

# FINAL RECORD

OF THE

DIPLOMATIC CONFERENCE OF GENEVA  
OF 1949

VOL. II

SECTION B





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*Diplomatic Conference for the Restoration of International  
Cooperation for the Purpose of Settling Peace*

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OF THE

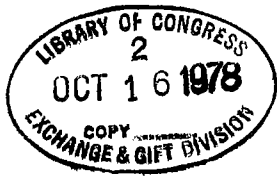
DIPLOMATIC CONFERENCE OF GENEVA

OF 1949

VOL. II

SECTION B

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VOL. II

SECTION B

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JOINT COMMITTEE

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EXAMINATION OF THE ARTICLES COMMON  
TO ALL FOUR CONVENTIONS





# JOINT COMMITTEE

## FIRST MEETING

*Tuesday 26 April 1949, 10 a.m.*

*Chairman:* Mr. Maurice BOURQUIN (Belgium), Chairman of Committee II

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### **First reading of Articles common to all four Conventions**      **Agenda**

The CHAIRMAN said that the Plenary Assembly had drawn up the list of Articles common to all four Conventions for the consideration of the Joint Committee of Committees I, II and III, and had also indicated the method to be followed. They were instructed to begin by a preliminary examination in order to prepare the ground for a second reading. It would not be till after the second reading that the Committee would be called upon to decide on the tenor of the Articles. On the first reading it was advisable to avoid discussion on points of form, to have a quite simple and direct exchange of views, not to raise questions of form or wording, and to concentrate on the meaning and substance of the Articles.

### **Appointment of a Rapporteur**

The CHAIRMAN proposed the appointment of a Rapporteur in the person of Colonel Du Pasquier, Rapporteur of Committee III.

This proposition was approved unanimously.

### **Collaboration of the International Committee of the Red Cross**

The CHAIRMAN drew attention to the important rôle which the I.C.R.C. would be called upon to play as an expert in the work of the Committee. He asked Mr. Pilloud to be at the disposal of the Committee for any clarification which might be required.

The CHAIRMAN announced that an addition to the list of common Articles adopted by the Conference had been proposed by the Netherlands Delegation, namely, the inclusion of Article 118 of the Prisoners of War Convention, corresponding to Article 129 of the Civilians Convention. The Plenary Assembly would have to take a decision on that extension of the instructions by the Committee.

### **Postponement of consideration of Article 1**

The CHAIRMAN felt that, although it was logical to start with a discussion on Article 1, it was preferable to defer examination of that Article, since it was probable that the Committee would have to discuss it in connection with the Preamble. Up to the present only in one Convention is proposed a Preamble, namely in the Convention for the Protection of Civilians. But it had been suggested—and the suggestion had met with considerable approval—that all the Conventions should have a Preamble. But Preambles, like the prefaces of books, although placed at the beginning of the Conventions, were written after them. It would, therefore, be best to begin with the consideration of Article 2.

The Chairman's proposal was adopted.

### **Consideration of Article 2**

The CHAIRMAN pointed out the importance of Article 2 as determining the scope of the Convention. Article 2 had a history. It had been prepared

in various stages. He felt that the discussion might begin with a statement by the Delegate of the International Committee of the Red Cross on the origin of the Article and the problems it raised.

Mr. GARDNER (United Kingdom) having suggested a general discussion on the whole of the common Articles before taking them individually, Mr. SLAVIN (Union of Soviet Socialist Republics) supported the Chairman's suggestion for a study of the Articles *seriatim*.

The CHAIRMAN pointed out that the common Articles concerned widely different questions, and it was preferable to take them Article by Article in the interest of a clear discussion.

Mr. GARDNER (United Kingdom) agreed with the Chairman's ruling.

Mr. PILLOUD (International Committee of the Red Cross) said that Article 2 contains important changes with reference to the text of the 1929 Conventions. This Article, particularly the first paragraph was considered necessary to define the conception of war. It was paragraph 4 of the proposed text which had given rise to most discussion at Stockholm. The idea of reciprocity figuring in the Convention for the Protection of Civilians was deleted in the Draft of the Convention for the Sick and Wounded. The two texts should be brought into conformity. Further, the I.C.R.C. in its "Remarks and Proposals", had suggested the addition in paragraph 3 of a provision with regard to the case of two States at war, one of which was not a Party to the Convention.

Mr. LAMARLE (France), speaking primarily with reference to paragraph 4, did not contest the necessity of providing for the situations envisaged in the Article, but felt that the positive form of the phraseology of the text might be dangerous in certain connections. The Conference at Stockholm had been mainly concerned with the protection of the rights of the individual; but it was also necessary not to lose sight of the rights of the States. It was impossible to carry the protection of individuals to the point of sacrificing the rights of States. In order to protect the rights of the State the French Delegation would propose an amendment making it impossible, for forms of disorder, anarchy or brigandage to claim the protection of the Convention under a mask of politics or on any other pretext. The amendment would indicate that the forces concerned must be organized military forces belonging to a responsible authority capable of respecting, or enforcing respect for the Convention, in a given territory.

Sir Robert CRAIGIE (United Kingdom) was against the adoption of paragraph 4 of Article 2 in its present form. He thought that the provisions of Article 2 required very careful consideration. He did not believe it possible to oblige a State to apply the Conventions to situations which were not war, declared or not, as this idea is defined by international law. The application of the Conventions in cases where there is no war, would lead to the application of new laws specifically adapted to the situation and this would create a great confusion. Moreover, the Parties to a conflict could not be sole judges as to whether a state of war existed. In the United Kingdom Delegation's view, paragraph 4 of Article 2 was a source of serious difficulties, not only because the Conventions would be applicable to situations which were not war, but because the application of the Conventions would appear to give the status of belligerents to insurgents, whose right to wage war could not be recognized. Even if paragraph 4 were confined in its application to situations in which one of the combatants was the lawful government (e.g. in the case of civil war), the difficulties would still exist. Careful consideration of the provisions of the Convention concerning Civilians, in particular, left little room for doubt that their application to civil war would strike at the root of national sovereignty and endanger national security, quite apart from the practical difficulty to which the I.C.R.C. had drawn attention in its "Remarks and Proposals" in connection with the stops which signatories were expected to take to implement the provisions of the Convention in the event of civil war.

Mr. PESMAZOGLU (Greece) recalled that at Stockholm he had drawn attention to paragraph 4 of Article 2. The meeting of Governmental Experts two years ago in Geneva had proposed that, when an international war was not in question, humanitarian principles alone should be applicable and then only on condition of reciprocity. He considered that the Stockholm Conference, by suppressing the explicit references to "civil war" and "colonial war" had given too wide a scope to the text. As the Delegate of France had pointed out, if that rule were applied in all armed conflicts, the rights of the State would be ignored, especially in the case of rebellion incited by a few factious parties. In particular, the adoption of the text as at present drafted would entail the application to the latter of the provisions of Articles 74 and 100 of the Prisoners of War Convention. The rebels could not, therefore, be charged with crimes against common law committed before their arrest, and they would be automatically granted a pardon at the end of the disturbances. Furthermore, they could claim the protection of a Protec-

ting Power. The possibility of such protection might incite political opponents to take up arms against a legitimate government. In the Conventions it was necessary to distinguish between the humanitarian and the legal principles. The recognition of belligerency entailed certain rights; but who would be competent to recognize belligerency in the case of civil war? The Greek Delegation had proposed one form of wording, and others might be forthcoming. It might for example be decided that a majority of members of the Security Council of the United Nations should be competent for the purpose. But as a general rule it was preferable to adhere to the conception of prior consideration for humanitarian principles as compared with strictly legal principles.

Mr. DE ALBA (Mexico) agreed with the spirit of Article 2. Confused situations might no doubt arise. In civil wars there might also be movements for emancipation of a morally creditable character. But in any case, the rights of the State should not be placed above all humanitarian considerations. The Conference at Stockholm had been courageous in placing this principle at the beginning of the Conventions. It might be advisable, in order to protect the rights of the State, to forego the eventual recourse to a Protecting Power; but in this case the rôle of the Protecting Power should devolve on some international body such as the International Red Cross in order to place the question on a humanitarian plane. Often civil war was more cruel than international war; and the Conference should not be deaf to the voice of those who are suffering.

Mr. CASTBERG (Norway) hoped that the proposals adopted by the Stockholm Conference, as a sequel to the meetings of the Governmental Experts and the work of the I.C.R.C., would be upheld.

It was a step forward in international law to say explicitly that, even if war was not recognized, the rules concerning the conduct of war should be applied. As to civil war, the term "armed conflict" should not be interpreted as meaning "individual conflict", or "uprising". Civil war was a form of conflict resembling international war, but taking place inside the territory of a State. It was not a conflict between a number of individuals. No doubt there were special cases, and it would be a good thing if some system of settlement could be found. The Greek Memorandum had very properly suggested that the point should be considered.

As for belligerency, when belligerency was recognized in an internal conflict, serious legal consequences were entailed; but it was to be

hoped that the Conference would agree that purely humanitarian rules should be applied in armed conflicts independently of any recognition of belligerency.

The last sentence of Article 2 was a sound innovation. If the application of the Convention entailed no consequence as regards the legal status of opposing parties, that meant that the Convention must be applied even where the opposing parties were not recognized as belligerents.

The Marquis OF VILLALOBAR (Spain) supported the amendment proposed by the Delegate of France. The Conventions should only be applied in cases where the legal government was obliged to have recourse to the regular military forces against insurgents militarily organized and in possession of a part of the national territory.

Mr. FALUS (Hungary) was of the opinion that the essential aim of the Conference was to extend the field of action of the Convention as much as possible for the protection of the victims of conflicts. He regretted that the Stockholm Conference had restricted the scope of the text submitted by the I.C.R.C. by including the idea of reciprocity. He did not think there was any justification for the fear expressed by certain previous speakers that the Convention might operate as an indirect incitement to take up arms.

Mr. COHN (Denmark) fully supported the views expressed by the Delegate of Mexico. The principles of international law and the humanitarian principles contained in the Conventions should be recognized in all cases of what could be called genuine armed conflicts; and not an action of a State against wrongdoers. He proposed the retention of paragraph 4 in its present form.

Dr. DIMITRIU (Rumania) thought the text of the Article should be adopted as it stood, in spite of certain imperfections. Humanitarian considerations should prevent the Conference from introducing restrictions in the text, the whole object of which was to extend the protection of the Convention to the greatest possible number of persons. The amendment of the French Delegation seemed redundant, since paragraph 4 provided for the application of the Convention, subject to its observance by the opposing party. The application of international Conventions, concerned about humanitarian causes, could not be the work of anarchy, disorder or banditry.

*The meeting rose at 12.45 p.m.*

## SECOND MEETING

Wednesday 27 April 1949, 10 a.m.

Chairman: Mr. Maurice BOURQUIN (Belgium)

**Article 2** (*continued*)

Mr. Leland HARRISON (United States of America) said that the United States Delegation considered Article 2, as adopted by the Stockholm Conference, was an improvement over previous drafts, but was still inadequate. The United States of America did not consider that it could bind itself to observe the provisions of the Convention except in the case of war as understood in international law. The Convention would therefore be applicable in all cases of declared or undeclared war between States, parties to the Convention, and to certain armed conflicts within the territory of a State party to the Convention.

Every government had a right to put down rebellion within its borders and to punish the insurgents in accordance with its penal laws. Conversely, premature recognition of the belligerency of insurgents was a tortious act against the lawful government and a breach of international law. The United States of America therefore considered that the Convention should be applicable only where the parent government had extended recognition to the rebels or where those conditions obtained which would warrant other States in recognizing the belligerency of the rebels whether or not such recognition was accorded by the Power on which they depend in this latter eventuality. The application of this Convention could not be regarded as recognition of belligerency by any party thereto. The conditions which should obtain before the Convention would be applicable to an armed conflict within a State, party to the Convention, might be briefly stated as follows:

- (1) The insurgents must have an organization purporting to have the characteristics of a State.
- (2) The insurgent civil authority must exercise *de facto* authority over persons within a determinate territory.
- (3) The armed forces must act under the direction of an organized civil authority and be

prepared to observe the ordinary laws of war.

- (4) The insurgent civil authorities must agree to be bound by the provisions of the Convention.

Dr. WU (China) observed that there was apparently a conflict of views, one humanitarian, the other juridical, the former tending to extend the scope of application of the Conventions as much as possible, while the latter considered the practical aspect of the system of international law. The same divergencies might be found in other Articles of the Conventions and it was the task of the Conference not to exaggerate this division, but to endeavour to keep the various trends in harmony. With regard to the first paragraph of Article 2, providing for the application of the Convention in places where the state of war was not even recognized by one of the belligerents, the interpretation of this paragraph was important in view of the situation obtaining during the recent world war. China had been subjected for 8 years to aggressive war which was often described as an "incident". The Chinese Delegation therefore felt that paragraph 4 of Article 2 was too sweeping when it declared that in all cases of armed conflict not of an international character occurring in the territory of one or more of the Parties to the conflict, each of the adversaries should be bound to implement the provisions of the Convention.

The Chinese Delegation therefore supported the views of the French and Greek Delegates expressed in the previous meeting, and was in favour of a restriction in the scope of the fourth paragraph, such as had been suggested by the United States Delegation.

Mr. LAMARLE (France) wished firstly to dispel a misunderstanding which appeared to have occurred as a result of his remarks on the previous day with regard to the rights of the State, and of the need for establishing a balance between them and the rights of the individual. By rights of the State,

he did not wish to imply rights, as interpreted by fascist régimes who sought to impose their laws on their own nation before imposing them on the world. It was obvious that the rights and duties of the State were identical. Taking as an illustration a group of persons who, animated by some pretext or other, aimed at exterminating another group, the Delegate for France considered it was the duty of the State to protect by violence the group of persons threatened. The sense of his remarks on the preceding day was to prevent lawlessness, in whatever form it might occur. He had not thought for one moment of placing the State above humanitarian laws, but on the contrary, of conceiving the State as the servant of these laws and of the common rights.

To take into account the remarks made by the Norwegian, Danish and Rumanian Delegations, the French Delegate would agree his proposal being modified to specify that respect of the wounded and sick covered by the provisions of the Convention concluded for this purpose, would not be excluded.

Mr. WERSHOF (Canada) suggested firstly, that there should be an addition to Article 2 providing for a reciprocal basis in the case of international war, for the application of the Convention between a party signatory and a party which was not signatory to the Convention. Secondly, the Delegate for Canada touched the question of civil war. According to the suggestion just made by the Delegate for the United States of America, in instances of large scale civil war, it should be possible to apply most of the terms of this Convention between the lawful Government and the rebels, in the case of effective control of a substantial portion of the national territory by the rebels, who had set up something resembling a civil administration. The Delegate for Canada considered it might even be in the interest of the lawful Government to have many provisions of the Convention applied. However, before saying that a civil war was of the kind in which the Convention should be applied, the test should be: recognition of belligerency of the rebels by the lawful Government. Except in the instance of a civil war of that kind, the Canadian Delegation were not in favour of the provisions contained in paragraph 4, Article 2.

In its present form, the fourth paragraph would justify a demand on the part of a small group of rebels for the recognition of a protecting power, and except in the case of a large scale civil war in which an extensive section of the national territory was in rebel hands, this would be absurd. Moreover, the same difficulty would occur in matters relating to treatment of prisoners of war. Although rebel prisoners should be treated in a

humane manner, a distinction should be made between humane treatment, and the application of the provisions of the Prisoners of War Convention, such as the supplying of pay and allowances.

Lastly, the introduction of the fourth paragraph into Article 2 seemed even more impossible in the case of the Civilian Convention. Here the persons protected were essentially enemy nationals residing in the country. It would be inconceivable to suggest that even in a large-scale civil war supporters of the rebels could justifiably demand from the lawful Government that they be treated as protected persons under the Civilian Convention, although they were not living in the part of the country controlled by the rebels. No lawful Government would be able to quell a rebellion under these circumstances.

Therefore the Canadian Delegation was in favour of complete suppression of the proposed application of the Civilian Convention to civil war, although they would be ready to support a formula covering only a limited type of civil war, as suggested by the United States Delegation.

Mr. MARESCA (Italy) pointed out that the fourth paragraph must be examined in connection with the text of paragraph 3 of Article 2 as it might be interpreted in different ways. According to the first interpretation, the provisions of the Convention would be applicable to the nationals of a belligerent not a party to the Convention. The second interpretation which reproduced the clause of *si omnes* appearing in all preceding Conventions seemed more accurate; it was only if all belligerent Powers were parties to the Convention that its provisions would be applied. Another interpretation would be to consider the Convention only applicable to victims of war even if one of the Powers in conflict is not party to the Convention. With a view to obviating this dual interpretation the Italian Delegation proposed that paragraph 3, Article 2 be amended as follows: "The Powers Parties to the present Convention shall be bound by it in their mutual relations, even if one of the Powers in conflict is not party to the present Convention." This wording would appear to be a compromise formula between the two theories with regard to the problem raised by paragraph 4. The Italian Delegation would be disposed to support the formula as suggested by the French Delegation, which might be accompanied by a recommendation stipulating that the humanitarian principles which are the essence of the Conventions should guide the conduct of States.

General SLAVIN (Union of Soviet Socialist Republics) recalled that Article 2, drafted by the experts in Geneva in 1947 and then approved at Stockholm contained two provisions; the first

referred to the application of the Convention in cases of international conflicts; the second related to the application of the Convention in all cases of armed conflict which were not international in character. In this connection, the United Kingdom Delegation had alluded to the fact that colonial and civil wars were not regulated by international law, and therefore that decisions in this respect would be out of place in the text of the Conventions. This theory was not convincing, since although the jurists themselves were divided in opinion on this point, some were of the view that civil war was regulated by international law. Since the creation of the Organization of the United Nations, this question seemed settled. Article 2 of the Charter provided that Member States must ensure peace and world security. They could therefore not be indifferent to the cessation of hostilities, no matter the character or localization of the conflict. Colonial and civil wars therefore came within the purview of international law.

With regard to the proposals submitted by the French and Greek Delegations, the Soviet Delegate noted that they were similar in character to the United Kingdom proposal.

If the French proposal were followed, there would be a danger of one party declaring, without proof, that the other party was not in a position to ensure order, and thus of justifying any violation of the basic humanitarian principles of the Conventions.

The Greek amendment was unacceptable, for it subordinated the application of the Convention in cases of conflict which were not of an international character, to formal recognition of the status of belligerents to the present Parties. This amendment restricted the scope of the text of the Draft which was approved at Stockholm and sapped its humanitarian bases.

Nor was its proposal to recognize the parties to the conflict as belligerents through a special decision of the Security Council any more acceptable. The latter's task was to seek a peaceful solution to conflicts which threatened world security and not to note these conflicts and to recognize the status of belligerents to the parties to the conflict.

Contrary to the fears expressed by the French and Greek Delegates, the text drafted at Stockholm allowed the States the means of repressing crimes jeopardizing the security of the State in accordance with their national law.

The proposal of the United States Delegation by subordinating the application of the Convention to the decision of one Party, was no longer in harmony with the humanitarian principles governing these Conventions.

In conclusion, the Soviet Delegate pointed out that civil and colonial wars were often accompanied by violations of international law and were charac-

terized by cruelty of all kinds. The suffering of the population in the instance of civil and colonial wars was as distressing as that which led Henry Dunant to realize the need for regulating the laws of warfare.

The Soviet Delegation shared in this connection the views of the Mexican, Danish, Norwegian, Rumanian and several other Delegations, and considered it necessary to maintain the text of Article 2 of the Convention, as it was drafted at the 16th and 17th Red Cross Conferences and which extends the application of the Convention to all cases of conflict.

MR. DE GEOUFFRE DE LA PRADELLE (Monaco) was of the opinion that from the humanitarian viewpoint, it would be regrettable to confine the application of Article 2 to international war alone. The objections submitted by the advocates of such a limitation did not seem justifiable. It should not be forgotten that this Article formed part of a whole which was the International Conventions for the protection of war victims. The activities of a group of criminals was obviously not war, this form of violence coming within the competency of domestic penal legislation.

The Conventions, the Conference was preparing were international Conventions regulating situations which were international in character, and which even if there were a civil war, might come within the competency of international law.

The Delegate for Monaco recalled the Havana Convention of 20 February 1928, regulating the application of international law to civil war. On the other hand, anarchy and rebellion came within the sphere of national law.

He could not accept the mutilation of paragraph 4, as proposed by certain delegations, that in situations coming within the competency of international law, application of the Conventions should be subject to a sort of previous authorization of the Powers directly or indirectly interested in the conflict. He considered that it was not even necessary that the application of the Conventions should be made subject to recognition of belligerency by a third party, which might be deemed impartial, or by a high international body, i.e. the Security Council.

The aim in view was to guarantee minimum protection to those who deserve it on account of their attitude, as evidenced by circumstances and facts, and who are ready to apply to their adversaries the provisions of these Conventions.

Paragraph 4 should be retained, but amended according to the French proposal, so that even if it were detached from its context, it would not frighten the supporters of sovereignty of the State.

Mr. BOLLA (Switzerland) noted that Article 2 raised interesting problems, and that only that relating to the application of the principles of the Convention to civil war was controversial.

The text prepared at Stockholm appears not to give sufficient guarantees to those who did not wish to disarm the State against crime, even of a political nature.

Without going into the detail of the various amendments submitted, the Delegate for Switzerland was of the opinion that the Conference should refrain from any restrictive condition or reference to the United Nations Organization. He suggested the nomination of a small Sub-Committee to deal with the definition of what was meant by armed conflict, and which would draft a text reconciling the different view points expressed.

Sir Robert CRAIGIE (United Kingdom) did not feel that a distinction should be drawn between the humanitarian viewpoint and the legalistic view. Humanity suffered when discord and chaos arose and judicial methods were the technical means of establishing order; they therefore made humanitarianism effective. Far from being in opposition, these two conceptions can be considered as complementary. He wished to correct what must have been a misapprehension; namely that he had stated colonial and civil wars were not subject to rules. He was well aware that under certain conditions, international law took notice of wars which were not international in character. But all delegations seemed to be of the view that the State must be protected against irresponsible outbursts.

He asked for a postponement of a few days to enable delegations to consider this problem in informal talks, before the Committee suggested by the Swiss Delegate was set up.

General OUNG (Burma) considered the issue involved in paragraph 4 of Article 2 perfectly clear. He recalled the experience of his own country and the distress entailed by the overrunning of the national territory by the armies of two foreign Powers. The proposed Convention should not give legal status to insurgents who sought by undemocratic methods, to overthrow a legally constituted government by force of arms.

Mr. W. R. HODGSON (Australia) pointed out that at present the Australian Government was of the opinion that the Convention should apply when an armed conflict became a full-scale war and when there was an organized form of Government which effectively controlled definite portions of the national territory and the inhabitants therein.

To distinguish between the aforementioned state of affairs and local uprisings, the principles of the present Convention should be applied to the Parties to the conflict, provided:

- (1) the *de jure* government had recognized the insurgents as belligerents, or;
- (2) the *de jure* government had claimed for itself the right of belligerent, and;
- (3) the *de jure* government had accorded the insurgents recognition as belligerents for the purposes only of the present Conventions;
- (4) that the dispute had been admitted to the Agenda of the Security Council or the General Assembly of the United Nations as being a threat to international peace, a breach of the peace, or an act of aggression.

This latter proviso indicates the fact that the matter was not one coming within the domestic jurisdiction of a State according to the terms of Article 2, point 7 of the Charter. Moreover no difficulty would arise with regard to the veto, because the placing of a conflict on the Agenda was purely a matter of procedure.

The CHAIRMAN considered that the first reading of Article 2 was closed. A second reading of Article 2 would take place later, and that in accordance with the terms of reference of the Joint Committee, decisions would then be taken. Meanwhile the Committee could examine the other Articles submitted. He suggested that a decision be taken at the next meeting with regard to the nomination of a small Committee as suggested by the Swiss Delegate.

*The meeting rose at 1.05 p.m.*



## THIRD MEETING

*Friday 29 April 1949, 10 a.m.*

*Chairman:* Mr. Maurice BOURQUIN (Belgium)

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**Article 2 (continued)**

The CHAIRMAN drew the attention of the meeting to the fact that the Swiss Delegation had proposed that a sub-Committee should be formed in order to establish a compromise formula for Article 2, paragraph 4 relative to armed Conflicts which were not of an international character.

He suggested that this Sub-Committee should be composed as follows:

Australia, United States of America, France, Greece, Italy, Monaco, Norway, United Kingdom, Switzerland, Union of Soviet Socialist Republics.

This proposition was adopted unanimously.

Mr. PESMAZOGLOU (Greece) wished to clarify the meaning of the motion he had formulated at the last meeting.

He did not wish it to be understood that recognition as belligerents should be given to rebels by the Security Council but given individually by the majority of the countries represented in the Council.

The CHAIRMAN considered the first reading of Article 2 to be closed and requested the Committee to proceed to the examination of the next Article, No. 4 in the Wounded and Sick Convention, and No. 5 in the other three Conventions.

**Article 4/5/5**

Mr. PILLOUD (International Committee of the Red Cross) pointed out that this Article is an almost exact reproduction of the terms of Article 83 of the 1929 Prisoners of War Convention. The only important amendment consists of the introduction in paragraph 1 of a stipulation which lays down that belligerents may in no case conclude agreements which may adversely prejudice the position of persons protected by the Conventions.

Mr. GARDNER (United Kingdom) stated that experience gained during the last war had shown that Article 83 of the 1929 Prisoners of War Convention had been one of the most valuable in that Convention. It was a fact that this Article had rendered possible the adaptation of the terms of the Convention to circumstances which its authors could not have foreseen. The corresponding Article of the new Convention should however make it possible for belligerents to conclude special agreements which might at first sight appear disadvantageous or unfavourable to prisoners of war. In certain cases it may be difficult to determine in advance whether a special agreement will, on the whole, be favourable or unfavourable to prisoners of war. For example, the Power on which the prisoners of war depend might request that its own medical personnel held as prisoners should not receive a higher rate of pay from the Detaining Power than that which they received in their own army, or that there should be a reduction of the number of letters or post cards which prisoners of war were permitted to send with a view to lightening the task of the censorship services and thereby to speed up despatch.

The position is different as regards the Wounded and Sick Convention, in which for the first time an Article is foreseen which would authorize special agreements between belligerents. This Convention already contains three Articles by which it would be possible for such agreements to be made in predetermined cases. It appeared to the United Kingdom Delegation that in other fields the provisions of the Convention should not be modified by special agreements and that Article 4 of the Wounded and Sick Convention as well as Article 5 of the Maritime Convention would be not only useless but even dangerous and for this reason should be deleted.

Mr. LAMARLE (France) considered that the examples quoted by the United Kingdom Delegation in order to justify the deletion of the safeguarding clause were of a much too special character. He

wished to maintain this necessary clause, but would like, however, that it should not be possible to detract from the rules set by the Conventions except in cases where it is necessary to clarify the procedure for their implementation or to elaborate more favourable measures.

Mr. MARESCA (Italy) was of the opinion that special agreements are particularly important as they are an everlasting record of international law during and notwithstanding the war. As regards the safeguarding clause, it could be elaborated in such a manner as to satisfy both the United Kingdom and the French Delegations. There also existed the problem of special agreements which might be concluded at the end of a war, that is to say, when the two contracting parties are in the position of victor and vanquished. The former might impose on the latter a renunciation of the rights to which it would be entitled by the Conventions, that is to say, to claims to which it might be entitled owing to the non-observation of the Conventions in time of war, such as for instance the payment of an indemnity to prisoners who had been wounded while carrying out dangerous tasks such as were prohibited by the Convention. He thought that in its present form the safeguarding clause is not a sufficient guarantee against such contingencies. Hoping to avoid that the Convention will not become a dead letter at the moment when its entire application must be used, the Italian Delegation had proposed in the Memorandum to introduce to this Article a third paragraph, reading as follows:

“No agreement even should it take the form of a clause to a Treaty intended to regulate matters which have remained in suspense at the conclusion of an armed conflict shall relieve any Party from the responsibilities it has incurred by its failure to observe this Convention”.

It might, however, be possible that the proper place for this clause would be at the end of the Convention in the Chapter which deals with violations.

Mr. DE GEOUFFRE DE LA PRADELLE (Monaco) estimated that the safeguarding clause ensures the superiority of the Conventions to special agreements reached by belligerents during the war. However, its importance should yet be stated. The problem raised by the possibility of the Conventions conflicting with armistice or peace treaties reached on the termination of war, is on the other hand also very important.

The Speaker reminded his colleagues that other Articles in the Conventions already dealt with the implementation of the protection instituted by them beyond the duration of hostilities and pointed to the importance of the Italian amendment.

Count of ALMINA (Spain) supported the Italian motion.

Nobody wishing to speak, the CHAIRMAN considered the first reading of this Article to be closed. He requested the Committee to start examining Article 5 of the Wounded and Sick Convention, which bears the number 6 in the three other Conventions.

#### Article 5/6/6/6

Mr. PILLOUD (International Committee of the Red Cross) pointed out that this Article was new, having been established after the Government Experts Conference, because it seemed necessary to protect prisoners of war, civilian internees and prisoners of war who were members of medical personnel against the temptation of giving up their status for another, for instance that of a civilian worker, or to join the forces of the Detaining Power. The I.C.R.C. had proposed at Stockholm that protected persons should not be persuaded, by coercion or any other forced means, to renounce the rights conferred upon them by the Conventions. Deleting the allusion of coercing, the Stockholm Conference went even further in stipulating, that the interested Parties could not renounce partially or totally to the rights granted to them by the Conventions. It adopted a text which inserted into a Convention which is intended to prescribe the obligations of the Detaining Powers, obligations incumbent upon the persons under detention. Mr. Pilloud therefore considered that this Article should be modified on the lines of the suggestion contained in its “Remarks and Proposals” (see *Annex No. 17*). This text, established in the spirit of the Stockholm Conference, prescribes obligations on behalf of the Detaining Power.

Mr. CASTRÉN (Finland) proposed a modification in reverting to the text submitted to the Stockholm Conference and inserting the word “inalienable” before the word “rights”. The Article would thus apply both to the belligerent Powers and to the protected persons.

Mr. GARDNER (United Kingdom) recalled that the Prisoners of War Convention is particularly intended to give the prisoner the greatest possible freedom. It may seem strange for a humanitarian Conference to have inserted an Article stipulating that in no circumstances a prisoner of war may be allowed to make a free choice; it would therefore be preferable to revert to the Draft submitted to the Stockholm Conference.

Mr. CASTBERG (Norway) supported the I.C.R.C. proposition and at the same time pointed out

how dangerous it would be to grant to protected persons the faculty to renounce to the rights granted to them by the Conventions. In the States of Social legislation persons who benefit through them cannot renounce to the rights deriving from it. This principle may lead to harsh consequences, but it is effective in ensuring the protection of persons protected by the Convention. Supposing an agreement was reached between the Detaining Power and prisoners of war or detained civilians, according to which the latter would renounce to the rights given to them by the Convention, Mr. Castberg thinks that it would be very difficult to prove that coercion or pressure have been used. Powers who have obtained a renunciation will have no difficulty in asserting that it was obtained with the free consent of those concerned, and for their part, the latter might confirm this allegation. The only way to ensure the sought for protection would be to set up in a general ruling the invalidity of a renunciation of the rights given by the Convention.

Mr. MOROSOV (Union of Soviet Socialist Republics) was of the opinion that the wording of the

text adopted at Stockholm is clear. It signifies that no legal issue may be raised by the fact that a protected person renounces the rights which the Conventions accord him. It is not correct to say that it places obligations on the protected persons and not upon States, for the States alone are bound by the Conventions.

The amendment suggested by the I.C.R.C. is no improvement on the text adopted at Stockholm, as it merely repeats what has already been said in Article 1, which provides that the Contracting Parties undertake to respect and ensure respect for the Convention in all circumstances.

The Finnish Delegate proposed to reinsert the mention of coercion and other means of pressure, but this in no way increases the scope of the text adopted at Stockholm. As regards the examples quoted by the United Kingdom Delegate, they tend to express ideas bordering on absurdity and deform the meaning of Article 6.

In consequence, the Soviet Delegation is of the opinion that the text adopted at Stockholm should be maintained.

*The meeting rose at 1 p.m.*

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#### FOURTH MEETING

*Monday 2 May 1949, 10 a.m.*

*Chairman:* Mr. Maurice BOURQUIN (Belgium)

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#### **Article 5/6/6/6** (*continued*)

Mr. LAMARLE (France) indicated that the French Delegation could not support the theory voiced at the preceding meeting by the Expert of the International of the Committee Red Cross according to which the proposed or any similar text, stating, that it is forbidden to enlist prisoners of war in the armed forces of the Detaining Power. Amongst other cases, he wanted to recall, the case of the inhabitants of Alsace-Lorraine, annexed by force by the Reich in 1871, who in 1914 were taken prisoners by the French or Allied Armies and wanted to join one of them. He considered that it would be contrary to the honour of the prisoners of war, to hinder them to serve in the armies of the

Power who captured them. Therefore he made the most explicit reservations.

The CHAIRMAN invited the Committee to start with the examination of the following Article: 6 of the Wounded and Sick Convention and 7 of the other Conventions.

#### **Article 6/7/7/7**

Mr. PILLOUD (International Committee of the Red Cross) recalled that this Article defined on general lines the rôle and functions of the Protecting Powers and reproduced practically in full the stipulations of Article 86 of the Prisoners of War Convention of 1929. However, it was an innova-

tion to introduce it into the Wounded and Sick and the Maritime Conventions. This stipulation was customary as during the last war the Protecting Powers were concerned with the application of these Conventions.

Mr. WERSHOF (Canada) pointed out that as drafted at present, the wording of Article 7 differed in two respects from Article 86 of the Prisoners of War Convention of 1929.

It embodied a new idea: the supervision by Protecting Powers, which, according to the interpretation of the Canadian Delegation, would imply some form of directives or instructions which the Protecting Powers would be authorized to give to the Detaining Powers. There was, however, no precedent for this in international law, nor had any justification of such instructions ever been given by the International Committee of the Red Cross, which would mean the obligation to supervise the application of the Conventions. The Canadian Delegation was therefore in favour of deleting the words "the supervision".

On the other hand the last sentence of the first paragraph of Article 7, added at Stockholm, stated that "the said Power may only refuse its approval if serious grounds are adduced". In wartime, security problems dictated the conduct of governments, and there were times when a government would not be in a position to disclose the reasons why a delegate selected from outside the diplomatic service of the Protecting Power was not *persona grata*. Therefore it would not be advisable to formulate rules for the delegates other than those in force for the diplomatic service and which provide that indications of reasons for a refusal of approval need not be disclosed.

Sir Robert CRAIGIE (United Kingdom) paid a tribute to the splendid work carried out by Protecting Powers during the two wars and stressed the great moral support which internees derived from the knowledge that somebody was looking after their interests. However, in defining the functions of the Protecting Powers care should be taken to avoid placing too heavy a burden upon them in time of war. For example, the Civilians Convention placed on the Protecting Power the onus of watching over the whole economic system of the country to which they were accredited and assuring that the food supplies and distribution and allocation of relief consignments were being properly carried out.

Moreover, the Protecting Power, to supervise the operation of the Wounded and Sick and the Maritime Conventions, would necessitate a large number of observers both on the battlefields and at sea.

The United Kingdom Delegation was also opposed to the word "supervision", used in the drafts. Such supervision would further increase the responsibilities of the Protecting Power and might even lead to friction with the Detaining Power.

Mr. BOLLA (Switzerland) was of the view that action by the Protecting Power would be all the more effective if it could rest on well-defined texts. He therefore considered that mention should be made of the Protecting Power in all Conventions. In acting as *negotiorum gestor* the Protecting Power might be exposed to risks, but the international solidarity imposes duties and they cannot be bound to the simple rôle of a messenger.

With regard to the first observation made by the Delegate for Canada, the Delegate for Switzerland considered that in French the word "supervision" did not imply the right to give directives to the Detaining Power. With regard to the second remark, he considered that a reason based on military security of the Detaining Power should be considered as serious grounds to be dispensed from entering into excessive specifications.

Mr. MARESCA (Italy) considered that the Protecting Powers could not undertake effective work, as specified by the Conventions unless, they were allowed to exercise a certain right of control. It was, however, essential that the person entrusted with this control should be approved by the Detaining Power and should enjoy their confidence. To restrict to the utmost degree feasible the possibility of refusal of approval, on the other hand he felt it was necessary to have recourse to qualified persons. The diplomatic and consular representations which approval could be refused only within the limits of international courtesy seem to be designated for this task. The Delegate for Italy suggested that the second and third sentences of the first paragraph should read as follows: "...To that effect, the Protecting Powers may, in addition to their diplomatic staff, appoint delegates from amongst their own nationals or the nationals of other neutral Powers. Such delegates shall perform their duties under the control and responsibility of the head of the diplomatic mission."

This addition would, in his view, make it possible to delete the last sentence of the paragraph.

Mr. SÖDERBLOM (Sweden) indicated that the experience acquired by the country as Protecting Power coincided with that of Switzerland. The Swedish Delegate stressed the need for the Protecting Power of being able to base its action on well-defined and precise provisions of a Convention. Moreover, the text approved at Stockholm did not imply that a Protecting Power was previously

compelled to ask for approval of each delegate as, in diplomatic practice, this was only done in the case of the head of the mission.

Mr. LAMARLE (France) recalled that the Prisoners of War Convention of 1929 already alluded to the control by the Protecting Power in the title of the section in which Article 86 can be found. He was supporting the thesis exposed by Mr. Bolla and suggested that this word must not be deleted.

All amounts to, as the Italian Delegate had mentioned, that it was a matter of confidence in the Power and the persons who were entrusted with carrying out the tasks belonging to the Protecting Power. On the other hand, they differed from the views expressed by the Swedish Delegation and considered that the Detaining Power should be given the widest possible powers of refusal with regard to the Delegates of the Protecting Power.

Colonel HODGSON (Australia) observed that in order to carry out its functions, the Protecting Power had to have the right of a certain degree of supervision and of reporting on the implementation of the provisions of the Convention. This system was a useful one, because it enabled certain minor details in the camps and elsewhere to be settled immediately with the camp commanders, and the local authorities.

In the English text of the Convention, the word "control" was now replaced by the much weaker term "supervision". The Australian Delegation therefore would have no objection to the first sentence of Article 7 standing in its present form.

The Australian Delegation agreed, on the other hand, with the Canadian Delegation that the Detaining Power should be authorized to refuse their approval without giving reasons for such action to the Protecting Power.

Mr. GARDNER (United Kingdom) pointed out that if the word "control" appeared in the heading of the Section, where Article 86 in the Prisoners of War Convention of 1929 is placed, it did not appear in the actual text of the Article. According to the rules relating to the interpretation of international treaties, it was only the text of the Articles which was taken into account in interpreting the obligations of the treaty. Although admitting that the 1929 Convention should be strengthened, the United Kingdom Delegation were desirous of an assurance that the system advocated by the new Draft would prove practicable.

The United Kingdom Delegation were deeply interested in the remarks made by the Swiss and Swedish Delegations. At a later stage in the discussion, they would be glad to have fuller explanations from these two Delegations as to how the new

obligations placed upon the Protecting Powers under the Draft Convention for Wounded and Sick, and in the Conventions for Maritime Warfare and for Civilians, would be implemented.

### Article 7/8/8/8

Mr. PILLOUD (International Committee of the Red Cross) indicated that this Article reproduced almost completely the provisions contained in Article 88 of the Convention of 1929 relating to the Treatment of Prisoners of War. It involved no commitment for the governments and merely restated the freedom of action of the International Committee of the Red Cross. It has been very useful in the practice and the I.C.R.C. would like to see it adopted under its present form.

Mr. GARDNER (United Kingdom) paid a tribute to the courage, patience and unselfishness with which the International Committee of the Red Cross had pursued their humanitarian effort. He desired that the unique position which this private body held in the world should in no way be weakened.

He wondered whether any useful purpose would be served by including the Article in question in the Wounded and Sick and in the Maritime Conventions. He recalled that the Diplomatic Conference of 1929 had not considered this necessary, although it had undoubtedly been conscious of the work accomplished by the International Committee of the Red Cross.

The problem presented itself differently in the Prisoners of War and Civilians Conventions submitted today to the Conference. There were over thirty references to the International Committee of the Red Cross, many of which corresponded to specific functions to be exercised by the Committee. Mr. Gardner feared that it would have the opposite effect as, the more precisely the duties of the Committee were defined, the more risk there was of governments opposing all activities which had not been expressly foreseen.

A further point to be examined critically was the duplication of functions between the Protecting Powers and the International Committee of the Red Cross. This might also lead in any future conflict to confusion and probably would result in restriction of the activities of the International Committee of the Red Cross. The Diplomatic Conference of 1929 had deleted the mention of certain detailed functions of the Committee with regard to visiting prisoner of war camps, and in the opinion of the United Kingdom Delegation, this had been a wise decision which had reacted to the interest of the humanitarian work of the International Committee of the Red Cross.

Mr. MARESCA (Italy) considered it necessary to introduce the provision under discussion into all the Conventions. However, he thought that it should be brought into line with the following Article, which provided for international humanitarian bodies offering all guarantees of impartiality which could act as substitutes for the Protecting Power. He proposed that this Article should be amended as follows:

“The provisions of the present Convention constitute no obstacle to the humanitarian activities which the International Committee of the Red Cross or any other impartial humanitarian body may undertake...”

Msgr. BERNARDINI (Holy See) approved the proposal submitted by the Italian Delegation and expressed the view that Red Cross work was coordinated with that of all other impartial agencies carrying out humanitarian activities.

Mr. CASTBERG (Norway) desired that the International Committee of the Red Cross which had been twice awarded the Nobel Prize, should be expressly mentioned in all the Conventions.

Mr. LAMARLE (France) considered that it would be regrettable to be deprived of the assistance which certain humanitarian agencies could extend, although perhaps in a more limited field than the International Committee of the Red Cross. He gave many instances which proved the valuable help given and he therefore supported the formula put forward by the Delegate for Italy, who, while making special mention of the International Committee of the Red Cross, reserved the possible collaboration of other welfare agencies. Such mention should appear in all the Conventions.

*The meeting rose at 1.00 p.m.*

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## FIFTH MEETING

*Tuesday 3 May 1949, 10 a.m.*

*Chairman:* Mr. Maurice BOURQUIN (Belgium)

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### **Article 7/8/8/8** (*continued*)

Mr. CARRY (International Committee of the Red Cross) emphasized the importance attached by the I.C.R.C. to this Article. Although it may not be as essential in the Wounded and Sick Convention and the Maritime Warfare Convention as in the other two, it may however prove extremely useful. The I.C.R.C. was, during the second world war, in particular, compelled to exercise considerable activity in the matter of military medical personnel retained in camps. As for the great number of proposals made by the I.C.R.C., they were introduced at previous Conferences and at the request of different countries.

### **Article 8/9/9/9**

Mr. PILLOUD (International Committee of the Red Cross) pointed out that this Article was introduced by government experts at their meeting

held in 1947, when they recognized the fact that the implementation of the Conventions depended on the existence and functioning of an organization capable of ensuring the protection of persons to whom these Conventions applied. It was in fact necessary to make up for the too frequent absence of a Protecting Power which had resulted, particularly during the last war, in 70 % of prisoners of war not receiving any benefit from the assistance of a Power of this description. The first paragraph made it possible, in time of peace already, to set up an organization which might replace all Protecting Powers; the second paragraph made the Detaining Power responsible for nominating either a neutral State or an impartial organization capable of assuming the functions of the Protecting Powers.

Mr. HARRISON (United States of America) pointed out that Article 7 deals with one of the principles which the United States Delegation considered essential for the application of Conventions.

The action of the Protecting Power and in particular, visits to prisoner of war camps and internment camps, contributes to the relief of war victims.

As far as humanitarian organizations such as the I.C.R.C. are concerned, they have an important complementary rôle to play.

Mr. LAMARLE (France) drew attention to the fact, that the French Delegation had emphasized at the 1947 Conference of Experts the necessity of providing for the possibility that, in any general conflict, the case that there might no longer be any neutral Power capable of efficiently fulfilling the part of a Protecting Power. Otherwise one can very well imagine that a non-belligerent Power might be in the impossibility of fulfilling this task or might not be accepted by a Detaining Power. For this reason an organization offering all the guarantees of impartiality must be considered in order to substitute the absence of a Protecting Power. The rôle of the I.C.R.C. is totally different from that of a Protecting Power; it does not act by virtue of a mandate but according to moral laws which go far beyond all mandates. For this reason it was sometimes compelled to refuse to undertake tasks which could only be accomplished by a Protecting Power. That is why the French Delegation considered the Stockholm text as the best one.

Mr. GARDNER (United Kingdom) was desirous that practical means should be found to provide for a substitute in the absence of a Protecting Power. The text adopted at Stockholm does not solve the problem as it merely stipulates that the Detaining Power should apply to a neutral State or to an impartial humanitarian organization. There is no obligation for a neutral State or an impartial humanitarian organization to assume the duties for which it is solicited. The United Kingdom Government sought by its Memorandum (*see Annex No. 20*) to strengthen the practical value of the Stockholm text. In particular great importance is attached to the fact that the substitute of a Protecting Power should act according to diplomatic usage, as its impartiality must be above all suspicion.

Mr. LAMARLE (France) said he had been convinced by the well founded statement just made by the Delegate of the United Kingdom. It was indeed important to obviate that the Detaining Power should nominate some puppet body to act as a Protecting Power.

Mr. DE ALBA (Mexico) was of the opinion that the functions of humanitarian organizations and particularly the I.C.R.C. should be extended in order to enable them to take the place of Protecting Powers as far as possible.

Mr. MOROSOV (Union of Soviet Socialist Republics) was unable to endorse the British proposal which appeared to him to reduce considerably the possibility of compensating for the absence of a Protecting Power, as it does not allow to appeal to a neutral or independent body except in the event of there being no government, representing the prisoners of war concerned, able to nominate a Protecting Power. The text adopted by the Stockholm Conference is more specific and has the advantage of obliging the Detaining Power to compensate for the absence of a Protecting Power by nominating, in its place, a humanitarian body. Further, Mr. Morosov pointed out, that the nomination of a substitute of the Protecting Power should be made with the consent of the belligerents concerned and that this is possible on the basis of the Stockholm text. It is likewise necessary that neutral States requested to assume the task of a Protecting Power may be able to consent of their own free will to their nomination.

Mr. Morosov refrained from drawing any definite conclusion at the moment but considered that the matter should be examined on the basis of the text drawn up at Stockholm.

Mr. LAMARLE (France) specified the reasons by the French Delegation preferred the United Kingdom's text to that of Stockholm. The aim in view is mainly to prevent the Detaining Power from evading the obligations imposed upon it by the Convention by nominating a puppet body. The United Kingdom text seemed to him to offer every guarantee from this point of view.

Colonel HODGSON (Australia) reminded the Meeting that the Protecting Power is by definition a neutral State, having a sufficient number of diplomatic and consular agents available to enable it to carry out its task properly. The tendency has become apparent, among defenders of the Stockholm text, to take into consideration the humanitarian aspects only of a Protecting Power's functions. This Power is, however, entrusted with important official or governmental functions, such as transfer and issue of relief, transfer of funds, custody of property and papers, conclusion of agreements relative to exchange of diplomats and civilians, and these functions cannot be assumed by a humanitarian body. Neutral States are indispensable for fulfilment of these tasks. It might however happen that no neutral State would be available for this purpose. The I.C.R.C. are the only case of a body able to a certain degree to replace the Protecting Power, but they can act in the humane sphere only and have no mandate allowing them to fulfil other functions. In these circumstances the Australian Government considers that the I.C.R.C. cannot serve as a substitute



for the Protecting Power and that it is probably impossible to find an international body able to play this part. It would therefore be advisable to replace the words which appeared in the Draft adopted at Stockholm, i.e. "an impartial humanitarian body, such as the International Committee of the Red Cross", by "a recognized international body".

Mr. WERSHOF (Canada) reminded the Meeting that after the German capitulation there was no longer any German Government on whose behalf

a Protecting Power could have acted. Switzerland was thus obliged to relinquish the mandate with which Germany had entrusted it to safeguard German interests in Canada. The I.C.R.C. then consented to fulfil some of the functions incumbent on the Protecting Power.

Mr. Wershof, in consideration of the complex nature of Article 8, proposed that it should be examined by a Sub-Committee.

*The meeting rose at 12.50 p.m.*

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## SIXTH MEETING

*Wednesday 4 May 1949, 10 a.m.*

*Chairman: Mr. Maurice BOURQUIN (Belgium)*

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### Article 9/10/10/10

Mr. PILLOUD (International Committee of the Red Cross) indicated that this Article was the reproduction, with certain alterations in the wording, of Articles 83 and 87 of the Convention of 1929 relative to the Treatment of Prisoners of War.

Mr. DE GEOUFFRE DE LA PRADELLE (Monaco) considered that this Article did not represent an improvement but on the contrary a regression in relation to previous texts.

After having defined the procedure of conciliation and recalled that, according to existant laws, the latter should conclude by a formula for the solution of the conflict proposed to the Parties, the Delegate for Monaco noted that the Article under consideration merely established a procedure for consultation, which doubtless could not be disregarded by the Parties to the dispute, but which contained no obligation as to the settlement of the dispute and which can, indeed, merely lead to note being taken that such difference of opinion exists between them. On the other hand, Article 41 of the Convention for Wounded and Sick stipulated for an investigation procedure which, by its provisions and the obligations it involved, was more akin to conciliation in the precise sense of the term.

Article 41, an improvement on Article 10, is however not as good as Article 30 of the 1929

Convention (Wounded and Sick) by which the decisions of the Enquiry Commission became compulsory in character.

The Delegate for Monaco considered that the humanitarian character of the Conventions ought to provide for a procedure which would conclude not merely by advice, which is the essence of conciliation, but by a settlement which would have force of obligation for the Parties. He asked the Committee to study carefully this aspect of the problem and to draw up a text taking into account the complete system of peaceful methods of solution of disputes, bearing on interpretation and application of the Conventions, from consultation and investigation procedure to arbitration.

The CHAIRMAN thought, that the insertion of stipulations of Article 41 of the Wounded and Sick Convention into the Prisoners of War and Civilians Conventions, where they do not appear, exceeded the limits of the terms of reference intrusted to the Committee.

The examination of this text by the Committee could only take place, if in a Plenary Session, the Conference would consider it as a joint stipulation.

Mr. COHN (Denmark) announced the submission of an amendment providing for a procedure for a final solution of disputes which might arise in connection with implementation of these Conventions.

The CHAIRMAN considered that this amendment also went beyond the scope of the terms of reference of the Committee and suggested that consideration of it should be postponed until the Conference had decided to extend the terms of reference of the Committee.

The two foregoing proposals made by the Chairman were adopted by the Committee.

#### **Article 38/42/117/128**

Mr. PILLOUD (International Committee of the Red Cross) pointed out that this was a new Article introduced to meet the desire expressed in various quarters that the Convention should be more widely disseminated amongst the public and amongst those who had occasion to apply it or to refer to its provisions. The text of this Article varies lightly according to the Conventions. He proposed to adopt the text as worded in Article 38 of the Wounded and Sick Convention in the manner that the words "if possible" figure in in all the Conventions.

No comment was made on this Article.

#### **Article 118 Prisoners of War, 129 Civilians**

Mr. PILLOUD (International Committee of the Red Cross) recalled that this Article already existed in a similar form in the Convention of 1929 relative to the Treatment of Prisoners of War. He suggested, that it could be introduced into all the Conventions. Furthermore he recommended countries which were neither English nor French speaking, but which spoke a common language, should agree to adopt a common translation of the Convention.

No comment was made.

#### **Articles 39,40/43,44/119/130**

The CHAIRMAN pointed out that the Stockholm Conference in adopting this Article, which was considered insufficient, had made a recommendation that the I.C.R.C. pursue its studies on the question of possible violation of the Conventions and submit new proposals. He suggested that the text drawn up by the I.C.R.C. in collaboration with a Committee of Experts and printed in the booklet "Remarks and Proposals" should be taken as a basis of discussion.

Mr. YINGLING (United States of America) recalled that the official text of Article 119 had been adopted by a large majority at the Stockholm Conference and that the United States Delegation

had no directions with regard to the proposals made by the I.C.R.C., and were therefore not in a position to debate them.

The CHAIRMAN explained that he had not wished to ask the Committee to drop the Article adopted at Stockholm but he had suggested that the Committee take jointly as a basis of discussion the four new Articles drawn up by the International Committee of the Red Cross as a result of the recommendation expressed by the Stockholm Conference.

Mr. WERSHOF (Canada) pointed out that the Stockholm Conference had not said the text of Article 119 was unsatisfactory; the International Committee of the Red Cross had suggested that with the approval of the Conference they would continue their studies on this point.

The Canadian Delegation was ready to begin the discussion of Article 119 taking into consideration the four I.C.R.C. Draft Articles.

Mr. SÖDERBLOM (Sweden) pointed out that the Swedish Delegation was in a similar position to the Delegation of the United States of America. He recalled that the Diplomatic Conference had been convened by the Swiss Government to draft new Conventions on the basis of the texts adopted at Stockholm. These texts could not be disregarded and must serve as a basis of discussion.

Captain MOUTON (Netherlands) intimated that the Netherlands Delegation would propose an amendment to adopt the principles contained in the I.C.R.C. proposals.

Mr. QUÉNTIN-BAXTER (New Zealand) and Mr. LAMARLE (France) appreciated the comments made by the United States Delegate.

Mr. YINGLING (United States of America) drew attention to the fact that the text of Article 119 as it appeared in the Draft Conventions sent out by the Swiss Federal Government was not exactly the text adopted by the Conference at Stockholm. He proposed to defer discussion until the correct text had been distributed.

Mr. PILLOUD (International Committee of the Red Cross) announced that a note re-establishing the text adopted at Stockholm would be distributed (*see Annex No. 50*).

The CHAIRMAN considered that no useful purpose would be served by beginning discussion before the exact text of the Resolution adopted at Stockholm had been distributed. Moreover, he asked the Committee if it considered whether its terms of

reference would enable it to examine the new Articles proposed by the I.C.R.C., and embodied in the amendments submitted by the Netherlands Delegation, or whether the matter should be submitted to the Plenary Assembly.

Mr. YINGLING (United States of America) considered that it was impossible for the Joint Committee to transform Article 119 into a code on war crimes by means of a so-called amendment. He questioned whether it were appropriate to include this item on the Agenda of the present Conference.

Captain MOUTON (Netherlands) considered that the amendment submitted by the Netherlands Delegation should be handled like any other amendment submitted to the Conference.

The CHAIRMAN stated that the Conference will regularly receive proposals from the I.C.R.C. while the Delegation for the Netherlands submitted them in the form of an amendment to Article 119.

He asked the Committee if it considered that this amendment could be included in the scope of its term of reference.

This suggestion was adopted by fourteen votes to eleven.

On the proposal of Colonel HODGSON (Australia), the Committee decided to adjourn the debate on Article 119.

#### **Article 43/46/120/131**

Mr. HARRISON (United States of America) considered that it was contradictory to state, on the one hand, that the French and English texts were equally authentic, and on the other, in case of doubt, that the French text should be considered as authoritative. He therefore moved the following amendment:

“The present Convention is formulated in the English and French languages, each of which is equally authentic.”

If need be, this provision might be included at the end of the Convention.

#### **Articles 47/50/121, 122/135**

Mr. CASTRÉN (Finland) considered that Article 122 of the Convention relative to the Treatment of Prisoners of War was superfluous and should be deleted, since the new Convention not only completed but also partially amended Chapter 2 of the Regulations of the Hague Conventions relative to Land Warfare.

#### **Article 44/47/123/132**

#### **Article 45/48/124/133**

No comments were made.

#### **Article 46/49/125/134**

Mr. WERSHOF (Canada) pointed out that two blanks had been left. He suggested that the period for coming into force of the present Conventions should be six months, similar to the Conventions of 1929.

This proposal raised no objections.

#### **Article 48/51/126/136**

#### **Article 49/52/127/137**

#### **Article 50/53/128/138**

No comments were made.

#### **Article 51/54/129/139**

Mr. CASTRÉN (Finland) felt that the last sentence of the last paragraph was redundant, for it was obvious that denunciation of an international treaty had no effect on the other international obligations of the denouncing party.

#### **Article 52/55/130/140**

Mr. HARRISON (United States of America) pointed out a possible misinterpretation of the adopted Stockholm text, and assumed that the Swiss Federal Council would forward to the United Nations Organization, for the purpose of registration, a copy and not the original document of the present Convention.

#### **Agenda**

The CHAIRMAN noted that if the Committee had concluded the last Article of the text, there would not be many different questions to resume. Certain questions remaining in abeyance or referred to a sub-Committee would still have to be considered; in particular, it would have to consider Article 1 of the Conventions possibly in connection with the question of the Preamble. Since this question was not included in the terms of reference given by the Plenary Assembly to the Committee, the Plenary Assembly would have to be consulted on this point.

This proposition was adopted unanimously.

The CHAIRMAN proposed to suspend the work of the Committee until the Conference in Plenary Session had reached a decision.

This proposition was adopted unanimously.

*The meeting rose at 12.40 p.m.*

## SEVENTH MEETING

*Tuesday 17 May 1949, 9.30 a.m.*

*Chairman:* Mr. Maurice BOURQUIN (Belgium)

**Terms of Reference and Membership of the Special Committee appointed to study Article 2, paragraph 4**

The CHAIRMAN proposed to extend the scope of the Special Committee by asking it to study other intricate questions which might be submitted for its consideration by the Joint Committee, so that the second reading of the Articles common to the four Conventions might be as easy as possible.

He likewise proposed to add to the Special Committee the Delegations for Burma and Uruguay, to represent Asia and Latin America.

Furthermore, any delegation submitting an amendment could take part in its discussion by the Special Committee.

These proposals were approved.

**Settlement of Disputes**

The CHAIRMAN pointed out that the Plenary Assembly had adopted a Draft Resolution submitted by the Delegations for Austria, Denmark, Finland, France, Monaco and the Netherlands aiming at charging the Joint Committee with the study as to whether a procedure for the settlement of disputes should be stipulated. It seemed preferable to refer such study to a limited Committee which might be the Special Committee whose terms of reference had just been extended.

Mr. COHN (Denmark) reminded the Committee that the Delegation for Denmark had submitted an amendment and requested that this amendment be referred to the Special Committee.

The CHAIRMAN agreed to refer this amendment to the Special Committee. The latter would also take into account the comments submitted by various delegations at the first discussion of the subject by the Joint Committee.

These proposals were approved.

**Article 1 of the four Draft Conventions**

The CHAIRMAN reminded the Committee that this Article had been reserved because it might be correlated to the Preambles of the four Conventions. The Plenary Assembly had decided that the Preamble should be examined by Committees I, II and III, and that the text should be referred to the Coordination Committee. The Joint Committee might therefore begin forthwith its consideration of Article 1.

Mr. PILLOUD (International Committee of the Red Cross) pointed out that Article 1 was along the lines of Article 83 of the Convention of Prisoners of War of 1929, and Article 25, first paragraph, of the Wounded and Sick Convention of 1929. The Stockholm Conference had deleted from the Drafts the words "in the name of their peoples".

**Agenda**

No delegate having asked to speak on this Article, the CHAIRMAN noted that two questions remained on the Agenda to complete the first reading of the common Articles:

- (1) the question of the settlement of disputes concerning the interpretation and application of the Conventions which had just been referred to the Special Committee for consideration, and
- (2) the question of violating the Conventions and the consequent penal sanctions which was the subject of a proposal made by the Netherlands Delegation resuming the draft Articles drawn up by the International Committee of the Red Cross.

The study of this problem should be deferred until such a time as the delegations had been able to study it and to receive the necessary instructions from their governments. The Chairman therefore proposed to include this item on the Agenda of a subsequent meeting of the Joint Committee, which would precede the second reading of the common Articles.

This proposal was approved.

*The meeting rose at 10.20 a.m.*

## EIGHTH MEETING

Wednesday 29 June 1949, 10 a.m.

Chairman: Mr. Maurice BOURQUIN (Belgium)

### High International Committee (Article 7 A)

The CHAIRMAN announced that since the last meeting the Delegation of France had tabled a proposal which represented supplement to Articles 6/7/7/7 and 8/9/9/9. It was evident that this proposal should, on account of its importance, be discussed at a first reading by the Joint Committee before being considered by the Special Committee.

Mr. CAHEN-SALVADOR (France) indicated the reasons that had prompted the Delegation of France to propose the appointment of a High International Committee which, in the absence of Protecting Powers, would take over the duties of such Powers. An essential condition for the effective working of the Conventions lies in the supervision of their application, such supervision being incumbent upon the Protecting Powers. The possibility must be borne in mind that in a future conflict there might be no neutral Powers left capable of effectively carrying out the duties of a Protecting Power. It was true that the Draft Conventions provided for the possibility of an appeal to the International Committee of the Red Cross. The duties of the International Committee of the Red Cross were, however, completely different from those of a Protecting Power, and even if it could replace a Protecting Power in certain respects, the possibility must be considered that the Committee itself might no longer be in a position to carry on its activities.

That was why the Delegation of France thought it important to seek means of filling the gap created by the absence of a Protecting Power. It therefore proposed the setting up, in time of peace, of an organization providing every guarantee of impartiality and efficacy in the sense of the provision which was already embodied in the first paragraph of Article 8/9/9/9. It was important to the Conference that the setting up of such an organization should be provided for, as otherwise there would be a serious gap in the Conventions which it was drawing up, and the hopes of the

peoples of the world would be disappointed. The Conference might perhaps charge a sub-Committee to examine the problem with a view to a further Conference, but it was essential to take up a definite position with regard to the matter.

The Committee decided to refer the question to the Special Committee for examination.

### First Report drawn up by the Special Committee

The CHAIRMAN invited the Joint Committee to begin the second reading of Articles which had been referred to it for consideration. He suggested that the proposals made by the Special Committee should be considered as being amendments to the Stockholm text. He also asked the delegations, who had tabled amendments and were not withdrawing them, to be good enough to mention them while discussion of the Article takes place.

Mr. BOLLA (Switzerland), Chairman of the Special Committee, reads this Committee's Report.

### Article 1

No observation having been made, the new Article 1, reproducing the text of Stockholm, was adopted unanimously.

### Article 2

Mr. SOKIRKIN (Union of Soviet Socialist Republics) reserved the final opinion of his Delegation in view of the fact that the fourth paragraph of the Article had not yet been accepted by the Special Committee.

The new Article 2 (see Annex No. 14) was adopted unanimously; the Soviet reservation being noted.

**Article 4/5/5/5**

Mr. GARDNER (United Kingdom) thought that circumstances might arise in which the Contracting Powers would have to have the option of concluding special Agreements which might affect, to some degree, the rights conferred by the Convention. Such circumstances had been provided for in various Articles of the Conventions, so that the second sentence of the Article in question (*see Annex No. 16*) was now in contradiction with them. In order to bring it into line, it should be clearly stated that it was only the other special agreements mentioned in the first sentence which could not be allowed to prejudice the rights of protected per-

sons. He therefore proposed to insert after "No special agreement" the words "under this Article...".

Mr. YINGLING (United States of America) opposed the suggested amendment for the reasons given in the special Committee's Report.

The amendment proposed by the United Kingdom was rejected by 16 votes to 8, with 3 abstentions.

The new text of Article 4/5/5/5 was adopted by 27 votes to 1, with 3 abstentions.

*The meeting rose at 12 noon.*

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**NINTH MEETING**

*Monday 11 July 1949, 10 a.m.*

*Chairman:* Mr. Maurice BOURQUIN (Belgium)

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**Second Report drawn up by the Special Committee**

On the invitation of the Chairman, Mr. BOLLA (Switzerland), Chairman of the Special Committee, presented his Report.

**Article 5/6/6/6**

After the United Kingdom Delegation had withdrawn its amendment the Article was adopted unanimously. It reproduces the text of Stockholm.

**Article 6/7/7/7**

After a statement made by the Rapporteur, the CHAIRMAN announced that the Committee had before it two amendments, one submitted by the United Kingdom Delegation, the other by the Delegation of the Union of Soviet Socialist Republics (*see Annex No. 19*).

Mr. GARDNER (United Kingdom) proposed that the words "auprès de laquelle" at the end of the first paragraph should be translated into English by "with which". The words in the third paragraph

of the English text "the limits of their mission as defined in the present Convention" should be replaced by the words "their mission under the present Convention", because the Conventions did not, strictly speaking, define the mission of the Protecting Powers. A similar change should be made in the French text.

Mr. MOROSOV (Union of Soviet Socialist Republics) declared that the Soviet Delegation continued to support the proposal which it had made to the Special Committee concerning the Article in question. It considered that it was necessary to show in the text of the Conventions that the activity of the Protecting Powers and of their delegates should neither impair the sovereignty of the State nor run counter to its security and military requirements. But the third paragraph adopted by the Special Committee was not sufficiently precise and should be more emphatic. It ought to be replaced by the following text:

"In regard to their co-operation in the application of the Conventions, and the supervision of this application, the activity of the Protecting Powers or of their delegates may not infringe the sovereignty of the State or be in opposition to State security or military requirements."

Mr. BOLLA (Switzerland), Chairman of the Special Committee, considered that the drafting changes proposed by the United Kingdom Delegation were interesting. He suggested they should be sent to the Drafting Committee of the Conference.

Mr. GARDNER (United Kingdom) accepted the suggestion of the Chairman of the Special Committee.

Agreed.

The first two paragraphs of Article 6/7/7/7 were adopted unanimously.

The Soviet amendment concerning the third paragraph was rejected by 17 votes to 7, with 8 abstentions.

The third paragraph was adopted by 29 votes, with 3 abstentions, in accordance with the proposal made by the Special Committee.

Mr. MOROSOV (Union of Soviet Socialist Republics) declared that he had voted for the proposal of the Special Committee, because it contained a certain number of provisions which appeared in the amendment proposed by his own Delegation; but the latter reserved the right to refer again to the third paragraph during the debate in the Plenary Meeting.

The CHAIRMAN took note of the Soviet statement, and put the Article as a whole to the vote, subject to the above reservation.

Article 6/7/7/7 was adopted unanimously.

#### Article 7/8/8/8

In the absence of observations, Article 7/8/8/8 was adopted unanimously.

#### Article 8/9/9/9

Mr. MOROSOV (Union of Soviet Socialist Republics) thought that, as a result of the changes made by the Special Committee, the Article (*see Annex No. 25*) was now vague and incomprehensible in certain parts. There was even a contradiction between it and the clear and precise text of the Stockholm Draft. The Soviet Delegation could consequently not accept the Draft text proposed by the Special Committee. The Special Committee's text made it possible to compel the Detaining Power to accept a substitute for the purpose of protection, whatever might be the reason, and irrespective of whether a government existed or not to which the protected persons were attached. Thus, if the Protecting Power chosen

by a belligerent gave up its functions, that belligerent could not choose another Protecting Power, and it would be left to the Detaining Power to solve the problem. That was quite absurd. He considered that the right to choose the Protecting Power could only be transferred to the Detaining Power when there did not exist a government to which the protected persons could claim attachment. The Soviet Delegation therefore proposed to omit the words "no matter for what reason" which the Special Committee had inserted in the second paragraph.

Again, the Soviet Delegation could not give its agreement to the third and fourth paragraphs added to the Stockholm text by the Special Committee. The Soviet Delegation could not admit that a sovereign State should be forced to accept against its will the services of a humanitarian organization, and considered that every State had the right to decide itself what organization it would ask to assume the humanitarian duties normally confided to the Protecting Power.

The Soviet Delegation had proposed on July 11, the substitution of the Stockholm text by the text of the Article adopted by the Special Committee. They now wished to modify that proposal slightly, in the sense that they suggested that the fifth paragraph of the text adopted by the Special Committee should be added to the Stockholm text.

The CHAIRMAN said that the Stockholm text served as a basis for the work of the Conference and, consequently, if the amendments to it were rejected, the Conference automatically reverted to the Stockholm text. In the proposal of the Special Committee, which comprised six paragraphs, the first and sixth paragraphs reproduced the Stockholm text, whereas the second, third and fourth were new and replaced the second paragraph of the Stockholm text. The fifth paragraph, which was also new, was approved by the Soviet Delegation.

The first and sixth paragraphs of Article 8/9/9/9 were adopted unanimously.

The fifth paragraph was adopted unanimously.

The proposal made by the Special Committee for the second, third and fourth paragraphs was adopted by 24 votes to 10, with 1 abstention.

Article 8/9/9/9 as a whole was adopted by 27 votes to 7, with 3 abstentions.

Mr. MOROSOV (Union of Soviet Socialist Republics) declared that the reason why the Soviet Delegation had voted against the Article in its entirety, although it contained some provisions with which he was in agreement, was that in his opinion a provision, which might impose a Protecting Power without taking into consideration the



wish of the government to which the protected persons belonged, was not legitimate. For that reason, the Soviet Delegation proposed to submit its text to the Plenary Meeting as a minority proposition.

The CHAIRMAN took note of Mr. Morosov's declaration.

### Third Report drawn up by the Special Committee

#### Article 38/42/117/128

The Article was adopted unanimously. It concerns the Stockholm text of which the first paragraph of the Prisoners of War and Civilians Conventions was modified in order to adapt it to the text of the first two Conventions (*see Annex No. 48 — version Prisoners of War and Civilians*). The text of the Article for the Conventions Wounded and Sick and Maritime is the Stockholm text.

#### Article 38A/42A/118/129

The Article was adopted unanimously. It concerns the text of Articles 118 Prisoners of War and 129 Civilians which was introduced into the first two Conventions.

#### Article 43/46/120/131

The Article was adopted unanimously. It concerns the Stockholm text of which the last sentence ("In case of doubt...") was deleted.

#### Article 44/47/123/132

The Article was adopted unanimously. It is the Stockholm text completed by the introduction of the words "Geneva" and "21 April 1949".

#### Article 45/48/124/133

The Article was adopted unanimously. It reproduces the Stockholm text.

#### Article 46/49/125/134

The Article was adopted unanimously. To the Stockholm text were added the words "six months".

#### Article 47/50/121/ —

The Article was adopted unanimously. It is the Stockholm text.

#### Article 48/51/126/136

The Article was adopted unanimously. It is the Stockholm text.

#### Article 49/52/127/137

The Article was adopted unanimously. To the Stockholm text were added the words "six months".

#### Article 50/53/128/138

The Article was adopted unanimously. The Stockholm text was reproduced.

#### Article 51/54/129/139

The Article as proposed by the Special Committee (*see Annex No. 57*) was adopted unanimously.

#### Article 52/55/130/140

The Article as proposed by the Special Committee (*see Annex No. 58*) was adopted unanimously.

#### Signature clauses

The signature clauses, as proposed by the Special Committee (*see Summary Record of the Twenty first Meeting*), were adopted unanimously.

*The meeting rose at 12.20 p.m.*

## TENTH MEETING

Saturday 16 July 1949, 10 a.m.

Chairman: Mr. Maurice BOURQUIN (Belgium)

#### Fourth Report drawn up by the Special Committee

Captain MOUTON (Netherlands), Rapporteur, introduced the Report dealing with Penal Sanctions.

As Delegate of the Netherlands, he recalled that the improvements which were now being sought in penal legislation with regard to the Conventions were not novel concepts, having already been advocated in 1874 in Brussels by the Frenchman, General Arnaudeau, who proposed that the Convention should serve as a common penal code for violations of the laws of war. He thought that the Contracting Parties would thereby be obliged to write into their penal codes similar provisions. The Oxford Manual of 1880 had also inserted in its Draft of Laws of War certain articles concerning violations.

It should be noted that through the absence of such articles, the Prisoners of War Convention was violated many times during the last war. The Reports published by the United Nations War Crimes Commission mentioned several trials concerning the Prisoners of War Convention.

The Netherlands Delegation was strongly convinced that a law and also an international convention had no strength without the possibility to enforce it, had no strength without sanctions. It hoped that the Conventions would never again be put to a test in practice. But if, what God forbid, these Conventions should ever have to be applied, they must be obeyed.

The task of this Conference was to diminish as much as possible the sufferings and horrors of that cancer of the human species for which a complete safe prophylactic had not yet been found. To make the protection of persons and goods as large as possible, it was necessary to find the means to prevent that irresponsible individuals or irresponsible Governments should turn the work of this Conference into a farce.

Thanks to the co-operation of a certain number of delegations and in particular to the help of the British Delegation a draft could be produced such as the text adopted by the Special Committee. (See Annex No. 55)

Mr. CASTRÉN (Finland) considered that the word "maltreatment" figuring in Article 40/44/119A/130A should be replaced by "inhuman treatment", in order to distinguish between serious crimes and offences of a milder character. The latter, under certain penal codes, such as that of Finland, were punishable only by a fine.

Mr. MOROSOV (Union of Soviet Socialist Republics) considered that Article 39/43/119/130 (see Annex No. 51) should be reinforced to increase their efficacy. A time limit of two years should be accorded for the introduction of provisions into the domestic legislation granting the punishment of violations of the Convention. This period should be sufficient to enact penal legislation and would go further than the present wording which would be only a recommendation.

The words "grave breaches" should be replaced by "serious crimes". The enumeration of "grave breaches" as given in Article 40/44/119A/130A proved that the offences the Conference had in mind were in reality crimes. The word "penal" should also be retained before the word "legislation".

The Soviet Delegation likewise asked for the addition of the words "in conformity with its own laws or with the Conventions prohibiting acts that may be defined as breaches" in the second paragraph.

The Soviet Delegation would support the Finnish amendment, as reproduced above.

Mr. MARESCA (Italy) asked for the deletion of the words "There remained, for instance, the liability to pay compensation" on page 11 of the Report.

Captain Mouton, Rapporteur, agreed.

Mr. LAMARLE (France) proposed to replace the word "repression" in Article 39/43/119/130, last paragraph, by the words "to inflict penalties for" (in French "sanction"), to cover also cases which would call only for disciplinary sanctions.

Referring to the amendment by the Italian Delegation, Mr. Lamarle pointed out that he was in agreement with this proposal, since recent peace

treaties had provided for agreements between former adversaries in full settlement of debts between them.

The French Delegation shared the view of the International Committee of the Red Cross that judicial guarantees should be accorded to all accused in virtue of this Article, including presumable war criminals who were handed over by a vanquished Power to its victor.

Mr. YINGLING (United States of America) stated that the reason why the United States Delegation could not accept the insertion of a two-year time limit was because the United States Legislature was independent of the Government who had no power over it to obligate it to enact legislation within a specific period.

Mr. HARASZTI (Hungary) was in favour of inserting the time limit of two years, which appeared adequate to modify the national legislation of the Contracting Parties, and to preclude arbitrary behaviour on the part of the Governments. The new Hungarian Military Penal Code which came into force on 1 February 1949 already stipulated severe penalties for acts contrary to the provisions of the Conventions. Mr. Haraszti was also in favour of defining the offences referred to in the Conventions by the term "serious crimes".

Mr. QUENTIN-BAXTER (New Zealand) was of the opinion that it was not the function of the present Conference to discuss the general subject of international criminal law, and he would therefore vote against the Soviet amendment.

The New Zealand Government would require more time to examine freely the responsibilities involved by these provisions, and therefore he was bound to reserve completely their attitude towards these Articles. Nevertheless he would support the text submitted by the Special Committee, because the principles which underly it were of great importance.

Colonel HODGSON (Australia) pointed out the difficulty in some federal States of enacting uniform legislation for the Federal Government and the States making up that country. This sometimes entailed long delay and he therefore could not vote in favour of the Soviet amendment.

He asked the Delegate of Italy what was the meaning of Article 40A/44A/119B/130B (*see Annex No. 56*).

Mr. MARESCA (Italy) said that the new Article purported to be a necessary supplement to the two precedent Articles. The new concept contained in this Article was that prior to their own responsibility, the perpetrators of violations had involved the responsibility of their State, and that the latter stood liable, even after individual penalties had been inflicted on the offenders who had acted as agents of that State. The provision would apply only to serious violations and would not involve special agreements, or over-all financial settlements of debts between the Parties.

Mr. SINCLAIR (United Kingdom) proposed to use the word "suppression" instead of "repression" in the third paragraph of Article 39/43/119/130, to meet the objection made by the Delegate of France. He could not agree to bind the legislature of his country by inserting a time limit of two years. He made a reservation for the position of the United Kingdom Delegation with regard to Article 40A/44A/119B/130B.

Colonel FALCON BRICENO (Venezuela) was opposed to the two-year time limit as proposed by the Delegation of the Union of the Soviet Socialist Republics and would vote in favour of the text submitted by the Special Committee.

The CHAIRMAN noted that the General Debate was closed.

*The meeting rose at 1.15 p.m.*

## ELEVENTH MEETING

Tuesday 19 July 1949, 10 a.m.

Chairman: Mr. Maurice BOURQUIN (Belgium)

**Fourth Report drawn up by the Special Committee (continued)**

The CHAIRMAN stated that the vote had to be taken on three Articles as presented by the Special Committee, i.e. Articles 39/43/119/130, 40/44/119A/130A and 40A/44A/119B/130B concerning Penal Sanctions for violations of the Conventions.

**Article 39/43/119/130**

*First paragraph.*

An amendment had been tabled by the Soviet Delegation regarding this paragraph, purporting to add the words "within a maximum period of two years" to the text of the Special Committee which comprised no time limit.

This amendment proposed by the Soviet Delegation was defeated by 9 votes for, 16 against, with 5 abstentions.

*Second paragraph.*

The Soviet amendment proposing to replace the words "grave breaches" by "serious crimes" in the second paragraph was rejected by 8 votes for, 20 against, with 7 abstentions.

The Soviet amendment proposing to add in the second paragraph the words "in conformity with its own laws or with the conventions prohibiting acts that may be defined as breaches" was rejected by 8 votes for, 19 against, with 7 abstentions.

*Third paragraph*

The United Kingdom proposal to replace the word "repression" by "suppression" was adopted by 20 votes for, 9 against, with 6 abstentions.

At the request of Mr. LAMARLE (France) the word "suppression" would be translated in the French text by "redressement".

*Fourth paragraph*

This paragraph was subject of an amendment (see Annex No. 52) tabled by the French Delegation, which differed according to the Conventions.

Mr. MOROSOV (Union of Soviet Socialist Republics) considered that the French amendment was not acceptable, since the accused persons referred to already benefited of the protection of the Convention. It would be inappropriate to introduce an Article of this kind into the Conventions, since it would appear to offer safeguards to perpetrators of violations.

Mr. LAMARLE (France) replied that the subject of the French amendment had already been contained in "Remarks and Proposals" published by the International Committee of the Red Cross, and had been discussed in the Special Committee. Probably nine-tenths of the cases were already covered by the Conventions, but the proposed amendment purported to cover those persons who in virtue of armistice agreements or peace treaties might be handed over by a vanquished Power to its victors as presumed war criminals.

The French amendment was adopted by 24 votes to 10, with 1 abstention.

*Vote on Article 39/43/119/130.*

The Article including the mentioned amendments was adopted by 28 votes to NIL, with 9 abstentions.

**Article 40/44/119A/130A**

The amendment tabled by the Delegation of Finland proposing to replace the word "maltreatment" by "inhuman treatment" was adopted by 22 votes to 5, with 10 abstentions.

The Soviet amendment proposing to replace the words "grave breaches" by "serious crimes", was rejected by 8 votes for, 21 against, with 7 abstentions.

The Article as a whole was adopted by 33 votes to NIL, with 1 abstention.

**Article 40A/44A/119B/130B**

Since the Australian amendment of this Article had been distributed only that morning, the vote was postponed.

**Fifth Report drawn up by the Special Committee**

Draft Resolution concerning a High International Committee.

Mr. ALEXANDER (United Kingdom), Rapporteur, read the Report drawn up by the Special Committee and the Draft Resolution concerning Article 8/9/9/9 (see *Summary Record of the Thirty-sixth Meeting*), which dealt with substitutes for Protecting Powers.

Mr. LAMARLE (France) said that the experience of the last war had proved that many countries were deprived of Protecting Powers, either because the adverse Party did not recognize their status as a legal government, or that the available neutral Powers were either too far away or had not met with the approval to act as Protecting Powers. He gave several examples taken from the experience of the French Provisional Government in the last war, which had not been recognized by the Government of the Reich. The International Committee of the Red Cross had not felt they could act, in these circumstances, as Protecting Power, since the functions of the latter were based on a mandate, whereas the International Committee operated by virtue of humanitarian, written and unwritten laws.

The French Delegation felt that the serious gap which at present existed in the Conventions should be filled.

Mr. MOROSOV (Union of Soviet Socialist Republics), considered that each question which came up for consideration should have a logical consequence after the Conference. As to the French proposal he felt that this was not the case, since the basis on which it rested seemed to him erroneous. He felt that the Delegate of France was unduly pessimistic when considering that in any future conflict there would be no neutral Powers left, and none who could serve as Protecting Powers. It would be doubtful whether the proposed International High Committee would be able to carry out its functions impartially in a conflict of a universal character.

Sir Robert CRAIGIE (United Kingdom) pointed out that the Committee believed that such a body might be required to operate a future conflict, if the draft Article 8/9/9/9 was adopted. The Committee was not necessarily assuming that a

future war would not absolutely be a world-wide one; but if a Protecting Power were operating it would have to be able to fulfil the heavy duties imposed upon it by the present Conventions. It would prove to be a nonsense if a Power, knowing in advance that it was not capable to carry out such duties, were to accept to carry out the provisions of the Conventions, which would then obviously be inappropriately applied. It would seem advisable for the delegations to be able to point out to their governments that the problem was a serious one, and that they should envisage the setting up of such a body already in peace-time.

General OUNG (Burma), while deprecating pessimism, felt that in the world as it was today, preparation should be made for such provisions as embodied in the Draft Resolution. He advocated that the proposed Committee should, as far as possible, be planned along the lines of the International Court of Justice, with special reference to national groups and regional agreements.

Dr. DIMITRIU (Rumania) shared the view that the present Draft Resolution was unduly pessimistic, and that there would remain neutral Powers which would be able to act as Protecting Powers. The proposed International Committee appeared to be a somewhat elaborate and expensive body, and if it were composed of outstanding personalities of various countries, their home States might find difficulty in dispensing with their services in any future conflict, to allow them to act as international officials. The Rumanian Delegation was, therefore, opposed to the Draft Resolution.

The Draft Resolution was adopted by 25 votes to 8, with 6 abstentions.

**Seventh Report drawn up by the Special Committee****Application of the Conventions to armed conflict not of an international character**

The CHAIRMAN recalled that the following Documents were put before the Joint Committee:

- (a) the Stockholm Draft, which was the basic text (Article 2, fourth paragraph);
- (b) a joint amendment resuming the draft proposed by the Second Working Party and amended by the Special Committee (*Annex E, Seventh Report of the Special Committee to the Joint Committee*) and tabled by the Delegations of France, Greece, Italy, the United Kingdom, Switzerland and Uruguay, to replace Article 2, fourth paragraph, by a new Article 2A.

The Special Committee had been unable to come to an agreement on a single text, but had submitted for the consideration of the Joint Committee the following documents:

- (1) Second Draft of the first Working Party (Annexes B and C of the Seventh Report).
- (2) Proposal made by the Delegation of the Union of Soviet Socialist Republics (Annex F).
- (3) Draft of the second Working Party as amended by the Special Committee (Annex E), which is the identical text appearing in the joint amendment mentioned above.

Mr. MOROSOV (Union of Soviet Socialist Republics) proposed that a vote should be taken first on the Soviet proposal, then on the amended Draft of the second Working Party, and lastly on the second Draft of the first Working Party.

The Soviet proposal seemed to deviate the most from the Stockholm Draft, as it embodied the broadest humanitarian measures contained in the Conventions. The joint proposal would presuppose a Convention in miniature, therefore it would facilitate the vote of certain delegations if the

Soviet proposal were voted on first, and, if it were rejected, those delegations would be able to vote for the joint proposal.

The CHAIRMAN suggested that at the present meeting a vote be taken which would be an informative one, and that the vote would be repeated on the following day. The draft which rallied the largest number of votes would then be put to a final vote.

#### Informative votes

The vote on the proposal made by the Delegation of the Union of Soviet Socialist Republics (in Annex F of the Report) showed 9 for, 25 against, with 3 abstentions.

The vote on the second Draft of the first Working Party (Annexes B and C of the Report) showed 5 for, 22 against, with 8 abstentions.

The vote on the amended Draft of the second Working Party (Annex E of the Report) showed 22 for, 4 against, with 12 abstentions.

*The meeting rose at 12.45 p.m.*

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## TWELFTH MEETING

*Wednesday 20 July 1949, 10 a.m.*

*Chairman: Mr. Maurice BOURQUIN (Belgium)*

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#### Fourth Report drawn up by the Special Committee (continued)

An amendment had been tabled by the Australian Delegation, proposing to delete the text of Article 40A/44A/119B/130B and to replace it by the following text:

“No Contracting Party shall be allowed to divest itself or any other Contracting Party of any responsibility incurred by itself or by another Contracting Party to punish persons who have committed or ordered to have been committed any of the grave breaches defined in Article 130A.”

Colonel HODGSON (Australia), in presenting his amendment, recalled the explanations given by the

Delegate of Italy (*see Summary Record of the Tenth Meeting*). In view of the variety of ways in which this new Article might be interpreted, it seemed necessary to define how Governments could discharge themselves from their responsibility if they have not to pay indemnities for violations committed. The Australian amendment endeavoured to state clearly the intention of the Special Committee, which would represent the extreme limit beyond which the Australian Delegation could not go. They would, however, prefer to have the Article deleted.

Mr. MARESCA (Italy) considered that the Australian amendment was an improvement on the Stockholm Draft, but was more restricted in scope as compared with the text of the Special Committee.

The fact that an individual might act as an agent of a State in committing breaches, should be punishable, and the State should be responsible for its nationals in this respect.

Captain MOUTON (Netherlands), Rapporteur, pointed out that, in Article 39/43/119/130, the High Contracting Parties were required to bring offenders to trial before their own Courts, but not to punish them, since the Judiciary was independent of the Executive. The Australian amendment should therefore be modified to read: "Responsibility to bring to trial". In this case, however, there would be a repetition of an obligation already laid down in Article 39/43/119/130.

Sir Robert CRAIGIE (United Kingdom) considered that Article 40A/44A/119B/130B went too far in attempting to bind States in their future relations with one another, and, in particular, in their liberty to conclude a treaty of peace at the end of a war. Special agreements between States for financial settlements would be interfered with, and if the proposed provision were inserted, it would imply a much wider interpretation than the other Articles concerning violations of the Conventions.

The Delegate of the United Kingdom approved the suggestion made by the Delegate of the Netherlands to change the wording of the Australian amendment from "punish", to "bring to trial". With a view to preventing States from withdrawing themselves from their obligations to bring accused to trial, the United Kingdom Delegation would be prepared to support the Australian amendment.

Mr. YINGLING (United States of America) proposed that the amendment be voted in two parts: firstly deletion of Article 40A/44A/119B/130B, and secondly, substitution of the Australian amendment. The United States Delegation would vote against both these proposals, because they were beyond the competence of the High Contracting Parties.

Colonel HODGSON (Australia), recognizing that the Australian amendment was not acceptable, withdrew it, and declared that he would vote against the adoption of Article 40A/44A/119B/130B.

Mr. SOKIRKIN (Union of Soviet Socialist Republics) said that he would support the Article, the Soviet Delegation considering that the signatory Parties to the Convention could not absolve themselves from any liability for breaches committed against the Conventions.

The text of the new Article 40A/44A/119B/130B was adopted by 18 votes to 16, with 3 abstentions.

## Seventh Report drawn up by the Special Committee (continued)

### Article 2A

The CHAIRMAN recalled the preliminary vote which had been passed on the previous day, which showed 22 votes in favour of the Draft tabled by the Second Working Party as amended by the Special Committee. The other proposals rallied, respectively 9 and 5 votes. The final vote would therefore be taken on the first of these Drafts.

Mr. COHN (Denmark) sought to interpret the meaning of this amendment. There was a tendency to replace in all the Conventions the word "belligerents" by "Parties to the conflict". In Annex E a distinction was drawn between High Contracting Parties and Parties to the conflict, the latter referring solely to those engaged in a civil war and not in an international war.

If the word "belligerent" was replaced throughout the Convention by "Parties to the conflict", Article 2 would be affected. It would be unnecessary to provide for special agreements for the application of the other provisions of the Conventions, such application already resulting from the substitution of the words "Parties to the conflict" for "belligerents" throughout the Convention.

In addition, if the Article, as drafted, were applied, the legal status of the Parties to the conflict would be affected, because it would obligate the State to apply in a civil war all the provisions of the Conventions and those provisions were rules of international law.

The Delegation of Denmark was moreover of the opinion that in the case of civil war, the obligations under Article 2A of States remaining outside the conflict did not differ from those of Parties to the conflict and should be confined to those of a humanitarian nature.

General OUNG (Burma) asked the Chairman how delegations who were opposed to the inclusion of such an Article in the Convention could mark their objection.

The CHAIRMAN replied that they should vote against the Article as a whole.

Mr. BOLLA (Switzerland), Rapporteur of the Special Committee, reassured the Delegate for Denmark that the words in the first paragraph "each Party to the conflict", would not have as a consequence that all the provisions of the Conventions would be applicable by all Parties. The Special Committee voiced a definite opinion that the provisions of the Conventions were, on principle, not applicable to civil war, and that only

certain stipulations expressly mentioned would be applicable to such conflicts. Therefore, if the text were adopted, neutral States would have no obligations.

Mr. SÖDERBLOM (Sweden) stated that he had at no time shared the apprehensions of his Danish colleague, and that he was of the same view as the Rapporteur.

Article 2A (*see Annex E of the Seventh Report*) was adopted by 21 votes to 6, with 14 abstentions.

### Sixth Report drawn up by the Special Committee

#### Settlement of disputes

##### Article 9/10/10/10

The CHAIRMAN recalled that the Rapporteur for this question was Mr. Georg Cohn (Denmark) and he thanked him for his work.

Mr. SOKIRKIN (Union of Soviet Socialist Republics) recalled that the Soviet Delegation opposed during the Thirty-ninth Meeting to the addition of the word "interpretation" in the first paragraph of Article 9/10/10/10 (*see Summary Record of this Meeting*), since they considered that the function of Protecting Powers was to contribute to the application of the Conventions, but not to interpret them. He would therefore vote against the addition of this word.

Mr. YINGLING (United States of America) pointed out that, in virtue of the present Conventions and this Article, in particular, the Protecting Power had no right to interpret the Convention, but only to use its good offices to bring the Parties together to enable them to come to an agreement as to the interpretation of the Convention.

Mr. SOKIRKIN (Union of Soviet Socialist Republics), referring to the suggestion made by the Special Committee to insert a new Article referring to recognition by the Contracting Parties of the jurisdiction of the International Court of Justice, remarked that such a provision would be in contradiction with Article 36 of the Statute of the Court. Articles 9 and 41 of the Wounded and Sick Convention already provided for the settlement of disputes, by the International Court. The new Article, therefore, seemed redundant. Moreover, some countries were not members of the United Nations, yet might be signatories to the present Convention, and should, therefore, not be required to recognize the jurisdiction of the International Court, and in fact, according to

Article 36, the Court would not consider itself competent to recognize applications submitted by them. The conditions according to which the Court would be open to non-member States of the United Nations were laid down by the Security Council in Article 35 of the Statute of the Court.

Mr. MEVORAH (Bulgaria) considered that the Article under consideration raised a question of method, because it applied not to all Contracting States, but only to some, and the obligations which the Article laid on the latter might have been carried by a majority vote, whereas the States to which the Article would apply might have been defeated in the vote.

The CHAIRMAN recalled that Article 9/10/10/10 contained two paragraphs. For the first paragraph there was a Soviet amendment comprising two elements:

- (1) Deletion of the word "interpretation" in the first paragraph.
- (2) Deletion of the words "with a view to settling the disagreement", at the end of the first paragraph, and substituting them by the words "with a view to facilitating such application".

The first part of this amendment was rejected by 9 for, 21 against, with 2 abstentions.

The second part of the Soviet amendment was defeated by 10 for, 19 against, with 3 abstentions.

The Article as a whole was adopted by 24 votes to 6, with 4 abstentions (*see Annex No. 27*).

##### Article 41/45/119C/130C

The above Article (*see Summary Record of the Thirty-ninth Meeting*) was adopted by 35 votes to NIL, with one abstention.

#### New Article on judicial settlement

The new Article (*see Summary Record of the Thirty-ninth Meeting*) was adopted by 17 votes to 10, with 10 abstentions.

The CHAIRMAN recalled that the Special Committee had asked the Drafting Committee of the Conference to decide on the most appropriate place in the Conventions for the insertion of this new Article.

*The meeting rose at 12.30 p.m.*



## THIRTEENTH MEETING

Monday 25 July 1949, 10.30 a.m.

Chairman : Mr. Maurice BOURQUIN (Belgium)

**Approval of the Report submitted by Joint Committee to Plenary Assembly**

Colonel DU PASQUIER (Switzerland), Rapporteur, Mr. YINGLING (United States of America) and Mr. LAMARLE (France), pointed out that several corrections have to be made in this Report.

Mr. SOKIRKIN (Union of Soviet Socialist Republics) asked to replace the beginning of Article 6/7/7/7 by a text reading as follows:

"The third paragraph was drawn up by the Special Committee with special reference to a proposal submitted by the Delegation of the U.S.S.R. which had submitted the following amendment:

"With regard to their co-operation in the application of the Conventions, and the supervision of this application, the activity of the Protecting Powers or of their Delegates may not infringe the sovereignty of the State or be in opposition to State security or military requirements."

The Soviet Delegation, however, was not satisfied and maintained its amendment which was rejected by 17 votes to 7, with 8 abstentions."

In the passage concerning Article 9/10/10/10, Mr. Sokirkin proposed the following wording:

"It was not the duty of the Protecting Powers to intervene in juridical questions which were not within their competence and concerned the interpretation of the Conventions".

With regard to the new Article, Mr. Sokirkin proposed to add at the end of the penultimate paragraph the following words:

"as it was of opinion that the present Conference was not competent to settle questions which fell within the competence of the Security Council".

Regarding Article 2A, the Soviet Delegation proposed to change the last paragraph as follows:

"...that in the case of an armed conflict not of an international character, each of the Parties to the conflict shall apply all the provisions of the Convention which involve the humane treatment of persons who should benefit by the protection of the Convention."

Colonel DU PASQUIER (Switzerland), Rapporteur, readily agreed to the suggestions made by the Soviet Delegation.

Mr. COHN (Denmark), referring to Article 2A, pointed out that in all the Conventions there was a tendency to replace the word "belligerents" by the words "Parties to the conflict", which could not fail to influence the legal status of the Parties to the conflict. The new Article 2A, as proposed, dealt with relations between Governments and insurgents, but no account had been taken of relations between insurgents and parties outside the conflict, which however could raise most intricate problems in international law, and went beyond the scope of the present Convention. He proposed that a declaration should be made to the Plenary Assembly making the following reservation:

"The question whether a Party to a conflict, who was not a government, should be recognized by a party outside the conflict, was to be decided in accordance with the general rules of international law in this connection, and was not governed by the Conventions drawn up at this Conference."

Captain MOUTON (Netherlands) asked that the Danish proposal be submitted to the Committee in writing.

In the third paragraph of the comment concerning the "Sanctions repressing the violation of the Conventions", the words "or the principle of the universality of repression" (figuring in the first

sentence after "international jurisdiction") should be deleted, following the decision not to replace the words "High Contracting Parties" by "Parties to the conflict", as proposed by a delegation.

Colonel HODGSON (Australia) deprecated the introduction into the present Report of any individual reservations by delegations. Such reservations should, in his opinion, be made at the time of signing the Convention.

At the end of paragraph two, concerning the "Question of the High International committee", he felt the wording should be revised, since the Special Committee had been careful not to invite the Governments to set up a specific international body, but, as would be seen in the relevant resolution on the High International Committee, only "An International Body".

Colonel DU PASQUIER (Switzerland), Rapporteur, agreed to the changes suggested by the Delegates of the Netherlands and Australia.

Mr. MARESCA (Italy) asked for the deletion in the passage concerning Article 40A/44A/119B/130B of the last sentence of the last paragraph.

Colonel HODGSON (Australia) was opposed to the deletion of that sentence.

Mr. MARESCA (Italy) withdrew his proposal.

Mr. SOKIRKIN (Union of Soviet Socialist Republics) shared the views of the Delegations of the Netherlands and Australia, and considered that the Danish proposal to formulate a statement to the Plenary Assembly, with regard to the implications of the term "Parties to the conflict" instead of "belligerents" throughout the Conventions,

should be examined at a subsequent Meeting of the Joint Committee, since it went beyond the scope of the present Report.

Mr. COHN (Denmark) withdrew his request that a vote be taken on this subject at the present Meeting.

Mr. SOKIRKIN (Union of Soviet Socialist Republics) agreed to the Report, while making the reservation that the U.S.S.R. Delegation considered that the comments in the Report on the subject of particular Articles of the Conventions could not be considered as obligatory in regard to the interpretation or implementation of the Conventions.

The CHAIRMAN noted the above statement by the Soviet Delegation.

The first and second Reports submitted the Joint Committee to the Plenary Assembly were unanimously adopted. They will be found in one Document.

The CHAIRMAN congratulated the Rapporteur on the clarity of the above Reports and thanked the Special Committee, its Chairman, Rapporteurs and collaborators, for their efforts. He also thanked the various Representatives of the International Committee of the Red Cross, who had rendered the greatest service in supplying information and advice.

Mr. AURITI (Italy), supported by Mr. LAMARLE (France), expressed the gratitude of the Joint Committee to their Chairman, Mr. BOURQUIN, for the authority, ability, impartiality and courtesy with which he had conducted the debates of the Committee.

*The meeting rose at 12.30 p.m.*

# SPECIAL COMMITTEE OF THE JOINT COMMITTEE

## FIRST MEETING

*Tuesday 3 May 1949, 5 p.m.*

*Chairman:* Mr. Maurice BOURQUIN (Belgium), later Mr. Plinio BOLLA (Switzerland)

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### **Election of a Chairman**

Mr. BOURQUIN (Chairman of the Joint Committee) declared the meeting open, and proposed the nomination of Mr. BOLLA (Switzerland) as Chairman of the Special Committee of the Joint Committee.

Agreed.

The CHAIRMAN expressed his thanks, and gave the floor to Mr. Bourquin.

### **Extension of the terms of reference of the Special Committee**

Mr. BOURQUIN (Belgium), Chairman of the Joint Committee, said that the Special Committee had been set up to solve the difficulties raised by Article 2, paragraph 4, of the Draft Conventions. It was, however, probable that other provisions common to all four Conventions might also have to be examined by the Special Committee. For that reason, he intended, provided the Committee agreed, to move that the Joint Committee should extend the terms of reference of the Special Committee, and instruct them to examine all the difficulties which might arise out of the common Articles. If such difficulties arose, it would be proper that Asia and Latin America should be represented in the Special Committee, and he had thought of inviting Burma and Uruguay. He was further of the opinion that a representative of those delegations which had moved an amendment should be invited to participate in the debates concerning that amendment.

The CHAIRMAN pointed out that the Joint Committee was the only body competent to accept or reject the proposal. The Special Committee might however express its opinion.

Mr. MOROSOV (Union of Soviet Socialist Republics) supported the two candidatures proposed by Mr. Bourquin. As far as the extension of the terms of reference of the Committee was concerned he felt that it would be proper to await the results of its examination of Article 2, paragraph 4.

Mr. BOURQUIN (Belgium), Chairman of the Joint Committee, endorsed that point of view.

The Special Committee decided not to nominate a Rapporteur until the close of its work.

### **Article 2, fourth paragraph**

The CHAIRMAN indicated that some amendments had been presented to the Special Committee by the Delegations of Australia, Canada, France, Greece and Hungary.

Mr. MARESCA (Italy) said that his Delegation, in the course of the discussion which took place at the meeting of the Joint Committee (*see Summary Record of the Second Meeting*), proposed the adoption of the criteria listed in the French proposal, with the recommendation, that the general humanitarian principles appearing in the Preamble of the Civilians Convention should be taken into consideration by the States.

Colonel DU PASQUIER (Switzerland) considered that the French Draft of 26 April (*see Annex*

No. 12) might be a useful basis for discussion, as it united all criteria of a material nature granting, from the point of view of international law, belligerent status to insurgents. He proposed, however, a slight change of form, namely, to replace the words "authority responsible" by "established authority". The Greek proposal had, in his eyes, the disadvantage of having recourse to formal criteria, which might prevent speedy application of the Conventions.

Mr. CASTBERG (Norway) said he would prefer to keep the Stockholm Draft, while taking the Hungarian proposal into account which tends to delete at the end of the first sentence of the fourth paragraph of the Conventions Prisoners of War and Civilians the part of the sentence "provided the adverse party keeps to it too". If on the other hand it was a question of finding a compromise, he was in favour of the French proposal.

Mr. ZANETTOS (Greece) endorsed the French proposal subject to the addition of the following sentence:

"In these circumstances the application of the humanitarian principles of the Convention shall in no way prejudice the legal status of the belligerents, in regard to their mutual relations."

Mr. CASTBERG (Norway) agreed to the proposed addition.

Mr. HART (United Kingdom) asked the Committee to give careful consideration to the questions raised by the application of the Civilians Convention in the event of civil war. The wording of the Civilians Convention was based on conceptions of nationality and territory, e.g. in Articles 32 and 35. In the event of civil wars, war of religion, colonial conflicts or political conflicts it would be impossible to decide which persons were entitled to protection, as the majority would be nationals of the same country. In their "Remarks and Proposals" the International Committee of the Red Cross pointed out that "it would probably be best to stipulate that these civilians should be given the same treatment by both adversaries as the population of an occupied territory". That suggestion hardly provided a solution of the problem. Article 47 provided for that protected persons in occupied territory were only to be employed in public utility services, and were not to be compelled to serve in the armed forces. That would automatically put an end to civil war. But that was certainly not what the authors of the Convention had in mind.

*The meeting rose at 7.30 p.m.*

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## SECOND MEETING

*Friday 6 May 1949, 10 a.m.*

*Chairman: Mr. Plinio BOLLA (Switzerland)*

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### **Article 2, fourth paragraph (continued)**

Commenting upon the scope of application of the Civilians Convention in the case of civil war, Mr. PILLOUD (International Committee of the Red Cross) considered that all persons who were not nationals of the State where the conflict took place, or who did not take part in the hostilities, should be protected. The International Committee of the Red Cross had suggested that protection in virtue of the provisions relating to occupied territories should be applied to such persons. Mr. Pilloud felt that most of the provisions of the Convention should in such a case be applied by analogy, and that it

would be appropriate to draw the attention of Committee III to this point.

Colonel HODGSON (Australia) said that he considered the proposals which had been made in determining the criteria for application of Article 2 of Stockholm to be impracticable. The Delegate for France had rightly objected that the use of the term "in all cases of armed conflict" was too comprehensive and would presuppose the inclusion of all cases of minor rebellion.

According to the terms of the French amendment, what body was going to decide that "the adverse party possessed an organized military force, an

authority responsible for its acts acting within a defined territory and having the means of observing and enforcing the Convention”.

The Australian Government believes that international law and Conventions should apply when civil war was of such magnitude as to be a full-scale war. The criteria given in the Australian proposal (*see Annex No. II*) were in conformity with international law and permitted the automatic application of the Conventions.

Mr. CASTBERG (Norway) prefers the amendment submitted by the French Delegation proposing the criteria as specific as those contained in the first articles of the 1907 Hague Convention.

Mr. YINGLING (United States of America) considered that the criteria contained in the Australian amendment were not satisfactory, as they were subject either to the decision of the *de jure* government, or to the Rules of Procedure of the Security Council of the United Nations.

Colonel HODGSON (Australia) agreed that the Australian amendment was rigid and precise in its terms, but considered that the other texts submitted would prevent the *de jure* government in certain instances even from applying its own criminal or penal code against small bodies of insurgents.

Mr. YINGLING (United States of America) recalled the statement which had been made by the Chief of the Delegation of the United States of America at the Second Meeting of the Joint Committee. Every government had a right to suppress rebellion within its borders and to punish the insurgents in accordance with its penal laws. Premature recognition of the belligerency of insurgents was a tortious act against the lawful government and a breach of international law.

Mr. MARESCA (Italy) considered it would be possible to reconcile the points of view of the Australian and French Delegations by adding to the amendment, proposed by the latter, Provisos 1 and 4 of the Australian text.

In reply to the question raised by the Delegate for Australia, Mr. LAMARLE (France) indicated that in the case of civil war there was no reason to institute special litigation proceedings. The same methods would be applied in this instance as in the instance of the other disputes which might arise, with the reservation that the conditions for the application of the Convention, in case of civil war, were effectively fulfilled. The French Delegation supported the proposal made by the Delegation for Monaco purporting to study the possi-

bility of providing in case of differences for a procedure of conciliation and possibly of arbitration. They reserved the position they would take during this examination.

Colonel BLANCO (Uruguay) considered that the proposals formulated by the Delegations for Australia and France would be difficult to apply in the case of civil war, such as it occurred in Latin America. Referring to some of these conflicts, the Delegate for Uruguay recalled that protection extended to the victims of the two parties had often been the result of an initiative by the Red Cross. He thought it preferable to stipulate that the provisions of the Conventions would be applied by analogy, and proposed that intervention by the International Committee of the Red Cross should be considered as the starting point for the application of the Conventions.

Mr. HART (United Kingdom) asked the Representative of the International Committee of the Red Cross what was understood by the word “nationals” when he spoke, in the draft of Article 3 “civilians” mentioned in the “Remarks and Proposals”, of the protection of “nationals of the country where the conflict takes place” in instances of conflicts which do not have an international character. In the case of a civil war or rebellion in a colony, a definition would have to be given as to the meaning of the word “nationals”, whether nationals of the colony or of the State which owned the colony; the United Kingdom, for instance, recognized no separate nationality for the home country or for the colony. If by “nationals of the country” were meant the nationals of the home country, this would mean that the entire population of the home country would also be under the protection of the Conventions in the case of a colonial war.

The second point the Delegate for the United Kingdom wished to raise was that governments had a right to suppress rebellion in their country and to inflict punishment on the insurgents under the laws of treason in force. He would like to hear in due course whether the members of the Special Committee thought that if the Conventions were applied to a particular rebellion, for example, the lawful government should still have these rights, or whether the Conventions should contain a provision limiting or excluding these rights, for example, a provision that neither Party to a conflict to which the Conventions applied should be allowed to punish any persons for having taken part in the conflict.

Mr. PILLOUD (International Committee of the Red Cross) asked for time to study the questions raised by the Delegate for the United Kingdom.

With regard to the proposal submitted by the Delegate for Uruguay, he recalled that in virtue of a mandate conferred on him by the Tenth International Red Cross Conference, the I.C.R.C. were bound to extend their humanitarian activities to civil war. It was therefore unnecessary to introduce a reference to the International Committee in the text of paragraph 4. Each time the Committee had intervened in this type of conflict, their first step had been to ask the parties to apply the Geneva Conventions of 1929. They had often been successful in this field, but there had also been failures, and their démarches were not always

well received. Application of the Conventions, either totally or partially, had even been achieved in situations which did not exactly correspond to the definition given in the French proposal. Therefore, if limitations were to be included in paragraph 4, Mr. Pilloud was of the opinion that there should likewise be introduced a clause stipulating that the present provisions would not prevent the voluntary application of the Conventions by Parties to a conflict which did not correspond to the definition given in this paragraph.

*The meeting rose at 1 p.m.*

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### THIRD MEETING

*Monday 9 May 1949, 10 a.m.*

*Chairman:* Mr. Plinio BOLLA (Switzerland)

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#### **Article 2, fourth paragraph** *(continued)*

The CHAIRMAN pointed out that the Committee would also have to examine the question of reciprocity which arose in connection with the application of the Conventions.

Mr. MOROSOV (Union of Soviet Socialist Republics) stressed that most of the amendments tabled differed from the text adopted at Stockholm. He noted that the delegations seemed to be in agreement to apply the humanitarian principles of the Convention in cases of armed conflict which were not of an international character, but that they subordinated such application to certain conditions which the Soviet Delegation could not agree to.

Contrary to the opinion expressed by certain delegates, the Stockholm text did not restrict the sovereign right of States, in the application of their own laws with regard to rebels. The aim to be reached was to see that civilian populations enjoyed the same protection in the case of civil as well as international war.

Mr. YINGLING (United States of America) asked the French Delegation to explain what they meant by the term "authority responsible for its acts acting within a defined territory". Did this mean a civil authority responsible for the acts of the military authority?

He asked moreover, what would be the position if the authority possessed the means for enforcing the Convention but was not disposed to do so.

Mr. MARESCA (Italy) pointed out that the question of reciprocity was correlated to paragraph 3 of Article 2. He proposed to introduce a clause stipulating that in all circumstances there should be the application of the humanitarian principles which were the basis of the Conventions, and in particular the provisions relating to assistance by the International Committee of the Red Cross or similar agencies.

In reply to the questions raised by the Delegate for the United States of America, Mr. CAHEN-SALVADOR (France) explained that the responsible authority, to whom reference was made in the amendments submitted by the French Delegation, might be a military or a civil authority, or both. Subject to final decision by the French Delegation, he proposed to alter the last phrase of his amendment as follows: "... an authority responsible for its acts acting within a defined territory, and declaring their readiness to observe and to enforce the Convention".

Mr. YINGLING (United States of America) noted that the answer given by the Delegate of France to the second question was very close to the

United States Delegation's point of view. With regard to the answer to the first question, the Delegate for the United States of America considered there must be more than an organized military force. That force must also be subject to a duly constituted civil authority.

Colonel BLANCO (Uruguay) recalled that most of the internal rebellions in Latin American countries were started by military forces. He felt that the Australian proposal would be inapplicable in those countries.

Mr. CASTBERG (Norway) supported the text submitted by the French Delegation, for he considered that the reference made in it to a responsible authority was sufficient and would compensate for the absence of a government. With regard to the question of reciprocity, Mr. Castberg shared the views expressed by the International Committee of the Red Cross in their "Remarks and Proposals" concerning Article 2 "Prisoners of War" and considered that the principle of reciprocity, in a certain measure, ran counter to prohibition of reprisals. With regard to the authority who would have to determine whether the conditions permitting application of the Conventions were fulfilled or not, the Delegate for Norway preferred, in lieu of the United Nations, that this should be a committee arbitration of similar to the body referred to under Article 30 of the Convention on the Wounded and Sick of 1929.

With regard to the situation of rebels during and after the conflict, the Delegate for Norway pointed out that the Convention would be applied to them as long as the hostilities lasted, but at the end of the latter they would be prosecuted in accordance with the national laws. He proposed, therefore, to complete the Convention by a provision stipulating that application of the Conventions in the case of armed conflicts which were not of an international character would not prevent the lawful government from instituting regular procedure for the prosecution of the rebels. The latter, however, could not be punished on the sole grounds of having taken part in the conflict.

Colonel HODGSON (Australia) pointed out that his proposal did not apply only to conflicts of an international character as the Delegate for the Union of Soviet Socialist Republics seemed to believe, for in the latter instance, the Australian Delegation would have asked for the deletion of paragraph 4 altogether, as being superfluous.

He pointed out that it was not possible to apply the Convention in all cases of armed conflict without making it impossible for the *de jure* government to suppress a local rebellion.

He added that arbitration as suggested by the Delegate for Norway was a slow and uncertain procedure, whereas recourse to the Security Council of the United Nations was speedy and automatic.

The CHAIRMAN felt that the time had come to classify the views and that the Committee should in the first place express itself on the following principles:

- (1) Should the Conventions be extended to cases of armed conflict which were not of an international character?
- (2) Would it be appropriate to define more clearly than was the case in the Stockholm text the cases of armed conflict which were not of an international character?
- (3) Which of the following criteria should be adopted: formal criteria, factual criteria or a combination of formal and factual criteria?

The CHAIRMAN indicated that after having voted on the basic principles, the Committee would then have to pronounce on:

- (a) The application of the Convention to the letter or by analogy;
- (b) The question of reciprocity;
- (c) The clause known as the "Discretionary Clause", as suggested by the International Committee of the Red Cross at the preceding meeting;
- (d) The Italian proposal purporting to apply the humanitarian principles of the Conventions to cases of conflicts not expressly stipulated;
- (e) The clause reserving the juridical status of Parties to the conflict;
- (f) The situation of the insurgents at the close of a conflict (Norwegian proposition).

The Delegations for Burma and Uruguay were not yet members of the Committee and could therefore formally not take part in the voting. The Chairman suggested that their views on each of the questions should be placed on record, so that they could be taken into consideration when the Joint Committee had included them in the present membership of the Committee.

Mr. HART (United Kingdom) would have preferred to examine how the Convention would be applied in case of a civil war, but did not stress this point.

If a delegation were placed in the minority on a given point, it should be understood that its votes on the subsequent questions submitted to

the Committee should be expressed, subject to the general attitude adopted by that delegation.

Mr. Hart suggested a further discussion, on the position of vanquished insurgents after a civil war was over, before taking the vote.

The CHAIRMAN asked the Committee to pronounce on the principle of extension of the Con-

ventions to cases of armed conflict which were not of an international character.

By 10 votes to 1, with 1 abstention, the Committee pronounced in favour of the extension of the Convention to cases of armed conflict which were not of an international character.

*The meeting rose at 1 p.m.*

#### FOURTH MEETING

*Wednesday 11 May 1949, 10 a.m.*

*Chairman:* Mr. Plinio BOLLA (Switzerland)

#### Article 2, fourth paragraph (*continued*)

MR. DE GEOUFFRE DE LA PRADELLE (Monaco) considered it was indispensable to distinguish between rebellion, which was more than an uprising, but had not yet taken on the proportions of a civil war, as defined in international law.

Colonel HODGSON (Australia) pointed out that in international law, there were welldefined principles as to the meaning of civil war. He added that in his view the Conventions should not apply to local uprisings.

Mr. MOROSOV (Union of Soviet Socialist Republics) asked the Australian Delegate if he proposed to reintroduce the words "especially cases of civil war, colonial conflicts or wars of religion", into paragraph 4 of the text of Stockholm after the words "international character", which had been deleted at the Stockholm Conference.

Colonel HODGSON (Australia) replied that the Australian Delegation stood by the text they had submitted and did not desire to introduce the words deleted at Stockholm.

The CHAIRMAN suggested to the Committee that they pronounce either in favour of the Stockholm text, or of a new text which would define more clearly the cases of armed conflict not of an international character.

By 10 votes for, 1 against, and 1 abstention, the Committee was of the opinion to abandon the Stockholm text and to define more clearly the

cases of armed conflict not of an international character to which the Conventions should apply.

The Committee then went on to the examination of the factors which should be included in the definition under consideration.

Mr. LAMARLE (France) was of the opinion that civil war was a political and not a legal concept, and that each case should be dealt with separately. The Conference was not competent to define civil war, nor to confer competency on a body of a political character. It was necessary to allow the normal play of international politics. Mr. Lamarle recalled in this connection the non-intervention policy followed during the Spanish civil war.

Mr. CASTBERG (Norway) did not share the opinion of the French Delegation as regards the competency of the Conference. He considered that a text which had come into force could attribute competency to a specific body, on the sole condition that the said body agreed to accept it. It might also be envisaged that the decision relating to implementation of the Convention might be entrusted to an arbitrator, but the task of the latter would be facilitated if precise criteria were specified in the Convention.

Mr. YINGLING (United States of America) said that his country would not be willing to give a free hand to any organism, whether the Security Council or any other, with regard to deciding whether the Conventions should come into effect.

They were, however, not adverse to the proposal that under certain circumstances some body



should be called upon to act as a fact-finding agency to determine whether the conditions governing the application of the Conventions were fulfilled or not.

Colonel HODGSON (Australia) suggested the creation of a Working Party to include the Delegates for the United States of America, France and Australia, which would work out a compromise wording embodying the conceptions formulated.

The CHAIRMAN supported the proposal of the Delegate for Australia and suggested that the Delegation for Norway also should be a member of this Working Party.

This proposal was adopted and at the suggestion of Mr. CASTBERG (Norway), Mr. BOLLA (Switzerland) agreed to accept the chairmanship of the Working Party.

The CHAIRMAN asked the Committee to pass on to the study of the problem of reciprocity.

Mr. YINGLING (United States of America) supported this principle. He noted that paragraph 3 of Article 2 referred only to the instance when a contracting party was involved in a conflict with a non-contracting party. He proposed to draft the reciprocity clause by saying that the Convention would apply if the insurgent civil authority declared it would observe it.

Mr. MARESCA (Italy) considered that it was not sufficient if a party declared they were disposed to apply the Convention; they must apply it in fact.

The CHAIRMAN noted that the introduction of a clause according to which a Party to the conflict shall be bound by the Convention only if the other Party respectively acknowledges the same obligation, raised no objections. He proposed to specify that the obligation to apply the Convention should lapse for each Party only if after a reasonable time limit the adverse Party declared they refused to apply the Convention, or in fact did not apply it. This formula would have the advantage that the Convention could be brought into force immediately upon the outbreak of hostilities.

Mr. MOROSOV (Union of Soviet Socialist Republics) recalled that the Canadian Delegation had submitted an amendment (*see Annex No. 8*) which was along the lines suggested by the proposal of the Chairman.

With regard to the remarks made on the third paragraph of Article 2, the Soviet Delegation reserved their position as to the application of reciprocity to cases of armed conflict having an international character. On the other hand, in all cases of armed conflict not of an international character, it supported the Stockholm text.

*The meeting rose at 12.30 p.m.*

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## FIFTH MEETING

*Monday 16 May 1949, 11 a.m.*

*Chairman: Mr. Plinio BOLLA (Switzerland)*

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### **Article 2, fourth paragraph** (*continued*)

The CHAIRMAN pointed out that after four meetings, the Working Party had drawn up the following Draft Article:

“In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each party to the conflict shall be bound to implement the provisions of the present Convention, provided:

- (a) that the *de jure* government has recognized the status of belligerency of the adverse party, without restrictions, or for the sole purposes of the application of the present Convention, or
- (b) that the adverse party presents the characteristics of a State, in particular, that it possesses an organized military force, that it is under the direction of an organized civil authority which exercises *de facto* gov-

ernemental functions over the population of a determinate portion of the national territory, and that it has the means of enforcing the Convention, and of complying with the laws and customs of war; application of the Convention in these circumstances shall in no way depend upon the legal status of the parties to the conflict. This obligation presupposes, furthermore, in all circumstances, that the adverse party declares itself bound by the present Convention, and, as is the *de jure* government, by the laws and customs of war (and that it complies with the above conditions in actual fact).

The provisions relating to the Protecting Powers shall, however, not be applicable, except in the instance of special agreement between the parties to the conflict. An impartial humanitarian body, such as the International Committee of the Red Cross, may offer to the parties to the conflict to undertake the duties conferred by the present Convention on the Protecting Powers.

In the case of armed conflicts which do not fulfil the conditions as determined above, the parties to the conflict should endeavour to bring into force, by means of special agreements, all or part of the provisions of the present Convention, or, in all circumstances, to act in accordance with the underlying humanitarian principles of the present Convention.

In all circumstances stipulated in the foregoing provisions, total or partial application of the present Convention shall not affect the legal status of the parties to the conflict."

This text had been drawn up, taking into consideration, as far as possible, the amendments, proposals and reservations submitted by the Delegations.

The Working Party had not felt itself competent to consider the question of the *de facto* application of the Convention, and of the laws and customs of war, to which reference was made in the second paragraph.

It was likewise of the opinion that it was not competent to make a pronouncement on the matter of the Norwegian proposal (*see Summary Record of the Third Meeting*), relating to the sentencing of rebels at the close of hostilities.

Referring to the second paragraph, Colonel DU PASQUIER (Switzerland) considered that this Article had significance only if the *de jure* government were bound in advance by the Convention. If the two Parties to the conflict had to declare themselves bound, the Article would become useless, and would be nothing more than a recommendation.

Mr. LAMARLE (France) remarked that already at the meeting of Government Experts in April 1947, the French Delegation drew attention to the need of humanizing all forms of armed conflict. They remained in favour of this point of view, and were in support of the extension of the humanitarian principles of the Conventions to cases of armed conflict not of an international character, but he did not feel it was possible to extend automatically all the clauses of the Conventions to internal conflicts. This impossibility was particularly obvious in the case of the Civilians Convention. Mr. Lamarle therefore reserved the point of view of his Government on the Article, as a whole, and proposed to submit further suggestions at a later stage of the discussions.

Mr. MARESCA (Italy) considered that the words "without restrictions", in sub-paragraph (a) of the first paragraph, were redundant. Concerning sub-paragraph (b), he proposed to delete the terms "presents the characteristics of a State", which gives the impression that the rebels already constitute a subject in international law. Likewise, in the second paragraph, the declaration to be made by the rebels presupposes a legal personality which they could not possess. As for the *de jure* government, it is bound by the Conventions and should not be called upon to make a declaration in this connexion. Lastly, Mr. Maresca considered that the Conference was not competent to pronounce itself when the laws of war should be applied.

Mr. HART (United Kingdom) strongly supported the remarks made by the Delegate for France with regard to the danger in applying the provisions of the Convention as a whole to certain classes of conflict not of an international character.

He quoted Article 60, first paragraph, of the Draft Civilians Convention, according to which protected persons could not be prosecuted for acts committed before the occupation.

Recognition of the status of belligerency mentioned in sub-paragraph (a) of the first paragraph was not in its proper place, because what was important was the application of the Conventions and not the concept of belligerency which implied rights exceeding the scope of the Conventions.

Mr. Hart remarked concerning the second paragraph that a conflict might arise between two rival groups of rebels in a country where the lawful government was not primarily a Party to the conflict.

Mr. PILLOUD (International Committee of the Red Cross) would consult the I.C.R.C. with regard to the mention made in the third paragraph. In his view, the text drawn up by the Working

Party could never have been applied in any recent case of civil war. It therefore did not represent a progress with regard to the present situation. Moreover, it would often be difficult to determine which was the legal government, since each Party to the conflict would pretend to be the legal government.

The value of the Conventions depends largely upon the means of controlling their application,

hence the need for providing for the intervention by a Protecting Power. The latter would obviously act only with the approval of the Detaining Power.

With regard to Article 60 of the Civilians Convention, mentioned by the Delegate for the United Kingdom, Mr. Pilloud considered that, in particular, it should be linked to Article 55.

*The meeting rose at 12.45 p.m.*

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## SIXTH MEETING

*Wednesday 18 May 1949, 10 a.m.*

*Chairman:* Mr. Plinio BOLLA (Switzerland)

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### Article 2, fourth paragraph (*continued*)

Mr. MOROSOV (Union of Soviet Socialist Republics) was of the opinion that the proposal submitted by the Working Party (*see Summary Record of the last Meeting*) rendered still more difficult the application of the Convention to cases of armed conflict not of an international character. To the objections already submitted by the Delegation for Italy and the International Committee of the Red Cross, the Delegate for the U.S.S.R. added some remarks with relation to the reciprocity clause, which was more clearly defined in the Stockholm text, the difficulties of application arising from the conditions as stipulated under point (b), paragraph 1 and the danger resulting from the suppression of control by the Protecting Powers. He considered that the fears expressed by certain delegations in connection with the risk of conferring the benefits of the Convention to mere rebels were unfounded; lastly, he pointed out that the second sentence of paragraph 3 and paragraph 4 were mere recommendations, for they did not stipulate any obligation.

The Soviet Delegation were therefore not in favour of the Draft submitted by the Working Party and preferred the Stockholm Draft.

Although supporting the Stockholm text, Mr. CASTBERG (Norway) had taken part in the drafting of the text of the Working Party with a view to finding a compromise solution permitting the reconciliation of the various points of view. He observed

that in virtue of paragraph 4 of this text the Convention may be applied even though the conditions contained in the first three paragraphs were not fulfilled. In reply to objections raised at the preceding meeting by the Delegations for France and for the United Kingdom, the Delegate for Norway pointed out that Articles 55 and 60 of the Civilians Convention would protect the loyal supporters of the *de jure* government and that the application of the Convention for the protection of the insurgents would not cause any difficulties either.

The CHAIRMAN proposed that the Working Party should be asked to draw up a new text according to the suggestions, comments and criticisms which had been made. This text would be submitted to the members of the Special Committee and they would have a time limit of 24 hours to submit amendments.

He pointed out that two questions remained to be solved: the question of reciprocity, and the question contained in the Norwegian proposal which dealt with the situation of insurgents at the close of hostilities.

Mr. YINGLING (United States of America) said that his Delegation was opposed to the insertion of the clause contained within brackets in the second paragraph of the text drawn up by the Working Party. The Conventions as they now stood contained no conditions in this respect with regard to war between States, and there seemed no reason to include provisions of this kind to apply to civil war.

The Delegate for the United States of America considered that the Norwegian proposal raised a question of national law, and therefore did not come within the competence of the Conference.

Mr. DE GEOUFFRE DE LA PRADELLE (Monaco) concurred with the Delegation of the United States of America with regard to reciprocity as mentioned in paragraph 2.

In his view, the text drafted by the Working Party was too involved and indefinite, whereas the Stockholm text was unsound in aiming at applying to civil war all the provisions of the Conventions. He proposed that the Working Party should recast its text, endeavouring to eliminate the impracticable conditions, and to determine which provisions of the Conventions would be applicable in the case of civil war.

Mr. MOROSOV (Union of Soviet Socialist Republics) considered that the Working Party should abandon its draft article, and should take the Stockholm text as a basis for its study. He observed that the Norwegian proposal stipulated only for the case in which, the legal government came victorious out of the conflict, and asked the Norwegian Delegation if it would not be appropriate to fill this gap.

Mr. HART (United Kingdom) supported the proposal that the text submitted by the Working Party should be reconsidered by it in the light

of the comments which had been made at the present Meeting. He strongly supported the view of the Delegate for Monaco that the Working Party should examine the provisions to see what parts of it could in fact be applied to civil war.

In addition to Section III on "Occupied Territories", other sections of the Civilians Convention, in particular Articles 58 and 59, could not apply to civil war.

Mr. Hart considered that the Working Party might, therefore, usefully take into consideration the comments concerning Article 3, "civilians", in "Remarks and Proposals" of the International Committee of the Red Cross. In the new draft of Article 3, second paragraph, the word "nationals" should be replaced by "inhabitants."

With regard to the Norwegian proposal in respect of prosecution by the legal government of the rebels (*see Summary Record of the Fourth Meeting*), it does not specify the rights of the legal government before the end of hostilities. The question arose whether the intention was to limit them. It would however be anomalous to protect insurgents by a Convention during the rebellion and treat them as traitors at the close of it. It might, therefore, be necessary to suggest that the signatory countries agree to amend their penal law to prevent them from condemning vanquished rebels on the sole grounds of having borne arms against the legal government.

*The meeting rose at 12.45 p.m.*

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## SEVENTH MEETING

*Thursday, 19 May 1949, 9.30 a.m.*

*Chairman: Mr. Plinio BOLLA (Switzerland)*

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### **Article 2, fourth paragraph** (*continued*)

Mr. MARESCA (Italy) considered that the question of reciprocity ought not to be dealt with specifically in the case of conflicts which were not of an international character.

He was of the opinion that the Norwegian amendment should be completed to enable the repression of acts which, under international law, were considered as war crimes. Furthermore, it would

be appropriate to state clearly that in no case could rebels be sentenced by virtue of provisions published after the offence had been committed, and also that the stipulations of the present Convention relating to death sentences should be applicable to them.

Mr. Maresca asked the Committee not to attach too much importance to the terms "legal government", "*de jure* government" or "insurgents", these concepts being strange to international law.

In conclusion, the Delegate for Italy proposed to revert to the text which was drawn up at the meeting of Government Experts in 1947, and in all cases of armed conflict not of an international character to provide only for the application of the principles underlying the Conventions.

Mr. CASTBERG (Norway) asked that the Norwegian proposal (*see Summary Record of the Third Meeting*) be referred to the Working Party as a basis for discussion. By "legal government" was meant the government having that status at the close of the conflict.

Mr. YINGLING (United States of America) considered that the Norwegian proposal should not be examined as coming within the scope of the common articles, since it did not refer to all the Conventions.

General OUNG (Burma) felt that a realistic view should be taken of the matter of armed conflict not of an international character. He was unable to accept the proposition made by the Working Party, and could not agree to the recognition of the status of belligerency to insurgents. Regarding the action of Protecting Powers, he admitted the impartiality of the International Committee of the Red Cross, but pointed out that the mere presence of aliens on the national territory might be a source of suspicion. Regarding the Norwegian proposal, he felt that rebels usually acted with full cognizance in advance of the risk they were running to incur penal sanctions.

The CHAIRMAN suggested that the Norwegian proposal be referred to the Working Party, without prejudging the final decision which would be taken

by the Committee on the basic problem. To facilitate the task of the Working Party, he asked the Committee to give their views on the principle of *de facto* reciprocity, such as was stipulated in brackets in the second paragraph of the proposal of the Working Party.

Colonel HODGSON (Australia) favoured deletion of the bracketed phrase, but considered that this did not solve the problem of reciprocity as a whole. He felt that the main difficulty in reaching agreement was caused by the very rigid terms used in the draft of the Working Party. When mentioning High Contracting Parties, this meant the governments which sign and ratify the Conventions and also those which come successively into power. The wording should be that both Parties to the conflict must declare themselves bound by the Convention, and by the laws and customs of war. He suggested a fundamental alteration in the membership of the Working Party which might include the delegations who had offered criticism on the draft under discussion.

Mr. MOROSOV (Union of Soviet Socialist Republics) preferred that the vote be taken on the reciprocity clause as framed in the Stockholm text, rather than on the wording proposed by the Working Party. Furthermore, before coming to a decision, the new text to be drafted by the Working Party would have to be examined.

The CHAIRMAN proposed to refer this question to the Working Party, the membership of which would remain unchanged, since no formal proposal had been made as a result of the suggestion submitted by the Australian Delegate.

*The meeting rose at 11.45 a.m.*

## EIGHTH MEETING

Monday 23 May 1949, 10 a.m.

Chairman: Mr. Plinio BOLLA (Switzerland)

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### Election of a Vice-Chairman

On the proposal of Mr. CASTBERG (Norway), seconded by Mr. LAMARLE (France), Colonel BLANCO (Uruguay) was unanimously elected Vice-Chairman of the Committee by acclamation.

### Article 40/44/119/130

The Committee considered the Danish amendment of 4 May relative to the settlement of disputes (*see Annex No. 54*).

Mr. PILLOUD (International Committee of the Red Cross) considered it would be the task of the Protecting Powers to seek a solution to the disputes which might arise in connection with the interpretation and application of the Conventions. Referring to the two categories of possible disputes, those which arose in peacetime and those which occurred in wartime, the Representative of the International Committee of the Red Cross noted that the former were a rare occurrence. In connection with the latter, experience had proved that to be effective, the investigation had to follow immediately the violation.

Furthermore, Mr. Pilloud pointed out that it was difficult to foresee the international body which in wartime would be capable of functioning with a view to settling disputes.

Mr. DE GEOUFFRE DE LA PRADELLE (Monaco) observed that the Protecting Power might be involved in the dispute and that it could not be simultaneously judge and party. He gave several examples of disputes occurring in peacetime between the High Contracting Parties in respect of interpretation and application of Conventions, and considered that such disputes should be referred to the International Court of Justice. Moreover, he pointed out that Article 30 of the Wounded and Sick Convention of 1929 might be effective in a case of localized international war, or of an

armed conflict not of an international character. He proposed to merge this Article 30 with Article 41 of the Stockholm Draft of the same Convention, retaining, in particular, the obligation stipulated at the end of Article 30.

Mr. BAGGE (Denmark) was of the opinion that arbitration could have value only if it were carried out by a body exercising effective authority, such as the International Court of Justice.

While in agreement with the principle laid down in the Danish amendment, Mr. CASTBERG (Norway) doubted whether it would be possible to obtain approval by the Powers to apply such a provision in wartime. He supported the Monegasque proposal and suggested a clause similar to the optional clause of compulsory arbitration contained in Article 36 of the Statute of the International Court of Justice.

Mr. YINGLING (United States of America) said that the United States Delegation would be opposed to the inclusion in the Conventions of any clause of compulsory arbitration. They were in agreement with the proposal to extend the investigation procedure to all the Conventions. However, they were not convinced of the practicability of such procedure in wartime.

The CHAIRMAN invited the Committee to pronounce on the advisability

- (a) of conferring on the International Court of Justice competency for the settlement of disputes arising outside of periods of armed conflicts;
- (b) to extend to the Prisoners of War and Civilians Conventions the enquiry procedure envisaged in the Wounded and Sick and the Maritime Conventions for the wartime period.

In reply to questions raised by Mr. YINGLING (United States of America) and Mr. MOROSOV

(Union of Soviet Socialist Republics), Mr. BAGGE (Denmark) indicated that according to the Danish amendment, each Party signatory to the Convention could at its discretion refer the disputes to the International Court of Justice. On the other hand, if such a dispute were submitted to the Court, its decision would have a mandatory character for both parties.

Mr. MARESCA (Italy) pointed out that account should be taken of the Regulations of the Statute of the International Court of Justice which provided in particular for a previous recognition of the obligatory competence of the Court.

Mr. YINGLING (United States of America) pointed out that, although the United States of America had recognized the compulsory jurisdiction of the International Court of Justice, all States had not accepted it. He proposed to replace in the Danish amendment the word "each" by "either".

Miss GUTTERIDGE (United Kingdom) was in principle in favour of the Danish amendment for the submission of disputes to the International Court in peacetime. She supported the United States Delegate's remarks and suggestions.

The United Kingdom Delegation were in favour of the extension to all Conventions of some provision for enquiry. Once the latter had been held, the parties should be bound to bring to an end any violation which had taken place.

Mr. BAGGE (Denmark) agreed to the proposal made by the Delegate for the United States of America.

Mr. MOROSOV (Union of Soviet Socialist Republics) felt that the procedure under Article 30 of the Wounded and Sick Convention of 1929 was sufficient to permit the punishment of violations of the Convention. But it did not provide for a satis-

factory solution with regard to disputes relating to the procedure of enquiry. Therefore, the Soviet Delegation had tabled an amendment to Article 41 of the Wounded and Sick Convention proposing to replace this Article by Article 30 of the Convention of the Wounded and Sick of 1929 with the addition of the following sentence:

"If agreement has not been reached concerning the procedure for the enquiry, the parties shall decide on the choice of an arbitrator."

The Soviet Delegation were ready, moreover, to contemplate the introduction into all the Conventions of a clause stipulating for enquiry procedure.

The CHAIRMAN noted that the introduction of an enquiry procedure into all the Conventions was not contested, and that the proposal to submit disputes in peacetime to the International Court of Justice gave rise to no fundamental objection, but only some reservations. He proposed that a text which would take into account the various comments and remarks made in the course of discussion should be drawn up by a Working Party composed of the Delegations for Denmark, Italy, Monaco, United Kingdom and the Union of Soviet Socialist Republics, under the Chairmanship of the Delegate for Monaco.

On the proposal of Mr. MOROSOV (Union of Soviet Socialist Republics), seconded by Miss GUTTERIDGE (United Kingdom), the Delegations for France and the United States of America were likewise asked to become members of this Working Party.

These proposals having been unanimously adopted, the Working Party would include the Delegations of the following countries: Denmark, United States of America, France, Italy, Monaco, United Kingdom, Union of Soviet Socialist Republics, under the Chairmanship of the Delegate for Monaco.

*The meeting rose at 1 p.m.*

## NINTH MEETING

Wednesday 25 May 1949, 3.30 p.m.

Chairman: Mr. Plinio BOLLA (Switzerland)

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**Article 1**

Mr. MARESCA (Italy) felt that the terms „undertake to ensure respect” should be more clearly defined. According to the manner in which they were construed, they were either redundant, or introduced a new concept into international law.

Mr. CASTBERG (Norway) considered that the object of this Article was to ensure respect of the Conventions by the population as a whole.

Mr. YINGLING (United States of America) said his interpretation of this point was the same as that of the Delegate for Norway. Article 1 did not imply the obligation to enact penal sanctions.

Mr. PILLOUD (International Committee of the Red Cross) pointed out that in submitting its proposals to the Stockholm Conference, the International Committee of the Red Cross emphasized that the Contracting Parties should not confine themselves to applying the Conventions themselves, but should do all in their power to see that the basic humanitarian principles of the Conventions were universally applied.

Mr. LAMARLE (France) considered that the term “to ensure respect” had the same purpose as the expression “in the name of their peoples”, which had been deleted in Stockholm.

Article 1 was adopted without a modification.

**Article 2, third paragraph**

The CHAIRMAN pointed out that amendments to the third paragraph of this Article had been tabled by the Belgian Delegation (*see Annex No. 8*), the Canadian Delegation (*see Annex No. 9*), the Italian Delegation (*see Summary Record of the Second Meeting of the Joint Committee*) and by the International Committee of the Red Cross (*see Annex No. 10*).

Mr. LAMARLE (France) considered that it was necessary to provide, as had been proposed by the International Committee of the Red Cross, for a certain time-limit before the obligation to apply the provisions of the Convention to a non-contracting State could expire. He was, however, of the opinion that this period should be defined.

Mr. WERSHOF (Canada) pointed out that the Canadian Delegation were in favour of a provision that the Convention would likewise apply to a Power not a Party thereof, as long as the said Power complied with the terms of the Convention. He was willing to waive his amendment in favour of the proposal submitted by the International Committee of the Red Cross.

Mr. CASTBERG (Norway) suggested the omission of the words “after a reasonable lapse of time” from the text proposed by the International Committee of the Red Cross.

Mr. MARESCA (Italy) thought that the Stockholm text was not clear and preferred the wording of the proposal submitted by his Delegation, or better still, the Belgian amendment which was more precise.

Mr. MOROSOV (Union of Soviet Socialist Republics) felt it was possible to go further than the Norwegian proposal, and preferred the Canadian amendment which was more concise and more easily applicable.

Mr. YINGLING (United States of America) preferred the Belgian text which placed an obligation on the Contracting Party to invite the Non-Contracting Party to apply the Convention, but placed no obligation on the Contracting Party to apply it before the adverse Party had stated its willingness to do likewise.

Colonel HODGSON (Australia) concurred in this view.



Mr. LAMARLE (France) considered the Belgian amendment as being more precise, but feared it would permit the signatory Power not to apply the Convention as long as the Non-Contracting Party had made no declaration. He therefore preferred the text drawn up by the International Committee of the Red Cross.

Mr. MOROSOV (Union of Soviet Socialist Republics) shared the view expressed by the Delegate for France, and pointed out that, according to the Belgian amendment, a Contracting Power might refuse to apply the Convention on the grounds that the Non-Contracting Party had not expressly declared that it did intend to comply with its provisions.

The CHAIRMAN proposed a compromise formula, adding, to the first sentence of the third paragraph of Article 2, a new sentence to read as follows:

“They are furthermore bound by the Convention in relation to the said Power, if the latter accepts and applies the provisions thereof.”

General OUNG (Burma) felt that the text submitted by the International Committee of the Red Cross would be difficult to insert in an international Convention, the reciprocity concept contained in it sounding retaliatory. He suggested deleting the words “after a reasonable lapse of time”.

On the proposal of the CHAIRMAN, the discussion would be resumed after his compromise text had been circulated.

### Article 4/5/5/5

The CHAIRMAN reminded the Meeting of the reservations made in connection with this Article by the United Kingdom Delegation in the discussion in the Joint Committee (*see Summary Record of the Third Meeting*). He drew the attention of the Committee to the amendment submitted by the Italian Delegation (*see Summary Record of the Third Meeting of the Joint Committee*).

Mr. HART (United Kingdom) recalled the views of his Delegation, stating that for practical reasons they considered that although there was no question of reducing the rights of persons benefited by the Conventions, means should be left available to the Contracting Parties to conclude special agreements in certain circumstances for the alteration of the rights conferred by the Convention. Such agreements might result in long-term advantages for the protected persons concerned. In the Wounded and Sick Convention, and in the Maritime Warfare Convention, the conclusion of special agreements was already provided for in certain places. It did not seem appropriate to introduce a clause into these Conventions providing for over-all authorization to conclude such agreements.

Mr. MOROSOV (Union of Soviet Socialist Republics) pointed out that the purpose of this Article was to prevent the conclusion of agreements which would aggravate the position of protected persons. In his view, the fears of the Delegate for the United Kingdom were unfounded, and the Italian proposal seemed unnecessary. He thought it advisable to revert to the text drawn up in Stockholm.

*The meeting rose at 6 p.m.*

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## TENTH MEETING

*Friday 27 May 1949, 10 a.m.*

*Chairman:* Mr. Plinio BOLLA (Switzerland)

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### Article 2, third paragraph (*continued*)

On the proposal of Mr. MOROSOV (Union of Soviet Socialist Republics), seconded by Colonel HODGSON (Australia), the CHAIRMAN invited the Committee to vote successively on the amendments tabled by

the Canadian, Norwegian and Belgian Delegations, and then to vote on the text prepared by himself.

The amendment of the Canadian Delegation (*see Annex No. 8*) was rejected by 5 votes to 1 with 2 abstentions.

The proposal of the International Committee of the Red Cross (*see Annex No. 10*), as amended by the Norwegian Delegation (deletion of the words "after a reasonable lapse of time"), was rejected by 3 votes to 2 with 3 abstentions.

The Belgian amendment (*see Annex No. 9*) was rejected by 3 votes to 1 with 4 abstentions.

Colonel HODGSON (Australia) proposed that the first sentence of the Stockholm text should be altered and not maintained as the Chairman suggested during the Ninth Meeting. It would read as follows:

"If one of the Powers in conflict is not party to the present Convention, the Powers who are party thereto shall, notwithstanding, be mutually bound by it."

The CHAIRMAN said this alteration was a matter of wording, and proposed to refer it to the Drafting Committee.

The first sentence of the Chairman's proposal was adopted unanimously (Stockholm text).

The second sentence (*see Summary Record of the Ninth Meeting*), was adopted by 7 votes with 1 abstention.

Subject to the drafting alteration proposed by the Australian Delegate, the text of Article 2, third paragraph, as adopted by the Committee, would run as follows:

"If one of the Powers in conflict is not party to the present Convention, the Powers who are party thereto shall, notwithstanding, be bound by it in their mutual relations. They are, furthermore, bound by the Convention in relation to the said Power, if the latter accepts and applies the provisions thereof."

#### Article 4/5/5/5 (*continued*)

Miss GUTTERIDGE (United Kingdom) proposed the deletion of Article 4 in the Wounded and Sick Convention, and Article 5 in the Maritime Warfare Convention, as being dangerous provisions. There were already other Articles in these Conventions providing appropriately for special agreements in particular matters.

Mr. MOROSOV (Union of Soviet Socialist Republics) was opposed to the United Kingdom proposal, considering that the possibility should be left to the parties to conclude special agreements, provided the latter did not restrict the rights of protected persons.

Mr. LAMARLE (France) was afraid that by deleting this Article the door would be left open to the conclusion of special agreements which would aggravate the position of protected persons.

The CHAIRMAN invited the Committee to vote first on the deletion of Article 4 in the Wounded and Sick Convention, and of Article 5 in the Maritime Warfare Convention.

This deletion was rejected by 4 votes to 2, with 2 abstentions.

Sir Robert CRAIGIE (United Kingdom) announced that his Delegation had tabled amendments to the Articles under consideration.

These amendments not yet having been circulated, the CHAIRMAN proposed to defer discussion on this point.

He indicated further that the Canadian Delegation had withdrawn the amendment they had submitted, and invited the Committee to vote on the Italian amendment (*see Summary Record of the Third Meeting of the Joint Committee*).

Colonel HODGSON (Australia) asked what type of treaty the Delegate for Italy visualized as being signed at the close of hostilities; any attempt on the part of a victorious party to relieve itself of responsibility for war crimes must be opposed.

Mr. MARESCA (Italy) reminded the Committee of the comments he had made in the Joint Committee on special agreements which might be concluded at the close of hostilities. The purpose of the amendment submitted by the Italian Delegation was to prevent the victor from forcing the vanquished to renounce claims which a possible non-compliance with the Conventions during the war would entitle him to make. It would run counter to the basic principles of the Conventions to safeguard certain fundamental rights and to ensure protection during hostilities, and then, subsequently, to abandon the vanquished State to arbitrary treatment by the victor.

Mr. LAMARLE (France) held the view that the Convention could not amend the clauses of a treaty which was already signed, nor give directives on the contents of a future treaty.

Mr. CASTBERG (Norway) was in favour of the text adopted by the Stockholm Conference. He felt that the Italian proposal was of a somewhat revolutionary character.

Mr. MARESCA (Italy) remarked that the Italian amendment did not refer to the past, but to the future.

Mr. MOROSOV (Union of Soviet Socialist Republics) felt that the Italian proposal was somewhat similar to the problem of acquired rights, and that for this reason it should be adopted.

Miss GUTTERIDGE (United Kingdom) was in agreement with the French and Norwegian Delegations. A peace treaty did not represent the result of violence, but the acceptance by a defeated Power of terms which it found itself able to accept.

Mr. YINGLING (United States of America), despite his sympathy with the Italian Delegation's point of view as expressed in their amendment, felt that the legal value of such a clause was doubtful.

Mr. MARESCA (Italy) withdrew his proposed amendment to the Article concerning Special Agreements, and reserved the right to submit it subsequently at a more appropriate place.

#### Article 5/6/6/6

The CHAIRMAN observed that an amendment had been submitted by the Finnish Delegation (see *Summary Record of the third meeting of the Joint Committee*), and that the International Committee of the Red Cross had suggested a new wording for this Article (see *Annex No. 17*).

Colonel HODGSON (Australia) pointed out the difference between the text prepared by the Government Experts (see *Annex No. 18*) and the text agreed upon at the Stockholm Conference. The first laid the obligation solely on the Detaining Power, whereas the second laid it on the individual.

Mr. CASTBERG (Norway) had no objection to the Stockholm text, but was nevertheless ready to accept the proposal made by the I.C.R.C. On the other hand, the Finnish proposal limited the scope of the Article. In his view, Article 6, as adopted at Stockholm, likewise laid an obligation on the Detaining Power, for it implied that the latter could not allege partial or total renunciation on the part of protected persons in order to deprive them of the rights to which they were entitled under the Conventions.

Mr. LAMARLE (France) felt that protected persons should not be prevented, in certain circumstan-

ces, from renouncing their rights. In this connection, he recalled the statement he had made in the Joint Committee and the historical examples he had cited (see *Summary Record of the Fourth Meeting of the Joint Committee*).

Mr. YINGLING (United States of America) considered that the Stockholm Draft was preferable to the International Committee's Draft, the first being more categorical. He would find it impossible to accept the Finnish amendment.

Miss GUTTERIDGE (United Kingdom) suggested that the Committee should come back to the text drawn up by the Government Experts. She supported the view of the Delegate for France that there might be certain circumstances in which it would be in the interest of protected persons to waive their rights under the Conventions.

Mr. MOROSOV (Union of Soviet Socialist Republics) shared the views of the United States Delegation, and considered that the I.C.R.C. proposal did not improve the text adopted at Stockholm, since it merely repeated what was already contained in Article 1, where it was stipulated that the Contracting Parties would undertake to respect and to ensure respect for the present Convention in all circumstances. The Soviet Delegation did not consider that the text adopted in Stockholm laid an obligation on the protected persons alone and not on the States; he recalled in this connection that only States were bound by the Conventions. He feared that if the proposal of the French Delegation were followed, the way would be open to abuse.

The CHAIRMAN pointed out that the proposal of the International Committee of the Red Cross had not been taken up by any Delegation. He asked the Committee to vote on the Finnish amendment.

The Finnish amendment was rejected by 4 votes to 3, with 1 abstention. The Stockholm text was therefore maintained.

*The meeting rose at 1.15 p.m.*

## ELEVENTH MEETING

Monday 30 May 1949, 10 a.m.

Chairman: Mr. Plinio BOLLA (Switzerland)

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**Article 6/7/7/7**

The CHAIRMAN pointed out that amendments to this Article had been tabled by the Delegations for Canada, the Union of Soviet Socialist Republics and Italy. He suggested that the Committee should proceed with the study of the first Canadian amendment (*see Annex No. 8*) which proposed adding the words "by belligerents" after the word "applied" at the beginning of the Article.

Mr. YINGLING (United States of America) pointed out that in some circumstances the Conventions were to be applied by neutrals.

Colonel HODGSON (Australia) reminded the Committee that in the discussion relating to Article 2, fourth paragraph, mention was made of the Parties to the conflict; it might occur that the latter had not the status of belligerents.

Colonel CRAWFORD (Canada) was prepared, in view of the remarks made, to withdraw the first Canadian amendment.

He recalled in relation to the second amendment of his Delegation (*see same annex No. 8*) that in the texts submitted to the Stockholm Conference the words "sous le contrôle de la puissance protectrice" had been rendered by "under the control of". The Canadian Delegation had objected to this on the grounds that it did not express adequately the functions and rights of a Protecting Power. The formula "under the supervision" had finally been adopted at Stockholm. They therefore considered that it would be preferable to use the words "under the scrutiny of the Protecting Powers".

Miss GUTTERIDGE (United Kingdom) felt equally that the word "supervision" was unsatisfactory, as it also implied the idea of issuing instructions of a mandatory character to the Detaining Power. She proposed the following text:

"The present Convention shall be applied with the cooperation of the Protecting Powers responsible for safeguarding the interests of the Parties to the conflict. It will be the function of the Protecting Powers to watch over the application of the Convention, and to take appropriate action in the interest of protected persons."

Mr. YINGLING (United States of America) proposed to use the word "observation" instead of "supervision" stating that the functions of the Protecting Powers were already clearly defined in other places in the Conventions.

Colonel HODGSON (Australia) said that the duties of a Protecting Power often are carried out by a consular staff; he suggested therefore to complete the second sentence of the Article by adding the words "or consular" after the word "diplomatic". The word "scrutiny", however, seemed to be too conservative. "Examination" would appear to be an appropriate word.

Mr. MOROSOV (Union of Soviet Socialist Republics) observed that the Protecting Power should not be reduced to the passive rôle of a mere observer. Contrary to the views of certain delegates, he thought that this was not only a question of form, but mainly a question of principle involving the right of the Protecting Power to control the application of the Conventions in wartime.

He did not feel the United Kingdom proposal an improvement with regard to the Stockholm text, for it merely enumerated a portion of the functions incumbent upon the Protecting Power.

Mr. YINGLING (United States of America) while in agreement with the Delegates of the Union of Soviet Socialist Republics and Australia felt that the use of the word "supervision" in conjunction with the word "co-operation" robbed the former of much of its value. He proposed the word "observation".

Mr. STORDET (International Committee of the Red Cross) suggested that the discussion on the translation of the word "contrôle" be postponed until such time as the Committee were able to take cognizance of the decisions of the other Committees with regard to the duties of Protecting Powers.

Mr. LAMARLE (France) feared that by following the suggestion made by the Representative of the International Committee of the Red Cross needless delay would be caused in the discussion.

Colonel CRAWFORD (Canada) was afraid that the text proposed by the United Kingdom Delegation might be construed to mean a limitation of the rôle of the Protecting Power.

Miss GUTTERIDGE (United Kingdom) said that the United Kingdom amendment aimed merely at stating briefly in this Article the functions of the Protecting Powers which were exemplified in later Articles of the Conventions. Subject to acceptance by the Head of the United Kingdom Delegation, she agreed to the substitution of the word "supervision" by "scrutiny".

Although preferring "supervision", Mr. YINGLING (United States of America) and Colonel HODGSON (Australia) concurred with these views.

The CHAIRMAN noted that the Committee agreed to adopt the French word "contrôle" and its English translation "scrutiny".

*The meeting rose at 1.15 p.m.*

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## TWELFTH MEETING

*Tuesday 31 May 1949, 10 a.m.*

*Chairman:* Mr. Plinio BOLLA (Switzerland)

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### Article 6/7/7/7 (continued)

The CHAIRMAN submitted for discussion Point 3 of the Canadian amendment (*see Annex No. 8*), proposing the deletion of the last sentence of paragraph 1 of the Article.

Major ARMSTRONG (Canada) recalled that, according to diplomatic usage, no government was required to adduce reasons for refusing approval of the appointment of a diplomatic agent. There was no reason to provide for other rules for delegates.

Mr. YINGLING (United States of America) concurred with these views.

Mr. MARESCA (Italy) recalled that during the Fourth Meeting of the Joint Committee he had proposed to specify that delegates should be members of the diplomatic mission of the Protecting Power.

Mr. ZANETTOS (Greece) proposed the retention of the last sentence of the first paragraph, which

had been introduced at Stockholm at the request of the Greek Delegation.

The proposal made by the Canadian Delegation to delete the last sentence of paragraph 1 of the Article was adopted by 8 votes to 1 with 1 abstention.

On the proposal of Colonel HODGSON (Australia) the Committee then unanimously approved the addition of the words "or consular" after the word "diplomatic".

Mr. LAMARLE (France) raised the question whether special approval would be required for diplomats of the Protecting Power who were called upon to protect the interests of a belligerent.

Mr. DE GEOUFFRE DE LA PRADELLE (Monaco) considered that approval given for members of diplomatic or consular staff referred to the person and not to the functions they performed. Therefore, it was not necessary to apply for a new approval when the duties varied in character.

Colonel HODGSON (Australia) considered that when approving the activities of a Protecting

Power a State took into account the membership of the diplomatic and consular mission of that Power. It could, moreover, at any time, withdraw the approval given to a diplomat, if he ceased to be "persona grata".

No amendment having been tabled in this connection, the CHAIRMAN proposed to close the debate and to pass on to the consideration of the amendment submitted by the Delegation of the Union of Soviet Socialist Republics, suggesting the addition, in the second paragraph of the Article, of a provision stipulating that the activity of the Protecting Powers or of their delegates might not infringe the sovereignty of the State or be in opposition to its security. The text read as follows:

"With regard to their co-operation in the application of the Conventions, and the supervision of this application, the activity of the Protecting Powers or of their delegates may not infringe the sovereignty of the State or be in opposition to State security or military requirements."

Mr. MOROSOV (Union of Soviet Socialist Republics) pointed out that this amendment purported to obviate that a Power could be accused of violating the Convention by restricting the activities of the Protecting Power in a specific and exceptional case, when it considered that such activities were temporarily in opposition to State security or military requirements.

Colonel HODGSON (Australia) gave several examples testifying the difficulties of accurately carrying out the functions of a Protecting Power. He considered that Conventions should not contain provisions enabling States to adduce their security or military requirements to restrict unduly the activities of Protecting Powers. For this reason he was of the view that the Soviet amendment should be rejected.

Miss GUTTERIDGE (United Kingdom) felt that it should be possible to place temporary restriction in given places on the activities of the Protecting Powers. However she considered it would be dangerous to introduce into the Conventions an amendment similar to the Soviet proposal. She suggested that the derogations which might possibly be indispensable in the interests of military security could be provided for in other Articles, as was the case, for instance, in Articles 45 and 126 of the Civilians Convention.

Mr. YINGLING (United States of America) considered that this amendment submitted by the Delegation of the Union of Soviet Socialist Republics was superfluous. The duties of Protecting Powers were defined in the different Articles of the Conventions, and if the Soviet Delegation felt that provision should be made to cover military requirements, they might introduce a clause to this effect in the specific Articles.

General OUNG (Burma) suggested that the Soviet amendment should read as follows:

"...shall pay due regard to the sovereignty and to the requirements of military security".

Mr. MOROSOV (Union of Soviet Socialist Republics) considered that the objections raised to the Soviet amendment were based on the assumption that the States intended to violate the Conventions. If this were so, it would be superfluous to draw up Conventions. He added that no contractual provision could prevent a State from violating the Convention, if it so desired.

Mr. LAMARLE (France) felt it was possible to discover a compromise formula. He pointed out that it might be useful, exceptionnally and temporarily, in case of imperative military necessity, to restrict the activities of Protecting Powers to a certain extent. The French Delegation proposed to table an amendment in this sense.

*The meeting rose at 1 p. m.*

## THIRTEENTH MEETING

Wednesday 1 June 1949, 10 a.m.

Chairman: Mr. Plinio BOLLA (Switzerland)

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**Article 7/8/8/8**

The CHAIRMAN announced that amendments had been tabled by the Italian Delegation (*see Summary Record of the Fourth Meeting of the Joint Committee*) and by the International Refugee Organization (*see Annex No. 24*). These amendments mentioned, in addition to the activity of the International Committee of the Red Cross, the work of other impartial humanitarian bodies.

General OUNG (Burma) felt that the scope of the Italian amendment should be narrowed to read: "any other internationally recognized impartial humanitarian body".

Sir Robert CRAIGIE (United Kingdom) was in favour of leaving the Stockholm text as it stood, since it consecrates the very special position of the International Committee of the Red Cross.

While paying tribute to the International Committee of the Red Cross, Mr. CAHEN-SALVADOR (France) pointed out that humanitarian activity could not be the monopoly of one organization. He, therefore, supported the Italian amendment. He felt that the fears expressed by the Burmese Delegation were unfounded, since the activities of humanitarian bodies were always subordinated to approval by the Parties to the conflict.

Colonel BLANCO (Uruguay) supported the proposal made by the Delegate of Burma.

Mr. YINGLING (United States of America) agreed with the remarks made by the French Delegate. He pointed out that in the United States of America were many welfare organizations of a non-international character. It would be most regrettable if in time of war they were prevented from carrying out their activities on account of a clause in the present Convention.

Mr. MARESCA (Italy) indicated that the amendment tabled by his Delegation also tended to

bring into line the Article examined with the following Article, which stipulated that humanitarian international bodies offering every guarantee of impartiality and efficacy might be called upon to perform the duties of a Protecting Power.

Sir Robert CRAIGIE (United Kingdom) pointed out he had not wished to confer a monopoly on the International Committee of the Red Cross. Although he would have preferred that only the latter be mentioned in this Article, he was ready to withdraw the United Kingdom proposal.

The Italian amendment proposing the addition of the words "or any other impartial humanitarian body" was adopted by 7 votes with 3 abstentions.

The Burmese amendment was therefore not adopted.

**Article 8/9/9/9**

The CHAIRMAN pointed out that amendments to this Article had been tabled by the Australian Delegation (*see Summary Record of the Fifth Meeting of the Joint Committee*), the French Delegation (*see Annexes No. 21 and No. 22*), the Italian Delegation (*see Summary Record of the Fourteenth Meeting*), the British Delegation (*see Annex No. 23*) and the International Refugee Organization (*see Annex No. 24*).

Miss GUTTERIDGE (United Kingdom) said that the purpose of the United Kingdom amendment was to lay down conditions under which substitutes for the Protecting Powers would be designated, i.e. when there was no government representing protected persons able to entrust the protection of their interests to a neutral Power. Substitutes for Protecting Powers ought to act with impartiality and a sense of responsibility to the country to which the protected persons belonged. It might be possible to add the amendment submitted by the French Delegation on 28 April to the United Kingdom proposal.

Mr. CAHEN-SALVADOR (France) considered that this Article was one of the most important ones in the Convention, since its purpose was to ensure the supervision of the application of the Conventions without which the latter would lose a large measure of their efficacy. To avoid a recurrence of facts similar to those which had taken place during the last conflict, the French Delegation considered it necessary to introduce a provision preventing the Government of an occupied country from being able to establish a derogation of the provisions relating to Protecting Powers by concluding a special agreement with the occupying Power. This was the purpose of the French amendment (*see Annex No. 22*).

It should also be remembered that in a future conflict there might be no neutral Powers left capable of adequately fulfilling the rôle of a Protecting Power. It would consequently be indispensable to find some means of compensating for the lack of the Protecting Power by setting up in peacetime a body which would offer every guarantee of impartiality. The Draft Conventions stipulated, furthermore, for the possibility of calling upon the International Committee of the Red Cross. The latter, however, performs duties which are totally different from those of a Protecting Power. Its activities are essentially humanitarian, and in order to carry them out successfully, the Committee has to preserve its entire independence on the political plane. It should also be envisaged that in a future war, circumstances might be such as to prevent the International Committee of the Red Cross from carrying on its work.

The French Delegation, therefore, proposed to set up in peacetime a specific body which would be able to act as a substitute for the Protecting Power. The characteristics of this body were defined in the other amendment submitted on 31 May by the French Delegation for an Article 7A (*see Annex No. 21*).

Mr. DE GEOUFFRE DE LA PRADELLE (Monaco) seconded the French proposal. He felt, however,

that only a properly constituted organization, possessing the ways and means of fulfilling all the duties which devolved on the Protecting Powers, and enjoying a recognized status, would be able to carry out these duties appropriately.

Mr. MARESCA (Italy) suggested that the French proposal should be studied by a Working Party.

Mr. SIORDET (International Committee of the Red Cross) pointed out that the Article examined introduced two separate notions. On the one hand, it provided for the possibility of an agreement between States, to entrust already in peacetime an impartial body with the functions devolving upon Protecting Powers. In this respect, the International Committee of the Red Cross could on no account be taken into consideration. On the other hand, when there was neither a Protecting Power nor a substitute, it was stipulated that a humanitarian body could be called upon to assume certain duties of the Protecting Power. But in this instance, the body would not be a genuine substitute for the Protecting Power.

Colonel HODGSON (Australia) said that the United Kingdom amendment only dealt with one aspect of the problem. It did not provide for the case when there would be no neutral State in a position to perform the duties of a Protecting Power. He doubted whether the various governments would agree to setting up a costly and permanent body to deal with the problematic situation that there might be no neutral State available in a future conflict. The Delegate for Australia wondered whether the French proposal should not first be discussed by the Joint Committee.

On the proposal of Mr. SOKIRKIN (Union of Soviet Socialist Republics) this question of procedure was referred to a subsequent meeting.

*The meeting rose at 1 p.m.*



## FOURTEENTH MEETING

Thursday 2 June 1949, 10 a.m.

Chairman: Mr. Plinio BOLLA (Switzerland)

**Article 8/9/9/9** (*continued*)

The CHAIRMAN invited the Committee to continue the discussion of the French amendment for a new Article 7A.

Mr. YINGLING (United States of America) considered that the French proposal was the first suggestion made covering the situation in which no Protecting Power would be available. He felt, however, that the scheme was too wide to be considered by the present Conference. He suggested that the present Conference asks the signatory Governments to examine, through the regular diplomatic channels, the means of setting up the body foreseen in the first paragraph of the Stockholm text. This would enable the French Government to realize their proposal.

Mr. DE GEOUFFRE DE LA PRADELLE (Monaco) considered that the first paragraph of the Article adopted at Stockholm might fix a time limit for the creation of the body stipulated therein.

Miss GUTTERIDGE (United Kingdom) considered that the French proposal was most interesting and deserved a careful study by the Governments as being the first constructive attempt to find a substitute for the Protecting Powers. She supported the United States proposal and to recommend it to the contracting Parties.

Colonel BLANCO (Uruguay) proposed that the question be referred to the Joint Committee or to the Plenary Assembly.

General OUNG (Burma) likewise paid a tribute to the novel and concrete character of the French proposal, and agreed with the United States and the United Kingdom Delegations that a reference should be included, perhaps in Article 8 Wounded and Sick and 9 of the other Conventions.

On the proposal of the Chairman, the Committee decided to suspend the discussion, to enable the delegations to make a thorough study of the French amendment. The Chairman of the Joint Committee would be informed of the suggestion to place the question at the beginning of the Agenda of a Plenary Session of the Committee.

The CHAIRMAN invited the Committee to consider the amendment which had been tabled by the United Kingdom Delegation (*See annex No. 23*).

Miss GUTTERIDGE (United Kingdom) proposed to take into account the comments made on the United Kingdom amendment by the Delegate for Australia, and suggested that the first paragraph should read: "When there is no Government representing persons protected by the present Convention in a position to arrange for the protection of their interests by a neutral Power, or where no neutral Power can be found to protect their interests, the Power in whose hands they are shall, ....."

Mr. SOKIRKIN (Union of Soviet Socialist Republics) pointed out that there seemed to be a contradiction between the first and second paragraph of the United Kingdom amendment, since it stipulated, on the one hand, for the obligation to accept the good offices of a neutral organization, and, on the other, the possibility of refusing such good offices, if certain conditions were not fulfilled.

Miss GUTTERIDGE (United Kingdom) said that the sense of the United Kingdom amendment was that the Detaining Power could refuse the good offices of an organization if it felt the latter did not offer sufficient guarantee that it would be able to carry out its duties with impartiality and efficacy.

Mr. SOKIRKIN (Union of Soviet Socialist Republics) asked what would be the situation in

case of the absence of a neutral or independent organization which was willing to undertake the duties devolving upon the Protecting Powers.

Mr. CAHEN-SALVADOR (France) considered that neither the United Kingdom amendment nor the Stockholm text solved the question of a substitute for the Protecting Powers. The problem could be solved only when a body assigned to replace the Protecting Powers had been set up in time of peace.

Mr. MARESCA (Italy) supported the United Kingdom amendment and suggested to complete it by the words "whatsoever the reason".

Mr. SIORDET (International Committee of the Red Cross) suggested that the second paragraph of the Stockholm Draft should be clearly distinguished from the first. It was here no longer a question of a genuine substitute for a Protecting Power, but of a case where there was neither a Protecting Power nor a substitute. The International Committee supported the idea, as embodied in the United Kingdom amendment, not to leave the initiative to the Detaining Power. It offered the advantage of safeguarding more fully the independence of the humanitarian organizations. The Stockholm text might be amended in this sense.

With regard to the mention made of the International Committee in the second paragraph of the text of Stockholm, Mr. SiorDET would like it to remain; it being clearly defined that the Committee could only assume the humanitarian tasks of the Protecting Powers.

Miss GUTTERIDGE (United Kingdom), in reply to the Soviet Delegate, said there would always be a gap until a body, such as suggested by the French proposal, would be set up.

She suggested amending the first paragraph of the United Kingdom proposal to read as follows:

"If for any reason whatsoever persons who should receive the protection of the present Convention do not enjoy or cease to enjoy the protection of a Protecting Power, the Power in whose hands those persons may be shall, subject to the provisions of this Article, accept the services of a recognized humanitarian organization which is willing to undertake, without charge to the Power concerned, the functions normally performed by the Protecting Power."

She added that it would not be appropriate to ask the International Committee of the Red Cross to perform all the functions of a Protecting Power, but merely to act as a partial substitute. It would therefore be appropriate to stipulate these functions in a separate Article.

Colonel HODGSON (Australia) remarked that the United Kingdom amendment completely departed from the principle of Article 8/9/9. He suggested that the two last paragraphs of this amendment should be deleted since any organization substituting a Protecting Power could only fulfil a small portion of the functions of such a Power.

The Delegate for Australia proposed the following amendment to the second paragraph of the Stockholm Draft: "..... by requesting either a neutral State, or where no neutral State can be found to undertake this protection, a recognized international body, to assume.....".

Mr. YINGLING (United States of America) observed that some other term than "Substitutes for the Protecting Powers" should be used in the title of the Article, and that the second paragraph of the Stockholm text should be amended to cover the fact that the International Committee of the Red Cross could not fulfil all functions of the Protecting Power.

*The meeting rose at 1 p.m.*

## FIFTEENTH MEETING

*Friday 3 June 1949, 10 a.m.*

*Chairman:* Mr. Plinio BOLLA (Switzerland)

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**Article 8/9/9/9** (*continued*)

The CHAIRMAN invited the Committee to examine the text he had drawn up for the second paragraph in the light of the various suggestions proposed during the previous meetings. That text is worded as follows:

“Furthermore, if prisoners of war do not profit, or cease to profit, no matter for what reason, by the activity of a Protecting Power or of the above mentioned body, the Party to the conflict in whose power they are shall be under the obligation to make up for this lack of protection by requesting a neutral State to assume on their behalf the duties imposed on the Protecting Powers by the present Convention. Should these steps not be taken, or should they be unsuccessful, the Party to the conflict in whose power the prisoners of war are, shall accept the offer of a neutral State to assume on their behalf the duties imposed on the Protecting Powers by the present Convention.

If protection of the prisoners of war concerned could not be ensured by a neutral State, the Party to the conflict in whose power they are shall be under the obligation to accept the services of any humanitarian impartial body, such as the International Committee of the Red Cross, which would be ready to assume, without charge to the said Party to the conflict, the humanitarian functions which are normally assumed by a Protecting Power. The delegates

and representatives of this body shall be subject to the approval of the Power near which they exercise their duties.”

The Chairman's proposal gave rise to different remarks, suggestions and reservations by Mr. YINGLING (United States of America), Colonel HODGSON (Australia), Mr. SIORDET (International Committee of the Red Cross), Mr. MARESCA (Italy), Mr. DE GEOUFFRE DE LA PRADELLE (Monaco) and Miss GUTTERIDGE (United Kingdom).

Mr. SOKIRKIN (Union of Soviet Socialist Republics) drew attention to the fact that the Working Documents of the Conference were the texts adopted at Stockholm; the CHAIRMAN accordingly withdrew his proposal and invited the Committee to examine the amendments submitted, taking the Stockholm texts as a basis.

The first paragraph of Article 8 Wounded and Sick and 9 of the other Conventions was unanimously adopted subject to modifications which might become necessary after a decision had been taken on the French proposal for an Article 7 A.

The Committee then went on to consider the second paragraph and it was unanimously decided to adopt the Italian amendment proposing to add the words “no matter for what reason” after “cease to profit”.

*The meeting rose at 1.15 p.m.*

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## SIXTEENTH MEETING

Friday 3 June 1949, 3.30 p.m.

Chairman: Mr. Plinio BOLLA (Switzerland)

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**Article 8/9/9/9 (continued)**

Mr. ALEXANDER (United Kingdom) placed before the Committee a new version of the first paragraph of the United Kingdom proposal which defines in turn the three possibilities open to the Detaining Power in the absence of a Protecting Power. The Detaining Power should first of all address an invitation to a neutral State. Should none be found, the Detaining Power should accept the services of an international organization capable of carrying out all the functions normally exercised by the Protecting Power; then, if protection cannot be ensured in this manner, the Detaining Power should accept the services of an organization such as the International Committee of the Red Cross, which would be in a position to carry out the humanitarian functions of the Protecting Power.

After an interruption of the meeting, allowing the translation and circulation of the new United Kingdom proposal, a discussion took place with the object of deciding whether this proposal should be amended on certain points before being considered in relation to the Stockholm text.

The following Members took part in the discussion: Mr. YINGLING (United States of America), Colonel HODGSON (Australia), Mr. AGATHOCLES (Greece), Mr. SOKIRKIN (Union of Soviet Socialist Republics), Mr. CAHEN-SALVADOR (France) and Mr. MARESCA (Italy).

The CHAIRMAN requested the British Delegate to recast the text of the British proposal mentioning the observations made during the discussion.

*The meeting rose at 6 p.m.*

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## SEVENTEENTH MEETING

Tuesday 7 June 1949, 10 a.m.

Chairman: Mr. Plinio BOLLA (Switzerland)

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**Article 8/9/9/9 (continued)**

The CHAIRMAN pointed out that the United Kingdom Delegation had recast the text of their proposal. It now consisted of five paragraphs the first of which recapitulated the text of the first paragraph adopted at Stockholm. The second to fifth paragraph now ran as follows:

*“Second paragraph.* When persons protected by the present Convention do not profit, or cease to profit by the activity of a Protecting Power for any reason whatsoever, the following steps shall be taken:

- (i) The Detaining Power shall invite a neutral State designated by the International

Committee of the Red Cross or shall invite an organization provided for in paragraph 1 to undertake the functions performed under the present Convention by a Protecting Power designated by the Parties to a conflict.

(ii) If protection cannot be provided for according to the terms of (i) above, the Detaining Power shall invite, or shall accept the services of any recognized international organization able and willing to undertake all the functions performed under the present Convention by a Protecting Power.

(iii) If protection cannot be provided for according to the terms of (ii) above, the Detaining Power shall invite, or shall accept the services of the International Committee of the Red Cross or any other organization which is able and willing to undertake on behalf of protected persons the humanitarian functions performed under the present Convention by a Protecting Power.

*Third paragraph.* The Powers concerned may object to such a neutral Power in (i) or to the organization in (ii & iii) if it is unable to furnish sufficient assurances that it is in a position to undertake the appropriate functions and to discharge them impartially. The Powers so concerned may also object to any of the agents or delegates of the State or organization appointed under (i), (ii) and (iii) above.

*Fourth paragraph.* Any neutral Power or any organization approved of these purposes by the Power concerned shall at all times act with a sense of responsibility towards the belligerent to which persons protected by the present Convention owe allegiance.

*Fifth paragraph.* Whenever in the present Convention mention is made of a Protecting Power, such mention shall also signify substitutes in the sense of the present Article."

Mr. SOKIRKIN (Union of Soviet Socialist Republics) thought that the Stockholm Draft was clearer and more accurate than the United Kingdom proposal.

Mr. SIORDET (International Committee of the Red Cross) considered that it was not up to the International Committee of the Red Cross to nominate the neutral State to whom the Detaining Power should address a request (second paragraph, Fig. 1, of the United Kingdom proposal).

Mr. ALEXANDER (United Kingdom) agreed to the omission of the words criticized by the Delegate of the I.C.R.C.

Mr. AGATHOCLES (Greece) proposed that in the second paragraph, Fig. 1, the body provided for in the first paragraph should be mentioned first, as it offered more guarantees of impartiality and efficacy than a neutral State. In view of the fact that, according to the statement of the Representative of the International Committee of the Red Cross, the neutral State would be appointed by the Detaining Power itself, there is reason to fear that the State so appointed might belong to that category of States which, though maintaining the outward appearance of neutrality, at the legal point of view, are actually concealed allies of a belligerent Power.

Mr. CAHEN-SALVADOR (France) thought that the neutral State should be mentioned first.

The Greek proposal was rejected by 4 votes to 1 with 2 abstentions.

The CHAIRMAN asked the Committee to express their opinion on a new wording of the second part of the second paragraph adopted at Stockholm, which would run as follows: "..... by requesting either a neutral State or the body provided for in the first paragraph to assume.....".

A vote was taken and resulted in, 2 in favour, 2 against with 3 abstentions. The proposed wording was therefore rejected, in accordance with Rule 35, second paragraph, of the Rules of Procedure of the Conference.

The second paragraph, Fig. 1, of the United Kingdom proposal, the words "designated by the International Committee of the Red Cross" being deleted, was then adopted by 6 votes with 1 abstention.

Article 8 Wounded and Sick and 9 of the other Conventions, was adopted by the Special Committee in the following form (as in the Prisoners of War Convention):

"Furthermore, if prisoners of war do not profit, or cease to profit no matter for what reason by the activity of a Protecting Power or of the above mentioned body, the Detaining Power shall invite a neutral State, or an organization provided for in paragraph 1 above, to undertake the functions performed under the present Convention by a Protecting Power designated by the Parties to a conflict."

The CHAIRMAN asked the Committee to express their opinion on the second paragraph, Fig. 2, of the United Kingdom proposal.

Mr. CAHEN-SALVADOR (France) thought that Fig. 2 served no useful purpose as it hardly seemed likely that there would be any other international organization than the body foreseen in the first paragraph which would be in a position to play the part of a Protecting Power.

Mr. YINGLING (United States of America) and Mr. SOKIRKIN (Union of Soviet Socialist Republics) agreed.

Colonel HODGSON (Australia), however, thought that there was no reason for dismissing a possibility

which might occur one day. He pointed out that the United Kingdom proposal might, for instance, be applied to the International Refugee Organization or to the Commission of Human Rights.

A vote was taken on the second paragraph, Fig. 2, of the United Kingdom proposal and resulted in, 3 in favour, 3 against with 1 abstention. The proposal was thus rejected, in conformity with Rule 35, second paragraph, of the Rules of Procedure.

*The meeting rose at 1 p.m.*

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## EIGHTEENTH MEETING

*Wednesday 8 June 1949, 10 a.m.*

*Chairman: Mr. Plinio BOLLA (Switzerland)*

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### Article 8/9/9/9 (continued)

The CHAIRMAN put point 3 of the second paragraph of the United Kingdom proposal under discussion (*see Summary Record of the Seventeenth Meeting*).

Mr. SOKIRKIN (Union of Soviet Socialist Republics), supported by Mr. YINGLING (United States of America), preferred the Stockholm text to the United Kingdom proposal, since the latter was of a nature to weaken the obligation on the part of the Detaining Power to find a substitute for the Protecting Power.

Mr. ALEXANDER (United Kingdom) considered the Stockholm text by no means clear, since neither the International Committee of the Red Cross, nor any other humanitarian body, could undertake all the duties of a Protecting Power.

Colonel HODGSON (Australia) agreed with the last speaker.

Mr. SOKIRKIN (Union of Soviet Socialist Republics) said that the Article examined only dealt with substitutes for the Protecting Powers. He therefore saw no reason to mention the International Committee of the Red Cross at this point, if the latter was not in a position to replace the

Protecting Power. The International Committee of the Red Cross remained at liberty to offer its humanitarian services in accordance with the provisions of the preceding Article Wounded and Sick and 8 of the other Conventions.

With a view to reconciling these different points of view, the CHAIRMAN suggested the following wording:

“If protection cannot be arranged accordingly, the Detaining Power shall invite an impartial humanitarian organization, such as the International Committee of the Red Cross, to assume the humanitarian functions performed by Protecting Powers under the present Convention.”

Mr. SIORDET (International Committee of the Red Cross) said that, in spite of the fact that Article 7 Wounded and Sick and 8 of the other Conventions reserved the right of initiative to the International Committee of the Red Cross, it might be well to mention that institution and other impartial humanitarian bodies in Article 8 Wounded and Sick and 9 of the other Conventions, and to give those institutions the possibility of volunteering their services.

Mr. ALEXANDER (United Kingdom), Mr. LAMARLE (France) and Mr. MARESCA (Italy) were prepared to accept the Chairman's suggestion, but

thought that it ought to be completed taking into consideration the remark made by the Representative of the International Committee of the Red Cross.

Colonel HODGSON (Australia) and Mr. YINGLING (United States of America) supported the Chairman's proposal.

Mr. SOKIRKIN (Union of Soviet Socialist Republics) was also in favour of that proposal, but considered that the Detaining Power could not be compelled to accept the services of any organization whatever.

Mr. YINGLING (United States of America) agreed with the last speaker.

Mr. ALEXANDER (United Kingdom), in order to take account of the above observations, proposed to add the following sentence to the Chairman's proposal:

".....or shall accept, subject to the provisions of this Article, the offer of the services of an impartial humanitarian organization".

This proposal was adopted by 6 votes to 4.

The Paragraph thus adopted reads as follows:

"If protection cannot be arranged accordingly, the Detaining Power shall invite or shall accept,

subject to the provisions of this Article, the offer of the services of an impartial humanitarian organization, such as the International Committee of the Red Cross, to assume the humanitarian functions performed by Protecting Powers under the present Convention."

The CHAIRMAN then put the third paragraph of the United Kingdom amendment under discussion.

Mr. ALEXANDER (United Kingdom) said that the purpose of this provision was to make it possible to object to a neutral Power or to a humanitarian body.

Mr. LAMARLE (France) agreed that the right to object was necessary, but pointed out that as long as no organization whose services could be objected to had been created, on the basis of the first paragraph, a gap would continue to exist.

Mr. ALEXANDER (United Kingdom) wished to make it clear that the right of objection contemplated in the United Kingdom proposal could be exercised either by the Detaining Power or by the Power on whom the protected persons depended, if such a Power existed.

*The meeting rose at 1 p.m.*

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## NINETEENTH MEETING

*Thursday 9 June 1949, 10 a.m.*

*Chairman: Mr. Plinio BOLLA (Switzerland)*

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### **Article 8/9/9/9 (continued)**

The CHAIRMAN invited the Committee to continue the discussion of the third paragraph of the United Kingdom proposal.

Mr. LAMARLE (France) could not agree to the first sentence of the United Kingdom proposal, since it conferred on the Detaining Power the right to object to the International Committee of the Red Cross which appeared to him unacceptable.

Mr. ALEXANDER (United Kingdom) advocated that the Committee should be realistic and should consider that in wartime a Detaining Power would accept the offices of an organization only if it offered certain minima conditions.

Likewise, the neutral Power invited by the Detaining Power might give rise to objections on the part of the Power to which protected persons belonged. There was also the question of protection of nationals of a country whose government had ceased to exist. Responsibility for payment of such services was a problem which

seemed difficult to be solved in the Conventions but which should be taken into consideration in the framework of the provision under discussion.

As a result of an exchange of views between Mr. MARESCA (Italy), Mr. SIORDET (International Committee of the Red Cross), Mr. YINGLING (United States of America), Colonel HODGSON (Australia) and Mr. SOKIRKIN (Union of Soviet Socialist Republics), Mr. ALEXANDER (United Kingdom) withdrew his proposal and reserved the right of introducing it in a different form in the fourth paragraph of the United Kingdom proposal.

The CHAIRMAN opened the discussion on the fourth paragraph of the United Kingdom proposal.

Mr. ALEXANDER (United Kingdom) proposed that this paragraph be amended as follows: "Any neutral Power, or any organization invited by the Power concerned, or offering itself for these purposes, shall act with a sense of responsibility towards the belligerent to which persons protected by the present Convention owe allegiance and shall furnish sufficient assurance that it is in a position to undertake the appropriate functions and to discharge them impartially."

Mr. SOKIRKIN (Union of Soviet Socialist Republics) asked who was to decide whether the conditions were fulfilled.

Mr. ALEXANDER (United Kingdom) considered that this decision should be taken by the Powers concerned, i.e., the Detaining Power and the Power to which the person to be protected belonged, if such existed.

Pending the distribution of the new wording proposed by the United Kingdom Delegation, the CHAIRMAN invited the Committee to return to the study of the amendment tabled by the French

Delegation (*see Annex No. 22*), with relation to Article 9, third paragraph, of the Prisoners of War Convention, examination of which had been suspended at the Thirteenth Meeting.

Mr. SIORDET (International Committee of the Red Cross) pointed out that it might be advisable to introduce into all the Conventions a provision similar to that in Article 9, third paragraph of the Prisoners of War Convention.

Mr. LAMARLE (France) was willing to agree to the proposal of the Representative of the International Committee of the Red Cross.

Miss GUTTERIDGE (United Kingdom) supported the French amendment.

After a few remarks made by Mr. MARESCA (Italy), Colonel HODGSON (Australia) and Mr. YINGLING (United States of America), Mr. LAMARLE (France) announced that he would submit a new text including the comments made.

The CHAIRMAN opened the discussion on the last paragraph of Article 8 Wounded and Sick and 9 of the other Conventions, (text of Stockholm).

Mr. SOKIRKIN (Union of Soviet Socialist Republics) indicated that his Delegation preferred the Stockholm text.

Colonel HODGSON (Australia) and Mr. SIORDET (International Committee of the Red Cross) concurred in this view.

The Committee unanimously adopted the last paragraph of Article 8/9/9 in the French version, and decided to substitute in the English version the words "applies to" for "shall also designate".

*The meeting rose at 1.15 p.m.*



## TWENTIETH MEETING

Friday 10 June 1949, 10 a.m.

Chairman: Mr. Plinio BOLLA (Switzerland)

**Article 38/42/117/128****Dissemination of the Convention**

The CHAIRMAN put the Article under discussion. Two amendments had been submitted, referring solely to the Prisoners of War Convention and to the Civilians Convention, by the following Delegations: Canada (*see Annex No. 8*) and the United States of America.

Mr. YINGLING (United States of America) stated that the amendment submitted by his Delegation was intended to take account of the constitutional limitations which affect certain governments. It tended, as proposed in the first point of the Canadian amendment, to introduce the expression "if possible" after the words "military and" before the word "civilians".

The second Canadian amendment proposed to delete the words "if possible" before the words "of the population".

The Committee adopted these two amendments unanimously.

The first paragraph of Article 117 of the Prisoners of War Convention was adopted, as follows:

"The High Contracting Parties undertake, in time of peace as in time of war, to disseminate the text of the present Convention as widely as possible in their respective countries and, in particular, to incorporate the study thereof in their programme of military, and if possible, civil instruction, so that the principles thereof may become known to all their armed forces and to the population."

The first paragraph of Article 128 of the Civilians Convention shall read similarly, except the last sentence which should read as follows:

"so that the principles thereof may become known to the whole of the population".

After a debate between General SLAVIN (Union of Soviet Socialist Republics), Mr. KRUSE-JENSEN (Norway), Mr. LAMARLE (France) and Mr. DE GEOUFFRE DE LA PRADELLE (Monaco), Mr. MARESCA (Italy) withdrew his proposal to insert in the second paragraph of Article 117 Prisoners of War and 128 Civilians the words "in time of peace already".

**Article 118 Prisoners of War and 129 Civilians**

Mr. STORDET (International Committee of the Red Cross) stated that, in accordance with the wish expressed by the Representative of the International Committee of the Red Cross in the Joint Committee, Spanish-speaking countries had already agreed to prepare a joint translation of the Convention, which would be communicated to the Swiss Government.

Mr. DE GEOUFFRE DE LA PRADELLE (Monaco) suggested that this Article should be embodied in all the Conventions.

Mr. STORDET (International Committee of the Red Cross) seconded the proposal.

The Committee, by 11 votes to nil, with one abstention, decided to embody in the Wounded and Sick Convention, and in the Maritime Convention, a provision analogous to Article 129 of the Civilians Convention.

**Article 43/46/120/131**

The CHAIRMAN stated that two similar amendments had been submitted by the Delegations of the United States of America (*see Summary Record of the Sixth Meeting of the Joint Committee*) and the United Kingdom. They aim to omit the last part of the sentence of the Article.

Mr. YINGLING (United States of America) pointed out that it was customary, when a treaty is drafted in more than one language, to stipulate that each of these texts shall be equally authoritative.

Mr. DE GEOUFFRE DE LA PRADELLE (Monaco) proposed to insert a provision that, in case of divergencies between the French and English texts, preference should be given to the text which would be more favourable to protected persons.

The proposal was seconded by Mr. MARESCA (Italy), but was opposed by Mr. YINGLING (United States of America) and Miss GUTTERIDGE (United Kingdom); both were of the opinion that the Article in question did not relate to the interpretation of the Convention.

Mr. DE GEOUFFRE DE LA PRADELLE (Monaco) withdrew his proposal, but reserved his right to resubmit it in connection with the problem of the settlement of disagreements.

The amendment submitted by the United Kingdom and the United States Delegations was adopted by 11 votes to nil, with one abstention.

The Article therefore reads as follows:

"The present Convention is established in French and in English. Both texts are equally authentic."

#### **Article 44/47/123/132**

This Article was adopted, subject to the insertion of the words: "Geneva" and "21 April 1949", into the two blank spaces.

#### **Article 45/48/124/133**

This Article was adopted without discussion.

#### **Article 46/49/125/134**

The CHAIRMAN reminded the Meeting that, in the course of debates in the Joint Committee (see *Summary Record of the Ninth Meeting*), the Canadian Delegation had proposed that the period for coming into force of the present Conventions should be six months.

The Article, thus completed, was adopted unanimously.

#### **Articles 47/50/121, 122/135**

The CHAIRMAN stated that amendments to Article 135 of the "Civilians" Convention had been submitted by the Delegations of Finland, Norway and Belgium.

The Delegation of Finland had further proposed in the course of debates on the occasion of the Sixth Meeting in the Joint Committee that Article 122 of the Prisoners of War Convention should be deleted.

Mr. KRUSE-JENSEN (Norway) proposed that Article 135 of the Civilians Convention should be referred to Committee III as this was not a Common Article.

Concurring with this view, and considering that Article 122 of the Prisoners of War Convention was not a Common Article, the Committee decided to adopt only Articles 47 of the Wounded and Sick, 50 of the Maritime and 121 of the Prisoners of War Conventions.

#### **Article 48/51/126/136**

This Article was adopted.

#### **Article 49/52/127/137**

Mr. YINGLING (United States) proposed that the period after which accessions shall take effect should be fixed at six months.

The Article, thus completed, was adopted.

#### **Article 50/53/128/138**

The Committee noted that in the English version the words "accession" and "adhesion" are successively used to describe the same act and requested the Drafting Committee to decide which of these terms was to be preferred.

The Article was adopted with this reservation.

#### **Article 51/54/129/139**

The CHAIRMAN reminded the Meeting that the Delegation of Finland had pointed out in the course of debates in the Joint Committee that the last sentence of this Article was superfluous, as the denunciation of an international treaty

could in no way impair the other international obligations of the denouncing Party.

In reply to questions put by Colonel HODGSON (Australia) and Mr. YINGLING (United States), Mr. SIORDET (International Committee of the Red Cross) specified that in certain cases the Convention was intended to continue to be binding beyond the period of one year, running not from the conclusion of peace but from the denunciation of the Convention, and in any case until the operations connected with the release and repatriation

of protected persons were terminated, or until the conclusion of the peace treaty.

Mr. DE GEOUFFRE DE LA PRADELLE (Monaco) suggested that the last sentence of the Article should be replaced by a provision similar to that in the so-called de Martens clause figuring in the Preamble of the IVth Hague Convention of 1907, which reserves the application of the principles of the law of nations.

*The meeting rose at 1.10 p.m.*

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## TWENTY-FIRST MEETING

*Friday 10 June 1949, 4.30 p.m.*

*Chairman:* Mr. Plinio BOLLA (Switzerland)

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### **Article 51/54/129/139** (*continued*)

The CHAIRMAN said that the Delegation for Monaco proposed to replace the last sentence by the following:

“The denunciation shall in no way impair the obligations which the denouncing Party shall remain bound to fulfil by virtue of the principles of the Law of Nations as they result from the usages established among civilized peoples, from the laws of humanity, and the dictates of the public conscience.”

Mr. LAMARLE (France) considered this sentence was unnecessary, since the act of denunciation applied only to one treaty and did not affect the other obligations of the denouncing party. The Conventions were an attempt to codify unwritten humanitarian basic principles. It was therefore merely necessary to define that the denunciation did not affect the humanitarian principles contained in the Convention.

Mr. YINGLING (United States of America) proposed to delete the last sentence, since it was dangerous to insert legal conclusions in a Convention of this kind.

Miss GUTTERIDGE (United Kingdom) was in agreement with the United States Delegate. She remarked that whether the principles of international law were inserted or not, they still remained valid.

The text proposed by the Delegation for Monaco was adopted by 5 votes to 2, with 1 abstention. It would replace the last sentence of the Stockholm draft.

At the suggestion of Mr. ALEXANDER (United Kingdom), the CHAIRMAN agreed to prepare a better wording for the other sentences of the Article.

### **Article 52/55/130/140**

The CHAIRMAN indicated that the Delegation for the United States of America had submitted an amendment to these Articles, according to which only one copy, and not the original document of the Convention, should be forwarded to the United Nations Organization for registration. The amendment runs as follows:

“The Government of the Swiss Confederation shall register the present Convention with the

Secretariat of the United Nations. The Government of the Swiss Confederation shall also inform the Secretariat of the United Nations of all ratifications, accessions, and notices of termination received by that Government with respect to the present Convention."

Mr. LAMARLE (France) pointed out that according to Article 102 of the United Nations Charter, Members of the United Nations were obligated to communicate treaties they signed to the United Nations for registration, failing which no party to such treaties might invoke them before any organization of the United Nations. It therefore seemed unnecessary to introduce this provision into the Conventions.

Mr. CASTBERG (Norway) pointed out that this clause existed in several treaties. Since Switzerland was not a member of the United Nations it would seem necessary to include this provision.

Mr. DE GEOUFFRE DE LA PRADELLE (Monaco) felt that this provision was unnecessary, since it referred to a measure under the internal regulations of the United Nations.

Mr. MARESCA (Italy) pointed out that registration or non-registration with the United Nations did not affect the validity of a treaty, and recalled that the 1929 Geneva Conventions contained a similar clause with relation to registration with the League of Nations.

Mr. LAMARLE (France) was not opposed to the Article provided it was understood that the formality of registration would in no way affect the conditions of validity and operation of the Convention as such.

Mr. YINGLING (United States of America) said that the United Nations Observer at the Stockholm Conference had specifically asked that such a clause be introduced.

The aforementioned United States amendment proposing a substitute text for the Stockholm Draft was adopted by 6 votes for, 1 against, with 1 abstention.

A second United States amendment relating to the signature clauses, was adopted, subject to the phrase in the second paragraph being worded in the French version: "en langues française et anglaise".

The text of the amendment reads as follows :

"IN WITNESS WHEREOF the undersigned, having deposited their respective full powers, have signed the present Convention.

DONE at ..... this ..... day of ..... 1949, in the English and French languages, the original of which shall be deposited in the archives of the Government of the Swiss Confederation. The Government of the Swiss Confederation shall transmit certified copies thereof to each of the signatory and acceding States."

*The meeting rose at 6.20 p.m.*

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## TWENTY-SECOND MEETING

*Monday 13 June 1949, 10 a.m.*

*Chairman:* Mr. Plinio BOLLA (Switzerland)

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### Article 4/5/5/5 (continued)

The CHAIRMAN opened the discussion on the amendment tabled by the United Kingdom Delegation (*see Summary Record of the Tenth Meeting*).

Miss GUTTERIDGE (United Kingdom) pointed out that the amendment under consideration was

a redraft of the Stockholm text, laying stress on the "fundamental rights" of protected persons, in lieu of the "situation" of protected persons, as referred to in the Stockholm Draft. The present draft aimed at giving more flexibility to the provision so that agreement could be concluded which might temporarily affect the rights of protected persons, but would ultimately be to their benefit.

Mr. YINGLING (United States of America) was opposed to this amendment since the Conventions were intended to lay down a minimum standard of treatment for protected persons and it would not be legitimate to withdraw certain of these rights with a view of ultimate benefit to protected persons. Moreover, it would be difficult to draw a distinction between rights which were fundamental and those which were not.

The United Kingdom amendment was rejected by 6 votes to 1 with 2 abstentions.

After a discussion in which Mr. YINGLING (United States of America), Miss GUTTERIDGE (United Kingdom) and Mr. SIORDET (International Committee of the Red Cross) took part, the Committee considered that the wording of the second sentence of the first paragraph of the Stockholm text ought to be amended to define clearly that this sentence referred to all special agreements. The Chairman was asked to make a redraft of this sentence.

#### Article 6/7/7/7 (*continued*)

The CHAIRMAN opened the debate on the amendments tabled by the Soviet Delegation (*see Summary Record of the Twelfth Meeting*) and by the French Delegation (*see further on*).

Mr. LAMARLE (France) indicated that the amendment tabled by his Delegation had been drawn up on the basis of the comments made at the first discussion of the Soviet amendment. It widened the scope of the second paragraph of Article 116 of the Prisoners of War Convention, extending it to the other Conventions, and exceptionally and temporarily permitted the restriction, to a certain extent, of the activities of the Protecting Power in cases of imperative military necessity.

Miss GUTTERIDGE (United Kingdom) was in support of the French amendment.

Mr. SOKIRKIN (Union of Soviet Socialist Republics) said that the purpose of the Soviet amendment was to lead the Protecting Power to act in full agreement with the Detaining Power. Such agreement was a presupposed condition for the proper interplay of rights and responsibilities between the Protecting Power and the Detaining Power.

In addition to the military requirements referred to in the French amendment, there might be other considerations, and the word "sovereignty", being a well-defined concept, should appear in the text of the Article as proposed by the Delegation of the U.S.S.R.

The Soviet amendment was rejected by 1 vote for, 7 against with 1 abstention.

Mr. YINGLING (United States of America) considered the French amendment unnecessary, since the requisite restrictions were already stipulated in various specific provisions. Moreover, it should be assumed that the Detaining Power would in any case have the means of preventing the Protecting Power from going beyond the limits set to its activities.

General OUNG (Burma) was opposed to the French amendment because it did not go far enough.

Mr. LAMARLE (France) indicated that the French amendment was applicable to all the Conventions.

Mr. SOKIRKIN (Union of Soviet Socialist Republics) was opposed to the views of the United States Delegation in this respect. The Article examined was expressed in very general terms, and it would be necessary, therefore, to define the scope of the Protecting Power, so that conflicting trends between the Protecting Power and the Detaining Power might be avoided.

The French amendment was adopted by 5 votes to 3 with 1 abstention.

The Article was completed by the following provision:

"The representatives or delegates of the Protecting Power shall not in any case exceed the limits of their mission as defined in the present Convention. They shall, in particular, take account of the imperative necessities of security of the State wherein they carry out their duties. Their activities shall only be restricted as an exceptional and temporary measure when this is rendered necessary by imperative military necessities."

#### Article 8/9/9/9 (*continued*)

The CHAIRMAN invited the Committee to begin consideration of the new wording of the fourth paragraph of the United Kingdom proposal (*see Summary Record of the Nineteenth Meeting*).

Mr. YINGLING (United States of America) was opposed to the new wording, since it weakened the Stockholm text and removed the mandatory character of the obligation placed upon the Detaining Power.

Mr. SIORDET (International Committee of the Red Cross) concurred in this view.

The United Kingdom proposal was adopted by 7 votes to 2 with 1 abstention subject to modifications in the wording.

Mr. ALEXANDER (United Kingdom), in reply to a question submitted by the CHAIRMAN, said that the form the organization referred to in the first paragraph could not yet be foreseen. If an unchallengeable organization came into being, offering all the requisite guarantees, the paragraph just adopted would not be operative, but until then, the drafting of its provisions should cover all possibilities.

Mr. LAMARLE (France) asked that the explanation given by Mr. Alexander should be mentioned in the Report to be submitted by the Special Committee to the Joint Committee.

The CHAIRMAN opened the discussion on the new wording (*see further on*) presented by the French Delegation to its amendment (*see Annex No. 22*) which had been examined during the Thirteenth and Nineteenth Meetings.

Mr. LAMARLE (France) said that the new wording of the French text had taken into account the comments made in the preceding discussion by various delegations, and in particular by the Italian Delegation.

Mr. SOKIRKIN (Union of Soviet Socialist Republics) pointed out that the expression "freedom to negotiate" was ambiguous, whereas in the first version of the French amendment the words "sovereignty" and "occupation of territory" were well-defined ideas in international law.

Mr. LAMARLE (France) observed that the new text was inspired by the experience of France in the recent war. One of the attributes of sovereignty was the active and passive right of representation. A government might have this right, yet be under the control of an Occupying Power.

Mr. SLAVIN (Union of Soviet Socialist Republics) considered that the first drafting was clearer than the second drafting of the French amendment, and ruled out difficulties of interpretation.

By 6 votes to 2 with 1 abstention the Committee adopted the French proposal.

The text adopted ran as follows:

"No derogation from the preceding provisions shall be made by special agreements between Powers one of which is restricted, even temporarily, in its freedom to negotiate with the other Power of its allies by reason of military events, more particularly where the whole, or a substantial part, of the territory of the said Power is occupied."

*The meeting rose at 1.15 p.m.*

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## TWENTY-THIRD MEETING

*Tuesday 14 June 1949, 10 a.m.*

*Chairman:* Mr. Plinio BOLLA (Switzerland)

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### Article 4/5/5/5 (*continued*)

The CHAIRMAN submitted the new draft of the Article which he had drawn up at the request of the Committee (*see Summary Record of the Twenty-second Meeting*).

This text was adopted with slight modifications.

Mr. MARESCA (Italy) proposed that the expression "Parties to the conflict" in the first paragraph should be replaced by "Contracting Parties", and

that the words "during and after hostilities" be added after the words "may conclude".

Mr. DE GEOUFFRE DE LA PRADELLE (Monaco) supported the Italian proposal but, in order to extend the scope of the Article to the Protecting Powers, suggested that the expression "the Parties concerned" be used.

Mr. SOKIRKIN (Union of Soviet Socialist Republics) felt that it was not within the terms of refe-

rence of the Special Committee to provide for situations before and after hostilities, but only to ensure application of the Convention during a conflict. Such special agreements as were mentioned in the Article to be examined, were an exception rather than a rule. After the cessation of hostilities, the Convention would cease to operate and only specific provisions would continue to be applicable, but these special agreements should be considered as additions to the Convention and for use in wartime only.

Mr. ALEXANDER (United Kingdom) reserved the right of his Delegation to come back to this point subsequently before the Joint Committee since their amendment had not been adopted on the occasion of the last meeting. He agreed to accept the Italian amendment but would abstain from voting.

The first Italian proposal to replace the words "Parties to the conflict" in the first paragraph by "Contracting Parties" was adopted by 6 votes, for, 1 against, with 5 abstentions.

The second proposal adding the words "during and after hostilities" in the first paragraph was defeated by 7 votes to 3 with 2 abstentions.

A third Italian proposal to replace the phrase "the rights which it confers upon them" at the end of the first paragraph by "the rights which it stipulates on their behalf" was defeated by 6 votes to 3 with 3 abstentions.

The Article was adopted as a whole by 10 votes to 2 and runs as follows:

"In addition to the agreements expressly provided for in Articles 12, 18 and 24, the Contracting Parties may conclude other special agreements for all matters concerning which they may deem it suitable to make separate provision. No special agreement shall adversely affect the situation of the wounded and sick, or of the members of medical personnel or of chaplains, as defined by the present Convention, nor restrict the rights which it confers upon them."

The second paragraph of the Article remained unchanged.

#### Article 40A/44A/119A/130A

The Italian Delegation proposed to introduce the following new Article:

"No contracting Party shall be allowed to absolve itself or any other contracting Party of any liability incurred by itself or by another contracting Party as a result of a failure to observe the present Convention".

This amendment would be examined in relation to Articles 39 and 40 Wounded and Sick, 43 and 44 Maritime, 119 Prisoners of War and 130 Civilians, dealing with Penal Sanctions.

#### Article 2, fourth paragraph (continued)

The CHAIRMAN observed that the Special Committee (see *Summary Record of the Sixth Meeting*), having considered that the scope of the fourth paragraph of Article 2 was too wide, had asked a Working Party to draw up a new provision of a more limited character.

Two methods which did not rule each other out, and which might possibly be dissimilar in the case of the four Conventions, were submitted by the Working Party:

"—either restrict the cases of conflicts not of an international character to which the Conventions should apply

—or restrict the contractual provisions to be applied in the case of a conflict which was not of an international character."

The application of the Civilians Convention raised the greatest difficulties. After having successively abandoned the idea of an application by analogy—which was considered dangerous, because it permitted too much freedom of interpretation—and that of an enumeration of the Articles which would be inapplicable in the case of civil war—a system which appeared complicated and of doubtful efficacy—the Working Party considered it advisable to impose on the Contracting States only one obligation; that of complying in all cases with the underlying humanitarian principles of the Convention. This mandatory provision should be followed by a recommendation to the Parties to the conflict urging them, by means of special agreements, to put into effect all or part of the contractual provisions.

With regard to the three other Conventions, the Working Party considered that certain civil wars were sufficiently akin to international wars to justify the application of the provisions of these three Conventions as a whole.

However, it would be necessary to define these civil wars. Two concepts had been formulated in this connection: either to take as a basis formal criteria, or to take into consideration factual elements. The Working Party reached a compromise formula including amongst the formal criteria that of recognition of the status of belligerency of the insurgents by the *de jure* government; this would, however, not affect the legal status of the Parties to the conflict, provided that the dissident party possesses as factual criteria:

- (1) an organized civil authority exercising *de facto* governmental functions over the population of a determinate portion of the national territory;
- (2) a military force under the direction of the above civil authority;
- (3) the means of enforcing the Convention and the other laws and customs of war.

The Working Party considered that it was up to the *de jure* government, under the supervision of the public opinion of the world, to judge whether the dissident party fulfilled the requisite conditions. On the other hand, it was of the opinion that the *de jure* government could not refrain from the application of the three Conventions, should the dissidents not comply therewith.

The draft Articles prepared by the Working Party were as follows:

(a) Civilians Convention (*new Article 2A*):

“In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, the Parties to the conflict should endeavour to bring into force, by means of special agreements, all or part of the provisions of the present Convention, and in all circumstances shall act in accordance with the underlying humanitarian principles of the present Convention.”

(b) Wounded and Sick, Maritime and Prisoners of War Conventions (*new Article 2A*):

In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply the provisions of the present Convention, provided:

- a. that the *de jure* government has recognized the status of belligerency of the adverse party, even for the sole purposes of the application of the present Convention, or
- b. that the adverse party possesses an organized civil authority exercising *de facto* governmental functions over the population of a determinate portion of the national territory, an organized military force under the direction of the above civil authority, and the means of enforcing the Convention and the other laws and customs of war; application of the Convention in these circumstances shall in no wise depend on the legal status of the Parties to the conflict.

This obligation presupposes, furthermore, that the adverse party likewise recognizes its obligation in the conflict at issue to comply with

the present Convention and the other laws and customs of war.

The provisions relating to the Protecting Powers shall, however, not be applicable, except in the instance of special agreement between the Parties to the conflict. In the absence of such agreement, an impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict.

In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, but which does not fulfil the conditions as set out above, the Parties to the conflict should endeavour to bring into force, by means of special agreements, all or part of the provisions of the present Convention, and in all circumstances shall act in accordance with the underlying humanitarian principles of the present Convention.

In all cases foreseen in the foregoing provisions, total or partial application of the present Convention shall not affect the legal status of the Parties to the conflict.

The CHAIRMAN added that amendments to the proposal made by the Working Party had been submitted by the French and Italian Delegations, whereas the Greek and Norwegian Delegations had withdrawn their amendments.

Mr. HART (United Kingdom) was in agreement with the suggestion to use the text of the Working Party as a basis to which certain additions were desirable, and the United Kingdom Delegation would circulate those texts shortly.

After a discussion between General SLAVIN (Union of Soviet Socialist Republics), Mr. ALEXANDER (United Kingdom) and Mr. DE GEOUFFRE DE LA PRADELLE (Monaco), the Committee decided to take the Stockholm Draft as a basis of discussion and to consider the proposal made by the Working Party as an amendment to this text. The amendments tabled by the Italian, French and United Kingdom Delegations would be considered as amendments to the principal amendment.

Mr. ALEXANDER (United Kingdom) tabled the motion to limit the time of speeches to 5 minutes.

The CHAIRMAN agreed to put this proposal to the vote at the next meeting.

*The meeting rose at 1.15 p.m.*



## TWENTY-FOURTH MEETING

Wednesday 15 June 1949, 10 a.m.

Chairman: Mr. Plinio BOLLA (Switzerland)

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**Article 2, fourth paragraph** (*continued*)

The CHAIRMAN reminded the Committee of the motion tabled by the United Kingdom Delegation at the preceding meeting to limit the time of speeches to five minutes.

Mr. ALEXANDER (United Kingdom) suggested that in view of the importance of the subject being discussed this morning, the time of speech of the first statement of each delegation on the subject of civil war should not have any time-limit, but that subsequent statements on this subject should be limited to five minutes.

This suggestion was adopted.

The CHAIRMAN proposed to examine first the French amendment of 8 July (*see Annex No. 13*), then the other two amendments made by the Italian and United Kingdom Delegations, and, lastly, the Stockholm Draft.

Mr. LAMARLE (France) paid a tribute to the spirit of conciliation which all delegations had shown in this very complex matter. He felt that despite of the efforts made, the text of the Working Party still contained dangerous elements from the very nature of the subject it dealt with. The French Delegation considered that signatory Governments who were confronted with an insurgent movement would be in a dilemma: either they would never apply the clauses of the Conventions, or they would implicitly recognize that the adverse party had a character which was tantamount to that of a State.

The French Delegation wished the humanitarian rules contained in the Preamble of the Civilians Convention to be applied also to war of a non-international character. Such a Preamble should be added to the three other Conventions, and contain also a definition of judicial guarantees in penal matters.

Mr. YINGLING (United States of America) felt that it would be difficult to mention the Preamble,

in this Article, before knowing what provisions would be contained in that Preamble. He considered it would be preferable if the French amendment referred only to those Articles of the Convention which would be applied to civil war.

Sir Robert CRAIGIE (United Kingdom) was in favour of some formula on the lines of the French amendment, and, subject to consideration of certain principles to be embodied in it, would be ready to support that amendment.

Mr. YINGLING (United States of America) could not support the French amendment because it removed any obligation of the Parties to the Convention to apply it in any circumstances. The draft proposed by the Working Party included a definition of the restricted circumstances in which the Conventions would apply to civil war, and established the mutual obligations of the Parties.

General OUNG (Burma) considered that the French proposal met all situations and was acceptable to the Asiatic countries he represented in the Special Committee.

Commander SMITH (Australia) would support the draft of the Working Party.

Mr. DE GEOUFFRE DE LA PRADELLE (Monaco) and Colonel BLANCO (Uruguay) were in support of the French amendment.

Mr. CASTBERG (Norway) reminded the Committee that the Working Party's document was a compromise, setting out very rigid conditions for the application of the Conventions. It was an improvement that point 4 of this proposal should contain the concept that, however it may be the humanitarian principles would be applied. The Norwegian Delegation would therefore vote in favour of this proposal and not in favour of the French amendment. The Norwegian Delegation advocated that a Committee of enquiry should determine whether the criteria for application of

the Convention were fulfilled, and that the findings of such a Committee should be made mandatory.

Mr. CARRY (International Committee of the Red Cross) supported the French amendment. He feared that the rigid conditions laid down in the Working Party's document would result in interminable discussions between the Parties to the conflict, before it were decided that the Conventions could be applied. The merit of the French amendment was in adopting and embodying the humanitarian principles referred to in point 4 of the Working Party's document.

Mr. YINGLING (United States of America) observed that the legal government would be the only signatory of the Conventions, and the dissidents would not be parties bound by its obligations. The French amendment spoke of the parties endeavouring to bring into force the Convention, and did not even obligate the High Contracting Parties to apply the humanitarian principles, as set out in point 4 of the Working Party's draft.

Sir Robert CRAIGIE (United Kingdom) felt that the application of the Conventions to civil war created a new situation, containing many pitfalls; there was a danger in making the Articles too mandatory.

Mr. LAMARLE (France), in reply to the Delegate for the United States of America, said that according to the French amendment the *de jure* governments were bound to apply the Conventions even if the dissidents were not obligated to do so.

Mr. DE GEOUFFRE DE LA PRADELLE (Monaco) pointed out that the rebels might be regarded as already bound by the Convention, for two reasons. First, because the humanitarian provisions of the Geneva Conventions are of a super-contractual character; and also, and more particularly, because the Contracting Parties undertake not only to respect them, but to ensure respect for them, an article providing for their dissemination among the population through instruction. Therefore, the

rebels are a part of the population in revolt of the Contracting State.

Mr. CARRY (International Committee of the Red Cross) stated that the International Committee of the Red Cross would welcome the reinsertion in the Conventions of the words "in the name of their peoples", which had been deleted from Article 1 by the Stockholm Conference.

General SLAVIN (Union of Soviet Socialist Republics) felt that the draft of the Working Party did not give satisfaction. The object of the Conventions was to provide for their immediate application in case of a conflict of a non-international character. It was not for the Parties to the conflict to decide whether the Conventions should be applied or not. It was of paramount importance that upon the outbreak of a conflict, the application of the Conventions should be automatic. Eventually special agreements might be taken into consideration in the course of the conflict, but it would not be acceptable to leave persons who required protection without defence, and the Working Party's proposal, therefore, seemed unacceptable.

A suggestion made by the Norwegian Delegation to make decisions as to fulfilment of conditions dependable on a Committee of Enquiry, weakened the provisions further. He asked the French Delegate to formulate a new draft which could then be compared with the Stockholm text.

Mr. AGATHOCLES (Greece) asked that the French proposal be referred to a Working Party, for re-drafting.

After an exchange of views, the CHAIRMAN summed up by saying that a Working Party, to include Representatives from France, which would have the Chairmanship, Italy, Monaco, the United Kingdom and the Union of Soviet Socialist Republics, would be set up to examine the French amendment and to report to the Special Committee.

*The meeting rose at 1.15 p.m.*

## TWENTY-FIFTH MEETING

Thursday 16 June 1949, 10 a.m.

Chairman: Mr. Plinio BOLLA (Switzerland)

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**Article 8/9/9/9** (*continued*)

The CHAIRMAN recalled, in connection with this Article, the Memorandum submitted by the International Refugee Organization (*see Annex No. 24*) asking that a mention be made of that Organization, in addition to the reference of the International Committee of the Red Cross, with regard to the possibility of its fulfilling the functions of substituting Protecting Powers in the interests of stateless persons.

After an exchange of views, in which several delegations considered that the possibility of inviting the International Refugee Organization for this purpose was adequately covered by the first and the third paragraphs of the Article, Dr. SCHNITZLER (International Refugee Organization) recalled that the Secretary-General of the United Nations Organization had sent a Memorandum to the Economic and Social Council in respect of a permanent body to be set up to look after the legal protection of persons who were stateless. Such protection had a wider scope than the care and maintenance of refugees and displaced persons given by the International Refugee Organization. The protection of refugees had previously been carried out by the High Commissioner of the League of Nations and the Inter-

Governmental Committee for Refugees. It was now hoped that the permanent organization to be set up by the United Nations for the legal protection of refugees would be included in the Article examined.

The CHAIRMAN invited to consider Article 8 of the Wounded and Sick Convention, paragraph by paragraph.

After a general discussion on points of drafting Article 8 Wounded and Sick and 9 of the other Conventions was adopted as a whole by 6 votes to 2, with 1 abstention (*see Annex No. 25*).

At the request of Mr. SOKIRKIN (Union of Soviet Socialist Republics), the CHAIRMAN agreed that in the Report of the Special Committee to the Joint Committee mention would be made that the Soviet Delegation was in favour of the Stockholm text.

**Article 51/54/129/139** (*continued*)

After a general discussion on points of drafting, the Article in question was adopted by the Committee (*see Annex No. 57*).

*The meeting rose at 1.15 p.m.*

## TWENTY-SIXTH MEETING

Monday 20 June 1949, 10 a.m.

Chairman: Mr. Plinio BOLLA (Switzerland)

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**State of work**

The CHAIRMAN summed up the work done by the Special Committee.

(1) War not of an international character.

A Working Party to deal with this question had been set up and had concluded its work. A Report on its work would be given by its Chairman, Mr. LAMARLE (France), upon his return and the matter would then again be discussed by the Special Committee.

(2) Settlement of disputes.

A Working Party under the chairmanship of Mr. DE GEOUFFRE DE LA PRADELLE (Monaco) had not yet concluded its work, but a Report would be drawn up the following week.

(3) Question of the High International Committee.

There was a French proposal in regard to this matter, and the Chairman of the Joint Committee intended to bring up the question in a meeting of the Joint Committee.

(4) *Article 122 Prisoners of War Convention* and *Article 135 Civilians Convention*.

These two Articles were referred for examination to Committee II and Committee III respectively.

(5) *Penal Sanctions* for violation of the Conventions.

The CHAIRMAN announced that a joint amendment submitted by several delegations had been withdrawn, and would be substituted by another joint amendment in a few days.

In reply to a question asked by the Delegate for the Union of Soviet Socialist Republics, Captain MOUTON (Netherlands) said that the Netherlands, amendment on this subject, sponsoring the proposal made by the International Committee of the Red Cross in "Remarks and Proposals", stood until the new joint amendment would be tabled by several delegations, then it would be withdrawn.

The CHAIRMAN said that, with regard to the question of Penal Sanctions, it would be preferable for the Special Committee to suspend their discussions until the joint amendment had been tabled.

*The meeting rose at 11 a.m.*

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## TWENTY-SEVENTH MEETING

*Thursday 23 June 1949, 3 p.m.**Chairman: Mr. Plinio BOLLA (Switzerland)***Designation of four Rapporteurs**

The CHAIRMAN recalled that, at its Meeting on 3 May 1949, the Joint Committee had set up a Special Committee to deal with Article 2, fourth paragraph. No Rapporteur had been appointed until the outcome of the discussions on that subject would become known. The Chairman now invited the Special Committee to appoint one or more Rapporteurs to submit reports to the Joint Committee on the subjects which had subsequently been submitted to the Special Committee for consideration.

After an exchange of views, Mr. ALEXANDER (United Kingdom) moved the proposal to invite Mr. Bolla (Chairman) to undertake the duties of a Rapporteur. This proposal was seconded by Mr. LAMARLE (France).

The CHAIRMAN felt that it would be more appropriate to designate the Chairman of the

Working Party which had dealt with the matter of civil war, Mr. Lamarle (France), to act as Rapporteur for this question.

The Chairman of the Working Party which had considered the question of the settlement of disputes, Mr. de Geouffre de la Pradelle (Monaco), could act as Rapporteur on that subject.

The task of reporting on Penal Sanctions could be entrusted to Captain Mouton (Netherlands) who had been associated with the Committee of Legal Advisers of the International Committee of the Red Cross.

The Chairman himself would be ready to prepare a Report on all the other Common Articles.

The Committee agreed to the above proposals submitted by the Chairman.

*The meeting rose at 3.35 p.m.*

## TWENTY-EIGHTH MEETING

*Friday 24 June 1949, 10 a.m.**Chairman: Mr. Plinio BOLLA (Switzerland)***Article 2, fourth paragraph (continued)**

Mr. LAMARLE (France) presented the text drawn up by the second Working Party on the basis of the remarks formulated at the previous discussion of the French amendment to the proposal submitted by the first Working Party (see *Summary Record of the Twenty-fourth Meet-*

*ing*). He pointed out that it offered in all cases and circumstances the chief advantage of permitting the automatic implementation of concrete and precise provisions which were the essence of humanitarian rules to be observed in cases of armed conflict not of an international character. These provisions had been reinforced, and enlarged to take into consideration the com-

ments made, in particular, by the Delegations for the United Kingdom and Burma, and the Representative of the International Committee of the Red Cross. The text, moreover, contained no clause of a political character which could possibly lead to contestation.

The Working Party considered that it was not appropriate to mention deportation, which was irrelevant in the case of civil war. On the other hand, it considered it necessary to introduce new clauses, in particular, the clause stipulating that the wounded and sick should be collected and cared for.

The text submitted to the Committee ran as follows:

*“First paragraph.* In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:

- (1) Persons taking no active part in the hostilities, and those placed *hors de combat* by sickness, wounds, captivity or any other cause, shall be treated humanely in all circumstances and without any discrimination. To this end, the following acts are and shall remain prohibited with respect to the above-mentioned persons:
  - (a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
  - (b) taking of hostages;
  - (c) outrages upon personal dignity, in particular, humiliating and degrading treatment;
  - (d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.
- (2) The wounded and sick shall be collected and cared for.
- (3) No adverse discrimination shall be practised on the basis of differences of race, colour, religion or faith, sex, birth or wealth.

*Second paragraph.* An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict.

*Third paragraph.* The Parties to the conflict should further endeavour to bring into force, by means of special agreements, all or part of the other provisions of the present Convention.

*Fourth paragraph.* The application of the preceding provisions shall not affect the legal status of the Parties to the conflict.”

The CHAIRMAN indicated that the Soviet Delegation had asked for instructions from their Government regarding this new text, and had expressed the desire that the vote be deferred. The Soviet Delegation were, moreover, prevented from taking part in the discussions on that day, their members being occupied in other Committees.

There followed an exchange of views between Mr. LAMARLE (France), Sir Robert CRAIGIE (United Kingdom), Commander SMITH (Australia), and General OUNG (Burma) on the advisability of continuing the examination of the new text in the absence of the Soviet Delegation.

By 7 votes to 1, the Committee decided to continue the study of the new text, but to postpone the vote.

The Record of the Meeting would be elaborated more detailed than was customary in order that the delegations who were not present might have a complete picture of the discussions.

Mr. YINGLING (United States of America) reiterated the point of view of the United States Delegation that it would be unfortunate if the obligation were not laid upon the Contracting States to apply the Conventions in certain instances of civil war. They therefore preferred the proposal made by the first Working Party (*see Summary Record of the Twenty-third Meeting*). The text drawn up by the second Working Party would in any case require certain modifications.

Mr. Yingling remarked firstly that the present Conference could not bind any Party who was not a Party to the Convention. Moreover, the acts of violence enumerated had already been prohibited by other international Conventions, and it seemed to serve no useful purpose to repeat such an enumeration.

With regard to judicial guarantees, the Delegate for the United States of America observed that standards varied from one country to another. In some countries, the accused person was considered guilty until proved innocent. Therefore the wording should include the concept that people should be given those specific judicial guarantees which were mentioned in the present Convention.

It might, furthermore, be more appropriate to say that the Parties to the conflict should accept the offer of the International Committee of the Red Cross.

Mr. CASTBERG (Norway) considered that the new text represented genuine progress, as com-

pared with the preceding proposal submitted by the French Delegation on 8 June (*see Annex No. 13*). But the latter, by referring to the Preamble, granted the advantage of covering all the protected persons, whereas the new text covered only two categories of persons: those who took no part in the hostilities, and those who had been placed *hors de combat*. As a result of this, certain persons remained without protection, which was particularly regrettable in the instance of prohibiting to take hostages.

Mr. LAMARLE (France) indicated that the expression "each Party to the conflict..." had been introduced as a result of the comment made in the course of the debates, that in accordance with Article 1, the Contracting State undertook to ensure respect for the Convention by its nationals. He was of the view that the Working Party's text protected all persons, except combatants at the time they were engaged in the fighting.

With regard to judicial prosecutions, Mr. Lamarle shared the point of view of the United States Delegate, and suggested that the term "judicial guarantees", should be clearly defined, and that, in particular, mention should be made of the rights of defence.

Mr. CASTBERG (Norway) pointed out that, according to the proposal under discussion, a government with the intention of executing combatant insurgents, or of taking them as hostages instead of capturing them, would be at liberty to do so.

Mr. YINGLING (United States of America) wished to reinforce what Mr. Castberg had said. It was necessary that the *de jure* government should treat insurgents as regular combatants.

Mr. MARESCA (Italy) was of the view that Article 1 laid only an obligation on the Contracting State and its agencies. He proposed that the prohibition to take hostages should be completed by the prohibition of collective penalty. He approved the remarks made with regard to judicial prosecution, and considered that it would be appropriate to adopt the formula contained in Article 58 of the Civilians Convention.

Lastly, he suggested stipulating expressly that the Parties would be responsible for all acts committed by persons belonging to their armed forces.

To take into account the remark made by the Delegate for Norway, the CHAIRMAN proposed to complete the enumeration of persons protected by the following words: "... and those who surrender...".

Mr. SIORDET (International Committee of the Red Cross) preferred the formula: "...and persons who lay down arms...". Moreover, he remarked that the French proposal of 8 June 1949 referred to the Preamble, and felt that this suggestion should be adopted. Should the Conference adopt a Preamble, a reference to the latter could be reintroduced into the Article, whilst maintaining the enumeration of the acts prohibited.

The CHAIRMAN indicated that this was a task which could be undertaken by the Coordination Committee.

Sir Robert CRAIGIE (United Kingdom), suggested adding the words "In respect of the above humanitarian principles,.." in paragraph 1, point 3, at the beginning of the sentence.

*The meeting rose at 12.15 p.m.*

TWENTY-NINTH MEETING

Monday 27 June 1949, 10 a.m.

Chairman: Mr. Plinio BOLLA (Switzerland)

**Articles 39, 40/43, 44/119/130**

The CHAIRMAN recalled that the International Committee of the Red Cross had communicated (see Annex No. 50) a correction to the texts published in the Working Document No. 3 of the Conference. The amendments submitted by the Netherlands Delegation, the Delegation of the United States of America, the Italian Delegation, and the Canadian Delegation, had been withdrawn in favour of the new joint amendment, tabled by the following States: Australia, Belgium, Brazil, the United States of America, France, Italy, Norway, Netherlands, the United Kingdom and Switzerland (see Annex No. 49).

The Greek Delegation had made certain additional observations in their Memorandum, and the Delegation of the Union of Soviet Socialist Republics had proposed the addition of Article 10A to the Wounded and Sick Convention and Article 11A to the Maritime Warfare Convention (see Summary Record of the Sixth Meeting of the Convention II).

The basic Document was the Stockholm text as amended by the International Committee of the Red Cross.

Captain MOUTON (Netherlands) presented the Joint Amendment.

He stated that the sole object of the amendment was to ensure respect to the Conventions. He pointed out that the Wounded and Sick Conventions of 1906 and 1929 and the Maritime Convention of 1907 contained a provision whereby the High Contracting Parties were obliged to propose to their legislators, should their penal laws be inadequate, the necessary measures for repression of any act contrary to these Conventions. The Prisoners of War Convention of 1929 contained no such provisions. Captain Mouton referred to the Report published in 1934 by Colonel Favre, Member of the International Committee of the Red Cross, showing that many penal laws did not contain Articles repressing all

acts contrary to the Conventions of 1907 and 1929. The absence of such Articles led to violations and to reprisals. In many cases the penal provisions which were introduced applied only to nationals of the country in question and not to the nationals of other countries.

The Stockholm Conference went a step further and envisaged an obligation on each Contracting Party to search for offenders against the Convention irrespective of their nationality, and to prosecute them before their own courts, or to hand them over for trial to another Contracting Party.

In pursuance of a recommendation of the Stockholm Conference, the International Committee of the Red Cross convoked a group of experts, who drew up new proposals. The Committee published them in its pamphlet "Remarks and Proposals" (pages 18 to 19).

The Netherlands Delegation, in cooperation with the Delegations which had been signatories of the joint amendment, had proposed a text imposing on the High Contracting Parties the obligation to enact legislation providing effective penalties for persons committing, or ordering to be committed, any of the grave breaches enumerated in the amendment.

Article 5 of the Genocide Convention had been taken as a model for this amendment. It was felt preferable to use the term "grave breaches" instead of "crimes", as the idea of what constituted a crime varied from one country to another.

No time limit for the enactment of the legislation in question was specified; but it might be found advisable in that connection to consider the insertion of a provision on the lines of Article 29 of the Wounded and Sick Convention of 1929 namely a notification to the Swiss Government of the penal laws, however, without fixing a time limit.

Mr. SOKIRKIN (Union of Soviet Socialist Republics) considered that the new proposal seemed in certain respects an improvement on the Stockholm Draft; but the two-year time



limit laid down in the latter should not be dispensed with. Again, the term "crimes" was easily understandable in every country, and seemed preferable to "grave breaches".

Mr. KRUSE-JENSEN (Norway) was in support of the amendment, but asked what the words "in so far as this Convention cannot be otherwise implemented" at the beginning of the first paragraph of Article 17 meant.

Captain MOUTON (Netherlands) replied that in certain countries special legislation would have to be passed to punish violation of an international Convention, whereas in others that would not be necessary.

The CHAIRMAN proposed the deletion of the phrase "in so far as this Convention cannot be otherwise implemented", and also of the words "in accordance with their respective Constitutions".

The CHAIRMAN's proposal was accepted by the authors of the amendment.

Mr. YINGLING (United States of America) was opposed to the mention of a time limit, as the legislative systems of the various countries differed from one another. He added that he could not accept the substitution of the word "crimes" for "grave breaches". It would be for the penal legislation of each nation to classify the breaches enumerated in the Conventions.

Mr. JONES (Australia) agreed with the Delegate of the United States of America.

Mr. SOKIRKIN (Union of Soviet Socialist Republics) reminded the meeting that the Soviet amendment, introducing Articles 10A and 11A of the Wounded and Sick and Maritime Warfare Conventions, had been unanimously approved by Committee I. The amendment proposed that certain acts should be treated as serious crimes.

The proposal to add to the first paragraph of Article A a time limit of two years was rejected by 6 votes to 1 with 3 abstentions.

The proposal to replace the words "grave breaches" by "grave crimes" was rejected by 7 votes to 1 with 3 abstentions.

The first paragraph of Article A was adopted by 10 votes to 1 with 1 abstention, in the following form:

"The High Contracting Parties undertake to enact any legislation necessary to provide effective penalties for persons committing, or ordering to be committed, any of the grave breaches defined in the following Article."

Mr. SOKIRKIN (Union of Soviet Socialist Republics) stated as grounds for his adverse vote that the Article as drafted was nothing more than a recommendation, as it did not include the words "grave crimes" and gave no time limit.

*The meeting rose at 1 p.m.*

## THIRTIETH MEETING

*Monday 27 June 1949, 3.30 p.m.*

*Chairman:* Mr. Plinio BOLLA (Switzerland)

### **First part of the Report of the Special Committee to the Joint Committee**

The CHAIRMAN introduced the Report he had prepared for the Joint Committee on questions which had not been entrusted to other Rapporteurs.

Proposals were made by Mr. YINGLING (United States of America), Mr. ALEXANDER (United

Kingdom), Mr. MARESCA (Italy) and Mr. SOKIRKIN (Union of Soviet Socialist Republics). The last named requested in particular that the Report should only be finally approved if the Articles adopted by the Special Committee had already been distributed.

The CHAIRMAN said that the proposals made would be borne in mind as far as possible, and

suggested that the Committee should give its final approval of the Report up to Article 4 Wounded and Sick and 5 of the other Conventions inclusive, and its provisional approval to the remaining Articles which had not yet been distributed.

Agreed.

Mr. JONES (Australia) reserved the opinion of the Head of his Delegation who was at the moment not in Geneva.

**Articles 39, 40/43, 44/119/130 (continued)**

The CHAIRMAN asked the Committee to proceed to the examination of the second paragraph of Article A of the joint amendment discussed at the preceding meeting.

Mr. SOKIRKIN (Union of Soviet Socialist Republics) considered that the text was too vague and that the terminology in particular should be more precise. He preferred the Stockholm text, which contained the expression "war crime".

Mr. MARESCA (Italy) thought that the obligation to search for persons accused of breaches of the Convention should be limited to the Parties to the conflict. He suggested that the words "in accordance with conditions provided for in its own laws" should be added after "if it prefers".

Mr. DE GEOUFFRE DE LA PRADELLE (Monaco) considered that the intention of the authors of

the amendment would not be fulfilled, if the effect of the Article was limited to the Parties to the conflict. He proposed that, in order to give effect to the proposal submitted by the Delegate of Italy, an obligation should be laid on the State holding the person concerned in order to hand him over as soon as the country claiming him instituted proceedings. He regretted that the words "war crimes" had not been included in the text.

Captain MOUTON (Netherlands) said that the aim was not to produce a penal code, but to make it obligatory for the Contracting Parties to include certain provisions in their own codes. "War crimes" were breaches of provisions in the laws of war and were thus covered by the word "breach". The latter word could, however, be replaced by the word "violation".

Mr. CAHEN-SALVADOR (France) said that "breach" was a general term applicable to all violations of laws or regulations. He considered that a person could only be handed over to another Contracting Party if the latter had already brought, or declared itself ready to bring proceedings against the person concerned for similar or connected breaches.

General OUNG (Burma) suggested that the word "offence" should be substituted by the word "breach" in English.

*The meeting rose at 6.45 p.m.*

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THIRTY-FIRST MEETING

*Tuesday 28 June 1949, 10 a.m.*

*Chairman:* Mr. Plinio BOLLA (Switzerland)

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**Articles 39, 40/43, 44/119/130 (continued)** — the last sentence of the second paragraph of the Article be altered as follows:

The Committee continued to examine Article A as proposed in the joint amendment (*see Annex No. 49*).

The CHAIRMAN suggested, with a view to the remarks made during the previous Meeting, that

"...or if it prefers, and provided that a *prima facie* case has been made out by another High Contracting Party concerned, hand them over, in accordance with the provisions of its own legislation, for trial to such Contracting Party."

Mr. SOKIRKIN (Union of Soviet Socialist Republics) suggested that the second paragraph of Article A be replaced by the corresponding provisions of the Stockholm Draft.

Mr. AGATHOCLES (Greece) pointed out that the Article leaves it to the discretion of a State to decide as to the possibility of delivering an accused person another State for judgment, even if the latter is not qualified to do so. He suggested that it should be made clear that the other State should give proof of its interest and its competence.

The amendment of the Delegation of Greece was rejected by 6 votes to 5.

The proposition made by the Delegation of Italy to insert the words "in accordance with the provisions of its own legislation", was adopted by 6 votes to 2 with 3 abstentions.

Thus amended, the second paragraph of Article A was adopted by 10 votes, with 1 abstention.

No delegation having asked to speak, the third paragraph was adopted.

The Committee proceeded to the consideration of Article B mentioned in the joint amendment.

The CHAIRMAN asked the Committee to proceed to the consideration of Article B for each Convention separately.

#### (a) Wounded and Sick Convention

Mr. SOKIRKIN (Union of Soviet Socialist Republics) recalled that the Drafting Committee of Committee I had adopted the amendment submitted by the Delegation of the Union of Soviet Socialist Republics for Article 10 A. He asked that reference to this amendment be made in Article B.

Captain MOUTON (Netherlands) called attention to the fact that all the acts mentioned in the Soviet amendment are covered by Article B.

Mr. SOKIRKIN (Union of Soviet Socialist Republics) thought that mention should expressly

be made of certain acts which are not covered by Article B and which are also grave breaches.

The Soviet proposal was rejected by 6 votes to 2, with 1 abstention.

Mr. MARESCA (Italy) supported by Mr. BAGGE (Denmark) proposed to add the words "and the seizure" after "destruction".

Mr. JONES (Australia) and Mr. SINCLAIR (United Kingdom) supported this proposal in so far as the word "saisie" was translated into English by "appropriation".

After discussion it was agreed to use the word "appropriation" in French also.

The Italian proposal was adopted by 8 votes with 1 abstention.

Thus completed Article B of the Wounded and Sick Convention was adopted by 8 votes with 1 abstention.

#### (b) Maritime Convention

Completed in the same manner, Article B of the Maritime Convention was adopted by 8 votes with 1 abstention.

#### (c) Prisoners of War Convention

An exchange of views between Mr. CAHEN-SALVADOR (France), Mr. YINGLING (United States of America), Mr. ALEXANDER (United Kingdom) and Mr. SIORDET (International Committee of the Red Cross) ensued on the advisability of mentioning here breaches of the judicial guarantees provided for in the Conventions.

By 4 votes to 4, with 1 abstention, the Committee rejected this suggestion.

Article B was adopted by 7 votes to 1, with 2 abstentions, subject to the French translation of the English word "fair" of the text of the Conventions Prisoners of War and Civilians.

*The meeting rose at 1.15 p.m.*

## THIRTY-SECOND MEETING

*Tuesday 29 June 1949, 3.30 p.m.*

*Chairman:* Mr. Plinio BOLLA (Switzerland)

**Articles 39, 40/43, 44/119/130** (*continued*)

The Committee proceeded to examine Article B (*see Annex No. 49*).

(c) Prisoners of War Convention.

The CHAIRMAN read the end of the Article in the new French version which runs as follows: "..... d'être jugé régulièrement et impartialement selon les prescriptions de la présente Convention".

This new wording was adopted.

(d) Civilians Convention.

Mr. MARESCA (Italy) seconded by Mr. SOKIRKIN (Union of Soviet Socialist Republics) proposed to delete the word "unlawful" before the word "deportation".

Mr. YINGLING (United States of America) and Mr. SINCLAIR (United Kingdom) noted in this connection that some countries had enacted legislation concerning aliens which provides for deporting persons who have entered the national territory illegally. Such deportations are legal and are therefore not subject to the Article in question.

Captain MOUTON (Netherlands) said that the French translation of the words describing the just mentioned breach could be improved.

After some discussion on this point, the Committee agreed on the following translation: "la destruction et l'appropriation de biens non-justifiées par des nécessités militaires et exécutées sur une grande échelle de façon illicite et arbitraire".

Mr. MARESCA (Italy) having asked that collective penalties should be included in the list breaches, Captain MOUTON (Netherlands) pointed out that these were already prohibited by Article 50

of the Hague Regulations, as well as by the guarantees of a fair trial stipulated in the new Article B.

Mr. MARESCA (Italy) considered that Article 50 of the Hague Regulations to which the Netherlands Delegate had referred did not exclude the idea of joint responsibility.

Mr. SOKIRKIN (Union of Soviet Socialist Republics) seconded the Italian proposal.

Captain MOUTON (Netherlands) agreed with Mr. Maresca's arguments.

Mr. SINCLAIR (United Kingdom) and Mr. YINGLING (United States of America) thought that it would be inadvisable to include collective penalties in "grave breaches", since such penalties are not always illegal and depend upon the offence for which they have been imposed.

An exchange of views then took place between Captain MOUTON (Netherlands), Mr. YINGLING (United States of America), Mr. MARESCA (Italy), Sir Robert CRAIGIE (United Kingdom), Mr. KRUSE-JENSEN (Norway) and Mr. SOKIRKIN (Union of Soviet Socialist Republics) with reference to the expediency of treating collective penalties as grave breaches.

At the request of the Netherlands Delegation, a vote on this point was adjourned to the next Meeting.

As the Committee had not voted on this Article at the Thirty-first Meeting, it was now adopted by 6 votes to 1.

**Second part of the Report drawn up by the Special Committee and submitted to the Joint Committee**

The second part of the Report (Articles 5, 6, 7, 8 Wounded and Sick and 6,7,8,9 of the other Conventions) was unanimously adopted.

**Article 2, fourth paragraph** (*continued*)

The Committee continued to examine the proposal submitted by the second Working Party (*see Summary Record of Twenty-eighth Meeting*).

Mr. SOKIRKIN (Union of Soviet Socialist Republics) stated that his Delegation had not yet received instructions from his Government on the point in question and was consequently not in a position to take part in the discussion.

At Sir Robert CRAIGIE's (United Kingdom) suggestion, the Committee decided to continue the discussion of this Article but to adjourn the vote to a subsequent meeting.

The CHAIRMAN then put the Article for discussion paragraph by paragraph.

*First paragraph.*

Mr. YINGLING (United States of America), seconded by Sir Robert CRAIGIE (United Kingdom) proposed to replace the words "each Party to the conflict" by the word "these" referring to the High Contracting Parties.

Mr. SIORDET (International Committee of the Red Cross) thought that this would tend to distort the meaning of those who had framed this Article, and who wished to bind not only the legal Government, but also the insurgents.

The CHAIRMAN noted that the Representative of the International Committee of the Red Cross had, at the twenty-eighth Meeting, with a view to meeting the Norwegian Delegate's proposal, proposed to complete the enumeration of the persons entitled to protection by adding the words "..... and persons who lay down arms.....".

Mr. ALEXANDER (United Kingdom) preferred the words: "including members of armed forces who have laid down their arms".

Mr. YINGLING (United States) thought that combatants should also be entitled to some protection. The use of poison or gas for instance was prohibited by international law; but international law only applied to wars between States, and the prohibition should be extended to cover civil wars also. He therefore proposed that all combatants should be entitled to the protection as stated by the humanitarian principles of the Convention.

Mr. ALEXANDER (United Kingdom) proposed to delete point 3 and embody this idea in point 1.

Mr. SIORDET (International Committee of the Red Cross) seconded this proposal, provided that mention was also made of the nationality.

Mr. YINGLING (United States of America) proposed to replace the words "civilized peoples" by "the present Convention".

*Second paragraph.*

Mr. ALEXANDER (United Kingdom) proposed to alter the paragraph as follows:

"Provided that the other Party to the conflict is also prepared to do so, the High Contracting Party concerned shall accept, if offered, the services of an impartial humanitarian body, such as the International Committee of the Red Cross."

*Third and Fourth paragraphs.*

No observations.

*The meeting rose at 6 p.m.*

## THIRTY-THIRD MEETING

Wednesday 29 June 1949, 4 p.m.

Chairman: Mr. Plinio BOLLA (Switzerland)

**Third part drawn up by the Report of the Special Committee and submitted to the Joint Committee**

The third part of the Special Committee's Report presented to the Joint Committee (Articles 38/41/117/128 to 43/46/120/131) was adopted unanimously.

**Articles 39, 40/43, 44/119/130 (continued)**

The Committee continued to examine Article B "Civilians".

The CHAIRMAN put for discussion the proposal which the Delegate of Italy had tabled at the previous Meeting to include collective punishments in the "grave breaches" referred to in the Convention.

Captain MOUTON (Netherlands) pointed out that collective punishments were already forbidden in the Civilians Convention. The act could however be committed on a minor scale, for instance if a camp commandant ordered an earlier reveille, because some internees were always too late for their work. Such an act could not be called a grave breach and was covered in the last paragraph of Article A. In serious cases these breaches were covered by implication in the provision of the present Article according to which protected persons were guaranteed fair and regular trial. Captain Mouton therefore considered the Italian amendment superfluous.

The Italian proposal was rejected by 5 votes to 2, with 2 abstentions.

The new Article B was adopted by 9 votes with 2 abstentions, its wording being as follows:

"Grave breaches to which the preceding Article relates shall be those involving any of the following acts, if committed against persons or property protected by the Convention:

the wilful killing, torture or maltreatment, including biological experiments, the wilful

causing of great suffering or serious injury to body or health, the unlawful deportation or transfer or unlawful confinement, compelling a protected person to serve in the forces of a hostile Power, or wilfully depriving a protected person of the rights of fair and regular trial prescribed in this Convention, the taking of hostages and the extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly."

**Article 40A/44A/119A/130A**

The Committee proceeded to consider the Italian proposal (see *Summary Record of the Twenty-third Meeting*).

The CHAIRMAN said that the Delegation of Italy had modified its proposal by replacing the words "as a result of failure to observe the present Convention" by the words "as a result of breaches provided for in the preceding Article".

Mr. MARESCA (Italy) said that the amendment tabled by his Delegation followed logically from the preceding Article on breaches of the Convention and was complementary to it. The State must be held responsible for offences committed by its nationals, and it would be illogical for individuals to be prosecuted while the State was able to evade its liability by means of agreements with another State.

The Italian proposal was adopted by 4 votes to 2, with 4 abstentions.

**Article 2, fourth paragraph**

At the request of the Delegation of the Union of Soviet Socialist Republics, the discussion was adjourned.

*The meeting rose at 5 p.m.*

## THIRTY-FOURTH MEETING

Friday 1 July 1949, 10 a.m.

Chairman: Colonel Hector BLANCO (Uruguay)

### High International Committee (Article 7A)

(continued)

The Committee proceeded to consider the French proposal to set up a High International Committee (see *Annex No. 21*).

The CHAIRMAN summarized the discussion on the French proposal which had already taken place in the Special Committee (see *Summary Record of the Thirteenth Meeting*), and in the Joint Committee (see *Summary Record of the Eighth Meeting*).

Mr. BAGGE (Denmark) doubted the possibility of forming a body fulfilling all requirements, composed of members from different States and capable of working effectively to the satisfaction of all the Nations. The formation of such a body would be difficult and would involve heavy expenditure.

Under these circumstances, he saw no reason for instituting a new body, the more so as the International Committee of the Red Cross had already given numerous proofs of its efficiency.

Mr. SOKIRKIN (Union of Soviet Socialist Republics) shared the view of the Delegate of Denmark. The body in question would have to be acknowledged, and the members forming part of it accepted by the Nations as a whole. It would have to act in the event of there no longer being a neutral State capable of undertaking the duties of a Protecting Power, and would therefore be in some way outside and superior to the existing world.

His Delegation could not agree with the assumption, on which the French proposal was based, that no neutral State would be left in the event of a future war.

Colonel HODGSON (Australia) considered that a new body, if it was formed, should fill an

existing need and should be practical. He pointed out the apparent contradiction between the intention that the body should take over all the duties of a Protecting Power and the limitation of its rôle in practice to the humanitarian tasks which are only part of those duties.

Again, the belligerents have the right to refuse the intervention of a Protecting Power, whereas exception could not be taken to that of the High International Committee.

He invited the French Delegation to withdraw its proposal and suggested that it should address a preliminary enquiry to the various States through diplomatic channels.

Mr. YINGLING (United States of America) stated that while the French Delegation deserved commendation for submitting a concrete proposal, nevertheless, the project was too extensive for consideration at this Conference and should be pursued through the normal channels. He had previously indicated that the United States Delegation would support a Conference resolution recommending to Governments consideration of the question of setting up a body as a substitute for the Protecting Powers.

Sir Robert CRAIGIE (United Kingdom) thought that the Conference had insufficient time at its disposal to make a detailed study of the French proposal which raised many practical difficulties. It was however of interest, and could not be disregarded. He suggested the introduction in the final act of a recommendation to the Governments, inviting them to study the action to be taken in cases where a Protecting Power no longer existed.

Mr. CAHEN-SALVADOR (France) said that the sole object of the French proposal was to fill a gap in the Conventions. The body which they proposed to form would not be costly. It could meet on a piece of internationalized territory, or

on several such territories in different parts of the world.

His Delegation felt that the Conference was particularly competent to discuss the problem and he would welcome any proposals made. He suggested that a clause should be added to Article 8 Wounded and Sick and 9 of the other Conventions obliging the Nations to form without delay a body which would be capable of taking the place of Protecting Powers no longer in a position to

carry out their rôle, and whose Statute would form an integral part of the Conventions.

Sir Robert CRAIGIE (United Kingdom) thought that a Resolution might lead to a consultation amongst the Governments. He said that a draft Resolution drawn up by his Delegation would be distributed to members of the Committee.

*The meeting rose at 12.45 p.m.*

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### THIRTY-FIFTH MEETING

*Monday 4 July 1949, 10 a.m.*

*Chairman:* Colonel Hector BLANCO (Uruguay)

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#### **Article 2, fourth paragraph** (*continued*)

The Committee continued to examine the proposal submitted by the second Working Party (*see Summary Record of the Twenty-eighth Meeting*).

Colonel HODGSON (Australia) said that the Delegation of Australia was in favour of the text drawn up by the first Working Party (*see Summary Record of the Twenty-third Meeting*). He requested that this text should be submitted to the Joint Committee at the same time as the one based on the proposal under discussion.

Mr. LAMARLE (France) said that he did not merely make reservations on particular points in the text of the first Working Party, but disagreed with the whole principle on which it was based. The Delegation of France could only support a draft based on the proposal of the second Working Party which confined itself to the application of humanitarian principles in case of civil war.

Mr. SOKIRKIN (Union of Soviet Socialist Republics) said that he had not yet received instructions from his Government regarding the text under discussion, but hoped to receive them within a few days. He proposed that both discussion and voting of the second Working Party's proposal should be postponed until Thursday, 7 July 1949.

This proposal was rejected by 7 votes to 1.

Mr. YINGLING (United States of America) pointed out that it had already been decided at a previous meeting to continue with the discussion of the text. He proposed that the vote on the various amendments should be postponed to Thursday 7 July 1949 but that discussion on that date should be limited to short statements.

Mr. AGATHOCLES (Greece) supported the proposal submitted by the Delegation of the United States of America.

This proposal was adopted by 7 votes to nil, with 1 abstention.

The CHAIRMAN then put for discussion the amendments previously submitted to the second Working Party's proposal.

Mr. YINGLING (United States of America) said that his Delegation's amendment (*see Summary Record of the Twenty-second Meeting*) to the first paragraph consisted of replacing in the English text the words "each Party to the conflict" by the words "such Party" and not by the word "these".

Miss ROBERT (Switzerland) thought that the principle of the amendment in question also applied to the third paragraph of the proposal.

Mr. LAMARLE (France) said that if insurgents claimed the privileges of a Power they should



also undertake the corresponding responsibilities. The third paragraph should be omitted altogether unless both Parties to a civil war were to be bound by it.

Sir Robert CRAIGIE (United Kingdom) supported the United States amendment on the ground that insurgents could not be bound by an agreement to which they were not a party, whereas any civilized government should feel bound to apply the principles of the Convention even if the insurgents failed to apply them. He did not agree with the suggestion of the Delegate of Switzerland, as there was a distinction between the first and third paragraphs of the proposal, the former being mandatory and the latter an exhortation.

Mr. LAMARLE (France) said that he would not insist on the wording of the proposal if a better wording could be found. He wished, however, to place on record the great difficulty which existed in applying the rules of international warfare to cases of civil war.

Colonel HODGSON (Australia) considered that the *de jure* government would be bound to carry out all the provisions of the Article even if the insurgents were mere bandits, whereas no obligation whatsoever would rest on the latter.

Mr. LAMARLE (France) said that they wished to achieve practical and not merely verbal reciprocity. He added that the French Government was not in any way embarrassed by the prospect of abiding the elementary humanitarian rules laid down, even in cases where the other party did not apply them.

Mr. AGATHOCLES (Greece) was of the view that, from the legal standpoint, they should be considered bound by the Convention; failure by the insurgents to accede to the Conventions was not an insurmountable obstacle; he based his arguments on two reasons:

(a) The Conventions which were being drafted could and should be considered as law making Conventions, i.e., as rules which should be applicable not only on behalf of or against the Contracting Parties, but also in circumstances which were analogous to those governed by the said Conventions;

(b) Insurgents and even bandits were obviously nationals of some State, and were thereby bound by the obligations undertaken by the latter; since practically all civilized States would sign the Conventions which were being drawn up, it therefore followed that, subject to exceptions, any insurgent or bandit would be a national of a

Signatory State, and would *ipso facto* be bound by the Convention. This legal interpretation enabled insurgents to be considered as automatically bound by the Convention — the aim of the rules which were being drawn up — since the *de jure* governments would apply the humanitarian principles even without being bound by the Conventions to do so; it was mainly insurgents which should be required to observe a humane attitude.

For these reasons, Mr. Agathocles was strongly in favour of maintaining the words "each Party to the conflict".

Mr. SIORDET (International Committee of the Red Cross) concurred with these views.

Mr. MARESCA (Italy) proposed the deletion from the first paragraph, sub-paragraph 1, of the word "captivity", which implied the status of a prisoner of war and was incompatible with the idea of civil war. His Delegation had first thought of substituting the word "capture", but the Norwegian amendment (see *Summary Record of the Twenty-eighth Meeting*) made this unnecessary.

Mr. YINGLING (United States of America) saw no difficulty in the use of the word "captivity" which meant "taking into custody" either by police or by opposing troops.

Sir Robert CRAIGIE (United Kingdom) proposed to delete the first paragraph, sub-paragraph 3, and to replace the words "in all circumstances and without any discrimination" in the first paragraph, sub-paragraph 1, first sentence, by the words "treated humanely, without any discrimination on a basis of race, colour, religion or faith, sex, birth or wealth."

Mr. SIORDET (International Committee of the Red Cross) supported the above proposal subject to mention also being made of nationality.

Mr. YINGLING (United States of America) thought that the inclusion of the word "nationality" might raise legal difficulties, as the laws of different countries would have to be taken into account.

Mr. LAMARLE (France) said that the word "nationality" had not been included in the second Working Party's proposal owing to the fact that it might be perfectly legal for a government to treat insurgents who were its own nationals differently from foreigners taking part in a civil war. The latter might be looked on as being more guilty than nationals of the country concerned, or they might, on the other hand, be treated less severely or merely regarded as subject to deportation.

Mr. MARESCA (Italy) withdrew the Italian proposal (see *Summary Record of the Twenty-eighth Meeting*) to add collective penalties to the list of acts prohibited.

The CHAIRMAN put for discussion the United Kingdom amendment to the second paragraph (see *Summary Record of the Thirty-second Meeting*).

Mr. YINGLING (United States of America) objected that the amendment as worded would oblige the High Contracting Party to accept the services of a humanitarian body chosen by the insurgents. Again, no mention was made of any obligation to take action to secure the services of an impartial humanitarian body. He suggested that in the original wording of the proposal tabled by the second Working Party the words "may offer its" should be replaced by "shall be requested to furnish its".

Mr. SIORDET (International Committee of the Red Cross) preferred the text produced by the second Working Party. The strength of the International Committee of the Red Cross was its

independence, which would be jeopardized if the I.C.R.C. were mentioned in any mandatory clause.

Sir Robert CRAIGIE (United Kingdom) said that he would not insist on the amendment, but would like to hear the views of delegates who had not yet spoken.

Mr. LAMARLE (France) preferred the original text, particularly so after hearing the views expressed by the Representative of the International Committee of the Red Cross.

Mr. COHN (Denmark) shared the views of the United States Delegate.

Mr. MARESCA (Italy) said that his proposal (see *Summary Record of the Twenty-eighth Meeting*) to add a new fifth paragraph reading "each Party to the conflict shall be responsible for all acts committed by persons belonging to their armed forces" would no longer apply if the United States amendment proposing to substitute in the first paragraph the words "such Party" for the words "each Party to the conflict" were adopted.

*The meeting rose at 1.30 p.m.*

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### THIRTY-SIXTH MEETING

*Wednesday 6 July 1949, 10 a.m.*

*Chairman:* Colonel Hector BLANCO (Uruguay)

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#### **Last part of the first Report (from Article 44/47/123/132)**

Mr. LAMARLE (France) pointed out that the communication to the United Nations provided for in Article 52 Wounded and Sick, 55 Maritime, 130 "Prisoners of War", 140 "Civilians" was a mere formality and entailed no legal effect whatsoever as regards the validity of the Conventions.

Colonel HODGSON (Australia) thought that, according to Article 102 of the Charter of the

United Nations, the original Conventions had to be transmitted to the United Nations Secretariat for registration.

Mr. YINGLING (United States of America) pointed out that only a certified copy, and not the original, has to be transmitted to the United Nations for registrations. Colonel HODGSON (Australia) declared himself satisfied.

The last part of the first Report of the Special Committee of the Joint Committee had been adopted.

**International Committee (Article 7A)***(continued)*

The CHAIRMAN, on behalf of Uruguay, supported the proposal made by the French Delegation to set up a High International Committee. Since, through the interplay of alliances, countries which at the beginning of a conflict might be neutral, would subsequently become belligerents, the Chairman felt that there should be a proportionate representation for Latin and North America to the extent of one third of the membership. He suggested that a time limit of six months should be allowed to set up this organization which, in the event of a war when there were no Protecting Powers, would safeguard the populations and human values.

The Delegation of the United Kingdom had prepared a draft resolution as suggested at the end of the Thirty-fourth Meeting which was as follows:

“(1) Whereas the High Contracting Parties recognize that circumstances may arise in a future international conflict in which there will be no Protecting Power with whose cooperation and under whose scrutiny the Convention for the Protection of Victims of War can be applied, and

(2) Whereas Article 8 of the Convention of ..... for the Relief of the Wounded and Sick in Armed Forces in the Field, Article 9 of the Convention of ..... for the Relief of Wounded, Sick and Shipwrecked Members of Armed Forces on Sea, Article 9 of the Convention of ..... relative to the Treatment of Prisoners of War, and Article 9 of the Convention of ..... for the Protection of Civilian Persons in Time of War provide that the High Contracting Parties may at any time agree to entrust to a body which offers all guarantees of impartiality and efficacy the duties incumbent on the Protecting Powers by virtue of the aforesaid Conventions,

(3) The High Contracting Parties recommend that consideration shall be given as soon as possible to proposals for the setting up of a High International Committee, the members of which shall be selected from amongst persons of high standing, without distinction of nationality, known for their moral authority, their spiritual and intellectual independence and the services they have rendered to humanity and the functions of which shall be, in the absence of a Protecting Power, to fulfil the duties performed by Protecting Powers in regard to the application of the Conventions for the Protection of Victims of War.”

Mr. SOKIRKIN (Union of Soviet Socialist Republics) considered that the present Conference was not competent to study the French proposal, and it would be advisable that it should be studied thoroughly in the usual diplomatic way. It had also been pointed out that such an organism as proposed was not absolutely necessary, nor was its structure practicable. The Soviet Delegation, therefore, felt that neither the French proposal nor the United Kingdom Resolution could be accepted.

Mr. YINGLING (United States of America) advocated deleting the words “High Contracting Parties”, since the Resolution would be adopted by the Conference in its final act.

The United States Delegation would not object to presenting a Resolution recommending to the Governments that such a body be contemplated. The United States Delegation considered, however, that the matter was too extensive for immediate decision. If the third paragraph were worded in such a way as to invite consideration of the constitution of a body such as mentioned in the second paragraph, the United States Delegation would be able to support it.

Colonel HODGSON (Australia) supported the first and second paragraphs of the proposed Resolution with the minor change suggested by the Representative of the United States of America. He felt that the third paragraph went too far, since it indicated the framework to be given to the High International Committee.

General OUNG (Burma) was in support of the French proposal and of the United Kingdom Resolution. Such a Committee as proposed would require international confidence which could only be obtained if there were equal representation of the five Continents in its membership. A certain permanency and also regional activity would be required, and it could be assumed that the duties to be discharged would go far beyond the duties of a normal Protecting Power. A permanent control of the wartime duties of the Committee would seem necessary.

Mr. SOKIRKIN (Union of Soviet Socialist Republics) remarked that any recommendation by this Conference in the line of the United Kingdom Resolution would lead to the conclusion that they were actually in sympathy with the French proposal. The French Government could at its discretion present its proposal through the usual channels.

Mr. CAHEN-SALVADOR (France) said that such a body as envisaged would be called upon to

act only when the conflict had broken out, but that it should already have a structure which had been previously set up, including a peacetime staff liable to be enlarged in time of war. It did not seem reasonable to be deterred by the question of costs in view of the losses of all kinds which war entailed.

Mr. SOKIRKIN (Union of Soviet Socialist Republics) and Mr. COHN (Denmark) both agreed as to the advisability of deleting any implication that a future international war was inevitable, in view of the effect this would produce on the public mind. Standardization of wartime conditions should be avoided.

After discussion the United Kingdom Resolution was amended as follows:

“Whereas circumstances may arise in the event of the outbreak of a future international conflict in which there will be no Protecting Power with whose co-operation and under whose scrutiny the Conventions for the Protection of Victims of War can be applied; and

Whereas Article 8 of the Convention of . . . . . for the Relief of the Wounded and Sick in Armed Forces in the Field, Article 9 of the Convention of . . . . . for the Relief of Wounded, Sick and Shipwrecked Members of

Armed Forces on Sea, Article 9 of the Convention of . . . . . relative to the Treatment of Prisoners of War, and Article 9 of the Convention of . . . . . for the Protection of Civilian Persons in Time of War provide that the High Contracting Parties may at any time agree to entrust to a body which offers all guarantees of impartiality and efficacy the duties incumbent on the Protecting Powers by virtue of the afore said Conventions;

Now, therefore, it is recommended that consideration be given as soon as possible to the advisability of setting up an international body, in the absence of a Protecting Power, the functions of which shall be to fulfil the duties performed by Protecting Powers in regard to the application of the Convention for the Protection of Victims of War.”

This Resolution was adopted by 7 votes to nil with 1 abstention.

Colonel HODGSON (Australia) expressed the hope that the French Government would take the initiative in consulting the States through the diplomatic channel, and on the basis of the replies received would call an international Conference.

*The meeting rose at 1.15 p.m.*

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## THIRTY-SEVENTH MEETING

*Friday 8 July 1949, 10 a.m.*

*Chairman: Colonel Hector BLANCO (Uruguay)*

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### **Article 2, fourth paragraph** (*continued*)

After an exchange of views, the Special Committee agreed to begin a discussion on the substitute proposal by the Delegation for the Union of Soviet Socialist Republics for the Draft submitted by the second Working Party which dealt with Article 2, fourth paragraph. The vote on this proposal would be deferred until the afternoon.

The proposal made by the Soviet Delegation was worded as follows:

#### A. *Wounded and Sick and Maritime Conventions.*

“In the case of armed conflict not of an international character occurring in the territory of one of the States, Parties to the present Convention, each Party to the conflict shall apply all the provisions of the present Convention guaranteeing :

Humane treatment for the wounded and sick; prohibition of all discriminatory treat-

ment of wounded and sick practised on the basis of differences of race, colour, religion, sex, birth or fortune."

#### B. *Prisoners of War Convention.*

"In the case of armed conflict not of an international character occurring in the territory of one of the States, Parties to the present Convention, each Party to the conflict shall apply all the provisions of the present Convention guaranteeing:

Humane treatment for prisoners of war; compliance with all established rules connected with the prisoners of war régime; prohibition of all discriminatory treatment of prisoners of war practised on the basis of differences of race, colour, religion, sex, birth or fortune."

#### C. *Civilians Convention.*

"In the case of armed conflict not of an international character occurring in the territory of one of the States, Parties to the present Convention, each Party to the conflict shall apply all the provisions of the present Convention guaranteeing:

Humane treatment for the civilian population; prohibition on the territory occupied by the armed forces of either of the parties, of reprisals against the civilian population, the taking of hostages, the destruction and damaging of property which are not justified by the necessities of war, prohibition of any discriminatory treatment of the civilian population practised on the basis of differences of race, colour, religion, sex, birth or fortune."

Mr. MOROSOV (Union of Soviet Socialist Republics), in introducing his Delegation's proposal, said that it had been set up by a desire to find a compromise text which would take into account the principal suggestion made by the two Working Parties and certain amendments which had been submitted by various delegations. Its guiding principle was that the obligation should be laid on both Parties in all the Conventions. Special emphasis was laid in the Civilian Convention upon prohibition to exterminate populations.

However, it did not seem possible to apply all the provisions of the Conventions in a conflict of a non-international character.

The novel features of the Soviet proposal were that the paragraph concerning special agreements was deleted. This deletion would be preferable to the proposal drawn up by the second Working Party tending to set up a universal Convention in miniature to be applied in the case of civil war.

It would hardly seem possible to summarize in twenty-five lines the four hundred Articles of the four Conventions, as the Working Party had tried to do. Such a procedure would inevitably entail the renunciation of many provisions drawn up by the Conference for the protection of war victims.

The Soviet proposal had, therefore, selected humanitarian elements of both texts worked out by the Working Parties without seeking to give them a concrete form. Inhuman treatment of human beings and any other acts which would be condemned in the case of international war between States should likewise be condemned in the instance of civil war.

The paragraph concerning the legal status of the Parties to the conflict appeared redundant and had been deleted, since the legal status of such Parties would in no way be affected.

It did not seem necessary to mention the International Committee of the Red Cross, since the Committee or any other body would always be free to offer their services to perform humanitarian duties.

Sir Robert CRAIGIE (United Kingdom) felt that the Soviet proposal offered greater elasticity than the Stockholm text. However, he felt that the term "all the provisions", in the Wounded and Sick and Maritime Conventions was not appropriate, as the governments would find difficulty in applying all these provisions to insurgents' leaders. Difficulty would also be found in determining which provisions of the Conventions concerning humane treatment should be applied. He felt it therefore regrettable that mention of the International Committee of the Red Cross had not been made. Moreover, if civil war developed to considerable proportions, there would be an inclination on both sides to introduce, by special agreements, as many as possible of the provisions of the Convention. It would therefore seem appropriate not to delete the paragraph on special agreements. Lastly, the United Kingdom Delegation could not see their way to accepting the deletion of the paragraph on the legal status of the Parties.

Mr. LAMARLE (France) considered that the Soviet proposal was an interesting suggestion by reason of its concision and its purpose in reconciling the various points of view. He was in agreement with Section A of the proposal. The French Government, however, could not see their way to applying all the rules contained in the Conventions to a non-international war. The concept of national sovereignty was intimately bound up with the idea of civil war, and, in such cases, all governments would insist that their sovereignty remains intact. The Delegate for France had already expressed this idea when the matter of

the limitation of the rights of the Protecting Power had been discussed. Likewise, all rules governing the régime for the treatment of prisoners of war could not be applied in a civil war because, here again, the mandates conferred upon Protecting Powers would thereby impair the sovereignty of governments. The same remarks would hold for the Civilians Convention. Lastly, the mention of the International Committee of the Red Cross corresponded to an unavoidable necessity, since it might have to substitute a full Protecting Power whose intervention might not be acceptable, by reason of the need for safeguarding the national sovereignty.

Mr. MOROSOV (Union of Soviet Socialist Republics) would be in agreement with the maintenance of the paragraph on special agreements, and with the mention of the International Committee of the Red Cross. With regard to the treatment of prisoners of war and civilians, in both cases the Soviet text aimed at the application of the most humane treatment possible, but this did not involve the application of all the contractual provisions. The purpose was to apply the general provisions, but not the technical ones, such as those relating to courts and penal sanctions.

Mr. COHN (Denmark) was in agreement with the remarks made in favour of the Soviet proposal by the Delegates for the United Kingdom and France. The sovereignty of the State would remain intact although humanitarian treatment was given to war victims. He proposed therefore to replace the term "all the provisions of the present Convention" by "those provisions of the present Convention which guarantee". The words "each Party to the conflict" should be replaced by "the signatory Parties".

It seemed impossible to apply to insurgents the régime of prisoners of war, including army pay.

He suggested to add a criterion to the conditions of application, precisising that the word "political armed conflict" should be inserted. This would differentiate between cases of a judicial character and those of a political character.

Colonel HODGSON (Australia) reiterated that his Delegation would be unable to accept the Stockholm text nor the text submitted by the second Working Party. He felt there was little difference between the Soviet text and the text of the second Working Party. The new Soviet text appeared to lay stress on the humanitarian character of the obligations, but each Party was left to evaluate the conditions under which they would apply the Conventions. It was certainly not intended to apply its provisions to bandits, but only to conflicts of the magnitude of a civil war. The Australian Delegation would adhere to the text of the first Working Party.

Miss ROBERT (Switzerland) recalled that the Swiss Delegation had supported the text of the first Working Party which had not met with the general agreement, and was therefore in support of the text of the second Working Party. The formula "each Party to the conflict" was not acceptable as only the *de jure* governments were bound by the Convention. This term should be replaced by "High Contracting Parties" (*see Summary Record of Thirty-seventh Meeting*).

Mr. LAMARLE (France) did not consider that the adjective "political" was appropriate, because the conflict might be of a religious character or have aspects pertaining to common law. The French Government was prepared to apply the principles contained in the text of the second Working Party, even to bandits.

Mr. MARESCA (Italy) felt that the term "each Party to the conflict" should remain. He could accept the term "all the provisions". On the other hand, the term "prisoner of war" was not acceptable, as applied to insurgents, since this was a definite concept according to the rules of warfare. These implied a payment of army pay, and penal sanctions, for instance.

*The meeting rose at 1.00 p.m.*

## THIRTY-EIGHTH MEETING

Friday 8 July 1949, 3.30 p.m.

Chairman: Colonel Hector BLANCO (Uruguay)

**Article 2, fourth paragraph (new Article 2A)**

(continued)

There were under consideration:

The Drafts of the first Working Party (see *Summary Record of the Twenty-third Meeting*).

The Italian and the United Kingdom amendments thereto.

The Draft of the second Working Party (see *Summary Record of the Twenty-eighth Meeting*).

The amendments submitted thereto during the discussion.

The Soviet proposal (see *Summary Record of the Twenty-seventh Meeting*).

All the above were to be examined on the basis of the Stockholm text.

At the suggestion of Mr. ALEXANDER (United Kingdom), it was agreed to vote first on the Soviet proposal, which was rejected by 1 vote for with 9 against.

*Amendments submitted during the discussion of the proposal of the second Working Party.*

*First paragraph.*

*Preamble:* The amendment tabled by the United States Delegation to replace "each Party to the conflict" by "such party" was rejected by 1 vote for, 4 against with 5 abstentions.

*Figure 1, first paragraph.*

The amendment tabled by the Delegations for Norway and the United Kingdom to begin the sentence as follows:

"Persons taking no active part in hostilities, including members of armed forces, who have laid down their arms..."

was adopted by 5 votes for, 1 against with 4 abstentions.

Sir Robert CRAIGIE (United Kingdom) had previously proposed that the word "who" should be replaced by "which", to indicate that the armed forces as a whole must lay down their arms.

The amendment was rejected by 1 vote for, 3 against with 6 abstentions.

The United Kingdom amendment to word the end of the sentence as follows:

"shall in all circumstances be treated humanely, without any discrimination on a basis of race, colour, religion or faith, sex, birth or wealth"

was adopted by 5 votes for, 1 against with 4 abstentions.

The Italian proposal to replace the word "captivity" by "detention" was adopted by 4 votes for, 1 against with 5 abstentions.

*Figure 1, second paragraph.*

The Italian amendment to word this paragraph:

"to this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons"

was adopted by 5 votes for, with 5 abstentions.

*Figure 1, letter d.*

The amendment tabled by the Delegation for the United States of America to replace the expression "by civilized peoples" by the expression "by the present Convention" was rejected by 1 vote for, 2 against with 7 abstentions.

*Figure 3.*

The proposal made by the United Kingdom Delegation to delete this sentence was adopted by 6 votes for, with 4 abstentions.

*Second paragraph.*

The amendment tabled by the United States Delegation to word this paragraph as follows:

"An impartial humanitarian body, such as the International Committee of the Red Cross, shall be requested to furnish its services to the Parties to the conflict"

was rejected by 3 votes for, 3 against with 4 abstentions.

The Delegation for Italy withdrew their amendment to add a new paragraph.

The amended Article 2A would run as follows:

*First paragraph*

1. In case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:

- (1) Persons taking no active part in the hostilities, including members of armed forces, who have laid down their arms, and those placed *hors de combat* by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely without any discrimination on a basis of race, colour, religion or faith, sex, birth or wealth. To this end the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:
- (a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
  - (b) taking of hostages;
  - (c) outrages upon personal dignity, in particular, humiliating and degrading treatment;

(d) the passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

(2) The wounded and sick shall be collected and cared for.

*Second paragraph.*

An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict.

*Third paragraph.*

The Parties to the conflict should further endeavour to bring into force, by means of special agreements, all or part of the other provisions of the present Convention.

*Fourth paragraph.*

The application of the preceding provisions shall not affect the legal status of the Parties to the conflict."

Paragraph 1 of the above amended proposal for Article 2A was rejected by 5 votes for, with 5 against.

Paragraph 2 was rejected by 4 votes for, 5 against with 1 abstention.

Paragraph 3 was rejected by 5 votes for, with 5 against.

Paragraph 4 fell because of the preceding votes.

The amended Article as a whole was therefore rejected.

*The meeting rose at 6.45 p.m.*



## THIRTY-NINTH MEETING

Monday 11 July 1949, 3.30 p.m.

Chairman: Mr. Plinio BOLLA (Switzerland)

**Article 2, fourth paragraph** (*continued*)

Colonel BLANCO (Uruguay), thought that he could not vote, in view of the vote taken on the draft drawn up by the second Working Party on 8 July when he was President and stated that he would have voted in favour of this text and that therefore, the vote would have been 6 to 5. He reserved his right to vote on a future occasion in this connection.

Mr. LAMARLE (France) reserved the position of his Delegation with regard to the validity of the vote on the second Working Party's draft.

Sir Robert CRAIGIE (United Kingdom) associated his Delegation with the remarks made by the Delegate for France.

The CHAIRMAN noted the declarations made by the Delegations for Uruguay, France and the United Kingdom.

THE CHAIRMAN pointed out that two amendments had been tabled concerning the Draft submitted by the first Working Party of 25 May (*see Summary Record of the Twenty-third Meeting*): by an Italian amendment of 30 May; a United Kingdom amendment of 14 June.

The Italian amendment was rejected by 7 votes for, NIL against, with 3 abstentions.

Sir Robert CRAIGIE (United Kingdom) reserved the right to submit the United Kingdom amendment of 14 June to the Joint Committee, and refrained from tabling it before the Special Committee.

The draft drawn up by the first Working Party of 25 May, considered as an amendment to the Stockholm text, was rejected by 4 votes for and 7 against.

Article 2, fourth paragraph, of the Stockholm text, was rejected by NIL vote for, 9 against with 1 abstention.

The CHAIRMAN concluded that the Special Committee had decided that Article 2, fourth

paragraph, should be deleted and should not be replaced by another text.

General OUNG (Burma) explained that the Eastern countries he represented in the Special Committee could not agree to an extension of the Conventions to civil war, and if such a provision were included, they would not be able to sign the Conventions. He had, therefore, voted against this paragraph.

Colonel HODGSON (Australia) considered that the Special Committee should submit to the Joint Committee a report in which the texts of the two Working Parties might be inserted as an addendum. It would be for the Joint Committee to decide whether a special Article or a paragraph under Article 2 should be inserted to cover the case of civil war.

Mr. MOROSOV (Union of Soviet Socialist Republics) agreed that it was not for the Special Committee to decide whether the text on this subject should be inserted or not in the Convention. The Soviet Delegation asked that its text be included in the report to the Special Committee as a minority text. He felt that the other two Working Party texts which had been rejected should also be submitted as minority texts.

On the proposal by Sir Robert CRAIGIE (United Kingdom), the CHAIRMAN agreed to act as Rapporteur on this question before the Joint Committee.

**Report drawn up by the Working Party on the settlement of disputes**

- (a) Procedure of good offices and consultation (*Article 9 Wounded and Sick and Article 10 of the other Conventions*).

Mr. SOKIRKIN (Union of Soviet Socialist Republics) suggested that the proposed addition "interpretation of the Conventions", as suggested by the United States Delegation, be deleted.

The Soviet proposal to delete the word "interpretation" was rejected by 2 votes for, with 10 against.

The following wording for the first paragraph of Article 9 and 10 in the other Conventions, as proposed by the Working Party, was adopted by 10 votes for, NIL against with 2 abstentions:

"In cases where they deem it advisable in the interest of protected persons, particularly in cases of disagreement between the Parties to the conflict as to the application or interpretation of the provisions of the present Convention, the Protecting Powers shall lend their good offices with a view to settling the disagreement."

The second paragraph in the text proposed by the Working Party, which corresponded to the Stockholm text, was adopted by 10 votes for, 1 against with 1 abstention.

(b) Procedure of enquiry and conciliation (*Article 41 Wounded and Sick and Article 45 Maritime Conventions*).

The CHAIRMAN opened the discussion on the text adopted by the Working Party which reads as follows:

"At the request of the belligerent, an enquiry shall be instituted, in a manner to be decided between the interested parties concerning any alleged violation of the Convention.

"If an agreement has not been reached concerning the procedure for the enquiry, the parties should agree on the choice of an umpire, who will decide upon the procedure to be followed.

"Once the violation has been established, the belligerents shall put an end to it and shall repress it within the briefest possible delay".

Mr. YINGLING (United States of America) recalled that the United States Delegation still preferred the method of selecting the Commission of Enquiry as laid down in the Stockholm text and asked that the words "while accepting this solution" in the Report of the Working Party be deleted.

The text proposed by the Working Party was adopted by 10 votes for, 1 against with 1 abstention.

The CHAIRMAN noted that no majority had been reached by the Working Party with regard to the addition of a similar provision to the two other Conventions (Prisoners of War and Civilians).

Mr. LAMARLE (France) proposed that a vote is taken on this question.

The proposal to add a similar provision to the two other Conventions was adopted by 9 votes for, 2 against with 1 abstention.

(c) Judicial Settlement.

The CHAIRMAN recalled that the Working Party had proposed to insert the following provision in the Conventions:

"The States, Parties to the present Convention, who have not recognized as compulsory *ipso facto* and without special agreement, in relation to any other State accepting the same obligation, the jurisdiction of the International Court of Justice in the circumstances mentioned in Article 36 of the Statute of the Court, undertake to recognize the competency of the Court in all matters concerning the interpretation or application of the present Convention."

Mr. SOKIRKIN (Union of Soviet Socialist Republics) objected to the addition proposed by the Working Party of a provision according to which Parties signatories to the Convention would be bound by the Statute of the International Court of Justice. All countries were not members of the United Nations, and there was a difference between the status of Member countries and Non-Member countries concerning the International Court, as set out in Article 35 of the Statute of the Court. He, therefore, considered that the Working Party's draft went against the stipulations of the United Nations Charter and were not within the province of the present Conference.

The proposal made by the Working Party to insert in the four Conventions a new provision on judicial settlement was adopted by 10 votes for, 1 against with 1 abstention.

Mr. LAMARLE (France) pointed out that there might be cases when the two parties to the dispute might not be in agreement as to recourse to the International Court of Justice or to a Commission of Enquiry.

Mr. COHN (Denmark) observed that two courses might be followed: the applicant might ask the adverse party which procedure it preferred, and if there were disagreement, the case could be settled by the International Court itself.

M. PILLOUD (International Committee of the Red Cross) felt it was important to find a proper place in the Convention for the insertion of this Article. He considered it would be preferable to introduce a new paragraph into Article 9, Wounded and Sick and into Article 10 of the other Conventions.

Mr. LAMARLE (France) recalled the views of certain delegations that procedure before the International Court would be slow and inadequate.

He suggested the addition of the words: "as a main procedure in peacetime and as a subsidiary procedure in wartime".

Sir Robert CRAIGIE (United Kingdom) proposed to introduce a paragraph as follows at the beginning of the text adopted by the Special Committee:

"If the difference has not been settled by means of good offices, consultation, enquiry or by any other means foreseen in a Convention in force between the States, or by a special agreement concluded between the parties, the parties should submit the difference to an impartial judicial or arbitration body, which might be the International Court of Justice."

Mr. YINGLING (United States of America) thought that the difficulty raised by the French Delegate might be overcome by adding to the end of the text "... which cannot be settled by any other means".

Mr. LAMARLE (France) accepted this proposal.

Colonel HODGSON (Australia) suggested that this point should be referred back to the Working Party for further consideration. He felt that, according to Articles 34, 35 and 36 of the Statute of the International Court of Justice, some of the High Contracting Parties to the present Conventions would not be competent to apply to the Court, and the Court would not be competent to receive their applications.

Mr. LAMARLE (France) agreed to refer the matter back to the Working Party.

Mr. YINGLING (United States of America) saw no purpose in such a course. The Working Party held the view, which was shared by the United

States Delegation, that parties to the present Convention could agree that matters concerning the interpretation or application of the Convention could be referred to the International Court. The latter course should be used only if other courses failed.

Mr. COHN (Denmark) concurred with this view.

Mr. LAMARLE (France) agreed to prepare a compromise text.

Sir Robert CRAIGIE (United Kingdom) supported this proposal made by the Delegate for France.

The CHAIRMAN agreed to leave the matter in abeyance until the next meeting.

#### **Designation of a Rapporteur for the question of the Settlement of Disputes**

The CHAIRMAN suggested, and Mr. YINGLING (United States of America) seconded, the designation of Mr. Cohn (Denmark) as Rapporteur for the question of the settlement of disputes.

This suggestion was accepted.

#### **Designation of a Rapporteur for the question of the High International Committee**

The CHAIRMAN proposed that Mr. Alexander (United Kingdom) be designated as Rapporteur for the question of the High International Committee.

This proposal was accepted.

*The meeting rose at 5.50 p.m.*

## FORTIETH MEETING

Tuesday 12 July 1949, 3 p.m.

Chairman: Mr. Plinio BOLLA (Switzerland)

**Report on Penal Sanctions in case of violation of the Conventions**

Mr. SOKIRKIN (Union of Soviet Socialist Republics) considered that the Report should have presented more clearly the views of all the delegations with regard to Penal Sanctions.

The CHAIRMAN noted that the Special Committee approved the Report on Penal Sanctions.

**Settlement of Disputes (continued)**

Mr. YINGLING (United States of America) felt that no amendment was necessary to the text adopted for the judicial settlement of disputes. The practical procedure which would be followed would be that a Party to the conflict which had a complaint would bring it to a Protecting Power, under, say, Article 9 of the Wounded and Sick Convention. That Power would use its good offices to try and get the Parties to the conflict to agree to a settlement of the dispute. If this failed, the Parties to the conflict were obligated, under Article 41, to try to find some method of settlement. If they agreed, they would not apply to the International Court. If not, one or the other party would go to the Court.

The United States Delegation suggested that the new Article should be inserted in the Convention by the Drafting Committee in an appropriate place.

Mr. LAMARLE (France) concurred with the Delegate for the United States of America and felt that the selection of recourse to be followed would be carried out automatically. He, therefore, withdrew his proposal.

Sir Robert CRAIGIE (United Kingdom) was of the same opinion as the Delegates for the United States of America and France, and suggested that

the text, as passed by the Special Committee, should remain unchanged.

Mr. SOKIRKIN (Union of Soviet Socialist Republics) did not see the practical necessity for including in the Conventions a mandatory provision of recourse to the Court of Justice. The present Conference was not competent to obligate the States to recognize the jurisdiction of the Court of Justice, since some of the signatory countries might not be members of the United Nations. Article 36 of the Statute of the Court stipulated that the States Parties to the Statute might at any time declare that they recognized as compulsory *ipso facto* and without special agreement, in relation to any other State accepting the same obligation, the jurisdiction of the Court in certain circumstances. It did not, therefore, seem appropriate for the present Conventions to include a provision which was contrary to the Statute of the Court.

Mr. MARESCA (Italy) shared the views of the Delegates for France, the United States of America and the United Kingdom. He felt, however, that the International Court was competent to deal with the legal aspect of certain questions which might be taken up by other bodies as regards the other aspects. There was no contradiction between the present Conventions and Article 36 of the Statute of the Court, since the latter stipulated only that the States Parties to the Statute were free to recognize the jurisdiction of the Court.

Mr. COHN (Denmark) considered that it was appropriate that the new provision should be an independent Article and that the Drafting Committee should select its place of insertion.

The CHAIRMAN agreed with this suggestion. During the Thirty-ninth Meeting on 11 July the Special Committee had agreed to insert in the Prisoners of War and Civilians Conventions an Article on the procedure of enquiry which would

be worded similarly to Article 41 of the Wounded and Sick and Article 45 of the Maritime Conventions. A coordination between those Articles and Articles III of the Prisoners of War and 120 of the Civilians Conventions should be established.

He proposed that the Special Committee draw the attention of Committees II and III to the need for correlating these articles.

*The meeting rose at 4.15 p.m.*

## FORTY-FIRST MEETING

*Friday 15 July 1949, 4 p.m.*

*Chairman:* Mr. Plinio BOLLA (Switzerland)

### Approval of three Reports drawn up by the Special Committee of the Joint Committee

1) *Draft Resolution concerning Article 8 Wounded and Sick and Article 9 of the other Conventions.*

Mr. SOKIRKIN (Union of Soviet Socialist Republics) suggested that the last sentence of this Report, proposing that the text adopted be inserted in the final Act of the Conference, be deleted.

This proposal was accepted, and the Report thus amended was adopted.

2) *Settlement of Disputes (Articles 9 Wounded and Sick and 10 of the other Conventions; 41 Wounded and Sick and 45 Maritime Conventions).*

After an exchange of views between Mr. YINGLING (United States of America), Mr. COHN (Denmark), Rapporteur, and the CHAIRMAN, the following wording was adopted for the third paragraph of the commentary concerning Articles 41 Wounded and Sick and 45 Maritime Conventions:

"In the text submitted by the Special Committee, the initiative for the enquiry procedure lay with either one of the belligerents and not with any other Contracting Party."

3) *Application of the Conventions to armed conflicts not of an international character.*

In response to a request made by Mr. SOKIRKIN (Union of Soviet Socialist Republics), the CHAIRMAN proposed to include the Soviet Delegation's proposal in a new Annex F instead of incorporating it in the Report.

This proposal was accepted.

At the suggestion of the CHAIRMAN, a conclusion would be added to the Report to the effect that

the Special Committee invited the attention of the Joint Committee to the following texts:

The second draft of the first Working Party (Annexes B and C);

The draft of the second Working Party as amended by the Special Committee (Annex E);

The proposal submitted by the Soviet Delegation (Annex F).

The CHAIRMAN proposed, and Colonel BLANCO (Uruguay) agreed to the suggestion that his statement made at the meeting of the Special Committee on the 11 July 1949, in regard to the reasons why he had abstained from voting at the Thirty-eighth Meeting, be appended to the Report.

Colonel BLANCO (Uruguay) accepted this suggestion.

General OUNG (Burma) recalled that the Asiatic countries which were represented by him at the Special Committee could not see their way to accepting Conventions which were extended to civil wars. He asked that this statement be included in the Report.

He felt that the last paragraph should be deleted.

Mr. YINGLING (United States of America) and Colonel HODGSON (Australia) were in favour of the retention of the last paragraph as being a fair statement of the views of the majority of the Committee.

The deletion of the last paragraph was defeated by 5 votes in favour of its maintenance, 1 against, with 2 abstentions.

The Report, as amended, was unanimously approved.

*The meeting rose at 6 p.m.*

## First Report drawn up by the Special Committee of the Joint Committee

27 June 1949

At its Third Meeting on 29 April 1949, the Joint Committee charged a Special Committee with the task of finding a compromise formula for the provision in the fourth paragraph of Article 2 of the four draft Conventions relating to armed conflicts not of an international character. The ten following Delegations were elected members of this Special Committee: Australia, United States of America, France, Greece, Italy, Monaco, Norway, United Kingdom, Switzerland, Union of Soviet Socialist Republics.

At its Seventh Meeting on 17 May 1949 the Joint Committee decided to extend the terms of reference of the Special Committee to include the consideration of the Articles common to the four draft Conventions, in order that the second reading might be facilitated. The Joint Committee decided at the same time to include in the membership of the Special Committee the Delegations for Burma and Uruguay, thus ensuring the representation of Asia and Latin America. Moreover, it was decided that any delegation tabling an amendment could participate in the discussions on that amendment which took place in the Special Committee.

The Special Committee held its First Meeting on 3 May 1949. It nominated as its President Mr. BOLLA (Switzerland). At its Eighth Meeting on 23 May 1949, it elected as Vice-President Colonel BLANCO, Delegate for Uruguay, and at its Twenty-seventh Meeting on 23 June 1949 it designated four Rapporteurs, Mr. LAMARLE (France) for the question of application of the Conventions in the case of civil war, Mr. DE GEOUFFRE DE LA PRADELLE (Monaco) for the question of settlement of disputes, Captain MOUTON (Netherlands) for the question of Penal Sanctions, and Mr. BOLLA (Switzerland) for the other questions.

The Special Committee has until now held 30 meetings. It reached a final conclusion with regard to all the questions which had been referred to it, with the exception of the following:

- (a) Article 2, fourth paragraph (application of the Conventions in case of civil war):

This provision was twice examined by a first Working Party. The Special Committee is working at present at a proposal drawn up by a second Working Party.

- (b) Article 9/10/10/10, and Article 41/45/-/ (settlement of disputes):

These texts and the amendments tabled in connection with them are at present being considered by a Working Party.

- (c) Article 122 (Prisoners of War) and Article 135 (Civilians) were referred by the Special Committee respectively to Committees II and III, who decided to examine them.

- (d) A French proposal relating to the institution of a High International Committee with the cooperation of which, and under whose supervision the Conventions would be applied, failing a Protecting Power, was referred to the Joint Committee after a preliminary discussion (see Annex No. 21).

- (e) Articles 39-40/43-44/119/130 (Penal Sanctions in case of violation of the Conventions) are at present being considered by the Special Committee.

Some of the Articles adopted by the Special Committee have already been distributed, namely Articles 1/1/1/1, 2/2/2/2 and 4/5/5/5. The present Report is concerned only with those Articles.

### Article 1:

No amendment was tabled in regard to this provision which is identical in the four Conventions, and which was adopted according to the Stockholm drafting.

### Article 2:

The Special Committee decided to separate from this Article the fourth paragraph relating to the application of the Conventions to conflicts not

of an international character, with a view, possibly, to replace this paragraph by an Article 2A.

The first and second paragraphs did not give rise to any amendments and were adopted according to the Stockholm text.

With regard to the third paragraph, amendments had been tabled by the Delegations for Canada, Belgium and Italy. A further suggestion had also been made by the International Committee of the Red Cross in their "Remarks and Proposals".

The Canadian proposal suggested adding the following sentence:

"The Convention shall also apply to a Power not a Party to the present Convention so long as this Power complies therewith."

The Belgian proposal suggested replacing the third paragraph by the following text:

"Should one of the Powers in conflict not be a Party to the present Convention, the Powers which are a Party to the latter need only be bound by it in so far as their mutual relations are concerned. However, the Powers which are a Party to the Convention shall invite the Power which is not a Party to it to accept the terms of the said Convention; as from the latter Power's acceptance of the Convention, all Powers concerned shall be bound by it."

The Delegation for Italy, considering that the text of the third paragraph might give rise to two interpretations, suggested clarifying it by using the following wording:

"The Powers who are a Party to the present Convention shall be bound by it in their mutual relations, even if one of the Powers in conflict is not a Party to the present Convention."

The International Committee of the Red Cross suggested adding to the third paragraph the two following sentences:

"In the event of an international conflict between one of the High Contracting Parties and a Power which is not bound by the present Convention, the Contracting Party shall apply the provisions thereof. This obligation shall stand unless, after a reasonable lapse of time, the Power not bound by the present Convention states its refusal to apply it, or in fact fails to apply it."

The proposal submitted by the International Committee of the Red Cross was taken up by the Delegation for Norway, with, however, the deletion of the words "after a reasonable lapse of time".

At its Tenth Meeting, the Special Committee rejected the Canadian amendment by 5 votes to 1, with 2 abstentions. It likewise rejected the

Norwegian proposal by 3 votes to 2 with 3 abstentions, and the Belgian amendment by 3 votes to 1 with 4 abstentions. In the course of the debates, the President of the Special Committee had submitted a compromise text, running as follows:

"If one of the Powers in conflict is not a Party to the present Convention, the Powers who are a Party thereto shall notwithstanding be bound by it in their mutual relations. They are, furthermore, bound by the Convention in relation to the said Power, if the latter accepts and applies the provisions thereof."

The first sentence of this text was adopted unanimously. The second by 7 votes with 1 abstention. The Australian Delegation suggested the first sentence of the text adopted should be amended as follows:

"If one of the Powers in conflict is not a Party to the present Convention, the Powers who are a Party thereto shall notwithstanding be mutually bound by it."

This suggestion was referred to the Drafting Committee of the Conference.

The majority of the Special Committee were guided by the following considerations:

Article 2, third paragraph, referred to the possibility of a conflict in which one or several States would be engaged on the one hand, and several States, on the other. When in either one or other group of belligerents, or in both, one or several States were not Parties to the Convention, the *clausula si omnes* would not be applicable; on the other hand, the States Parties to the Conventions must remain bound by it in their mutual relations. In the instance of a war of this character, the Convention could not directly govern the relations between a State Party to the Convention and an adverse State not Party to the Convention. As a general rule, a Convention could lay obligations only on Contracting States. But, according to the spirit of the four Conventions, the Contracting States shall apply them, in so far as possible, as being the codification of rules which are generally recognized. The text adopted by the Special Committee, therefore, laid upon the Contracting State, in the instance envisaged, the obligation to recognize that the Convention be applied to the non-Contracting adverse State, in so far as the latter accepted and applied the provisions thereof. The Contracting State was therefore not bound to apply the Convention in its relations with the adverse non-Contracting State if the latter declared that it did not recognize itself bound by the Convention or while making such a statement, it did not abide by it in practice. A hypocritical declaration, belied by the facts, was not sufficient.

On this point, the text adopted differed from the Belgian amendment. But a declaration was necessary, contrary to the Canadian amendment, according to which an attitude on the part of the non-Contracting State in conformity with the Convention would have sufficed to make it applicable. The declaration of the non-Contracting State might be made spontaneously; it might also be brought about by a summons or by an invitation on the part of the Contracting State, or by intervention on the part of an international body. In this connection, the Convention could not lay down a uniform procedure, nor fix the details of the latter. The Convention would be applicable as soon as the declaration was made. It would cease to be applicable as soon as the declaration was clearly disavowed by the attitude of the non-Contracting belligerent.

*(The text adopted by the Special Committee is contained in Annex No. 14.)*

*Article 4/5/5/5:*

The Canadian amendment was withdrawn.

The United Kingdom Delegation proposed to delete this provision in the Wounded and Sick and Maritime Conventions. This proposal was rejected by 4 votes to 2 with 2 abstentions during the Second Meeting. The United Kingdom Delegation then tabled amendments to the four Conventions. In the Wounded and Sick and Maritime Conventions these amendments ran as follows:

“Besides the agreements expressly provided for... the Parties to the conflict may conclude special agreements regarding medical personnel and chaplains. Such agreements shall in no case adversely affect or restrict the fundamental rights which the present Convention confers on medical personnel and chaplains.”

In the Prisoners of War Convention the amendment would run as follows:

“In addition... the Parties to the conflict may conclude special agreements for all matters relating to prisoners of war, concerning which they may deem it suitable to make separate provision. Such agreements shall in no case adversely affect or restrict the fundamental rights which the present Convention confers upon prisoners of war.”

In the Civilians Convention the amendment ran as follows:

“Besides... the Parties to the conflict may conclude special agreements for all matters concerning which they may deem it suitable to make separate provision. Such agreements shall in no case adversely affect or restrict the funda-

mental rights which the present Convention confers upon protected persons.”

The United Kingdom Delegation considered that it was desirable to provide for the conclusion of agreements which might temporarily affect the rights of protected persons, but would ultimately be to their benefit.

The United Kingdom amendments were rejected at the Twenty-second Meeting by 6 votes to 1 with 2 abstentions. The Special Committee considered it would be difficult to distinguish between rights of protected persons which were fundamental and those which were not. Such a distinction might open the way to all kinds of abuse, and the purpose of the Conventions was to secure minimum guarantees for the persons which they were intended to protect.

The Special Committee considered during the Twenty-second and Twenty-third Meetings that the second sentence of the first paragraph of the Stockholm text was not sufficiently clear, and by a new wording endeavoured to define clearly that the agreements which did not adversely affect the situation of protected persons included both the agreements expressly stipulated in the Articles of the four Conventions, and the other special agreements concluded by the Parties to the conflict.

An Italian proposal to replace the words “Parties to the conflict” by “Contracting Parties” was adopted by 6 votes to 1 with 5 abstentions at the Twenty-third Meeting. A second Italian proposal to add the words “during and after hostilities” after “may conclude” was rejected by 7 votes to 3 with 2 abstentions. A third Italian proposal to replace the phrase “the rights which it confers upon them” by “the rights which it stipulates in their behalf” was rejected by 6 votes to 3 with 3 abstentions.

The second paragraph of Article 4/5/5/5 did not give rise to any discussion and was adopted in the Stockholm text.

The Italian Delegation proposed to add a third paragraph to run as follows:

“No agreement, even should it take the form of a clause of a treaty intended to regulate matters which have remained in suspense at the conclusion of an armed conflict, shall relieve any Party of the responsibilities it has incurred as a result of its failure to observe this Convention.”

After a debate, during the Tenth Meeting the Italian Delegation withdrew their proposal as an amendment to Article 4/5/5/5, reserving the right to submit it subsequently at a more appropriate place.

*(Concerning the text adopted by the Special Committee, see Annex No. 16.)*



## Second Report drawn up by the Special Committee of the Joint Committee

28 June 1949

### Article 5/6/6/6:

A Finnish proposal suggested the readoption of the text submitted at the XVII International Red Cross Conference in Stockholm (*see Annex No. 18*), to be completed however, by the insertion of the word "inalienable" before the word "rights".

The International Committee of the Red Cross, in their booklet "Remarks and Proposals", suggested a new wording for the text adopted in Stockholm (*see Annex No. 17*).

The Special Committee considered that this new wording should not be substituted for the Stockholm text. The latter did not lay a direct obligation on protected persons. It laid upon the Contracting States the obligation not to take into account renunciation of certain of his rights by a protected person.

The Special Committee considered that the insertion of the word "inalienable" was tantamount to a tautology, any valid renunciation being conceivable solely with regard to alienable rights. Furthermore, the Finnish amendment, tending to declare nul and void, not all renunciations, but only those which had been brought about by constraint or any other means of coercion, was defeated by four votes to three with one abstention. The majority of the Special Committee considered that this amendment weakened the scope of the Article, and opened the way to abuse. The minority felt that, in certain circumstances, it might be even in the interests of protected persons to renounce rights conferred upon them by Conventions, and gave examples taken from the history of the first World War, in particular, that of Alsatian and Lorrainer prisoners of war, who had asked to fight for France, and that of Czechoslovak prisoners of war, who had built up an army for the liberation of their country.

### Article 6/7/7/7:

Amendments were tabled by the Delegations of Canada, Italy, the United Kingdom and the Union of Soviet Socialist Republics.

The first Canadian amendment suggesting the

introduction of the words "by belligerents" after the words "the present Convention shall be applied" was withdrawn.

The second Canadian amendment proposed to translate the word "contrôle" in the French text, by "scrutiny" and not by "supervision". During the discussions, other translations had been suggested, in particular "observation" and "examination", but finally "scrutiny" was unanimously adopted by the Anglo-Saxon Delegations who were members of the Special Committee. The fundamental concept was that the Protecting Power could not give orders or directives to the Detaining Power. It was entitled to verify whether the Convention was applied and, if necessary, to suggest measures on behalf of protected persons.

The third Canadian amendment proposed the deletion of the last sentence of the first paragraph, according to which the Detaining Power may refuse its approval only if serious grounds are adduced. This deletion was approved by 8 votes to 1 with 1 abstention. The majority of the Special Committee felt that in accordance with common practice, a State was not obliged to supply the reasons why it refused approval of a diplomatic or consular agent, and that *a fortiori* this would also hold good for delegates selected from outside the diplomatic or consular staff. Such staff did not require to apply for further approval when the State to which they belonged agreed to protect the interests of a belligerent within the State, to which such personnel was accredited. The latter State, however, might at any time withdraw the approval which it had previously given.

An Australian proposal, suggesting the addition of the words "or consular" between "diplomatic" and "staff", was unanimously adopted at the Twelfth Meeting.

The Soviet amendment proposed to add the following sentence to the Article:

"In regard to their cooperation in the application of the Conventions, and the supervision of this application, the activity of the Protecting Powers or of their delegates may not infringe the sovereignty of the State or be in opposition to State security or military requirements."

This amendment was defeated by 7 votes to 1 with 1 abstention. The majority of the Special Committee considered that, by concluding an international Convention, a State thereby agreed to restrict its sovereignty to the extent of certain obligation laid upon it by the said Convention. A general reservation of sovereignty under the Convention might not be invoked by a Contracting State to limit unduly, or even to suppress, the activities of the Protecting Power.

To take into account the motives adduced by the Soviet Delegation in support of their amendment, the French Delegation proposed to add a new paragraph worded as follows:

"The representatives or delegates of the Protecting Power shall not in any case exceed the limits of their mission as defined in the present Convention. They shall, in particular, take account of the imperative necessities of security of the State wherein they carry out their duties. Their activities shall only be restricted as an exceptional and temporary measure when this is rendered necessary by imperative military necessities."

This amendment was adopted by 5 votes to 3 with 1 abstention. The majority of the Special Committee considered it advisable to extend to the other Conventions the scope of this limitation which had already been mentioned in several specific provisions of the Conventions, for instance under Article 116, second paragraph, of the Prisoners of War Convention (*Concerning the draft of the adopted Article, see Annex No. 19*).

#### *Article 7/8/8:*

An Italian amendment, supported by the International Refugee Organization, proposing to add, in addition to the reference to the I.C.R.C., the words "or any other impartial humanitarian body", was adopted by 7 votes with 3 abstentions.

The Special Committee did not think it advisable to add to the conditions which such a body was to fulfil, that of being of an international character. There were humanitarian bodies which were not of an international character, and it would be regrettable if a provision in the Conventions prevented them from carrying out their activities in wartime.

#### *Article 8/9/9:*

Amendments were tabled by the Delegations of Australia, France, Italy, the United Kingdom and an Aide-mémoire was submitted by the International Refugee Organization.

The French proposal to set up, already in peace time, a specific body which would be able to serve

as a substitute for the Protecting Powers was referred to the Joint Committee after a preliminary discussion.

The first paragraph of the Article was unanimously adopted, subject to the amendments which might subsequently appear necessary when a decision had been reached with regard to the French proposal.

The second paragraph was recast to include the ideas contained in the Australian, United Kingdom and Italian amendments, and was replaced by the second, third and fourth paragraphs of the text adopted by the Special Committee.

This text differed essentially from the Stockholm draft on the following points:

According to the text of the Special Committee, the Detaining Power, under the conditions fixed by the second paragraph of the Stockholm draft, was obligated to apply first, either to a neutral State or to a body appointed in accordance with the first paragraph (there may be several such bodies), with a view to their undertaking the duties devolving, under the present Convention, upon the Protecting Powers appointed by the Parties to the conflict. In addition to the neutral States and differing from the Stockholm draft, the text of the Special Committee mentioned the bodies referred to under the first paragraph. These bodies were expressly provided for to carry out the tasks devolving upon the Protecting Powers with the maximum guarantees of impartiality and efficacy. It was only if such protection could not be thus ensured, that the Detaining Power would have to apply to a humanitarian body such as the I.C.R.C. However, such a body could not undertake all the tasks devolving upon the Protecting Powers under the Convention, but only those of a humanitarian character.

If the Detaining Power did not, on its own initiative, apply to a humanitarian body in the circumstances envisaged, any body of this kind might offer it its services, and it might not refuse them. This latter obligation laid upon the Detaining Power was offset by the condition that the body offering its services should be able to afford sufficient guarantees of its ability to perform the duties in question and to fulfil them with impartiality. The same guarantees must be given by any neutral Power or body invited by the Detaining Power. The question may arise as to the necessity for permitting a Detaining Power to claim guarantees of efficacy and impartiality from a neutral Power or a body which it had itself invited. But it might occur that grounds for doubt might subsequently arise. Moreover, the right to demand guarantees was likewise granted to the Detaining Power as well as to the Power, if any, on which the persons to be protected depended, and which might not necessarily be the Power of which such persons were nationals.

A United Kingdom proposal suggested the obligation for the Detaining Power, should it be impossible to ensure protection in accordance with the new second paragraph, of first applying to a recognized international institution, and of accepting the services of such an institution, but this proposal was defeated by 3 votes to 3 with 1 abstention.

A minority of the Special Committee would have preferred to abide by the second paragraph of the Stockholm text, or at least the second and third paragraphs of the new text. They were mainly apprehensive that the possibility afforded by the new fourth paragraph to the Detaining Power might unduly weaken the obligation incumbent upon the latter to find a substitute for the Protecting Power.

The Special Committee did not deem it necessary to mention explicitly the International Refugee Organization, since the latter might be included both amongst the bodies referred to under the first paragraph, and those referred to under the third paragraph of the new text.

To avoid a repetition of events similar to the agreement concluded, during the recent conflict, between the Vichy Government and the German Government, with regard to French prisoners of war in Germany, the French Delegation proposed to insert, in the Prisoners of War Convention, a new paragraph worded as follows:

“No derogation by special agreement may be made to the preceding provisions when one of the Powers concerned with the protection of its prisoners is deprived totally or partially of its sovereignty, in particular when the territory of the said Power is wholly or partially occupied by the troops of the Detaining Power or of the Allies of the latter.”

The Special Committee felt that this provision would be appropriate in all four Conventions. To take into account criticisms with regard to details, the French Delegation worded their amendment as follows:

“No derogation from the preceding provisions shall be made by special agreements between Powers one of which is restricted, even temporarily, in its freedom to negotiate with the other Power or its Allies by reason of military events, more particularly where the whole, or a substantial part, of the territory of the said Power is occupied.”

In this form the French amendment was approved by 6 votes to 2 with 1 abstention.

Article 8/9/9 as a whole was adopted at the Twenty-fifth Meeting by 6 votes to 2 with 1 abstention in the text as drafted by the Special Committee (see *Annex No. 25*).

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### Third Report drawn up by the Special Committee of the Joint Committee

6 July 1949

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#### *Article 38/42/117/128:*

In adopting unanimously (at the Twentieth Meeting) similar amendments submitted by the Delegations of Canada and the United States of America, concerning the first paragraph of Articles 117 Prisoners of War and 128 Civilians, the Special Committee (see *Annex No. 8*) has brought into concordance the Prisoners of War and Civilians Conventions, on the one hand and the Wounded and Sick and Maritime Conventions on the other.

The obligation to incorporate the study of the Conventions in their programmes of civil instruction was undertaken by the Contracting States only in so far as possible, in order to take into account the constitutional limitations of certain governments with regard to public education.

#### *Article 38A/42A/118/129:*

By 11 votes with 1 abstention the Special Committee decided to insert in the Wounded and Sick and Maritime Conventions a similar provision to Article 129 of the Civilians Convention.

A recommendation was made that all countries using the same official language, which was neither French nor English, would agree to draw up a common translation of the Conventions.

#### *Article 43/46/120/131:*

Similar amendments tabled by the Delegations for the United States of America and the United Kingdom proposing to delete in the Stockholm text the sentence: “In case of doubt as to the interpretation of any particular stipulation, the

French text shall be considered as authoritative" were adopted by 11 votes with 1 abstention (Twentieth Meeting).

A proposal made by the Delegation for Monaco, according to which in case of divergency between the French and English texts preference should be given to the text which was most favourable to protected persons, was withdrawn, the Delegation for Monaco reserving the right to submit it later in the course of discussion on the settlement of disputes.

*Article 44/47/123/132:*

This Article was approved during the course of the Twentieth Meeting including the introduction in the two last blank spaces of the words "Geneva" and "21 April 1949".

*Article 45/48/124/133:*

This Article was adopted without discussion at the Twentieth Meeting.

*Article 46/49/125/134:*

The period after which the Conventions would take effect was fixed at six months. The Article, thus completed, was unanimously adopted in the course of the Twentieth Meeting.

*Articles 47/50/121/122-135:*

Article 122 of the Prisoners of War Convention and Article 135 of the Civilians Convention were referred to Committees II and III, who decided to examine them. These are, in fact, not common Articles. Articles 47 of the Wounded and Sick, 50 of the Maritime, and 121 of the Prisoners of War Conventions were adopted as they stood in the course of the Twentieth Meeting.

*Article 48/51/126/136:*

This Article was adopted without discussion in the course of the Twentieth Meeting.

*Article 49/52/127/137:*

The period after which accessions would take effect was fixed at six months. The Article, thus completed, was unanimously adopted in the course of the Twentieth Meeting.

*Article 50/53/128/138:*

Having noted that the English text used successively the words "accession" and "adhesion" to

express the same idea, the Special Committee decided in the course of the Twentieth Meeting to ask the Drafting Committee of the Conference to select one or other of these terms. Subject to this reservation, the Article was unanimously adopted.

*Article 51/54/129/139:*

During the discussions in the Sixth Meeting of the Joint Committee, the Finnish Delegation pointed out that the last sentence of the Stockholm text was superfluous, because denunciation of an international treaty could have no effect on the other international obligations of the denouncing Party.

The purpose of the sentence in question was in reality to establish that obligations deriving from the principles of international law continued to bind the denouncing Party. On the proposal made by the Delegation for Monaco, and guided by the clause known as the de Martens Clause contained in the Preamble of the Fourth Hague Convention of 1907, the Special Committee in the course of the Twenty-first Meeting decided by 5 votes to 2 with 1 abstention, to replace the last sentence of the Article by a new provision stipulating that denunciation would in no way impair the obligations which the Parties to the conflict would remain bound to fulfil by virtue of the principles of the law of nations, as they result from the usages established among civilized peoples, from the laws of humanity and the dictates of the public conscience.

The Stockholm text was, moreover, recast by the Special Committee in the course of the Twenty-fifth Meeting to determine clearly the time when denunciation would take effect. This time would be situated one year after the notification of denunciation to the Swiss Federal Council. However, if the denouncing Power were involved in a conflict at the time of notification of the denunciation, and the conflict lasted more than a year, as from such denunciation, the denunciation would have no effect as long as peace had not been concluded, and operations connected with the release and repatriation of the persons protected (in the Civilians Convention: the operations connected with the release, repatriation and re-establishment of the protected persons) had not been terminated.

*Draft of the Article adopted by the Special Committee, (see Annex No. 57).*

*Article 52/55/130/140:*

The amendment tabled by the United States Delegation proposing to specify that only a copy and not the original of the Convention should

be transmitted to the United Nations Secretariat by the Government of the Swiss Confederation for registration, was adopted by 6 votes to 1 with 1 abstention.

*Draft of the Article adopted by the Special Committee, (see Annex No. 58).*

#### *Signature Clauses.*

The amendment submitted by the United States Delegation, concerning the Signature Clauses, was adopted, subject to the sentence in the second paragraph being worded in the French version as follows: "en langues française et anglaise".

## Fourth Report drawn up by the Special Committee of the Joint Committee

12 July 1949

*(Report on penal sanctions in case of violation of the Conventions)*

Penal Sanctions were discussed in the Special Committee of the Joint Committee on 27, 28 and 29 June. (Twenty-ninth—Thirty-third Meetings.)

The Joint Committee itself dealt, in its Sixth Meeting of 4 May, with the question of whether the Stockholm text of the Articles 39-40/43-44/119/130 or the corresponding Articles in "Remarks and Proposals" of the Red Cross should serve as a basis for discussion. The Netherlands Delegation had tabled the International Committee of the Red Cross' Articles as their own amendment. This amendment has been replaced by the joint amendment submitted by the Netherlands, Australia, Belgium, Brazil, the United States of America, France, Italy, Norway, the United Kingdom and Switzerland (*see Annex No. 49*), which has also replaced the proposals made by the United States of America, Italy and Canada.

The Greek Delegation had made some observations in a Memorandum. The amendments tabled by the Union of Soviet Socialist Republics were also relevant.

The basic document was the Stockholm text containing corrections as indicated in the rectifying note submitted by the I.C.R.C. (*see Annex No. 50*).

The Netherlands Delegate presented the joint amendment with the following introduction:

"The sole object of the Articles dealing with violation is to increase respect for the Conventions, and to strengthen them and the protection they provide by supplying a means of deterring people from violating their provisions and, if necessary, by enforcing obedience to the Conventions. Such Articles existed already in the Wounded and Sick Convention of 1906 and 1929 and the Maritime Convention of 1907.

The Prisoners of War Convention of 1929 did not contain such a provision. Moreover, the Articles only laid an obligation on the Contracting Parties, to propose to their legislators, should their penal laws be inadequate, the necessary measures for the repression, in time of war, of any act contrary to the Convention. Captain Mouton did not know whether all the High Contracting Parties had proposed measures for the repression of such acts to their legislators, but it is certain that many countries have not inserted the necessary provisions in their penal code (see the Report of Colonel Guillaume Favre, member of the International Committee of the Red Cross of 1934).

The absence of such provisions resulted in many violations in the second World War and brings in the danger of possible reprisals. Furthermore, some Contracting Parties had made provisions which would allow their tribunals to try only their own nationals and nothing could be done in respect of nationals of another country where these offences had not been made punishable or against persons which had ordered such offences to be committed. Hence the necessity for stronger wording.

The Stockholm text is already stronger than the previous ones in so far as it has inserted an Article dealing with violation in the Prisoners of War Convention and laid an obligation on each Contracting Party to search for persons alleged to be guilty of breaches, and to indict such persons whatever their nationality before its own tribunals or, if it prefers, to hand them over for judgment to another Contracting Party. Nevertheless many objections against the texts of 1907 and 1929 remain.

The first paragraph, taking up the wording of

the first paragraph of Article 29 of the Wounded and Sick Convention, still reads "the High Contracting Parties shall propose to their legislators". This provision had not the desired result after 1907 and 1929, so why should we hope that it will be better this time.

The Stockholm Conference was not satisfied with its creation and recommended that the International Committee of the Red Cross should submit proposals to a later Conference. Hence the Articles submitted by the International Committee of the Red Cross in their "Remarks and Proposals".

Right at the beginning of this Conference it had become clear, however, that many delegations had strong objections to these proposals and the Netherlands Delegation, which first wanted to give these Articles the chance of being discussed, decided that much time could be saved by trying in the first place to draw up, in collaboration with the delegations which had raised objections, a text which would be acceptable to them and which would at the same time improve and strengthen the Stockholm text.

The proposals made by the International Committee of the Red Cross were gratefully used and so were the amendments tabled by the Union of Soviet Socialist Republics Delegation on the interdictory Articles in the four Conventions.

The improvements of the Stockholm text are as follows:

- (a) Instead of providing for an obligation to "propose to the legislators", we borrowed the much stronger wording of Article V of the Genocide Convention which lays down the obligation to enact legislation "to provide effective penalties".
- (b) To the penal responsibility of the author of a breach we added the responsibility of whoever ordered the breach to be committed. In order to allow for reluctance to include all breaches even trifling ones in penal legislation, we limited the obligation to enact legislation to grave breaches which no legislator would object to having included in the penal code, and left the Contracting Parties free to take their own measures for the repression of breaches which do not come within the category defined as grave breaches.

This category has been carefully defined, so as to avoid including acts which allow for various degrees of gravity and could not therefore be considered to be grave breaches if only committed in their less serious forms. The inclusion of grave breaches which have to be penalized, guarantees a certain amount of uniformity in the national laws,

which is very desirable when tribunals are also dealing with accused of other nationalities.

Finally, the handing over of accused persons has been made conditional by the clause which lays down that the Power asking for an accused who is in the hands of another Power has to make out a *prima facie* case.

It seems clear however, that if a Contracting Party does not hand over an accused person, it has to bring him to trial before its own courts."

Captain Mouton suggested that this text which was evolved with much pain and labor is an advance and improvement on the past and goes as far as is possible at this moment. If accepted, as he sincerely hopes it will be, *ex post facto* legislation will be avoided.

There remain many things to be desired.

It might, for instance, be advisable to state that a grave breach of the Conventions should not be considered as a political crime. There are ideas which were omitted on purpose.

The word "crime" instead of "breach" did not seem to be an improvement, nor could general agreement be reached at this stage regarding the notions of complicity, attempted violation, duress or legitimate defence or the plea "by orders of a superior". These should be left to the judges who would apply the national laws.

The Diplomatic Conference is not here to work out international penal law. Bodies far more competent than we are have tried to do it for years.

Captain Mouton added that the proposals concerning safeguards for the accused as submitted by the International Committee of the Red Cross have neither been adopted. These safeguards are already laid down in the Prisoners of War Convention and in the Civilians Convention. When the accused are of their own nationality, the Contracting Parties should not be obliged to follow international rules of procedure.

The authors of the amendment therefore think that the text laid down in this joint amendment goes as far as is practicable at this moment and will be acceptable to all delegations.

During the discussion, the following points were raised:

1. The Delegation of the Union of Soviet Socialist Republics wanted a time limit of two years similar to that in the Stockholm text.

The Netherlands Delegate replied, that this time limit as provided for in Article 119 of the Prisoners of War Convention: "Within a maximum period of two years the governments of the High

Contracting Parties shall, if their penal laws are inadequate, enact or propose to their legislative Assemblies the measures necessary for the repression, in time of war, of all acts contrary to the provisions of the present Convention", did not appear in the corrected version of the Stockholm text, as reproduced in the rectifying note submitted by the I.C.R.C. (*see Annex No. 50*).

The American Delegate pointed out that in the wording of the joint amendment Article A: "The High Contracting Parties undertake to enact legislation to provide effective penalties...etc." the legislator could not be bound by a time limit and as far as his country was concerned, such a time limit was not acceptable.

The Netherlands Delegate suggested that a certain moral pressure on the legislators could be exercised if the first part of the last sentence of Article 29 of the Wounded and Sick Convention of 1929 were inserted, namely:

"They shall communicate to one another, through the Swiss Federal Council, the provisions relative to such repression" without mentioning a time limit.

The Delegate of Monaco drew the attention of the Committee to the fact that such provisions already existed in the Stockholm draft of two Conventions and have been added to the other two Conventions (*see Article 38A, Article 42A, Article 118 and Article 129*).

The Union of Soviet Socialist Republics Delegate was of the opinion that the Article as drafted was no more than a recommendation as it did not include a time limit.

His proposal to add to the first paragraph of Article A a time limit of two years was rejected by 6 votes to 1, with 3 abstentions (*Twenty-ninth Meeting*).

2. The Delegate of the Union of Soviet Socialist Republics proposed to replace the word "breaches" by "crimes" as used in the Union of Soviet Socialist Republics' amendment on Article 10A of the Wounded and Sick Convention and in similar amendments presented to the other Conventions. The word "crime" should be used, otherwise there was no place for the words "accused" and "trial". Besides the words "war crimes" were used in the Stockholm text.

The Netherlands Delegate answered that this word was omitted in the correction of the I.C.R.C.

This Delegate, and the United States of America, United Kingdom, French and Australian Delegates were opposed to the word "crime", firstly because this word had a different meaning in the national laws of different countries and secondly because an act only becomes a crime when this act is made punishable by a penal law. The Conference is not making international penal law but is under-

taking to insert in the national penal laws certain acts enumerated as grave breaches of the Convention, which will become crimes when they have been inserted in the national penal laws.

A proposal made by the Burmese Delegate to use the word "offences" was not acceptable to other delegations.

The Union of Soviet Socialist Republics' proposal to replace the word "breaches" by "crimes" was rejected by 7 votes to 1, with 3 abstentions (*Twenty-ninth Meeting*).

3. The Norwegian Delegate asked what was meant by the words "in so far as this Convention cannot be otherwise implemented" (*Article A*).

The Netherlands Delegate answered that in some countries the enumerated grave breaches could be punished without special legislation.

The President proposed to delete these words so that the first sentence of Article A would read:

"The High Contracting Parties undertake to enact...any legislation necessary to provide effective penalties..."

This was adopted.

4. The President further proposed to delete the words "in accordance with their respective Constitutions". These words appeared in Article V of the Genocide Convention which was used to draft the first part of Article A.

This proposal was adopted.

The first paragraph of Article A was adopted by 10 votes to 1, with 1 abstention (*Twenty-ninth Meeting*).

5. In the second paragraph of Article A the Italian Delegate proposed to limit the obligation of the Parties to the conflict, to search for persons alleged to have committed any of the grave breaches and to bring them before the courts.

The Netherlands Delegate answered that each Contracting Party should be under this obligation, even if neutral in a conflict. The principle of universality should be applied here. The Contracting Party in whose power the accused is, should either try him or hand him over to another Contracting Party.

The President was of the opinion that a neutral State did not violate its neutrality by trying or handing over an accused, under an international obligation.

The proposal was withdrawn.

6. The Italian and the Monegasque Delegates preferred the word "extradition" to "handing over".

The Netherlands Delegate explained that the use of the word "extradition" was less practicable

because of the large variety of extradition laws and extradition treaties.

The notion "handing over" was a notion of customary international law in so far as it was extensively practised by States after the last war in connection with the activities of the United Nations War Crimes Commission.

7. The Italian Delegate proposed to insert the words "in accordance with the provisions of its own legislation" after: "if it prefers".

This proposal was adopted by 6 votes to 2, with 3 abstentions. (Thirty-first Meeting).

The President suggested the following wording for the last sentence:

"or if it prefers, and provided that a *prima facie* case has been made out by another High Contracting Party concerned, hand them over, in accordance with the provisions of its own legislation, for trial to such Contracting Party".

This was adopted.

8. A proposal made by the Delegate for Greece, that the Contracting Party asking for an accused person to be handed over should give proof of its interest and of its competence to try the accused person in question, was rejected by 6 votes to 5 (Thirty-first Meeting).

9. The question of the French Delegate, who asked what was meant by "a *prima facie* case" and whether this was not in contradiction with the general principle that an accused person was not guilty until his guilt had been proved, was answered by the Netherlands and the United States Delegates who referred to the use of this term by the United Nations War Crimes Commission; it meant there that the State asking for the accused to be handed over had to provide statements which would satisfy the Commission (or in this case the Detaining Power) that a finding of guilt to the charges against the accused was highly probable.

10. A second proposal tabled by the Union of Soviet Socialist Republics Delegate to replace the words "grave breaches" by the words "war crimes" was replied to by the Netherlands and United States Delegates who objected that the term "war crimes" was under consideration by the International Law Commission of the United Nations, and that a war crime was a breach or violation of the laws of war, so that the word "breach" or "violation" was preferable in view of the objections raised to the use of the expression "war crime". The proposal was rejected by the Chairman, seconded by the Australian Delegate, on the ground that the Committee had already decided this question in the first paragraph of Article A.

The second paragraph of Article A was adopted,

with the amendment mentioned under (7), by 10 votes with 1 abstention (Thirty-first Meeting).

The third paragraph of Article A was unanimously adopted.

The whole of Article A was adopted by 6 votes to 1 (see new Article 39/43/119/130, Annex No. 51).

11. During the discussion on Article B, the Delegate of the Union of Soviet Socialist Republics asked that the wording of the Soviet amendment 10A, as modified at a later period, should be added to Article B in the Sick and Wounded Convention.

The Netherlands Delegate pointed out that all the points of the Union of Soviet Socialist Republics text as adopted by the Drafting Committee I were covered by Article B of the Sick and Wounded Convention, and that Article B covered at the same time other interdictory provisions in other Articles of the Convention.

The Union of Soviet Socialist Republics proposal was rejected by 6 votes to 2 with 1 abstention (Thirty-first Meeting).

12. The Italian and Danish Delegates suggested the addition of the words "...and seizure..." after "destruction".

The Australian and British Delegates proposed the word "appropriation". This was adopted (also in the French text) by 8 votes, with 1 abstention.

Article B of the Wounded and Sick Convention and of the Maritime Convention, thus amended, was adopted by 8 votes with 1 abstention (see new Article 40 Wounded and Sick Convention, and new Article 44 Maritime Warfare Convention, see Annex No. 55).

The English text was translated as follows into French:

"...la destruction et l'appropriation de biens non justifiées par des nécessités militaires et exécutées sur une grande échelle de façon illicite et arbitraire".

13. During the discussion of Article B of the Prisoners of War Convention and the Civilians Convention, difficulty arose as to the translation of the words "fair trial" into French.

The Delegate of the United Kingdom suggested changing the wording into "wilfully depriving the prisoner of war (e.g. the protected person) of his rights of trial and of the proper judicial safeguards prescribed in the Convention".

The President said that deprivation of the judicial safeguards of the Convention might mean the violation of one of the Articles of the Convention, but in the standing text it would not always be a grave breach if one of the Articles of the Convention was violated, as long as the accused was tried in a fair way.



The British suggestion was rejected by 4 votes to 4, with 1 abstention. (Thirty-first Meeting).

The President proposed the following text in French:

“d’être jugé régulièrement et impartialement selon les prescriptions de la présente convention”.

This was adopted.

Article B of the Prisoners of War Convention was adopted by 7 votes to 1 with 2 abstentions (see new Article 119A, Annex No. 55).

14. In Article B of the Civilians Convention the Italian Delegate, seconded by the Delegate of the Union of Soviet Socialist Republics, proposed to delete the word “unlawful” before “deportation”. The proposal was withdrawn after the United States Delegate had explained that deportation could be lawful if based on aliens legislation.

15. The Italian Delegate suggested including collective penalties in the enumeration of grave breaches, and was seconded by the Delegate of the Union of Soviet Socialist Republics. Article 50 of the Hague Regulations had made such punishments possible provided the population was regarded as being collectively responsible.

After some discussion the proposal was rejected by 5 votes to 2, with 2 abstentions (Thirty-third Meeting), on the grounds that such a punishment

could not be regarded as being the result of a fair trial and that offences should not be inserted when they could be of varying degrees of gravity and would not be considered to be a grave breach if committed in their less serious form, for instance if a Camp Commandant punished the internees by ordering “reveille” half-an-hour earlier than normal because of a certain number being late for work.

Article B of the Civilians Convention was adopted by 9 votes, with 2 abstentions (see new Article 130A, Annex No. 55).

Finally, the Italian amendment to insert a new Article (40bis, 44bis, 119bis, 130bis) was discussed in the course of the same Meeting.

The President drew attention to a change by the Italian Delegation in the wording of their amendment, the words “as a result of a failure to observe the present Convention” being replaced by the words “as a result of breaches provided for in the preceding Article”.

The Italian Delegate explained that this amendment was a logical consequence of the preceding Article. The State remained responsible for breaches of the Convention and could not refuse to recognize its responsibility on the ground that the individuals concerned had been punished. There remained, for instance, the liability to pay compensation.

The Italian proposal was adopted by 4 votes to 2, with 4 abstentions (see new Article 40A/44A/119B/130B, Annex No. 56).

## Fifth Report drawn up by the Special Committee of the Joint Committee

15 July 1949

### *Draft resolution concerning Article 8/9/9/9*

At its Ninth Meeting on 11 July, the Joint Committee adopted the following text as the first paragraph of Article 8/9/9/9:

“The Contracting Parties may at any time agree to entrust to an organization which offers all guarantees of impartiality and efficacy the duties incumbent on the Protecting Powers by virtue of the present Convention.”

With a view to making this provision more specific, the French Delegation proposed the adoption of a new Article 7A (see Annex No. 21).

In accordance with its terms of reference, the Special Committee examined the French proposal

at the Thirteenth and Fourteenth Meetings but in view of the importance of this entirely new question, decided that it would be more appropriate to discuss the matter in the Joint Committee. A debate took place accordingly at the Eighth Meeting of the Joint Committee.

The Delegate of France explained that the purpose of the proposal to set up a High International Committee was to fill a gap in the Conventions. Provisions had been made for substitutes for Protecting Powers, but such substitutes would not be able to function in all instances particularly where the conflict extended to a very large number of Powers and assumed the character of

a world war with, as a consequence, the elimination of neutrals. Only a permanent body, set up in peacetime, would be able to fill this gap. The French Delegation had studied ways of setting up such a body and, while it was fully aware that its proposals would require exhaustive study, hoped that the Conference would be able to come to a clear decision on the basis of their proposal, so that subsequent study of the question could be undertaken easily and quickly.

The Joint Committee decided to refer these proposals to the Special Committee, which then considered them at its Thirty-fourth and Thirty-

sixth Meetings. A draft resolution, tabled by the United Kingdom Delegation and amended in the course of discussion, was carried without contrary vote and with one abstention.

The text adopted (*see Summary Record of the Thirty-sixth Meeting*) recommended that the advisability of setting up an international body to be vested with the functions set out in the first paragraph of Article 8/9/9/9, should be examined as soon as possible. It was expected in the Committee that the French Government would take the initiative in the matter of these conversations.

## Sixth Report drawn up by the Special Committee of the Joint Committee

16 July 1949

### *Settlement of Disputes*

At its Sixth Meeting on 10 May, the Conference, in Plenary Assembly, asked the Joint Committee to study the advisability of introducing into the Conventions a procedure for the settlement of disputes which might arise in connection with the interpretation or the application of the Conventions.

The Joint Committee then referred this question to the Special Committee at its Seventh Meeting.

In course of its Seventh Meeting the Special Committee set up a Working Party and designated as its President Mr. de Geouffre de la Pradelle, Delegate of Monaco. This Working Party held eight meetings, the last of which was under the Chairmanship of Mr. Georg Cohn, Delegate of Denmark.

The Special Committee studied the Report of the Working Party in course of the Thirty-ninth and Fortieth Meetings, and adopted the conclusions contained therein. These concerned:

- (a) procedure of good offices and consultation (Article 9/10/10/10);
- (b) procedure of enquiry and conciliation (Article 41/45/—/—);
- (c) procedure of judicial settlement (new provision).

(a) *Article 9/10/10/10.*

The first paragraph was amended, according to the proposal made by the United States Delegation, i.e. that it mentioned not only the disputes connected with the application of the Conventions, but also

those pertaining to their interpretation. The addition of the word "interpretation" was opposed by the Soviet Delegation for, in its view, it was not incumbent upon Protecting Powers to interpret the Conventions.

The second paragraph of the Article was adopted according to the Stockholm text. The amendment submitted by the Delegation of Israel was thus rejected. The object of this amendment was to obligate the Protecting Power to submit a proposal to the Parties to the conflict when it was asked to do so by one of these.

The first paragraph, amended by the Working Party (*see Summary Record of the Thirty-ninth Meeting*) was passed by 10 votes for with 2 abstentions, and the second paragraph by 10 votes for and 1 against.

*(Draft of Article adopted by the Special Committee, see Annex No. 27).*

(b) *Article 41/45/—/—*

Amendments which were substantially similar and which had been tabled by the United Kingdom Delegation and the Soviet Delegation were passed with a few modifications by 10 votes to 1 and 1 abstention (*see Summary Record of the Thirty-ninth Meeting*).

The Special Committee considered that Articles 41 and 45 of the Stockholm drafts set up a procedure for recruitment which was too complicated, and that it would be appropriate to revert once more to the provision contained in Article 30 of

the Wounded and Sick Convention of 1929, while defining its terms more clearly.

In the text submitted by the Special Committee (*see Summary Record of the Thirty-ninth Meeting*), the initiative for the enquiry procedure belongs to either one of the belligerents and not to all the Contracting Parties. The membership of the Commission of enquiry was determined by agreement between the Parties and not from a previously established list. The enquiry procedure was not closed by a mere recommendation, but by findings which were mandatory for the Parties.

The Special Committee, moreover, decided by 9 votes for, 2 against with 1 abstention, to propose the introduction of the same provision into the Prisoners of War Convention (Article 119C) and the Civilians Convention (Article 130C).

(c) *Judicial Settlement*

On the basis of a proposal tabled by the Danish Delegation on May 4th completed on June 10th

(*see Annex No. 54*), the Working Party examined the advisability of stipulating a procedure of judicial settlement of disputes relating to the interpretation and application of the Conventions. They had proposed to the Special Committee a text submitted by the Delegation of France and amended by the United States Delegation, which was adopted by 10 votes for, 1 against with 1 abstention (*see Summary Record of the Thirty-ninth Meeting*).

The Soviet Delegation considered that this text did not take account of the provisions of the Statute of the International Court of Justice dealing with the competency of the Court, and that it related to a question which was not within the sphere of the present Conference.

The Special Committee, moreover, proposed to leave to the Drafting Committee of the Conference the decision as to the place in the Conventions where this provision, which was drafted as an independent Article, could most appropriately be inserted.

## Seventh Report drawn up by the Special Committee of the Joint Committee

16 July 1949

### *Article 2, paragraph four*

#### *(Application of the Conventions to armed conflicts not of an international character)*

The four Draft Conventions approved at Stockholm by the XVII International Red Cross Conference included, in Article 2, a fourth paragraph which provided for the application of the provisions of the Convention by each of the adversaries (the Prisoners of War and Civilians draft Conventions speak of each Party to the conflict),

“in all cases of armed conflict not of an international character which may occur in the territory of one or more of the High Contracting Parties”,

independently of the legal status of the Parties to the conflict; moreover, this status would not be affected by the application of the Convention. The Prisoners of War and Maritime draft Conventions stipulated, however, that the application would take place only on condition that the adverse party likewise complied with the provisions of the Convention.

Article 2, fourth paragraph, of the drafts was discussed at length in its first reading in the Joint

Committee at its three first meetings. It was referred on 29 April 1949 to a Special Committee comprising the following countries: Australia, United States of America, France, Greece, Italy, Monaco, Norway, United Kingdom, Switzerland, Union of Soviet Socialist Republics. At its Seventh Meeting of 17 May 1949, the Joint Committee decided to include in the membership of the Special Committee Burma and Uruguay, so that Asia and Latin America might be represented on it.

At its first meeting on 3 May 1949, the Special Committee, in addition to the working text represented by the Stockholm drafts, had before it the following proposals:

- (1) A Canadian amendment;
- (2) A French amendment;
- (3) A Hungarian amendment;
- (4) An Australian amendment;
- (5) A Greek amendment;

- (6) A proposal submitted by the United States Delegation to the second Meeting of the Joint Committee;
- (7) A proposal submitted by the Delegation of Italy to the Second Meeting of the Joint Committee;
- (8) A proposal submitted by the Delegation of Spain to the First Meeting of the Joint Committee.

The Delegation of Canada proposed to delete the fourth paragraph of Article 2.

The Hungarian amendment aimed at standardizing the four Conventions by deleting the reciprocity clause provided for in the Stockholm text of the Prisoners of War and Civilians draft Conventions.

The French amendment proposed to restrict the application of the provisions of the Convention, within the scope of the fourth paragraph to Article 2, to the case when the adverse party possessed an organized military force, an authority responsible for its acts acting within a determinate territory and having the means of respecting and ensuring respect for the Convention.

The Greek amendment was at once withdrawn, the Delegation of Greece being in agreement with the French amendment which was also supported by the Delegation of Italy, the latter, however, suggesting that in cases which were not provided for under the French proposal, the Parties to the conflict should be bound to respect the humanitarian principles embodied in the Preamble of the draft Civilians Convention.

The Delegation of Spain also supported the French amendment, but would have preferred to stipulate that

“the Conventions should only be applied in cases where the legal government was obliged to have recourse to the regular military forces against insurgents organized as military and in possession of a part of the national territory”.

The Australian amendment tended to apply the provisions of each Convention (or at all events, the basic principles of the Convention), within the scope of the fourth paragraph of Article 2, only if:

- (a) the *de jure* government had recognized the insurgents as belligerents; or
- (b) the *de jure* government had claimed for itself the rights of a belligerent; or
- (c) the *de jure* government had accorded the insurgents recognition as belligerents for the purposes only of the present Convention; or
- (d) the dispute had been admitted to the agenda of the Security Council or the

General Assembly of the United Nations as being a threat to international peace, a breach of the peace, or an act of aggression.

The Delegation of Australia, moreover, suggested that the expression “non-international conflict” should not be used, but be replaced by the terms “civil war in any part of the home or colonial territory of a Contracting Party”.

The suggestion made by the Delegation of the United States of America likewise proposed to introduce the following complementary conditions into the fourth paragraph of Article 2:

- that the insurgents must have an organization purporting to have the characteristics of a State;
- that the insurgent civil authority must exercise *de facto* authority over persons within a determinate territory;
- that the armed forces must act under the direction of the organized civil authority and be prepared to observe the ordinary laws of war;
- that the insurgent civil authority must agree to be bound by the provisions of the Convention.

All the proposals tending to introduce complementary provisions into the text of the fourth paragraph of Article 2 had a common criterion, i.e. that it would be dangerous to weaken the State when confronted by movements caused by disorder, anarchy and banditry, by compelling it to apply to them, in addition to its peacetime legislation, Conventions which were intended for use in a state of declared or undeclared war.

To this, the delegations which were in favour of the Stockholm text replied that the latter text presupposed an armed conflict resembling an international war in dimensions, and did not include a mere strife between the forces of the State and one or several groups of persons (uprisings, etc.).

The Special Committee forthwith indicated the lines which it intended to follow by two decisions carried by a clear majority:

- firstly, on 9 May 1949 it rejected, by 10 votes to 1 with 1 abstention, a proposal the purpose of which was to exclude any extension of the Conventions to conflicts not of an international character;
- it then voted against the Stockholm text of the fourth paragraph of Article 2 on 11 May 1949 by 10 votes to 1 with 1 abstention, considering that it was too wide in scope,

Two ways were then open to the Special Committee:

- either limit the cases of conflicts not of an international character, to which the Conventions would apply;
- or restrict the provisions of the Conventions which should be applied in conflicts not of an international character.

These two ways did not exclude each other, and the possibility of solving the problem in different ways in the four Conventions increased the number of solutions to be envisaged.

After a general discussion of the question at the four first meetings, a Working Party, including the following States: Australia, United States of America, France, Norway, and Switzerland, was set up at the meeting on 11 May 1949.

This Working Party submitted a first Draft on 13 May 1949 which is appended to the present Report, Annex A (see also *Summary Record of the Fifth Meeting*).

This Draft defined the cases of non-international conflicts to which the provisions of the Conventions would be applicable (except those referring to Protecting Powers); the Draft was partly based on formal criteria taken from the Australian amendment, and partly on factual criteria taken from the French amendment and the suggestion made by the United States Delegate. In addition to the possibilities envisaged, the Parties to the conflict were to endeavour to bring into force, by means of special agreements, all or part of the provisions of the Convention or in any case to comply with the underlying humanitarian principles of the Convention; the right of initiative of the International Committee of the Red Cross or any other impartial humanitarian body was safeguarded; it was specified that full or partial application of the Convention would have no effect on the legal status of the Parties to the conflict. The Draft left unsettled the question of reciprocity, upon which the Special Committee had not yet made a pronouncement.

The Draft of the Working Party was discussed by the Special Committee at its Fifth, Sixth and Seventh Meetings and at the close of the last meeting was referred to the same Working Party with the request to submit a new text taking into account, in so far as possible, the many comments submitted.

The new text bears the date 25 May 1949; it is appended to the present Report: Annexes B and C (see also *Summary Record of the Twenty-Third Meeting*).

This Draft is characterized by the fact that it comprises different regulations for the Civilians Convention, on the one hand, and for the three

other Conventions on the other. With regard to the first, the Draft confines itself to obligating the Parties to the conflict, in the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, to endeavour to bring into force, by means of special agreements, all or part of the provisions of the Convention, and in all circumstances to act in accordance with the underlying humanitarian principles of the Convention. In the case of the other three Conventions, the Draft preserves the distinction between the two categories of international conflicts; all the provisions of the Convention, except those on Protecting Powers, are applicable to conflicts of the first category, subject to special agreements between the Parties to the conflict; in this instance, however, the adverse party must likewise recognize its obligation, in the conflict in question, to respect the Convention and the other laws and customs of war; in conflicts of the second category, the Parties would endeavour to bring into force, by means of special agreements, all or part of the provisions of the Convention, and in all circumstances would act in accordance with the underlying humanitarian principles of the Convention; to fall under the heading of the first category, the conditions of a non-international conflict should be the same as in the first Draft with, however, certain adaptations; the right of initiative of the International Committee of the Red Cross and any other impartial humanitarian body was safeguarded; it was expressly stated that total or partial application of the present Convention would not affect the legal status of the Parties to the conflict.

The second Draft called forth several written amendments:

- (a) an Italian amendment of 30 May 1949 tending to add, as a condition to the application of the provisions of the Convention to conflicts of the first category, *de facto* respect of the Convention by the adverse party;
- (b) a Greek amendment of 30 May 1949, the contents of which it is unnecessary to indicate, since it was withdrawn without discussion;
- (c) a United Kingdom amendment of 14 June 1949 tending to admit application of the provisions of the Convention to conflicts of the first category only after a period of six months, dating from the beginning of the conflict, and to provide for the competency of the International Court of Justice in cases of disputes with regard to the existence of the conditions governing application of the provisions of the Convention;

(d) a French amendment of 8 June 1949 worded as follows:

"In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall apply the provisions of the Preamble to the Convention for the Protection of Civilian Persons in Time of War.

"The Parties to the conflict should further endeavour to bring into force, by means of special agreements, all or part of the other provisions of the Convention for the Protection of Civilian Persons, likewise those of the Convention for the Relief of Wounded and Sick, the Convention relative to the Treatment of Prisoners of War, and the Maritime Convention. "The application of the foregoing provisions shall not affect the legal status of the Parties to the conflict."

The second Draft drawn up by the Working Party and its amendments were discussed by the Special Committee at its Twenty-third and Twenty-fourth Meetings.

The main objections to the second Draft of the Working Party were that the sub-division of non-international conflicts into two categories would raise interminable discussions at the beginning of each civil, colonial, or other war as to whether it belonged to one or the other category; no jurisdiction had been provided for to determine whether the conditions for full application of the Conventions had been met in a specific case; that in reality such a decision was left to the discretion of the *de jure* government; and that the conditions in question would very seldom be fulfilled.

The French amendment, having been supported by several delegations, it was decided on 15 June 1949 to hand it over for consideration to a second Working Party, composed of the Delegations of France, Italy, Monaco, the United Kingdom and the Union of Soviet Socialist Republics.

The second Working Party submitted a Draft dated 17 June 1949 to the Special Committee. It is appended to the present Report under Annex D (see also *Summary Record of the Twenty-eight Meeting*).

This draft might be summarized as follows:

In the case of armed conflict, not of an international character, occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, a certain number of humanitarian principles expressly set out; the initiative of the International Committee of the Red Cross and any other impartial humanitarian body was safeguarded;

the Parties to the conflict would endeavour to bring into force, by means of special agreements, all or part of the other provisions of the Convention; the legal status of the Parties to the conflict would remain entirely unaffected.

The Draft drawn up by the second Working Party was examined by the Special Committee at its Twenty-eighth, Thirty-second, Thirty-fifth and Thirty-eighth Meetings.

During the discussion, the Delegation of the Union of Soviet Socialist Republics proposed to word the fourth paragraph of Article 2 as reproduced in Annex F (see also *Summary Record of the Thirty-seventh Meeting*).

The Soviet Delegation pointed out, in support of its proposal, that it would be scarcely possible, as the second Working Party had endeavoured to do, to sum up in a few lines the provisions drawn up for the protection of war victims, an application of which would be justifiable in the case of non-international conflict.

The Soviet proposal met with the contention that it did not determine sufficiently clear the provisions of the Conventions which would be applicable in the case of a non-international conflict, and that it did not except from such application a number of rules which it would be impossible to require a *de jure* government to recognize in favour of insurgents.

The Soviet proposal was rejected by 9 votes to 1 at the meeting of 8 July 1949.

The text proposed by the second Working Party was amended in various places and was worded in the form appended to the present report under Annex E (see also *Summary Record of the Thirty-eight Meeting*).

The text thus adapted was lost by 5 votes for and 5 against.

The Vice-Chairman, Colonel Blanco, Delegate of Uruguay, who presided over the meeting, thought he should abstain from voting. Concerning this action, he made at the next meeting on 11 July 1949 a declaration which is recorded under Annex G.

The Committee then reverted to the second proposal of the first Working Party.

At the Thirty-ninth Meeting on 11 July, 1949, the Italian amendment to the second proposal of the first Working Party was rejected by 7 votes against, none for with 3 abstentions. The United Kingdom amendment to the same proposal was withdrawn, the sponsor Delegation reserving the right, however, to submit it again before the Joint Committee. The second proposal of the first Working Party was finally rejected by 7 votes to 4.

The Delegate of Burma declared that his nor any other Asiatic State he is representing in the Special Committee could accept Conventions referring to civil war.

Mention has already been made of the objections which were formulated to the second proposal made by the first Working Party.

The second Working Party's proposal was contested, on the grounds mainly that it did not take into account the existence of civil wars which resembled international wars sufficiently close to justify, in the general interest, the application to them of the provisions of the Wounded and Sick, Maritime and Prisoners of War Conventions as a whole, with the exception of the rules relating to the Protecting Power; according to those in favour of the second draft of the first Working Party, this would arise when insurgents had set up a government which they obeyed, had regular organized forces, had afforded adequate guarantees of order; the *de jure* government could not in the face of this evidence deny the existence of these conditions, without calling forth condemnation on the part of world public opinion.

Although the Special Committee almost unanimously agreed that the four Conventions should contain a clause extending at least part of their benefits to non-international war, it was impossible to rally a majority in the Special Committee in

favour of a text embodying this idea. There are grounds for hope that the long discussions of the Special Committee on this point have not been superfluous, and that the Joint Committee will be able to draw from them the elements for some reasonable solution. Civil wars sometimes leave the most painful wounds in the organism of nations and their healing is most difficult; it was in the well-conceived interest of the Parties to the conflict, and above them of the country which they desired to serve, to reduce the excesses and horrors of such conflicts to the greatest possible extent.

The Special Committee drew the attention of the Joint Committee on the following texts:

- (a) the second Draft drawn up by the Working Party (Annexes B and C);
- (b) the Draft drawn up by the first Working Party, as amended by the Special Committee (Annex E);
- (c) proposal submitted by the Delegation of the Union of Soviet Socialist Republics (Annex F).

## ANNEX A

### *First Draft drawn up by the first Working Party.*

"(1) In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to implement the provisions of the present Convention, provided:

- (a) that the *de jure* government has recognized the status of belligerency of the adverse party, without restrictions, or for the sole purposes of the application of the present Convention, or
  - (b) that the adverse party presents the characteristics of a State, in particular, that it possesses an organized military force, that it is under the direction of an organized civil authority which exercises *de facto* governmental functions over the population of a determinate portion of the national territory, and that it has the means of enforcing the Convention, and of complying with the laws and customs of war; application of the Convention in these circumstances shall in no wise depend upon the legal status of the parties to the conflict.
- (2) This obligation presupposes, furthermore, in all circumstances, that the adverse party declares

itself bound by the present Convention, and, as is the *de jure* government, by the laws and customs of war (and that it complies with the above conditions in actual fact).

(3) The provisions relating to the Protecting Powers shall, however, not be applicable, except in the instance of special agreement between the Parties to the conflict. An impartial humanitarian body, such as the International Committee of the Red Cross, may offer to the Parties to the conflict to undertake the duties conferred by the present Convention on the Protecting Powers.

(4) In the case of armed conflicts which do not fulfil the conditions as determined above, the Parties to the conflict should endeavour to bring into force, by means of special agreements, all or part of the provisions of the present Convention, or, on all circumstances, to act in accordance with the underlying humanitarian principles of the present Convention.

(5) In all circumstances stipulated in the foregoing provisions, total or partial application of the present Convention shall not affect the legal status of the Parties to the conflict."

## ANNEX B

*Second Draft drawn up by the first Working Party.*

*Wounded and Sick, Maritime and Prisoners of War Conventions*: (new Article 2a)

(1) In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply the provisions of the present Convention, provided:

- (a) that the *de jure* government has recognized the status of belligerency of the adverse party, even for the sole purposes of the application of the present Convention, or
  - (b) that the adverse party possesses an organized civil authority exercising *de facto* governmental functions over the population of a determinate portion of the national territory, an organized military force under the direction of the above civil authority, and the means of enforcing the Convention and the other laws and customs of war; application of the Convention in these circumstances shall in no wise depend on the legal status of the Parties to the conflict.
- (2) This obligation presupposes, furthermore, that the adverse party likewise recognizes its

obligation in the conflict at issue to comply with the present Convention and the other laws and customs of war.

(3) The provisions relating to the Protecting Powers shall, however, not be applicable, except in the instance of special agreement between the Parties to the conflict. In the absence of such agreement, an impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict.

(4) In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, but which does not fulfil the conditions as set out above, the Parties to the conflict should endeavour to bring into force, by means of special agreements, all or part of the provisions of the present Convention, and in all circumstances shall act in accordance with the underlying humanitarian principles of the present Convention.

(5) In all cases foreseen in the foregoing provisions, total or partial application of the present Convention shall not affect the legal status of the Parties to the conflict.

## ANNEX C

*Second Draft drawn up by the first Working Party.*

*Civilians Convention*: (new Article 2a)

"In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, the Parties to the conflict should endeavour to bring into force, by

means of special agreements, all or part of the provisions of the present Convention, and in all circumstances shall act in accordance with the underlying humanitarian principles of the present Convention."

## ANNEX D

*Draft drawn up by the second Working Party.*

*Paragraph 1.* — "In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:

- (1) Persons taking no active part in the hostilities, and those placed hors de combat by sickness, wounds, captivity or any other cause, shall be treated humanely in all circumstances and without any discrimination.



To this end, the following acts are and shall remain prohibited with respect to the above-mentioned persons:

- (a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
- (b) taking of hostages;
- (c) outrages upon personal dignity, in particular, humiliating and degrading treatment;
- (d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

(2) The wounded and sick shall be collected and cared for.

(3) No adverse discrimination shall be practised on the basis of differences of race, colour, religion or faith, sex, birth or wealth.

*Paragraph 2.* — An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict.

*Paragraph 3.* — The Parties to the conflict should further endeavour to bring into force, by means of special agreements, all or part of the other provisions of the present Convention.

*Paragraph 4.* — The application of the preceding provisions shall not affect the legal status of the parties to the conflict."

## ANNEX E

*Draft submitted by the second Working Party and amended by the Special Committee.*

§ 1. In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:

- (1) Persons taking no active part in the hostilities, including members of armed forces, who have laid down their arms, and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely without any discrimination on a basis of race, colour, religion or faith, sex, birth or wealth.

To this end the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

- (a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
- (b) taking of hostages;

(c) outrages upon personal dignity, in particular, humiliating and degrading treatment;

(d) the passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all the judicial guarantees which are recognised as indispensable by civilized peoples.

(2) The wounded and sick shall be collected and cared for.

" § 2. An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict.

" § 3. The Parties to the conflict should further endeavour to bring into force, by means of special agreements, all or part of the other provisions of the present Convention.

" § 4. The application of the preceding provisions shall not affect the legal status of the Parties to the conflict."

## ANNEX F

*Proposal made by the Delegation of the Union of Soviet Socialist Republics*

The proposal made by the Soviet Delegation was worded as follows:

A. *Wounded and Sick and Maritime Conventions.*

"In the case of armed conflict not of an international character occurring in the territory of one of the States Parties to the present Convention, each Party to the conflict shall apply all the provisions of the present Convention guaranteeing:

Humane treatment for the wounded and sick; prohibition of all discriminatory treatment of wounded and sick practised on the basis of differences of race, colour, religion, sex, birth or fortune."

B. *Prisoners of War Convention.*

"In the case of armed conflict not of an international character occurring in the territory of one of the States parties to the present Convention, each Party to the conflict shall apply all the provisions of the present Convention guaranteeing:

Humane treatment for prisoners of war; compliance with all established rules connected with the prisoners of war régime; prohibition of all discriminatory treatment of prisoners of war practised on the basis of differences of race, colour, religion, sex, birth or fortune."

C. *Civilians Convention.*

"In the case of armed conflict not of an international character occurring in the territory of one of the States parties to the present Convention each Party to the conflict shall apply all the provisions of the present Convention guaranteeing:

Humane treatment for the civilian population; prohibition on the territory occupied by the armed forces of either of the parties, of reprisals against the civilian population, the taking of hostages, the destruction and damaging or property which are not justified by the necessities of war, prohibition of any discriminatory treatment of the civilian population practised on the basis of differences of race, colour, religion, sex, birth or fortune."

## ANNEX G

*Declaration made by Colonel Blanco (Uruguay)*

In course of the last meeting held on July 8th under my chairmanship, the Special Committee pronounced itself concerning the proposal submitted by the second Working Party, who is studying the question of applying the Conventions in case of civil war.

Of this proposal, amended in course of the meeting, each paragraph was put to the vote.

At the time of the vote on the first paragraph, five delegations voted for and five delegations voted against the proposed text.

In the presence of this result, I have asked the

Secretary of the Committee, if in case of a partition of the votes the President was allowed to vote. The Secretary replied that the rules of the Conference were silent on this point.

Consequently, in my character of Delegate of Uruguay, I declare that if I had not been called upon to preside over the meeting, I would have voted in favour of all the paragraphs as proposed by the second Working Party, such as they were amended in course of the discussion and I reserve my right to vote in this connection at a later occasion.

## Report drawn up by the Joint Committee and presented to the Plenary Assembly

Following the decision taken by the Conference at the Plenary Meeting on 26 April 1949, the Articles common to the four Conventions were referred to the Committee known as the Joint Committee. Its Chairman was Mr. Maurice Bourquin (Belgium), Professor at the University of Geneva, and its Rapporteur Colonel Claude Du Pasquier (Switzerland), Professor at the Universities of Geneva and Neuchâtel.

The Joint Committee examined the following provisions (the Article of the Wounded and Sick Convention is followed by the corresponding Articles of the other three Conventions, in the order Maritime Warfare Convention, Prisoners of War Convention and Civilians Convention):

Articles 1/1/1/1  
 2/2/2/2  
 4/5/5/5  
 5/6/6/6  
 6/7/7/7  
 7/8/8/8  
 8/9/9/9  
 9/10/10/10  
 38/42/117/128  
 —/—/118/129  
 39, 40/43, 44/119/130  
 41/45/ —/—  
 43/46/120/131  
 44/47/123/132  
 45/48/124/133  
 46/49/125/134  
 47/50/121/—  
 48/51/126/136  
 49/52/127/137  
 50/53/128/138  
 51/54/129/139  
 52/55/130/140.

The Joint Committee entrusted a Special Committee with the preparation of the texts. This Committee, composed of twelve delegations, was under the Chairmanship of Mr. Plinio Bolla (Switzerland), a Judge of the Supreme Federal Court, and held 41 meetings. Within this Committee various Working Parties were set up,

regarding which seven Reports of the Special Committee give all the information wanted.

The Joint Committee devoted seven meetings to a first reading of the Articles common to the four Conventions. After the Reports drawn up by the Special Committee had been received, the Committee held six meetings.

The Articles which the Joint Committee had to deal with did not form a complete whole. They were really separate provisions which should be considered separately, especially as they vary considerably in scope. Some — and they are many — were adopted without discussion (Stockholm text). It will not be commented upon them; the present Report will only refer to those which gave rise to discussion either in the Special Committee or in the full Committee.

### *Article 2/2/2/2:*

As this Article gave rise to no discussion in the Joint Committee, we have only to refer to the first Report drawn up by the Special Committee and presented to the Joint Committee. The Rapporteur, Mr. Bolla, explained that the Special Committee decided to detach from this Article the fourth paragraph, which relates to the application of the Convention to armed conflicts not of an international character. This paragraph now forms Article 2A.

The first and second paragraphs were adopted without opposition as they stand in the Stockholm text.

As regards the third paragraph (*see Annex No. 4*), this gave rise to a more animated discussion. It was finally decided to adopt the solution embodied in the text accepted by the Special Committee and ratified by the Joint Committee. This text provides that, in case of a conflict in which one of the parties is not a signatory to the Convention, the provisions thereof shall nevertheless apply if the non-signatory party accepts and applies its provisions. This calls for a declaration — a suspensive condition — and for application; when it is admitted that a non-signatory State is not applying the Convention, this would constitute a resolutive condition.

*Article 2A/2A/2A/2A: Application of the Conventions to Armed Conflicts not of an international character*

In the Stockholm Draft, the fourth paragraph of Article 2 stipulated that, in all cases of armed conflict not of an international character, each of the Parties to the conflict should be bound to implement the provisions of the Conventions.

At the present Conference, the question immediately arose of deciding what was to be understood by "armed conflict not of an international character which may occur in the territory of one of the High Contracting Parties". It was clear that this referred to civil war, and not to a mere riot or disturbances caused by bandits. States could not be obliged as soon as a rebellion arose within their frontiers, to consider the rebels as regular belligerents to whose benefit the Conventions had to be applied. But at what point should the suppression of the rising be regarded as a civil war? What criterion should be adopted?

The first solution considered was to impose the application of this Convention only when the rebellion had asserted and organized itself with enough strength and coherence to represent several of the features of a State (the existence of an army, an authority responsible for its actions, a specified area of territory, etc.). A further possible solution was to make the criterion the recognition of the rebels as belligerents by the State in conflict with them or by other States. But in view of the enormous practical difficulties to which these differentiations would have given rise, and the very thorny problems presented by the application to civil war of Conventions drawn up for international war, an attempt was made to find another principle which might provide a solution, and it was proposed to restrict the obligations of the legitimate government and the rebel authority to the most obvious and imperious rules of the Conventions, that is, to humanitarian duties as a whole.

These different ways of approaching the problem are described in the Seventh Report of the Special Committee of the Joint Committee, which also gives an account of the various stages in the work of the Special Committee and its successive Working Parties.

The conclusion of the Special Committee did not take the form of a recommendation: the Committee restricted itself to submitting to the Joint Committee, in the Annexes A to F attached to its Report, five texts or groups of texts among which a choice had to be made.

The first and second Drafts of the first Working Party, reduced to their simplest terms, make it obligatory for both Parties to apply the Convention but subject to one of the following two conditions:

the recognition of belligerent status by the legitimate government to its adversaries (the formal criterion), or the existence of the features of a state on the rebel sides (the material criterion). The Joint Committee rejected them.

The Draft of the second Working Party, whether in its first form or in the form as amended by the Special Committee, abandons the idea of applying the Conventions as a whole and also of defining the objective conditions which would make it obligatory. It repeats the wording of the Stockholm text: "conflict not of an international character" and lays down a minimum of humanitarian rules which both Parties are bound to respect. It is this Draft, as amended by the Special Committee (Annex E, which is identical to the joint proposal of France, Greece, Italy, the United Kingdom, Switzerland and Uruguay), which was approved by the Joint Committee, the final vote being 21 against 6, with 14 abstentions.

In the course of the discussion, it was made clear that, in spite of the term "the High Contracting Parties" which appears at the beginning of the Article, this text imposes obligations only on the Parties to the conflict, and that neutrals are not bound by the Convention in the case of a purely internal conflict.

Lastly, Annex F consists of a proposal made by the Union of Soviet Socialist Republics, submitting drafts for four different Articles for each of the four Conventions; it stresses the fact that in the case of an armed conflict not of an international character, each of the Parties to the conflict is bound to apply all the stipulations of the Convention guaranteeing humane treatment for all protected persons. It further stipulates that all the rules relating to the prisoners of war régime must be applied to the combatants. The proposal was rejected by 25 votes to 9 with 3 abstentions.

*Article 4/5/5*

The first sentence of the first paragraph (*see Annex No. 16*) refers on the one hand to the agreements expressly provided for in various Articles of the Conventions, and, on the other hand, to special arrangements on all other matters concerning which the parties may deem it suitable to make special provision. The second sentence provided that such agreements shall in no case adversely affect the situation of protected persons. The intention of those who drafted this text was to provide that the latter rule should apply equally to the agreements expressly provided for in various Articles as to the others. This, however, did not meet with the approval of one delegation, which would have preferred to limit the application of the second sentence to the special agreements expressly pro-

vided for at the beginning of the Article. An amendment proposing this interpretation was rejected by 16 votes to 8, with 3 abstentions.

*Article 6/7/7/7*

The third paragraph (*see Annex No. 19*) was drawn up by the Special Committee with special reference to a proposal made by the Delegation of the U.S.S.R. which had submitted the following amendment:

„In regard to their co-operation in the application of the Conventions, and the supervision of this application, the activity of the Protecting Powers or of their delegates may not infringe the sovereignty of the State or be in opposition to State security or military requirements.”

The Soviet Delegation, however, was not satisfied and maintained its amendment which was rejected by 17 votes to 7, with 8 abstentions. The majority felt that the Protecting Power has no authority to intervene except for the purpose of seeing that the provisions of the Convention are duly respected; these represent commitments freely entered into. It is accepted in international law that a commitment always involves, by force of circumstances, a certain restriction of the freedom of action of the State which has entered into it, but that the sovereignty of the State is not thereby affected, since the signature of a Convention itself constitutes a manifestation of its sovereignty and a declaration of the will to be bound by it.

*Article 8/9/9/9*

For the purpose of determining clearly the scope of the text adopted, one cannot do better than reproduce a passage from the Report submitted by Mr. Bolla, Judge of the Federal Court, in his capacity as Chairman of the Special Committee of the Joint Committee:

“According to the text of the Special Committee, the Detaining Power, under the conditions fixed by the second paragraph of the Stockholm Draft, was obligated to apply first, either to a neutral State or to a body appointed in accordance with the first paragraph (there may be several such bodies), with a view to their undertaking the duties devolving, under the present Convention, upon the Protecting Powers appointed by the Parties to the conflict. In addition to the neutral States and differing from the Stockholm Draft, the text of the Special Committee mentioned the bodies referred to under the first paragraph. These bodies were expressly

provided for to carry out the tasks devolving upon the Protecting Powers with the maximum guarantees of impartiality and efficacy. It was only if such protection could not be thus ensured, that the Detaining Power would have to apply to a humanitarian body such as the International Committee of the Red Cross. However, such a body could not undertake all the tasks devolving upon the Protecting Powers under the Convention, but only those of a humanitarian character.

If the Detaining Power did not, on its own initiative, apply to a humanitarian body in the circumstances envisaged, any body of this kind might offer it its services, and it might not refuse them. This latter obligation laid upon the Detaining Power was offset by the condition that the body offering its services should be able to afford sufficient guarantees of its ability to perform the duties in question and to fulfil them with impartiality. The same guarantees must be given by any neutral Power or body invited by the Detaining Power. The question may arise as to the necessity for permitting a Detaining Power to claim guarantees of efficacy and impartiality from a neutral Power or a body which it had itself invited. But it might occur that grounds for doubt might subsequently arise. Moreover, the right to demand guarantees was likewise granted to the Detaining Power as well as to the Power, if any, on which the persons to be protected depended, and which might not necessarily be the Power of which such persons were nationals.”

One delegation raised objections to the second, third and fourth paragraphs, which it regarded as diminishing the freedom of choice of a belligerent State in regard to the substitutes for Protecting Powers. These three paragraphs, however, were adopted by 24 votes to 10.

The fifth paragraph was added by the Special Committee in order to render impossible agreements such as that which was entered into between the Vichy Government and the German Government on the subject of French prisoners of war in Germany.

*Question of the High International Committee*

The French Delegation had submitted a proposal (*see Annex No. 21*) to insert a new Article for the purpose of establishing a “High International Committee” consisting of thirty members, whose duty would be, in the event of a conflict, to “supervise the application and ensure the respect for the Convention”. The object of the proposal was to make provision for the absence of any Protecting Power in the event of a world wide war in which there were no neutral States. The International Committee of the Red Cross, it is clear, would only

be able to undertake humanitarian duties, and could certainly not undertake any mandate of an administrative nature which devolved on the Protecting Power.

This proposal was referred to the Special Committee of the Committee for consideration, and is dealt with in the fifth Report of the Special Committee. The idea was accepted, but instead of an Article incorporated in all the four Conventions, it was embodied in a draft Resolution recommending to the Powers "that consideration be given as soon as possible to the advisability of setting up an international body" to fill the gap to which the French Delegation had drawn attention.

During the discussion in the Joint Committee, various objections were raised with regard to the practical difficulties which this High International Committee would encounter. The Resolution was, however, adopted by 25 votes to 8 with 6 abstentions (see *Summary Record of the Thirty-sixth Meeting of the Special Committee for the text of the Resolution*).

*Settlement of Disputes. Article 9/10/10/10. Article 41/45/119C/130C. Article 41A/45A/119D/130D*

To deplore the inadequacy of the procedure for settling disputes under international law is almost a commonplace. Whereas national legislations generally provide for the repression of any infringement of their rules, and whereas all legal disputes are settled by the national courts of justice, the dogma of State sovereignty in international law has proved an insurmountable obstacle to any generalization of a system of compulsory international jurisdiction.

It is true that the period in which we are living has witnessed undoubted progress in this respect; arbitration by agreement has made considerable progress, while the establishment of an International Court of Justice has broken fresh ground. But at every stage in the study of our Conventions, these questions inevitably arise: in the event of a violation of a Convention, how is the injured State to obtain justice? In cases of differences of opinion as to the interpretation of the text, how can the law be declared, and how can a dispute with regard to the interpretation of one of our Conventions be settled by arbitration while the two parties are at war with one another?

This was the reason why, at the first reading, the Delegate of Monaco proposed, in connection with Article 9/10/10/10, the revision of the conciliation procedure and the insertion of an arbitration clause in the Conventions (see *Summary Record of the Sixth Meeting*). A draft Resolution concerning the procedure for the settlement of disputes was submitted, at the same time, by

the Delegations of Austria, Denmark, Finland, France, Monaco and the Netherlands.

The Plenary Meeting, at its Sixth Meeting on 10 May 1949, adopted this draft Resolution, which was referred for consideration to the Joint Committee, who in turn passed it on to the Special Committee. The latter prepared a report (*Sixth Report see page above*) and submitted texts of the three Articles 9/10/10/10 (see *Annex No. 27*), 41/45/119C/130C (see *Summary Record of the Thirty-ninth Meeting of the Special Committee*), and a new Article, whose place in the Convention was decided by the Drafting Committee (41A/45A/119D/130D), (see *Sixth Report*).

#### *Article 9/10/10/10*

The question dealt with here is the conciliation procedure intended to result in a meeting between the mandatories of the two parties, in the event of a dispute regarding the application of the Conventions. The Special Committee added the case of a dispute concerning the interpretation of a Convention; and one delegation protested against the inclusion of this expression, since, it was argued, it was not the duty of the Protecting Powers to intervene in juridical questions which were not within their competence and concerned the interpretation of the Conventions. But the text in question does not confer any duty of interpretation on the Protecting Power: if there is a dispute on a question of interpretation, this implies that the two parties attribute different meanings to one and the same provision, and in such cases, the Protecting Powers are simply required to "lend their good offices with a view to settling the disagreement" by arranging for a meeting of the representatives of the two parties, as provided in the second paragraph, or by proposing a neutral personality for their acceptance.

This Article was adopted by 24 votes to 6, with 4 abstentions.

#### *Article 41/45/119C/130C*

This provision, which now applies to the Prisoners of War and Civilians Conventions, deals with violations of the Convention and establishes a procedure for enquiry, or possibly arbitration. It is simpler than Article 41 of the Wounded and Sick Convention in the Stockholm text, and reverts to the imperative wording of Article 30 of the 1929 Convention: "once the violation has been established, the belligerents shall put an end to it and shall repress it within the briefest possible delay".

There was no opposition to this Article.

*New Article 41A/45A/119D/130D*

International Justice, as a result of the adoption of this provision, makes its appearance in the Convention, and to grasp the full bearing of this, the wording of Article 36, second paragraph, of the Statute of the International Court of Justice must be recalled:

“The States, parties to the present Statute, may at any time declare that they recognize as compulsory *ipso facto* and without special agreement, in relation to any other State accepting the same obligation, the jurisdiction of the Court in all legal disputes concerning:

- (a) the interpretation of a treaty;
- (b) any question of international law;
- (c) the existence of any fact which, if established, would constitute a breach of an international obligation;
- (d) the nature or extent of the reparation to be made for the breach of an international obligation.”

For States which have already adhered to the Statute of the Court, the only effect of the new Article is to extend the competence of the Court to their disputes concerning the Convention with States signatories to it, but which have not adhered to the Statute.

With reference to these States, they are bound to accept compulsory arbitration, within the framework of the Conventions, in their disputes with all the Contracting Parties.

One delegation objected to the insertion of this Article and invoked Article 35 of the Statute of the Court, which provides that the conditions in which the Court is open to States which are not parties to its Statute, shall be determined by the Security Council, a provision which the Delegation considered at variance with our text as it was of opinion that the present Conference was not competent to settle questions which fell within the competence of the Security Council.

The Article was nevertheless adopted by 17 votes to 10, with 10 abstentions.

*Repression of Abuses and Infractions of the Conventions: Article 39/43/119/130, Article 40/44/119A/130A, Article 40A/44A/119B/130B*

Those of the above Articles which figured in the Stockholm drafts covered two points:

- (1) an undertaking by the Contracting Parties to complete their national legislation by the incorporation of penal provisions for the repression of acts constituting a breach of the Conventions;

- (2) the obligation for the Contracting States to apprehend persons charged with acts contrary to the Conventions, regardless of their nationality, and to refer them for trial to their own Courts, or if necessary, to those of another Contracting State.

Moreover, the Stockholm Conference had, in Resolution XXIII, expressed the wish that the International Committee of the Red Cross should continue its work on the repression of abuses and infractions of the humanitarian Conventions and should submit proposals on the subject to a subsequent Conference. For this reason the International Committee of the Red Cross convened a Committee of Experts in December 1948, which prepared new texts; these appear in the “Remarks and Proposals” of the International Committee of the Red Cross (*see pages 5, 18, 33, 64, 84*). This Draft contained comparatively far-reaching innovations, which impinged on the domain of international penal law.

The Special Committee of the Joint Committee considered it advisable to proceed more cautiously; it followed the lead of the Experts Committee in devoting a special article to “grave” violations, but without any reference to an international jurisdiction. The fourth Report drawn up by the Special Committee of the Joint Committee, for which Captain Mouton (Netherlands) was responsible, contains all the relevant information relative to the origin of the texts adopted. It will suffice here to recall his statement that it is not the duty of this Conference to frame rules of international penal law. The sole purpose of the present Report is to summarize the Joint Committee’s reception of the proposals of the Special Committee, and to draw the relevant conclusions.

*Article 39/43/119/130*

The first of the three proposals submitted by the Special Committee recapitulates (*see Annex No. 51*) the substance of the two points in the Stockholm draft already referred to above; but the emphasis is laid on the clauses dealing with “grave” breaches, which are defined in the following Article.

Certain delegations were opposed to the abolition of the two years’ time limit for the enactment of the necessary legislative measures. But it was pointed out in reply that in certain federative States, where the federal authority is not competent to adopt penal legislation, it takes a great deal of time to bring the constituent States to adopt the necessary legislation. The amendment to re-insert the time limit was rejected.

An amendment to substitute the words “serious crimes” for “grave breaches” was also rejected.

The third paragraph is dealing with the other acts contrary to the provisions of the Conventions. The text submitted by the Special Committee reads: "Each High Contracting Party shall take measures necessary for the repression...", but a United Kingdom amendment was submitted to replace, in the English text, "repression" by „suppression" and also, in the French text, „répression" by "suppression". At a meeting of the Joint Committee it was proposed, in French, to adopt the word "redressement"; and this was adopted. By using the word "suppression" in the English text, it was intended to signify that all necessary measures would be taken to prevent a recurrence of acts contrary to the Convention, which was perfectly clear. In the French text the following was a satisfactory translation: "...prendra les mesures nécessaires pour faire cesser les actes contraires aux dispositions". It was tacitly adopted by the Joint Committee at its Meeting on 25 July 1949.

A fourth paragraph was added, as the result of the adoption of a French amendment, to ensure to the accused safeguards in procedure and the right to select their own counsel.

#### *Article 40/44/II9A/I30A*

This Article (*see Annex No. 55*) contains the list of grave breaches. No objections were raised in the Committee, except a Finnish amendment to replace the expression "maltreatment", which was considered unduly vague, by the words "inhuman treatment".

The proposal to introduce the term "serious crimes", already made with regard to the preceding Article, was again rejected, since the specialists in criminal law explained that crime is a technical term used in penal law as opposed to misdeemeanour or offence, and which is therefore too restricted with reference to the wider term "breach".

#### *Article 40A/44A/II9B/I30B*

This is a new provision (*see Annex No. 56*) inserted at the suggestion made by the Italian Delegation, intended to render null and void, in advance, any contractual exemption by which a victor State could prevail upon the conquered State to cease to hold the victor responsible for any violations of the Conventions committed by the organs of the latter; any clauses of this kind might render useless the prosecution of individual guilty persons, for where a State has obtained a promise that it shall not be held responsible, it would be extremely difficult to condemn an individual agent acting under its orders. This provision was the only means of ensuring that the compulsory character of the prosecution, as proclaimed in the preceding Article, should continue in force.

The scope of this Article is comparatively restricted. It does not cover special financial arrangements under which a State can finally liquidate a claim to damages by an agreed lump sum payment or a settlement in compensation.

The Article was adopted by 18 votes to 16, with 3 abstentions. The minority criticized the Article as wanting in clearness.





# COORDINATION COMMITTEE

## FIRST MEETING

*Monday 22 April 1949, 12.15 p.m.*

*Chairmen:* Mr. Leland HARRISON (United States of America), Vice-President of the Conference; subsequently Mr. F. CASTBERG (Norway)

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### **Election of the Chairman**

Mr. Leland HARRISON (United States), Second Vice-President of the Conference, opened the meeting and invited the Committee to elect its Chairman.

On the proposal made by Mr. MILL IRVING (United Kingdom), seconded by Commander OROZCO SILVA (Mexico), the Committee elected Mr. CASTBERG (Norway) to the Chairmanship.

The CHAIRMAN thanked the Delegates for this tribute and for the confidence which they thereby showed in him.

### **Election of two Vice-Chairmen and one Rapporteur**

On the proposal made by Mr. Leland HARRISON (United States), seconded by Mr BAMMATE (Afghanistan), Safwat Bey (Egypt) and Mr. Luang Dithakar Bhakdi (Thailand) were elected Vice-Chairmen.

On the proposal made by SAFWAT BEY (Egypt), the Committee elected Mr. Mill Irving (United Kingdom) to the office of Rapporteur.

### **Agenda and date of the next Meeting**

The CHAIRMAN pointed out that, the task of the Committee being to coordinate the work of the three principal Committees, and to see that no problem which came within the terms of reference of each Committee was overlooked, the Coordinating Committee could not undertake its labours before the main Committee had begun their work and had adopted texts. The date of the next meeting could not therefore be fixed. It would be announced later.

The Chairman's proposal was unanimously adopted.

*The meeting rose at 12.40 p.m.*

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## SECOND MEETING

Monday 27 June 1949, 3.30 p.m.

Chairman: Mr. F. CASTBERG (Norway)

**Terms of Reference of the Coordination Committee**

The CHAIRMAN gave a brief explanation of the terms of reference of the Coordination Committee. Each Article adopted by Committees I, II and III would be examined by the Coordination Committee and afterwards by the Drafting Committee. The essential duty of the Coordination Committee was to see that there was no lack of concordance between the Articles dealing with similar matters in one or other of the Conventions.

Mr. MILL IRVING (United Kingdom), Rapporteur, had prepared the following statement which had been distributed to the delegates and which he then read.

1. The Bureau of the Conference considered the functions of the Coordination Committee at a meeting held on 21st June and recommended that the Committee should begin work without delay on the Articles which have already been voted by Committees I, II and III.

2. The duty of the Coordination Committee, as defined in Article 18 of the Rules of Procedure, is to examine the conclusions of the Committees I, II and III and to draw the attentions of the Committees concerned to any discrepancies in their conclusions. It may make recommendations to the Committees concerned as to how these discrepancies should be removed.

3. The Bureau further recommended that the Committee should try to avoid discrepancies between the Conventions and should pass on Articles they had accepted to the Drafting Committee. When, however, any change was found necessary, the Committee should refer the Article back to the Committee or Committees concerned with recommendations, as provided for in the Rules of Procedure.

4. The Committee has first to decide what the limits of our task are so that we may be able

to restrict our discussions solely to the matters which are within the competence of this Committee. If we do this at the outset it ought to be possible to complete the work of the Committee within a reasonable time.

5. The Rapporteur has considered with the Chairman, in consultation with the Secretariat, the question of the definition of the work and has the following suggestions to make.

The Articles which are submitted to this Committee will have to be voted upon in the main Committees and will therefore represent the considered views of the majority of the Conference at this stage. When these Articles come up for consideration, the Committee shall naturally be confronted with texts which in some cases it considers excellent and in others open to objection. But the sole duty of the Committee is to accept the Articles which it receives and avoid any reopening of the discussion on their merits or demerits however great may be the temptation. If we follow this rule our discussions may lose something in liveliness but should gain in speed.

6. With regard to the working method, the Rapporteur suggests that the Committee should use the Concordance tables contained in Conference Document No. 5. The Concordance will need amending owing to the changes that have been made in the numbering of some Articles and splitting up of others. But no doubt we shall be able to make the necessary alterations as we proceed.

7. The Rapporteur suggests that the Committee should defer consideration of Articles relating to similar subjects until the relative Articles from all the main Committees have become available for the purpose of coordination.

8. In each Convention there are a certain number of Articles which appear to have no connection in substance with Articles in any of the other Conventions and the Rapporteur has been in some doubt whether such Articles should be considered in this Committee. Although no question of coordinating

may arise in such cases, it is suggested that there would none the less be some advantage in such Articles also, when they are completed by the Committee concerned, passing through the Coordination Committee who might wish to make some recommendation in the matter of form and arrangement.

9. In advance of each meeting the Rapporteur proposes to circulate a list of the Articles proposed to consider. It will of course be open to any member of the Committee at the meeting or before, to suggest the addition of any other Article to the list if he considers it deals with a related subject. The Rapporteur also suggests that other delegations not represented on the Coordination Committee should be invited to make suggestions regarding the reconciliation by the Coordination Committee of any other Articles than those mentioned.

The CHAIRMAN opened the discussion on the Rapporteur's statement.

Mr. STARR (United States of America) made certain reservations concerning Articles which had no relation with Articles in other Conventions. He did not understand why a Coordination Committee should be called upon to intervene in such cases, but he reserved his opinion.

Mr. POPPER (Austria) also wondered whether he had understood correctly the bearing of the eighth paragraph of the Rapporteur's statement regarding Articles which had no relationship with paragraphs in other Conventions. Those Articles might also contain terms which it would be useful to correlate in all the Conventions. For example, when reading the Articles adopted it would be noticed that the words "Parties to the conflict" had been used in some places and in others the words "belligerents" to signify the same thing.

The CHAIRMAN hoped that it would be possible to coordinate the terms throughout any one Convention; he considered, however, that the Coordination Committee should merely point out any discrepancies and leave it to the Drafting Committee and Committees I, II and III to take whatever decisions might be necessary.

Mr. MEVORAH (Bulgaria) requested that the scope of the Committee's work should be precisely defined. The Committee was not called upon to transform itself into a supervisory committee; for that reason it would seem desirable to specify that Articles which had no connection in substance with those of other Conventions should also be

dealt with by the Coordination Committee but only if certain discrepancies were apparent in those Articles.

The CHAIRMAN agreed with the Delegate of Bulgaria's observations. Naturally only those parts of Articles in which some discrepancy was apparent would be examined by the Coordination Committee. Accordingly, the whole of each Article would not be re-read during the meetings; they would merely be indicated by their number.

The Committee agreed to that procedure.

The CHAIRMAN opened the discussion on the first Articles to be examined.

### Articles 3 Wounded and Sick and 4 Maritime

Mr. GARDNER (United Kingdom) pointed out that the two texts had been established by Committee I, and the discrepancy remaining between the two Articles was intentional. He questioned whether it was necessary to reconsider the coordination which had already been made by Committee I.

On the other hand he drew the attention of the Committee to Article 1 of the Wounded and Sick Convention, which might differ from the Prisoners of War Convention. For that reason it might perhaps be desirable to re-examine Article 1.

Mr. STARR (United States of America) as a member of Committee I, said that the remarks made by the Delegate of the United Kingdom were well-founded. If any discrepancy existed between the two Conventions, it was, generally speaking, intentional.

The CHAIRMAN again stressed that the Coordination Committee was not called upon to discuss questions of substance. It had only to decide whether any lack of concordance was intentional or not, and then to point out to the Committees any errors which might have been made involuntarily.

Mr. MILL IRVING (United Kingdom), Rapporteur, quoted Article 32 of the Wounded and Sick Convention and Article 38 of the Maritime Warfare Convention as examples. The first paragraph of each of those Articles was identical: Article 38, however, contained a second paragraph which was omitted from Article 32. The discrepancy was obvious at first glance and therefore did not need to be referred to the Drafting Committee.

Mr. GARDNER (United Kingdom) explained that there would be considerable difficulty in coordinating any further the Wounded and Sick and Maritime Warfare Conventions. The fact that they had been coordinated already should be borne in mind in order not to undertake work which had been done already.

Mr. BURDEKIN (New Zealand) agreed with the remarks made by the Delegates of the United States of America and of the United Kingdom. There were a few Articles regarding which delegates wished to point out a lack of concordance. For example, Article 21 in the Maritime Warfare Convention, and Article 21 of the Wounded and Sick Convention. It could not be said that that was a case of intentional discrepancy between the Conventions. It would not be necessary, however, to re-examine all the Articles.

The CHAIRMAN asked if there were any further remarks as regards Article 3 of the Wounded and Sick Convention and Article 4 of the Maritime Warfare Convention.

No remarks were made.

#### Articles 15 Wounded and Sick, 19 Maritime and 15 Civilians

Mr. ADAM (Belgium) pointed out that the term "belligerents" was used in Article 15 of the Wounded and Sick Convention and Article 19 of the Maritime Warfare Convention, whereas "Parties to the conflict" was used in Article 15 of the Civilians Convention.

Mr. POPPER (Austria) noted another discrepancy between those Articles. He said that the term "be attacked" appeared in the Maritime Warfare Convention and the Wounded and Sick Convention, whereas the Civilians Convention used the expression "be the object of attack".

Mr. GARDNER (United Kingdom) thought that Articles 16 and 34 of the Wounded and Sick Convention and Article 40 of the Maritime Warfare Convention also corresponded with Article 15 of the Civilians Convention, and that in those Articles likewise were discrepancies to be noted in connection with the protective emblems. The attention of Committee III should be drawn to those discrepancies.

He further considered that the Drafting Committee should be informed of the discrepancy pointed out by the Belgian Delegate; he said that the word "belligerent" was the traditional word used in the Geneva Convention.

Mr. PICTET (International Committee of the Red Cross) pointed out a discrepancy which had so far escaped notice between Article 15, Wounded and Sick Convention, second paragraph, and Article 15, Civilians Convention, second paragraph. The meaning of those two paragraphs seemed to him the same, but the wording in the Civilians Convention was preferable.

Mr. QUENTIN-BAXTER (New Zealand) remarked that the use of the term "be the object of attack" appearing in Article 15 of the Civilians Convention had been intentional, and had been decided unanimously by Committee III.

The CHAIRMAN said that there were two proposals submitted to the Committee:

(1) The United Kingdom Delegate's proposal to request the Drafting Committee to adhere to the expression "belligerents" rather than to use both "belligerents" and "Parties to the conflict".

(2) The proposal made by the Representative of the International Committee of the Red Cross that the wording of the second paragraph of Article 15 of the Civilians Convention should be given preference over the corresponding paragraph of the Wounded and Sick Convention.

Mr. POPPER (Austria) thought the first proposal unsatisfactory. The term "Parties to the conflict" might just as well be considered preferable to the word "belligerents".

Mr. GARDNER (United Kingdom) mentioned that he had not expressed any preference in the matter. The word "belligerents" was more traditional. It was a matter of drafting and not of coordination. It would merely be necessary to draw the attention of the Drafting Committee to the problem.

No objections were raised and it was decided to submit the question to the Drafting Committee.

General SANCHEZ HERNANDEZ (Mexico) referred to the proposal made by the Representative of the International Committee of the Red Cross. He said that Article 15 of the Civilians Convention and Article 15 of the Wounded and Sick Convention had to take into account different conditions; the wording selected by Committees I and III respectively was therefore equally right in both cases as each of the Committees worked in a clearly defined field.

Mr. POPPER (Austria) admitted the truth of the Mexican Delegate's remark; nevertheless, he pointed out that the Civilians Convention referred to

fixed establishments only, whereas the Wounded and Sick Convention dealt with both fixed establishments and mobile units. In any case, he thought that the wording was better in the Civilians Convention and that the wording of Article 15 of the Wounded and Sick Convention should be modified accordingly.

Mr. PICTET (International Committee of the Red Cross) said that his proposal did not intend merely to transfer the terms of the Civilians Convention to the Wounded and Sick Convention, but to adapt the latter in accordance with the wording appearing in the second paragraph of the Civilians Convention.

Mr. GARDNER (United Kingdom) analysed Article 15 of the Wounded and Sick Convention in order to show that, in his opinion, it was preferable to the corresponding Article of the Civilians Convention. Article 15 of the Wounded and Sick Convention took into account the opinion of military experts of Committee I, who had contingencies in mind that were not alluded to in the Civilians Convention.

The CHAIRMAN asked the United Kingdom Delegate if he opposed the proposal made by the Representative of the International Committee of the Red Cross.

Mr. GARDNER (United Kingdom) replied that his proposal was contrary to that suggested by the International Committee of the Red Cross, namely, he wished Committee III to be requested to adapt its text instead of that of Committee I.

Mr. POPPER (Austria) thought that a small Working Party should be set up consisting of members of Committees I and III. If any divergence became apparent within the Working Party, the latter would have to state its reasons for such divergency.

Mr. MEVORAH (Bulgaria) supported the proposal to set up a small Working Party, consisting of two or three persons entrusted with the task of preparing a coordinated text.

Mr. QUENTIN-BAXTER (New Zealand) thought it essential that both Committees should delegate a Representative or a Rapporteur to sit on the Coordination Committee to enable delegates to be fully informed before taking any decisions.

The CHAIRMAN considered it would be difficult to put the New Zealand Delegate's recommendation into effect. There were, moreover, delegates on the Coordination Committee who were also mem-

bers of the various Committees, and who were therefore able to put forward their respective Committees' points of view.

The opinions expressed on Article 15 were as follows:

(1) The Representative of the International Committee of the Red Cross and the Austrian Delegate proposed that Committee I should be asked to reconsider its text, in conjunction with the corresponding Article of the Civilians Convention.

(2) The United Kingdom Delegate suggested that Committee III should alter its text, in conformity with the corresponding Article of the Wounded and Sick Convention.

(3) Other delegates considered that the wording of those Articles had been adopted with a full knowledge of the facts and that there was no need to alter them.

Mr. STARR (United States of America) thought that if a Working Party were set up to coordinate the existing texts, it would arrive at the same conclusions as the Coordination Committee. Supposing the Working Party succeeded in drafting a third text, it was highly probable that the text in question would be rejected by one or other of the Committees concerned, or by all of them. Alternatively, the text might be accepted by one Committee and rejected by another. Finally, it would be much better simply to draw the attention of the Committees concerned to the existence of discrepancies between Article 15 of the Wounded and Sick Convention, Article 19 of the Maritime Warfare Convention and Article 15 of the Civilians Convention.

Mr. MEVORAH (Bulgaria) thought that the Coordination Committee should be able to coordinate the work of the Committees, and that the best method of doing so was to set up a Working Party and then submit definite proposals to the Committees.

Mr. GARDNER (United Kingdom) said that the arguments advanced by the United States Delegate had convinced him of the difficulties inherent in his proposal; he therefore withdrew it, and hoped that the other delegates would do likewise.

The CHAIRMAN asked the Austrian Delegate whether he wished to maintain his proposal.

Mr. BLUEDHORN (Austria) withdrew his proposal. However, he asked that the attention of Committee I be drawn to the discrepancies between the French and English texts of Article 15.

The CHAIRMAN asked the Drafting Committee to deal with the matter.

Mr. GARDNER (United Kingdom) refers to Articles 34 Wounded and Sick and 40 Maritime which should also be coordinated with the third and fourth paragraphs of Article 15 with which they were dealing.

Mr. MILL IRVING (United Kingdom), Rapporteur, pointed out that no final wording had yet been adopted for Article 40 of the Maritime Warfare Convention.

The CHAIRMAN asked the United Kingdom Delegate whether he thought that Article 34 of the Wounded and Sick Convention and Article 40 of the Maritime Warfare Convention affected the wording of Articles 15 of the Wounded and Sick and Civilians Conventions and Article 19 of the Maritime Warfare Convention.

Mr. GARDNER (United Kingdom) thought that Articles 15 and 34 of the Wounded and Sick Convention and Article 15 of the Civilians Convention should be coordinated, but on the other hand, it was probably unnecessary for Article 40 of the Maritime Warfare Convention to be so coordinated.

Mr. POPPER (Austria) referring to his observation concerning the terms "be attacked" and "be the object of attack", thought that it would also be necessary to examine Article 19A of the Maritime Warfare Convention where there was a reference to objectives which must be neither bombarded nor attacked. He considered that was a pleonasm, as a bombardment was an attack. To suggest anything to the contrary even once, risked giving an aggressor using bombs the excuse that a bombardment did not constitute an attack.

The CHAIRMAN said that he would include that point among the suggestions which he would make personally to the Drafting Committee.

Article 34 of the Wounded and Sick Convention and Article 40 of the Maritime Warfare Convention would only be considered subsequently by the Coordination Committee.

It was agreed that the Chairman should refer drafting questions to the Drafting Committee, and should inform Committees I and II of the discrepancies in the second paragraph of Article 15 in their respective Conventions.

#### **Articles 16 Wounded and Sick, 29 Maritime and 16 Civilians**

Mr. PICTET (International Committee of the Red Cross) pointed out that Article 16 of the Wounded

and Sick Convention and the first paragraph of Article 29 of the Maritime Warfare Convention were identical. On the other hand, there was a considerable difference between Articles 16 of the Wounded and Sick Convention and of the Civilians Convention respectively. He approved of the beginning of Article 16 of the Wounded and Sick Convention and the words "outside their humanitarian duties"; he was also in favour of the second sentence of the first paragraph of Article 16 of the Civilians Convention. The two Committees concerned should be invited to extract the best part of the re-drafted wording, and, if possible, endeavour to adopt a uniform text.

Mr. MEVORAH (Bulgaria) said that Articles 16 of the Wounded and Sick and Civilians Conventions respectively applied to the cessation of the protection to which hospitals were entitled, and to the time limit allowed for either removing patients, or the warning to cease to be effective. Those two questions were dealt with differently in the respective Articles. Nevertheless, it should be possible to improve the wording of Article 16 in the Wounded and Sick Convention by incorporating the finer points to be found in the text of Article 16 of the Civilians Convention.

Mr. POPPER (Austria) agreed. He thought that the wording of Article 16 of the Wounded and Sick Convention could be improved without any difficulty.

Mr. GARDNER (United Kingdom) pointed out that a question of substance was involved. Cases might occur where commanders of units were confronted with insuperable difficulties, rendering application of the provisions of Article 16 an extremely awkward matter. For instance, an army commander might find himself facing a hospital building from the windows of which machine-guns were trained on his own troops. In such a case the Civilians Convention provided that a sufficient time limit should be allowed for the removal of the sick and wounded before the Commander himself could open fire. The Wounded and Sick Convention, on the other hand, provided that the army commander must give the enemy due warning to cease fire, and, if the enemy did not comply with that order, he would be entitled to attack forthwith.

He thought it would be preferable, when dealing with such important questions, to submit a report to a Plenary meeting of the Conference.

The CHAIRMAN reverted to the terms of reference of the Coordination Committee. If that Committee confined itself to drawing the attention of Committees to the existence of discrepancies, that would

at least have the desired result, i.e. that the Bureau and the President of the Conference will know of those differences at the time of the vote in the Plenary meeting. In which case, the duty of the Coordination Committee would be simply to indicate the lack of concordance.

Mr. DE RUEDA (Mexico) pointed out that it seemed difficult for the Coordination Committee to take decisions without the cooperation of the experts of the Committees concerned.

Mr. STARR (United States of America) agreed with the procedure which the Chairman had just outlined.

He thought the United Kingdom Delegate was perfectly right in drawing attention to the difficulties with which the military commanders might be confronted in applying the Conventions. It was the duty of the Coordination Committee to draw the attention of the Committees to such difficulties. The difficulties in question would then be considered by the Committees, and if the latter failed to solve the controversial points, they would be referred automatically to the Plenary Meeting of the Conference.

The CHAIRMAN asked the Committee whether it would agree to address a letter to the two Commit-

tees concerned, drawing their attention to the discrepancies existing in the Articles which had been considered.

Those discrepancies were as follows:

Article 16 of the Wounded and Sick Convention provided that:

“the protection to which fixed establishments and mobile medical units of the Medical Service are entitled shall not cease unless they are used to commit, beside their humanitarian duties, acts harmful to the enemy. Protection may however cease only after the warning, naming in all appropriate cases, a reasonable time limit in which warning remains unheeded.”

Article 16 of the Civilians Convention provided that:

“the protection to which civilian hospitals are entitled cannot lapse unless they are used to commit acts harmful to the enemy, and only after due warning which is unheeded. In any case, a sufficient period shall be allowed for the removal of the patients.”

The Committee agreed to the Chairman's proposal, which was accordingly adopted.

*The meeting rose at 6.50 p.m.*

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### THIRD MEETING

*Thursday 30 June 1949, 10 a.m.*

*Chairman: Mr. CASTBERG (Norway)*

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#### **Committee of Experts of the Coordination Committee**

The CHAIRMAN announced that the Bureau of the Committee had held two meetings.

The Bureau considered that the best method of proceeding in the future would be to appoint a Committee of Experts who would be responsible for preparing the work of the Committee. It was proposed that the Committee of Experts should be composed of three members chosen from the Coordination Committee, viz. the Rapporteur and two other members. In addition Committees I,

II and III would each be represented by one member, and an Expert from the International Committee of the Red Cross would also be present. The above proposal was embodied in a draft resolution presented by the Bureau, the text of which was as follows:

“A Committee of Experts is appointed whose duty will be to prepare work for the Coordination Committee. This Committee of Experts will report to the Committee any mistakes in coordination in the texts drawn up by Committees I, II and III, and when necessary will



suggest recommendations for the Committee to make to Committees I, II and III, or, when they concern matters of form only, to the Drafting Committee."

Mr. MEVORAH (Bulgaria) agreed to the proposal, but thought that it would be helpful if the Committee of Experts was composed of members who knew languages, so that they could do without an interpreter. That would speed up the work.

The CHAIRMAN agreed. He noted that the Bureau's resolution was not opposed. It was therefore adopted.

He proposed, in the name of the Bureau, that the Committee should appoint the following as members of the Committee of Experts: Mr. Mill

Irving (United Kingdom), Rapporteur, Mr. Mevorah (Bulgaria), and Mr. Popper (Austria).

It appeared however that Mr. Popper would not be present during the coming weeks, and the CHAIRMAN proposed that he should be replaced by Mr. Bluedhorn, Head of the Delegation of Austria.

The above proposals were adopted.

The CHAIRMAN said that he would invite Committees I, II and III to nominate one member as their representative on the Committee of Experts and that he would take the liberty of recommending them to choose delegates familiar with the Conventions and accustomed to work objectively.

*The meeting rose at 10.30 a.m.*

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#### FOURTH MEETING

*Thursday 7 July 1949, 10 a.m.*

*Chairman: SAFWAT BEY (Egypt)*

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#### **Proposal made by the Committee of Experts with regard to procedure**

With the aim of simplifying and speeding up the work of the Committee and of the Conference, the Committee of Experts proposed to circulate among members of the Committee after each meeting, summary records indicating the conclusions which had been reached.

If within a lapse of twenty four hours after circulation of the said summary records no comments concerning the conclusions had been submitted by members of the Committee, the summary records will be considered as approved by the Committee and will therefore be transmitted to other Committees concerned.

It should be clearly understood that if any comment is made on the conclusions reached by the Committee of Experts, the Articles on which the said comments were made would be considered by the Committee of Coordination.

This proposal was adopted unanimously.

#### **Coordination of the Articles adopted by the Joint Committee**

Mr. STARR (United States of America) was of the opinion that it was not within the terms of reference of the Committee to coordinate the articles considered by the Joint Committee, this latter being already a body entrusted with coordination.

Mr. SOKIRKIN (Union of Soviet Socialist Republics) pointed out that Article 18 of the Rules of Procedure of the Conference, in obedience to which the Coordination Committee was set up, make it incumbent on the said Committee to consider Articles adopted by Committees I, II and III but does not mention the Joint Committee. He therefore thought that it was not within the terms of reference of the Committee to decide this matter.

Dr. POPPER (Austria) stressed that circumstances might well arise under which it would nevertheless prove necessary to coordinate, from the point of

view of form in particular, the Articles adopted by the Joint Committee.

Without coming to a final decision and with the proviso that the subject might be taken up again later if necessary, the Committee was of

the opinion that in principle it was not within its terms of reference to consider common Articles already considered by the Joint Committee.

*The meeting rose at 10.45 a.m.*

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## FIFTH MEETING

*Saturday 16 July 1949, 10 a.m.*

*Chairman: SAFWAT BEY (Egypt)*

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### **Articles 33-33A Wounded and Sick, 39 Maritime, 15 Prisoners of War, 18 Civilians**

General SKLYAROV (Union of Soviet Socialist Republics) said that in the case of medical personnel of civilian hospitals, it was unnecessary to establish identity cards similar to those issued to the personnel of military medical formations. He therefore thought that the suggestion made in this sense by the Committee of Experts was superfluous. It is unnecessary to indicate to Committee III this discrepancy between the second paragraph of Article 18 Civilians and the second paragraphs of Articles 33 Wounded and Sick and 39 Maritime.

Mr. CLATTENBURG (United States of America) supported this proposal which was unanimously adopted.

### **Articles 28 Wounded and Sick, 35 Maritime and 19A Civilians**

General SKLYAROV (Union of Soviet Socialist Republics) thought that it would be inadvisable as proposed by the Committee of Experts, to extend the provisions of Article 28, Wounded and Sick Convention, to the means of transport of civilian hospitals. It is therefore unnecessary to submit to Committee III the question of reintroducing this disposition in Article 19A Civilians.

Mr. CLATTENBURG (United States of America) pointed out that the result of the deletion of the second paragraph of Article 19A of the Civilians Convention was that civilians in convoys carrying out evacuation operations, were deprived of the protection of the Convention.

After some discussion between Mr. POPPER (Austria), Mr. MINEUR (Belgium), Mr. MEVORAH (Bulgaria) and Mr. SENDIK (Union of Soviet Socialist Republics), the CHAIRMAN put the Soviet proposal to the vote.

The Soviet proposal, recommending that Committee III should not be asked to reintroduce the second paragraph of Article 19A of the Civilians Convention, was adopted by 3 votes to 2.

Mr. MINEUR (Belgium) then moved the addition of the following provision to Article 19A as a second paragraph:

“Should such transport or vehicles fall into the hands of the enemy, the latter shall in all cases ensure the well-being of such wounded and sick civilians, infirm persons and expectant mothers as may be in them.”

Mr. SENDIK (Union of Soviet Socialist Republics) recalled that Article 19A of the Civilians Convention was the subject of a very close examination by Committee III, and therefore insisted that no alterations should be made to this Article. The Belgian proposal affected the very substance of this Article and was therefore beyond the competence of the Committee. On the other hand, the proposed addition would weaken the provisions of the second paragraph of Article 50A, Civilians Convention.

Mr. MINEUR (Belgium), thought that the Committee was competent to move basic alterations if these were necessary for coordination purposes.

A discussion followed concerning the terms of reference of the Committee, in which Mr. MEVORAH

(Bulgaria), Mr. MINEUR (Belgium), and Mr. SENDIK (Union of Soviet Socialist Republics) took part. The CHAIRMAN requested the Committee to vote on whether the Belgian proposal came within its terms of reference or not.

The Committee decided in the affirmative by 4 votes to 2.

Mr. SENDIK (Union of Soviet Socialist Republics) said that although the majority of the members of this Committee considered the Belgian proposal to be within its terms of reference, the Soviet Delegation considered, on the contrary, that the Committee was not competent in the question. It would therefore abstain from voting.

The Belgian proposal was adopted by 4 votes to 1, with 1 abstention.

### Proposals made by the Israeli Delegation

The CHAIRMAN informed the Committee that he had received a letter from the Israeli Delegation asking whether it would not be advisable to insert a general provision in the Convention stipulating that, whenever a mention was made of the "National Red Cross Societies", this would also refer to the National Societies of the Red Crescent, the Red Lion and Sun, and the Red Shield of David.

Mr. PICTET (International Committee of the Red Cross) said that in the last paragraph of Article 36, Wounded and Sick Convention, the term "Red Cross" was followed by the words, in brackets: Red Crescent, Red Lion and Sun. It was therefore perfectly clear that these societies were covered by the mention of the Red Cross. It might make matters clearer if this enumeration also appeared in Article 20, Wounded and Sick Convention, where for the first time in the Convention, appears the expression "National Societies of the Red Cross".

As far as the Red Shield of David was concerned, the speaker pointed out that the Conference had not so far accepted this new denomination or new sign. Should it decide not to do so, it was obvious that the Red Shield of David would have to be added to the list.

Mr. SENDIK (Union of Soviet Socialist Republics) said that Article 20, Wounded and Sick Convention, included the term "the Staff of National Red Cross Societies and other Voluntary Aid Societies". Should the Red Shield of David be adopted, it would be covered by that term.

Mr. POPPER (Austria) said that a similar enumeration appeared in Article 28 of the Civilians Convention.

The CHAIRMAN suggested to the Committee that the arguments put forward by the Delegates of the Union of Soviet Socialist Republics and of Austria, and by the Representative of the International Committee of the Red Cross, should be communicated to the Delegation of Israel.

This proposal was unanimously adopted.

### Articles 10 (2) Wounded and Sick, 11 (2) Maritime, 12 Prisoners of War and 29A Civilians

The Committee of Experts has returned these Articles to the Coordination Committee, because it noticed notable differences between these Articles. It considers itself not competent to change them; each of these Articles has already been discussed at length by the Committees concerned.

Mr. CLATTENBURG (United States of America) recalled that these Articles had been very carefully examined by each of the Committees concerned. He emphasized that these Articles applied to different persons, in different circumstances, and, therefore, he did not think that it was possible to alter them.

Mr. SENDIK (Union of Soviet Socialist Republics) supported the Delegate of the United States of America.

Mr. POPPER (Austria) said that there were all the same considerable discrepancies between the four texts and quoted definite examples of differences in terminology. It was inconsistent that variations should appear in texts dealing with similar subjects in the Conventions.

Mr. MEVORAH (Bulgaria) said that these differences were merely a matter of form and in no way altered the meaning of the Articles, which remained the same. Owing to the difficulty of the subject, all these Articles had been the subject of careful examination in the different Committees; in spite of all its efforts, the Committee of Experts had been unable to establish a uniform text. He therefore wondered whether it would not be preferable to allow these Articles to remain in the original form given to them by each Committee.

The CHAIRMAN proposed that the Committee should not alter these Articles.

This proposal was adopted by 6 votes with 1 abstention.

*The meeting rose at 12.45 p.m.*

## SIXTH MEETING

*Monday 18 July 1949, 3 p.m.*

*Chairman: Mr. DITHAKAR BHAKDI (Thailand)*

**Preamble**

The Delegation of Thailand moved the submission of the following recommendation to Committee I:

“Committees II and III having opposed the adoption of a Preamble to the Conventions, the Coordination Committee recommends that Committee I reconsider its decision relative to the adoption of a Preamble.”

This proposal was supported by the Delegation of the Union of Soviet Socialist Republics and was adopted unanimously.

**Observations of the Committee of Experts****Articles 115 Prisoners of War and 28 Civilians**

The Committee of Experts drew the attention to an orthographical error in the last sentence of the last paragraph: the word “ou” should not have an accent. The Committee suggests to replace the word “or” by “ou bien”.

Mr. DROUGOV (Union of Soviet Socialist Republics) said that this remark was not very clear and also seemed to contain an error.

Mr. POPPER (Austria) said that this remark applied to the last line of the first paragraph of Article 115, Prisoners of War Convention, and not to the last paragraph, as had been pointed out in error. On the other hand, the proposed alteration should also appear in the English text, in which the word “where” should be replaced by “or”.

Mr. DROUGOV (Union of Soviet Socialist Republics) said that this alteration changed the meaning of the Article, and requested that the latter should be re-examined by Committee II.

A discussion followed between Mr. DU MOULIN (Belgium), Mr. MILL IRVING (United Kingdom), Msgr. COMTE (Holy See) and Mr. DROUGOV (Union

of Soviet Socialist Republics) as to the suitability of submitting the point either to Committee II or to the Drafting Committee.

The Committee decided to submit the proposed alteration to the Drafting Committee by 3 votes to 1.

The alteration adopted was as follows:

“The Committee wishes to point out a spelling error in the penultimate line of the French text of the first paragraph, which also affects the English text. The word “where” should be replaced by “or”.

**Article 105, Civilians**

With a view to expressing the idea contained in this Article more clearly, the Committee of Experts suggested that the beginning of the first paragraph should read as follows:

“In all cases where an internee is party in a civil suit before any court of any kind, the Detaining Power shall, if required, advise the tribunal of the detention of the internee, and shall...”

Mr. POPPER (Austria) said that the provisions relative to the moratorium had now been removed from Article 105, Civilians Convention, as adopted by Committee III on June 20, whereas the marginal note had remained. He suggested that the remarks made on this subject by the Committee of Experts should be completed by the following recommendation, to be submitted to Committee III:

“The Committee notes that the question of the moratorium in favour of persons interned in occupied territory has been deleted from the present Convention, but that the marginal note has been allowed to remain. If this deletion was made voluntarily the Committee is of the opinion that the marginal note should be altered. Should the deletion be due to an oversight it

is recommended that the Committee should include the question of the moratorium in another Article of the present Convention.”

This proposal was unanimously adopted.

#### **Annexes to the Conventions**

- (a) *Annex I, Prisoners of War:*  
No remarks.
- (b) *Annex II, Prisoners of War.*  
No remarks.
- (c) *Annex III, Prisoners of War.*  
*Annex II, Civilians.*

The Committee pointed out that there was no sentence in Article 5 of Annex III, Prisoners of War, corresponding to the last sentence of Article 5 of Annex II, Civilians.

The Committee pointed out that Annex III, Prisoners of War, contained no corresponding Article to Article 7 in Annex II, Civilians.

The Committee noted that Article 8 of Annex III, Prisoners of War, contained the words: “They shall facilitate in a similar way the transfer of funds...” whereas the corresponding Article 7 of Annex II, Civilians, stated: “They shall likewise facilitate the transfers...”

- (d) *Annex IV, Prisoners of War.*

No remarks.

- (e) *Annex V, Prisoners of War.*

No remarks.

- (f) On the proposal made by the Delegation of the Union of Soviet Socialist Republics, the Committee recommended that the numbers of the Articles referred to in the Annexes should be mentioned in the respective headings of the Annexes.

#### **Coordination Committee’s Report to the Assembly**

On the proposal made by Mr. MILL IRVING (United Kingdom), Chairman of the Committee of Experts, the Committee decided to assemble and publish the Summary Records of the meetings of the Committee of Experts, and to attach as an introduction a note on the working methods of the Committee.

The Committee extended its thanks to the Committee of Experts and in particular to its Chairman, Mr. Mill Irving, for the excellent work that had been accomplished notwithstanding the shortness of time at its disposal and the many difficulties encountered.

The Coordination Committee also wished to express its appreciation to its Chairman for the able manner in which he had conducted the debates.

*The meeting rose at 5 p.m.*

## Report of the Coordination Committee to the Plenary Assembly of the Diplomatic Conference of Geneva

### PART I

#### **Draft Convention for the Relief of the Wounded and Sick in Armed Forces in the Field; Draft Convention for the Relief of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea**

1. The Committee was constituted on 25 April 1949, under the Chairmanship of Mr. Frede Castberg (Norway), Professor at the University of Oslo and Counsellor at International Law at the Ministry of Foreign Affairs.

Abdel Karim Safwat Bey (Egypt), Envoy Extraordinary and Minister Plenipotentiary for Egypt in Switzerland, was appointed First Vice-President. Mr. Luang Dithakar Bhakdi (Thailand), Envoy Extraordinary and Minister Plenipotentiary for Thailand in Switzerland, was appointed Second Vice-President. Mr. D. J. Mill Irving (United Kingdom), First Secretary at the Foreign Office, was appointed Rapporteur.

2. The following States were represented on the Committee: Afghanistan, Austria, Belgium, Burma, Brazil, Bulgaria, Egypt, United States of America, Greece, Ireland, Italy, Mexico, Norway, New Zealand, Pakistan, Peru, Portugal, United Kingdom, Thailand, Union of Soviet Socialist Republics.

3. During the greater part of the Conference, the Committee was necessarily inactive as it had to await the adoption of texts by the other Committees. The second meeting did not, therefore, take place until 27 June. It immediately became clear that a Committee of twenty members was much too large to deal satisfactorily with the work in the very restricted time available and that it would be much better done by a small group with expert advice from delegates intimately acquainted with the proceedings of Committees I, II and III and from Representatives of the International Committee of the Red Cross. A Committee of Experts was accordingly formed consisting of the Rapporteur of the main Committee, Mr. Missim Mevorah (Bulgaria), Mr. Rudolf Bluehdorn (Austria) (later

replaced by Mr. Hans Popper), Captain A.W. Mellema (Netherlands; Committee I Expert), Mr. Jean Stroehlin (Switzerland, Committee II Expert), Mr. Maurice Mineur (Belgium, Committee III Expert). The Committee invited the Representative of the International Committee of the Red Cross to help them in their work, and desired to record their appreciation of the assistance furnished by that body.

4. The Committee of Experts met for the first time on 4 July and held fourteen meetings between that date and 16 July. To expedite the proceedings the discussions were held in one language (French) and the conclusions of each sitting were transmitted to the Committees concerned on the following day unless any objection had been raised by members of the Main Committee. The object of this arrangement was to enable the Drafting Committee to continue its functions without interruption.

5. The Experts Committee worked under the disadvantage of having no up-to-date table of concordance to assist them. The existing table (Document No. 5) proved unreliable in view of the re-arrangement of some Articles and the addition or suppression of others. The Committee was likewise handicapped by the pressure of work in other Committees which made it difficult for all the members of the Committee to attend the meetings. A further difficulty was that it was impossible for the Committee to have all the Articles of the Convention under review at the same time as Articles had to be dealt with as and when the texts had been voted.

6. The Experts Committee found it necessary to deal both with discrepancies of form and of substance. In the former case recommendations and suggestions were made to the Drafting Committee and, in the latter, to Committees I, II or III, except in cases where the Committee, having noticed an apparent lack of concordance, confined itself merely to pointing out to the Committees concerned that a discrepancy appeared to exist. The latter course was taken when it appeared to

the Committee that seeming discrepancies might be justified having regard to the different objects of the various Conventions or when the Committees felt that it would be inconsistent with its essentially neutral functions to attempt to reconcile opposing points of view. The Committee did not confine itself to considering defects of concordance between the different Conventions but, when the need arose, dealt also with contradictions within the same Convention. It was decided that errors of translation in the French and English texts were properly a matter for the Drafting Committee, but in some cases the attention of the Drafting Committee has been drawn to such points.

7. The following are the conclusions of the Committee of Experts of the Coordination Committee, as amended and approved by the Coordination Committee, in relation to the Conventions for the Relief of Wounded and Sick in Armed Forces in the Field, and for the Relief of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (the numbering is the following: Wounded and Sick/Maritime/Prisoners of War/Civilians).

#### *I. Articles 12/16, 23/—/—*

The Committee suggested:

- (a) the insertion of Article 23 of the Maritime Convention as the second paragraph of Article 16 of the same Convention, the beginning to be amended as follows: "Whenever circumstances permit, the belligerents..."
- (b) the insertion of the words "and religious" before the word "personnel" in the third paragraph of Article 12, Wounded and Sick, and in the second paragraph (former Article 23) of Article 16 of the Maritime Convention.

#### *II. Articles 15/19A/—/—*

The Committee suggested:

- (a) the deletion, in the Maritime Convention, of the first sentence of Article 19A and its insertion, after amendment of its wording, as the second paragraph of Article 15, Wounded and Sick Convention. The new paragraph to run as follows:

"Hospital ships entitled to the protection of the Convention for the Relief of Wounded, Sick and Shipwrecked Members of Armed Forces on Sea, shall not be attacked from the land."

- (b) the deletion, in the second sentence of Article 19A, which thus becomes the only sentence in the Article, of the word "also".

#### *III. Articles 16-Wounded and Sick, Civilians*

The Committee, noting that there was a divergence of drafting, and also a difference of substance between Article 16, Wounded and Sick Convention, and Article 16, Civilians Convention, decided to point out to Committees I and III the defect of concordance which appears to exist in the last sentences of Article 16, Wounded and Sick Convention, and Article 16 (1), Civilians Convention.

#### *IV. Annex I*

The Committee recommended the adoption of the text of Annex I, Civilians Convention, as the text of Annex I, Wounded and Sick Convention. There would thus be a single annex for both Conventions.

#### *V. Preamble*

The Committee recommended to delete the Preamble since there is no Preamble to the "Prisoners of War" and "Civilians" Conventions.

In its meeting of 18 July, 1949, Committee I has accepted points (a) and (b) under I.

It has also accepted points (a) and (b) under II and V. On the other hand, it refused to take into consideration the recommendations under III and IV.

## PART II

### **Draft Convention relative to the Treatment of Prisoners of War**

The following are the conclusions of the Committee of Experts of the Coordination Committee, as amended and approved by the Coordination Committee in relation to the "Prisoners of War" Convention.

#### *I. Articles —/—/20/74*

The Committee noted that Article 74, Civilians Convention, provided that internees may not be interned in the same places as prisoners under common law (...persons deprived of liberty for any other reason...). It wondered whether it would not be suitable to insert a similar provision in addition to the first paragraph of Article 20, Prisoners of War Convention.

#### *II. Articles —/—/79/109 (new)*

The Committee

- (a) noted a difference of drafting between point 3 of the first paragraph of Article 79,

Prisoners of War Convention, and point 3 of the same paragraph of Article 109, Civilians Convention, which provided that fatigue duties could only be in connection with work necessary for the upkeep of the Camp,

- (b) said that the last sentence of the second paragraph of Article 109, Civilians Convention, did not correspond to the third paragraph of Article 79, Prisoners of War Convention.

### III. *Articles —/—/85 (new)/112*

The Committee said that the sentence "its duration shall in any case be deducted from any sentence of confinement" which appeared in the second paragraph of Article 112, Civilians Convention, had not been included in the second paragraph of Article 85, Prisoners of War Convention.

### IV. *Article 31 Civilians*

The Committee drew attention to the fact that Article 31, Civilians Convention, had no counterpart in the Prisoners of War Convention.

### V. *Articles —/—/111/120*

The Committee drew attention to divergencies of wording between the first paragraph of Article 111 Prisoners of War Convention and the first paragraph of Article 120, Civilians Convention.

### VI. *Articles —/—/13/70*

The Committee recommended:

- (a) the deletion of the words "which they enjoyed at the time of their capture", in the third paragraph of Article 13 of the Prisoners of War Convention (the case of a prisoner reaching his majority);
- (b) that the second sentence of the third paragraph of Article 13 of the Prisoners of War Convention be amended as follows: "The Detaining Power may not restrict the exercise of the rights conferred by such capacity either within its own territory or...";

### VII. *Articles —/—/16/86*

The Committee pointed out that the first sentence of the sixth paragraph of Article 86 of the Civilians Convention did not correspond with the second paragraph of Article 16 of the Prisoners of War Convention.

### VIII. *Articles 25 and 42A Prisoners of War*

The Committee recommended the deletion of the second sentence of the second paragraph of Article 25 of the Prisoners of War Convention in view of the provisions contained in the first and third paragraphs of Article 42A of the Prisoners of War Convention.

### IX. *Articles —/—/26/76*

The Committee drew attention to the substantial difference between the third paragraph of Article 26, Prisoners of War, and the third paragraph of Article 76, Civilians.

### X. *Articles —/—/32/88(1)*

The Committee suggested the deletion of the words "under the direction of his Government" at the close of the first paragraph of Article 32, Prisoners of War, in order to coordinate the said Article with Article 88, Civilians.

### XI. *Articles 24, 37 and 37A Prisoners of War*

The Committee suggested the deletion of the last sentence of Articles 37 Prisoners of War and 37A, Prisoners of War, and the insertion after the word "kitchens" in the fourth paragraph of Article 24, Prisoners of War, of the words "management of the mess by the prisoners of war themselves shall be facilitated in every way".

### XII. *Articles —/—/45/37,84*

The Committee drew attention to the fact that the provisions of Articles 37, Civilians, and 84, Civilians, relative to accident insurance of protected persons, have no counterpart in Article 45, Prisoners of War.

### XIII. *Article 22 Wounded and Sick*

The Committee drew attention to the fact that the provisions of Article 22 of the Wounded and Sick Convention, which define more particularly the duties of medical personnel and chaplains retained in prisoner of war camps, are inadequately reproduced in the Prisoners of War Convention.

### XIV. *Articles —/—/11/26*

The Committee recalled that experiences made in the last war showed that certain camp guards considered prisoners of war to be in their hands; the Committee therefore raised the question whether it would not be advisable, to prevent



an interpretation of the kind, to add at the close of the first sentence of the first paragraph of Article 11, Prisoners of War Convention, the words "or those who guard them". This addition would coordinate this paragraph with the general idea expressed in Article 26, Civilians.

XV. *Articles —/—/65/101*

The Committee pointed out to Committee II that the third paragraph of Article 65 of the Prisoners of War Convention does not appear in the corresponding Article 101 of the Civilians Convention. It requested Committee II to consider whether this paragraph actually fulfils any useful purpose.

XVI. *Articles —/—/66/102*

The Committee drew the attention of Committee II to the fact that the words "except in the case of written or printed matter" appearing in the second paragraph of Article 66 of the Prisoners of War Convention do not appear in the corresponding Article 102 of the Civilians Convention. The Committee questioned whether the words fulfil any useful purpose.

XVII. *Articles 68 and 71, Prisoners of War*

The Committee asked Committee II whether it would not be desirable to incorporate in Article 68 of the Prisoners of War Convention the idea referred to in the last sentence of the fourth paragraph of Article 71 of the Prisoners of War Convention, that is to say, that "such communication shall not be... considered as forming a part of the quota mentioned in Article 96".

XVIII. *Articles —/—/40/118*

The Committee recommended that Committee II reinsert, in the second paragraph of Article 40 Prisoners of War Convention, the last sentence of the second paragraph of Article 118, Civilians Convention, as it seems to be more accurate and more intelligible.

XIX. *Articles 22/—/29B/—*

See observations concerning Article 22, Wound and Sick Convention.

XX. *Articles —/—/95/62*

The Committee drew the attention of Committee II to the fact that the provisions relating to the assistance of an interpreter, in the first

paragraph of Article 95, Prisoners of War Convention, and the third paragraph of Article 62, Civilians Convention, do not correspond. The Committee therefore suggested that these two Committees should adopt an identical wording to express this idea and say:

"The prisoner of war or any other accused person shall have the right to be assisted by a competent interpreter both during preliminary investigation and during the hearing in court".

XXI. *Articles —/—/94 (new)/61*

The Committee suggested the insertion, with adaptations, of the first sentence of the second paragraph of Article 61, Civilians Convention, as the first section of Article 94 (new), Prisoners of War Convention, since the Detaining Power's obligation to notify the accused person himself of the judicial proceedings is implicit in the English wording of the last paragraph of Article 94, although it is not explicitly stated.

XXII. *Articles —/—/98 (new)/66*

The Committee pointed out that the fourth paragraph of Article 66, Civilians Convention, has no corresponding provisions in Article 98, Prisoners of War.

XXIII. *Articles —/—/112-113/123A*

The Committee pointed out that Articles 112 and 113, Prisoners of War Convention, do not contain the following reservation, which appears in the second paragraph of Article 123A, Civilians Convention, "...except in cases where their transmission might cause prejudice to the person concerned or his next of kin."

XXIV. *Annex II Civilians and Annex III Prisoners of War*

The Committee pointed out that there was no sentence in Article 5 of Annex III, Prisoners of War, corresponding to the last sentence of Article 5 of Annex II, Civilians.

In the thirty-third, thirty-fourth and thirty-fifth meetings of July 15th, 19th and 20th, Committee II has only accepted the following above-mentioned recommendations: V, XVII, XXI, and XXIV.

## PART III

**Draft Convention for the Protection of Civilian Persons in Time of War**

The following are the conclusions of the Committee of Experts of the Coordination Committee as amended and approved by the Coordination Committee in relation to the Civilians Convention.

I. *Articles 16 Wounded and Sick and Civilians*

The Committee decided

- (a) to point out to Committee III the lack of concordance which appears to exist in the last sentence of Article 16, Wounded and Sick, and the last sentence of the first paragraph of Article 16, Civilians;
- (b) to recommend the insertion in the first sentence of the first paragraph of Article 16, Civilians, of the words "outside their humanitarian duties", which already figure in the Wounded and Sick Convention and the Maritime Convention.

II. *Articles 28, 32/—/15, 19A*

The Committee decided

- (a) to point out that Article 19A, Civilians Convention, makes no mention of medical equipment;
- (b) to draw the attention of the Committee III to the fact that it had thought it necessary to delete the second paragraph of Article 19A, Civilians Convention, whereas that paragraph had been maintained in Article 28 of the Wounded and Sick Convention. Should Committee III decide to restore this paragraph to Article 19B, Civilians Convention, the Committee suggested that the words "they shall be subject to the laws of war" should be replaced by the words "they shall be subject to the general provisions of international law";
- (c) to point out that there is a basic discrepancy between Articles 28 and 32 of the Wounded and Sick Convention and the third paragraph of Article 15 of the Civilians Convention, on the one hand, and Article 19A of the Civilians Convention, on the other. The three first provisions mentioned provide that the emblem may only be used, for the transport of sick and wounded members of the forces, with the permission of the competent military authority; in the case of civilian hospitals, the consent of the

Government and of the national Red Cross Society is necessary. On the other hand, Article 19A of the Civilians Convention does not require such authorization for the transport of wounded and sick civilians.

III. *Articles 33/39/—/18*

The Committee decided to draw the attention of Committee III to the divergencies which exist between Article 18 (2) of the Civilians Convention and Articles 33 (2) of the Wounded and Sick Convention and 39 (2) of the Maritime Convention as regards the identity card.

IV. *Articles —/—/20, 23/75*

The Committee

- (a) recommended, in the first sentence of the first paragraph of Article 75, Civilians Convention, that the words "on land" should be added, as already appeared in the first part of the first paragraph of Article 20, Prisoners of War Convention, in order to avoid the possibility of internment aboard ship;
- (b) suggested the addition of the following sentence: "All precautions must be taken against the danger of fire" to the second paragraph of Article 75, Civilians Convention, so as to collate it with the last sentence of the third paragraph of Article 23, Prisoners of War Convention.

V. *Article 35 Prisoners of War*

The Committee queried whether it would not be suitable to insert in the Civilians Convention a provision similar to Article 35, Prisoners of War Convention, possibly even more stringent than the latter.

VI. *Articles —/—/76 (new)/30*

The Committee wondered whether the rule *non bis in idem*, as it figures in Article 76 of the Prisoners of War Convention, ought not to appear in the general part of the Civilians Convention, in order to ensure that the rule in question shall apply to all persons.

The Committee proposed that this provision should be embodied in the first paragraph of Article 30 of the Civilians Convention. This would ensure proper coordination between the two Conventions in question.

VII. *Articles —/—/80 (new)/109*

The Committee suggested the deletion of the word "consecutive" in the first sentence of the

third paragraph of Article 109, Civilians Convention, as this term had not been retained in the first sentence of the first paragraph of Article 80, Prisoners of War Convention.

VIII. *Articles —/—/85 (new)/112*

The Committee said that Article 85, Prisoners of War Convention, prohibited the principle of confinement awaiting trial, with two exceptions only, whereas Article 112, Civilians Convention, accepted this principle but introduced a limitation.

IX. *Articles 71 and 84 Civilians*

The Committee said that there was a contradiction between the second paragraph of Article 71, Civilians Convention, which stipulated "No deduction shall be made from the allowances, salaries or credits due to the internees..." and the third sentence of the fourth paragraph of Article 84, Civilians Convention, which provided that the Detaining Power, when fixing wages, may take into account the fact that it is under the "obligation to maintain the internees free of charge and allow them all the necessary medical care required by their health condition."

X. *Articles 13/—/110, 111/119, 120, 123B*

The Committee

- (a) emphasized that Article 110, Prisoners of War Convention, (first paragraph, second sentence) provided that the wills of prisoners of war should be forwarded to the Protecting Power, whereas Article 119, Civilians Convention (first paragraph, second sentence) only provided for these to be received by "a responsible authority";
- (b) drew attention to the suitability of completing the third paragraph of Article 119, Civilians Convention, by a provision similar to that of Article 123B, Civilians Convention;
- (c) drew attention to divergencies of wording between the second paragraph of Article 120, Civilians Convention, and the second paragraph of Article 111, Prisoners of War Convention;
- (d) noted that the provision relative to ashes which appeared in Articles 13, Wounded and Sick Convention, and 110, Prisoners of War Convention, did not correspond to Article 119, Civilians Convention, and therefore recommended the introduction of a similar provision in the said Article.

XI. *Articles —/—/13/70*

The Committee recommended, in order to coordinate these Articles with the third paragraph of Article 13 of the Prisoners of War Convention, to draft Article 70 of the Civilians Convention as follows:

"Internees shall retain their full civil rights. The Detaining Power may not restrict the exercise of the rights either within or without its own territory except in so far as their internment requires."

XII. *Articles —/—/21/73*

The Committee:

- (a) suggested that the following words should be added at the beginning of the third paragraph of Article 73 of the Civilians Convention:
 

"whenever considerations of a military nature shall permit...", so as to bring this Article into line with the fourth paragraph of Article 21 of the Prisoners of War Convention;
- (b) suggested the addition of the last sentence of Article 21 of the Prisoners of War Convention, duly adapted, to the end of the third paragraph of Article 73 of the Civilians Convention (Prohibition of Abuses).

XIII. *Article 22 Prisoners of War*

The Committee pointed out that Article 22 of the Prisoners of War Convention does not correspond with the Civilians Convention.

XIV. *Articles —/—/24/78*

The Committee pointed out that the first paragraph of Article 24 of the Prisoners of War Convention does not correspond with Article 78 of the Civilians Convention.

XV. *Articles —/—/26/76*

The Committee drew attention to the substantial difference between the third paragraph of Article 26, Prisoners of War, and the third paragraph of Article 76, Civilians.

XVI. *Articles —/—/29/81*

The Committee drew attention to the fact that the wording of the last sentence of Article 29, Prisoners of War, differs from that of the last sentence of Article 81, Civilians.

XVII. *Articles —/—/34/88*

The Committee drew attention to the fact that the provision covering posting of special agreements and annexes to the Convention contained in Article 34, Prisoners of War, does not appear in the second paragraph of Article 88, Civilians.

XVIII. *Articles —/—/42/37, 47, 84*

The Committee

- (a) pointed out that the first paragraph of Article 42, Prisoners of War, contains an enumeration of authorized forms of labour; neither Article 37, Civilians, nor Article 47, Civilians, however, contain such an exhaustive enumeration;
- (b) suggested the deletion of the words "Human beings" in the second paragraph of Article 37, Civilians, on the grounds that these words would preclude veterinary work, cattle breeding, transport of goods, etc., and further, that Article 42, Prisoners of War, does not contain this restriction;
- (c) drew attention to the advisability of comparing Articles 37, Civilians, and 47, Civilians, with the fourth paragraph of Article 84, Civilians, concerning working conditions and in particular insurance and protection against working accidents.

XIX. *Articles —/—/48/84*

The Committee drew attention to the very comprehensive provisions laid down in Article 48, Prisoners of War, relative to prisoners working for the account of private persons, and to the less detailed provisions on the same subject in the fourth paragraph of Article 84, Civilians.

XX. *Articles —/—/60/96*

The Committee

- (a) drew attention to the lack of concordance between the wording of Article 60, Prisoners of War, and Article 96, Civilians;
- (b) recalled that the model cards or letters foreseen in the first paragraph of Article 96, Civilians, have not yet been approved.

XXI. *Articles —/—/73 (new)/108*

The Committee suggested that Article 108 of the Civilians Convention should be amplified by the insertion, in the second paragraph, of provisions similar to those of Article 73 (new) of the Prisoner's of War Convention.

XXII. *Article 74 (new) Prisoners of War*

The Committee pointed out that the second paragraph of Article 74 (new) of the Prisoners of War Convention has no corresponding paragraph in the Civilians Convention.

XXIII. *Articles —/—/11/26*

The Committee suggested the deletion in Article 26, Civilians Convention, of the words "its agents" in order to coordinate this Article with the first paragraph of Article 11, Prisoners of War.

XXIV. *Articles —/—/28/80*

The Committee recommended, for the same reasons, the addition at the end of the first paragraph of Article 80, Civilians, of the words "or mental" between the words "contagious" and "disease", which appear at the close of the first paragraph of Article 28, Prisoners of War.

XXV. *Articles —/—/54-55/87*

The Committee pointed out that Articles 54 and 55, Prisoners of War, contain very specific provisions concerning prisoner of war accounts and their management which do not figure in Article 87 or elsewhere in the Civilians Convention.

XXVI. *Articles —/—/16/86*

The Committee pointed out that the fifth paragraph of Article 86, Civilians, appears to confer the right on the Occupying Power to promulgate regulations concerning monetary relations, which is contrary to international common law. The Committee further suggested that the idea expressed in the sixth paragraph of Article 16, Prisoners of War Convention, should be retained.

XXVII. *Articles —/—/61/97*

The Committee, after considering Article 61 of the Prisoners of War Convention and Article 97 of the Civilians Convention, considered that the text of Article 61 of the Prisoners of War Convention is more precise and gives more detail; it recommended that Committee III should consider the possibility of adopting a similar text for Article 97 of the Civilians Convention.

XXVIII. *Article 51, Civilians*

The Committee pointed out to Committee II that there exists no provision in the Prisoners

of War Convention similar to that contained in the second sentence of Article 51 of the Civilians Convention.

XXIX. *Articles —/—/64/52, 100*

The Committee

- (a) pointed out to Committee III that the second part of the first sentence of the second paragraph of Article 52 of the Civilians Convention “unless these latter are necessary in the interests of the economy of the territory”, has no equivalent in Article 64 of the Prisoners of War Convention;
- (b) drew the attention of Committee III to the fact that the second paragraph of Article 100 of the Civilians Convention does not appear to be sufficiently precise as regards exemptions within the country of internment.

XXX. *Articles —/—/67/103*

The Committee pointed out that the word “reasonable” appearing in the first sentence of the first paragraph of Article 103 Civilians does not occur in the corresponding Article 67 of the Prisoners of War Convention.

XXXI. *Articles 90 and 93, Civilians*

The Committee suggested to take up in Article 90 of the Civilians Convention the idea expressed in the third sentence of the third paragraph of Article 93, Civilians: “such communication shall not be limited nor considered as forming a part of the quota mentioned in Article 96”.

XXXII. *Articles —/—/69/91*

The Committee drew the attention of Committee III to the fact that Article 91 of the Civilians Convention contains no provision similar to that appearing in the fifth paragraph of Article 69 of the Prisoners of War Convention.

XXXIII. *Articles —/—/70/92*

The Committee pointed out that Article 92 of the Civilians Convention contains no provision similar to that appearing in the third paragraph of Article 70 of the Prisoners of War Convention.

XXXIV. *Articles —/—/71/93*

The Committee pointed out to Committee III that Article 93 of the Civilians Convention

contains no provision similar to that appearing in the third paragraph of Article 71 of the Prisoners of War Convention.

XXXV. *Articles —/—/18, 38/117*

The Committee recommended that Committee III insert the word “drinking” before “water”, in the first sentence of the second paragraph of Article 117, Civilians Convention, as this word already figures in the second paragraph of Articles 18 and 38, Prisoners of War Convention.

XXXVI. *Articles —/—/30, 30A, 30C/82*

The Committee recommended to take the wording of Articles 30, 30A and 30C, Prisoners of War Convention, as a basis in drafting Article 82, Civilians Convention.

XXXVII. *Articles —/—/88/115*

The Committee suggested that Committee III should insert in Article 115, Civilians Convention, a first paragraph, based on the provisions of the first sentence of the first paragraph of Article 88, Prisoners of War Convention. If this suggestion was accepted, the fourth paragraph of Article 115, Civilians Convention, could then constitute the second sentence of the new paragraph.

XXXVIII. *Articles —/—/91/65*

The Committee noted that the ideas expressed in the third paragraph of Article 65, Civilians Convention, are absent from the corresponding Article 91, Prisoners of War Convention; the Committee therefore wondered whether it would be advisable to retain this Article. (*See Article 31, Civilians Convention.*)

XXXIX. *Articles —/—/95/62*

The Committee drew the attention of Committee III to the fact that:

- (a) Article 95, Prisoners of War Convention, is more complete than Article 62, Civilians Convention;
- (b) the provisions relating to the assistance of an interpreter, in the first paragraph of Article 95, Prisoners of War Convention, and the third paragraph of Article 62, Civilians Convention, do not correspond. The Committee therefore suggested that it should be adopted an identical wording to express this idea and say:

“The prisoner of war or any other accused person shall have the right to be

assisted by a competent interpreter both during preliminary investigation and during the hearing in court."

**XL. Articles —|—|94(new)|61**

The Committee

- (a) drew attention to the fact that the third paragraph of Article 61 of the Civilians Convention stipulates a time-limit of one week for the notification of the Protecting Power, whereas the time-limit stipulated in the first paragraph of Article 94 (new), Prisoners of War Convention, is at least three weeks. The Committee stresses the fact that in the first case, only very severe penalties are considered whereas, in Article 94, Prisoners of War Convention, the aforementioned time-limit relates to prosecutions for less serious offences;
- (b) pointed out that the point 2 of the second paragraph of Article 94, Prisoners of War Convention, does not correspond to section 3 of Article 61, Civilians Convention; it considered that it would be advisable to complete Article 61, Civilians Convention, by a provision similar to that of Article 94, Prisoners of War;
- (c) suggested the insertion, under letter (a), in the third paragraph of Article 61, Civilians Convention, of the words: "and place of residence" after the word "identity". Sub-paragraph (a) will therefore read: "the accused person's identity and place of residence";
- (d) suggested the insertion, at the end of Article 61, Civilians Convention, of the French wording of the last paragraph of Article 94, Prisoners of War Convention, adding, after the words: "n'est pas apportée que", the words "le prévenu et...", and changing the "a reçu" to "ont reçu". The French wording would then correspond more closely to the English wording.

**XLI. Articles 59A and 64 Civilians**

The Committee

- (a) suggested the addition, at the end of the first paragraph of Article 64, Civilians Convention, of the words "in conformity with the provisions of Article 61 of the present Convention";
- (b) considered that the last sentence of Article 64, Civilians Convention, is out of place in the present Article, which deals with assistance by the Protecting Power, and sug-

gested its insertion elsewhere in the Civilians Convention in the form of a new Article 59A.

**XLII. Articles —|—|98(new)|66**

The Committee

- (a) suggested the addition, at the end of the last sentence of Article 66, Civilians Convention, of the words
 

"...and to send and to receive correspondence, in conformity with Article 96 of the present Convention";
- (b) suggested the addition of the following third sentence to the first paragraph of Article 66, Civilians Convention:
 

"These conditions shall in all cases conform to the requirements of health and humanity."

A similar sentence does in fact appear at the end of the first paragraph of Article 98 (new), Prisoners of War Convention;
- (c) suggested, in order to bring Article 66, Civilians Convention, into line with Article 98, Prisoners of War Convention, the addition at the end of the first paragraph of Article 66, Civilians Convention, of the following sentence:

"They shall receive medical attention required by their state of health and shall enjoy the rights of complaint provided for in Article 90 of the present Convention."

**XLIII. Articles —|—|100|41, 121**

The Committee pointed out that the idea expressed in the third paragraph of Article 100, Prisoners of War Convention, does not appear in the corresponding Article of the Civilians Convention (Article 121). In this connection, it may be noted that Article 41, Civilians, only applies to aliens on the territory of a Party to the conflict, and does not protect those who are in occupied territory. To remedy this discrepancy, it is suggested that the last provision should be transferred to the section of the Civilians Convention immediately preceding Article 32.

**XLIV. Articles —|—|116|126**

The Committee proposed to insert, in the first paragraph of Article 126, Civilians Convention, the words "and Work", in order to coordinate this paragraph with the first paragraph of Article 116, Prisoners of War Convention.

**XLV. Articles 12|—|13**

The Committee proposed to add the words "and collect" after the words "to search for",

in the second paragraph of Article 13, Civilians Convention, in order to coordinate this Article with Article 12, Wounded and Sick Convention. The words "and sick" should also be inserted after the word "wounded".

XLVI. *Articles 40 and 68 Civilians*

The Committee pointed out that no provision is made in Article 68, Civilians Convention, that persons interned or in assigned residence shall be entitled to require that the decision taken with regard to them shall be reconsidered by a competent body with the least possible delay.

This Article simply provides that all decisions taken shall be subject to periodical revision, without specifying the interval of time between such revisions, which might be considerable.

Article 40, Civilians Convention, does, on the contrary, provide that a revision shall take place at least twice a year.

Article 40 also provides for the setting up of a court or competent administrative board; Article 68, on the contrary, only provided for a competent body, which offers less adequate safeguards to the person concerned.

The Committee therefore wondered if interned persons in occupied territory are not as much entitled to protection as persons interned in the territory of a Party to the Conflict.

XLVII. *Articles —/—/112/123*

The Committee

(a) proposed to add, at the end of the first paragraph of Article 123, Civilians Convention, the ideas expressed in the second part of the first sentence of the first paragraph of Article 112, Prisoners of War Convention;

(b) pointed out that the two last sentences of the first paragraph of Article 112, Prisoners of War Convention, do not correspond with Article 123, Civilians Convention.

XLVIII. *Articles —/—/112/123C*

The Committee proposed to complete the second sentence of Article 123C, Civilians Convention, by adding the words "the parcel shall also contain a declaration clearly indicating the identity of the persons to whom the articles belong, together with a complete inventory of the parcels", as they figure at the conclusion of Article 112, Prisoners of War Convention.

XLIX. *Articles —/—/116/126*

The Committee recommended the insertion of the following words after the second paragraph of Article 126, Civilians Convention:

"they shall also be allowed to go to places of departure, passage and arrival of protected persons", which figure in the first paragraph of Article 116, Prisoners of War Convention.

L. *Articles 20 and 50C Civilians*

The Committee pointed out the discrepancies between the wording of the second paragraph of Article 20, Civilians Convention, and that of the last paragraph of Article 50C, Civilians Convention, regarding the system for the passage of relief consignments.

LI. *Annex: Identity Card, Article 18 Civilians*

The Committee pointed out that while the Civilians Convention provides in Article 18 for an identity card for civilian hospital personnel, no model is annexed to the said Convention. An identity card for medical personnel is, however, annexed to the Wounded and Sick Convention. Would it not be advisable to provide a model for the Civilians Convention also or at least to refer in this Convention to the Annex of the Wounded and Sick Convention?

LII. *Article 105 Civilians*

The Committee notes that the question of the moratorium in favour of persons interned in occupied territory has been deleted from the present Convention, but that the marginal note has been allowed to remain. If this deletion was made voluntarily, the Committee is of the opinion that the marginal note should be altered. Should the deletion be due to an oversight it is recommended that the Committee should include the question of the moratorium in another Article of the present Convention.

LIII. *Annexes II Civilians and III Prisoners of War*

The Committee pointed out that Annex III, Prisoners of War, contained no corresponding Article to Article 7 in Annex II, Civilians.

In its fifth meeting of July 19th, 1949, Committee III has accepted the following above-mentioned recommendations:

I(b), II(c), X(d), XII(b), XVII, XVIII(c), XXIV, XXVII, XL(a), (b) and (d), XLI(b), XLIV and XLVIII.

**Report presented by the Drafting Committee  
to the Plenary Assembly**

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**PART I**

WOUNDED AND SICK CONVENTION

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The sole task of the Drafting Committee was to make changes in the wording of the texts submitted to it by the Coordination Committee with a view to arriving at a clear and coordinated text. In no case has the Committee altered in any way the meaning of the Articles submitted to it.

The English version of this Report will contain only the amendments made by the Committee in the English text of the Conventions.

The Drafting Committee has made the following amendments to the Articles it has considered:

*Article 1*

No change.

*Article 2*

The third paragraph has been changed from:

“If one of the Powers in conflict is not party to the present Convention, the Powers who are party thereto shall notwithstanding be bound by it in their mutual relations. They are furthermore bound by the Convention in relation to the said Power, if the latter accepts and applies the provisions thereof.”

to :

“*Although* one of the Powers to a conflict may not be a party to the present Convention, the Powers who are *parties* thereto shall *remain* bound by it in their mutual relations. They shall furthermore be bound by the Convention in relation to the said Power, if the latter accepts and applies the provisions thereof.”

*Article 2A*

The Drafting Committee recommends to the Plenary Assembly that the phrase “...without any discrimination on a basis of race, colour, religion or faith, sex, birth or wealth” should be replaced by the following words: “...without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.”

In the sub-paragraph 1) d., the word: “judgement” has been altered to: “judgment”.

*Article 3*

The following words have been added at the end of Article 3: “as well as to dead persons found.”

*Article 3A*

A new text has been adopted which reads as follows: “For the protected persons who have fallen into the hands of the enemy, the present Convention shall apply until their final repatriation.”

*Article 4*

In the first paragraph, the figure 22 has been inserted between “18” and “and”.

The second paragraph has been reworded to read as follows, bringing it into line with Article 5 in the other three Conventions:

“Wounded and sick, as well as medical personnel and chaplains, shall *continue to have the benefit of such* agreements as long as the Conven-



tion is applicable to them, subject to express provisions to the contrary in the said or subsequent agreements, or again subject to more favourable measures taken *with regard to them* by one or other of the Parties to the conflict."

#### Article 5

Article 5 has been adapted to agree with the English translation of the same French text in Article 6 of the Prisoners of War and Civilians Conventions, and reads as follows:

"Wounded and sick, as also members of the medical personnel and chaplains may in no circumstances renounce in part or in entirety the rights secured to them by the present Convention, and by the special agreements referred to in the foregoing Article, if such there be."

#### Article 6

In the first paragraph, the words "in whose territory" have been replaced by the words "with which".

In the third paragraph, the words "the limits of their mission as defined in" have been changed to "their mission under".

#### Article 7

The wording of Article 7 has been rearranged as follows:

Original text:

"The provisions of the present Convention constitute no obstacle to the humanitarian activities which the International Committee of the Red Cross or any other impartial humanitarian body may undertake for the protection of wounded and sick, medical personnel and chaplains, and for their relief, *subject to the consent of the Parties to the conflict concerned.*"

New text:

"The provisions of the present Convention constitute no obstacle to the humanitarian activities which the International Committee of the Red Cross or any other impartial humanitarian body may, *subject to the consent of the Parties to the conflict concerned*, undertake for the protection of wounded and sick, medical personnel and chaplains, and for their relief."

#### Article 8

No change.

#### Article 9

In the second paragraph, the words "of its own motion" have been replaced by the words "on its own initiative".

In the same paragraph, the words "eventually in suitably chosen neutral territory" have been changed to "possibly on neutral territory suitably chosen".

#### Article 10

In the second paragraph, first sentence, the word "belligerent" has been replaced by the words "Party to the conflict".

In the fifth paragraph, first sentence, the words "belligerent who" have been replaced by the words "Party to the conflict which".

In the fifth paragraph, the word "his" has been replaced by the word "its".

#### Article 10A

The words "Protected Wounded and Sick" have been inserted as a marginal heading. Apart from this addition Article 10A has been adopted without change.

#### Article 11

No change.

#### Article 12

In the first paragraph and in the third paragraph, the word "belligerents" has been replaced in each case by the words "Parties to the conflict".

The first paragraph has been reworded to read "to protect them against pillage and ill-treatment, to insure...".

The second paragraph has been amended to read:

"Whenever circumstances permit, an armistice or a suspension of fire shall be arranged, or local arrangements made to permit the removal, exchange and transport of the wounded left on the battlefield."

In the third paragraph, the words "bound for the said area" have been replaced by the words "on their way to that area".

#### Article 13

Article 13 has been transformed into two Articles, Article 13 and Article 13A, the amended text reading as follows:

#### "Article 13

*Parties to the conflict* shall record as soon as possible in respect of each wounded, sick or dead person of the adverse Party falling into their hands, any particulars which may assist in their identification.

These records should if possible include:

(a) designation of the Power on which he depends;

- (b) *army, regimental, personal or serial number*;
- (c) *surname*;
- (d) *first name or names*;
- (e) *date of birth*;
- (f) *any other particulars shown on his identity card or disc*;
- (g) *date and place of capture or death*;
- (h) *particulars concerning wounds or illness, or cause of death*.

As soon as possible the above-mentioned information shall be forwarded to the Information Bureau described in Article 112 of the Convention of ..... relative to the treatment of prisoners of war *which shall transmit this information to the Power on which these persons depend through the intermediary of the Protecting Power and of the Central Prisoners of War Agency*.

*Parties to the conflict* shall prepare and forward to each other through the same Bureau, certificates of death or duly authenticated lists of the dead. They shall likewise collect and forward through the same Bureau *one half of the identity disc, last wills or other documents of importance to the next of kin, money and in general all articles of an intrinsic or sentimental value, which are found on the dead*. These articles, together with unidentified articles, shall be sent in sealed packets accompanied by statements *giving all particulars necessary for the identification of the deceased owners and by a complete list of the contents of the parcel*."

#### "Article 13A

*Parties to the conflict* shall ensure that burial or cremation of the dead, carried out individually as far as circumstances permit, is preceded by a careful *examination*, if possible *by a medical examination*, of the bodies, with a view to confirming death, establishing identity and enabling a report to be made. *One half of the double identity disc, or the identity disc itself if it is a single disc, should remain on the body*.

Bodies should not be cremated except for imperative reasons of hygiene or for motives based on the religion of the deceased. In case of cremation the circumstances and *reasons for the cremation* shall be stated in detail in the death certificate or on the authenticated list of the dead.

They shall further ensure that the dead are honourably interred, if possible according to the rites of the religion to which they belonged, that their graves are respected, *grouped* if possible according to the nationality of the deceased, *properly maintained* and marked so that they may always be found. To this effect, they shall organize at the commencement of hostilities an Official

Graves Registration Service, to allow subsequent exhumations and to ensure the identification of bodies, whatever the site of the graves, and the possible transportation to the home country. These provisions *shall* likewise apply to the ashes, which shall be kept by the Graves Registration Service until proper *disposal* thereof according to the wishes of the home country.

As soon as circumstances permit, and at latest at the end of hostilities, these services shall exchange, *through the Information Bureau mentioned in the first paragraph*, lists showing the exact location and markings of the graves together with particulars of the dead interred therein."

#### Article 14

In Article 14, first paragraph, first sentence, the words "and may grant" have been changed to the word "granting". In the second sentence of the first paragraph, the words "enemy belligerent" have been changed to "adverse Party".

#### Article 15

In the first paragraph change the word "belligerent" to the words "Parties to the conflict".

In the second paragraph replace the word "located" by the word "situated".

#### Article 15A

No change.

#### Article 16

The last sentence has been amended as follows:

Original text:

"Protection may, however, cease only after due warning, naming, in all appropriate cases, a reasonable time limit which warning remains unheeded."

New text:

„Protection may, however, cease only after a due warning has been given, naming, in all appropriate cases, a reasonable time limit, and after such warning has remained unheeded”.

#### Article 17

In Article 17 (1) alter the words "sick and wounded" to "wounded and sick".

#### Article 18

In the second paragraph, first sentence, the word "hospital" has been inserted between the words "the" and "zones".

*Article 19*

The words "Protection of medical personnel and chaplains" have been inserted as a marginal heading.

The first sentence has been amended to read as follows: "Medical personnel exclusively engaged in the search *for, or the* collection, transport *or* treatment of the wounded or sick,".

"And" (chaplains) has been replaced by the words "as well as" (chaplains).

*Article 19A*

The words "Protection of temporary medical personnel" have been inserted as a marginal heading.

The words "to be employed" have been replaced by the words "for employment". Further, the word "for" has been replaced by the words "in the search for or".

*Article 20*

No change.

*Article 21*

There has been an addition at the end of the second paragraph, and a new third paragraph has been added as follows:

"...The belligerent who accepts such assistance is bound to notify the adverse Party thereof before making any use of it.

In no circumstances shall this assistance be considered as interference in the conflict".

*Article 22*

In the second paragraph, sub-paragraph (b), the words "the belligerents shall agree about the equivalents of the ranks" have been changed to "the Parties to the conflict shall agree regarding the corresponding seniority of the ranks".

In the second paragraph, sub-paragraph (b) (beginning), the word "it" has been replaced by the word "they".

In the third paragraph, the word "belligerents" has been changed to "Parties to the conflict".

*Article 22A*

The text of Article 22A has been changed from:

"If personnel designated in Article 19A fall into the hands of the enemy, *it* shall be prisoner of war but shall be employed on their medical duties in so far as the need arises".

to:

"*Members of the* personnel designated in Article 19A *who have fallen* into the hands of the enemy

shall be prisoners of war, but shall be employed on their medical duties in so far as the need arises".

*Article 23*

In the second paragraph, first sentence, the word "deemed" has been inserted between the words "...they shall not be" and "prisoners of war...".

*Article 24*

No change.

*Article 25*

The second and third paragraphs have been reworded as follows:

"The Persons designated in Article 21 *who* have fallen into the hands of the adverse Party, *may not be detained.*

*Unless otherwise agreed,* they shall have permission to return to their country, or if this is not possible, to the territory of the *Party to the conflict* in whose service they were, as soon as a route for their return is open and military considerations permit."

In the second paragraph the word "belligerent" has been changed to "Party to the conflict".

Further "and the" and "if possible" have been added in the sentence: "personal articles and valuables, *and the* instruments, arms, and *if possible* the means...".

In the fourth paragraph the word "belligerents" has been replaced by the words "Parties to the conflict".

In the fourth paragraph the words "in quantity" have been replaced by the words "as regards quantity".

*Article 26*

The first paragraph has been amended as follows:

Original text:

"The material of mobile medical establishments of the armed forces which falls into the hands of the enemy, shall be retained for the care of wounded and sick".

New text:

"The material of mobile medical *units* of the armed forces which *fall* into the hands of the enemy, shall be *reserved* for the care of wounded and sick".

*Article 27*

No change.

*Article 28*

In the second paragraph the word "belligerent" has been replaced by the words "Parties to the conflict".

*Article 29*

There has been no change in the wording, but the fourth and fifth paragraphs have been joined together to form one paragraph, and the existing sixth paragraph has become the fifth paragraph.

*Article 30*

In the first paragraph, first sentence, the term "paragraph 2" has been replaced by the words "the second paragraph".

In the same paragraph the word "belligerents" has been changed to "Parties to the conflict".

In the first paragraph the last sentence has been altered to read "only when flying on routes, at heights and at times specifically agreed upon between the *Parties to the conflict* and the neutral Power concerned".

In the third paragraph the words "belligerent Powers" have been replaced by the words "Parties to the conflict".

*Article 31*

In the second paragraph the words "as emblem" have been inserted between the words "use" and "in place".

*Article 32*

In the third line, the words "employed in" (the medical Service) have been replaced by the words "belonging to".

*Article 33*

In the second paragraph, the word: "disk" has been altered to read: "disc".

In the second paragraph, second sentence, the word "attest" (in what capacity) has been changed to "state".

In the third paragraph, second sentence, the word "belligerents" has been changed to "Parties to the conflict".

In the third paragraph, third sentence, the word "established" has been replaced by the words "made out".

In the fourth paragraph, second sentence, the word "have" has been replaced by the word "receive" (duplicates...).

*Article 33A*

Article 33A has been amended as follows:

Original text:

"The personnel designated in Article 19A shall wear, only while carrying out medical

duties, a white armlet bearing in its centre the distinctive sign but of small dimensions; the armlet shall be issued and stamped by the military authority.

Military identity documents borne by this type of personnel shall specify what special training they have received, the temporary character of the duties they are engaged upon, and that they have the right to bear the armlet."

New text:

"The personnel designated in Article 19A shall wear, *but* only while carrying out medical duties, a white armlet bearing in its centre the distinctive sign *in miniature*; the armlet shall be issued and stamped by the military authority.

Military identity documents *to be carried* by this type of personnel shall specify what special training they have received, the temporary character of the duties they are engaged upon, and *their authority for wearing* the armlet."

*Article 34*

In the first paragraph, the word "only" has been inserted before the word "with" (only the consent, etc...).

In the second paragraph, the word "belligerent" has been changed to "Party to the conflict".

In the third paragraph, the words "other flag than" have been altered to read "flag other than".

In the fourth paragraph, the word "Belligerents" has been replaced by the words "The Parties to the conflict".

*Article 35*

The text of the first paragraph has been changed from:

"The medical units belonging to neutral countries, which may have been authorized to lend their services under the conditions laid down in Article 21, shall fly along with the flag of the Convention, the national flag of the belligerent *to whom they are attached* wherever the latter makes use of the faculty conferred on him by Article 34."

to:

"The medical units belonging to neutral countries, which may have been authorized to lend their services *to a belligerent* under the conditions laid down in Article 21, shall fly along with the flag of the Convention, the national flag of *that* belligerent, wherever the latter makes use of the faculty conferred on him by Article 34."

*Article 36*

In the first paragraph, the words "protect or to indicate" have been changed to "indicate or to protect" (the medical units, etc...)

At the beginning of the second paragraph, the words "On the other hand," have been changed to "Furthermore" (National Red Cross, etc...).

*Article 37*

In the first line, the word "belligerent" has been changed to "Party to the conflict".

*Article 37A*

The text of Article 37A has been changed from:

"In no case shall reprisals be taken against the wounded, sick, personnel, buildings or equipment protected by the Convention."

to:

"Reprisals against the wounded, sick, personnel, buildings or equipment protected by the Convention are prohibited."

*Article 38*

The word "incorporate" has been changed to the word "include" (the study etc...)

*Article 38A*

No change.

*Article 39*

At the end of the third paragraph, the words "above mentioned grave breaches" have been replaced by the words "grave breaches defined in the following Articles".

The second paragraph has been reworded as follows, to agree more closely with the French text:

"Each High Contracting Party shall be under the obligation to search for persons alleged to have committed, or to have ordered to be committed, such grave breaches, and shall bring such persons, regardless of their nationality, before its own courts. It may also, if it prefers and in accordance with the provisions of its own legislation, hand such persons over for trial to another High Contracting Party concerned, provided such High Contracting Party has made out a *prima facie* case."

*Article 40*

The word "the" has been deleted in the following places: after "Convention", after "experiments" and after the word "and" (extensive destruction etc...).

*Article 40A*

Article 40A has been amended to read as follows:

"No *High Contracting Party* shall be allowed to absolve itself or any other *High Contracting Party* of any liability incurred by itself or by another *High Contracting Party* in respect of breaches referred to in the preceding Article."

*Article 41*

In the first paragraph, the words "the belligerent" have been altered to read "a Party to the conflict".

In the third paragraph, the word "belligerents" has been altered to read "Parties to the conflict".

*Article 41A*

In the first line, "The States parties to the present Convention" have been replaced by the words "The High Contracting Parties".

Further, the word "other" has been deleted after the words "to any".

*Article 42*

In the first paragraph, the words "as well as" have been replaced by the word "or".

Article 42 was deferred to the Drafting Committee by the Plenary Assembly, following the adoption of an amendment submitted by the Delegation of Turkey.

It recommends to the Assembly the following wording for the last paragraph of this Article:

"The prohibition laid down in the first paragraph of the present Article shall also apply, *without effect on any rights acquired through prior use*, to the emblems and marks mentioned in the second paragraph of Article 31."

*Article 43*

No change.

*Article 44*

In the second sentence (after furthermore), the word "party" has been changed to the word "parties".

*Article 45*

Article 45 has been amended as follows:

Original text:

"The present Convention shall be ratified as soon as possible.

The ratifications shall be deposited at Berne. A *procès-verbal* of the deposit of each instrument of ratification shall be drawn up, one copy

of which, certified to be correct, shall be transmitted by the Swiss Federal Council to the Governments of all Powers in whose name the Convention has been signed, or whose accession has been notified."

New text:

"The present Convention shall be ratified as soon as possible and the ratifications shall be deposited at Berne.

*A record shall be drawn up of the deposit of each instrument of ratification and certified copies of this record shall be transmitted by the Swiss Federal Council to the Governments of all Powers in whose name the Convention has been signed, or whose accession has been notified."*

*Article 46*

No change.

*Article 47*

No change.

*Article 48*

The text of Article 48 has been changed from:

"From the date of its coming into force, the present Convention shall be open to accession, duly notified, by any Power in whose name this Convention has not been signed."

to:

"From the date of its coming into force, it shall be open to any Power, in whose name the present Convention has not been signed, to accede to this Convention."

*Article 49*

No change.

*Article 50*

The text of Article 50 has been changed from:

"The situations defined in Article 2 shall give immediate effect to ratifications deposited and accessions notified by the Parties to the conflict before or after the outbreak of hostilities. The Swiss Federal Council shall communicate by the quickest method any ratifications or adhesions received from Parties of the conflict."

to:

"The situations provided for in Article 2 shall give immediate effect to ratifications deposited and accessions notified by the Parties to the

conflict before or after *beginning* of hostilities or *occupation*. The Swiss Federal Council shall communicate by the quickest method any ratifications or *accessions* received from Parties to the conflict."

*Article 51*

In the third paragraph, second sentence the words "until after" have been inserted between the words "and" and "operations"; at the end of the same paragraph, the word "are" has been replaced by the words "have been".

*Article 52*

The text of Article 52 has been changed from:

"The Government of the Swiss Confederation shall register the present Convention with the Secretariat of the United Nations. The Government of the Swiss Confederation shall also inform the Secretariat of the United Nations of all ratifications, accessions and notices of termination received by that Government with respect to the present Convention."

to:

"The *Swiss Federal Council* shall register the present Convention with the Secretariat of the United Nations. The *Swiss Federal Council* shall also inform the Secretariat of the United Nations of all ratifications, accessions and *denunciations* received by that Government with respect to the present Convention."

*Signature clauses*

The second paragraph of the Signature Clauses was reworded as follows:

Original text:

"Done at ..... this ..... day of ..., 1949, in the English and French languages, the original of which shall be deposited in the archives of the *Government* of the Swiss Confederation. The Government of the Swiss Confederation shall transmit certified copies thereof to each of the signatory and acceding States."

New text:

"Done at ..... this ..... day of ..., 1949, in the English and French languages, and the original of which shall be deposited in the archives of the Swiss Confederation. The *Swiss Federal Council* shall transmit certified copies thereof to each of the signatory and acceding States.

## ANNEX I

*Article 1*

1. In the heading the word "beneficial" has been amended to read "benefited". 2. The words "relating to the Sick and Wounded" have been replaced by the words "for the Relief of Sick and Wounded in Armed Forces in the Field". 3. The words "the zone thus constituted" have been replaced by the words "such zones".

*Article 2*

At the beginning the word "All" has been replaced by the word "No".

Further the word "no" (work) has been changed to the word "any".

*Article 3*

No change.

*Article 4*

Sub-paragraph (a) has been reworded as follows:

"They shall *comprise* only a small *part* of the territory governed by the Power which *has established them*."

*Article 5*

In sub-paragraph a) the word "they" has been replaced by the words "hospital zones".

*Article 6*

In the first sentence the words "the Red Cross Emblem" have been replaced by the words "red crosses on a white background".

*Article 7*

In the heading the word "Opposition" has been replaced by the words "Refusal of recognition".

In the first paragraph, first sentence, the words "not later than" have been replaced by the words "in peace time or on".

At the end of the third paragraph, last line, the word "for" has been inserted after the word "provided".

*Article 8*

In the first paragraph the words "to ascertain" have been replaced by the words "for the purpose of ascertaining".

*Article 9*

At the end of the first sentence the words "to settle the matter" have been replaced by the words "within which the matter can be rectified".

*Article 10*

In the heading the word "of" has been replaced by the word "for".

*Article 11*

No change.

*Article 12*

No change.

## ANNEX II

Delete the words "Signature of bearer" in the space at the foot of the reverse side of the Identity Card.

On the top right-hand portion of the reverse side of the Identity Card replace the words "Fingerprints (optional)" by the words "Signature of bearer or fingerprints or both".

At the top centre of the front on the Identity Card delete the word "Name" and substitute "Space reserved for the name".

On the left hand side of the front of the Identity Card, half way down, delete the word "Name" and substitute "Surname".

**PART II**  
**MARITIME CONVENTION**

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*Article 1*

No change.

*Article 2*

The third paragraph has been changed from:

“If one of the Powers in a conflict is not party to the present Convention, the Powers who are party thereto shall *notwithstanding be* bound by it in their mutual relations. They are furthermore bound by the Convention in relation to the said Power, if the latter accepts and applies the provisions thereof.”

to:

“*Although* one of the Powers in a conflict may not be a party to the present Convention, the Powers who are *parties* thereto shall *remain* bound by it in their mutual relations. They shall furthermore *be* bound by the Convention in relation to the said Power, if the latter accepts and applies the provisions thereof.”

*Article 2A*

No change.

*Article 3*

In the first paragraph, the word “belligerents” has been changed to the words: “Parties to the conflict”.

*Article 4*

The following words have been added at the end of Article 4:

“..., as well as to dead persons found.”

*Article 5*

In the first paragraph, the figure “33” has been deleted.

The second paragraph has been reworded to read as follows, bringing it into line with the corresponding Articles in the other Conventions:

“Wounded, sick and shipwrecked, as well as medical personnel and chaplains, shall continue

to have the benefit of such agreements as long as the Convention is applicable to them, subject to express provisions to the contrary in the said or subsequent agreements, or again subject to more favourable measures taken *with regard to them* by one or other of the Parties to the conflict.”

*Article 6*

Article 6 has been adapted to agree with the English translation of the same French text in Article 6 of the Prisoners of War and Civilians Conventions, and reads as follows:

“Wounded and sick, as also members of the medical personnel and chaplains, may in no circumstances renounce in part or in entirety the rights secured to them by the present Convention, and by the special agreements referred to in the foregoing Article, if such there be.”

*Article 7*

In the first paragraph, the last sentence has been changed from:

“Such delegates shall be subject to approval by the Power near which they will carry out their duties.”

to:

“The *said* delegates shall be subject to the approval of the Power *with* which they will carry out their duties.”

In the third paragraph, the first sentence has been changed from:

“The representatives or delegates of the Protecting Power shall not in any case exceed *the limits* of their mission as defined in the present Convention.”

to:

“The representatives or delegates of the Protecting Power shall not in any case exceed their mission *under* the present Convention.”



*Article 8*

The wording of Article 8 has been amended as follows:

Original text:

"The provisions of the present Convention constitute no obstacle to the humanitarian activity which the International Committee of the Red Cross or any other impartial humanitarian body may undertake for the protection of wounded, sick and shipwrecked, medical personnel and chaplains, and for their relief, *subject to the consent of the parties to the conflict concerned.*"

New text:

"The provisions of the present Convention constitute no obstacle to the humanitarian activities which the International Committee of the Red Cross or any other impartial humanitarian body may, *subject to the consent of the parties to the conflict concerned*, undertake for the protection of wounded, sick and shipwrecked, medical personnel and chaplains, and for their relief."

*Article 9*

In the second paragraph, the word "Power" has been inserted between the words "Protecting" and "or".

In the fourth paragraph, the word "belligerent" has been replaced by the words "Party to the conflict".

*Article 10*

In the second paragraph, the words "of its own motion" have been replaced by the words "on its own initiative".

At the end of the first sentence of the second paragraph, the words "eventually in suitably chosen neutral territory" have been replaced by the words "possibly on neutral territory suitably chosen".

*Article 11*

In the second paragraph, the first word "they" has been replaced by the words "such persons".

In the same paragraph, the word "belligerent" has been replaced by the term "Party to the conflict".

*Article 11A*

No change.

*Article 13*

The word "and" has been inserted between the words "ships", and "hospital"; the words "as well as" have been inserted between the words "individuals" and "merchant".

*Article 14*

No change.

*Article 14A*

At the beginning, the words "the foregoing Article" have been replaced by "Article 11".

Further, the word "prisoners" has been replaced by the words "prisoners of war".

*Article 15*

No change.

*Article 16*

In the first paragraph, the words "and ensure" have been altered to read "to ensure".

In the second paragraph, the word "belligerents" has been altered to read "Parties to the conflict". The words "intended for the said area" have been replaced by the words "on their way to that area".

*Article 17 (and 17A)*

Article 17 has been divided into two Articles, Articles 17 and 17A, which read as follows:

*"Article 17**Communication of information*

*Parties to the conflict* shall record as soon as possible in respect of each *shipwrecked*, wounded, sick or dead person of the adverse party falling into their hands, any particulars which may assist in their identification.

These records should if possible include:

- (a) designation of the Power on which they depend;
- (b) army, regimental, personal or serial number;
- (c) surname;
- (d) first name or names;
- (e) date of birth;
- (f) any other particulars shown on his identity card or disc;
- (g) date and place of capture or death;
- (h) particulars concerning wounds or illness, or cause of death.

As soon as possible the above mentioned information shall be forwarded to the information bureau described in Article 112 of the Convention of . . . . relative to the treatment of prisoners of war, *which shall transmit this information to the Power on which these prisoners depend through the intermediary of the Protecting Power and of the Central Prisoners of War Agency.*

*Parties to the conflict* shall prepare and forward to each other through the same bureau, certificates of death or duly authenticated lists of the dead. They shall likewise collect and forward through the same bureau *one half* of the identity disc, last wills or other documents of importance to the next of kin, money and in general all articles of an intrinsic or sentimental value, which are found on the dead. These articles, together with unidentified articles, shall be sent in sealed packets, accompanied by statements giving all particulars necessary for the identification of the deceased owners, *as well as by a complete list of the contents of the parcel.*"

"Article 17A

*Procedure regarding the dead*

*Parties to the conflict* shall ensure that burial at sea of the dead, carried out individually as far as circumstances permit, is preceded by a careful *examination*, if possible by a medical examination, of the bodies, with a view to confirming death, establishing identity and enabling a report to be made. *One half of the double identity disc, or the identity disc if it is a single disc,* should remain on the body.

If dead persons are landed, the provisions of the Convention of Geneva of . . . . relative to the Relief of the Wounded and Sick in Armed Forces in the Field shall be applicable."

The Drafting Committee having had to reexamine the Articles 17 and 17A, which had been returned by the Plenary Assembly following an intervention of the United Kingdom Delegate, it has recommended to the Assembly to change these Articles as follows:

Article 17

Replace the second sentence of the third paragraph by the following text:

"They shall likewise collect and forward through the same bureau *one half* of the double identity disc, *or the identity disc itself if it is a simple disc,* last wills or other documents of importance to the next of kin, money and in general all articles of an intrinsic or sentimental value, which are found on the dead."

Article 17A

Replace the last sentence of the first paragraph by the following text:

"*Where a double identity disc is used, one half of the disc should remain on the body.*"

Article 18

In the first paragraph, the word "belligerent" has been replaced by the words "Parties to the conflict".

Article 19

In the first paragraph, the words "by the belligerents" have been deleted.

At the end of the same paragraph, the words "belligerent Powers" have been replaced by the words "Parties to the conflict".

Article 19A

No change.

Article 20

In the first paragraph, the words "belligerent Power" have been replaced by the words "Party to the conflict".

Article 21

The words "belligerents" and "belligerent" have been replaced by the terms "Parties to the conflict" and "Party to the conflict" respectively.

Article 21A

The word "belligerent" has been replaced by the words "Party to the conflict".

Article 21B

In the first paragraph, the word "those" has been inserted before the word "provided".

Further, in the same paragraph, the word "also" has been inserted after the word "shall"; and the word "equally" has been deleted.

Commas have been inserted after the words "craft" and "operations".

Article 21C

No change.

Article 24

No change.

Article 25

The first two paragraphs have been changed from:

"The ships described in Article 19, 20 and 21 shall afford relief and assistance to the wounded, sick and shipwrecked without distinction of nationality.

Governments undertake not to use these ships for any military purpose."

to:

"The *vessels* described in Articles 19, 20, 21 and 21B, shall afford relief and assistance to the wounded, sick and shipwrecked without distinction of nationality.

*The High Contracting Parties* undertake not to use these *vessels* for any military purpose."

#### Article 26

At the beginning of the first, third and fourth paragraphs, the word "belligerents" has been replaced by the words "Parties to the conflict."

In the second sentence of the first paragraph, the word "ships" has been replaced by the word "vessels".

#### Article 27

The words "Articles 19, 20 and 21" have been replaced by the words "Articles 19, 20, 21 and 21B".

#### Article 28

No change.

#### Article 29

In the first paragraph, the last sentence has been arranged as follows:

Original text:

"Protection may, however, cease only after due warning, naming in all appropriate cases a reasonable time limit, which warning remains unheeded."

New text:

"Protection may, however, cease only after due warning *has been given*, naming in all appropriate cases a reasonable time limit, *and after such warning has remained* unheeded."

#### Article 29A

The beginning had been amended to read as follows:

"The following conditions shall not be considered as depriving hospital *ships* or sick-bays of vessels of the protection due to *them*:

(1) The fact that the *crews* of the *ships* or the sick-bays *are* armed for the maintenance of order, for *their* own defence or that of the wounded and sick."

#### Article 30

No change.

#### Article 31

No change.

#### Article 35

In the first paragraph, first sentence, the words "the conditions" have been replaced by the word "particulars".

In the second paragraph, first sentence, the word "belligerents" has been replaced by the words "Parties to the conflict".

In the second paragraph, second sentence, the words "to that end" have been replaced by the words "for this purpose".

#### Article 36

At the end of the first paragraph, the words "the countries" have been replaced by the words "Parties to the conflict".

In the first and in the second paragraphs, the word "belligerents" has in each case been replaced by the words "Parties to the conflict".

The fourth and fifth paragraphs have been joined together to form one paragraph, and the original sixth paragraph has become the fifth paragraph.

#### Article 37

In the first paragraph (first and third sentences), and in the second paragraph (second sentence) the word "belligerents" has been replaced by the words "Parties to the conflict".

In the third paragraph, first sentence, the words "belligerent Powers" have been replaced by the words "Parties to the conflict".

#### Article 38

In the second paragraph, the words "as emblem" have been inserted between the words "use" and "in place".

#### Article 39

In the second paragraph, first sentence, the word "disk" has been replaced by "disc" and in the third sentence the word "attest" has been replaced by the word "state".

In the third paragraph, second sentence, the word "belligerents" has been replaced by the words "Parties to the conflict" and in the fourth sentence the word "established" has been replaced by the words "made out".

In the fourth paragraph, second sentence, the word "have" has been replaced by the word "receive".

#### Article 40

In the first paragraph, first sentence, the word "distinguished" has been changed to "distinctively marked".

In the second and fifth paragraphs, the words "the national flag of the belligerent" have been

altered to read "the flag of the Party to the conflict".

In the third paragraph, the words "above prescribed" have been amended to read "prescribed above".

In the fourth paragraph, the word "belligerent" has been altered to read "Party to the conflict".

In the sixth paragraph, the words "the Red Cross flag" have been altered to read "a flag carrying a red cross on a white ground". In the same paragraph, and in the eighth paragraph, the word "belligerents" has been altered to read "Parties to the conflict".

The seventh paragraph has been altered to read:

"All the provisions in this Article relating to the red cross shall apply equally to the other emblems mentioned in Article 38."

In the eighth paragraph, the word "reach" has been replaced by the word "conclude".

#### Article 40A

The words "protecting or indicating" have been changed to "indicating or protecting".

#### Article 41

In the first line the word "belligerent" has been changed to "Party to the conflict".

#### Article 41A

The text of Article 41A has been changed from:

"In no case shall reprisals be taken against the wounded, sick and shipwrecked persons, personnel, the vessels or equipment protected by the Conventions."

to:

"Reprisals against the wounded, sick and shipwrecked persons, personnel, vessels or equipment protected by the Conventions are prohibited."

#### Article 42

The word "incorporate" (the study etc.) has been changed to "include".

#### Article 42A

No change.

#### Article 43

The second paragraph has been reworded as follows, bringing it into closer agreement with the French text:

"Each High Contracting Party shall be under the obligation to search for persons alleged to have committed, or to have ordered to be com-

mitted, such grave breaches, and shall bring such persons, regardless of their nationality, before its own court. It may also, if it prefers and in accordance with the provisions of its own legislation, hand such persons over for trial to another High Contracting Party concerned, provided such High Contracting Party has made out a *prima facie* case."

In the third paragraph the words "above mentioned grave breaches" have been replaced by the words "grave breaches defined in the following Articles".

#### Article 44

The word "the" has been deleted in the following places: after "convention", before the word "wilful" and after the word "and".

#### Article 44A

Article 44A has been amended to read as follows:

"No High Contracting Party shall be allowed to absolve itself or any other High Contracting Party of any liability incurred by itself or by another High Contracting Party in respect of breaches referred to in the preceding Article."

#### Article 45

In the first paragraph the words "the belligerent" have been changed to "a Party to the conflict".

In the third paragraph the word "belligerents" has been altered to read "Parties to the conflict".

#### Article 45A

In the first line, the words "the States parties to the present Convention" have been replaced by the words "the High Contracting Parties".

#### Article 46

No change.

#### Article 47

In the second sentence (after "furthermore") the word "Party" has been changed to "Parties".

#### Article 48

Article 48 has been amended as follows:

Original text:

"The present Convention shall be ratified as soon as possible.

The ratifications shall be deposited at Berne.

A procès-verbal of the deposit of each instrument of ratification shall be drawn up, one copy of which, certified to be correct, shall be transmitted by the Swiss Federal Council to the Gov-

ernments of all Powers in whose name the Convention has been signed, or whose accession has been notified."

New text:

"The present Convention shall be ratified as soon as possible *and* the ratifications shall be deposited at Berne.

*A record shall be drawn up of the deposit of each instrument of ratification and certified copies of this record shall be transmitted by the Swiss Federal Council to the Governments of all Powers in whose name the Convention has been signed, or whose accession has been notified.*"

*Article 49*

No change.

*Article 50*

No change.

*Article 51*

The text has been changed from:

"From the date of its coming into force, the present Convention shall be open to accession, duly notified, by any Power in whose name this Convention has not been signed."

to:

"From the date of its coming into force, it shall be open to any Power, in whose name the present Convention has not been signed, to accede to this Convention."

*Article 52*

No change.

*Article 53*

The text has been changed from:

"The situations defined in Article 2 shall give immediate effect to ratifications deposited and accessions notified by the Parties to the conflict before or after the outbreak of hostilities. The Swiss Federal Council shall communicate by the quickest means any ratifications or adhesions received from Parties to the conflict."

to:

"The situations *provided for* in Article 2 shall give immediate effect to ratifications deposited and accessions notified by the Parties to the conflict before or after the *beginning* of hostilities or *occupation*. The Swiss Federal Council shall

communicate by the quickest *method* any ratifications or *accessions* received from Parties to the conflict."

*Article 54*

In the third paragraph, second sentence, the words "until after" have been inserted between the words "and" and "operations"; at the end of the same paragraph, the word "are" has been replaced by the words "have been".

*Article 55*

The text of Article 55 has been changed from:

"The Government of the Swiss Confederation shall register the present Convention with the Secretariat of the United Nations. The Government of the Swiss Confederation shall also inform the Secretariat of the United Nations of all ratifications, accessions and notices of termination received by that Government with respect to the present Convention."

to:

"*The Swiss Federal Council* shall register the present Convention with the Secretariat of the United Nations. The *Swiss Federal Council* shall also inform the Secretariat of the United Nations of all ratifications, accessions and *denunciations* received by that Government with respect to the present Convention."

*Signature Clauses*

The second paragraph of the Signature Clauses was reworded as follows:

Original text:

"DONE at ..... this ..... day of ....., 1949, in the English and French languages, the original of which shall be deposited in the archives of the *Government* of the Swiss Confederation. The Government of the Swiss Confederation shall transmit certified copies thereof to each of the signatory and acceding States."

New text:

"DONE at ..... this ..... day of ....., 1949, in the English and French languages, *and* the original of which shall be deposited in the archives of the Swiss Confederation. The *Swiss Federal Council* shall transmit certified copies thereof to each of the signatory and acceding States."

**PART III**  
**PRISONERS OF WAR CONVENTION**

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*Article 1*

No change.

*Article 2*

The third paragraph has been changed from:

"If one of the Powers in a conflict is not party to the present Convention, the Powers who are party thereto shall *notwithstanding be* bound by it in their mutual relations. They are furthermore bound by the Convention in relation to the said Power, if the latter accepts and applies the provisions thereof."

to:

"*Although* one of the Powers in a conflict may not be a party to the present Convention, the Powers who are *parties* thereto shall *remain* bound by it in their mutual relations. They shall furthermore be bound by the Convention in relation to the said Power, if the latter accepts and applies the provisions thereof."

*Article 2A*

No change.

*Article 3*

In the first paragraph, sub-paragraph 4, the word "...military..." has been replaced by the words "...armed forces..."

In the second paragraph, sub-paragraph 1, the words "...shall also benefit by the treatment reserved by the present Convention to prisoners of..." have been deleted; and in sub-paragraph 2, seventh line, the words "...first paragraph..." have been deleted, and the words "...and treaties." have been added at the end of the paragraph.

The Drafting Committee drew the attention of the Plenary Assembly to an apparent contradiction between the provisions of this Article and those of Article 29B of the same Convention. With a view to coordinate the text of the two Articles, the Committee suggested that a paragraph reading as follows should be added to Article 3:

"This Article shall in no way affect the status of medical personnel and chaplains as provided for in Article 29B of the present Convention."

Article 3 has been divided into two sections, which are headed A and B (beginning: "The following shall likewise..." etc.). Section A includes six sub-paragraphs, and section B two. The wording of this Article remains unaltered.

*Article 4*

No change.

*Article 5*

In the first paragraph, the numbers 21, 55, and 112 have been inserted, after, respectively, 9, 51, and 109. The number 102 has been deleted.

The second paragraph has been changed to read as follows:

"Prisoners of war shall continue to have the benefit of such agreements as long as the Convention is applicable to them, except *where* express *provisions* to the contrary *are* contained in the aforesaid or in subsequent agreements, or *where* more favourable measures *have been* taken with *regard* to them by one or other of the Parties to the conflict."

*Article 6*

No change.

*Article 7*

The first paragraph has been changed from:

"The present Convention shall be applied with the cooperation and under the scrutiny of the Protecting Powers *responsible for safeguarding* the interest of the Parties to the conflict. To *that* effect, the Protecting Powers may, apart from their diplomatic or consular staff, *appoint* delegates from amongst their own nationals or the nationals of other neutral Powers. *Such* delegates shall be subject to approval *by* the Power near which they will carry out their duties."

to:

"The present Convention shall be applied with the cooperation and under the scrutiny of the Protecting Powers *whose duty it is to safe-*

*guard* the interests of the Parties to the conflict. To *this* effect, the Protecting Powers may appoint, apart from their diplomatic or consular staff, delegates from amongst their own nationals or the nationals of other neutral Powers. *The said* delegates shall be subject to the approval of the Power near which they will carry out their duties."

In the third paragraph the words "the limits of" have been deleted; further, the words "...as defined in..." have been replaced by the word "under".

#### Article 8

The wording of the Article has been changed from:

"The provisions of the present Convention constitute no obstacle to the humanitarian *activity* which the International Committee of the Red Cross or any other impartial humanitarian body may undertake for the protection of prisoners of war and for *the relief to be given them with* the consent of the *interested* Parties to the conflict."

to:

"The provisions of the present Convention constitute no obstacle to the humanitarian *activities* which the International Committee of the Red Cross or any other impartial humanitarian body may, *subject to the consent of the Parties to the conflict concerned*, undertake for the protection of prisoners of war and for their relief."

#### Article 9

In the first paragraph the words "imposed upon" have been replaced by the words "incumbent on"; the words "virtue of" have been inserted between the words "by" and "the present".

In the second paragraph, the word "profit" (recurring twice) has been replaced by the word "benefit" (in each case); further the word "activity" has been replaced by the word "activities".

#### Article 10

In the second paragraph, the first sentence has been amended as follows:

Original text:

"To that effect, each of the Protecting Powers may, at the invitation of one Party, or by its own motion, propose to the Parties to the conflict a meeting of their representatives, and in

particular of the authorities responsible for prisoners of war, in suitably chosen neutral territory, if circumstances permit."

New text:

"To *this* effect, each of the Protecting Powers may, at the invitation of one Party, *or on its own initiative*, propose to the Parties to the conflict a meeting of their representatives, and in particular of the authorities responsible for prisoners of war, *possibly on neutral territory suitably chosen*."

#### Article 11

In the second paragraph, second sentence, the word "If" has been changed to the word "When".

#### Article 12

The first two paragraphs have been amended to read as follows:

"Prisoners of war must at all times be humanely treated. Any unlawful act or omission by the Detaining Power *causing* death or seriously endangering the health of a prisoner of war in *its custody* is prohibited and will be regarded as a serious breach of *the present* Convention. In particular, no prisoner of war may be subjected to physical mutilation or to medical or scientific experiments of any kind which are not justified by the medical, dental or hospital treatment of the *prisoner* concerned and carried out in *his interest*."

Likewise, prisoners of war must at all times be protected, particularly against acts of violence *or* intimidation *and* against insults and public curiosity."

#### Article 13

At the end of the last paragraph the word "as" has been inserted between the words "far" and "the".

#### Article 14

The word "is" (bound) has been changed to "shall be"; the words "for all medical care which their state of health requires" have been replaced by the words "to grant them also the medical attention required by their state of health".

#### Article 14A

The word "relative" has been replaced by the word "relating".

The Drafting Committee wished to draw attention to the words "prejudicial discrimination" occurring in the sixth line of this Article. In the

corresponding Articles in the Wounded and Sick, Maritime Warfare and Civilians Conventions, the same idea has been expressed in different ways, viz:

*Article 10, Wounded and Sick Convention and Article 11, Maritime Warfare Convention*

“without any adverse distinction founded on sex, race, etc.”

*Article 11, Civilians Convention*

“without any distinction founded in particular on race, etc.”

The Committee did not consider itself competent to decide on one or the other of these formulae as the question was not one merely of drafting but of substance. The Committee suggested that the Plenary Assembly should choose the wording which in its opinion expressed most exactly the intention of the authors of the Articles in question.

*Article 15*

In the first paragraph the words “name and rank, date of birth, army” have been replaced by the words “surname, first names and rank, date of birth, and army”.

The third paragraph has been amended to read as follows:

“Each party to a conflict is required to furnish the persons under *its* jurisdiction who are liable to become prisoners of war, with an identity card showing the owner's *surname*, first names, rank, army, regimental, personal or serial number or equivalent information, and date of birth. The identity card may, furthermore, bear the signature or the finger-prints or both of the owner and may bear, as well, any other information the Party to the conflict may wish to add concerning persons belonging to its armed forces. *As far as possible the card shall measure 6.5×10 cm. and shall be issued in duplicate.* The identity card shall be shown by the prisoner of war upon *demand*, but may in no case be taken away from him.”

The following words have been added at the end of the fifth paragraph:

“...subject to the provisions of the preceding paragraph.”

*Article 16*

In the first paragraph, second sentence, the word “serving” has been replaced by the word “used”.

In the fourth paragraph, the last sentence has been rearranged to read:

“Sums in the currency of the Detaining Power or which *are changed into such currency*

at the prisoner's request shall be placed to the credit of the prisoner's account as provided in Article 54.”

The fifth paragraph has been amended to read as follows:

“*The Detaining Power may withdraw articles of value from prisoners of war only for reasons of security; when such articles are withdrawn, the procedure laid down for sums of money impounded shall apply.*”

*Article 17*

Article 17 has been reworded as follows:

“Prisoners of war shall be *evacuated* as soon as possible after their capture to camps *situated* in an area far enough from the combat zone for them to be out of danger.

*Only those* prisoners of war who, owing to wounds or sickness, would run greater risks by being evacuated than by remaining where they are, may be temporarily kept back in a danger zone.

Prisoners of war shall not be unnecessarily exposed to danger while awaiting *evacuation* from a fighting zone.”

*Article 18*

No change.

*Article 19*

In the second paragraph, first sentence, the word “is” has been inserted between the words “as,” and “allowed”; in the second sentence the words “they can” have been replaced by the words “this may”.

In the third paragraph, first sentence, the words “opposing Power” have been replaced by the words “adverse Party”.

*Article 20*

In the last paragraph the words “unless they so consent” have been inserted between the words “placed” and “in camps” and at the end, the last four words “unless they so consent” have been deleted.

*Article 21*

The text of the second paragraph has been changed from:

“Prisoners of war shall have shelters against air bombardment and other hazards of war, to the same extent as the local civilian population. In case of alarms, they may enter such shelters as soon as possible, excepting those engaged in



the protection of their quarters against the aforesaid hazards. Any other protective measure taken in favour of the population shall also apply to them."

to:

"Prisoners of war shall have shelters against air bombardment and other hazards of war, to the same extent as the local civilian population. *With the exception of those engaged in the protection of their quarters against the aforesaid hazards they may enter such shelters as soon as possible after the giving of the alarm.* Any other protective measure taken in favour of the population shall also apply to them".

The beginning of the third paragraph has been altered to read "Detaining Powers shall give the Powers concerned..." and in the second line the word "medium" has been replaced by the word "intermediary".

In the fourth paragraph, last sentence, the words "No place other than a" have been replaced by the word "Only" and the word "camp" has been changed to "camps".

*Article 22*

No change.

*Article 23*

In the third paragraph, first sentence, the words "dampness, adequately" have been replaced by the words "dampness and adequately".

*Article 24*

In the fourth paragraph, first sentence, the word "in" has been replaced by the word "with".

*Article 25*

In the second paragraph, first sentence, the word "regular" has been inserted between the words "The" and "replacement".

*Article 26*

The first two paragraphs have been amended to read as follows:

"Canteens shall be installed in all camps, where prisoners of war may procure foodstuffs, soap and tobacco and ordinary articles in daily use. The tariff shall never be in excess of local market prices.

The profits made by camp canteens shall be used for the benefit of the prisoners; a special fund shall be created for this purpose. The pri-

soners' representative shall have the right to collaborate in the management of the canteen and of this fund."

In the third paragraph, at the end of the first sentence, the words "the constitution of the" have been deleted.

*Article 27*

At the beginning of the third paragraph, the words "Furthermore, and without prejudice to" have been replaced by the words "Also, apart from". In the same paragraph the words "and time" have been inserted between the words "facilities" and "shall".

*Article 28*

In the fourth paragraph, second sentence, the word "having" has been replaced by the words "who has".

*Article 29*

In the second sentence the word "also" has been deleted; at the end of the third sentence the word "complaints" has been replaced by the word "disease".

*Article 29A*

In the first sentence, the words "Armed Forces" have been altered to read "armed forces"; at the end of the same sentence the words "Prisoners of War" have been altered to read "prisoners of war".

*Article 29B*

The first sentence has been reworded as follows:

"Members of medical personnel and chaplains whilst retained by the Detaining Power to look after prisoners of war shall be granted all facilities necessary to provide for the medical care of and religious ministrations to prisoners of war."

Then the text of Article 29B has been amended as a whole to read as follows:

„Members of the medical personnel and chaplains while retained by the Detaining Power with a view to assisting prisoners of war, shall not be considered as prisoners of war. They shall, however, receive as a minimum benefits and protection of the present Convention, and shall also be granted all facilities necessary to provide for the medical care of and religious ministrations to prisoners of war.

They shall continue to exercise their medical and spiritual functions for the benefit of prisoners of war, preferably those belonging to the armed forces upon which they depend, within the scope of the military laws and regulations of the Detaining Power, and under the control of its competent services, in accordance with their professional etiquette. They shall also benefit by the following facilities in the exercise of their medical or spiritual functions:

- (a) They shall be authorized to *visit periodically* prisoners of war situated in working detachments or in hospitals outside the camp. *For this purpose* the Detaining Power shall *place at their disposal* the necessary means of transport.
- (b) The senior medical officer in each camp shall be responsible to the camp military authorities for everything *connected with* the activities of retained *medical* personnel. *For this purpose, Parties to the conflict* shall agree at the outbreak of hostilities on the subject of the corresponding ranks of the medical personnel, including that of *societies* mentioned in Article 20 of the *Geneva Convention of ..... for the Relief of the Wounded and Sick in Armed Forces in the Field*. This senior medical officer, as well as chaplains, shall have *the right to deal direct with the* competent authorities of the camp *on all questions relating to their duties*. *Such authorities* shall afford them all necessary facilities for correspondence relating to these questions.
- (c) Although *they* shall be *subject* to the internal discipline of the camp in which *they are* retained, *such* personnel may not be compelled to carry out any work other than that concerned with its medical or religious duties.

During hostilities, the *Parties to the conflict* shall agree *concerning* the *possible* relief of retained personnel and shall settle the procedure to be followed.

None of the preceding provisions shall relieve the Detaining Power of its obligations with regard to prisoners of war from the medical or spiritual point of view."

#### Article 30

A new second paragraph has been added, worded as follows:

"Adequate premises shall be provided where religious services may be held."

#### Article 30A

At the end of the first sentence the word "practising" has been replaced by the word "of".

In the sixth sentence, the words "accorded to them to this effect" have been replaced by the words "which they may send".

The last sentence has been separated to form a second paragraph, and reworded as follows:

"They shall be granted additional rations as *provided* for working prisoners of war in the second paragraph of Article 24, and they shall also be granted additional opportunities for exercise and recreation including some freedom of movement in order to maintain *the state of* mental and physical fitness *required to carry out their religious duties*."

#### Article 30B

At the beginning of the second sentence, the words "To this effect" have been replaced by the words "For this purpose".

#### Article 30C

At the end of the first sentence, the word "designated" has been replaced by the word "appointed" and an "s" has been added to the word "prisoner"; at the same place, the words "of war" have been deleted, and the word "designation" has been replaced by the word "appointment".

In the last sentence the word "designated" has been changed to "appointed".

#### Article 31

No change.

#### Article 32

At the beginning of the second sentence the words "The said" have been replaced by the word "Such".

#### Article 33

No change.

#### Article 34

No change.

#### Article 35

No change.

#### Article 36

In the first paragraph, first sentence, the word "parties" has been altered to read: "Parties"; in the same sentence the word "designated" has been replaced by the word "mentioned".

In the second paragraph, the words "the promotions in rank accorded" have been replaced by the words "promotions in rank which have been accorded".

*Article 37*

In the third paragraph the word "should" has been replaced by the word "shall".

*Article 37A*

In the second paragraph the word "should" has been replaced by the word "shall".

*Article 38*

In the first paragraph, first sentence, the word "for" has been replaced by the words "those under which"; at the end of the same sentence, the words "when they" have been deleted.

*Article 39*

At the end of the first paragraph, the word "it" has been inserted after "demands".

In the second paragraph, "removal" and "removed" have been replaced by "transfer" and "transferred" respectively.

*Article 40*

In the second paragraph, second sentence, delete "but" and insert "which shall" between "carry" and "in". Replace further "to" by "be".

In the third paragraph, second sentence, insert "the" between "with" and "prisoners"; change the word "representatives" to "representative". In the same sentence, replace "kit" by "property".

*Article 41*

In the second paragraph, second sentence, "request" has been replaced by "ask for", further, in the same sentence "secured" has been replaced by "found".

In the third paragraph, "request" has been replaced by "ask for".

*Article 42*

In the first paragraph "in connection" has been changed to "connected"; further, "only" has been deleted and "obliged" has been replaced by "compelled". The following insertions have been made: "only such" between "do" and "work", and "as is" between "work" and "included".

The sub-paragraph (b) has been amended to read:

"Industries connected with the production or the extraction of raw materials and manufactur-

ing industries, with the exception of iron and steel, machinery and chemical industries and of public works and building operations which have a military character or purpose."

In sub-paragraph (c), replace "having neither" by "which are not" and insert "in" between "military" and "character".

At the beginning of the second paragraph, the following insertions have been made: "which are" between "devices" and "dangerous", and the word "were" between "and" and "placed". Further "have been" (taken) have been replaced by "were". The words "under conditions defined in the following Article" have been altered to read "in accordance with the provisions of Article 42 A". At the end of the same paragraph, the word "suitable" has been inserted before "training".

*Article 42A*

At the end of the second paragraph, the words "security of industrial workers" have been replaced by "safety of workers".

In the third paragraph, second sentence, the words "Subject to Article 43, they can be" have been replaced by "Subject to the provisions of Article 43, prisoners may be".

*Article 43*

The first paragraph has been altered to read as follows:

"Subject to the stipulations contained in Article 42, second paragraph, no prisoner of war may be employed on labour which is of an unhealthy or dangerous nature."

*Article 44*

The second paragraph has been reworded as follows:

"Prisoners of war must be allowed, in the middle of the day's work, a rest of not less than one hour. This rest will be the same as that to which workers of the Detaining Power are entitled, if the latter is of longer duration. They shall be allowed in addition a rest of twenty-four consecutive hours every week, preferably on Sunday or the day of rest in their country of origin. Furthermore, every prisoner who has worked for one year shall be granted a rest of eight consecutive days, during which his working pay shall be paid him."

*Article 45*

In the first paragraph, "conformity" has been replaced by "accordance".

In the second paragraph, first sentence, "all" has been inserted between "receive" and "the"; the word "attention" has been changed to "care". In the second sentence, the word "such" has been inserted after "deliver to". Further "put in" has been replaced by "submit" and "with" has been replaced by "to".

#### Article 46

In the first paragraph, second sentence, "should" has been replaced by "shall".

In the second paragraph, second sentence, the words "who, in their opinion, are" have been replaced by the words "who are, in their opinion".

#### Article 47

No change.

#### Article 48

In the first paragraph, first sentence, "working" has been changed to "who work" and "the account of" has been deleted; the words "their safe keeping" have been altered to read "guarding and protecting them". In the second sentence, "such" has been inserted after "pay of".

At the end of the first paragraph, "working for private individuals" have been deleted.

In the last paragraph "of" (the camps) has been replaced by "in".

#### Article 49

In the first paragraph, second sentence, "possession, which" has been replaced by "possession and which".

#### Article 50

The first paragraph has been altered to read as follows:

"Cash which was taken from prisoners of war, in accordance with Article 16, at the time of their capture, and which is in the currency of the Detaining Power, shall be placed at their separate accounts, in accordance with the provisions of Article 54 of the present Section."

#### Article 51

In the first paragraph, Category IV, the word "and" which appeared between the words "colonels" and "prisoners", has been replaced by "or".

In the fourth paragraph, the word "a" has been inserted between "conclusion of" and "special agreement"; in sub-paragraph (b), "own" has been inserted between "their" and "use".

#### Article 51A

Article 51A has been amended to read as follows:

"The Detaining Power shall accept for distribution as supplementary pay to prisoners of war sums which the Power on which the prisoners depend may forward to them, on condition that the sums to be paid shall be the same for each prisoner of the same category, shall be payable to all prisoners of that category depending on that Power, and shall be placed in their separate accounts at the earliest opportunity in accordance with the provisions of Article 54. Such supplementary pay shall not relieve the Detaining Power of any obligation under this Convention."

#### Article 52

In the first paragraph, the first sentence has been amended to read:

"Prisoners of war shall be paid a fair working rate of pay by the detaining Authorities direct."

In the second paragraph, the words "an artisanal" have been replaced by "a skilled or semi-skilled"; at the end of the paragraph, "in favour of" has been replaced by "on behalf of".

In the third paragraph, the first sentence has been amended to read:

"The working pay of the prisoners' representative, of his advisers, if any, and of his assistants, shall be paid out of the fund maintained by canteen profits."

In the second sentence, "rate of" has been inserted between "working" and "pay".

#### Article 53

No change.

#### Article 54

In sub-paragraph 1, the word "or" has been inserted between "pay," and "working".

#### Article 55

In the third paragraph, at the end of the first and of the second sentences, the words "shall follow" have been changed to "will follow".

#### Article 56

This Article has been amended to read as follows:

"On the termination of captivity, through the release of a prisoner of war or his repatriation, the Detaining Power shall give him a statement, signed by an authorized officer of that Power, showing the credit balance then due to him."

The Detaining Power shall *also* send through the Protecting Power to the Government upon which the prisoner of war depends, lists *giving all appropriate* particulars of all prisoners of war whose captivity has been terminated by repatriation, release, escape, death or any other means, and showing the amount of their credit balances. Such lists shall be certified on each sheet by an authorized representative of the Detaining Power.

Any of the *above* provisions of this Article may be varied by mutual agreement between any two Parties to the conflict.

The Power on which the prisoner of war depends shall be responsible for *settling with him* any credit balance due to him from the Detaining Power on the termination of his captivity."

The Delegate of France suggested that the words "On the termination of captivity..." in the first line of the first paragraph should be deleted as superfluous, but this suggestion was not considered by the Committee.

#### Article 57

In the second sentence, the words "by virtue of" have been replaced by "under".

#### Article 57A

In the first paragraph, the last sentence has been amended to read:

"*This statement will be signed by a responsible officer of the Detaining Power and the medical particulars certified by a medical officer.*"

In the second paragraph, the two last sentences have been amended to read:

"The Detaining Power will, in all cases, provide the prisoner of war with a statement, signed by a responsible officer, showing all available information regarding the reasons *why* such effects, monies or valuables *have not been restored to him*. A copy of *this* statement *will be forwarded to the Power on which he depends through the Central Agency for Prisoners of War provided for in Article 113.*"

#### Article 58

In the first sentence, the words "into their power the Detaining Powers" have been replaced by "into its power the Detaining Power".

#### Article 59

In the first sentence, the words "by Article 113, on the hand" have been replaced by "in Article 113, on the other hand".

#### Article 60

In the first paragraph, at the end of the third sentence "interpreters" has been replaced by "linguists".

In the second paragraph, first sentence, the word "have" has been changed to "receive".

#### Article 61

In the first paragraph, "by" has been inserted between "or" and "other". Further the word "medicaments" has been replaced by "medical supplies".

At the end of the third paragraph, the word "the" (prisoners) has been deleted.

#### Article 62

In the second paragraph, "limit" has been replaced by "restrict". Further the word "and" (to dispose etc.) has been changed to "or".

In the third paragraph, "body" has been replaced by "organization".

#### Article 64

In the first paragraph, the words "All shipments of relief" have been altered to read "All relief shipments".

The third and fourth paragraphs have been amended to read as follows:

"*If relief shipments intended for prisoners of war cannot be sent through the post office by reason of weight or any other cause, the cost of transportation shall be borne by the Detaining Power in all the territories under its control. The other Powers party to the Convention shall bear the cost of transport in their respective territories.*

*In the absence of special agreements between the parties concerned, the costs connected with transport of such shipments, other than costs covered by the above exemption, shall be charged to the senders.*"

In the last paragraph, "charges" has been changed to "rates".

#### Article 65

In the first paragraph, first sentence, "belligerents" has been replaced by "Parties to the conflict". In the second sentence, "for that purpose", and "means of" have been deleted. In the same sentence, "in particular" has been altered to read "especially".

In the second paragraph, first line, the words "The said means" have been replaced by "Such".

Sub-paragraph (a) has been amended to read:

"correspondence, lists and reports exchanged between the Central Information Agency referred to in Article 113 and the National Bureaux referred to in Article 112."

The first word of sub-paragraph (b), "the" has been deleted. At the beginning of the third paragraph, the words "are not intended" have been replaced by "in no way". Further the word "grant" has been changed to "granting", and an "s" has been added to "conduct".

In the last paragraph, the words "Failing special agreements" have been altered to "In the absence of special agreements". Further the words "these means of" have been replaced by "such" and "transportation" has been changed to "transport".

#### Article 66

In the first paragraph, first sentence, "effected" has been replaced by "done". In the second sentence, "shipping" has been changed to "despatching".

In the second paragraph, first sentence, "not" has been inserted between "shall" and "be"; the word "in" has been replaced by "under"; also the words "such as" have been changed to "that" and the word "not" has been deleted. Further the words "to damage" have been deleted, and "therein" replaced by "in them to deterioration". In the second sentence, "transmission" has been changed to "delivery".

In the last paragraph, the position of "only" has been altered from before the word "be" to after "be".

#### Article 67

The second paragraph has been amended to read:

"In all cases they shall facilitate the preparation and execution of such documents on behalf of prisoners of war; in particular, they shall allow them to consult a lawyer and shall take what measures are necessary for the authentication of their signatures."

#### Article 68

In the first paragraph, "with regard to" has been changed to "regarding".

The second paragraph has been amended to read as follows:

"They shall also have the *unrestricted* right to apply to the representatives of the Protecting Powers either through their prisoners' representative, or, if they consider it necessary, direct, in order to draw their attention to any points on

which they may have complaints to make regarding their conditions of captivity."

In the third paragraph, first sentence, "such" has been replaced by "These".

The wording of the last paragraph has been altered to read as follows:

"Prisoners' representatives may send periodic reports on the situation in the camps and the needs of the prisoners of war to the representatives of the Protecting Powers."

#### Article 69

In the first paragraph, first sentence, the words "where officers are present" have been replaced by "in those where there are officers".

In the second paragraph, first sentence, "prisoner" has been deleted; the words "of the highest rank" have been replaced by "among the prisoners of war". In the second sentence "amongst" has been changed to "among". At the end of the paragraph "by them" have been replaced by "shall be elected by them."

In the third paragraph, the first two sentences have been altered as follows:

"Officer prisoners of war of the same nationality shall be stationed in labour camps for prisoners of war, for the purpose of carrying out the camp administration duties for which the prisoners of war are responsible. These officers may be elected as prisoners' representatives under the first paragraph of this Article."

In the last sentence of the same paragraph "this" has been replaced by "such"; and the words "other than" have been replaced by "who are not".

In the fourth paragraph, first sentence, the word "An" (elected) has been replaced by "Every". In the same sentence, the words "as a representative of the prisoners of war under this Convention" have been deleted.

In the last sentence, the words "it must give the reason for such refusal to the Protecting Power." have been altered to read "it must inform the Protecting Power of the reason for such refusal."

In the final paragraph, first sentence, the words "In any case" have been replaced by "In all cases". In the second sentence, "will" has been replaced by "shall". Further the words "provisions of" have been deleted.

#### Article 70

In the first paragraph, "contribute to" has been replaced by "further".

The beginning of the second paragraph has been re-arranged to read:

"In particular, where the prisoners decide to organize amongst themselves a system of mutual assistance". This organization *will* be "within the province...".

In the last paragraph, the word "functions" has been replaced by "duties".

#### Article 71

At the end of the first paragraph, "rendered" has been changed to "made"; the word "there by" changes its position from after "difficulty" to between "is" and "made".

In the third paragraph, the word "to" changes its position from before "freely" to after "freely".

In the fourth paragraph, second sentence, the word "of" (communications etc.) has been replaced by "for". Further the "s" has been deleted from the word "communications" and an "s" has been added to the word "communication" in the third sentence. The word "limited" has been replaced by "restricted".

#### Article 72

The second paragraph has been amended to read as follows:

"If any law, regulation or order of the Detaining Power shall declare *acts* committed by a prisoner of war *to be punishable, whereas the same acts* would not be punishable if committed by a member of the forces of the Detaining Power, such *acts* shall entail disciplinary *punishments* only."

#### Articles 73, 74, 75, 76, 77

No change.

#### Article 78

In the first paragraph, "less favourable" have been replaced by "more severe".

At the end of the second paragraph, the words "in respect of" have been replaced by "for".

At the end of the third paragraph, there has been an addition as follows "Detaining Power *dealt with for a similar offence.*"

#### Article 79

In sub-paragraph (3), the "s" has been deleted from the word "fatigues" and "duty" has been inserted between "fatigue" and "not".

#### Article 80

In the first paragraph, first sentence, the word "awarded" has been deleted.

In the last paragraph, the first word "If" has been replaced by "When".

#### Article 81

In the last paragraph, the last word "flight" has been changed to "escape".

#### Article 82

In the first paragraph, "but" has been replaced by "or".

The third paragraph has been amended to read as follows:

"Article 78, fourth paragraph notwithstanding, prisoners of war punished as a result of an unsuccessful escape may be subjected to special surveillance. Such surveillance *must* not affect the state of their health, *must be* undergone in a prisoner of war camp, and *must* not entail the suppression of any of the safeguards granted them by the present Convention".

#### Article 83

The last paragraph has been amended to read as follows:

"*Prisoners of war who aid or abet* an escape or attempt to escape shall be liable on this count to disciplinary punishment only."

#### Article 84

No change.

#### Article 85

No change.

#### Article 86

In the first paragraph, the word "higher" has been replaced by "superior".

In the third paragraph, the first words "Prior to" have been replaced by "Before" and the words "sentence being" have been altered to read "award is". Further the words "informed precisely of" have been replaced by "given precise information regarding". The last word of the same paragraph, "spokesmen" has been replaced by "prisoners representative."

#### Article 87

The first paragraph has been amended to read as follows:

"*Prisoners of war shall not in any case be transferred to penitentiary establishments (prisons, penitentiaries, convict prisons, etc.) to undergo disciplinary punishment therein.*"

In the second paragraph, first sentence, "the" has been inserted between "to" and "sanitary".

In the fourth paragraph, the word "Female" has been replaced by "Women"; at the end of the paragraph "a woman" have been replaced by "women".

*Article 88*

In the third paragraph, "given" has been changed to "awarded".

In the last paragraph, second sentence, "not" and "handed" have been deleted. In the same sentence, the words "withheld from" have been inserted in place of "to" (them etc.). The word "expiration" has been replaced by "completion" and the word „sentence" has been replaced by "punishment".

*Article 89*

No change.

*Article 90*

In the last paragraph, fourth line, the word "since" has been inserted between "that" and „the", the words "not being" have been altered to read "is not". Further the word "he" has been inserted between "Power" and "is".

*Article 91*

The last lines of this Article are deleted and replaced by the following words:

"...at least six months from the date *when the Protecting Power receives at the indicated address, the detailed communication provided for in Article 97.*"

*Article 92*

No change.

*Article 93*

No change.

*Article 94*

In the first paragraph, at the end of the first sentence, the words "the opening" have been inserted between "before,, and "of"; the word "the" has been inserted between "of" and "trial". In the second sentence, the word "this" (notification etc.) has been replaced by "such".

In sub-paragraph (1), the word "his" has been inserted before the words "rank, army, date of birth" and "profession"; the word "regimental" has been inserted between "army" and "personal".

In sub-paragraph (3), the words "of the indictment" have been altered to read "on which the prisoner of war is arraigned".

The last paragraph has been amended to read:

"If no evidence is submitted, at the opening of a trial, that the notification referred to above was received by the Protecting Power, by the prisoner of war and by the prisoners' represent-

ative concerned, at least three weeks before the opening of the trial, then the latter cannot take place and must be adjourned."

*Article 95*

In the first paragraph, first sentence, the word "a" has been inserted between "by" and "qualified"; the words „advocate or" have been inserted between "qualified" and "counsel".

Further, the word „own" has been inserted between "his" and "choice".

In the second paragraph, first sentence, the words "or counsel" have been inserted between "advocate" and "and". In the last sentence, the words "an advocate or" have been inserted twice, each time before the word "counsel", and the word "a" has been inserted between "appoint" and "competent".

The beginning of the third paragraph is altered to read as follows:

*"The advocate or counsel conducting the defence on behalf of the prisoner of war shall..."*

In the fourth paragraph, the first words "The indictment" have been replaced by "Particulars of the charges on which the prisoner of war is arraigned". In the second sentence, the words "defence counsel of" have been altered to read "conducting the defence on behalf of".

In the last paragraph, first sentence, the words "this is" have been deleted, and the words "this is" have been inserted between "exceptionally" and "held".

*Article 96*

In the first sentence, the words "rendered with regard to" have been replaced by "pronounced upon"; in the second sentence, the words "to the time limit in" have been replaced by the words "of the time limit within".

*Article 97*

In the first paragraph, first sentence, the words "also indicating" and "prisoners of war have" have been replaced by, respectively, "which shall also indicate" and "he has". In the second sentence, "spokesman" has been changed to "prisoners' representative". At the end of the same sentence, "announced" has been changed to "pronounced".

In the second paragraph, sub-paragraph 1, the word "judgment" has been replaced by "finding". In sub-paragraph 2, the words "pre-trial enquiry" have been altered to read "preliminary investigation" and the word "points" has been replaced by "elements". In sub-paragraph 3, the words "indication, if necessary", have been amended to read "notification, where applicable".



*Article 98*

In the first paragraph, first sentence, the words "convictions regularly put into force" have been replaced by "at conviction has become duly enforceable". In the same sentence, the word "for" (members etc...) has been changed to "in the case of".

In the second paragraph, the last words "female personnel" have been replaced by "women".

In the last paragraph, second sentence, the words "required by" have been inserted between "care" and "their"; the words "may require" have been deleted.

In the third sentence "conformity" has been replaced by "accordance".

*Article 100*

At the beginning of the first paragraph, the words "the third" has been inserted between "of" and "paragraph", and the words "of this Article" have been inserted between "paragraph" and "Parties". Further the words "seriously wounded and" have been inserted between "rank" and "seriously", and the words "and seriously injured" have been deleted. The words "brought them to a condition where they can be transported" have been replaced "cared for them until they are fit to travel. At the end of the paragraph, "conformity" has been changed to "accordance".

In the second paragraph, at the end of the first sentence, the word "designated" has been replaced by "referred to".

In the last paragraph, the words "of this Article" have been inserted after "paragraph" and "may".

*Article 101*

In the second paragraph, sub-paragraph 1, the words "of wound or the inception of illness" have been changed to the words "of the wound or the beginning of the illness"; at the end of sub-paragraph 2, the word "from" has been deleted.

In the third paragraph, the sub-paragraphs 1 and 2 have been amended to read as follows:

- "(1) *Those* whose state of health has deteriorated so as to fulfil the conditions laid down for direct repatriation;
- (2) *those* whose mental or physical powers remain, even after treatment, considerably impaired."

In the fourth paragraph, the first words "In default of special agreements concluded" have been replaced by "If no special agreements are concluded".

*Article 101A*

The words "which may be" have been deleted. The word "reach" has been changed to "conclude". Further the words "in neutral territories" have been altered to read "in the territory of the said neutral Powers.

*Article 102*

In the first paragraph, at the end of the first sentence "due" has been replaced by "appropriately".

*Article 103*

In the first paragraph, "sick and injured" has been changed to "wounded or sick".

In sub-paragraph 1, the first words "Sick and wounded prisoners designated" have been replaced by "wounded and sick proposed".

In sub-paragraph 2, the first words "sick and wounded" have been transposed to read "wounded and sick" and the word "prisoners" has been deleted. The word "presented" has been replaced by "proposed".

In sub-paragraph 3, "sick and wounded" has been transposed to read "wounded and sick" and the word "prisoner" has been deleted. Further the words "a body" have been replaced by "an organization.

At the end of the second paragraph, the words "by them" have been deleted.

*Article 104*

The words "same provisions as regards" have been changed to "provisions of this Convention as regards".

*Article 105*

In the first paragraph, first sentence "might be" has been replaced by "is"; further the words "served his sentence" have been replaced by "undergone his punishment."

*Article 106*

No change.

*Article 107*

No change.

*Article 108*

In the second paragraph, "belligerents" has been replaced by "Parties to the conflict".

In the fourth paragraph, the sub-paragraphs (a) and (b) have been amended to read as follows:

- "(a) If the two Powers are contiguous, the Power on which the prisoners of war depend

shall bear the costs of repatriation from the frontiers of the Detaining Power.

- (b) If the two Powers are not contiguous, the Detaining Power shall bear the costs of transport of prisoners of war over its own territory as far as the frontier or port of embarkation nearest to the *territory of the Power on which the prisoners of war depend*. The Parties concerned shall agree *between themselves* as to the equitable apportionment of the remaining costs of the repatriation. The conclusion of this agreement shall in no circumstances justify any delay in the repatriation of the prisoners of war."

#### Article 109

In the first paragraph, the words "bearing in mind Article 108 and" have been replaced by "having regard to" and the words "contained in it" have been altered to read "of Article 108, and those of the following paragraphs."

In the third paragraph, first sentence, the word "the" (correspondence etc...) has been changed to "any". In the second sentence, the words "but in no case to less than twenty-five kilograms per head" have been altered to read "each prisoner shall in all cases be authorized to carry at least 25 kilograms."

In the fifth paragraph, "warranted" has been replaced by "justified". Further the words "and family circumstances" have been replaced by "or in the case". Finally, a full stop has replaced the comma after "children" and the words "and that" have been replaced by the wording "Such distinction shall only be made by their family circumstances".

In the sixth paragraph, first sentence, the words "prosecution is" have been changed to "proceedings are". In the same sentence, the word "the" (proceedings) has been changed to "such". In the second sentence, "hold true of" has been replaced by "apply to"; the word "judicial" has been deleted and finally, the words "relating to judicial proceedings" have been added after the word "Convention".

The seventh paragraph has been amended to read:

"Parties to the conflict shall communicate to each other the names of any prisoners of war who are detained until the end of proceedings or until punishment has been completed."

In the last paragraph, the word "belligerents" has been replaced by "Parties to the conflict". The words "of war" have been inserted between "prisoners" and "and", the word "of" has been inserted between "and" and "assuring".

#### Article 110

In the first paragraph, first sentence, the words "according to" have been replaced by "required by"; the words "will have to" have been changed to "must". In the second sentence, a comma has been added after the word "death".

In the second paragraph, first sentence, a comma has been added after the word "Convention". In the second sentence, the word "listed" has been replaced by "set out" and "the" has been inserted between "in" and "third". In the same sentence the words "and also" have been inserted between "Article 15" and "the".

In the fourth paragraph, first sentence, "and" has been added after "belonged".

In the fifth paragraph, at the end of the second sentence, the words "in accordance with" have been inserted between "or" and "his". The last words, "prisoners of war." have been deleted.

In the last paragraph, third sentence, the word "of" (records etc.) has been replaced by "for". In the same sentence, the word "that" (territory etc.) has been changed to "the". In the fourth sentence, "likewise" has been replaced by "shall also". Finally, "disposition" has been changed to "disposal".

The phrase in the English version "which will take steps to inform the Detaining Power of its requirements in this respect" appears to the Delegation of the United Kingdom to be satisfactory. It refers back to the conditions of validity required by the legislation of the prisoner's country of origin. The Delegation of the United Kingdom does not think that the French translation "qui prendra soin de faire connaître à la Puissance détentrice les dispositions du droit successoral en vigueur sur son territoire" corresponds with the English words quoted above. It would appear that "droit successoral" means: the law relating to succession and to wills, and it is undoubtedly a much wider term than the law relating to the conditions of validity of a will. The Delegation of the United Kingdom therefore would suggest that the French be altered to correspond with the English.

The Delegation of the United Kingdom are not, in any case, fully satisfied with the first paragraph of Article 110, as there may well be a contradiction in stating, first of all, that the wills of prisoners of war shall be drawn up "in the form according to the law of the Detaining Power" and following this by saying, in the second place, that such wills must "satisfy the conditions of validity required by the legislation of their country of origin." It is quite possible that a will drawn up in the form required by the legislation of the Detaining Power might not, according to the law of the prisoner's country of origin, possess the necessary requirements for validity. The Delegation of the United

Kingdom would very much prefer the opening sentence of the first paragraph of this Article to read:

"Wills of prisoners of war shall be drawn up so as to satisfy the conditions of validity required by the legislation of their country of origin, which will take steps to inform the Detaining Power of its requirements in this respect."

The Delegation of the United Kingdom has, however, recognized that an amendment of this kind is something more than a drafting amendment. The Drafting Committee, being also of this opinion, has therefore decided to submit the amendment to the Plenary Assembly.

#### Article III

The second paragraph has been amended to read:

"A communication *on this subject* shall be sent immediately to the Protecting Power. The *statements* shall be taken from witnesses, especially from those who are prisoners of war and a report including such statements shall be forwarded to the Protecting Power."

#### Article II2

In the second paragraph, first sentence "the" has been inserted between "Bureau" and "information". In the second sentence, the words "belonging to such categories" have been inserted between "persons" and "whom". In the same sentence, the words "under the conditions named in the preceding paragraph" have been altered to read "within their territory".

In the third paragraph, the word "medium" has been replaced by "intermediary".

In the fourth paragraph, second sentence, "for" has been replaced by "in respect" of. In the same sentence, the following insertions have been made: "s" after the word "name" and "rank" between "names" and "army", finally, the words "personal or serial" between "regimental" and "number".

The word "rank" in the original text (between "number" and "place") has been deleted.

In the fifth paragraph, "respecting" has been replaced by "regarding". Further the word "admittances" has been changed to "admissions" and the words "the third" have been inserted between "in" and "paragraph" in place of "paragraph 3".

The seventh paragraph has been transferred to form the last sentence of the eighth paragraph.

The eighth paragraph has been amended to read:

"The Information Bureau shall also be *responsible for* replying to all enquiries sent to it concerning prisoners of war, including those who have died in captivity; it will make any enquiries *necessary* to obtain the information which is

asked for *if this* is not in its possession. *All written communications made by the Bureau shall be authenticated by a signature or a seal.*"

The last paragraph has been rearranged so that the second sentence (sixth, seventh and eighth lines) has been transferred to become the last sentence of the paragraph. The words "showing clearly full identity particulars" have been replaced by the words "giving clear and full particulars of the identity."

The Drafting Committee suggested to the Plenary Assembly that the word "nationality" in the fourth paragraph, second sentence, should be replaced by "indication of the Power on which they depend."

#### Article II3

In the first paragraph, "central" has been altered to „Central”.

In the second paragraph, first sentence, the words "by the most rapid means" have been replaced by "as rapidly as possible".

#### Article II4

No change.

#### Article II5

In the first paragraph, first sentence, the word "body" (assisting etc.) has been replaced by "organization". Further the word "and" (distributing etc.) has been deleted. In the second sentence "bodies" has been changed to "organizations".

In the second paragraph, the word "bodies" has also been replaced by "organizations" and the word „function" has been replaced by "carry out their activities".

In the last paragraph, the first word "When" has been replaced by "As soon as". Further the phrase "or very shortly afterwards" has been inserted between "war" and "receipts". In the same sentence, the words "spokesman of these prisoners" have been altered to "prisoners' representative". At the end of the sentence, "addressed forthwith or at least soon thereafter" has been replaced by "forwarded" and "body" have been changed to "organization". In the second sentence, the words "relative to" have been replaced by "for".

#### Article II6

In the first paragraph, last sentence, "either" has been inserted before "personally".

In the second paragraph, second sentence, "limited" has been changed to "restricted". In the third sentence, "then" has been inserted between "and" and "only".

In the third paragraph, the word "shall" has been deleted.

*Article 117*

In the first paragraph, "incorporate" has been replaced by "include"; at the end of the paragraph, "entire" has been inserted between "the" and "population".

The second paragraph has been amended to read as follows:

"Any military or other *authorities*, who in time of war assume responsibilities *in* respect of prisoners of war, must possess the text of the Convention and be specially instructed as to its provisions."

*Article 118*

No change.

*Article 119*

The second paragraph has been adapted to the wording of the corresponding Articles in the other Conventions and reads as follows:

"Each High Contracting Party shall be under the obligation to search for persons alleged to have committed, or to have ordered to be committed such grave breaches, and shall bring such persons, regardless of their nationality, before its own courts. It may also, if it prefers and in accordance with the provisions of its own legislation, hand such persons over for trial to another High Contracting Party concerned, provided such High Contracting Party has made out a *prima facie* case."

*Article 119A*

"The" has been deleted twice before "wilful". Further, the same word "the" appearing before "prisoner", has been replaced by "a".

*Article 119B*

Article 119B has been amended to read as follows:

"No *High Contracting Party* shall be allowed to absolve itself or any other *High Contracting Party* of any liability incurred by itself or by another *High Contracting Party in respect of* breaches *referred to* in the preceding Article."

*Article 119C*

In the first paragraph, "the belligerent" have been replaced by "a Party to the conflict".

In the third paragraph, "belligerents" has also been replaced by "Parties to the conflict".

*Article 119D*

At the beginning of the Article, the words "The States parties to the present Convention"

have been replaced by the words "The High Contracting Parties"; further the word "other" has been deleted.

*Article 120*

No change.

*Article 121*

Article 121 has been reworded as follows:

"*The present* Convention replaces the Convention of July 27, 1929, in relations between the High Contracting Parties."

*Article 122*

The word "who" (are etc.) has been replaced by "which". The word "complete" (Chapter II etc.) has been changed to "be complementary to". At the end of the article "aforesaid" has been replaced by "abovementioned" and the words "of the Hague" have been added after "Conventions", replacing the word "Hague".

*Article 123*

At the end of the article, the words "the said" (Conference etc.) have been replaced by "that".

*Article 124*

Article 124 has been amended to read as follows:

"The present Convention shall be ratified as soon as possible *and the ratifications* shall be deposited at Berne.

*A record shall be drawn up* of the deposit of each instrument of ratification *and certified copies of this record* shall be transmitted by the Swiss Federal Council to the Governments of all the Powers in whose name the Convention has been signed, or whose accession has been notified."

*Article 125*

No change.

*Article 126*

Article 126 has been amended to read as follows:

"From the date of its coming into force, *it* shall be open to any Power, in whose name *the present Convention* has not been signed, to *accede to this Convention.*"

*Article 127*

No change.

*Article 128*

Article 128 has been amended to read as follows:

"The situation provided for in Article 2 shall give immediate effect to ratifications deposited and accessions notified by the Parties to the conflict before or after the *beginning* of hostilities or *occupation*. The Swiss Federal Council shall communicate by the *quickest method* any ratifications or *accessions* received from Parties to the conflict."

*Article 129*

In the third paragraph, second sentence, the words "until after" have been inserted between "and" and "operations"; and at the end of the paragraph, the word "are" has been replaced by "have been".

*Article 130*

The words "Government of the Swiss Confederation" have been twice replaced by "Swiss Federal Council" further the words "notices of termination" have been replaced by "denunciations".

*Signature Clauses*

The second paragraph of the Signature Clauses has been amended to read as follows:

"Done at ..... this ..... day of....., 1949, in the English and French languages, and the original of which shall be deposited in the archives of the Swiss Confederation. The *Swiss Federal Council* shall transmit certified copies thereof to each of the signatory and acceding States."

## ANNEX I

## CHAPTER I

## A

In No. 1, first paragraph, the words "the defect" have been replaced by "this disability".

The following note has been inserted after sub-paragraph No. 3:

"The decision of the Mixed Medical Commission shall be based to a great extent on the records kept by camp physicians and surgeons of the same nationality as the prisoners of war, or on an examination by medical specialists of the Detaining Power."

## B

In sub-paragraph 7 of the first paragraph, the words "pregnant women and" have been replaced by "women prisoners of war who are pregnant or".

At the beginning of second paragraph, "be excluded from" has been changed to "not be eligible for".

## CHAPTER II

In No. 1, first paragraph, "should" has been changed to "shall".

In the second paragraph, first sentence, the words "should especially" have been replaced by "shall above all". In the second sentence, "warrants" has been changed to "justifies".

In No. 3 "likewise" has been replaced by "as well as".

In No. 4, first sentence, the words "present stipulations" have been replaced by "provisions of this Annex". In the second sentence, the word "to" (the accomplishment etc.) has been changed to "for".

In No. 5, second sentence, "stipulations" has been replaced by "provisions".

## ANNEX II

*Articles 1, 2*

No change.

*Article 3*

In the first sentence, the words "two adverse parties" have been replaced by "Parties to the conflict concerned".

*Article 4*

No change.

*Article 5*

The words "proceed to" have been changed to "arrange for".

*Article 6*

No change.

*Article 7*

The words "Powers parties" have been replaced by "Parties".

*Article 8*

The wording of this Article has been rearranged to insert the words:

"...when making the appointments provided for in Articles 2 and 4 of the present Regulations" between "Red Cross" and "shall".

*Articles 9, 10*

No change.

*Article 11*

The wording of the last sentence has been rearranged to insert the words:

"...to those whose repatriation has been proposed".

between "issue" and "certificates".

*Article 12*

This Article has been amended to read:

"The Detaining Power shall be required to carry out the decisions of the mixed medical commissions within three months *of the time when it receives due notification of such decisions.*"

*Article 13*

No change.

The proposal of the Delegation of New Zealand relating to Article 13 has been deferred to the Plenary Assembly, the Committee having decided that it was a question of principle which it did not feel competent to consider.

*Article 14*

At the end of the article, the words "not exceeding" have been replaced by "of not more than".

## ANNEX III

*Article 1*

The words "administratively subordinate" have been changed to "administered by". Further, the word "in" (preceding the word "prisons") has been replaced by "or in".

*Article 2*

In the first sentence, the word "the" (preceding "plan") has been changed to "a". In the second sentence, the word "by" (preference etc.) has been replaced by "for". In the same sentence, the word "those" (may etc.) has been changed to "the latter". Further, the word "disregard" (the said etc.) has been replaced by "waive".

*Article 3*

This Article has been amended to read:

"The said prisoners' representatives or their assistants shall be allowed to go to the points of arrival of relief supplies near their camps *so as to enable the prisoners' representatives or their assistants to verify the quality as well as the quantity of the goods received, and to make out detailed reporters thereon for the donors.*"

*Article 4*

No change.

*Article 5*

In the first sentence, the words "bearing on" have been replaced by "relating to".

The following sentence has been added at the end of the Article:

"Such forms and questionnaires, duly completed, shall be forwarded to the donors without delay."

*Article 6*

In the first sentence "constitute" has been replaced by "build up". In the second sentence, the word "that" (purpose etc.) has been changed to "this".

*Article 7*

In the first sentence, the words "shall have the property of" have been replaced by "retain in his possession" and the word "a" (complete set etc.) has been changed to "one". In the second sentence, "articles" has been replaced by "clothing". In the last sentence "will" has been changed to "shall".

*Article 8*

In the first sentence, the words "is in any way possible" have been altered to "authorize, as far as possible".

*Article 9*

The words "to ensure" have been changed to "ensuring". At the end of this Article, the word "that" has been inserted between "means" and "they".

## ANNEX IV

## I

No change.

## II

At the top of the card, the word "nationality" has been replaced by "Power on which the prisoner depends".

## III

No change.

## IV

The word "nationality" has been changed to "Power on which the prisoner depends".

## V

The text has been amended to read as follows:

*"Repatriation Certificate*

Date:

Prisoner of War:

Camp:

Hospital:

Surname:

First Names:

Date of birth:

Rank:

Unit:

Army Number:

P. W. Number:

Injury—Disease:

Decision of the Commission:

Chairman of the  
Mixed Medical Commission

A = direct repatriation

B = accommodation in a neutral country

NC = re-examination by next Commission".

## ANNEX V

(See Article 53)

The second paragraph of Annex V has been amended to read as follows:

"The notification will be signed by the prisoner of war or his witnessed mark made upon it

if he cannot write, and shall be countersigned by the prisoners' representative in that camp."

At the end of the third paragraph, the words "to be paid" have been replaced by "as payable".

**PART IV**  
**CIVILIANS CONVENTION**

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*Article 1*

No change.

*Article 2*

In the last paragraph, the first word "If" has been changed to "Although"; in the same sentence, the word "a" has been inserted between "in" and "conflict"; the word "is" has been replaced by "may" and the words "be a" have been inserted between "not" and "party". Further, the word "party" (thereto etc.) has been changed to "parties" and the word "notwithstanding" has been deleted. The word "be" (bound etc.) has been replaced by "remain". In the second sentence, the word "are" has been replaced by "shall", and the word "be" has been inserted between "furthermore" and "bound".

*Article 2A*

No change.

*Article 3*

In the first paragraph, "whatever" (manner etc.) has been replaced by "any", and the word "whatsoever" has been inserted between "manner" and "find".

In the second paragraph, first sentence, the words "which is" have been inserted between "State" and "not".

At the beginning of the third paragraph, the word "Geneva" has been inserted between "by the" and "Convention".

Finally, the Drafting Committee agreed to a United States Delegation's amendment, adopted by the Plenary Assembly, which proposed to place the fourth paragraph ahead of the third paragraph.

*Article 3A*

The second paragraph has been amended to read:

"Where in occupied territory an individual protected person is detained as a spy or saboteur, or as a person under definite suspicion of activity hostile to the security of the Occupying

Power, such person shall, in those cases where absolute military security so requires, be regarded as having forfeited rights of communication under this Convention."

At the beginning of the third paragraph, the word "however" has been deleted.

*Article 4*

In the first paragraph, the word "enumerated" has been replaced by "mentioned".

The Committee agreed to a United Kingdom Delegation's amendment, adopted by the Plenary Assembly, which proposed to delete, in the second paragraph, the words "one year after" and substitute them by "on".

*Article 5*

In the first paragraph, the numbering is changed to "Articles 9, 12, 12 bis, 33, 52, 84, 97, 98, 121 and 122..."

In the second paragraph, the words "benefit by the" have been replaced by "continue to have the benefit of such. Further, the word "stipulations" has been changed to "provisions".

*Article 6*

No change.

*Article 7*

In the first paragraph, the last sentence has been amended to read as follows:

"*The said* delegates shall be subject to the approval of the Power *with* which they will carry out their duties."

In the third paragraph, first sentence, the words "the limits of" have been deleted. In the same sentence, the words "as defined in" have been replaced by "under".

*Article 8*

This Article has been amended to read as follows:

"The provisions of the present Convention constitute no obstacle to the humanitarian



*activities* which the International Committee of the Red Cross or any other impartial humanitarian body may, *subject to the consent of the Parties to the conflict concerned*, undertake for the protection of civilian persons and for their relief."

#### Article 9

In the first paragraph, the words "imposed upon" have been replaced by "incumbent on", and "virtue of" has been inserted between "Powers by" and "the present".

In the second paragraph, "profit" has been twice replaced by "benefit".

In the last paragraph, the word "bodies" has been changed to "organizations".

#### Article 10

In the second paragraph, the first sentence has been amended to read as follows:

"To *this* effect, each of the Protecting Powers may, at the invitation of one Party, or *on its own initiative*, propose to the Parties to the conflict a meeting of their representatives, and in particular, of the authorities responsible for protected persons, *possibly on neutral territory suitably chosen*."

#### Article 11

The Drafting Committee first recommended to the Plenary Assembly that the phrase:

"...without any adverse discrimination on alleged considerations, in particular, of race, religious beliefs or political opinions."

should be replaced by the following words:

"...without any adverse *distinction founded on sex, race, religion, political opinions, or any other similar criteria*."

Lastly, the Committee agreed to an amendment adopted by the Plenary Assembly (*see Summary Record of the 31st Plenary Meeting*).

#### Article 12

No change.

#### Article 12A

No change.

#### Article 13

No change.

#### Article 14

This Article has been rearranged to read as follows:

"The Parties to the conflict shall endeavour to conclude local agreements for the removal *from besieged or encircled areas*, of wounded, sick, infirm, and aged persons, children and maternity cases, and for the passage of ministers of all denominations, medical personnel and medical equipment *on their way to such areas*."

Later, the Committee agreed to an Indian Delegation's Amendment, adopted by the Plenary Assembly, which proposed to delate the word "denominations" and to substitute it by "religious".

#### Article 15

In the second paragraph, second sentence, "danger" has been changed to "dangers" and "incurred" has been deleted. In the same sentence, the word "by" (hospitals etc.) has been replaced by "to which" and the words "may be exposed by" have been inserted between "hospitals" and "being". At the end of the second paragraph, the words "the said" have been changed to "such".

The third paragraph has been amended as follows: "Article ..... of the Geneva Convention of ..... 1949 for the".

Lastly, the text submitted by the Working Party (*see Annex No. 215 and Summary Record of the 31st Plenary Meeting*) was adopted.

In the third paragraph, the last phrase "and only with the permission of the State" was replaced by "but only if so authorized by the State".

#### Article 16

In the first paragraph, the last sentence has been amended to read as follows:

"Protection may, however, cease only after due warning *has been given, naming, in all appropriate cases, a reasonable time limit and after such warning has remained unheeded*."

In the second paragraph, the word "and" (the presence etc.) has been replaced by "or". Further, in the same paragraph, the word "and" (which have etc.) has been deleted. At the end of the sentence, the word "as" has been changed to "to be".

#### Article 18

In the second paragraph, first sentence, the words "provided with" have been replaced by "bearing". At the end of the sentence, the words "during the" have been replaced by "while".

In the second sentence, "shall" has been inserted between "and" and "bear". The end of the paragraph has been altered to read:

"...emblem provided for in Article ..... of the *Geneva Convention of ..... 1949 for the Relief of the Wounded and Sick in Armed Forces in the Field.*"

Finally, the Committee agreed to amendments submitted to the Plenary Assembly by the Delegates of Pakistan, the United Kingdom and the United States of America (see *Annex No. 214*). The sub-amendment 3 was adopted, amended as follows:

The word "in" was inserted in the first sentence after the word "provided". In the same sentence, the commas after the words "provided" and "prescribed" were deleted. In the last sentence, the words "In their case" were deleted.

#### Article 19A

The last words have been altered to read "Article ...of the *Geneva Convention of ... 1949 for the Relief of the Wounded and Sick in Armed Forces in the Field.*"

Later, the Committee agreed to an United States Delegations amendment (adopted by the Plenary Assembly, see *Summary Records of the 25th and 31st Plenary Meetings*)

#### Article 20

In the first paragraph, first sentence, and at the beginning of the third paragraph, "High" has been inserted before the words "Contracting Party".

In the last paragraph, the word "the" (free passage etc.) has been changed to "their" and the words "of them" have been deleted.

#### Article 21

In the first paragraph, first sentence, the words "in all circumstances" have been inserted between "and" and "to facilitate", and deleted at the end of the sentence. In the second sentence, the word "a" has been inserted between "of" and "similar".

The first word of the second paragraph has been changed to: "The Parties to the conflict".

In the last paragraph, the words "the identifying of" have been deleted, and the word "either" has been replaced by "to be identified".

#### Article 22

In the second paragraph, the word "States (concerned etc.)" has been replaced by "Parties to the conflict". At the end of the paragraph, the word "Societies" has been transferred to become the last word of the sentence.

The last paragraph has been amended to read as follows:

"If the Parties to the conflict deem it necessary to restrict family correspondence, such restrictions shall be confined to the compulsory use of standard forms containing twenty-five freely chosen words, and to the *limitation of the number of those forms despatched to one each month.*"

The Drafting Committee does not consider that the last paragraph is clear as at present worded. It could, indeed, be understood from it, that only one standard form could be sent each month by the whole population. The Committee therefore suggests that the Plenary Assembly insert the words "by each person" after the word "despatched" in the last line.

#### Article 23

In the second sentence, the word "agencies" has been replaced by "organizations".

#### Article 25

In the first paragraph, second sentence, the word "especially" has been inserted after "protected". In the same sentence, the words "or to" have been altered to "and against". At the end of the sentence, the word "or" has been changed to "and".

In the third paragraph, "relative" has been changed to „relating“.

The Drafting Committee recommends to the Plenary Assembly that the phrase:

"...without any adverse discrimination on alleged considerations, in particular, of race, religious beliefs or political opinions"

should be replaced by the following words:

"...without any adverse distinction founded on sex, race, religion, political opinions or any other similar criteria."

The Drafting Committee also recommends that for reasons of uniformity, the wording underlined above should be adopted in all four Conventions where the same idea is expressed.

Finally, the Committee agreed with an Afghanistan Delegation's amendment, adopted by the Plenary Assembly (see *Summary Record of the 31st Plenary Meeting*).

#### Article 25A

No change.

#### Article 26

No change.

*Article 28*

At the end of the first paragraph, the word "also" has been replaced by "well as" and "any body" has been changed to "any organizations".

In the second paragraph, "bodies" has been replaced by "organizations".

The first words of the third paragraph, "In addition to" have been replaced by "Apart from".

*Article 29*

No change.

*Article 29A*

At the beginning of the second sentence, the word "covers" has been changed to "applies". In the same sentence, the word "to" has been inserted between "only" and "murder" and between "also" and "any".

*Article 30*

The first words of the last paragraph, "Measures of" have been deleted.

*Article 31*

No change.

*Article 32*

No change.

*Article 33*

In the first paragraph, last sentence, "particular" has been replaced by "special".

In the second paragraph, "belligerents" has been replaced by "Parties to the conflict".

*Article 34*

No change.

*Article 35*

In the first paragraph, first sentence, the word "in" (Articles etc.) has been changed to "by". In the same sentence, the word "thereof" has been inserted between "and 38" and "the".

In sub-paragraph 5, the words "fifteen years" have been inserted in place of the number "15". Further, the words "seven years" have been inserted between "under" and "shall" in place of the number "7".

*Article 36*

No change.

*Article 37*

In the third paragraph, the word "and" (particular etc.) has been deleted. Further, "outfit" has been replaced by "clothing and equipment".

At the end of the last paragraph, the word "conformity" has been replaced by "accordance".

Finally, the Committee agreed with an amendment adopted by the Plenary Assembly, (*see Summary Record of the 26th Plenary Meeting*).

*Article 38*

In the first sentence, the word "other" has been inserted between "any" and "measure". Further, the words "by way of exception" have been replaced by "as an exceptional measure". At the end of the same sentence, the word "conformity" has been changed to "accordance".

Finally, the Committee agreed to the sub-amendments (1) and (2) of the United States amendment adopted by the Plenary Assembly (*see Annex No. 258 and Summary Record of the 26th Meeting*). The sub-amendment (3) was adopted, with the insertion of the word "the" before "standards".

*Article 39*

After examination of this Article by the Plenary Assembly (*see Summary Record of the 26th Meeting*), the Committee agreed to the amendment adopted with the following change: instead to add "and enforced residence" in the first sentence, add "or placing on assigned residence".

*Article 40*

In the second paragraph, at the beginning of the second sentence, an "s" has been added to the word "decision". In the same sentence, the words "of the present Article" have been inserted between "paragraph" and "shall".

*Article 40A*

This Article has been amended to read as follows:

"In applying the measures of control mentioned in this Convention, the Detaining Power shall not treat, *as enemy aliens exclusively on the basis of their nationality de jure of an enemy State*, refugees who do not, in fact, enjoy the protection of any government."

*Article 41*

In the first paragraph, the word "a" has been inserted between "not" and "Party".

*Article 42*

The word "rescinded" has been replaced by "previously withdrawn" and the word "previously" has been deleted.

The Committee agreed to the Italian amendment adopted by the Plenary Assembly, (*see Summary*

*Record of the 26th Plenary Meeting*) amended as follows: after "protected persons", delete what follows and substitute it by:

"and those relating to their property shall be cancelled, in accordance with the law of the Detaining Power, as soon as possible after the close of hostilities".

In the amended Article it was not clear if the phrase "in accordance with the law" refers to both the protected persons and their property or merely to their property. The Drafting Committee, therefore, returned the amendment to the Plenary Assembly with the request that the intention of the authors of this amendment with regard to this point be made clear.

It was finally decided to add a sentence, worded as follows:

"Restrictive measures affecting their property shall be cancelled, in accordance with the law of the Detaining Power, as soon as possible after the close of hostilities."

[*See the declaration made by the Delegate of Italy, Summary Record of the 31st Plenary Meeting, under the title "Article revised by the Drafting Committee (continued)".*]

#### Article 43

The text of this Article has been changed from:

"No change which is introduced, as the result of the occupation of a territory, into the institutions or government of the said territory, no agreement concluded between the authorities of the occupied territory and the occupying Power, nor any annexation by the latter of the whole, or part, of the occupied territory can, in any case or in any manner whatsoever, deprive protected persons who may be in the occupied territory of the benefits of the present Convention."

to:

*"Protected persons who are in occupied territory shall not be deprived, in any case or in any manner whatsoever, of the benefits of the present Convention by any change introduced, as the result of the occupation of a territory, into the institutions or governments of the said territory, nor by any agreement concluded between the authorities of the occupied territories and the occupying Power, nor by any annexation by the latter of the whole or part of the occupied territory."*

#### Article 44

At the beginning of the Article, the words "who are" have been inserted between "persons" and

"not". Further, the words "stipulated in" have been replaced by "of". At the end of the paragraph, "conformity" has been changed to "accordance".

#### Article 45

In the first paragraph, the word "removals" has been replaced by "transfers".

In the second paragraph, at the end of the first sentence, the words "in cases of physical necessity" have been altered to read "when for material reasons it is impossible to avoid such displacement".

In the third paragraph, the word "safety" has been inserted between "of" and "hygiene".

Finally the Committee agreed to the following change of the United Kingdom amendment adopted by the Plenary Meeting (*see Summary Record of the 26th Meeting*): the word "security" was replaced by "safety".

#### Article 46

In the third paragraph, the fourth line, the word "the" (children etc.) has been deleted. In the same paragraph, the word "and" has been inserted between "war" and "who".

In the fourth paragraph, first sentence, the words "charged with" have been replaced by "responsible for".

At the beginning of the last paragraph, the words "impair the continuance" have been altered to read "hinder the application". At the end, the word "years" has been inserted after the words "fifteen" and "seven" respectively.

#### Article 47

In the second paragraph, first sentence, the word "to" has been changed to "for".

In the third paragraph, first sentence, the words "persons whose services have been" have been inserted between "the" and "requisitioned", and the words "persons may be" have been replaced by "are". In the second sentence, "requisitioned" has been changed to "such". In the last sentence of the same paragraph, the words "continue to" have been deleted.

In the last paragraph, "any" has been replaced by "no", the word "shall" has been inserted between "case" and "requisition" and the words "shall at no time" have been deleted.

Finally, the Committee agreed to the amendment adopted by the Plenary Assembly (*see Summary Record of the 26th Meeting*), amended as follows (last sentence of the third paragraph):

"The legislation in force in the occupied country concerning working conditions, and safeguards as regards, in particular, such matters as wages, hours of work, preliminary training and compen-

sation of occupational accidents and diseases, shall be applicable to the protected persons assigned to the work referred to in this Article."

#### Article 48

In the first paragraph, the word "every" has been replaced by "any".

#### Article 48A

The Committee agreed to the amendment adopted by the Plenary Assembly (*see Summary Record of the 27th Meeting*), amended as follows:

"Any destruction by the Occupying Power of real or personal property belonging individually or collectively to private persons, or to the State, or to other public authorities, or to social or co-operative organizations, is prohibited, except where such destruction is rendered absolutely necessary by military operations."

#### Article 48B

In the first paragraph, the word "to" has been inserted between "sanctions" and "or".

#### Article 49

In the first paragraph, the word "assuring" has been replaced by "ensuring".

In the second paragraph, first sentence, the word "not" has been inserted between "may" and "requisition" and "or" has been deleted. Further, the words "as also" have been replaced by "or". In the same sentence, the words "only for" have been altered to read "except for use by" and "these" has been inserted between "and" and "only".

In the last paragraph, the words "with the reservation of" have been amended to "except where" and "necessitated" has been replaced by "are made necessary".

The Drafting Committee agreed to the Indian Amendment adopted by the Plenary Assembly (*see Summary Record of the 27th Meeting*).

#### Article 50

In the first paragraph, second line, the word "to" (ensure) has been replaced by "of" and the words "ensure" and "maintain" respectively have been changed to "ensuring" and "maintaining". Further, the word "the" has been inserted between "of" and "prophylactic".

In the second paragraph, the word "confer" has been replaced by "grant them".

At the beginning of the last paragraph, the words "measures of" have been inserted between

"adopting" and "health"; the word "measures" has been deleted, and "in" has been inserted between "and" and "their".

The Drafting Committee agreed to the United Kingdom Delegation's amendment, presented at the 27th Plenary Meeting (*see Summary Record*) amended as follows: in the proposed sentence, the word "may" was replaced by "shall."

Finally, the Committee agreed to an amendment presented by the Delegations of Argentina, Belgium, Denmark, Italy, Luxemburg, Uruguay and Venezuela (*see Summary Record of the 27th Plenary Meeting*), amended in the second paragraph, as follows: "the occupying authorities shall, if necessary, grant them" etc.

#### Article 50A

The first paragraph has been amended to read as follows:

"The Occupying Power may requisition civilian hospitals *only* temporarily and *only* in cases of urgent necessity for the care of wounded and sick *and then* on condition that suitable arrangements are made in due time for the care and treatment of the patients and for the *need* of the civilian population for hospital accommodation."

#### Article 50B

No change.

#### Article 50C

In the second paragraph, "bodies" has been replaced by "organizations". Further, the words "the provision of" have been inserted between "of" and "consignments".

At the beginning of the last paragraph, the word "of" has been replaced by "to" (consignments etc.) and the words "for a" have been altered to "on their way to". Further, the words "to be" have been inserted between "are" and "used" and between "not" and "used".

#### Article 51

In the second sentence, the words "the event" have been replaced by "cases" and "interest" has been changed to "interests".

#### Article 52

In the second paragraph, first sentence, the word "latter" has been deleted. In the second sentence, the words "endeavour to ensure" have been replaced by "facilitate".

The last paragraph has been altered to read as follows:

"All Contracting Parties shall endeavour to permit the transit and transport *free of charge* of such relief consignments *on their way* to occupied territories."

*Article 53*

This Article has been amended to read as follows:

"*Subject* to imperative reasons of security, protected persons in occupied territories *shall furthermore be permitted* to receive the individual relief consignments sent to them."

*Article 54*

In the first paragraph, the words "which might be" have been deleted.

In sub-paragraph *a*, second sentence, the first word "The" has been deleted.

The last paragraph has been amended to read as follows:

"The same principles shall apply to the activities and personnel of special organizations of a non-military character, *which already exist or which may be established* for the purpose of ensuring the *living conditions* of the civilian population by the maintenance of the essential public utility services, *by the distribution of relief and by the organization of rescues.*"

*Article 55*

In the first paragraph, first sentence, "menace" has been replaced by "threat"; the word "the" (security) has been changed to "its" and the words "of the Occupying Power" have been deleted. In the second sentence, the word "the" (preceding "latter") has been changed to "these" and the word "latter" has been deleted. In the same sentence, the word "consideration" has been changed to "considerations".

*Article 56*

No change.

*Article 57*

At the beginning of the first sentence, the word "a" has been inserted between "of" and "breach".

*Article 58*

In the first sentence, the words "solely the" have been replaced by "only those". Further, the words "which were" have been inserted between "law" and "applicable" and "conformity" has been changed to "accordance".

*Article 59*

In the first paragraph, first sentence, the words "which is" have been inserted between "offence" and "solely". Further, in the same sentence, "are" has been replaced by "shall be" (liable etc.). The last word of the paragraph, "duration" has been changed to "period".

In the second paragraph, "conformity" has been replaced by "accordance" and the word "only" (impose etc.) has been deleted and inserted between "person" and "in". Further, the word "and" (of intentional etc.) has been replaced by "or" and the word "cases" has been changed to "offences".

In the third paragraph, "since" has been inserted between "that" and "the"; "is" has been inserted between "accused" and "not" and the word "being" has been deleted. Lastly, the word "an" has been changed to "the" (Occupying Power etc.) and the word "he" has been inserted between "Power" and "is".

*Article 59A*

This Article has been amended as follows:

"In all cases the duration of the period during which a protected person *accused of an offence* is under arrest awaiting trial or punishment shall be deducted from any period of imprisonment awarded."

*Article 60*

In the second paragraph, the words "out of" (the occupied etc.) have been replaced by "from" and the word "unless" has been inserted between "and" and "extradition".

*Article 61*

In the first paragraph, "conviction" has been replaced by "sentence".

In the third paragraph, second sentence, the word "the" has been inserted between "that" and "provisions". In the same sentence, "paragraph" has been changed to "Article".

The Committee agreed to the Indian amendment adopted at the 28th Plenary Meeting.

*Article 62*

The first paragraph of this Article has been altered to read:

"*Accused persons shall have the right to present evidence necessary to their defence and may, in particular, call witnesses. They shall have the right to be assisted by qualified advocate or*

counsel of their own choice, who shall be able to visit them freely and shall enjoy the necessary facilities for preparing the defence."

In the first and second sentences of the second paragraph, the words "advocate or" have been inserted between the words, respectively "with" and "counsel" and "provide" and "counsel".

#### Article 63

The first paragraph has been deleted.

In the second paragraph, which has become the first paragraph, the word "A" has been inserted as the first word of the paragraph.

The following sentence has been added to the end of the paragraph:

"He shall be fully informed of his right to appeal or petition and of the time limit within which he may do so."

#### Article 64

The first paragraph has been altered to read:

"The representative of the Protecting Power shall have the right to attend the *trial* of any protected person, unless the hearing has, *as an exceptional measure to be held in camera* in the interests of the *security* of the Occupying Power, which shall then notify the Protecting Power. A notification in respect of the date and *place of trial* shall be sent to the Protecting Power."

At the beginning of the second paragraph, the word "pronounced" has been deleted, and the word "a" has been inserted between "involving" and "sentence". In the second sentence, the words "the other" have been deleted, and the words "other than those referred to above" have been inserted between "judgments" and "shall".

#### Article 65

At the end of the second paragraph, the word "rejecting" has been replaced by "denying".

At the beginning of the last paragraph, the words "six months" have been inserted between "The" and "period"; the word "the" has been inserted between "of" and "death" and the word "an" has been inserted between "involving" and "organized".

#### Article 66

In the first paragraph, first sentence, the word "indicted" has been replaced by "accused of offences" and the second sentence has been altered to read:

"They shall, if possible, be separated from other detainees and shall enjoy conditions of

food and hygiene *which will* keep them in good health, and *which will be* at least *equal* to those obtaining in prisons in the occupied country."

In the fifth paragraph, the first word "Detained" has been deleted, and the words "who are detained" have been inserted between "persons" and "shall". The word "conformity" has been changed to "accordance".

In the last paragraph, the first word "Furthermore" has been deleted.

The Committee finally agreed to the Indian amendment adopted at the 28th Plenary Meeting, and inserted the word "the" between "receive" and "medical" in the proposed text of the amendment.

#### Article 67

The word "indicted" has been replaced by "who have been accused of offences".

#### Article 68

In the first paragraph, the first word "Should" has been changed to "If" and an "s" has been added to the word "consider".

In the second paragraph, first sentence, "conformity" has been replaced by "accordance".

The Committee agreed to an amendment presented by the Delegations of Afghanistan, Belgium, India and Italy at the Plenary Assembly (*see Summary Record of the 28th Plenary Meeting*); in the last sentence of the amendment, the Committee replaced "at least" by "if possible".

Finally, the Committee agreed to the United States Amendment (*see Summary Record of the 28th Plenary Meeting and Annex No. 314*); the Committee amended the proposed text and replaced "this" (Convention) by "the present" (Convention).

#### Article 69

The word "only" has been replaced by "not" and the words "in conformity" have been altered to "except in accordance".

#### Article 70

No change.

#### Article 71

The first word of the first paragraph, "The" has been deleted and the words "under obligation" have been replaced by "bound"; the words "free of charge" have been inserted between "provide" and "for".

In the second paragraph, the phrase "shall be made" has been transferred from its position and inserted between "internees" and "for".

In the last paragraph, the words "or are" have been inserted between "support" and "unable"; the last four words of the paragraph, "on their own account" have been deleted.

#### Article 72

The Plenary Assembly charged the Committee to reexamine the wording of the Amendment presented by the U.S.S.R. Delegation (*see Summary Record of the 28th Meeting*).

The Committee did not see how it would be possible to change the wording of this amendment without changing its meaning. It suggested therefore to the Assembly to set up a working party to consider the question.

#### Article 73

In the first paragraph, the word "situate" has been replaced by "set up".

In the second paragraph, the word "The" has been inserted as the first word of the paragraph. Further, the word "medium" has been changed to "intermediary".

The Committee agreed to the United Kingdom Delegation's amendment adopted by the Plenary Assembly at the beginning of the 29th Meeting.

#### Article 74

No change.

#### Article 75

In the first paragraph, first sentence, the word "all" has been replaced by "every" and the "s" has been deleted from the word "safeguards". Further, the word "provide" has been inserted between "health and" and "efficient". In the second sentence, the word "located" has been changed to "situated", in the same sentence, the word "for" has been replaced by "to". In the third sentence, the words "any case" have been altered to "all cases". At the end of the paragraph, the phrase "as rapidly as circumstances permit" has been inserted following "internment".

In the second paragraph, second sentence, the word "roomy" has been changed to "spacious".

In the third paragraph, second sentence, the words "their underwear" have been replaced by "their personal laundry" and the words "installations and" have been inserted between "laundry" and "facilities". At the end of the paragraph, "for" has been inserted between "and" and "cleaning".

In the last paragraph, the words "not being" have been replaced by "who are not".

#### Article 75A

This Article has been amended to read:

„The Detaining Power shall place at the disposal of interned persons of whatever denomination premises suitable for the holding of their religious services.”

#### Article 76

In the first paragraph, the words "for the" have been changed to "their", and the words "of enabling" have been replaced by the words "shall be to enable". Further, the words "the possession of which may tend to" have been altered to "such as would".

In the second paragraph, at the end of the first sentence, the word "that" has been replaced by "such". In the second sentence, the word "mentioned" has been changed to "provided for".

In the last paragraph, first sentence, the word "all" has been inserted before the word "internees"; the words "in general who" have been deleted, and "remain" has been changed to "remaining".

#### Article 77

No change.

#### Article 78

In the first paragraph, second sentence, the word "habitual" has been replaced by "customary".

In the second paragraph, the words "for preparing" have been replaced by "by which they can prepare for".

In the fourth paragraph, the word "proportionate" has been changed to "in proportion".

In the last paragraph, the word "proportionate" has been replaced by "in proportion".

#### Article 79

In the first paragraph, first sentence, the word "arrested" has been replaced by "taken into custody". In the second sentence, an "s" has been added to the word "internee"; in the same sentence, the word "cannot" has been changed to "be unable to". At the end of the paragraph, the words "the internee" have been replaced by "them".

In the last paragraph, the word "kit" has been replaced by "outfit" and the words "kind of labour" have been altered to "nature of their work so".

#### Article 80

In the second paragraph, the word „necessitates" has been replaced by "requires". At the end of the paragraph, "general" has been inserted between "the" and "population".



In the third paragraph, the words "for preference" have been inserted between "shall" and "have" and the word "preferably" has been deleted.

In the fourth paragraph, first sentence, the word "having" has been replaced by "who has"; the word "indicating" has been changed to "showing"; the word "kind" has been replaced by "nature" and the word "the" inserted between "of" and "treatment".

In the last paragraph, the word "protheses" has been replaced by "artificial appliances".

#### Article 81

In the second sentence, the word "complaints" has been changed to "diseases".

The Committee agreed to the Indian amendment adopted at the 29th Plenary Meeting.

#### Article 82

In the first paragraph, the word "the" has been inserted between "with" and "disciplinary".

In the second paragraph, second sentence, the word "that" has been replaced by "this" (purpose etc.). In the last sentence, the word "but" has been changed to "It"; the word "however" has been inserted between "shall" and "be" and the words "censorship according to" have been replaced by "the provisions of".

In the third paragraph, the first words "Should there be" have been altered to "When" and "who" has been changed to "do not" while the word "not" has been deleted. At the end of the first sentence, the word "sectarian" has been replaced by "denominational".

#### Article 83

In the first paragraph, first sentence, the word "and" (sports etc.) has been deleted, and the words "and games" have been inserted between "sports" and "amongst".

In the last paragraph, first sentence, the word "the" has been deleted, and "opportunity" changed to "opportunities". In the second sentence, the word "sufficient" has been inserted between "purpose" and "open".

#### Article 84

In the third paragraph, first sentence, the word "or" has been inserted between "internees" and "to" (employ etc.); the word "and" has been inserted between "internment" and "to"; the words "connected with" have been substituted for "directed". The last word of the sentence, "hazards" has been replaced by "risks".

In the last paragraph, first sentence, the word "the" has been inserted between "take" and

"entire"; the word "conformity" has been changed to "accordance"; at the end of the sentence, the word "for" has been inserted between "and" and "the". In the third sentence, the words "be more unfavourable" have been amended to read "contain less favourable conditions". In the fourth sentence, the words "required by" have been inserted between "attention" and "his" and the words "may require" have been deleted. In the fifth sentence, the word "for" has been inserted between "and" and "the".

The final sentence has been amended to read:

*"In respect of internees thus detailed, the other working conditions and insurance benefits shall not be inferior to those applied generally to work of the same nature in the same district."*

#### Article 85

In the second sentence, "this" has been replaced by "a"; the word "the" (labour etc.) has been changed to "a".

#### Article 86

In the first paragraph, first sentence, the words "To the extent practicable" have been altered to read "As far as possible".

In the second paragraph, first sentence, the words "subject to the provisions of" have been replaced by "as provided for in". In the second sentence, the word "either" has been deleted.

In the third paragraph, the words "of a" have been changed to "which have above all a" and the word "only" has been deleted.

In the fourth paragraph, the first word "no" has been replaced by "A" and the word "not" has been inserted between "shall" and "be".

In the fifth paragraph, first sentence, the word "conformity" has been changed to "accordance". In the second sentence, the word "internee" has been deleted, and the words "of an internee" inserted between "property" and "is". At the end of the paragraph, the word "certificate" has been replaced by "receipt".

In the sixth paragraph, second sentence, the word "given" has been changed to "issued with"; the word "issued" has been replaced by "drawn up" and "to" has been replaced by "which will", while the word "their" has been inserted between "as" and "identity".

The Coordination Committee drew the attention of the Drafting Committee to the inadequacy of the second sentence of the first paragraph of Article 86 of the Civilians Convention and suggested that reference should be made in this connection to the more precise provisions in the fourth and fifth paragraphs of Article 16 of the Prisoners of War Convention.

The Drafting Committee felt that a slight change of substance would be involved if it were to give effect to the above recommendation and that this was therefore not within its competence.

The Drafting Committee therefore left to the Plenary Assembly the decision as to whether action would be taken on the Coordination Committee's recommendation.

Finally the Committee agreed to the Soviet amendment, adopted by the Plenary Assembly (see *Summary Record of the 29th Meeting*), but amended as follows:

In the first paragraph, first sentence, delete the words "as far as possible" and replace the words "their personal effects and personal articles" by "articles of personal use".

#### Article 87

In the first paragraph, second sentence, the word "allowance" has been changed to "allowances".

The first sentence of the second paragraph has been altered to read:

"Furthermore, internees may receive allowances from the Power to which they owe allegiance, the Protecting Powers, the organizations which may assist them, or their families."

In the last paragraph, at the end of the first sentence, the words "the internee" have been changed to "he". In the second sentence, the word "the" has been replaced by "such" and the words "in question" have been deleted.

The Committee agreed:

to the Soviet amendment, adopted by the Plenary Assembly (see *Summary Record of the 29th Meeting*);

to the Indian Amendment, adopted at the end of the 29th Plenary Meeting. In the proposed text the Committee replaced the word "Internees" by "they";

to the Italian amendment, stated, however, that:

it is not clear what country is referred to in the expression "by the law of that country". The Drafting Committee returned the amendment to the Plenary Assembly with the request that the above point be elucidated.

#### Article 88

In the first paragraph, first sentence, the word "amongst" has been deleted.

In the second paragraph, the words "along with" have been altered to read "and the"; the word "shall" has been inserted between "or" and "be".

In the third paragraph, the word "issued" has been replaced by "communicated" and the words "the internees" have been replaced by "they".

#### Article 89

No change.

#### Article 90

In the third paragraph, the word "and" has been inserted between "alteration" and "even".

In the last paragraph, the words "as to" have been inserted between "and" and "the".

#### Article 91

In the first paragraph, the first word has been changed to "In". At the end of the sentence, the word "body" has been replaced by "organization".

In the second paragraph, the phrase "subject to their having received the approval of" has been altered to read "after their election has been approved by". In the second sentence, the word "possible" has been deleted. In the same sentence, the words "refusal" and "dismissal" respectively have an "s" added to them.

#### Article 92

In the first paragraph, the word "internee" has been inserted between "The" and "committees" and the words "contribute to" have been replaced by the word "further".

In the last paragraph, the word "by" has been changed to "under".

#### Article 93

In the first two paragraphs, the word "internee" has been inserted between "Members of" and "committees".

In the second paragraph, second sentence, the word "to" has been inserted between "granted" and "them".

In the last two paragraphs, the words "members of internee committees" replace the words "committee members".

In the third paragraph, at the end of the first sentence, "bodies" has been changed to "organizations". In the second sentence, the words "the same" have been replaced by the word: "...similar..."

#### Article 94

In the first sentence, the words "their Home Power" have been altered to read "the Power to which they owe allegiance".

*Article 95*

The first three words "Immediately upon detention" have been amended to read "As soon as he is interned" and the words "at the latest" have been inserted between "or" and "not"; "his" has been inserted between "after" and "arrival" and the word "and" has been inserted between "internment" and "likewise". Further, the word "write" (direct etc.) has been changed to "send".

The last word "manner" has been replaced by "way".

*Article 96*

The first two paragraphs have been amended to read as follows:

"Internees shall be allowed to send and receive letters and cards. If the Detaining Power deems it necessary to limit the number of letters and cards sent by each internee, the said number shall not be less than two letters and four cards monthly; these shall be drawn up *so as to conform as closely* as possible to the models annexed to the present Convention. If limitations must be placed on the correspondence addressed to internees, they may be ordered only by the Power to which such internees owe allegiance, possibly at the request of the Detaining Power. Such letters and cards must be conveyed with reasonable dispatch; they may not be delayed or retained for disciplinary reasons.

"Internees who have been a long time without news, or who find it impossible to receive news from their relatives, or to give them news by the ordinary postal route, as well as those who are at a considerable distance from their homes, shall be allowed to send telegrams, the charges being paid by them in the currency at their disposal. They shall likewise benefit by this provision in cases which are recognized to be urgent."

*Article 97*

In the first paragraph, first sentence, the word "medicaments" has been replaced by "medical supplies".

The second paragraph has been amended to read as follows:

"Should military necessity require the quantity of such shipments to be limited, due notice thereof shall be given to the Protecting Power and to the International Committee of the Red Cross or any other organization giving assistance to the internees and responsible for the forwarding of such shipments."

In the third paragraph, the word "the" has been inserted between "be" and "subject".

The last sentence has been reworded as follows:

"Parcels of clothing and foodstuffs may not include books. Medical relief supplies shall, as a rule, be sent in collective parcels."

*Article 98*

The first paragraph has been amended to read as follows:

"In the absence of special agreements between Parties to the conflict regarding the conditions for the receipt and distribution of collective relief shipments, the regulations concerning collective relief which are annexed to the present Convention shall be applied."

In the second paragraph, the word "limit" has been replaced by "restrict" and the words "proceed to" have been replaced by "undertake".

In the third paragraph, the word "organization" has been inserted between "other" and "giving" in place of the word "body".

*Article 100*

In the first paragraph "relief" has been inserted between "All" and "shipments", and the words "of relief" have been deleted.

In the second paragraph, first sentence, the words "matter sent by mail" have been inserted replacing the word "mail". At the end of the sentence, "any" (postal etc.) has been replaced by "all". The first words of the second sentence, "To that effect" have been replaced by "For this purpose".

At the beginning of the third paragraph, the words "which are" have been inserted between "shipments" and "intended".

The first words of the second sentence, "The other Powers party to the Convention" have been replaced by "Other Powers which are Parties to the present Convention".

In the fourth paragraph, the words "The costs incident to the transport of such shipments and which" have been replaced by "Costs connected with the transport of such shipments, which".

Lastly the Committee agreed to an amendment (presented by the Delegations of Belgium, India, etc. and adopted at the 30th Plenary Assembly (see Annex No. 343), amended as follows: at the end of the proposed text, "exemptions" has been replaced by "freedom from charges".

*Article 101*

Article 101 has been amended to read as follows:

"Should military operations prevent the Powers concerned from fulfilling their obligation to assure the transport of the mail and relief shipments pro-

vided for in Articles 95, 96, 97 and 103, the Protecting Powers concerned, the International Committee of the Red Cross or any other *organization* duly approved by the *Parties to the conflict* may undertake to ensure the conveyance of such shipments by suitable means (railway, cars, motor vehicles, vessels or aircraft, etc.). *For this purpose*, the High Contracting Parties shall endeavour to supply them with such transport, and to allow *its circulation, especially* by granting the necessary safeconducts.

Such transport may also be used to convey:

- (a) correspondence, lists and reports *exchanged between* the Central Information Agency referred to in Article 124 and the National Bureaux referred to in Article 123;
- (b) correspondence and reports relating to internees which the Protecting Powers, the International Committee of the Red Cross or any other body assisting the internees, exchange either with their own delegates or with the *Parties to the conflict*.

The costs occasioned by the use of *such* means of transport shall be borne, in proportion to the importance of the shipments, by the *Parties to the conflict* whose nationals are benefited thereby."

Finally, the Committee agreed to the United Kingdom Delegation's amendment adopted by the Plenary Assembly (*see Summary Record of the 30th Plenary Meeting and Annex No. 345*).

#### Article 102

In the first paragraph, the word "effected" has been replaced by the word "done".

The second paragraph has been amended to read as follows:

"The examination of consignments intended for internees shall *not* be carried out *under* conditions *that* will expose the goods contained *in them to deterioration*. It shall be done in the presence of the addressee, or of a fellow-internee duly delegated by him. The *delivery* to internees of individual or collective consignments shall not be delayed under the pretext of difficulties of censorship."

In the third paragraph, the words "only be" have been altered to "be only" and the word "brief" has been replaced by "short".

#### Article 103

In the first paragraph, the word "assure" has been replaced by "provide".

The second paragraph has been reworded as follows:

"In *all cases the Detaining Powers* shall facilitate the execution and authentication in due legal form of such documents *on behalf of internees*, in particular by allowing them to consult a lawyer."

#### Article 104

The text has been amended to read as follows:

"The Detaining Power shall afford internees all facilities *to enable them to manage their property, provided this is not incompatible with the conditions of internment and the law which is applicable*. For *this purpose*, the said Power may give them permission to leave the *place of internment* in urgent cases and if circumstances allow."

#### Article 105

The text has been amended to read as follows:

"In *all cases* where an internee is a party to proceedings in any court, the Detaining Power shall, if he so requests, cause the court to be informed of his detention and shall, within legal limits, *ensure that all necessary steps are taken to prevent him from being in any way prejudiced*, by reason of his internment, *as regards* the preparation and conduct of his case or *as regards* the execution of any judgment of the court."

#### Article 106

Article 106 has been reworded as follows:

"In so far as circumstances permit, every internee shall be allowed to receive visitors, *especially* near relatives, *at regular intervals* and as frequently as possible.

So far as *is possible*, internees shall be permitted to visit their homes *in urgent cases*, particularly in cases of death or serious illness of relatives."

The Committee agreed to an amendment submitted by the Soviet Delegation and adopted by the Plenary Assembly (*see Summary Record of the 30th Plenary Meeting*).

#### Article 107

The first paragraph has been replaced by the following wording:

"Subject to the provisions of the present chapter, the laws in force in the territory in which they are detained will continue to apply to internees who commit offences during internment."

In the second paragraph, the words "only disciplinary penalties as punishments" have been replaced by "disciplinary punishments only."

*Article 108*

In the first paragraph, second sentence, the word "foreseen" has been replaced by "prescribed" and the word "of" (which etc.) has been replaced by "with".

The second paragraph has been amended to read:

"Imprisonment in premises without daylight, and, in general, *all forms of cruelty without exception* are forbidden."

In the third paragraph, the word "to" has been replaced by "from".

*Article 109*

The first paragraph has been amended to read as follows:

"The disciplinary *punishments* applicable to internees shall be the following:

- (1) *a fine which shall not exceed 50%* of the wages which the internee would otherwise receive under the provisions of Article 84 during a period of not more than 30 days;
- (2) discontinuance of privileges granted over and above the treatment provided for by the present Convention;
- (3) fatigue duties, not exceeding two hours daily, in connection with *the maintenance of the place of internment*;
- (4) confinement."

The third paragraph has been reworded as follows:

"The duration of any single punishment shall in no case exceed *a maximum of thirty consecutive days*, even *if the internee is answerable for several breaches of discipline when his case is dealt with*, whether such breaches are connected or not."

*Article 110*

The wording of the third paragraph has been rearranged as follows:

"*Internees who aid and abet an escape or attempt to escape*, shall be liable on this count to disciplinary punishment only."

*Article 111*

Article 111 has been amended to read as follows:

"Escape, or attempt to escape, even if it is a repeated offence, shall not be deemed an aggravating circumstance, *in cases where an internee is prosecuted for offences committed during his escape*."

The Parties to the conflict shall *ensure* that the *competent* authorities exercise leniency in deciding

whether *punishment inflicted for an offence* shall be of a disciplinary or judicial nature, especially in respect of acts committed in connection with an escape, whether successful or not."

*Article 112*

In the first paragraph, first sentence, the words "Facts constituting" have been replaced by "Acts which constitute"; in the second sentence, the words "especially applied" have been replaced by "applied in particular".

In the second paragraph, the words "for all internees" have been moved and inserted following "minimum".

In the third paragraph "under" has been replaced by "in".

*Article 113*

The first four paragraphs of Article 113 have been amended to read as follows:

"*Without prejudice to the competence of courts and higher authorities*, disciplinary punishment may be ordered only by the commandant of the place of internment, or by a responsible officer or official who replaces him, or to whom he has delegated his disciplinary powers.

*Before any disciplinary punishment is awarded*, the accused internee shall be given *precise information regarding the offences of which he is accused*, and given an opportunity of explaining his conduct and of defending himself. He shall be permitted, in particular, to call witnesses and to have recourse, if necessary, to the services of a qualified interpreter. The decision shall be *announced in the presence of the accused and of a member of the internee committee*.

The period elapsing between the *time of award of a disciplinary punishment* and its execution shall not exceed one month.

When an internee is *awarded a further disciplinary punishment*, a period of *at least three days* shall elapse between the execution of any two of the punishments, if the duration of one of these is ten days or more."

*Article 114*

In the first paragraph, the word "prison" has been altered to read "prisons".

In the third paragraph, the word "Female" has been replaced by "Women" and in the last line, the words "a woman" have been changed to "women".

*Article 115*

In the first paragraph, "given" has been replaced by "awarded".

The second and third paragraphs have been amended to read as follows:

"They shall be allowed, *if they so request*, to be present at the daily medical inspections. They shall receive the attention which their state of health requires and, if necessary, shall be removed to the infirmary *of the place of internment or to a hospital*.

They shall have permission to read and write, likewise to send and receive letters. Parcels and remittances of money, however, may be *withheld from them until the completion of their punishment*; such consignments shall meanwhile be *entrusted* to the internee committee, who will *hand over* to the infirmary the perishable goods contained in the parcels."

#### Article 116

No change.

#### Article 117

The first three paragraphs have been amended to read:

"The transfer of internees shall always be effected humanely. As a general rule, it shall be carried out by rail or other means of transport, and *under conditions at least equal to those obtaining for the forces of the Detaining Power in their changes of station*. *If as an exceptional measure* such removals have to be effected on foot, they may not take place unless the internees are in a fit state of health, and may not in any case expose them to excessive fatigue.

The Detaining Power shall supply internees during transfer with *drinking water and food sufficient in quantity, quality and variety to maintain them in good health, and also with the necessary clothing, adequate shelter and the necessary medical attention*. The Detaining Power shall take all suitable precautions to "ensure their safety during transfer, and shall establish before their departure a complete list of all internees transferred.

Sick, wounded or infirm internees and maternity cases shall not be *transferred* if the journey would be seriously detrimental to them, unless their safety imperatively so demands."

In the fifth paragraph, the first words "The Detaining Power, in deciding the transfer of internees" have been changed to "When making decisions regarding internees, the Detaining Power".

#### Article 118

In the first and second paragraphs, the word "removal" has been replaced by "transfer".

In the fourth paragraph, the word "effect" has been changed to "ensure" and the word "kit" has been replaced by "property".

#### Article 119

Article 119 has been amended to read as follows:

"The wills of internees shall be received for safe keeping by the responsible authorities; and in the event of the *death of an internee his will shall be transmitted without delay to a person whom he has previously designated*.

Deaths of internees shall be certified in every case by a doctor, and a death certificate shall be *made out*, showing the causes of death and the conditions under which it occurred.

An official record of the death, duly registered, shall be drawn up in *accordance with the procedure relating thereto in force in the territory where the place of internment is situated, and a duly certified copy of such record shall be transmitted without delay to the Protecting Power as well as to the Central Agency referred to in Article 124*.

The detaining authorities shall ensure that internees *who die while interned* are honourably buried, if possible according to the rites of the religion to which they belonged, and that their graves are respected, properly maintained, marked in such a way that they can always be recognized, and grouped as far as possible.

Deceased internees shall be buried *in individual graves* unless unavoidable circumstances require the use of collective graves. Bodies may be cremated only for imperative reasons of hygiene, *on account of the religion of the deceased or in accordance with his expressed wish to this effect*. In case of cremation, *the fact shall be stated and the reasons given in the death certificate of the deceased*. The ashes shall be retained for safekeeping by the detaining authorities and shall be transferred as soon as possible to the next of kin on their request.

As soon as circumstances permit, and not later than the close of hostilities, the Detaining Power shall forward *lists of graves of deceased internees to the Powers on whom deceased internees depended* through the Information Bureaux provided for in Article 123. Such lists shall include *all particulars necessary for the identification of the deceased internees as well as the exact location of their graves*."

(1) The Drafting Committee recommends to the Plenary Assembly that Article 119 be divided into two Articles, an Article 119 comprising the first three paragraphs of the Article as it is at present and an Article 119A consisting of the remainder of the present Article 119. The

provisions relating to certificates, wills etc. will thus be grouped in the new Article 119 and those dealing with cremation and burial will appear in Article 119A.

The same division into two Articles has already been approved by the Plenary Assembly in respect of Article 13 of the Wounded and Sick Convention and Article 17 of the Maritime Warfare Convention.

The above change, if agreed to by the Plenary Assembly, should also be adopted by the latter in respect of the corresponding Article in the Prisoners of War Convention in spite of the fact that this Article (Article 110) has already been adopted by the Plenary Assembly as it stands.

(2) The Drafting Committee is of the opinion that the coordination of the texts of Article 119 of the Civilians Convention and Article 110 of the Prisoners of War Convention has gone too far in one respect. It does not appear necessary to lay down that the graves of internees should be grouped for the reason that the families of internees often live within reach of the places of internment. The Drafting Committee therefore suggests that the phrase "and grouped as far as possible" be deleted.

After reexamination, as a result of the decision taken by the Plenary Assembly (*see Summary Record of the 30th Meeting*), the Committee deleted "and grouped as far as possible" at the end of the fourth paragraph and inserted "and" between "maintained" and "marked".

The existing Article 119 was divided into a new Article 119, comprising the first three paragraphs of the former Article, and a new Article 119A comprising the fourth, fifth and sixth paragraphs of the former Article 119.

#### Article 120

The second and third paragraphs have been reworded as follows:

"A communication on this subject shall be sent immediately to the Protecting Power. The evidence of any witnesses shall be taken, and a report including such evidence shall be prepared and forwarded to the said Protecting Power.

If the enquiry indicates the guilt of one or more persons, the Detaining Power shall take all necessary steps to ensure the prosecution of the person or persons responsible."

#### Article 121

In the first paragraph, the words "All interned persons" have been altered to read "Each interned

person" and, accordingly, "their" has been changed to "his".

In the second paragraph, the word "the" has been inserted between "or" and "accommodation"; the word "small" has been replaced by "young".

#### Article 122

No change.

#### Article 122A

The wording has been rearranged to read as follows:

"The High Contracting Parties shall endeavour, upon the close of hostilities or occupation, to facilitate the return of all internees to their last residence or to their country of origin."

The Committee further agreed to an Italian amendment (adopted by the Plenary Assembly, *see Summary Record of the 31st Plenary Meeting*) amended as follows: "to ensure the return of all internees to their last place of residence, or to facilitate their repatriation".

#### Article 122B

The text has been amended as follows:

"The Detaining Power shall bear the expense of returning released internees to the places where they were residing when interned, or, if it took them into custody while they were in transit or on the high seas, the cost of completing their journey or of their return to their point of departure.

Where a Detaining Power refuses permission to reside in its territory to a released internee who previously had his permanent domicile therein, such Detaining Power shall pay the cost of the said internee's repatriation. If, however, the internee elects to return on his own responsibility or in obedience to the Government of the Power to which he owes allegiance, the Detaining Power need not pay the expenses of his journey beyond the point of his departure from its territory. The Detaining Power need not pay the cost of repatriation of an internee who was interned at his own request.

If internees are transferred in accordance with Article 41, the transferring and receiving Powers shall agree on the portion of the above costs to be borne by each.

The foregoing shall not prejudice such special agreements as may be concluded between Parties to the conflict concerning the exchange and repatriation of their nationals in enemy hands."

The Drafting Committee considered that the exact meaning of the second sentence in the second

paragraph of Article 122 *bis* is not obvious to those who were not present when the text was drawn up. The Committee therefore recommended that the sentence in question be re-drafted by the Plenary Assembly in such a way as to express clearly and exactly the meaning of those who originally drew up the text.

After the decision taken by the Plenary Assembly at the 31st Meeting, the Drafting Committee inserted in the second sentence of the second paragraph, the words "to his country" following "return".

#### Article 123

The first paragraph has been amended to read as follows:

"Upon the outbreak of a conflict and in all cases of occupation, each of the Parties to the conflict shall *establish* an official information Bureau *responsible for receiving and transmitting* information *in respect of* the protected persons who are in its power."

In the second paragraph, first sentence, the words "who are" have been inserted in three places as follows:

- (1) between "persons" and "kept";
- (2) between "weeks," and "subjected";
- (3) between "or" and "interned".

#### Article 123A

In the first paragraph, first sentence, the word "available" has been deleted; the words "Protecting Powers and, additionally" have been replaced by "intermediary of the Protecting Powers and likewise"; in the second sentence, the word "likewise" has been replaced by "also".

In the second paragraph, second sentence, the word "a" has been inserted between "such" and "case"; at the end of the paragraph, the word "outlined" has been replaced by "indicated".

In the third paragraph, the words "in writing" have been inserted between "communications" and "made".

#### Article 123B

Article 123B has been amended to read as follows:

"The information received by the national Bureau and transmitted by it shall be of such a character as to make it possible to identify the *protected person* exactly and to advise his next of kin *quickly*. The information *in respect of each person* shall include at least his surname, first name, place and date of birth, nationality, last residence and distinguishing characteristics, the first name of the father and the maiden

name of the mother, the date, place and nature of the action *taken with regard to* the individual, the address *at* which correspondence may be sent to him and the name and address of the person to be informed.

Likewise, information regarding the state of health of internees who are seriously ill or seriously wounded shall be supplied regularly *and if possible* every week."

#### Article 123C

Article 123C has been amended to read as follows:

"Each national Information Bureau shall furthermore be *responsible for* collecting all personal valuables left by protected persons *mentioned* in Article 123, in particular *those who* have been repatriated or released, or who have escaped or died; *it* shall forward the said valuables to those concerned *either direct* or, if necessary, through the Central Agency. Such articles shall be sent by the Bureau in sealed packets which shall be accompanied by statements *giving clear and full identity particulars* of the person to whom the articles belonged, and by a complete list of the contents of the parcel. Detailed records shall be maintained of the receipt and dispatch of all such valuables."

#### Article 124

At the end of the first paragraph, the words "Convention relative to Prisoners of War" have been altered to read "Convention of ..... 1949 relative to the Treatment of Prisoners of War."

In the second paragraph, first sentence, the words "by the most rapid means" have been replaced by the words "as rapidly as possible".

#### Article 125

No change.

#### Article 125A

The first paragraph has been amended to read as follows:

"Subject to the measures which the Detaining Powers may consider essential to ensure their security or *to meet any other reasonable need*, the representatives of religious *organizations*, relief societies, or any other *organizations* assisting the protected persons, shall receive from these Powers, for themselves or their duly accredited agents, all facilities for visiting the protected persons, distributing relief supplies and material from any source, intended for educational, *recreational* and religious purposes, or for assisting them in organizing their leisure



time within the places of internment. Such societies or *organizations* may be constituted in the territory of the Detaining Power, or in any other country, or they may have an international character."

In the second paragraph, the word "function" has been replaced by "carry out their activities"; the word "sufficient" has been replaced by "adequate".

The provisions of the first paragraph of Article 125A include among others those already covered in the third paragraph of Article 28.

The Drafting Committee therefore recommends that the Plenary Assembly delete the third paragraph of Article 28.

#### *Article 126*

In the first paragraph, the words "may be" have been replaced by "are".

In the second paragraph, the word "success" has been replaced by "access".

In the third paragraph, first sentence, the word "then" has been inserted between "and" and "only"; in the second sentence, "limited" has been replaced by "restricted".

At the beginning of the fourth paragraph, the word "Such" has been inserted before the word "representative". In the second sentence, "ultimately" has been replaced by "when occasion arises".

In the fifth paragraph, first sentence, the words "shall enjoy the same" have been altered to read "shall also enjoy the above".

#### *Article 135*

The last words, "aforesaid Hague Conventions." have been replaced by "above-mentioned Conventions of The Hague."

## ANNEX I

#### *Article 1*

In the first paragraph, the word "designated" has been replaced by "mentioned"; the words „relating to the sick and wounded" have been replaced by "for the Relief of the Wounded and Sick in Armed Forces in the Field".

In the second paragraph, the words "within the zones thus constituted shall" have been altered to read "within such zones shall".

#### *Article 2*

The first word "All" has been replaced by "No"; the word "no" has been replaced by "any" and the words "which is" have been deleted.

#### *Article 3*

No change.

#### *Article 4*

Sub-paragraph (a) has been amended to read as follows:

"(a) They shall *comprise* only a small *part* of the territory governed by the Power which *has established them*."

#### *Article 5*

The first word "They" has been replaced by "Hospital and safety zones".

#### *Article 6*

Same alteration as for Article 5.

#### *Article 7*

The heading has been altered from:

"*Notification and opposition*"

to:

"*Notification and Refusal of recognition*".

In the first paragraph, first sentence, the words "not later than" have been replaced by "in peacetime or on".

In the second paragraph, "constituted" has been replaced by „established".

At the end of the third paragraph, the word "for" has been inserted between "provided" and "in".

*Article 8*

In the first paragraph, the words "to ascertain" have been altered to read "for the purpose of ascertaining".

*Article 9*

In the first paragraph, end of the first sentence, the words "to settle the matter" have been replaced by "within which the matter can be rectified".

At the 31st Plenary Meeting, the Swiss Delegation proposed to add a new Article 9A (see *Annex No. 380*). The Committee agreed with the amendment, changed as follows:

"Any Power setting up one or more hospital and safety zones, and the adverse Parties to

whom their existence has been notified, shall nominate or have nominated by *the Protecting Powers or by other neutral Powers*, persons *eligible* to be members of the Special Committees mentioned in Articles 8 and 9."

*Article 10*

The heading of Article 10 has been altered from:

"*Respect of Zones*"

to:

"*Respect for Zones*".

*Articles 11 and 12*

No change.

## ANNEX II

*Article 1*

Article 1 has been amended to read as follows:

"The *internee* committees shall be allowed to distribute collective relief shipments for which they are responsible to all internees who are dependent *for administration* on the said committees' place of internment *including those* internees who are in hospital, in prison or in other penitentiary establishments."

*Article 2*

Article 2 has been amended to read as follows:

"The distribution of collective relief shipments shall be effected in *accordance* with the instructions of the donors and with a plan drawn up by the *internee* committees. The *issue* of medical stores shall, however, be made *for preference* in agreement with the senior medical officers, and the latter may, in hospitals and infirmaries, *waive* the said instructions, *if* the needs of their patients demand. Within the limits thus defined, *the* distribution shall always be made equitably."

*Article 3*

Article 3 has been reworded as follows:

"*Members of internee committees* shall be allowed to go to the railway stations or other *points* of arrival of relief supplies near their places of internment, so as to enable them to

*verify the quantity as well as the quality of the goods received and to make out detailed reports thereon to the donors.*"

*Article 4*

The words "necessary opportunities of" have been replaced by "facilities necessary for"; the word "supplies" has been deleted. At the end of the paragraph, the words "made in conformity" have been replaced by the words "carried out in accordance".

*Article 5*

At the beginning of the first sentence, the word "permitted" has been replaced by "allowed", and "have" has been replaced by "cause to be". In the second sentence, the words "filled up accordingly" have been changed to "duly completed".

*Article 6*

At the beginning of the first sentence, "ensure" has been replaced by "secure"; further, the word "of" (their etc.) has been replaced by "in"; the word "eventually" has been deleted, and the words "the needs which" have been altered to read "any needs that". At the end of the sentence, the word "permitted" has been replaced by "allowed" and the word "supplies" has been deleted. In the second sentence, the words "to hold" have been replaced by "holding".

## Article 7

In the first sentence, the word "is" has been inserted between "as" and "in"; the word "allow" has been replaced by "authorize". Further, the word "supplies" has been deleted; in the second sentence, the words "transfers of funds and any" have been changed to "transfer of funds and". In the same sentence, the word "and" has been replaced by "or" and the words "which are" have been deleted.

## Article 8

Article 8 has been amended to read as follows:

"The foregoing provisions shall not constitute an obstacle to the right of internees to receive collective relief before their arrival in a place of internment or in the course of their transfer, nor to the possibility of representatives of the Protecting Power, the International Committee of the Red Cross, or any other humanitarian organization giving assistance to internees which may be responsible for the forwarding of such supplies, ensuring the distribution thereof to the recipients by any other means they may deem suitable."

## ANNEX III

## INTERMENT CARD

The headings: "1. Obverse" and "2. Reverse" have been replaced by:

"1. Front" and "2. Reverse side".

## 1. Front

No. 3. has been changed from:

"First name (in full)"

to: "First names (in full)".

No. 12. has been changed from:

"My present address"

to: "Present address".

The third note under the asterisk (\*) has been changed from:

"See explanations overleaf."

to: "See explanations on other side of card."

## 2. Reverse side

The Reverse side has been amended to read as follows:

"CIVILIAN INTERNEES MAIL

Postage free

## POST CARD

*Important*

This card must be completed by each internee

immediately on being interned and each time his address is altered by reason of transfer to another place of internment or to a hospital.

This card is not the same as the special card which each internee is allowed to send to his relatives."

A remark about the size of the internment card has been added as follows:

"(Size of internment card — 10 × 15 cm.)".

Central Information Agency for Protected Persons

International Committee of the Red Cross

## LETTER

The following remark has been added:

"(Size of letter—29 × 15 cm.)".

## CORRESPONDENCE CARD

The headings:

"1. Obverse" and "2. Reverse"

have been changed to:

"1. Front" and "2. Reverse side".

The following remark has been added:

"(Size of correspondence card—10 × 15 cm.)".

# PLENARY MEETINGS

*(Continued)*



# PLENARY MEETINGS

## EIGHTH MEETING

Thursday 21 July 1949, 10 a.m.

*President:* Mr. Max PETITPIERRE, President of the Conference

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### Agenda

The PRESIDENT: The Committees set up to draft the texts of the Conventions have almost finished their work. This has taken longer than expected. Our work has sometimes been both laborious and difficult; nevertheless, thanks to the efforts of the Chairmen of Committees and of those who assisted them, it has been brought to a satisfactory conclusion. I have great pleasure in thanking, in the name of the Conference, all the Rapporteurs, Chairmen, and Rapporteurs of Committees and Working Parties. I also desire to express our gratitude to the Experts, whose advice has always been of the greatest value.

### Procedure

We are now entering upon the last phase of the Conference, that of the discussion and adoption of the texts in Plenary Meeting. We shall begin today with the Wounded and Sick Convention. We shall then take the Maritime Warfare, the Prisoners of War, and the Civilians Conventions. Any draft resolutions submitted will be discussed once the Conventions have been adopted.

It was our desire that the Conventions should be complete when they were submitted to the plenary meeting; unfortunately, in the case of the Wounded and Sick Convention, that was not possible. Some of the Articles are still awaiting their adoption by the Committee. However, too much time would be lost if we were to wait for them to be in their final form before submitting the Convention as a whole for discussion. The text of the Wounded and Sick Convention, which has been distributed,

accordingly contains only those Articles which have been definitively adopted by the competent Committees. The others will follow as soon as possible. If you are willing, we shall begin today's discussion by taking Article 10A, and shall afterwards consider the other common Articles.

On June 23, the Bureau of the Conference made certain recommendations (*see Annex No. 6*) for the purpose of accelerating the work of the Conference. It may not be entirely out of place to recall these. You will doubtless remember that the Bureau attached great importance to the Plenary Meetings of the Conference not being uselessly prolonged. As was rightly pointed out, most of the Articles had been very exhaustively discussed; every argument had been put forward, and most of the delegates had made up their minds. I therefore urgently request the delegations to avoid repetitions uselessly prolonging the work of the Conference. No time limit has been set for speeches in Plenary Meetings; but the Bureau has reserved the right to reconsider this point, if necessity arises.

With a view to preventing any misunderstanding, the Bureau of the Conference suggested certain rules for the discussion of Conventions in plenary meetings (*see Annex No. 7*). Do you all agree with these rules?

As there are no speakers, I shall regard the proposals as adopted.

As regards the counting of votes, the Secretariat has been instructed to adopt a system which will be absolutely reliable. It will be the duty of four members of the Secretariat to count the votes, and for this purpose they will take their places at the foot of the rostrum; while each vote is being taken, they will move about the corridors, and

each will be responsible for counting the votes in his own corridor. In order to facilitate their work, I must request all delegates to raise the card indicating the name of the country that they represent when voting by show of hands.

#### WOUNDED AND SICK CONVENTION

The PRESIDENT: I now open the discussion on the Wounded and Sick Convention. The discussion will be based solely on the texts distributed for this purpose. You have already received the Reports of Committee I, of the Coordination Committee and also of the Drafting Committee; but the Joint Committee's Report has not yet been issued.

We shall therefore begin with Article 10A. In accordance with the rules we have just adopted, Rapporteurs will not read their Reports, but will confine themselves to giving any explanations which delegates may request. Before proceeding to consider the Articles, one by one, I shall ask General Lefebvre, Rapporteur of Committee I, to give a few explanations relative to the Wounded and Sick Convention.

#### Statement made by the Rapporteur

General LEFEBVRE (Belgium), Rapporteur: Committee I was set up for the purpose of undertaking the revision:

(1) Of the Geneva Convention of July 27, 1929 for the Relief of the Wounded and Sick in Armies in the Field;

(2) The Xth Hague Convention of October 18, 1907 for the adaptation to Maritime Warfare of the Principles of the Geneva Convention of July 6, 1906.

In accordance with your instructions, however, the Committee did not consider those Articles which were of a specifically legal character, and common to more than one Convention.

The Bureau of Committee I comprised the following members: Chairman: Sir Dhiren Mitra (Head of the Indian Delegation), Vice-Chairmen: Mr. Rana Tarhan (Head of the Turkish Delegation), and Mr. Pinto da Silva (Member of the Brazilian Delegation), Secretary: Mr. Rappard, and Rapporteur: myself.

Committee I welcomes the opportunity of expressing to the Chairman and Vice-Chairmen of the Committee at a Plenary Assembly of the Diplomatic Conference its sincere gratitude for the

tact, impartiality, and patience with which they have presided over the discussions of the Committee.

The Committee has held 39 meetings, at which a considerable number of Articles were adopted on first reading. On the other hand, the complexity and special character of certain questions, together with the number and importance of the amendments submitted, rendered it necessary to set up nine Working Parties and a Drafting Committee.

On behalf of Committee I, I wish publicly to pay the warmest tribute to their hard work and efficiency. That efficiency, and indeed the whole work of the Committee, were greatly facilitated by the steady cooperation of the Representatives of the International Committee of the Red Cross, whose courtesy and knowledge were never appealed to in vain.

Committee I now submits the texts of the Articles adopted, and altered as the results of the recommendations of the Coordination Committee and of the Drafting Committee of the Conference. It sincerely hopes that you will agree to these texts. Committee I also submits the Report on the work of the Committee, as adopted at the meeting of July 18.

The Report consists of three parts. Part I gives a general outline of a number of important questions as they now emerge from the Committee's work; this part deals not only with the Wounded and Sick Convention, but also with the Maritime Warfare Convention. Parts II and III give an explanation, Article by Article, of the alterations made to the Conventions under consideration. They constitute the main body of the Report.

In the margin of each Article you will note the remark in brackets "former Article No. ...": These indications constitute the necessary references to the Geneva Convention of 1929 or the Hague Convention of 1907.

Before completing this brief statement, may I take this opportunity of expressing in public my thanks to all the persons the Conference was good enough to place at the disposal of the Committees, to the Secretariat and all its staff, and to the précis-writers and interpreters, all of whom worked with us wholeheartedly and devotedly. They all deserve our warmest thanks.

The PRESIDENT: I should like to thank General Lefebvre for the very precise and full report which he has submitted to the Conference on behalf of Committee I. I should also like to thank him for the interesting statement which he has just made.

We shall now proceed to examine each Article, announcing under each of them whether or not any amendments have been submitted to them.

We shall begin by Article 10A.

**Article 10A**

Captain MELLEMA (Netherlands): Article 10A of the present Convention consists of the greater part of Article 3 of the Prisoners of War Convention. It enumerates the persons protected by this Convention. If I am not mistaken Article 3 of the Prisoners of War Convention is not yet adopted in its final form. Committee I agreed that Article 10A should be coordinated with Article 3 of the Prisoners of War Convention. If we adopt this Article now in its final form, it will no more be coordinated with Article 3 of the Prisoners of War Convention when the latter is adopted in its final form in the plenary meeting.

The PRESIDENT: I am going to ask the Rapporteur to tell us whether he considers it advisable to postpone the discussion on Article 10A until Article 3, which is one of the common Articles, comes up for discussion; or whether, on the contrary, he feels that the Conference would be in a position to take a decision today on Article 10A.

General LEFEBVRE (Belgium), Rapporteur: The remarks made by the Delegate of the Netherlands are relevant. There is no doubt that the Committee's intention was to introduce into Article 10A every one of the provisions of Article 3 of the Prisoners of War Convention. This Article 3 has not yet been adopted. We have decided to accept Article 3 of the Prisoners of War Convention as ultimately adopted by Committee II, but we do not yet know the wording of it. It is possible that in connection with this Article 3 of the Prisoners of War Convention, there may still be a good deal of discussion in the Plenary Assembly.

We might perhaps have a vote on principle, and state that Article 10A of the Wounded and Sick Convention would be in conformity with Article 3 of the Prisoners of War Convention.

The PRESIDENT: In view of the remarks which have just been made, I propose to postpone the discussion on Article 10A. (*Approved.*)

**Articles 11 and 12**

The above mentioned Articles were adopted.

**Article 13**

Mr. GARDNER (United Kingdom): In Article 13 there are two editorial corrections which ought to be made. In the third paragraph of the English text the word "prisoners" appears but I think it ought to be, to conform to the texts, "persons".

The word "prisoner" does not appear in this Convention until later than Article 13. Then, in the next paragraph, by some mischance the word "Belligerents" has remained at the beginning of the paragraph instead of the term which is commonly adopted, except where there is special reason to the contrary, "Parties to the conflict".

The PRESIDENT: These are merely wording corrections which involve only the English text. Presumably there is no objection to them. Nevertheless, it might be advisable to hear the views of the Rapporteur.

General LEFEBVRE (Belgium), Rapporteur: In the French text of the third paragraph, the word "prisoners" should also be replaced by the word "persons". The word "Belligerents" does not appear in the French text. These are corrections which do not modify the sense of Article 13.

The PRESIDENT: Are there any objections to these wording corrections which are accepted by the Rapporteur?

Article 13 was adopted.

**Articles 13A, 14, 15, 15A, 16 and 17**

The above mentioned Articles were adopted.

**Article 18**

The PRESIDENT: There is an amendment to Article 18 which has been tabled by the Delegation of the Union of Soviet Socialist Republics. As this text was submitted only last night, 20 July, and distributed this morning 21 July, I consider it necessary to postpone consideration of this Article. Are there any objections?

There being none, this proposal was approved.

**Articles 19 and 19A**

Mr. GARDNER (United Kingdom): The Drafting Committee has altered the English text of Article 19A and, I presume, also the French text. The word "or" has been altered to "and" so that the text now reads:

"Members of the armed forces specially trained for employment, should the need arise, as hospital orderlies, nurses or auxiliary stretcher-bearers in the search for and the collection, transport and treatment of the wounded".

That seems to me to be an important change of substance altering the meaning of the Article and



excluding, for example, somebody who is detailed to search for wounded but not necessarily collect them. On a battlefield you may send out a party who moves around and puts some marking on the men who are still alive whilst the people with the dressings and stretchers follow along and collect them. In my submission both ought to be protected, but with this amendment neither will be protected because unless they are searching and collecting they are not within the terms of the Article. It is too late to move an amendment, unless the President will accept it because it is a purely drafting point, but I certainly think the substance of the Article has been seriously altered.

The PRESIDENT: I should be grateful if the Rapporteur would give us his views.

General LEFEBVRE (Belgium), Rapporteur: When comparing the two Articles, 19 and 19A, it will be noticed that Article 19 refers to personnel engaged "in the search, collection, transport *and* treatment of the wounded", whereas, in Article 19A the wording is: "collection, transport *or* treatment of the wounded". Also, in the English text, mention is made of "transport *or* treatment".

The observation made by the Delegate of the United Kingdom is correct. There may very well be medical personnel exclusively engaged in the search, collection and transport of the wounded, but in no way engaged in their treatment. It seems therefore that the word "or" is more appropriate in this case than the word "and". But it would then be advisable to insert it in the French text of Article 19 as well as of Article 19A.

The PRESIDENT: Do either the Chairman or the Rapporteur of the Drafting Committee wish to speak; or are they in agreement with the opinion just expressed by the Rapporteur of Committee I?

Mr. VAILLANCOURT (Canada), Rapporteur: In the Report presented by the Drafting Committee to the Plenary Assembly there is a recommendation made by the Drafting Committee in connection with Article 19A. The word "for" has been replaced by the words "in the search for or". It is merely an error in the reproduction of the text which has been submitted.

The PRESIDENT: I imagine that Article 19 can now be adopted, subject to the correction suggested by the United Kingdom Delegate.

Article 19 was adopted.  
Article 19A was adopted.

## Article 20

The PRESIDENT: As in the case of Article 18, an amendment was submitted yesterday by the Delegation of the Union of Soviet Socialist Republics, but was only distributed this morning. I therefore propose to adjourn the consideration of this Article. (*Approved*).

## Article 21

This Article was adopted.

## Article 22

The PRESIDENT: With regard to this Article the New Zealand Delegation has proposed to alter the second sentence of the second paragraph to read: "They shall nevertheless be treated in accordance with all the provisions of the Convention of... relating to the Treatment of Prisoners of War, with the following reservations:...".

Mr. QUENTIN-BAXTER (New Zealand): My Delegation has filed identical amendments to Article 22 and to the following Article 23. It will suffice if I speak once in explanation of this amendment. The amendment itself may arouse memories of the long discussions which took place in Committee I about the status of medical personnel and chaplains after capture. It is not the object of this amendment to alter any decision of principle taken by Committee I.

We offer to you the choice of two phrases: the first one (that of the Committee's text) is: "They shall nevertheless benefit by all the provisions of the Prisoners of War Convention". The second one (that of our amendment) is: "They shall nevertheless be treated in accordance with all the provisions of the Prisoners of War Convention, with the following reservations:...". The amendment which we have tabled is taken exactly from the text of an amendment deposited by the Swiss Delegation. That amendment was defeated in Committee I by a margin of 2 votes in which 26 delegations took part.

We feel that the matter is of sufficient importance to bring it once more to your attention. Superficially, the phrase "benefit" looks better; it means that doctors get the privileges of accommodation, food, pay, clothing and so on which are given to prisoners of war, but the fundamental thing about the Prisoners of War Convention is that it stipulates that a prisoner shall be placed in a camp. That is the basis of the whole Convention. In our opinion the placing of a prisoner in a prisoner of war camp can scarcely be regarded

as a benefit, and therefore in our opinion it is at present not covered in the wording of Article 22 relating to retained personnel.

Now there is no question whatever that the texts adopted by Committee I are intended to mean that doctors and chaplains who are retained shall be placed in prisoner of war camps. The Article stipulates specifically that they shall be subject to the internal discipline of the camp and that they shall have facilities for looking after the prisoners in that camp. That is the whole object of their being retained. Nevertheless, we fear that this phrase "benefit" has left a possible loophole, and that it is competent for a Detaining Power to say that retained personnel shall be put under a special régime in assigned residences, provided, of course, that they have the standards of pay, accommodation, clothing and so on of prisoners of war, and provided also that they are given access to prisoners of war in order to carry out their routine medical or spiritual duties.

We feel that is a real danger. We have learned in two wars the value of chaplains and doctors in prisoner of war camps; we know that their value is not in any way limited to the carrying out of their routine duties. Their value is rather as a constant living influence on the men in the camps, and we would like to place it beyond a shadow of doubt that, when doctors and chaplains are retained, they must be kept in the camps; they must not be separated from the men; they must be allowed to minister to their welfare and morale. That is the only purpose and, I think, the only effect of our amendment.

Mr. LAMARLE (France): I greatly regret having to contradict our colleague from New Zealand. In spite of what he has said, his amendment, which appears at first sight only to involve a change of one or two words, would in reality nullify the result of long and patient efforts to reach a compromise which have now lasted for three months. In my opinion its adoption would create a very unfortunate precedent, which might have very serious consequences. The substance of the question under consideration would certainly be affected.

I wish to convince you that the French Delegation, in urging you to retain the text submitted by the Committee, has no desire to grant persons, hitherto known as "protected", legitimately protected persons, any undue or excessive privileges. The status that we are asking for such personnel is essential if they are to render physical and spiritual assistance to prisoners of war under proper conditions.

During the last war, the many members of the French Army who experienced the rigours of captivity included a considerable number of

doctors; but even under the régime to which they were at that time entitled—the régime of the 1929 Convention which formally stipulated that they were not prisoners of war—these doctors were harassed and hampered in their work by the Detaining Power in a way which seriously prejudiced them in their professional duties.

It has happened, I repeat, even under the 1929 Convention, that doctors were considered by the Detaining Power as subordinate to itself even in the matter of their professional duties, and consequently numerous formalities, summons and counter-summons, inspections and so on hampered them in the performance of their duties. Further, on the pretext that they were in the hands of the Detaining Power, to these doctors were, in many cases—I repeat, in many cases, and France has a large collection of evidence on the subject—given orders by the German doctors which were against these French doctors' professional ethics. For instance, a doctor has on occasion been ordered to amputate a limb which his professional conscience led him to believe he could save.

The Draft submitted by the New Zealand Delegation, which proposes to apply to doctors the treatment laid down for the prisoners of war, would give such acts the authority of the Convention and would authorize still more serious ones. There is, moreover, a discrepancy of wording between the first sentence as it appears in our present Draft and the second sentence as the Delegate of New Zealand proposes to amend it. It is impossible to lay down simultaneously that the personnel in question shall not be considered as prisoners of war, and that they shall be treated in accordance with the Prisoners of War Convention. We therefore used the words "shall benefit by" which are, I repeat, the result of a prolonged search for a compromise which would be entirely nullified by this amendment.

The French Government, fully aware of the importance of the experience gained in the last war, and conscious of their responsibility towards medical and religious personnel of all nationalities (which, one day, might have to go through the same experiences as those I have just outlined), cannot accept the heavy responsibility entailed by the adoption of the New Zealand amendment, either when voting or at the time of signature.

Mr. AGATHOCLES (Greece): At the meetings of Committee I, I had the opportunity of speaking of the amendment submitted by our Delegation which suggests the use, in Articles 22 and 23, of terms likely to safeguard in the best way the rights of medical personnel who have fallen into enemy hands and who are not prisoners of war. I then proposed to add that, in the case under consideration, the said personnel should "at least" enjoy all the

rights of prisoners of war, so as to ensure the greatest possible protection. The Committee rejected my amendment. The intentions of the Committee as regards the status of medical personnel are set forth, at length and extremely well, in the Report addressed by Committee I to the Plenary Assembly. It is specially stressed in this Document that all the delegations agreed that medical personnel should receive the maximum degree of protection, and that a special status was contemplated which should ensure that maximum degree of protection.

In our opinion, not even the sentence in the Article adopted by Committee I meets this requirement or the intentions of the Committee as shown in the Report and as they have been expressed with great eloquence by the Delegates of France and of New Zealand. We therefore propose a mere drafting alteration to the second sentence of the second paragraph, namely—and my interpretation is in complete agreement with that of the French Delegate—“They shall nevertheless at least benefit by all the provisions...”

It appears to us that this is the only way in which we can give emphasis to our intention, which is that medical personnel shall not be placed on the same footing as prisoners of war. If it is laid down that the members of the medical personnel are not to be considered as prisoners of war, but that the status of prisoners of war shall nevertheless be applicable to them, we shall not have interpreted correctly the recommendations of the Conference and the intentions defined here.

Mr. MOROSOV (Union of Soviet Socialist Republics): To get a better understanding of the meaning of the amendment proposed by the New Zealand Delegation, we must examine the background of the question. It must be remembered that the New Zealand Delegation supported at the time proposals which were not humanitarian, the effect of which was to treat medical personnel as prisoners of war.

The discussions which took place in Committee I resulted in the present text of Article 22, which says that “Personnel thus retained shall not be deemed prisoners of war”, whereas the hidden meaning of the New Zealand amendment is that such personnel shall be considered as prisoners of war.

I call your attention to the inoffensive appearance of the amendment proposed by the New Zealand Delegation. It seeks to introduce by a change in drafting the very idea which was rejected by a majority in Committee I. It would be quite a different matter if the Delegate of New Zealand had frankly stated that such personnel should be considered as prisoners of war. That would not have been as dangerous as what is at present proposed in a veiled form. It seems to me that we have

tried during the work of our Conference to avoid adopting such methods as this, when it was desired to change the principle of an Article or to nullify a principle already adopted, on the pretext that it is merely a change in drafting.

I fully support the statement made by the Delegate of France. There is a flagrant contradiction between the first sentence of the second paragraph of Article 22, which states that members of retained personnel shall not be considered as prisoners of war, and the amendment proposed by the Delegation of New Zealand which says that retained personnel shall nevertheless be treated in conformity with the provisions of the Prisoners of War Convention.

It seems to me that we must agree to such persons not being considered as prisoners of war. If on the contrary, they are to be so considered, as requested by the Delegation of New Zealand, this Delegation should say so frankly from this rostrum, and so should any other delegation who supports the amendment.

The text of Article 22 is based on the fact that such persons shall not be considered as prisoners of war, but shall enjoy nevertheless all the advantages and all the protection granted by the Convention, whereas the proposal made by the New Zealand Delegation weakens this provision to a very considerable extent.

I remember that, at the Twenty-seventh Meeting of Committee I, on June 15, Mr. Burdekin, the Delegate of New Zealand, declared that he had received instructions from his Government to support the proposal to treat medical personnel as prisoners of war. But today the Delegate of New Zealand has not dared to repeat this statement in the clear terms of his colleague. On the contrary, he has attempted to introduce this provision in a veiled form.

Accordingly the Delegation of the Union of Soviet Socialist Republics is categorically opposed to the adoption of the amendment proposed by the New Zealand Delegation.

Mr. BAGGE (Denmark): In common with the Delegation of France, we consider that the amendment submitted by the Delegation of New Zealand cannot be accepted. To the arguments put forward by my colleague of the French Delegation, which I support, I would like to add another.

The Delegate of New Zealand appears to fear that medical personnel may be separated from other prisoners. In this connection I would ask you to refer to the text of the Article itself, where you will read, under letter (b): “In each camp the senior medical officer of the highest rank shall be responsible...” etc.; and below, under letter (c): “Although retained personnel in a camp shall be subject to its internal discipline, they shall not...”

In view of that, the anxiety expressed by the Delegate of New Zealand hardly seems to me to be justified. Accordingly the Delegation of Denmark will vote against the amendment and for the retention of the Article in the form submitted.

Mr. QUENTIN-BAXTER (New Zealand): I must make one small correction. In my amendment there appeared the words "with the following reservations". It has been pointed out to me in the last ten minutes by a number of delegates that those words would be better omitted and, with your permission, I should like to take them out. I do not in fact know how they crept in.

If I may, I should like to say something on the question of substance. In the first place my Delegation has been attacked by the Delegation of the Union of Soviet Socialist Republics, and charged more or less specifically with being anything but frank about this matter. I should like to tell you precisely what our attitude is. We have always believed that there should be provision for the repatriation of doctors as soon as possible. We have always believed that doctors held in captivity should have the fullest rights to carry out their duties as doctors. We have always believed they should also have all the rights of prisoners of war and provided that was done, and provided that the sick and wounded got looked after, we did not consider it mattered very much what you called them.

I have no concern or quarrel whatever with the text adopted by Committee I. It is not the concern of my Delegation to alter any matter of principle except that we should like to make it clear that our own doctors must be kept in a camp while in captivity and must be used for the benefit of the prisoners of war and kept with the prisoners of war. We will say that we have yet to hear anyone allege in this Assembly that being kept in a prisoner of war camp is a benefit. If anybody thinks it is, let him come up to this lectern and say so.

I do not feel that the views expressed by the Delegate of France are well founded. He has spoken of petty restrictions, minor annoyances and so on to which medical men may be subjected. I think they will be subjected to them under the text as we have it. The Delegate of Denmark pointed out that the words "although retained personnel in a camp shall be subject to its internal discipline" occurred. If that is established, there is not much doubt that doctors and chaplains will be subject to roll calls and so on. They surely are matters of camp discipline. We feel strongly that there is no danger, no hidden menace whatever in the amendment we suggest. We are not concerned about the present form of the Article in so far as our own country may be a Detaining Power. We shall be happy to carry out its provisions but we should

like to make it clear that the Power in whose hands our doctors may be is obliged to keep them with our prisoners and not separately.

Mr. LAMARLE (France): I fear that I have not been correctly understood, at least by the Delegate of New Zealand, since the facts and particulars which I cited from the rostrum have been understood by him as implying only some "minor annoyances". But the result of these "minor annoyances" was—as I said a few moments ago, perhaps not sufficiently clear—that certain prisoners of war had their arms and legs amputated! That was the kind of "annoyance" resulting from the manner in which Germany interpreted the Convention of 1929. I leave it to you to imagine the way in which another Germany—or perhaps the same Germany—would eventually interpret a Convention in which even less protection was guaranteed.

The Delegate of New Zealand has submitted his amendment as being likely to guarantee more distinctly the protection of medical and religious personnel. But I do not think that anyone here can give credit to the fact by suppressing the word "benefit" in a text, any kind of advantage is given to the interested parties.

The Delegate of Greece, by advancing important arguments and adducing precise details, has shown that several delegations would wish, or would have wished, that the text should on the contrary be strengthened rather than mutilated.

The French Delegation is grateful to the Delegate of Greece for the indications which he has given, and is ready in a spirit of conciliation to accept (as just stated) the text presented by the Committee, as the outcome of numerous and difficult attempts to understand and reconcile different points of view.

Mr. GARDNER (United Kingdom): The United Kingdom Delegation supports the amendment of the New Zealand Delegation, but not for the reasons given by the Delegate of the Soviet Union.

It is part of the training of a Britisher to be able to take a beating and come up smiling after it. We came to this Conference, having told the countries invited in an advance document that we believed the position of doctors and chaplains could best be safeguarded by giving them the full status of prisoners of war. That view has not been accepted and we are not attempting to reopen that question, nor, I venture to think, does the amendment put forward by the New Zealand Delegation do so, despite the dialectical argument from the Soviet Union.

I believe that the difference of how people shall be treated is a very narrow one. It turns almost

entirely on the meaning of the English word "benefit" and the French word "bénéficieront". I cannot speak with any authority of what the effect of the French word is. I can say that my Government has given the very closest attention to the meaning of this text in English and they believe that the choice of the word "benefit" can have the effect of excluding certain of the provisions of the Prisoners of War Convention from application to doctors and chaplains, and we are quite sure that if any Power does so interpret those words and does exclude them from some provisions, the only people to suffer will be the doctors and the chaplains.

The sole object of this amendment is to ensure that everything which has been put into the Prisoners of War Convention, as a result of experience, to protect prisoners of war—even when it is not a benefit, as the word is understood in England—is necessary to be applied to doctors and to chaplains, if they are to have all the protection they ought to have from a Detaining Power which may have no great love for them. Indeed, they are to have all the protection they need from Detaining Powers who did the very things in the last war that the French Delegation complains about. We believe that the text as it stands exposes them to the sort of things which did happen, if a Detaining Power chooses to read the words in the narrowest sense they can bear, and I want to appeal to the Conference to pause before it gives final approval to a text which may have that effect in the hands of a Detaining Power which is wanting to read it in that way.

There were three arguments, as I understood it, advanced against the amendment, the last of which was that we were trying to get prisoner of war status through a back door. I hope I have satisfied the Conference that that was neither the intention of the New Zealand nor of the United Kingdom Delegations; and I hope I can satisfy you, it is not the effect. The other two arguments were that it would subject doctors to the orders of camp commandants who would impose upon them irritating practices such as frequent roll-calls, and so on, and secondly that it would in some way infringe the professional independence of these people and place them under the direct orders of the doctors of the Detaining Power.

I want to submit to you that so far as Article 22, presented by Committee I, is concerned, it does both of those things already. In the sentences immediately following the one we want to improve it says:

"within the framework of the military laws and regulations of the Detaining Power and under the authority of its competent service they shall continue to carry out",

in other words, they are placed under the authority of the medical service of the Detaining Power. It has to be so, but we had thought, and I thought the French Delegation had agreed to that interpretation in previous discussions, that the next words of the Article safeguarded them against improper intervention by the Detaining Power in professional matters. Those words are: "in accordance with their professional ethics". Those words were first suggested two and a half years ago by the French Delegation in order to maintain the professional independence of doctors in the hands of an enemy, and those words remain in their full force, even if you adopt the New Zealand amendment, so that I suggest, so far as professional independence is concerned, the amendment neither weakens nor strengthens the position. The position rests on other provisions in the Article which will remain untouched.

As to the point about discipline, roll-calls and so on, sub-paragraph (c) of this Article 22 provides that retained personnel in a camp shall be subjected to its internal discipline. As the Delegate of New Zealand has said, so far as the doctors in the camp are concerned, the camp commandant can impose any discipline upon them that is consistent with the Convention. But I wish to point out, and this is the essential case for the amendment, that there is not a word anywhere about what discipline doctors and chaplains shall be subjected to when they are outside the camp, nor is there a word anywhere which says that they must be housed and fed in prisoner of war camps. All that is said is that they must have the benefits of the Prisoners of War Convention. But I can conceive of a special régime under civil authorities being set up for the detention of these people, where they would be housed not under the military authority and military camps but under some civil camp and a civil control and would only come within the military framework when they are required to carry out their professional duties. I ask anybody who doubts that to read through Article 22 very carefully and see whether there is anything in this Article which imposes upon the Power holding these people any general régime apart from the benefits of the Prisoners of War Convention.

In the judgment of my Government—in the considered judgment of my Government—one of the most important protections in the Prisoners of War Convention is not a thing which can be described as a benefit. It is Article 72, which says that prisoners of war shall be subject to the laws, regulations, and orders which apply to the armed forces of the Detaining Power. I am bound to say that as an old soldier I never regarded most of the orders and regulations which applied to me as beneficial; I said very rude things about

many of them on many occasions, but it is that framework of laws, regulations and orders applicable to the armed forces of the Detaining Power which does in fact protect the prisoners of war from being subjected to all kinds of special laws, regulations and orders peculiar to themselves.

That is the case for the amendment.

The French Delegate has rightly referred to the long efforts of conciliation that were made, but if it is implied that the present text is a text generally accepted I would remind the Conference that this text was adopted by Committee I on second reading, as against the text which the New Zealand Delegation proposes, by 14 votes to 12. Twenty-six countries out of well over fifty represented in this Conference differed from the others by two votes. Less than a quarter of the countries represented in this Conference voted for this text, and nearly as many voted for the text put forward by the New Zealand Delegation. I believe that fact is enough to refute the suggestion that the text proposed by New Zealand is an attempt to restore the original United Kingdom proposition, that these people should be called prisoners of war and should be prisoners of war. The words "They shall not be deemed to be prisoners of war" would remain in the Article, and nothing in this amendment can weaken those words. The amendment represents almost as strong a body of opinion in Committee I as does the text, and for the reasons I have tried to outline we believe it gives far more effective protection to doctors, nurses, chaplains and others in the hands of a Detaining Power seeking to interpret the Convention strictly but as unfavourably to those personnel as it can consistently with the text. We believe the amendment gives more protection to those people, and that is why we ask the Conference to adopt it.

The PRESIDENT: We shall now proceed to vote. Delegates who accept the amendment proposed by the Delegation of New Zealand are kindly requested to raise the card bearing the name of their country.

The amendment was rejected by 42 votes to 6, with 2 abstentions.

The PRESIDENT: The Greek Delegation has presented a verbal amendment. This amendment should have been tabled in the form of a written proposal within the time-limit fixed by the Rules of Procedure. I would like to know the opinion of the Rapporteur on this amendment, and to learn if it is possible to invite the Conference to come to an immediate decision on it.

General LEFEBVRE (Belgium), Rapporteur: As the amendment is a very short one and does not concern the substance of the Article, it could be considered, although some speakers have indicated

that they do not care for it particularly. However, this is a personal opinion and I do not wish to influence the Meeting's opinion.

Mr. AGATHOCLES (Greece): We are not dealing with an amendment in the strict sense of the word, but simply with an attempt to word this paragraph in such a way that it will express the unanimous opinion of the Meeting. I therefore venture to request that a vote should be taken on this question.

The PRESIDENT: I do not wish to enter into a discussion with the Greek Delegate as to whether his proposal constitutes an amendment or not; I note that he proposes to alter the text submitted by the Committee. I think it would be extremely difficult to take a vote now, and I must therefore ask the Greek Delegation to submit an amendment in writing, which can be considered by the Conference at a subsequent meeting.

Does anyone wish to speak on this proposal?

If that is not the case, I take it that you all agree with me. The vote on Article 22 as a whole is adjourned.

#### Article 22A

This Article was adopted.

#### Article 23

The PRESIDENT: An amendment has been submitted by the New Zealand Delegation; and as the New Zealand Delegate has already spoken about his amendment, I propose to take an immediate vote, unless someone wishes to speak.

Mr. QUENTIN-BAXTER (New Zealand): The amendment is identical with the former one and I shall be happy to withdraw it.

Mr. GARDNER (United Kingdom): The French word "bénéficieront" is translated in Article 22 into English as "benefit" and in Article 23 by the word "enjoy". I suggest that Article 23 should be brought into line in the English version with Article 22.

The PRESIDENT: We are dealing with a drafting correction; and I believe that the remark made by the United Kingdom Delegate does not give rise to any objection.

I note that the New Zealand Delegate has withdrawn his amendment.

Mr. AGATHOCLES (Greece): As I have already explained, the same reasons apply to Article 23.

The amendment I am going to submit today refers to that Article.

The vote on Articles 22 and 23 as a whole was adjourned.

#### Article 24

The PRESIDENT: An amendment has been submitted by the Irish Delegation in order to delete in the first paragraph the word "repatriates" and substitute it by "personnel for return under Article 23".

Further, in the second paragraph of the English text the word "captive" should be deleted.

Mr. RYNNE (Ireland): This does not call for much explanation. The fact is that Article 24 was adopted in its present form by Committee I before the status given to medical and religious personnel was settled and before Articles 22 and 23 were drafted as at present. Article 23 provides that personnel, whose retention is not necessary, shall be returned to the belligerent to whom they belong. The word "returned" does not necessarily involve repatriation, and we venture to hope that the revised wording we propose for the first paragraph of Article 23 will find general acceptance as being more precise. Similarly, it has now been decided that medical and religious personnel shall not be deemed to be prisoners of war. They are to be retained, not as captives, but solely to carry out medical and spiritual duties in regard to prisoners of war. Therefore the word "captive" in the English text is not proper, and does not moreover appear in the French text, and we formally propose its deletion.

The PRESIDENT: If no one wishes to speak, I shall consider that there is no opposition to the Irish Delegation's amendment.

The Irish Delegation's amendment was adopted. Article 24 as altered was adopted.

#### Articles 25, 26, 27, 28 and 29

The above mentioned Articles were adopted.

#### Article 30

The PRESIDENT: An amendment has been submitted by the United Kingdom Delegation for the purpose of adding at the end of the first sentence of the third paragraph the words: "where so required by International Law." The reason stated for the amendment is given in the following note: Certain categories of those who may be made prisoners of war, e.g. merchant seamen, are not required to be interned by a neutral Power

whose territory they reach; the amendment is designed to clarify their position".

Mr. GARDNER (United Kingdom): This amendment has a corresponding amendment in four Articles of the Maritime Convention and also in Article 3 of the Wounded and Sick Convention. With a view to saving time I would suggest that, if it is adopted on this Article, the Conference should regard the changes on the other Articles as consequential. Article 30 in the third paragraph provides that "unless agreed otherwise between the neutral Power and the Parties to the conflict, the wounded and sick who are disembarked, with the consent of the local authorities, on neutral territory by medical aircraft, shall be detained by the neutral Power in such a manner that they cannot again take part in operations of war." That wording was drafted originally with the armed forces in mind on the understanding that, if members of the armed forces of a belligerent enter neutral territory, the neutral Power is bound under international law to detain them and to prevent them from taking further part in the conflict.

Article 10A of this Convention being based on Article 3 of the Prisoners of War Convention will extend the provisions of the Convention to classes who are not part of the armed forces, in particular to merchant seamen and civilian air crews. It is not international law at present that a neutral Power should be bound to detain merchant seamen or civilian air crews landing in their territory, even though they belong to a belligerent. These men have a right to proceed on their journey to their own country. The purpose of the amendment and the corresponding amendments to the other articles in this and the Maritime Convention, where exactly the same point arises, is to preserve what is at present the position of neutrals in relation to the nationals of belligerents arriving in their territory in war time. We propose that that should be done by adding at the end of the first sentence of the paragraph which I read a short phrase "where so required by international law". The effect of these words is to preserve the obligation of neutral Powers to detain people exactly according to that obligation as it stands at the moment. Without those words there is a danger, we think, that this Article may be construed as placing on neutral Powers in war time an obligation to detain certain classes of people reaching their territory which such Powers do not possess at present.

Mr. SÖDERBLÖM (Sweden): No one can deny that Committee I was unanimous in deciding that it was not competent to interpret or to amend international law, in so far as it applies to the internment of soldiers, members of the armed forces

or other categories of persons entitled to the protection of the various Conventions under discussion.

This was explicitly stated in the Report of the Special Committee of Committee I, and was reproduced in the comments of our Rapporteur.

I consider that it would be desirable to stress this fact by inserting the reference proposed by the United Kingdom Delegation, a reference which already occurs in several other Articles of the Wounded and Sick Convention, and also the Maritime Warfare Convention. Every time this question comes up for discussion, the Swedish Delegation will support this proposal.

Mr. MOROSOV (Union of Soviet Socialist Republics): This is the second time I have been obliged to speak here in order to emphasize the somewhat vague character of a British proposal.

Actually, we find ourselves in a rather difficult position, as the United Kingdom amendment to Article 30, as well as Article 30 itself, are closely related to the tenor of sub-paragraph 5 of Article 3 of the Prisoners of War Convention, in which it is laid down that the crews of the Merchant Navy, including commanders, and the crews of civil aircraft of one of the Parties to the conflict who do not benefit by more favourable treatment under any other provisions of international law, shall be considered prisoners of war.

Thus, when we compare the provisions of Article 3 of the Prisoners of War Convention with those which are proposed in the United Kingdom amendment, we can easily realize that this may lead to a certain amount of confusion. For this reason, the Delegation of the Union of Soviet Socialist Republics considers that it is superfluous to add at the end of the first sentence of the third paragraph of Article 30 the words "when this is required by international law".

We should mention that this question was raised by the United Kingdom Delegation at a meeting of Committee I in connection with the discussion of certain Articles of the Maritime Warfare Convention, and, in particular, with Article 30 of the Wounded and Sick Convention.

Committee I had already decided to reject the proposal made by the United Kingdom Delegation. The wording of the corresponding Articles was accepted as drafted by the United States Delegation and supported by the majority of the other delegations. As was indicated and explained by the Delegate of the United Kingdom during a meeting of Committee I, the purport of the amendment is that neutral Powers may not detain categories of persons such as members of the Merchant Navy and the crews of civil aircraft who involuntarily find themselves within their territory, as a result of military operations and owing to circumstances beyond their control.

The United Kingdom Delegate, when explaining his proposal, alluded to Article 6 of Chapter III of the XIth Hague Convention. This Article refers to vessels of the Merchant Navy of the enemy and states that:

"Commanders, officers and crews belonging to an enemy Power shall not be taken prisoner, provided they gave a written and formal undertaking not to join any service in connection with the conduct of military operations for the duration of hostilities."

Applying this Article, by analogy, to the crews of the Merchant Navy and of civil aircraft who find themselves in neutral territory, the United Kingdom Delegate considers that this personnel should not be interned or retained within the territory of the neutral Power.

As I have said already, we know that Committee II came to a unanimous decision as regards Article 3 of the Prisoners of War Convention, which stipulates that seamen of the Merchant Navy and crews of civil aircraft of a Party to the conflict who might fall into the hands of the enemy, are to be considered prisoners of war.

This being so, the allusion made by the Delegation of the United Kingdom to Article 6 of the XIth Hague Convention is groundless, as no international treaty, nor the Article just mentioned, governs the position as regards seamen of the Merchant Navy. I would like, furthermore, to draw your attention to the fact that, according to Article 15 of the Hague Convention, the Geneva Convention is applicable to wounded and sick who may be in neutral territory; the Geneva Convention referred to is that of 1906, Article 2. In the last paragraph it is stipulated that if wounded and sick reach the territory of a neutral State, with the consent of the said State, it shall undertake to care for the wounded and sick and to detain them in its territory until the close of hostilities. The same idea is expressed in the Article we have under consideration.

It follows, therefore, that the amendment submitted to Article 30 by the Delegation of the United Kingdom has no foundation in law and in no way clarifies the position of persons who find themselves in neutral territory. On the contrary, the proposal would lead to some uncertainty in the status itself and the situation of these persons. Thus it again happens that, in the form of an apparently unimportant amendment which has not yet been objected to by the other Delegations here present, the Delegation of the United Kingdom is, as it were, entrenching itself the better to attack point 5 of Article 3 of the Prisoners of War Convention. I would like to ask the Delegation of the United Kingdom not to set us, in the form of amendments, charades and cross-word puzzles



which we could never hope to solve. For my part, I consider such methods are particularly dangerous.

Thus the Delegation of the United Kingdom is endeavouring by means of arguments which cannot be called well-founded, and in a not very open fashion, to obtain the adoption of a proposal which has already been rejected twice by Committee I, and which might be used against the provisions of point 5 of Article 3 of the Prisoners of War Convention.

The above reasons make it clear why the Delegation of the Union of Soviet Socialist Republics consider it necessary to reject the amendment submitted by the Delegation of the United Kingdom.

The PRESIDENT: We will now vote on the amendment submitted by the Delegation of the United Kingdom.

The delegations who accept the said amendment are requested to raise the card bearing the name of their country.

It appears to me that the Delegate of the Netherlands wishes to speak.

Captain MOUTON (Netherlands): I should like to propose that the vote be postponed until after lunch, as certain delegates might have something to say on the subject.

The PRESIDENT: Under these circumstances, I propose that voting should be postponed until this afternoon, as it is already late and certain delegations still wish to speak. I shall therefore declare the Meeting closed and we will resume at 3.30 p.m.

*The meeting rose at 1.30 p.m.*

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## NINTH MEETING

*Thursday 21 July 1949, 3.30 p.m.*

*President: Mr. Max PETITPIERRE, President of the Conference*

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### Article 30 (continued)

The PRESIDENT: We will resume the discussion of Article 30 and of the amendment presented by the United Kingdom Delegation.

The Netherlands Delegation has the floor.

Captain MOUTON (Netherlands): The Netherlands Delegation supports the British amendment. The argument put forward by the Delegation of the Union of Soviet Socialist Republics that merchant seamen and civil air crews can be made prisoners of war if they fall into the hands of the adverse party does not consequently mean that they should be interned when they come into the territory of a neutral State. If the point of view of the Delegation of the Union of Soviet Socialist Republics were correct, belligerent merchant seamen could never go into ports of neutral countries any more and I am sure that that consequence will not be accepted by the Delegation of

the Union of Soviet Socialist Republics. What I am saying here about merchant seamen goes just as much for civil air crews. It would be very queer if a merchant seaman could go ashore in a neutral port and not be interned as is the point of view of international law as it stands, but would be interned if he happens to be ill and the plane in which he is transported has to land in a neutral country? The XIth Convention of The Hague has nothing whatsoever to do with this subject. The XIth Convention of The Hague speaks about the possibility of not making prisoners of war crews of merchant ships when captured by a belligerent if they fulfil certain conditions. There is nothing new, as I explained in Committee II about the rule that crews of merchant ships will be treated as prisoners of war. It is an old rule of customary international law and the fact that we have inserted this rule in the Prisoners of War Convention does not mean anything else except that we have codified customary inter-

national law. It just does not change the position as it was in 1907 and for that reason there is no reason whatsoever to change the Vth Hague Convention which stipulates precisely in Article 11 that the neutral State will only intern members of the armed forces of the belligerents who enter their territory. Civilians have never been interned and will never be interned. For that reason we support the British amendment.

The PRESIDENT: There being no further applications for the floor on this amendment, we will proceed to vote.

The amendment submitted by the United Kingdom Delegation was adopted by 29 votes to 10, with 3 abstentions.

The PRESIDENT: I now request you to vote on Article 30 as a whole.

Article 30, as amended by the United Kingdom, was adopted by 35 votes with no opposition, and 8 abstentions.

### Article 31

The PRESIDENT: We have to consider three amendments which have been submitted:

the first, submitted by the Delegation of Israel, proposes that recognition as a distinctive emblem in the sense of the present Convention should be given to the Red Shield of David on a white ground, on an equal footing with the Red Cross and the Red Lion and Sun;

the second, submitted by the Delegation of Burma, proposes the re-examination of the Draft Resolution submitted by the Delegation of India in Committee I. This Resolution recommends that an appropriate procedure should be set up for devising an emblem which shall constitute an adequate sign of protection. This emblem should have no religious significance, should be red on a white ground, should possess maximum visibility and be a simple geometrical pattern. If this resolution were rejected, the Delegation of Burma would propose an amendment to Article 31, to the effect that all red symbols on white grounds whose use had been duly notified should be given recognition as distinctive emblems;

lastly, the third amendment, submitted by the Delegation of India, proposes to alter the text of the Draft Resolution, by providing for the setting up of a body to examine the possibility of introducing and adopting a new emblem which would fulfil the conditions just enumerated.

Moreover, the President of the International Committee of the Red Cross has notified his

wish to make a general statement on the question of the emblem. If the Assembly agrees, I shall ask him to speak before opening the discussion (*approved*).

Mr. RUEGGER (International Committee of the Red Cross): The International Committee of the Red Cross, as the institution which in 1863 founded what is today the Red Cross, considers that it is entitled, and above all that it is its duty to express, at this stage of the Conference, its carefully considered views on the fundamental problem of the emblem.

The International Committee of the Red Cross would like to warn the Governments represented at this Conference against the putting into effect of plans which would sooner or later inevitably entail the risk of a multiplication of protective symbols, which would, in turn, diminish the value attached to them. The protective emblem cannot be fully efficacious unless it is universally known, unless it is the symbol which is automatically and universally recognizable by all of the protection given to war victims. Any infringement of this principle of universality can only undermine the value of the symbol and hence increase the dangers incurred by those whom it is designed to safeguard.

Our view is based on the fullest respect for all national emblems. But what we must avert at all costs is the possible confusion between these emblems and the neutral symbol of fraternal and mutual aid in time of war. Under the emblem of the Red Cross, men are treated simply as human beings, whether they are prisoners, wounded or refugees, irrespective of origin. If the present Conference were to adopt new symbols, it would open the way to other exceptions in the future. The progressive weakening of the symbol of aid to war victims would be a positive disaster, since the protection of human lives is here at stake.

It is in the light of this principle that the International Committee of the Red Cross would not only deprecate any increase in the number of symbols of protection, but even emphasize the advantages of the single symbol of the Red Cross if a return to the past were envisaged.

There are undoubtedly today some emblems which are an exception: the venerable Red Crescent, which has witnessed so many acts of generous self-sacrifice; and also the Red Lion and Sun of Iran. One thought, however, occurs to us: if, about 1870, the Red Cross had been part of the spiritual birthright of humanity as it is today, if the emblem and the term had at that time already acquired the high moral significance which is attached to it and which all peoples, whatever their creed, recognize today, would the Ottoman Empire have pressed for the

adoption of the Red Crescent? It is possible to imagine that the very natural attitude adopted at that time towards a new symbol of the Red Cross, which had not yet taken root in the minds of nations, might have been different. This reflection is justified by the example of a great statesman who died recently, the leader of a great Mahomedan Power of 70 million inhabitants, the Quaid-El-Azam Muhamed-Ali-Jinnah, Head of the State of Pakistan.

At the beginning of last year, I had the opportunity and the privilege of speaking with Mr. Jinnah about the question of the emblem. On 15 March of last year, at the public foundation ceremony of the Red Cross Society of Pakistan, the Quaid-El-Azam, who became its President, said:

"The Conference also decided that all those who were striving to relieve the sufferings caused by war and all those who are to be protected by this Convention, would adopt a distinctive emblem, irrespective of the country to which they belonged.

"The emblem which was adopted was a Red Cross on a white ground. It is generally recognized that this emblem should be universal, in order to fulfil its mission as effectively as possible, in particular on the battle-field."

"The symbolic value of the Red Cross", he went on, "is no less great in the field of international cooperation, by contributing towards the mitigation of the horrors of war and the improvement of public health and well-being."

Mr. Jinnah's eloquent words are, in my opinion, of paramount importance for the solution of the question at present before the Conference. They give due emphasis to the principle of unity which should inspire us.

The International Committee of the Red Cross, after long consideration, and debates which lasted throughout several meetings, has also decided to advise the Governments against adopting an exceptional symbol of geometric design.

The proposal first drafted by the Delegation of India, and then withdrawn, has been revived to a certain extent by the Delegation of Burma.

We have before us today a new amendment submitted by India, and in originally supporting the decisions of your Committees, was not the Delegation of India acting in the spirit of Mahatma Gandhi?

Ten days before the foul assassination of the Mahatma, the present President of the International Committee of the Red Cross heard the holy man who prayed for understanding and peace between nations say: "The Red Cross creed is my creed". We should like to conclude that

the symbol of the Red Cross was also his symbol and we place this invaluable testimony on record.

One last consideration! If, on account of the multiplication of symbols, the emblem of the Red Cross were to lose its universal value, the word "Red Cross", which is itself perhaps equally, if not more important, would lose part of its universal significance.

We must make a common effort to avert such a disaster. It would be a heedless sacrifice of the heritage of self-denial and devotion to duty accumulated in the glorious past, in the vain hope of recreating, perhaps a century hence, perhaps even later, a new mysticism around a new symbol.

No objection, I believe, has been raised to the name of "Red Cross" as the designation of the Red Cross movement as a whole, comprising the International Committee of the Red Cross, the League of National Red Cross Societies, the International Conferences of the Red Cross, in a word, all the bodies which go to make up the International Red Cross.

The general term "Red Cross" would no longer apply, in theory at least, to the whole of the movement, if the emblem lost its universal character. The name without the universal emblem, which is the corresponding symbol, would finally become incomprehensible. We need not prolong here the discussion on the origin of the emblem.

In 1864, the First Diplomatic Conference, under the Chairmanship of General Dufour, met under this very emblem, the reversed colours of the Swiss flag. The Swiss Confederation had itself adopted the symbol of Schwyz, the community which, seven centuries ago, already bore the white cross as the symbol of its faith.

Everyone, today, whatever his opinions, whatever his religious convictions, can recognize in the Red Cross the symbol of the neutral protection of war victims, of fraternal aid and mutual assistance between nations. A kind of mysticism has grown up around the Red Cross, and innumerable lives have been sacrificed in the service of the idea which it represents.

The Red Cross is borne by vast spiritual forces and invisible legions. May our precarious world neither uproot nor weaken one of the rare symbols, one of the rare words, perhaps the only symbol and the only word, which still unite it in a common ideal.

The PRESIDENT: I call upon the Delegation of Israel to speak.

Mr. NAJAR (Israel): The Delegation of Israel asks this Conference to recognize the Red Shield of David as a distinctive emblem on the same footing as the Red Cross, the Red Crescent, and the Red

Lion and Sun. We have already had the opportunity of giving a written explanation of our amendment (*see Annex No. 42*) and to the verbal discussion in Committee I. The various delegations will certainly have examined the files concerning Article 31. I will therefore be as brief as possible.

The request tabled by the Delegation of Israel is surely both normal and natural. The Shield of David has been used for twenty years by Israeli bodies identical in structure with the Red Cross organizations. Extensive relief work has been carried out among the population of Israel under that emblem, without distinction of race or of religion. That emblem followed us in the recent struggle for our national liberation, and it is significant that during the conflict in which the State of Israel has been involved since 29th November, 1947, the belligerents mutually respected the emblems of the Red Shield of David and the Red Crescent. Our request, moreover, is consistent with the opinions expressed in the course of the present Conference. It is certain that if amendments had been submitted and adopted with a view to the immediate unification of the distinctive emblem, this would have impelled reflection and might perhaps have led to the reconsideration of certain ideas. But nothing of the kind occurred. The actual basis of the discussions remains the 1929 Convention, the object of which is certainly not to arrive at a universal distinctive emblem.

Three emblems are actually recognized by the 1929 Convention. In the first place, there is the red cross and we are glad to pay a tribute to the emblem chosen by the founders of the great institution which bears that name, with which we intend to collaborate as we have already done in the past. The second and third signs recognized under that Convention are the red crescent and the red sun. These are the facts.

The brilliant statement made by the President of the International Committee of the Red Cross, which we have just heard, obliges me to revert to the problem of symbols and emblems.

The Conventions we are today assembled here to work out are intended to be applied by men. They will have value only to the extent to which they take human nature into consideration. It is a strange confusion of values to say that one symbol is as good as another. The very persons who declare that the symbols are merely designs are themselves profoundly attached to a definite symbol.

A symbol is not a mere geometrical figure. It is deep-rooted in the hearts of men, it is a living thing, and in the course of the centuries acquires a human content from which it becomes inseparable. We must recognize that with such an emblem men progress. The attachment of the people of Israel to the Shield of David is based on a tradition which goes back thousands of years and is still living; it

stands for powerful facts of sentiment and of history.

These facts are not, moreover, peculiar to the Jewish people. The Shield of David goes back to a period which is doubtless the most ancient of all those referred to here. In the Song of Solomon, in the Bible, the words "the Shield of David" are used to invoke the name of the Lord. Later, one hundred and thirty-five years before the Christian era, in the time of the Asmonians, the six-pointed star took on its full significance. These are pages of the universal history of mankind, to be read by all those who come after.

We, who are assembled in this international centre, cannot but remember what the Shield of David has meant in recent history. Thousands and thousands of Jews were killed under the Hitler régime, marked with this symbol to distinguish them. It was against this emblem that Nazism rose in the name of its racial dogma. Had this assault triumphed, it would have overwhelmed not only Judaism, but Christianity too, and all those who defend the cause of the equality of man and a universal conception of humanity. It would in truth be a very great achievement if this sign should today become the emblem of mercy and of life, if it were no longer used to brand victims, but to proclaim the respect of man.

It cannot be argued that this sign is not universally familiar. In all the documents we submitted, we intentionally refrained from describing our emblem: not once were we asked for an explanation whether by Moslem or Christian, nor by bodies such as the International Committee of the Red Cross. Everyone knew the Red Shield of David. We did not come here with an unknown or little-known sign, but with an emblem known to all and pregnant with significance.

We have encountered nothing in the work of this Conference which could change our point of view or make us abandon our legitimate request.

It has been objected that, were our emblem adopted, a flood of emblems would have to be dealt with. Sometimes a flood of emblems, sometimes a catalogue of emblems, is referred to. I need only say that the very experiences of this Conference have shown that attitude to be unjustifiable. No new individual emblem, no emblem designed *ad hoc*, has been proposed. There would, indeed, be great difficulty in finding other emblems which, like the Shield of David, were not only ancient, but also fraught with universal meaning, which had been in actual use for twenty years, were familiar to all and already triumphantly stood the test of war. It has been said that it is difficult to teach members of the forces to respect three or four different emblems. That is not in accordance with facts, and we do not believe, moreover, that the argument is sincere.

We read the Report now under consideration most carefully, and in particular the passage stating that Committee I sincerely hoped that the time would come when all the countries of the world would decide to adopt the red cross on a white ground as the sole distinctive emblem. Surely it should be recognized in all fairness that this desire has found no expression in concrete action. The advocates of the red cross as the sole sign have taken no actual steps to bring about a decision at the present Conference. Their defence of the unity of the sign was somewhat half-hearted. The Committee's Report even contains a passage which takes us a long way from that unity, when it notes that the Christian nature of the symbol—which certain nations see in the red cross—makes it impossible to impose it on the Mohammedan peoples.

How can, therefore, the desire one day to establish the red cross as the sole, distinctive sign be realized? Nothing in the documents before us can give us any clue.

To this must be added the fact that those Near Eastern countries who refused to accept the Red Cross insisted on the retention of the Red Crescent. It was this group of nations—of which Israel is one—which raised a problem that still awaits solution.

How, under such conditions, could Israel fail to be aware of the real point of the debates of the Conference and the most evident realities of its immediate geographical neighbourhood?

How could the Israeli people allow that, while to the north, east or south of their territory nobody wished to hurt the feelings of those who bore the Red Crescent, a different ruling should be applied to themselves? The considerable sacrifice demanded of us by certain people is difficult to conceive.

The Israeli Delegation feels bound to state that it will not be possible for its Government to ask its population to relinquish the symbol of the Red Shield of David in favour of one of the recognized emblems.

The consequences of a negative decision by this Conference could only be deplorable. No vote will destroy deeprooted and legitimate traditions. Should a major or minor conflict arise to-morrow and wounded and sick Jews or non-Jews be attacked while travelling in ambulances which are always marked with the Red Shield of David, it would be legitimate to ask with whom the real responsibility lay.

We have come to this Conference in the firm desire to establish a universal Convention intended to be supplied by all the peoples. We believed that a refusal of our request would gravely prejudice the fundamental condition for the establishment of a universal Convention. The Israeli Delegation is confident that, in application of those principles of equality and enlightened tolerance, which form

basis of all striving towards human universality, the justice of its amendment will be recognized. Our Delegation sincerely hopes that it will be understood, for it asks nothing that has not been granted to others and which does not answer to living and indisputable realities.

I should like here to refer briefly to the statement made by the President of the International Committee of the Red Cross. I believe that in speaking as I have, I have been the best defender of the Cross. We have defended here the meaning of these symbols and emblems. We do not believe in human factors, abstract and divorced from men. We believe that the emblem of the Cross, like the emblem of the crescent, and the Shield of David, can only have meaning and help to develop and strengthen human and world wide institutions if it is recognized that they are imbued with the passions, faiths and hopes handed down through the centuries. Mankind throughout the world will not serve meaningless emblems, nor will they enforce the attention and respect of soldiers; Armies will only respect those emblems which they revere and in which they believe.

I truly and sincerely believe that, by defending the Shield of David, we are also defending the Cross and the Crescent. We are not attacking a symbol. We respect the great moral forces of humanity and believe that human unity may be built up only if this moral strength is concerted; it must not be an abstract process which does not take human realities into account.

If each one of us examines his own conscience and recognizes his own motives and the sentiments by which he is actuated, an understanding will be possible. Not conformity, but tolerance and understanding of those great forces throughout the world alone will bring about universal harmony and show us the way out of our present impasse.

Lastly, I would like to explain our position concerning the resolution tabled by the Delegation of India and the amendment submitted by the Delegation of Burma.

We shall vote for the Indian resolution, not because we are in favour of an abstract emblem but because this resolution shows goodwill and a sincere desire for equality and unity. I do not know how that resolution will be received; it calls for the constitution of a body to consider the possibility in the future of establishing a single emblem. It has no bearing in any case upon our present and immediate request for the recognition of the Red Shield of David together with those which are already recognized.

As to the Burmese amendment, and in particular its second part, despite our sympathy for the principle of equality for which it stands, we do not think new emblems should be accepted in an abstract spirit. Each emblem must be submitted to the

appreciation of the Conference, and judged according to its merits. For this reason we cannot sign a kind of blank cheque for new emblems whatever they may be.

The Delegation of Israel believes that it has fulfilled its duty to the Conference by submitting to it, in a very concrete fashion, the problem of the meaning and value of the emblems. We are not advocating a purely nationalistic point of view; we are endeavouring to help to assemble, however small may be our contribution, those living forces without which a truly universal institution cannot be built up.

General OUNG (Burma): I am not going to take up much of your time on this subject because, although I know I have a convincing case, I know also that, as in the previous meetings in Committee I, most of your minds are already made up. Nevertheless I feel I should appeal once again for support of our proposal to a vast majority of delegates of this Conference who belong to one definite race and one definite religion. We have heard with much interest this discussion which commenced with the very noble and spirited words of the President of the International Committee of the Red Cross, and we hold him in great esteem. After hearing him I feel more convinced than ever that my case is sound. I feel strongly, and that is why I shall speak a little longer than I had intended.

The President of the International Committee of the Red Cross spoke against the multiplicity of emblems. He pointed out that it reduced the value of the emblem. I agree with him, and the whole object of the Indian proposal was to remove this multiplicity. While I am on this subject I would also say that I have heard the Delegate of Israel speaking against multiplicity of emblems, yet he was asking for a fourth. Since he does not agree with multiplicity and the President of the International Committee of the Red Cross has also spoken against multiplicity. I will, if I may, withdraw the second part of my proposal. I regret that I cannot agree to any other sign except one.

There is a lot to be said against national emblems in the international field. The same remark applies equally strong to religious signs. This delicate problem of the emblems has not been brought up by us at this Conference for the first time. We have all seen the publication entitled "Remarks and Proposals" and it is a well thought out and well prepared publication. On page 15 of that publication you will find the whole history of the emblems. It began when the red crescent was adopted, when there was a discussion on the multiplicity of emblems, and then at subsequent

meetings of the Red Cross in 1937, 1946 and 1947 and at the Stockholm Conference this subject was discussed again. We are bringing up nothing new. If we have created any misunderstanding or ill-feeling we very much regret it but I repeat that this is nothing new.

In "Remarks and Proposals" you will find that practically unanimous opinion was in favour of one universal emblem, and for it to be universal it must not be national, racial, religious or regional. Ever since I knew where I was in the army, I knew what the red cross was; and that was because we were, in these days, in the British army. We knew what the red cross meant, and we had every respect for it and we have it now. We followed the directions we received that we should tell our men and the villagers the significance of the red cross and that it was a reversal of the great national flag of Switzerland and that it had no religious significance. We did that and nothing was said. But you will know as well as I do that ever since this question was brought up again we have unfortunately created a feeling, a religious feeling. We have had newspapers sent to each of us explaining the religious significance of the red cross. I cannot now conscientiously go back to my country and to my men and tell them that it has no religious significance. Since we are voicing what has been said before, namely, the desire of many of us to have one universal emblem, I strongly support the proposal made by my brother Delegate for India to have one universal emblem and that will naturally be referred to our Governments before we sign the Convention.

I think that is enough to convince you that our case has been sincerely brought forward without any religious after-thought but with a desire to remove the multiplicity of emblems, and simply to have one universal emblem which will have no racial, religious or regional significance. I hope that in this enlightened age sound reasoning will decide on which way you should vote.

Mr. GENNAOUI (Syria): I have listened attentively to the speech made by the President of the International Committee of the Red Cross, and I wholeheartedly support all the arguments which he has advanced. I have before me a synopsis of all his arguments. I have rapidly taken note of them, and I accept the principles which he has advanced as to the non-multiplicity of emblems and the universality of the emblem of the Red Cross, as it is at present recognized.

I am glad to avail myself of this opportunity of paying my tribute, in the name of my country, to the magnificent humanitarian work accomplished

by the Red Cross; it is needless for me to say more on that subject.

On the other hand, I must say that I cannot accept the arguments put forward by the Delegate of Israel, and I shall attempt to refute them in order. I also have before me the list of the arguments which he put forward.

In short, if I have understood his meaning, and if I have correctly interpreted the facts which he has reported—the facts being one thing and their interpretation being another—the symbol of the Red Cross has become dear to the heart of mankind. I fail to see why the symbol of the Red Cross, which is universally known at present, cannot be adopted as such.

The Delegate of Israel might object, and I can immediately admit that my Government like other Governments has not adopted it. I may say in reply that, if my Government has not adopted it, it is for purely historical reasons, reasons to which the President of the International Committee of the Red Cross has already alluded. It is a question of the Ottoman Empire and of the decision taken in 1870.

The first argument is the question of the Shield of David. The Shield of David does of course exist in the Bible. But the question does not arise, because we have not adopted the principle of choosing an emblem and the conditions which this emblem should fulfil. For this reason the question which does arise, is that the chosen symbol should be universally familiar. Now the symbol of the Red Cross like the symbol of the Red Crescent is universally familiar. This is why it has appeared in previous International Conventions. Moreover, it is familiar to soldiers and prisoners of war and has always been sanctioned by International Conventions which are well known to all the Delegates.

As for the arguments based on the multiplicity of emblems, it still holds good. There are already two or three emblems. Why not choose three, four or even five? And so it would go on. The argument might be sound! If certain delegations were in favour of the Israeli amendment, they should immediately agree to the possibility of drawing up a list on which every delegate could enter the national emblem which he prefers. The result would be complete confusion, a Tower of Babel! This point was already discussed by Committee I which did not accept the Israeli amendment. It is my opinion that the Committee was well advised in rejecting the emblem proposed by the Delegation of Israel.

As regards the question of the Near East, to which the Delegation of Israel alluded, I can simply reply that there are the two facts of the date of 1870, and the adoption of the Red Crescent

in our countries by the International Conventions, and that there is no question, in our case, of a new emblem having been introduced.

Lebanon, which is in part a Mahommedan country, has adopted the symbol of the Red Cross. Why should Israel not do the same?

I wholeheartedly support all the arguments advanced in the speech made by the President of the International Committee of the Red Cross, and I shall vote with regret against the Israeli amendment.

M. LAMARLE (France): After having heard the various different statements which have already been made, the French Delegation feel that they are expressing the unanimous opinion of the Meeting when they say that the significance of the emblem of protection is an ideal which we must never cease to bear in mind, and try to attain as far as possible.

The President of the International Committee of the Red Cross has just shown, with great eloquence and feeling what it would mean if all the nations could agree on the adoption of a single emblem, whose very singleness would in itself be the visible sign of the united endeavour made in Geneva for three quarters of a century to render war more humane.

The French Delegation also have great pleasure in associating themselves with the tribute paid by Mr. Ruegger to this traditional emblem of the Red Cross, which is already familiar throughout the world. The French Delegation will always give their support to any plans, past or future, to open negotiations for the purpose of attaining or returning to unity. Nevertheless, in the present state of affairs, certain important aspects of the problem cannot be overlooked. Unity should not be attained at the cost of legitimate national or religious pride. The French Delegation have supported this point of view from the outset, at the time when the question arose of giving recognition to what have been perhaps mistakenly called "exceptions".

The President of the International Committee of the Red Cross correctly stated that the multiplication—or more exactly the unrestricted multiplication—of symbols of protection would result in a sacrifice of that emblem's prestige. The French Delegation fully agrees; but must point out with emphasis that there would be another no less serious cause for loss of prestige, a qualitative cause, if I may use the term, as opposed to the quantitative cause which Mr. Ruegger so rightly set forth. That qualitative cause would consist in a lack of respect for the legitimate self-respect of national or religious groups. It is for this reason that France has from the outset conti-

nuously paid the greatest attention to this legitimate self-respect, which must not be sacrificed to the dogma of unity.

If our idea is considered and makes the wide appeal which we hope, the French Delegation do not see how it will be possible to refuse an exception, since this is the term used, an exception which is based on considerations closely resembling those which inspired the very legitimate exceptions previously granted, which we have wholeheartedly supported.

If those exceptions were inspired by mere caprice or private interest, we would, of course, be entitled to treat them with reserve or even refuse to grant them. But that is not the case, whether as regards the exceptions—I am loath to use the word—which have already been accepted, or the exceptions which we are asked to grant today, since the so-called exceptional emblems, which have been already adopted or which are under discussion today, are the expression of the most precious spiritual or moral possessions of the peoples or national or religious groups concerned; they are the symbols which represent age-old traditions. Therefore for each one of these peoples it is precisely that symbol which is the guarantee of their faith in the principle of human charity on which this Conference is founded.

Mr. BOLLA (Switzerland): It was as a tribute to my country that the pattern and inverted colours of the Swiss flag were selected as an emblem of international aid during hostilities.

It is not for me to state here whether this tribute was deserved or whether its renewal is justified, nor to reply to such questions, or indeed even to raise them.

One thing is certain. The Swiss Delegation is not guided today in this question by any considerations of national pride or sentimental attachment, how understandable this might be. It considers the question solely from the point of view of the efficient international aid which is the object and purpose of the Geneva Conventions; the emblem is an indispensable means for this assistance. The best sign will be that which has the greatest protective value.

What we have to decide today is whether it would be in the interests of those persons whom we wish to shield as far as possible from the turmoil, the wounded, prisoners and internees, to abandon the Red Cross emblem or to weaken it by continual inroads on its character as a single and universal emblem. We do not think it possible to reply in the affirmative.

The sign of the Red Cross has a tradition of eighty years, in which the most widespread and ruthless wars in history were fought. It is known to hundreds of millions of men, women and

children, it is for them the unequivocal and eloquent voice of charity prevailing over violence; it is for many of them the memory of one of those rare glimmers of light in the darkness of sombre years. It is therefore all the more priceless a human heritage in that it rests on spiritual values. It would be no easy matter to replace the red cross by a sign which would be both simple and free of all religious, national or other implications. Even at best, we should have to wait several decades before such a sign attained a significance in the minds of men comparable in beneficent power to that of the present emblem—and the name—of the red cross. It should not be forgotten that without the companion emblem, the very name of the red cross, a name so full of historic tradition, and one of those rare names which in international politics does not divide the peoples would be shorn of its significance.

True, the cross shown on the Swiss flag is related to the Christian faith; it is connected to it by its historic origin, and by the will of the Swiss people. Thus, when the Red Cross began its work, an understandable exception was made in the case of the Red Crescent and of the Red Lion and Sun.

But we must not mistake the present undeniable tendency to make of the red cross a neutral symbol of brotherly aid in wartime, in the name of that respect for human dignity which is a principle common to all faiths; and if such a tendency is a justifiable one, have we the right to impede or hinder it by multiplying the protective signs, and, with them, the opportunities for tragic mistakes particularly in the generalized warfare and coalitions of today. If we now approve a new exception, this would inevitably be followed by others for which the most plausible motives could also be invoked.

Although it has been said that only one exception was proposed, an amendment already submitted by Burma—and, I agree, withdrawn—would have opened the door for each country to use a distinctive sign of its own choice, provided that this was a red sign on a white background.

The Swiss Delegation fully understand the reasons for the amendment submitted by Israel. They understand the attachment which the people and Government of Israel feel for the Shield of David, the ancient and high significance of which the Delegate of Israel has so eloquently described. But, in my opinion, the advantages represented for all parties by the maintenance of a universally known sign with only those exceptions now recognized, far exceed those which any State might enjoy from the acceptance of a new emblem.

The Israeli Delegation made an ardent appeal to our tolerance, and our principles of equality. We will reply by a no less ardent appeal for solidarity. We all agree on the object in view. We



must have the will to attain it. The most effective means are those which have been handed down to us, and I do not think we should sacrifice them for some abstract desire for uniformity or formal equality, which disregarded the factual changes of circumstances which have come about in the last century. As for tolerance, the whole activity of the Red Cross since its inception is the most eloquent and steadfast testimony to such a principle. This would not have been possible under an emblem of intolerance.

For these reasons, the Swiss Delegation will vote for Article 31 of the text submitted by Committee I, and against the Israeli amendment and the Draft Resolution submitted by Burma and amended by the Indian Delegation.

Mr. TARHAN (Turkey): The Turkish Delegation have no objection in principle to the universal adoption of a new emblem of protection devoid of any religious or national character. They have, on the other hand, noted that during the discussions which took place in Committee I, certain countries which use the Red Cross wish to retain the use of this emblem which has been employed by them since the very foundation of the humanitarian undertaking which is the basic element of the Conventions now under study by our Conference.

We have just heard the President of the International Committee of the Red Cross express the deep attachment of those countries to the Red Cross. Out of respect for their sentiments, and for the International Committee of the Red Cross, the Turkish Delegation will abstain from voting on the Draft Resolution submitted by the Indian Delegation.

Mr. SPERONI (Argentine): The Argentine Delegation have always been in favour of maintaining the Red Cross as the sole emblem of the Army Medical Services. They would have preferred to see the Red Cross become the sole and universal emblem for all armies. Religious, historical and practical consideration, the recommendation of the XVIIth International Conference of the Red Cross as well as the reasons given by the President of the International Committee of the Red Cross lead us to remain of this opinion.

However, as the Committee has also agreed to retain besides the Red Cross, the Red Crescent and the Red Lion and Sun as distinctive emblems, the Argentine Delegation cannot see any serious obstacle to the acceptance of the emblem proposed by the Delegation of Israel.

The PRESIDENT: There is still one speaker to be heard. I propose that he should now take the floor, after which a vote will be taken.

Mr. DE ALBA (Mexico): We have listened with the greatest interest to the statement of the President of the International Committee of the Red Cross, and we agree with him that it would be highly desirable to have only one distinctive protective emblem, internationally recognized. We consider, however, that a first weakness was shown when the Red Crescent, Red Lion and Sun were allowed. But since they were allowed, it is very difficult to turn back and to expect the countries which adopted these divergent signs to accept another emblem for the protection of prisoners, the sick and wounded and refugees.

The Delegation of Mexico are entirely in favour of the universality of the Red Cross emblem. On the other hand my Delegation is aware that at present the United Nations have recourse every day to compromise solutions in the international sphere. The International Labour Office has also, since its foundation, borne in mind the memorable words of its first director, Albert Thomas, who said that the International Labour Office must be universal; if it were not it might well become inoperative for any encroachment on this principle as it would make it extremely difficult to mend matters subsequently.

Under these circumstances, it seems to me that we might await from our colleagues, the Representatives of India and of Burma, an endeavour, in a spirit of fellowship, to convince the peoples of their countries that the red cross in use up to date is not a religious symbol but a traditional and historical emblem, of mercy and human solidarity. If they were able to obtain recognition of this idea in their countries, a great step forward would be taken on the only path which can lead to the adoption of a universal sign standing simultaneously as an emblem of sympathy, tolerance and human solidarity.

The Conference has before it a proposal submitted by the Delegation of Israel asking for the recognition of another new sign. As it is a matter of principle in our case and as we are by conviction in favour of universality and unity in these matters, I shall regretfully be unable to vote either in favour of the amendment or in favour of Article 31 which admits a multiplicity of signs. Therefore, to be consistent with the principle of unity and universality, my Delegation will abstain from voting.

The PRESIDENT: We will now proceed to vote. We have before us an amendment relating to Article 31, submitted by the Delegation of Israel and a Draft Resolution tabled by the Delegation of India.

The Delegation of Burma has informed me that they accept the modification of the wording of this Resolution, as proposed by the Indian Delegation.

"This Conference recommends that the High Contracting Parties set up a suitable machinery for examination of the question of the use of the Red Cross and other emblems now in use or proposed for use as distinctive or protective signs of the Medical Service of the Armed Forces and explore the possibility of devising and adopting an emblem which shall fulfil the following conditions:

- (1) It shall have no religious significance in any part of the World nor be popularly associated with any religions, cultural or other organization.
- (2) It shall be of red colour on a white background.
- (3) It shall possess maximum visibility.
- (4) It shall be a simple geometrical pattern that can be easily executed with minimum materials and labour".

I therefore ask you to vote first on the amendment submitted by the Delegation of Israel.

I will then put Article 31 to the vote as a whole and finally I shall ask you to come to a decision on the Draft Resolution tabled by the Delegation of India and supported by the Delegation of Burma.

Mr. LOKER (Israel): I request that, in accordance with Article 36 of the Rules of Procedure of the Conference, the vote should be taken by roll-call in view of the importance attached by the Government of Israel to this issue.

Colonel HODGSON (Australia): Mr. President, under the Rules of Procedure my Delegation will ask for a vote by secret ballot, for the following reasons, which we believe are very good ones: in Committee I, when this vote was about to be taken, the Delegation of Israel asked for a vote by roll-call. Unfortunately many of the delegates were not quite sure of the rules and did not realize that a vote had to be taken on a question as to whether or not there should be a roll-call vote. The roll-call vote was taken, and, in the opinion of my Delegation, the result of that roll-call was used in a way in which it should never have been used, nor indeed was it intended to be used by the Rules. Delegation after delegation who voted against the Israeli motion have informed me how embarrassed they have been by the persistent lobbying and, I will go further, Sir, and say that even pressure has been put on Governments through diplomatic channels. We think that is a wrong use of a roll-call vote and that is why, in order to save further embarrassment, we asked for a secret ballot.

The PRESIDENT: Three delegates wish to speak on this matter of procedure. I would like to ask them to be as brief as possible so that the question may be decided without too much delay.

Mr. NAJAR (Israel): Our Delegation raise no objection to the secret ballot. We intend, as a matter of fact, to ask for it and if we do not do so, this was due to the fact that we wish to follow the same procedure as that used by Committee I.

I must, however, express the very great surprise I felt when listening to the Delegate of Australia. I cannot admit the criticisms he has made of our attitude after voting took place in Committee I. I fear, too, that the Delegate of Australia was ignorant on 17 May of the Rules of Procedure of which he seems to have become acquainted with only since that date.

After the numerous conversations I have had during the two days since I arrived in Geneva, I believe that if political pressure has been brought to bear in this matter, it has not been from us.

The PRESIDENT: May I ask the Delegate of Israel if, when he stated that he had no objection to the secret ballot, he intended me to understand that he withdrew his request for a roll-call?

Mr. NAJAR (Israel): Certainly!

The PRESIDENT: There is only one proposal before us, that made by the Delegation of Australia to vote by secret ballot. Do the delegates who asked to speak still wish to do so?

Mr. MIKAOUI (Lebanon): I would like to state that I should not be embarrassed if we voted by roll-call, as I should vote against the amendment submitted by the Delegation of Israel.

For the reasons just given by our Vice-Chairman, however, I support his proposal and request that we vote by secret ballot.

SAFWAT BEY (Egypt): I only speak to express my wholehearted support of the proposal put forward by the Australian Delegation, which is self-explanatory. I need add no more.

The PRESIDENT: Does anyone wish to oppose the proposal made by the Australian Delegation to vote by secret ballot?

As this is not the case I shall take it as adopted. We will now vote by secret ballot.

In accordance with the Rules of Procedure three tellers shall be selected from amongst the delegates attending the Meeting. I propose to nominate the Delegates of Sweden, Brazil and Pakistan. Voting-papers have been or are

now being circulated. A ballot-box has been placed at the foot of the platform. The delegations will be called one by one and will deposit their votes in the ballot-box.

I would remind you that we are voting on the amendment submitted by the State of Israel. The delegations in favour of this amendment will write "Yes" on their voting-paper and those not in favour will write "No".

Have all the delegations their voting-papers?

Will the Secretary-General kindly call the delegations?

Voting by secret ballot took place.

Will the tellers kindly count the votes?

The amendment submitted by the Delegation of Israel was rejected by 22 votes to 21 with 7 abstentions.

Mr. LOKER (Israel): There is one point which puzzles me and which I would like to have explained. If 21 delegations were in favour, 22 against and 7 abstained, that makes 50 delegations. There are 60 delegations present. I noted that 6 delegations were absent, there were thus 4 blank

papers. I do not understand this vote and I request the Chairman and the tellers to explain the mystery.

The PRESIDENT: Does the Delegation of Israel wish to have the vote taken again? I hardly think this is possible. Perhaps some delegates, whose delegation was called, came up to the ballot-box and did not deposit a voting-paper.

Has any delegation a remark to make on the comments put forward by the Delegation of Israel? Was any delegation not called?

The ballot was checked by the tellers and it appears to me to be final.

We will now vote on Article 31 as a whole.

Article 31 was adopted by 40 votes to 1 with 7 abstentions.

We will now vote on the Draft Resolution tabled by the Delegation of India.

The Draft Resolution tabled by the Indian Delegation was rejected by 16 votes to 9 with 20 abstentions.

*The meeting rose at 6.40 p.m.*

## TENTH MEETING

*Friday 22 July 1949, 10 a.m.*

*President: Mr. Max PETITPIERRE, President of the Conference*

### WOUNDED AND SICK CONVENTION

#### Agenda

The PRESIDENT: I declare the Tenth Plenary Meeting open.

The first item on the Agenda circulated for this meeting is the continuation of our consideration of the Wounded and Sick Convention, in particular Articles 32 to 37A. For the moment, we propose to leave the common Articles on one side, and to consider Article 32; we will then proceed to consider the Articles which were postponed yesterday, namely 3 and 3A, 10 and 10A, 18, 20, 22, 23.

Are there any comments on this procedure? As there are none, we will proceed to consider Article 32.

#### Article 32

The PRESIDENT: An amendment has been submitted by the United Kingdom Delegation. It proposes to replace the words "Sous le contrôle de" in the French version by "Sauf ordre contraire de" (In the absence of orders to the contrary). A footnote points out that the text adopted by Committee I makes the use of the emblem for the protection of all medical material optional;

in the opinion of the United Kingdom Delegation this was neither the purpose nor the effect of the text of the 1929 Convention; the aim of this amendment is to clarify the sense of this article by omitting the optional clause.

Mr. GARDNER (United Kingdom): I have two comments which the United Kingdom Delegation would like to make on Article 32.

The first is to refer to the change made by the Drafting Committee in the English version, where the words "all equipment employed in the medical service" has been altered to "all equipment belonging to the medical service". In most countries in war-time there is in use equipment provided very often by voluntary aid societies which does not belong to the medical service. Indeed the Convention recognizes that by providing a special Article about the equipment belonging to relief societies working with armies in the field. We believe that this change made by the Drafting Committee is not a drafting change but a change of substance narrowing the effect of the Article, and we would like to see the wording as approved by Committee I restored.

The other comment is in connection with our Amendment and this arises from carefully examining the wording as adopted in Committee I with the agreement of my Delegation. We have, however, come to the conclusion that the wording then adopted did, in fact, change the intention and we believe what has been the traditional interpretation of this Article in the past. In the 1929 Convention the wording used was to the effect that the emblem shall figure on the flags etc. belonging to the medical service with the permission of the competent military authority, and in French the wording at the end was "avec la permission de l'autorité militaire compétente". That wording in all military circles was interpreted as meaning that the equipment of the medical service must be marked with the emblem, but in order that there should be no abuse of the use of the emblem you had to have the permission of the medical authorities to do so. The clause on that permission was entirely a control clause to avoid abuse and was not intended, certainly not in my own country's forces, to be used as an *optional article*. It was treated as a mandatory provision. The wording as it now stands is "in the absence of orders to the contrary from the competent military authority" (in French, "sauf ordre contraire de l'autorité militaire compétente"). That wording, I submit, makes the whole Article optional and any power is now at liberty to choose whether it marks its medical equipment with the emblem or not. At the same time there has been inserted an absolute prohibi-

tion against the destruction of any medical equipment, so that you may be in the position of having equipment coming into your possession not marked with the Red Cross which may be a breach of the Convention to destroy. The sole object of the United Kingdom amendment is to restore in what we believe to be clear language the position as we understand it under the 1929 Convention, i.e. to get rid of the option but to maintain the control of the use of the Red Cross or the Red Crescent etc. on medical equipment. To do that, we suggest that the words "in the absence of orders to the contrary from" be replaced by the words "under the direction of". We believe that wording really expresses more clearly what was the intention of the framers of the Red Cross Convention and what ought to be the international law on the subject.

The PRESIDENT: I will ask the Rapporteur to give his views on the amendment submitted by the United Kingdom Delegation.

General LEFEBVRE (Belgium), Rapporteur: The amendment falls into two parts.

The first aims at replacing, in the English version, the words "belonging to" ("appartenant à" in French) by "employed in" ("employé par" in French). This part of the United Kingdom amendment is, in my opinion, quite legitimate; for it would be most undesirable that the material and stores of relief societies placed at the disposal of the Army Medical Services should, by a faulty interpretation, cease to be covered by the provision of this Article.

The second part of the amendment, proposing to substitute another expression for "in the absence of orders to the contrary", might give rise to a different interpretation, since, until I had heard the United Kingdom Delegate, I imagined that the expression "in the absence of orders to the contrary" was the more categorical, whereas he has just convinced me that "under the direction of" is, in reality, more absolute.

I therefore believe that Committee I would have no objection to the use of the words "under the direction of"; and I venture to suggest the adoption of both parts of the United Kingdom proposal.

The PRESIDENT: Are there any objections to the United Kingdom proposal?

**Article 32 was adopted.**

**Article 33 was adopted.**

**Article 33A was adopted.**

**Article 34**

Mr. GARDNER (United Kingdom): In the English version only, I think, there is a word which has slipped out in line 3. After "and" there should be the word "only". I think it appears in the French text. It would then read "and only with the consent of the military authorities".

The PRESIDENT: The Rapporteur of Committee I states that this remark is perfectly correct. I presume that you will agree that it should be taken into consideration.

**Article 34 was adopted.**

**Article 35 was adopted.**

**Article 36 was adopted.**

Dr. PUYO (France): May I ask the President to be good enough to speak a little slower. In view of the form in which the documents are submitted, it is quite impossible to pass from one page to another instantaneously.

The PRESIDENT: Very well, I will read this enumeration slower. Would the French Delegation like me to reread any of the former Articles?

Dr. PUYO (France): No.

**Article 37 was adopted.**

**Article 37A was adopted.**

The PRESIDENT: We will now proceed to consider Article 42.

**Article 42**

The PRESIDENT: I should like to point out that the reference to a wish expressed by Committee I at the foot of this Article, in the text of the Wounded and Sick Convention, does not form part of the Convention; consequently, it is unnecessary for us to take it into consideration.

On the other hand, an amendment has been submitted by the Turkish Delegation.

Mr. TARHAN (Turkey): The Turkish Delegation had submitted to Committee I a draft amendment relative to Article 42 of the draft Wounded and Sick Convention, which aimed at extending to all the protective emblems recognized in the

Convention the provisions of this Article prohibiting the misuse of the Red Cross emblem.

The object of this amendment was to ensure adequate protection for the emblems intended to protect hundreds and thousands of human beings in time of war, without conferring any special privilege on any one of these emblems.

Committee I considered our amendment, but limited its scope in such a way that the misuse of emblems, other than the Red Cross, would only be prohibited in the countries where they are used.

The amendment, in the form in which it is reproduced in the last paragraph of Article 42, discriminates between the various emblems and by depriving the Turkish amendment of any value has created a situation which is quite incompatible with the reciprocal principles which ought to govern relations between nations. The Turkish Delegation believe that such discrimination is quite unjustified from a logical standpoint, and cannot be justified on practical grounds.

The assumption that emblems, other than the Red Cross, would not be employed in commerce or in industry in countries making use of this emblem is, moreover, quite unwarranted, and even if this were true at the present time, it would offer no guarantee for the future. If, on the other hand, these emblems were already in use in commerce or in industry in these countries, and if vested interests would be affected by a prohibition to use them, the Turkish Delegation ventures to point out that a similar situation already existed, as regards the use of the Red Cross, at the time when the Geneva Convention of 1929 was concluded. Our amendment is, moreover, not retroactive.

As for the assumption that the prohibition stipulated in the first paragraph of Article 42 is not intended to be applied in countries which make use of other protective emblems, the wording of the paragraph in question does not lend itself to this interpretation. The Turkish Delegation is, moreover, convinced of the necessity of also prohibiting the misuse of the Red Cross in countries where another emblem has been adopted, in order to prevent any confusion or ambiguity with regard to an emblem intended to afford protection to innumerable human beings in time of war. The Turkish Delegation, inspired by the same humanitarian considerations, is convinced that it is essential that emblems other than the Red Cross should also be protected in all the States, Parties to the Convention, since other human beings owe their security and protection to these other emblems.

To achieve this object, I have the honour to submit, for the approval of the delegates present at this meeting, a fresh amendment worded as follows:

"The prohibition laid down in the first paragraph of the present Article shall also apply, without retroactive effect, to the emblems and marks mentioned in the second paragraph of Article 31".

By accepting this amendment, the Conference will not only ensure that the provisions of Article 42 are coordinated with those of Article 31, but also that equity and reciprocity shall be re-established in the undertakings accepted by the Parties to the Convention.

SAFWAT BEY (Egypt): I would like to express the support of the Egyptian Delegation for the views expressed by the Turkish Delegation, which seem to be practical and logical, all the more so for the reciprocity which is offered.

Mr. GENNAOUI (Syria): I consider that the arguments set forth by the Turkish Delegate are unanswerable, and therefore warmly support his amendment.

The PRESIDENT: Is there any opposition to the amendment submitted by the Turkish Delegate?

Mr. WERSHOF (Canada): I do not wish to make a speech on this subject, but I do ask that it be put to the vote nevertheless, even if nobody makes a speech, because the Canadian Delegation wishes indeed to record its vote against the amendment.

Mr. BAMMATE (Afghanistan): I had not intended to speak, but as the Turkish proposal has been opposed, I venture to guess the reasons which I must confess I find very difficult to understand.

Article 31 clearly provides for the recognition of emblems other than the Red Cross (the Red Crescent, and the Red Lion and Sun) in the present Convention, in as far as they are protective emblems used by medical units of the Armed Forces.

Does not this equality necessarily imply equality of treatment in all circumstances? Otherwise Article 31 would have a very limited scope, and the equality granted to the three emblems would be illusory.

I can guess the reasons for some of the objections to the Turkish amendment by referring to certain remarks made on other occasions and in private conversations. It would appear that no one questions the justification of the Turkish proposal on equitable and logical grounds; for the proposal is the natural consequence of Article 31. But arguments based on practical considerations have sometimes been advanced against it, and I presume that the Canadian Delegate was thinking on these lines.

It has also been alleged that it would be very difficult to protect an emblem which under different forms is already used, in certain countries, for other purposes; and it was precisely this objection which the Turkish Delegate was trying to meet when he said that the prohibition laid down by the first paragraph of Article 42 applied equally, but without a retroactive effect, to the emblems and marks referred to in Article 31.

The words "without retroactive effect" are intended to meet this objection. Another objection raised is that the red crescent is used for commercial purposes in some countries which themselves make use of it as a protective emblem. This seems to be a confusion between the Turkish national emblem and the emblem of humanitarian protection.

Turkish cigarettes have been mentioned in this connection. These packets of cigarettes, however, are not only marked with the national symbol of Turkey, but also with stars. In my opinion, there are two distinct situations here, and the national emblem of Turkey should not be confused with the humanitarian emblem of the Red Crescent and the Red Lion and Sun, which has to be protected in the same manner.

As we wish to protect the humanitarian emblem, whichever it may be, I consider that the proposal made by the Delegate of Turkey is entirely justified. I support his proposal not for reasons of national or local prestige, but simply because it is a natural consequence of Article 31 and of the principle of justice and reciprocity, as the Delegate of Turkey has very aptly pointed out. I think there is no need to labour the point.

The last argument which I wish to advance is the following: there may be countries which use both the Red Cross and the Red Crescent. It would place them in an illogical position if they were asked to show less respect for the Crescent than for the Cross.

Mr. AGATHOCLES (Greece): I should like to draw your attention to a question which is of some importance and also to request the Rapporteur to clarify certain points.

The Working Party which was charged with the drafting of Article 42 had taken into consideration the amendment proposed by our Delegation to stipulate a time limit for countries whose legislation did not make provision for the protection stipulated in Article 42.

This idea was expressed in the first paragraph of the Article, in the form in which it was submitted to Committee I. The Committee did not vote in favour of this paragraph, but there is an addendum which gives a reassuring explanation; Committee I made the recommendation that Article 39 should be amended to the effect that:

"the High Contracting Parties should complete their legislation in order to sanction, in peace as in war, the prohibitions which are contained in Article 42 and to repress any violation of these regulations."

In the Report of Committee I to the Plenary Assembly, last paragraph of Article 42:

"it is stipulated that this prohibition is to take effect immediately for countries who were Parties to the Geneva Convention of 1929, and which have had ample time to enact the necessary legislation. Other countries would be allowed two years from the date of the coming into force of the present Convention to take similar measures, provided, however, that during this period the emblem or designation would not, in time of war, confer protection under the Convention."

I therefore ask the Rapporteur if the Joint Committee undertook to consider the question and if it adopted the recommendation expressed by this Committee.

Should the Joint Committee not be in favour of this idea, I should like to bring this question to the notice of the Plenary Meeting, for I consider that to stipulate obligations without providing sanctions would be tantamount to making the former inoperative.

The PRESIDENT: Does the Rapporteur wish to speak?

General LEFEBVRE (Belgium), Rapporteur: The Article to which the Delegate of Greece has just alluded was actually considered by a Working Party at whose meetings I was not present. According to the Report of this Working Party, the opening words of Article 42 were as follows: "the High Contracting Parties whose legislation is not at present adequate for the purpose, shall take, within two years, at most, etc...."

I notice that the Delegation of the United States of America considered it difficult to accept this text. It is true that the prohibition which is mentioned in the first paragraph of the Article concerned the emblem of the Red Cross as well as the arms of the Swiss Confederation. As the United States of America are a Confederation they considered themselves unable to promise in this connection that the different States composing the Union would vote early enough in favour of the prohibitions requested.

This at least is how I understand the Report of the Working Party. I think that is all I can say in reply to the Delegate of Greece. I repeat that I was not a member of this Working Party and am unable to say what stage has been reached at present by the Joint Committee in their consideration of this question.

Mr. YINGLING (United States of America): I would like to enquire of the Rapporteur whether the phrase "and irrespective of the date of its adoption", at the end of the first paragraph of Article 42, was not deleted when this Article was considered by the Working Party and by the full Committee I. It is the impression of the United States Delegation that that was the result of the consideration of this Article in the Working Party and in the full Committee I. The United States of America would have difficulty in abolishing or prohibiting persons who have previously used this sign before a certain date from continuing to use it. This would amount in United States law to a confiscation of private property, which is contrary to our Constitution and cannot be done without adequate compensation.

The United States Delegation, after being informed on this point, would like an opportunity, if this phrase is still in the Article, to put in an amendment for its deletion.

Mr. GARDNER (United Kingdom): Since our friends who are pressing this amendment feel that the reasons for opposing it ought to be given to this Conference, and since nobody else who opposes it seems prepared to explain those reasons, the United Kingdom Delegation feels that something ought to be said, quite briefly, as to why we feel this amendment should be rejected.

We sympathize with the reasons for it, and we would have liked to be able to support it, but there are two main reasons why we cannot.

First of all, in Article 31 the emblem of the red cross is the emblem of protection. The others are described as exceptions. Therefore it seems to us that the protection of the Red Cross emblem is a universal liability within Article 31 in any case. The protection afforded to the other emblems is limited by Article 31 to their own country, and it does not seem to us that that should involve obligations to give up the use of those emblems for other purposes in other countries.

The second reason is a very practical one. My country has always enforced the prohibition in Article 42 very strictly indeed, and I would remind the Conference that it is not merely a prohibition against using these particular marks for trade purposes, it is an absolute prohibition against the use by individuals, societies, firms or companies—in fact by anybody anywhere—and is not only a prohibition of the use of the emblem, it is also a prohibition of anything constituting an imitation thereof; and certainly within the meaning of those words we should not regard the defence by the Delegate of Afghanistan of the placing of red crescents with something else on cigarettes as being anything but an infringement of that prohibition.

But it is deeper than that. Those who have visited my country, particularly those who have travelled through the countryside, will be aware that one of the features of England is our country inns. Those inns all have names, and the names are indicated frequently by picture signs. One of the most popular inn names in England—I do not know why—is “The Red Lion”; and, if this amendment were adopted, we should have to make every “pub” in England with a “Red Lion” sign take it down. If those in this Conference who know my country know what importance is attached by the population of the country to the “pubs” and their signs, they would not invite us to embark on action which might lead to a civil war!

I could give you other illustrations of what this amendment would mean. It is a very popular thing in children’s books, on Christmas cards, and things like that, to have a nice crescent moon. We should have to stop all that under this amendment, not merely the red crescent but anything which might be mistaken for a red crescent, or anything which might be mistaken for a “Red Lion”.

Those are the reasons why we in the United Kingdom would feel it quite impossible, however much we sympathize with the purpose of this amendment, to adopt it, and therefore we shall, with regret and with very real regret, vote against our friends who have proposed it.

General LEBEVRE (Belgium), Rapporteur: I hasten to agree that the remark of the United States Delegate is perfectly correct. The Summary Record of the 37th Meeting of Committee I states:

“the Chairman put to the vote the United States proposal recommending the deletion of the words ‘whatever the previous date of its adoption’”.

This proposal was adopted by 9 votes to 6, with 5 abstentions.

I suppose that these words have inadvertently continued to be used in the existing text of Article 42. As I have not got all the documents before me, my attention has been drawn to the fact that these words have been deleted from the second paragraph of the Article, but not from the first paragraph. As there is some confusion here, I request the President to authorize me to collect all the necessary documents, which I will submit to you in a few moments.

Mr. MOROSOV (Union of Soviet Socialist Republics): Our opinion is that in questions relating to Article 42 of the present Convention, as well as other questions under consideration here, the

discussion should be based on questions of principle; but some of the statements we have listened to in this Hall unfortunately do not comply with this method. For instance, some delegations, in particular the United States Delegation, have advanced arguments of a commercial nature. I am quite unable to agree to considerations of this kind.

The emblem we are discussing today is the symbol of the Convention. It should be respected. It constituted the expression of a tradition which finds its echo in the penal laws of many countries, which provide special penalties for its misuse. The Soviet Delegation supports Article 42 as drafted. They wish to raise a vigorous protest against any attempt to weaken the measures designed to penalize the misuse of the emblem, or any failure to respect it.

We have unfortunately been compelled to listen here to views on a different plane; we have heard statements which were not concerned with questions of principle and seemed to flout the national sentiment of certain nations. It seems to me that the United Kingdom Delegate, in his recent speech, not only showed a lack of humour, but also of courtesy in scoffing at certain emblems which are the symbols of our Convention. He regaled us with an anecdote concerning his wanderings among English inns; he appeared to forget, however, that we are not here to discuss the British inn, but the use of an emblem intended to symbolize this Convention. I therefore believe that I am voicing the opinion of many delegations in asking the United Kingdom Delegate, through the President, to refrain from digressions relating to a sphere with which we are not as familiar as he. We are not here to discuss the signs of English public houses, but something far more important, which constitutes for many countries the living symbol of this Convention. I refer to emblems such as the Red Lion and Sun, which should be respected in all circumstances.

The Soviet Delegation wishes to protest against such remarks, and to urge strongly that all the emblems which are the symbol of our Convention should be equally respected. For this reason, the Soviet Delegation is in favour of the proposal submitted by the Turkish Delegation.

The PRESIDENT: There are still two speakers on my list, and after we have heard them, I hope it will be possible to take a vote.

Mr. LAMARLE (France): The French Delegation wishes to state that, in the spirit of its declaration yesterday relating to the general question of emblems, and more particularly emblems other than the Red Cross, it supports the amendment



submitted by the Turkish Delegation. It is scarcely necessary to state for what reasons: they are obvious, and I explained them yesterday. It seems to us inconceivable that all the different emblems should not be placed on the same footing, and be entitled to the same rights and the same protection.

May I add that I am sure that this Meeting appreciates, as much as the French Delegation, the spirit of compromise displayed by the Turkish Delegation in its amendment in proposing to add the words "without retroactive effect". This is a generous gesture, to which the French Delegation would like to pay a tribute. This Delegation finds itself, on this point, in agreement with the United States Delegate who rightly pointed out, that there were such things as acquired rights (or at least, that there might be), that these rights were deserving of respect and that to disregard them would result in disrupting an established legal system.

The French Delegation will therefore vote in favour of the Turkish amendment, and will consider later the amendment which the United States Delegation intends to submit, and which already appears to be on similar lines to the French views.

Mr. TARHAN (Turkey): The statement according to which the Red Crescent and the Red Lion emblems would be presented as exceptions is incompatible with the stipulations of the Convention; and in this connection, I will confine myself to reading the text of Article 31: "Those emblems are also recognized by the terms of the present Convention."

Mr. MIKAOUÏ (Lebanon): I would like to recall a statement made by my Syrian colleague when he told you yesterday that in Lebanon, Mohammedans as well as Christians had opted for the Red Cross; we Lebanese people believe in, and are greatly attached to, the principle of unity of the emblem which should serve for the protection of the wounded and sick in war-time.

Yesterday, however, in adopting Article 31, you admitted other signs than the Red Cross, such as the Red Crescent and the Red Lion and Sun. Today, the delegates of those countries which use these emblems told you from this rostrum that they were prepared to accept and apply Article 42, which relates to abuses of the Red Cross. It seems to me unjust to request those countries to apply Article 42, and to protect the Red Cross within their territory, without granting them reciprocity.

The Delegate of the United Kingdom has expressed the opinion that those countries which

have adopted the Red Crescent should first of all ensure respect for this emblem within their own territory. I personally am convinced that these governments are doing everything within their power to prevent misuse of the emblem. It is our duty to assist them, and we can only do so by accepting the amendment submitted by the Turkish Delegation.

As regards other remarks made by the United Kingdom Delegate on the use which has already been made of the Red Lion and the Red Crescent i.e. Christmas cards, inn signs, I must inform you that the Turkish Delegation has taken into consideration all the difficulties and doubts expressed by the United Kingdom Delegate. For this reason, it is proposed in the Turkish amendment that there should be no retroactive effect.

The Delegation of Lebanon will, therefore, vote in favour of the amendment submitted by the Turkish Delegation.

Mr. BOLLA (Switzerland): The Delegate of the United States of America suggested the deletion, at the end of the first paragraph of Article 42, of the words "whatever the previous date of their adoption". This suggestion was supported by the French Delegation.

I would like to emphasize that if these words were deleted, it would be necessary to delete the whole of the third paragraph of this Article, otherwise the meaning of this provision would be distorted.

What is the meaning of this Article at present? A distinction is made between the Powers which were Signatories to the 1929 Convention on the one hand and, on the other, those who were not Signatories of that Convention, and who will become Signatories of the present Convention.

These recent signatory States will be granted a maximum time limit of three years to abolish, within their territory, any signs or emblems which might tend to create confusion with the distinctive emblem of the Red Cross.

Those States who were Signatories of the 1929 Convention are not granted any time limit, for the simple reason that in those countries the use of the Red Cross emblem has already been regulated.

I would request you to refer to Article 28 of the 1929 Convention which states:

"The Governments of the High Contracting Parties whose legislation is not at present adequate for the purpose, shall adopt or propose to their legislature the measures necessary to prevent at all times...etc."

I also read in the last paragraph of the same Article:

"The prohibition indicated in (a) of the use of marks or designations constituting an imitation of the emblem or designation of "Red Cross" or "Geneva Cross", as well as the prohibition in (b) of the use of the arms of the Swiss Confederation or marks constituting an imitation, shall take effect from the date fixed by each legislature, and not later than five years after the coming into force of the present Convention."

"If the emblem of the Red Cross is to have its full protective effect during war-time, it is therefore for ourselves in turn to protect the emblem in the most efficient manner".

Mr. YINGLING (United States of America): The Delegate of the United States of America had already reached the same conclusion, but had been unable to get the floor. He withdrew his request for an opportunity to amend this Article, and is willing to vote for it as it stands.

Sir Robert CRAIGIE (United Kingdom): We have been treated to an exhibition of that caustic humour for which the Soviet Delegate has made himself famous in our discussions, and, of course, we are all very grateful to him for having put his point of view in the way which he thinks best; but I feel that the United Kingdom Delegation has reason to complain when that humour is employed at our expense and in such a fashion as to distort—and wilfully to distort—the arguments put forward by the United Kingdom Delegation. In no country in the world are these emblems, as national emblems, more fully and deeply respected than in the United Kingdom; and it was quite obvious that my colleague of the United Kingdom Delegation was merely quoting some of the examples of the very real difficulties which will be involved, certainly in the United Kingdom and I believe also in the majority of States, if they intend to carry out these provisions to the letter and in full. If we sign this Convention that, of course, will be our intention.

I understand there is an amendment here which is intended to diminish the retroactive effect of this provision. Certainly, if it were really possible not to be obliged to apply this Article retroactively, that would assist in what will be an extremely difficult administrative task; but I am advised that the mere adoption of the words "without retroactive effect" does not clarify the situation altogether. Is it to be a retroactive effect as regards punishment? Does it mean—and I am not sure it can be held to mean—that all those who have used these signs in the past, or signs of this description, may continue to use them in the future? At all events this and the point

raised by the Swiss Delegate are points which must be very carefully considered, because we are embarking upon a path which may lead us into great difficulties. I therefore propose to defer this whole question for further consideration, unless the points I have mentioned can be cleared up fully in the present discussion.

The PRESIDENT: This Conference has so far observed the laws of courtesy. These laws also are worthy of all due respect. I should like to request all Delegations to avoid prolonging the discussions unnecessarily and running the risk of introducing an acrimonious note by making personal remarks liable to provoke incidents which, I feel, could be avoided.

I call upon the Rapporteur to speak.

General LEFEBVRE (Belgium), Rapporteur: Having verified the Summary Records of the meetings of Committee I and the Working Parties, I must correct my previous statements. Our discussions have shown that the wording of Article 42 as submitted to the Plenary Assembly, conforms to the decisions of Committee I. Article 42 contains several paragraphs. The first paragraph, dealing with the protection of the emblem, ends with the words: "whatever the previous date of their adoption". The second paragraph, relating to the "arms of Switzerland", originally ended with the same words. Nevertheless, after the discussions in Committee I, the following words were substituted: "shall be prohibited at all times".

I have asked the President's permission to make this statement in order to make the terms of the text on which we shall be asked to vote clear to all the Delegations.

The PRESIDENT: We shall now proceed to the vote. The Delegation of the United Kingdom has, however, just proposed to defer the discussion to a later meeting. I hardly feel this course is desirable, as we have already spent two hours in discussion. I think that all the Delegations are now in a position to vote on the amendment submitted by the Delegation of Turkey. I shall however, put the proposal of the Delegation of the United Kingdom to the vote.

Sir Robert CRAIGIE (United Kingdom): My proposal was that we should postpone the discussion if I could not at this Session have an answer to the point I raised—that is to say, what precisely is to be the meaning of "retroactive effect"? I have no desire to prolong the proceedings by a postponement, if we can clear this point up. That is all I ask now.

Colonel HODGSON (Australia): My Delegation support the view of the United Kingdom, because we also have a question which we would like answered by the proposers of this amendment before we come to a vote. The question is this. In my country a very important State has its national flag and national emblem of the Red Lion on a white ground. Does the effect of this amendment mean that my country has got to prohibit its own national flag?

Mr. TARHAN (Turkey): If I say that the Delegation of Turkey intends to interpret the words "with retroactive effect" in the widest possible sense, would that give satisfaction?

The PRESIDENT: Is the Delegation of the United Kingdom prepared to withdraw its proposal to postpone the discussion?

Sir Robert CRAIGIE (United Kingdom): I am very glad to take note of the Turkish Delegate's assurance on that point; and, assuming that to be the opinion of the Conference, I withdraw my proposal for postponement.

General FARUKI (Pakistan): I have come here to correct an impression which seems to me to have gained ground, because it has been repeated twice in this house. The United Kingdom Delegates mentioned the Red Lion, and again my fellow Delegate from Australia also mentioned the Red Lion. May I remind them, since Iran is not here, that the Red Lion itself is not the emblem which is respected in Red Cross Conventions by Iran, it is the Red Lion and the Sun: so why make these harsh statements and mislead the delegates? Will they please note that the Red Lion itself has no meaning whatsoever. It is the Red Lion and the Sun that is the emblem equivalent to the Red Cross.

The PRESIDENT: We shall now take the vote. The Delegations who are in favour of the amendment submitted by the Delegation of Turkey are requested to raise the card bearing the name of their country.

The amendment submitted by the Delegation of Turkey was adopted by 35 votes to 3, with 9 abstentions.

I now request you to vote on Article 42 as a whole.

Article 42 was adopted by 45 votes, with 3 abstentions.

### Article 3

The PRESIDENT: We shall now consider Article 3. An amendment has been submitted by the Delegation of the United Kingdom; this Delegation

asks that the words "in accordance with International Law" be inserted before the words "as well as to dead persons found".

This is the same amendment as the one adopted yesterday by the Assembly with regard to Article 30. I therefore consider that it is unnecessary to discuss it again, and if no-one wishes to speak, I propose to put this amendment to the vote immediately.

Mr. SENDIK (Union of Soviet Socialist Republics): Although the amendment of Article 3 submitted by the Delegation of the United Kingdom is the same as the amendment previously proposed with regard to Article 30, its meaning is, however, slightly different. The Delegation of the Soviet Union considers that the addition to the text of Article 3 proposed by the Delegation of the United Kingdom is not only devoid of meaning, but is detrimental to the interests of the wounded and sick received or interned in the territory of a neutral Power.

Article 3 is not intended to regulate the internment of wounded and sick in the territory of neutral Powers. It merely stipulates that these wounded and sick shall benefit by the provisions of the present Convention. It is unnecessary to complete this Article by stipulating that the internment should be carried out "in accordance with International Law", for that is obvious.

If we accepted this proposed addition, the result will be that the provisions of the Convention will only be applied to the wounded and sick received or interned in the territory of a neutral Power in accordance with International Law. Other cases may arise. For instance, what attitude would be adopted towards wounded and sick who may be detained in the territory of a neutral Power in violation of International Law? If the addition proposed by the Delegation of the United Kingdom is accepted, the Convention will not apply to these persons, who will be deprived of any protection. For these reasons, the Soviet Delegation proposes the rejection of the amendment submitted by the Delegation of the United Kingdom.

Mr. COHN (Denmark): I cannot help feeling that several delegations are not fully aware of the consequences which the rejection or adoption of the United Kingdom proposal would entail. It would therefore be advisable for the Delegation to give us an explanation of its bearing and the consequences it is likely to have. It would be equally desirable that the delegations who are opposed to this provision should give us their reasons.

The Delegation of Denmark voted in favour of the amendment when Article 30 was under con-

sideration, since we thought that it might not have the same consequences. There are cases when neutrals are not bound, under the provisions of International Law now in force, to intern or to retain in their territory persons who have entered it. There are special cases of this kind, but as I can find no reservation on this point in Article 3, I think that the amendment proposed might be adopted. If, however, it is not the case just mentioned which is under consideration here, it would be extremely helpful if the matter were more fully explained.

General LEFEBVRE (Belgium), Rapporteur: I merely wish to draw attention to a drafting point. The French text runs as follows: "armées belligérantes", whereas the English text reads: "Armed forces".

In order to bring these two versions into line, as recommended by the Drafting Committee and by Committee I, the French text should run: "...forces armées des Parties au conflit...".

Mr. GARDNER (United Kingdom): The United Kingdom Delegation has no desire to press this amendment to this Article. It was put down after the amendments to Article 30, and it was put down because some delegations suggested that it was desirable to insert these words in Article 3 also. The United Kingdom Delegation is satisfied with what has been said that the words are unnecessary in Article 3.

May I say on the point just made by the Rapporteur that I agree to the insertion of the words "armed forces" in the French text; but I think the Conference would hesitate to put "Parties to the conflict" in an Article dealing with neutrals, because (so far as I know) in international law neutrality is a conception which can relate only to recognized belligerency in other Powers. I stand subject to correction; but I submit that you cannot be neutral in international law to a conflict which does not amount to a belligerent conflict.

Dr. PUYO (France): The French Delegation is fully aware of the interest attached to the amendment to Article 30 submitted by the United Kingdom Delegation but cannot see how it could be relevant to Article 3. My Delegation therefore prefers to adhere to the text submitted to the Committee and asks for its adoption as it stands. Furthermore, the French Delegation also considers that the terms "Parties au conflit" should be substituted for "belligérants".

The PRESIDENT: We will now vote.

Mr. GARDNER (United Kingdom): I said that I did not wish to press the amendment. I withdrew it.

The PRESIDENT: I certainly heard the Delegate of the United Kingdom say that he would not press the matter, but I did not understand that he was withdrawing his amendment. It was therefore in order to ask the Meeting to vote.

As, however, the amendment has been withdrawn, we shall vote only on Article 3 as a whole, with the modification suggested by the Rapporteur, which consists of replacing in the fourth line of the French text the words "...armées belligérantes ..." by "...forces armées des Parties au conflit...". Are there any objections to this modification?

I note that this is not the case.

Article 3 with the modification was adopted.

### Article 3A

This article was adopted

### Article 10

The PRESIDENT: No amendment has been submitted to Article 10, but the Drafting Committee proposes a drafting alteration which concerns only the first sentence of the second paragraph of the French text:

"Ils seront traités et soignés avec humanité par la Partie au conflit qui les aura en son pouvoir, sans aucune distinction de caractère défavorable basé sur le sexe, la race, la nationalité, la religion, les opinions politiques ou tout autre critère analogue."

("They shall be treated humanely and cared for by the Party to the conflict in whose power they may be, without any adverse distinction founded on sex, race, nationality, religion, political opinions, or any other similar criteria.")

Article 10, with the modification proposed by the Drafting Committee was adopted.

### Article 10A (continued)

The President:

You will recall that we decided yesterday to postpone consideration of Article 10A at the request of the Delegation of the Netherlands who wished to submit an amendment to Article 3 of the Prisoners of War Convention. As Article 10A reproduces the enumeration appearing in Article 3 of the said Convention, and as Article 3 was adopted by Committee II, I propose that you should approve Article 10A provisionally, subject to any modifications which may still be made to Article 3 of the Prisoners of War Convention.

The Delegation of the Netherlands agrees to this procedure.

Mr. COHN (Denmark): The Danish Delegation also reserves the right to make a statement on this matter before Committee II.

The PRESIDENT: I believe I am right in thinking that the Delegate of Denmark has just said that his Delegation wishes to make a statement when Article 3 of the Prisoners of War Convention is discussed, but that he does not oppose the adoption of Article 3 of the Wounded and Sick Convention, subject to any modifications which may still be made to Article 3 of the Prisoners of War Convention.

Mr. COHN (Denmark): That is so.

Article 10A was adopted.

### Article 18

The PRESIDENT: We will now examine Article 18 to which an amendment has been submitted by the Soviet Delegation.

Mr. BOUTROV (Union of Soviet Socialist Republics): Article 18 of the Wounded and Sick Convention provides for the establishment by the States, either in their own territory, or, if the need arises, in occupied territory, of hospital zones for the protection of the wounded and sick from the effects of war.

It is not necessary to explain at length that there should at all times be sufficient medical personnel available in each zone to care for the wounded and sick. Sufficient permanent administrative personnel should also be at all time available.

On these grounds, the Convention should contain a provision enabling personnel of this category to reside in each zone. This provision is essential and should be inserted not only in the Annex of the Convention relating to hospital zones, but also in Article 18 of the Convention.

The Soviet Delegation therefore moves the addition of the following provision at the end of the first paragraph of Article 18:

“and the personnel in charge of the organization and administration of such zones and localities and of the care of the persons assembled there”.

General LEFEBVRE (Belgium), Rapporteur: The amendment submitted by the Delegate of the Union of Soviet Socialist Republics is in complete conformity with the spirit of the Convention, which is to protect not only the wounded and sick, but also those who care for them.

In my opinion, this amendment is an appropriate one. It might be possible to say that the text

submitted by the Delegate of the Union of Soviet Socialist Republics already exists in the draft Agreement relative to hospital zones and localities. This, however, is still only a draft, the adoption of which is by no means certain.

In my opinion, therefore, the Soviet Delegation is perfectly right in requesting that there should be a supplementary provision in the text of Article 18.

The PRESIDENT: Is there any opposition to this amendment?

Mr. YINGLING (United States of America): The United States Delegation does not desire to speak on it, but would like to vote against it.

The amendment presented by the Delegation of the Union of Soviet Socialist Republics was adopted by 31 votes to 4, with 5 abstentions.

Mr. DUPONT-WILLEMEN (Guatemala): Would it be possible for the Secretariat, together with the Soviet Delegation, to revise the drafting of the text of the amendment which has just been accepted?

The PRESIDENT: The Drafting Committee will revise all the Articles.

The Article as a whole was adopted by 40 votes to none, with 1 abstention.

### Article 20

The PRESIDENT: The Soviet Delegation had submitted an amendment to Article 20 but has since withdrawn it.

Any remarks on Article 20?

If there are no remarks, I shall consider that this Article has been adopted.

Article 20 was adopted.

### Article 22

The President:

We shall now pass on to Article 22, to which an amendment was submitted by the Greek Delegation.

This amendment proposes to replace in the second phrase of the second paragraph the wording “They shall nevertheless benefit” by “Nevertheless, they shall at least benefit”.

Are there any remarks on this Article?

If not, the amendment will be put to the vote.

The amendment submitted by the Greek Delegation was adopted by 18 votes to 7 with 11 abstentions.

Are there any remarks on Article 22? If there are none, we will now vote on this Article as a whole as amended.

Article 22 as amended was adopted by 35 votes with 4 abstentions.

### Article 23

The PRESIDENT: We will now consider Article 23, to which an amendment was submitted by the Greek Delegation.

Are there any remarks? If not, the amendment will be put to the vote.

The amendment submitted by the Greek Delegation was adopted by 19 votes to 6, with 11 abstentions.

We will now vote on Article 23 as a whole as amended.

Article 23 as amended was adopted by 34 votes with 4 abstentions.

*The meeting rose at 1.10 p.m.*

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## ELEVENTH MEETING

*Saturday 23 July 1949, 9.30 a.m.*

*President: Mr. Max PETITPIERRE, President of the Conference*

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### Agenda

The PRESIDENT: In accordance with the Agenda which was distributed to you, we shall first consider the two Annexes to the Wounded and Sick Convention, then take up the Maritime Convention, leaving aside the common Articles which will be examined at a later meeting.

Are there any remarks on this programme? This working programme was adopted.

### Annex I

The President:

Let us therefore take up Annex I of the Wounded and Sick Convention. The following amendment has been tabled by the Swiss Delegation:

- (1) Article 8, first paragraph: Delete "...control by the Power protecting its interests...". Substitute "...control by one or more special Committees...". Second paragraph: Delete "...the representative of the Protecting Power...". Substitute: "...members of the Special Committees...".
- (2) Article 9, first paragraph: Replace "Protecting Power" by "Special Committees".

- (3) Add a fresh Article 9A:

"Any Power setting up one or more hospital and safety zones, and the adverse parties to whom their existence has been notified, shall nominate or have nominated by neutral Powers, the persons who shall be members of the Special Committees mentioned in Articles 8 and 9."

Colonel MEULI (Switzerland): During the discussion of the common Articles in the first reading at the Joint Committee, the Delegation of the United Kingdom pointed out that the Stockholm Draft laid too many and too heavy duties on the Protecting Power. We made a reservation that we would come back to this question later.

Articles 8 and 9 of the draft Annex I to the present Convention are amongst those to which the general comment I referred to above would apply. Article 8 says that any Power having recognized hospital zones shall be entitled to demand control by the Power protecting its interests if the zones fulfil the conditions and obligations stipulated in the agreement.

Article 9 stipulates sanctions; should the Protecting Powers note any facts which they consider contrary to the present agreement relating to the

hospital zones, they shall at once draw the attention of the Power governing the said zone to these facts, and shall fix a time limit of five days at most within which the matter can be rectified. They shall duly notify the Power whose interests they protect.

The Swiss Delegation has considered whether such control could be undertaken by the Protecting Powers, i.e., by the diplomatic representations of the State protecting the interests of a belligerent Power. The experience gained by Switzerland as a Protecting Power in the course of two world wars enables us to state today: (1) that such control goes far beyond the functions of a Protecting Power and the means at the disposal of a diplomatic representation; (2) that the application of sanctions,—a necessary complement of such control—would place the Protecting Power in an extremely difficult position by obligating it to denounce the violations of the agreement which had been committed. This would apply to wartime, and in a sphere directly involving the conduct of military operations. The diplomatic mission which complied with these requirements would obviously no longer be considered “*persona grata*” and would have to renounce defending with any hope of success the foreign interests entrusted to their care.

Regarding the common Article 6 Wounded and Sick and 7 of the other Conventions, it has rightly been pointed out that the Protecting Power should confine itself to duties of control. The representatives or delegates of the Protecting Powers should in no case go beyond the bounds of their mission, as defined by the present Convention. In particular, they should take into account the imperative necessities of security of the State in which they perform their duties. The Protecting Power should give neither orders nor directives, whereas in the present Article the intention is to require it to send out summons and even ultimatums. The text of Articles 8 and 9 of Annex I therefore appears unacceptable.

The Swiss Confederation which has been spared the anguish of the two last world wars has succeeded in making a hospital zone of its country. The Swiss Delegation therefore desires to facilitate, in so far as possible, the creation of hospital and safety zones. Many delegations have expressed the same intention, and the public is taking a lively interest in the question. It is to be hoped that with the help and goodwill of all, the International Committee of the Red Cross may be able to develop its activities to adapt itself to new requirements, and to succeed in setting up many hospital and safety zones.

It appears to us necessary to remove anything which might be an obstacle to the normal functioning of these zones, so that they may achieve their purpose in the best possible conditions. We therefore propose that the control referred to should

be in the hands of special commissions, acting independently and similar to mixed medical commissions.

The PRESIDENT: Are there any objections to the amendment tabled by the Swiss Delegation?

Mr. BOUTROV (Union of Soviet Socialist Republics): The Delegation of the U.S.R.R., after having carefully studied the Swiss proposal and having listened to the Delegate of Switzerland, considers that this amendment, without valid grounds, would tend to eliminate Protecting Powers from the control of the application of the Conventions as regards hospital zones and localities, and to entrust this task to special commissions. It is however precisely the Protecting Powers which should carry out such control and weigh the interests of the Parties to the conflict, as stipulated fully in Articles 6, 8 and 9.

Obviously the Protecting Powers would exercise wide authority and would enjoy the most extensive practical means of controlling the effects of the Convention, the more so as the commissions would comprise representatives of neutral Powers.

We are all interested in seeing that such control, which should also extend to living conditions in the hospital and safety zones, should be genuinely effective. Therefore the Soviet Delegation considers that the provisions in Articles 8 and 9 of Annex I represent what might be termed a logical application of the provisions of this Convention with regard to Protecting Powers. For this reason, our Delegation will vote against the proposed amendment.

The PRESIDENT: Does anyone else wish to speak?

Since no one wishes to speak we shall proceed to vote.

I propose to do so in two successive votes, the amendments tabled by the Swiss Delegation comprising different elements. I shall therefore ask you to pronounce first on the modification of Articles 8 and 9 where the words “the Protecting Powers” would be replaced by the expressions figuring under points 1 and 2 of the amendment. Then the second vote would deal with the addition to Article 9 of a new Article bearing the number 9A.

On the first point, the amendment tabled by the Swiss Delegation was adopted by 12 votes to 11, with 14 abstentions.

The PRESIDENT: I shall now ask you to vote on the new Article 9A.

It was adopted by 15 votes to 9, with 12 abstentions.

Annex I was adopted by 20 votes, with 9 abstentions.

The PRESIDENT: There is a slight error in the English text of Annex I; in Article 9, fifth line, the word "can" should be replaced by the word "should".

This correction was accepted by the Meeting.

## Annex II

The PRESIDENT: As no delegate wishes to speak, I will assume that you all agree to adopt Annex II, to which no amendment has been submitted.

Do you wish me to put the question to the vote?

The INTERPRETER: There is a correction in the English text. The word "place", the first word on top of the identity card, should be replaced by the word "space".

The PRESIDENT: As no one wishes to speak neither on Annex II, nor on the vote, or on the correction of the English text, I presume that it has your approval.

Annex II was adopted, subject to correction of the English text.

## MARITIME WARFARE CONVENTION

The PRESIDENT: We will now take up the Maritime Warfare Convention, postponing for the moment the consideration of the common Articles, and beginning with Article 3.

### Article 3

The PRESIDENT: No amendment has been submitted to this Article.

Article 3 was adopted.

### Article 4

The PRESIDENT: An amendment was submitted by the United Kingdom Delegation but has since been withdrawn.

There is therefore no other amendment to this Article. Does anyone wish to speak? As nobody wishes to speak Article 4 is adopted.

### Article 11

The PRESIDENT: There is no amendment to Article 11. Does anyone wish to speak? As nobody wishes to speak Article 11 is adopted.

### Article 11A

The PRESIDENT: No amendment has been submitted to Article 11A, but this Article includes the list contained in Article 3 of the Prisoners of War Convention, to which an amendment has been submitted by the Netherlands Delegation.

I therefore suggest that, as we have already done in the case of Article 10A of the Wounded and Sick Convention, we should provisionally adopt Article 11A, subject to any alterations which may be made in Article 3 of the Prisoners of War Convention.

Mr. COHN (Denmark): The Danish Delegation wishes to make a statement when Article 3 of the Prisoners of War Convention is discussed.

The PRESIDENT: This wish will be duly recorded.

Article 11A was adopted, subject to the reservation just mentioned.

### Article 13

The President:

We will now pass on to Article 13. An amendment has been submitted by the Italian Delegation.

It proposes:

- (1) to delete Article 13;
- (2) to replace this article by the following text:

"All warships of a belligerent Party shall have the right to demand that the wounded, sick or shipwrecked on board...etc."

General PERUZZI (Italy): Article 13 of the Maritime Warfare Convention, as drafted by Committee I, gives the right to demand the surrender of the wounded and sick on board hospital ships detained for the purposes of search. However, and this is an important point to emphasize, these provisions are not included among the rights accorded to belligerents. Thus in the application of this Article, contrary to one of the fundamental principles of the Conventions, the nationality of the wounded and sick would be a deciding factor. This Article contains a clause favourable to sick and wounded prisoners of war, which is in itself sufficient justification for adopting it. At the same time however, it provides for the capture of wounded and sick members of the Armed Forces who are neither in occupied territory, nor in a country to whose authority they have surrendered. This Article therefore requires the commander of a hospital ship to cooperate with the enemy. Cooperation of this kind is compatible with the rule of military discipline, if it applies to the release



or return of sick and wounded prisoners of war; but it is quite unacceptable if it becomes a matter of handing over one's own sick and wounded countrymen who are on board ship under the protection of their own flag.

If we wish to ensure that this Article shall not involve some risks, we must scrutinize it carefully, and discover not only the reasons underlying it, but also the consequences which would result from its application. Our opinion is that it would be preferable to delete this provision.

Let us consider the consequences of this Article. First of all, belligerents who wish to ensure the protection of the wounded and sick and the crews of hospital ships, will take more effective steps than those provided by the Convention. They will provide hospital ships with escorts, or fighter protection. This would be a deplorable consequence, recalling what happened in 1917 when ships carrying Allied sick and wounded from Malta to Southampton had to be protected by warships.

It is always possible to make sure that hospital ships are actually carrying sick and wounded, and this has frequently been done. These will be war casualties, disabled men, exhausted by illness, and usually mere wrecks. Nevertheless they will still enjoy their freedom and be borne up with hope when they are on board a hospital ship of their own country.

If such hospital ships were escorted by warships, the rights of belligerents would be satisfied by the full application of Article 26. If, on the contrary, the belligerents were to recommend that Article 13 be applied, they could demand the immediate surrender of sick and wounded of their own or Allied nationality. There might be some dispute as to the identity of such persons, as to the hospital equipment on the warships, and as to the safety of the wounded in the event of an action. Difficulties would also arise if a heavy sea was running. Some of the sick and wounded might take their stand on Article 100 of the Prisoners of War Convention, and refuse immediate repatriation.

These are some of the problems for which a solution should have to be found.

I know that the crews of hospital ships would cooperate loyally in such operations, for they would merely be acting in accordance with the Convention and could not be suspected of collaboration with the enemy.

But there are other sick and wounded on the same hospital ship, and some of them are officers. These are free men of the same nationality as the ship which is taking them home. When they are on a ship which has not been captured, and are under the protection of their national flag, they cannot surrender to the enemy without offering resistance.

It must therefore be expected that the crew will refuse to surrender, and will not willingly hand over wounded or sick compatriots to the enemy. The commander of the hospital ship will be in a very difficult position, the commander of the warship will be considerably embarrassed, and the whole matter will run counter to the spirit of the Convention.

Article 13 is not applicable in full. We must consider the consequences it may entail, what may happen if it is applied by both Parties, and the possibility of reprisals on the part of injured belligerents.

This Convention must not exceed the limits set by the Wounded and Sick Convention and by the military discipline of men still at liberty who have not lost hope; an Article must not be allowed to make the victims of war still more wretched. The crew and medical personnel of hospital ships cannot consent to a collaboration with the enemy which would be incompatible with the rights of all soldiers and citizens in time of war.

The Delegation of Italy considers that Article 13 is unnecessary. It can be omitted without prejudice to the Convention. It is better to give all the liberty and responsibility compatible with the Conventions to the dignity, loyalty and honour of the commanders of hospital ships.

If the Conference prefers, however, to retain this Article, it must attempt to make it acceptable, and faithful to the spirit of the Convention whose aim is to give relief to the wounded and sick. The addition of the words we have proposed would make it acceptable in the interests of the wounded and sick of the Armed Forces on hospital ships. There would be no danger of the clause being misunderstood or misapplied. Its adoption would be to the advantage of the Convention and an act of wisdom which could do nothing but good.

The Article as amended in this way, would read as follows:

"All warships of a belligerent party shall have the right to demand that the wounded, sick or shipwrecked prisoners of war, on board military hospital ships, hospital ships belonging to relief societies or to private individuals, merchant vessels, yachts and other craft, shall be surrendered, whatever their nationality, provided that the wounded and sick are in a fit state to be moved..."

Mr. COHN (Denmark): The Delegation of Denmark is in favour of the amendment proposed by the Delegation of Italy. In its present form, however, the text does not make it sufficiently clear whether persons who have already been

captured are meant, or persons liable to capture under the provisions of the Convention.

I therefore request the Delegation of Italy to submit a text which makes this point clear.

The PRESIDENT: As no one else wishes to speak we could now take a vote and decide for or against this amendment. The question of form raised by the Delegation of Denmark could be examined by the Drafting Committee, to which the Article will be referred.

Mr. SENDIK (Union of Soviet Socialist Republics): The amendment proposed by the Delegation of Italy to Article 13 repeats in an entirely incorrect form the text of Article 12 of the Hague Convention.

This is clear from the very wording of the Article, which states that a warship shall have the right to demand the surrender of the wounded, sick and shipwrecked on board any ship, regardless of the nationality of the ship.

If, the Delegate of Italy has said, only wounded and sick on board the ship were meant as prisoners of war, it would not be necessary to mention the nationality of the vessel, for the nationals of the country to which the naval unit belongs can only be prisoners on board enemy ships. If they are on board a neutral ship, they cannot be regarded as prisoners of war.

That is why international law has always allowed a warship to demand the surrender, not only of its own nationals, but also of all the wounded and sick enemies on board of any of the ships mentioned in Article 13. The amendment of the Delegation of Italy tends to alter this rule of international law.

In order to protect the interests of the wounded and sick, Committee I decided to add to Article 13 of the stipulation of the Xth Hague Convention, by which a warship shall only have the right to demand the transfer of wounded and sick provided that they are in a fit state to be moved and that the warship has at its disposal adequate facilities to ensure that these wounded and sick are properly cared for. The Soviet Delegation does not consider it necessary to revise the provisions of international law, and for that reason will vote against the amendment submitted by the Italian Delegation.

General PERUZZI (Italy): The remarks of the Delegate of Denmark, referred, as rightly pointed out by the President, to drafting matters only. There should be no difficulty in meeting the point he raised.

But my main concern is to reply to the objections raised by the Delegate of the Soviet Union, whose competence I fully recognize as he is a naval officer of high rank.

I began my statement by pointing out that this provision does not figure in Article 26 which deals with the rights of belligerents. It did figure in the Hague Convention, but was so worded as to bring out more clearly than the present text that the possibility of surrendering the wounded and sick should apply to all ships or vessels, irrespective of their nationality. The present wording contains a comma which might give rise to some doubts on the point.

But we are not here to comment on the rules of war. There are other rules on the rights of belligerents, and our proposal to delete this Article is intended to allow belligerents perfect liberty and full responsibility for the application of these rules in conformity with the principles of the Convention.

Supposing, however, that this Article is retained, it cannot be denied that it includes provisions at variance with the Convention. Moreover it would be very difficult to apply, particularly if, looking upon the problem from the point of view of seamen and with seamen's practical experience, we try to imagine what the transfer on the high seas of sick and wounded free men, from the freedom of a ship flying their own national flag to another one, would really involve. We must remember that they are not prisoners of war like other prisoners of war; they have been placed on board ship to be carried to a port and they still have a chance of being released.

The Hague Convention did not take account of the possibility that the comparative freedom of sick and wounded men might be endangered in such cases. It only aimed at giving them certain advantages, and as in all the other Articles, a certain degree of protection.

We consider that it requires a certain ingenuity to deduce laws of war from this Article which belligerents might apply to a hospital ship. Moreover this is not the work of this Conference.

I have several times drawn attention to the difficulties connected with the problem of maintaining discipline on such hospital ships, which still remain ships of war, flying the national flag. Could we possibly require the crews to surrender sick and wounded men in such conditions? For it is not a case of returning sick and wounded men where they belong but of handing them over to the enemy. Does the Conference really believe that the crew would lend themselves to such a proceeding, which moreover presents grave difficulties and could not be carried out without their cooperation?

The Convention contains certain Articles which give the belligerents the right to seize other persons on board hospital ships. These persons must then be taken to a port, at the convenience of the

belligerents, who could transfer them to a hospital on land.

But in practice there would be great, if not insuperable difficulties. Nor can it be averred that the Article has actually been applied officially in this sense. I fear that its adoption would result in very embarrassing and difficult situations for commanders of hospital ships, and also for commanders of war ships. I therefore urge you once more to adopt our proposal to the effect that any war ship belonging to a belligerent party may demand the surrender of wounded, sick or shipwrecked prisoners of war on board military hospital ships. If they are on board a ship which is not of a military character then clearly they are not prisoners of war, although the adverse party would nevertheless have the right to capture them.

These are some of the difficulties we want to avoid, and this is why my Government has urged me to bring them to your notice, so that we may sign this Convention in all good faith, and in the sure knowledge that we shall be able to apply its provisions effectively.

The PRESIDENT: We will now proceed to the vote. Delegations in favour of the amendment submitted by the Italian Delegation are requested to signify in the usual way. The final text will be considered by the Drafting Committee.

Mr. WERSHOF (Canada): There are two amendments, Mr. President.

General PERUZZI (Italy): I propose that we should first take a vote on the deletion of this Article and if it is retained to vote on the proposed modifications.

The PRESIDENT: We will vote first on the deletion of Article 13.

According to the text before me, the two questions are closely connected. The Italian Delegation proposes that Article 13 be deleted and replaced by a new text.

General PERUZZI (Italy): It is proposed either to delete the Article, or to replace it by new provisions.

The PRESIDENT: I had not understood. We will therefore take a vote on the retention or rejection of this Article.

Mr. COHN (Denmark): I wonder if it would not be better to vote first on the deletion or the retention of Article 13. If this Article is retained, we could then consider the second proposal, namely to amend it.

The PRESIDENT: I agree that this would be the most rational procedure. Point 2 of the amendment really constitutes an amendment in the proper sense of the term, whereas point 1 is simply a proposal to reject Article 13 as a whole.

The first part of the amendment submitted by the Italian Delegation was rejected by 19 votes to 14, with 11 abstentions.

The PRESIDENT: We will now vote on the second part of the amendment submitted by the Italian Delegation. In other words we shall vote on Article 13 as a whole.

The amendment submitted by the Italian Delegation was rejected by 27 votes to 2, with 8 abstentions.

Article 13 as a whole was therefore adopted.

#### Article 14

The PRESIDENT: We will now take Article 14. An amendment to Articles 14, 15 and 37 has been submitted by the United Kingdom Delegation. It proposes to add to these Articles the words: "where so required by International Law". The amendment would read as follows:

"Certain categories of those who may be made prisoners of war, e.g. merchant seamen, are not required to be interned by a neutral Power whose territory they reach: the amendments are designed to clarify their position."

Mr. GARDNER (United Kingdom): These amendments to Articles 14, 15 and 37 rest on the principle already accepted by the Committee when they adopted the same amendment to Article 30 of the Wounded and Sick Convention. I will only say that the object of the amendments is to secure that incautious wording in these Articles should not risk placing on neutrals obligations to detain people, which were not incumbent on them under international law as it stands at present. I developed the argument on Article 30 of the Wounded and Sick Convention, and I do not propose to lose time repeating that argument now.

Mr. SENDIK (Union of Soviet Socialist Republics): My Delegation feels it should draw the attention of the delegations present to the fact that the amendment submitted by the Delegation of the United Kingdom is unfounded. As stated, and as explained by the Delegate of the United Kingdom at the meeting of Committee I, seamen of the merchant marine may not be interned by a neutral Power whose territory they may reach. Without wishing to reopen

discussion of this provision, I would remind you that Article 14 contains no provision that persons rescued at sea shall be interned. There is no mention in this Article of the word "interned". It states that:

"If wounded, sick or shipwrecked persons are taken on board a neutral warship or a neutral military aircraft, it shall be ensured that they can take no further part in operations of war."

In other words, the Delegation of the United Kingdom, in defending its amendment, is at odds with a non-existent text. This had already been pointed out when, on the 18 July, Committee I discussed this amendment for the second time and rejected it, as it had done at the first reading.

I would also remind you that Article 14 reproduces Article 13 of the Xth Hague Convention of 1907.

The Soviet Delegation believes that the wording of Article 14, as proposed by Committee I, is entirely in conformity with international law. The United Kingdom Delegation proposes in its amendment to append the following clause to Article 14: "where so required by International Law". A clause of this type implies that where this is not required by international law, the neutral Power need not ensure that wounded or sick taken on board a neutral warship or a neutral aircraft do not take any further part in operations of war. Such a proposition is, however, at variance with international law, as any wounded, sick or shipwrecked person reaching neutral territory after having taken part in operations of war and thus having fought for a belligerent Power, must be treated by the neutral Power in such a way that he cannot take part again in military operations. That is clear. I draw your attention to the closing words of Article 14: "that they can take no further part in operations of war".

These words make it clear that the persons under consideration here are indeed wounded, sick or shipwrecked persons who had already taken part in operations of war. Thus, not only does the United Kingdom amendment in no way add to the precision of the Article but on the contrary it introduces a provision at variance with international law.

The Soviet Delegation therefore regards the amendment as unacceptable. If the Delegation of the United Kingdom does not withdraw it, as it rightly did in the case of the amendments to Article 3 of the Wounded and Sick Convention and Article 4 of the Maritime Warfare Convention, my Delegation will vote against this amendment.

Captain MOUTON (Netherlands): When we discussed the Article concerning aircraft landing

in neutral territory, the Plenary meeting accepted the principle that civilians cannot be interned when they land on neutral territory. We must be consistent, and we must adopt this principle throughout the four Conventions. A neutral warship is neutral territory, so if a neutral warship takes on board civilians, they should not be interned.

The Hon. Delegate of the Union of Soviet Socialist Republics said that not taking part again in the operations of war does not necessarily mean internment, but in practice it boils down to the same thing. How else can you prevent people from taking part in the war if you do not intern them? With reference to the Xth Hague Convention, I should like to answer that point by saying that in those days there was no question about civilians because the 1907 Convention dealt exclusively with military people. There was no question that civilians picked up by a neutral warship in 1907 would be interned. Now the last argument, viz. that the sentence of this Article ends up by saying that "wounded, sick and shipwrecked persons can take no further part in the operations of war", does not, in my opinion, indicate that this Article only deals with military people, because a member of a crew of a merchant ship may very well have taken part in the war. He might have been a member of a gun crew defending a ship against attacks by submarines. Nevertheless, there is no reason whatsoever, and it is against international law as it stands, to intern such a member of a merchant ship.

Mr. MEVORAH (Bulgaria): I would like to add to this debate a purely theoretical, or rather a purely legal argument, to convince you that the amendment submitted by the United Kingdom Delegation is unacceptable. The addition of the proposed words to Article 14 would make it null and void. It would lose its substance, since it would then refer to other sources and other standards existing in the Conventions or, again, to stipulations or provisions to be found elsewhere. If it is stipulated that the condition laid down in Article 14 must be maintained insofar as that is required by another source of law, this is tantamount to saying nothing at all.

An illustration may make this clear. If you lay down in law that divorce is prohibited, and if you say: divorce is prohibited when prohibited by civil law, your statement is void; the prohibition or permission of divorce already exists in civil law. You, yourselves, who have just drafted a rule, cancel it by adding that closing sentence.

My second argument is that a reference to international public law is, generally speaking, undesirable because international law is a some-

what vague subject. Where it is referred to, the reference should be to a specific text. To refer to international law would be to take our stand on provisions which have existed, which exist, or which may come into existence in the future. We cannot accept them here and now because they are, in part, unknown to us. I repeat that international law is too vague a thing for us to refer to it.

I will close my statement by telling you a little story. In my student days in Geneva, alas a good many years ago, Professor Jeantet was our Professor of international law. He was a very witty man and when I sat for my exams—I must tell you that though I hope I am not a very bad lawyer now, I was a very bad student then—he asked me a question on a point of international law. When I did not reply, he said: “Let me hear some theory or other—your own—because there are twenty-four on that point!”

Under these circumstances, if we have to refer to twenty-five theories, it seems to me wiser to do without them altogether.

Mr. COHN (Denmark): The Danish Delegation fully agrees with the amendment submitted by the United Kingdom Delegation; they consider the proposed addition necessary, both, to the Article under discussion and to the following Article.

I should like to add something to what has been said by the Delegate of the Netherlands. The point at issue does not only concern merchant seamen; in certain cases it may also concern members of the naval forces of the belligerents, who must not be interned, and whom the neutral State is not bound to intern.

The Delegate for the Union of Soviet Socialist Republics referred to certain clauses of the Hague Conventions. It was when this question was being discussed at the Hague in 1907 that Mr. Renault, the famous French international lawyer, drew attention to certain cases in which, according to the provisions of international law, neutrals are under no obligation to intern members of the naval forces of belligerents. Thus this exception may hold not only for merchant seamen, but also for members of the naval forces of belligerents.

The Delegate for the Union of Soviet Socialist Republics also said that there was no question here, in Article 14, or in the following Articles, of interning such persons, but of preventing them from taking any further part in military operations. Now I remember perfectly well what Mr. Renault said on this point too at the Hague Conference, for such questions interest me profoundly. He said, and I am quoting him literally, that not only were neutral States not bound to intern these persons, but that the latter are free. They

may do anything they like; they are not interned, but remain free.

The question has been raised whether we can or cannot change the international law of war... I think we shall find it impossible to arrive at a final settlement here of all the important problems at issue, without amending that law, and without taking into consideration the principles governing the question in our day, which are not the same as those which had been considered in the Hague Conventions. In my opinion, those principles must necessarily be taken into account, above all as regards the law of neutrality. This question has been left completely out of our discussions, but it seems to me that we cannot change the status of neutrals, nor make any alteration, even indirectly, in their position. In my opinion, therefore the law of neutrality should be left exactly as it is at present.

The Delegate of Bulgaria pointed out that international law was something rather vague and that too much reference should not be made to it. Yet there are several Articles in our Conventions which are related to international law. I raised this point in the Drafting Committee, where I wished in several cases to have an explanation of the exact bearing of certain texts. I was told, and rightly, I believe, that it was not possible to enter into all these details here and there were times when it might be necessary to refer to general international law. Now internment, and more especially the requirement that neutrals should intern belligerents, are extremely complicated and difficult matters. I believe therefore that the best solution would be to adopt the addition proposed by the United Kingdom Delegation.

The PRESIDENT: We will now take the vote on the United Kingdom amendment.

The amendment submitted by the United Kingdom Delegation was adopted by 22 votes to 12, with 5 abstentions.

We shall now vote on Article 14 as a whole, thus amended.

Article 14, as a whole, was adopted by 27 votes with 11 abstentions.

#### Article 14A

The PRESIDENT: We will now take Article 14A; no amendment has been submitted. Does any one wish to speak? Nobody wished to speak.

Article 14A was adopted.

**Article 15**

The PRESIDENT: An amendment to Article 15 has been submitted by the United Kingdom Delegation. As the same amendment has already been submitted in connection with Article 14, it seems to me unnecessary to discuss it again. If no delegate wishes to speak, I shall proceed to take the vote at once.

Mr. SENDIK (Union of Soviet Socialist Republics): I have no wish to repeat here the arguments I have already put forward on the subject of Article 14, although they fully apply to the question now under discussion.

I merely want to draw the attention of those present to the objections which the Netherlands Delegate raised to my statement on Article 14. I consider that his objections do not go to the root of the matter, for he spoke only of internment while in the Article which we are examining, internment is not even referred to.

Further, I have to point out to the Danish Delegate that, in spite of my deep respect for eminent international jurists, I prefer to base my arguments on facts, and on the texts of the Articles, rather on quotations of those jurists' opinions.

The Delegation of the Union of Soviet Socialist Republics considers that the proposal of the United Kingdom Delegate on the subject of Article 15 lends itself to an equivocal interpretation and that it is not well-founded in law. For that reason the Delegation for the Union of Soviet Socialist Republics will vote against the amendment.

The PRESIDENT: The delegations in favour of the amendment submitted by the Delegation of the United Kingdom are requested to signify in the usual way.

The amendment was adopted by 18 votes to 11, with 10 abstentions.

Article 15 was adopted by 23 votes, with 13 abstentions.

**Article 16**

The PRESIDENT: Article 16. No amendments to this Article have been submitted.

Article 16 was adopted.

**Articles 17 and 17A**

The PRESIDENT: No amendments to Article 17 have been submitted.

Mr. GARDNER (United Kingdom): I think the Drafting Committee has reintroduced into this Article and Article 17A something which was deliberately omitted from the Articles by Committee I, because the Drafting Committee assumed that the conditions on land and on sea should be identical in these Articles. In the second sentence of the fourth paragraph of Article 17 there is a note that they shall likewise collect and forward to the same Bureau one-half of the identity disc, which follows the provision in the Wounded and Sick Convention. If I may now refer to Article 17A, in order to save time, at the end of the first paragraph of Article 17A there is the provision that one-half of the double identity disc, or the identity disc itself if it is a simple disc, should remain on the body. That is obviously a necessary provision in the case of burials on land where the bodies may be subsequently exhumed. I suggest it has no meaning in relation to burials at sea, which are being dealt with here, and that we should therefore provide in this Convention, as did Committee I, that the identity disc—if there is only one—should be taken from the body and sent back to the home country. I would suggest that the Drafting Committee might find the correct wording.

The PRESIDENT: Will the Rapporteur please state his opinion?

General LEFEBVRE (Belgium), Rapporteur: I do not think, at a first glance, that there would be any objection to accepting the United Kingdom amendment, but I cannot for the moment see the drawback of the present wording, which actually gives complete freedom in respect of the identity disc or the disc itself. It is not immediately clear to me why the United Kingdom amendment is needed.

The PRESIDENT: It is, I think, difficult to come to a decision on this amendment at once. It would perhaps be preferable to request the Drafting Committee to revise the provision.

We shall therefore return to this point at our next Meeting. The same remark applies to Article 17A.

**Articles 18, 19, 19A, 20, 21 and 21A**

These Articles, to which no amendments have been submitted, were adopted.

Mr. GARDNER (United Kingdom): I only want to call attention to the fact that the amendments recorded in the Drafting Committee's Report do not appear in the English text.

The PRESIDENT: We will ask the Secretariat to correct the English version.

We shall now consider the following Articles.

### Articles 21C, 24 and 25

Articles 21C, 24 and 25, to which no amendments have been submitted, were adopted.

### Article 26

The PRESIDENT: We shall now consider Article 26. An amendment has been submitted by the Delegation of the United Kingdom. It proposes to delete in the first, third and fourth paragraphs the words "The Parties to the conflict" and substitute them by: "Belligerents." The amendment would read as follows:

"The right of search at sea is a right which has hitherto belonged only to recognized belligerents."

Mr. GARDNER (United Kingdom): There has been a general change in these Conventions from the word "belligerents" to the words "Parties to the conflict", and that general change has been carried into Article 26 amongst other. My Delegation submits that in this case it is essential to retain the word "belligerents" if we are not to alter drastically the rules and customs of war. This Article deals with the right to stop and to search ships on the high seas and under international law, as it has been up to now, that right is one which is severely restricted to belligerents, and one in respect of which I think I may say fairly, all neutral Powers have carefully guarded against encroachment. If this Article is adopted with the words "Parties to the conflict", it will introduce for the first time into international law authority for one who is not a recognized belligerent to exercise rights of search which have hitherto belonged only to those who are recognized as belligerents. If that right to stop and search ships on the high seas is once conceded, we believe that extension far beyond this particular Article will be claimed.

We therefore suggest that in this Article the right to stop and search ships on the high seas should be given only to belligerents, and should be withheld from "Parties to the conflict" who are not recognized as belligerents under international law.

Mr. SENDIK (Union of Soviet Socialist Republics): The expression "belligerents" or "Parties to the conflict" has already been fully considered

by Committee II. The events of the last few years have shown us that hostilities usually begin without an official declaration of war. It sometimes happens that the Parties regard not only their enemy, but even themselves as nonbelligerent, often for a very long period. Bearing this fact in mind, Committee II and the other Committees have used in their documents and in the text of the Conventions the expression "the Parties to the conflict"; this is a wider term and corresponds more closely to the conditions of modern warfare; the same is true of the idea of "war victims" protected by the Conventions which we are drawing up.

I would remind you of the first paragraph of Article 2 of the Convention, which is worded as follows:

"In addition to the stipulations which shall be implemented in peace time, the present Convention shall apply to all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Powers, even if the state of war is not recognized by one of them."

I do not think that the remark made by the Delegation of the United Kingdom substantially alters the position in this connection.

The Soviet Delegation considers therefore that there is no reason why Article 26 should contain any exceptions. The Soviet Delegation therefore opposes the amendment of the United Kingdom and will vote against it.

Dr. PUYO (France): The French Delegation supports the remarks of the Delegation of the Soviet Union regarding the amendment of the United Kingdom, for the following reason: during the last war, the Hitler Government did not recognize the belligerent status of the navy of the Free French Forces. This navy, however, played its part in all the battles of the liberation and should consequently have had all the privileges and all the duties of a belligerent navy.

It is for this reason that we request that the words "Parties to the conflict" be retained in this Article, as in all the others.

The PRESIDENT: We shall now vote on the amendment of the Delegation of the United Kingdom.

The amendment was rejected by 17 votes to 16, with 10 abstentions.

The PRESIDENT: We shall now vote on Article 26 as a whole.

Article 26 was adopted by 34 votes with 7 abstentions.

**Communication made by the President**

I propose to adjourn our discussion. Before closing the meeting, I have some announcements to make.

The Report of Committee II will be distributed tomorrow, Sunday, in the course of the afternoon.

The last meeting of the Joint Committee will be held on Monday, 25 July, at 10.30 a.m. It

will consider the Report it is to submit to the Plenary Assembly.

The next Plenary Meeting will be held on Monday, 25 July, at 3 p.m. We shall complete consideration of the Maritime Convention and if time permits we shall begin the examination of the Prisoners of War Convention.

*The meeting rose at 12.40 p.m.*

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**TWELFTH MEETING**

*Monday 25 July 1949, 3 p.m.*

*President: Mr. Max PETITPIERRE, President of the Conference*

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**Agenda**

The President:

As you will see on the Agenda which has been circulated, we shall today continue the consideration of the Maritime Warfare Convention. If we have time, we shall then begin the consideration of the Prisoners of War Convention.

We propose to consider the common Articles when we have reached the end of the Prisoners of War Convention, that is to say, probably on Thursday or Friday.

Are there any comments on this procedure?

As there are none, I conclude that you all agreed.

MARITIME WARFARE CONVENTION

**Articles 27, 28, 29, 29A, 30**

These Articles were adopted.

**Article 31**

The PRESIDENT: An amendment to Article 31 has been submitted by the Delegation of Greece. Since it repeats the terms of the amendment which the Assembly adopted to Articles 22 and 23 of the Wounded and Sick Convention (*see Summary Record of the Tenth Meeting*), I propose,

if no one wishes to speak, to proceed immediately to consider it and, if time permits, to put it to the vote. It proposes:

“Insert the following sentence after the first sentence in the first paragraph:

They shall not be deemed to be prisoners of war, nevertheless they shall benefit at least by all the provisions of the Convention..... relative to the Treatment of Prisoners of War.”

Mr. AGATHOCLES (Greece): With regard to Articles 21 and 22 of the Wounded and Sick Convention, which deal with the protection of retained personnel, the Conference adopted the principle of not considering as prisoners of war the medical and religious personnel who have fallen into the hands of the adverse Party, while ensuring that they will benefit, at least, by all the provisions of the Prisoners of War Convention.

Articles 30 and 31 of the Maritime Warfare Convention are the equivalent in maritime warfare of the provisions which I have just mentioned. They are based on the same principle as those of the Wounded and Sick Convention. We doubt whether the protection to be granted to non-prisoners of war will be guaranteed to the personnel of all vessels which have been captured and have fallen into enemy hands while that personnel is on board. The terms used in the first paragraph of Article 31: “...shall be respected and protected...” are too vague and general; in our opinion, the



duty of the enemy to send back the personnel in question, as soon as the Commander-in-Chief in whose hands they are considers it possible, does not constitute effective protection. In order to avoid all possibility of doubt on the scope of this protection, our Delegation proposes the amendment referred to, which merely repeats the wording of the amendments which have been adopted in Articles 22 and 23 of the Wounded and Sick Convention. In submitting this amendment, our aim has simply been to ensure the identity of the corresponding passages in the two Conventions.

Mr. POPOV (Soviet Socialist Republic of Byelorussia): Article 31 provides that medical and religious personnel who fall into the hands of the enemy at sea may continue to carry out their duties as long as it is necessary for the care of the wounded and sick, and shall then be sent back; if, however, it proves necessary to retain some of this personnel owing to the needs of prisoners of war everything possible shall be done to land them at the earliest possible moment. Further, it is pointed out in the last paragraph of the Article that retained personnel shall be subject on landing to the provisions of the Convention for the relief of the wounded and sick. These are Articles 22 and 23 of the Convention. Thus we see that the status of the personnel retained does not require to be specified as it is already defined by the last paragraph of Article 31 and also by the Convention for the Wounded and Sick.

In view of the fact that Article 31 of the Maritime Convention already provides for the status of the medical and religious personnel in case they are retained, namely that such personnel shall not be prisoners of war and that at least they shall enjoy the benefits of all the provisions of the Prisoners of War Convention, the Greek amendment to this Article is absolutely unnecessary.

Accordingly, the Delegation of the Soviet Socialist Republic of Byelorussia proposes to reject the amendment submitted by the Greek Delegation.

Mr. AGATHOCLES (Greece): In reply to the statement which the Delegate of Byelorussia has just made, allow me to draw your attention to the following point: it is true that the last paragraph stipulates that on landing the retained personnel shall be subject to the provisions of the 1949 Geneva Convention for the Relief of Wounded and Sick in Armed Forces in the Field. But what will the status of this personnel be on board? The Article does not mention this point; that is why we propose to clarify the matter by our amendment, which will correspond to the

following provision of the Wounded and Sick Convention:

“The religious, medical and hospital personnel giving medical or spiritual care to persons designated in Articles 11 and 11A, who fall into enemy hands, shall be respected and protected...”

It is only on landing that retained personnel will be subject to the stipulations of the Geneva Convention; but, as long as they are on board, they will not benefit under these stipulations. It is this omission which we wish to remedy by proposing this amendment.

Should the Conference consider this addition unnecessary, I move that this opinion be mentioned in the record of the discussion.

The amendment submitted by the Delegation of Greece was rejected by 19 votes to 8, with 12 abstentions.

Article 31 was unanimously adopted by 38 votes, with no abstentions.

#### Article 35

The PRESIDENT: We will now pass on to Article 35. An amendment has been submitted by the Delegation of the Union of Soviet Socialist Republics.

Mr. SENDIK (Union of Soviet Socialist Republics): The Soviet Delegation consider that the transport of medical equipment intended exclusively for the care of wounded and sick should be guaranteed in all circumstances. Article 35, as it now stands, does not fulfil this condition. It is laid down in this Article that, to ensure vessels transporting medical equipment reaching their destination, not only must all information concerning the vessel's course be communicated to the enemy, but that the enemy must consent to the voyage. What, then, if the enemy refuses to consent?

Obviously in that case the transport cannot take place, Article 35 becomes void and wounded and sick run the risk of being deprived of the necessary care and medicaments.

Is it really necessary to obtain the enemy's consent to a voyage of a vessel carrying medical supplies? The very wording of Article 35 proves that such a requirement is unfounded and entirely superfluous. It lays down that in order that a ship carrying medical stores may sail, the enemy must be notified of all particulars of the voyage — the date of departure, course, speed and other necessary details. The enemy preserves the right to board the vessel in order to verify that it is transporting medical equipment only.

It is further provided that, by agreement between the belligerents, neutral observers may be placed on board such ships to verify the medical equipment.

The above provisions constitute an adequate guarantee that the ships mentioned in this Article will not be used for other than purely humanitarian purposes and that, from a military point of view, they are of no interest to the enemy.

Consequently, the additional condition (namely that the consent of the adverse Party must be obtained for such transports) appears to us redundant. It considerably complicates the situation of the wounded and sick who, in the event of the enemy refusing to give the consent requested, or in the event of delay in granting it, will be deprived of medical care.

Thus Article 35, with the words "and approved by the latter", does not, in point of fact, bind the Parties. If for one reason or another one of the Parties concerned refuses its approval, the Article loses all its practical force. The Delegation of the Union of Soviet Socialist Republics hopes that its amendment to delete the words "and approved by the latter" will be accepted unanimously.

Captain MOUTON (Netherlands): The Netherlands Delegation fully appreciates the idea underlying the amendment tabled by the Soviet Delegation but nevertheless it feels that this provision should remain. Protection can only be complete, so to speak, when the adverse Party has given its consent. Only then can a safe voyage be assured. These ships have no markings and we feel that one belligerent cannot force another to accept, for instance, a certain course when this course would go through an area where military or naval operations are going on. This kind of provision for a voyage should have the character of an agreement. Otherwise we feel that we shall not give these ships enough protection. For that reason the Netherlands Delegation is in favour of the text as it stands.

The PRESIDENT: As no one wishes to speak, we will now proceed to take a vote.

The amendment submitted by the Delegation of the Union of Soviet Socialist Republics was rejected by 16 votes to 11, with 13 abstentions.

Article 35 was adopted, by 30 votes to NIL, with 7 abstentions.

#### Article 36

Article 36 was adopted.

#### Article 37

The PRESIDENT: An amendment has been submitted by the United Kingdom Delegate (*see Summary Record of the Eleventh Meeting*). This is identical with the amendment adopted to Article 30 of the Wounded and Sick Convention, and with those discussed in connection with Articles 14 and 15 of the Maritime Warfare Convention.

The amendment submitted by the United Kingdom Delegation was adopted by 27 votes to 11, with 2 abstentions.

Article 37 was adopted by 29 votes to NIL, with 9 abstentions.

#### Article 38

The PRESIDENT: An amendment has been submitted by the United Kingdom Delegation; it is identical with the amendment submitted to Article 32 of the Wounded and Sick Convention (*see Summary Record of the Tenth Meeting*).

If no one wishes to speak, we may proceed to vote at once.

Another amendment has been submitted by the Israeli Delegation for the purpose of obtaining official recognition of the emblem of the Shield of David. The Israeli Delegation has re-submitted the amendment to Article 31 of the Wounded and Sick Convention (*see Annex No. 42*), which was rejected at the Plenary Meeting on 21 July.

I therefore suggest that these two amendments should be taken in succession.

To begin with, I put for discussion the amendment submitted by the United Kingdom Delegation.

The amendment submitted by the United Kingdom Delegation was adopted by 36 votes to NIL, with 2 abstentions.

The PRESIDENT: The amendment submitted by the Israeli Delegation is now open to discussion.

GUENENA Bey (Egypt): I should like to speak on a point of order: I submit that the amendment which has been presented is not receivable by the Plenary Assembly being a contradiction of a principle already discussed and accepted and voted upon, namely, that the Red Shield of David should not be recognized. In those conditions, I assume that it is impossible to take a decision on this point, Article 31 of the Wounded and Sick Convention having already been adopted.

The PRESIDENT: I think it would be difficult to treat this question as a point of order.

On the other hand, I must interpret the statement just made by the Egyptian Delegate as a motion that the Conference shall treat the amendment submitted by the Israeli Delegation as out of order; I consider that the question cannot be settled in accordance with the procedure applicable to points of order, but that the Conference must decide whether the amendment is admissible or not.

I therefore suggest that we should now open the discussions on this question.

The debate is open, but only on the admissibility of the amendment. If it is declared admissible, a thorough discussion will take place. If it is declared inadmissible, Article 33 of the Rules of Procedure will be applicable. I will read Article 33:

“When a resolution or a motion has been adopted or rejected, it shall not be reconsidered unless the Conference or Committee decide otherwise by a majority of two-thirds of the delegates present.”

I would further make it perfectly clear, to obviate any misunderstanding or confusion, that in the ballot on the question of admissibility, the decision will be reached by a simple majority.

Mr. NAJAR (Israel): I do not think that it is possible to raise the question of admissibility in this connection.

If it is to be a question of procedure in this discussion of a matter of principle, we are prepared to follow those who wish to take this course. I do not, however, see the slightest justification for a reference to Article 33 of the Rules of Procedure in this case.

No legal text exists, either in private or public law, which lays down that an amendment to an article of an international convention, signed by a certain number of States, can be considered in law as constituting an amendment to another article of another international convention signed by other States. I contest the existence of any legal identity between the Wounded and Sick Convention and the Maritime Warfare Convention. The distinction between these two Conventions is so clear as regards subject matter, signatories and obligations incurred that I fail to understand how it is possible to cite a legal disposition of one of these Conventions as an argument against the admissibility of an amendment to the other. I therefore move that the Conference should come to a decision first on the question of whether a legal disposition of the Wounded and Sick Convention can be considered as affecting the Maritime Warfare Convention.

Mr. GENNAOUI (Syria): I would like to point out to the Delegate of Israel that the Plenary Meeting is the same, and that the matter under considera-

tion is identical. I would further like to tell him that, in pure logic, any decision come to by the Plenary Meeting on any point in the Wounded and Sick Convention will be valid for the same point of the Maritime Warfare Convention. Since the Meeting is the same, and the issue identical, there is no reason why in two days the Meeting should have changed its mind on a vital matter which was discussed for three or four hours.

I therefore propose that the amendment submitted by the Delegation of Israel should be declared inadmissible.

I will add that by submitting this amendment, the Delegation of Israel is seeking to evade the application of the two-thirds majority Rule in the event of that a Delegation wishing to reopen the question regarding the Wounded and Sick Convention. That would mean an attempt to return by the back door after having been shown out at the front. I shall therefore vote, with regret, against the admissibility of the amendment submitted by the Delegation of Israel.

GUENENA Bey (Egypt): It has been argued by the Delegate of Israel that Convention No. 1 is totally different and distinguishable from Convention No. 2. I beg to submit that this is entirely false: Conventions Nos. 1, 2, 3 and 4 are four Conventions which come under one name; and we are gathered together here in order to discuss these Conventions for the protection of war victims, and they form a concrete whole. They originate from the same idea, they have been studied by the same people and discussed by us all here—four Conventions, each complete in itself, but forming an integral part of the whole work.

I beg to submit that the assumption put forward by the Israeli Delegate is false. It is true our decision was taken, while we were discussing Convention No. 1; but the fact remains that what we really discussed and what we really decided was the principle of the acceptability of the Shield of David as a distinctive emblem. Once this rule has been laid down, it applies with equal force to all four Conventions. Let me make myself, if possible, more clear. I ask you to put side by side Article 31 of Convention No. 1 and Article 38 of Convention No. 2. Article 31 says “emblem of the Convention”—nothing more—and the emblem of the Convention is the Red Cross or its equivalent, the Red Crescent or the Red Lion and Sun—nothing more and nothing less. If you turn to Article 38 it says “use of the emblem”, and it has been put there in order to implement the original point laid down in Article 31 of Convention No. 1. When you look at these two Articles, you cannot help being absolutely convinced that the principle of the acceptability of the emblem of the Shield of

David as a protective or distinctive emblem has been decided, as it was only right that it should be decided, when we discussed Article 31, and that Article 38 has nothing whatever to do with the matter.

I hope I am making myself clear. In the second paragraph of Article 38 it says:

"Nevertheless, in the case of countries which already use as emblem, in place of the Red Cross, the Red Crescent or the Red Lion and Sun on a white ground, these emblems are also recognized by the terms of the present Convention."

This has only lately been laid down in virtue of the Stockholm Conference and only for the sake of uniformity between the two Articles. That is why, when we were discussing Article 31 of the First Convention, no mention whatsoever was made of hospitals or medical installations or similar objects pertaining to land warfare. Not one word was said about hospitals or base hospitals or anything of that sort. We all concentrated on one point only, whether the Shield of David was to be considered as an emblem equivalent to the Red Crescent or the Red Lion and Sun, and we decided on that point alone. The Delegation of Israel seems to insist upon bringing up that point again; but it has already been decided. When the first amendment was defeated a few days ago, they tried to throw a shadow of doubt over the decision and you will all remember the unfortunate words of the Delegate of Israel when he asked for an explanation of the mystery of the four missing votes. Now they are trying to evade the rule of the two-thirds majority by, I believe, a similar amendment to an Article which has nothing whatever to do with the emblem.

Fellow Delegates, your rejection of the first amendment which was tabled by the Delegation of Israel was carried by a simple majority; but I am quite convinced that it will be with a crushing majority that you will give support to our point of order, for it is only in this way that you can show respect for your own decisions and so save valuable time for more fruitful discussions.

Mr. NAJAR (Israel): In my recent reference to the law, I may have spoken in terms rather too abstract for certain delegates. Let me give a more concrete illustration.

The procedure we have adopted is really perfectly simple; and, whatever the Egyptian Delegate may think, it is quite devoid of Machiavellian intentions. We have a number of Conventions here, with different signatories, which constitute distinct legal instruments. It is not at all surprising that one more of them should contain

Articles of a more or less similar character; but one Convention is distinguished from another by being a self-contained legal instrument, and by its signatories. All this is quite elementary.

If therefore I submit an amendment to Article 31 of the Wounded and Sick Convention, that constitutes a legal act, which cannot in any circumstances have any decisive effect on quite different acts or on an amendment submitted to Article 38 of a Convention signed by other persons. It cannot be questioned that in signing the Maritime Warfare Convention I am not undertaking to be bound by the provisions of the Wounded and Sick Convention; conversely in signing the Wounded and Sick Convention, I am not bound by the provisions of the Maritime Warfare Convention. It is therefore merely a device of procedure, or simply a mistake in the most straightforward sense of the word, to confuse the two Conventions.

Instead of losing our time in discussing an elementary point of procedure, let us assume that we are dealing with two distinct legal acts and examine the case on its own merits.

Mr. QUENTIN-BAXTER (New Zealand): As no delegate has supported the Delegate of Israel on this question of procedure, I should like to say just one word in his support. I believe that this procedural point is misconceived. I do not believe that anything which this Conference has decided in regard to one Convention can bind it in regard to another. The Delegate for Egypt has said that only by supporting his point of order can we ensure respect for these Conventions. With great respect, Sir, that is not the case. If we believe that the amendment submitted by the Delegation of Israel is a bad amendment and is inconsistent with the terms of the Wounded and Sick Convention, then we can vote against that amendment on the substance: but it is all wrong that we should take a procedural point which I think is technical and unjustifiable.

I would like to say, further, that the Delegate of Egypt has said that the Delegation of Israel is trying to bring this amendment in through the back door. It may well be that this Conference will consider that it would be wrong to have a different position under one Convention from the position we have already established under the other Convention; but, if that is the case, we should push out the Israeli amendment through the front door, we certainly should not push it out through the back door.

I would like to support very strongly the procedural argument put forward by the Delegation of Israel, and I shall vote against the point of order.

The PRESIDENT: As no one else wishes to speak, we will now vote on a point of order, namely

whether the amendment submitted by the Israeli Delegation is admissible or not. I might put the matter in another way, that is whether Rule 33 of the Rules of Procedure applies to this case or not. Delegations who vote in favour of the admissibility of the amendment submitted by the Israeli Delegation will therefore implicitly recognize that Rule 33 of the Rules of Procedure does not apply. Delegations, on the contrary, which vote that the amendment is inadmissible, will thereby agree that Rule 33 should be applied in this particular case.

Mr. NAJAR (Israel): I should like to prevent any misunderstanding arising from the way in which the question has been put. I venture to suggest to the President that the question should be put in such a way that delegates will understand perfectly clear the question at issue, namely whether a vote of this Conference on a particular Article of one of the Conventions is binding the Conference in connection with a vote on a similar Article in another Convention.

The PRESIDENT: I should like to point out that what we have to vote on is not an abstract question but a question of substance involving a principle. I think therefore that the way I have presented the problem to the Conference is sufficiently explicit for each delegation to know exactly how it has to vote.

GUENENA Bey (Egypt): You have said what I wished to say. I really cannot understand how the Delegate of Israel can lay down the terms of my point of order.

Mr. MIKAOUÏ (Lebanon): After the remarks made just now by the Israeli Delegate, I should like to ask the Secretariat to explain what we are going to vote on, so as to prevent any possible misunderstanding.

The PRESIDENT: Do you understand quite clearly what the point at issue is? Does any Delegation wish any further explanations? I have done my best to make myself as clear as possible. I am quite ready to call on the Secretary-General, if this is likely to contribute in any way to making the question clearer. I should like to know exactly on what point any doubt or uncertainty remains?

I see that no one else wishes to speak.

We can therefore proceed to take a vote on the proposal of the Egyptian Delegate, namely that the amendment submitted by the Israeli Delegation is not admissible. Delegations who wish to vote that the Israeli proposal is not admissible are requested to raise their hands.

The motion submitted by the Delegation of Egypt was defeated by 26 votes to 5, with 12 abstentions.

Mr. NAJAR (Israel): A few days ago the Plenary Meeting considered the question of the distinctive emblems recognized by the Wounded and Sick Convention. It rejected the amendment of the Delegation of Israel to give to the Red Shield of David the same recognition in that Convention as to the Red Cross, the Red Crescent, and the Red Lion and Sun.

Some Delegates will certainly wonder why the Delegation of Israel should revert to this question. If our Delegation had considered it possible for the population of Israel to abandon the Red Shield of David, if it had had any doubt whether it was the right and duty of the people of Israel to claim the recognition of this emblem, or if our Delegation had had the slightest idea that the recognition of the Red Shield of David might affect in any way the interests of protected persons, we would not have been justified in pressing this point.

But how could the people of Israel admit the imposition of the Red Cross or the Red Crescent as an emblem of protection and brotherly aid, when it already possesses an emblem which is equally valid, already in use, familiar to all, and to which it is as passionately attached as other peoples are to the Red Cross or the Red Crescent?

We do not think that the interests of protected persons would have been affected if, in this place five days ago, the Red Shield of David had been recognized as on an equal footing with the Red Cross, the Red Crescent and the Red Lion and Sun. The Red Shield of David is the only emblem which this Conference has been asked to accept. Attempts have been made to cause motions to be tabled for the adoption of a single emblem. None of these efforts was successful, for they all disappeared before reaching the final stage.

I request you to take into consideration a point which I believe is of some importance. It is significant that those who defended the necessity of a single distinctive emblem, and who recommended the Red Cross as being the most suitable, did not submit any amendment to this effect. The Red Crescent, and the Red Lion and Sun whose disappearance was prematurely announced by Mr. Pictet in his remarkable survey, have remained an unchallenged reality.

Can all this enthusiasm have been directed simply against the Red Shield of David? Our Delegation deplores the decision adopted by the Conference on 21 July 1949, for it contradicts principles and realities of a peculiar force. I urge this Conference to give consideration to the points

which I am now raising; it is neither possible, not imaginable, that the Red Cross should replace the emblem of the Red Shield of David, which is universally used throughout Israel. How can this emblem disappear, when it has acquired so much additional significance by the experiences we have all lived through in these last few years?

The decision of the Conference has disregarded decisive geographical and political factors. It is futile not to recognize the fact that Israel is situated in the heart of the Near East, and that its closest neighbours are the countries of the Red Crescent. It would be an illusion to blind ourselves to this elementary fact. It seems to me even more opposed to logic and elementary justice to force Israel to adopt the Red Cross. Lastly, that decision ignores the fact that this land, which is known as the Holy Land, is a unique meeting-place of three universal symbols, which, in chronological order, are: the Shield of David, the Cross and the Crescent. Unequal treatment between the Red Cross, the Red Crescent and the Red Shield of David can never be understood or tolerated by the people of Israel, and could only have regrettable consequences.

This Assembly has fully appreciated both the moral and material gravity of the problem. Our amendment was defeated by an accidental majority of 1 vote. According to the official results of the ballot, only 50 Delegations out of 60 took part in the voting. This fact is sufficient justification for the reconsideration of the problem by this Conference.

The Delegation of Israel also considers that it must state here and how that it intends to raise the question of the Red Shield of David during the discussion of the Civilians Convention. We believe that we have a special right to do so, for it might be said that the Jewish tragedy of the last few years was one of the determining causes of the awakening of the world conscience which is expressed by this Convention.

Our Delegation has no intention of reviving a discussion and speeches which are still fresh in your memory. Our amendment is submitted to your judgment. We request you to make your decision in full consciousness of its implications.

Captain MOURON (Netherlands): Without taking at this stage any position as to the amendment tabled by the Delegate of Israel, we should like to draw your attention to the name of the Convention we are dealing with at the moment. This name has never been discussed in this Conference; and the only thing we can say is this, that this so-called Maritime Warfare Convention is nothing else than an overhauling of the Hague Convention of October 18th, 1907 for the adaptation to maritime warfare of the principles of the Geneva

Convention of 6 July 1906. I should like to have an answer perhaps from the Rapporteur on this question as to the name of the Convention we are talking about. We always call it the Maritime Warfare Convention; but nobody knows what the official name is, and I think it would elucidate the matter if we cleared up this question in connection with the amendment tabled by Israel. But we feel that the name of the Xth Hague Convention points in a further direction, namely, that the Maritime Warfare Convention is a Convention for the adaptation of the principles of the Geneva Convention. That is another question for the Assembly to consider—whether the point in question is a point of principle.

Mr. MIKAOUI (Lebanon): Two days ago, your Assembly made a final decision and defeated the proposal of the Delegation of Israel to give recognition of the Red Shield of David as well as to the emblems of the Red Cross, the Red Crescent and the Red Lion and Sun. That decision was not lightly taken, but was the result of a very long discussion. You have heard the statements of eminent persons such as Mr. Ruegger, President of the International Committee of the Red Cross, and Mr. Bolla, Head of the Swiss Delegation. Other speakers had also expressed their opinions on the subject, and you made your decision after having listened to all these speeches.

I would have fully understood that the Delegation of Israel should have presented its amendment if it had been decided to include the Red Shield of David among the emblems recognized by the Convention. But I must admit that I do not understand at all why this amendment should be submitted at this stage of the discussion.

While it is true that there was only a majority of one vote, fifty delegations took part in that vote, and I do not believe that ever before have so many delegations voted on any of the Conventions. I would like to ask you what would happen if you were to express today an opinion utterly opposed to the decision you took two days ago; and if, having refused to recognize the Red Shield of David as an official emblem, you should decide that it could be worn by hospital orderlies or used as a marking on ships? These two decisions would stand in flagrant contradiction to each other. You were told just now that the Israelites of Palestine were surrounded by nations who used the Red Crescent as an emblem; but you were not told, purposely I believe, that the Israelites of Palestine are near neighbours of a nation which uses the Red Cross as an emblem. This country is half-Christian, half-Mohammedan, for the Mohammedans almost equal the Christians in number and Lebanon, and all its population, did not

hesitate for a moment to adopt the Red Cross as an emblem.

You will forgive me if I feel a certain pride on the subject, but I think it is an example which should be followed.

Mr. QUENTIN-BAXTER (New Zealand): I regret that on the question of substance my Delegation is bound to oppose the amendment put forward by the Delegation of Israel. A day or two ago, when we discussed Article 31 of the Wounded and Sick Convention, we were faced with this difficult and complex issue, and this Assembly decided, by a very narrow margin, not to accept the Red Shield of David as an additional emblem. Now, the Delegate of Israel has invited us to vote once again upon the merits of his original application. In the opinion of my Delegation we cannot do that. We must accept a decision which this Conference has taken.

In our opinion the only question of substance now before this House is whether or not it would be wise or proper for this Conference to provide one series of distinctive emblems in the Wounded and Sick Convention and another set in the Maritime Warfare Convention. That is not a question of procedure; it is a question of substance; but it is a question which I feel that delegations here present can only answer in one way. I think our determination to ensure the maximum respect for the distinct emblems must impel us to refuse to have a different position in one Convention from the position which has been adopted in the other; and for that reason, without reference at all to the merits of the original amendment put forward by the Israeli Delegation, my Delegation will oppose their amendment to this Article.

General LEFEBVRE (Belgium), Rapporteur: What the Netherlands Delegate has just told you is perfectly true. The Convention we are now considering is known as the Xth Hague Convention of 1907 for the adaptation to Maritime Warfare of the Principles of the Geneva Convention of July 6th, 1906; we are therefore dealing with an adaptation.

I think I am right in stating that in 1907, at the Hague, one Country endeavoured, in much the same way as the Israeli Delegation, to induce the Conference to agree to adopt an emblem which the Geneva Convention of 1906 had refused to accept. It was decided, in view of the decision at Geneva in the previous year, not to take this proposal into consideration.

Mr. ZUTTER (Switzerland): The Swiss Delegate, speaking the other day from this rostrum, expressed our Delegation's views on this question

of the Red Shield of David. I should probably not have ventured to speak today, if the Israeli Delegate had not just told you that some of the speeches made the other day against his amendment might simply have been dictated by undue prejudice against the Red Shield of David.

I wish to take this opportunity of stating that our Delegation has always considered this problem quite dispassionately and I wish to repeat that the Swiss Delegation has never had any intention of questioning the high symbolic value of the Red Shield of David.

We nevertheless abide by our opinion, namely that the multiplication of distinctive emblems is inadvisable. That opinion has received striking confirmation today, for, should the Red Shield of David be accepted as an emblem in the Maritime Warfare Convention in spite of having been rejected in the Wounded and Sick Convention, the result would be confusion. It only needs a few moments' reflection to realize the deplorable consequences which might result from such a decision in the event of war.

I cannot believe that public opinion, which is following our proceedings so closely and attaches such great importance to them, would not find it difficult to understand why this Conference had taken such a paradoxical decision.

Far be it from me to cast any doubt on the value of these symbols; but our first duty is to arrive at common sense solutions and though, I repeat, we have no personal objections to the use of the emblem under consideration, whose lofty significance is familiar to all, we are in favour of adopting a rational and consistent solution.

The Swiss Delegation therefore intends to vote against the amendment submitted by the Israeli Delegation.

GUENENA Bey (Egypt): I only wish to say how very glad I was to hear the Delegate of New Zealand speak in favour of the very reasons for which I presented my motion of order, although he voted against it only a few minutes ago. It would really be impossible for us to arrive at any contrary decision to the one which we have taken on the land warfare Convention, unless we are ready at the same time to reverse our first decision by a two-thirds majority. This has already been confirmed by our Rapporteur.

Colonel HODGSON (Australia): My Delegation believes that the decision you took this afternoon on the procedural question was a correct one. After all, these Conventions may be signed and ratified by different States. As we see it, these Conventions are all self-contained, and we believe the Delegation of Israel was quite within its

rights in introducing this new amendment; and we are pleased that a vote was taken, because apparently they were not satisfied with the vote which was taken on Friday afternoon, and they again want to put the question to this Conference in order that it may be made quite clear one way or the other. It would seem to us, though, in view of the fact at times we have been accused, or we have accused each other of lack of clarity, we might certainly, as a Conference, be accused of a complete lack of consistency if we rejected a particular emblem for one Convention and then turned round and voted in favour of it in another Convention.

Now, my Delegation has never at any stage discussed the principle of substance behind this question. No doubt this emblem has great historical value; no doubt it has great sentimental value; no doubt it has practical value. But the point is, is it, or is any other additional emblem, necessary for the implementation of this Convention? The same question arose over the Preamble. Many people—I might say the majority of people—wanted to see a Preamble. They were prepared to accept many of the forms of Preamble presented to them; but having in mind the conflict of opinion and the fact that at least half of the Conference did not want it (which is true also of this particular emblem), they preferred to have no reference to it at all rather than to divide the Conference on a thing which was not necessary, as I have said, for the implementation of the Convention.

On Friday afternoon my Delegation asked for a secret ballot under Rule 36, and they will do the same this afternoon for the same reasons, because we want to make the position quite clear one way or the other: and in view of the circumstances and the developments we hope that that vote will be decisive, and at least avoid the necessity of discussing this question all over again when we come to deal with the Civilians Convention.

Mr. NAJAR (Israel): After the speeches we have just heard, I feel it my duty to draw the attention of this Conference to the importance of the question of emblems. The choice of any particular emblem will have material consequences. It is quite likely that units will bear an emblem which, according to their conscience, confers protection but which will confer no protection in the eyes of this Conference. Such things have already happened in Palestine during the war in which we have been involved since 29 November 1947, and which cannot be affected by any decisions of this Conference.

We are not here to force the Red Shield of David on those who prefer to bear the Red Cross,

but on the other hand, those who prefer the Red Cross cannot force it upon those who do not wish to bear it. After all, there are degrees and limits in everything. There are religious or traditional reasons which conflict with the wish to make that emblem universal. I find no difficulty in believing that, for many of the delegates here, the Red Cross emblem has no religious significance. But there are others for whom, I am convinced, it has a religious meaning. On the basis of the publications of the Swiss Red Cross and of certain votes which took place in this hall, it cannot be denied that, for some people, it is a religious symbol. Why not face the facts?

We do not wish to force our emblem on you, but do not lightly force us to imperil the life of a large number of our people. It was our duty to come here to explain matters. At some point the truth must be told. That is the position.

This is not an academic question. I believe the decision of 22 July to be an error that will cost human lives. It lies with the Conference to decide whether it wishes that to happen or not. But, and it is my duty to tell you so, I do not consider that it would be right to persevere in this error, whatever the fear of public opinion certain delegates may feel. Perhaps, on the contrary, public opinion will recognize that the Conference acted wisely this time in not endeavouring to impose obligations in a part of the world which is particularly sensitive as regards religious symbols and emblems. That is why I appealed indirectly the other day for enlightened tolerance. This debate is not on a theoretical issue. I do not think that the fear of public opinion should be the motive power of Delegates' actions. In my opinion, we are here to concentrate on our responsibilities and on the immediate material consequences of our decisions on the lives of the people we intend to protect.

If we plead for the recognition of the Red Shield of David, it is in order that certain protection may be extended to yet more people, in order that no missing link may break the chain of security this Convention has drawn round the Middle East. Our request is not theoretical but practical, our claim is not arbitrary, for we merely assert our right to tolerance, which we are ready to extend to others. Let those who think differently say so openly, but do not let the discussion be influenced by public opinion or the fear of self-contradiction. I think this is a welcome opportunity, while the Conference is still at work and the delegates are still here, to turn back and to reconsider the question. I appeal particularly to the Delegates from the Middle East, who know that what I say is the truth in the region in which we live. I therefore ask the delegates to realize



that we are called upon to decide a definite problem which involves concrete responsibilities and which concerns the protection of the lives of individuals. This is the issue part to the Conference.

The PRESIDENT: There is still a delegate who wishes to speak. I propose that we should hear him and I hope that the Meeting will then consider the matter sufficiently clear to proceed to a vote.

Mr. MIKAOUI (Lebanon): The Middle East countries have just been appealed to and I wish to respond to this appeal.

It has been said that the Conference should show broadmindedness by accepting a sign which so far has not been one of the recognized emblems. I take this opportunity of asking whether it is more broad-minded to seek to impose a new emblem in addition to those officially recognized, once the question has been discussed at length and been definitely decided, than to accept a sign already universally known.

I have already told you that my country did not choose the Red Crescent, but the Red Crescent and the Red Cross simultaneously. The Mohammedan population itself unanimously agreed to use the Red Cross as an emblem.

I take this opportunity to support the proposal put forward by the Head of the Australian Delegation to vote by secret ballot.

The PRESIDENT: There is a proposal to vote by secret ballot. Are there any objections?

Since that is not the case, we shall vote by secret ballot. I will ask the Delegations of Byelorussia, Mexico and the Netherlands to be kind enough to act as tellers, that is to say, will a member of each of these delegations come and stand by the urn at the foot of the rostrum?

We will now distribute voting papers, and I request all the delegations to use them for voting. Delegations who wish to abstain are requested to place in the urn a blank voting paper, that is, without the words "Yes" or "No". Delegations wishing to vote for the amendment submitted by the Israeli Delegation will write the word "Yes" on their voting paper, and those who wish to vote against it, will write the word "No".

Are there any delegations which have not yet received a voting paper?

I note that this is not the case; I therefore call upon the tellers to come up to the rostrum to check the voting. The Secretary-General will now take a roll-call of the various delegations, who will be good enough to come up in turn and deposit their voting papers in the urn.

*A vote was then taken by secret ballot.*

The PRESIDENT: I will now ask the tellers to count the voting papers.

With regard to the vote on the amendment submitted by the Israeli Delegation, I wish to state that 45 voting papers were distributed and 45 were deposited in the urn.

The amendment was rejected by 24 votes to 18, with 3 abstentions.

Article 38, as a whole, with the United Kingdom amendment, was adopted by 40 votes to 1, with 1 abstention.

### Article 39

Article 39 was adopted.

### Article 40

Commander OROZCO SILVA (Mexico): I am very sorry to take up the time of this Conference with an intervention about something that may be too late to arrange but the Mexican Delegation thinks that the Assembly should consider if there is, or is not, a gap in Article 40. I will explain what I mean.

In Article 18 there are provisions to appeal to the charity of commanders of neutral merchant vessels, yachts or other crafts to take on board and care for wounded, sick or shipwrecked persons and to collect the dead; and it is stipulated that vessels of any kind responding to this appeal shall enjoy special protection and facilities to carry out such assistance.

On the other hand in Article 40, which provides for recognition of signs, there is no provision for immediate recognition and identification of a neutral merchant ship carrying protected people on board. As it is very important to ensure the assistance of these ships in case of necessity, the Mexican Delegation believes that if provisions are not put into the Maritime Warfare Convention, the Convention will not be complete and will not have accomplished its task of relieving war victims at sea. Therefore, if it can possibly be done, we should like to propose to add to Article 40 a new paragraph to fill the gap on something like the following lines:

"Neutral merchant ships mentioned in Article 18 carrying on board wounded, sick or shipwrecked persons might hoist on a suitable place the flag of the Convention."

If it is too late to accept this as an amendment, perhaps it would be possible to send it to the Drafting Committee. The Mexican Delegation leaves it to the judgment of the Assembly to find some means of filling this gap.

The PRESIDENT: Can the Rapporteur give us his opinion on this point?

General LEFEBVRE (Belgium), Rapporteur: Committee I did not insert any special clause in Article 40 with regard to neutral vessels which might be asked to render assistance to hospital ships or lifeboats, for the simple reason that neutral vessels are entitled to the same protection as neutral persons. In accordance, therefore, with the provisions of all international Conventions, a neutral vessel is entitled to protection as such, and it was therefore not considered necessary to provide for any additional protection.

Commander OROZCO SILVA (Mexico): It is true that neutral ships are protected by the Geneva Convention, as the Rapporteur has said; but I do not think that is sufficient. I am sure all my sailor colleagues who are present are well aware of the conditions on board merchant ships and on tramp ships, which form the majority of the ships that make up the neutral traffic during a war. These ships generally have a limited capacity for food and limited accommodation and a lack of the necessary means of taking care of serious cases where it is necessary to perform operations. Among the wounded and sick and shipwrecked there will be cases of extreme gravity which the quickest possible landing is an absolute necessity. The ship may be grossly overcrowded. There may be a lack of food or proper accommodation. In those conditions the captain may well be compelled to proceed to the nearest port, and it may also happen that this port is blockaded or is located in a restricted area, and the approach to it may be dangerous. Many of my sailor colleagues may have some experience of such conditions. If you are in a merchant ship, you run very great risks, and there is always the very grave probability of being bombed. I know that in the Spanish war English merchant ships had that experience and now in the Chinese war the neutral ships are having that same experience. A ship cannot approach a blockaded port without a sign, and without the consent of the parties blockading the port; but if a ship has the flag of the Convention, and the Convention is recognized by the Power which is blockading the port, that is another matter, and I am quite sure that such a ship will succeed in landing the protected persons which it has on board. That is why I would like to insist that something should be arranged in order to fill this gap in Article 40.

The PRESIDENT: I greatly regret that the Mexican Delegation did not submit their amendment in writing. From the statements we have just heard from the Rapporteur, the question to which this amendment relates had not been lost sight of by

Committee I. I wonder if the best procedure to avoid the necessity for reconsidering this Article, would not be for you to take a decision now on the principle of the proposal submitted by the Mexican Delegation. If there is a majority in favour of the proposal, the question can be referred to the Drafting Committee, and the Article, as amended, could then be submitted to the Conference at a subsequent Plenary Meeting. If there is an adverse majority, the question could be regarded as settled. Would you agree to accept this procedure?

As no one wishes to speak, I will ask you to vote on the oral amendment submitted by the Mexican Delegation.

The Mexican proposal was rejected by 17 votes to 12, with 8 abstentions.

We shall now vote on Article 40 as a whole.

Dr. PUYO (France): I should like to draw the attention of the Assembly to a difference between the French and the English texts. In the first sentence, the French text enumerates Articles 19, 20, 21 and 21B, whereas the English text does not mention Article 21B.

The PRESIDENT: The remark which has just been made by the French Delegate is fully justified and will be taken into account.

Article 40 as a whole was adopted by 35 votes to 1.

#### Article 40A

The PRESIDENT: We shall now proceed to Article 40A, to which there are no amendments.

Article 40A was adopted.

#### Article 40B

The PRESIDENT: We shall now proceed to Article 40B, which is a new Article proposed by the Delegation of Italy (*see Annex No. 77*).

General PERUZZI (Italy): In a Memorandum, the Italian Government had proposed that the Maritime Warfare Convention should contain details of agreements prepared by the naval experts in accordance with the terms of Article 26, particularly as regards methods of communication between air forces and hospital ships.

We were not able, however, to include a provision on the last point in Article 40. Experience has shown that not only naval but also air forces have frequently endeavoured to transmit important orders and information, which it proved impossible to understand. We also know that hospital ships have been attacked at night by mistake, because they were unable to comply with communications

which were incomprehensible, and that such attacks could have been avoided if the hospital ships had been able to emit a simple and readily comprehensible agreed signal.

For the above reasons, we have proposed to insert a new Article, dealing with the means and above all the methods of communications between hospital ships and naval or air forces.

The proposal does not aim at the insertion of detailed regulations in an Article of the Convention. Regulations of this kind could be framed, revised and brought up to date by naval and air force experts, taking full account of the latest developments in telecommunications, and the requirements of the International Code of Signals. All that would have to be done would be to name general basic standards, which could subsequently be developed into a model form of agreement annexed to the present Convention.

It is only on this condition that the Italian Government could undertake obligations and sign the Convention, without making reservations to Article 26.

The new Article proposed by our Delegation consists of four paragraphs. The first specifies that all communications must be transmitted in such a way as to ensure that they will be received. For instance, fighter aircraft should be fitted with wireless apparatus using the same wave-length as hospital ships, which is not the case at present. The second paragraph provides that hospital ships must reply to communications by using the same means as those used by the adversary. For instance, should a hospital ship use wireless to reply to an enemy vessel making use of visual signals, this would be equivalent to using a method of communication detrimental to the enemy, and would therefore constitute a breach of the Convention.

The third paragraph provides for the possibility of using the distress signals regularly employed by merchant ships in time of peace.

This Article is intended to remedy a gap in the Convention, a gap which could not have been foreseen when the Hague Convention was drawn up.

We also propose that the Final Act of the Conference should include a Recommendation to the Powers concerned to convene, as soon as possible, a Committee of Experts for the purpose of drawing up a standard form of agreement for communications between belligerents and hospital ships.

Mr. SENDIK (Union of Soviet Socialist Republics): The Soviet Delegation considers that there is no reason for including in the Convention the Article proposed by the Italian Delegation. In the first paragraph of this Article, it is stated that the

naval and air Forces shall endeavour to transmit their communications in such a way as to ensure that they are received. In what way can an aeroplane transmit its communications? It is obvious that a message transmitted by flags or other visual means, without a preliminary agreement between the aircraft and the hospital ships, will not be understood. Similarly, transmissions by wireless can only be used provided that there is agreement on identification signals, wave lengths, etc. The conditions mentioned in the first paragraph of the amendment of the Italian Delegation cannot therefore be fulfilled without a preliminary agreement.

The stipulations of the second paragraph entail some danger for hospital ships and the wounded and sick on board, for these ships may not have at their disposal the means of communication used by the naval and air Forces of the enemy. These hospital ships and the wounded and sick on board may consequently be endangered by the fact that they cannot reply to the signals in question. In naval warfare experience has thus shown that an aeroplane frequently orders a ship to stop, or transmits a message by some signal such as a burst of machine-gunfire or a bomb thrown near the ship. A hospital ship certainly cannot reply in the same way to such signals. These cases frequently occur in practice.

As regards the third paragraph, it is unnecessary, in our opinion, since a ship which considers itself to be in danger can, without any additional permission, use any form of signal to catch the attention of ships or aircraft in its proximity.

The last paragraph seems to us strange. There are no technical regulations at present which could be annexed to the Convention, as proposed in this paragraph. As for drafting technical regulations for communication between hospital ships and aeroplanes, the question does not come within the terms of reference of our Conference, and lies outside the scope of the tasks which the Conference has undertaken. We therefore consider that there is no reason to include this new Article, since it has no practical value.

Dr. PUYO (France): The proposal submitted by the Italian Delegation does however aim at filling an obvious gap. The French Delegation would willingly support it. The French Delegation is even prepared to adopt this new Article as Article 26B, instead of 40B, with some amendments, however, which might be entrusted to the Drafting Committee. It goes without saying, for example, that the last paragraph should be deleted.

If however the Assembly does not see its way to vote in favour of this Article, it should at least adopt the idea suggested by the Italian Delegation,

by passing a Resolution inviting the Governments to take this important problem into consideration, and if necessary, call a Conference of naval experts to study it.

General PERUZZI (Italy): The Italian Delegation recognizes that the technical problem of signals in use by day and by night on ships in time of peace and in time of war is a knotty one. But a new question which came to the fore during the last war must be considered: certain vessels were unable to get into touch with aircraft because there was no convention, no agreement, no regulation enabling them to do so. Provisions of this type must therefore be introduced.

The question of night fighting also arises. Most hospital ships were sunk at night because they are most difficult to identify at that time. It is true that hospital ships are illuminated, visible from a distance, but every illuminated vessel is not a hospital ship. It may be a merchant vessel or perhaps a warship proceeding with all lights on in order to evade recognition. It takes a very few moments to attack by air.

What did we hear from the survivors of hospital ships torpedoed at sea or sunk by aircraft? They heard the sound of the aircraft approaching, then when silence fell again they concluded that the aircraft was climbing in order to attack them. If in such a case there had been an agreed signal, for example a flare with red and white stars, the pilot's attention might have been attracted and he would have had time to refrain from action. We likewise had hospital ships torpedoed in port because they could not be identified.

There is, however, a still more important question.

We know that fighters have not the same wireless apparatus as hospital ships. The latter have a compulsory wavelength of 600 m., i.e. the commercial and international standard, which differs from the standards of military aircraft. If aircraft send signals, they are signals agreed between them and ships of the same nationality. In the absence of any reply, the aircraft attacks. Some means must therefore be provided by which hospital ships can both be recognized and make themselves understood, to prevent them being attacked from the air.

The arguments put forward by the Delegate of the Union of Soviet Socialist Republics are somewhat similar to our proposal, with the exception of certain signals which, though extremely vigorous, are not very effective. A machine-gun salvo is not, for instance, a suitable signal with which to ask for information or to give orders to a hospital ship!

We propose that the Convention should in peace time provide for the conclusion of agreements on

this question. It is too late, once war has broken out, to make researches which require the cooperation of special experts. Clear regulations must be set up in time, regulations to which hospital ships and belligerents can obey.

The last paragraph of our Article which, in the opinion of the French Delegation, should be deleted, seems to us on the contrary to be the most important paragraph. We attach great value to the inclusion in this Convention of an Article concerning means of communication between hospital ships on the one hand and belligerent forces on the other. How could we commit ourselves to respect the orders given by virtue of Article 26, if these orders are not understood?

If the distress signals now in use can be used in time of war, the position is different. In time of war, there are no real distress signals, since any ship using such a signal would run the risk of being attacked at night. If it is agreed that a hospital ship can and should use a distress signal, a signal must be chosen which is easily recognizable. For this reason the Italian Delegation, though it does not insist on retaining every detail of the wording of its amendment and is prepared to accept any possible improvement, maintains that the Article it has proposed is necessary. The Delegation considers that this Article is absolutely essential in a Convention which will be implemented under very different conditions from those which existed at the time of the Hague Convention of 1907.

The PRESIDENT: We shall now proceed to vote on the proposal made by the Italian Delegation to adopt the new Article 40B.

The amendment submitted by the Italian Delegation was defeated by 17 votes to 10, with 7 abstentions.

The PRESIDENT: The French Delegation had suggested that if this new Article were defeated, the Conference should pass a Resolution. I request this Delegation to draft and submit in writing this Resolution, which will be considered with the draft Resolutions at the end of the Conference.

Dr. PUYO (France): If I am not mistaken, it was the Delegation of Italy who proposed this Resolution, while the French Delegation only supported it.

The PRESIDENT: If a Delegation wishes to submit a Recommendation to be voted on by the Conference, it is requested to do so in writing. It will be considered in due course. In spite of the length of this Meeting, I should like to keep you a little longer, to adopt several Articles which I think will not give rise to discussion.

**Articles 41 and 41A**

Articles 41 and 41A were adopted.

**Annex**

The PRESIDENT: There is an Annex to this Draft Convention, to which no amendment has been submitted.

The Annex was adopted.

**Articles 17 and 17A (continued)**

The PRESIDENT: We still have to review Articles 17 and 17A. We have already considered them at the Plenary Meeting on Saturday and decided, on the proposal made by the Delegation of the United Kingdom, to refer them to the Drafting Committee.

The Drafting Committee has considered the question and has proposed two amendments in the text, one to Article 17, and the other to Article 17A. (*see Report of the Drafting Committee*)

Are there any objections to the new wording proposed by the Drafting Committee for Articles 17 and 17A?

As there are no objections, I conclude that you approve this new wording.

Articles 17 and 17A were adopted.

**Communications**

The PRESIDENT: We have now completed the consideration of the Maritime Warfare Convention, except for the common Articles which we have reserved for a subsequent meeting.

It still remains for me to express my very special thanks to General Lefèbvre, Rapporteur of the First Committee, for the clarity of his statements and the objectivity of his judgment. General Lefèbvre has greatly facilitated our work. I am sure that I am expressing the feelings of all the Delegations by assuring him of our gratitude. (*Applause.*)

Our next meeting will be held tomorrow morning at 10 a.m. and we shall begin the consideration of the Prisoners of War Convention.

As a general rule, we shall hold two Plenary Meetings a day from tomorrow, one at 10 a.m. and the other at 3 p.m., until we have completed the consideration of the four Conventions.

I think we can consider the common Articles when we have completed the consideration of the Prisoners of War Convention.

*The meeting rose at 7.05 p.m.*

**THIRTEENTH MEETING**

*Tuesday 26 July 1949, 10 a.m.*

*President: Mr. Max PETITPIERRE, President of the Conference*

**Agenda**

The PRESIDENT: As you will see in the Agenda, we shall begin today with the consideration of the Prisoners of War Convention, taking first Articles 3, 4, 11, etc. As in the case of the other Conventions, we shall consider the common Articles at a subsequent meeting.

Are there any comments on this procedure?

As there are no comments, this procedure is adopted.

I shall ask the Rapporteur to present the subject of discussion.

**PRISONERS OF WAR CONVENTION****Statement by the Rapporteur**

Mr. SÖDERBLOM (Sweden), Rapporteur: In presenting the Report on the new Prisoners of War Convention, on behalf of Committee II, I wish first of all to pay tribute to all, Government or private experts, organizations and societies of all kinds, who have, under the auspices of the International Committee of the Red Cross, taken part in the preparatory work for more than three years.

The Report is a statement of the facts and the comments which arose from our debates. From a general point of view, I think it advisable to remind you that, whereas Chapter II of the Hague Regulations on Prisoners of War comprised only 17 Articles and the 1929 Convention, 97 Articles, our Draft Convention comprises 130 Articles excluding the Annexes, one of which is of an imperative character. Moreover, the Articles of our draft are generally more comprehensive and substantial than their predecessors. This increase certainly reflects the phenomenal extent of captivity in our time, but it also expresses the desire to alleviate the sufferings inseparable from it by placing that captivity under the rules of international law based on humanitarian principles.

Many of the provisions here submitted to the Conference establish standards which might possibly be deduced from the 1929 Convention. Experience has shown, however, that it is the way in which a general rule is interpreted which affects the daily life of prisoners of war. It was, therefore, appropriate to lay down explicit provisions interpreting in reasonable terms standards, many of which were inadequately defined. Further, even general principles, whose force seemed to be their very brevity, have been so grossly violated, that the Committee considered it necessary so to clarify and amplify them that any future infringement would be at once apparent.

Other provisions in the Draft Convention are intended to settle problems which were not solved by previous Conventions, or which, by reason of changes in the conduct of warfare, in its consequences or even in the living conditions of the nations, required some other solution. Wherever necessary, the Committee had to suggest fresh solutions to problems which had been dealt with in 1929 by reverting to the Regulations of the Hague Convention.

Despite the wide scope of the Draft Convention, we have retained its character as international law no section of which must be converted into a mere set of executive rules. We have however constantly borne in mind the special nature of this international law. It must be understood, not only by the authorities, but by every individual everywhere. It should be posted in every prisoner of war camp and every Camp Commander should be familiar with it. This standpoint is the explanation and justification of the details, and even the repetitions.

Lastly, the Committee has also had to take into account the inevitable necessities of war. But it has endeavoured to avert abuses, which might occur if the reservations introduced were too flexible. Rather has it endeavoured to find solutions which shall offer prisoners of war the soundest and most reliable guarantees possible.

The PRESIDENT: I take this opportunity of thanking the Rapporteur of Committee II for his complete and concise report as well as for the brief summary he has just given.

We shall now begin the study of Article 3 of the Convention. I call on the Rapporteur to speak.

### Article 3

Mr. SÖDERBLOM (Sweden), Rapporteur: The new wording suggested by the Delegation of the Netherlands concerning Article 3, point 3, contains in the French text two slight errors. The word "alinea" should be replaced by "chiffres" and the end of the sentence should read "existant aux côtés de l'une des Parties au conflit".

I should also mention that one word has been omitted. Towards the middle, the text should read "...d'une autorité non reconnue". (Note: The above alterations do not affect the English text).

I must emphasize that this Article constitutes the main object of our Draft Convention; it has given rise to lengthy discussion and the solution arrived at is largely due to the endeavours of the Netherlands Delegation.

The PRESIDENT: Note has been taken of the remarks made by the Rapporteur in respect of the errors in the French wording of Article 3. Two amendments were proposed, one by the Netherlands Delegation and the other by the Irish Delegation. Further, the Drafting Committee suggested the addition of a new paragraph to this Article, to coordinate it with Article 29B of the same Convention (*see Report of the Drafting Committee*).

I now call on the Delegate of Denmark to speak.

Mr. COHN (Denmark): I should like to make a few remarks on the Report before us and the references made in it to Article 3. This applies to two sentences which appear in the last paragraph on page 9 and which I beg to quote:

"One delegation pointed out, in particular, that the acceptance of the proposed extension would be tantamount to rejecting the principles generally accepted at The Hague, and recognized in the Prisoners of War Convention. It was, according to the views of this delegation, essential that war, even illegal war, should be governed by those principles".

The second sentence reads:

"Nevertheless, another delegation asked that the Summary Record should mention that no

objections had been raised, during the discussion in the Special Committee, against his view that Article 3 could not be interpreted in such a way as to deprive persons, not covered by the provisions of Article 3, of their human rights or of their right of self-defence against illegal acts."

These two sentences deal with two different questions. The first refers to the scope and substance of the Conventions in general; the second deals with a special point, namely, the interpretation of Article 3. These two statements have no relation to each other and, taken together, may be confusing. A few remarks on these two questions may not be out of place. Each is of fundamental importance for the exact appreciation and interpretation of the legislative work upon which we are engaged. It is true that the four Conventions should also be applicable to illegal warfare, since their object is to protect wounded, sick and shipwrecked persons, prisoners of war and civil populations, in all circumstances. It must be borne in mind that this humanitarian task is the object of these Conventions, and unless they serve that purpose, they cannot be considered as an expression of international law or of the laws and customs of war.

As regards the last point, entirely different rules are in force; for example, the United Nations Charter, the unanimous Declaration of 24 September 1947, condemning aggressive war as an international crime, the Declaration of Human Rights of 6 December 1948, and others.

To take one instance, an illegal war of aggression does not automatically become legal if the aggressor applies the provisions of the Prisoners of War Convention. The aggression is, and must remain, illegal; and it must incur all normal consequences such as sanctions, reparations, and so on.

These considerations are equally valid in the second question arising from the interpretation of Article 3. This Article, like all the other provisions of the four Conventions, must be regarded as having, as its sole purpose, the protection of those persons enumerated; it will therefore have no effect on rules applied outside the explicit provisions of these Conventions. The Article is an attempt neither to revise international law in general nor to revise the law of war, in particular.

The categories named in Article 3 cannot be regarded as exhaustive, and it should not be inferred that other persons would not also have the right to be treated as prisoners of war. The cases not provided for by Article 3 must be treated separately and in accordance with present-day international law. It is, and will always be an international crime to shoot briefly any person not covered by this Article.

The same applies to such questions as, for instance, whether a civilian population is entitled to defend itself against an aggressor, or whether private individuals have the right of self-defence against illegal acts committed by members of the armed forces; the right is *neither confirmed nor denied* in the Prisoners of War Convention. Situations of this kind must be considered in the light of other national or international regulations, and in the particular case in accordance with the general principles of the law of self-defence against illegal acts, and in disregard of Article 3, which is not of a universal nature and consequently cannot be invoked either as an analogous or as a conflicting provision. Wars of aggression having been condemned as international crimes, it is obvious that the civilian population is entitled to self-defence against an illegal act of this kind. This has nothing to do with Article 3.

Sir Robert CRAIGIE (United Kingdom): In his opening remarks the Danish Delegate read a sentence from the Rapporteur's Report. He referred to the statement that had been made by one delegation and to the view of that delegation that Article 3 could not be interpreted in such a way as to deprive persons not covered by the provisions of that Article of their human rights or their rights of self-defence against illegal acts. The Danish Delegate continued to elaborate that in the course of his remarks. With all respect I do feel that that suggestion about depriving persons is somewhat irrelevant. The purpose of Article 3 is not to deprive anybody of anything but to define what persons are to have the protection of the Convention under Article 3. As this matter seems to the United Kingdom Delegation of some importance I should like to make the following declaration on behalf of my Delegation.

The United Kingdom Delegation believes that in international law it is clear, firstly, that States which deliberately order the commencement of hostilities without a previous declaration of war or a qualifying ultimatum commit an international delinquency but they are nevertheless engaged in war. Secondly, that States which allow themselves to be dragged into a condition of war through unauthorized hostile acts of their armed forces commit an international delinquency, but they are nevertheless engaged in war. Thirdly, that in all these and similar cases all the laws of warfare must find application, for a war is still a war in the eyes of international law even though it has been illegally commenced or has automatically arisen from acts which were not intended to be acts of war.

The PRESIDENT: Does anyone else wish to speak on Article 3 and the amendments proposed?

Mr. MOROSOV (Union of Soviet Socialist Republics): I would like to know whether the discussion has been opened on all the amendments submitted to Article 3. I refer to the amendments submitted by the Delegations of the Netherlands and Ireland, and also to the suggestion of the Drafting Committee.

The PRESIDENT: I am prepared to put the two amendments for discussion in turn and subsequently the Drafting Committee's suggestion. We will therefore begin with the first amendment, that submitted by the Delegation of the Netherlands.

Does anyone wish to speak on Article 3 as a whole?

General OUNG (Burma): If Article 3 as put before us refers only to international war we give it every support, but if it is going to refer to anything other than international war, I am afraid that we shall have to make a certain reservation on this and I suggest that we do not talk about it until we have discussed Article 2.

Colonel HODGSON (Australia): Prior to the detailed discussion of this Article and the amendments thereto, my Delegation would be glad if the Assembly, with the concurrence of the Rapporteur, would ask the Drafting Committee to paragraph this Article properly, because from their own Report and from the amendment it is completely impossible to follow it. In other words, we have sub-paragraphs 1, 2 and 3 etc., and it takes us a long time to find out that they are part of the first paragraph, and it takes a long time to wake up to the fact that sub-paragraphs 1 and 2 are really part of the second paragraph. So we suggest that they do what they were requested to do by Committee II, to paragraph it properly. That is to say, the whole of the above-mentioned sub-paragraphs comprise the first paragraph, and categories a, b, c and d of sub-paragraph 2 become Roman I, II, III and IV. Then the next part becomes the second paragraph, comprising two categories, (a) and (b). I should be glad if you would agree to ask the Drafting Committee to paragraph this in accordance with the way I have indicated or in some other sensible way.

Mr. COHN (Denmark): I entirely endorse the opinion expressed by the Delegate of Australia. I suggested at the meetings of the Drafting Committee that it would be useful to number the paragraphs of this Article, in view of its length; I pointed out that it is often difficult to know

which paragraph is being discussed. Generally speaking, I think that all the Conventions, and perhaps even all the Articles, would be improved if the paragraphs were numbered. It would greatly facilitate the search for references.

Mr. SÖDERBLOM (Sweden), Rapporteur: As the Delegate for Australia has, as it were, appealed to me, I must confess that, like him, I have had some difficulty when the various paragraphs of Article 3 were under discussion. Perhaps the solution would lie in placing the letter A before the first paragraph and B before the second paragraph.

The PRESIDENT: We have two proposals put before us: the first is to postpone consideration of Article 3 till the Conference has come to a decision on Article 2, which is a common Article; the second is to refer the Article to the Drafting Committee with the request that it set out the paragraphs, and the relative amendments, more clearly.

You may well wonder whether it is expedient to postpone consideration of provisions which have already been discussed at length by the Committees, sub-Committees and Working Parties. Nevertheless, since proposals have been made to this effect, I shall ask for the Meeting's decision. I therefore put to the vote the proposal made by the Delegation of Burma to defer consideration of Article 3 till Article 2 has been adopted by the Conference.

The proposal submitted by the Delegation of Burma was adopted by 13 votes to 9, with 20 abstentions.

The PRESIDENT: In view of this decision, this Article will be referred to the Drafting Committee for the reasons just given by the Delegate for Australia. (*Assent.*)

#### Article 4

An amendment to Article 4 has been submitted by the Delegation of the Netherlands (*see Annex No. 95*). Does anyone wish to speak?

Mr. MOROSOV (Union of Soviet Socialist Republics): The Delegation of the U.S.S.R. considers that the amendment to Article 4 proposed by the Delegation of the Netherlands is unnecessary and can only lead to confusion in the interpretation of Article 3 of the Prisoners of War Convention.

The Delegation of the Netherlands proposes that prisoners of war status be provisionally granted to persons suspected of having committed belligerent acts. The object of the proposal is to supplement the list of categories of persons and



the conditions such persons must fulfil in order to be recognized as prisoners of war when they fall into enemy hands. The wording of Article 3, however, quite adequately defines the persons who may be considered as prisoners of war.

We therefore believe that it is unnecessary to add any further conditions to Article 3.

Equally superfluous, in our view, is the final part of the Netherlands amendment, under which military courts, in doubtful cases, would determine the status of persons who had fallen into enemy hands. The proposal made by the Delegation of the Netherlands would alter the text of the Article merely because it is not desired to make a single person responsible for deciding whether the Convention is to cover a given person who has fallen into enemy hands.

This proposal would therefore have the effect of bringing before a military court all persons in regard to whom there is any doubt whether the Convention should be applied in their favour. It is a provision which at first sight seems humane, but which, in reality, would singularly complicate the position of protected persons.

It is obvious that to bring a person before a military tribunal, may have more serious consequences than a decision simply to apply, or not to apply, the provisions of the present Convention in his case. If the defendant is sentenced by a tribunal, he will not only be unable to benefit by the Convention under Article 4, but it is also uncertain whether he will succeed in clearing himself. These measures cannot be compared with a simple administrative decision.

I believe that the persons to be protected would have little cause to be grateful to us and would refuse the benefit of the Convention rather than appear before a military tribunal which is likely to punish them.

In addition made by the proposal the Netherlands Delegation weakens the scope of the various conditions which, according to Article 3, are the only criteria for deciding whether or not to apply the Convention. Such a procedure would make it possible, that such persons who had fallen into enemy hands and who had fulfilled the conditions as stipulated in Article 3 of the Prisoners of War Convention, would be deprived of the benefits of the Convention if a tribunal sentenced them. We consider that the procedure for doubtful cases, provided in the second paragraph of Article 4 as drafted by Committee II, is humane and closer to the spirit of the present Convention than the Netherlands amendment.

For this reason the Delegation of the Union of Soviet Socialist Republics calls for the rejection of the amendment to Article 4 submitted by the Delegation of the Netherlands.

Mr. COHN (Denmark): The Delegation of Denmark fully supports the amendment proposed by the Delegation of the Netherlands and will vote in its favour. We propose, however, that the expression "military tribunal" be replaced by "competent tribunal". The laws of the Detaining Power may allow the settlement of this question by a civil court rather than by a military tribunal. The amendment which we suggest would, to a certain extent, meet the objections raised by the Soviet Delegation.

The PRESIDENT: Does the Delegation of the Netherlands accept the proposal made by the Delegate of Denmark?

Captain MOUTON (Netherlands): The idea of the amendment before you is to avoid arbitrary decisions by a local commander, who may be of a very low rank. He may be a corporal and we do not want to have a corporal deciding on the life or death of any human being. If you look at the text of Article 4 as it stands you will find that the wording is illogical. The first paragraph refers to persons mentioned in Article 3. That means certain specified categories of persons who fulfil certain specified conditions. Now in the second paragraph it refers to the "aforesaid persons". That means, too, the persons enumerated in Article 3. The paragraph begins "Should any doubt arise whether one of the aforesaid persons belongs to any of the categories named in the said Article". Well, that is nonsense as it stands, if you start by referring to persons who are enumerated in an Article. As I said before, there are persons who belong to certain categories, who fulfil certain conditions, but you go on to say that there may be doubt whether one of these persons belongs to one of the categories I have just referred to. For that reason we used in our amendment a description of the categories we have in mind, that is, persons having committed a belligerent act and having fallen into the hands of the enemy. Now a doubt arises whether they belong to one of the categories enumerated in Article 3. This is just to explain why we chose a different wording from that used in Article 4 as it stands. I do not understand why the Delegate of the U.S.S.R. thinks that our proposal is less humane than the existing Article. In the existing Article the decision is left to a competent authority. In practice that means the military commander on the spot—and I repeat that that might be a corporal—decides whether a person who has fallen into his hands comes under Article 3 or does not belong to Article 3. What does the decision entail? It means that if he decides that he does not belong to Article 3 he will be considered to be a franc tireur and be put against the wall

and shot on the spot. That is what it means. For that reason, we think that such an important decision entailing life and death should be left to a military tribunal. Now to answer the question for which the Chairman called me to the rostrum: we have no objection to change the wording to "competent tribunal" although we cannot imagine circumstances under which any body other than a military tribunal would decide on these questions. I repeat that in presenting and tabling this amendment at the Plenary Meeting our only object is that we think this important decision should be left to a court and not to one person.

Mr. MOROSOV (Union of Soviet Socialist Republics): I should first like to apologize for taking the floor once more. As a general rule one first submits an amendment and then the objections; in this case, the opposite has been done. I should like to reply to the two arguments advanced by the Netherlands Delegate which do not accurately reflect the meaning of the Article.

First of all, one should not, as does the Delegate of the Netherlands, infer from Article 4 that a mere corporal could be responsible for a decision on the life or death of any person. Such a conclusion in no way corresponds to the actual wording of Article 4, which plainly states that a "responsible authority" is meant. Those who are drawing up this Convention, and those by whom it will be applied, cannot regard a mere corporal as a responsible authority. For this reason, the argument three times put forward by the Netherlands Delegate is not valid. This argument may have been distorted, but its object, nevertheless, was to weaken the scope of the Article.

With regard to the second point raised by the Netherlands Delegate, to the effect that any person not protected by the provisions of Article 3 (that is to say, any person not recognized as a prisoner of war), should be shot. Where is it laid down that any person not protected by Article 3 should be shot? I do not know of any law to this effect, and I do not know of anybody who would wish to devise a clause of that kind. That argument, therefore, is also not valid. If a person is not recognized as a prisoner of war under the terms of Article 3, such a person would then be a civilian and would enjoy the full protection afforded by the Civilians Convention. The second argument, therefore, is quite unfounded. The Netherlands Delegate merely wishes to prove that his amendment is acceptable, but in view of the arguments he puts forward, and of which I have shown the weakness, we do not see that this amendment fulfils any useful purpose, for prosecuting before military tribunals all persons who are not protected by Article 3.

With regard to the observation made by the Delegate of Denmark, it would seem that while he has fully understood my remarks and the arguments I have put forward, he has drawn no conclusions from them. We do not consider that there is any advantage in replacing the expression "military tribunal" by "competent tribunal". In an occupied territory, for instance, only military tribunals exist, and the objections we raise refer precisely to the execution of a sentence pronounced by a military tribunal on the persons referred to in the Article under discussion.

Here again we believe that the proposed amendment of the Netherlands Delegation would entail risks, and we cannot accept it. We also invite other Delegations to reject it.

Captain MOUTON (Netherlands): I will be very brief in my remarks but I would just like to answer the Honourable Delegate for the U.S.S.R. The Honourable Delegate for the U.S.S.R. said that a corporal cannot be a "responsible authority"; unfortunately, we have had sad experiences in our own country. We had a case before the court where a man was caught in a forbidden area and a corporal who happened to be on the spot took a decision and the man was shot; although there was a higher commander a few kilometres further on, the decision was taken by a corporal. Besides, in war time it is very possible that a corporal may be in command of a certain area and is, in that area, the responsible authority.

The belief that I considered that persons who do not fall under Article 3 would be shot must have arisen owing to a misunderstanding. I only said that a person who had taken up arms and did not fall under Article 3 might be considered to be a franc tireur, and the fate of francs tireurs is well known. The possibility that a lower authority may have to decide in such cases is just the thing we wanted to avoid. That persons who do not fall under Article 3 are automatically protected by other Conventions is certainly untrue. The Civilians Convention, for instance, deals only with civilians under certain circumstances; such as civilians in an occupied country or civilians who are living in a belligerent country, but it certainly does not protect civilians who are in the battlefield, taking up arms against the adverse party. These people, if they do not belong to Article 3, and if they fall into the hands of the adverse party, might be shot and that is a decision which we do not want to leave in the hands of one man.

The PRESIDENT: We will now vote on the amendment submitted by the Netherlands Delegation.

The amendment tabled by the Delegation of the Netherlands was adopted by 24 votes to 15, with 5 abstentions.

The PRESIDENT: The amendment is adopted, together with the alteration proposed by the Danish Delegation and accepted by the Netherlands Delegation, to the effect that the expression "military tribunal" in the second paragraph be replaced by "competent tribunal".

We shall now vote on the whole of Article 4, with the amendment that you have just adopted. The delegations who accept Article 4 are requested to signify their acceptance.

Article 4 was adopted by 32 votes to NIL, with 10 abstentions.

### Article 11

The PRESIDENT: We shall now consider Article 11. An amendment has been submitted by the Delegation of the Union of Soviet Socialist Republics. It aims to omit the second and third paragraphs which were proposed and to substitute them by the second paragraph of the Stockholm text.

Does anyone wish to speak?

Mr. MOROSOV (Union of Soviet Socialist Republics): The Delegation of the Soviet Union has often maintained that when prisoners are transferred to a Power which is a Party to the Convention, irrespective of the fact of the transfer, the responsibility for the application of the Convention rests on the transferring Power as well as on the receiving Power.

This is not a new provision, for it is already in the Stockholm Draft.

For no good reason and by a slight majority only, Committee II amended this part of Article 11 by stating that the responsibility for the application of the Convention shall rest only on the receiving Power. None of the other amendments or additions made by Committee II (among others, that the transferring Power must, if informed of violations of the Convention, take effective measures to set matters right, and that it can even transfer prisoners to its own territory) corrects the basic flaws in Article 11 as submitted to us now, in which responsibility no longer rests on the Power which has made the transfer.

The new wording of Article 11 is unacceptable as a matter of principle; in spite of the rest of the Article or any explanatory comments, it entails the risk of creating a situation which abolishes all responsibility for the welfare of prisoners captured by one Power and then trans-

ferred to another. If the Convention were violated in the case of one particular group of prisoners, it would no longer be possible to lay the responsibility on the captor Power. Since this Power transferred them, it could always claim that no blame attached to itself, that it had, on the contrary, done its best to implement the provisions of the Convention and that the responsibility rested on the Power to whose territory the prisoners had been transferred; it might happen that this Power was not in conflict with the Power to whom these prisoners belonged but that it was not in diplomatic relations with it.

The principle of joint or mutual responsibility is thus violated, for the Power which captured these prisoners is no longer responsible for them, once they are transferred to another country, whereas the Power to which these prisoners belonged is nevertheless responsible for prisoners of war on its territory who are nationals of the former Power. The principle of mutual responsibility therefore no longer exists.

The absence of this joint responsibility makes the position of prisoners of war worse and the repression of violations of the Convention more difficult. The Delegation of the Soviet Union attaches great importance to this amendment as a matter of principle; if it were rejected, the Delegation would then vote against Article 11 itself. It does not wish to see prisoners of war captured by one Power and transferred to another, abandoned to their fate, while the Power which made the transfer is relieved of all responsibility in respect of them.

We have made several alterations in the text of our amendment as we originally submitted it; we now retain the first phrase of the second paragraph of the text proposed by Committee II, which reads as follows:

"Prisoners of war may not be transferred by the Detaining Power to a Power which is not a Party to the Convention. They may be transferred only when the Detaining Power is satisfied that the Power concerned is willing and able to apply the Convention."

We even regard this passage as an improvement on the original text; that is why we agree to leave it as it stands.

On the other hand, we maintain that it is necessary to delete from Article 11 the whole of the last part from the following words in the second paragraph: "When prisoners are thus transferred..." until the end, and we propose the substitution of the following wording:

"Prisoners of war may not be transferred by the Detaining Power to a Power which is not a Party to the Convention. If they are transferred

to a Power which is Party to the Convention, responsibility for the application of the Convention rests on the two Powers jointly."

This is the text of the Stockholm Draft.

Mr. QUENTIN-BAXTER (New Zealand): I wish strongly to oppose the amendment put forward by the Soviet Delegation. The first point which I should like to make is that the object of this Article is to protect transferred prisoners of war. Now, we consider that the new text—the text before us now—gives every bit as much protection to transferred prisoners of war as the text proposed by the Soviet Delegation. Indeed we think that the text we have is very much better because it sets out the obligation clearly. It spells out the obligation which rests on one Power and the obligation which rests on the other Power. There is no question but that a Power which takes prisoners of war must remain responsible for their future treatment. It cannot entirely divest itself of all responsibility for what is done with them and that is precisely what is provided for in Article 11. If the Power to whom they are transferred fails to carry out the provisions of the Convention in any important respect, the Power by whom the prisoners of war were transferred shall, upon being notified by the Protecting Power, take effective measures to correct the situation or request the return of the prisoners of war. That is a very definite and continuing obligation and it comes into force the moment the Power that has transferred prisoners is advised that they are not being treated in accordance with the provisions of the Convention. So we do not feel that there is any question of giving greater protection to prisoners of war by adopting the Soviet amendment. We object to the text which the Soviet Delegation has presented because of the form in which it is stated, and not because we do not agree that there must be a continuing responsibility.

But the text of that Article states plainly that there shall always be a joint responsibility and we have said that that is an obligation which we cannot undertake for the following reason: if a small Power transfers prisoners of war to a great Power and if that great Power mistreats them, the small Power can ask for them back or it can make arrangements to send food to them and see that they are treated properly. But more than that it cannot do. No small nation can undertake responsibility for the actions of a great nation, and that is the plain implication of the amendment which the Soviet Union has presented.

The converse case is equally serious. If a small country agrees to take prisoners of war from a

large country, it must be responsible for them. If it does not treat them properly, it must either make an agreement with the Power which transferred them or it must send them back, but this clause which the Soviet Delegation has presented to us as an amendment means that a great Power has a legal right to interfere in the affairs of a small Power. Who is to judge what is the proper degree of interference? We feel that that clause is thoroughly objectionable, first because we do not propose to undertake an obligation which we must be sure of fulfilling, and, secondly, because we do not propose to give any Power the rights of unlimited interference in our own affairs.

The Soviet Delegate has stated that his Delegation places a great deal of importance upon the principle involved, the principle of joint responsibility. I suggest that there is no substance whatever in these words, and that they are mere words. I invite the Conference to compare the text of the second and third paragraphs of the present Article 11 with the text presented in the Soviet amendment. If any Delegate feels that the text of the Soviet amendment genuinely offers greater protection to prisoners of war, he should vote for it, but I feel confident that no reasonable person can reach that decision.

Mr. MEVORAH (Bulgaria): The discussion of this Article has suggested the two following ideas to me. The first is the problem of civil responsibility which has been dealt with under one form or another in every code of obligations; the second is the effect of the mandate. These problems have given rise to lively discussions in our countries, which all have definite ideas on the subject.

Let us consider first the question of civil responsibility. There have been long discussions to decide whether a person could be held responsible for the actions of another person. The principal idea, in the view of those who recognize such responsibility, is that of having made a wrong deal. A person may be held responsible for the action of another person, when the latter was incapable of adequately acting as a substitute for the former, or when the former did not watch closely enough the actions of the person acting as his substitute.

If you consider the question of the mandate from the same point of view, you discover the same theory. A person entrusted with a mandate must carry out the mandate given to him. He may, under exceptional circumstances, appoint another person to represent him. But in doing so, he will remain responsible for the actions of the other person. The predominant idea in this matter seems to me clear: it is again the idea of the mistaken deal.

On reading the text of this Article I came upon a very interesting idea which has been practically neglected, namely, that the Detaining Power must satisfy itself of the willingness and ability of the transferee Power to apply the Convention. We thus impose an obligation on the transferee Power, namely, a choice. Only one obligation rests on the Detaining Power: it is liable if the duty incumbent upon it is badly carried out. If the Power to which prisoners were transferred has failed to carry out the provisions of the Convention, if it has accomplished its duty unsatisfactorily, that means that the transferee Power was badly chosen. If the Detaining Power has not caused its own obligations to be respected, it will be responsible for the actions of the transferee Power.

The same notion governs *ex contractu* responsibility in transfer contracts. I therefore ask, for the last time, exactly how far the responsibility of the Detaining Power extends, and when and where the responsibility of the transferee Power begins? Does the notion of choice, which is precisely the concern of the Detaining Power—in other words, the obligation accepted by someone—continue and remain active beyond the transfer of the prisoners? Does this responsibility continue to operate as regards the actions of the Power which has accepted these prisoners and which has not carried out the duties entrusted to it? Is this a purely moral obligation? We are warning the transferring Power to take care to select a country capable of carrying out its obligation.

If the latter fulfils all its obligations, the idea of a bad choice does not arise. If, however, we continue to hold the Detaining Power responsible for the actions of the Power who has accepted the prisoners, then the idea of a bad choice would arise.

I wonder why so many delegations are opposed to penal responsibility. The question is perfectly clear. It applies to action taken by the Detaining Power which is responsible for the actions of the Power which takes its place. If the latter has committed reprehensible acts, we could call the Detaining Power to account for such acts; for instance, that prisoners having been transferred to another State, have been placed in unhealthy surroundings which have caused sickness and epidemics, from which some have died, etc. This argument seems perfectly natural. Why should this concept not be admitted, why should objections be raised? I should like to know what fault can be found with the wording of the proposal made by the Soviet Delegation. Why reject this amendment when the idea contained in it is acceptable?

I appeal to you to consider carefully this idea of choice which implies an obligation on the Detaining Power, and to examine if the latter could, in fact, be relieved of all responsibility should it transfer its prisoners to a Power of its own choice.

The PRESIDENT: There are still two delegations who wish to speak. In view of the late hour, the Meeting will adjourn and the discussion will be renewed this afternoon.

May I draw your attention to the fact that we have only been able to adopt one Article this morning, and remind you of the recommendations made by the Bureau. Will speakers be as brief as possible, avoid repetition and speeches which merely continue arguments which have already been set forth.

If some discipline is maintained it will be possible to avoid any decision by the Conference to limit the length of the speeches.

*The meeting rose at 1.05 p.m.*

## FOURTEENTH MEETING

*Tuesday 26 July 1949, 3 p.m.**President: Colonel W. R. HODGSON (Australia), Vice-President of the Conference*

## PRISONERS OF WAR CONVENTION

**Article II** (*continued*)

The PRESIDENT: We will continue our discussion of Article II, and I call upon the Delegate of the Union of Soviet Socialist Republics.

Mr. MOROSOV (Union of Soviet Socialist Republics): I would like to make a few comments on the objections made by the Delegation of New Zealand to the proposal submitted by the Delegation of the U.S.S.R.

It has been said that the form of this proposal is not happy, that the objections are to its form and not to its substance. I must say that as a matter of fact, the New Zealand Delegation often submits proposals which are not easy to interpret, and an effort is required to grasp their meaning. Our proposal is, however, perfectly clear, namely that responsibility must be joint. It has been objected that prisoners of war may be retransferred to the Power which captured them in the event of their having undergone treatment not in accordance with the provisions of the Convention in the country to which they were transferred. This argument is irrelevant because, in actual fact, I do not think that, in the course of hostilities Powers would transfer and retransfer hundreds of thousands of prisoners, if difficulties arose in connection with them in the country to which they had been transferred. As regards the possibility of intervention in the affairs of another country, which the principle of joint responsibility seems to open up, and to which the Delegate of New Zealand has alluded, I do not think there is much danger of this contingency arising. The responsibility under discussion has nothing to do with an interference in the affairs of another State. It is, moreover, easy to prevent this contingency from arising: all the Detaining Power has to do is not to transfer prisoners of war but to keep them in its own territory, if there is the slightest doubt that the State to which it is intended to transfer

them may not treat them properly. All the State has to do is to take full responsibility for prisoners of war it has captured. When they have to be transferred to another Power, this responsibility must remain operative.

I will not reply to the statement made by the New Zealand Delegation that our proposal is not justified, as, after all the arguments I have put forward during this Meeting, its meaning is perfectly clear, and I have no need to return to it.

Mr. GARDNER (United Kingdom): I have listened very carefully to the speeches in favour of this amendment in the desire to find out what it is in the text adopted by Committee II which does not secure what the proposers of the amendment seek. I venture to think they have not yet shown anything which ought to be achieved which is not achieved by the text prepared by Committee II, and I have heard no more convincing arguments in favour of this text than came this morning from the Delegate of Bulgaria, a view which I found was shared by other delegates in the Conference who listened to that speech. When the Conference opened there was a sharp division of opinion between those who favoured what was called joint responsibility and those who favoured what was called single responsibility. During the course of the Conference, delegates holding both points of view got together to see whether there was really any substantial difference between the two; and the formula eventually put forward and adopted, not only by Committee II but also by Committee III, was the result of the collaboration of those who favoured joint responsibility and those who favoured single responsibility. It represents, I venture to suggest to the Conference, a happy compromise in which neither side may have secured everything that it wanted, but both sides have secured everything which was essential to their point of view; and the whole purpose of a Convention such as we are discussing is surely to secure, not the triumph of one particular point of view over another, but rather the greatest

possible measure of common agreement, so that the nations of the world may work together on a basis to which they have all contributed. I suggest to the Conference that the whole issue as between joint responsibility and single responsibility died both in Committee II and in Committee III when this new text was adopted, and that this new text secures all the particular things for which the proposers and seconders of the amendment have argued today. I think therefore that the Conference would be wise to confirm the decision of Committee II, and that means rejecting the amendment.

The PRESIDENT: That closes the discussion. We will now vote on the Soviet amendment. I call upon the Delegate of the United States of America.

General DILLON (United States of America): The United States Delegation would like to explain its reason for supporting the text submitted by Committee II. Our Delegation has always supported the principle of joint responsibility. Joint responsibility is unfortunately a technical term. It is better expressed as dual responsibility. It is unfortunate to have used the term joint responsibility, because it is more than one Power responsible at one time, and yet only one Power can have control at one time. That Power is the Power that has the prisoner in its custody. We believe that dual responsibility gives greater protection for the prisoner of war. We believe further that the text as submitted by Committee II is the only practicable means of carrying out this dual responsibility. For that reason the United States Delegation will vote for the text as submitted by Committee II and will vote against the Soviet amendment.

The PRESIDENT: Any other comments? Very well, I shall put the Soviet amendment to the vote.

The amendment submitted by the U.S.S.R. Delegation was rejected by 20 votes to 14, with 5 abstentions.

I will now put to the vote Article 11 as a whole.

The Article was adopted by 29 votes to 8, with 1 abstention.

Mr. MOROSOV (Union of Soviet Socialist Republics): I wish it to be recorded in the Minutes that the Delegation of the U.S.S.R. voted against this Article.

The PRESIDENT: Yes, that can be done.

## Article 12

The PRESIDENT: We have no amendment. Are there any comments? I call upon the Delegate of the Netherlands.

Captain MELLEMA (Netherlands): I have only a few brief remarks to make. As we adopted the text of this Article in Committee II (*see Summary Record of the Twenty-ninth Meeting*), we used the word "prisoners" in the plural. The Drafting Committee altered that to "prisoner" in the singular; but as a doctor I think that the old text was better than the new. Certain medical measures taken for prisoners as a group may be applied to prisoners as individuals; but we still have the group as a goal. I will give you an example. New treatment for a certain disease is mostly carried out in the following manner. The patients are divided into two groups; and one of the groups receives the new treatment and another group the old treatment. If the new treatment is successful, it cannot be said that the old method is in the interests of the individual prisoner, whereas the new measure is taken in the interests of the prisoners as a group. Also in the case of new treatment for contagious disease, if patients are isolated, it cannot be said that the isolation is in the interests of the individual, whereas it is in the interests of the group. Therefore I think the text adopted by Committee II, that is to say, with the word prisoners in the plural and the words "their interests" is better than the new text, and I propose that we go back to the text adopted by Committee II.

The PRESIDENT: Does anybody else wish to speak?

Mr. COHN (Denmark): The Danish Delegation prefers the text of the draft submitted by Committee II. We do not think it would be desirable to use the plural instead of the singular, because this Article does not deal with general measures taken in the interests of all prisoners of war, but with certain measures (physical mutilation, or medical or scientific experiments of whatsoever character) which would not be justified by the medical treatment of the prisoners concerned, and would not be in their interest.

The essential thing, in my opinion, is that in every case the treatment proposed must be proved to be really in the interest of the individual prisoner of war, if it is to be authorized.

For this reason, we are unable to vote in favour of the amendment submitted by the Netherlands Delegation.

The PRESIDENT: Does anybody else wish to speak?

Mr. GARDNER (United Kingdom): Unlike the Delegate of the Netherlands, I have no claim to be a qualified doctor; but I can say that the advice of our own medical advisors at home before we came out to this Conference was exactly what Captain Mellema has said to the Conference. If the treatments which are experimental are to be limited by this kind of clause, the patients themselves will suffer in the long run and very often in the short run. It would have been quite impossible to develop the use of penicillin as it has been developed without dealing with groups of patients on different bases in the way that Captain Mellema has indicated. For that reason I hope that the Conference will stick to the text as adopted by Committee II, and not accept this change of substance which has been made as if it were only a drafting change.

The PRESIDENT: I want to make sure that we have the actual wording desired by the Netherlands Delegation. Do you wish the English text, paragraph 1, last sentence, to read: "in particular any prisoners of war" etc., and the last line to read: "or hospital treatment of the prisoners concerned and carried out in their interest". Is that correct, please?

Captain MELLEMA (Netherlands): Yes. I prefer the text of Article 12 as adopted by Committee II.

The PRESIDENT: I am not sure that that is not a point of substance for which the Assembly should have had due notice. I should like the views of the Rapporteur on this point and as to the proposed amendment.

Mr. GARDNER (United Kingdom): May I raise a point of order. The text which we have in front of us purports to have only drafting changes. You have ruled that it differs in substance from the text adopted by Committee II. I submit that the Drafting Committee had no authority to make a change in substance and that therefore, for the purposes of this Meeting, it is the text of Committee II and not the Drafting Committee's text which should be considered.

Mr. SÖDERBLOM (Sweden), Rapporteur: I was about to say, when I was interrupted, that I think the Plenary Meeting is entitled to revert to the text of Committee II. I might even add that, if there is any doubt on the point, it would be preferable to adhere to the text drafted by the Committees which have specialized in the subject.

The PRESIDENT: With all due deference, I did not declare that it was a point of substance; I

said I was doubtful and would ask the views of the Rapporteur. Therefore the question before the Assembly, which I think is one for you to decide by vote, is whether you accept the text before you or whether you go back to the text of Committee II, which, in effect, means the adoption of the amendment proposed by the Delegate of the Netherlands.

Captain MELLEMA (Netherlands): Could we not ask the Drafting Committee why they changed the text?

The PRESIDENT: This Committee is holding a meeting, I understand, but if there is any representative of the Drafting Committee here and he would like to speak on this point or to give us an explanation, we should all be happy to hear it.

General DILLON (United States of America): I was present at the meeting when this change was made and I heard the reasons given for such a change. The word "prisoner" in the penultimate line of the first paragraph has an antecedent in the word "prisoner" in the beginning of the same sentence. It was in order to give the two terms the same sense that they changed the word "prisoners" into the singular "prisoner" in the penultimate line. It was only in order to make it agree with what had gone before.

Mr. COHN (Denmark): I was also present at the meeting of the Drafting Committee, and was under the impression that it had been decided to use the singular in order to make the position of prisoners of war clearer and safer.

The PRESIDENT: Well, Gentlemen, we shall vote on the point. The Drafting Committee, in the text before you, proposes in the last line the words "treatment of the prisoner concerned and carried out in his interest"; the amendment before us is that we revert to the text of Committee II, which reads "of the prisoners concerned and carried out in their interests". In order to make it clear I shall first put the text of Committee II to the vote because it has taken the form of an amendment. Will all those who favour the text of Committee II please indicate their views.

The amendment was rejected, there being a tie, 17 votes to 17 with 6 abstentions.

Captain MELLEMA (Netherlands): Which amendment is rejected, that of the Drafting Committee or that of the Netherlands Delegation?

The PRESIDENT: Both; they are both the same.



Captain MELLEMA (Netherlands): So we now have no Article?

Mr. GARDNER (United Kingdom): I submit to you that the text before this Meeting is the text as recommended by Committee II, only subject to drafting amendments made by the Drafting Committee. This amendment was not a drafting amendment; it was an amendment of substance, and therefore the vote was a vote on whether the text proposed by Committee II should be amended as recommended by the Drafting Committee. If you accept my submission, Sir, then the recommendation of the Drafting Committee failed to secure a majority.

The PRESIDENT: In reply to the Delegate of the United Kingdom, I consider that what he submitted was a point of order. I clearly explained what I was going to do and the point of order should have been put before and not after the vote was taken. In the second place, it had been made very clear at the outset of the first meeting of this particular Convention, that our basic paper would be the text drafted by Committee II and revised by the Drafting Committee, and the Secretary informs me that the President's proposition was adopted by the Assembly. Therefore, in reply to the point of order, the ruling is that this is the basic document, the amendment submitted by the Netherlands Delegation was an amendment to this document or to the text before us and that amendment failed.

There is no further observation. I will put Article 12 as a whole before you. Article 12 as a whole was adopted by 38 votes to NIL, with no abstentions.

#### Article 13

The PRESIDENT: No amendments are submitted. Is there any discussion? None.

The Article was adopted.

#### Article 14

The PRESIDENT: We have an amendment proposed by the Delegation of the United Kingdom.

Mr. GARDNER (United Kingdom): This is another change made by the Drafting Committee to the text of Committee II, which makes a drastic alteration unfavourable to the prisoner. If you will read the text drafted by Committee II and revised by the Drafting Committee, you will see it provides that the prisoner shall have free of charge main-

tenance. Then it goes on to provide for the grant of medical attention. The effect of that text is that the grant of medical attention is not necessarily free of charge, whereas in the text as adopted by Committee II it was quite clear that maintenance and medical attention were to be free of charge.

We therefore propose to delete from the text as recommended by the Drafting Committee the three words "to grant them", which, so far as at any rate the English version is concerned, will have the effect of making it clear that medical attention is also to be free of charge.

Mr. SÖDERBLOM (Sweden), Rapporteur: If I have correctly interpreted the unanimous opinion of the Committee, it was to the effect that upkeep and medical treatment should be free of charges. The suggested alteration to the English text must therefore be accepted.

With regard to the French version, the proposed alteration should be worded differently. It seems to me that it is difficult to say "pourvoir aux soins médicaux". It would be preferable to say "pourvoir gratuitement à leur entretien et leur accorder gratuitement les soins médicaux... etc.". If this wording was adopted, there could be no possible ambiguity.

The PRESIDENT: Does anybody else desire to speak? If not, you have the United Kingdom amendment before you to delete the words "to grant them".

The amendment submitted by the United Kingdom Delegation was adopted by 42 votes to NIL with no abstentions.

I shall now put the Article as a whole and as amended to the vote.

The Article as a whole and as amended was adopted by 43 votes to NIL.

#### Article 14A

The PRESIDENT: We have no amendments to this Article, but I will invite your attention to the views of the Drafting Committee (*see Report of this Committee*) who drew attention to the words "prejudicial discrimination" used in this Article, whereas in Article 10 of the Wounded and Sick Convention and Article 11 of the Maritime Warfare Convention those two words were replaced by the words "without any adverse distinction", and the Committee suggests that for the sake of consistency and uniformity you adopt those words. Is there any objection to that? As there appears to be no objection we will consider the Article as adopted with the modification indicated.

I call upon the Delegate of Albania.

Mr. BUDO (Albania): I cannot quite see what is the right translation of "distinction discriminatoire". The question seems to me to have a certain importance; for if the English words "discriminatory distinction" are retained, this would not be very satisfactory, as it might be interpreted to mean that a distinction can be made, provided it is not contrary to the prisoners' interests. But this was not what we intended, since that would open the way to irresponsibility. On the contrary, any form of distinction is prohibited.

The PRESIDENT: I thought we had adopted that Article. We had a long discussion previously on the two other Conventions. I call upon the Delegate of France, who desires to speak.

Mr. LAMARLE (France): I voted in favour of adopting the terms proposed by the Drafting Committee; but, in reply to the remarks made by the Delegate of Albania, I should like to point out that the expression "distinction discriminatoire" is not good French; it is a repetition, a tautology, saying the same thing twice. This was why I voted in favour of the words "without any distinction of an unfavourable character". One could also say "without any discrimination of an unfavourable character", but you cannot use the two words "discrimination" and "distinction" together, because the word "discrimination" in itself implies the idea of distinction.

The SECRETARY-GENERAL: May I draw the Delegate of Albania's attention to the fact that he will find the exact terms proposed by the Drafting Committee in the Report of this Committee. As the French Delegate has told us that these are the most expressive terms, I would suggest that you should regard the vote which has been taken as final, and that the expression proposed by the Drafting Committee, "without any distinction of an unfavourable character" should be adopted by the Assembly.

### New Article (14B)

The PRESIDENT: If that satisfies the French Delegation, and I presume it does, we will pass on to Article 14B, a new Article proposed by the Delegate of the United Kingdom (*see Annex No. 102*). I will call upon the Delegate of the United Kingdom.

Mr. GARDNER (United Kingdom): Experience has shown us in the United Kingdom that there are times when it becomes extremely difficult, even impossible, to carry out all the provisions of the Prisoners of War Convention even with the best

will in the world. In the previous discussion on this subject nobody disputed in Committee II that that was so. The sole difference of opinion was as to whether the Convention should recognize the fact and try to safeguard the position or whether the Convention should ignore the fact and leave people to defend their actions subsequently. The United Kingdom Government feel that it is unreal to adopt a Convention which, you say, must be carried out at all times, knowing that circumstances will inevitably arise in war when it will be temporarily impossible to do so.

When we left the shores of the United Kingdom in company with gallant Allies to invade anew the continent of Europe with a view to its liberation, we made plans, as we were in duty bound to do, for the care of the prisoners of war we hoped to take. Our plans proved inadequate because the operation was successful to a degree we could never have anticipated and the number of prisoners on our hands and the pace of development of the invasion and the advance were such that it was quite impossible to maintain the true standards of treatment for prisoners without endangering the liberation of Europe from the West. That is the kind of choice with which commanders in the field have been faced, not only in that instance but in others I could give you from the history of the last war, and with which commanders in the field will be faced in future wars.

We suggest to the Conference in drawing up a Convention that it should recognize that those things will inevitably happen, and that this Convention should include provisions regarding them. So we ask that temporary derogations from the present Convention shall be permissible where exceptions to the present Convention are rendered inevitable by the conditions immediately following capture. Those conditions will vary; but it is practically certain that the vast majority of prisoners cannot receive all the treatment the Convention sets down in the period immediately following capture.

Another development which experience leads us to believe will inevitably occur in any future war on a large scale is the temporary interruption of means of communication and supply services in the neighbourhood of camps where prisoners of war are held. It is common knowledge that we, by no choice of our own, had considerable experience of the effects of heavy bombing and we know that one night's heavy raiding may break down the whole of the supply services in a particular area and involve placing the population of that area on some emergency ration basis—for water and so on. If there are prisoner of war camps whose services depend upon the communications running through that area, those services may be tem-

porarily interrupted; and that is the second class of case in which we ask the Conference to recognize that there will inevitably be temporary derogations from the provisions of the Convention. We have, as we always try in these difficult situations, to provide what safeguards can be provided. We ask that these exceptions shall not infringe the fundamental principles of the Convention. I have heard some people suggest that they do not know what these are; but I do not think that can be a serious objection after three months of discussing the Conventions. We ask that they shall be reported to the Protecting Power without delay, and that they shall cease as soon as the conditions which caused them can be brought to an end. I would emphasize that we have chosen the English word "can" as indicating that it must be done at the earliest date that is possible.

As I said at the outset in Committee II nobody disputed that these sort of conditions will arise; and, when they arise, derogations from the Convention are inevitable. What then was the answer of the majority to our proposal? It was that you can always plead failure to carry out the Convention on the grounds of impossibility of accomplishment. The difficulty we feel about this doctrine of impossibility is that it is not always absolutely impossible to do these things; and the illustration I took at the beginning, which is an illustration from history and not from imagination, was that the commander concerned might have serviced those prisoners if he was prepared to delay his operations. I believe the Conference will agree with me that the suffering resultant to humanity from that delay would have far exceeded the temporary discomfort which the prisoners had to undergo. In such a case the doctrine of impossibility does not, I submit, really meet the situation.

In the discussion in Committee II one delegation went further and suggested that there was another doctrine, which was always a good defence. The doctrine was described as that of military necessity. We are a little nervous of the doctrine of military necessity being brought in to justify derogations which have deliberately been ignored; but, if the Conference really believes that it is wise to let the defence rest on military necessity instead of binding the Parties to the Convention by an Article such as this, then we hope it will say so, and that fact will be clearly recorded for the information of posterity in the Minutes of this Plenary Meeting.

To put the matter in a nutshell, the United Kingdom Government do not like signing a Convention which they know will be subject to derogation in such conditions without saying so in the Convention. They do not like leaving these derogations to chance. They would like to bring

them under control; and for that reason they regard the second paragraph of this Article, which I now propose, as even more important than the first paragraph. I hope the Conference will agree with us.

Mr. FENEŞAN (Rumania): One of the major preoccupations of Committee II was to eliminate any possibility of abuse in the individual provisions of the Prisoners of War Convention. The Plenary Meeting ought to take even greater pains to ensure that no opening is left for different interpretations which might lead to abuses in connection with the implementation of the Convention as a whole.

The amendment submitted by the United Kingdom Delegation relates to possible violations of the Convention. Such an amendment, if adopted, would present a grave danger for the implementation of the Convention, both by facilitating subjective interpretations and by making it possible to invoke conditions which would justify non-implementation. We believe that the principal task of the Diplomatic Conference and its most constant resolve should be to ensure respect for the Conventions, rather than to offer justification for those who consider international conventions as having no binding force. The arguments just presented by the Delegate of the United Kingdom do not appear to us to be sufficiently convincing. For that reason the Delegation of Rumania proposes that the Assembly should reject the suggestion of the United Kingdom as was done by Committee II.

General DILLON (United States of America): The United States Delegation is opposed to this amendment. This type of provision is full of danger, however good may be the intention of its sponsors. It seems to us that, if a Government feels that some particular provision of an Article is impracticable or impossible of fulfilment, it should seek to have the provision modified or deleted; but when a Convention has been considered, Article by Article, and line by line, and agreed upon, there is no need for sweeping general provisions leaving it to the discretion of the interested party to decide whether exceptional conditions release it from its obligations under the Convention. Of course, no one is held to the impossible. This is sound law and sound sense and needs no specific statement in this or any other Convention. But it must be assumed that, when a specific provision is agreed to in this Convention, it is because it has been considered to be both practical and possible. For these reasons, the United States Delegation feels that this amendment should be rejected. Such provisions only encourage belligerents to find excuses for relieving themselves of their obligations

under this Convention. Such provisions involve a nullification of the Convention, and render uncertain what treatment prisoners of war have a right to expect. For that reason the United States Delegation reject this amendment.

General SKLYAROV (Union of Soviet Socialist Republics): The United Kingdom amendment calling for a new Article 14B in the Prisoners of War Convention is not new. The same proposal was examined in Committee II on April 28, that is to say, at the beginning of that Committee's work. It has also been studied by the Special Committee and was rejected by an overwhelming majority.

During the discussions which followed the submissions of this amendment, a number of delegations raised objections to the proposal, more particularly the Delegation for the Union of Soviet Socialist Republics, the Netherlands Delegation, the Swiss Delegation and the Delegation of the United States of America. These Delegations, particularly the Netherlands Delegation, emphasized that if the proposal was accepted it would give rise to great abuses.

The United Kingdom proposal is a dangerous one and might even result in nullifying the effects of the present Convention, as the Delegate of Switzerland has just pointed out.

The Delegation of the Union of Soviet Socialist Republics reiterates its point of view, as already expressed during the meetings of the Committee. The Delegation considers that it is wholly unjustifiable to provide for certain exceptional circumstances in which it would be permissible to violate the Convention. Our principal task is to ensure that the Convention shall be applicable, not to create situations in which it might be possible to avoid applying it.

It is for this reason that the Delegation of the Union of Soviet Socialist Republics moves the rejection of the United Kingdom amendment, not only because it might give rise to abuses, but also because already at this stage, it provides for, and justifies violations of the Convention.

The PRESIDENT: Does anyone else desire to speak on this amendment? We will then proceed to vote on the proposed new Article 14B as set out in the amendment submitted by the United Kingdom Delegation.

The proposed new Article 14B was rejected by 30 votes to 2, with 4 abstentions.

### Articles 15, 16, 17, 18 and 19

Articles 15 to 19 inclusive were adopted.

### Article 20

The PRESIDENT: We have an amendment proposed by the Soviet Delegation.

Mr. MOROSOV (Union of Soviet Socialist Republics): In examining Article 20 we have to take into consideration the fact that, as in the 1929 Convention, it is assumed that prisoners of war belonging to the armed forces of different countries will be interned in separate camps according to their nationality, language and customs. Article 20, as drafted by Committee II, might be interpreted as making it permissible for prisoners belonging to the armed forces of any one country to be placed in separate camps or in camp compounds according to their nationality, language and customs. That would be contrary to the wishes and to the interests of prisoners of war. When the amendment of the Union of Soviet Socialist Republics was examined in Committee II, the United Kingdom Delegation proposed the addition of the words "unless they so consent" indicating that the text of Article 20 together with our amendment, would be acceptable to the United Kingdom Delegation. We are in agreement with that Delegation, and we accept the addition proposed by it. Thus the last paragraph of Article 20 would read as follows:

"The Detaining Power shall assemble prisoners of war in camps or camp compounds according to their nationality, language and customs, provided that such prisoners shall not be separated from prisoners belonging to the armed forces in which they were serving at the time of their capture, unless they so consent."

The text proposed by us for this paragraph of Article 20 is in conformity with the spirit of the Convention, for it takes account of the interests of the prisoners of war as well as the practice at present in force relating to their internment.

The PRESIDENT: I would ask you to take note that in the third paragraph of Article 20, is a small typographical error. It should read in the *English text*: "camps or camp compounds according to their nationality".

Mr. LAMARLE (France): A mere glance at the two texts leads at once to the conclusion that the text proposed by the Delegation for the Union of Soviet Socialist Republics is very much better than the one submitted to us. This text covers everything which is in the first one, but says it much more clearly and accurately. Furthermore, it is drafted in much better French. I believe that the Assembly should be able to approve unani-

mously the very useful amendment submitted by the Delegation of the Union of Soviet Socialist Republics.

Mr. GARDNER (United Kingdom): The United Kingdom Delegation agrees entirely with what the French Delegate has just said.

The PRESIDENT: Are there any other comments? There being none, we will proceed to a vote. The amendment to Article 20, submitted by the U.S.S.R. Delegation was adopted unanimously.

I will now put to the vote Article 20. Article 20 as a whole as amended was adopted by 43 votes to NIL.

#### Articles 21, 22, 23, 24, 25, 26, 27, 28, 29, 29A

Articles 21 to 29A inclusive were adopted.

#### Article 29B

The PRESIDENT: We now come to Article 29B. On that we have two amendments. One is submitted by the Delegations of the Netherlands, the Holy See, Italy, France, Mexico and Portugal (*see Annex No. 110*). We also have an amendment submitted by the Delegation of New Zealand.

In view of the fact that a similar amendment was withdrawn in the case of a previous Article, I would first like to ask whether the Delegate of New Zealand desires to maintain his amendment.

Mr. QUENTIN-BAXTER (New Zealand): No, Sir, I wish to withdraw this amendment for the reason you have mentioned.

The PRESIDENT: Thank you. Then we have before us just the one amendment submitted by the above mentioned delegations and I will call upon the Rapporteur.

Mr. SÖDERBLOM (Sweden), Rapporteur: I should just like to mention that the idea underlying this amendment has already been discussed, if I am not mistaken, four times during this Conference. I also believe that all the arguments are quite well known; I make this remark in the hope of averting an unduly prolonged discussion.

Mr. BAISTROCCHI (Italy): In its Report, the Committee of Experts of the Coordination Committee drew the attention of Committee II to the fact that the provisions of Article 22 of the Wounded and Sick Convention, which define, *inter alia*, the duties of medical personnel and chaplains retained

in prisoner of war camps, are very inadequately reproduced in the Prisoners of War Convention. This comment is perfectly legitimate; it corresponds to the opinion voiced by several Delegations during the discussions in Committee II. At the meeting on July 12th the Netherlands Delegation submitted an amendment to substitute a new text for Article 29B. That Article embodies and summarizes the provisions relating to the duties, privileges and—if the term may be used—prerogatives of retained medical personnel and chaplains.

The Netherlands Delegation and other Delegations consider that these provisions are inadequate to enable the commandant of a prisoner of war camp to know what rules he must follow in treating medical personnel and chaplains. Yet some delegations suggested that it tended to overburden the Convention. It would, however, be undesirable if our work would be unduly influenced by pure questions of style. Certain delegations have pointed out that the inclusion of the provisions of Article 22 of the Wounded and Sick Convention was unnecessary, since these provisions are already referred to in the Convention, and a reference to the relevant Articles would be quite sufficient. I should like to remind you that the first proposal considered by Committee II was a Canadian amendment, with a footnote giving a reference to Article 22 of the Wounded and Sick Convention. It was decided however for technical and practical reasons to omit the footnote, but not before a considerable number of delegations had expressed themselves in favour of the proposal.

I have already stated that the text of our Convention should serve as a guide to commandants of prisoner of war camps. It is possible, however, that some countries, signatories of the Prisoners of War Convention, might perhaps not be prepared to sign the Wounded and Sick Convention.

The main purpose of our work is to ensure that the provisions of these Conventions will be quite clear to those who are called upon to apply them. They should be worded in such a way that they are "workable", to use a word which one of our colleagues has frequently employed in the course of our discussions.

The Italian Delegation is compelled to state, for the same reasons as those already voiced by the French Delegate, that they are not entirely satisfied with the wording of Article 22 of the Wounded and Sick Convention. This wording is certainly not an improvement on the 1929 Convention. It contains certain restrictions which render the privileges and safeguards in favour of medical personnel and chaplains less effective and which are therefore to the advantage of the prisoners of war themselves. But the text has at least the merit of being clear, and of containing clear cut

directions for those who will have to apply these provisions, namely commandants of prisoner of war camps.

For all these reasons, the Italian Delegation, together with those Delegations which expressed their concurrence with the principle of the Netherlands amendment, sincerely hopes that the delegations represented here will vote in favour of the amendment, so that a deficiency which might have dangerous consequences may be made good.

Mr. FILIPPOV (Union of Soviet Socialist Republics): The Delegation of the U.S.S.R. considers that Article 29B, adopted by Committee II, which defines the status of retained medical personnel and chaplains, accurately specifies the conditions which will enable such personnel to carry out the duties assigned to it by the Prisoners of War Convention. The amendment submitted to us by the Delegations of the Netherlands, the Holy See, Italy, France, Mexico and Portugal does not strengthen the provisions laid down in Article 29B and in the corresponding Articles, it weakens them. Besides Article 29B, which defines the status of retained medical personnel or chaplains, Articles 28, 29, 30, 30A, 30B and 30C enumerate the conditions enabling such personnel to carry out their duties of rendering medical or spiritual assistance to prisoners of war, and regulate their relations with the responsible authorities. Thus, according to Article 30A, chaplains have the right to correspond freely on religious matters with the ecclesiastical authorities in the country of detention and with international religious bodies.

In the amendment submitted to us an allusion is made to Article 20 of the Wounded and Sick Convention. This reference seems to us inadmissible, as the Prisoners of War Convention is an entirely independent document and the allusions in its Articles to other Conventions, in particular the Wounded and Sick, might involve difficulties if the Parties to the conflict were not signatories to both Conventions. The Delegation of the U.S.S.R., taking into account the fact that Articles 28, 29, 30, 30A, 30B and 30C deal both adequately and accurately with all questions arising in connection with retained personnel, fails to see the necessity of altering the text of Article 29B adopted by Committee II.

The proposal put forward by the Delegations of the Netherlands, the Holy See and certain other delegations is not new. As already pointed out, the amendment to Article 29B (*see Annex No. 110*) submitted to Committee II by the Delegation of the Netherlands at the meeting of 12 July and rejected by that Committee, was identical with the one now under discussion.

The Delegation of the U.S.S.R. is opposed to the amendment now before us and will vote against its adoption.

Mr. AGATHOCLES (Greece): The Greek Delegation gives its full support to the amendment proposed by the six delegations, and suggests that, if this amendment is accepted by the Meeting, the Drafting Committee should be asked to coordinate the wording of the new Article with Article 22 of the Wounded and Sick Convention so that the texts may agree.

Mr. GARDNER (United Kingdom): I want to support what the Soviet Delegate has said, and to add that, I suggest, this is one of the most ill-thought out amendments ever submitted to a responsible body of delegates. The position of chaplains who are retained to look after prisoners of war is dealt with in Article 30A, adopted by Committee II and anybody who will take the trouble to compare this amendment with Article 30A will find that the treatment of chaplains under Article 30A is more favourable than under this proposal, so that the authors of this proposal intend to write into a Convention a series of provisions about chaplains which are inconsistent with the provisions already in that Convention a few Articles later on.

I am not going to take up your time in showing the other inconsistencies in this document, which is a repetition of Article 22 of the Wounded and Sick Convention which was drawn up by Committee I without any consultation with Committee II, and, I venture to suggest, without any full understanding of the machinery or the circumstances of prisoner of war camps. Article 30A, on the contrary, was the result of careful deliberation in Committee II and represents what the Committee of Experts on prisoner of war camps thought was right and proper for chaplains. A similar Article was proposed for doctors, and was rejected by those who are now pressing this particular amendment, as to which I venture to suggest that the more you examine it in relation to the Prisoners of War Convention, the more it will become apparent that it fails to do what it intends to do. It does not fill the gap. If anything, it exaggerates the gap which is already left as a result of the decisions of Committee I.

General DILLON (United States of America): The United States Delegation has consistently, up to this point, opposed the amendment which is submitted to Article 29B. The United States Delegation opposed it, not because it had any objection to the contents, but because it felt it was too detailed in material for a Convention.

After further reflection, and after studying the entire Convention and appreciating how thoroughly detailed all the Articles are, we have changed our view. We believe that this Article—this proposed amendment—is properly included in the Convention; without it there is a gap which leaves the position of medical personnel somewhat unexplained.

As to the United Kingdom Delegate's point that it is repetitious as to the benefits to be obtained under the Convention by chaplains, I would say that, if that is its only evil, I suggest that we adopt it. Repetitive words are cheap. I suggest that if we give to medical personnel what we intend to give, and the cost of so doing is merely to give repetitively what we intend to give to chaplains, then the cost of gaining our intention is cheap. For that reason, and for the reasons previously stated, the United States Delegation supports this amendment.

Dr. PUYO (France): After the speech made by the United States Delegate I wonder whether it is really necessary to give further support to the amendment. Its humanitarian bearing must be evident to all. I think, however, that it may be useful to dissipate the slight doubts which may perhaps still exist in certain minds. We will therefore run over some of the arguments once again.

The Delegate for the Union of Soviet Socialist Republics stresses the fact that the text proposed to you is taken from another Convention, and that it is therefore out of place in the Prisoners of War Convention. It would be quite easy to reply: we have already adopted, in Committee I, a text taken from the Prisoners of War Convention, Article 3, which has now become Article 10A, contained a list of the categories of persons to whom the Wounded and Sick Convention shall apply.

Another argument might be that Article 29B, as it is proposed, is sufficient, because it is of general application; moreover, the following Articles make provision for all cases. I have no wish to go into detail or to study the effect of all the Articles one by one in their relation to Article 29B. It will suffice to define certain omissions. Neither Article 29B nor the subsequent Articles make any mention of the designation of a spokesman for medical personnel. The question is one of very great importance; the considerable responsibility which we have placed upon the leader of the medical personnel, in view of his grade and his seniority, is an idea by which we set great store. It is the leader of the medical personnel who will decide upon the functions of the spokesman, in accordance with our decisions laid down

in Article 22 of the Wounded and Sick Convention. Nor do the subsequent Articles contain any reference to relief, an important stipulation of the Prisoners of War Convention. Lastly, we must not overlook the obligations of the Detaining Power to provide prisoners of war with medical and spiritual assistance, a stipulation which absolutely must be included in the Prisoners of War Convention.

A third objection: if the Soviet Delegate considers that the wording of Article 29B is sufficiently clear and precise, I doubt if a prisoner of war, when reading the Article posted on the camp notice board, as the rule stipulates, would find it sufficiently clear to understand all the rights to which he is entitled under the Convention. It is precisely by an enumeration of these rights in great detail that a prisoner of war can obtain this knowledge.

With reference to the United Kingdom Delegate's statement pointing out that Article 29B is badly drafted and formless, I can only say that I share his opinion. But, if that is so, it is because the draft is the result of a number of compromises and in fairness I must say that the United Kingdom Delegation did not always make our task easier. Article 29B, as you know, merely reproduces our old friend article 22 of the Wounded and Sick Convention.

Badly drafted it may be, but such as it is it has been adopted by an overwhelming majority of the Conference. It has therefore proved its right to be embodied in the Prisoners of War Convention.

With regard to the last argument advanced by the United Kingdom Delegate, I should like to point out that while his own country has considerable experience as a Detaining Power, other countries have also had experiences which must be taken into consideration, experiences acquired from having been prisoners of war themselves. And I venture to think that, in this matter, the Delegates of Italy, France and the Netherlands have a perfect right to insist that their experiences should be taken into account. I therefore hope that you will accept this Article 29B, so aptly seconded by the United States Delegation and with the amendment submitted by the Delegate of Greece.

Mr. GARDNER (United Kingdom): I apologize for speaking again. There is a small correction I would make in what General Dillon said about my remarks. I did not say that the provisions were repetitive. I said they were inconsistent; and nothing that he has said alters the fact that Article 29B as proposed and Article 30A are inconsistent.

I really rose, however, to answer the French Delegate, who suggested that the United Kingdom Delegation had not assisted in framing Article 22. It is perfectly true that every effort made by the United Kingdom Delegation to reach agreement was frustrated. It is not true that the United Kingdom Delegation did not go to the very limit, admissible within its instructions, to try to secure agreement; and I venture to think that most of the things that find their place in Article 22 now have in fact been accepted from amendments tabled by the United Kingdom Delegation at an earlier stage. It ill becomes the French Delegation to suggest that we did not help.

Secondly, I would remind the French Delegation that the United Kingdom had a very wide experience of its own personnel being in the hands of the enemy as well as of enemy personnel being in its own hands. All we have said at this Conference has been based not on the experience of a Detaining Power only, but also on the experience of a Power who had hundreds of thousands of its own nationals as prisoners of war in the hands of the enemy in the last war; and if I have ventured to plead that the gap, which I believe exists in this Article, should be made good, as I did when we were discussing the first Convention, it is because of the experience of our doctors in the hands of the enemy during the war.

Mr. QUENTIN-BAXTER (New-Zealand): In the first place there are two small drafting changes which I think may be made in this Article, should the amendment be accepted. I bring them up at this point simply because it appears that there will not be an opportunity later. In sub-clause (b) of the second paragraph of the English text we talk about the "associations" mentioned in Article 20 of the Wounded and Sick Convention. That word should be "societies" if the text is to be uniform. In sub-clause (c) we have a phrase which makes strange reading in English: "Although it shall be submitted to the internal discipline of the camp in which it is retained, its personnel may not be compelled" and so on. The word "it" I take it refers to "members of the medical personnel" which in itself is a strange phrase but at least we might speak in the plural and say "Although they shall be submitted to the internal discipline of the camp in which they are retained their personnel may not be compelled" or perhaps "such retained personnel". At any rate that might be improved.

Further, I should like to make this one comment. I have not myself sat in Committee II on more than one occasion but it is surprising to me to find that at the end of three months' work on a Convention which was already in existence, six or seven delegations—some of them large ones—should

come before this Conference and plead that it is now necessary to introduce a long Article to fill a gap, the extent of which they have apparently not previously realized. I should like to ask whether those delegations have any amendments to propose to Article 30A in the event of this amendment being accepted or do they regard it as a matter of small concern that after three months' work on the committee stages we should have a Convention with inconsistencies in its text?

The PRESIDENT: I have two more speakers on my list, the Delegate of Denmark and the Delegate of Italy. I will call upon the Delegate of Denmark.

Mr. COHN (Denmark): I should like to put one question with regard to the procedure we are to adopt for the proposals submitted to us. Will the question be referred to the Drafting Committee after the vote, or would it not be wiser to refer it to that Committee before the vote? Some Delegations have said that certain expressions were not quite accurate, either from a linguistic point of view, or in relation to the provisions in other Conventions. I think we ought to have some definite ruling on this point of procedure.

The PRESIDENT: In reply to the Delegate of Denmark I should say that we should vote first on the amendment to Article 29B because I do not see any point in referring it at this stage to a Drafting Committee when it may be defeated in its entirety; so let us know the principle first, whether we are going to adopt the amendment or not. Unless you disagree with that I suggest we vote on the amendment first and then we can consider the suggested drafting changes subsequently. I will call upon the Delegate of Italy.

Mr. BAISTROCCHI (Italy): I should like to say a few words about the statement just made by the New Zealand Delegate. He expressed some surprise that certain delegations had only realized at the last moment that there was this gap in the Convention. But as I have already pointed out in this Hall, we knew it was there from the outset. It was referred to in the Netherlands amendment, and the Article itself gave rise to considerable discussion in Committee II.

You are all aware that the question of the status of medical personnel and chaplains was exhaustively examined. Very involved discussions took place, and it was natural that the New Zealand Delegate should refer to this point.

With regard to the alterations suggested by the Delegate of Greece, we have said at previous meetings that we were prepared to accept them.



The modifications proposed by the New Zealand Delegate, like those suggested by the Greek Delegate, do not affect the substance of the amendment.

I therefore agree with the President that the amendment we have just discussed should be put to the vote, and subsequently, if necessary, be referred to the Drafting Committee for the necessary alterations.

Mr. WINKLER (Czechoslovakia): The Czechoslovakian Delegation opposes the amendment submitted by the Delegations of the Netherlands, the Holy See, Italy, France, Mexico and Portugal for the same reasons as have been stated here by the United Kingdom Delegation and by the Delegation of the Soviet Union. After having listened to the arguments of the Delegate of France I can only state with all deference to the French Delegation that these arguments fail to change in any way the conviction that we share with the Delegation of the United Kingdom and with that of the Soviet Union, that the amendment in question is not necessary, the objects being already covered by the other provisions of the Convention. Therefore my Delegation is going to vote against this amendment submitted by the six above mentioned Delegations.

The PRESIDENT: I presume we can now proceed to a vote. The proposal is that we replace Article 29B by the text submitted by the Joint Delegations.

The text was adopted by 24 votes to 16 with 3 abstentions.

Now we have two drafting changes proposed by the Delegate of New Zealand. I suggest that you agree to refer this back to the Drafting Committee and then we will defer the vote until we can see the clean text as a whole. In the meantime I would suggest that the Delegate of New Zealand might indicate verbally or in writing the precise wording he would like to see in paragraph 2. If that is agreeable to you we will defer the vote on Article 29B as a whole and pass on to Article 30 to which there are no amendments. I think you agree.

### Article 30

The PRESIDENT: Are there any comments on Article 30?

Article 30 was adopted.

### Article 30A

The PRESIDENT: We now come to Article 30A on which there are no amendments.

Mr. GARDNER (United Kingdom): I merely want to say that as Article 29 B has been adopted Article 30A is now a contradiction in some respects. I ask the Conference to vote against it as an unnecessary Article.

Captain MOUTON (Netherlands): The Netherlands Delegation proposes to refer Article 30A, together with Article 29B, to the Drafting Committee in order to bring the two texts into harmony with one another.

Mr. GARDNER (United Kingdom): I thought that Article 29B was adopted and therefore Article 30A was clearly out. If the Netherlands Delegation press their proposal, I suggest that it is necessary for this Meeting to give some instructions to the Drafting Committee because the reconciliation of those two Articles will raise question of substance and not just questions of form. It is not within the terms of reference of the Drafting Committee to settle questions of substance. That was the difficulty I saw in adopting Article 29B, but having adopted it I suggest that the Conference can only consistently act now, by deleting Article 30A. We have already provided in Article 29B for chaplains who are retained and for the facilities to be given to them, and Article 30A therefore becomes completely unnecessary. On the other hand, if what the Netherlands Delegation really means is that in so far as Article 30A is a better Article than Article 29B and that Article 29B ought to be revised, then I think a two-thirds majority is really needed to modify the decision just taken. What is certain is that you cannot adopt the two Articles without introducing confusion into the Convention.

The PRESIDENT: I should like to make the position as the Chair sees it quite clear before I call upon the next speaker.

You have just adopted Article 29B. If you send that back to the Drafting Committee you cannot do so and give the Committee authority to bring it into line with Article 30A. All the Drafting Committee can do is to take into account the two drafting changes suggested by the Delegate of New Zealand.

We now have before us two proposals, one made by the United Kingdom Delegation for the rejection of Article 30A. The second proposal, that made by the Netherlands Delegation, is that we send Article 30A back to the Drafting Committee. That is the question put to the Assembly.

Captain MOUTON (Netherlands): The Netherlands Delegation agrees completely with your proposal, Mr. President. You have explained our

ideas and what we actually meant by this proposal, and we should like to ask the Drafting Committee to delete from Article 30A any provisions already contained in Article 29B.

The PRESIDENT: I should like to get this clear. Your proposal is that we refer Article 30A back to the Drafting Committee in order to bring it into harmony with Article 29B just now adopted by this Assembly.

The Delegate of the Netherlands indicates that that is his point of view.

Msgr. COMTE (Holy See): The comments made on Article 30A resulting from the adoption of Article 29B in the form proposed by certain delegations, have not escaped the attention of the Delegation of the Holy See. May I venture to point out, however, that the stipulations of Article 29B, which have just been adopted, differ from those of Article 30A. Article 29B is chiefly concerned with the status to be granted to retained personnel, whether medical, or placed on the same footing, that is chaplains. But if you had referred to the amendment which has just been adopted, you would have realized that this Article is far more concerned with the treatment of medical personnel than with that of chaplains. In Article 30A, the position is viewed from a different angle; it is not a question of deciding the status of retained soldiers or doctors, but of defining the facilities given to chaplains to perform their duties.

Therefore Article 30A has to be considered from quite a different point of view, and I wish to ask for your special attention on this point. So much labour was spent in Committee II on drafting these Articles, 30A, 30B and 30C that I think it unnecessary to bring the question up again; but as Article 29B has just been adopted, we would have no objection to Article 30A being referred to the Drafting Committee in order to coordinate it with Article 29B, if it is really necessary for drafting reasons that these two Articles should be coordinated. But I must insist that the essential provisions of Article 30A should remain substantially unaltered. This is a point which we regard as of primary importance.

General OUNG (Burma): I would like to support the proposal of the Netherlands Delegate.

The PRESIDENT: I would like to make this clear: sending this Article 30A back to the Drafting Committee, if you approve of it, means that the Drafting Committee cannot, so far as any point of substance is concerned, harmonize it with Article 29B as now adopted, and further, you may be asking the Drafting Committee to perform a

most difficult task, as they do not know the subject to the extent that those who are in this Assembly know it. May I put forward a suggestion? If it is the general wish that you should refer it to some drafting body it might be preferable for you to appoint a Working Party of this Assembly to endeavour to do the job which the Netherlands Delegation has in mind because, as I see it, the Drafting Committee has no authority or mandate to alter points of substance. I merely put those considerations to you before I put the Netherlands' proposal to the vote, which is that we refer this Article 30A back to the Drafting Committee.

Mr. GARDNER (United Kingdom): I think the Conference ought to see what it is that it is being asked to do. It has already decided that retained chaplains shall continue to exercise their spiritual functions for the benefit of prisoners of war, within the scope of the military laws and regulations of the Detaining Power and under the control of its competent services, in accordance with their professional etiquette. I personally do not know how you can maintain Article 30A, after having taken that decision, which says something quite different: "They shall be allowed to exercise freely their ministry amongst prisoners of war of the same religion, in accordance with their religious conscience".

We have decided this afternoon that they can only exercise their religious function under the control of the competent service of the Detaining Power, a proposal to which I personally have the strongest objection, but that was the Conference's decision. How can you refer this to the Drafting Committee just to alter the wording? If you go through Article 30A you will find there are a number of other things in it which are inconsistent; it is not merely a question of repetition, as General Dillon said earlier, but it is actual inconsistency, and I suggest to the Conference that having deliberately adopted Article 29B the only thing it can now do is to cut out Article 30A. It was adopted very deliberately, after a very careful consideration, as the Delegate of the Holy See has said. All that has just been swept aside by adopting an Article which was adopted in Committee I without any consideration by Committee II as to what it meant in terms of prisoner of war administration. This is one of the inevitable consequences of the decision already taken.

If it is desired, on second thoughts, to maintain Article 30A, I submit that the first thing which will have to be done is to reverse the decision we have just recently taken, at any rate as far as it affects chaplains. If that were to be proposed by any delegation I should be happy to support it,

but so long as the decision we have just taken stands, I cannot see how Article 30A, with its totally different conception of the position of chaplains in relation to prisoners of war, can be maintained.

General DILLON (United States of America): Notwithstanding the personal abhorrence of the last speaker to a certain phrase which he cited in Article 29B just adopted, the United States Delegation finds no serious inconsistency between Articles 29B and 30A.

We should like to support the suggestion to refer the matter to a Working Party of this Plenary Assembly with a view to ironing out any minor inconsistencies.

The PRESIDENT: May I ask whether the Netherlands Delegation would be prepared to accept that suggestion from the Chair?

I am pleased to say that the Netherlands Delegation have signified their agreement to the proposal that we refer the question of Article 30A to a Working Party of this Assembly.

That is the question now put to the meeting.

Does anybody wish to speak on that point? Is there any objection to that proposal.

It was adopted.

Dr. PUYO (France): I propose that the Delegations of the United Kingdom, Italy, the Netherlands and the Holy See should be represented on this Working Party.

The PRESIDENT: Has anybody other suggestions?

Mr. GARDNER (United Kingdom): If it is proposed that this Working Party should meet at the same

time as the Plenary Session of the Conference the United Kingdom Delegation will not be able to join it.

Msgr. COMTE (Holy See): I think the Working Party might meet at times when no Plenary Meeting is being held. On the other hand, as only four delegations have been proposed as members of the Working Party, I venture to suggest that the French Delegation should be the fifth member.

The PRESIDENT: Are there any other proposals?

Dr. PUYO (France): On the same grounds as those expressed by the United Kingdom Delegate, it would not be possible for the French Delegation to nominate a representative to sit in the Working Party, if the latter intended to hold meetings when Plenary Meetings are taking place. But if the Working Party can sit at other times, the French Delegation will be in a position to take part in its work.

The PRESIDENT: I think the answer is that the Working Party would be entirely free to select their own hours of work. That is a matter for arrangement amongst themselves.

The Working Party will therefore consist of members of the Delegations of the United Kingdom, the Netherlands, Italy, the Holy See and France. Might I suggest from the Chair that we ask the Netherlands Delegation to act as convenors and arrange for the first meeting, when the Working Party can appoint their Chairman or Rapporteur and decide on the time-table of their meetings.

The meeting is adjourned.

*The Plenary meeting rose at 7.10 p.m.*

## FIFTEENTH MEETING

Wednesday 27 July 1949, 10 a.m.

*President:* Mr. Max PETITPIERRE, President of the Conference

## PRISONERS OF WAR CONVENTION

**Articles 30B, 30C**

The PRESIDENT: We will continue the consideration of the Prisoners of War Convention. We shall first discuss Article 30B. No amendments have been submitted and if no one wishes to speak, I shall take this Article as adopted.

General SLAVIN (Union of Soviet Socialist Republics): The Soviet Delegation ask that Articles 30B and 30C should be voted on separately.

The PRESIDENT: We shall proceed to vote first on Article 30B.

Article 30B was adopted by 20 votes *nem. con.* with 6 abstentions.

We shall now vote on Article 30C.

Article 30C was adopted by 21 votes *nem. con.* with 6 abstentions.

The PRESIDENT: We shall now consider the following Articles:

**Articles 31, 32, 33**

Articles 31, 32, and 33 were adopted.

**Article 34**

Mr. SÖDERBLOM (Sweden), Rapporteur: I wish to point out, that a correction should be made to the English version in the fourth paragraph, first sentence instead of "at places where all may read *it*" the sentence should run "may read *them*".

Article 34 was *adopted*.

**Articles 34, 35, 36, 37, 37A**

Articles 34, 35, 36, 37 and 37A were adopted.

**Article 38**

The PRESIDENT: An amendment has been submitted by the Italian Delegation proposing to add at the beginning of the Article the following paragraph:

"The Detaining Power, when deciding upon the transfer of prisoners of war, shall take into account the interests of the prisoners themselves, more especially, so as not to increase the difficulty of their repatriation."

Mr. BAISTROCCHI (Italy): The amendment submitted by the Italian Delegation is based on the fundamental principles of the Convention we are now drawing up. Its moral significance will be immediately apparent to you. It is not drawn up in imperative or categorical terms. It is simple and elastic. It is an appeal to the good faith and to the very conscience of all civilized nations. Article 38 merely lays down the methods and conditions in which the transfer of prisoners of war should be carried out. Those methods and conditions have been defined in the light of the experience acquired during the late war. But the Article gives no accurate definition of the standards which the Detaining Power must observe when transferring prisoners of war.

Our amendment does not depart from the principles of sound realism. It recognizes the right of the Detaining Power to be the main judge of the political, military and practical exigencies which make transfer necessary. We rely on the conscience and good faith of the Detaining Power to take the interests of the prisoners into account when deciding to transfer prisoners of war.

It must not be overlooked that, whatever benefits the present Convention confers on prisoners of war, their position will always be very distressing. We are considering not only the question of transfer in order to render that position still worse, for example the case of those prisoners of

war, who, as officers and soldiers of the Fourth Italian Army, were transferred to Poland by the Germans after the armistice and who resented their loyalty to the legal Italian Government, but all cases of transfer in general.

The principal aim of our amendment is to establish what might be called an ideal standard correlating the provisions dealing with the transfer of prisoners of war and those dealing with their repatriation. The delegates who took part in the work of Committee II have probably not forgotten that the Italian Delegation laid great emphasis upon the principle that repatriation should take place without delay—I stress this term which is extremely important. These provisions are intended to prevent any delay in repatriation due to transfers carried out without any consideration for the welfare of the prisoners themselves. It must not be forgotten that delay in the repatriation of prisoners of war means a protraction of their sufferings. The Detaining Power should make every effort to restore as soon as possible to their families and homes prisoners of war who have fallen into their hands.

As we have just said there is nothing imperative or categorical about our amendment. We repeat that it is an appeal to the conscience and good faith of Detaining Powers, to take into account the future interests of repatriates, when deciding to transfer prisoners of war.

These are the grounds on which the Italian Delegation submits its amendment to your consideration, in order that it may be inserted into the Convention as part of Article 38, which has been adopted by this Assembly.

The PRESIDENT: As no one else wishes to speak, we shall proceed to vote on the amendment submitted by the Delegation of Italy.

The amendment submitted by the Delegation of Italy was adopted by 22 votes to 3 with 15 abstentions.

Article 38, as thus amended, was unanimously adopted by 34 votes with no abstentions.

#### Articles 39, 40, 41

Articles 39-41 were adopted.

#### Articles 42 and 43

The PRESIDENT: An amendment to Article 42 has been submitted by the Delegations of Afghanistan, Australia, Belgium, Canada, United States of America, Holy See, Ireland, Italy, Mexico, Pakistan, the Netherlands, Portugal, Spain, Switzerland and Venezuela.

Mr. SÖDERBLOM (Sweden), Rapporteur: I should like to point out to the Meeting that the question now before us was one of those which was discussed at greatest length in Committee II, particularly by its Special Committee.

The Special Committee succeeded in adopting by a small majority a solution which was then rejected by a very small majority in the full Committee. This question must now be finally settled by the Plenary Meeting; as I have just said, it was the subject of very long discussions which, according to one of the speakers, were of a very high standard, and during which the arguments on both sides were set forth as lucidly and as fully as could be desired.

Major ARMSTRONG (Canada): If I may I should like to discuss Article 42 and the effects that a decision on Article 42 will have on Article 43. In the Committees, as the Rapporteur has pointed out, there has been considerable discussion on Article 42, not so much on the part concerning the regular work that a prisoner of war may be employed to do as on the part concerning the removal of mines and similar devices. As a member of the armed forces of Canada, I am particularly anxious that the soldiers of Canada, when they become prisoners of war, should not be compelled to remove mines. In paragraph 2 of Article 42 there is a provision now which states that a Detaining Power is authorized to use prisoners of war to remove mines and similar devices whether laid by the prisoners themselves or by other members of the forces on condition, first, that they have training and experience in such work and that the mine-removal is carried out in areas distant from the theatre of military operations. In other words, omitting those conditions which in actual fact mean nothing, prisoners of war whether they laid the mines themselves or whether the mines were laid by others can be compelled to remove mines by a Detaining Power. This iniquitous paragraph in a few words takes away all the protection that a prisoner of war has up to the present under this Convention. It is incompatible with the humane treatment that we have granted so far to prisoners of war.

Exceptional circumstances are mentioned. Who is to be the judge of what is to be considered exceptional circumstances? Could this not be interpreted by an unscrupulous Detaining Power at any time and any circumstances? No protecting Power is to come into the picture. We were very particular to lay down that even when a man's pay is to be changed the Detaining Power must advise the Protecting Power. Now, when he is to be forced to remove mines there is no provision

in this Article as adopted at the present time to say that the Protecting Power must be advised or must take action. Yet, here we have the lives of prisoners of war at stake.

The other main condition is that the removal of mines may be required only in areas distant from the scene of military operations. I think I should point out to you that the removal of mines is dangerous work whether it is done in the proximity of military operations or whether it is done 100 miles in the rear. That does not take away the danger of mine lifting. There is not even a proviso in this paragraph, valueless as it would be, that volunteers only may do this work. In most of our armed forces, at any time that there is a dangerous task to be done, the soldier has the privilege of volunteering for this work. The article states nothing on those lines. On the contrary, a prisoner of war can be compelled to do this work. Does this give the maximum protection we have all sought? Does this give the protection that the Danish Delegate spoke about on 15th July when he was referring to the Preamble? Maximum protection is necessary for a prisoner of war is what he said at that time. And now, why do the supporters of this paragraph wish to have it included in the Prisoners of War Convention? Not, as you can readily understand from the wording of paragraph 2, for the protection of prisoners of war. That is not why it is there. It has been inserted to protect the civilians belonging to the Detaining Power. That is the only argument, so far as I remember, that was put forward in support of the employment of prisoners of war in the removal of mines. It has been stated in some of our previous discussions that if this work is not done by the prisoners of war, the civilians will have to do it and many of them may die. One delegation even stated that it was more humane to use prisoners of war than civilians, stating that the prisoners of war were disciplined. They may be disciplined but they can still die.

Those who originated this idea seem to have overlooked one very important fact: in case of the civilian population or others being used to lift mines they would be trained to do this work by their own government, since they are nationals of the Detaining Power; their own government would make certain that the work was done only by experts and with the best equipment that was available and that every precaution was taken to make certain that those removing the mines would not come to any harm. I ask you, would an unscrupulous Detaining Power make certain that this right was granted to the prisoners of war? What would have happened in the Second World War if Nazi Germany had had permission to force prisoners of war to lift

mines? Even without that provision the loss of prisoners of war who were compelled to lift mines is stated to have been as high as five per cent. One cannot estimate what the losses might have been if the Convention had granted Nazi Germany permission to use prisoners of war to remove mines.

Naturally, those of you who are civilians think of this situation from a civilian point of view. You are thinking of what may happen to the civilians in your own country but you must at the present time take into consideration this fact, that we are writing a Convention for the protection of prisoners of war and, since that is so, their protection must be our first consideration. There should be no case when a prisoner of war is not fully protected and we feel that under paragraph 2 of Article 42 he is not getting full protection. Those of you who are or who have been members of the armed forces, others of you, in whose hands lie the fate of your armed forces who may in future become prisoners of war and be compelled to lift mines, you should think twice before you accept that condition. Think of the effect it may have on you or yours. Then ask yourself one question: is mine-removal dangerous? There is only one answer you can give and that is yes. Consequently, we must get the permission to use prisoners of war on mine-removal out of this Convention.

I appeal to you, you who now have the fate of hundreds and possibly thousands of prisoners of war in your hands to vote for the deletion of paragraph 2 of Article 42 which gives a Detaining Power permission to force prisoners of war to remove mines. In other words, it can force a prisoner of war to his death. Only by voting for the deletion of this paragraph and the inclusion of the statement in Article 43, that removal of mines and similar devices shall be considered as dangerous work, only in that way can you give a prisoner of war the full protection that we are working here to give him. I appeal to you as members of the armed forces. I am appealing to you for the lives of my own men and for the lives of thousands of men, your own soldiers who may become prisoners of war. I appeal to you, vote for the deletion of paragraph 2 of Article 42 and for the required changes in Article 43.

The PRESIDENT: I concur with the last speaker that the present debate is not only on the amendment submitted on Article 42 but also on those bearing on Article 43; these various amendments are, in point of fact, inter-related. I therefore propose that the discussion should be on the three amendments, it being understood that at the end of the debate we should vote separately on each of them.

Mr. BAGGE (Denmark): The Danish Delegation is sorry to have to oppose the amendment submitted. We regret it because we, too, desire to ensure the protection of prisoners of war. We should like even to grant them privileged protection.

For these reasons, in the Articles under consideration the word "exceptionally" has been used. In our understanding, this means that, if a Detaining Power has an adequate number of mine-lifting experts, it will not draw on prisoners of war. While however we are in favour of protection of prisoners of war, we are not in favour of protection in disregard of any other consideration; we are against protection where it is to the detriment of other human beings. We think it is the duty of the present Conference to ensure the protection not only of prisoners of war but also of the civilian population, men, women and children.

The Delegate of Canada has spoken of the danger attached to mine removal; we obviously recognize this danger ourselves. It may be compared to the danger of work on a high tension electric current. If it is necessary to handle such currents, the work is entrusted to electricians specially trained in this dangerous operation.

Our desire, as we have already indicated, is that the same considerations should apply if the removal of mines is perhaps entrusted to prisoners of war under exceptional circumstances; prisoners of war should be used to such work, they should know the mines and they should be under efficient discipline. I need hardly say that, if recourse is made only on prisoners of war who have knowledge of mines, losses will be considerably diminished, though still inevitable. As regards unavoidable casualties, I cannot help wondering whether, when the balance is struck between the interest of the prisoners of war and the population of a country so thickly strewn with mines that the earth can no longer be ploughed and the children can no longer go out and play, I wonder, (I repeat), if proper charity does not begin at home.

The sponsors of the amendment have called on humanitarian principles. Bearing in mind the considerations which I have just described, however, I would suggest that humanitarian principles must operate on behalf of the civilian population not less than on prisoners of war.

I therefore ask you, with a perfectly clear conscience on the humanitarian issue, to reject the amendment and to vote in favour of Articles 20, 42, 43 as submitted.

Mr. LAMARLE (France): The French Delegation wishes first of all to pay tribute to the ideas underlying the draft amendment now before us

and which were urged again a moment ago from this rostrum by the Delegate of Canada on behalf of the other delegations who have signed that text.

This amendment is based on the very legitimate desire to ensure the protection of prisoners of war. The French Delegation must nevertheless point out that that is only one aspect of the question. My country is one of those which had the unhappy distinction of seeing the construction on its soil of what the invading and occupying Power called "the Atlantic Wall", as a defence against the armies of our friends and allies who later liberated us. My country, together with others which were in the same position, has to consider the other aspect of the problem, — the other side of the question, — and I should like to give you a brief account of this aspect in order that the Assembly may be fully aware of the merits of both sides of the question and make its decision accordingly.

The coasts of western Europe were literally strewn by the occupying forces with mines and explosive devices of every kind, which were so numerous and thickly sown that in many places the slightest movement on the part of the local population entailed imminent and considerable danger.

In many areas of western France, children could no longer leave their homes without running an extremely serious risk of mishap, and unfortunately tragedies often occurred before even there had been time to take any measures of guard against them by removing the most dangerous of these devices.

What were the authorities of the countries concerned to do? Since they still lacked technicians capable of mine-lifting operations, in consequence of the profound disorganization of their country during a four-years occupation, should they meanwhile have allowed their children to run about among these mines, and the civilian population to attend to their essential daily business in those circumstances?

Should they have remained inactive when there were a large number of German prisoners with the necessary technical training and sufficient experience to carry out mine-lifting operations with the minimum of risk? I put the question to you. As for the French authorities, they took the responsibility upon themselves with even less hesitation, if I may say so, because a certain number of German prisoners volunteered at an early stage to undertake the mine-lifting and the number of these volunteers rapidly increased as they heard and saw that the French authorities had promised the volunteers an early liberation and that this promise was, indeed, faithfully kept.

The Delegate of Canada has very rightly appealed

to your conscience on behalf of the protection of prisoners. I should like to ask you also to consider what the attitude should have been in the past, must be now, and should be in the future, of a Power which, I repeat, has seen its soil crammed with explosive devices and the civilian population exposed to the gravest risks, particularly in the period immediately after the liberation.

In such a situation, France endeavoured to implement in advance the stipulations of Article 42 submitted by Committee II.

The French authorities endeavoured to apply all these precautions to fulfil all these conditions and to ensure their observance at all times. I believe therefore that in view of the entirely legitimate considerations put forward by the Delegate of Canada and of which the French authorities have taken account, consideration must also be given to the position in which countries are liable to be placed, and have in fact been placed, when they saw a large part of their population exposed to imminent dangers which were extremely serious and sometimes fatal.

Article 42, as you have already been told, gave rise to very closely-reasoned discussions, enabling the delegates to be fully informed of all the arguments on both sides which have been put forward from this rostrum, and to weigh their merits. The French Delegation thinks that Article 42 is a correct synthesis of the necessary measures of protection which must be taken into account when deciding in favour of either aspect of the problem. In any case, I believe that I am not going against the intentions of the delegates when I request that Articles 42 and 43 be voted on separately, for according to the result of the voting on the first of these Articles, the French Delegation would reserve the right to make certain comments and even perhaps certain suggestions as regards Article 43.

General SLAVIN (Union of Soviet Socialist Republics): The Soviet Delegation had not intended to speak, for it considered that the question was quite clear. Nevertheless, having heard the speech made by the Delegate of Canada, we feel that it is necessary to speak, in an attempt to clarify the position.

The Soviet Delegation supports the text adopted by Committee II, and cannot approve the amendment submitted by the Delegations of the United States of America, Canada, Switzerland and certain other countries. The arguments in favour of this amendment appear to be humanitarian. In reality, they are less humanitarian than the arguments which could be brought forward in favour of the text submitted by the Committee.

Articles 42 and 43 deal with the removal of

mines placed by the prisoners of war themselves before their capture or by other members of the armed forces to which they belonged. These prisoners may in exceptional cases be required to remove these mines.

It must be pointed out here that prisoners of war may only be required to do this work when they are accustomed to it, or have received special training in mine-lifting, and lastly, when this work is carried out in areas distant from the theatre of military operations.

Are these provisions in order or not? The Delegation of the Union of Soviet Socialist Republics would be glad to have the delegates, who submitted the amendment concerned, tell us what their countries experience has been with regard to mine-lifting operations; for it is only on the basis of one's own experience that it is possible to give a competent opinion on this question.

Imagine for example, that war has broken out on the territory of a small country. Troops have entered this territory, have laid a large number of mines, and, after fierce battles, have retreated. A large number of mines remain on the territory of this small country, and may be the cause of many casualties among the civilian population. There are, in fact, hundreds of victims. No one in this country knows where the mines have been laid, and there are no experts with the training necessary to remove them.

The Delegate of France spoke very competently on this point. Everyone is aware that the French Army possesses mine-lifting experts; but even this army had difficulty in carrying out this enormous task.

The local population appeals for help to the military authorities in control of the territory. The only reply which these authorities can give is that they do not know where the mines are laid, and that in addition all the mine-lifting experts are at the front.

On the other hand, the military authorities know that there are mine-lifting experts among the prisoners of war, who have laid the mines themselves, and that there are also other prisoners who have received special training in these operations. Under the terms of the Convention, however, the authorities are not entitled to employ these prisoners for this work.

Is it not only just and humane to require the prisoners of war who laid the mines themselves and the other experts who have technical knowledge of the mines or placed them in position, to remove the mines rather than to leave the civilian population, among whom there may be many thousands of victims, to its fate? The trained personnel which has adequate equipment at its



disposal and knows where the mines are laid, will suffer insignificant losses, or even no losses at all.

It is clear that neither the arguments in support of the above mentioned amendment, nor those put forward here by the Delegate of Canada, have any real foundation. The proposal before us is not therefore of a humanitarian nature. This fact is obvious, especially to countries which were the theatre of military operations during the Second World War.

It is for this reason that many European delegations, with the exception of certain delegations whose countries have fortunately been spared the horrors of war, have stated that they are not in favour of the proposed amendment to Articles 42 and 43.

The Delegate of Canada opened his speech in moving terms. He said that he did not wish Canadian soldiers who have been taken prisoners to be employed on work of this kind.

I thank the Delegate of Canada for what he has said. Allow me, however, to point out that, if Canadian soldiers were to lay mines on any territory, we would request them to remove them themselves. We consider this standpoint more humane than that which proposes to employ the civilian population on this work.

Moreover, when deciding whether it should be done by the civilian population or prisoners of war, we should carefully bear in mind that we are establishing not only a Prisoners of War Convention, but also a Civilians Convention. That is why we must say that it is far less humane to employ the civilian population on this work than competent prisoners of war.

Though the Delegate of Canada has spoken here on behalf of thousands and hundreds of thousands of people, the Delegate of the Union of Soviet Socialist Republics can speak on behalf of millions and tens of millions of people, whose lives would be endangered if the mines were not lifted.

Lastly, I should like to add that the proposed amendment is especially dangerous to small countries. It is for this reason that the Soviet Delegation will vote against its adoption.

General DILLON (United States of America): The United States Delegation feels that there is little to be added to the comprehensive and logical statement in support of the amendment made by the Delegate for Canada. However, we feel that certain remarks made by other speakers are refutable, and we intend to refute them.

First of all, the Delegate for Denmark stated that the word "exceptionally", as used in the second paragraph of Article 42, means that if a

Detaining Power had experts at mine removal they would not use prisoners of war for that purpose. I submit that the context in which the word "exceptionally" is used will not support any such interpretation: "exceptionally", as there used, means that notwithstanding other prohibitions against the employment of prisoners of war on dangerous work, notwithstanding other prohibitions, they may be used on mine removal, and I submit further that if the second paragraph of Article 42 remains in this Convention, no-one other than prisoners of war will be used to remove mines.

The United States Delegation happily noted that France, in observing the prohibition against the employment of prisoners of war on dangerous or unhealthy work provided in the Convention of 1929, did not use prisoners of war for mine removal, other than those who volunteered for such work. I submit further that no nation observing the 1929 Convention believes that prisoners of war could be used for the removal of mines. We can only conclude that the permission granted in paragraph 2 of Article 42 is retrograde of the provisions for the protection of prisoners of war in the 1929 Convention.

The Soviet Delegate has stated that only those prisoners who laid the mines would be utilized in their removal. The second paragraph of Article 42 does not so provide; those who laid them, and other members of the forces who laid them, may be so used. We should like to remind the delegates present that feeling during war against the prisoner of war runs high. If nations are permitted to use prisoners of war in mine removal, considering the feeling that inevitably exists against the prisoner of war, the Detaining Power will not be concerned with the state of training given to the prisoner of war, nor with the equipment with which it supplies the prisoner of war to do this dangerous work. The choice, as given by the Soviet Delegate, of having women and children and civilians injured by these mines unless prisoners of war are employed to remove them, is not the choice of a nation because a nation can use its own personnel for such work, and if it does use its own personnel it will supply them with adequate equipment and will assure itself that the personnel so utilized will be properly trained and competent to do such work.

The balance of humanity, or humanitarian concepts, must lead to the conclusion that we have taken a step retrograde to 1929 when we inserted the second paragraph of Article 42. There is no standard of danger; there is no dangerous work to which the employment of prisoners of war may be prohibited if this paragraph remains.

Finally, the United States Delegation agrees

with the Danish Delegate, when he said "Charity begins at home" and we believe further that charity will end there so far as the prisoner of war is concerned if paragraph 2 of Article 42 is not rejected by this Conference. If I had the eloquence of Portia in pleading for her lover when she said "The quality of mercy is not strained, it droppeth as the gentle rain from heaven", if I had that eloquence I would ask this Conference mercifully to consider the question and to reject the second paragraph of Article 42.

Major ARMSTRONG (Canada): I will take just a moment in order to answer some of the arguments against the proposed amendment.

I might first draw your attention to the fact that, as I stated at the beginning, not one of the opponents of our amendment has mentioned anything about the protection of the prisoner of war. If you think back for one moment to what has been said, not once has consideration been given to the protection of the prisoner of war, and this week at the present time we are discussing the Prisoners of War Convention which is precisely for the protection of prisoners of war.

I feel that one statement should not go unanswered. In his speech the Soviet Delegate stated that the Canadian Government was trying to restrict humanitarian principles. It is rather unfortunate that the Soviet Delegate finds it necessary to use this type of argument, especially against Canada. We all agree that there is room for honest differences of opinion about most of our problems. As you all know, Canada, like most of the nations represented here, is a Party to the 1929 Convention, and we obeyed that Convention implicitly during the last war. It seems to me, therefore, that countries like Canada, which accepted and applied the 1929 Prisoners of War Convention, have a right to expect that their good faith, when they put up proposals, will not be questioned, and that when they engage in debate, there should be no question of the fact that they have in mind always humanitarian principles. We have lived by those for many years.

Going back to the arguments put forth, not once, as I pointed out to you, has anyone considered the protection of the prisoner of war; everyone has said we must protect the civilian. I agree we must protect civilians, but, as was pointed out by the Delegate for the United States of America, we must also think of the prisoner of war who is in the hands of an enemy, and of the treatment that he will receive as a prisoner. That is what this Convention is being written for. The Civilians Convention is written for the protection of civilians. This Convention is being written for the protection of prisoners of war.

I am not afraid of how prisoners of war in the hands of Canada would be treated. We know, and all of you know from experience in the past war, how they would be treated if this Article were adopted. What I am afraid of is how will our soldiers, how will your soldiers, be treated if they are in the hands of an unscrupulous enemy. We have had such people in the past, you know. Think of what happened during the past war. We all know that prisoners of war used on mine-lifting were killed.

France has stated that they saw to it that the conditions as laid down now were fulfilled. The French Government would make certain of that, but would every Government make certain of that?

Let us try to think—think into your minds—whom are we trying to protect? What is our job here this week, this morning, right now? Our work is to protect prisoners of war, to give them all the protection we can possibly give them. If you accept paragraph 2 of Article 42 you will be taking away from that protection.

Now it is up to you. Think, as I said before, of what will happen to your soldiers—not of what you are going to do to soldiers who are prisoners of war in your hands—think of what will happen to your soldiers when they are prisoners of war in enemy hands; and I plead with you, as I said before, for the deletion of paragraph 2 of Article 42.

Colonel HODGSON (Australia): During the stages of the Working Committees, this question which now appears as the second paragraph of Article 42 was twice rejected, and it only obtained the majority vote in the full Committee and that majority even included countries which had previously rejected it. It seems amazing to my Delegation that a delegation should come up to this rostrum again and again professing the great humanitarian ideals by which it was actuated and that the same delegation should be in the forefront of sponsoring this particular proposal.

This morning I spoke to a person who was attending this Conference for the first time and I was asked "What are they dealing with?" and my reply was "The Prisoners of War Convention". The remark was "And do you mean that some of them want, in a Convention dealing with the protection of prisoners of war, that prisoners should be made to do that? It is incredible!"

In the first Committee dealing with the protection of certain categories of persons belonging to the armed forces many doctors were present and we provided plenty of protection for medical personnel throughout, and in the Civilians Convention we provided any amount of protection for

civilians, even going so far as to say that our own soldiers could be brutally murdered and yet there would be no death penalty if there was no death penalty for murder in that country.

We were asked the question by the Soviet Delegate, the sponsors of this amendment, what experience we had of mine-lifting or of mine disposal. I do not know. I should like to know how many other delegations or members of delegations have had that experience, or how many delegates present in this room have ever volunteered for mine disposal.

Everyone in this room who has spoken and everyone who has spoken in the Committee has avoided—I will not say deliberately—one important element in this question. The Article says “or similar device”. A mine is simply an explosive with a casement around it and detonated by a fuse. In other words, the Article provides for aerial bomb and bomb-disposal of every kind, and they speak as if it were only a question of mines near the shore or land mines; that is, planted by the airman, the soldier or the sailor. How many prisoners of war have had actual experience of laying mines such as those? How are they to know? We are told they know where the mines are. Do they know where the mines are in indiscriminate bombing? Bomb disposal squads or mine lifting squads are a highly skilled occupation and they do nothing else.

The Soviet Delegate asked what experience we had. I have enough experience to know this, that you cannot train soldiers easily and readily or give them suitable training, because there was one subject during the war which was more scientifically developed than anything else. Never mind about the explosive; it was the fuse which was the vital factor—the time-fuse, the percussion fuse, the secret fuse—and everybody was striving to get a new kind out every month. How can soldiers who have been prisoners of war, without all the scientific laboratories and apparatus which those technical squads had, be suitably trained? It is fantastic. Who are the countries supporting this Article? Their motives are clear. There is no need to enumerate their motives but we can indicate the nature of the countries and we can draw our own conclusions as to the motives. They are small countries who feel they might be occupied, maritime countries, countries which have never had prisoners of war and no doubt hope they never will, and countries which *prima facie* are indifferent to the fate of prisoners of war. Therefore, in order that this vote should go on record for all the world and for posterity to see and that your own Governments should know how you voted, my Delegation is going to ask for a vote by roll-call.

General DE LIMA BRAYNER (Brazil): I wish to revert to this matter, though Brazil did not sign the amendment submitted by the Delegation of Canada. I further wish to draw attention to an aspect of the question which has not been considered so far.

A mine field is laid, not as the result of the personal choice of each soldier but in accordance with the decisions of the command, with which the wishes of the person carrying out the orders has nothing to do. If the Convention authorizes the use of prisoners of war for the removal of mines, it will be giving its sanction to the spirit of revenge in a document that is intended to ensure the protection of these prisoners.

The considerations put forward by the Delegates of France and the U.S.S.R. are entirely honourable. We cannot, however, ensure the protection of the civilian population by obliging prisoners of war to do dangerous work, deprived as they are of any possibility of defending their very lives. If we do this, we shall be introducing an element of inconsistency into the Convention.

I have myself had some experience of warfare. I have taken charge of thousands of prisoners captured by the Brazilian Expeditionary Force. No Convention had been adopted at that time, but we respected all the existing obligations in that field without exception.

The Delegation of Brazil therefore wholeheartedly supports the amendment submitted by the Delegation of Canada and by other delegations. Prisoners of war—I insist on that point—are not responsible for the laying of mines. The decision lies with the command which desires, for tactical reasons, to prohibit access to a given sector. If the unrestricted use of mines and other frightful engines of war continues, it should be remembered, when mines have to be removed, that no provision should ever be enforced which might constitute an act of vengeance. That is the Brazilian Delegation's point of view.

General SLAVIN (Union of Soviet Socialist Republics): I must ask your indulgence for speaking a second time, but I must clear up a small point and prevent misunderstandings which might arise from arguments put forward by delegates who spoke after I had spoken. I must add that some of these arguments are not quite accurate, among others those made by the Delegate for the United States of America.

It has been said that opposition was raised to the inclusion in the Convention of a clause allowing the employment of qualified prisoners of war in mine lifting. It has been said that I did not give an accurate account of the provisions of Article 42. In my opinion I was perfectly accurate. I stated that prisoners of war cannot be employed in such

work save in exceptional circumstances, that all the requisite conditions must be fulfilled and the persons concerned must have both experience and the necessary means of protection.

In our opinion it would be more humane to employ qualified personnel rather than the civilian population, which has not been trained in such work. Such a decision should not be taken save in exceptional cases. It therefore seems to me that there can be no hesitation, when the safety of millions is at stake, to employ qualified and specially trained personnel for the work under consideration.

The Delegation of the United States of America had no valid arguments to bring against the statements made by the Danish Delegate concerning this amendment and none against the Soviet Delegation's standpoint.

I cannot agree with the Delegate for Australia, as he did not reply to the question put to him by the Delegate for the Union of Soviet Socialist Republics. I had asked what personal experience the sponsors of this amendment had had in their respective countries; I had asked if mines had ever been laid in these territories. I do not think that anything of the kind ever occurred in the territory of the country in question.

On the other hand, what we are discussing is the safety of the civilian population, apart from the territory in question, when that population is perhaps living in an occupied country.

I repeat that, in my opinion, the safety of a small number of prisoners of war qualified for this work, as compared with that of a large number of civilian persons in great danger is indisputable.

It is much more humane to maintain the text adopted by the majority of the Committee than to adopt the text proposed by the authors of the amendment.

Throughout the Conference, the Soviet Delegation, aware of its responsibility and of the humanitarian ideas which must find their place in the Convention, has defended the interests of the millions of persons who constitute the civil population.

As regards the proposal of a nominal roll-call I quite agree. Everybody should know which delegations supported and which delegations opposed the humanitarian provisions.

I may add that the Australian Delegate said that he had had a further conversation this morning. I do not know with whom. Perhaps he meant a conversation with himself, or at least with a person only slightly acquainted with the work of mine lifting. I should advise the Australian Delegate to discuss the matter with somebody who has seen thousands of mines laid in his territory, and who has some experience of the work of mine-lifting.

For these reasons we are absolutely opposed to the amendment put before us, and we hope that all the delegations who wish that humanitarian provisions should have their place in the Convention will be of our opinion.

Mr. LAMARLE (France): With equal emphasis, with equal conviction and with equal good faith, various speakers have stated their various opinions. They all appealed to the delegates' conscience and I concur on this point with the Delegate of Australia. My conclusions, however, are different. Matters of conscience are resolved in secret, I consequently propose a secret ballot.

The PRESIDENT: There is still one delegation to speak. I hope we shall then be able to vote.

Mr. MEVORAH (Bulgaria): I shall be very brief. My Delegation will vote for the text proposed by the Drafting Committee. I would just like to explain my vote first because otherwise my Delegation might be accused of an action contrary to the humanitarian interests which it has been our concern to defend throughout this Conference.

I have read the paragraph proposed to us with great attention. We have already been told that it concerned a very exceptional case and, if I may be so trite, I would say that we have here the exception proving the humanitarian rule embodied in the Convention.

You will remember that in the course of debates on the various provisions of our Conventions, and in particular of those of the Convention for the Protection of Civilians, a large number of delegations advocated the insertion of a reservation which might justify their actions in wholly exceptional cases. Several attempts have been made to insert in this Convention a sentence more or less as follows: "as far as possible", or "as far as circumstances allow".

In the case now under consideration, there is no question of inserting a general rule in the Convention; but we are asked to provide for a wholly exceptional eventuality. In an endeavour to convince the delegations here, I will mention four points which would justify the use of prisoners of war in mine-lifting. These four conditions should all be fulfilled before derogation of the rule could be allowed. That derogation would be very exceptional and would in no way modify the general principle.

Firstly, mines would have had to be laid by the prisoners themselves or by the forces to which they belong. It would be impossible to apply this provision in the event of the mines having been laid by the adverse Party and if this had been the case, the Detaining Power could not oblige the prisoners to clear sectors which it itself had

mined. This is in itself a considerable restriction on the use of prisoners of war for this work. This condition does not allow to derogate the general humanitarian rule we have just mentioned.

Secondly, it is explicitly laid down that a derogation can be allowed in exceptional cases only. The rule is therefore not intended for normal conditions. It will be obvious to any honest person that the derogation should not occur too often. But this is a moral issue, a matter of life and death for the civilian population.

Thirdly, mine-removal is allowed only in areas distant from the theatre of operations. A moment ago someone whispered in my ear that it would be inadmissible for an advancing army to send prisoners ahead to remove mines in order to allow free passage to combatants. This question does not arise. The question is simply that of removing mines in territory distant from the theatre of operations in order to protect the civilian population, which it is our duty to safeguard at all times and in all places.

Fourthly, the second paragraph of Article 42 contains the following stipulation:

“provided that the prisoners or other members of the forces named above have training or experience in the removal of mines”.

It would therefore be impossible to employ men in this work who had no experience in the matter. On the contrary, trained men who had already done this work after preliminary instruction, might be employed in areas distant from the theatre of operations, and only for the removal of mines laid down by themselves or by their armies. There is nothing tragic about it. You are not being asked to agree in principle to dangerous work for prisoners of war, which is, as a general rule, prohibited. The rule we have just laid down in a preceding paragraph is simply to be subject, when this is justified, to a slight reservation due to our concern for the

civilian population. In this way the rule can be maintained and no harm done to our common humanitarian concern. We can therefore agree to this exception without any derogation of the rule.

These are the considerations which will lead me to vote in favour of the paragraph submitted by the Committee.

The PRESIDENT: We will now vote on the amendment submitted to Article 42. Two proposals are before us: one to vote by roll-call and the other to hold a secret ballot. I shall ask you to vote on these proposals.

The proposal to vote by secret ballot was adopted by 20 votes to 4.

The PRESIDENT: Will the Delegations of India, Portugal and Rumania kindly act as tellers?

*(The tellers come to the platform.)*

Delegates in favour of the amendment will vote yes, those against it will vote no, those abstaining will place a blank voting paper in the ballot-box.

Will Delegates kindly place their votes in the ballot-box?

*[The secret ballot takes place.]*

The PRESIDENT: Here is the result of the ballot: 46 voting papers were issued, and 46 were placed in the ballot-boxes; 23 Delegations are in favour of the amendment, 19 against and 4 have abstained.

The amendment was thus adopted by 23 votes to 19, with 4 abstentions.

The PRESIDENT: We will now vote on Article 42 as a whole with the amendment just adopted.

Article 42, as amended, was adopted by 25 votes nem. con. with 11 abstentions.

*The meeting rose at 1.25 p.m.*

## SIXTEENTH MEETING

Wednesday 27 July 1949, 3.30 p.m.

*President:* Mr. Max PETITPIERRE, President of the Conference

## PRISONERS OF WAR CONVENTION

**Article 42A**

The PRESIDENT: We will now resume the consideration of the Prisoners of War Convention, and start with Article 42A. As no amendment is submitted to this Article, it is adopted.

**Article 43** (*continued*)

The PRESIDENT: An amendment to this Article is submitted by the same delegations who presented an amendment to Article 42 (*see Annex No. 118*).

Major ARMSTRONG (Canada): The only reason I wish to speak on Article 43 is to explain the reason for the amendment. If you recall, in the discussion in Committee II when Article 42 came up after the decision to include the second paragraph that was deleted this morning, some change had to be made in the first paragraph. Since that paragraph of Article 42 has been again deleted by this Assembly the delegations sponsoring the amendment request that the Plenary Assembly should adopt again the regulations as they were in the 1929 Convention, as first paragraph of Article 43:

"No prisoner of war may be employed on labour which is either unhealthy or of a dangerous nature". (First point of the Amendment.)

The second point of the amendment is a disposition added by the Special Committee of Committee II, who learned during the discussions that some delegates felt that mine-lifting might be permitted under Article 42 as it then read and a delegation put forward this amendment: "The removal of mines or similar devices shall be considered as dangerous labour". The co-sponsors of the mentioned amendment would request that since the second paragraph of Article 42 concerning mine-lifting has been deleted, the second point of the

amendment relating to Article 43 should also be adopted which makes a specific statement that the removal of mines and similar devices shall be considered as dangerous labour.

Dr. PUYO (France): After the vote taken on Article 42 this morning, Article 43 will have to be altered in order to coordinate the two Articles.

The French Delegation would like to point out, however, that there may be prisoners who are prepared to volunteer for the work of removing mines. Attention was drawn to this fact this morning. In France, for instance, a substantial number of prisoners of war had, in fact, volunteered to undertake this work. Consequently, this possibility must not be excluded, particularly as such a possibility would be to the advantage of the civilian population, to whom several delegates referred this morning. We therefore propose to substitute the words "Unless he is a volunteer" for the words "Subject to the stipulations contained in Article 42, second paragraph" at the beginning of Article 43.

The first paragraph would therefore read as follows:

"Unless he is a volunteer, no prisoner of war may be employed on labour which is of an unhealthy or dangerous nature."

The PRESIDENT: Does anyone else wish to speak? This not being so, we will vote successively on the two proposed amendments.

The French Delegation proposes that the words "unless he does so voluntarily" be added to the amendment No. 1.

I think it will be desirable to vote first of all on that proposal. Then, if it is accepted, the Assembly can vote on amendment No. 1 thus completed.

The French proposal was adopted by 18 votes to 10, with 8 abstentions.

We will now proceed to vote on amendment No. 1 with the addition proposed by the French Delegation, which you have just accepted.

Amendment No. 1 was adopted by 25 votes to none, with 10 abstentions.

We will now go on to amendment No. 2, which consists of adding a new third paragraph to Article 43.

Amendment No. 2 was adopted by 22 votes to 1 with 12 abstentions.

We have now to vote on Article 43 as a whole, as modified by the two amendments just adopted.

Article 43 was adopted by 25 votes to none, with 9 abstentions.

#### Article 44

The PRESIDENT: An amendment has been proposed by the Greek Delegation.

Mr. AGATHOCLES (Greece): According to Article 44 the duration of a prisoner's daily labour is based on the duration of daily labour permitted for civilian workers in the district, employed in the same work. This draft ensures just treatment of prisoners belonging to a country where the climatic conditions are not very different from those in the country where they have to carry out such work. Where the climates of the two countries are diametrically opposed however, e.g., when a worker from the North is required to work in a tropical country for the same number of hours as a native labourer it is doubtful whether such treatment would be endurable for the prisoner. I believe it would not; and this argument also holds good in the reverse case.

In theory, a prisoner ought not to be required to carry out more intensive work than that which he does in his own country, regard being paid to conditions of climate where he works. Obviously, however, it would be extremely difficult to apply that rule in a camp containing prisoners of war belonging to different countries. For these reasons we have proposed an amendment fixing the maximum daily hours of work on the basis of the virtually universal rule, i.e. eight hours for workers in general and ten hours for agricultural labour.

Our proposal, if adopted, would require no change in Article 44, but would merely expand it.

Mr. SÖDERBLUM (Sweden), Rapporteur: I should like to point out that this question has already been raised in Committee II. This Committee found that the provisions of Article 44 were sufficient, and it decided not to accept the Greek suggestion. The Greek amendment was then put to the vote; 9 delegations voted against, 4 in favour, and there were 10 abstentions.

Mr. AHOKAS (Finland): After the Rapporteur's explanation, I shall refrain from speaking.

Mr. GARDNER (United Kingdom): I want to say briefly why my Delegation—as, I think, Committee II—rejected this proposal. The spirit behind it is one with which we all would sympathize but it disregards, I believe, the practical circumstance, surrounding the employment of prisoners of war in what is, perhaps, the best occupation in which they can be employed namely in agriculture. If you go into the northern part of the country which I have the honour to represent you will find that agricultural labourers—indeed all the farm workers—during the winter work no more than four or five hours in the days which are shortest. Against that their hours in the long days of June and July are certainly longer than ten. I would go further, and I would say that in my country generally, and I suspect in most countries—certainly in countries which are liable to have heavy thunderstorms or rain coming on suddenly—it would be impossible to get the harvest in if the workers were restricted to ten hours a day. In harvest time people work almost from sunrise until sunset, and if prisoners of war employed on those farms were to get more favourable treatment it would only result in antagonism on the part of the civil population against the prisoners.

We believe that the provisions of the Article as it stands, with its prohibition against excessive hours and its relation of hours to those hours which are worked by the people side by side with whom the prisoners are working, is an adequate precaution against exploitation of prisoner labour, and that this particular amendment would introduce practices which, in the long run, would act adversely upon the prisoners' interests.

Mr. AGATHOCLES (Greece): Just a few words of explanation. There is no question of stipulating eight and ten hours of work. We are fixing a maximum, the maximum amount of work which can be required of prisoners of war, and not a compulsory standard of ten hours for agricultural labour and eight hours for other work.

The PRESIDENT: We shall now take the vote. The amendment was rejected by 16 votes to 3, with 7 abstentions.

Article 44 as a whole was unanimously adopted by 36 votes with no abstentions.

#### Articles 45, 46, 47, 48, 49 and 50

The above mentioned Articles were adopted.

**Article 51**

The PRESIDENT: An amendment has been submitted by the Delegation of the United Kingdom, proposing to delete the word "gold" wherever it appears and to delete the second paragraph.

Mr. SÖDERBLOM (Sweden), Rapporteur: The Article concerns certain payments to be made to prisoners of war, both officers and men of other ranks. Should these payments be made on a gold basis or not?

The question was considered by a Committee of financial Experts who, after an exhaustive discussion, came to the conclusion that it is preferable to maintain the gold basis.

When the problem came before Committee II, opinions were very divided: 9 votes in favour, 9 votes against, and 9 abstentions. In accordance with internal procedure, the amendment was rejected.

In my capacity as Rapporteur, I venture to request that one delegation should tell us the reasons in favour of the abandonment of the gold basis, while another might speak in favour of retaining this basis. This would be the means of clarifying the whole problem.

Mr. GARDNER (United Kingdom): Twenty years ago today the Geneva Conventions for the protection of the sick and wounded and for the protection of prisoners of war were signed in this city. At that time, one of the greatest world slumps in history was coming on all the countries in the world, and we all experienced the terrific consequences which followed in the succeeding years. It is common knowledge that those years compelled countries which had adhered to the gold standard to abandon it as no longer workable or useable, and that today the majority of the countries in the world, I think I am right in saying, no longer have a fixed gold value for their currencies. The United Kingdom Government believes that as the years move forward gold will more and more cease to be a true measure of the comparative value of currencies in terms of commodities to be bought by them.

We are drafting a Convention which may never come into operation and which, at any rate, we hope will not come into operation for a good many years and he would be a brave man who would prophesy what the relation of gold to international currencies will be say, 20 years, or even 10 years, from today. Unless we can be reasonably sure that gold will continue to be a true measure of value in terms of purchasing power the whole case for linking the measurement of pay for prisoners of war to gold disappears in the view of the United Kingdom's Government—may I

say in the considered view of my Government, for their attitude has been carefully reviewed in London in the light of the decisions taken in the Expert Committee here and subsequently in accordance with the somewhat inconclusive result reached in Committee II. My Government instructs me in the light of those decisions that we should press you most strongly to separate the measurement of the pay of prisoners of war from gold because no man can foresee what relation it will bear to the currencies of the world or to the value of commodities in the years that lie ahead of us. In the 20 years since 1929 the whole relation of currencies to one another in the world has been transformed and it is no exaggeration, I suggest, to say that we are moving towards a world in which currencies will be related to one another on a series of factors of which gold may well not even be one and if we are to plan wisely and to look ahead we shall surely not pin our faith to a standard which is passing away with the changing conditions of the world.

You may ask what will be the effect if we delete gold from this Article. The effect will be to link the measurement of the pay of prisoners of war to the Swiss franc and there again the choice has been deliberate. It is not in any sense related to sentiment. We are advised by the experts in money matters in the City of London, who, I venture to think, are recognized as knowledgeable on the subject as those in any other part of the world, that the Swiss franc is more likely to remain in relation to other currencies a reasonably steady measure of the relative value of those currencies than any other measure at present open to us. Certainly I am advised—and I can only pass on the advice because I am not personally an expert in the matter—that it is likely to be a better measure of the relationship of the currencies of the different countries than gold is likely to be in the years that lie ahead in this troubled world. That is the case for divorcing the measurement of the pay of prisoners of war from gold and basing it simply on the Swiss franc whatever may be the measurement of that franc from time to time.

The PRESIDENT: I will now ask the delegates to vote on the amendment submitted by the United Kingdom Delegation. The delegations who accept this amendment are requested to raise their hands.

The amendment was accepted by 21 votes to 10, with 5 abstentions.

Mr. ZUTTER (Switzerland): The United Kingdom amendment which we have just accepted provides for the deletion of the word "gold" wherever it appears. I should like to know whether the



paragraph appearing under the Categories I, II, III, etc., namely:

“the Swiss gold franc aforesaid is the franc containing 203 milligrams of fine gold”,

remains or is omitted.

The PRESIDENT: The amendment submitted by the United Kingdom Delegation proposed the omission of the word “gold” wherever it appears as well as the omission of the second paragraph, so that by its vote the Meeting has just decided to omit the second paragraph.

We will now proceed to Article 51A.

Mr. GARDNER (United Kingdom): I did not hear you put Article 51 as a whole to the vote and as there are other important aspects of it I think we ought to adopt it.

The PRESIDENT: I must apologize for an oversight. The subject of the vote should be the whole of Article 51. I now put Article 51 to the vote.

Article 51 was adopted by 37 votes, no opposition, one abstention.

#### Article 51A

Article 51A was adopted.

#### Article 52

The PRESIDENT: We have before us an amendment submitted by the United Kingdom Delegation proposing to delete the word “gold” in the first sentence of the first paragraph. This amendment is connected with that submitted to Article 51. I presume no discussion is necessary and, if nobody wishes to speak, I will put this amendment immediately to the vote. (*Approval*).

The amendment submitted by the United Kingdom Delegation was adopted by 26 votes to 2 with 10 abstentions.

The PRESIDENT: We will now vote on the whole of Article 52 as amended.

Article 52 was adopted as a whole by 34 votes, no opposition, one abstention.

#### Articles 53, 54, 55, 56 and 57

The above mentioned Articles were adopted.

#### Article 57A

Mr. SÖDERBLOM (Sweden), Rapporteur: There is a small change in the English text at the end of the third sentence of the second paragraph. It should read: “the reasons why such effects” etc.

The PRESIDENT: Are there any comments on the remark just made by the Rapporteur?

As there are none, the remark is noted. Does anybody wish to speak?

This not being the case, Article 57A is adopted.

#### Article 58

The PRESIDENT: We have before us an amendment submitted by the Greek Delegation proposing to replace this Article by the following:

“Upon the outbreak of hostilities, the belligerents shall publish the measures taken by them for the execution of the provisions of this section, and shall notify such measures to all prisoners falling into their hands, and to the Protecting Power. Any alteration in such measures shall also be notified in the same way.”

Mr. SÖDERBLOM (Sweden), Rapporteur: This amendment was discussed by Committee II which rejected it by 15 votes to 2 with 3 abstentions. The majority were of the opinion that Article 34, which deals with the posting of the provisions of the Convention in prisoners camps, and Article 117, which deals with the dissemination of the text of the Convention, provide sufficient guarantee.

Mr. AGATHOCLES (Greece): Article 58, which deals with the notifications by belligerents of measures taken to implement the provisions of Section V of the Convention (External relations of prisoners of war), provides that such notification shall be made as soon as prisoners of war have fallen into their hands. This means that belligerents are only required to inform prisoners, and the Powers on which they depend, through the Protecting Power, of the measures taken for implementing the provisions in question.

The time for making this notification does not seem very appropriate. Why wait until prisoners have actually been captured, since the time of capture cannot be foreseen, in order to notify the conditions under which they will be treated? It would be more logical, easier, and more expedient to issue this notification at the outbreak of hostilities, which would ensure that all the persons concerned would be informed in due time.

Moreover, the Conference has already agreed, in a similar case in the same Convention, namely

the third paragraph of Article 19, which deals with notifications in connection with the internment of prisoners of war, that such notification shall be made at the outbreak of hostilities. This was already provided by the 1929 Convention.

The expediency of coordinating provisions which are so similar is a reason in favour of our amendment.

It seems that the two Articles mentioned by the Rapporteur do not settle the question. Similar questions are treated differently in the third paragraph of Article 19, on the one hand, and in Article 58, on the other. The lack of coordination between these texts may well lead to conflicting interpretations.

The PRESIDENT: As no one wishes to speak, I will take a vote on the amendment submitted by the Greek Delegation.

The amendment submitted by the Greek Delegation was rejected by 16 votes to 4, with 15 abstentions.

We will now take a vote on Article 58 as a whole.

Article 58 was adopted by 33 votes, with 1 abstention.

#### **Articles 59, 60, 61, 62, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74**

The above mentioned Articles were adopted without discussion.

#### **Article 75**

The PRESIDENT: There is an amendment submitted by the Delegation of the Union of Soviet Socialist Republics proposing to complete Article 75 by a second paragraph drafted as follows:

"Prisoners of war convicted under the laws of the country where they are in captivity for war crimes or crimes against humanity, in accordance with the principles laid down at Nuremberg, shall be subject to the prison régime laid down in that country for persons undergoing punishment."

General SKLYAROV (Union of Socialist Soviet Republics): During the work of the Conference, the Soviet Delegation has several times mentioned the question which has just been raised, and has pointed out that Article 75 of the Prisoners of War Convention needs amplification. It should be stated in a second paragraph that prisoners of war, convicted under the legislation of the country in which they are held in captivity—for war crimes or crimes against humanity, in con-

formity with the principles of Nuremberg—should be subject to the treatment normally given to prisoners serving their sentence in that country. The Soviet Delegation regards this point as an important question of principle, and suggests its inclusion as an addition to Article 75.

In submitting this proposal, the Soviet Delegation is basing its attitude on the fact that persons guilty of war crimes or crimes against humanity, once their guilt has been established and they have been sentenced by a regular court, cannot and should not enjoy the privileges of the Convention. These persons, who have lost all human dignity, and are guilty of very serious crimes against humanity, have themselves erased their name from the list of protected persons entitled to benefit under the provisions of the Convention. We intended the procedure against these persons to be safeguarded by all the guarantees generally recognized for this type of crime. In other words, all guarantees necessary to ensure a just and impartial sentence should be provided. As soon as the sentence begins to run however, that is as soon as it is implemented, convicted persons should be subject, as I have said, to the treatment which is the rule in the country in which they are detained, for persons serving a sentence of the same kind.

The proposal made by the Soviet Delegation, when considered by the Special Committee and later by Committee II, met with objections from certain delegations. In our opinion it is necessary to make a brief review of these objections.

The most serious objection concerns the inclusion in Article 75 of an allusion to the principles of Nuremberg. This objection is not well-founded. For example, the Delegate of the United States of America, in reply to an enquiry by the Delegate of the Union of Soviet Socialist Republics as to his objections to this proposal, stated that, although the Government of the United States of America had signed the Statute of the Nuremberg Court together with the Governments of the United Kingdom, France and the Union of Socialist Soviet Republics and still recognizes as valid the principles known as the "Nuremberg Principles", it had to be borne in mind that a certain number of States are represented at this Conference who are not Parties to the agreements relative to the Nuremberg Court.

The United States Delegate was however obliged to recognize immediately that these States afterwards adhered to the principles of the Nuremberg Statutes and that, further, the General Assembly of the United Nations, in a resolution taken in the name of all members of this Organization had agreed with these principles. Thus a heavy majority of the States participating in the present Conference had accepted and recognized

the principles contained in the Statute of the Nuremberg Tribunal. Some States, which are not members of the United Nations and are represented at this Conference, had not up to the present raised any objection to the inclusion in Article 75 of the allusion to the principles of the Nuremberg Trial. It must be emphasized, which is rather strange, that the objections made to this inclusion emanate entirely from delegations whose Governments have, in one form or another, expressed their agreement with the Nuremberg principles.

The United States Delegate has also objected that the Commission set up to codify international law is at present engaged in modifying the Nuremberg principles. The United States Delegation has also stated that it was not possible before the work was ended to make any allusions on the lines proposed by the Soviet Delegation. In our opinion there is no basis to this argument, for a close study of the codification of the Nuremberg provisions, which should be effected by the Commission for the codification of international law, in no way excludes the possibility and necessity of adding to Article 75 an allusion to the principles in question, where persons sentenced for war crimes or crimes against humanity are concerned.

The provisions contained in the Statute of the Nuremberg Tribunal, and Article 6 in particular, do not require any complementary study or commentary; for their wording is both clear and precise. In this case the objections raised against the proposal of the U.S.S.R. are merely a legal subterfuge by means of which some Delegations wish to avoid the allusion that we propose.

For Article 75 to be quite clear as regards war crimes and crimes against humanity, it should make some allusion to the principles of Nuremberg. These principles define very specifically the nature of the crimes a conviction for which would render prisoners of war liable to the same code of punishment as that to which convicted persons are subject in the country where the prisoners are detained.

The second objection which has been raised against the proposed addition to Article 75 by the Soviet Delegation was that this addition deprived prisoners of war sentenced for war crimes or crimes against humanity of humane treatment. This is not the case, since the object of the Soviet proposal is not to place prisoners of war in unfavourable circumstances, but to ensure that they should serve their sentence in the same conditions as any other common law criminal and under the system obtaining in the country where the prisoners are detained. We do not think it possible to support here the principle that prisoners of war convicted in accordance with the legislation of the countries where they have committed offences of such gravity as war crimes or crimes against humanity,

should serve their sentence under better conditions than other persons serving sentences in the same country for less serious offences. Nevertheless this also means that while these prisoners of war are serving their sentence, they shall be treated in accordance with the humanitarian principles which are an essential part of the penal system of every State. The most elementary justice demands that prisoners of war who have forfeited their place among protected persons by reason of their crimes should not, while they are serving their sentences, enjoy the benefits of the Convention which they have so flagrantly violated.

The suggestion to complete Article 75 is an important matter of principle since it is also preventive. Those who flout the honour and the conscience of the nations, those who dare to violate the stipulations of this Convention and to follow the fatal path which leads to war crimes or crimes against humanity, should realize now what will be their punishment, namely that they will be deprived of the privileges granted by the Convention and that they will be subject to conditions similar to those applying to persons serving sentences in the same country.

For this reason it is quite inadmissible that, as the present text of Article 75 implies, those who commit a war crime should have the guarantee of the protection of the present Convention even if they are convicted.

Mr. LAMARLE (France): The question we are dealing with now gave rise to prolonged and laborious negotiations, not only in Committee II but also in the Special Committee and in the Special Working Party set up for the purpose of finding a compromise. The French Delegation made some contribution to these endeavours, but they were unfortunately fruitless and the French proposal only obtained one vote, its own, in the Special Committee, as I think it was called (the Committee of which Mr. Zutter was Chairman).

You can scarcely be surprised, therefore, if I do not feel inclined to renew these endeavours, and if I have notified my wish to speak, it was in order to clear up another point which will affect the future and may even affect the present.

The French Delegation had pointed out that Article 75, in the form adopted by Committee II, is absolute, peremptory and unlimited. The French Delegation have cited several examples to show that this absence of any limitation, if I may so express myself, is distinctly unfortunate, and that it would be really grotesque to allow certain war criminals to receive their pay. And we pointed out, the Nuremberg Tribunal did not agree to pay Marshal Goering the quintuple salary to which he was entitled, as Prime Minister of Prussia, Marshal of the Reich, and the holder of several

other important offices. We were all agreed on this point; but Article 75, as it is now drafted, would compel the Allies, as Occupying Powers in Germany, to issue to war criminals still serving their sentences in prison their handsome pay as Generals or Field Marshals; and I can scarcely imagine that anybody really wishes to do this.

In France we certainly have no intention of issuing military pay to war criminals of less importance, who are still awaiting their trial in that country. This was why I made a reservation. In this instance, I was somewhat luckier. The Special Committee, speaking, if I may put it in this way, through the mouth of the United Kingdom Delegate, Mr. Gardner, had recognized that my remark was well-founded. And in view of the assurances I gave him, Mr. Gardner agreed that Article 75 should be interpreted as conferring safeguards of a primarily legal character to war criminals awaiting trial or already convicted. In other words, they would be entitled to be treated humanely in the widest sense of the word, to have a fair trial with all proper legal guarantees, by a regularly constituted Court, and also to have the possibility of appealing against the verdict or sentence, and if necessary asking for a new trial.

The Special Committee—the one I referred to above with Mr. Zutter as Chairman—made neither comment on, nor objection to this interpretation. I even requested that this should be noted in the Minutes, forgetting that no Minutes of this Meeting were taken, but there will be a Record of today's Meeting, and a very important one.

As I have no hope of being able to induce the Meeting to adopt the proposal for which only France voted, I wish to explain clearly how France interprets, and will interpret Article 75, an interpretation accepted by the Special Committee, as the United Kingdom Delegate has pointed out, and as I have already stated.

Mr. WINKLER (Czechoslovakia): My country is one of the countries which suffered from crimes against humanity committed in the last war. This fact is well known all over the world, and therefore it is not necessary to take up your time by speaking of details of all the horrors we and other countries experienced during the war and during the Nazi occupation. Having these facts in mind it is only natural that our Delegation attaches a very great importance to the provisions of Article 75 and especially to the amendment submitted to our Conference by the Soviet Delegation. By this fact at the same time we should like to state our position in this matter.

We consider this matter as a question of principle, as a matter on which the Convention we are discussing must be absolutely clear, so that it will leave no doubt about the intention of its authors.

The Soviet amendment concerns those prisoners of war who have been convicted for war crimes or for crimes against humanity in accordance with the principles of the Nuremberg Trial. In other words, it concerns those war criminals who not only give by their deeds clear evidence that they do not respect the provisions of this Convention and other Conventions concerning the war, but also manifest that the very basic principles of humanity mean nothing to them and that they are always ready to violate the elements of human law, written or unwritten, of human society. The main purpose of our Convention is to guarantee the humanitarian principles even in war; and the Conventions resulting from this Conference must form, if I may say so, a charter of those humanitarian principles. It would be a very bad service to humanity to include in such a charter of humanitarian principles provisions giving special protection and granting special benefits to the war criminals and criminals against humanity, that is, to the most dangerous enemies to the very life of humanity. This is the main reason, this reason of principle, for which my Delegation cannot accept the text of Article 75 as it stands without adding to it an exception concerning war criminals and criminals against humanity as stipulated in the Soviet amendment.

During the long discussion in Committee II we heard arguments against the amendment saying that it is inhuman, that it is barbarous to treat inhumanity by inhumanity. Those arguments, however, seem to me to be entirely out of place. We read in the amendment that prisoners of war convicted, etc., shall be subject to the prison régime laid down in the country, where they are in captivity, for prisoners undergoing punishment. I ask you, what is inhuman in subjecting convicted criminals to the existing prison régime applied for all prisoners undergoing punishment in the same country? Nobody can see anything inhuman in that, unless he considers inhuman the very fact that war criminals and criminals against humanity are going to be put in prison. I think it would be much more inhuman not to protect human society against the inhumanities of these inhuman beings.

Other arguments put forward against the amendment in question contend that this principle itself would be acceptable, if the amendment did not refer to the principles of the Nuremberg Trial and if it did not use the words "war criminals" and "criminals against humanity". These arguments we cannot understand either. We see here again the question of principle. The Nuremberg Trial was a result of cooperation and agreement between the Great Powers who were allies in the last war. So was the Moscow Declaration concerning prosecutions and punishment of war criminals. In abandoning and denying this agreement and this coopera-

tion we feel that there is a grave danger to one of the very fundamental principles of international law, of the principle *Pacta sunt servanda*; and this is being endangered at a Conference engaged in creating new international Conventions. Having in mind that we are working on Conventions which are humanitarian par excellence, we could never accept provisions protecting the greatest enemies of human society, the war criminals. I appeal to all delegations not only in the name of Lidice and Terezin but in the name of Majdanky and Osviecim and in the name of all the pillaged and burnt-out villages of many countries and in the name of the millions of people massacred by the war criminals of the last war, to join with us with voting for the amendment in question.

General DILLON (United States of America): At the outset I should like to clear up some of the confusion in the issue with which we are dealing. We do not believe that the Nuremberg principle or charter is in issue here at all. Any arguments to that address are in our view irrelevant and can only confuse the main issue. Secondly, those delegations who join us in opposing the Russian Delegation's amendment are as anxious as the proposers of that amendment that those who commit war crimes and crimes against humanity shall be punished.

Let that be clearly understood; but we want to be assured that the nature of their punishment is not changed by the nature of their crime. It is a well-established principle of modern penology that the nature of the punishment does not follow the nature of the crime.

The Russian Delegate has stated that I regarded the Nuremberg principle as the main issue. I have already stated that I do not regard it as being in issue at all. The Czechoslovakian Delegate finds me in agreement with him when he states that this Convention must be clear and definite at all times. For the reason that the Soviet amendment makes uncertain the punishment that will be accorded to a war criminal or a person who commits a crime against humanity, for the reason that the Soviet amendment makes his punishment uncertain—for that reason mainly—the United States Delegation objects to the amendment and opposes it.

Now just exactly what does Article 75 do? What is it intended to accomplish? It gives to a prisoner convicted of a crime, a pre-capture crime, the right to the minimum standards of a prison regime as laid down in Article 98. If his conviction entails a sentence of death, it gives him the benefit of Article 91, which requires that his Government should be notified of his conviction and that his execution should be delayed for six months. If the principle of granting a man convicted and sentenced to death a six months' respite is to

be denied by this Conference, then the United States Delegation cannot agree with such a conclusion.

We do not know the prison regime existing in the various nations throughout the world. We cannot know it. Therefore what the Soviet amendment proposes is to ask this Conference to adopt a punishment which is uncertain.

We cannot possibly know what regime exists in the various nations throughout the world; but I personally have seen Dachau, I personally have seen Buchenwald, and I know some of the outrageous regimes which have existed. It would be immoral, unjust, and I repeat, barbarous—barbarously inhuman—to subject any prisoner of war to such uncertainty and such regimes.

That is the issue—only that—in this proposal made by the Soviet Delegation. No other issue is involved. Do not be confused by any talk about the Nuremberg principle or any talk about the heinousness of war crimes. Consider but one principle: do you want certainty in the punishment of all criminals? Do you want uniformity in the nature of that punishment? If you do, you must reject the Soviet amendment. The United States Delegation will vote against the Soviet amendment.

Mr. MEVORAH (Bulgaria): I should like to stress a few points. We are dealing with the question of an inconsistency in our attitude to certain more closely-related theories.

May I recall that when the Joint Committee discussed Article 3A of the Civilians Convention, submitted or at least supported by the United Kingdom Delegation, this Article seemed to us rather strange. It stipulated the complete forfeiture of civil rights by certain persons suspected of activities directed against the security of the State, who would by reason of that forfeiture lose the benefit of all privileges and rights granted by the Convention.

I wonder what is the exact difference between these two hypotheses. The case I have just mentioned concerns hostile activity, which has not yet been proved by trial, since the proceedings have only reached the stage of enquiry and nothing exists but more or less indefinite suspicions. Yet we would be ready to decree the complete forfeiture of the rights and privileges granted by the Convention. Why should we now change our opinion? We are dealing with war crimes and crime against humanity. What does this mean? The principles are well established and adequately defined, since there was a preliminary agreement in London when they were outlined, though, I admit, somewhat briefly; but later came the Records, we have witnessed convictions, and have thus been able to reach a clear definition of what we now call war crimes or crimes against humanity.

In these circumstances, why should we now refer to definitions which are not admitted in the field of international public law? On the other hand, as soon as the words "crimes against humanity" are pronounced, they immediately call up the vision of a person who has lost all sense of humanity, whose remaining instincts are those of a brute, who would not hesitate to smash a child's body against a wall, who would shoot anybody and who would order summary executions without trial or sentence, who would torture his victims or, in violation of the prohibition which we have adopted, would take hostages and perhaps, worse still, would execute them. If this is clear for a layman, it must be still more apparent for a jurist, especially if he has studied the Nuremberg trials. This has already become history and we should have no hesitation in referring to a matter which is quite clear to everybody.

If you had sufficient courage to deprive of their civil rights persons suspected of actions against the State, and thereby to deprive them of the privileges and rights of our Convention, I consider there is all the more reason to do so in this case. Criminals must by necessity be deprived of their civil rights.

I have given my full attention to previous interventions. It is obvious that we all agree on the principles, but in spite of that there is a difference of opinion as regards their application.

It has just been said that we cannot refer to Nuremberg because it has nothing to do with our Convention. I venture to say that the remark is somewhat egoistical. Nuremberg has, in fact, much in common with our Convention. We cannot, of course, apply the London agreements or the Nuremberg judgments (which were pronounced for war crimes) to persons who have been guilty of activities directed against the State, but that standard might be admitted in the estimation of crimes.

The United States Delegate (I beg him not to be offended) stated with much emphasis that the nature of the punishment cannot be influenced by the nature of the offence. According to him this was an existing principle of penal law, which, he added, was established and undisputable.

I must admit that this is the first time this principle has been brought to my notice. Everything I have read in my life and all I have learnt at universities has led me to believe the contrary; it is evident that the nature of the offence is directly proportionate to the nature of the punishment. This is what is called proportional punishment.

We could not in fact inflict the death penalty on a person who stole a loaf. If we unanimously decide that the crimes in question are of primary importance, we should thereby make the punishment proportionate to the magnitude of the

crime. But what the United States Delegate said surprised me for another reason. He stated that the penalty should not be proportionate to the crime, but there is no question in the Soviet amendment of making the penalty proportionate to the crime, since it is assumed that sentence has already been pronounced.

We are dealing with war criminals convicted as such, and with the regime to which such prisoners should be subject. In order not to prolong this theoretical discussion, I should like to ask you one single question: if you are prepared to deprive persons responsible for acts hostile to the State of their civil rights (although this has not yet been proved and they have not yet been tried), surely you ought *a fortiori* to have the courage to sentence war criminals guilty of crimes against humanity to the loss of their civil rights, particularly if these criminals have been tried in accordance with the principles of our Convention. For the whole of this Convention still applies to persons convicted of crimes as atrocious as those which were tried at Nuremberg.

I therefore urge you to weigh this matter very carefully. I quite understand that we are rather tired of it. Perhaps we might ask our distinguished and gracious President to allow us a short rest, for we must at all costs continue to think and act logically, and avoid contradictions of fact. Our desire to adopt an Article is not sufficient reason for creating contradictions which would do the Convention little honour.

The PRESIDENT: There should have been a meeting of the Bureau at 6 p.m.; but it has been adjourned to a subsequent date which will be notified later, as I wish to finish the discussion of Article 75 today.

Mr. HARASZTI (Hungary): I have to make a few brief remarks on behalf of the Hungarian Delegation in regard to Article 75. In the first place I notice that certain delegations wish to avoid all reference to the principles of Nuremberg. That is to be regretted, for the aim of this Conference is the protection of war victims. I am convinced that we cannot effectively protect war victims, if we are not ready to convict war criminals who are responsible for the death and torture of millions of men, women and children.

I have to draw the Meeting's attention to the fact that the principles of Nuremberg were accepted during the last World War by the Great Powers and afterwards by most of the countries represented here. They represent remarkable progress in the field of international law. I consider that it is not for this Conference to disavow those principles. If we pass them over in silence, or even if we are not prepared to confirm them, we

must not be astonished if a revision of the Nuremberg proceedings as well as the principles of Nuremberg is asked for. Under those conditions the Hungarian Delegation considers that we ought of clearly indicate that we approve of those principles. If we fail to give this point of view due emphasis, we put ourselves on the side of those who do not recognize those principles. In that case it is better to say so clearly, at once.

That is the principal reason which makes it impossible for the Hungarian Delegation to accept the arguments put forward by the Delegate of the United States of America, who asserts that he is absolutely convinced of the necessity of punishing war criminals, but desires to avoid, by means of arguments which are not convincing—from a lawyer's point of view at any rate—any reference to the principles of Nuremberg.

I had intended to say a few words on the subject of those arguments; but I think that the speech made by the Bulgarian Delegate has rendered it unnecessary.

As regards the question of the treatment of war criminals, the Hungarian Delegation considers that it is impossible to grant such persons the same protection as is given to prisoners of war. The latter deserve all the protection which the Convention provides, but it would not be justifiable to put them on a footing of equality with persons who have committed crimes against humanity. The Hungarian Delegation is convinced that war criminals ought to receive the same treatment as persons imprisoned for having committed crimes and punished in accordance with the penal code of the Detaining Power. There is no reason for placing war criminals in a privileged situation.

The absurd consequences of the text submitted by Committee II have been demonstrated by the Delegate for France, and I regret that he did not draw the inference from his intervention. The Minutes do not form an integral part of our Convention, and we need very clear texts which will not call for further reference to the Minutes.

Consequently, the Hungarian Delegation considers that the only way to eliminate all possible misunderstanding is to insert the amendment submitted by the Union of Soviet Socialist Republics in the text of our Convention. The Hungarian Delegation will vote for the amendment submitted by the Delegation of the Union of Soviet Socialist Republics.

Mr. SÖDERBLOM (Sweden), Rapporteur: There has twice been a question of the interpretation of Article 75. It has been pointed out that the guarantees afforded by it are merely the right of appeal, postponement of the carrying out of

capital punishment, and the benefits of minimum treatment. We ought to add to these: the right to repatriation, once the sentence has been served.

One delegate thought fit to repeat this interpretation, so that it should appear in the Minutes of our Meeting. For that reason I desire to say that the text is to be found in the Record of the Twenty-Sixth Meeting of the Special Committee, in the Record of the Thirtieth Sitting of Committee II and in the Report of Committee II.

Captain MOUTON (Netherlands): I will be very short. We noticed some confusion in the discussion this afternoon and we will try to help a little bit to clear up the issue. We regret that the Delegate of France mentioned an example which in our opinion is perhaps not quite correct. He said that it would be undesirable that a war criminal could receive his pay after he was convicted. I do not think there is any reason to be afraid of that because I do not know of any country where convicted prisoners are paid.

I should like to say in a few words what we are actually doing here. In view of the U.S.S.R. amendment I have to state this, that it is quite true that there is a doctrine in international law that he who violates the rules of international law cannot invoke the protection of the same law. You can find this in works by writers like Gentili and in the Lieber rules of 1863. On the other hand we must not forget that international law is not a static thing but is progressive. It develops and the Netherlands Delegation has no reason whatsoever to oppose such evolution.

International law follows the development of ordinary law at least to a certain extent and we do want to contribute to the development of international law. That is one of the purposes for which we are gathered together here. It is also true that before this Conference there have been four decisions taken by Courts, three of them Supreme Courts, who have ruled that the provisions for the punishment of prisoners of war do not apply in cases of war crimes. The reason given for these decisions was that the drafters of the Convention of 1929 simply did not take account of crimes committed before capture but only thought of crimes committed during captivity.

When the experts gathered here in 1947 after the experience of this last war and after the experience of several trials of war criminals, they realized that they could not, on the simple fact that somebody is alleged to have committed a war crime, put that person outside the protection of the Convention and for that reason we thought that we should at least make a provision that nobody would lose the protection of the Convention until condemned by a Court. But when you take this

step why not take one step more? What is there against leaving even a war criminal (and do not forget that there are gradations in the criminality; we always hear of frightful types of war criminals in these discussions here but there might be some of a minor character and the difficulty is to know where to draw the line) protected by the few provisions of this Convention which still apply? I am sure that in the case of any of your soldiers who are accused of war crimes and are convicted by Courts you would still want to have them treated in a humane way and would want them to be repatriated after their sentence is finished.

The last few things I want to say are these. I know that it seems audacious to mention in the U.S.S.R. amendment the Nuremberg principles and the words "war crimes" or "crimes against humanity". I want to draw your attention to the fact that the so-called Nuremberg principles are laid down in a charter which was made for one single case. At the moment, because the Assembly of the United Nations has asked the International Law Commission to draft rules which will be judged by the Assembly later about the principles of Nuremberg, we think that this Conference should not touch a subject which is under discussion at the moment in Lake Success. We have heard from the Delegate of Bulgaria, that even for a layman "war crimes" and "crimes against humanity" are very precise notions. I should like to answer him and say that war crimes is a notion which is more definite than crimes against humanity but both are difficult to define specifically. In several courts of the world, in several universities and in the International Law Commission we are studying very hard to get a good and clear definition of what both these notions mean and what they entail, and I can tell you that the notion of crimes against humanity is even for lawyers, and lawyers who are specialists in this specific field of international law, a concept which is not very clear yet. For that reason I think we should leave this alone because I cannot see any necessity to mention these notions which are being studied by the International Law Commission. They should not be mentioned in this Article.

I will finish by saying that so far as I have noticed nobody in this Meeting has stated that we do not want to convict war criminals. On the contrary, the Delegate of the United States of America has very clearly stated that all the countries who have suffered during this war are very much convinced of the necessity to try war criminals but it has nothing to do with the issue of this Article. This Article only deals with the few provisions of this Convention which still cover war criminals who have been convicted and I think that in view of the line of development of international law we should leave Article 75 as it stands.

Mr. MOROSOV (Union of Soviet Socialist Republics): The Soviet Delegation wishes once more to draw the attention of all delegates to the question now under discussion. We consider that the present position is scandalous, and I have no hesitation in using the word, which I wish to stress quite particularly. Everything is quite clear, and it is really scandalous that a certain number of delegations should insist on retaining Article 75 in its existing form. Surely the delegations which have spoken in defence of this Article have now arrived at a logical no-thoroughfare. If we consider the arguments of the Soviet Delegation as they were set forth by the French Delegate, this is, I repeat, perfectly clear. The various points of view advanced and the various tendencies revealed in these discussions are as clearly reflected here as in a drop of water.

Everything has its limits. It is hardly a sign of strength to argue in favour of a provision which everyone must regard as quite illogical. But this is precisely what the adoption by the Conference of Article 75, as submitted to you now, would mean. No one will ever be able to understand such a decision. It is proposed to punish persons for breaches of the Convention, by raising the left hand, and to ensure, by raising the right hand, that the same persons shall be entitled to the benefits of the Convention the provisions of which they have violated. Even those who are accustomed to think that proposals emanating from the Soviet Delegation are generally odious, who are always and on principle opposed to its proposals, must grasp quite clearly that Article 75 as submitted to them cannot be adopted, and that its adoption would be a very serious mistake. Even for those actuated by the most reactionary principles, it is impossible to go so far in defiance of all logic and common sense. If anyone believes that the Soviet amendment can be drafted differently, can be altered or completed, that is quite another matter, and could if necessary be considered.

But we must repeat that the question cannot be settled by a simple vote, without thorough examination of the matter and without consideration of the serious consequences which the adoption of such an Article would entail. It would be a tragic, a monstrous thing to grant persons guilty of crimes against humanity or war crimes the protection of the Convention. The Delegation of the Union of Soviet Socialist Republics calls upon the delegates not to adopt an Article the inevitable result of which would be to grant to these categories of persons benefits which are not even stipulated for persons convicted of infinitely less serious crimes.

The Delegate for the United States of America thinks that the Soviet amendment would cause



some confusion. In doing so, he is hardly logical. He admits that his Government, like himself, agrees with the principles of Nuremberg, and then proceeds to argue that our amendment would lead to confusion. Yet that amendment is founded on the principles of Nuremberg, which are a model of clarity and precision. I imagine that the Governments which signed them knew perfectly well what they were signing and were far from considering those principles confused.

Further, here is a summary of the Article 6 of the Nuremberg Statute: "The following acts, or any of them, are crimes coming within the jurisdiction of the Tribunal for which there shall be individual responsibility":

.....  
 (b) war crimes: namely, violations of the laws or customs of war. Such violations shall include, but not limited to, murder, ill-treatment or deportation to slave labour or for any other purpose of civilian population of or in occupied territory, murder or ill-treatment of prisoners of war or persons on the seas, killing of hostages, plunder of private or public property, wanton destruction of cities, towns or villages, or devastation not justified by military necessity;"

Now these questions are actually dealt with in several Articles of our Conventions; you will even find passages from point (b) of the Nuremberg Statute.

Why, should we say, therefore, in drafting Article 130A, that this Article, and Article 51 are based on confused ideas, when we are agreed on the principle? No one here present can deny the Nuremberg principle. But the United States Delegate nevertheless seems afraid to see it figure in our Convention. This is quite incomprehensible. Anyone who objects to the Article we have submitted can, if it is rejected, make another proposal; but he is not entitled to adopt Article 75, as now submitted to the Conference. The Soviet Delegation is absolutely opposed to this Article being included in the Convention.

The PRESIDENT: If no one else wishes to speak, we shall proceed to take a vote on the amendment submitted by the Soviet Delegate.

Mr. GARDNER (United Kingdom): The United Kingdom Delegation has been referred to twice in the course of the debate. May I consider those two points first?

It is perfectly true that in Committee II I stated as my considered view which is shared by, I think, most other delegations. The effect of Article 75 is that a man in prison does not get paid. The reason is that under Article 72 prisoners of war are subject to the same laws, regulations

and general orders as the military forces of the Detaining Power. To the best of my knowledge those laws, regulations, and orders in all countries deprive a soldier sent to prison of pay.

The Delegate for Bulgaria seemed to think there was some inconsistency between our attitude here and our attitude towards Article 3A in the Civilians Convention. I think he overlooked the fact that anybody falling under Article 3A of the Civilians Convention who is convicted would receive all the benefits of the Convention. There is, therefore, so far as convicted criminals are concerned, no inconsistency between the United Kingdom attitude under that Article and its attitude here.

I only want to recall briefly what it is that divides the two sides. We are all agreed that a prisoner of war charged with a crime should have all the benefits of all the judiciary guarantees as laid down in this Convention. We are all agreed that anybody convicted of a crime—not only of a war crime, mark you, or a crime against humanity, but of any crime—deserves to be punished and should be punished, and the Prisoners of War Convention provides for his punishment.

The difference between the two parties is a narrow one, but an important one. On the one side, some of us hold that what is laid down for a convicted prisoner in this Convention is a minimum demand for any prisoner anywhere under the laws of humanity. There are others who hold that what is laid down in this Convention is all right for the criminal prisoner of war, that it is quite right that that minimum should be laid down for him, but the Convention should lay down no minimum for one convicted for war crimes or crimes against humanity. It is because the man in question is in the hands of the enemy as a prisoner of war, not because he has fallen into their hands as a war criminal or as a criminal convicted of a crime against humanity, but because he is a prisoner of war that we hold that, if he is convicted, he should enjoy the benefits of this Convention.

What are they? First, if he is sentenced to death under Article 91, that sentence must be suspended long enough for his Government to consider the facts of the case and to make any representations they think fit. Nobody, even a convicted war criminal in the hands of his captors, because he is a prisoner should be deprived of that. Secondly, he should have the same right of appeal as prisoners of the Detaining Power. Does anyone dispute that a convicted war criminal ought to have every right to appeal? Thirdly, the notification of his conviction and his rights of appeal should be communicated to the Protecting Power. Is there any reason why the war criminal should be deprived of that? Finally, if

he is sent to prison, he shall enjoy the minimum standards laid down under Article 98 for any criminal put in prison who is in the hands of the enemy as a prisoner of war. We submit that those things are the minimum which should be given to anybody anywhere; even in peace-time, if a citizen of the United Kingdom is convicted in a foreign Court, these are the things we should seek to secure for him through diplomatic channels. We repudiate, therefore, any suggestion that we are trying to be soft towards war criminals. We have provided for their punishment; but we have insisted, and we shall continue to insist, in the vote that is to take place, that if you punish a war criminal in the name of the law of humanity your punishment must conform to the law of humanity. Unless the Soviet amendment really means treating him worse than Article 98 when he is imprisoned, I do not believe there is any difference in practice between the parties; there is only a difference in the way it is expressed. I ask the Conference to endorse the view which Committee II took on the same amendment and to uphold the Stockholm text (former Article 74).

Mr. MOROSOV (Union of Soviet Socialist Republics): I ask for a vote by roll-call.

The PRESIDENT: Are there any objections to this proposal?

Mr. AGATHOCLES (Greece): I propose a vote by secret ballot.

Mr. MOROSOV (Union of Soviet Socialist Republics): The Soviet Delegation wishes to express its unqualified opposition to a vote by secret ballot. Voting procedure is not an end in itself. A vote is merely a means of indicating clearly the collective intentions of the Conference. Our proposal is a very important one. Since some delegations, in spite of the warnings they have received from this rostrum, are ready to encourage future war criminals and to help them to tread the fatal path which awaits them, I think it is absolutely essential that the name of the country and the delegate representing these views should be known when a vote is taken. We ought to know those who have ventured to defend such an unjust and mistaken contention in this Conference.

The attempt to vote by secret ballot clearly shows the weakness of those who uphold this unjust contention, and the lack of boldness they have displayed in defending it. The Soviet Delegation categorically opposes a vote by secret ballot. If we were dealing with questions according to diplomatic traditions, it would be quite a different matter; but this is not the case today.

The Greek Delegate will not object to my telling him that he has not adequately considered the proposal he has just made. I beg him not to press his suggestion.

The Soviet Delegation maintains its proposal; and I repeat that it will never agree to accept Article 75 in the wording proposed by Committee II.

Mr. AGATHOCLES (Greece): I made my suggestion not from personal motives, but relying on the unanimous desire of the Meeting which, on two occasions, when voting by roll-call was requested, decided by a majority of several votes to vote by secret ballot. I have no reason to press the point, and if no other delegation supports my proposal, I shall consider it withdrawn.

The PRESIDENT: Does anybody wish to support the proposal of the Greek Delegate?

This not being the case, I consider the proposal has been withdrawn in accordance with the declaration just made by the Greek Delegate.

There remains only one proposal, that of the U.S.S.R. Delegation to vote by roll-call; is there any opposition?

This not being the case, we will now vote by roll-call.

The results of the roll-call were:

In favour:

Albania, Byelorussia S.S.R., Bulgaria, Hungary, Roumania, Czechoslovakia, Ukraine S.S.R., Union of Soviet Socialist Republics.

Against:

Argentina, Australia, Belgium, Brazil, Canada, China, Denmark, United States of America, Ireland, Italy, Luxemburg, Mexico, Norway, New Zealand, Netherlands, Portugal, United Kingdom, Holy See, Sweden, Switzerland, Thailand, Turkey, Uruguay.

Abstentions:

Finland, France, Greece, India, Israel, Liechtenstein, Nicaragua.

Absent:

Afghanistan, Austria, Burma, Bolivia, Chile, Columbia, Costa Rica, Cuba, Egypt, Ecuador, Spain, Ethiopia, Guatemala, Iran, Lebanon, Monaco, Pakistan, Peru, Salvador, Syria, Venezuela.

The amendment submitted by the Soviet Delegation was accordingly rejected by 23 votes to 8, with 7 abstentions.

Article 75 as a whole was adopted by 27 votes to 8, with 3 abstentions.

General SLAVIN (Union of Soviet Socialist Republics): The Soviet Delegation requests that it should be noted in the Records that it voted against Article 75.

The PRESIDENT: This declaration is duly noted.

### Article 30A

Before the close of this meeting I wish to inform you that the United Kingdom Delegation has

informed me that it is unable to attend the meetings of the Working Party set up to examine Article 30A. We are therefore obliged to replace this Delegation on the Working Party, and I propose that we should call upon the Bulgarian Delegation to do so. The Netherlands Delegation is requested to summon this Working Party.

Does anybody wish to comment on these remarks? I note that this is not the case.

*The meeting rose at 7.50 p.m.*

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## SEVENTEENTH MEETING

*Thursday 28 July 1949, 10 a.m.*

*President: Mr. Max PETITPIERRE, President of the Conference*

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### PRISONERS OF WAR CONVENTION

The PRESIDENT: We will resume our consideration of the provisions of the Prisoners of War Convention beginning with Article 76.

**Articles 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93 and 94**

The above mentioned Articles were adopted.

### Article 95

The PRESIDENT: For Article 95 we have an amendment submitted by the Greek Delegation. I call upon the Rapporteur to speak.

Mr. SÖDERBLOM (Sweden), Rapporteur: This amendment was already submitted by the Greek Government in a document which was circulated before the Conference started. It proposes to replace the last words "ou d'appel" of the third paragraph of the Stockholm text by "et celui en grâce". The Penal Sanctions Committee of Committee II considered that the wording it had adopted was sufficient likewise to cover cases of appeal.

Committee II unanimously adopted this text.

The Drafting Committee of the Conference made a slight alteration on this particular point. In the third paragraph of Article 95 the two words "ou d'appel" in the French text have been deleted. The English text will include the words "appeal or petition".

In my opinion I consider that the text submitted by the Drafting Committee fully meets the wishes of the Greek Delegation.

Mr. AGATHOCLES (Greece): In view of the Rapporteur's explanation, I withdraw this amendment.

The PRESIDENT: The amendment is withdrawn. Does anyone wish to speak on Article 95? Article 95 was adopted.

### Articles 96, 97 and 98

The above mentioned Articles were adopted.

### Article 100

The PRESIDENT: To this Article no amendment has been submitted.

Mr. GARDNER (United Kingdom): We will ask that Article 100 be put to the vote by paragraphs in order that we may invite the Conference to vote against the last paragraph. We believe that, though this paragraph was inspired by the best of motives, it in fact introduces a wrong principle, the principle that an alien who has been held in a foreign country for reasons of the security of that country, should be able to insist on remaining in that country, when under the Convention he no longer ought to do so but ought to be returned to his own country. We rest our objection on the fact that experience has shown that this kind of provision, had it been in operation, would have compelled us to retain for many months, indeed for years, in Britain aliens whose motives for staying have no connection with any motive that has been advanced by those who advocate this particular paragraph. Their motives will be various. There will be individuals who rightly expect that if they return to their own country they will be prosecuted for crimes for which they ought to be prosecuted and for which, if they are guilty, they ought to be punished. There will be individuals who want to remain in the Detaining Power's country because conditions, such as food and treatment etc., are better than in their own country. There will be individuals, and this is probably the largest category of all, who will want to remain because of liaisons with women in the country of the Detaining Power. We suggest that a Convention for the protection of prisoners of war, which recognizes no justification for retaining as a prisoner of war a man who is seriously disabled by wounds or sickness, should not impose upon the Detaining Power the obligation to keep as a prisoner of war, a man who ought not to be a prisoner of war and, most of all, should not impose upon the Detaining Power the obligation of retaining an alien in its country, who has no claim to be there except his own particular desire not to return to his own country.

The justification has been that there are some captured as prisoners of war who, if returned to their own country, have to fear persecution. I suggest that a country should be allowed to decide for itself whether it will give refuge and asylum to a foreigner who has come to that country not by a voluntary act of his own; for instance, when a Detaining Power is satisfied that he has good grounds for staying, but there should not be an obligation on the Detaining Power to keep a prisoner of war who, as the Convention itself says, ought no longer to be a prisoner of war. I invite the Conference to vote against the last paragraph of Article 100.

Mr. SÖDERBLÖM (Sweden), Rapporteur: Lengthy discussions on this question took place in Commit-

tee II and its sub-Committees. The Report submitted by Drafting Committee No. 2 of Committee II proposed a compromise solution, which consisted of adding to this last paragraph the following clause:

“provided that he can be sent at once to a neutral country willing to accept him in accordance with the second paragraph above”.

This compromise proposal was re-submitted to the Committee by one delegation, but was rejected by 12 votes to 7, with 8 abstentions. The Committee further adopted Article 100 as a whole by 28 votes to 2.

Mr. BOURQUIN (Belgium): I should like to indicate as briefly as possible our reasons for urging that this last paragraph of Article 100 should be retained. A situation might arise—it actually arose during the last war—which must be borne in mind. If the Detaining Power is authorized to repatriate prisoners against their will, this is what might happen: the Detaining Power, in need of economic assistance, would repatriate the prisoners who seemed most likely to be useful from that point of view. Even if a prisoner did not wish to be repatriated, he would be repatriated by force; once he was back in his own country steps would be taken to compel him, by some means or other, to collaborate in the economy of the Occupying Power. Cases of this kind did occur; they occurred in Belgium. That is why, so far as we are concerned, we consider it essential that this third paragraph should be retained.

Mr. LAMARLE (France): During the discussions which took place in the Drafting Committee and in Committee II, the French Delegation shared the opinion of the majority, i.e. it was in favour of the last paragraph. The explanations just given by the United Kingdom Delegate have led the French Delegation to revise its opinion on the matter; first of all, because it is not always easy, in such a situation, to say definitely that the interned person has reason to fear persecution. It might be pure fancy, an understandable fancy on the part of a wounded or sick person; but nevertheless, fancy simply due, perhaps, to the fact that the person concerned considers that the climate is better in the country where he is a prisoner, or to other similar reasons. This wish may be a perfectly reasonable one, of course, but it is one which cannot be taken into consideration in all cases by the Detaining Power. Moreover, as the United Kingdom Delegate pointed out, no question of any kind of right of sanctuary arises. It cannot be said that the right of sanctuary is being violated, for the interested Party never

had any right to be received in the territory of the Detaining Power.

Furthermore, as the United Kingdom Delegate has already pointed out, it is by no means certain that in all or even in the majority of cases, the Detaining Power will return him against his will. It is natural, however, or at least it seems natural to me, for the reasons I have already stated, that the Detaining Power should reserve its own discretion. This would of course not prevent it from taking account of any circumstances which seemed to merit consideration.

Mr. BAISTROCCHI (Italy): The Italian Delegation agrees with the views expressed by the Belgian Delegate, and will vote in favour of retaining the last paragraph of Article 100.

The PRESIDENT: We will now take a vote on each of the three paragraphs in turn, as requested by the United Kingdom Delegation.

Is there any opposition to the first paragraph?

As this is not the case, it is adopted.

Is there any opposition to the second paragraph?

As this is not the case, it is adopted.

With regard to the third paragraph, we will first take a vote on the United Kingdom proposal that it should be deleted.

Eighteen delegations have voted in favour of retaining, and eighteen in favour of deleting this paragraph (in other words, for the adoption of the amendment); seven delegations abstained.

The PRESIDENT: According to the Rules of Procedure, the proposal made by the United Kingdom Delegation is rejected. It is open to any delegation, however, after a lapse of 24 hours, to ask the Conference, in Plenary Meeting, to reconsider the question. This is prescribed by Rule 35, second paragraph, of the Rules of Procedure.

Mr. GARDNER (United Kingdom): There is a drafting point on Article 100. As the third paragraph disappeared a drafting amendment is necessary at the beginning of the first paragraph; perhaps that could be left to the Drafting Committee.

The PRESIDENT: At present, as the third paragraph of Article 100 has not been deleted, there is no need to alter the first paragraph. As I have already stated, however, it is open to the United Kingdom Delegation, or to any other delegation, to ask tomorrow, after the lapse of 24 hours, for a new vote. At that time, if the result of the voting is different from what it was today, it will be possible to reconsider the first paragraph.

Does anyone else wish to speak on Article 100?

As this is not the case, the Article is adopted.

## Articles 101, 101A, 102, 103, 104

Articles 101 to 104 were adopted.

## Article 105

The PRESIDENT: An amendment to Article 105 has been submitted by the Delegation of the Union of Soviet Socialist Republics.

General SKLYAROV (Union of Soviet Socialist Republics): The Soviet Delegation considers that the wording of Article 105 adopted by Committee II should be altered.

The Stockholm text was completed by the addition of the following words:

“prisoners of war prosecuted for an offence for which the maximum penalty is not more than ten years’ detention, or sentenced to less than ten years, shall similarly not be kept back”.

This Article conflicts with the principle expressed by the clause of Article 109 of the Prisoners of War Convention, which specifies that prisoners of war convicted of a common law offence may be retained until they have completed their sentence. This provision of Article 109 is perfectly justified: for, if we admit that persons convicted of criminal offences—in this particular case prisoners of war—must be repatriated unconditionally, that is tantamount to exonerating them from all punishment for the crimes they have committed.

It is difficult to suppose that they would continue to serve a sentence in their own country for a crime for which they had been convicted by an enemy court, and which might amount to ten years’ detention. It must be remembered that persons sentenced to 10 years’ detention have, under the criminal laws of most countries, been convicted of a serious crime. Consequently, if the provisions of Article 105 provide for the repatriation more or less automatically of “...prisoners of war sentenced to a maximum of ten years’ detention...”, this would be equivalent to granting an improper amnesty to persons convicted of serious crimes.

Such a position would be in contradiction with the spirit of the Convention; and this is why the Soviet Delegation proposes the deletion of the first paragraph of Article 105.

Mr. GARDNER (United Kingdom): I hope the Conference will maintain the text as submitted by Committee II, for this reason. This Article is in the Section dealing with the direct repatriation during war time of sick and wounded pris-

oners or with their accommodation in neutral countries. The position of the fit being repatriated at the end of hostilities is dealt with in Article 109 on this particular point, in the sixth paragraph of that Article which Committee II decided should not include a provision on these lines.

If these words were deleted, a prisoner of war, who had qualified for repatriation owing to his physical or medical condition and who has been sentenced for some comparatively minor offence to a short sentence of imprisonment, even as short as one, two or three months, would not be repatriated unless the Detaining Power chose to release him, he would be retained to serve his sentence. More than that, a man charged with some minor offence might be retained for the proceedings to be heard and determined.

If a man misses a repatriation of sick and wounded during war time he may have to wait a very long time before the next repatriation takes place; and so it was that Committee II accepted the view that it was really only serious offences which would prevent a man who was disabled from being repatriated when his time came.

There were naturally differences of opinion as how to draw the line between serious and other offences, and this particular line—which is a rough line—was drawn as a result of a discussion within the Committee itself. Some might think a better line could be drawn, others might think that this line is good enough. According to my recollection, there was no sharp difference in the Committee about the desirability of drawing such a line to give a man, charged with or sentenced for a minor offence, the opportunity to go home.

I would point out that a man who is charged has got to be charged with an offence carrying a maximum sentence of more than ten years. It is true that if he has already been sentenced, the line drawn is not less than ten years. We felt that generally speaking anything less than those two standards might be treated, in the case of a sick man—and it is only the sick and wounded people that we are talking about—as not serious and the man allowed to go home instead of having perhaps to stay with the Detaining Power away from his own people for perhaps many months and in some cases even for years.

I hope that the Conference will, on general humanitarian grounds, retain the text as produced by Committee II.

Mr. MEVORAH (Bulgaria): It seems to me that there is a discrepancy in the second sentence of Article 105. Its aim is clearly to prevent the possibility of a prisoner being detained for an offence which, although generally considered serious,

is not sufficiently serious to fall within the scope of this phrase. May I explain my point of view. We are dealing with a certain category of offences which cannot merely be classified as rape, murder, etc. All we can do is to define the offences by naming their penalties, since it is these with which we are most concerned. We have fixed a total of ten years as the maximum penalty and, at the same time, we have also adopted ten years as the same a maximum for sentences actually pronounced.

There seems to me to be a huge difference between the maximum penalty provided for and a sentence which has already been pronounced, since penal legislation usually provides for a minimum and a maximum and leaves to the Judge's discretion the fixing of an equitable penalty between these two extremes. This method is fair and correct, and makes it possible to take attenuating or aggravating circumstances into account. Usually, however, in normal cases without attenuating or aggravating circumstances, the Judge inflicts a medium penalty half-way between the maximum and minimum provided. Consequently the case I have just cited should refer to offences involving a maximum of seven and a half years' imprisonment, in other words half-way between a maximum of ten years and a minimum of five years, provided for as the penalty.

When we find a reference, at the end of the sentence, to a maximum sentence of ten years in the event of conviction, we must also consider the previous stage of the proceedings, that is, before sentence has been passed. The only case to be considered here is the penalty provided by law. Suppose, for example, that fifteen years' imprisonment is the maximum penalty provided by law for a given offence. This penalty, framed in the criminal code, corresponded, before conviction, to an offence for which ten or fifteen years' imprisonment could be inflicted. In such a case, the penalty inflicted was, say, ten years' imprisonment. If the minimum penalty was eight years and the maximum was twelve years, the sentence passed of ten years would be a medium between the two. But if a sentence of ten years had been passed, punishment was inflicted for an offence which at most should have entailed 12 or 15 years, at the discretion of the Court.

I recall these facts to show you that the two classes of penalties, or in other words offences, are not the same if you look at them from the point of view of the penalty provided under the law, and the penalty inflicted after conviction. In the latter case, we are considering a much more serious class of offences, whereas the offences in the former category are not very serious. To show you clearly what I mean, here is an example.

Take the case of rape committed under normal conditions—i.e. abnormal conditions. Let us suppose first that the punishment provided by the criminal code is ten years' imprisonment; in such a case, it would not be possible to release the detained prisoner by virtue of the provisions of Article 105. If the Court had already passed sentence and inflicted not the maximum penalty of ten years, but only eight years, for example, it would be impossible to retain this sentence. You see, therefore, that the same offence may produce directly opposite results, according to the position envisaged, in other words, whether we take the period before or after conviction.

May I add in conclusion, that if, after taking into account all the various criminal codes in the world, we were to take the means, we should find that a penalty of ten years, that is to say, a penalty fixed at ten years, falling between the maximum and the minimum, generally corresponds to a very serious offence. Even murder, in certain cases, may only be punishable by ten years' imprisonment; and if attenuating circumstances are granted, a clever lawyer can easily get the sentence reduced to less than ten years. There are also a large number of other offences for which the average penalty is less than ten years' detention.

Can all serious crimes therefore be included in this category, immediately after those disciplinary offences we have already dealt with in the first sentence of this paragraph? These two classes of offences which have entailed disciplinary sanctions, and those which entail or may entail sentences of less than ten years are obviously quite different, and the logical conclusion must be that they should be treated quite differently. A different solution should be found.

The PRESIDENT: We will now proceed to take a vote on the amendment submitted by the Delegation of the Union of Soviet Socialist Republics.

The PRESIDENT: The voting was as follows: 15 Delegations voted in favour of the amendment, 15 against, and 14 abstained. According to the second paragraph of Rule 35 of the Rules of Procedure, the amendment is rejected. But any delegation may, after the lapse of twenty-four hours, ask for a new vote.

We will now take a vote on Article 105 as a whole.

Article 105 was adopted by 32 votes to 8, with 1 abstention.

### Articles 106 and 107

These Articles were adopted.

### Article 108

The PRESIDENT: We will now consider Article 108. An amendment has been presented by the Delegation of the Union of Soviet Socialist Republics. It proposes to delete the two last sentences of the stipulation in sub-paragraph *b*) last paragraph of the Article.

Mr. SÖDERBLOM (Sweden), Rapporteur: This refers to the apportionment of repatriation costs for prisoners of war between the Detaining Power and the Power on which the prisoners depend. The Stockholm Conference had advocated a Model Agreement to be annexed to the Convention. Committee II did not favour that idea, and instead inserted a fourth paragraph in Article 108. This fourth paragraph lays down the general principles governing the apportionment of costs.

The amendment now submitted to us relates to the remaining costs, that is to say, the expenses of transport on the territory of the Powers concerned.

Mr. FILIPPOV (Union of Soviet Socialist Republics): The Soviet Delegation considers that certain provisions of Article 108 are not well-founded. Point (*b*) lays down the principle that the Detaining Power, if it has no common frontier with the Power on which the prisoners depend, must bear a proportion of the repatriation expenses involved, including transport costs not only up to that Power's own frontier or up to the nearest point on the territory of the Power on which the prisoners of war depend, but even beyond its own frontier.

The Soviet Delegation considers that repatriation costs of prisoners of war in respect of their transport beyond the frontier of the Detaining Power cannot, in any case, be the responsibility of that Power. Such costs should be met by the Power on which the prisoners depend.

The result of such a provision, if adopted, would be that Powers who had been victims of aggression would afterwards be required not only to pay for the transport of prisoners of war up to their own frontier but would further have to meet a proportion of the transport costs beyond their own territory. This would involve difficulties especially if the prisoners had to be conveyed considerable distances from the frontier of the country which had been invaded. It would not be equitable that the Detaining Power should be called upon to bear these costs or any part of them.

For this reason, the Soviet Delegation proposes that the two last sentences, beginning with the words: "The Parties concerned shall agree..." be deleted from paragraph four, sub-paragraph (*b*).

Mr. BAISTROCCHI (Italy): The apportionment of repatriation costs was discussed at considerable length in Committee II.

The Committee's final decision was the result of persistent efforts on the part of the delegates to arrive at a compromise agreement which would take account of the different views expressed in the course of the discussion. Although the principle of an equitable apportionment of repatriation costs had already been accepted at Stockholm, Committee II failed to arrive at the agreement it was hoped to reach. We nevertheless believe that the solution contained in the text under consideration is an equitable one, and that the costs are apportioned in such a way as to take account of the interests of all the Parties concerned.

The Delegate of the Union of Soviet Socialist Republics drew our attention to the fact that it would be unfair for belligerents who had been victims of aggression to be compelled also to bear the whole or a part of the costs of repatriating prisoners from their own frontier as far as the territory of the country on which the prisoners depend.

May I venture, in my turn, to point out to the Soviet Delegate that all wars involve at least two belligerents; and this implies that prisoners are taken on both sides. It therefore seems quite fair that these costs should be equitably apportioned between the two Parties. If necessary, moreover, the question could be settled by special agreements.

During the discussions, we emphasized this principle of equity, and we believe that it is perfectly right that this principle should be maintained in the Article now under discussion.

Mr. LAMARLE (France): May I first make a short remark concerning the drafting of the first sentence of the provision under (b) of the fourth paragraph of Article 108, which is not at present under discussion. I believe everybody will agree that the exact meaning of this phrase would be better emphasized if it read "as far as *its* frontier or *its* nearest embarkation port". It might possibly be supposed that another frontier, not that of the Detaining Power, was intended. Everybody will certainly agree that the frontier and port of the Detaining Power is meant. I believe that this alteration will be advisable and will not raise any objection.

The French Delegation shares the views of the delegations who consider that the cost of repatriation as from the frontier should be, as far as possible, fairly shared by agreement between the two Powers concerned. The Soviet Delegate has said that it would not be fair if in a war of aggression the Power which is the victim of the aggression should be obliged to send back prisoners perhaps to destinations 5, 6 or 10,000 kilometres from their place of internment. This is certainly true, but it is difficult to make the distinction. Repa-

triation would not only affect the prisoners of a Power which is the victim of aggression. There would be others who would also have to be repatriated. From a general standpoint, it would be desirable for the two Powers to bear equal shares of the costs, under a mutual agreement.

The French Delegation believes that the various observations made here could be given effect if instead of deleting the last two sentences of the provisions under (b) from the words: "The Parties concerned shall agree . . ." onwards, the whole of the last sentence, beginning with the words "The conclusion of this agreement . . ." be deleted. This last sentence might prove to have rather unfortunate consequences. For instance, if the Power situated at 15,000 kilometres from the prisoners' place of internment delayed negotiations for sharing the costs, the Detaining Power would be obliged, under this clause, to repatriate them immediately and in consequence, to advance the costs of the operation. If agreement finally proves impossible, the result will be that the Detaining Power will have borne the whole of the costs; this is not within the intentions of anyone present here. A reasonable compromise would perhaps be to delete the last sentence only.

Mr. SÖDERBLOM (Sweden), Rapporteur: The suggestion as to the drafting seems judicious to me and should be adopted without further proceedings.

I hesitate to give an opinion on the remaining question which raises a great many difficulties. I think a vote should be taken on these two divergent views.

Mr. BAISTROCCHI (Italy): I apologize for again taking the floor. May I draw the attention of the Meeting to the fact that the last sentence was adopted by Committee II after lengthy debates. It is based upon a most important principle to which we attach particular value. Article 108 starts with the sentence: "Prisoners of war shall be released and repatriated without delay". On this point we have frequently stated that we do not wish the necessary agreements on the allocation of repatriation costs to serve as a pretext for delaying this operation. The Italian Delegation urges that this last sentence be maintained in the present text.

The PRESIDENT: We will now vote on the matter. I should like first to settle the question raised by the Delegate of France who asked for two words to be changed in the last paragraph under (b) of Article 108. This alteration is accepted by the Rapporteur. Are there any objections?

Mr. BAISTROCCHI (Italy): We oppose this proposal.



The PRESIDENT: If I have rightly understood, the Italian Delegation is opposed to this proposal.

The French Delegation made two proposals: to replace in Article 108, paragraph (b), first sentence, the words "as far as the frontier or port of embarkation" by the words "as far as its nearest frontier or port of embarkation to the territory of the Power on which the prisoners of war depend".

The French Delegation made another suggestion to which I will revert later.

The alteration in the substance of the phrase proposed by the French Delegation is accepted.

We have now two amendments before us, one submitted in writing by the Soviet Delegation for the deletion in Article 108, sub-paragraph (b), of the last two sentences; and another submitted verbally to-day by the French Delegation for the deletion only of the last sentence of sub-paragraph (b) of the last paragraph of Article 108. We shall vote

on these two amendments in turn, beginning with that tabled by the Soviet Delegation as this differed the most from the text proposed by the Committee. The delegations who accept this amendment are requested to signify.

The amendment in question was rejected by 16 votes to 15, with 13 abstentions.

I put to the vote the amendment submitted by the French Delegation.

This was rejected by 20 votes to 6, with 18 abstentions.

Will you now vote on the whole of Article 108.

Article 108 was adopted by 35 votes to none, with 11 abstentions.

I propose that we should now adjourn. The Bureau will meet in a few minutes. Another Plenary Meeting will be held at 3 p.m.

*The meeting rose at 11.50 a.m.*

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## EIGHTEENTH MEETING

*Thursday 28 July 1949, 3 p.m.*

*President: Mr. Max PETITPIERRE, President of the Conference*

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### "PRISONERS OF WAR" CONVENTION

#### Article 109

The PRESIDENT: An amendment has been received from the Delegation of the Union of Soviet Socialist Republics, proposing:

- I. In the sixth paragraph, *delete* the words "judicial prosecution" after "Prisoners of war against whom", and *replace* by "criminal prosecution for a crime or felony in criminal law".
- II. In the same paragraph, *delete* the words "under the judicial provisions of the Convention" following "The same shall hold true of prisoners of war already sentenced" and *replace* by "for a crime or felony in criminal law".

Mr. SÖDERBLOM (Sweden), Rapporteur: Article 109 deals with the repatriation of prisoners after the close of hostilities.

The sixth paragraph of that Article enables a Detaining Power to retain prisoners of war against whom judicial proceedings are pending. The amendment now proposed to us is to delete in two separate places the words "judicial proceedings", replacing them by the expression "criminal prosecution for a crime or felony in criminal law".

The rectification in question is in accordance with the unanimous view of those who drafted the Article. I feel sure that I am justified in saying this, as I do not believe that those who drafted the Article intended that a prisoner should be detained because proceedings were being taken against him or because he was summoned to appear before a court for neglect of some obligation in civil law. The authors of this Article were thinking of a prisoner of war who is subject to criminal proceedings. I ask you to correct me if I am wrong. If I am not, I shall propose to the Meeting to accept the rectification proposed.

The PRESIDENT: Is any objection raised to the proposal submitted by the Delegation of the Union of Soviet Socialist Republics?

Mr. QUENTIN-BAXTER (New Zealand): I do not wish to oppose what I believe to be the principle of the Soviet amendment but I feel that it raises technical difficulties of interpretation which must be discussed now. The English wording of the amendment says "for a crime or felony in criminal law". Now in common law a felony is a certain class of crime and therefore it adds nothing to the English text nor do the words "in criminal law". The whole phrase is embodied in the three words "for a crime". On the other hand I believe, although my knowledge of civil law is very scanty, that the French phrase means something very different and that it is much nearer to the intention of the Soviet Delegate. The word "délit" I understand to have a very different meaning. It is a class of offence which is less than a crime yet more than a petty offence, but that word does not in any way correspond to the word "felony" in the English text. It seems to me that the English and French texts mean nearly the same thing, and I think that is more than a point of translation. For this reason I would suggest that if the Soviet Delegate agrees, we should vote on the principle contained in his Delegation's amendment, and that we should refer it later to a small group of lawyers to try to find a phrase in English and in French which will correspond and have a definite meaning. I do not think that it would be a difficult or a lengthy job, and I think that if it were done it would be well worth while, but if the amendment were left in its present form, my Delegation would be bound to vote against it for the technical reasons which I have just given.

Mr. SÖDERBLOM (Sweden), Rapporteur: From the remarks made by the New Zealand Delegate, I conclude that an adjustment of the English and French texts is much desired. For my part, I venture to suggest that Mr. du Moulin of the Belgian Delegation should be requested to meet the Delegates of New Zealand and of the U.S.S.R. in order to make this alteration.

General DILLON (United States of America): The United States Delegation shares fully the views expressed by the New Zealand Delegate.

The PRESIDENT: We are going to vote on the principle of the amendment. I also consider that the wording of the French text should be revised. The words "poursuite pénale pour crime ou un délit de droit pénal" should be replaced by "poursuite pénale pour crimes ou délits". I therefore

propose to adopt the Rapporteur's suggestion and to request a member of the Belgian Delegation to contact Delegates of the U.S.S.R. and of New Zealand in order to adjust the text.

If you accept this method, we could vote later on the amendment submitted by the U.S.S.R. Delegation.

General DILLON (United States of America): I do not understand what we are voting on. What is the principle of the amendment?

The PRESIDENT: The principle of the amendment is in fact the amendment itself; but the final form to be given to Article 109 must remain in abeyance; that is to say, the form will be examined in the light of the suggestion just made by the Rapporteur and the Meeting will be able to come to a decision later on the whole of the Article, when the Committee of three members has studied the question and finished its work.

General DILLON (United States of America): Could we defer voting on this matter until we have the text of this Working Party?

The PRESIDENT: I myself am prepared to accept this proposal. Is the U.S.S.R. Delegation prepared to do so?

General SKLYAROV (Union of Soviet Socialist Republics): The U.S.S.R. Delegation agrees with the suggestion made by the Delegate of New Zealand, and also the President's proposal, that a vote should be taken first on the principle of the amendment and that the amendment should then be sent to the Drafting Committee.

The PRESIDENT: As no delegation opposes the actual principle of the amendment, I take it we can vote today on the principle itself. Voting on Article 109 as a whole will be postponed till the select Committee of 3 members has decided upon the final text of this Article.

The amendment submitted by the Delegation of the U.S.S.R. was adopted by 34 votes to none, with 6 abstentions.

The PRESIDENT: Voting on Article 109 as a whole is therefore postponed till a later meeting. Does anyone wish to speak on Article 109?

Mr. GARDNER (United Kingdom): The United Kingdom Delegation wants to object to the fifth paragraph of Article 109. Shall we do it now or when we come to the vote?

The PRESIDENT: I think the United Kingdom Delegation may now submit its objections.

Mr. GARDNER (United Kingdom): The United Kingdom Delegation invites the Conference to reject the fifth paragraph of Article 109 for two reasons. The first is that if it is applied at all it can only be applied by causing delay, and almost certainly considerable delay in the carrying out of repatriation. Yet, the second sentence of the paragraph says "on the condition that it does not cause any delay". In other words, you say in the first sentence that you shall observe certain distinctions in the order of departures, and in the second sentence that you must not take the time which is essential if you are to pay due regard to those distinctions. We have a strong objection to provisions being inserted in the Convention which we believe to be ineffective because they are self-contradictory.

Our second objection is that we believe that the attempt to fix distinctions in the order of departure is not really seriously meant. In the discussions on this particular paragraph in Committee II it was unanimously agreed that it was not these distinctions which should determine the order of departure, but that the order should be determined by their speediest method of emptying the camp in which the prisoners were detained, and of conveying them to their homes by whatever means of transport was available. Therefore we suggest that if you want general repatriation to be carried out without delay you must pay attention, not to the particular characteristics of the prisoners set out in this paragraph, but to the location of the prisoners and the means of transport available; any distinctions made, if repatriation is delayed, should be distinctions based on those factors and not on the factors referred to in the fifth paragraph. For that reason we ask the Conference to reject the fifth paragraph of Article 109.

Mr. LAMARLE (France): I entirely endorse the remarks made by the United Kingdom Delegate, as would anyone aware of the practical difficulties (transportation and so on) repatriation involves.

Mr. AGATHOCLES (Greece): In view of the fact that the final text of Article 75 was adopted yesterday it seems to me that the sixth paragraph of Article 109 should be amended as it is diametrically opposed to Article 75 as adopted yesterday.

I draw the Meeting's attention to this point in order that some solution may be found.

Mr. LAMARLE (France): The Delegate for Greece has said what I myself intended to say, therefore all I can say is that I wholeheartedly support him.

The PRESIDENT: Two questions are before us: the first is the deletion of the fifth paragraph of Article 109, as proposed by the United Kingdom Delegation and supported by the Delegation of France; the second is the discrepancy said to exist between Article 75, already adopted, and the sixth paragraph of Article 109.

I suggest that these questions should be considered separately.

We will first vote on the proposal put forward by the United Kingdom Delegation for the deletion of the fifth paragraph of Article 109.

The proposal submitted by the United Kingdom was adopted by 23 votes to none, with 20 abstentions.

The PRESIDENT: As regards the contradiction between the sixth paragraph of Article 109 and Article 75, pointed out by the Delegations of Greece and France, I do not know whether the Rapporteur is in a position to express an opinion.

If he wishes, we might discuss another Article, and return later to the one now under discussion.

Mr. SÖDERBLOM (Sweden), Rapporteur: I am afraid this discrepancy is not clear to me. It might perhaps be advisable to have this point explained.

Mr. LAMARLE (France): The discrepancy to which I drew attention mainly relates to Article 105, which covers the case of men eligible for repatriation for reasons of health and who are detained in connection with a judicial prosecution or conviction involving a sentence of less than ten years. The sentence would under that clause be void.

The Article we have just examined covers repatriation in general and allows of no restrictions of this sort.

I hardly think the discrepancy would be difficult to clear up; it would be a matter for the Drafting Committee.

General DILLON (United States of America):

The alleged contradiction is illusory rather than real. Article 105 deals with repatriation during hostilities, and of those who are eligible for repatriation, approved by the Mixed Medical Commission under Article 105, there are going to be very few, at best, who are undergoing any sentence. Article 109 deals with repatriation at the close of hostilities. These two decisions were taken by Committee II after long and serious consideration of the matter: the decisions were deliberately made because the Committee felt it was willing, in the case of repatriation under Article 105 during hostilities, to take the proposal of a maximum of 10 years to apply but they were unwilling to apply it in a general repatriation at

the close of hostilities. There is no contradiction; we just took different decisions in the two Articles, and I think the decisions taken are correct and we should not regard them as inconsistent.

The PRESIDENT: Does any delegation wish to propose an alteration to the sixth paragraph of Article 109?

Mr. LAMARLE (France): General Dillon's explanations seem to me relevant and they have convinced me.

Mr. GARDNER (United Kingdom): I am unable to find any inconsistency between Article 75 and Article 109, and unless some inconsistency can be proved I suggest that we reject the proposal made by the Greek Delegation.

The PRESIDENT: As no alteration is proposed to the sixth paragraph of Article 109, this paragraph is adopted as drafted by Committee II.

The vote will be taken on Article 109 as a whole when the Working Party concerned reports on the amendment tabled by the Soviet Delegation, which has just been adopted.

Does anyone else wish to speak on Article 109? As this is not the case, we shall proceed to Article 110.

#### Article 110

Mr. SINCLAIR (United Kingdom): It appears to the United Kingdom Delegation that Article 110 in its present form stipulates two requirements that may well be found to be mutually incompatible in practice and therefore to place upon the Detaining Power an obligation which will not possibly be fulfilled by it. I can perhaps best illustrate that by reading the relevant words of the Article:

"The wills of prisoners of war shall be drawn up in the form required by the law of the Detaining Power and must satisfy the conditions of validity required by the legislation of their country of origin...".

I think it is indisputable that it would be universally agreed that the provisions of this Article should ensure that wills become duly operative in the country where they have to take effect. In the circumstances, I would be quite prepared to suggest an alteration of wording that could secure that position, but it may be thought to be insufficiently removed from a question of substance in the strict sense; in which event I should like to suggest that the rewording of this Article, in this particular connection, should be referred to a small Working Party.

General DILLON (United States of America): The United States Delegation shares fully the view which has just been expressed by the Delegate of the United Kingdom.

The PRESIDENT: Is the Rapporteur now in a position to express an opinion?

Mr. SÖDERBLOM (Sweden), Rapporteur: I believe that it would be advisable to examine the text of this paragraph very closely.

The PRESIDENT: I call upon the Delegate of the Union of Soviet Socialist Republics to speak.

General SKLYAROV (Union of Soviet Socialist Republics): Article 112 on the Agenda refers to the Report of the Drafting Committee, which is also connected with Article 110. I consider that this document should be studied in connection with Article 110, for it corresponds to the statement which the Delegate of the United Kingdom made a few minutes ago.

The PRESIDENT: A certain number of comments have been made on Article 110. As it is impossible to discuss them all at this Meeting, I propose that we should proceed to the following Article. We shall attempt to decide how far these comments are justified or not. I shall again put Article 110 for discussion before the end of the Meeting.

#### Article 111

The PRESIDENT: We shall now consider Article 111.

Article 111 was adopted.

#### Article 112

The PRESIDENT: With regard to Article 112 the Drafting Committee has made a proposal which is the subject of the very document which the Soviet Delegation has just referred to.

Mr. SÖDERBLOM (Sweden), Rapporteur: The Drafting Committee suggested to the Assembly that the word "nationality" appearing in the fourth paragraph should be replaced by "indication of the Power on which they depend". This change is in my opinion not only justified, but necessary. Allow me to remind you that Article 15, in which identity cards are mentioned, does not use the term nationality, but refers to persons who are under the jurisdiction of the Belligerent Parties... etc.

In Annex IV (capture card), the word "nationality" has been avoided. The wording is the following: "the Power on which the persons concerned depend".

We must adopt a term which has been approved for the rest of the Convention.

Article 112 was adopted.

### Articles 113 and 114

Articles 113 and 114 were adopted.

### Article 115

The PRESIDENT: An amendment to Article 115 has been submitted by the Delegation of the Union of Soviet Socialist Republics. It proposes to delete in the first sentence of the first paragraph the words "Religious organizations".

Mr. SÖDERBLOM (Sweden), Rapporteur: I have asked to speak only to say that in the first paragraph of Article 115, the wording of the last sentence of the French text is not as clear as could be desired. I propose two slight alterations, so that the sentence should read as follows:

"Such societies or bodies may be constituted either in the territory of the Detaining Power, or in any other country, or they may have an international character."

I hope that the reason for this alteration is sufficiently clear for there to be no need of any further explanation, and if the French-speaking Delegations have no objections, this alteration could be accepted straight away.

It would also be better to delete the only two commas which appear in the same sentence of the English text. At any rate it would be an improvement.

The PRESIDENT: Is there any objection to the Rapporteur's comment, which is exclusively concerned with the wording of Article 115?

As this is not the case, his proposal is therefore adopted.

Mr. FILIPPOV (Union of Soviet Socialist Republics): In the opinion of the Delegation of the Soviet Union it is unnecessary in Article 115 to include religious organizations in the enumeration of the various organizations which may assist prisoners of war.

We do not see the necessity of giving a complete list here of all the organizations engaged in different forms of relief and assistance to prisoners of war.

We see no reason to make special reference to religious organizations for they seem to us to be included in the idea of relief societies, as defined in Article 115.

For this reason we propose to alter this Article by adopting the amendment submitted by the Soviet Delegation, that is to say, to delete the words "...religious organizations".

Msgr. COMTE (Holy See): More than once during the discussion in Committee II the advisability, and perhaps even necessity, was urged of making our Conventions clear and exact. It is precisely in order to achieve this clarity and exactitude that we have asked for a reference to religious organizations in Article 115.

No doubt many of you remember the origins of Article 115 and Article 30. Certain delegates and the Stockholm experts had considered it advisable to condense in a single Article everything concerning the religious assistance to be given to prisoners of war and the facilities to be granted them for the exercise of their religious duties, to whatever faith they might belong. During the discussions in Committee II, it was thought that certain provisions of Article 30 would be more appropriately inserted elsewhere. We have no objections to this, since the wording of Article 30 is clear and precise and we hope to see Article 115 equally clearly worded.

The Delegate of the Union of Soviet Socialist Republics has expressed the opinion that it is not necessary to make any special reference to religious organizations, as these are already included in the term Relief Societies; he also said that it was neither possible nor advisable to enumerate all the Relief Societies and religious bodies and I agree with him, firstly because this enumeration would probably be very long, and also because there is always the danger that a list may appear restrictive. But I do not agree with the Delegate of the Soviet Union when he affirms that the term "Relief Societies" is sufficient to cover religious organizations. A Relief Society, whether temporary or permanent, founded to give aid to assisted persons in a given situation, is one thing, and a religious organization, the normal purpose of which is to serve religion, but in certain exceptional circumstances may direct part of its energies towards humanitarian ends, is another. The religious organizations—let us say, if you like, the Churches and Religions—which are mentioned in this Article side by side with Relief Societies, cannot surrender a right, which is at the same time a duty of mutual help and charity, especially when the exercise of this right is more necessary than ever, for it is only too well known, how fiercely human passions are aroused in time of war.

All of us here know how much has been done by the International Committee of the Red Cross, mentioned in Article 113, and everyone here has made a point of paying the most solemn and whole-hearted tribute to the magnificent work which it has accomplished, but we all know equally well, how vast its task was in the last conflict, and what substantial aid it received from relief societies and religious organizations.

I cannot mention all these religious organizations by name, but I should like to refer particularly to the Young Men's Christian Association, the Society of Friends, the American Joint Distribution Committee, and the Vatican Information Bureau; there are many others which I have omitted, but, as I said, it is not necessary to name them all.

Imagination does not dare to dwell on what a new conflict would mean and the misery it would engender, specially with the newly invented weapons, and now that there is no longer any real distinction between combatants and non-combatants. It is precisely to establish a balance between the evils and the remedies, to help, succour and comfort prisoners of war, that the religious organizations are anxious to be mentioned in Article 115, where they would naturally take their place side by side with the International Committee of the Red Cross and other Relief Societies which are to assist prisoners of war. Mention of these organizations would be a well deserved tribute to the work which they have accomplished in the past, and a preparatory measure for future events—events which we all hope will never come to realization. Since we are assembled however, to establish a Convention for the protection of prisoners of war, the religious organizations consider themselves in honour bound to take part in this humanitarian work, which corresponds so closely to our religious principles. This is why the Delegation of the Holy See requests this Assembly to vote in favour of Article 115 in the form in which it was submitted.

The PRESIDENT: We shall now vote on the amendment submitted by the Delegation of the Union of Soviet Socialist Republics.

The amendment was rejected by 25 votes to 8, with 3 abstentions.

Article 115 was adopted by 32 votes to none, with 9 abstentions.

#### Article 116

Article 116 was adopted.

#### Article 122

Article 122 was adopted.

#### Annexes I, II, III, IV

Annexes I, II, III, IV were adopted.

Mr. GARDNER (United Kingdom): I have only just spotted in Annex IV ("I. Identity Card"), a reference to Article 3. It should be a reference to Article 15. I apologize for not spotting it earlier.

The PRESIDENT: Note has been taken of the remarks of the United Kingdom Delegate.

Mr SÖDERBLOM (Sweden), Rapporteur: I am not absolutely sure; but I think that the reference to Article 3 is correct. This can easily be checked by the Secretariat.

General DILLON (United States of America): I was just going to say what the Rapporteur has said, that properly it is the key to Article 3, I think.

The PRESIDENT: The United States Delegate, the Rapporteur and the Secretariat have checked the reference and it appears to be correct. I therefore think the United Kingdom Delegate is mistaken on this point. Perhaps he will kindly tell us if he agrees. (*Mr. Gardner agreed.*)

#### Annex V

Annex V was adopted.

#### Titles of chapters and sections

The PRESIDENT: Will the delegates kindly let us hear their opinions on the titles of the chapters and sections of the Convention the bulk of which has now been adopted?

Does anyone wish to speak on the titles?

Since no delegation wishes to speak, I take it that you agree with the details figuring in this Document.

#### Article 110 (continued)

We will resume the consideration of Article 110, on which several remarks were made.

Mr. SÖDERBLOM (Sweden), Rapporteur: I am glad to have had a few minutes to consider this Article. I rather agree, as one delegation pointed out in the course of the debate, that the Meeting should refer to the Drafting Committee's Report. The Drafting Committee explains certain editorial

modifications of Article 110 and also mentions the fact that the United Kingdom Delegation had preferred another text for the first paragraph of the Article. This text is to be found in the Report I have just quoted.

In my opinion this is a text that would do very well as the first paragraph of Article 110. If you think it advisable I see no objection to the United Kingdom Delegation's text being put to the vote.

The adoption of this text would solve the difficulty and there would be no reason to return to the Article. If it is adopted, I would remind you that the Drafting Committee also mentioned in the Report that some doubt had arisen as to the coordination of the English and French texts, and that improvements, not affecting the substance, might be made.

If we are going into the question of coordination, I would suggest that we should refer the matter to the Select Committee just set up, which will report to us. I think this would be the best way to solve the difficulty.

Mr. GARDNER (United Kingdom): The United Kingdom Delegation accepts the proposal made by the Rapporteur to adopt the wording suggested in the Drafting Committee's Report.

The PRESIDENT: Is there any objection to the Rapporteur's proposal?

No one having asked to speak, I take it that you approve the proposal made by Committee II to replace the text of the first paragraph of Article 110 by the one mentioned in the Report of the Drafting Committee.

Mr. GARDNER (United Kingdom): It is only the first sentence that is replaced, it is not the whole paragraph.

The PRESIDENT: That is true.

### Articles 3, 30A, 109 (continued)

Mr. SÖDERBLOM (Sweden), Rapporteur: We have now reached the end of the Agenda, but three Articles remain, namely Article 3, which has to be considered after Article 2 had been discussed in the light of the Joint Committee's Report, Article 30A, which has to be coordinated with Article 29B, and finally the Report of the sub-Committee on Article 109.

### Articles 13, 20 (continued)

Mr. SÖDERBLOM (Sweden), Rapporteur: There is still one small correction to be made which we might entrust to the kind offices of the Secretariat.

It concerns the expression "capturer" (French). In the French text of the Convention, the words "capturer, capture", etc. have been deleted in order to give the Convention the widest scope possible by covering members of armed forces taken prisoner on surrender or in other circumstances which cannot, properly speaking, be described as capture.

This term has been replaced by "who have been taken prisoner" or "who have fallen into the hands of the enemy", for instance in Articles 3, 4, 17, 50, 59, etc. The word "capture", however, has survived in the third paragraph of Article 13, and has been introduced into the third paragraph of Article 20 as the result of the adoption of an amendment proposed by the Soviet Delegation. I think we might ask the Secretariat to delete this word in the two Articles mentioned, which would then read as follows: Article 13, first sentence third paragraph:

"Prisoners of war shall retain the full civil capacity which they enjoyed at the time when they were taken prisoner";

Article 20, third paragraph. (No change in the English text.)

This is a mere correction.

The PRESIDENT: Does the Meeting agree to the motion brought forward by the Rapporteur?

Since no one wishes to speak, it is taken as agreed.

With the exception of the Articles just mentioned and the common Articles, we have now finished our consideration of the Prisoners of War Convention.

I wish to express our most sincere thanks to Mr. Söderblom, Rapporteur of Committee II, both for the Report which he has presented to the Conference and for his active part in the debates of the Assembly. (*Applause.*)

### Article 105 (continued)

General SKLYAROV (Union of Soviet Socialist Republics): The Delegation of the Union of Soviet Socialist Republics moves the inclusion, in the Agenda of a forthcoming Plenary Meeting of the Conference, of the Soviet Delegation's proposal relative to Article 105, which obtained a tied vote at today's Meeting and which should therefore be put to the vote again.

The PRESIDENT: The motion has been noted. The question will probably figure in the Agenda of tomorrow afternoon's Plenary Meeting. I must remind the Meeting, however, that there will be no discussion, but merely a vote.

**Article 100** (*continued*)

Mr. GARDNER (United Kingdom): The United Kingdom Delegation further wishes Article 100, upon which we tied yesterday, to be put on the Agenda for new votes.

The PRESIDENT: This motion has been noted and the question will also figure on the Agenda of tomorrow afternoon's Plenary Meeting.

## COMMON ARTICLES

The PRESIDENT: We will now consider the Articles common to the four Conventions. We will base our work on the Wounded and Sick Convention.

To save time I suggest we should consider each Article for the four Conventions simultaneously. There will thus be one vote on any given Article or amendment, except where an amendment does not concern all the Conventions or where a delegation specially asks us to proceed otherwise.

I take it that you agree with this proposal.

The Rapporteur, Colonel Du Pasquier, being absent, I call upon the Delegate of Switzerland to put the matter for discussion.

Mr. BOLLA (Switzerland): As you are aware, the Stockholm Draft contained a number of provisions which were repeated in identical or almost identical terms in the four Conventions or at least in two or three of the Conventions.

This Conference has decided in Plenary Meeting that these common provisions should be considered separately and referred to a Joint Committee having, in reality, the same membership as the Plenary Meeting.

The Joint Committee elected Mr. Maurice Bourquin, Delegate for Belgium, as Chairman and Colonel Du Pasquier, Delegate for Switzerland, as Rapporteur, whose place I have unexpectedly been asked to take.

These common provisions are, I need hardly say, of varied content, and it would be fruitless to seek to divide them into categories.

We have first the introductory provisions on the application of the Conventions, on special agreements, on acquired rights, on the activity of the International Committee of the Red Cross and international bodies carrying out similar work, on the Protecting Powers and their substitutes, and generally speaking on the measures required in the absence of Protecting Powers. One group of Articles concerns the settlement of disputes and another sanctions for breaches of the Conventions. Lastly, we considered the final provisions, which are similar to those in all international treaties, on

the entry into force of the Convention, ratification, accession, termination and so on.

That, briefly, was the work assigned to us.

The common Articles were examined at the first Reading by the Joint Committee and then referred to a Special Committee. The Special Committee submitted their proposals to the Joint Committee which then proceeded to a second Reading.

The Joint Committee's Report, drawn up by Colonel Du Pasquier, was circulated and I think it unnecessary to read it to you.

I am entirely at your disposal for any additional information you might desire to have on any of the Articles.

The PRESIDENT: We will now consider the common Articles.

**Articles 1, 2**

Articles 1/1/1/1 and 2/2/2/2 were adopted.

**Article 2A**

The PRESIDENT: Amendments have been submitted by the Delegation of the Union of Soviet Socialist Republics and by the Delegation of Burma asking for the deletion of Article 2A and the consequential reference in Article 3. We further have a recommendation by the Drafting Committee.

If no one wishes to speak we may vote at once on the two amendments and on the proposal made by the Drafting Committee.

Mr. MOROSOV (Union of Soviet Socialist Republics): No other issue has given rise to such a long discussion and to such a detailed and exhaustive study as the question of the extension of the Convention to war victims of conflicts not of an international character. That is quite natural. If wars between States have always been attended by cruelty, the mass extermination of innocent persons, and the destruction of material and cultural values of mankind, civil and colonial wars lead to even greater cruelty. This is indisputable. Now-a-days we can see colonial wars attended by unspeakable cruelty and destruction, unprecedented infringements of international law, and acts of barbarism against the civilian population. It is unnecessary, in spite of the proposals that have been made to delete this Article from the Convention, to produce proof that civil and colonial wars should be governed by the rules of international law. We have only to read the United Nations Charter (which states as the aims of the Organi-



zation the maintenance of peace and international security, the adoption of collective measures in order to repress all acts of aggression or other infringements of peace) to understand clearly that the members of the United Nations cannot neglect such events as civil or colonial wars, wherever they may occur.

The fundamental principle on which the United Nations Organization rests proves that these considerations are right. It is well known that the conflicts which took place in Indonesia and in other parts of the world have been examined on several occasions by the Security Council. The four Draft Conventions for the protection of war victims which we have prepared are based on the principles of international law; they also amplify the provisions of international law relative to the laws and customs of war, and in particular guarantee the protection of war victims. Obviously then, the special provisions of international law relative to periods of war should be extended to all cases of armed conflict, including those of a non-international character. The provision for the application of the four Conventions to colonial and civil wars is supported by the overwhelming majority of the delegations present at this Conference. Certain delegations propose to extend the humanitarian clauses of the present Convention in the greatest possible measure to conflicts of a non-international character, whereas other delegations are striving to restrict the application of the Convention in the cases mentioned, as far as possible.

This is the fundamental difference of principle between the draft of the fourth paragraph of Article 2 of all four Conventions proposed by the Soviet Delegation and the draft Article 2A as submitted by the majority of the Drafting Committee and based on the French proposal. We must choose between these two proposals. We have already said that Article 2A, as worded by the Joint Committee, is intended to restrict the application of the Convention as far as possible in conflicts of a non-international character; this will at once become clear if we examine the Article attentively. It is proposed that, in the case of a conflict of a non-international character, none of the provisions of the four Conventions for the protection of war victims, except those of Article 2A, shall be applied if the Parties do not decide by a special agreement to apply all or part of the other provisions of the Convention. Article 2A is thus, as it were, a miniature Convention which is intended to replace the four Conventions in conflicts of a non-international character. The obvious outcome of such a measure is that a large number of important provisions concerning the protection of war victims will not be put into operation. This is tantamount to denying the

necessity of applying, in case of conflicts of a non-international character, a large number of important provisions in the Draft Conventions drawn up by our Conference. The great majority of the provisions concerning the protection in international conflicts of wounded, sick, prisoners of war and the civilian population cannot be applied in the case of conflicts of a non-international character which occur in the territory of a State signatory of this Convention. This decision is based, from a purely formal point of view, on the fact that certain provisions of the Conventions can obviously not be applied to the same degree in wars between States and in wars of a non-international character; for instance it is impossible to stipulate that the provisions relative to penal legislation and the continued functioning of Courts in occupied territory should be applied in exactly the same fashion. This undoubted fact has been used as a pretext to deny the possibility of applying several provisions of the four Conventions which, on the contrary, can very well be applied to all cases of conflict, international or not. I should be very glad if the supporters of Article 2 would explain why, in the case of conflicts of a non-international character, it would be impossible to apply the provisions of the Wounded and Sick Convention or those of the Civilians Convention, which stipulate, for instance, that civilian hospitals may in no circumstances be attacked, and that women and children shall at all times enjoy particular respect and protection, that, in order to bring relief to the civilian population, the unrestricted transport and distribution of various shipments, such as medicines and medical equipment, shall be guaranteed—that all these provisions should be extended to apply to conflicts of a non-international character, as well as a number of other humanitarian provisions established by the present Conference.

There can be no question but that all these humanitarian provisions must be implemented in all cases of armed conflict, whatever their character may be.

Measures must be taken to ensure that in all cases—especially cases of civil war and colonial conflicts, which are particularly cruel—the protection of the victims must not run the risk of being ineffectual, when it is precisely in these cases that it is the most urgently needed. It is with this aim in view that the Delegation of the Soviet Union proposes to stipulate that in cases of armed conflict of a non-international character, each of the Parties to the conflict shall be bound to implement all the provisions of the Convention, which ensure that protected persons shall be treated in accordance with humane principles.

Especially as regards the Wounded and Sick and the Maritime Warfare Conventions, we consider that all the provisions should be implemented

which ensure that the persons covered by these Conventions are treated in accordance with humane principles, particularly those provisions which prohibit all discrimination of race, colour, religion, sex, birth, occupation or social status.

As regards the Prisoners of War Convention, all the provisions should be implemented which guarantee prisoners of war humane treatment, as well as all those provisions which prohibit discrimination of the grounds which we have just mentioned.

Lastly, as regards the Civilians Convention, we consider that here again all the provisions should be implemented which ensure that the civilian population shall receive humane treatment, and which prohibit such measures as reprisals against civilians, the taking of hostages, the mass execution of civilians, or the destruction of property not rendered absolutely necessary by military operations, and, of course, all discrimination founded on race, colour, religion, sex, birth, social status, etc.

In contrast to the text of Article 2A, which restricts the application of the Convention, the proposal submitted by the Soviet Delegation is based on the necessity of giving effect to many important provisions of the Conventions, in order to ensure the protection of war victims in the case of conflicts of a non-international character.

Allow me to draw your attention particularly to the fact that the wording which we propose makes it possible to avoid, in cases of conflict of a non-international character, a purely automatic implementation of provisions which, for certain specific reasons, can only come into force in cases of conflicts between States. At the same time, our wording makes it possible to put into practice all those progressive provisions which, by reason of their nature, can and should be implemented in conflicts of a non-international character.

These are the grounds on which the Delegation of the Soviet Union appeals to all the delegations present to support this essentially humanitarian proposal, and to act upon it in cases of colonial conflicts, civil wars, or any other conflicts of a non-international character. The Delegation of the Soviet Union therefore urges them to adopt its proposal.

General OUNG (Burma): It is because of the conflicts arising in certain parts of the world, including mine—conflicts caused by foreign ideologies—that I am submitting my amendment that Article 2A and the consequential reference in Article 3 be deleted. In doing so I refer not only to Article 2A adopted by the Joint Committee but also to the U.S.S.R. amendment and the original Stockholm text, known to us as Article 2, paragraph 4. I regret having to take up your time, but you will perhaps remember that at the very first meeting,

when Article 2 was discussed, I affirmed clearly that humanitarian principles are to us more important than national and racial issues and that as such they are very strictly observed, and also that we were strongly of the opinion that the inclusion of this Article in the Convention is a very serious danger to sovereignty and civilian rights. To give international recognition to insurgency would certainly be as grave an error as recognition of aggression.

In view of its great importance I crave your indulgence for a patient hearing of views which have not hitherto been fully submitted for your consideration. I will be as brief as possible over an issue of such a magnitude.

I will start, Sir, with the seventh Draft Report drawn up by the Special Committee of the Joint Committee. In this Report you will find that the Special Committee voted against the Stockholm text by 10 votes to 1 with 1 abstention, considering (according to the Report) that it was too wide in scope. This declaration, I regret to state, does not give you a complete picture: in fact, if you refer to the Report of the Fourth Meeting of the Special Committee held on 11th May, the complete picture was that the Special Committee was of the opinion that the Stockholm text should be abandoned and a clearer definition should be given of the cases of armed conflict not of an international character, to which the Convention should apply. It is clear that this was the only agreement ever reached by the Special Committee in its lengthy considerations on Article 2, paragraphs 2 and 4, but what has happened to this one and only agreement? It has been abandoned: it has been completely lost sight of in the adopted text and also in the U.S.S.R. text.

In the Report drawn up by the Joint Committee and submitted to the Plenary Assembly, a reference is made to Article 2A. The Joint Committee accepted the second Working Party's text by 21 votes to 6 with 14 abstentions. You will also find in the third paragraph of this Report that only 2 solutions are possible, but it says that in view of the very thorny problems presented by the application to civil war, of Conventions drawn up for international war, an attempt was made to find another principle which might provide a solution. That was after finding that there were only two possible solutions. Then an attempt was made, and if you will excuse my language, it must be said that a futile attempt was made, which was no solution. The observation in the Report of the Joint Committee is really an apology for the adoption of the Article—the Article which would never have been accepted if such an observation had been known before the meeting of the Joint Committee. So the fact remains that we have an adopted text before us, the U.S.S.R. and the Stockholm text, not only

without any distinction or clarification but with increased vagueness.

I am casting no aspersions on those who have ignored the necessity for definition. All tribute should be paid to those various delegations who have submitted amendments and proposals and to the two Working Parties who spent hours in endeavouring to find a solution. I pay a tribute to their sincerity, tolerance, sense of fairness and loyalty to the principles underlying this Conference. Their failure—if I may be permitted to use the word—was because the subject cannot be fitted into the scope of the Convention.

The seventh Report of the Special Committee of the Joint Committee continues:

“it is commonly agreed that it would be dangerous to weaken the State when confronted by a movement caused by disorder and anarchy, by compelling it to apply to them, in addition to its peace-time legislation, Conventions which were intended for use in a state of civil war”.

The Stockholm text according to the above mentioned Report presupposed:

“an armed conflict representing an international war in dimensions and did not include mere strife between the forces of the State and one or several groups of persons in uprisings, etc.”

Have the texts before us made these points clear? Have they removed the difficulties and dangers and clarified the vagueness? I say, Sir, they have not done so. The present texts do not remove the danger to the State, nor do they include mere strife. I will endeavour to make it clearer when I come to discuss the proposed text in detail.

After this difficult and insoluble distinction in regard to armed conflict comes reciprocity—the second and also insoluble difficulty. “The Convention should only be applied if the insurgent civil authority accepted it”: this was said by the honourable Delegate for the United States of America at a meeting on the 11th May. I repeat: it says that the insurgent civil authority should accept the Convention.

The adverse party should, in all reason and sense of justice, be made to comply with the unqualified provisions laid down for the observance of the High Contracting Party. Will we not endanger very seriously the strength and structure of a High Contracting Party by binding it to a one-sided agreement—why should we embarrass or weaken it because it has signed the Convention? It would be far better if we did not become one of the contracting parties, as by doing so we will be bound by the Conventions in our internal affairs.

In the Summary Record of the Meeting of May 11th you will find that the Draft of the Working Party left unsettled the question of reciprocity,

upon which the Special Committee have not yet made a pronouncement. Not only has the Special Committee found itself unable to make such a pronouncement but the two texts before us have totally ignored it—again, this was on account of the impossibility.

In the seventh Report presented by the Special Committee you will find a very lucky reference to the French amendment, which was the one and only hopeful sign in our discussions. It was supported, as you will see in the Report, by several delegations. It was decided to hand it over to the second Working Party; what was the result when it was proposed to the Special Committee? It was rejected: the first paragraph by 5 votes to 5, the second by 5 votes to 4, the third by 5 votes to 5, and it was not necessary to vote on the fourth. All hope of agreement previously secured by the original French amendment, was thus lost in the desire for a compromise.

You will see in the seventh Report of the Special Committee that the failure to take into account the existence of civil wars which resemble international wars was the reason given for the rejection of the proposal submitted by the Working Party. The other reasons were not mentioned in the Report. From a reference to previous papers I will give you these reasons: the reason why the text tabled by the second Working Party was rejected by the Special Committee was because the Article did not define armed conflict not of an international character; because it proposed an impossible condition: to bind down a non-contracting party; because of paragraphs 1 and 2, which were considered redundant; because of the vague reference to “civilized people” instead of confining the Conventions only to contracting Parties, and lastly because of the objection to include civil wars—domestic matters—in an international Convention.

None of these objections have been covered. The proposal submitted by the second Working Party presented as bare a picture as when it was considered by the Special Committee, and though dangerously vague was adopted by the Joint Committee without discussion. I submit it now to you for rejection.

I will close my observation on the seventh Report with references to the last paragraph, which reads as follows:

“hoped that the long discussions of the Special Committee have not been superfluous and that the elements of some reasonable solution will be able to be drawn”.

Well, the discussions are not superfluous. On the other hand, they have been very thorough. Very careful considerations have clearly revealed the fact that no satisfactory solution can be arrived at, no compromise would meet the case,

and that the only reasonable course is to ignore it completely in our Conventions.

The only remark of the Report which can be fully accepted is the description that civil wars leave the most painful wounds in the organism of nations, and their healing is most difficult. Because we fully agree to this able and very true description, we strongly recommend the deletion of Article 2A, as the inclusion will only be an incentive to armed conflicts with all their terrible effects.

May I now refer to the adopted text, as it stands, for your consideration? It starts with the reference to "armed conflicts not of an international character". You see that no attempt has been made to define this phrase. To go further, the phrase may include banditry, uprisings, disorders, rebellion and civil war. By not defining it, all the above degrees of armed conflict fall within the Article that you are now asked to adopt. Even the lesser forms are discarded, rebellion and civil war are by themselves most undesirable inclusions in the Conventions. They may easily be the work of paid mercenaries and "Quislings" acting for their own gain and at the expense of the civilians on behalf of foreign ideologies. Some of you, especially the delegations of Colonial Powers, have really been remarkably broadminded to support the Article, though it is going to encourage Colonial wars. We, the smaller nations, naturally feel much enthusiasm for Colonial wars, we like to help, we like to help them, but if you will refer to the number of conquered countries which have been given their independence, there is every hope—I go further and say it is certain—that in this highly enlightened age the remaining conquered countries of the world will also receive their independence without the loss of a single drop of blood. So the only help that the Article will give, if you adopt it, will be to those who desire loot, pillage, political power by undemocratic means, or those foreign ideologies seeking their own advancement by inciting the population of another country. If you agree that this will be the result, we are sure you will not adopt this Article, especially if you will realize that no Government of an independent country can, or will ever, be inhuman or cruel in its actions towards its own nationals. If you adopt it you will not only be embarrassing the *de jure* government, but you will also seriously endanger its sovereignty, as you will be taking away from it its own legal machinery to maintain the security of its population and the prosperity of its State.

The next point in the text that I would submit for your consideration is the phrase "Parties to the conflict". By the substitution of this phrase in place of "belligerents" in other Articles the insurgent party in the country of a High

Contracting Party is being included in this term. It is thus being, rightly or wrongly, given a place in international law.

Then the Article says that "each Party to the conflict shall be bound to apply" etc. May I ask how it is proposed to bind the rebels? If there was a foreign agency behind the movement, would you let the former enter the scene and help in binding the rebels to the Conventions, which means securing the benefits of the Conventions to the insurgents? It is a dangerous aspect. In Article 2, the application of the Conventions in conflicts of an international character, the High Contracting Party has to apply the provisions only when a non-signatory party accepts and complies with its provisions. In this Article in a conflict not of an international character—in the dealings with insurgents—the High Contracting Party is bound to apply the provisions whether the insurgents accept and observe them or not.

In adopting the principle "to restrict the obligations of a legitimate government and the rebel authority to the most obvious and imperious rules of the Convention, that is, the humanitarian duties as a whole", the Article states in point one of paragraph one:

"persons taking no part in the hostilities shall in all circumstances be treated humanely... To this end the following acts are and shall remain prohibited".

Those follow, and I ask you to read them. They are probably considered the most obvious rules of the Convention referred to. "The Great International Convention for the Protection of War Victims affirms that in armed conflicts not of an international character, violence to life and person, in particular murder of all kinds—(I do not know how many kinds of murder there are)—mutilation, cruel treatment and torture are and shall be prohibited". I will not proceed further on this. The paragraph is entirely unnecessary. When we talk about the humane treatment of persons taking no part in hostilities, there is surely no need to treat persons who take no part in the hostilities otherwise than humanely. In our country we give such persons every encouragement, and even rewards. Very humane treatment. The paragraph therefore is entirely unnecessary.

To succeed in convincing you, and to make absolutely sure that I convince you, I will proceed a bit further on the other paragraphs of the Article.

Paragraph 3 says:

"The Parties to the conflict should bring into force all or part of the other provisions of the Convention".

Surely this interference with the position of the High Contracting Parties is unjustified, as it is

unnecessary and impracticable. As was pointed out by the Delegate for Denmark the other day, by the inclusion of the "insurgents" in the term "Parties to the conflict", no special agreements are necessary, there seems to be no necessity to conclude special agreements to the provisions of the Convention, so this paragraph also seems to be unnecessary.

Paragraph 4—the last—is an attempt to safeguard the legal status of the *de jure* government. I say it is only a bait—but it is a bait—which I hope will fail in its object. Whether or not you safeguard the legal status of the *de jure* government, the mere inclusion of this Article in an international Convention will automatically give the insurgents a status as high as the legal status which is denied to them. It can easily be imagined that this paragraph is going to be an encouragement and an incentive to the insurgents.

I do not think I need to go into the Stockholm text. The same objections and criticisms apply. I will conclude with some general observations. I repeat that I have all the time stressed our strong objections to the extension of the Conventions to civil war and insurgency, and the expansion of protected persons to include rebels.

I do not understand why foreign governments would like to come and protect our people. Internal matters cannot be ruled by international law or Conventions.

We say that external interference in purely domestic insurgency will but aggravate the situation, and this aggravation may seriously endanger the security of the State established by the people. Each Government of an independent State can be reasonably expected to treat its own nationals with due humanity, and there is no reason to make special provisions for the treatment of persons who had taken part in risings against the national government as distinct from the treatment of other offenders against the laws of the State.

At this stage I would like to emphasize that the object of our Conference is to establish international Conventions for the protection of war victims, and while doing so we should not disregard the equal rights of nations, large or small. As the honourable Delegate for the U.S.S.R. did so, I also would like to make a reference to the United Nations Organization. It is also not the object of the Conference to intervene in matters essentially within the domestic jurisdiction of any State, nor to aggravate the situation, especially that of a domestic nature.

If you include provisions for armed conflicts not of an international character in the Conventions, you will not only be going well beyond the scope of the Conference but also you will be going against the high principles laid down by the United Nations Organization. Do you think that it is justified or

fair to do so when the Great Powers at this Conference have been so reluctant in the complete acceptance of provisions likely to effect the security of their States, even in matters within the bounds of the Conference, i.e. international wars? When you have to discuss the constitution and functions of Protecting Powers in international wars, the matter of international disputes, the regulations against fifth columnists etc., when you rightly dispute over the use of words such as "control", "war crimes", reasonable fears of small nations in matters of internal dispute and infractions of national laws against its own citizens, external intervention in domestic insurgencies, may be sympathetically considered, especially when we have all along supported the necessity of safeguarding the security of the State.

We express these observations with bitter experience of insurgencies. These are our very strong views. We appeal especially to the Delegations of France, Greece, Italy, the United Kingdom, Switzerland and Uruguay, those who sponsor the Article that has been adopted, for a reconsideration of their views. I hope you will not vote against us simply because you sponsored the Article. We have not had the full opportunity to place our views before you. We have done so now, and we hope we shall get your sympathy.

I think I have stated my case. I apologize for having taken up so much of your time, and I thank you, Mr. President and Fellow Delegates, for having given me this patient hearing.

In the attempt to embody a clause extending part of the benefits of the Conventions to non-international war, an Article which happens to be one of the longest, vaguest and most dangerous to the security of the State in the Convention has been placed before you.

In the wise words of one of the delegates it is described as redundant. I repeat that it is not only redundant; the sincere desire to reduce the excesses and horrors of such conflicts has not achieved anything. On the other hand, its inclusion is especially harmful and beyond the scope of our Conference. The Article, I repeat once and for all, is an incentive to armed conflicts and I propose the complete deletion of any extension of the Conventions to civil war and insurgency.

The PRESIDENT: I propose that we should adjourn the debate and resume it tomorrow morning, as we cannot in any case finish our discussion of Articles 2 and 2A now.

I propose to hold two Plenary Meetings tomorrow, the first at 10 a.m. and the second at 3 p.m. We will hold one Plenary Meeting on Saturday morning and then adjourn till Monday.

*The meeting rose at 6.25 p.m.*

## NINETEENTH MEETING

Friday 29 July 1949, 10 a.m.

*President:* Mr. Max PETITPIERRE, President of the Conference

## COMMON ARTICLES

**Article 2A** (*continued*)

The PRESIDENT: We will continue this morning to consider Article 2A, which is one of the common Articles. Several speakers already spoke yesterday afternoon on the subject; there are no further names on the Agenda.

Dr. DIMITRIU (Rumania): The prolonged discussions in the Special and the Joint Committees have drawn attention to the great importance of the provisions of Article 2A. Our Delegation feels that neither proposals intended only to give greater precision to the existing provisions, nor those claiming to be no more than a detailed summary—which, of its nature must be restrictive—will allow us to arrive at a definition of those humanitarian principles which should also apply in warfare of a non-international character. A draft text should therefore be prepared which is both flexible and precise, and which embodies these basic principles. It would therefore not be advisable to provide for special agreements as the only means of applying the Conventions; that might destroy all safeguards for the practical application of this Article.

The amendment submitted by the Soviet Delegation (*see Annex No. 15*) takes account of this point by proposing the application of all humanitarian stipulations of the present Convention without seeking to enumerate all the provisions contained in the Convention. At the same time, it lays down in the Civilians Convention, important obligations the object of which is to prevent the extermination of civil populations. The Article as it is drafted in this amendment contains, in our opinion, the only formula which would allow the Contracting Parties to ensure the efficient application of the Convention in warfare of a non-international character, i.e. to apply all the humanitarian stipulations without necessitating the enumeration of a quantity of technical details. This solution is still more interesting if we consider the very

complex nature of non-international wars; it involves no legal difficulty and cannot infringe the sovereignty of the State.

For these reasons the Rumanian Delegation supports the proposal contained in the Soviet amendment.

Mr. COHN (Denmark): The Burmese Delegate alluded to a remark I had made on the question under consideration today. I should like to point out, however, that this remark, or if you prefer, criticism, did not refer to the provisions prescribed in Article 2A. This Article is, in my opinion, perfectly satisfactory; it relates only to humanitarian obligations which we can agree to apply to all, and consequently to the insurgents or rebels referred to in this Article.

My remark concerned something quite different, namely the fact that throughout all the Articles of the four Conventions, the terms "belligerents" or "belligerent Parties" have been replaced by the expression "Parties to the conflict". In these circumstances the reference in the Records of the Committees as suggested by the Swedish Delegate with regard to the word "neutral" is not sufficient to solve the difficulty which I have pointed out. For this difficulty does not relate to Article 2A itself, nor to the term "High Contracting Party" used in that Article, nor to the position of neutrals. It simply relates to the fact that the expression "Parties to the conflict" has been used throughout the Convention instead of the word "belligerents".

It is surprising that it should be so difficult to secure understanding for something which is really perfectly clear and simple. I will therefore try once more to explain what I mean.

We had all agreed that it was not possible to accept the idea that parties such as rebels, insurgents, partisans, or even ordinary criminals, should be able to claim the benefits of the Convention; and that it was essential to determine certain conditions and fix certain limits. This is why we set up a sub-Committee to consider this point. This sub-Committee was unable to define the con-

ditions or to fix limits; it was not successful in finding a solution to the problem, which is certainly a complex and arduous one. What did the Subcommittee actually do? It simply evaded the difficulty without solving it. And how did it succeed in evading it? Simply by recognizing humanitarian obligations and duties only to the Parties to the conflict. If we had confined ourselves to Article 2, the whole question would have been settled most satisfactorily since the Article only deals with humanitarian duties, acceptable to everyone. But this was unfortunately not the case; and it was decided, at the same time, to substitute, in all the other Articles of the Conventions, the expression "Party to the conflict" for the words "belligerent Party"; and this, in our opinion, is a very dangerous step, which might have grave consequences, and we consider it quite unacceptable. For, it will thus become necessary to interpret the expression "Party to the conflict" wherever it occurs, in the same sense as in Article 2A.

This raises another difficulty; for we are no longer dealing with humanitarian duties only but with the whole subject matter of the four Conventions, not only as regards the mutual relations between the Parties, but also as regards the relations between the Parties to the conflict and those which are not Parties to it. We must recognize that all these "Parties to the conflict", however small and insignificant they may be (for example, a gang of ordinary criminals engaged in armed conflict), will have the benefit of all the rights recognized by the Convention, not only as regards their own government but also in respect of other States, even those outside the conflict. To give you an example: a small gang of criminals, in armed conflict with its own government, would have the right to intercept ships owned by other countries, to demand the extradition of wounded, sick or shipwrecked men, and, in fact, would be entitled to demand the observance of all the obligations and to claim all the rights embodied in the four Conventions.

We therefore find ourselves faced with a very serious and, in my opinion, insuperable difficulty, since we cannot revert to the original wording and speak of "belligerents" instead of "Parties to the conflict". The real truth is that we are in certain cases obliged in international law, to recognize as belligerents, Parties which are not States, and the question cannot be solved unless rules and conditions of this kind are embodied in the Convention. The only way out is to take a decision as to whether a Party to the conflict, which is not a State, is entitled to claim the benefit of the rules laid down in the four Conventions.

This is why the Danish Delegation has prepared a draft resolution intended to decide whether the question of the recognition of a Party to the

conflict by a Party outside the conflict shall be determined, not by a Convention, but in accordance with the general rules of international law, in all special cases.

Colonel DU PASQUIER (Switzerland), Rapporteur: I owe the Meeting a few words of explanation in regard to the special point just raised by the Delegate of Denmark. The question was brought up in the Joint Committee during the discussion of the Draft Report. The eighth paragraph of the comment on Article 2A of the Joint Committee's Report was the subject of the statement made by the Delegate of Denmark, but it has not been modified.

It was made clear that, in spite of the term "the High Contracting Parties" which appears at the beginning of the Article, this text imposes obligations only upon the Parties to the conflict, and that neutrals are not bound by the Convention.

The point raised by the Delegate of Denmark was of a wider scope; he proposed that the Joint Committee should insert into the Report a few lines which, if I remember rightly, would have made it clear that our Conventions were not concerned with the question as to what rules of international law did or did not oblige all States to recognize the status of belligerency, if a rebellion proved on a sufficiently large scale to warrant the term of belligerent being applied to it as a Party.

The draft declaration submitted to the Committee's meeting was not voted upon as the Chairman of the Joint Committee pointed out that a sentence drafted entirely by one member of the meeting could not be inserted in the body of a Report. In order to simplify matters, the Delegation of Denmark did not press the point. This was doubtless the origin of the resolution which has just been brought to your attention and which I personally have not yet seen. It should obviously be examined, but I should like the Assembly to be informed that this point has already been examined by the Joint Committee. If I understand right, some internationalists do not completely share the opinion which has just been expressed with regard to the existence of regulations in international law which do or do not obligate the States to recognize belligerency in case of civil war. The difficulties mentioned just now by the Delegate of Denmark do not appear to be a matter of concern to the majority of the members of the Committee.

Mr. DE ALBA (Mexico): We are now confronted with one of the most difficult problems with which the Conference has to deal. This Conference was convened to examine the problem of protecting war victims. Each of our four working documents has its own individual character; but they all have

the same purpose—the protection of victims of war. We feel that the problem of these victims should not be approached solely from the angle of what may be called classical international law. There is hardly an aggression or military occupation which can be described as “undeclared war” in the sense of the English “technicality” or French “technicité”. It may even be argued that in certain cases a state of war, which has lasted for years, is not really an international war at all. This was why the Stockholm Conference took particular care in drafting the Article under consideration, which was taken as a basis of discussion in this Conference.

From the very outset of our proceedings the Mexican Delegation signified its approval of the Stockholm text; and we should like to pay a well-earned tribute to the valuable work and the efforts of our Committee. Nevertheless Article 2A, as it is submitted to you today, appears to be inadequate. We must dispel the idea that the protection accorded to prisoners of war and to the wounded and sick by the Conventions, could result, during conflicts not of an international character, in encouraging rebellion or revolt. Revolutions break out for reasons beyond human comprehension, and beyond the scope of protective enactments.

The Delegate of Burma, in the course of his very interesting speech yesterday, expressed the fear that the adoption, not only of the Stockholm text, but even of the Article we are now discussing, might lead to domestic disturbances. He feared that it might encourage revolutions and uprisings, and that the rebels would invoke the protection of the Convention.

The aim of the Mexican Delegation is to ensure that in all non-international wars of whatever character, whether civil wars, wars of resistance or wars of liberation, the right of the stronger and the *lex talionis* shall not prevail, and that methods disregarding all humanitarian considerations and the fundamental rights of man shall be prohibited.

I myself am an advocate of the ideas of Gandhi and Tolstoi on non-resistance; for I firmly believe that brutal repression always leads to a reaction, generally stronger than the original movement.

We should not like to be misunderstood. If we adhere to the original idea of Stockholm, it is only in the interests of justice and humanity. We would not wish the humanitarian ideal to raise internal political complications. The Prisoners of War Convention clearly indicates those who can claim the status of prisoners of war. The wounded and sick in a conflict, not of an international character, also deserve the protection of the Convention. We have taken a step forward in the humanitarian sphere as regards protection in warfare of a non-international character. Article

2A as proposed by the Committee also has a humanitarian purpose but it seems to us too detailed. You all know that detailed enumerations are rarely complete.

The Mexican Delegation would like to ask the Representative of the International Committee of the Red Cross whether the text submitted by the Committee covers all the cases which had been foreseen at Stockholm, and whether the spirit of the Stockholm Declaration is reflected in the wording of the Article submitted to us.

Miss GUTTERIDGE (United Kingdom): The United Kingdom Delegation realizes that in discussing whether the term “belligerent” or “Party to the conflict” should be used in these Conventions, we are entering into a much wider field than that covered by Article 2A. But as the point has already been raised, the United Kingdom Delegation wish to take the opportunity of expressing their doubts as to whether it is always satisfactory in every case in which the expression occurs to replace the word “belligerent” throughout these Conventions by the expression “Parties to the conflict”. The word “belligerent”, I need hardly remind the Conference, has a well understood meaning in international law and is used in particular in relation to questions of neutrality. Certain rights are accorded in international law to belligerents, and the wholesale replacement of the word “belligerent” in these Conventions by the expression “Parties to the conflict”, the wholesale replacement of one expression in an international treaty by another expression can lead to legal consequences which I am certain are not intended by the framers of these humanitarian Conventions.

The United Kingdom would therefore urge very strongly that before it is too late further careful consideration should be given to the use of these expressions “Parties to the conflict” and “belligerents” throughout the Convention, using in whatever Article the expression occurs the more appropriate term.

Colonel FALCON BRICENO (Venezuela): The Working Document provided in the fourth paragraph of Article 2 that:

“in the case of armed conflict not of an international character . . . . each Party to the conflict shall be bound to apply . . . . the provisions of the present Convention”.

We must be quite certain of what is meant by “armed conflicts not of an international character”. There is no doubt that this does not apply to the exploits of bandits or to riots of any kind, but to civil war, a sociological phenomenon of political history which often in essence is a form of class struggle. This class struggle was apparent



during the colonial period of South and Central America and has become evident in the rise of political parties. Many civil wars could be compared with those which were fought between patricians and plebeians of ancient Rome and to the conflict between the proletariat and capitalism.

Let us leave the problems raised by a definition of civil war on one side, however. This Conference has a serious aim and what we are listening to are not the opinions of a Delegate but those of the representative of a Government. In the period in which we are living, the twentieth century, we must be practical. Our work is to establish humanitarian Conventions and the more we bear this in mind the more useful shall we be to humanity.

With regard to Article 2 which has been submitted to us by the Working Party, I ask myself—in my personal capacity and not as the Representative of my Government—what would be most useful for the people of South America. In my opinion, and in this instance I speak in the name of the Delegation of Venezuela, we should revert to the Stockholm term: “armed conflicts which are not of an international character”.

My Delegation supports the text submitted by the Delegations of France, Greece, Italy, the United Kingdom, Switzerland and Uruguay, in which the fourth paragraph of Article 2 is replaced by a new Article 2A.

Mr. WINKLER (Czechoslovakia): As we read in the seventh Report submitted by the Special Committee of the Joint Committee dealing with the different drafts of the Article in question, the Special Committee almost unanimously agreed that the four Conventions should contain a clause extending at least part of their benefits to non-international conflicts. The voting in the Joint Committee itself showed again that almost all delegations there present considered it necessary to include armed conflicts of a non-international character in the four Conventions. Therefore I do not want to argue as to the types of armed conflicts to be covered by the Conventions.

I would like to make some remarks with regard to the text concerning Article 2A as it now stands before us in the version adopted by Committee II. My Delegation cannot consider this text sufficient, mainly because it contains too many restrictions. These restrictions are of different kinds: firstly, there are restrictions as to the persons protected by this provision, and reading the enumeration of the protected persons in paragraph 1, point 1, we see a very considerable restriction. For example, we do not find any mention of the prisoners of war; the wording “members of armed forces who have laid down their arms” does not cover persons who have fallen into the power of the enemy—i.e. prisoners of war.

That means that if we adopt the text of article 2A as it stands, prisoners of war would not benefit, in an armed conflict of a non-international character, by any protection at all.

In sub-paragraph 2 of paragraph 1 we read an enumeration of the acts which are, and shall remain, prohibited with respect to the above-mentioned persons. By argumentation *a contrario* one might think that acts such as violence to life, murder, etc., are allowed with respect to the above non-mentioned persons, especially to prisoners of war. I suppose that was not the intention of the authors of the present text of Article 2A, but the text as it stands makes such an interpretation possible. Our Delegation considers that this possibility is a great danger.

Secondly, the present text contains restrictions as to the provisions of the Conventions which are to be applied in an armed conflict not of an international character. It gives a text and an enumeration of the acts prohibited, but the text and enumeration in such a case can never be complete. The authors of the text themselves seem to have been aware of this gap, and probably that is why they stipulate, in paragraph 3 of Article 2A, that the Parties to a conflict shall endeavour to bring into force all the benefits of the Conventions.

This stipulation, however, is hardly of any value because it presents merely an appeal to the Contracting Parties but it does not contain a straight obligation, so there is no duty whatever to comply with the provisions of the Conventions.

For these reasons my Delegation prefers a clearly stipulated obligation, and instead of the text and enumeration, a general formula covering all the important provisions of the Conventions, such as is contained in the Soviet amendment.

Mr. BOLLA (Switzerland): May I state, very briefly, the reasons which led the Swiss Delegation to vote as it did just now on this important question.

The Stockholm Draft provided for the application of all the provisions of all the Conventions to all armed conflicts of a non-international character. But very soon it was evident to us that a whole series of provisions drawn up in view of international war were not applicable, even by analogy, to non-international conflicts. I am referring, in the first place, to a number of provisions in Convention IV which relate to the protection of civilians. But even among other provisions which can be conceived as being applicable, either directly or by analogy, to civil war, there were a considerable number, which, if they were applied, would put obstacles in the way of the legitimate government whose duty it is, in a non-international war, to compel rebels and insurgents to respect the national law of the country.

An attempt was made at the Conference to distinguish between different kinds of non-international conflicts.

It was suggested on the one hand, that non-international conflicts which most resembled international wars, should form one category, while another would include all other non-international conflicts. It was also proposed that nearly all the provisions of the three first Conventions, Wounded and Sick, Maritime Warfare, and Prisoners of War should apply to those in the first category, while at least the humanitarian principles of the three Conventions should be applied to the conflicts of the second type. As regards the fourth Convention for the protection of civilians, it was proposed to apply, at any rate its fundamental humanitarian principles, to non-international conflicts of both types. The Swiss Delegation accepted this solution; but it was soon compelled to recognize that it would meet with resolute and widespread opposition, and would have practically no chance of success.

We were, moreover, compelled to admit that at least two of the arguments brought against this solution were relevant. The first was that there would be interminable discussions at the commencement of every civil war, to determine whether the conflict should be classified under Category I or Category II; the second was that no provision had been made for an authority whose duty it would be to make the classification, should no agreement be reached by the parties.

On the outbreak of a civil war, however, it is obviously desirable that humanitarian activities should begin without delay, without waiting for arbitral or judicial decisions, or for the result of difficult and possibly interminable negotiations between the parties concerned.

In the hope of reaching some constructive solution, we were then compelled to fall back on an alternative which, I must admit, is a far more modest one, but which was adopted by a large majority in the Joint Committee. It consists in applying, in non-international conflicts, at least a minimum of humanitarian measures, and also provides that the International Committee of the Red Cross or any other impartial humanitarian body will have the right to intervene. I should like to stress, once more, that this solution was a compromise, and has naturally come in for criticism from both sides. On the one hand—and these were the criticisms we heard yesterday from the Soviet Delegate and this morning from the Delegate of Mexico—we are told that it does not go far enough, while on the other—and this was the charge brought against it by the Burmese Delegate—it is said it goes much too far. These two criticisms compensate each other. And to those who complain that the suggested solution does not

go far enough, there is a pertinent reply: half a loaf is better than no bread.

A comparatively modest solution is certainly better than none. Moreover our solution involves a factor which must be regarded as of prime importance—viz. the official recognition of the right of the International Committee of the Red Cross, or any other impartial body, to offer its services. This means that the International Committee of the Red Cross will not be exposed to the risk of its services being refused by the Parties to a conflict in case of civil war.

In reply to the criticisms made by the Burmese Delegate last night, which the Delegate for Mexico repeated this morning, I should like to say this:

The Burmese Delegate is afraid that Article 2A might be invoked against the legitimate government, in cases of individual outbreaks of banditism or organized movements of the kind; but I do not consider that this apprehension is well-founded. These provisions are applicable in the event of an armed conflict; in other words, an armed conflict must actually be going on. But outbreaks of individual banditism, or even movements of the kind, complicated or aggravated by the existence of a conspiracy, do not really constitute an armed conflict in the proper sense of the term. Nor does a mere riot constitute an armed conflict. An armed conflict, as understood in this provision, implies some form of organization among the Parties to the conflict. Such organization will, of course, generally be found on the governmental side; but there must also be some degree of organization among the insurgents.

As soon as an armed conflict is in process, Article 2A requires the legitimate government to certain humanitarian principles, the violation of which would make it to forfeit the respect of the public opinion of the world. Are we prepared to admit that a legitimate government, faced by a rebellion involving a certain degree of organization, should have the right to act with cruelty towards the opposing Party, or to ill-treat or torture some of its members? Is it intended that it should have the right to inflict humiliating or degrading treatment or to disregard the legal safeguards generally regarded as essential throughout the civilized world, and by so acting to place itself beyond the ban of civilized opinion? Do we wish to authorize it to refuse to search and care for the enemy wounded and sick? I feel sure that we should be unanimous in answering no. A victory obtained by a legitimate government under such conditions would indeed be a Pyrrhic victory, or to speak more accurately, a victory involving disastrous consequences, since violence necessarily breeds further violence.

What I fear, in the event of this Conference rejecting the text adopted by the Joint Committee, is this:

Provisions were framed at Stockholm to ensure, even in civil war, some protection to the victims. These provisions were, here in Geneva at this very Conference, the subject of lengthy discussions. If as a result of these the Conventions we are engaged in establishing should be found not to contain a single word relating to civil war, it would be natural to conclude that the Diplomatic Conference of Geneva actually did not wish to frame any regulations whatever for the purpose of protecting the victims of civil war. And in that event I fear that the generous offers of service made by the International Committee of the Red Cross would meet with a categorical refusal, based on this *a contrario* argument.

In the Special Committee, however, the Representative of the International Committee of the Red Cross informed us that in the course of the civil wars which have occurred during recent years, his organization had succeeded in displaying, naturally under very difficult conditions, a certain degree of activity. It would be extremely regrettable if activity of this kind should be rendered impossible by the deletion of the text of Article 2A as it now stands, from all the four Conventions.

May I say a few words in reply to the Danish Delegate's statement?

He pointed out that there is a reference in Article 2A to "Parties to the conflict", and that this expression also occurs in a considerable number of other Articles in all four Conventions. He feared that, even in cases of civil war, the use of this term would make it impossible to attempt to apply, to neutrals for instance, the remaining provisions of the four Conventions.

I do not believe this inference is justified; and in any case, it certainly does not represent the intentions of those responsible for drafting this text. In the minds of the authors of the text adopted by the majority of the Joint Committee, the provisions embodied in Article 2A are intended to constitute a complete and exhaustive code of the obligations assumed by the Contracting States in the event of non-international conflicts; apart from this text, no other Article of the four Conventions applies to civil wars. Where the term "Parties to the conflict" is used in other Articles of the Convention, it should always be understood as referring to Parties to an international conflict. Where it refers to Parties to a non-international conflict, Article 2A enumerates the only obligations by which they are bound, and by which States which are not Parties to the conflict are also bound.

The question of belligerency is completely outside this scope of the provisions and of the solutions proposed in the four Conventions. For that matter, the Danish Delegate told us that he

intended to submit a draft resolution on this point; we shall therefore have another opportunity of discussing the matter when this draft is submitted to the Conference.

One more remark with regard to a criticism made just now, by the Delegate of Czechoslovakia, in connection with Article 2A. He told us that the text does not contain any provision in favour of prisoners of war, although prisoners of war are members of the armed forces who have laid down their arms. It is true that Article 2A does not guarantee the treatment accorded to prisoners of war by the third Convention in its entirety—for example, as regards pay—but it does guarantee them at least a minimum of humanitarian treatment, without any distinction based on differences of race, colour, religion, sex, birth or wealth. And that is at least something! The Swiss Delegation therefore urges you to adopt the text of this Article, as drafted by the Joint Committee. The present version is the one recommended to the Special Committee—and I venture to reply here without perhaps being qualified to do so, to a question raised by the Mexican Delegate—by the International Committee of the Red Cross. It constitutes a compromise, which represents the only possible balance between the claims of idealism so eloquently pleaded by the Mexican Delegate this morning, and the rights of realism which the Burmese Delegate recalled yesterday, with at least as much eloquence.

The PRESIDENT: A question has been put by the Mexican Delegate to the International Committee of the Red Cross. Is there a Member or Representative of this Committee present who is in a position to reply to this question?

Mr. CARRY (International Committee of the Red Cross): The International Committee of the Red Cross had no intention of speaking on a question which, in their opinion, comes within the exclusive competence of governments. As they have been asked to give their views, however, and as a proposal has been made to omit any text concerning the question of conflicts not of an international nature, the International Committee of the Red Cross feel that they cannot refuse the invitation to speak on the matter. Their position is clear; the International Committee of the Red Cross was in favour of the text which they themselves submitted to the Stockholm Conference and which provided for the full application of the Conventions in the event of conflicts not of an international nature.

In a Diplomatic Conference, however, realistic and practical views must be taken, and the Committee was aware from the outset of the work that the original text, even in the Stockholm

wording, had no chance whatever of being adopted by Governments and that a compromise solution should accordingly be sought. Several drafts have been submitted, including that of the French Delegation, the text of which was adopted by the Joint Committee.

The International Committee of the Red Cross gave it their support and still give it today, because this text is simple and clear and has the merit of ensuring, in the case of civil war, at least the application of the humanitarian rules which are recognized by all civilized peoples. This text therefore, without being a complete expression of the ideal which the International Committee has in view, ensures a minimum protection and—which is still more important—gives impartial international bodies, such as the International Committee of the Red Cross, means of intervention.

Adoption of the Burmese proposal would in our opinion be a calamity. This proposal would create a dangerous gap in the mechanism for the protection of war victims; worse still, it would imply that this Conference implicitly accords the Parties to the conflict the right to perform acts which the draft Convention was intended to prohibit. Another consequence would be that it could be used at any time in the future as a pretext for rebutting an intervention by the International Committee of the Red Cross, and for this reason the latter wish to draw your attention to the disastrous consequences which might arise by the deletion of any text which covers the problem which has been placed before us.

I appeal to you most urgently to provide at least minimum protection for war victims even in conflicts not of an international nature.

The PRESIDENT: We will now vote on the matter; I suggest we should first vote on the amendment submitted by the Delegation of the U.S.S.R.

General OUNG (Burma): I am very glad to have been offered some criticism, that of the Mexican Delegation being particularly constructive. I happened to speak on delicate subjects. I do not know why I go where others fear to tread, but since I have come to this Conference I feel we should tell our brother Delegates whatever is on our minds, discuss with them and hear their criticisms, frankly and fearlessly offered. Various delegations have submitted observations. This is a subject which, prior to this Conference, I thought I had prepared very carefully, presenting my case fairly well, but so far I have received no reply to the real point I had endeavoured to make. Instead, suddenly I am faced with the threat that because of proposing this vote I must lose the respect of

other countries, indeed, that I might be placed outside the laws of humanity. Those were the words we heard just now and I do not think they were at all justified. I am charged with stating that the Article went too far. I would not flatter it. What I said was that it was dangerously vague. I proposed its deletion because it would incite and encourage insurgency.

You think I proposed this text because we wish to perform acts of cruelty against our own countrymen? Believe me, nothing like that happened. As I said in one of the Committee meetings, we have not shot one rebel for being a rebel after having made him a prisoner. We have taken so long to achieve peace in Burma because we are fighting our own countrymen. We do not want to intensify the conflict by cruel acts and that is why we have refused direct intervention from foreign States. Yesterday, out of deference to my host and to the Chairman of my Committee, I omitted all references to this point but since it has been brought up as prime importance in support of the Article under discussion, I would refer to parts of my speech which I passed over yesterday.

The second paragraph of Article 2 of the Convention as proposed says: "An impartial humanitarian body such as the I.C.R.C. may offer its services to Parties to the conflicts". It may offer them at the request of the *de jure* government or of the insurgents or of the shadow behind the insurgents; neither is the agreement of the *de jure* government necessary. Surely you do not accept that. The acceptance of these views which are those of a race like any other need not place that race beyond the laws of humanity. Acceptance of outside intervention, even if it be from a humanitarian organization, would certainly confuse the issue, create further misunderstanding, prolong the dispute or even involve a State in an international dispute of serious dimensions. I again appeal to your sense of justice, to the declaration in the Charter of the United Nations, that you do not intervene in matters essentially within the domestic jurisdiction of any State nor aggravate the situation, especially that of a domestic nature.

Since I have always happened to speak on delicate subjects I have always been defeated by abstentions. I am afraid I have been placing some of my friends in an embarrassing situation, that of either voting for me or of not voting for me. For this reason I respectfully request the Chairman—and I hope the delegates will agree—that this vote should be taken under the rules of procedure providing for a secret ballot.

Mr. MOROSOV (Union of Soviet Socialist Republics): I should just like to make a few remarks in regard to the method of voting which has been

suggested by the Delegate of Burma. I have already had the occasion to express my views against the secret ballot, which had been suggested in other circumstances, as voting should be carried out openly and not in the way suggested. We should not make use of the secret ballot for such matters as these, which are not fundamental and which are actually in opposition to the underlying principles of the work of our Conference and to the humanitarian attitude which should be observed in all cases of armed conflict. During this Conference, the Burmese Delegate alone has found it necessary to oppose the application of humanitarian principles in the case of civil war. We are firmly opposed to a secret ballot, for this would not be in keeping with the objects of our Conference.

With regard to the Burmese Delegate's statement that he had received no reply to the questions raised by him, I beg to say that this statement is not correct, as numerous replies have been given during the debate.

I may add that this attitude in this respect takes us back to the dark period of Saint Bartholomew's eve, or to incidents in history which have only been surpassed by certain barbaric acts committed during the last war.

The suggestion made by the Burmese Delegation would purport to entail a repetition of such acts, and runs contrary to the conscience of the peoples.

If the Burmese Delegate is not satisfied with this reply, I regret that I cannot give him another, as I must remain within the limits of diplomatic courtesy.

Mr. ALEXANDER (United Kingdom): My Delegation does not feel that we need follow our Soviet colleague in questioning the good faith of the motives of our colleague from Burma in coming to a decision on the procedural point before us. It seems to my Delegation to be a very simple point. If the Soviet Delegation do not want a secret vote on their amendment, I would certainly be prepared to support them, but I feel it would be only a matter of courtesy and common sense to accept the proposal made by the Delegate of Burma and to have a secret vote for his amendment.

Speaking as the Representative of one of the sponsors of the original text which came before the Joint Committee we, for our part, would not be averse to a secret vote on that text, and we therefore support the suggestion of our colleague from Burma.

Mr. YINGLING (United States of America): The United States Delegation fully supports the remarks which have just been made by the Delegation of the United Kingdom. The United States Delegation does not need to vote secretly on anything

which comes before this Conference, but it respects the rights of those people who desire such a method of ballot.

The PRESIDENT: I agree, that the Burmese Delegate's proposal to take a vote by secret ballot, only refers to his own amendment. I agree that the votes on the other questions connected with Article 2A shall be taken by a show of hands. I propose to consult the Conference with reference to the Burmese Delegate's proposal, and to ask it to decide whether a vote is to be taken by secret ballot, or, on the contrary, by show of hands. I propose to adopt the following procedure for these votes.

I will first take a vote on the amendment submitted by the Soviet Delegation; this will be by show of hands. I shall then take a vote on the recommendation of the Drafting Committee (*see its Report to the Plenary Assembly*) also by show of hands. I will then proceed to take a vote on the Article as a whole. At that point, delegations in favour of the Burmese Delegation's proposal will have an opportunity of voting against the Article as a whole. Before this vote, I will take a vote on the Burmese Delegation's proposal to vote by secret ballot.

Delegations who are in favour of the amendment submitted by the Soviet Delegation are requested to signify it.

Mr. WINKLER (Czechoslovakia): I should like to say a few words after the President has announced the result of the voting.

The PRESIDENT: We will complete the votes which have to be taken, and I will then call upon the Delegate of Czechoslovakia.

The amendment submitted by the Soviet Delegation is rejected by 20 votes to 11, with 7 abstentions.

We will now take a vote on the Drafting Committee's recommendation. Delegations in favour of this recommendation are requested to signify it.

The recommendation of the Drafting Committee is adopted by 34 votes to none, with 10 abstentions.

We will now take a vote on the proposal made by the Burmese Delegation to vote by secret ballot on the Article as a whole, and also on its proposal to delete the Article.

Mr. MOROSOV (Union of Soviet Socialist Republics): May I make a suggestion with regard to procedure? I wonder how we can vote for the deletion of a text which was adopted a few minutes ago. This seems to me impossible from the point of view of procedure, since it requires a two-thirds majority of the delegations present to re-

verse a decision which has already been taken. Otherwise, it would be incomprehensible. I should be happy to know your opinion on this point.

The PRESIDENT: I am a little surprised by the remark made by the Delegate of the Union of Soviet Socialist Republics. We have just taken two successive votes, one on the amendment, and the other on a recommendation which was in the nature of an amendment. The first amendment was rejected, whilst the second was adopted. We now have before us a final text on which we must take a decision. In this connection I should like to remind you that since the beginning of our Plenary Meetings, each time an amendment has been submitted, irrespective of whether it was adopted or rejected, I have always thereafter proceeded to take a vote on the whole Article to which the amendment in question referred.

The Delegate of Nicaragua has asked to speak. I shall call upon him to do so once the voting has taken place and we have heard the Delegate of Czechoslovakia.

We shall now vote on the Burmese Delegation's proposal regarding a secret ballot.

This proposal was adopted by 22 votes to 14, with 11 abstentions.

A secret ballot will therefore be held. I would ask the Delegations of Ireland, the Soviet Socialist Republic of the Ukraine and Guatemala to be so kind as to furnish one teller each. I would remind you that the procedure for voting will be as follows: delegations accepting the text of Article 2A, as submitted by the Joint Committee, will vote "yes"; those in favour of the rejection of Article 2A, as was proposed by the Burmese Delegation, will vote "no"; lastly, the delegations abstaining will place a blank voting paper in the ballot-box.

Is there any delegation without a voting paper?

Mr. LAMARLE (France): I beg your pardon, but a few delegations, including my own, thought that there was to be a secret ballot on the proposal made by the Delegation of Burma. We had al-

ready filled in our voting paper. As things are, may we ask the Secretariat to be so good as to repeat exactly the subject of the vote, and perhaps to give us fresh voting papers.

The PRESIDENT: In point of fact, the proposal made by the Delegation of Burma is not an amendment; it is a motion to vote "No" on the whole of Article 2A, in other words to reject the Article outright. I therefore suggested that we might take one vote only.

The Delegations in favour of Article 2A will vote "yes", those rejecting it, on the motion of the Burmese Delegation, will vote "no". Will any Delegation requiring fresh voting papers please ask for them?

The secret ballot took place.

I propose that, while the votes are counted, we should hear the three Delegates who asked to speak just now.

Mr. WINKLER (Czechoslovakia): I did ask to speak, but now I think it unnecessary.

The PRESIDENT: I call upon the Delegate of Nicaragua.

The Delegate for Nicaragua apparently does not wish to speak either. I call upon the Delegation of Bulgaria.

Miss PAPOUKTCHIEVA (Bulgaria): The Delegation of Bulgaria merely wished to ask for a small point to be cleared up; but this no longer seems necessary.

The PRESIDENT: This is the result of the vote: 47 voting papers were issued; 47 have been returned.

Article 2A was adopted by 34 votes to 12 with 1 abstention.

I propose to adjourn the discussion. This afternoon's Meeting will begin at 3.15 p.m.

*The meeting rose at 1.05 p.m.*

## TWENTIETH MEETING

Friday 29 July 1949, 3.15 p.m.

*President:* Mr. Max PETITPIERRE, President of the Conference

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## PRISONERS OF WAR CONVENTION

The PRESIDENT: We shall resume to consider the Articles which we have not yet adopted, namely Articles 3, 29B, 30A, 12, 100 and 105.

**Article 3** (*continued*)

I would remind you that this Article was referred to the Drafting Committee (*see its Report*), which revised the wording. In addition, the Drafting Committee has submitted a proposal in the same Report.

Lastly, two delegations have submitted amendments; the Netherlands Delegation (*see Annex No. 93 bis*) and the Irish Delegation (*see Annex No. 93*).

Does anyone wish to speak on Article 3?

General SCHEPERS (Netherlands): After a full consideration of the question, and having discussed it with other delegates, the Delegation of the Netherlands withdraws its amendment.

Mr. RYNNE (Ireland): These amendments which the Delegation of Ireland have tabled to subparagraph 2 of paragraph B of Article 3 (*see Annex No. 93*) are only amplifying amendments. They are designed to make clear that, during a conflict, when any of the persons coming within the categories previously mentioned in the Article are interned in a neutral or non-belligerent country, the functions of a Protecting Power may be performed by the Power upon which the persons normally depend, when that Power already possesses diplomatic or consular representation in the country concerned. In other words, these amendments make it clear that Article 3 of the Convention does not purport to make a fundamental change in the existing international practice as to the reception of foreign representatives.

Since there is no new point of substance involved in the amendment now being proposed, the Irish Delegation is confident that the other delegations here present will have no difficulty in accepting them.

General SKLYAROV (Union of Soviet Socialist Republics): The Delegation of the U.S.S.R. consider that the two amendments to Article 3 proposed by the Delegation of Ireland are unacceptable.

The Irish Delegation's amendment proposes to amplify the text of Article 3 by including the concept that the Parties to the conflict will only exercise the functions of a Protecting Power on behalf of persons interned in neutral territory "where diplomatic relations exist between the Parties to the conflict and the neutral or non-belligerent Power concerned". This would place belligerent Powers in an unfair position as regards the protection of persons interned in neutral territory who belong to the armed forces of the belligerent countries.

For instance, if nationals of States B and C are interned in the territory of State A, and if States B and C are in conflict, should State B be in diplomatic relations with State A while State C is not, State C cannot exercise the functions of a Protecting Power with regard to its nationals.

However, according to the principles of international law, if State C has no diplomatic relations with State A, it cannot be deprived of the right to protect the interests of its nationals, and in particular to exercise the functions of a Protecting Power, if not directly, at least with the help of a State which is in diplomatic relations with State A.

It is unnecessary to repeat here details which we have already included in the text of Article 3, as the question whether or not the functions of a Protecting Power can be exercised, will be settled in accordance with the provisions of recognized international law, including the provisions of the present Convention.

Now as regards the second amendment, submitted by the Delegation of Ireland, proposing to grant more favourable treatment to persons who have been accommodated by neutral or non-belligerent powers in their territories only in cases where diplomatic relations exist between the Parties to the conflict and the neutral or non-belligerent Power concerned, we do not see the necessity of the alteration.

Where these diplomatic relations exist, the question of more favourable treatment, that is of treatment provided for by the stipulations of international law and by this Convention, will be decided by means of diplomatic agreements or conversations, if necessary.

It is clear that, if the neutral Power prefers to grant the persons concerned more favourable treatment, it will do the same in respect of persons belonging to the armed forces of any Party to the conflict.

As regards persons who have been accommodated by the neutral or non-belligerent Power in its territory, the question will likewise be equitably settled by the neutral Power as regards nationals of any belligerent.

It is therefore unnecessary to include in the Convention provisions which are a consequence of the fact that the decisions are made in accordance with recognized international practice, by means of diplomatic conversations, if necessary.

For the reasons which I have just given, the Soviet Delegation will vote against the amendments submitted by the Delegation of Ireland.

General DILLON (United States of America): The Delegate of Ireland has offered to clear up the United States Delegation's misunderstanding in regard to the first amendment. The Irish Delegation's amendment is dated July 22nd, thus predating by five days the paper which it is proposed to amend. For that reason there is some confusion, and as the Irish Delegation has offered to clear up the matter from the rostrum, we give place to the Irish Delegate.

Mr. RYNNE (Ireland): I am very grateful to the Delegate of the United States of America for having explained the position concerning the document now before us, namely the new text established by the Drafting Committee. Our amendments, of course, refer to sub-paragraph 2 of paragraph B of that document.

With regard to the doubts expressed by the Soviet Delegate on the subject of the Irish Delegation's amendments, I should like to say that nothing is further from our minds than the intention to deprive any protected person or any prisoner of war of the protection to which he is entitled under this Convention in time of war, if he happens to find himself in a neutral country without diplomatic representation of his own. We would, however, consider it not only unfair but entirely anomalous and contrary to ordinary everyday diplomatic practice if any State—perhaps I should say *a fortiori* a neutral State in time of war—could be compelled, without its agreement and simply by virtue of a Convention such as this, important though it is, to accept representatives

from a country from which it had not accepted them during time of peace, or perhaps even from a country in which such representatives were not recognized in any way by their own government.

However, it would obviously be grossly unfair, as the Soviet Delegation pointed out, if these people without their own diplomatic representation in such a neutral country were to be deprived of all protection, but we believe that that is adequately covered by Article 5 of the Prisoners of War Convention as now drafted, which says "that in addition to agreements expressly provided for by certain Articles of the Convention the Contracting Parties may conclude other special agreements for all matters relating to prisoners of war concerning, which they may deem it suitable to make separate provision". We can see no reason whatever why—to use the letters used by the Soviet Union Delegate—a State "A", which is a belligerent with internees in a neutral State "B" and with no diplomatic representation with "B", would not immediately make an agreement with the neutral State under Article 5 to have those internees in State "B" looked after by the diplomatic or consular representative already there of some other State, a neutral State or any kind of State, that happened to have its representative already in the neutral country.

We think that should be perfectly adequate to meet all possible necessities of the Prisoners of War Convention without in any way interfering with the ordinary international rule whereby every country is entitled to give its agreement before it accepts any diplomatic representative from any other country. On the one hand you have agreement; on the other hand you have agreement under Article 5; and we cannot see how any delegation here could object to such a situation. It seems to us to be a perfectly normal reason.

The PRESIDENT: We shall now proceed to vote; we will vote first on the amendment submitted by the Irish Delegation, then on the proposal made by the Drafting Committee and lastly on the whole of Article 3 as submitted by that Committee.

The amendment of the Irish Delegation is adopted by 17 votes to 6, with 8 abstentions.

We shall now vote on the proposal of the Drafting Committee. The delegations in favour of the proposal are requested to raise their hands.

Mr. YINGLING (United States of America): What is the proposal? What are we voting on?

The PRESIDENT: As I said just now this concerns the proposal figuring in the Report presented by the Drafting Committee to the Plenary Assembly, Part III, Convention relative to the Treatment of Prisoners of War. This proposal reads as follows:



"The Drafting Committee draws the attention of the Plenary Assembly to an apparent contradiction between the provisions of this Article and those of Article 29B of the same Convention. With a view to coordinating the text of the two Articles, the Committee suggests that a paragraph reading as follows should be added to Article 3:

"This Article shall in no way affect the status of medical personnel and chaplains as provided for in Article 29B of the present Convention."

This is simply a reference to another provision, in order to avoid any contradiction between the two Articles.

Will delegations in favour of this proposal please signify in the usual manner?

This proposal is adopted by 19 votes *nem. con.*, with 15 abstentions.

We shall now vote on Article 3 as a whole.

Mr. ABUT (Turkey): I think that there are still two more proposals by the Drafting Committee on the same Article.

The PRESIDENT: I do not know whether the Delegate of Turkey was present at the beginning of the debate. The amendment submitted by the Delegation of the Netherlands was withdrawn and there is therefore no need to take a vote on it. It is on the text submitted by the Drafting Committee that we are now going to vote.

Mr. ABUT (Turkey): I am referring to the Report presented by the Drafting Committee. Under Article 3 there are two alterations proposed by the Drafting Committee. It is on these two alterations that I wish to speak.

Mr. SÖDERBLOM, Rapporteur: These two points have already been incorporated by the Drafting Committee in the text which you have before you.

The PRESIDENT: The Rapporteur confirms what I have just said.

We shall therefore now vote on Article 3 as a whole, as it was finally worded by the Drafting Committee in a new text including the alterations to which the Delegate of Turkey has just referred. I am now putting to the vote Article 3 as a whole, with the amendment which has just been adopted.

Article 3 as a whole was adopted by 33 votes *nem. con.* with 3 abstentions.

#### Article 29B (continued)

The PRESIDENT: You will remember that Article 29B was referred to the Drafting Committee on 26 July as a result of proposals sub-

mitted by the Delegations of New Zealand and Greece. I am now putting to the vote the text revised by the Drafting Committee (*see Annex No. 110 and Report of the Drafting Committee*).

Article 29B was adopted by 26 votes to 10, with 1 abstention.

#### Article 30A (continued)

The PRESIDENT: The Working Party has reconsidered Article 30A in order to coordinate it with Article 29B. I now put to the vote the text which the Working Party has submitted (*see Annex No. 114*).

Article 30A was adopted by 27 votes to 2, with 8 abstentions.

#### Article 12 (continued)

The PRESIDENT: You will remember that at a previous meeting we voted on the proposal tabled by the Delegation of the United Kingdom to replace the wording submitted by the Drafting Committee by the text which had been adopted by Committee II. As there was a tied vote, the Delegation of the United Kingdom, in accordance with Article 35 of the Rules of Procedure, moved that the vote should be repeated.

We shall therefore proceed to vote again on this provision.

The Delegate of the Netherlands wishes to speak; before asking him to do so, I wish to remind him that only points of order may be raised, and that there can be no new discussion on the substance of Article 12.

General SCHEPERS (Netherlands): The day before yesterday, the Delegation of the Netherlands asked to be informed of the opinion of the Drafting Committee on the alteration made to this text. At that time the Drafting Committee was in session and our Delegation did not press the point, because it did not wish to prolong the discussion. But as the Drafting Committee is now no longer in session, it should be possible to know its opinion. We consider that the Plenary Meeting cannot decide whether an alteration made by the Drafting Committee is acceptable or not, without first knowing the reasons for which the Drafting Committee altered the text drawn up by Committee II.

The Delegation of the Netherlands therefore proposes to request the President or the Rapporteur of the Drafting Committee to explain the reasons of this modification.

The PRESIDENT: A member of the Drafting Committee has already explained why the alteration was made to the text, the principal reason being that it was considered preferable to use the singular in this instance in order to specify more clearly the position of prisoners of war. These explanations were also given by the Delegate of Denmark at the meeting at which the decision was taken. I think that in these circumstances the meeting is in a position to take a decision. We shall now proceed to vote.

May I remind you that the two alternative texts are the following ones: first, the text submitted by the Drafting Committee retaining the words (at the end of the first paragraph):

"...medical... treatment of the prisoner concerned and carried out in his interest...".

On the other hand, the original text adopted by Committee II:

"...hospital treatment of the prisoners concerned and carried out in their interests...".

In one instance the word "prisoner" is in the singular and in the other in the plural.

I will ask you to vote first on the text as drawn up by the Drafting Committee, and given in the Document we are now considering.

19 votes are in favour of this text.

I will now put the original text drawn up by Committee II to the vote.

18 votes are in favour of this text.

The text of Article 12 as submitted by the Drafting Committee was adopted by 19 votes to 18, with 4 abstentions.

#### Article 100 (continued)

The PRESIDENT: Voting on the third paragraph of this Article resulting in a tie, the United Kingdom Delegate moved a repetition of this vote. You are therefore asked to vote for or against the third paragraph of this Article.

The third paragraph of Article 100, as proposed by the Committee, is adopted by 21 votes to 17, with 3 abstentions.

Thus the whole of Article 100, on which we voted paragraph by paragraph, is adopted.

#### Article 105 (continued)

The PRESIDENT: The vote taken yesterday morning on the amendment submitted by the Delegation of the U.S.S.R. resulted in a tie. The Delegation of the U.S.S.R. has requested a repetition of this vote, in accordance with Article 35 of the Rules of Procedure.

We will therefore vote on this amendment.

The amendment is adopted by 19 votes to 7, with 14 abstentions.

The whole of Article 105, as amended, is adopted nem. con, with two abstentions.

### MARITIME CONVENTION

#### Article 11A (continued)

The PRESIDENT: This Article had been adopted provisionally, subject to possible modifications of Article 3 of the Prisoners of War Convention. I wish to remind you that the part of this Article which is correlated to Article 11A has not been altered. Other modifications have, however, been made. I refer to the enumeration figuring in Article 3.

Article 11A was finally adopted.

### WOUNDED AND SICK CONVENTION

#### Article 10A (continued)

We have here again the same question of correlation with Article 10A of the Wounded and Sick Convention. This Article was adopted provisionally, subject to possible modifications of Article 3 of the Prisoners of War Convention.

Article 10A of the Wounded and Sick Convention was finally adopted.

#### Article 42 (continued)

This Article had been referred to the Drafting Committee, subsequent to the adoption of an amendment submitted by the Delegation of Turkey.

The Committee has submitted a proposal on the wording of the last paragraph of this Article (see *Report of the Drafting Committee*).

Does anyone wish to speak on the rewording proposed by the Drafting Committee?

As this is not the case, this text is adopted.

### COMMON ARTICLES

#### Article 4/5/5/5

The PRESIDENT: No amendments have been submitted.

The Article was adopted.

**Article 5/6/6/6**

The PRESIDENT: No amendments have been submitted.

The Article (Stockholm text) was adopted.

**Article 6/7/7/7**

The PRESIDENT: The New Zealand Delegation has submitted an amendment proposing to delete the last sentence of the third paragraph of Article 7 "Prisoners of War" and "Civilians".

Mr. QUENTIN-BAXTER (New Zealand): The Special Committee of the Joint Committee added a new third paragraph to Article 6 of the Sick and Wounded Convention and Article 7 of the other three Conventions. The last sentence of that new paragraph, which refers to the activities of the Protecting Powers, reads:

"Their activities shall only be restricted as an exceptional and temporary measure when this is rendered necessary by imperative military necessities".

There was no such provision in the present Prisoners of War Convention—the 1929 Convention. It is the object of my Delegation to delete that sentence from the text of the Prisoners of War and of the Civilians Conventions, but not from the Wounded and Sick or from the Maritime Warfare Conventions; and I will explain first the reason why we have made a distinction between the two. The Wounded and Sick Convention and the Maritime Warfare Convention have operated for many years without having in them any clause concerning Protecting Powers. If there were no such provision in the new text we would still have every reason to believe that they would prove useful and workable Conventions, but they have not been written in the light of a Protecting Power provision, and since it has been decided to bring such a provision into those Conventions we think it is proper and necessary that this proviso should be in those Conventions, because it is obvious and reasonable that the activities of a Protecting Power in sea warfare and on the field of battle must be restricted.

However, with the Prisoners of War Convention as with the Civilians Convention we believe that entirely different considerations apply. The Protecting Power provision is really the essence of those Conventions: Article after Article in those two Conventions lays down rules—mere rules—but the vital force which animates those rules and gives them effect is the presence of the Protecting Power. It is not the function of a Protecting Power to command or to overrule: it is

its function to observe, to comment, to make representations, and to send reports to the outside world. If we are faced with an unscrupulous belligerent, the presence of the Protecting Power and the ability of the Protecting Power to examine what is going on and to observe is the only preventive measure which we have. It is the only inducement to that Power to observe the Conventions, but the value of the Protecting Power is, of course, not limited to that case. Any belligerent which has the will to carry out the provisions of these Conventions is glad of the activities of the Protecting Power, because the Protecting Power is an impartial referee which will establish the good faith of a Detaining Power or of an Occupying Power.

For these reasons, then, we feel that the whole protection which these two Conventions offer hinges basically upon the activity of the Protecting Power. We feel that any special provision which detracts from the rights of the Protecting Power weakens the strength of those Conventions.

Now let me admit immediately that there are certain circumstances in which consideration of military security demands a specific restriction upon the rights of the Protecting Power. That is regrettable, but it is necessary, and the texts of the Prisoners of War and of the Civilians Conventions have been drawn up with that idea in view. Let me give you some examples. In Article 49 of the Civilians Convention, which deals with the obligation of an Occupying Power to provide food supplies, we have this provision:

"The Protecting Power shall, at any time, be at liberty to verify the state of the food and medical supplies in occupied territories, except where temporary restrictions are made necessary by imperative military requirements."

Now my Delegation has some association with the Working Group which drew up the text of that provision: we supported that reservation strongly because we believed that military security demanded it, but although it is only a specific provision we know that delegates from countries which have had the bitter experience of occupation, agree to this reservation only reluctantly, anxiously, and not without some heart-burning, and this proviso affects only one paragraph of one Article of one Convention. The sentence which it is my Delegation's desire to omit affects the whole text of two Conventions.

Now I can give you other examples to show that throughout the Civilians and the Prisoners of War Conventions the question of a reservation on the rights of a Protecting Power has been covered. For instance, in Article 126 of the Civilians Convention, which deals with the right

of the Protecting Power to visit the places of internment, we have a specific provision,

“such visits may not be prohibited except for reasons of imperative military necessity, and only as an exceptional and temporary measure”.

That again we feel is a necessary and a proper provision. There is a similar provision in Article 116 of the Prisoners of War Convention.

I quote those examples in order to illustrate to this Conference that the sentence—the general sentence—to which we object is not necessary. It seems to us very strange that a Conference whose delegates have watched jealously each specific proviso qualifying any one right of a Protecting Power should, in the end, agree to accept a sweeping reservation which covers the whole text of the two Conventions.

We think that the Conference will not underestimate the effect of this proviso. It applies as a temporary measure, but in war-time temporary circumstances tend to recur. It applies only as an exceptional measure, but in war-time exception tends to become the rule. It applies only in the case of imperative military necessity, but a belligerent fighting for his very survival will tend to interpret such a phrase broadly. We feel that this sentence casts a shadow over the whole text of the Prisoners of War and of the Civilians Conventions. We feel that it is not demanded by any legitimate reason of military security; we feel that there are specific provisions which cover the case of military security in those cases where it is really necessary.

As an additional proof we would remind you once again that in the existing Prisoners of War Convention, drawn up 20 years ago, there is no such reservation as the one to which we object.

We feel that this is a retrograde step, the seriousness of which has not been fully realized. In our opinion it reduces very substantially the value of the whole of the texts which this Conference has before it and therefore we hope that you will support us in deleting this sentence from the Civilians Convention and from the Prisoners of War Convention.

The PRESIDENT: As no one else wishes to speak, we will proceed to vote on the amendment proposed by the New Zealand Delegation.

Mr. SOKIRKIN (Union of Soviet Socialist Republics): The Soviet Delegation cannot accept the New Zealand proposal to delete the last sentence of the third paragraph of Article 7 of the Prisoners of War and Civilians Conventions respectively. It should not be forgotten that the Protecting Powers may be prevented by the military situation from exercising their functions.

Moreover, quite apart from any provision in the Convention authorizing the Powers concerned to restrict the activity of the Protecting Powers for reasons of military necessity, a limitation of this kind will exist in fact, and this cannot be ignored.

We should therefore be placing the Protecting Powers in a false position, since they might think that their activity was not subject to any restriction. It must be noted, however, that such activity must not exceed certain specified limits.

But on the other hand, the Article does not contain any provision with regard to a temporary and exceptional limitation, for military reasons, of the activity of the Protecting Powers by the Powers concerned; this would seem to imply that the Powers concerned would in fact be authorized to limit the activity of the Protecting Powers at their own discretion on military grounds.

The sentence which the New Zealand Delegation wishes to delete does not restrict the activity of the Protecting Powers to any considerable extent, and it should be retained. The limitation of such activity, temporarily and for exceptional reasons, can only be justified on military grounds. In the absence of such a provision, the Powers concerned could, I repeat, imagine that they are entitled to limit the activities of the Protecting Powers of their own accord. This would place both the Protecting Power and the Powers concerned in a false position.

The sentence which remained in the text prevents any such erroneous interpretation; it should therefore not be deleted.

These are the grounds on which the Soviet Delegation proposes to reject the amendment tabled by of the New Zealand Delegation and to retain the text as it stands, including the sentence in question.

Colonel HODGSON (Australia): My Delegation supports the amendment proposed by New Zealand for the deletion of the last sentence of Article 7 of the Prisoners of War Convention and of the Civilians Convention respectively. We have noticed from the beginning of this Conference, right up to the present, that delegation after delegation has maintained that full authority, and the highest status should be given to the Protecting Power to enable it to carry out its function of being, in fact, a real protector to the categories you desire protected and any delegation which votes for the retention of this sentence has been completely, or will be completely, inconsistent because, as it stands, it will completely invalidate the true functions of a Protecting Power. The New Zealand amendment is not based on hypothetical cases. It is not a theoretical amendment but it is one of real practical necessity. My

country during two World Wars has had experience as an Occupying Power or as a Detaining Power. Regrettably, as a Protecting Power we completely failed in our duty. At the beginning of the second World War my country was a Protecting Power. There were tens of thousands of internees. We had hundred of thousands of pitiful appeals to find out what had happened to their sons, their husbands, and their children. In not one case were we allowed to go to those camps. In not one case did we find out where those camps were located and we were unable to give one response to the many appeals. In every case the reason given was "Imperative military necessity prevents us even giving you the information to enable you to carry out your duties as a Protecting Power". That was at a time when there was no such provision in the 1929 Convention or in any other Convention but here and now, you propose to put it in and make it legal. Now if the state of affairs which I have just described could exist when there was no such provision in the Convention, what can happen now if it is accepted and you legalize it so that the whole work of the Protecting Power can be nullified on the grounds of urgent military necessity? I should like to know if the delegations who have declared openly the principles they have done would venture to vote against this amendment. I just ask you to watch carefully those delegations who do vote against such an amendment.

The PRESIDENT: We will now proceed to take a vote. As has already been pointed out, the amendment submitted by the New Zealand Delegation only concerns the Prisoners of War and the Civilians Conventions.

We will therefore first take a vote on Article 6 of the Wounded and Sick Convention and on Article 7 of the Maritime Warfare Convention.

No amendments have been submitted to these two Articles.

Are there any comments on these Articles?

As no one wishes to speak, the two Articles in question are adopted.

We will now take a vote on the amendment to Article 7 of the Prisoners of War Convention and the Civilians Convention.

The delegations in favour of this amendment are requested to signify.

The amendment is adopted by 23 votes to 6, with 6 abstentions.

We will now take a vote on Article 7 as a whole of the Prisoners of War and Civilians Conventions respectively. Delegations wishing to vote for the adoption of the Article, subject to the amendment which has just been adopted, are requested to signify.

Article 7 was adopted by 25 votes to none, with 9 abstentions.

### Article 7/8/8/8

The PRESIDENT: No amendments have been submitted; no one wishes to speak.

The Article was adopted.

### Article 8/9/9/9

The PRESIDENT: Various amendments have been submitted by the Delegation of the Union of Soviet Socialist Republics (*see Annex No. 26*). An amendment has been submitted by the Delegation of Ireland (*see Annex No. 199*). I wish to point out that the amendments submitted by the Soviet Delegation concern the four Conventions, whereas the amendment submitted by the Irish Delegation concerns the Civilians Convention only.

Mr. CASHMAN (Ireland): The purpose of the amendment to Article 9 of the Civilians Convention proposed by the Delegation of Ireland is to ensure that where neutral aliens are protected persons under Article 3 of that Convention, they shall have a substitute for a Protecting Power, to look after their interests.

In Article 3 of the Civilians Convention, as adopted by Committee III, protected persons are to include the nationals of neutral countries who find themselves residents in the territory of a belligerent State where their countries of origin are not diplomatically represented or who find themselves living in occupied territory. The common Articles dealing with Protecting Powers and substitutes therefore were, however, prepared before Article 3 was adopted in its present form and are so worded as to apply only to the nationals of countries which are Parties to the conflict and to the nationals of an occupied country. Neutral aliens in occupied territory, and neutrals without diplomatic representation in the territory of the Party to the conflict in which they are residents, are consequently now left without the benefits of a Protecting Power or a substitute organization. This is obviously an oversight which our proposal is intended to rectify. We seek to have the provisions of Article 9 extended to nationals of a neutral State who are either in occupied territory or who find themselves without diplomatic representation in the territory of the belligerent State. The salient portion of the Article which would be so adapted and extended would be the second paragraph. This reads as follows:

"When persons protected by the present Convention do not benefit, or cease to benefit, no matter for what reason, by the activity of a Pro-

protecting Power, or of an organization provided for in the first paragraph above, the Detaining Power shall request a neutral State or such an organization to undertake the functions performed under the present Convention by a Protecting Power designated by the Parties to the conflict."

Thus, according to our proposal, protected neutral aliens could be looked after either by another neutral State or by an organization such as the International Red Cross Committee. Such an arrangement should be easy to conclude with regard to neutral aliens residents in the territory of a belligerent State, while neutrals in occupied territory could doubtless be taken in charge by the Protecting Power responsible for the interests of all the other inhabitants of the territory.

Alternatively, the persons to be protected could be entrusted to the I.C.R.C. or an organization of a similar nature. The Irish Delegation feel therefore that the amendment they propose in this connection will find unanimous support because they are convinced that to leave one class, however small, of persons entitled to protection without a Protecting Power would be anomalous and contrary to the spirit of the Convention.

Mr. SOKIRKIN (Union of Soviet Socialist Republics): The Delegation of the Union of Soviet Socialist Republics has submitted a number of amendments to Article 8/9/9/9. I would like to review briefly the motives which induced us to submit certain amendments to the Article under consideration.

The aim of Article 8/9/9/9 is, as we see it, to establish the procedure by which the Detaining Power may be substituted for the Protecting Power in the event of the latter being unable to fulfil their function or when they cease to exist. The Stockholm Draft provided for substitution in two instances; firstly, when an agreement is come to by the Contracting Parties, and secondly, when the activity of the Protecting Power is not extended to protected persons, that is to say when the protection assumed by the Protecting Power comes to an end and the Government on which the protected persons depend ceases to exist. It was not by chance that the Stockholm Draft entrusted the functions of a substitute for the Protecting Power to the Detaining Power.

The addition of the words "no matter for what reason" gives the Detaining Power the right to substitute itself for the Protecting Power irrespective of whether the Government to which the protected persons belong exists or not. According to the addition made by the Special Committee, the Detaining Power can substitute itself at will for the protecting body even if a Government on which

protected persons depend does in fact exist, and is the body which will naturally protect its own nationals. Obviously, we cannot prevent the Government of the country to which the protected persons belong from taking part in the choice of the substitute for the Protecting Power. We consider, however, that the right to select the substitute can be transferred to the Detaining Power in one case only: when there is no Government of the country of which protected persons are nationals.

For these reasons, we propose to delete the words "no matter for what reason", which have been added to the second paragraph of the text proposed by the Special Committee. To make myself quite clear, and to exclude the possibility of Article 8/9/9/9 being interpreted in any other way, we propose to add in the second paragraph, after the words "the Detaining Power", the following sentence: "in the event of the Government of the country of which protected persons are nationals, having ceased to exist".

This addition clarifies the sense of the Article by explicitly stipulating that the functions of the Protecting Power can be transferred to the Detaining Power. The Protecting Power's right of choice, in the sense of the amendment of the Soviet Delegation, may be transferred to the Detaining Power only in the event of the Government on which the protected persons depend having ceased to exist. In all other cases of substitution of the Protecting Power by the Detaining Power, the substitution could only be made on the initiative and in accordance with the views of the Government of which the protected persons are nationals.

The Delegation of the Union of Soviet Socialist Republics has likewise proposed to delete in the third and fourth paragraphs the words "humanitarian organization", and to replace them by the words "a relief society". We consider that the term "relief society" more accurately defines the category of organizations suited to assume the functions previously assumed by the Protecting Power. These are the reasons why the Union of Soviet Socialist Republics considers it necessary to make this alteration in Article 8/9/9/9.

As regards the order in which the amendments which we are proposing should be considered and voted on, we recommend that the first amendment to be considered and put to the vote should be the amendment proposing the deletion of the words "in no matter for what reason". We could then pass on to the addition, after the words "Detaining Power", of the words "in the event of the Government of the country of which protected persons are nationals have ceased to exist".

We could then consider the amendment concerning the deletion, in the third paragraph, of the words "humanitarian organization" and their replacement by the term "relief society".

Allow me also to say a few words on the amendment submitted by the Delegation of Ireland. This Delegation proposes to extend the provision of Article 9 of the Civilians Convention to nationals of neutral countries who might be in occupied territory or in the territory of a belligerent, when these neutral countries have no regular diplomatic representative.

We consider that this amendment does not relate to Article 9, which deals with the question of the substitutes for the Protecting Power. The question of protected persons is dealt with in Article 3, in which both the categories of persons and the functions of the Protecting Power are quite clearly defined. There is no connection between this Article and Article 9, which deals only with the substitutes for the Protecting Power.

It is unacceptable that the functions of the substitute for a Protecting Power should be wider in scope than those of the Protecting Power itself. For these reasons, the Delegation of the Union of Soviet Socialist Republics proposes to reject the amendment proposed by the Delegation of Ireland, as having no connection with Article 9.

The PRESIDENT: We shall now proceed to vote.

Mr. MARESCA (Italy): The Delegate of the Union of Soviet Socialist Republics has proposed the deletion of part of the sentence appearing at the beginning of the second paragraph, which reads as follows: "no matter for what reason". What do these words mean? What is their purpose and what part do they play in the construction of this sentence? Can they be deleted as unnecessary? Or would their deletion, on the contrary, tend to weaken the effect of the provision? Would their deletion tend to limit its field of application? These are the questions which we should consider before replying to the proposal which has just been made.

The Common Article 8/9/9/9 is one of the most important Articles of our Convention, for it provides the machinery for replacing the Protecting Power, the Power which, as the Representative of the United Kingdom pointed out one day, is not only essential to protected persons, but also to the Detaining Power.

In order to make provision for the various ways in which the Protecting Power may be replaced, the following wording was used: "prisoners of war do not benefit, or cease to benefit", by the activities of the Protecting Power.

In spite of the apparent comprehensiveness of the term, this sentence makes provision for only two contingencies. The first is where there is no Protecting Power (for example, when it was never called upon to exercise its functions). The second is where the neutral Power which has been

entrusted with the functions of a Protecting Power has been involved in the war and is therefore unable to carry out its duties. But other cases may arise. If we take into account the legal character of the Protecting Power and the system of legal relations which come into play, we can see how many possibilities may arise, in case this Power could default.

In order that the Protecting Power is in a position to carry out its functions, the Power on which the protected persons depend must first entrust it with the mandate and this mandate must be accepted. It is also necessary for the Detaining Power to have accepted the Protecting Power appointed by the Power on which the protected persons depend. Here we have two systems of legal relations.

For the system of legal relations to be a reality, the Power on which the protecting persons depend must exist and continue to exist, its Government must exist and must continue to exist, its recognition by the Detaining Power in whose hands the protected persons are must be a fact and continue to be a fact. You can see how many possibilities have to be taken into account, if the Protecting Power defaults.

You have all learnt from the experiences of the last war, experiences which have been so numerous, varied and cruel. These historical facts are fresh in your memory, and each of the abstract possibilities which I have just described corresponds to a concrete case which arose during the last war. The Head of the French Delegation one day recalled with restrained feeling that the Provisional Government of Algiers was regarded by the enemy—our common enemy—as a band of rebels. How can a Protecting Power be appointed to a Detaining Power in such a case? It is clear that an appointment of the kind would be simply disregarded. Other delegates have recalled what happened in their country when a Government which continued to be the symbol of their national independence exercised its functions in exile while the national territory lay under the yoke of the Occupying Power. Under these circumstances, how could a Protecting Power be designated?

The Delegation of Italy ventures in its turn to speak of its own experiences. In September 1943, the legitimate Government of Italy, the only Government to which the Italian soldiers, diplomats and civil servants owed allegiance, was at war with our common enemy. On the shores of the Lake of Garda, Germany had created a puppet Government in its own image, and for its own purposes, and no longer recognized the legitimate Government of Italy as the Italian Government. How could a Protecting Power have been designated by two such Governments?

How could it have sacrificed the duties which it was bound to fulfil with regard to Germany?

There are other possibilities, and other concrete cases which could be recalled.

How can all these possibilities be summed up in a single term? How can we take into account all the concrete realities which we have encountered and which—God forbid—we may encounter again?

It is for this reason that the Special Committee and the Joint Committee considered it advisable to insert in the sentence under discussion, the words “no matter for what reason”. All possibilities, and all concrete cases should be covered by this term. Provision had to be not only for the possibility of the Power on which prisoners of war depend having ceased to exist, but also for all the other possibilities which I have described.

This sentence is therefore necessary. If it were to be deleted, the effect of the proposal would be weakened. We believe that it should be retained.

Colonel DU PASQUIER (Switzerland), Rapporteur: It is my duty to comment first of all on the amendment submitted by the Delegation of Ireland.

This amendment, we were told a short while ago, is based on the assumption that there would be an omission in the Article now under discussion (8/9/9/9); and in justification it is pointed out that Article 3, proposed to the Plenary Meeting for the Civilians Convention, was drawn up later than Article 9.

This is correct, but the position is not affected, because Article 9 is intended to be applied more widely, to a much larger circle of protected persons, since this circle includes all the neutrals, whether they have diplomatic representatives or not; consequently Article 9 does not need no alteration in order to be adopted to Article 3, which has limited the circle of protected persons.

Moreover, as the Soviet Delegate correctly pointed out a moment ago, it is really Article 3 which is at issue here; it is no longer an Article common to the four Conventions which is in question, but an Article 9, which would stand alone in the Civilians Convention.

In my opinion, the addition proposed by the Delegation of Ireland is unnecessary and the adjustment between Articles 3 and 9 can be effected without more ado.

We have the second paragraph of Article 9 to provide for the case in which protected persons do not benefit, or cease to benefit by the activities of the Protecting Power. It is stated that the Detaining Power is bound to take steps to provide them either with a Protecting Power in the shape of a neutral State or to ensure the intervention of a humanitarian body.

Since the Detaining Power itself must take the initiative of compensating the absence of protection for these neutrals deprived of normal diplomatic representation, it seems to me that the machinery set up by Article 9 meets all requirements and that it is unnecessary to insert the addition proposed by the Irish Delegation.

For my part, I am rather in favour of rejecting the amendment proposed by the Irish Delegation, while leaving the latter free to reintroduce its proposal when we come to deal with the corresponding Article of the Civilians Convention.

I will only say a few words as regards the proposals made by the Delegation of the U.S.S.R. Just now, the Delegate for Italy gave us a striking picture of the various aspects of that very complex question, the existence or non-existence of a Government. It appears to me that we have here a major reason for rejection of the Soviet amendment.

The suggestion was to add, in particular, the following words: “in the event of the Government of the country of which protected persons are nationals having ceased to exist”. But we are not told who is to decide whether the Government in question has ceased to exist.

The experiences of the late war have proved that certain Governments continued to function to a certain degree, and were recognized by certain States as existing, when other States denied that they existed at all.

This occurred frequently; and, if the application of this paragraph depended on the recognition or the existence of this kind, difficulties in international law would inevitably arise which our Committee and even our Meeting would regret to have caused.

I think it is far more in accordance with the spirit and aim of our Convention to maintain the text proposed by the Joint Committee.

As regards the expression “relief society” which was to be substituted for “humanitarian organization”, I must say that in French this is most unsatisfactory. A relief society is an association of persons who agree to help each other, e.g. a lifeboat society. It is therefore not the same thing as a humanitarian organization which is set up to give all kinds of assistance or relief to third parties.

I think that here too the wording introduced by the present Draft should be maintained.

Colonel HODGSON (Australia): My Delegation will support the amendment submitted by the Delegation of Ireland because we think it is a useful one and it does fill a gap in the Convention, but we agree that it should be more appropriately applied to Article 3 because there is a gap in that Article which this particular amendment does



purport to fill in relation to occupied territory. We are not quite clear about the Soviet amendment. Should it be accepted, the phrase would then read:

“...a relief society such as the International Committee of the Red Cross”.

I am not sure whether the International Committee of the Red Cross calls itself a relief society. If that term is either sufficiently embracing or comprehensive I do not know. I should think not. Therefore, I would be pleased if you would be good enough to invite the Representative of the International Committee of the Red Cross to explain briefly the attitude of the Committee towards this particular amendment and what they consider the effect of it would be.

Mr. MOROSOV (Union of Soviet Socialist Republics): I wish to speak again; but, as the United Kingdom Delegate has asked to speak for the first time, I shall be glad to leave to him the floor, and not to speak myself until those delegates have spoken who are speaking for the first time.

Sir Robert CRAIGIE (United Kingdom): I only want to make a very short statement in regard to the Irish Delegation's amendment. It is not clear to the United Kingdom Delegation that there is any gap, as has been suggested, in Article 3 Civilians as at present drafted. The second sentence of Article 3 says that:

“Nationals of a neutral State who find themselves in the territory of a belligerent State, and nationals of a co-belligerent State, shall not be regarded as protected persons while the State of which they are nationals has normal diplomatic representation in the State in whose hands they are.”

Therefore the point raised by the Irish Delegation seems to be entirely covered as far as Article 3 is concerned, but when we come to the Article under discussion there does seem to be a gap, for it may well be that where there is no normal diplomatic representation there should be provisions not only for the appointment of a Protecting Power but, failing that, for the appointment of a substitute for the Protecting Power and if that is the intention, as I believe it is, of the Irish amendment it seems to us to be very reasonable, and we hope that the Conference will take it into consideration.

The PRESIDENT: Three delegates still wish to speak, two of them for the second time. I ask them to be as brief as possible in order that we may come to a decision this evening on the Article under consideration.

A question has been put to the International Committee of the Red Cross. If one of their Representatives is able to reply to this question, I will call upon him to speak.

Mr. SIORDET (International Committee of the Red Cross): The Head of the Australian Delegation has put a clear question: Can the International Committee of the Red Cross be called a relief society? The answer of the International Committee of the Red Cross is: No! Strictly speaking it is not a relief society. In the course of the late war and other conflicts, the International Committee transported thousands of tons of relief supplies, but only in the capacity of a neutral intermediary.

If you will allow me, I will add a few words on the Rapporteur's able statement on relief societies. The three Conventions under discussion mention “relief societies”; the Wounded and Sick Convention mentions “societies acting as auxiliaries to the medical services of the army”; and the Prisoners of War and Civilians Conventions mention “Relief societies assisting prisoners of war or internees”. If in the Article on the Protecting Power and its replacement the term “relief society” is used instead of the expression “humanitarian organization”, misunderstanding might arise, as it might mean that only relief societies provided for under the Conventions could act in the absence of the Protecting Power. But the relief societies mentioned in the three Conventions are all national societies. It is not at all certain that they could take the place of a Protecting Power for a belligerent who is an enemy of their country. In the opinion of the International Committee of the Red Cross, it would therefore be preferable to adhere to the expression adopted in the text proposed by the Joint Committee.

Mr. MOROSOV (Union of Soviet Socialist Republics): I should like to reply to the very eloquent speech of the Delegate for Italy. Unfortunately, the warmth of his speech was not always in proportion to the cogency of his arguments. In this special case, the speech of our Italian Fellow-Delegate, who as a rule raises interesting questions and supports them by relevant arguments, was ill-founded. Actually, he was arguing in two directions. For instance, it was said that the text of Article 8/9/9/9 as drafted by the Joint Committee should be retained, for if it is admitted that two governments can exist, one legitimate, but exiled from its own territory by circumstance, and the other illegitimate, nobody would know which of these two governments should select the Protecting Power.

I can understand that the question should be put in this way; what I cannot understand is that, leaving it unanswered, a conclusion can be reached

which seems to have no connection with the arguments put forward by the Delegate for Italy.

The selection of the Protecting Power should be a matter for the legitimate government, whether it is still in its national territory, or exiled from it by circumstance, since it is the legitimate government which is recognized by international law.

On the other hand, it must be pointed out that the situations referred to by the Delegate for Italy are not the only ones which may actually arise. We must admit that there may be others for which the text of Article 8/9/9 submitted by the Joint Committee might be taken into account. We are dealing with the legitimate government in the strictest sense, that is, the government recognized by all, residing in its own territory, which exercises authority and is, in the fullest sense, a legitimate government.

What will be the consequences of such a situation if Article 8/9/9 is applied? Although there is a legitimate government recognized by all and residing in the capital of its own country, the enemy would select the Protecting Power. That would be in flagrant contradiction both with international law and with Article 6/7/7/7.

Let me give you an illustration: there is one government or country which I will call A another country or another government which I will call B, which is the Protecting Power. As a result of underground intrigues, country B has abandoned its position as Protecting Power of the nationals of country A.

In that case, according to Article 8/9/9 it would devolve on the enemy to choose the Protecting Power. If he chooses, for example Power X, the legitimate government will reply: "I refuse to accept Power X, I prefer Power C". The enemy might then retort: "The choice does not concern you. According to Article 8/9/9 of the Convention I am the person entitled to choose the Protecting Power and I select Power X to undertake the protection of nationals of your country." This would be the actual situation created by Article 8/9/9 if left in its present form.

I wish to place it on record, on behalf of the Delegation of the U.S.S.R., that my Delegation will never approve an Article which leaves to the enemy the choice of the Protecting Power which he may wish to impose on a legitimate government.

We consider that your amendment should be adopted to prevent the contingency to which I have just invited your attention. This is of the utmost importance to us, and I repeat that the Article will have no practical value in our eyes if our amendment is not inserted in it.

Further, it has been asked on whom responsibility would rest to decide whether the government is legitimate or not. I do not think the question

arises; it would in any case be difficult to answer. You might say that everything depended on the situation created in this case by international law; but you cannot evade answering a question merely because it is difficult to answer. I would submit that our amendment is not intended to eliminate a problem but merely to strengthen the Article submitted to us.

If no reply is given to the question raised, that does not mean that the enemy is free to select the Protecting Power. Various methods of solving this problem are conceivable. First of all there is the conciliation procedure. No one has suggested the application of the machinery we have devised.

The Delegation of the U.S.S.R. presses for the adoption of its amendment recommending the deletion, in the second paragraph, of the words "no matter for what reason" and the insertion in this paragraph of the words "in the event of the government of the country of which protected persons are nationals having ceased to exist" after the words "Detaining Power".

Mr. CASHMAN (Ireland): We are very grateful for the observations of the Rapporteur, and of the Delegates of Australia and the United Kingdom. Arising out of their remarks, we submit a few short observations.

The question here is the provision of something in the nature of a Protecting Power for neutral protected aliens. Articles 7 and 9, as drafted, do not cover these persons. They enable a Protecting Power to provide only for the nationals of a belligerent country or for the nationals of an occupied territory. That is the reason for our amendment.

When we were preparing the amendment, we considered putting it into Article 3 of the Civilians Convention; but as that Article is really exclusively for protected persons we felt it would be wrong to bring into that Article anything about Protecting Powers, and therefore we are thrown back on Articles 7 and 9.

We did not wish to interfere in any material way with the wording of these Articles, because they have given a great deal of trouble in the Special Committee of the Joint Committee, and therefore we sought a way which would enable a Protecting Power to provide for neutral aliens, and at the same time would not alter the text of Articles 7 and 9 in any material respect. We felt from that point of view that in Article 9 machinery was provided—i.e., where persons did not benefit by the protection of a Protecting Power—the Detaining Power would make alternative provision. That of course related to nationals of belligerent territories or occupied territories, and we felt it could be adopted and extended to apply also to neutral aliens, by adding a paragraph to Article 9 which did not alter the text already prepared but merely put an

additional paragraph to it, and that seemed to us to be the most suitable way.

We think that, as it has produced the necessary effect, it might well be adopted.

Mr. MARESCA (Italy): The Italian Delegation has followed the remarks made by the Delegate of the Union of Soviet Socialist Republics with the closest attention. I wish to express my appreciation of the clarity of his arguments and of his wit. Unfortunately, I cannot agree with his conclusions. I would like to ask him to consider carefully the consequences of the deletion of the words "no matter for what reason" and the addition of the words "in the event of the government of the country of which the protected persons are nationals having ceased to exist".

A single eventuality would be taken into account, namely that the government on which these persons depend has ceased to exist. But what is to happen if the government on which such persons depend still exists, but is not recognized by the Protecting Power? No Protecting Power will be in a position to act, for the Power in whose hands the prisoners are will never accept the State designated by a government which it has ceased to recognize. Again, how is a puppet government, or a Quisling government to appoint a Power? It will never do so, for it will say: "These prisoners of war are dependent on us, they are rebels...".

The Protecting Power would in fact, no longer exist. What kind of situation would arise if the machinery we have evolved could no longer work?

I fully agree with the Delegate of the Union of Soviet Socialist Republics when he says that it would in any case be regrettable if the Detaining Power were itself to select the Protecting Power. But that contingency is less serious than the situation that would arise if our provision were unable to be carried out.

I should further like to draw your attention to the fourth paragraph. Its provision is of a nature, in my opinion, to allay the legitimate fears that might be caused by the idea of the Detaining Power selecting the Protecting Power.

In conclusion, I believe that the text submitted to us can provide the guarantees which would be compromised by any alteration of it. It would therefore be preferable to retain the text as it stands.

The PRESIDENT: We shall now proceed to vote. Our first vote will be taken on the amendment proposed by the Delegation of Ireland.

The amendment was adopted by 23 votes to 8, with 6 abstentions.

The PRESIDENT: We shall now vote point by point on the amendment submitted by the Soviet Delegation. I shall first put to the vote the first amendment proposing the deletion in the second paragraph of Article 8/9/9/9 of the words "no matter for what reason".

The amendment was rejected by 20 votes to 8, with 9 abstentions.

The PRESIDENT: We shall now vote on the second amendment which proposes to add to the second paragraph the words "in the event of the Government of the country of which the protected persons are nationals having ceased to exist".

The amendment was rejected by 19 votes to 8, with 11 abstentions.

The PRESIDENT: We shall now vote on the two last points of the Soviet amendment taken together. They propose to substitute in the third paragraph the words "...a relief society" for "...a humanitarian organization", and in the fourth paragraph, to substitute "... a relief society invited" for "...or- ganism invited".

The amendments were rejected by 23 votes to 10, with 2 abstentions.

The PRESIDENT: We shall now proceed to vote on the Article as a whole.

The Article as a whole was adopted by 30 votes to 8, with no abstentions.

*The meeting rose at 7.20 p.m.*

## TWENTY-FIRST MEETING

*Saturday 30 July 1949, 10 a.m.*

*President:* Sir Robert CRAIGIE, Vice-President of the Conference

## COMMON ARTICLES

The PRESIDENT: Before starting with Article 9/10/10/10 I will ask the Rapporteur to make a short statement in regard to Article 8/9/9/9.

**Article 8/9/9/9** (*continued*)

Colonel DU PASQUIER: (Switzerland), Rapporteur: Both at the Plenary Meeting and in the Mixed Committee we have heard Mr. Cahen Salvador's eloquent speeches proposing the setting up of a High International Committee. I refer to what I have already said on the subject in my Report, under Article 8/9/9/9 (*see Report of the Joint Committee to the Plenary Assembly*).

I have to inform the Conference that the draft amendment submitted by the French Delegation has been modified as a result of the discussions which took place in the Special Committee and the draft resolution which was drawn up.

I mention this point for information only, and I presume that the President of the Conference will open the discussion on the draft when the examination of the Articles of the Conventions is closed.

The PRESIDENT: We will now proceed to discuss Article 9/10/10/10. We have an amendment tabled by the Delegation of the U.S.S.R. and I call upon the Delegate of the U.S.S.R. to speak.

Mr. SOKIRKIN (Union of Soviet Socialist Republics): Article 9 of the Wounded and Sick Convention and the corresponding Articles in the other Conventions, as adopted by the Joint Committee, make the Protecting Powers responsible for functions which are not within their competence, namely the participation in the interpretation of the stipulations of the Convention, and in the solution of differences which may arise between the Parties to the conflict. One of its stipulations which states that the Protecting Power shall, in case of necessity, lend its services and good offices in

order to facilitate the application of the Convention (as stipulated in the Stockholm text, Article 9) is inadmissible. The Protecting Powers cannot be called upon to take any part in interpreting the provisions of the Convention, nor can they be called upon to exercise functions which, by their very nature, they cannot exercise.

According to Article 6/7/7/7 of the Conventions, the duties of the Protecting Powers consist in supervising and facilitating the application of the Convention. Thus, the Soviet Delegate objects to the stipulations of Article 9; not only are these stipulations incorrect, but they are also contradictory to the stipulations of Article 6/7/7/7, which defines the rights and obligations appertaining to the Protecting Power.

It should not be left to the Protecting Powers to settle differences, for that is not within their competence. On the other hand, it would be more reasonable for them to be granted the rights stipulated in Article 9 of the Stockholm text, which provides that the Protecting Power shall facilitate the application of the Convention. The Soviet Delegation is therefore of the opinion that the words "or interpretation" should be omitted from the first paragraph of Article 9 of the Stockholm text; also that in the same paragraph the words "with a view to facilitating the application of the Convention" should be substituted for the words "with a view to settling the disagreements". In other words, the Soviet Delegation proposes to restore the Stockholm text of Article 9 in its entirety, which better corresponds to the definition of the activity of the Protecting Powers.

Colonel DU PASQUIER (Switzerland), Rapporteur: For those who have taken part in the debates of the Special and the Joint Committees, this amendment is an old acquaintance. On each occasion it was rejected by the two Committees I have just named. Legal experts will tell you that there is no clear line of demarcation between the application and the interpretation of legal or treaty texts, and that when there is any disagree-

ment as to the possibility of applying any Article, its meaning must be clearly defined, and from that time that meaning is the interpretation of the Article. If one person states that such or such provisions cover a case and another person replies that they do not, that already raises a question of interpretation and it is perfectly right that the authors of these texts should have also considered the question of conciliation in interpreting them. Arguments concerning application are often merely arguments concerning interpretation.

With regard to the duty of the Protecting Power in this matter, the Soviet Delegation, whose remarks we have just heard, seems to have some misgivings, as to whether Article 9/10/10/10 should be understood as attributing to the Protecting Power the duty of interpreting the text, a duty similar to that of a judge. An examination of the procedure laid down in Article 9/10/10/10 will lead us to consider the Protecting Power merely as an intermediary; this is clearly stated at the end of the first paragraph, which alludes to good offices. It is evident that these offices would lead to a meeting of the Parties (which is the object of the second paragraph) or the nomination of a person who could act as an arbitrator. In any case, the Protecting Power only intervenes in order to bring the two adversaries in this legal conflict into contact. Thus I cannot see how anyone can take umbrage. This was exactly the view taken by the Joint Committee, which rejected by a large majority, if I remember rightly, the amendment which we are now discussing. I think the Plenary Meeting would do well to follow the Joint Committee's example.

Mr. COHN (Denmark): The Rapporteur has already advanced the arguments which militate against the amendment submitted by the Delegation of the Union of Soviet Socialist Republics. All I have to say is that the Danish Delegation cannot approve the amendment, and that it prefers the text which figures in the Report of the Drafting Committee.

I may add that the Delegate of the Union of Soviet Socialist Republics expressed the opinion that a certain contradiction existed between Article 9 and Article 6 of the Convention. In my opinion it would be very difficult to prove that any such contradiction exists, for only one statement is made in Article 6, i.e., that the Protecting Powers are called upon to safeguard the interests of the Parties to the conflict. Thus the task of the Protecting Powers is not defined in any way and it would be impossible to my mind to find any contradiction between the two Articles. Otherwise I can only refer to the arguments brought forward by the Rapporteur.

The PRESIDENT: If there is no other comment, I will put the amendment submitted by the Delegation of the U.S.S.R. to the vote. Unless there is any objection, I propose to put the two parts of the amendment to the vote at the same time, as the one appears to depend on the other.

The amendment submitted by the U.S.S.R. Delegation was rejected by 25 votes to 10, with 9 abstentions.

We will now vote on Article 10 as a whole.

The Article was adopted by 34 votes in favour, no opposition, with 8 abstentions.

#### **Article 38/42/117/128**

The PRESIDENT: There are no amendments to this Article; but the Rapporteur will make a statement.

If there are no observations, I will put Article 117 to the vote.

The Article was adopted by 37 votes in favour, no opposition, with 1 abstention.

#### **Article 38A/42A/118/129**

The PRESIDENT: As the Rapporteur has nothing to say, and as there seems to be no objection, I will take this Article as adopted.

#### **Article 39/43/119/130**

The PRESIDENT: There are two amendments submitted by the Delegation of the Union of Soviet Socialist Republics (*see Annexes No. 53 and 53A*).

Colonel DU PASQUIER (Switzerland), Rapporteur: For the moment I do not wish to give any explanations in regard to the Article and will leave the floor to the Soviet Delegation, so that the reasons for their amendment can be placed before the Meeting.

There is, however, another point to which I must draw attention. It has been discovered quite recently that Committee I had recommended, in connection with Article 39, that the High Contracting Parties should adapt their legislation so as to implement, both in time of peace and in time of war, the prohibitions set forth in Article 42 of the Wounded and Sick Convention, and punish any infractions which might occur.

It now appears that this recommendation, which was of course intended to reach the Joint Committee (to which Article 39 had been referred) never came into the hands of its Chairman. No letter on the subject was addressed to him, so

that the Joint Committee, although it had studied Article 39 and had drafted the text of it, was unaware of the wish expressed by Committee I, which might perhaps have made some difference in its decisions and in the drafting of the text.

In these circumstances, and taking account also of Article 43 of the Maritime Warfare Convention, it would appear that the question should be reconsidered by a Working Party. The question is that of the protection of the emblems, and, in the second paragraph, the protection of the Swiss national arms.

Obviously the question should be dealt with by a Committee of specialists, and for that purpose we might have recourse to the Working Party of the Special Committee under the Chairmanship of Captain Mouton. I propose—and this need not delay consideration of the Soviet amendment—that we should refer this question back to the Working Party, which would report on the matter at a later Meeting.

Unfortunately, I have just learned that Captain Mouton has left the Conference. However, the Chairman of the Special Committee of the Joint Committee, Mr. Bolla, might be invited to take his place. I feel that we should then have a Working Party fully qualified to deal with these questions which might, in a very few days, propose any amendments to be made to Article 39 in accordance with the wish of Committee I.

The PRESIDENT: If the Conference agrees with the proposal of the Rapporteur, I will ask Mr. Bolla to get in touch with his colleagues in order to examine this question. Meantime, we can continue to discuss the two amendments submitted by the Soviet Delegation.

Mr. MOROSOV (Union of Soviet Socialist Republics): This is perhaps the fifth or sixth time in the course of our proceedings that the Soviet Delegation has drawn the attention of the Conference to a misunderstanding in connection with Article 39 and the corresponding Articles of the other Conventions which ought to be cleared up at once. When this question was being discussed in conjunction with Articles 10 and others of the Maritime Warfare, Wounded and Sick, and Prisoners of War Conventions, this Article was divided into two parts; it was decided to retain the first part which referred to crimes, torture, etc., whereas the second part, for which the Soviet Delegation pressed and in which these acts were described as "serious crimes", was accepted in principle; it was, however, decided that this part should be inserted in Article 39 and the corresponding Articles, which we are at present considering. Time has passed since then, however, and the Delegations which upheld the point of

view of the Soviet Delegation have forgotten this decision and we are now again engaged in discussing where this clause dealing with "serious crimes" should be inserted.

I would recall the discussion which took place in the Committee and the semi-official talks during which agreement had been reached to embody this conception in Article 39 and in the corresponding Articles of the other Conventions. We were all agreed in describing certain acts as "serious crimes".

In order that acts constituting the most serious breaches of the Conventions should be defined in Article 39 with greater force, the Soviet Delegation proposed to substitute for the words "grave breaches" the words "serious crimes". Acts such as murder, mutilation, torture, etc., are described in the criminal law of all countries as crimes. We cannot agree with the point of view of certain delegations who consider that to apply this description to breaches of the Conventions, such as I have referred to, would constitute an interference with the internal affairs of the State. It is quite obvious that this is not the case, and that there is no question whatever of interfering with the internal affairs of any State. I should like to point out that no one could deny that the Soviet Delegation, during these debates, has consistently opposed any violation of the sovereignty of the State.

Our proposal is simply to call breaches of the Convention "crimes" if they deserve that description. We all agreed on this point, but as soon as we try to put an agreement into effect, and endeavour to find an appropriate wording, we find ourselves caught up in a vicious circle. On the one hand, we are told that everyone is agreed, but on the other it is pointed out that such a term cannot be inserted in the Convention. No one, I may point out, has adduced any legal arguments against such insertion. I should like to know if there is a law—and, if so, in what country—under which murder is not considered a crime. In order that such crimes shall be adequately punished it is essential that a State should be under the obligation to incorporate in its legislation provisions for the effective punishment of those guilty of serious crimes. We sincerely hope, at this late stage of the Conference, that this misunderstanding will be cleared up and that it will prove possible to find a suitable form of words to describe such acts appropriately. The Soviet Delegation further proposes that the text of Article 39, and the corresponding Articles of the other Conventions, be supplemented by a provision that persons accused of such crimes shall be brought to trial, and that the States shall be required to adapt their own legislation to the provisions of the Conventions which lay down

that acts described as breaches of the law shall be prosecuted.

This proposal would enhance the importance of Article 39/43/119/130 and render it more effective in dealing with grave breaches of our Conventions. I appeal to the Chair, in view of the fact that our amendments relate to different subjects, to take a vote on each of them separately; that is, to call for a vote first on the amendment for the deletion of the word "breaches" in these Articles and their replacement by the word "crimes" and subsequently on the other amendment which proposes a new text for the Article in question.

Mr. COHN (Denmark): The Rapporteur has requested the Delegate of the Union of Soviet Socialist Republics to explain the difference between the amendment submitted by that Delegation and the text adopted by the Committee.

I must admit that the Danish Delegation is not altogether clear as to what this difference consists in. The Delegate of the Union of Soviet Socialist Republics referred to the amendment which proposes to replace the word "infractions" by the word "crimes". It is easy to understand the difference here and, for my part, I have no objection to accepting this alteration.

But I refer principally to the other amendment. In order to be able to take a decision on a proposal, it is necessary to understand exactly what difference there is between the amendment and the original text. I should therefore be grateful to the Delegate of the Union of Soviet Socialist Republics if he would give us some explanation on the second amendment, the only one which gives rise to some difficulty. He mentioned a misunderstanding; for my part, I do not understand very well where the misunderstanding lies.

The PRESIDENT: The Delegate of the U.S.S.R. wished the Conference to vote separately on these two amendments. He did not suggest a separate discussion; but I noticed that in his remarks he did not refer to the second amendment. I suggest to the Conference that it might be convenient not only to vote on these two amendments separately but to discuss them separately, and (if there is no objection) we will confine the discussion for the moment to the first amendment.

Mr. SINCLAIR (United Kingdom): The Soviet proposal to substitute in these Articles the word "crime" for the words "grave breaches" has been very fully thrashed out both in the Special Committee and in the Joint Committee, and you will all have read the results in the Reports of those Committees and in particular in the Special Report on penal sanctions.

It is not a question as to whether or not these

grave breaches are crimes, it is simply a question of finding appropriate words for carrying out the intention behind these Articles which all the delegations who were responsible for framing those Articles were attempting to secure. That intention was to ensure that any persons who committed breaches of these Conventions would be suitably dealt with and punished according to the seriousness of the offences that they committed, and therefore it would have been quite inappropriate to have gone into the question of establishing a new penal code in these Articles.

For that reason the proposal in the present Soviet amendment has been rejected throughout this Conference.

Finally, I should like to take this opportunity of reminding the Conference that possibly the Articles now before you represent one of the biggest achievements of statesmanship on the part of this Conference. They are the result of free and open discussion between a number of delegations representing countries who started with very diverse views; and, if it had not been possible to find some way of reconciling those views, we might have had a position which would have created one of the most serious deadlocks in the Conference. As the result of those delegations and consequently the Joint Committee being able to find a result acceptable, you are today being asked to give your final approval to proposals that have originated from ten delegations in this Conference coming from four different Continents.

Colonel DU PASQUIER (Switzerland), Rapporteur: I merely wish to raise a small textual point. The text of Article 39/43/119/130, as it has now been distributed, was previously distributed at the last meeting of the Joint Committee. It was then decided to make an alteration in the third paragraph of Article 39 for the purpose of making its meaning clearer. This third paragraph is at present worded as follows:

"Each High Contracting Party shall take measures necessary for the suppression of all acts contrary to the provisions of the present Convention" (*see Annex No. 5 and Summary Record of the Eleventh Meeting of the Joint Committee*).

The Joint Committee preferred the following text:

"Each High Contracting Party shall take measures necessary to put an end to all acts contrary..." etc. (*see Report of the Joint Committee*).

That, therefore, is how this Article must read in future and I believe that this is the text which we shall vote on presently.

Mr. YINGLING (United States of America): I associate myself with the remarks which have been made by the Delegate of the United Kingdom. I see no need for repeating the arguments. This Convention is clearly not a penal statute, and the term "crimes" is clearly inappropriate to express violations of this Convention, which will not be crimes until they are so made by domestic penal legislation.

Mr. LAMARLE (France): The French Delegation would like to make some general comments on the arguments which the Delegate of the Union of Soviet Socialist Republics advanced a few minutes ago. Firstly, as regards the second amendment proposing a new text for the Article, I notice two alterations.

One alteration would be to replace the words in the French text "infractions graves" by "infractions lourdes". I can completely reassure the Delegate of the Union of Soviet Socialist Republics on this point, for, in French, the words "lourd" and "grave" have exactly the same meaning. It is quite impossible to distinguish between the two. One of these words has apparently been derived from classical Latin and the other from vulgar Latin. The word "gravité" means precisely heaviness or weightiness. I can therefore, as I have already said, completely reassure the Delegate of the Union of Soviet Socialist Republics on this linguistic point.

A more serious point, on the other hand, is the disappearance at the end of the Article of the stipulations ensuring that the accused persons shall have the judicial safeguards provided by Article 95 and those following of the Prisoners of War Convention. This proviso had been inserted on the suggestion of the International Committee of the Red Cross and at the request of the French Delegation (*see Annex No. 52 and Summary Record of the Joint Committee*). We had intended then to remedy an omission. Though it is true that most accused persons are already covered by the provisions of the Convention, there are nevertheless certain cases, as the spokesman of the International Committee of the Red Cross has pointed out, where the accused persons may not be covered by any provision. This would be so in the case of suspects, or of accused persons who were transferred by one Power to another under the terms of an armistice, for example. In that case the accused persons would not be covered by any provision, since they would count neither as prisoners of war nor as civilians in occupied territory. Lastly, I wish to associate myself with the comment made by the Delegate of the United States of America on the following point:

We have no intention, and, in any case, the French Delegation is not authorized by its Govern-

ment, to convert Article 40 (to which the third paragraph of Article 39/43/119/130 refers) into a veritable penal code which would alter the French Penal Code. We consider that every country should apply its domestic penal code. In any case, I have received specific instructions from my Government not to support any word or any idea which would affect the provisions of the penal code.

The PRESIDENT: The Soviet Delegation has asked for a separate vote on these two amendments, and there appears to be no other Delegation wishing to speak on the first amendment. I think it might be convenient, therefore, if there is no objection, to take the vote on that Article now and then proceed with the discussion on the second amendment proposed by the Soviet Delegate.

Mr. MOROSOV (Union of Soviet Socialist Republics): I think I should clarify this discussion and the vote we are about to take if I make some further brief remarks. After examining the French text of Article 39—this is how I refer to it—I am in favour of maintaining the word "infractions" in the French text instead of the term which we had proposed; and we might then say "infractions graves". I hope this proposal will meet with general approval; but I wish to emphasize that we interpret the word "infractions" as a breach of the law, and not simply as an insignificant misdeed.

If this is agreed, the question arises how to coordinate the English version with the French, and to find a term corresponding to the French words "infractions graves". I therefore propose that the words "grave offences" be substituted for the words "grave breaches".

If the English speaking delegations agree that the English version should be brought into line with the French version as proposed by us, we should be ready to withdraw our proposal for the substitution of the word "crimes" for "infractions" (French) and "breaches" (English).

Some delegations have argued that we are trying to introduce a new penal code. In reply to this argument I should like to point out that the question under discussion is sufficiently important to require legislators in the various countries to insert a special provision on this point in their national penal codes. This, of course, is a question which cannot be dealt with at present. The only thing on which we can come to an agreement, I feel, is to retain the words "infractions graves" in the French text, and to insert the term I proposed in the English text so as to ensure that the versions in the two languages correspond. This would serve to dissipate the misunderstanding.



Mr. YINGLING (United States of America): As one of the English speaking Delegates in this Assembly, I should like to say that that is unacceptable to us. The Soviet Delegate, of course, knows that the word "offence" is tantamount to the word "crime". We are perfectly satisfied with the English text as it is now.

Mr. MOROSOV (Union of Soviet Socialist Republics): In order to solve our present difficulty and to avoid lengthy debates, I think that the various delegations should be given the opportunity of meeting to clear up this question. I therefore propose to place the matter in the hands of a Working Party. This solution seems all the more acceptable to me as the Working Party in question will have to deal with other questions which arise on the same subject. I therefore formally propose that the question should be referred to the Working Party which has, in fact, already been set up to deal with this Article.

The fact that the English-speaking Delegations do not agree to the alteration I have suggested, and therefore prefer to keep to the present English wording of the text, does not help matters. If we adopt the wording which I propose for the French text (which, I must remind you, is the original text) the question of the corresponding term in English is merely a question of translation. We shall never get out of our deadlock if the minority of the English-speaking Delegations refuse to accept the English wording as coordinated with the French text adopted by the majority. If by chance such a difficulty arose for us, we should have to revert to the provision contained in the text adopted at Stockholm to the effect that the French text "shall be considered as authoritative" in cases of doubt. For the time being I am not making a formal proposal on this point, but if any difficulty of this description should arise I should be bound to request that the said provision be restored.

It seems to me that the whole difficulty could be avoided by the adoption of my proposal, that is to say, by a compromise solution for the French term such as I have just indicated, and by the correction of the English wording to bring it into line with the French.

To avoid discussing this question any longer I propose to refer the matter to the Working Party.

The PRESIDENT: Before I call up on other delegations to speak I should like to make a short clarification. I am informed that the text of this Article was originally drafted in English, and that the French text purports to be a translation of the English text. The point at issue therefore seems to me to be whether the word "infractions" is a correct translation of the term "breaches"

in the text as originally drafted. It is this point, put from a somewhat different angle, which the Soviet Delegate now proposes should be referred to the Working Party. After that explanation I will call upon the Delegate for Canada to speak.

Mr. WERSHOF (Canada): I wish to object, on behalf of the Canadian Delegation, to the Soviet proposal that the phrase "grave breaches" be referred to a Working Party, and if that proposal is put to a vote I hope that it will be rejected decisively.

The Soviet Delegate has referred to some difficulty which he very kindly offers to solve for us. I am not aware of any difficulty whatsoever, except in the mind of the Soviet Delegate. Here is a text which, as our President has just pointed out, was originally drafted in the English language. This was the proposal which was put before the Conference, and the numerous delegations which have drafted this text deliberately used the phrase "grave breaches". This is what those delegations wanted and, as far as I know, they do not want anything else; certainly the Canadian Delegation, which has on previous occasions voted for the text, is not prepared to vote for any other version.

The question of whether the French words "infractions graves" is a correct translation of the English words "grave breaches" has already been dealt with by the Drafting Committee of the Conference, and I presume that the majority of the Drafting Committee of the Conference were satisfied, therefore I do not see why we now need to refer the matter to yet another Committee.

The Soviet Delegation has tabled an amendment to substitute the word "crimes" or the French word "crimes" for the phrases we have mentioned. They have made many speeches on that subject in the course of this Conference, and now at long last they have the final opportunity to have their proposal put to a vote, and I have no doubt it will be rejected.

It seems to me that we should decline the generous suggestion of the Soviet Delegation to refer this matter to yet another Working Party, and that we should proceed to vote on the Soviet amendment, which I hope will be rejected; we can then adopt the Article.

Mr. SINCLAIR (United Kingdom): I do not now wish to speak.

The PRESIDENT: In that case, if no one else has anything to say, I would ask the Delegate for the U.S.S.R. whether he wishes his proposal to refer this matter to a Working Party to be put to the vote, having regard to the fact that it has been opposed.

Mr. MOROSOV (Union of Soviet Socialist Republics): I rise to speak in order to state that the Soviet Delegation maintains its proposal; as this Article will have to be discussed again by the Assembly, it will not be possible to take a final decision today.

I do not understand the restlessness of the Delegate of Canada; he is always in a hurry. What I can understand, however, is that he should wish to settle this question as soon as possible.

It seems to me that the good will of the Soviet Delegation in not pressing its proposal for the more drastic wording which it had at first submitted should be taken into consideration.

Everyone agrees that the acts specified in Article 39 and the corresponding Articles, are criminal. The only thing we now have to do is to find an adequate wording to qualify these acts.

If we follow the line indicated by the Delegate of Canada, we shall never find in the national legislations of any country the condemnation of such acts.

The Delegate of Canada changes this purely technical question of translation into a question of principle. I do not wish to go further into this subject; it would require a special discussion. It seems to me, however, that it is a question of language which would be difficult to solve in such a large meeting. For this reason, I had proposed that the question should be referred to the Working Party. The latter's recommendation would enable us to come to a decision likely to satisfy, if not everybody, at least the majority of the delegations, and that would be a very worthwhile result. As we are joining our efforts to find a compromise solution, I think that our proposal should not be purely and simply rejected, and thus the door closed to any further possibility of agreement. That would be the result of the proposal of the Delegate of Canada. The Assembly would then be required to vote on the first wording which we had proposed, even while we were endeavouring to arrive at a compromise text on the point. I again suggest that this question should be referred to the Working Party which, after studying it, would put forward proposals which we could examine before taking a final decision.

The PRESIDENT: The Soviet Delegation having maintained its view that this matter should be referred to a Working Party, and that proposal having been opposed, we will now proceed to vote upon it. The proposal is that the discordance in the French and English texts between the words "infractions graves" in French and "grave breaches" in English, should be referred to a Working Party. The Soviet Delegate says that in addition to a mere matter of translation there is also a point of substance. (A vote was taken.)

The proposal submitted by the U.S.S.R. Delegation was adopted by 17 votes to 16, with 9 abstentions.

The matter will therefore be referred to the Working Party which has previously dealt with this question of breaches of the Conventions.

I may take this opportunity to make an announcement on a point which arose on the previous Article. The Working Party which, on the proposal of the Rapporteur, would examine the recommendation of Committee I regarding Article 39 will meet on Monday, 1st August, at 9.15 a.m. under the Chairmanship of Mr. Bolla. The Working Party is composed of the Delegations of France, the United Kingdom, the Union of Soviet Socialist Republics, the United States of America, Turkey and Uruguay. I assume that the same Working Party will also deal with the point raised by the Soviet Delegation.

Mr. GARDNER (United Kingdom): The proposal to refer the question of legislation for the protection of the red cross and the Swiss national emblem to a Working Party seems to the United Kingdom Delegation to have nothing whatever to do with the proposal which we have just adopted to refer the question of the translation of the English word "breaches" to a Working Party. Article 39 in the Wounded and Sick Convention and the corresponding Articles in the other Conventions deal with the very serious problem of grave breaches of the Conventions during war time. The use of the red cross emblem or of the Swiss flag for commercial or other purposes outside the protection of the wounded and sick involves generally comparatively minor offences nearly all of which arise in peace time, and the United Kingdom Delegation suggests that the provision in the Conventions requiring legislation to protect the red cross emblem and the Swiss flag is a question quite different from the one dealt with in Article 39 of the Wounded and Sick Convention.

For that reason we would hope that even if the same Working Party deals with them, they will deal with them as distinct and separate questions, and not let us confuse this very serious problem of what should be done about grave breaches with what is much more an administrative problem in peace time, of how you will ensure that firms and others do not misuse the red cross emblem. Because they are distinct and separate questions, the United Kingdom Delegation would have preferred to see them dealt with by a separate Working Party. The question of legislation to protect the red cross is not, in fact, common to the four Conventions at all. It belongs primarily to the Wounded and Sick and Maritime Warfare Conventions. It may have some reference to the Civilians Convention but that cannot be known until the results of the discussion on that Convention are known because

there is an amendment coming before the Conference which would remove the use of the red cross entirely from the Civilians Convention. It has nothing to do with the Prisoners of War Convention because the red cross emblem is not referred to in that Convention so this question of legislation to implement Article 42 of the Wounded and Sick Convention is not a question proper to the Joint Committee. It is a question which should in our view have been settled by Committee I and it ought to be referred to an appropriate Working Party selected from that Committee and not to a Working Party appropriate to the question of grave breaches.

The PRESIDENT: I understand that the objection of the United Kingdom Delegation is not so much to the composition of the Working Party which is proposed on the point arising out of Article 39, but rather to the suggestion that both these points, the one arising out of Article 39 only and the one arising out of Articles 39 and 40, should be considered by the same Working Party. If that is the case I take it that for the first Working Party there will be general acceptance of the following: France, Turkey, United Kingdom, Union of Soviet Socialist Republics, United States of America, and Uruguay, under the Chairmanship of Mr. Bolla. If there is no objection to that, I will proceed to the question of the Working Party to consider the point arising in Articles 39 and 40. It is clear that, as the question of English and French translations arises in a high degree in this connection, it means that the Working Party should consist of Representatives of France, the United Kingdom and the United States of America and, of course, the Union of Soviet Socialist Republics. As it is a point of drafting, I am wondering if we could not stop there and leave it to that small Committee to try to find a solution on the point arising on Articles 39 and 40.

Mr. LAMARLE (France): I would thank the Chair for having included the French Delegation among those to be represented on the Working Party; I should like to state quite frankly, however, that I really doubt whether we can be of any assistance. The French text has been approved, and, as nobody has denied, it is simply a question of providing a correct and accurate English translation. In these circumstances, the participation of the French Delegation would not serve any useful purpose.

The PRESIDENT: In view of the statement of the French Delegate I provisionally suggest that possibly the Belgian Delegate might be prepared to help this Committee. I will now call upon the Delegate of Australia.

Mr. GLYN JONES (Australia): I wish to refer to the remarks of the President, made prior to the vote which took place as to whether or not this meeting would appoint a Working Party. You will recall that he said that this Common Article is the result of an amendment put in under the names of several delegations. It was put in in English on June 24 (*see Annex No. 49*) and special attention was paid to every word that was in that amendment. Our Delegation would not have been prepared to put their name to this amendment, had the words "grave breaches" been in any way altered, or if it had been made clear that the French translation of that amendment would have in any way suggested the very smallest variation of those particular words "grave breaches". That being the case—and here I support the Delegate of the United Kingdom—this is not a matter which should go back to the Working Party suggested for matters quite outside the jurisdiction of what had been before the Special Committee. I suggest that it should either be referred again to the Special Committee, or that the Working Party should consist of the same delegations as were on the Special Committee.

I would remind you that an amendment to Article 40/44/119A/130A was put in on July 15 by the Soviet Delegation which simply states:

"At the beginning of the first paragraph replace the words 'grave breaches' by 'serious crimes'".

This was following many attempts to replace the words "grave breaches" by "serious crimes" during the hearings of the Special Committee (*Twenty-ninth and following Meetings*) on the form in which the original amendment went in, which was split into "A" and "B". On "A" they were defeated, and on "B" they tried to get it back and again were defeated. When this amendment was presented to the Joint Committee on 19 July, this particular wording was defeated by 15 to 8 votes, with 7 abstentions.

I think it is wasting the time of the Conference for the matter to be referred to working parties, particularly when it is the intention apparently to alter what we agreed to very clearly in the wording of our amendment and in the wording of the amendment now before this Plenary Meeting. We do not want to vary that one whit; and if it is the intention that the French translation is to alter it in any way, or if it is intended to claim, as the Delegate of the U.S.S.R. suggests, that the French translation is to be accepted as the basic one, then we, the Australian Government, shall be forced to reserve our right on this particular point, inasmuch as this has been dealt with in a way that never intended when we submitted our name as one of the Delegations agreeing to this proposed amendment.

The PRESIDENT: The decision that this matter should be referred to a Working Party having been taken by the Conference, rightly or wrongly, there is little use in discussing how far it was a good decision. Therefore I think we should be in order in confining our remarks to the composition of the Working Party to be entrusted with this matter. If I may express an opinion from the Chair, it is that the proposal of the Australian Delegate that this matter should be referred back to the Special Committee which has considered the whole question in the past is a good one. Clearly it is not merely a question of translation; but it is necessary that those who re-examine this point in the light of the Soviet Delegation's proposal should know the earlier history of it, and I think only such a Committee would be able to return a rapid answer such as will be required if our discussions are not to be delayed.

If there is no objection to the Australian Delegation's proposal, I will assume that that course will be adopted. We are now very close to the end of our time. We come to the second Soviet amendment. Is there any Delegation which would like to speak on this amendment now?

Mr. MOROSOV (Union of Soviet Socialist Republics): As identical terms are used both in the first and second parts of the amendment submitted by our Delegation, we feel that it would be impossible to split up the amendment; and that both parts should be referred as they stand to the Working Party.

Mr. SINCLAIR (United Kingdom): The United Kingdom Delegation cannot agree with the view that has just been expressed by the Soviet Delegate. We do not see that the reference of this matter, which has already been decided, back to the Special Committee on just one particular point can in any way affect the general principle and intention of this Article. Therefore, we can see no grounds whatsoever for referring the Article as a whole back to the Special Committee.

The PRESIDENT: I think there is no doubt at all that the decision of this Conference was to refer back to the Working Party only the words as to which the Soviet Delegation claims that there is discordance, viz. "infractions graves" in the French and "grave breaches" in the English text. It would be quite improper in view of the decision taken here today that any other point should be taken up by the Special Committee. In view of the observation made by the Soviet Delegate, I think it would be undesirable to proceed today with the discussion of their second amendment. I would propose therefore:

- (a) to make it clear that the point arising in Article 39 will be referred to a Working Party composed as I have already indicated, under the Chairmanship of Mr. Bolla; and
- (b) to refer the point arising on Article 40 back to the Special Committee of the Joint Committee. In order that we may proceed as quickly as possible and not lose too much time, I would suggest that these two Committees should, if possible, meet this afternoon. Possibly they might meet at different times in case there should be one delegate representing his country on both parties.

Mr. GARDNER (United Kingdom): We would like to be clear about the tasks of the two Working Parties. The first, as we understand it, will consider what provisions should be made in the Wounded and Sick and the Maritime Warfare Conventions, and if necessary in the Civilians Convention, in order to protect the Red Cross emblem and the Swiss flag. The Working Party, we take it, is not instructed to make that provision a part of Article 39.

The second Working Party, as we understand it, will consider the French words "infractions graves" and the English words "grave breaches" in connection with Article 39 of the Wounded and Sick Convention and Article 40 of that same Convention, and the corresponding Articles of the other Conventions.

We would like to be clear that our understanding of the tasks of the two Parties is that of the Conference.

The PRESIDENT: As regards the second point raised by the United Kingdom Delegate I can say that I agree, as far as the Chairman is concerned.

As regards the first point, I think the United Kingdom Delegate has explained the point clearly but I would call upon the Rapporteur to confirm that my view is correct.

Colonel DU PASQUIER (Switzerland), Rapporteur: You have taken me somewhat by surprise in putting this question, as I have had no opportunity of examining it. I notice, however, that the International Committee of the Red Cross, in its memorandum to the President of the Conference, on which the proposal to refer this back is based, mentions the Articles in the Wounded and Sick and in the Maritime Warfare Conventions, but does not refer to the other two. I presume therefore that it would be only necessary to prepare drafts for these two Conventions. If my suppo-

sition is incorrect, I hope the Representative of the International Committee of the Red Cross will say so at once. The Representative of the International Committee of the Red Cross signifies his assent.

The PRESIDENT: Does the Representative of the International Committee of the Red Cross agree?

*(Approbation of the Delegate of the International Committee of the Red Cross.)*

Mr. BOLLA (Switzerland): I suggest that the first Working Party, dealing with abuses of the Red Cross emblem, should meet this afternoon at 3 p.m., and that the second Working Party, which will consider the amendments of the Soviet Delegation should meet at 4 o'clock.

May I point out that the terms of reference of the second Working Party are somewhat indefinite, and I appeal to the Conference to define them clearly.

The PRESIDENT: My idea of the task of the Special Committee is quite clear, and I hope after I have spoken the Conference will agree. The Soviet Delegate has suggested that there is a discordance between the words "grave breaches" and the words "infractions graves": not only that, but he has said that while he can accept "infractions graves" he cannot accept "grave breaches", and he suggests instead what would appear in English to be a change of substance, namely the word "offences" to be substituted for the word "breaches".

Now that is the task before the Working Party, which should endeavour to deal with the Soviet Delegation's proposals, particularly as regards the concordance of the texts. If that is now clear to Mr. Bolla, who has been good enough to undertake to preside at this meeting, I will assume—unless I hear to the contrary—that everybody is in agreement with the times proposed for the meetings of these two Working Parties.

If no one else desires to speak I will close the meeting.

*The meeting rose at 1.10 p.m.*

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## TWENTY-SECOND MEETING

*Monday 1 August 1949, 10.30 a.m.*

*President: Mr. Max PETITPIERRE, President of the Conference*

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### COMMON ARTICLES

#### **Article 39/43/119/130** *(continued)*

The PRESIDENT: During its Saturday meeting, the Conference decided to refer to a Working Party the recommendations made by Committee I on Article 39, which had not been taken into account by the Joint Committee.

This Working Party proposed that the following new Article be inserted in the Wounded and Sick Convention:

"The High Contracting Parties shall, if their legislation is not already adequate, take measures necessary for the prevention and repression, at all times, of the abuses referred to under Article 42".

Does anyone wish to speak on this subject?

### Wishes

Mr. CAHEN-SALVADOR (France): I ask to be excused for interrupting the work of the Meeting for a few moments. But on behalf of all the Delegations and as one of the veterans of this Conference, I think our work should not begin without our conveying to Switzerland, our host, our congratulations and good wishes for her prosperity on this day on which she celebrates her National Festival.

We all know Switzerland's heroism and patriotism and at this time, when the solemn Grütli Oath is being commemorated, I wish to pay tribute to that country on behalf of you all. We may claim the right to do so, having experienced the cordiality of Switzerland's welcome, the spirit of brotherhood and of solidarity in which she has received us. The kindness of our Swiss hosts is a very valuable

help to us and I believe that my words truly interpret the feelings of us all. I am sure that we are unanimous in addressing our most heartfelt good wishes to Switzerland for her prosperity and happiness, and for that of all those peoples whose fortunes are bound up with those of that high-minded and great-hearted country.

(*Applause*).

The PRESIDENT: I beg to offer my thanks to the Delegate of France, and I desire also to thank you all for the moving tribute which you have just paid to my country. You know how happy the Federal Government as well as the people of Switzerland have been to receive this Diplomatic Conference on our national territory.

While conveying our sense of gratitude for what has just been said and the manner in which you have all endorsed it, I now wish to express not only in my own name, but also on behalf of my country the earnest hope that this Conference which is to close in a few days will achieve the results which all peoples so ardently desire.

(*Applause*).

#### **Article 39/43/119/130 (continued) and new Article**

The PRESIDENT: We return to the proposal made by the Working Party instructed to examine the recommendation made by Committee I. Does anyone wish to speak on this proposal?

Since nobody wishes to speak, I consider it to be adopted.

The new Article will be inserted after Article 42. During the Saturday meeting the Conference also decided to refer to a second Working Party the first amendment proposed by the Soviet Delegation to Article 39 of the Wounded and Sick Convention. After having studied the question, the Working Party proposes (*see Annex No. 53*) that the first paragraph of that Article (which corresponds to Article 43 of the Maritime Warfare Convention, 119 of the Prisoners of War Convention and 130 of the Civilians Convention) be drafted as follows:

“The High Contracting Parties undertake to enact any legislation necessary to provide effective penalties for persons committing, or ordering to be committed, any of the grave breaches of the present Convention defined in the following Article.”

Does anybody wish to speak with regard to this proposal submitted by the Working Party?

There being no observations, the proposal is adopted.

In view of the agreement reached by Working Party No. 2, I assume that the Soviet Dele-

gation withdraws its amendment. I request that the Soviet Delegation be so good as to confirm that assumption.

Mr. MOROSOV (Union of Soviet Socialist Republics): It is quite correct that the first Soviet amendment should be considered as withdrawn, so far as the first part of Article 39 is concerned. The second amendment now remains to be considered.

The PRESIDENT: The position seems quite clear to me. The Delegation of the Union of Soviet Socialist Republics has withdrawn its first amendment. We will now proceed to the second amendment submitted by the same Delegation.

Does anyone wish to speak?

Mr. MOROSOV (Union of Soviet Socialist Republics): The second amendment of the Union of Soviet Socialist Republics stipulates that it is necessary to retain the text in its present wording. It is stated, in the second paragraph, that each Contracting Party shall be under the obligation to search for persons alleged to have committed, or to have ordered to be committed, any of the above-mentioned serious breaches and to defer them to its own tribunals, whatever their nationality may be. We propose, however, to add the following words: “or to the Conventions for the repression of such acts as may be defined as breaches”. These words should therefore be added to the first sentence of the second paragraph.

I have examined the memorandum drawn up by the United Kingdom Delegation, which has not yet been distributed; I have been informed however that I can refer to this document.

This memorandum states that if the laws of a State are violated, the courts of that country can immediately prosecute the responsible parties; and that it is therefore unnecessary to specify the legal sources on the basis of which the court takes action. Further, the memorandum contains the following sentence: “, in other words, if a specified act is a penal offence under the law of any State, (either because of express legislation or because of an international treaty which has become part of the law of such a State), it is obvious that the courts of such a State will have jurisdiction to try any person committing such an offence”.

As noted in the United Kingdom memorandum, it is unnecessary to refer, in the second part of Article 39/43/119/130, to sources on which the jurisdiction of the country in question is based. I therefore imagine that the last part of the passage which I have just quoted is based on a misunderstanding, since it is quite clear that these provisions cannot have force of law unless they have been embodied in municipal legislation.

It is necessary, in the second paragraph of the Article under consideration, to emphasize the obligation to search for and to prosecute persons guilty of serious breaches of the Convention, when it has been duly established that national legislation must take account of facts or acts which, under the Convention we are now engaged in drawing up, constitute serious breaches of that Convention. There is, therefore, first of all the obligation to embody in national legislation the concept of punishment for the breaches of the Convention; then we have the part showing how this decision is given effect. In other words, one of the sources of the national legislation on the subject consists of the fact that in the Convention provision had been made for the punishment of serious breaches.

May I draw your particular attention to the fact—to which I attach special importance—that one of the legal sources of municipal law is precisely the obligation to punish certain serious breaches specified in the Convention. This is why we consider that to emphasize this, the addition to the second part of Article 39/43/119/130 proposed in our amendment is necessary.

Miss GUTTERIDGE (United Kingdom): The United Kingdom Delegation wishes to explain shortly how what has been referred to as the United Kingdom memorandum on this subject, was presented. It was handed to the Delegation of the U.S.S.R. in the form of a note giving a short explanation of the reason for which the words in the second paragraph of Article 39/43/119/130, now under discussion, were not included in the Article as approved by the Joint Committee. It was not, as you will understand, in any sense intended to be a formal memorandum but merely a note of explanation. However, since it has been laid before the Conference, I have been instructed to read the note. The note is as follows:

“The words “in obedience to its own legislation or to the Conventions repressing such acts as may be defined as breaches” which appear in the second paragraph of Article 39/43/119/130, as amended by the Delegation of the Union of Soviet Socialist Republics, were not included in the Article as approved by the Joint Committee for the following reasons: If the High Contracting Parties carry out their obligations, under the first paragraph of this Article, to enact any legislation necessary to provide effective penal sanctions for persons committing...etc., grave breaches of the Convention, it necessarily follows that they will be able to bring before their Courts any such persons. In other words, if a specified act is a penal offence under the law of any State (either because of express legislation or because of an international treaty

which has become part of the law of such a State), it is obvious that the Courts of such a State will have jurisdiction to try any person committing such an offence. It is, therefore, quite unnecessary to specify the source from which the jurisdiction of the Court arises in the second paragraph of Article 39/43/119/130”.

I do not think that the United Kingdom Delegation needs to add very much more by way of explanation except to say that the argument just put forward by the Delegation of the Union of Soviet Socialist Republics has been carefully considered by us and we feel that the first paragraph of the Article, in the form in which it was approved by the Joint Committee, makes it quite clear that the grave breaches for which penalties are to be provided as a result of the Convention we are now discussing. We do not therefore see any need for further clarification or for the addition of these words.

The PRESIDENT: We will vote on the amendment submitted by the Delegation of the U.S.S.R. I would again draw your attention to the fact that an error has occurred in the French text of the distributed Document. This amendment is worded as follows: “Conformément à ses propres lois et aux Conventions réprimant les actes...”, whereas it should read “Conformément à ses propres lois *ou* aux Conventions réprimant les actes...”, the word “et” should be replaced by “ou”. The English text is in order.

The amendment was rejected by 21 votes to 9, with 12 abstentions.

We will now vote on the Article as a whole. Delegations accepting this Article together with the alterations are required to signify.

This Article was adopted by 40 votes to none with 1 abstention.

#### Article 40/44/119A/130A

The PRESIDENT: There are no amendments to this Article, as that submitted by the Soviet Delegation has been withdrawn.

Does anyone wish to speak?

Nobody wishing to speak, the Article is adopted.

#### Articles 40A/44A/119B/130B and 41/45/119C/130C

The above mentioned Articles were adopted.

**Article 41A/45A/119D/130D**

The PRESIDENT: An amendment has been submitted by the Soviet Delegation proposing the deletion of the Article.

Mr. MOROSOV (Union of Soviet Socialist Republics): The Soviet Delegation's amendment is to delete this Article which requires the Parties to the Convention to recognize the jurisdiction of the International Court of Justice. Some serious doubt may be felt as to the practical necessity for inserting such a stipulation into the Convention.

Articles 9/10/10/10 and 41/45/119C/130C already provide measures for the settlement of disputes which may arise in connection with application of the Conventions, and also prescribe the procedure of enquiry with regard to breaches of the Conventions.

Apart from this, it may be emphasized that the Article under examination does not concord both with the Statute of the International Court of Justice and with the United Nations Charter.

As is well known, according to Article 35 of the Statute of the Court, the latter is open without further proviso to States who recognize this Statute. Moreover, the conditions of access to the Court for other countries are determined, according to the same Article 35, by the Security Council.

The Statute thus provides for two categories of States; for States in the first category, the International Court of Justice is open without further proviso; for States in the second category, however, such access is subject to certain conditions laid down by the Security Council. But Article 41A, with which we are now dealing, contains provisions of an entirely different character.

Are we entitled to say that this Article, as now drafted, is in conformity with the provision I have just mentioned, and with the Statute of the International Court and the Charter of the United Nations?

If this question is considered carefully, it will be apparent that the intention is to alter Article 41A substantially, even possibly to do away with the conditions I have referred to above, and which constitute an integral part of the Charter and the Statute. For Article 41A on the one hand merges and includes in one category the two types of countries which, as I stated above, are eligible for access to the Court. It also compels States belonging to both these categories to recognize that the jurisdiction of the Court is binding on both under the same conditions. Lastly, the Article completely ignores the fact that the States represented at this Conference have not all adhered to the Statute of the Inter-

national Court. Similarly, the Article ignores the fact that members of the United Nations are, under Article 93 of the Charter, *ipso facto* parties to the Statute, whilst States which are not members of the United Nations may become parties to the Statute, only on certain conditions, to be determined in each case by the General Assembly of the United Nations, upon the recommendation of the Security Council. I must frankly confess to some surprise at having to explain these facts to this audience as they are elementary matters which are well known to all. I am unfortunately compelled to do so, however, since the provisions of Article 41A obviously infringe both the competence of the Security Council and of the General Assembly of the United Nations; it overthrows the procedure set up for recognition of the jurisdiction of the Court, by which States which are parties to the Statute, equally with those which are not, must recognize this jurisdiction in accordance with the conditions laid down in Article 36 of the Statute. These conditions only apply to States which are parties to the Statute, in particular those which have subscribed to the declaration of recognition provided for under Article 36 with regard to the compulsory character of such jurisdiction. But certain countries, including the Union of Soviet Socialist Republics, have not yet subscribed to this Declaration.

We therefore consider that the Conference is not competent to deal with this point, and has no right to interfere in a matter which in reality comes within the province of the General Assembly and of the Security Council of the United Nations. The Soviet Delegation therefore feels that to adopt Article 41A would constitute an unprecedented violation of established international practice and of international law.

We cannot possibly condone such a situation. We cannot agree that, simply as the result of a vote, States which are not parties to the Statute should be able to compel those which are parties to recognize that the jurisdiction of the Court is binding; similarly, we cannot accept a situation in which States which are parties to the Statute would be in a position, by a mere vote, to compel those which had not adhered to it to recognize its jurisdiction. Such questions cannot, and must not, be decided by a mere vote.

It is for the above reasons that the Soviet Delegation proposes the deletion of the provision contained in Article 41A of the Wounded and Sick Convention, and the corresponding Articles of the other Conventions.

We should regard it as absolutely inadmissible that the Conference endorse a decision, which was carried by a majority vote in the Joint Committee, and adopt Article 41A in its present wording.

In practice, this provision would have no legal



validity, for the simple reason that it violates the United Nations Charter and the Statute of the International Court of Justice.

I would therefore ask the Conference why we should place ourselves in such a ridiculous position, and why we should introduce provisions into our Convention which are in conflict with the Charter of the United Nations. By taking such a decision, we should risk jeopardizing the work accomplished by this important Conference. No legal arguments can possibly be adduced to justify the text of Article 41A as it stands at present.

It is true that decisions which are entirely contrary to commonsense can always be taken; but this is scarcely our purpose. Surely we have not come here to take decisions which would prejudice the whole work of this Conference.

For all the above reasons, the Delegation of the U.S.S.R. urges the Conference to delete Article 41A.

Mr. CAHEN-SALVADOR (France): The text at present under discussion expresses the views of the French Delegation, and this is why I venture to speak on its behalf.

The purpose of this wording is to conciliate conflicting views. It was, of course, quite natural that the referring to difficulties in interpreting and applying the Conventions we are engaged in framing, France should envisage recourse to the highest international jurisdiction.

It was the best safeguard for all concerned; at the same time it was a tribute to the impartiality and objectivity of this High Court which, as you are aware, is composed of the most outstanding authorities on international law of all countries, regardless of nationality.

After the statement by the Delegate of the U.S.S.R., however, the French Delegation clearly realizes that the terms of the Statute of the International Court (of which the Soviet Delegate gave a very clear analysis) impedes the proposed solution. It is, in fact, evident that we cannot contemplate specifying, in one of our Conventions, conditions of accession which are reserved by the Statute of the Court itself to other authorities. To avoid a lengthy debate which might lead to confusion, and at the same time in the conciliatory spirit which the French Delegation has always shown whenever it was possible, without detriment to the rights of the French State, we now ask you all, both the majority and the minority, to make a conciliatory gesture. If the French Delegation is fortunate enough to have its suggestion unanimously approved by the Conference, it will consider that once more it has followed a broad humanitarian policy by which all Delegations are enabled to agree on a vote.

The suggestion which the French Delegation wishes to place before you is the following: to

make the present clause mandatory under the Convention would be to hamper an accession which cannot be compulsory, but only voluntary.

What would be feasible, would be to recommend delegations, who have not yet signed the Statute of the International Court of Justice, that they should join the international community which recognizes the competence of this High Court; this should be recommended, but not made an obligation.

That is the suggestion which the French Delegation would once more make both to the minority and the majority element in the Joint Committee; it considers that by so doing, it is contributing towards the unanimity which we are seeking by every means within our power and in all cases where our rights are not infringed. The French Delegation hopes that it has also helped to shorten the debates, once again in the interests of all concerned.

If, therefore, the Conference will adopt this draft Resolution, and convert Article 41A into a Resolution which would be appended to the other Resolutions annexed to the Convention, the French Delegation would be most gratified and it therefore makes an earnest appeal along those lines to all delegations.

Mr. COHN (Denmark): The expediency of inserting a clause of this kind in the Conventions we have been framing during this lengthy Conference has been emphasized from the outset of our proceedings, and a substantial number of delegations have expressed themselves in favour of this procedure. There is nothing in what the Representative of the U.S.S.R. has told you which can in any way diminish the importance of this question. He confined himself to repeating the formal, legal arguments which he had developed on several occasions, both in the Special Committee and the Joint Committee; and the French Delegation, which was present at these meetings, has already had several opportunities of giving its views with regard to these objections.

I should merely like to say that these objections are baseless. There is no rule, no principle of international law, which conflicts with the insertion of a clause of this kind in our Conventions; and no one will deny that all the States represented here are entitled to recognize the jurisdiction of the Court. The objections which have been made are therefore devoid of any importance and should not prevent this Conference from including such a clause among the provisions of the Conventions. After listening to the views expressed by the French Delegation today, it would be superfluous for me to go into further detail, and I have nothing to add to these few words.

Mr. MEVORAH (Bulgaria): I had originally intended to raise a point of order with regard to the admissibility of this Article, in order to make my position quite clear. I at once realized, however, that this would cut short the discussion, and I had no wish that it should end in a hurry. Personally, I consider that this discussion has been very useful, for we are dealing with a question which affects a very important legal principle.

Two objections may be raised to this Article. The first was made by the Representative of the U.S.S.R., and repeated aptly by the Representative of France. It amounts to this: the Statute of the International Court of Justice contains a clause providing for and regulating the access of a State to the Court and its acceptance of the Court's jurisdiction. If we endeavour here to insert a provision compelling States which have not yet declared their readiness to submit to this jurisdiction to do so, and thus if we ignore the rules and procedures laid down in the Statute of the Court itself and in the Charter of the United Nations, we should be doing what is generally known as exceeding our terms of reference.

I will not dwell on this objection; it has been explained at some length by other delegates.

I now come to my second objection, which is of a personal nature and may be set forth as follows: is it admissible that the Meeting should impose obligations upon specific States without the latter having declared their readiness to accept them? Can obligations of this nature be imposed merely by means of a majority vote? In other terms, if a State which is Party to the present Convention has not until now declared that it recognizes as compulsory the jurisdiction of the International Court of Justice, can it be said that this State has obligations towards this Court, against its own will, in virtue of a majority vote of this Meeting? The reply to these questions must clearly be negative.

I am much surprised by the remarks made by the Delegate from Denmark; he has just said the arguments advanced by the previous speakers have not convinced him and that he still holds to his theoretical position. In the Joint Committee I was led to believe that, after the objections raised there, this Meeting would accept our opinion unanimously. I have observed, however, that this is not the case, and that the great majority of the Meeting has maintained its previous attitude. Nevertheless, I am not discouraged, and I trust that the Meeting will reconsider and readjust its opinion. It is in fact absurd (this is a technical and legal term that may be employed in such cases) for the majority to decide upon an obligation which is incumbent on a minority when the latter has, by vote, refused to accept it. This act, in itself, cannot be subject to a majority vote. The point at issue is a

declaration, a free expression of a readiness to accept a certain jurisdiction. This declaration would have neither aim nor effect if it ceased to be freely accepted and were merely the result of a vote by others against those very delegates who do not wish to assume the obligation.

You will observe that the case in point is typical, and still more so for States who are not members of the United Nations Organization; the two questions are correlated. It would be advisable to leave these States to follow their own course and direction without seeking to oblige them to become members of the United Nations Organization, or to bind them irrationally to observe obligations which result from the competence of the High International Court of Justice. They should be left free as regards their accession to the United Nations Organization, and their admission by the latter.

It is premature for these countries to declare that they accept this jurisdiction forthwith, since, as the Soviet Delegate has already stated, the procedure laid down requires that the question should be brought before the Security Council and the General Assembly. Conditions may be attached to the acceptance of this jurisdiction, and the submission to the International Court of Justice. The two problems, therefore, cannot be treated separately. They go hand in hand.

In my opinion, the discussion should simply be adjourned, and the States left free to accept the jurisdiction of the Court at their discretion. It will only be possible to decide whether that acceptance is voluntary or not after a decision has been reached at Lake Success. If the acceptance of the jurisdiction of the Court is adopted by a majority vote, it would amount almost to compulsion. I do not think anyone would wish to go so far as to impose a decision which would be contrary to the wish of those principally concerned.

As regards the proposal for a compromise put forward by the Delegation of France, I wish to add that it should be submitted in writing. It will be the subject of a future debate; we shall vote upon it when deciding on the resolutions to be taken by the Assembly.

Colonel HODGSON (Australia): My Delegation always opposed this Article but the Committee were determined to go ahead and approve of it. It seems to us quite wrong in principle; it seems unlawful, and, above all, it is impracticable. In a dispute arising out of the interpretation or application of a Convention, expedition is the whole essence of the settlement of such a dispute, and the International Court is the very last tribunal in the world from which to get a decision expeditiously. What would happen? There are several delegations here representing States who have not accepted the

Statute; they cannot accept the Statute because they are not members of the United Nations, and I quite agree with that argument about non-Members, and even about Members, of the United Nations: they are not compelled to accept the competency of the International Court. There are several members of the United Nations who have not accepted and are not bound to accept the competency of the Court, and I understand that, of those who have accepted, a large majority have accepted with reservations, but you, under these Conventions, are compelling all those who sign the Conventions automatically to accept that obligation, and we are told that is not well founded in law.

Here is another legal objection, and a practical objection going hand in hand with the legal one. Suppose that in the future non-members of the United Nations get involved in some dispute regarding the interpretation or application of a Convention, and they go to the Court and the Court simply say "Despite that Convention we have no jurisdiction, because our jurisdiction flows from the charter of the United Nations, and under our Charter you have got to go to the Security Council—under Article 35 of the Statute". They then go to the Security Council, which involves another delay, and those of you who know the operation of the Veto in the Security Council will know that you are not going to get the Security Council to lay down conditions for non-members of the United Nations.

For all those reasons we are going to vote for the rejection of this Article. As to the suggestion that it might take the form of a general resolution, we could not accept it in the terms in which it is drafted in this Article. Until we see it we could not indicate our support of it, but at the moment I am speaking on the question of deletion, and my Delegation will vote for its deletion.

Mr. COHN (Denmark): As I have already said, I have no intention of prolonging this discussion, nor of entering into details. I wish, however, to comment on an argument which has been repeated on several occasions by the Delegate for Bulgaria, namely that the majority cannot compel the minority to submit to the jurisdiction of the Court, should that minority not wish to do so.

There is a misunderstanding here. The majority of our Assembly cannot compel the States to do anything at all; those States are bound by their signature and their ratification of the Convention. The question of the competence of the majority as regards the minority is identical for all the questions we have discussed and settled by a vote of our Conference. This is not a question which has special reference to the jurisdiction of the Court, as the Delegate for Bulgaria imagines.

Sir Robert CRAIGIE (United Kingdom): The United Kingdom Delegation have always been in favour of some reference to the jurisdiction of the Hague Court in our Convention, and we feel that if we were to take as the last word on this subject the legal objections made by the Soviet Delegate and the Australian Delegate it would really preclude the inclusion in any future international treaties of references to the jurisdiction of the Hague Court. In actual fact, of course, that has not been the case: there have been several important international treaties where that jurisdiction has been invoked. I do not want to prolong the legal argument, but if we look at Article 35 it seems quite clear that precisely such a reference is provided for. Article 35 says, in the first paragraph, "The Court shall be open to States Parties to the present Statute", and in the second paragraph "The conditions under which the Court shall be open to other States shall, subject to the special provisions contained in treaties in force—that is, treaties in force at the time of the dispute—be laid down by the Security Council but in no case shall such conditions place the parties in a position of inequality before the Court". Under the words "subject to the special provisions contained in treaties in force", any such reference in an international treaty seems to us to be perfectly in order.

On the other hand, in a matter of this kind we do feel very strongly that there should be unanimity; there should be no question, I think, of trying to enforce the wish of a majority on the will of a minority, and from that point of view the United Kingdom Delegation would fully support the proposal of the French Delegate that the present Article, which is mandatory, should be turned into a resolution. The advantage of that would be that it would at all events bring this matter to the attention of governments, and would perhaps lead to a more general acceptance of the jurisdiction of the International Court. It seems to us quite clear that there are some kinds of dispute which might not be so readily referred to the type of procedure that we have laid down—conciliation and consultation—as to the highest international juridical body in existence, so that it would be unfortunate in our view if there were no reference to it at all.

I should like to submit a point of order; I would appreciate it if at all events the proposal that the principle of a resolution dealing with references to the International Court of Justice were taken first in order, before the Soviet amendment to Article 119D, Prisoners of War. It would be better for delegations who wish to see some reference if the votes could be taken in that order.

The PRESIDENT: I admit the point of order. In point of fact I was intending to take the vote

of the Assembly on the draft resolution, before passing on to vote on the deletion of Article 41A as proposed by the Soviet Delegation.

I suggest that the votes should be taken as follows: I shall first put to the vote the French Delegation's proposal to replace Article 41A by a resolution, the text of this resolution to be drafted by a Working Party to be nominated forthwith. Should the French proposal be accepted, Article 41A should be considered as rejected. Should the French proposal not be accepted, I shall put to the vote the acceptance or rejection of Article 41A, in accordance with the proposal made by the Soviet Delegation. Do you agree to this procedure?

Mr. MOROSOV (Union of Soviet Socialist Republics): May I make a few remarks on the voting procedure proposed, which also affects the draft resolution submitted by the French Delegation?

The text of that resolution is not yet before us; in view of the fact, I cannot see the reason for any departure from the method of voting we have followed hitherto in dealing with questions of this kind. The question at issue is whether Article 41A should be replaced by the resolution announced to us. I fear that some confusion may arise if it is decided to replace a provision which is the subject of an actual Article by a resolution, the precise tenor of which is unknown to us. As the Delegate for Australia rightly pointed out, we should have this text before us. Imagine the situation that might arise should we now vote on a resolution intended to replace Article 41A, and, when that resolution was submitted, it proved unacceptable to a majority of the delegations; a purely hypothetical supposition which would seem almost impossible in practice, though such a possibility should not be ignored.

Of course, I do not believe that it will really happen that the text of the resolution will be adopted by a majority of the Conference. But in dealing with questions of procedure, it is essential to take a firm line; even if there was only one per cent risk arising of the situation I have just referred to, it would, in my opinion, be a sufficient reason for rejecting the voting procedure proposed.

On these grounds I propose, for my part, that a vote should be taken on two quite separate and distinct points. First on the deletion, pure and simple, of Article 41A. Subsequently, on a second question, on which I shall dwell at greater length. I mean the question of substituting a resolution for the existing Article; this at any rate is the procedure which has been proposed.

I must say, Sir, with all due respect to you that a procedure of this kind seems to me legally inadmissible; it is impossible to substitute a resolution for an article, since an article deals with a binding obligation, which signatory States

undertake to respect by their signature; a resolution merely expresses a wish. This being the case, to substitute a resolution, a mere recommendation, for an Article of the Convention seems to me quite impossible from a legal point of view. This is the reason, as I have already said, why I propose that two votes should be taken on the matter.

The first vote would be on the question of deleting Article 41A—or, if you prefer, on the text of the Article—since there is an amendment to delete it completely.

The second vote would be on the proposal to refer to a Working Party the drafting of a text on the lines suggested by the French Delegation, which would constitute a wish or a resolution, as has been pointed out.

I think therefore that we should proceed as I have suggested, taking two distinct votes in succession. In this way the Conference would not be bound by a text which it had not yet seen. I suppose that the majority of delegations will prefer to vote first on the deletion of Article 41A, that they will then agree to instruct a Working Party to frame the text of the draft resolution submitted by the French Delegation, and that lastly the resolution might be adopted by a majority of the Conference. I must say that personally we have a great deal of sympathy with the French proposal, but I repeat once more that we consider it necessary for the vote to be taken in two parts.

The PRESIDENT: We now have to discuss a point of order and my reasons for deciding to accept it. One speaker opposed this point of order; one other may express himself in favour, after which a vote must be taken. The Delegate of France desires to speak, and I hope that it is for the purpose of defending this motion rather than in order to combat it.

Mr. CAHEN-SALVADOR (France): I thank you for allowing me to say a few words in support of the procedure which should, I think, be recommended to the Conference. If the efforts which we have made are to reach a logical conclusion, something approaching unanimity must be achieved by this Conference. That is our aim, and is, in fact, the object of our proposal.

If, as certain delegations seem to desire, we were to begin by voting upon the Article, majority and minority would, in a sense, crystallize: and, whether the Article were approved or rejected, I do not see what could be added by a draft resolution.

The attempt at conciliation ought to be made before the vote is taken and I propose to the Chair that we should vote (as the President himself

suggested) on the principle of a draft resolution, the effect of which would be to transform into a recommendation a requirement which is considered by a certain number of delegations as being scarcely compatible with diplomatic law and custom. This would make it possible to avoid taking a vote where a majority and a minority were opposed. The draft resolution has not been actually put into words, but it is easy to imagine it. It would be roughly on the following lines:

“The Conference recommends that the High Contracting Parties to the present Convention who have not declared that they recognize the jurisdiction of the International Court of Justice as fully binding in law and irrespective of the existence of any special Convention to that effect, in their relations with any other State accepting the same obligation, should recognize, or agree to recognize, the competence of this Court in regard to any question relating to the interpretation or application of the present Convention.”

A simple recommendation should, in fact, take the place of an obligation or a compulsory clause. We believe that this will elicit a united vote from those who are opposed to the Article as at present drafted and those who are prepared to maintain it. It may therefore perhaps be possible, as a special exception, to suspend the vote on Article 41A/45A/119D/130D, and set up a Working Party without delay to prepare a text for later submission to the Conference. In the last resort, delegations, in the very improbable case of the draft resolution not meeting with general agreement, would be free to vote for or against the Article.

I ask you to help to bring our work to a successful conclusion by drafting a resolution which will be approved almost unanimously when submitted to the Conference.

The PRESIDENT: On a point of order, the Delegation of the United Kingdom has moved that the meeting first give its decision on the proposal of the Delegation for France. Its proposal is that a Working Party be asked to draw up a draft recommendation for submission to the Plenary Meeting. This point of order was opposed by the Delegation of the Union of Soviet Socialist Republics, which proposed that the meeting should begin by deciding whether to adopt or reject Article 41A/45A/119D/130D; it could afterwards examine the French proposal.

We have therefore to consider the order in which the decisions of the Meeting should be taken.

A request to speak has been made, but the Rules of Procedure are explicit, and the debate

cannot be continued on this question. I suggest, therefore, that you should now vote and I shall afterwards call upon the Delegation which has asked to speak.

Mr. MOROSOV (Union of Soviet Socialist Republics): I should like to ask a question concerning the matter about which we are about to vote.

The PRESIDENT: I now call upon the Delegate of the Union of Soviet Socialist Republics for a short statement.

Mr. MOROSOV (Union of Soviet Socialist Republics): We have to vote upon the proposal of the United Kingdom Delegation concerning the second part of the Article and we must also give a decision regarding the Article itself. I should like to know upon which we are going to vote first.

The PRESIDENT: We shall vote upon the proposal of the Delegation of France. If it is accepted, the Working Party will draw up a draft recommendation which will be submitted to the Meeting; the vote upon the acceptance or the rejection of the Article in question will be held over until the draft resolution has been submitted to the Meeting. If the proposal of the Delegation of France is rejected, we shall immediately proceed to vote upon the acceptance or the rejection of the Article.

I must remind you that we are only deciding at present upon the method of voting, and not yet upon the French proposal. The delegations who agree that the first vote should be on the proposal of the French Delegation (in accordance with the motion of the United Kingdom) are requested to signify in the usual manner.

The motion of the Delegation of the United Kingdom was adopted by 27 votes to 13 with 4 abstentions.

The PRESIDENT: We will now vote on the proposal submitted by the Delegation of France.

The proposal tabled by the Delegation of France was adopted by 26 votes to 1 with 16 abstentions.

I propose that the Working Party responsible for drawing up the draft recommendation be composed of members of Delegations of the following countries: France, Union of the Soviet Socialist Republics, Denmark, Australia, Italy.

Are there any other proposals?

Colonel HODGSON (Australia): I shall be glad if you will excuse the Australian Delegation, Mr. President. We have practically no Delegation now available, and secondly I happen

to be the only Delegation who voted against that proposal and I am against it in principle.

The PRESIDENT: Would the Delegation of the United Kingdom care to be on this Working Party?

No objection being made, I take this suggestion as accepted. We have finished our provisional consideration of Articles 41A/45A/119D/130D.

*The meeting rose at 1.25 p.m.*

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## TWENTY-THIRD MEETING

*Monday 1 August 1949, 3.30 p.m.*

*President: Mr. Max PETITPIERRE, President of the Conference*

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### COMMON ARTICLES

#### Article 43/46/120/131

The PRESIDENT: We shall resume the consideration of the common Articles beginning with Article 43/46/120/131, an amendment to which has been submitted by the Delegations of Ecuador, Mexico, Nicaragua, the Union of Soviet Socialist Republics, and Venezuela. I should like to add a second paragraph stipulating: "The Federal Council shall arrange for official translations of the Convention to be made into the Russian and Spanish languages."

I do not think that much discussion will be necessary on this amendment, which proposes to give the Federal Council a mandate to have official translations of the Conventions made into the Russian and Spanish languages.

The Federal Council has already considered this question; it is prepared to accept this mandate which could therefore be adopted without discussion if there are no objections.

Colonel FALCON BRICENO (Venezuela): No delegation here can be surprised by the request submitted by the Delegations of Ecuador, Mexico, Nicaragua, the Union of Soviet Socialist Republics and Venezuela.

We are not requesting the Swiss Federal Council to arrange for official translations of the Conventions to be made into Russian and Spanish out of any desire to complicate our work, but rather in order to possess a single authentic text, which may also prove very helpful to the International

Committee of the Red Cross in the fulfilment of its great humanitarian mission.

We therefore hope that the amendment will be favourably received.

Colonel HODGSON (Australia): I can see the practical advantages of this proposal for the reasons just indicated, but I do not think that the principle behind it is correct. A similar question arises year after year at the United Nations when, for example, the Chinese Delegate will say: "Well, why not Chinese?" and somebody else will ask, why not something else? Further, I should like to know how many of these official translations are going to be made by the Federal Council. Ten thousand? One hundred thousand? Two hundred thousand? And who is going to pay for them?

Further, I think this: we argued this morning that this Conference could not lay certain obligations on individual countries, and here you have it not as a simple request but as something which I think is utterly outside our Conventions. Our Conventions impose an obligation not on one country, but on every State who is a Party to the Convention.

Here you are for the first time imposing an obligation on one State, Switzerland, and the language used is not even polite. It says: "The Federal Council shall arrange", and my Delegation, for one, objects to it. I think the proper and most polite way would be for certain States, if they so desire, to exchange their views informally. I think the Swiss Council are very good to give the reply that they have given, but I do not

think either they, or this Conference, should have been called upon in the first place to entertain such a proposal which was never even submitted to, or discussed in Committee.

Colonel WANG (China): Allow me to add one comment to the remarks made by the Delegate of Australia. The amendment proposed by the Delegations of Ecuador, Mexico, Nicaragua, the Union of Soviet Socialist Republics and Venezuela is no doubt based on the precedent established by the United Nations Charter at San Francisco. There is, however, one omission. The San Francisco Charter was translated into five official languages. I fully agree that the Swiss Federal Council should establish official translations of the Conventions into Russian and Spanish. I should, however, like to point out that, if the San Francisco Charter is taken as a model, the Chinese language has been overlooked.

Mr. MOROSOV (Union of Soviet Socialist Republics): I should first like to express the profound satisfaction with which I listened to the statement made by the President in the name of the Swiss Federal Council. I think that in thanking him, I am expressing the feelings of everyone who submitted this amendment and of all those who are supporting it. The adoption of this proposal will certainly contribute to a wider understanding of the Conventions and a correspondingly wider implementation of their provisions.

May I add that the attitude taken up by the Delegate of Australia surprises me greatly. He spoke as if someone here were asking him personally, or asking his Government, for financial assistance in carrying out this work. He asked who was going to meet the cost of it. And to substantiate an argument in itself fallacious, he asked how many copies of this translation were to be printed—100,000, 200,000, or even more?

In my opinion these questions and these objections are unfounded. Was he perhaps trying to amuse us by telling us an anecdote? I do not think so and, besides, we have only a little time left in which to finish our work; we have not, therefore, leisure in which to listen to such pleasant entertainment. Any question of finance is, we think, entirely irrelevant here.

In reply to his question as to the number of copies of this translation to be printed, I would say: "Sir, just one in Russian and just one also in Spanish". We do not intend to ask the Swiss Federal Council to have a whole edition of these translations published, we are merely asking them to be so good as to have one copy of them prepared in each of the two languages.

Furthermore, as far as I know, the text of the translation into Spanish is already well advanced;

as for the Russian translation I can take full responsibility for saying that the texts are all now ready. You will readily believe this, as the Soviet Delegation has worked in its own language throughout the Conference. All that remains to be done, therefore, from a technical point of view, is to compare these texts and to check them and give them final form, since the documents of the Convention are virtually in existence, probably in Spanish and certainly in Russian.

Besides, I do not suppose that the Delegate for Australia wished to query the statement the President of our Conference made in the name of the Swiss Federal Council, to the effect that the Swiss Government is fully prepared to undertake the task proposed in the amendment submitted by the four Delegations in question. I do not therefore consider that there is any reason to oppose the agreement which may be reached here by adopting this amendment.

The Soviet Delegation raises no objection in principle to the translation of these Conventions into other languages. My Delegation was, nevertheless, somewhat surprised by the remarks of the Delegate for China, who expressed his opinion on this issue without, I would submit, any previous preparation, perhaps even without having carefully considered the matter and without submitting his amendment in accordance with the Rules, which were duly respected by the four other Delegations.

Notwithstanding the great respect the Soviet Union Delegation naturally feels for other languages, it seems to us that a proposal of this kind could not but distort the meaning of the text, and complicate the adoption of the amendment submitted by the four other Delegations. Perhaps it was even with this object in view that it was submitted in a manner contrary to the Rules.

This is why the Soviet Delegation supports the proposal put forward by the four other Delegations to the effect that the Conventions should be translated into two other languages; namely Russian and Spanish, which are the mother tongues of hundreds of millions of people. I may perhaps be allowed to point out that Russian is the language of over two hundred million human beings. An agreement on the point at issue might very well contribute to a better and wider understanding of the Conventions.

The PRESIDENT: There are still two speakers on the list. I wonder, as matters stand, whether it is really useful to prolong this debate. I will, nevertheless, call upon them to speak, but I hope that when we have heard them, we shall at last be able to vote. I would point out that, so far, the amendment has not been formally opposed.

Commander OROZCO SILVA (Mexico): At this stage of the debate the Mexican Delegation supports entirely the view of the Soviet Delegate. We took due note of the objections of the Australian Delegation but we think that the Australian Delegate ignores some facts. The amendment that the Union of Soviet Socialist Republics and we, the Delegations of Ecuador, Nicaragua, Venezuela and Mexico put forward in the name of the Spanish-speaking peoples, is quite clear and we think that it needs no explanation. Nevertheless we should like to point out that it is very important for us Spanish-speaking nations to obtain an official translation of the Convention, since it will avoid each government giving a different interpretation to the Conventions through their own translation. I am sure that you are aware that we defended this point at the International Red Cross Conference at Stockholm, taking into account that the Spanish language is spoken by twenty nations—a linguistic and geographic fact that cannot be ignored. At Stockholm our language was unanimously accepted not only as an official language, but as a working language to be used at the next International Red Cross Conference.

If we do not make a similar demand here it is because we hope that it will not be necessary to have another Diplomatic Conference in the future, in view of what such a Conference would imply. We are now only asking for an official Spanish translation for the benefit of all Spanish-speaking countries. As it is merely a technical matter we expect that the delegates of the States here represented will vote in favour of what we are so anxious to obtain. We are aware that the Swiss Federal Council has agreed beforehand to make this translation. We now take this opportunity to express, through the kind offices of our President, our appreciation to the Swiss Federal Council for the facilities that they have been good enough to grant, and we should like to assure them of our collaboration whenever they think it will be necessary.

Colonel WANG (China): I should merely like to reply to the Delegate of the U.S.S.R., who, I think, has not fully understood the position of the Chinese Delegation. The Chinese Delegation has no desire to add further complications to the work of the Conference. That is why it has not submitted a formal amendment, but now that we are about to vote on the proposed Russian and Spanish translations, my Delegation would simply like to draw attention to the Chinese language.

The PRESIDENT: We shall now take the vote on the amendment concerning the translations of

the Convention to be made into the Russian and Spanish languages.

The amendment was adopted by 34 votes to 1 with 6 abstentions.

Article 43/46/120/131, with the amendment which had just been adopted, was adopted as a whole by 41 votes, *nem. con.* with no abstentions.

**Articles 44/47/123/132 ; 45/48/124/133 ; 46/49/125/134 ; 47/50/121/— ; 48/51/126/136 ; 49/52/127/137**

The above mentioned articles were adopted.

**Article 50/53/128/138**

The PRESIDENT: We shall now consider Article 50/53/128/138.

Mr. FENEŞAN (Rumania): I should like to draw the attention of the Meeting to the fact that, as a consequence of the decision made with regard to Article 2/2/2/2, which was divided into two parts, reference should be made, in order to avoid confusion, in the first sentence of Article 128 of the Prisoners of War Convention, not only to Article 2, but also to Article 2A/2A/2A/2A. The Drafting Committee might be instructed to insert this reference.

The PRESIDENT: We shall consider the question which has just been raised and we shall return in a moment to Article 50/53/128/138.

I think that the question can be settled without referring it back to a Committee.

**Articles 51/54/129/139 and 52/55/130/140**

The PRESIDENT: We shall now consider Article 51/54/129/139.

This Article was adopted.

**Signature Clause**

The PRESIDENT: Lastly, we must consider the signature clause terminating each of the four Conventions. I declare the discussion open on the clause submitted by the Joint Committee. As no one wishes to speak, I conclude that you are in agreement on this clause and that you have adopted it.

With the exception of Articles 41A/45A/119D/130D and 50/53/128/138, we have thus completed the consideration of the Common Articles.



I should like to take this opportunity of thanking the Chairman of the Joint Committee, Professor Bourquin, Head of the Belgian Delegation, and Colonel Du Pasquier, Rapporteur, for their co-operation, the Report which they submitted to the Conference and the part which they took in the debates on these Common Articles. (*Applause.*)

**Article 50/53/128/138** (*continued*)

I have just been told that the Rapporteur is in a position to make a statement on Article 50/53/128/138, so that we could settle this question immediately.

Colonel DU PASQUIER (Switzerland), Rapporteur: After considering what the Rumanian Delegate has just said, I agree with him. I think it would be preferable to word the opening portion of this Article 50/53/128/138 as follows:

“The situations provided for in Articles 2 and 2A shall give immediate effect to ratifications deposited, and accessions notified...”

Article 2A being in reality a provision taken from Article 2, it is therefore appropriate that ratifications deposited, and accessions notified should apply not only to the obligations assumed by the Contracting Parties as regards international war but also as regards civil war. If it was decided not to quote Article 2A, this would imply that ratifications deposited and accessions notified would be effective in cases of international war, but not in cases of civil war. I entirely fail to understand why such a distinction should be made.

Under these conditions—I am simply expressing my own views and not voicing those of the Committee—I should be prepared to agree to the suggestion made by the Rumanian Delegate.

The PRESIDENT: Is there any opposition to the views expressed by the Rapporteur?

Mr. WERSHOF (Canada): In my opinion it is unfortunate that a point of this kind should have been thrown at us without any notice at the last moment of our consideration of the common clauses. It may be that the Delegate of Rumania thought it was purely a point of having overlooked Article 2A when drafting Article 50, but it does not seem to me to be so, and I must, with great regret, differ from the honourable Rapporteur.

In the first place, the fact that what is now Article 2A was part of Article 2 in the Stockholm Draft but has now become a separate Article, seems to me to be of no importance whatsoever because what we have here as Article 50 was in

one or both of the 1929 Conventions. Unfortunately I have not the text with me, so I am not certain whether it was in both Conventions but it was certainly in one of them: and there was, of course, no reference to civil war in the 1929 Conventions. Therefore the new Article 50 as it stands is a perfectly reasonable Article in relation to Article 2, and—I have been looking back at the precedent of the 1929 Conventions—there is not the slightest reason to drag the question of civil war into Article 50.

I think, however, that there is a more definite reason against referring to Article 2A in Article 50. What is the purpose of Article 50? I must say that Article sometimes puzzled the Canadian Delegation, and it may be that we have misunderstood what its real purpose is. If we have really misunderstood it we shall be grateful if our misunderstanding is removed this afternoon. In another Article of the Convention, it is stated that the instrument of ratification or adherence shall come into force for the country which deposits it, six months after the date of deposit, that is the basis on which we drafted the Convention, namely that if a country ratifies it it will come into force for the country six months afterwards, or if the country adheres to the Convention it will come into force for the country in question six months later. The purpose of Article 50, as we have understood it, is that if, for example, on 29th August 1939 one of the countries which went to war a week later had only at that late date ratified the 1929 Prisoners of War Convention, in the absence of a clause like Article 50, the Convention would not have begun to apply, would not have been in force for that country, until six months later. Everybody agreed in 1929, and presumably agrees now, that that is not desirable, and Article 50 therefore says that, if war breaks out, within the meaning of Article 2 immediate effect shall be given to the ratifications and accessions notified—in other words there will be no six months delay: even if the instrument of adherence is notified after the beginning of the war, it will come into force immediately. It seems to me that that is a reasonable enough provision as regards international war, but at the moment I cannot think of any reason why we should make it apply to civil war. For example, if a country adheres to one of these Conventions and three days later a civil war breaks out within the meaning of Article 2A, I really do not know why the Convention should be deemed to come into force immediately without the six months delay as regards that country.

Finally, I would say that Article 2A has already been the source of much bitter controversy in this Conference. I would have thought that those delegations who are anxious to have civil war mentioned in the Conventions would perhaps have

been satisfied by their partial victory. They have Article 2A, and are presumably content with it, so why they should now desire to reopen the dispute—and I predict that it will be reopened if this proposal regarding Article 50 is pressed—is something that I do not understand, and which I certainly deplore.

The PRESIDENT: I note that there is a difference of opinion on this question, and most of the delegations are not, I believe, in a position to give an opinion. I therefore suggest that each of you should consider this question, and that we should vote on the Rumanian Delegate's proposal at a subsequent meeting.

In principle, I am opposed to referring Articles back, but in this particular case, I think that each delegation should have an opportunity of forming an opinion on a question which is new to most of them.

Do you agree that we should defer taking a decision on this Article, until we take on Article 41A?

It is understood that there will not be a further discussion, but only a vote, since both views have been heard. We have thus completed the consideration of the Common Articles, with the exception of the two Articles to which we shall return later.

#### CIVILIANS CONVENTION

The PRESIDENT: We can now commence the consideration of the last of our Conventions, the Convention for the Protection of Civilian Persons in time of War. I should like to draw your attention to the fact that 62 amendments have been submitted, and this seems to me to be a reason for requesting the speaker in favour of or against these amendments to be as brief and precise as possible. This rule would not seem difficult to observe, since the majority of these amendments, if not all, have already been discussed at great length by the Committee concerned.

I should therefore like to remind you once more of the Recommendations made by the Bureau, which you approved at the beginning of our Plenary Meetings. If the speeches on the same subject were too long or too numerous, the Bureau would be obliged to propose restrictions, either as regards the length of the speeches, or as regards their number.

I think it would be better not to be obliged to impose these measures, and I again appeal to the spirit of discipline which has so far prevailed at our Conference.

I also remind you that we do not have to examine the Articles of this Convention which have been

considered during the discussions on the Common Articles.

We shall immediately proceed with the consideration of Article 3.

#### Article 3

Colonel DU PASQUIER (Switzerland), Rapporteur: Following the recommendations of the Bureau, I have no intention of inflicting on the Assembly a second edition, even an abridged one, of the Report which my colleagues of the Delegation of the United Kingdom and I have the privilege of submitting.

I shall restrict myself to drawing your attention to a green paper which has just been distributed to you and which is not an amendment. It merely deals with the corrigendum which corrects certain typing errors which appeared in the final text of the Report.

This applies only to the French text of the Articles with which I was personally concerned, that is to say, from the beginning to Article 43.

Certain sections of the text would be incomprehensible without these corrections and, for the final publication of the Acts of the Conference, it is absolutely necessary to clear up these points.

The PRESIDENT: We have two amendments to Article 3 which have been submitted, one by the Delegation of the United States of America, and the other by the Delegation of the Union of Soviet Socialist Republics. The first one proposes to place the present fourth paragraph ahead of the present third paragraph. The second one proposes to delete the first sentence in the second paragraph.

I declare the discussion open.

Mr. MOROSOV (Union of Soviet Socialist Republics): As regards the United States of America's amendment to alter the order of the paragraphs of the Article concerned, the Delegation of the Union of Soviet Socialist Republics supports this proposal and will therefore vote in favour of this amendment.

I should now like to make some comments on Article 3 itself. The Delegation of the U.S.S.R. consider that it is a mistake, in principle, to include in Article 3 provisions according to which the nationals of a State which is not bound by the Convention, do not benefit from its protection. These provisions are unacceptable. The aims of the Civilians Convention must be borne in mind. This Convention ensures that the civilian population shall receive humane treatment, forbids any action such as murder or torture, or any arbitrary measures against civilian persons in time of war.

The application of these humanitarian provisions, which are based on the elementary rules of inter-

national law, the conscience and honour of nations, and the traditional standards of conduct generally recognized throughout the civilized world, cannot be subject to criteria of race or nationality. It is clear that these rules should apply, in the same degree, to any category of protected persons, regardless of their civilian status.

The provision which it is proposed to include in Article 3, and which would have the result of denying protection to the citizens of the States which are not bound by the Convention, is contrary to elementary humanitarian principles.

Nor can the said provisions of Article 3 be defended from a legal standpoint. The nationals of any State whatever cannot and must not be held responsible for the actions of a government which, for any reason, has not adhered to the Convention. It is perfectly obvious that the nationals of a State which has refused to adhere to the Civilians Convention cannot be allowed to be victims of acts prohibited by that Convention. How can those in favour of including in Article 3 the provision now under discussion contemplate that the acts committed against the nationals of a State not signatory to the Convention, such as murder, destruction of property, and so on, shall not be punished, as they would be if the victims were nationals of States signatory to the Convention?

The third fundamental argument concerning the sentence in the second paragraph of Article 3 to which I refer, is that it is in flagrant contradiction to the provisions of Article 2 of the present Convention. That Article stipulates that:

“Although one of the Powers in a conflict may not be a party to the present Convention, the Powers who are parties thereto shall remain bound by it in their mutual relations. They shall furthermore be bound by the Convention in relation to the said Power, if the latter accepts and applies the provisions thereof.”

In this way, Article 2 makes it possible for the protection of the Convention to be extended to the nationals of a State which has not explicitly adhered to the said Convention, while Article 3 excludes that category of persons from the same protection. On these grounds, the Soviet Delegation insist on the above-mentioned provision being omitted from Article 3 as being in contradiction with Article 2 and with the spirit and aims of the present Convention.

Mr. WERSHOF (Canada): I wish to speak on the Soviet amendment to delete the first sentence of the second paragraph of Article 3 which reads as follows:

“Nationals of a State which is not bound by the Convention are not protected by it.”

This same amendment was proposed by the Soviet Delegation in Committee III and at the Forty-eighth Meeting held on July 18th. The amendment was rejected by 26 votes to 7, with 2 abstentions. In the face of such a vote one might have expected that the Soviet Delegation would regard the matter as settled. However, the Soviet Delegation apparently think that the first sentence of the second paragraph is so bad that it is necessary for this Plenary Assembly to discuss it once again.

This sentence was not included in the Stockholm Draft. It had not occurred to the Canadian Delegation, and so far as I know, it had not occurred to any other delegation which took part in the Stockholm Conference, that the nationals of a State which refused to accept the Convention could legally demand the status of protected persons under the Convention. However, at Geneva, in the Drafting Committee of Committee III, it became apparent that the Soviet Delegation thought that it was perfectly reasonable that nationals of a state not party to the Convention and refusing to be bound by the Convention should nevertheless be entitled to claim the status of protected persons under the Convention. In the Drafting Committee of Committee III the Soviet Delegate gave as one of his arguments the argument which I think he gave this afternoon, namely that it is not the fault of the individual citizen if his government, for mysterious reasons of its own, does not wish to be bound by the Convention.

In the face of this reasoning, it seemed to the six other members of the Drafting Committee of Committee III that it was essential to put the matter beyond doubt. Accordingly the sentence now objected to was added to this Article in the Drafting Committee by the vote of the Delegations of Norway, Switzerland, France, United States of America, United Kingdom and Canada, on the motion of Professor Castberg of the Norwegian Delegation. In the Meeting of Committee III held on July 18th, when the Soviet Delegate sought to delete this sentence, he did not use the arguments which his Delegation used in the Drafting Committee. He used quite different arguments. During this meeting he said that I had misunderstood his attitude completely, and I now quote from the Summary Record of the Meeting:

“The Soviet Delegation had never assumed that nationals of a State not signatory to the Convention were to enjoy the benefits of the latter except in the case provided for in the third paragraph of Article 2”.

That was certainly quite a different kind of reasoning from the one used in the Drafting Committee of Committee III, and it is a somewhat

different reasoning from that which has been used today. Frankly, I do not know what are the arguments put forward today by the Soviet Delegation.

The main point apparent to the Canadian Delegation, having heard in the Drafting Committee of Committee III the views of the Soviet Delegation, is that it is essential that this sentence should be retained in Article 3. There is certainly a danger that some day it may be argued that a belligerent must accord the status of protected persons in this Convention to citizens of the enemy, even though the enemy government absolutely refuses to accept the Convention. One other argument that has been used by the Soviet Delegation is that there is some conflict between this sentence in Article 3 and the last paragraph of Article 2. That argument was considered by Committee III on July 18th and was effectively rebutted by the Rapporteur on that occasion; we agreed that there was nothing in that argument.

I would add this, although in our opinion, the status of protected persons does not properly belong to citizens of a State who refuses to accept the Convention, such persons have other protections under international law. The idea that if an individual in war time is not a protected person under this Convention therefore it will be legal to murder or torture him is complete nonsense because we had no Convention in the last war, but other international laws prohibited conduct of that kind on the part of a government towards enemy aliens in its hands. Furthermore, in Canada and many other countries, even though no Civilians Convention existed, the government voluntarily gave to enemy aliens practically every right contained in this Convention, including, incidentally, the right of full access to and protection by the Protecting Powers and the International Committee of the Red Cross. However, it is one thing to say that every alien has certain protection under international law or that a government may voluntarily give enemy aliens protection in time of war, and quite another thing to say that these aliens should legally have that protection under this Convention when their own government refuses to become a party to the Convention or be bound by it. For those reasons the Canadian Delegation is absolutely opposed to the Soviet amendment, and hopes that the Conference will decide to retain this sentence in Article 3.

The PRESIDENT: I shall first ask you to vote on the amendment submitted by the United States of America.

The amendment submitted by the Delegation of the United States of America was adopted by 31 votes to 4, with 1 abstention.

The PRESIDENT: We shall now vote on the amendment submitted by the Soviet Delegation.

The amendment submitted by the Union of Soviet Socialist Republics was rejected by 28 votes to 9, with 5 abstentions.

The PRESIDENT: We now have to decide on Article 3 as a whole, with the alteration made by the amendment which has just been adopted.

Article 3 as thus amended was adopted by 31 votes, with no opposition and with 9 abstentions.

### Article 3A

The PRESIDENT: An amendment has been submitted by the Soviet Delegation. It proposes:

1. Delete Article 3A in the wording adopted by Committee III.
2. Complete the Convention, as a result of this deletion, by adding a new Article 102A, reading as follows:

“Persons convicted of espionage and sabotage on the national territory of the belligerent, or in occupied territory, shall be deprived of the right to correspond by letter and by other means of communication provided in the present Convention.”

Mr. MOROSOV (Union of Soviet Socialist Republics): The Delegation of the U.S.S.R. cannot accept the text of Article 3A as adopted by Committee III. This is a particularly important issue, because to maintain Article 3A as it now stands in the Civilians Convention would leave signatory States free to deprive protected persons of their rights and privileges. The question therefore required exhaustive consideration and I ask your permission to speak on it at some length.

The Delegations of the United States of America, the United Kingdom, Australia, Canada, France, and certain other delegations who support this text, are of the opinion that these measures should be taken in the interests of the security of the State by all signatories of the Convention, to protect themselves against spies and saboteurs. It is proposed that such persons should be deprived of the right of communication with the exterior which is guaranteed to persons protected under the present Convention. As regards this argument, the Soviet Delegation agrees that spies and saboteurs should be deprived of the right of communication with the exterior, as stipulated by the Convention. My Delegation therefore proposes to include in the Convention the special Article mentioned above:

This suggestion would, we feel, settle the question of the withdrawal of the right to communicate with the exterior. If this right were not withdrawn, a harmful activity would most probably continue even after the agents had been unmasked.

In view of its substance, it matters little to the Delegation of the U.S.S.R. whether Article 3A figures in other places in the Convention, but nothing can change the Soviet Delegation's point of view on the insertion of the Article in this part of the Civilians Convention.

Were it merely a matter of depriving spies and saboteurs of the right of corresponding with the outside world, as is asserted by those in favour of introducing Article 3A into the Convention, they would have little difficulty in agreeing to the proposal I have just made. These delegations, however, persist in combating the proposal put forward by the Soviet Delegation and press for the maintenance of Article 3A as adopted by the Joint Committee. This is positive proof that the real intentions of those delegations which insist on the inclusion of Article 3A are not consistent with the motives they allege in support of their view. Moreover, the provisions of Article 3A go much further than the motives which are given and on which the text of Article 3A is based.

A glance at Article 3A will convince us that to deprive any protected person on the territory of a belligerent of the rights and privileges provided by the Convention is to express suspicion of him. I would ask you to note that this wording arouses suspicion in respect of the person thus accused of activities hostile to the State. This would lead to all aliens who are nationals of an enemy country being suspected of activities hostile to the Power on whose territory they may be during the war. Thus, any protected person whatsoever on belligerent territory may easily be placed on the list of persons suspected of activities hostile to the State.

I must also add that Article 3A makes no provision for investigation and clarification of the accusations or the suspicions laid against protected persons. Consequently, any policeman will be in a position to state that he suspects any alien of committing acts hostile to the State; and that will be enough, not only to cause this person to be interned or committed to an assigned residence, but also to deprive him of all rights and advantages under the present Convention. Such a proposal spoils the effect of the whole work which we have been seeking to build up in this Convention which safeguards in such detail protected persons on the territory of a belligerent. These stipulations are therefore in flagrant contradiction with those concerning the internment of aliens on belligerent territory, included in the present Convention.

Internment may be ordered just because it is impossible to leave certain aliens who are nationals of an enemy country at liberty if they are likely to endanger the security of the country where they may be. In the opposite case, that is to say if the persons concerned are not suspected of wishing to commit acts contrary to the security of the State, aliens cannot be deprived of their liberty and cannot be interned.

Finally, if for reasons of security of the State, it is necessary to intern such or such a person and if internment takes place in accordance with a clearly defined procedure, judicial or administrative, which ensures its lawfulness, the interned person retains the rights and privileges accorded to him under this Convention.

This is precisely the sense of a series of Articles of the Civilians Convention concerning aliens on the territory of belligerent Powers. In these circumstances, since we have provisions relative to the internment of foreigners in the territory of belligerents for reasons of State security, it is unnecessary to include in the Convention provisions contained in Article 3A. Clearly the provisions of these Articles sometimes duplicate the provisions of Article 32 and other Articles of the Civilians Convention. Contrary to the stipulations of these Articles, it is proposed in Article 3A to deprive aliens who cannot be left at liberty for reasons of State security of all the rights and privileges of the present Convention. As I have already said, what is proposed is to a certain extent reprisals against aliens suspected of activity hostile to the State. They are to be detained in conditions which eliminate any possibility of control over the legality and justification of decisions of this kind. It is clear that this is equivalent to excluding from the Convention the provisions contained in Article 32 and the other Articles concerning the treatment of protected persons who have to be interned during the war for reasons of State security.

Have we worked here these three months, have we discussed for so long and in such detail the provisions relative to the treatment of aliens who are citizens of an enemy country and are on the territory of a belligerent Power in time of war, in order, at the end of our work, to adopt a final text of the Convention which includes an Article that may render the provisions of this same Convention null and void?

The arguments of those who are in favour of the present text of Article 3A can be summed up as follows: this Article is in no way dangerous, they say, for there is no question of depriving certain aliens—"individual" aliens, if I may use the term—who are nationals of an enemy country, of the rights and privileges granted by the Convention.

This contention cannot stand. It follows from

the text of Article 3A that, individually, hundreds, thousands and even tens of thousands of persons may be deprived of the protection of the Convention. True, these measures may be implemented on an individual basis, but the total sum of cases will nevertheless represent tens of thousands of persons.

In the second paragraph of Article 3A, it is proposed to withdraw the right of communication with the outside world from persons arrested as spies or saboteurs or suspected of activity hostile to the security of the Occupying Power. If the supporters of Article 3A wished to make use of this provision for the sole purpose of withdrawing the right of communication with the exterior from persons regarded as spies or saboteurs, they could have accepted the text of the new Article in the wording proposed by the Delegation of the Union of Soviet Socialist Republics. But the fact is that it is intended to deprive these persons not only of the right of communication but also of the other rights and privileges conferred by the Convention. This is clearly implied in the text of Article 3A, third paragraph. Let us consider the wording of this paragraph: it concerns persons who are on the territory of a belligerent Power, or individuals among the civilian population of occupied territory who are suspected of hostile activity. It is proposed to deprive them of the rights and privileges conferred on protected persons by the Convention, which are inconsistent with the security of the State or of the Occupying Power, as the case may be.

The second paragraph of Article 3A, however, deals with persons in occupied territory who are suspected of hostile activity. These persons can only be deprived of the right of communication with the outside world. Those responsible for Article 3A forgot this provision when they went on to the third paragraph. It would, in fact, be logical in this last paragraph to state that protected persons in occupied territory would be entitled to communicate with the outside world. In the third paragraph of Article 3A, it is stated instead that these persons shall be granted at the earliest date the full rights and privileges consistent with the security of the Occupying Power. In other words, it is assumed that these persons may be deprived of other rights and privileges stipulated in the Convention, apart from the right of communication.

To provide this preposterous edifice with a proper façade, the sponsors of Article 3A have decided to include among these provisions a stipulation laying down that the persons mentioned in the preceding paragraphs shall nevertheless be treated with humanity and in case of trial shall not be deprived of the rights of fair and regular trial prescribed by the Convention. This stipulation simply disguises the facts. It has no bearing whatsoever on aliens who are in the territory of

a belligerent, because infringements committed by these persons must be brought before the competent courts of that country and tried in accordance with a form of procedure not covered by the Convention. Nor has this stipulation any bearing whatsoever on members of the civilian population of occupied territories suspected of activity hostile to the State. Article 3A states that this category of persons may be deprived only of the right of communication with the exterior. Why, therefore, also specify that these persons cannot be deprived of the rights of a fair trial? That right is ensured by Articles 59, 60 and others of the Civilians Convention. Thus, a fair and regular trial and humane treatment are merely required in Article 3A to obscure the meaning of that Article, which is thus in contradiction with the spirit and the aim of our Convention. What has been said about alien nationals of an enemy Power who may be in the territory of a belligerent is even more applicable to the civilian population of occupied territories.

I would like to ask the originators of Article 3A, and those who light-heartedly support it, whether there is in the whole world a country whose citizens would be loyal to the Occupying Power. There may be Quislings, but never a whole nation which will welcome the occupant with open arms. Under the terms of Article 3A it is enough that a person in occupied territory should be suspected, considered as dangerous and assumed to be carrying on activities hostile to the Occupying Power, for that person to be deprived of the rights and privileges provided by the Convention. If it were our task to set up a police organization or occupation statutes, then Article 3A might be included. But we are here to draw up a Convention for the protection of the civilian population and that being so it is perfectly plain that the text of Article 3A is unacceptable. It cannot be approved, either from a political or a legal point of view.

The Delegation of the Union of Soviet Socialist Republics presses with the utmost urgency that Article 3A should be excluded from the Convention. My Delegation repeats that the proposal it made to draft a new Article would fully ensure the security of the belligerents, and that of the occupying Power, and would enable them to deprive persons convicted of espionage and sabotage in the national territory of the belligerent, or in occupied territory, of the right to communicate with the external world.

Mr. GINNANE (United States of America): Article 3A as adopted by you in Committee III by 29 votes to 8, represents a careful compromise solution of the difficult security problem. It attempts to protect the security of States and, at the same time, to protect the fundamental rights of individual

men. The text of Article 3A speaks for itself and I shall not reply to the misinterpretations of it which you have just heard. The Soviet amendment, which applies only to spies and saboteurs after they have been convicted, clearly does nothing to meet the legitimate security problems of States. For that reason the United States Delegation strongly urges the rejection of the Soviet proposal to delete Article 3A.

Mr. SINCLAIR (United Kingdom): This subject has already been exhaustively dealt with and I do not propose to go any further into the general merits and needs of an Article like the one we are now considering, but I should just like to give an answer to one or two of the points which have been raised by the Soviet Delegation.

One was that anybody could be just suspected of being hostile to the State by, I gathered, practically anybody in the State at all and would thus be caught by this Article. It is quite clear that that in no way represents the intention or effect of this Article. Nobody can be deprived of protection under this Article unless he is definitely suspected of a hostile act.

Following much the same line of argument, it was then said that there would be nothing to prevent a policeman from taking up somebody under this Article and depriving him of the rights of this Convention if he thought fit to do so. Well, Brother Delegates, I just ask you to look at this Article and see, in the first place, that it is stated quite definitely that the person which has to be satisfied as to whether somebody is in fact definitely suspected of hostile activity is no less a body than the State itself. Can it really be suggested that with that onerous and very serious duty thrust upon it by this Article, any responsible State is going to allow a decision for which it holds such a responsibility to be made by a policeman?

A further point which I should just like to mention is that it was stated that the provisions with regard to restoring the rights under the Convention to people once they were no longer required to be deprived of them, and in particular the prescription of proper rights of trial, really meant nothing; it was therefore rather surprising to hear it suggested that the last provision was not necessary because of the fact that we already had Articles 59 and 60, for surely if you read Article 3A, giving it its fullest meaning, then it would be possible for Articles 59 and 60 to be abrogated under its provisions. Those who were responsible for the framing of Article 3A were quite satisfied that there could on no account be any possible occasion upon which anybody, whatever act they did, could not have a fair trial and that is why the provision in question was put in, and if it had not been put in it might have been

said that there was no particular reason why that right should not have been taken away. Lastly, I should just like to comment on the remark made that if we have this very limited Article it will spoil the effect of the whole work which we have been seeking to build up in the construction of this Convention. Surely that is a somewhat large overstatement, to put it no more strongly, because it seems to me that the arguments put forward against this Article completely overlook the fact that the people with whom we are generally dealing here are people who have entered the country of the Home Power in time of peace and with their permission, and who have taken all that the country had to give them and have turned out to be conspirators and traitors in war-time against the country which has sheltered them. I personally, Brother Delegates, am genuinely no less a humanitarian than anybody else among you, but is it not being a little extravagant to feel so much tenderness for people of that kind when the issue at stake is the security and lives of our own men, women and children in belligerent territory, and the security of your own military forces in occupied territory?

There is just one further point which I should like to make, and that is that I think it must have been owing to a little excessive enthusiasm for the type of person whom I have just been mentioning that the Soviet Delegate overlooked, I think, the true position in one of his final phrases, because he certainly gave me the impression of saying that the effect of this Article as applied to occupied territory was that they could be deprived of all the rights in the Convention. That, I need hardly say, would not be a correct representation of the picture because it is quite clear that in occupied territory all that is being proposed is to deprive these suspected—and definitely suspected—persons of the rights of communication.

Mr. MEVORAH (Bulgaria): It is very difficult to be the last speaker and at so late an hour. I shall endeavour not to try your patience too much. But I must speak because I feel very strongly that matters have not yet been clearly and sufficiently explained. I do not think this debate has been exhausted yet. This is a serious issue and in my opinion we must pursue it to the end and have the courage to go to the root of the matter and adopt a really just and beneficial solution in order that our consciences may be clear and we may have the satisfaction of having done our duty.

Though many arguments have already been put forward and debated in the Committees, I feel that it is also our duty to say what we think and to endeavour to throw the greatest possible light on the question.

There is one point on which we thoroughly agree; that is that while the requirements of individual security cannot be ignored, the requirements of the security of the State must also be considered. Up to that point no really serious divergencies separate us. It is when we try to strike a balance that difficulties arise. Where should we draw the limit? Where must we draw what I can only call the crucial line? We are all the victims of a sort of impotence of expression—forgive me using this term—which is typical of mankind. We think, we feel, but we must admit that we are ill-equipped to express our ideas clearly and that we are thus reduced to approximate statements.

I feel that the wording of the proposed text is not very apt. If we gather round a table to discuss how this text should be worded, I do not doubt that after three minutes we shall conclude that the task is too difficult. I will explain what I mean:

First of all the expression in the first paragraph “serious grounds” (*sérieuses raisons*): I suppose that doubtless this means, for example, that no one can be imprisoned, deprived of light, refused the right to correspond with a relation, a friend, a mother, a wife and so on, without due reason. This is certainly what all the delegates who supported this text stated, but they are obliged and I too am obliged to go somewhat further; the rest of the sentence must be understood: “serious grounds” (*de sérieuses raisons*)... but grounds of what? To what end? If this were all, then this wording might be a little more acceptable. Is it a matter of being satisfied, for example, that the prosecution of any person is justified? No—all that is said is: “is satisfied that an individual person is definitely suspected...”.

It is from this point that I fail to understand the text: “serious grounds for suspicion...”. It is as if one said: “serious grounds for not being serious...”. I cannot find any terms which are more adequate or conclusive; the difficulty of finding adequate words to express one’s thoughts is always a handicap and I am doubly handicapped by speaking a language which is not my own.

The wording is therefore: “serious grounds for suspicion...”. It is true that the word “...definitely...” is added, but once more I ask, suspicion of what? Here several notions are added, such as espionage and sabotage. This is not all, however; it is further said: “suspected of or engaged in activities hostile to the security of the State...”. Once before, when confronted with this term, I failed to understand—and do not understand even now—what is meant by “activities hostile to the State”. I have already said and I still say: this might be interpreted to cover just anything. In its own territory, or in territory which it occu-

pies, a State cannot prosecute citizens or protected persons except for hostile activity, because any offences against common law come within the competence of the regular Courts of the country. In the case of activity which is to the advantage of the State, it is clear that there will be no question of prosecuting persons engaged in such activity.

In fact, any act liable to be interpreted as being directed against the State would constitute hostile activity. This is a truism. But if that is so, what is left apart from this idea? Hardly anything; that could be proved by a few examples, of which I could quote any number. It is clear that a person definitely charged with espionage or sabotage will be prosecuted. There is no doubt on this point. It is possible, however, to imagine the case of a person who, in the territory of a belligerent Power or in occupied territory, has formed a small group whose members exchange unofficial news, listen to the foreign radio in the evening or at night, spread this news abroad, and print as best they can a small underground newspaper which they distribute; other people will buy it, will read it or will, perhaps, make financial contributions towards its publication and distribution. We have here a very wide and elastic conception, an almost unlimited list of activities which might be regarded as hostile to State security. I question whether complete forfeiture of rights and privileges as stipulated at the end of the first paragraph, could really be imposed for all activities of this kind, on the grounds of suspicion against persons who are alleged to have taken part in such activities. Or, again, partial forfeiture might be decreed, in accordance with the provision at the end of the second paragraph. In my opinion, such measures would be too severe, since we have conceived and drafted all these provisions as a means of limiting, in one way or another, the somewhat excessive activities and powers of the State, in order to ensure that humane principles are respected and that individuals are more adequately protected against legal proceedings which may perhaps be too lightly instituted.

But in that case, all the provisions which we have attempted to lay down with this aim in view would become null and void.

I should no doubt express myself more briefly; I have no intention of making a long speech on this point, or of putting forward futile suggestions. I am attempting to deal with concrete cases. If our real intention is to safeguard the State against the activities of spies and saboteurs, let us have the courage to say so frankly, and to delete this unfortunate phrase which refers to persons engaged “in activities hostile to the State...”.

It is further alleged that the forfeiture of rights and privileges which is mentioned here is not



such a serious matter, and that, in the circumstances described at the end of the first paragraph, the consequence will not be that the persons concerned are deprived of all the rights enumerated by the Convention. This is poor consolation. Let us be frank; in the case of persons mentioned in the first paragraph the following phrase is used: "deprived of all rights and privileges...". What is the exact position, then? I would certainly presume too far on your patience and indulgence if I attempted to enumerate all the rights and privileges which should be assured to a person who has been prosecuted, accused, convicted, or even merely suspected of activity hostile to the State and which this person should now forfeit. It would be another almost endless list. I do not understand therefore why we have drawn up this list, if we are going to render it practically meaningless by subsequent provisions which, as a previous speaker has said, are intended to meet a theoretical situation based on the flimsiest premises.

As regards the second paragraph, it is true that the forfeiture of rights and privileges is less extensive; it is a minimum forfeiture. Here it is a question of occupied territory and the forfeiture of all rights relating to correspondence and communication, which is stipulated again with regard to the same cases of espionage and sabotage. Moreover, to my distress, the following words have been added: "any activity hostile to the security of the Occupying Power". To reassure us, it has been said that these restrictions only amounted to the forfeiture of the right of correspondence or communication. We would do well to make this point clear, in order to avoid the danger of this provision being interpreted differently by different people, or not understood by those who have to implement the Convention. If this is the way in which you understand the matter, I beg you to say so. It would be simpler, straightforward and might make it possible for us to agree.

I have gradually come to the Soviet amendment. Having listened very carefully to the criticism with which it has met, I particularly remember what the French Delegate said. His criticism did somewhat shake me. In particular, he said that we were agreed to prosecute saboteurs and spies.

It was feared that it would be going too far to state that complete forfeiture of rights could be imposed, on suspicion alone. If it is necessary to take action against a spy who has been found guilty, it is also necessary to prosecute a spy who is not under sentence, but against whom judicial proceedings are pending.

The accused person must not be allowed to conduct his defence by lies or to carry out his

hostile intentions by communicating with the outside world. In this case, it is precisely the security of the State which is at stake.

I venture to make a suggestion which will be the conclusion of my speech. This suggestion is drafted, as it were, on the Soviet amendment. It is to add to the spies and saboteurs mentioned therein, persons against whom judicial proceedings are pending for sabotage or espionage.

I think that in this way the fundamental intention of the promoters of the official proposal would be realized, while at the same time the official wording, which I consider unfortunate, would be improved. We would thus have removed from this text the notion of suspicion, and of the prosecution of persons who have engaged in activity hostile to the State.

Colonel HODGSON (Australia): My Delegation was one of the sponsors of this Article as finally drafted and it is surprising to hear this afternoon that our motives have been questioned and to be told that we were deliberately trying to get round the Convention. This particular Article has been before the Plenary Assembly longer than any other Article as it was first raised on the 26th July. It was longer with the Drafting Committee than any other Article, and it was not until the 18th July that the vote was taken on this Article in Committee III. Now, at this late stage, after every angle has been most exhaustively discussed, the Delegate of Bulgaria calmly comes up and tells us: "Let us sit round the table and we will soon reach agreement, probably in an hour or so" when it has been discussed for months and months. The agreement reached in all respects is not only a reasonable compromise, if you like to call it that, but also a merging of various viewpoints. It certainly does not go so far as the original Australian proposal and what my Government wanted. Even so, you would think this afternoon that our main purpose in coming to this Conference was to draft Conventions or Articles for the protection of Quislings, saboteurs and traitors. We are not and it seems to me that it is quite wrong in principle for an Article which has been decisively defeated two or three times in the various Working Parties, Special Committees and main Committees to be brought up repeatedly, and all this time taken over it.

I can quite understand a delegation, when the voting is close in a thin Committee, that is to say, when the voting is 13 to 14, or 15 to 16, coming back with an amendment. In such a case, I think it is the duty of a delegation responsible for an amendment to submit it to the Plenary Assembly to test the feelings of the whole Conference, but to expend so much time and, through the medium of this particular Convention, to

tackle sheaves of amendments on Articles which have been overwhelmingly defeated, using exactly the same arguments over and over again is, I suggest, quite wrong. It must also be remembered that the vote taken on the 18th July was only taken after a very long discussion. The Conference this afternoon is in fact being told that it was ill-informed and unintelligent and that it should reverse its vote within a few days. My Delegation will do nothing of the kind. We think that sufficient time has been taken up on this Article and I move the closure of the debate, and I hope that other delegations will move the closure of the debate in subsequent Articles where the previous voting has been similar to the voting on this Article. I formally move the closure of the debate.

The PRESIDENT: I have no other speakers on my list and I think that we can now vote, even without discussing the proposal submitted by the Australian Delegation.

Mr. MEVORAH (Bulgaria): I wish to add something...

The PRESIDENT: I call upon you to speak, but only on the amendment submitted by the Australian Delegation.

Mr. MEVORAH (Bulgaria): I think that enough has been said on the matter...

The PRESIDENT: So do I...

Mr. MEVORAH (Bulgaria): ...and I will not even speak on the closure of the debate.

The PRESIDENT: I think that would be useless...

Mr. MEVORAH (Bulgaria): But I must raise another point. I would wish my suggestion to be considered as an amendment and put to the vote.

The PRESIDENT: The Delegate of Bulgaria made a proposal just now which may be considered as a sub-amendment to the amendment submitted by the Delegation of the Union of Soviet Socialist Republics. I think we are in a position to decide on this sub-amendment immediately. Will the Delegate of Bulgaria kindly repeat the text of his amendment, to enable the Meeting to get a clear idea of the issue involved?

Mr. MEVORAH (Bulgaria): This is the text:

"Persons judicially prosecuted for espionage and sabotage, as also persons convicted for the same reasons, or on the same counts of indictment, in the national territory of the belligerent,

or in occupied territory, may be deprived of the right to correspond by letter and by other means of communication provided in the present Convention."

The addition to the Soviet amendment appears at the beginning of the text and consists of the terms: "Persons judicially prosecuted for espionage and sabotage..."

The PRESIDENT: I call upon the Delegate of the United Kingdom to speak, but only on the question of the vote.

Mr. SINCLAIR (United Kingdom): On a point of order, Mr. President. I want to object on behalf of the United Kingdom Delegation, to an amendment being introduced in this manner at this stage, which is quite inconsistent with the Rules of Procedure, and is without notice. I do not think anybody would say that this does not involve a question of substance.

Colonel HODGSON (Australia): I wish to raise a point of order before the Soviet Delegate commences to speak. I have formally moved the closure of the debate. After that you will have no amendments or any further motions: under the Rules if anybody desires to speak one delegation may speak for the closure, and one against and then the vote must be taken, but as nobody asked to speak for or against, then the position is, I respectfully suggest, that the vote should be taken immediately.

The PRESIDENT: The closing of the debate is not in question. Speakers who spoke after the point of order had been raised by the Delegate of Australia did so simply and solely on the question of the vote. The Delegate of Bulgaria made a verbal proposal. I think that it would be inadvisable to defer this Article to a subsequent debate, and that the Meeting is now in a position to vote both on the verbal proposal and on the amendment submitted by the Delegation of the Union of Soviet Socialist Republics.

I call upon the Delegate of the Union of Soviet Socialist Republics for a short statement dealing exclusively with the question of the vote.

Mr. MOROSOV (Union of Soviet Socialist Republics): I wish to state that the Soviet Delegation agrees with the proposal just put forward by the Delegate of Bulgaria. There are not therefore two proposals before us, but one, a Soviet amendment with a sub-amendment submitted by the Bulgarian Delegation.

On the other hand, the Delegate of the United Kingdom has spoken, and not on the point of

order. Rule 25 of the Rules of Procedure leaves it to the President's discretion to call upon a delegate to speak when a proposal or an amendment justified his doing so by its brevity, its clarity and its relative unimportance.

The Bulgarian amendment is a case in point, for all it says is: "...persons who are the object of judicial prosecution...". This is simple, clear and brief.

It raises no new point, and the President has the right to authorize the discussion of this sub-amendment, especially as the movers of the amendment themselves agree.

On the other hand, in view of the obvious pressure which is being brought to bear on some delegations, I move that the Meeting should proceed to a secret ballot.

The PRESIDENT: I note that we have before us at the present moment a single amendment submitted by the Delegation of the Union of

Soviet Socialist Republics with a sub-amendment submitted by the Delegation of Bulgaria.

The Soviet Delegation supports the text submitted by the Delegation of Bulgaria.

A proposal has been made for a secret ballot. You have now to vote on that proposal.

The proposal submitted by the Delegation of the Union of Soviet Socialist Republics was rejected by 14 votes to 13, with 15 abstentions.

The PRESIDENT: We will therefore proceed to vote by a show of hands.

The delegations in favour of the amendment to Article 3A submitted by the Delegation of the Union of Soviet Socialist Republics are requested to raise their hands.

The amendment was rejected by 25 votes to 9, with 6 abstentions.

Article 3A as a whole was adopted by 29 votes to 8, with 4 abstentions.

*The meeting rose at 7.35 p.m.*

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## TWENTY-FOURTH MEETING

*Tuesday 2 August 1949, 10 a.m.*

*President: Mr. MAX PETITPIERRE, President of the Conference*

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The PRESIDENT: The Delegate of France has the floor on a point of order.

### **Time-limit for speeches**

Mr. CAHEN-SALVADOR (France): I am taking the floor today on a point of order, but certainly not out of a love of procedure. We make a lot of procedure—in my opinion, a great deal too much—but there are cases where procedural points may serve the aims and the intentions of the whole Conference. It is to meet a wish which I have heard expressed by a great number of delegations that I take the liberty, as one of the veterans of the Conference, to submit that desire to the Chair.

Yesterday we began to consider the Civilians Convention. In three and a half hours work, we were able to vote on only two Articles. We are

now reaching the closing stages of this Conference and it is to be feared that if we do not curb the often persuasive eloquence of our colleagues we shall prolong this Conference into its fourth month. However, despite the agreeable and friendly hospitality of the Swiss Confederation, and of Geneva in particular, a great many of us have other duties and after three months and a half of conference work we should like, in full agreement, to be able to close these debates.

The French Delegation considers that the best means to this end would be to limit both the time allowed for speakers and the number of speeches. The self-restraint for which the President has often called, does not seem to have produced the desired results. I base my remarks on our experiences during my Chairmanship of Committee III; on June 7th, with the full agreement of all present, we set a limit of five minutes for individual

speakers and ten minutes per delegation on the text of an Article or an amendment. The Bureau of Committee III proposed this regulation which was unanimously accepted and applied by that Committee.

On June 23, the Bureau of the Conference drew attention to this measure and recommended that all Committees should consider its possible application in the Plenary Assembly. So far, with his usual courtesy, our President has avoided making that ruling obligatory. I would, however, remind him of the decision of the Bureau and of Article 27 of the Rules of Procedure, which states that the Conference, either in Plenary Meeting or in Committee, may at any time on a point of order and a formal motion, limit the length of speeches. In the interest of the success of this Conference, and in the interest of all concerned, therefore, I take the liberty of recalling this rule, for repetitions do not make the smallest contribution to the result which we have in view whilst they sometimes have an unfortunate effect.

Furthermore, as we are concerned with the physical, moral and intellectual integrity of civil populations in time of war we should consequently also be concerned with the physical integrity of our colleagues in peacetime.

In this spirit and for these various reasons, I venture to suggest that the Chair might follow the precedent whereby Committee III was enabled to finish its work within the allotted time. I therefore request the President to ask the Conference to apply similar if not identical regulations, so that we may bring our work to a close within the time limit which had been originally fixed. At the same time, I appeal to the Conference for unanimity on this motion.

The PRESIDENT: We have before us a point of order; in accordance with the term of Rule 30 of the Rules of Procedure two speakers may address the meeting, one against and one in favour.

Personally, I accept this point of order as I believe that it has become necessary to limit the length of the speeches. Our experiences up to the present justify a measure of this description.

Mr. PASHKOV (Union of the Soviet Socialist Republics): When discussing the first three Conventions, no procedural motion was tabled to limit the length of speeches and the number of speakers. Yet all the problems involved were very thoroughly studied and our discussions were crowned with success.

It usually happens in families that the eldest child is more spoilt than the others. We are doing the same thing. The first Conventions were granted every privilege but now we have arrived at the last we are inclined to neglect it.

The last Convention is the most complicated and the most important. It has called for harder work and will still require much more detailed study than all the others.

I do not think it is necessary at present to adopt this point of order on the limitation of speeches and of the number of speakers.

For the time being I think that, without adopting a formal rule, the President could, in each particular case and when the necessity is quite clear, limit the length and number of speeches.

It should be sufficient for the moment to leave the matter in the President's hands as we must first of all see how our work is likely to proceed.

The Soviet Delegation therefore believes that it would be premature to take such a decision after only one day's discussion of the Convention.

The PRESIDENT: We will now proceed to the vote.

The point of order submitted by the French Delegation (to limit the length and number of speeches) is adopted by 22 votes to 10, with 10 abstentions.

The PRESIDENT: The principle we have adopted is that speeches should not last more than five minutes and that the length of speeches should be limited to ten minutes per delegation, when several speakers of the same delegation wish to take the floor.

### Signature of the Conventions

The PRESIDENT: This question was examined by the Bureau of the Conference during its Meeting on July 28. Its decision is contained in a document which has already been distributed (*see Annex No. 403*). A decision now has to be taken by the Assembly. I will ask you to vote on the proposals submitted by the Bureau.

The proposals submitted by the Bureau were adopted.

## PRISONERS OF WAR CONVENTION

### Article 109 (*continued*)

The PRESIDENT: This Article was referred to a Working Party, which has embodied in it an amendment adopted by the Assembly. It proposes a new text for the fifth paragraph:

"Prisoners of war against whom criminal proceedings for an indictable offence are pending may be detained until the end of such proceed-

ings, and, if necessary, until the completion of the punishment. The same shall apply to prisoners of war already convicted for an indictable offence."

Are there any remarks on the proposal of the Working Party?

Mr. WERSHOF (Canada): I do not wish to speak on it, but would be glad if it could be put to the vote because we wish to vote against it.

The PRESIDENT: We shall now vote. Delegations accepting this Article as drafted by the Working Party will please signify their approval.

Article 109 was adopted by 30 votes to 1, with 3 abstentions.

#### COMMON ARTICLES

##### Article 50/53/128/138 (continued)

The PRESIDENT: The vote on this Article was deferred to this morning's meeting, following a proposal by the Delegation of Rumania to insert a reference to Article 2A in the Article under discussion.

This question was already discussed yesterday. I take it that all the delegations are now in a position to come to a decision, and we will therefore proceed to a vote. Delegations in favour of the proposal of the Delegation of Rumania to insert in this Article a reference to Article 2A are requested to signify.

The proposal of the Delegation of Rumania was adopted by 28 votes to 2, with 10 abstentions.

The PRESIDENT: We will now proceed to take a vote on the Article as a whole. Delegations in favour of this Article are requested to signify.

The Article was adopted by 38 votes to none, with 2 abstentions.

#### CIVILIANS CONVENTION

##### Article 4

The PRESIDENT: An amendment has been submitted by the Delegation of the United Kingdom, proposing the deletion, in the second paragraph, of the words "one year after" and their replacement them by "on".

Mr. FENEŞAN (Rumania): Before speaking on the substance of Article 4 of the Civilians Conven-

tion, I should like, for the reasons I explained yesterday in connection with Article 50/53/128/138, to draw the attention of the Conference to the necessity of filling a gap by inserting a reference to Article 2A in the first paragraph of Article 4. To explain what I mean, I venture to make a brief reference to certain points.

During the first reading, on April 27, no reservations were made to the first paragraph of Article 4 of the Civilians Convention. The Drafting Committee of Committee III prepared, on July 6 (see *Annex No. 198*), the text of Article 4, without any change in the first paragraph, and this Article was also adopted by Committee III at its Meeting of July 8, 1949.

Consequently, as explained by the Rapporteur of Committee III, there was no difficulty with regard to the disposition concerning the commencing date for the application of the Civilians Convention; but at the time when Article 4 of the Civilians Convention was adopted, it had not yet been decided to subdivide Article 2, as it was only on July 20 that in the Joint Committee the text of Article 2A was adopted in a form which provided for splitting it up into two separate Articles, 2 and 2A. It was therefore impossible to refer at the time to Article 2A, but only to Article 2, the fourth paragraph of which, in the Stockholm text, covered the application of the humanitarian provisions of the Civilians Convention to the case of wars not of an international character. This is shown by the fact that on May 9, when the fourth paragraph of Article 2 was under discussion, the Special Committee of the Joint Committee decided, by 10 votes to 1, with 1 abstention, to extend the application of at least a portion of the Convention to armed conflicts not of an international character.

To sum up, when Article 4 was adopted, the subdivision of Article 2 had not yet been effected; and by referring to Article 2, the intention was to refer also to the cases covered by the fourth paragraph of Article 2 and, subsequent to the adoption of Article 4, by Article 2A.

For the above reasons, the Rumanian Delegation considers that it would be necessary, and logical, simply to reestablish the position envisaged by Committee III when it adopted Article 4.

Mr. SOKIRKIN (Union of Soviet Socialist Republics): The Soviet Delegation could not accept the proposal of the United Kingdom Delegation to establish, in the second paragraph of Article 4, that the application of the Convention in belligerent territory shall cease immediately on the close of hostilities instead of one year after the general close of military operations as provided in the text adopted by the majority of the Committee. His Delegation is of the opinion

that the arguments relied on by the United Kingdom Delegation in support of its amendment rest on very precarious premises.

The United Kingdom Delegation said that if the text of Article 4 was to be adopted in its present form, it might serve as a pretext for prolonging the internment of protected persons, after the need for that measure had disappeared. We consider that this argument is not sound; the internment of protected persons can and must come to an end, even before the close of hostilities, as soon as the reasons for this measure cease to exist. Further, the stipulations of the Convention on the reconsideration of decisions concerning internment, and also the terms of Articles 121 and 122, lay great stress on this point.

If the proposal of the United Kingdom Delegation were accepted, the obvious conclusion would be that the effects of the Convention are to cease with the end of hostilities; or, in other words, that the protection conferred by the Convention on aliens who are nationals of an enemy State would automatically cease when the last shot was fired. It must be remembered that the close of hostilities obviously cannot and does not signify the immediate resumption of normal relations. Inevitably certain time must elapse before such relations can be resumed and it was for this reason that the Convention provided for a further period of one year. This is a necessary condition for the efficient protection of the interests of aliens on belligerent territory during the period which immediately follows the close of hostilities.

Colonel DU PASQUIER (Switzerland), Rapporteur: The Rumanian Delegation has again raised an interesting and delicate question and I feel that, as Rapporteur, I should submit my views on the subject.

As we did in the case of the common Article 50/53/128/138, I think we should accept the suggestion of the Rumanian Delegation to embody in Article 4, not only the reference to Article 2, which already appears in the first paragraph, but also a reference to Article 2A. It is true that the latter only provides for a limited application of the Convention, an application restricted to the great humanitarian principles. The terms "shall apply", or, subsequently, "application", should refer to application within the limit fixed by Article 2A. No serious drawbacks are to be feared at the outset of the application of the Convention apart from some practical difficulties that might be encountered; for the period dating from the end of the conflict it would also be advisable to retain the time limit of one year mentioned in the second and third paragraphs of Article 4.

I would also point out that as regards occupied territory—and this may also apply in the case

of civil war—the maintenance of the provisions of Articles 1 to 10, which clearly included 2A, is expressly stipulated at the end of the third paragraph.

It seems to me, therefore, that the Conference, if it is to be consistent, should adopt the proposal of the Rumanian Delegation, as it has already done in regard to Article 50/53/128/138.

Mr. SINCLAIR (United Kingdom): As is stated in the note accompanying the amendment to Article 4, which has been put forward by my Delegation, the point here is a very simple one. Under the final paragraph of his Article, protected persons whose release, repatriation or re-establishment may take place after such dates—that is, the dates on which the Convention will generally cease to apply—shall meanwhile continue to benefit by the present Convention. Accordingly, all the people who would normally be affected by this Article on the home territory of a belligerent are duly safeguarded. Therefore it seems to my Delegation that there can be no advantage—it is pretty certain that it would go the other way—in continuing to apply this Convention after the cessation of hostilities on the home territory of a belligerent. It is quite true that another Article says that internment has got to cease as soon as military conditions no longer require it, but you cannot get away from the fact that, if in fact there is a provision in this Convention which makes it absolutely clear that it will be regarded as quite the normal thing for this Convention to go on applying for a year after hostilities end, it may, at any rate, be still much easier for some country that may have some special motive for wanting to keep, say, one particular class of internees interned longer than might really be justified because they have at any rate then got what they can put before the rest of the world—the definite sanction for continuing to apply this Convention for another year. If, in fact, the Convention were to be terminated on the conclusion of the hostilities, that possibility would be entirely obviated.

Therefore, having regard to the further fact which I think once again is being overlooked, and which I mentioned in another connection from this rostrum yesterday—that is, that the people this Article is going to affect in the home territory of a belligerent are people who had come into that country of their own free will before the war and thereby assumed the rights and obligations of ordinary citizens—they will automatically on the cessation of hostilities merely be restored to the same position that they were in before, alongside the home citizens of the country in which they have been detained.

The PRESIDENT: I must request the United Kingdom Delegate to terminate his speech as his allotted time is now up.

Mr. SINCLAIR (United Kingdom): I am just finishing. Therefore they will merely be like everybody else, returning from measures of control which have had to be exercised over them because of war time emergencies, but as most of them will have done nothing whatsoever to have aroused any enmity against them in the country where they have been detained, their object will be, like the citizens of that country, to get back to normal conditions and exercise their ordinary rights alongside the citizens of the State which will be bearing no enmity to them whatsoever.

General SCHEPERS (Netherlands): The Rumanian Delegate proposed that a reference to Article 2A be inserted in Article 4. The Netherlands Delegation opposes this proposal for the following reason: Article 4 states that "the present Convention shall apply..." whereas Article 2A only provides for the limited application of the Convention.

Article 2A, in fact, enumerates the special provisions which may be applied in the case of an armed conflict not of an international character. It states the conditions governing the observance of these provisions in the case of an armed conflict, namely that they shall be in force from the beginning to the end of hostilities. For this reason, the Netherlands Delegation opposes the inclusion in Article 4 of the idea expressed in Article 2A.

The PRESIDENT: We will first vote on the amendment of the United Kingdom Delegation.

The amendment was adopted by 17 votes to 14, with 12 abstentions.

We will now pass on to the proposal submitted by the Rumanian Delegation to insert a reference to Article 2A in Article 4.

The proposal was rejected by 21 votes to 20, with 2 abstentions.

We will vote on Article 4, as thus amended.

Article 4 was adopted by 35 votes to none, with 8 abstentions.

## Article 11

The PRESIDENT: A recommendation has been made by the Drafting Committee (*see Report of the Drafting Committee*).

Mr. BAMMATE (Afghanistan): The proposal of the Drafting Committee to alter the text of Article 11 would mean, more or less, a reversion to the

Stockholm wording. Committee III, however, found it advisable to change this wording; this was not done in any hasty or arbitrary fashion but after careful consideration of the subject and on the recommendation of its own Drafting Committee. What is more, it unanimously adopted the wording which it is now proposed to modify. What is the reason for this retraction? As the amendment to modify the text was submitted by my Delegation, I beg to place before you the arguments by my Delegation, I beg to place before you the arguments which were brought up before the Committee and which I trust will be also accepted by this Assembly.

Referring to the wording proposed by the Drafting Committee I read:

"without any adverse distinction founded on sex, race, religion, political opinions, or any other similar criteria".

The word "similar" in the expression "any other similar criteria", seems to me particularly unfortunate. Indeed, what can be similar between such different facts as race, which is a physical fact, and religion, which is a spiritual principle, and the conception of nationality, which combines both moral and physical elements?

This enumeration is not, in fact, a list of criteria properly speaking, but merely a collection of divergent and incongruous elements. We could go on discussing this question for a long time without giving any more specific meaning to the idea conveyed by the word "criterion".

I now come to my second argument. If there is no analogy there can be no criterion in the strict sense of the word. For what is a criterion? It is a rule which, proceeding from the known to the unknown by means of analogy—and I wish to underline the word analogy—makes it possible to apply a predetermined principle to a multiplicity of phenomena. If there is no profound analogy between these different terms, there can be no criterion; and this is precisely what the Rapporteur wished to make clear in his Report, when he pointed out that it was difficult to grasp how there could be similar criteria, based on such distinctive and different ideas as race, nationality, religion, and political opinions. If the problem is defined as it ought to be defined, it seems to me that it is not a question of criteria at all, but simply of a series of conceptions intended not as a strict definition, but to clarify the intention of the legislator by quoting certain examples to illustrate what this "unfavourable" character may be, by emphasizing their gravity and generality.

If this second argument, which was accepted by Committee III, seems to you rather too theoretical, there is a third which seems to me quite decisive. For what has been our real object? We have been

trying to extend as widely as possible the protection given; but in so trying we have succeeded in doing just the opposite. For by saying: "...without any adverse distinction...or similar criteria", the emphasis has been laid on the distinctions which occur solely among cases similar to those enumerated in Article II. But there may be distinctions which might be extremely adverse to protected persons, but which have nothing in common with those I have just enumerated.

After these criticisms, let us see how much of the text of the Drafting Committee can be accepted: "...without any distinction" would be the most concise way of putting it, and would suffice. Some perhaps will find it somewhat laconic. "...without any distinction" is a general prohibition. What occurred in fact was that the whole question was re-examined, and that the words "any other" were reintroduced. This brought the problem back to the domain of the absolute. A fourth proposal reintroduces the words "similar criteria". These changes of mind should be avoided. This is why, in addition to deleting the words "similar criteria", I suggest the deletion of "or any other". Reverting to the formula "without any distinction of an adverse character", it is clear that if a distinction is adverse, its character is also adverse. This is why the word "character" is not necessary. Instead of saying "basée" (in French) it would be better to say "fondée", which is better French. The word "adverse" would therefore be sufficient, and the sentence should read: "without any adverse distinction based on race, nationality, religion or political opinion".

We thus revert to the text of Committee III, with the addition of the word "adverse", which had been decided upon by that Committee, as is shown by the fact that the word actually occurs in the English text. This is why I propose that we should not vote for the Drafting Committee's proposal, but should accept the text it had adopted, with the sole addition of the word "adverse". We should then have a more complete, a more vigorous, a more understandable, and, above all, a much more accurate text.

Colonel DU PASQUIER (Switzerland), Rapporteur: I think we should have no hesitation in dropping the Drafting Committee's proposals, and in retaining the text as drafted by Committee III. In suggesting this, I represent the opinion of the Chairman of that Committee.

I do not propose to restate the arguments just advanced by the Delegate of Afghanistan, with which I entirely agree. I should like to draw attention, however, to the fact that the somewhat hasty character of some of the proposals put forward, has resulted in a distinct lack of coherence between the English and French texts of the Report of the

Drafting Committee, which contains the proposed new draft. First, the text adopted by Committee III is somewhat inaccurately quoted in the English text. The word "nationality" has been omitted; it reads "religious beliefs" instead of "religion"; and the proposed text includes the word "sex", which does not appear in the French version; on the other hand, the word "nationality" has been omitted. This is an additional reason for rejecting the proposal.

Mr. COHN (Denmark): As Rapporteur of the Drafting Committee, I should like to make a few remarks in defence of the text proposed by that Committee. In my opinion, it should be adopted. The question at issue was discussed at great length, and there are weighty reasons in favour of this version.

In reply to the remarks made by the Delegate of Afghanistan, I seem to notice some contradiction between the opening and closing parts of his speech. He began by saying that it was impossible to discover any analogy between the various cases cited in the Article, which constitute an enumeration, but not an analogy; whereas at the conclusion of his speech he said that the word "analogy" implied a certain limitation, since only cases which were similar ought not to be taken into account.

I do not think it is very difficult to discern an analogy between the different cases. Other cases could be imagined, for instance, social differences between the rich and the poor, or the caste system in certain countries. The analogy is simply that it is a question in each case of differences between human beings.

This is why I venture to urge you to vote in favour of the text submitted by the Drafting Committee.

Mr. DE ALBA (Mexico): I remember that during the proceedings in Committee III, the Mexican Delegation more or less agreed on a wording for Article II somewhat similar to the one suggested by the Drafting Committee; we pointed out that the expression "adverse discrimination" was rather tautological, and we proposed to substitute the word "distinction" for the word "discrimination".

At the end of the phrase proposed by the Drafting Committee, instead of saying "or any other similar criteria", would it not be preferable to say "or any other discriminatory criteria"? As the Delegate of Afghanistan cogently pointed out, if the term "similar criteria" is used it is uncertain to what the adjective "similar" refers. Subject to this alteration, the text proposed by the Drafting Committee would be preferable to one originally adopted by Committee III.



Sir Robert CRAIGIE (United Kingdom): I quite appreciate the point which has been raised by the Delegate for Afghanistan and I am wondering whether we cannot perhaps make a slight change in the drafting of the Drafting Committee's text in order to meet his point. My suggestion is that this text should be changed so as to read as follows:

"Without any adverse distinction founded on such considerations as sex, race, religion or political opinions."

That would be a far better text so far as the English is concerned than the original text proposed by the Drafting Committee which seems to us, in English, to be a thoroughly bad text. To go back to the original Article 11 would also be retrograde because there have been a good many discussions since that took place. I therefore venture to recommend that amended text to the Conference, and would ask whether it meets the view of the Delegate for Afghanistan.

Mr. MOROSOV (Union of Soviet Socialist Republics): We are in favour of the text proposed by the Drafting Committee, as it provides the most effective safeguards with regard to the provisions in the Chapter of the Convention commencing with Article 11; we also agree with the views expressed by the Mexican Delegate.

On the other hand, I should like to point out that the English and French texts of the proposal made by the Drafting Committee require co-ordination; the word "sexe" has been omitted from the French text, and the word "nationality" from the English. The idea of nationality is of special importance in this connection; and this is why I think it ought to figure in the English text, irrespective of the proposal submitted by the United Kingdom Delegation. In short, the Soviet Delegation is in favour of the Drafting Committee's text, subject to the insertion of "sexe" in the French text and "nationality" in the English.

Colonel DU PASQUIER (Switzerland), Rapporteur: I should like to point out, contrary to what has just been said, that there are no translation errors in the official texts submitted to the Conference by the Committees. Article 11, as it resulted from the discussions in the Drafting Committee and in Committee III, contains no reference, in either the French or English texts, to "sex", and quite rightly, since Article 25 provides that persons of the feminine sex shall be treated with special consideration. On the other hand it does include a reference to nationality, in conformity with the French text. Confusion has arisen because, in the Report of the Drafting Committee, the word "sex" has been inserted into

the English text, for some unknown reason, and the word "nationality" omitted. It was on this error that the United Kingdom Delegate based his remarks just now, and no doubt caused him to make his own mistake. But the official text, to which I have just referred, is the only one which should be taken into account.

Mr. QUENTIN-BAXTER (New Zealand): It is certainly true that those of us, or some of us, who have relied upon the English text did not realize that the word "nationalité" appeared in the French text. On that point my Delegation does feel that it would be wrong to introduce the word "nationality" into this list, because inevitably if you are fighting a war and if it is nations that are fighting that war there will be some sort of discrimination founded upon nationality. The Conference will remember that we have a new Article, 40A Civilians, which specifically safeguards the position in regard to measures of control and says that they shall not be based solely on nationality. That is a reasonable suggestion, but to go further and to say that there shall be no distinction founded on nationality seems to us to be an impossible provision which runs entirely counter to what is written in the rest of the Convention.

With that one exception we do consider that the Drafting Committee's Report and their new text are very much better than the text of Committee III. My Delegation agrees entirely with the views expressed by the Delegate for Denmark and with the suggestion of the Delegate for the United Kingdom, and we would like to say further that we think the biggest thing to be said in favour of the Drafting Committee's text is that it avoids these words "adverse discrimination on alleged considerations". The only inference that can be drawn from that text is that the prohibition extends only to alleged considerations, and that if the considerations are real ones discrimination is permissible.

We feel, therefore, that the Drafting Committee's text is a very much better one. We would like very much to be able to vote for it, and we hope that we may have some way of clarifying the position to see whether the word "nationality" should be there or not, and if it is not we shall be very pleased to support the Drafting Committee's text.

Colonel DU PASQUIER (Switzerland) Rapporteur: If the intervention to which we have just been listening is to be taken as a proposal to delete the word "...nationality..." from Article 11, then I must make the following observation: Article 11 only relates to Part II, and consequently to a series of obligations of a quite general nature,

such as protection of hospitals, protection of children, etc. It is not necessary to draw any distinction as regards nationality.

Part III, on the other hand, lays down provisions with which you are already acquainted; it starts with Article 25, which also in its third paragraph refers to discrimination:

“...without any adverse discrimination on alleged considerations, in particular, of race, religious beliefs or political opinions”.

The term “nationality” very properly does not appear. The observation made by the Delegate for New Zealand would be well-founded if the question turned on a basic Article of Part III; but it would appear to be inaccurate with regard to a provision of Part II.

Mr. COHN (Denmark): I have already addressed the Meeting, but I should like to be allowed to speak once more on this Article in my capacity as a member of the Drafting Committee.

The PRESIDENT: I call upon the Delegate of Denmark.

Mr. COHN (Denmark): I would like to point out that the word “nationality” has perhaps not the meaning attributed to it by the Delegate of New Zealand. It goes without saying that the enumeration of the various categories given here could not imply the elimination of all distinctions between one man and another. Thus, in the case with which we are now dealing, the term “nationality” in this context does not imply the elimination of any differences between the nationals of the country, on the one hand, and enemy aliens, on the other; that goes without saying. The term must be taken to mean nationality in the same circumstances. In other words, what is meant is that discrimination cannot be made simply on the basis of difference of nationality; but this does not mean that no difference is to be made between the nationals of a country and enemy aliens.

I think that this statement may make clearer the meaning of the text proposed by the Drafting Committee, and may make its acceptance easier.

Mr. QUENTIN-BAXTER (New Zealand): I am exceedingly sorry to speak again on this point but there are two things I should like to say. In the first place, I am indebted to the Rapporteur and to the Delegate of Denmark for replying to my remarks about the word “nationality”, and on more mature consideration, agree that there is no possible objection to the word “nationality” appearing in this text. The second point is this:

that I made some remarks based on the presence of the word “alleged”. That word does appear in the text adopted by Committee III as stated in the Drafting Committee’s proposal, but in the actual text adopted by Committee III the word does not appear, so I think that is one point we should be quite clear about before we go much further. I gather that the Drafting Committee text is wrong in quoting the Committee III text as having the word “alleged” in it.

Mr. BAMMATE (Afghanistan): I should like to make a statement which I think may lead us to a solution which could be accepted unanimously.

I have just had a consultation with the Delegations of the United Kingdom and of the Union of Soviet Socialist Republics. Both of them approve the present text and my Delegation is in full agreement with them. I propose to read it to you in French and then in English, and I hope that the Meeting will find no difficulty in accepting it. In French it reads as follows:

“...sans aucune distinction de caractère défavorable, fondée notamment sur des considérations de race, de nationalité, de religion ou d’opinions politiques...”,

and in English:

“...without any adverse distinction founded in particular on such considerations as race, nationality, religion, or political opinions...”.

The PRESIDENT: A new text which, it appears, has met with the approval of several delegations is now submitted to you. It has just been read to the Meeting. Has anyone any objection to it? If not, we could vote on it. The Secretary will now proceed to read the Article as a whole. *(The Article was read).*

Mr. BAMMATE (Afghanistan): I beg your pardon, but in the reading of the Article which we have just listened to, I did not hear the word “adverse” which appears in the Draft proposed by us.

On the other hand, the Delegations of the United Kingdom and of the Union of Soviet Socialist Republics might be prepared to delete the word “fondé” which seems useless in the French text. The text would thus read: “...without any adverse distinction, in particular...”.

The PRESIDENT: This method of submitting texts which are afterwards subject to alteration seems to me undesirable. I propose that we should wait until the text is distributed after its final re-wording. We could then vote on the draft tomorrow. *(Agreed).*

**Articles 12 and 12A**

The above-mentioned Articles were adopted.

**Article 13**

The PRESIDENT: The Delegation of Italy has submitted an amendment.

Mr. MARESCA (Italy): Committee III was quite justified in wishing to retain Article 13, in the Civilians Convention, among the provisions of Part II, in other words among those intended to protect war victims, regardless of their nationality or the territory in which they find themselves, or the conditions under which they are suffering hardships due to war. This is a rule sanctioned by international law, an idea which has always been accepted by the human conscience quite apart from any international laws. This Article also figures in the Wounded and Sick, and Maritime Warfare Conventions.

The authors of the text in the Civilians Convention were careful to adopt a more flexible, unpretentious and cautious wording. This is why the Italian Delegation ventures to suggest that the words "as far as military considerations allow" should be deleted from the second paragraph, since the Italian Delegation considers that these words are both inappropriate and dangerous.

The rule we are now considering in connection with Article 13 lays down a fundamental principle, recalling the good Samaritan's action in helping a wounded man despite the urgency of his journey. This is one of the fundamental principles of human solidarity. If it neglects these principles, mankind is doomed to return to depths of barbarism. This is why we consider that the words "as far as military considerations allow" are quite inappropriate, and even dangerous. All of you here who have had the honour of commanding military units in war are well aware how many and varied military necessities can be: retreat, medical supplies, the establishment of camps, etc., all of which constitute military necessities which may delay aid to the sick and wounded or to civilians. These words are dangerous for other reasons, because they tend to diminish the force of the stipulation imposing the duty to help the sick and the wounded, which should not be hesitating or timid. These words are dangerous for yet another reason; if they are retained, the opening provisions of the Convention will provide for limitations; but our Convention should not open with limitations, but with a positive affirmation.

Mr. GARDNER (United Kingdom): This Article has been likened to an article of the Wounded and Sick

and Maritime Conventions, but there is one important fundamental difference between those Conventions and this Convention. Those Conventions deal with the conduct of armed forces which are under the command of Commanders-in-Chief and are under full discipline and control, and the searches for wounded and sick referred to in them will be carried out by parties belonging to those armies who are under the control of the Commanders-in-Chief. This Convention deals with facilities to be given to civilians and I ask the Conference to visualize for a moment a battle going on in a town and the mayor or prefect of that town coming to the commander of the forces and saying: "You are bound to allow me to send out parties to search for wounded and sick and collect them." No party can go out in such a battle area without getting knowledge of the military posts which are occupied in that area and will any Commander-in-Chief, or any commander, be in a position to allow civilians not part of his forces to go wandering into the battle area seeing his dispositions and making all kinds of use of the information they get?

That is the practical reason why the United Kingdom Delegation suggests that these particular words are essential in a civilians convention. They do not appear in the other Conventions because in fact they are there, since the whole of the search operations are carried out by troops under the command of the commanders in the field and they will be carried out in accordance with military exigencies. Here you are dealing with parties not under the control of the commanders in the battle area concerned and therefore it is necessary to specify that all these things so far as civilian parties are concerned must be subject to military exigencies. I ask the Conference to take a realistic view and maintain the text of Committee III.

The amendment of the Italian Delegation is rejected by 26 votes to 12, with 6 abstentions.

Article 13 as a whole was adopted by 41 votes nem. con., with 1 abstention.

**Article 14**

The PRESIDENT: An amendment has been submitted by the Indian Delegation. The amendment proposes to substitute the word "religions" for the word "denominations" in this Article.

Mr. HAKSAR (India): I do not think it is really necessary to speak on this, but I might add that if one looks at the first paragraph of Article 50B the object of the amendment will be obvious, if it is not already clear.

The amendment submitted by the Indian Delegation was adopted by 30 votes *nem. con.*, with 7 abstentions.

Article 14 as a whole was unanimously adopted by 43 votes.

### Article 15

The PRESIDENT: Several amendments have been submitted, the first by the Canadian Delegation, the second by the Burmese Delegation, the third by the Delegations of the United States of America, the United Kingdom and Pakistan (*see Annex No. 214*), the fourth by the Delegations of Argentine, Belgium, Denmark, Italy, Luxemburg, Uruguay and Venezuela (*see Annex No. 213*).

The Canadian amendment is to change "shall be marked" to "may be marked".

The amendment of the Burmese Delegation read as follows: "delete 'the emblem provided for in Article... of the 1949 Geneva Convention for the Relief... in the field' and insert 'a red circle on a white back ground'."

General OUNG (Burma): I regret to have to bring this proposal before you at such a late stage, but I believe much discussion took place with regard to this subject at Stockholm—as much as that for a universal emblem for the armed forces—and also we have had plenty of time to study the "Remarks and Proposals" submitted by the I.C.R.C. and in which special recommendations are given on page 73 of the English version.

Once again it has been left to me to take up another subject which is open to misunderstanding. If, in the process of my discourse, I create any offence or misunderstanding I hope you will overlook it as it may not only be owing to my inexperience at this type of diplomatic conference, but also to my enthusiasm to secure everlasting understanding and goodwill between the various races and ideologies; that is to restore the real universal brotherhood and peace which underlies our endeavours in this Conference.

With reference to my amendment, I need not go into any details as I am sure you must be as tired of the subject as I am myself. I have only three points to make to support my amendment, and I invite criticism of those points.

The first is to prevent the abuses of the emblem designed to protect the wounded and sick and the medical personnel of our armed forces. In support of this point it will only be necessary to remind you that even without extension of the military emblem legislation is necessary to prevent misuses. With the extension of the military emblem to civilian personnel there will be many more cases of misuse and more difficult legislation. I will

quote to you brief extracts from page 72 of the I.C.R.C. booklet, "Remarks and Proposals", English version. It speaks about the extension of the military emblem to civilians:

"This extension seems dangerous, since any widening of the applicability of the red cross emblem will inevitably entail a far greater risk of misuse and violation".

I will not read any further than that, but if you will read paragraph 2 you will find some basis for my argument.

If you will also refer to the United Kingdom amendment which is before you, you will find the objective underlying the amendment to safeguard against abuse. If you will look at the United Kingdom amendment, you will find that it proposes these additional safeguards. I submit to you, Sir, that these additional safeguards are not sufficient until we adopt a single emblem as a distinctive civilian emblem.

My next point I put forward in order to avoid confusion. There is going to be, as you know, much more use made of the emblem if we extend it to the civilians. More civilians are involved in modern wars, and in our Civilians Convention transports are to be provided for the wounded and sick civilians, for the infirm and for maternity cases. You can imagine the confusion which will arise with all the number of transports which we have to provide, and you can imagine the greater responsibilities—responsibilities which I do not think you can take on in war time.

My third point is that of the desirability of a universal emblem, a universal symbol for protected civilian activities. I need not go into any detail about this, but I would like just to tell you that in Articles 15, 18 and 19, on which I am proposing this amendment, you will find reference to only one emblem. If that were so, my third point would not arise, but unfortunately—I say unfortunately—this is not so. When it refers to one emblem it means two others; that is three, and I assure you that there are going to be many more emblems than three, whether this Conference likes it or not; so I base my third argument on this desirability of a universal emblem. We have the opportunity in our hands now to adopt one such universal emblem, a distinctive emblem, so I put it to the Conference to consider the acceptance of my amendment. I hope it will receive your approval, and I would like to quote again this little edition on which I base all my work—my bible, page 73, "Remarks and Proposals", the last paragraph:

"If a protective emblem for all civilian medical personnel is desired, it would be better to examine the possibility of using a special device entirely distinct from the 'red cross emblem'."

I therefore appeal to you for a practical display of that tolerance, that spirit of goodwill and of compromise, which you have advocated at this Conference.

The PRESIDENT: I propose to adjourn our debate at this point. The next meeting will be held this afternoon at 3 p.m.

*The meeting rose at 12.55 p. m.*

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## TWENTY-FIFTH MEETING

*Tuesday 2 August 1949, 3 p.m.*

*President: Mr. Max PETITPIERRE, President of the Conference*

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### CIVILIANS CONVENTION

#### Article 15 (continued)

The PRESIDENT: Several amendments have been submitted. The Delegate for Burma has already had an opportunity of speaking to set forth his Delegation's amendment; I suggest that we should now finish the discussion which we began. We can then put this amendment to the vote before passing on to the others. (*Agreed*).

Does anyone else wish to speak on the amendment submitted by the Delegation of Burma?

As this is not the case, I put it to the vote.

The amendment submitted by the Delegation of Burma was rejected by 14 votes to 3, with 17 abstentions.

General OUNG (Burma): May I give notice that I am bringing this up in the form of a resolution?

The PRESIDENT: We shall therefore wait for the submission of the resolution which has just been announced, and shall see whether it will be possible to consider it.

I now put the other amendments to Article 15 for discussion.

Mr. NAJAR (Israel): Our Delegation wishes to make a short statement on the question of the distinctive emblem, which has just been discussed.

Twice, though by a small majority, this Meeting has rejected recognition of the Red Shield of David.

In these circumstances, in order not to retard

the work of the Conference, the Israeli Delegation has considered it useless to submit amendments to Articles 15, 18 and 19A of the Civilians Convention (or to Article 6 of Annex I) which define the emblems of this Convention in omitting the Red Shield of David.

The Delegation of Israel is nevertheless desirous of reaffirming that there is a contradiction of principle between the fact of excluding the Red Shield of David and the fact of maintaining simultaneously the Red Cross, the Red Crescent and the Red Lion and Sun, above all at a time when opposition is raised against amendments submitted with the aim of achieving the unification of the distinctive emblems.

Our Delegation also points out that the Red Cross and the Red Crescent, maintained side by side, cannot but symbolize two separate aspects of human civilisation and of religious faith. The coexistence of these two emblems, which is particularly apparent in the Middle East, deprives them of the universal character which, taken separately, one or the other might have had.

The Israeli Delegation has supported all the attempts made here to achieve the unification of the distinctive emblems. These attempts all failed. Others, solemnly announced, have never been put into concrete form.

The considerations put forward by the Delegation of Israel in the course of debates on Articles 31 of the Wounded and Sick Convention and 38 of the Maritime Convention thus retain their full value.

The Delegation of Israel consider it necessary to state that as long as the unification of the distinctive emblems has not been achieved, the

Red Shield of David will continue to be used by Israel as its protective emblem.

We should like to express our profound and sincere gratitude to all the delegations—and to the countries they represent—who have here given their support to the cause we defended.

Mr. GARDNER (United Kingdom): The United Kingdom Delegation has submitted an amendment jointly with the Delegations of Pakistan and the United States of America to Article 15 and the Delegations of Argentine, Belgium, Denmark, Italy, Luxemburg, Uruguay and Venezuela have also submitted an amendment. I believe the purpose of those amendments is the same. It is to secure more effective protection of hospitals set aside for the care of the wounded and sick in war and particularly when war comes into their immediate neighbourhood. On the one hand the desire to protect civil hospitals is stressed by some, and on the other hand the importance of securing that civil hospitals are in fact civil hospitals and nothing else is stressed by others. It has been the whole basis of the Geneva Convention from the beginning that the protection of a military hospital is related to the fact that it is used for nothing else but the care of the wounded and sick and that condition must somehow be fulfilled if the protection of civil hospitals in actual fighting is not to be put in jeopardy. There has been some discussion between the Belgian Delegation and my Delegation and also with the United States Delegation as a result of which we believe it is possible to arrive at an agreed text embodying the principles I have briefly outlined and we would therefore suggest that without discussing these amendments now the Assembly might agree to refer them and Article 15 to a Working Party which should try and secure an agreed text to submit to the Conference at a later Assembly.

The PRESIDENT: You no doubt consider that the proposal of the Delegation of the United Kingdom is a very sensible one, and that it is calculated to shorten the discussions which may arise on Article 15. (*Assent*).

I therefore propose to accept it and to set up a Working Party consisting of Delegations of the following countries: Belgium, Bulgaria, India, United Kingdom and Uruguay; the International Committee of the Red Cross might be called upon to take part in an expert capacity in the discussions of this Working Party, which might meet tomorrow Wednesday, at 9 a.m., in Room A.

Does anyone wish to speak on this proposal?

Mr. BARAN (Soviet Socialist Republic of the Ukraine): The Delegation of the Ukraine proposes that the Soviet Delegation be a member of the Working Party.

Mr. MEVORAH (Bulgaria): The Delegation of Bulgaria will be glad to give up its place on this Working Party to the Soviet Delegation.

The PRESIDENT: I thank the Delegation of Bulgaria.

In that case, the Working Party would consist of the Delegations of the following countries: Belgium, India, the United Kingdom, the Union of Soviet Socialist Republics and Uruguay.

As there are no objections to this proposal, it is adopted.

### Article 16

Article 16 was adopted.

### Article 18

The PRESIDENT: Amendments have been submitted by the Delegations of the United States of America, United Kingdom and Pakistan (*see Annex No. 214*), and by the Delegation of Burma (*see Report of the Twenty-fourth Meeting*).

As the last amendment is the one on which a vote was taken a few minutes ago, I imagine that the Delegation of Burma will agree to withdraw it.

General OUNG (Burma): Yes.

The PRESIDENT: I see that the Delegate of Burma is willing to withdraw his amendment and I thank him for doing so.

There remains the amendment submitted by the Delegations of the United States of America, the United Kingdom and Pakistan.

Mr. GARDNER (United Kingdom): The United Kingdom Delegation and the Delegations of the United States of America and Pakistan propose an amendment to Article 18. The purpose of this amendment is to secure more effective protection for the wounded and sick by effectively protecting those who look after them. In the Geneva Convention the protection of medical personnel rests on the early conception of Henry Dunant that they are outside the fight; they take no part in the actual fighting, and their position is that of looking after the victims of the battle. In the same way if we are to maintain effective protection for those who look after civilian sick and wounded we must secure that the persons protected are not, in fact, actually fighting in the war against the enemy.

Now it is perfectly possible—may be it did indeed happen—that doctors or other staff of hospitals engaged during part of the day, or even during the full day, in looking after wounded and

sick felt their patriotism demanded that in their spare time they should take a more active role in resisting the enemy. If medical personnel in a hospital become involved in that kind of operation, then the difficulty of protecting them while occupied with their hospital duties will be tremendously increased. Therefore we propose that in the first paragraph of the Article the words "and solely" should be added after "regularly" so that the full-time staff of hospitals shall be precluded from taking part in activities incompatible with their hospital duties.

At the same time we recognize that it is not everybody in the hospital who is fully occupied with hospital duties, and we therefore provide a protection comparable to that given to regimental stretcher bearers and auxiliary nurses in the Geneva Convention and other personnel engaged in hospitals during the time they are actually functioning. There is an important distinction between the full-time exclusive occupation of looking after the wounded and sick, carrying with it protection at all times, and the part-time occupation of looking after the wounded and sick carrying with it complete protection whilst engaged on those duties but not involving protection when, during the rest of the day, they are engaged in some other occupation which may have nothing whatever to do with looking after the wounded and sick. If I may illustrate the point, in my own office, which is the War Office, during the last two wars there have been some of our lady staff who, during their one day off in the week, have gone and spent that day regularly, week after week, assisting in a hospital, either as auxiliary nurses, cooks, orderlies or any other job that needed to be done. It is right that such people should be protected whilst in the hospital but it would clearly be quite wrong, because they are regularly employed in a hospital once a week, to extend to them protection during the six days when they were positively engaged in the war effort—or we will hope they were—in the War Office.

The second amendment is similar to the amendments which are proposed for Article 15, and would bring Article 18 into line with Article 19 by making the authority for issuing the armlets the State. "The responsible authorities" is a vague phrase which we believe ought to be avoided in a matter of precision such as the issue of an armlet. A belligerent ought to be able to make a particular authority responsible for issuing armlets to persons to be protected, and we suggest it is right and proper that that authority should in all cases be the State.

Mr. MOROSOV (Union of Soviet Socialist Republics): The Delegation of the U.S.S.R. considers

that amendments Nos. 1 and 3 proposed by the Delegations of Pakistan, the United Kingdom and the United States of America are unacceptable.

The question which has been raised is not new, and a similar amendment has already been submitted in the meetings of Committee III, but it was rejected by the majority of the delegations. The arguments put forward in support of his amendment by the Delegate of the United Kingdom contains a new element: it is the allusion made to Henry Dunant, the man who conceived the idea of the Conventions which we are here establishing, and who sacrificed his life to the cause which we are discussing. We consider that it is not fitting to refer to this name in order to support arguments and introduce provisions which are detrimental to the very cause for which Henry Dunant sacrificed his life.

The word "solely", which is proposed in the amendment, is unacceptable, for it denies the protection conferred by the Convention to a great number of persons engaged in the noble mission of bringing succour and relief to the sick and wounded. According to this proposal, a doctor has only to engage in a scientific activity ancillary to the care of the wounded and sick, to be excluded from the protection conferred by the Convention, which is inadmissible.

We have already discussed this question at the meetings of Committee III. There is no need to repeat our arguments here. We have declared this proposal to be antihumanitarian. Although certain delegations may advance arguments in support of this amendment, these arguments cannot convince anyone.

On the other hand, we approve amendment No. 2, that is, the suggestion to replace the words "responsible Authorities" by "State". This proposal is entirely justified and we voted accordingly, even during the discussions of Committee III.

As regards amendment No. 3 concerning the right to wear the armlet, we cannot accept this idea, for it constitutes a restrictive measure. This provision is already covered by the second paragraph of Article 18, relating to special identity certificates and armlets in the second paragraph of Article 18. There is no reason to insert a further paragraph, as vague as it is unnecessary.

We request that the three amendments be put to the vote separately since our Delegation, for example, will accept the second, although it will reject the first and third. We request all the delegations to vote likewise against the first and third amendments, for neither the arguments put forward nor the allusion to Henry Dunant can mislead anyone; they will only serve to prove once more that there is a great divergence between the words and the actions of certain delegations.

Colonel DU PASQUIER (Switzerland), Rapporteur: I would merely point out to the Meeting that if you add the adverb "solely" this changes the tenor of the text voted by the Committee, as it would then exclude collaborators who are semi-permanent, such as the surgeons to whom I referred in my Report. Nevertheless, it would seem desirable that partial collaborators, who are necessary for the smooth working of the hospitals, should enjoy protection. I speak in the name of the Committee, and particularly of its Chairman, when I propose to the Assembly that it should reject the first amendment submitted by the Delegations of Pakistan, the United Kingdom and the United States of America.

As for the second amendment, the authorities responsible are obviously the State authorities and vice versa.

With regard to the third amendment, I also think that it should be rejected. It is not easy to see what it adds except that it specifies that the armband may only be worn during the time personnel are employed on hospital duties. This provision, however, is included in the text of the Drafting Committee of Committee III and in that which was adopted later by Committee III. In a modified form this idea was taken up by the Drafting Committee which, in its Report also stresses the fact that the wearing of the armband is only authorized while the hospital worker is on duty. Thus the amendment might be dismissed as superfluous.

Mr. CLATTENBURG (United States of America): It appears to me from the last two remarks that some of the delegates have failed to perceive the intimate connection between amendment No. 1 and amendment No. 3 of the amendment to Article 18. It is true that the insertion of the words "and solely" which are analogous to the word "exclusively" in the Stockholm text, will place certain persons outside the scope of the first paragraph, and that those persons are important for the functioning of hospitals. However, amendment No. 3 proposes to insert a new paragraph to provide protection for every one of those individuals during the time that they are engaged in work in the hospitals.

Now these people can be doing all sorts of things when they are not working in hospitals. Are we going to say that because a man fires a stove in a hospital for one hour a week and works the rest of the week in a defence plant, he is entitled to wear a brassard with a Red Cross during the whole week? That is the effect of the present text. Therefore, the United States Delegation have joined in this proposal to provide adequate protection for members of the staffs of hospitals, who are not exclusively engaged in that work,

during the time they fulfil that function. We believe that that is all the protection that any reasonable person can expect, and that there is nothing inhumane about such a point of view. It merely ensures that the Red Cross emblem, which we have this morning decided shall be used for the benefit of these people, shall not be too widely employed.

The PRESIDENT: We shall take a separate vote on each of the three amendments submitted by the Delegations of Pakistan, the United Kingdom, and the United States of America.

The first amendment provides for the addition of the words "and solely" after "regularly" in the first paragraph of Article 18.

This amendment was adopted by 18 votes to 15, with 6 abstentions.

We will now vote on the second amendment to substitute the word "State" for the words "responsible authorities" in the second paragraph of Article 18.

This amendment was adopted by 35 votes nem. con., with 2 abstentions.

We will now vote on the third amendment to insert a new paragraph as the third paragraph of Article 18. This amendment was adopted by 27 votes to 8, with 3 abstentions.

We will now take a vote on Article 18 as a whole with the amendments which have just been adopted.

Article 18 as a whole was adopted by 38 votes nem. con., with 1 abstention.

Mr. BAISTROCCHI (Italy): The Assembly has just approved the amendment proposed by the Delegations of Pakistan, the United Kingdom, and the United States of America. Therefore, the Italian Delegation thinks that it is its duty to draw the attention of the Assembly to the fact that as they have adopted the new third paragraph, it would be desirable to replace the words "Persons regularly engaged" in the first paragraph by another term, and to say, for instance, "Persons permanently employed".

I think that this change would be useful. It would give a necessary explanation for the change which has been made in the Article.

I think that this is a question of drafting and I leave this point to the Assembly.

The PRESIDENT: This suggestion seems to me somewhat late. There is always a possibility of making the Assembly rescind a decision already taken, but this possibility involves a vote with a majority of two-thirds.

I propose for the moment that we should not go further into this matter. If certain delegations are interested in the suggestion made by the Delegate of Italy, they can always ask the Assembly to rescind the decision which it took just now.



**Article 19A**

The PRESIDENT: Amendments have been submitted by the Delegations of the United States of America, the United Kingdom and Pakistan (see *Annex No. 214*), the Delegation of Canada, and the Delegation of Burma (see *Report of the Twenty-fifth Meeting*).

I take it that, as in the case of Article 18, the Delegate of Burma will agree to withdraw his amendment.

General OUNG (Burma): Yes.

The PRESIDENT: The Delegate of Burma replies that he agrees to withdraw his amendment. I thank him. Does anyone wish to speak on Article 19A?

Mr. CLATTENBURG (United States of America): The United States Delegation is sponsor of an amendment to this Article proposing to delete the word "transports" (in the English text) and substitute the words "convoys or vehicles or hospital trains on land or specially provided vessels on sea". It is also co-sponsor with the Delegations of Pakistan and the United Kingdom of another amendment to the same article. If you will look on paragraph 7 of the Document, you will see that the amendment to Article 19A need not enter into discussion if the first mentioned amendment is accepted. I shall therefore limit myself at the present time to this last amendment.

The English language in its current usage contains no word equivalent in all shades of its meaning to the French word "transport". An effort has been made to use it in the text of Article 19B, and it has produced confusion in the minds of the English speaking delegates plus, in the case of one delegate as he expressed himself at an earlier meeting, some wonder as to how he would explain the Article to the authorities at home. To us the word means a ship operated by the armed forces to convey troops or supplies and I am quite sure that no such meaning was ever in the minds of the people who drafted this Convention. As a matter of fact, this Article was drafted by a delegate at Stockholm who had in mind exclusively land transport. It is the request of the United States Delegation in this amendment that a text be adopted for this article which our people at home can understand.

In our amendment we tried to use language which, after discussion with two of the delegates present at Stockholm, we believe covers all that was intended in drafting the Stockholm text. We have been assured that civilian ambulances belonging to a hospital, which have been the subject of

concern to some delegations, are fully covered in Articles 15 and 50A and do not need to be specifically covered in this article since they are part of, and the material of hospitals. We therefore request in the interests of our people at home that our first amendment be adopted and we should appreciate it, in view of the connection between this amendment and the amendment proposed with the Delegations of Pakistan and the United Kingdom, if this amendment could be voted on before discussion on the other amendment is opened.

Dr. DIMITRIU (Rumania): Article 19A was discussed at length in Committee III, and a large number of arguments were put forward to weaken its humanitarian provisions as much as possible. We are now faced with a new series of proposals, the result of which would be to diminish the necessary protection given to the transport of wounded and sick, and which might even completely cancel such protection. This is the purport of the Canadian Delegation's amendment, which proposes first that the emblem should be used only in the zone of military operations, whereas everyone is aware of the nature of modern warfare. The second part of the same amendment consists in substituting "may be marked" for "shall be marked"; this system offers great opportunities to delegations wishing to nullify very adroitly the generous and humanitarian ideas of the Conventions.

The most important issue in this Article is to secure the protection of civilian wounded and sick transported by the vehicles in question. Their protection is very closely connected with the compulsory use of the emblem. On all these grounds, the Rumanian Delegation considers that the amendments submitted to Article 19A should be rejected and that the majority text of Committee III should be maintained.

Mr. CAHEN-SALVADOR (France): I fully appreciate the motives of the United States Delegation in submitting their amendments, but I regret to say that, while I admire their tenacity in again putting forward amendments which have already been rejected in Committee, I cannot, personally, in the name of the French Delegation, support them. The Rapporteur has given us very good reasons why Committee III rejected these amendments, and I would like to point out the great difference which exists between the text voted by the Committee and the amendments submitted by the American Delegation. The Committee was concerned with the wounded and sick and their transport; it was they whom it intended to protect. According to the text suggested by the United States Delegation, it is vehicles which are to be protected. That is the whole difference. The vehicles, in our eyes, are important only when they are transporting

wounded and sick. Now, under the United States amendment, these vehicles are granted protection, which is of little interest to us since protection is given to ambulances attached to hospitals, simply by the fact that they are so attached. But this is not all. It is stated in the amendment that the vehicles entitled to protection are those exclusively used for transport of the sick. I will put this question to you: a village has just been bombed. There are casualties. Suitable ambulances are not available, and a peasant's cart is taken to convey the injured quickly to hospital. Under such circumstances, according to the text proposed by the United States Delegation, this vehicle, because it is not exclusively engaged in the transport of wounded and sick, would not be protected.

We cannot agree with this view. We are of opinion that it is our primary duty here to protect wounded and sick. This is why, in the name of the French Delegation, I take the liberty of urging that the text submitted by the Commission be adopted.

Colonel HODGSON (Australia): With due respect to the Delegate of France and, at the same time, to the Chairman of Committee III, that Committee did not know what they were doing with regard to this particular Article, and I am sure they had no clear intention in their minds either, because I distinctly recall that right up to the very end I asked the Chairman and everybody else in the meeting to tell me the meaning of the word "transports". I indicated that it had a technical meaning and was used mainly in connection with marine transportation, so to that extent the United States amendment does clear up that point. However, in their desire to cover, say, future contingencies, I would invite the attention of the Conference to a most important method of transportation of sick and wounded which has not been considered at all: that is, transportation by air of the sick and wounded. With the development of aircraft, even in peace time, more and more countries are beginning, in all the outlying parts, to rely solely on air transportation — what they call "the flying doctors' service".

During the last war, in the case of the wounded and sick of the Armed Forces, it was air transportation which took by far the greatest number of them across the Atlantic, across the Pacific, and across the Indian Oceans, and my Delegation ascertained that if this vital means of future transportation for the wounded and sick has not actually been forgotten, it has nevertheless not been brought to the attention of the Committee or the Conference. I, personally, have not heard it mentioned but I am wondering if the framers of this particular amendment could examine it quickly in order to see if one or two words could

be added to include the idea which I am trying to bring before the Conference, and which I think should appeal to every delegation.

Mr. CLATTENBURG (United States of America): I am sorry to have to take stand once more, but after I returned to my seat I found two different delegates who had not understood what I had said when I mentioned that I was speaking only to our own amendment and not to the amendment presented with the Delegations of Pakistan and of the United Kingdom; for that reason there was a speech made which spoke of the word "exclusively". If the text of our own amendment is accepted there is no need to touch the French text adopted by Committee III because, so far as the Delegation of the United States of America is concerned, we consider it equivalent.

The second problem which has been raised by the Delegate for Australia is with regard to aircraft. That, I am informed, is a difficult technical question. The type of protection which is envisaged by this Article can be extended to aircraft only if they are flying on a given route in a given direction at a given time because attacks on aircraft are managed by radar which cannot read red crosses or other signs. For that reason it would appear that if the protection of this Convention is to be applied to aircraft, an interested delegation will have to propose an additional amendment which we have not at the moment got before us and which I am not competent to draft at three seconds notice.

Mr. MOROSOV (Union of Soviet Socialist Republics): We are now forced to resume all the discussions which took place in Committee III. All the arguments have already been brought forward and on this subject the Committee have taken a decision on the subject which seemed quite justified. It seemed so, at any rate, from the point of view of the U.S.S.R. Delegation.

So far as Article 19A is concerned, this draft seems to us to be quite complete and we think that it should be retained. Unfortunately, certain delegations, such as that of the United States of America, for instance, are following a very definite policy tending to worsen the position of the protected persons covered by our Convention.

We have already seen a decision, taken recently under pressure from this very policy, which resulted in rendering the situation of medical personnel less favourable. Attempts are now being made to do the same thing in respect of the protection of transport of wounded and sick, by depriving them of the necessary guarantees.

We can already draw our conclusions from the different discussions which have taken place during our work. A great number of delegations are

inclined to introduce into the Convention humanitarian provisions for the purpose of effectively safeguarding protected persons. Other delegations, on the contrary, are trying to make the situation of these persons worse.

That is why the Soviet Delegation definitely opposes all the amendments submitted which are liable to make the text of Article 19A less effective; this Delegation therefore will vote against the amendment which has been submitted.

Mr. GARDNER (United Kingdom): Nobody listening to the last speaker would imagine that the text before the Conference was adopted by Committee III on an amendment produced at the last moment, by 18 votes to 17. The text which had been produced as a result of long discussions was very nearly the same text as that proposed in the joint amendment and if there is a really considered text before the Conference it is, I suggest, the latter. In the "civilian" world we are venturing into a new field where there is no experience, but we have experience of the marking of ambulances and the protection of them in the military field, and it is significant that Committee I of this Conference excluded from protection vehicles which are only temporarily used for the conveyance of wounded and sick. They were protected in the 1929 Convention, but they will not be protected in the 1949 Convention unless they are set aside exclusively for the purpose of carrying wounded and sick, and it is the fundamental principle underlying all protection for the wounded and sick that if vehicles, buildings, or personnel carrying or caring for wounded and sick are to be respected and not attacked, then they must be outside the fight: and you cannot give protection, you cannot ask an advancing force to give protection, to a vehicle which is perhaps carrying wounded and sick for half an hour and carrying shells for twenty hours during the day. That is the real problem, and the joint amendment suggests to the Conference that it should say quite clearly that if a vehicle is to be protected an authority of the State must take the responsibility by giving a certificate that that vehicle has been set aside to carry wounded and sick and will not be used for any purpose which could be harmful to the enemy.

It is suggested that this amendment is weakening the protection of the wounded and sick. I submit, quite seriously and earnestly to the Conference, that what will destroy the protection given to the wounded and sick is if the vehicles, buildings and personnel concerned with looking after them become mixed up with the fighting. You have got to take the position that those who are set aside for the wounded and sick must abstain from the fight altogether, and the condition for them being respected and protected is that they should abstain

from the fight and—to use the words which have been so often used in Committee I—take up a neutral position.

I therefore submit to the Conference that if they do not adopt the United States amendment, which would solve the problem in one way, and if you have any regard for protecting the wounded and sick being carried by vehicles, you will adopt the joint amendment, because a loose provision like Article 19A would be inevitably inapplicable in practice and commanders in the field would find that vehicles posing as ambulances were being used half an hour or an hour later for purposes hostile to them.

Mr. WERSHOF (Canada): There are two things that I would like to say about this Article and about the various amendments.

The first point is that, with great respect to the Delegate of France who was the Chairman of Committee III, Article 19A was never necessary in this Convention for the purpose of protecting the wounded and sick, for the simple reason that there is in the Convention—and always was—Article 13 which states in the most categorical terms that the wounded and sick shall be the object of particular protection and respect. There was never any need for Article 19B so far as the protection of the wounded and sick themselves was concerned. Article 19A was manufactured at the Stockholm Conference. It was not considered necessary by the International Committee of the Red Cross which prepared the working papers for the Stockholm Conference. The delegates at Stockholm who wanted this new Article were thinking of the vehicles, but not of the wounded and sick. I wish to repeat that even if this Article were completely deleted, the absolute obligation to respect and protect the wounded and sick would still be in the Convention in Article 13.

The second point I wish to make is this. Today, for about the fiftieth time in the past two and a half months, the Soviet Delegate made a charge which relates to the Canadian Delegation and perhaps to others—I take it as relating to the Canadian Delegation, as we put down an amendment to this Article—the charge being that because we do not agree with his point of view we are therefore against the humanitarian objectives of this Convention while the Soviet Delegation, of course, is the leader of all the humanitarian forces at this Conference.

I think it is most unfortunate that the Soviet Delegation has found it necessary, not only today, but for about two and a half months, to use that particular type of assertion in place of argument. There is room in the case of Article 19A, and in the case of many other Articles, for honest difference

of opinion—for example, there is an honest difference of opinion today between the Delegate of France on the one hand and the Delegations of the United Kingdom, the United States of America and Canada on the other—but to the Soviet Delegate it seems to be necessary to say, whenever some of us disagree with his opinion, that it is his Delegation which is interested in the humanitarian objectives of this Conference while we are opposed to humanitarian objectives and are only interested in seeking devices whereby to cut down the humanitarian cover of this Convention.

No greater nonsense has been spoken in this Conference. It has been said repeatedly and the time has come to denounce it publicly. I do not intend to throw the same kind of statement back at the Soviet Delegation. If they say they are greatly interested in the humanitarian interests of this Convention I take their word for it. I only ask that they believe that the Canadian Delegation is also interested in humanitarian objectives.

I think I am entitled to add one thing on the basis of experience in the past war. It is a plain fact that the Canadian Government and other Governments represented at this Conference were Parties to the Prisoners of War Convention and obeyed it and allowed the Protecting Powers to do anything they liked and allowed full access to the International Committee of the Red Cross. It is a plain fact that the Soviet Government during the war refused to be a Party to the Prisoner of War Convention and is not a Party to it today. The Canadian Government knows a little more about being Parties to humanitarian Conventions and obeying them than the Soviet Government does, because we obey them and they do not. They refused to be a Party to the Prisoners of War Convention and have never given any facilities to the Protecting Powers or to the International Committee of the Red Cross.

I regret that the Canadian Delegation has found it necessary to make this kind of statement but it is really intolerable that week after week for the past three months whenever some of us have disagreed with the Delegates of the Soviet Union, instead of limiting themselves to disputing our views, they say we are trying to reduce by devious methods the humanitarian aspects of the Convention. I repeat that that is nonsense and it is an insult to the intelligence of this Assembly.

Mr. MOROSOV (Union of Soviet Socialist Republics): I think that anyone who speaks from this rostrum must be prepared to take full responsibility for what he says. If the Delegate of Canada does not know that the U.S.S.R. recognized the Prisoners of War Convention in 1941, all I can do is to express regret at his ignorance. The

antipathy of the Delegate of Canada to certain provisions has led him to adopt the attitude which we have just heard him express. Or is it simply the result of incomplete information on the subject?

I should also like to request the Delegate of Canada not to give me advice on the way in which I should speak as the Delegate of the U.S.S.R., until the President has told me that I am not conforming to the Rules of Procedure. I am not prepared to listen to remarks of this nature, which I consider to be contrary to the practice of all international conferences.

I could—but I do not choose to do so—quote a large number of provisions proposed or supported by the Delegation of Canada, which are highly detrimental to the position of protected persons under the terms of our Conventions. Whenever a provision detrimental to the position of protected persons is under discussion in this hall, the Delegate of Canada raises his hand as high as possible. The speeches of the Delegate of Canada have become identified with the worst provisions in our Conventions.

Our intention is to oppose these provisions and proposals with all our strength, on behalf of all the persons who, in the disastrous event of another war, might benefit by the protection conferred by this Convention.

I wish to add that my words apply only to the Prisoners of War Convention.

The PRESIDENT: We shall now vote on the three amendments under discussion. I shall put them to the vote in the following order: first, the amendment submitted by the Delegation of the United States of America. If I have correctly understood, in the event of this amendment being accepted, the amendment submitted by the Delegations of the United States of America, the United Kingdom and Pakistan would become null and void. On the other hand, if the first amendment were rejected, the joint amendment would be put to the vote. Thirdly, and lastly, I shall ask you to vote on the amendment submitted by the Delegation of Canada.

Mr. CAHEN-SALVADOR (France): I should like a word of explanation on the way in which the vote is going to be taken. The Amendment tabled by the United States Delegation only concerns the English text. I want to be certain that it will not affect the French text in any way. If this is correct, I think that the French-speaking delegations should abstain from voting.

The PRESIDENT: Does the Delegate of the United States of America agree with the Delegate of France? (The United States Delegate agrees).

I should nevertheless like to point out that if this amendment were to be accepted, there would be a difference between the French and English texts: therefore this amendment does not concern the English text alone. If it were to be adopted, the French text would have to be altered accordingly.

We shall now take the vote, but I draw the attention of the Assembly to the fact that if the amendment is adopted it will involve alteration of the French as well as of the English texts.

Mr. BOURQUIN (Belgium): As the Delegate of France has just said, if the English text alone is concerned, it is simply a matter of translation. If this is not the case, we must have a corresponding French text.

The PRESIDENT: The remark made by the Delegate of Belgium appears to me to be quite correct, and I do not consider that the Assembly is in a position to vote on this amendment to-day.

The discussion must be considered closed. A translation of the English term which appears in the proposal made by the United States Delegation, will be made and distributed, and the vote will be taken on the three amendments at a subsequent meeting.

I repeat that the discussion is closed and that we shall only take the vote tomorrow or the day after tomorrow.

Does the Assembly agree to this procedure?

Mr. GARDNER (United Kingdom): I submit that until we see the French text none of us can say whether we shall want to discuss it or not. It is therefore difficult to close the discussion before we know the full text of the amendment we are supposed to have discussed.

The PRESIDENT: If necessary, the discussion could be resumed on this point only. As regards the rest of Article 19A, the discussion must be considered closed.

## Article 20

No amendment has been submitted.  
Article 20 was adopted.

## Article 21

An amendment has been submitted by the Delegation of the Union of Soviet Socialist Republics proposing to delete the text adopted by Committee III and to re-establish the Stockholm text.

Mrs. SPERANSKAYA (Union of Soviet Socialist Republics): The Delegation of the Soviet Union is of the opinion that the text of Article 21 as adopted by Committee III is not satisfactory.

The Stockholm text of the same Convention provided that the Parties to the conflict should take the necessary measures to ensure that children under fifteen, who are orphaned or separated from their parents as a result of the war are not left to their own resources and that their maintenance and education are facilitated in all circumstances. The Stockholm text therefore imposed on States, Parties to the Convention, an obligation to take concrete measures to carry out this eminently humanitarian task.

The amendments which have been proposed have made the text of Article 21 a mere statement of principle, whereas before it was a concrete obligation imposed on the States Parties to the Convention. It is for this reason that Article 21, particularly in its first part concerning the protection of the rights of children, has a less extensive application than it had in the Stockholm Draft.

Instead of laying responsibility for the necessary measures for the protection of children on the Parties to the conflict, the new text of Article 21 introduces a vague formula which may perhaps be called intentional, according to which the Parties to the conflict must only prevent the children being left to their own resources. It is obvious that this wording gives a less real and less effective protection to children.

The second world war has had serious consequences for children who have become orphaned or who have been separated from their parents by reasons of circumstances. This is why we must include in the Convention for the protection of civilians in time of war obligations which will bind the Parties to the Convention to take practical measures to the maximum possible extent, with the object of ensuring the protection of the interests of children.

Special measures should be taken with a view to protecting the interests of children in occupied territories. The Occupying Power should be obliged to enforce on its own responsibility measures to ensure that children, who are not supported by their parents or their relations, should not be left to their own resources.

We cannot agree with the arguments brought up during the discussion of Article 21, according to which the Occupying Power neither can, nor should provide orphaned children with the necessities of life, with maintenance and education. In principle, it is inadmissible and intolerable to view this problem in such a manner.

This part of the Convention does not and cannot give rise to reservations and vague formulae.

It cannot be claimed that such provisions

threaten the security of the Occupying Power or interfere with the administration of the territory, as certain delegations have done when raising this argument in the case of other Articles.

Assistance to innocent children, who have become orphans or separated from their parents by reason of the war, is the most noble and humane task.

The Soviet Delegation draws your attention to the necessity of restoring the precise wording of the provisions of Article 21, and proposes to replace the text of Article 21 as submitted by Committee III by the Stockholm text.

As regards the terms which have been added at the end of the Article of the Stockholm text by Committee III, that is to say "or by some other means", the Soviet Delegation agrees to keep them.

Sir Robert CRAIGIE (United Kingdom): I am frankly a little puzzled by the last speech we have listened to, because it conveys the impression that Article 21 which, as the Soviet Delegate has said, is an extremely important one, is no longer mandatory. Now if we look at the Article we see that in every paragraph it is stated quite specifically that it is mandatory; "the Parties to the conflict shall take the necessary measures", etc., and then we come to paragraph 2, "the Parties to the conflict shall facilitate the reception of such children in a neutral country", and finally, in the third paragraph, "they shall furthermore endeavour to arrange for all children under 12 to be identified", etc. Nothing could be more mandatory, and I am a little puzzled about what precise stipulation of importance for the protection of children has been omitted. On the other hand, I can see a great many things which have been very usefully added. In fact, this Article has been improved as a result of the discussions in Committee III probably as much as any Article in this Convention.

Perhaps I might specify one or two points, if I can do so, within my allotted five minutes. In the first place, in the first paragraph, provision has been included, at the request of the Holy See, for children separated from their parents to have freedom to practice their religion. A further provision has been added to the proposal of the Israeli Delegation to ensure that the education of the children shall be entrusted to persons of a similar cultural tradition, and lastly, on a proposal by the Delegation of Burma, the scope of the Article has been extended to cover children separated from their families as well as those separated from their parents.

In the second paragraph, Committee III has added, by unanimous agreement, essential safeguards to ensure the well-being of children sent

to a neutral country. Finally, the last paragraph incorporates the text recommended by the Drafting Committee as strengthened by a Holy See amendment carried in Committee III by no less than 30 votes to 2, and in the final form the Article was adopted unanimously.

The Soviet Delegation now apparently asks that all these improvements and additional safeguards should be swept away in favour of a return to the Stockholm text. I hope this Conference will give its strong support to the Article in its amended and improved form—the form in which it emerged from Committee III.

Mr. AGATHOCLES (Greece): I fully agree with the views and arguments of the Head of the United Kingdom Delegation, and since the problem of children is only too familiar and real in my own country, I should like to draw the meeting's attention to the following question. If a great step forward was taken in Committee III, it was largely due to the proposal of the Delegation of Israel, to the effect that the education of children should be entrusted to persons of the same cultural tradition as themselves. That is the crucial point which distinguishes the Stockholm text from the text submitted to the Assembly by Committee III. This obligation, which is of great importance, is mitigated by the words "as far as possible". I should like to ask whether these words could be omitted, in order that this provision may operate as the Committee and, I hope, the Conference wishes that it should. If the proposal to omit the words "as far as possible" in the last sentence of the first paragraph cannot be accepted, I shall in any case vote in favour of the text submitted by the Committee, and against the amendment proposed by the Soviet Delegation.

Mr. BOURQUIN (Belgium): I think we all agree on one point, namely that the children mentioned in Article 21 must be protected to the greatest possible extent. If I have rightly understood the speech made by the Delegate for the U.S.S.R., her apprehensions with regard to the new text are mainly due to the expression "...shall take the necessary measures to prevent...". The Soviet Delegate considers this wording less definite and less imperative than that of the Stockholm text. I must say that I agree with her on this point. In any case, I think that we must eliminate from our text anything which would uselessly restrict the scope of the provision. Yet on the other hand, there seem to be, in the text drafted by Committee III, a number of definitions which did not appear in the Stockholm text and which, in my opinion, should be retained. Therefore, if I have really understood the views expressed

at this Meeting, an agreement should be possible if we inserted, at the beginning of the first paragraph, a wording similar to that in the first paragraph of the Stockholm Draft and left the remainder of the text of Committee III as it stands.

I therefore make the following proposal: Article 21 would begin with the words:

“The Parties to the conflict shall take the necessary measures to ensure that children under fifteen...”

and for the rest, the text of Committee III would be retained.

Mr. FENEŞAN (Rumania): The question dealt with in Article 21 is of primary importance for everybody here. The Article was certainly inspired by the unspeakable sufferings which the children of so many countries suffered during the last war; in fact, not only during, but directly after the war, millions of innocent little victims, orphaned children, were left to their own resources, and had neither the requisite food nor education when they most stood in need of all the protection possible.

That is why we feel that, in a question of this kind, the wording of the Convention should be absolutely clear, and without any possible ambiguity. From this point of view, the Stockholm text seems to me to meet our wishes.

Also I should like to point out that the Belgian Delegate raised a very important point, a short time ago, concerning the ambiguity of the first paragraph. With regard to the third paragraph of the text adopted by Committee III, we think that it might be open to an arbitrary interpretation, which would be particularly deplorable in a question of such importance as that of the settlement and identity of children.

For all these reasons, the Delegation of Rumania considers that it would be preferable to revert to the Stockholm text and will therefore vote in favour of the amendment submitted by the Soviet Delegation.

Mr. CLATTENBURG (United States of America): It had not been the intention of the United States Delegation to take a stand on this Article. We had intended to support the draft of the Committee's text as it was.

There has been a proposal submitted by the Belgian Delegation to change the wording of the first part of this Article. The translation of that suggested change which has been given to us is not, however, adequate because it leaves the last part of the first sentence in a complete state of grammatical chaos, and for that reason it would be impossible for the United States Delegation to vote for that amendment drawn up not in correct English.

Miss JACOB (France): Since there is a question of altering the wording of Article 21, the French Delegation proposes that there should be some correction of the third paragraph, which is not in very correct French. (Does not relate to the English text).

Sir Robert CRAIGIE (United Kingdom): I understand, from discussions which have just taken place outside the Conference, that the following wording, *i.e.* the first two lines of Article 21, would be acceptable to some of the delegations which have spoken today:

“The Parties to the conflict shall take the necessary measures to ensure that children under fifteen who are orphaned or separated from their families as a result of the war are not left to their own resources, and shall facilitate in all circumstances their maintenance...”

The paragraph would then continue as in the Committee III text.

I understand that only a few changes in the French text would be required in order to make it conform with the English text.

The PRESIDENT: I think we can now proceed to vote. We have before us one proposal made by the Belgian Delegation and another tabled by the French Delegation.

First, the wording of Article 21 must be put right and then I will compare the text of Article 21, as submitted by the Committee, with that drawn up at Stockholm, which the Soviet Delegation calls upon the Meeting to adopt, in place of the Committee's text.

I therefore put first to the vote the proposal submitted by the Belgian Delegation to delete, at the beginning of the Article, the word “...empêcher...” (in the French text only).

This proposal was adopted unanimously by the delegations present, without opposition or abstention.

On the other hand, the French Delegation proposes to replace the words “...or by some other means.” at the end of the third paragraph.

Miss JACOB (France): The whole paragraph is involved. Allow me to read it to you:

“They shall furthermore endeavour to arrange for all children under 12 to be identified by the wearing of identity discs, or by some other means.”

The PRESIDENT: I think that, as regards the substance, the two texts may be considered identical. It is merely a matter of drafting modifications.

Sir Robert CRAIGIE (United Kingdom): I think no change is necessary in the English text, so it is only the French text which is concerned.

The PRESIDENT: It seems to me that, if the English text is satisfactory, there is no reason to alter it. It is only the original text that requires modification.

I take this opportunity of saying that I think it is regrettable that proposals of this kind should be made at the last moment, and that the Plenary Assembly should be expected to do the Drafting Committee's work over again.

Mr. COHN (Denmark): I entirely endorse what you have just said. Nevertheless, since we are modifying one of the Articles, I would draw attention to the proposal made by the Delegate of Greece to omit the words "as far as possible" in the last sentence of the first paragraph. I quite agree that these words are redundant in this case.

The PRESIDENT: We cannot continue to work under such conditions. A time limit was fixed for proposing amendments. I therefore propose that the Assembly should consider such amendments as tabled too late—sometimes amendments of substance, like that of the Greek Delegation—which are submitted *in extremis* to the Assembly.

If we want our work to be properly done, we must adopt the methods provided for in our Rules of Procedure and abide by them.

Mr. AGATHOCLES (Greece): I have always strictly adhered to the Rules of the Conference. When I submitted my proposal two others had already been submitted by other delegations. When I made this proposal I asked you if it could be considered; when you enumerated the proposals submitted today by the other two delegations, not counting my own, I did not even ask for the floor and I dropped the question. It was only when the Delegate of Denmark was good enough to support my proposal that the question came up again.

I now wish to state that it is my intention to respect, as I always have, the Rules concerning the procedure for submitting amendments.

Moreover, as regards the Civilians Convention, the Greek Delegation has submitted one amendment only to which my Delegation attaches much importance since it bears on Article 60. This amendment is a clear statement of my Delegation's views on an eminently humanitarian question, which indicates strongly its point of view.

Colonel HODGSON (Australia): I rise to support your own statements and to support your views that the work of this Conference will be

impossible if we have a repetition of the proceedings we had this afternoon on Article 21. Here is the history of what happened in the Committee. This was not the first reading but the second reading when this Article had been before this Conference for weeks. There were 18 speeches on it in the second reading and it took the whole day. There was an adjournment; there was a deferment of a vote, and it was finally passed unanimously, and those Delegations which put verbal amendments in this afternoon to the Plenary Meeting never raised them then. I sympathize with you, Sir. It makes the position of the Chair and the work of this Conference impossible, and I do appeal to you, Sir, to reject at this stage any verbal amendments.

The PRESIDENT: I note that the Delegation for Greece has not submitted a formal amendment. I further note that a proposal has been made by the French Delegation on a purely drafting point. I myself see no objection to taking a vote on this proposal, provided that the United Kingdom Delegation does not wish to have this provision re-drafted.

Afterwards we shall vote on the amendment submitted by the Delegation of the Union of Soviet Socialist Republics.

We shall now therefore take the vote on the proposal submitted by the Delegation of France, which concerns drafting changes only.

The proposal of the French Delegation was adopted by 25 votes to 1, with 8 abstentions.

We shall now proceed to vote on the amendment submitted by the Delegation of the Union of Soviet Socialist Republics which proposes to substitute the Stockholm text for that submitted by the Committee.

7 Delegations have voted in favour of this amendment.

I now request the Delegations in favour of the text amended by the Belgian Delegation to raise their hands.

Mr. WERSHOF (Canada): I do not understand what we are asked to vote against.

The PRESIDENT: The Soviet Delegation proposes that the Assembly should accept the Stockholm text. The Delegations in favour of this proposal have just voted to this effect. I now request the delegations who wish to reject the proposal made by the Soviet Delegation and who prefer the text of Article 21 as submitted by the Committee, to raise their hands.

Mr. WERSHOF (Canada): With respect, could you not allow us to vote against the Soviet amendment separately from the other question?



The PRESIDENT: If you prefer to take two votes instead of one, I have no objection.

The Soviet proposal was rejected by 31 votes to 7, with 3 abstentions.

Mr. WERSHOF (Canada): I ask for the floor to explain in two words why the Canadian Delegation abstained from voting on Article 21. We entirely agree with the first and second paragraphs but we do not agree with the third paragraph, and that is why we abstained from voting.

The PRESIDENT: We shall now vote on Article 21 as a whole, with the two alterations which have just been adopted.

Article 21 was adopted by 34 votes, with 7 abstentions.

#### Article 22

The PRESIDENT: No amendment has been submitted. This Article was adopted.

#### Article 23

Article 23 was adopted.

#### Article 25

The PRESIDENT: The Drafting Committee has made a recommendation (*see Report of the Drafting Committee*). I propose to postpone this question, as it is identical with the one which we referred this morning to a Working Party. I therefore propose to leave Article 25 aside for the moment. (*Agreed*).

#### Articles 25A, 26, 28 and 29

The above mentioned Articles were adopted.

*The meeting rose at 6.25 p.m.*

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### TWENTY-SIXTH MEETING

*Wednesday 3 August, 1949, 10 a.m.*

*President: Mr. Max PETITPIERRE, President of the Conference*

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#### CIVILIANS CONVENTION

#### Article 29A

The PRESIDENT: We will now resume the consideration of the Civilians Convention. An amendment has been submitted by the Indian Delegation.

I see that the Indian Delegation is not represented, as the Indian Delegate has been detained at a meeting of the Working Party. I therefore suggest that we should defer consideration of this Article, and proceed to consider Article 30.

#### Article 30

The PRESIDENT: There are no amendments to this Article; no one has asked to speak; Article 30 was adopted.

#### Article 31

The PRESIDENT: There are no amendments to this Article; no one has asked to speak; Article 31 was adopted.

#### Article 32

The PRESIDENT: An amendment to this Article has been submitted by the Finnish Delegation.

I see that the Finnish Delegation is not represented. I therefore propose to defer consideration of this Article, which will be resumed later.

#### Article 33

The PRESIDENT: There are no amendments to this Article; no one has asked to speak; Article 33 was adopted.

**Article 34**

The PRESIDENT: There are no amendments to this Article; no one has asked to speak; Article 34 was adopted.

**Article 35**

The PRESIDENT: There are no amendments to this Article; no one has asked to speak; Article 35 was adopted.

**Article 36**

The PRESIDENT: There are no amendments to this Article; no one has asked to speak; Article 36 was adopted.

**Article 29A (continued)**

The PRESIDENT: As the Indian Delegation is now represented, I propose that we should proceed to consider Article 29A.

Mr. HAKSAR (India): The amendment proposed by the Indian Delegation, namely, to delete the words "in their hands" from the first sentence of Article 29A is due to a particular interpretation of these words and their relevance in which perhaps the Indian Delegation may be wrong. In this Convention, and particularly in this section of this Convention, the words "protected persons" are used innumerable. The question arises whether there is in fact any justification whatever for the inclusion in Article 29A of the words "in their hands". If you examine the term "protected persons", it is defined for the purposes of this Convention in Article 3, and in that Article it is stated that persons protected by the Convention are those who at a given moment and in any manner whatever find themselves in case of a conflict or occupation in the hands of a Party to the conflict. Therefore, the term "protected persons" expresses in two words a type of relationship existing between certain categories of human beings within the four corners of a State. It defines a relationship of a certain group of persons, namely persons who find themselves in the hands of a Party to the conflict.

Therefore, once having defined "protected persons" in Article 3, strictly speaking—legally speaking—it is not necessary to repeat these words "in their hands" whenever we refer to protected persons, because by definition protected persons are persons in the hands of a Party to the conflict in certain circumstances, and that

is the reason why, now here in the Convention, although the words "protected persons" occur many a time, it has been thought necessary to qualify those words by adding "in their hands" because the position was obviously quite clear. Therefore, if it is not legally strictly necessary to have these words, the question arises whether they serve any other purpose, and the only purpose I can see is the creation of a class of protected persons—a narrower class, not protected persons generally, but protected persons in their hands, and for this reason the Indian Delegation suggests, firstly, that either the words "in their hands" are redundant or that they have the effect of limiting the protection of Article 29A to a smaller group of protected persons than is justified.

Mr. GINNANE (United States of America): The first sentence of Article 29A provides that the Contracting States specifically agree that each of them is prohibited from taking any measure of such a character as to cause the physical suffering or extermination of "protected persons in their hands". The purpose of the phrase "protected persons in their hands" is to limit the application of Article 29A to protected persons and to preclude any future interpretation that Article 29A regulates the conduct of military operations.

The Indian Delegation now proposes to delete the words "in their hands" on the ground that those words add nothing to the words that would remain, i.e. "protected persons". Technically, our Indian colleague, who is an able lawyer, may well be correct; however, the phrase which he proposes to delete "in their hands" makes it absolutely certain that Article 29A applies only to protected persons in the control of the State in question and not to protected persons in the hands or under the control of some other State or Government. That means that with respect to a particular government Article 29A protects aliens in its home territory and the inhabitants of any territory which that State may be occupying. The phrase "in their hands" makes that purpose clear and precise, and for that reason the United States Delegation believe that the text of Article 29A should not be changed.

Mr. WERSHOF (Canada): I rise to support the remarks of the United States Delegation. We are very sorry that on this occasion we cannot agree with the amendment proposed by our Indian colleague, whom we all respect, especially for his legal ability in connection with this Convention.

I would like to add these remarks to what the United States Delegate has just said. Article 29A was one of the most bitterly disputed Articles in this Convention. You will recall that it was

not in the Stockholm draft. It developed out of the new Article which was proposed by the Soviet Delegation and finally, on 15 June, in Committee III, the matter was put to the vote. On the one hand there was a draft—the final draft proposed by the Soviet Delegation—and on the other hand there was the other draft which was adopted and is now in the text before us, and which had been recommended by six of the seven members of the Drafting Committee of Committee III. There were two differences between the two drafts: one was that in the Soviet draft the words “in their hands” did not appear, and the other difference was that there was another phrase which had nothing to do with that point and which appeared in the Soviet draft but not in the draft of the majority of the Drafting Committee. There was a lengthy and very heated discussion of these two differences between the Soviet draft and the draft of the majority of the Drafting Committee, and finally by a vote of 27 to 8 Committee III adopted the text which is before us today, and with all due deference to my Indian colleague there was no speech, either by the Indian Delegate or, for that matter, by any delegation other than the Soviet Delegation criticizing the words “in their hands” which were in the text.

Now in view of that history of the Article and of the fact that these very words were thoroughly debated in the Drafting Committee of Committee III, and were then debated in Committee III itself, and were criticized by the Soviet Delegation, and finally that Committee III, by a vote of 27 to 8, decided to adopt the text as we have it now, I ask you, fellow Delegates, why should we now proceed to take out those words? In the opinion of the Canadian Delegation it would be very dangerous to take them out in view of the history of this particular Article.

I entirely agree with my United States colleague that if this Article could be looked at purely from a lawyer's point of view without paying any attention to its history, one could say as a lawyer that the words “in their hands” are redundant, but I appeal to you to keep in mind the rather bitter history of this Article, and in view of that history it is the considered opinion of the Canadian Delegation that if you delete the words “in their hands” you will be opening up a possibility in future years of a completely distorted interpretation and meaning being given to this Article.

Apart from Part II, our Convention is dealing with the question of what a government does to protected persons in its territory; for instance, what the Canadian Government should do to aliens in Canada in time of war, or what an Occupying Power should do to the people of an occupied

territory. Now both of those categories of protected persons are clearly covered by the phraseology of Article 29A, and that is what the words “in their hands” mean; they mean aliens in the territory of a Party to the conflict, or the population of an occupied territory. If the words are taken out there is a serious danger that this Article could be distorted into meaning something entirely different, and I therefore hope that the Plenary Conference will uphold the decision taken in Committee III and will allow these words to remain in the Article.

Mr. DE ALBA (Mexico): Article 29A is a striking example of constructive cooperation between the great Powers, on the one hand, and small or medium sized States on the other. As the Canadian Delegate pointed out, it deals with a subject which was exhaustively discussed, not only in the Conference itself, but also in the various Committees. It is certain that nobody here is fundamentally opposed to the concepts and principles stated in this Article which expresses great and generous ideas, which will not only reflect credit on the Conference, but will also strengthen the Civilians Convention.

We have only to read Article 29A to be reminded of all the atrocities committed during the last war, and all the sufferings endured by the civilian populations in occupied territories. The Article is inspired by exalted moral convictions, and this, I repeat, is a credit to our Conference and a good omen for the future of this Convention.

The amendment submitted by the Indian Delegation aims at making the scope of Article 29A yet wider and more generous. It goes without saying that none of us is opposed to the principles of humanity and the brotherhood of man which this text implies; nevertheless, while we are all agreed on the substance of these provisions, we must not remain oblivious to the difficulties of applying them in practice, bearing in mind the responsibility we would take in adopting this amendment. The great advantage of the Indian Delegation's proposal, however, is that, without referring to legal criteria or to international law, it is drafted in broad and generous terms and gives our Conference a timely opportunity to make a declaration of humanitarian principles and human unity, irrespective of all other considerations.

The Mexican Delegation therefore supports the proposal to delete the words “...in their hands”, while leaving the remainder of Article 29A unaltered, as a formal affirmation of principles laid down by the Conference. The Mexican Delegation sincerely hopes that the amendment will be adopted.

Mr. CAHEN-SALVADOR (France): Speaking as a Delegate of France, I wish to apologize here, as Chairman of Committee III, for having omitted, when Article 29A was being considered by that Committee, to make the remarks which I am now going to make.

As our esteemed colleague the Head of the Mexican Delegation has just informed you, Article 29A, together with Article 31, is all that actually remains of the ill-fated Preamble of unhappy memory; unhappy not by reason of its contents, but owing to the unfortunate incidents which occurred while it was under discussion and which finally led to its suppression.

This Preamble was intended to proclaim those humanitarian principles to which the Mexican Delegate has just referred; it was a declaration of principle, as well as a summary of the preliminary provisions, and of the essential measures embodied in our Convention for the prevention of the atrocities which we have all denounced, and which many of us have experienced.

We are now confronted with a blank page, and future readers of the Convention will have to peruse it in its entirety in order to discover, here and there, those essential Articles to which our efforts have been directed. Article 29A is one of them, and is now almost lost among a number of other provisions dealing with entirely different matters. If this is the case, it is essential that these two Articles at any rate should express the whole contents of the Preamble, now that the Preamble is, by a freak of fortune, reproduced in an Article which relates exclusively and completely to civil war.

You will doubtless recall the words of Article 2A:

“In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:”

The acts prohibited at all times and in all places with respect to the persons referred to are then quoted; then follows the residue of what might be termed the “preliminary provisions”, in other words “violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture”; secondly, “taking of hostages”; thirdly, “outrages upon personal dignity, in particular humiliating and degrading treatment”; and lastly sentences passed and executions carried out without previous judgment.

I omit the fourth formula, which is covered by another Article; but Article 29A reproduces at least the essential substance of the minimum humanitarian safeguards to which the persons whom we intend to protect are entitled, even

though they do not enjoy the benefit of all the provisions of the Convention.

If Article 29A in its present form is carefully read, it will be seen that it enumerates prohibitions with regard to causing physical suffering, the extermination of protected persons, murder, torture, corporal punishment, mutilation, medical and scientific experiments, and in general any measures of torture or cruelty whether applied by civilian or military agents. What causes me a certain anxiety, however, is that there is a disparity in terms between Article 29A and Article 2A of which I was just speaking.

Our Convention is intended to become an integral part of international law, and in my capacity as a lawyer I have to point out to you that it would be extremely dangerous to allow any discrepancy to exist between the terms used, because as soon as there is disparity lawyers and legal authorities—which might here be the High Contracting Parties—might discuss indefinitely the reasons for this difference. Any Powers, the good faith of which was in doubt, might use such a discrepancy as a pretext to renounce the obligations which we have just established. That is my concern, and I felt obliged to inform you of it. What solution can be found?

During the last few days I have listened while a number of delegations deplored the fact that regrettable incidents in connection with the Civilians Convention had obscured the great interest shown in a Preamble and preliminary provisions. The French Delegation was one of the sponsors of the Preamble and did its utmost to give that Preamble a form which it was hoped would reconcile all opinions; in these circumstances you would not expect the French Delegation to revert to the proposal which has been rejected.

What the French Delegation does ask is that we should at least restore the essential points to the text upon which we have to vote. That is the object of my statement. I think it is not too late to remedy this deficiency. The French Delegation attaches very great importance to this matter and, although I have some diffidence in saying so, the Chairman of Committee III would be extremely pleased.

Colonel DU PASQUIER (Switzerland), Rapporteur: I should merely like to observe that the three words “in their hands” were inserted in order to avoid any possible ambiguity. The intention was to show quite clearly that this Article did not constitute any encroachment upon the sphere of the Hague Regulations concerning the Laws and Customs of War.

I consider therefore that the Committee’s text should be maintained as it stands, and that the amendment of the Delegation for India should

be rejected, since the omission of the words "in their hands" would entail the substitution of a text liable to confused and incorrect interpretation for one which is perfectly clear.

The PRESIDENT: We shall now vote on the amendment submitted by the Delegation for India.

The amendment submitted by the Delegation for India was rejected by 25 votes to 19, with 2 abstentions.

The PRESIDENT: We shall now vote on Article 29A as a whole.

Article 29A was adopted by 25 votes to 1, with 1 abstention.

### Article 32 (continued)

The PRESIDENT: An amendment has been submitted by the Delegation for Finland. It proposes to replace at the end of the first sentence of the first paragraph the words "national interests to the State" by "on urgent grounds of security".

Mr. AHOKAS (Finland): The Delegation for Finland consider that the change made in this Article by the Committee constitutes a dangerous weapon. The proposed text gives belligerents a great deal too much power to detain the persons in question on their territory. A possibility might even arise where these persons could be obliged to undertake some disguised form of military service. Furthermore, we feel that the draft is not clear enough. That is why we now propose that the Conference return to the more precise and limited text adopted by the Stockholm Conference.

Mr. GINNANE (United States of America): Article 32 was adopted unanimously in the Drafting Committee of Committee III as it was adopted unanimously in the full Committee III. In its present form as adopted by Committee III it permits a government engaged in war to refuse permission to depart to aliens whose departure would aid the enemy or would adversely affect the country whose hospitality the alien has been enjoying, in many cases for many years. Those are the reasons why the Drafting Committee of Committee III and Committee III itself adopted as a departure text the words "contrary to the national interest of the State". It was felt that such a broader text, broader than the text proposed by the Delegate for Finland, was both necessary and just as applied to the situation of resident aliens who have spent their lives in the country of the Detaining Power. The only other point I should like to make, in contradiction of

the Delegate of Finland, is that nothing in Article 32 has anything to do with military service, disguised or otherwise.

The PRESIDENT: We shall now vote.

The amendment submitted by the Delegation for Finland was rejected by 22 votes to 16, with 7 abstentions.

The PRESIDENT: We shall now vote on Article 32 as a whole.

Article 32 was adopted unanimously.

### Article 37

The PRESIDENT: An amendment has been submitted by the Delegations for Afghanistan, Belgium and India. It proposes to delete the last three words of the third paragraph "insurance against accidents" and to substitute the following: "compensation for occupational accidents and diseases".

Mr. BMMATE (Afghanistan): I should like to explain in a few words the reasons which have led the Delegations of Belgium, India and Afghanistan to place before you an amendment to Article 37. Our first concern was the coordination of the various texts relative to the work of internees and the amendment which you have before you represents the first of these adjustments. We are dealing in the first place with the suggestion made by the Coordination Committee to Committee III with regard to the advisability of coordinating Articles 37, 47, and the fourth paragraph of Article 84 of the Civilians Convention, concerning working conditions and, in particular, compensation for and protection against occupational accidents.

It is in fact the wording concerning protection against and compensation for occupational accidents which is the subject of our amendment. You will notice that there is a discrepancy. Article 37 refers to "insurance against accidents", whereas Article 47, which deals with the same subject, refers to "protection against occupational accidents". A common wording should be found, and this we have tried to do without using the word "insurance" or "protection"; we suggest the word "compensation" which seems to be preferable. The word "insurance" has a precise and limited technical meaning. The concept of the Assembly, however, would be to compensate occupational accidents whatever the means employed to this end.

Some legislations may provide, besides, or apart from the benefits derived from insurance, for the payment of lump sums intended to com-

pensate the victim. For this reason, we preferred a wider term which is closer to the wishes of the Assembly. We remain within the limits, but at the same time try to cover all branches of national legislation.

In order to be quite sure, we consulted the International Labour Office which confirmed that these cases were quite frequent, and that the technical term in constant use was, in fact, "compensation". We therefore have no hesitation in suggesting this term. Further, we suggest the inclusion of occupational diseases referred to in Article 84. There is no reason why these should not be mentioned here, and this is a further argument in favour of the word "compensation", the term "insurance" being less suitable for occupational diseases than the term "compensation" which we now propose.

The PRESIDENT: We will now vote upon the amendment submitted by the Delegations of Afghanistan, Belgium and India.

The amendment was unanimously adopted.

The whole of Article 37, as amended, was adopted by 41 votes, *nem. con.*, with no abstentions.

### Article 38

The PRESIDENT: The United States Delegation has submitted an amendment. The United States Delegate has the floor.

Mr. CLATTENBURG (United States of America): the amendment of the United States Delegation to Article 38 is to be found in a Document which was distributed (*see Annex No. 258*) and if you will be kind enough to read the explanation contained in that document, which is quite lengthy and quite detailed, you will understand the purpose of the amendment, which is to reduce the danger to certain persons placed in what is literally translated as "forced residence". If you read that, it will not be necessary for me to read, it and we can thus save time.

The PRESIDENT: We will now vote upon this amendment.

The amendment submitted by the United States Delegation was adopted by 20 votes to 12, with 6 abstentions.

Article 38 as a whole, as amended, was adopted by 33 votes to none, with 9 abstentions.

### Article 39

The PRESIDENT: An amendment has been submitted by the Delegations of the United States of America, France, Italy, Monaco and Switzer-

land. It proposes to add in the first sentence after the word "internment" the words "and enforced residence".

Colonel DU PASQUIER (Switzerland), Rapporteur: Speaking as Delegate for Switzerland—and consequently as one of the authors of this amendment—and at the same time in my capacity as Rapporteur—I beg to draw the attention of the Meeting to the need for correcting what is merely a slight oversight. In Articles 38 and 40, assigned residence and internment have been placed on the same footing. Any distinction between these two measure is a matter of municipal law, all the more so as we have just adopted the amendment proposed by the United States Delegation, for the deletion from Article 38, first sentence, of the words "as an exceptional measure". There is therefore no longer any reason to distinguish between internment and assigned residence and it seems to me that this adjustment could be accepted without discussion. I might add that there are two translation errors in the English text of the amendment; first of all "Sweden" appears instead of "Switzerland" and then "enforced residence" is given instead of "assigned residence".

The PRESIDENT: We will now vote upon this amendment. Will delegations who are in favour kindly signify?

The amendment was unanimously adopted by 40 votes.

Article 39 as a whole was unanimously adopted by 41 votes.

### Article 40

The PRESIDENT: No amendment has been submitted and nobody has asked to speak; the Article was adopted.

### Article 40A

The PRESIDENT: There is no amendment. Does anybody wish to speak?

Mr. SINCLAIR (United Kingdom): The object of Article 40A, which did not appear in the Stockholm draft, is, as stated in the report of Committee III, to recommend to States that they should not automatically consider as enemies those refugees who are not protected by their government, and also should not take account only of the legal citizenship of such refugees.

In attempting to draft an Article incorporating as strongly as possible such a recommendation, there is always some danger that a text may be

produced which would be capable of being interpreted in a sense going beyond the actual intention. Thus, for example, it has been suggested that this Article, as at present framed, might be held to prohibit a State from applying enemy alien legislation or recognized measures of control to a particular enemy alien who had claimed to be an enemy alien refugee who had been deprived by his own government of the diplomatic protection normally afforded by that government, or had taken steps to deprive himself of that protection. The consequences would then be that the Article would remain operative at all times, whatever the dangers with which the host country might in time of crisis be faced, and irrespective of any grounds that might call for the taking of legitimate measures of control in any particular case. Any such possibility was advisedly obviated by the insertion of the words "in principle" in the original form of words as suggested by the Delegation of the United Kingdom to the Drafting Committee, and was apparently also in the minds of the Delegation of Israel when they introduced the original amendment at the request of the International Refugee Organization, who also suggested including these words.

Whilst the doubt did not occur to the United Kingdom Delegation, it has been questioned whether the Article is not framed in a manner that could be interpreted otherwise than in accordance with the aim indicated in the Report of Committee III. Consequently, my Delegation would like to suggest that the matter should be placed beyond all doubt by the inclusion of the words "in principle" after the words "shall not" in this Article. This proposed amendment could hardly be briefer or simpler, and the history of the Article up to date does not show that it gives rise to any controversial issue. This proposal is therefore made simply on that footing. If, however, it should meet with any opposition at all from the Conference I should not wish to press it to a vote, but should that be the case, I should then wish to make a short statement placing on record the exact understanding on which my Delegation would accept Article 40A.

The PRESIDENT: You have heard the statement of the United Kingdom Delegate; does anybody wish to make a remark?

Mr. COHN (Denmark): I am entirely in agreement with the United Kingdom Delegate. I wonder, however, if this notion is not already expressed in the word "exclusively" which in fact has the same meaning as "in principle".

In any case, it would seem that one cannot use both expressions and say:

"...the Detaining Power shall not in principle treat as enemy aliens, exclusively on the basis of their nationality *de jure* etc."

The idea already seems to be contained in the word "exclusively", but I repeat that I am, in principle, in agreement with the United Kingdom Delegate.

Colonel DU PASQUIER (Switzerland), Rapporteur: The remark made by the Danish Delegate is quite correct, at least as regards the French text. To employ both the terms "in principle" and "exclusively" would make the text somewhat cumbersome.

It must be recognized that this text is nothing to be particularly proud of; however, it is at least comprehensible. The whole discussion really resolves itself into a question of a comma; and if something must be altered at all costs, it would perhaps be sufficient to delete the comma after the words "les étrangers ennemis" (in the French text) in order to make it clear that the word "exclusively" refers to the word "treat"; for the idea is that an alien who has taken refuge on the territory of a Contracting Party, may be regarded, on paper, as having the nationality of another State which has become the enemy of the State in whose territory he is resident. A case of this kind—and this is simply a recommendation—should not be considered solely from the point of view of a person's legal nationality according to his identity papers, but should be considered in accordance with all the circumstances of the case which may prove that he has abandoned his native country and is attached to his adopted country by ties of interest and of sentiment. In essence, this Article urges the State which has taken in such a refugee, not to consider him *ipso facto* as an enemy, because his identity papers prove that he has enemy connections, but to take all the circumstances of the case into consideration. In other words, i.e. in the words of the Article: Do not treat him exclusively on the basis of his *de jure* nationality. Of course this factor of *de jure* nationality may be taken into account, among others, in taking a decision, but the circumstances of the case as a whole should be considered.

It seems to me, therefore, that Article 40A is self-contained, and I think the only change we should make is to delete the comma after "étrangers ennemis" (French text).

The PRESIDENT: After hearing the speeches of the Delegate of Denmark and of the Rapporteur, is the United Kingdom Delegate prepared to withdraw his proposal, and to be satisfied with the deletion of the comma, as suggested by the Rapporteur?

Mr. SINCLAIR (United Kingdom): No, Sir. I am not satisfied with that. As I said before, I do not want to press this matter to a vote but it would not, I think, make sufficiently clear the position that we are most anxious to place beyond doubt and which nothing I have heard since I spoke shows is not the general intention of the Conference. I would be quite prepared to agree that if the words "in principle" were to be added the word "exclusively" could come out of the English text.

The PRESIDENT: I see that no definite proposal has been made, and that the United Kingdom Delegate does not press for a vote on his own proposal. In these circumstances, the remarks made will be recorded and I suggest that we should now take a vote on Article 40A as a whole.

Mr. CAHEN-SALVADOR (France): As Chairman of Committee III, I should like to ask the Conference to note that only the interpretation suggested by the Rapporteur was perfectly clear, and is moreover the only one which officially expresses the views of the Conference.

The PRESIDENT: We will now take a vote on Article 40A as a whole.

Article 40A was adopted, by 37 votes to none, with 9 abstentions.

Mr. SINCLAIR (United Kingdom): The United Kingdom Delegation desires that it should be placed on the record of the Conference that in accepting Article 40A in the form in which it has been adopted, they agree with the statement contained in the Report of Committee III that its effect is to do no more than secure the principle that refugees who may remain *de jure* enemy aliens will not be automatically treated as enemies and that consequently the adoption of the Article cannot in any way affect the might of the State to submit any such person to internment or any other recognized measure of control when there is any additional reason that renders the taking of such action necessary in the interest of the State in a moment of national crisis.

Mr. YINGLING (United States of America): That is correct. The United States Delegation voted for the Article and has the same understanding of its meaning as has just been indicated by the Delegate of the United Kingdom and would like the fact to be shown in the record.

Mr. CAHEN-SALVADOR (France): I must request that the declaration I made just now, namely

that the Rapporteur's interpretation was the only one which the Assembly should consider as official, should be recorded in the Minutes.

The PRESIDENT: The various statements will be recorded in the Minutes.

#### Article 41

The PRESIDENT: There is an amendment submitted by the Delegation of the Union of Soviet Socialist Republics. It proposes to delete the text of Article 41 in the wording adopted by Committee III and substitute the Stockholm wording of the same Article.

Mr. PASHKOV (Union of Soviet Socialist Republics): The Soviet Delegation cannot approve the text of Article 41 as proposed by Committee III for the following reasons:

Our Delegation has always been of the opinion that the responsibility should fall jointly upon the Power transferring protected persons and the Power receiving them. In accordance with this principle of joint responsibility, the maximum assistance contributable by the Powers responsible for transfer must be ensured to the interested Parties.

The third paragraph of Article 41, although requiring the Power undertaking the transfer of protected persons to take account of the opinion of the Protecting Power, in no way establishes the idea of joint responsibility. The other clauses of Article 41 do not improve the situation at all and constitute a deflection from the principle of the Article.

These provisions of Article 41 are not acceptable in principle, for they may lead to a situation where the responsibility of the Power concerned ceases to exist as regards the application of the Convention to protected persons. Furthermore, in case of violation of any of the provisions of the Convention, it would not be possible to make any representations to the Power transferring protected persons or, in other words, the Power which has taken them prisoner.

The Detaining Power, under whose authority the protected persons remain after they have been transferred to another Power, will be aware that serious consequences may result in case of violation of the provisions of this Convention. It can, however, always allege that it had not defaulted, that it has done everything possible in accordance with the provisions of the Convention, and that the fault lies in such a case with the Power to whom the protected persons have been transferred. Moreover, it may be that the Power receiving protected persons is not involved



in actual conflict with the Power under whose authority the protected persons are, but merely does not maintain relations with that Power.

This absence of responsibility on the part of the Power in whose power the protected persons are impedes the repression of infringements of the provisions of the Convention. The Soviet Delegation therefore considers that the responsibility must be jointly borne when protected persons are transferred from one Power to another.

Furthermore, the Soviet Delegation is surprised by the decision to omit in the fourth paragraph the words "during hostilities or occupation", which appeared in the Stockholm text. Moreover, our Delegation regards the fifth paragraph as redundant. The Soviet Delegation proposes that the Stockholm text be restored and it will vote in that sense.

Mr. QUENTIN-BAXTER (New Zealand): The question of joint responsibility is one which has been very fully discussed at various stages in the work of our Conference. I do not propose now to repeat all the arguments which have led this Conference to adopt the text now before us. Article 41 of the Civilians Convention corresponds to Article 11 of the Prisoners of War Convention. The Soviet amendment now before us corresponds to the Soviet amendment which this Conference rejected a few days ago when Article 11 of the Prisoners of War Convention was discussed.

It is not necessary for me to re-capitulate the detailed argument which caused this Conference to reject that Soviet amendment. I need only remind you that this issue has never involved the question of protection of transferred prisoners of war or internees. Everybody has been agreed that such protection should be afforded to them. The only difficulty was that the term "joint responsibility" carried with it technical implications which were unwanted and therefore it was necessary to devise another formula to enable many delegations to subscribe to this obligation. For those reasons a new text was elaborated. It has the advantage that no delegation has any technical objection to it. All delegations can subscribe to the protection which it affords to internees. Furthermore it is a detailed text which makes perfectly clear and specific the obligations which fall upon both the transferring Power and transferee Power. In the Drafting Committee of Committee III the new text was adopted without opposition. In Committee III itself the amendment which the Soviet Delegation now presents to us was defeated by 22 votes to 9. The Article in the form in which it comes before you was adopted in Committee III without a single vote being cast against it. The Soviet Union and certain other delegations abstained.

Now, despite the fact that an exactly similar amendment has been defeated when dealing with the Prisoners of War Convention, after considerable discussion of the substance, the Soviet Delegation continues to take up the time of this Conference by repeating that the abstract principle of joint responsibility gives greater protection to prisoners of war or internees than the new text does.

Any Delegate who feels any doubt whatever upon this point can easily resolve it by comparing the new, carefully prepared text which we have before us with the Stockholm text which the Soviet Delegation would have us take up again. We feel that if the Soviet amendment were adopted it could only cause unwanted inconsistencies between the Prisoners of War Convention and this Convention and unwanted dissension among the delegates at this Conference, all of whom wish to protect transferred internees and prisoners of war.

The PRESIDENT: We will now take a vote on the proposal of the Soviet Delegation.

The proposal was rejected by 25 votes to 10, with 8 abstentions.

The PRESIDENT: We will now take a vote on Article 41.

Article 41 was adopted by 31 votes to 8, with one abstention.

Mr. PASHKOV (Union of Soviet Socialist Republics): The Soviet Delegation requests that it should be recorded in the report of the proceedings that it voted against this Article as at present drafted.

The PRESIDENT: This will be duly recorded in the report.

## Article 42

The PRESIDENT: To this article an amendment has been submitted by the Italian Delegation. It proposes to substitute the text adopted by Committee III, after the words "protected persons", by the following text: "and those relating to goods shall be cancelled, according to the domestic law, as soon as possible after the close of hostilities".

Mr. MARESCA (Italy): The amendment submitted by the Italian Delegation merely expresses an idea which is certainly in keeping with the spirit of Article 42. This Article relates exclusively to measures affecting personal liberty, and does not apply to other measures, which are equally

important and equally justified. In our opinion, our amendment, therefore, fits in perfectly with the plan and arrangement of the Convention.

The amendment is based on the fundamental principles of international law, according to which the private property of persons who are abroad must be respected, although it may be subject to control during hostilities. This amendment is in harmony with the fundamental principles of the Hague Convention for the protection of enemy property, particularly as regards Articles 23G, 40 and 46. Our amendment also meets certain requirements of fair dealing which nobody can disregard.

We wish to provide for the restitution of property which has been acquired through a long period of work; not only in the owner's own interest, but also in the interests of the country's development and the economic relations between that country and the owner's country of origin. The amendment is, moreover, very limited in scope, as it only applies to protected persons within the meaning of the Convention and does not cover certain forms of foreign property, particularly that connected with shipping. The amendment is also drafted in flexible terms, since it provides that the restitution of property shall be in accordance with the national legislation of the countries where the property in question is situated and subject to the conditions specified by such legislation. We therefore feel that it should be possible to apply it.

Lastly, the amendment has the great advantage of providing for the possibility, not only of a hastened return of the property belonging to protected persons, but also of greater confidence among those who have to continue working under certain conditions. This Article could not in any way hamper the freedom of action of the countries in which the property is situated when peace is concluded, for if these States then consider that it is essential to utilize such means for settling their debit and credit balances, they can introduce a clause into the preliminary payment agreement to the effect that the restitution of such property shall be deferred to a subsequent date. This, therefore, merely constitutes an exception, which is not in itself an obstacle.

The Italian Delegation therefore urges you, for the above reasons, to accept the amendment which it considered it its duty to submit.

Colonel DU PASQUIER (Switzerland), Rapporteur: The Committee did not feel able to accept the views of the Italian Delegation in connection with this amendment, and with several others dealing with the property of protected persons. The Committee took as a basis for their work the principle that the purpose of our Conventions is to protect persons; and that questions of property, which are dealt with

more or less completely by the Hague Convention, should remain outside the scope of our activities.

Mr. WERSHOF (Canada): As the Rapporteur has said what I wanted to say I do not wish to speak again, but I hope that the Conference will vote against the amendment for the reasons given by the Rapporteur.

The PRESIDENT: We shall now vote.

The amendment submitted by the Italian Delegation was adopted by 22 votes to 9, with 12 abstentions.

Article 42, thus amended, was adopted by 43 votes, with 2 abstentions.

### Article 43

The PRESIDENT: An amendment was submitted by the Delegation of Italy. It proposes to add after the words "in any manner whatsoever" the following words "of any rights deriving from their personal status and...". I am informed by the Delegation of Italy that it is withdrawing this amendment.

Article 43 was adopted.

### Article 44

Article 44 was adopted.

### Article 45

The PRESIDENT: An amendment has been submitted by the Delegation of the United Kingdom. It proposes to delete the third paragraph and to replace it as follows:

"The Occupying Power undertaking such transfers or evacuations shall ensure, to the greatest practicable extent, that proper accommodation is provided to receive the protected persons, that the removals are effected in satisfactory conditions of hygiene, health, security and nutrition, and that members of the same family are not separated."

Mr. GARDNER (United Kingdom): This amendment is proposed by the United Kingdom Government because it believes that the article as it stands will be prejudicial to the interests of the persons concerned. The paragraph provides that the Occupying Power shall not undertake transfers or evacuations of protected persons before having ensured proper accommodation to receive the protected persons. It goes in with further details.

The amendment provides that the Occupying Power shall ensure to the greatest practicable extent that proper accommodation is provided. The circumstances in which evacuations of transfers may take place are frequently circumstances of emergency. The choice may be between removing the population from a threatened area at short notice under the best conditions available, which may not include the immediate provision of effective accommodation for them, or on the other hand leaving them there to be involved in the actual confusion of the battle. The fact that they have proper accommodation at the beginning of the battle may quickly be changed by the circumstances of the battle itself. If this absolute necessity for ensuring proper accommodation before you can move people remains in the Convention, it will oblige powers frequently in the circumstances of war to keep people in a dangerous area because there is no other area with appropriate accommodation available for them.

We agree that to the greatest extent possible you should always provide accommodation in advance, but we submit to the Conference that it is contrary to the interests of the people concerned to make it an absolute condition that such accommodation shall be provided before you ever move anybody.

We therefore ask the Conference to accept the paragraph proposed by our Delegate in place of the third paragraph of Article 45.

The PRESIDENT: We will now vote on this amendment.

The amendment submitted by the United Kingdom Delegation was adopted by 28 votes to 8, with 6 abstentions.

Article 45 as a whole was adopted as amended by 36 votes, with 8 abstentions.

#### Article 46

The PRESIDENT: No amendment has been submitted. As nobody wishes to speak, this Article is adopted.

#### Article 47

The PRESIDENT: Amendments have been submitted by the Delegations of Afghanistan, Belgium, India and Italy and by the Delegation of Mexico. The debate is open upon these two amendments.

Mr. MINEUR (Belgium): The amendment proposed by the Delegations of Afghanistan, India, Italy and Belgium does not call for any lengthy remarks. It merely suggests three alterations. The

first is to insert the words "and other safeguards" in the last sentence of the third paragraph, after the words "working conditions". The reason is that a similar term already appears in Article 37 (third paragraph) and as we wish to coordinate the texts of Articles 37, 47 and 84, it is natural to include here in Article 47 the term which appears in Article 37.

The second alteration suggested by our different Delegations is to replace in this same sentence the words "and protection against occupational accidents" by the words "and compensation for occupational accidents and diseases". Here again I do not need to make any lengthy comment. The reasons which the Afghan Delegate expounded with such clarity a few moments ago are precisely those advanced for the adoption of this wording. As you have taken this decision for Article 37, it would be only logical to do the same for Article 47.

Lastly, we propose to replace in the last sentence of the third paragraph the words "continuera" by "sera"<sup>1</sup>. In reality this is intended to meet an objection raised during the meeting of Committee III by the Mexican Delegate who feared that the words "shall continue" might prevent the Power concerned from adapting wage rates in conformity with the fluctuating economic conditions of the country. The cost of everything normally rises in wartime; wages should normally rise in proportion and the Mexican Delegate wondered whether the words "shall continue" might not have the effect of preventing the necessary advance of wage rates. That was the reason why we suggested the use of the word "sera". I admit that this is not the ideal wording, and that it could be improved, but I think it is definitely better than the term "continuera". Those are the reasons why I propose that you should adopt the amendment to Article 47 submitted by our various delegations.

The PRESIDENT: We will vote upon the two amendments under discussion; first upon the amendment submitted by the Delegations of Afghanistan, Belgium, India and Italy.

Mr. DE RUEDA (Mexico): Although we do not consider that the amendment just explained is quite perfect, we think that it does, in any case, meet the point which we raised during the discussion of this Article by Committee III and, in these circumstances, the Mexican Delegation withdraws its amendment.

The PRESIDENT: There now remains only one amendment, that submitted by the Delegations of Afghanistan, Belgium, India and Italy.

<sup>1</sup> Affects the French text only.

Will delegations in favour kindly raise their hand?

The amendment was adopted by 42 votes, with 1 abstention.

Article 47, as a whole, thus amended, was adopted by 47 votes with no abstentions.

#### Article 48

The PRESIDENT: No amendments have been submitted. As nobody wishes to speak, this Article is adopted.

*The meeting rose at 1 p.m.*

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## TWENTY-SEVENTH MEETING

*Wednesday 3 August 1949, 3 p.m.*

*President: Mr. Max PETITPIERRE, President of the Conference*

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### CIVILIANS CONVENTION

#### Article 48A

The PRESIDENT: An amendment has been submitted by the Delegations of Belgium, India and Turkey. It aims (1) to add, after "state or" the words "or to public communities"; (2) to replace the last sentence "except..." by the following: "except where destructions are rendered absolutely necessary by military operations".

I call on the Delegate of Turkey to speak.

Mr. ABUT (Turkey): The amendment which the Delegations of Belgium, Turkey and India have the honour to submit to this Meeting hardly calls for comment, at least as far as the French text is concerned, owing to its simplicity and clarity. I shall therefore be extremely brief.

The object of this amendment is to ensure the protection of property belonging to local administrations such as communes, municipalities, provinces, etc., by the insertion of the words: "public communities".

We hope that this proposal, the adoption of which would fill in a gap in the present wording of Article 48A, will meet with the unanimous approval of the Meeting.

The English translation, however, of the term "collectivités publiques", seems likely to give rise to difficulties and we would like to suggest that the words "public bodies" or "public corporations" be used here. We may add, however, that we are prepared to accept any other interpretation or adequate wording which an English-speaking Delegation may propose.

The PRESIDENT: If no one wishes to speak, we shall vote on this amendment. The final English text will be prepared by the Drafting Committee.

General SLAVIN (Union of Soviet Socialist Republics): The Soviet Delegation does not object to the first part of the amendment submitted by the Delegations of Belgium, India and Turkey. We are not, however, satisfied with the second part, or rather the end of this amendment, for the following reasons:

The text states that destructions, except those rendered absolutely necessary by military operations, are prohibited. In our opinion this sentence cannot be maintained as it seems to authorize destructions. We consider that this cannot be permitted and that the sentence should not be included in the Article. We agree, however, that there are cases when destructions may be necessary, as a result of circumstances beyond the control of the Parties to the conflict, but such cases are impossible to foresee.

The Soviet Delegation therefore proposes that the present text should be allowed to stand.

The PRESIDENT: We shall now vote on the amendment to Article 48A proposed by the Delegations of Belgium, India and Turkey.

General SLAVIN (Union of Soviet Socialist Republics): I forgot to ask whether we could not vote separately on the two parts.

The PRESIDENT: We will vote separately on the amendment.

General SLAVIN (Union of Soviet Socialist Republics): I propose that we should first vote on the beginning of the amendment where the words "public communities" appear and then on the remainder of the last sentence "except where destructions are rendered absolutely necessary by military operations".

The PRESIDENT: We shall therefore vote separately on the two parts of the proposed text.

Mr. GARDNER (United Kingdom): There is no change in the French text of the last clause in the Article.

The PRESIDENT: Is the Rapporteur in a position to express an opinion? At any rate the French text requires alteration, if not as regards substance, at least as regards the form given to this reservation. In the first part of the text, the alteration would refer to the words "or to public communities" which do not appear in the Committee's Report. We can thus vote separately on the first part of the amended text; we will then vote on the reservation: "except where destructions are rendered absolutely necessary by military operations".

We are now about to vote on the first part of the amended text.

The first part of the amendment was adopted by 35 votes, with 3 abstentions.

Mr. MINEUR (Belgium): If I have correctly understood, the Soviet Delegation objects to the second part of Article 48A because it considers that it differs from the text which was submitted by Committee III.

I agree that the form is different, (the active voice is used in one case, and the passive voice in the other), but the substance remains unchanged. I can assure the Soviet Delegate that there is no difference. The French text adopted by Committee III is worded as follows: "...sauf dans les cas où les opérations militaires rendraient ces destructions absolument nécessaires", whereas the French text of the amendment submitted by the Delegations of India, Turkey and Belgium is worded as follows: "...sauf dans les cas où des destructions seraient rendues absolument nécessaires par les opérations militaires".

The PRESIDENT: We shall now vote on the second part of Article 48A as it appears in the amendment.

The second part of this text was adopted by 20 votes to 8, with 10 abstentions.

Article 48A as a whole, as amended, was adopted by 32 votes, with no opposition and with 9 abstentions.

#### Article 48B

The PRESIDENT: There is no amendment to this Article.

Article 48B was adopted.

#### Article 49

The PRESIDENT: An amendment has been submitted by the Delegation of India, proposing to replace, in the first sentence of the second paragraph, the words "are taken in account" by "have been taken in account".

Mr. HAKSAR (India): In support of my amendment I would say that it is merely intended as a drafting alteration, and, in my opinion, it does improve the English text.

I am hardly in a position to say whether it affects the French version, but I would submit that it is a necessary amendment as far as the English text is concerned.

The PRESIDENT: Is the French Delegation in a position to give us its opinion on this drafting point?

Mr. CAHEN-SALVADOR (France): One text is as good as the other.

The PRESIDENT: We shall now take a vote.

The amendment submitted by the Delegation of India was adopted by 30 votes to 1, with 7 abstentions.

We shall now vote on Article 49 as a whole in its amended form.

Article 49 was unanimously adopted.

#### Article 50

The PRESIDENT: An amendment has been submitted by the Delegations of Argentina, Belgium, Denmark, Italy, Luxemburg, Uruguay and Venezuela (*see Annex No. 213*); another amendment has been submitted by the Delegation of the United Kingdom proposing to insert, in the second paragraph, the following sentence:

"In similar circumstances the occupying authorities may also grant recognition to hospital personnel and transport vehicles under the provisions of Articles 18 and 19A".

Mr. WERSHOF (Canada): I just wish to ask a question. In the amendment submitted by Argentina and others Delegations, I cannot find where the amendment fits in to the English text. Will someone please tell me?

The PRESIDENT: I request the Rapporteur to give us the desired explanation.

Mr. DAY (United Kingdom) Rapporteur: I think that the words "if necessary" should go after the words "occupying authorities" in the third line of the second paragraph.

Mr. WERSHOF (Canada): The amendment says in English that in Article 50, second paragraph, after the words "the occupying authorities shall state", some other words should be inserted, and my problem is that I cannot find in the second paragraph of Article 50 those mysterious words after which some other words are to be inserted. Could the Secretary or someone show me where the words are? I cannot find them.

The PRESIDENT: It appears that there is a typing error in the English text. I consider it unnecessary to discuss this question in a Plenary Meeting. It could be settled between the Rapporteur, the Secretariat and perhaps the Delegation of Canada. We shall reconsider Article 50, when the question has been settled.

#### Article 50A

The PRESIDENT: An amendment has been submitted by the Delegation of Italy proposing to delete, at the end of the second paragraph, the words: "so long as they are necessary for the needs of the civilian population".

Mr. MARESCA (Italy): The amendment submitted by the Delegation of Italy is based on several considerations.

The first is a legal consideration, the substance of which is absolutely irrefutable. Article 56 of the Hague Regulations of 1907 stipulates that all seizure of institutions dedicated to charity is forbidden. A hospital, at least when it is used for its normal purpose, is certainly an institution dedicated to charity.

The second reason is a matter of justice. The first paragraph of Article 50A stipulates that civilian hospitals may be requisitioned for the care of the wounded and sick of the occupying army. We believe that it would be somewhat premature to insist that the material in the stores of the hospital should also be requisitioned.

The third reason is of a more practical nature and concerns the administration of the hospital. The stores of a hospital are not intended to meet the requirements of the civilian population for a short period only—a day or a week—but for a very long period. A store of material is accumulated over many years; it requires great care and ex-

pense. It would indeed therefore be regrettable if such material could be requisitioned.

If you will allow me to quote from my personal experience, I should like to repeat what I heard in the hospital in Rome, which recently I visited very often as my brother had been seriously wounded. The nursing staff and doctors said to me with emotion: "So many years after the end of the war this hospital, whose stores of material were the pride of the people of Rome, has not yet built up its reserves again after their depletion by the various requisitions."

This is one of the reasons why the Italian Delegation proposes to delete the part of the sentence which is under discussion. In doing so, our Delegation feels that it is carrying out its duty towards all those persons who are entitled to receive adequate care when they knock at the gates of a hospital.

Colonel HODGSON (Australia): My Delegation opposes this amendment and will vote against it, not for judicial or other similar reasons, but for very real and practical reasons, because if the amendment were accepted it would mean that under no conditions or circumstances whatever could any material or stores of civilian hospitals be requisitioned.

I have been putting myself in the position of a commander of an occupying force. Say that he found that his ambulances or his field hospitals had run out of certain kinds of drugs, of chloroform or of instruments, and his own troops had to go without such necessities when there might well be in certain circumstances ample supplies, not only for short but for long term needs. If this amendment stood, do you think that that commander, or any other commander in similar circumstances, would abide by the Convention? Of course he would not. There would be a standing invitation to break the Convention. Surely no commander of occupying troops is going to exercise his right arbitrarily or capriciously, but the text as it stands does enable the Occupying Force, in cases of necessity and where no other supplies are available, to do certain kinds of requisitioning. Therefore my Delegation will support the text of Article 50A as it now stands without an amendment.

Mr. CLATTENBURG (United States of America): In answer to the first point submitted by the Italian Delegate I should like to state, without in any way going into the legal aspects of the matter, that I am surprised that he should confuse the idea of confiscation with the idea of requisition, which are two separate legal concepts. The Italian amendment is based, as I judge from the discussion by the Italian Delegate, on past experience in Italy; but the experience took place in an earlier war, the last war, at which time we did not have the benefit of the pro-

tection of the present Convention. Our present Convention in Article 49 which we have already adopted, says:

"To the fullest extent of the means available to it, the Occupying Power has the duty of ensuring the food and medical supplies of the population; it should, in particular, bring in the necessary foodstuffs, medical stores and other articles if the recourse of the occupied territory are inadequate".

In Article 50 it says:

"To the fullest extent of the means available to it, the Occupying Power has the duty of ensuring and maintaining, with the cooperation of national and local authorities, the medical and hospital establishments and services".

Now, if the Italian amendment is adopted, you are reducing the resources at the disposition of the Occupying Power. You are taking away with one hand the material which is available to live up to those obligations and laying on these heavy obligations with the other hand, and that is not reasonable. This amendment is not new. This amendment was proposed at Stockholm and rejected. It was proposed in Committee III and rejected, and we today urge its rejection again. If this amendment is adopted it will create a distinction between the sick and wounded on grounds of nationality. It will mean in cases of necessity a military Occupying Power may not use available supplies for its own sick and wounded. It is inhumane in depriving sick and wounded of material and supplies which may be necessary for their care and cure in the event of nothing else being available at the moment. There is also an obligation to bring in replacements under the Article we have adopted.

Mr. AGATHOCLES (Greece): May I ask the Italian Delegate for an explanation? The distributed Document states "at the end of the third paragraph". This must be an error as Article 50A has no third paragraph. It would therefore be from the second paragraph that the following phrase "so long as they are necessary for the needs of the civilian population" should be deleted. The second paragraph of Article 50A as adopted by Committee III, and as it appears in the final text, is worded:

"the material and stores of civilian hospitals cannot be requisitioned so long as they are necessary for the needs of the civilian population".

There are two different ideas involved. Furthermore, I cannot find in the text the words which the Italian Delegation proposes to delete. There seems to be an error in the wording.

The question of substance was the object of lengthy debates in Committee III which adopted,

by a large majority, the final text and which it seems to me is in full agreement with the considerations put forward by the Delegate of Italy.

The PRESIDENT: In reply to the remark made by the Greek Delegate I beg to state that the operative document of the Italian amendment is not the one to which he refers to, but the corrected text, which was distributed later. It concerns the second paragraph and not the third.

Mr. WERSHOF (Canada): The Canadian Delegation also opposes the Italian amendment and I just wish to add two short points to those which have been already made. The first is that the text of Article 50A as adopted by Committee III was adopted, according to my records, without one opposing vote. I do think in the Plenary Assembly we should pay some regard to the votes that were cast in Committee III. When an article has been adopted with no opposing votes in Committee III there should be some powerful reason before we start to change the article in the Plenary Assembly.

On the other hand the second paragraph of Article 50A was originally in Article 17 of the Stockholm Draft, but as it appears now, it is much more favourable to the people of the occupied territory and more stringent as applied to the Occupying Power than Article 17 of the Stockholm Draft. In Article 17 of the Stockholm Draft it states that:

"The materials and stores of civilian hospitals cannot be requisitioned and diverted from their normal purpose so long as they are necessary for the wounded and sick."

Now it is much stricter. They cannot be requisitioned "so long as they are necessary for the needs of the civilian population". The opinion of the Canadian Delegation is that the Article is really too strict, quite impracticable and unfair to any honest Occupying Power. Nevertheless, we are happy to vote for the Article as adopted by Committee III, but we think it would be a great pity to make the Article even more stringent by adopting the Italian amendment.

The second thing I want to say is this: this amendment, like many other amendments on the occupied territory section in this Conference, is the result of the horrible experiences many countries suffered under German occupation. But I do suggest to the Conference that we should remember that not every Occupying Power is necessarily barbarous. The great countries of the United States of America, the Soviet Union, the United Kingdom and France were, and still are Occupying Powers in Germany, and the Canadian Delegation does not think they were doing an evil thing by entering and occupying Germany. There is such a

thing as a good occupation, and there is such a thing as a good Occupying Power, and we think it is necessary to strike a balance between the needs of the suffering people of the occupied territory and the legitimate needs of an honest Occupying Power, because it is the honest Occupying Power that is going to pay attention to this Convention. If it were Hitler he would pay no attention and it would not matter what you said in it.

The PRESIDENT: Will the delegations in favour of the amendment submitted by the Italian Delegation kindly signify?

The amendment was rejected by 19 votes to 4, with 20 abstentions.

Article 50A as a whole was adopted by 43 votes nem con. with 1 abstention.

#### Article 50 (continued)

The PRESIDENT: The Canadian Delegation requested some information concerning this Article. I believe, however, that this Delegation has received the required information, and that we may now vote on the two amendments which have been submitted.

Mr. PASHKOV (Union of Soviet Socialist Republics): The Soviet Delegation proposes a modification to the amendment submitted by the United Kingdom Delegation, namely that the word "shall" be substituted for the word "may". The text would therefore read:

"In similar circumstances the occupying authorities shall also grant recognition to hospital personnel and transport vehicles under the provisions of Articles 18 and 19A."

Mr. DAY (United Kingdom): If I may speak for the United Kingdom, we are quite happy to accept the Soviet amendment.

The PRESIDENT: Does anyone wish to oppose the Soviet proposal?

As this is not the case, we shall now vote in turn on each of the two amendments before us.

I first put to the vote the amendment submitted by the Delegations of the Argentine, Belgium, Denmark, Italy, Luxemburg, Uruguay, and Venezuela.

The amendment was adopted by 28 votes, nem con. with 12 abstentions.

The PRESIDENT: I put the amendment submitted by the United Kingdom Delegation to the vote, as first amended by the proposal made by the Soviet Delegation.

The amendment was adopted unanimously.

It remains for us to vote on Article 50 as a whole, modified in accordance with the amendments just adopted.

Article 50, thus amended, was adopted unanimously.

#### Article 50B

The PRESIDENT: No amendments have been submitted.

Mr. PASHKOV (Union of Soviet Socialist Republics): The Soviet Delegation nevertheless requests that this Article should be put to the vote.

The PRESIDENT: I put Article 50B to the vote.

Article 50B was adopted by 32 votes nem con. with 6 abstentions.

#### Articles 50C and 51

The above mentioned Articles were adopted.

#### Formation of a Working Party entrusted with the drawing up of the Final Act of the Conference

The PRESIDENT: I propose to interrupt for a moment the consideration of the provisions of the Civilians Convention, in order to discuss now the first item on this afternoon's Agenda, which we were prevented from discussing at the commencement of the Meeting because not all the delegations were present. The item concerns the formation of a Working Party entrusted with the drawing up of the Final Act of the Conference.

At its Twenty-fourth Plenary Meeting, the Assembly decided that a Final Act would be submitted for the signature of all the delegations at the close of the Conference. The Secretariat has prepared a draft; before submitting this draft to the Assembly, however, it would appear advisable for a Working Party to consider the text and if necessary revise it. I propose therefore that a Working Party be formed for this purpose, consisting of Delegates of the following States: Australia, the United States of America, France, India, Mexico, United Kingdom, the Netherlands, the Union of Soviet Socialist Republics and Sweden. This Working Party might meet tomorrow at 9 a.m.

General SCHEPERS (Netherlands): Our Delegation regrets that it is not able to be a member of this Working Party, as it is not in a position to appoint a representative.



The PRESIDENT: Are the other Delegations whose names I have read out willing to be members of this Working Party?

Mr. BLUEHDORN (Austria): I should like to propose that a member of the Delegation of Switzerland be nominated.

The PRESIDENT: Is the Delegation of Switzerland willing to be a member of the Working Party?

Colonel DU PASQUIER (Switzerland): Yes.

The PRESIDENT: If no other proposals are made, the Working Party will consist of Delegates of the States which I have just enumerated, the Netherlands, however, being replaced by Switzerland.

#### CIVILIANS CONVENTION

##### Article 52

The PRESIDENT: There is an amendment submitted by the Delegation of the Union of Soviet Socialist Republics proposing to re-establish the Stockholm text.

Mr. PASHKOV (Union of Soviet Socialist Republics): Throughout this Conference, the Soviet Delegation has continually upheld the point of view that the widest scope should be provided for humanitarian organizations to carry out their work of assistance to civilian populations in time of war.

The Soviet Delegation once more desires to draw the attention of the Conference to the fact that the text of Article 52, as it has been adopted by Committee III, considerably weakens the force of the humanitarian principles of the Stockholm text. Indeed, that text provided exemption for relief consignments from various duties or taxes such as customs duties, and made it obligatory for the Occupying Power, to transport such consignments "free of charge in the territory which it governs", an obligation which was legitimate and quite natural since it concerned relief supplies brought by welfare organizations to civilian populations in time of war.

These facilities are not mentioned in the new wording of Article 52. The Article concedes to the Occupying Power a limited right to levy taxes on relief consignments, while specifying that such a levy will only be permissible "if necessary in the interests of the economy of the territory". The Occupying Power is therefore free to decide whether these relief consignments should or should not be transported free of charge.

In other words, Article 52, in its present form, involves no obligation on the Occupying Power to assist in relief measures for the civilian population. On the contrary, it makes it possible for that Power to raise various obstacles and to impede relief measures in favour of the population, under the pretext that this would be in the interests of the economic welfare of the country.

Consequently, the Delegation of the Union of Soviet Socialist Republics proposes that the Stockholm text be restored, for it reflects more exactly the humanitarian principles underlying the Convention which we are establishing at the present moment.

Mr. QUENTIN-BAXTER (New Zealand): This Soviet amendment may appear superficially to be a reasonable one, but it involves an interference with an exceedingly technical provision which has been very carefully studied in a Working Party and in Committee III and which we feel should not be changed.

Let me deal first with the question which the Soviet Delegation has just raised. They object to the words "unless these are necessary in the interests of the economy of the territory": that is to say, they object to the provision that relief consignments shall be exempt from charges, taxes or customs duties unless those duties are necessary in the interests of the economy of the territory. The reason for that provision is that these supplies are not merely gifts. Frequently relief supplies are a very long-term arrangement, and the country which receives the supplies is bound ultimately to account for them. It will be known to delegates at this Conference that many countries rely upon customs and excise duties for a very large proportion of their revenue. If they are receiving large supplies for which they are expected to pay ultimately, and if they are deprived of the right to collect the ordinary revenue upon those supplies which will be sold to members of their own population, then they may, through a seemingly humanitarian provision, be implicated in insolvency. This special clause has been put into Article 52 at the instance of countries which have had some experience of occupation and which feel very strongly that the authorities of an occupied territory must themselves have that right, that is the right to impose customs duties, taxes and so on.

Of course where relief supplies are gifts no country will wish to impose duties, because that would merely be a deterrent to the sending of more supplies; but it was felt by the people who studied this question carefully and exhaustively that they must have the right just mentioned.

The Soviet Delegation in Committee III moved an amendment to delete these words, and Com-

mittee III, which was fully cognisant of this whole difficult subject, defeated that proposal by 16 votes to 6. The Article, as it is before you, was then approved without one opposing vote. Now, however, the Soviet Delegation has not only directed its attention to this one provision, it has suggested that we go back to the original Stockholm text which was before us before we began our study three months ago.

I can only point out one of several of the bad effects that such a step would have. The first paragraph of Article 52 deals with the responsibility for the distribution of relief supplies. The Stockholm text provides that the Protecting Powers or other neutral Powers may carry that provision out. The Working Party, which was absolutely unanimous in its Report, pointed out that the Stockholm text would make it possible to give an Occupying Power which was not scrupulous the power of choosing at will between the Protecting Power and a neutral Power. In other words, this loose provision would enable an unscrupulous Occupying Power to avoid a good Protecting Power and to appoint some Power which was friendly to itself to carry out this duty. That danger we have avoided in the new text.

I have said that this is a technical provision. It is not the sort of provision that anyone should decide to change without having studied it extremely carefully and having all the facts in mind. I suggest that an amendment which merely suggests that we go back to the text which was before this Conference when we came here, before we had begun to study anything, before we had put in hours and hours of work upon this particular Article, is an irresponsible and vexatious amendment which should be rejected by an overwhelming majority of the delegations here present.

Mr. CLATTENBURG (United States of America): The New Zealand Delegate has so clearly stated what I expected to state that it is not necessary for me to speak.

The PRESIDENT: We will first take a vote on the amendment submitted by the Delegation of the Union of Soviet Socialist Republics.

The amendment of the Delegation of the U.S.S.R. was rejected by 25 votes to 9, with 5 abstentions.

We will now vote on Article 52.

Article 52 was adopted by 31 votes *nem. con.* with 9 abstentions.

### Article 53

The PRESIDENT: No amendment has been proposed; nobody has asked to speak, therefore this Article is adopted.

### Article 54

The PRESIDENT: An amendment has been submitted by the Soviet Delegation proposing to re-establish the Stockholm text.

Mr. PASHKOV (Union of Soviet Socialist Republics): The Delegation of the Soviet Union is of the opinion that the text of Article 54 is unsatisfactory, and proposes to restore the text of Article 54 as adopted at Stockholm. In the Draft before us the right of the National Red Cross (Red Crescent, Red Lion and Sun) Societies to pursue their activities is "subject to temporary measures and exceptional measures imposed for urgent reasons of security by the Occupying Power". What does this reservation mean? It gives the Occupying Power discretionary powers over all the humanitarian activities of the National Red Cross, Red Crescent, Red Lion and Sun Societies. In fact, the authorities of the Occupying Power need only declare that the activities of the Red Cross Societies are contrary to the conditions of security required by that Power, to be able to forbid all such activities without any explanation.

The Delegation of the Union of Soviet Socialist Republics considers that such a stringent restriction of the activities of the National Red Cross Societies in occupied territory, particularly during hostilities—that is to say, at a moment when these Red Cross Societies are most necessary—is contrary to established tradition and humanitarian principles. The Stockholm text gives much more effective protection to the activities of the Red Cross Societies. It is for this reason that the Soviet Delegation proposes the restoration of Article 54 as adopted at Stockholm.

Mr. BAGGE (Denmark): The Article which is before us was studied for a long time by a Working Party. Finally it framed the text which is submitted to you today. Committee III adopted this wording by 15 votes to 4, that is to say, by a considerable majority. It is for that reason that we can confidently recommend you to vote in favour of this text today.

Furthermore, we have a very special interest in this question as, I think, have all small nations. This remark particularly concerns the last paragraph. From our point of view, it is reasonable and equitable, now that this Conference is engaged in drafting a Convention for the protection of civil population, that some protection should be given to organizations which are going to care for and assist the civil population.

It is for all these reasons that I ask you to accept the Article as it is now presented to us.

Mr. MINEUR (Belgium): I can only support what the Delegate of Denmark has just said. Article 54 has not been considered lightly; it has given rise to long debates, acrimonious arguments and profound discussions, particularly as regards its last paragraph dealing with what are called "special organisations of a non-military character".

We should have liked to see this Article included in the first part, as the second, third or fourth paragraph of either Article 12, 12A, 13, 15 or 18. The suggestion was made to include it under the heading of "occupied territory".

The Working Party, under the Chairmanship of Mr. Mevorah, received our proposal favourable. Finally, although we did not obtain all that we should have liked we did gain the essentials. The present text is the result of a compromise.

If the proposal of the Soviet Delegation were accepted, it would result in the retention of certain guarantees for the Red Cross Societies and other private societies, but it would also result in the omission of the whole of the last paragraph to which we attach the greatest importance. We therefore venture to urge that it be retained.

I should like to say a few words on the non-military organizations. I shall not speak very long. The experience of the last war has shown beyond all doubt how great were the services rendered by certain new organizations concerned with the welfare of the civilian population. In the event of a new conflict, these organisations are liable to be extended and enlarged in proportion to the increased efficacy of the new means of destruction which will probably be employed.

This is why I stress the necessity of retaining Article 54 in its present form.

The amendment submitted by the Soviet Delegation, put to the vote, was rejected by 28 votes to 9, with 5 abstentions.

The PRESIDENT: We shall now vote on the Article as submitted by Committee III.

Article 54 was adopted by 31 votes *nem. con.*, with 11 abstentions.

#### Article 55

The PRESIDENT: There is no amendment. I call upon the Rapporteur to speak.

Mr. DAY (United Kingdom), Rapporteur: I wish merely to draw attention to an amendment which has been made by the Drafting Committee which I think is a point of substance and is wrong.

In the second sentence of the first paragraph the words "subject to these considerations" have been substituted for the words "subject to the

latter consideration". The effect of this change is that an Occupying Power can now suspend the local courts in cases where they constitute a threat to its security. Committee III never had that intention. They considered that cases where the local courts would threaten the security of the Occupying Power would in fact never exist and that such a provision would only give rise to abuse. I would therefore suggest that in this case the recommendation of the Drafting Committee be rejected and that we revert to the words in the text approved by Committee III: "subject to the latter consideration".

The PRESIDENT: Does anyone wish to speak on the observation made by the Rapporteur, which only concerns the English text? As no one wishes to speak, I take it you agree with the Rapporteur's observation.

Does anyone else wish to speak on Article 55? If this is not the case, I consider this Article as adopted.

Article 55 was adopted.

#### Articles 56, 57, 58

The above mentioned Articles were adopted.

#### Article 59

The PRESIDENT: An amendment has been submitted by the Delegations of Australia, Burma, the Netherlands, the United States of America and the United Kingdom (*see Annex No. 301*).

Sir Robert CRAIGIE (United Kingdom): The amendment to the second paragraph of Article 59 which has been put in the names of the Delegations of Australia, Burma, the Netherlands, the United States of America and the United Kingdom, is virtually identical with the text adopted for this paragraph by the Drafting Committee No. 2 of the Committee III. I should perhaps for clarification's sake inform you what the modification is from this latter text. In the text of Drafting Committee No. 2 of Committee III the words occur: "grave acts of sabotage of installations" as the kind of act for which the death penalty can be imposed. In the amendment it says "grave acts of sabotage resulting in the destruction of or severe damage to installations". In other words, it is a clarification of what was meant by sabotage of installations. Now that text was lost in the main Committee by only 4 votes, and in view of the great importance of this subject of the imposition of the death penalty in occupied territory, I feel I owe the Conference

no apology for bringing this matter up and asking it to go into the matter at some length.

Let us first examine the text in this paragraph as it is presented to us by the Drafting Committee of the Conference. In the first place, you will see here in the middle of the paragraph that it speaks of serious acts of sabotage against the military installations of the Occupying Power, and then it goes on to say "provided that such offences were punishable by death under the law of the occupied territory in force before the occupation began." Clearly, no power before it is occupied would have legislation providing for the punishment by death of acts of sabotage against military installations in time of occupation, so it really means that particular category of act is eliminated from the scope of this article.

The really important phrase is: "provided that such offences were punishable by death under the law of the occupied territory in force before the occupation began". The United Kingdom Delegation have the fullest sympathy with those who object to the penalty of death in time of peace, (it was very nearly abolished a short time ago in the United Kingdom), but we do suggest to the Conference that there is all the difference in the world between the peace time application of this question of the death penalty and its application in time of war and in occupied territory. If we take this text at its face value it really means, I believe, that in practice the death penalty cannot be imposed even for the types of acts mentioned in this paragraph, since it will only be necessary for a country which believes that it is shortly to be occupied, or may be occupied, to pass a law abolishing the death penalty, and the latter cannot then be imposed.

One cannot but sympathize—and I am sure the Conference sympathizes—with those in an occupied country who feel it is their duty to proceed with the types of act against the Occupying Power which are mentioned in this Article, but we must not let our sympathy with those people blind us to two important facts: the first is that it is the duty of the Occupying Power under international law to maintain law and order in the occupied territory, and the second is that if such acts are not punished adequately at an early stage, widespread disaffection might result which the Occupying Power must repress, with the result that the civilian population as a whole is made to suffer because perhaps one man was not condemned to death.

In all these matters I suggest we must maintain a balance, and above all we must not put into our Convention provisions which certainly cannot be carried out in practice. I challenge any of the delegations here, which are opposed to this amendment, to say, after careful examination,

whether, supposing they were to be placed in the position of an Occupying Power and were faced with this type of action, they would not feel themselves compelled to impose the death penalty.

We therefore ask you to consider this amendment which we put forward as a just compromise between opposing views; something which, provided the Convention is carried out at all, will definitely prevent the type of horror which occurred in occupied territory during the last war, the type of abuse under which the death penalty could be imposed for such things as listening to the radio or even for striking. It is far better, I suggest, to include a code of that description, under which the acts which are punishable by death are reduced to their lowest possible denominator, rather than to risk putting into the Convention a provision which cannot be carried out in practice, which can never become one of the accepted principles of international law, and which may therefore end in exposing the civilian population and those who work against the Occupying Power, to far worse rigours than would be the case if you put in a stipulation which is workable and reasonable.

Mr. LELAND HARRISON (United States of America): The United States Delegation shares the view of the United Kingdom Delegation that paragraph 2 of Article 59 would in practice result in the abolition of the death penalty in occupied territory. I wish to emphasize the various possibilities of such a result.

Every delegation here is in agreement that the death penalty should be limited to truly serious crimes. In this connection, however, we must remember that an even more important principle is that no matter how serious the offence, the accused shall not be punished without a previous trial and conviction, even though he may be a spy or a murderer. In other words, under the law as it now stands, the troops of an Occupying Power who apprehend illegal combatants or persons accused of illegal combat activities must hand such persons over to the appropriate military authorities for trial. Men have struggled for a long time to establish these principles but can we expect soldiers in occupied territory to turn over to the authorities for trial persons accused of espionage, sabotage and unlawful homicide unless they know that appropriate punishments will follow trial and conviction?

Under Article 67 of the Civilians Convention, protected persons convicted in occupied territory must be handed over at the close of occupation to the authorities of the liberated territory. Not even persons convicted of the murder of soldiers of the Occupying Power are excepted. Thus, the Occupying Power can at most only imprison

such persons for the duration of the occupation, so that even for a malicious act resulting in the death of a large number of soldiers an illegal combatant could be imprisoned by the Occupying Power only for a few years at most, with the possibility of being released at the end of the Occupation. Such a situation will result not only in encouraging illegal acts by a hostile population against the soldiers of the Occupying Power, with resultant disorders, but will also inevitably lead to retaliation and revenge-killings by soldiers of the Occupying Power whose safety has been jeopardised or whose comrades have been assassinated. Such summary and uncontrolled actions will undoubtedly also result in the death of innocent persons.

Therefore the question placed before us, Mr. President, is whether we shall make sound international law by providing in this Convention not only for the trial of persons accused of serious crimes, but also for their adequate punishment, or whether we shall place in this Convention unrealistic provisions which cannot be carried out in practice and which will result in placing the inhabitants of occupied territory in a worse position than they now enjoy.

Mr. COHN (Denmark): The text drawn up by Committee III is the result of detailed consideration of the question, as well as the result of the experience of civilian populations in occupied territory. The aim of the Convention is to protect them. This Article does not concern a population subject to military law or to military penal legislation, but civilian persons who, although their country is occupied, can nevertheless have recourse to their national legislation as it existed before the occupation.

The Delegate of the United Kingdom, with the support of the Delegate of the United States of America, has here recalled the past experiences of belligerent Powers. He has stressed "necessities" which, in this special case, I cannot myself recognize.

Allow me to draw your attention to the bitter experience of the populations of occupied countries during the war, and to recall the long series of crimes perpetrated and death sentences pronounced by the belligerent Powers against the civilian population, in defiance of every law and moral principle.

We must, therefore, in the name of the countries which have suffered from such acts committed by belligerents, call for the maintenance of a text ensuring generous and effective protection for civilians in the special circumstances referred to by the two previous speakers.

The acts in question could not, in all cases, be classed as crimes, in the ordinary sense of the word; they may be acts committed in an

honourable and very understandable spirit of resistance by a population which sees its country occupied by the enemy.

This is why the Danish Delegation will vote in favour of the text submitted by Committee III, and recommends the Assembly not to give its vote to another new text, the adoption of which might, in the event of another war, serve as a pretext for a belligerent, once more to commit atrocities of the kind which aroused the indignation of the whole world during the last world conflict.

Mr. MINEUR (Belgium): During the discussion in Committee III of Article 59, as proposed by the majority of the Drafting Committee, I pointed out an expression in the second paragraph that I thought inadmissible. This referred to the possible imposition of the death penalty on a person guilty of homicide. I pointed out that whilst there may be premeditated or intentional homicide, there may also be homicide through negligence or imprudence. The latter, according to the Belgian Penal Code, incurs only a relatively light penalty.

I had asked for, and obtained, the consent of the Delegation of the United Kingdom that it should be stipulated that the homicide for which it is proposed to impose the death penalty, is intentional homicide.

As the amendment to Article 59 submitted by the Delegations of Australia, Burma, the Netherlands, the United Kingdom and the United States of America is singularly similar to the majority text which has been submitted to us, and which was rejected by Committee III, I would ask the Delegation of the United Kingdom and the other Delegations sponsoring this amendment if they would agree to its being slightly modified in the sense desired. For instance, under (b) it might be stipulated: "intentional homicide, or attempted intentional homicide".

General SLAVIN (Union of Soviet Socialist Republics): The second paragraph of Article 59 has been adopted by Committee III by 21 votes to 11 and not by 17 votes to 13, as stated in the footnote of the amendment in discussion. This amendment has given rise to long and careful study. On two occasions the Drafting Committee of Committee III considered the question. A very large majority of the delegations declared themselves in favour of maintaining the humanitarian principles contained in the draft text of Article 59.

The desire of certain delegations to extend the right to impose the death penalty in occupied territory has been very obvious from the beginning of these discussions. For example, the Delegation of the United Kingdom submitted on 28 May a first amendment enumerating in detail the crimes which could be punished by the death penalty.

Not content with this list, on 22 June the same Delegation submitted another amendment containing an enumeration of alleged crimes punishable by death (for example, carrying forbidden arms, etc.).

In their amendment the Delegations of Australia, Burma, the Netherlands, the United Kingdom and the United States of America refer to the fact that:

“such acts of illegal warfare may well constitute a grave threat to the military security of an Occupying Power and have traditionally been punishable by death”.

I should remind you that Article 59 concerns the protection of civilian persons in occupied territory and not the status of the Occupying Powers.

Article 108 of the present Convention stipulates that:

“The courts or authorities shall in passing sentence take as far as possible into account the fact that the defendant is not a national of the Detaining Power. They shall be free to reduce the penalty prescribed for the offence, ...”

and I stress the word “reduce” and not “increase this penalty”. At the same time, the amendment proposes to impose the death penalty on protected persons, even when the law of the occupied territory in force before the occupation began, did not prescribe the death penalty for certain specified offences.

The observations made by the Delegates of the United Kingdom and the United States of America have convinced us even more of the fact that this amendment is liable to reinforce arbitrary acts and measures of terrorism against the civilian population, on the pretext of establishing order. It is interesting to note that the same Delegations have recently refused to allow the inclusion in Article 75 of the Prisoners of War Convention of provisions which would have deprived war criminals of the protection conferred by the Convention. This category of persons is at liberty to commit crimes, but when it is a question of the civilian population, another attitude is adopted. If this provision as regards the civilian population were accepted, the latter would be subject to a reign of terror on no pretext.

The Delegation of the U.S.S.R. opposes the amendment submitted by the Delegations of Australia, Burma, the Netherlands, the United Kingdom and the United States of America, as it violates the humanitarian principles of Article 59 and gives the Occupying Powers wide powers to impose the death penalty on civilian populations. I am sure that the Conference will not take such a retrograde step and will reject this harmful amendment.

Mr. MEVORAH (Bulgaria): The proposed amendment radically alters the official text which was

adopted by Committee III. I must say, first of all, that the comment made by the Delegate of Belgium is correct, but in my opinion does not go far enough. He stated that we must not speak of premeditated offences but of deliberate offences. I should like to point out that in legal language, deliberate offences are all offences which are committed intentionally, although the intention is not necessarily premeditated, but may be instantaneous. Thus, if for example a soldier of an Occupying Power insults a woman by indecent language or rough behaviour and if the husband draws his revolver and shoots the soldier, it would be called deliberate murder or attempted deliberate murder. I think that the Delegate of Belgium had premeditation in mind, which is quite a different thing.

Secondly, I should like to point out that in the second paragraph of the text drawn up by the Drafting Committee, an essential part does not appear which is included in the amendment which the sponsors would like us to adopt. This part concerns homicide, or attempted homicide, resulting in grave injury to a member of the armed forces. In the official text of Article 59, as adopted by Committee III, homicide only is mentioned, and not attempted homicide resulting in grave injury. You know, of course, that grave injury, as defined in nearly all penal codes, is an injury which may be the cause of persistent weakness in the victim's constitution. The list of these injuries includes the paralysis of several fingers, an injury to the jaw liable to hinder normal mastication, etc. You can see that these are serious injuries, but really very insignificant in comparison with the suggestion which we are now considering. This wording does not appear in the official text and is only to be found in the amendment which it is now proposed to re-examine.

The most important point, however, is the third. We have to decide whether we have made a mistake by adopting the second paragraph of Article 59, and particularly the last part of this paragraph which is worded as follows:

“provided that such offences were punishable by death under the law of the occupied territory in force before the occupation began”.

I need not remind you that we have had long discussions on this subject, and it was only by a happy compromise that we finally adopted this Article. We would be making a serious mistake if we reversed this decision at the last minute, for we have not unlimited time in which to develop our arguments and opinions on the subject. It would be inexpedient for me to speak any longer on this point. I feel that I should already have finished my speech and I seem to have said absolutely nothing.

Reversals of decisions of this kind should not be tolerated. It would be better to retain the pro-

visions as we have drafted them after much effort and many compromises. I must, however, point out one thing: you must bear in mind that we are discussing the death penalty, of which the distinctive feature is its irrevocability. We must also remember that we are talking about happenings in time of war. We are familiar with the demands of warfare, we are even aware of the exigencies of State security, especially the security of an Occupying State. All this is true, but we know very well that in time of war many things are done hastily, many people may disappear completely, thanks to a summary procedure which has been carelessly set up. This is a characteristic of war time.

We must find a happy medium. It has been said: we are not in a position to abolish the death penalty in general, but we wish it to be enacted only in very serious cases; we do not desire that it should be prescribed and enacted as legislation in countries where by custom, perhaps by philosophic usage, it has been abolished from legislation.

Thus, as I have already stated, if the death penalty is admitted in certain cases, the Occupying Power will seize on this opportunity with the plea "You insisted on it!". On the other hand, if the death penalty is traditionally abolished even in time of war, or allowed only in exceptional cases, the Occupying Power will not have such an opportunity. Would this be a danger to that Occupying Power? Not at all, for it would have all the other means at its disposal: imprisonment, internment, etc.

I repeat, we are dealing with really exceptional cases. In general, even States which do not provide for the death penalty in peace time, do so in time of war, so that we can really call a halt here and admit the death penalty in the cases provided for.

The PRESIDENT (interrupting the speaker): I would ask you to terminate for you have already exceeded your time limit.

Mr. MEVORAH (Bulgaria): I am endeavouring not to exceed the time limit that you granted to the Delegate of the United Kingdom. I would conclude by proposing that this final sentence concerning the death penalty, even for countries which have a tradition for excluding it, be maintained.

Mr. DUPONT-WILLEMEN (Guatemala): I will not speak, since the Delegate of Belgium has said what I desire to say in respect of the term "homicide", which appears in the amendment submitted by the Delegation of the United States of America and other Delegations.

Colonel HODGSON (Australia): With due respect to the Delegation which made the statement this

afternoon that the text of this article had been fully considered by Committee III, that statement was quite incorrect because this paragraph of the article was never discussed at all. These were the circumstances: the Chairman announced that the four speakers on his list might speak and that after that the debate would be closed. Now the French text, which was the basis of this paragraph, had been withdrawn, so we understood, by the French Delegation in favour of the text which came down from the Drafting Committee, and the debate was closed after those four speakers, one of whom was the Delegate of Australia; then, at the closure of the debate, the Danish Delegation introduced the French proposal. My Delegation objected on a point of order because, had we known, we would certainly have opposed the French proposal. This is the first opportunity we have had to debate the substance of it.

With all respect to the Soviet Delegation, the vote regarding the substance of the French proposal was 17 to 13; I do not know whether he is deliberately trying to mislead this Conference; but the vote he mentions was on the paragraph as a whole, after the other vote had been taken. It seems strange, as the Canadian Delegate pointed out yesterday, that when any of us differ from the Soviet Delegation all kinds of false motives are impugned to us. For instance, this afternoon the five sponsors of this amendment were accused of trying to bring force and terrorism against protected persons; that was the exact quotation of the translation.

As we see it, the text before us is defective in these respects; offences which have caused the death of one or more persons are punishable by the death penalty only when they are intentional. These cases are usually caused by a hand-grenade or a bomb which may injure or cripple for life half a dozen soldiers; that is not punishable under this text. You may have a grave act of sabotage against railway communications or bridges which imperils the whole of your army; that is not punishable under this text, only sabotage against your own military installations—against your *own* military installations.

I could quote many cases where acts such as we have been discussing, when there has not been punishment, have led to serious trouble. As I said in Committee III, even the best disciplined troops in the world will rebel, and you are going to have reprisals and the troops taking the law into their own hands, and the consequences will be the loss of protection for the people you are trying to protect. With respect I would say this to the Delegate who spoke just now: I have seen the old Bulgarian penal code of the army, and that had the death penalty for all kinds of offences. I would like to know if it is still in force. I under-

stand that it is the same in the Soviet army. Their military code imposes the death penalty for all kinds of offences.

So the text as it stands, in the light of our experience as a Protecting Power and as an Occupying Power, is fair and reasonable; it is a good compromise and, we think, a just solution, and we therefore commend the text which has been set out as an amendment by the five sponsoring Powers. We ask you to give it the careful attention and examination which it did not get in the Committee, and we ask you to vote for it.

The PRESIDENT: Four Delegations have asked to speak. I hope that after these four speeches the Meeting will be sufficiently informed for a vote to be taken.

Mr. WERSHOF (Canada): This is certainly a subject on which there is room for honest difference of opinion. When one sees the line-up of delegations on the one side and on the other it is apparent that it is a subject on which many countries, many delegations, feel deeply for a variety of reasons.

There are four brief points that I would like to make in the short time at my disposal.

The first is this. In one of the debates in Committee III on this Article, we had before us at the time a draft from the Drafting Committee of Committee III which gave an even longer list of offences for which the death penalty would be permissible than those contained in the amendment now before us. When I spoke on that amendment I put this question to Committee III. I asked if any of the countries represented here which had had any experience as Occupying Powers had ever promulgated a death penalty code in occupied territory that was more favourable to the occupied people than the list contained in the text in front of us. No answer was given at the time, and I said in my speech that I hoped that if there was any country with experience as an Occupying Power that had ever promulgated a more favourable code—(by the word “favourable” I mean “with fewer offences punishable by the death penalty”)—perhaps they would kindly tell us before the Plenary Assembly. Needless to say, no country here with any experience as an Occupying Power has come forward to say that that country has actually in practice promulgated a death penalty code more favourable than the one we had before us then, and, *a fortiori*, no country has ever promulgated a death penalty code more favourable than the one proposed in this amendment.

My second point is this. There has been some reference in the debate to the idea that this amendment would encourage terrorism against the people of an occupied territory. Surely that argument has

nothing to it whatsoever. This whole Article is subject to other provisions of the Convention which provide the most detailed requirements for fair trial, for representation by the Protecting Power, and for so many other things that, frankly, I think the commander of an army would have to give up fighting the war in order to attend to all the provisions before he could put anyone on trial for a capital offence. It does not mean that his soldiers could just go and take a man and put him up against a wall and shoot him; he has to have a trial according to the guarantees of the Convention. The provision has nothing to do with terrorism; it has to do with what the offences are for which the death penalty may be decreed by law in occupied territory, and for which the death penalty may be imposed by a court after proper trial.

At the present time there is no Civilians Convention, and under international law occupying powers have a perfectly legal right to give a much longer death penalty list than there is in this amendment; and I ask, does anybody here suggest that any of the Occupying Powers in Germany have, because of the fact that they are not restricted by the proposed Civilians Convention, used the death penalty provisions to permit terrorism? I do not think so. The Canadian Delegation has no such suspicion of any of the four Occupying Powers in Germany, and yet, at the present time, there is no Civilians Convention. I think they could impose the death penalty for about fifty offences if they wanted to, and for all I know there may be, in the death penalty code in Germany, many more offences than there are in this amendment.

The third point is that if the Article as adopted by the great majority of Committee III were adopted, it means that if, in a country in which the death penalty for murder had been abolished before the war started, a soldier of the Occupying Forces were brutally murdered in cold blood—shot in the back—for no reason at all, the Occupying Power would not be able to impose the death penalty.

Is it possible to believe that any Occupying Army in this unfortunately human world would allow that kind of murder to go unpunished by anything except the death penalty?

My last point in the short time at my disposal is this. There are some countries here and some individual delegates who have a deep conscientious objection to the death penalty, and that I greatly respect; but I plead with them not to allow that conscientious objection to the death penalty in their own country to influence them in a matter of this kind. If their conscience will not allow them to vote for this amendment, I suggest they consider the possibility of abstaining.



When you look at the list of sponsors of the amendment, there are three countries which have had great experience as Occupying Powers—the United Kingdom, the United States of America, and Australia—and there are two which have suffered from occupation—the Netherlands and Burma. I think, that when an amendment of this kind is put forward by the governments of countries such as those it deserves the deepest respect.

Mr. BOSCH VAN ROSENTHAL (Netherlands): The Delegate of Denmark stated in his speech that the text of this Article was the result of a careful study carried out by Committee III. I am sorry that I have to inform him that this was not the case. This study was mainly carried out by a Drafting Committee which twice decided not to insert the concluding words of the second paragraph. Committee III therefore decided to amend the text, although it could not be said that all the delegates had studied the question thoroughly. The result, in my opinion, is a text which is contrary to the principle of public law.

Indeed, in the sphere of public law, if any authority is set up, it is the task of the higher authority to define and limit the powers of that authority. It would be a mistake to set up a legal system in such a way that the power of an authority depended on regulations drawn up by a subordinate body. Now this is exactly what the Committee has done here. It has established the rule that the rights of the Occupying Power may be limited, amended, and even, up to a certain point, nullified by internal measures which may be taken by the authorities of the Occupied territory.

A principle of public law requires that the rights of the Occupying Power should be defined at a higher level, that is to say, by an international Convention independent of the will of that Power and that of the occupied territory. May I give you an example of this.

Our country, like many others, consists of provinces enjoying a certain autonomy which they exercise through their representatives; but in each province there is a higher official of the Central Government, a Commissioner of the Queen, who is responsible for seeing that the laws and orders of the Government are obeyed. Could one imagine that the powers of the Commissioner, an agent of the Central Government, might depend on internal regulations drawn up by the provincial authority? This would be monstrous from the legal point of view; and yet this monstrous element exists in the Article that we are discussing.

I could quote other examples to show you that this text is absurd. Supposing that the rule provided for here had existed before the Second

World War, let us think what might have happened. Do you remember the situation in the month of September 1944? At that moment, and on all sides, the Allied Forces were getting nearer and nearer to the frontiers of Germany, driving before them the routed Nazi armies.

It was clear at that time that a few days later some areas of German territory would be occupied. If, in those circumstances, the German Government had promulgated a decree having force of law and stipulating that: "Throughout the territory of the Reich, the death penalty is abolished for any crime whatsoever and in all circumstances", the consequence would have been that the Occupying Powers—France, the United Kingdom, the United States of America and also the Soviet Union—would have found it impossible to inflict the death penalty in their zones of occupation, even for the most atrocious crimes. Experience has shown, however, that it is impossible for an Occupying Power to maintain order efficiently if it cannot, in certain serious cases, apply capital punishment.

I wished to make these remarks on behalf of the Delegations signatories to the amendment and I have much pleasure in replying to the Delegate of Belgium that our Delegation agrees with his proposal to insert the word "intentional" in the second paragraph (*b*) before the word "homicide" as also before the word "attempted".

Dr. DIMITRIU (Rumania): The very lengthy debates which took place in Committee III were a proof of the extreme importance of Article 59.

While the text adopted by the Committee appears more restrictive than that of Stockholm, it is nevertheless the outcome of a compromise solution based on the desire to provide protection for the civilian population. In the course of these debates the Representative of the International Committee of the Red Cross asked us to give the matter our careful attention, and not to leave an Occupying Power complete freedom to send a very large number of civilian persons to their death, perhaps on the strength of some such accusation as attempted homicide.

The Rumanian Delegation considers that it is not our task to draft provisions here which would be contrary to the very spirit of the Convention, that is to say dealing with the rights of the Occupying Power instead of the protection of the civilian population.

The arguments advanced in the explanatory note in support of the amendment are inconclusive. In point of fact, while the guarantee proposed in paragraph (*a*) is limitative, the provisions figuring under (*b*) and (*c*) leave the door wide open to an infinite number of interpretations which might lead to considerable abuses.

We heard countless speakers in the Joint Committee endeavouring to attenuate the concept of a "crime" and to replace this term by that of "infringement"; whereas today the same delegations seek to strengthen this concept of a "crime" and to extend, as much as possible, the field of application of the death penalty for alleged crimes. Speaking as a doctor, I wonder how one might best classify wounds, as serious or less serious, as there are many kinds of wounds, each different from the other.

The Rumanian Delegation, for the above reasons, supports the text adopted by Committee III.

Mr. BAGGE (Denmark): I do not desire to prolong the discussion, but the speech made by the Delegate of Australia seems to suggest that the Danish Delegation reverted to the French proposal in an irregular manner. Although I am personally convinced that the Delegate of Australia had no intention of making such a suggestion, I wish to state that when the Danish Delegation associated itself with the French proposal, that proposal had already been discussed and a vote had been taken on the question; everything was therefore done in the most regular manner.

I think, furthermore, that the Delegate of France, who was then Chairman of Committee III, will confirm everything that I have just said.

Mr. CAHEN-SALVADOR (France): I have just been criticized as Chairman of Committee III and I thank the Delegate of Denmark for having given me an opportunity to speak. I defy any delegation to question what I have said. The whole procedure followed by Committee III was absolutely regular and the objectivity and impartiality of the Chairman were never in doubt. I was anxious to make this statement here and I also wish to express my gratitude to the Delegate of Denmark for having raised the matter.

The PRESIDENT: I have no desire to prolong the discussion on what took place in Committee III, but I will nevertheless call upon the Delegate for Australia to speak.

Colonel HODGSON (Australia): Yes, that is exactly my intention. I just wish to make my point clear. I did not infer, nor intend to infer, that there was any irregularity whatever on this point in Committee III. The point I did make was this: up to the time the discussion was closed we did not know that the French text was before the meeting. We could not speak against it and it did not come before the meeting for discussion until the closure had been indicated; then it was revised by the Danish Delegation which, under the Rules, they had, of course, every right to do. The only point I make is that, as a Committee, we did not have an opportunity of discussing the text because we did not even know we were going to vote on it.

The PRESIDENT: The amendment on which we are about to vote has been changed by its sponsors in such a way that in paragraph (b), the word "intentional" now precedes "homicide". It also provides for the addition of the word "intentional" before the words "attempted homicide".

I think I must point out that attempted murder cannot but be intentional. This is a drafting point. If the word "intentional" is used before homicide, it is quite unnecessary to repeat it before the words "attempted homicide".

The amendment, amplified by the insertion of the word "intentional" was rejected by 17 votes to 15, with 11 abstentions.

Article 59, as a whole, was adopted by 34 votes to 4, with 5 abstentions.

Sir Robert CRAIGIE (United Kingdom): I should like to make a correction in my vote. I understood that, in the first instance, we were voting on the insertion of the word "intentionally" and then on the amendment. My vote should therefore be corrected on the last vote. I should have voted against the Article.

The PRESIDENT: Here is the result of the vote, after the Delegate of the United Kingdom had corrected his own vote.

Article 59 as a whole was adopted by 33 votes to 5, with 5 abstentions.

*The meeting rose at 7.15 p.m.*

## TWENTY-EIGHTH MEETING

Thursday 4 August 1949, 10 a.m.

*President:* Mr. Max PETITPIERRE, President of the Conference

### COMMON ARTICLES

#### Articles 41A, 45A, 119D, 130D (continued)

The PRESIDENT: We still have one more Common Article to consider. At the Twenty-second Plenary Meeting, you instructed a Working Party to frame a draft converting into a resolution the obligation set forth in Article 41A/45A/119D/130D. The text drawn up and proposed by this Working Party has been distributed (*see below*). It is understood that Article 41A/45A/119D/130D would be automatically deleted if the Assembly were to adopt the draft resolution which corresponds to the proposal of the French Delegation. If the Draft which has been submitted were not adopted, we should then vote on the Article.

Mr. CAHEN-SALVADOR (France): The Working Party appointed by the Assembly has succeeded in reaching agreement. It has requested Miss Gutteridge, of the Delegation of the United Kingdom, to submit an introductory report to the text of the Draft Resolution. I venture to request that Miss Gutteridge be called on to speak.

Miss GUTTERIDGE (United Kingdom): The Working Party set up to consider the form of the Resolution by the Conference regarding the reference of disputes to the International Court of Justice met on Tuesday morning at 9 o'clock. The Working Party considered the possibility of keeping to the wording of Article 41A/45A/119D/130D as presented to the Plenary Assembly by the Joint Committee, and thus merely transforming an Article into the shape of a Resolution. Certain objections to this course were, however, expressed. In particular, the Working Party were of the opinion that it would be preferable in this Resolution to avoid any reference to the optional clause, Article 36, of the Statute of the Court in view of the reservations under which certain States have accepted the optional clause.

The Working Party therefore agreed upon an

alternative formula, based on the suggestion put forward by the United Kingdom. This formula is as follows:

“The Conference recommends that in the case of a dispute relating to the interpretation or application of the present Convention which cannot be settled by other means, the High Contracting Parties concerned endeavour to agree between themselves to refer such dispute to the International Court of Justice.”

In adopting this formula the Working Party had in mind the following considerations: first, it avoids any reference to Article 36 of the Statute of the Court; secondly, it expresses the idea that all other means of settling a dispute should first be tried and then, but only then, the States concerned should endeavour to agree upon reference of the dispute to the International Court, and thirdly, it does not, since it is based on the idea of an agreement between the Parties, suggest the possibility of one of the Parties to the dispute refusing to recognize the jurisdiction of the Court.

I have the honour to present to the Conference the text recommended by the Working Party.

The PRESIDENT: Does anyone wish to speak on the text submitted by the Working Party?

As this is not the case, I shall put it to the vote.

The Draft Resolution drawn up by the Working Party was adopted by 36 votes to 1, with 1 abstention.

The PRESIDENT: The Common Article 41A/45A/119D/130D is therefore deleted. We have thus completed the discussion on the Common Articles.

### CIVILIANS CONVENTION

#### Article 59A

The PRESIDENT: We shall now resume the consideration of the Civilians Convention with Article 59A.

Article 59A was adopted.

**Article 60**

Amendments have been submitted by the Delegations of the United States of America, Greece, the Union of Soviet Socialist Republics, and France and India.

It appears to me that two of these amendments are practically identical—the amendments submitted by the United States of America and the Union of Soviet Socialist Republics.

Mr. GINNANE (United States of America): In the amendment to Article 60 submitted by the United States Delegation (*see Annex No. 303*) we propose the deletion of the last words: "and extradition is carried out in accordance with the procedure laid down by that law". These words were added to the text in Committee III, and we think that the net effect of these words thus added is to destroy the clear purpose and application of the second paragraph of Article 60.

Our reasons for that conclusion are set forth in the explanation which accompanied our amendment, and I accordingly will not repeat them.

Mr. HAKSAR (India): The amendment presented jointly by the Delegations of France and India is in respect of the second paragraph of Article 60, and the aim is to insert the word "particularly" after the words "occupied State" and before the word "from".

When this Article was being drafted in Drafting Committee III—of which I had the honour to be one of the members—it was felt even at that time, that all refugees who sought refuge before the occupation in the occupied territory should be protected. No doubt was expressed at that time as to the object of this second paragraph. I speak subject to correction, but I think that everybody agreed that all refugees should be protected, and it was felt that they were in fact protected by the Draft submitted by Committee III to the Plenary Assembly. Later on, however, certain doubts began to creep in because of the peculiar wording of the second paragraph, which says that:

"Nationals of the Occupying Power who have sought refuge from the consequences of an offence committed shall not be arrested, etc."

It was felt that perhaps those persons who have sought refuge without committing any offence would perhaps, on a very literal interpretation of the paragraph, not be protected. Although the argument then advanced was that it was absurd to suppose that persons who are innocent and have sought refuge should not be protected whereas those who had committed an offence and sought refuge should be protected, there is this possible interpretation, namely a literal interpretation.

In order, therefore, to clear up these doubts

and to make it quite clear that all refugees are protected, the Delegations of France and India have moved this amendment.

Mr. WERSHOF (Canada): I regret that I must appear again in my favourite rôle of opposing other Delegations' amendments, this time, two different amendments.

First of all, I wish to oppose the amendment of France and India on which the Delegate of India has just spoken, and I know that their intentions in putting forward the amendment are of the noblest. But in the opinion of the Canadian Delegation the consequences of that amendment could be absolutely disastrous. I do not think there is anything wrong with the words as they now stand as adopted by Committee III but I suggest that if the word "particularly" were put in, one result if this Convention were enforced might be the following. In the last war the famous traitor Lord Haw-Haw committed his treason in Germany. He was taken out of Germany, the United Kingdom Government brought him back to Britain and gave him a fair trial and in due course he was hanged. If you add the word "particularly" I do not think the United Kingdom Government could have taken Lord Haw-Haw out of Germany and I do not think anyone else in this Assembly would be in favour of an amendment which would lead to a curious result of that kind.

In our opinion, the Article as it stands in that respect is perfectly reasonable and satisfactory, and it would be very dangerous if at the last moment, without a good many hours of study by lawyers, we were to start readjusting the Article in the way proposed by the Delegates of France and India.

I regret also that I must speak against the amendment of the Delegate of Greece (*see Annex No. 304*) in which he proposes to add a completely new paragraph reading as follows:

"A mere expression of opinion in time of occupation cannot lead to prosecution unless it is by nature or intention such as might instigate a rising against the Occupying Power".

Here again, on the face of it, it looks to be a very reasonable, noble and humanitarian provision and those are, of course, the intentions of the Greek Delegation in putting it forward, but I think there are several arguments against it. In the first place it is a pity that a rather important amendment of that kind comes before the Plenary Assembly when it was never introduced before and never discussed before in Committee III or in any sub-Committee of Committee III and here we are at the last moment asked in a very brief debate to consider adding an entirely new provision. So far as the legal argument is concerned we do not agree with it. We do not think there is anything

in the first paragraph of Article 60 as it stands which would lead to the unpleasant consequences feared by the Delegation of Greece as explained in the note to their amendment. Our opinion may be wrong but our opinion is that there is nothing wrong with the clause as it stands. There are severe restrictions elsewhere in the Convention, particularly in Article 55, on the kinds of offences in regard to which the Occupying Power may adopt provisions. The Occupying Power does not have complete discretion to set up all the new types of offence it likes. There will be restrictions, particularly in Article 55, so if the Occupying Power wishes to consider as an offence the expression of certain types of opinion, it will have to do so within the limitations of the Convention. Finally, if you think of the occupation of Greece and other noble countries by the Germans and consider that this particular provision would be a very laudable one, I ask you again to think of the occupation of Germany by the Soviet Union, France, the United Kingdom and the United States of America. Do the delegates here think that when they occupied Germany they should not have made it an offence for the Nazis to propagate Nazi opinions?

Would the world have approved if then they had allowed Nazi propaganda to go on unchecked in the areas under occupation? They had to make it an offence. There would have been an outcry from the whole world if not. If I had time, I could give examples of the fantastic results which such a paragraph would have had in occupied Germany if it had been enforced, and I hope the Conference will decide at this late date not to accept a very dangerous amendment of that kind, even although the intentions of the Greek Delegation are of the very best and most honourable.

Mr. SINCLAIR (United Kingdom): The United Kingdom Delegation fully appreciates the humanitarian reasons which have been explained by the Delegate of India as a reason for the amendment in their name and in the name of the French Delegation now presented before us, but I doubt really whether the danger that this amendment is designed to counter is not more imaginary than real. On the other hand, it is quite clear that, as has been explained by the Delegate of Canada, the implications of this amendment are far wider than probably the promoters realised when they presented this amendment at this late stage in the Conference. On behalf of the Delegation of the United Kingdom, I should like to endorse entirely what has been said by the Delegation of Canada, and to add that it would be most unwise at this very late stage of the Conference to introduce an amendment of such a far reaching effect as this in an Article of such an important nature as the present one, when the Article as it now stands was unanim-

ously adopted by Committee III. Therefore the United Kingdom Delegation would not be able to support that amendment.

Mr. HAKSAR (India): I am sorry that I have to intervene twice in this debate. I do not mind an opposition by anyone to an amendment tabled by the Delegation of India, provided such opposition is based, not on superstition, but on arguments that intelligent men can understand. One single argument has been put forward against the amendment. It has been said that Lord Haw-Haw (William Joyce), for instance, would have been protected by the second paragraph of Article 60. If I may say so respectfully, I do not agree. Common criminals, including those committing treasonable offences during hostilities, are not protected. In fact, Lord Haw-Haw could have been apprehended under the provisions of the second paragraph of Article 60, tried and hanged. Therefore it is wrong to counter my arguments with an argument which is basically false. As I said, I do not mind opposition, but there is here involved a definite problem, namely the problem of the protection of *bona fide* refugees, and that this problem is not solved by the text of Article 60 submitted by Committee III. With all due respect to the Delegate of Canada, he has not attempted to give a solution to this problem. It is obvious that all *bona fide* refugees, whether they have committed crimes or not must be protected. On this point there was no disagreement in the Drafting Committee and General Schepers, who was Chairman at that time, will bear me out. The object of my amendment is to protect all *bona fide* refugees and I submit that the argument put forward by the Delegation of Canada is completely beyond the point and that the illustration he has cited is also false; therefore no argument has been put forward against my amendment except a vague irrational fear that it is far-reaching. It has been my misfortune during the course of the last twenty-four hours to have to present such far-reaching amendments.

Mr. DAY (United Kingdom), Rapporteur: I think the question raised by the Delegate of India is an extremely important one. Unfortunately the second paragraph of Article 60 has only one extremely complicated sentence and it is not easy at first sight to see the full implications of the addition of one word. It is quite clear that if that word goes in there will be a number of consequential drafting alterations to be made. In my view this question cannot be really satisfactorily considered in Plenary Session, and I would strongly recommend that the amendment be referred back to the Drafting Committee under General Schepers to be fully considered.

The PRESIDENT: You have heard the proposal to refer to the Drafting Committee the amendment submitted by the Delegations of India and France. I shall ask you to take a decision on this proposal. I call upon the Delegate for Australia to speak but only on this proposal.

Colonel HODGSON (Australia): My Delegation is against this proposal because we have repeatedly said that a Drafting Committee can only draft a text when it has a clear indication from the Conference or the Committee as to what it has to draft. In other words, it must have a clear direction and it must have a clear indication of what is in the minds of the Committee or Conference. The proposal now before this Meeting is that we refer back to the Drafting Committee a word, a statement on which this Conference has not made up its mind; I frankly say that my Delegation examined this particular amendment exhaustively last night after the Plenary Meeting, and we think that it can be given half a dozen different interpretations. It is clear that it extends the meaning of this Article very considerably. It certainly makes it very much wider, but we do not know its full implications and for that reason my Delegation would prefer to vote on the amendment now and reject it rather than refer it to the Drafting Committee.

The PRESIDENT: I would like to correct the statement just made by the Delegate for Australia. I did not propose to refer this amendment to the Drafting Committee and, on this point, I entirely endorse this Delegate's opinion that the Drafting Committee is not competent to take any decision on a proposal affecting the substance of a provision of the Convention. This proposal was made by the Rapporteur and, as was my duty, I laid it before you. But I would ask you not to lose too much time in discussing this procedural point. In my opinion our best course would be to vote speedily. I have a large number of speakers on my list and I think we would do well to curtail this discussion as far as possible.

I suggest you should consider the Rapporteur's proposal as a point of order, which it really is.

One speaker has already spoken against this proposal. I will call upon one more delegate, who wishes to defend the Rapporteur's proposal. When we have heard these two speakers, we will take the vote.

Does the Delegate for France intend to defend the Rapporteur's proposal?

Mr. CAHEN SALVADOR (France): Yes, Sir. I simply wish, in the name of the French Delegation, to point out that the Delegate for India who, I think, was in the Chair at the Working Party, had

submitted his amendment to the said Working Party. I will not press the matter.

I merely wish to draw attention to the continuous cooperation between the Delegations of India and of France and urge that a vote should be taken on our amendment.

The PRESIDENT: Two further delegations have asked to speak. They are those of the United States of America and the Netherlands. Does either of these delegations intend to defend the Rapporteur's motion of order?

I note that this is the intention of the Delegation of the Netherlands whom I forthwith call upon to speak.

General SCHEPERS (Netherlands): The Delegate for Australia has stated that it was impossible to refer a matter to the Drafting Committee unless the said Committee is able to base its considerations on a decision of the Plenary Meeting. That is quite correct.

In my opinion, the issue the Meeting has to decide on is whether "bona fide" refugees should be protected or not.

The text of the second paragraph of Article 60, as submitted to us, provides protection only for refugees who have left the country after committing an offence. It does not afford protection to "bona fide" refugees.

If the Conference considers itself bound to take the decision requested by the Delegates of India and of France, it would be necessary to refer the Article to the Drafting Committee which would be instructed to draw up a new text. This text has, as it happens, already been prepared. It was proposed by the Drafting Committee No. 2 of Committee III. It was rejected at that time by 3 votes to 2. We see now that opinions have altered; it is practically certain that we shall be able to obtain unanimous agreement on the basis of a new text.

The PRESIDENT: We shall vote on the Rapporteur's proposal to refer the amendment submitted by the Delegations of France and India to the Drafting Committee.

The Rapporteur's proposal was adopted by 19 votes to 12, with 8 abstentions.

The PRESIDENT: We shall consider this amendment later.

On the other hand, I should now like to consider the other amendments which have been proposed. To facilitate the discussion, I propose to begin with the amendments submitted by the Delegation of the United States of America and the Delegation of the Union of Soviet Socialist Republics. These two amendments are identical.

Does anyone wish to speak on one or the other of these amendments?

Mr. MARESCA (Italy): With all due respect to the eminent legal experts of the United States and Soviet Delegations, I venture to draw your attention to the real meaning of the clause which is proposed to delete.

The Stockholm text, as worded before it was amended by Committee III, stipulated that nationals of the Occupying Power who have sought refuge in the territory of the occupied State and who have been accused of having committed crimes before the occupation, shall not be arrested, prosecuted, convicted or deported for offences unless, under the law of the occupied State, the offence would have justified extradition.

If this provision is interpreted literally, it says both too much and too little.

Let us take the following example: the German citizen Fritz Müller has committed a murder. He has killed the head of the German police. Before the occupation of Italy, he had sought refuge in that country. As the crime which he committed is of a political nature, according to the Stockholm text, neither the Italian criminal authorities, nor the authorities of the Occupying Power could arrest, prosecute or convict him. Italian Penal Law does not allow extradition for political crimes; it provides only for the punishment of a crime committed abroad by an alien. If we interpret the provision of the Stockholm text literally, we shall reach an unacceptable conclusion.

Now let us take another example. Let us imagine that Fritz Müller is wrongly accused by the Occupying Powers of having killed his wife. In Italy, this crime entails extradition. The following question then arises: is a simple request for the extradition of a person sufficient grounds for the extradition to be enforced? No, more than this is necessary. All the safeguards of extradition must also come into play, that is extradition procedure must be complied with.

The Conference should accept the addition of this clause, which stipulates that extradition must be carried out in accordance with the procedure laid down by law, with a double aim in view: on one hand, if the question of extradition arises, the requisite conditions for this operation must be fulfilled. On the other hand, all necessary safeguards must be provided to ensure that the extradition does not become a simple administrative measure of transfer devoid of all safeguards.

The condition stipulated only applies to extradition; it is not necessary for arrest, prosecution or conviction.

If you delete this clause, the text will remain obscure and you will have abandoned the safe-

guards of the judicial procedure in the case of simple transfer.

I consider it my duty, on behalf of the Italian Delegation, to warn you against the dangers of deleting this clause.

If the wording of Committee III does not seem sufficiently clear, let us accept the wise suggestion of the Rapporteur and refer the text back to the Drafting Committee; but do not let us simply delete this clause, for such a step would certainly weaken the force of the provision under consideration.

The PRESIDENT: We shall now vote on the amendments submitted by the Delegations of the United States of America, and the Soviet Union. Delegations who are in favour of these amendments are requested to signify in the usual manner.

These amendments were adopted by 21 votes to 6, with 10 abstentions.

The PRESIDENT: We shall now consider the amendment submitted by the Delegation of Greece.

Mr. AGATHOCLES (Greece): When we drafted our amendment and the accompanying explanatory note, we hoped that we would not be obliged to explain the reasons which prompted this amendment. The comments which the Delegate of Canada has made, however, and the various other remarks which I have heard certain delegates express, make it for me necessary to give a verbal explanation of the reasons for this amendment and its importance, and to reply at the same time to the objections made by the Delegate of Canada.

Firstly, as regards the first point raised by the Delegate of Canada, I must point out that our amendment has already appeared in the Memorandum of the Greek Government, which was submitted before the opening of the Conference. The question was submitted to Committee III, which rejected the amendment by 13 votes to 9. We do therefore agree on this point. On the other hand, the criticism levelled against amendments in general and against amendments submitted to the Plenary Assembly, does not, I think, apply exclusively to ours, which in any case was submitted ten days ago and distributed on 27 July.

When we drafted this amendment, we thought that the anomaly in the text of the first paragraph of Article 60, was primarily a matter of wording. The arguments raised by the Delegate of Canada and other delegates, however, have shown me that it reflects a genuine difference of opinion.

We do not understand the matter in the same way. I shall read the first paragraph of the Article to remind you of the exact wording. It stipulates that:

“Protected persons shall not be arrested, prosecuted or convicted by the Occupying Power for acts committed or for opinions expressed before the Occupation, or during temporary interruption thereof, with the exception of breaches of the laws and customs of war”.

When using the term opinions expressed during the Occupation, we are supplying a legal basis for the prosecution of people, regardless of whether the opinions in question merely express personal views of a harmless nature, or on the contrary, constitute propaganda which would be dangerous from any point of view. We naturally recognize the fact that the Occupying Power has certain legitimate rights; it is at war and cannot tolerate insults from any quarter; it cannot allow persons belonging to the population of an occupied country to criticize it openly or express their ideas in a way which might be harmful to it. But our aim is to avoid supplying a legal basis for the prosecution of people for a mere expression of opinion which, objectively as well as subjectively, could not be regarded as an act liable to be seriously detrimental to the interests of the Occupying Power. Such was our intention and I think that the amendment which we are proposing makes it clear. I now venture to read the amendment to you, for I believe that the wording meets the arguments of the Delegate of Canada:

“A mere expression of opinion in time of occupation cannot lead to prosecution unless it is by nature or intention such as might instigate a rising against the Occupying Power”.

If this paragraph is adopted, I do not think that there is any danger of its being interpreted as allowing the people of an occupied country to spread propaganda in any form, or to climb on a chair and make speeches against the Occupying Power. I do not think that anyone could interpret this provision in such a way, inasmuch as these offences will be tried by the courts of the Occupying Power, which will be able to interpret it as it wishes. But it would seem to us altogether unreasonable, if this Conference were to establish a provision making it possible to prosecute people for a mere expression of opinion, to which the only objection can be that it is unpleasant for the Occupying Power. The Delegate of Canada has referred to Article 55. To my regret, I do not think that this Article includes any provision which would be likely to fill the gap which it was our purpose to remedy in drafting our amendment. For this reason our Delegation requests the Assembly to give a favourable consideration to this amendment.

Mr. CAHEN-SALVADOR (France): In order to save time, I venture to suggest that the amendment submitted by the Greek Delegation be referred to

the Drafting Committee, to which the Article concerned has already been submitted; even if the amendment were accepted, the wording would have to be revised.

The PRESIDENT: I admit that I would personally prefer the discussion to continue, since a question of substance is at issue, but I am willing to take a vote on the point of order which has just been raised.

The point of order was rejected by 13 votes to 10, with 5 abstentions.

The PRESIDENT: You have thus decided to continue the discussion on the Greek amendment.

Mr. MEVORAH (Bulgaria): I believe that the Delegate of Greece is over-zealous and over-logical. The argument *a contrario* which is of concern to him, appears to me harmless, and, in short, comes to this: You forbid the Occupying Power to prosecute protected persons for opinions expressed by them before the Occupation; therefore you permit the Occupying Power to prosecute such persons for opinions expressed during the occupation. This is dangerous. It would be better to draw up a special Article.

I do not believe that we can reason in this way or act accordingly, even in obedience to the rules of abstract logic. If I say, for instance: “It will rain tomorrow”, it does not follow that I mean: “It will rain the day after tomorrow.” This question of opinions expressed during an occupation, remains open and is a domain which we should not attempt to explore. Opinions can be expressed either in public or in private, either by the spoken or by the written word; there are many different shades and degrees. Must we undertake to legislate for all these points, in order to settle such a complicated question?

The second sentence which the Delegate of Greece wishes by his amendment to insert here also appears to me somewhat dangerous. To put his good intentions into effect, as we already know from the statement which he has just made, he proposes an exception under which it would be feasible to prosecute persons having expressed opinions which might have provoked a rebellion or rising. But how shall we decide in the future, supposing that we have to interpret the Convention in a time of occupation, whether an opinion expressed by any given person had provoked a rising, and whether an opinion expressed with the purpose of creating amongst the population a hostile attitude towards the Occupying Power without, however, leading to subversive action, could be prosecuted or not?

This idea is dangerous because it could be taken as a pretext by an ill-disposed or dishonest Occupying



ing Power to act upon the following concept which is both crude and rudimentary: "I am arresting you for having expressed an opinion which, I consider, might have led to a rising."

No, we must not go so far. I consider the proposed Article aptly worded in every sense. If we attempt to introduce too many definitions and additions, we shall defeat our own ends and shall be committing the offence of over-zealousness.

The PRESIDENT: The Delegate of Canada wishes to correct a point he made in his last speech. He had stated that the amendment submitted by the Greek Delegation had not been submitted to Committee III. He now informs me that this is not correct, and that in fact this amendment was correctly submitted to Committee III, which discussed and rejected it.

Now that this point has been clarified, I shall ask you to vote on the amendment submitted by the Greek Delegation.

This amendment was rejected by 22 votes to 8, with 12 abstentions.

The PRESIDENT: It appears that we have provisionally completed our consideration of Article 60. We shall revert to it when we have the Report by the Drafting Committee of Committee III, and when we are able to vote on the Article as a whole.

### Article 61

The PRESIDENT: An amendment has been submitted by the Delegation of India. It aims to modify as follows the text of the first paragraph:

"No sentence shall be pronounced by the competent Courts of the Occupying Power except after a regular trial".

Mr. HAKSAR (India): This is really a drafting change, in order to make the point clear that, so far as Article 61, paragraph 1, is concerned, it relates to a trial by the courts of the Occupying Power. The Draft as it appears in the text submitted by Committee III to the Plenary Assembly is a confusing one. It seems to suggest that the courts of the Occupying Power alone can pass a sentence. It is quite clear in the body of this Convention, in Article 55 and Article 58 that there are courts in the occupied territory which continue to have jurisdiction in respect of certain matters. Those courts will continue to have jurisdiction in respect of those matters, but on the other hand, non-military courts are set up by the Occupying Power which have jurisdiction in respect of offences under Article 56. If we allow the text to remain as it is, there is this possibility of misinterpreta-

tion, namely, that the courts of the Occupying Power must intervene in all cases where sentence is to be pronounced. That is not the intention and never was the intention, and it is better expressed by the draft which I submit to the Conference.

The PRESIDENT: The amendment submitted by the Indian Delegation is adopted by 40 votes to none, with 1 abstention.

Article 41 was a whole as adopted by 42 votes to 1.

### Article 62

Mr. BAMMATE (Afghanistan): There is a slight drafting error in Article 62. It concerns the term "no longer" in the second sentence of the third paragraph. The sentence is worded as follows:

"When an accused person has to meet a serious charge and the Protecting Power is no longer functioning, the Occupying Power, subject to the consent of the accused, shall provide an advocate or counsel".

This term "no longer" means that there was a Protecting Power formerly, but that it was prevented, for some reason or another, from exercising its functions. But provision must be made for cases where a Protecting Power never existed, and I therefore propose the replacement of the term "no longer" by the word "not".

If the accused has to answer a serious charge, and if there is no Protecting Power, all contingencies would thus be provided for both where there has already been a Protecting Power and where there has never been one.

The PRESIDENT: Is the Rapporteur in a position to clarify this matter?

Mr. DAY (United Kingdom), Rapporteur: I am in entire agreement with that proposal.

The PRESIDENT: Does anyone wish to oppose the proposal made by the Delegate for Afghanistan?

This is not the case. I therefore take it that you approve this alteration, and Article 62 is thus adopted.

### Article 63

The PRESIDENT: No amendments have been submitted on Article 63.

Mr. CAHEN-SALVADOR (France): This is not an amendment; it is merely a matter of pointing out

that the second paragraph, at least in the French version, is incomprehensible. It reads that the procedure shall be applied as far as it is applicable. On the other hand, it is added that if the legislation does not provide for appeals, the convicted person is entitled to submit a petition against the sentence. I am aware of no right of petition applicable in this case. Consequently, I request the Drafting Committee to correct this text, unless the correction can be made in Plenary Meeting.

Mr. LIFSCHITZ (Nicaragua): I would like to know the Rapporteur's opinion on this point.

Mr. DAY (United Kingdom) Rapporteur: The second sentence of the last paragraph provides for two alternative cases. The first case is where there is provision for appeal to a higher court. The second case is where there is no provision for appeal, and in that case it has been provided that the convicted persons may submit a petition to the competent authority of the Occupying Power. The Committee have had in mind the fact that the competent authority will usually be the Military Commander in the district, and they think it right that, as in certain military legal systems, there should always be that right of petition which, however, is very distinct from an appeal to a higher Court.

The PRESIDENT: I entirely agree with what the Delegate for France has just said. It is essential that the second paragraph of Article 63 should be examined by the Drafting Committee. The Committee is due to meet this afternoon and it is perfectly feasible to submit this text to it.

This is agreed.

We will revert to Article 63 later.

#### Articles 64 and 65

The above mentioned Articles were adopted.

#### Article 66

The PRESIDENT: An amendment has been submitted by the Delegate of India. It proposes to insert the following sentence at the end of the first paragraph:

"They shall receive medical attention required by their state of health".

I wish to point out that this amendment was unanimously approved by Drafting Committee No. 2 of Committee III. Owing to an oversight, it was not submitted for adoption to Committee III sitting in full meeting. The aim of this amend-

ment is merely to adjust a matter which had been omitted. In my opinion, it is unnecessary to discuss it at any length. We can proceed to vote if no opposition is raised.

Mr. MINEUR (Belgium). I merely wish to point out that in the amendment submitted the word "personnes" is used, while further on the words "ils bénéficieront" occur. I therefore ask that the pronoun "ils" should be replaced by "elles".

The PRESIDENT: I am grateful to the Delegate of Belgium for having drawn our attention to this error, which will be corrected. Does anyone else wish to speak on Article 66?

As this is not the case, it is adopted.

#### Article 67

The PRESIDENT: An amendment has been submitted by the Delegation of the Union of Soviet Socialist Republics.

Mrs SPERANSKAYA (Union of Soviet Socialist Republics): The Soviet Delegation proposes to replace the text of Article 67, as submitted by Committee III, by the corresponding passage of the Stockholm Draft. We consider that the deletion, in the text submitted to us, of the indication that protected persons shall in no case be taken outside occupied territory, is a mistake. Committee III based their decision on the fact that Article 66 contains provisions which lay down that protected persons who are indicted shall be detained in the occupied territory, and that, in the event of their being sentenced, they shall serve their sentence in that same country. This provision does not, however, cover all contingencies. A literal interpretation of the provisions contained in Article 66 might lead to the conclusion that the place of detention is dependent on the period of occupation. It may therefore be said that the Convention does not contain any provision formally prohibiting the taking of indicted protected persons outside the occupied territory after the close of the occupation. This is why the provisions of Article 67 in the Stockholm Draft appear to us preferable, as they contain the unqualified principle that protected persons shall in no case be taken outside occupied territory. We therefore consider that this wording should be retained, since it ensures the proper application of this provision. On the other hand, if, as is claimed by certain delegates, the alterations to Articles 66 and 67 are merely drafting alterations, it would greatly facilitate the discussion of the question, provided these delegates really agree

that convicted protected persons can in no case be taken outside occupied territory, if they would support the amendment submitted by the Delegation of the Union of Soviet Socialist Republics, which undoubtedly improves the text of the Convention. It therefore seems to me that our proposal may be acceptable to all.

Mr. DAY (United Kingdom): The whole point of the change which has been made by the Committee to Article 67 is that the prohibition in the Stockholm Draft that none of these protected persons should be taken outside the territory was thought to be much too emphatic. For example, if one of them appealed to an Appeal Court outside the territory, quite clearly they should be taken there to appeal. Other persons might require special medical attention which was not available in the territory. Article 45 already provides that there shall be no forcible deportations or transfers of any persons in occupied territory, so that no person may be taken out of the territory against his will.

By adding to Article 66 a provision that the sentences of convicted persons should be served in the territory, the Committee felt that they had dealt very adequately with the principle which was originally contained in Article 67 while still leaving some freedom for persons who wanted to leave the territory to be taken out by the Occupying Power.

The PRESIDENT: We shall now vote on the amendment submitted by the Soviet Delegation.

The amendment was rejected by 18 votes to 14, with 8 abstentions.

Article 67 was adopted by 32 votes to none, with 8 abstentions.

### Article 68

The PRESIDENT: Amendments have been submitted by the Delegations of Afghanistan, Belgium, India and Italy and by the United States of America.

Mr. CLATTENBURG (United States of America): The amendment submitted by the United States Delegation (*see Annex No. 314*) to Article 68 is intended to achieve the same purposes in occupied territory as the amendment to Article 38 which this Convention accepted yesterday. As the explanation of the amendment is detailed in the document, I will refrain from inflicting it upon you a second time.

The other amendment to Article 68 proposed by four other delegations (*see below*), meets with the sympathy of the United States Delegation because we believe that it endeavours to carry

out a laudable purpose, but we find one small difficulty in the fifth sentence where it says "at least every six months". Conditions in occupied territory vary from place to place and from time to time, and to lay down a rigid rule, "at least every six months", might cause an Occupying Power to be put in a position where it would be unable to comply with the rule.

The principle is sound, but we would propose that the words "at least" be replaced by the words "if possible". If that change were accepted the United States Delegation would support the vote for the other amendment in question.

Mr. MINEUR (Belgium): As you know, a Committee of Experts was formed by the Coordination Committee to bring the texts of the various Conventions into line with each other, and also to ensure that certain passages or Articles of the same Convention corresponded. In the Summary Record of the Thirteenth Meeting, held on July 16th we read as follows:

"The Committee pointed out that no provision is made in Article 68, Civilians Convention, that persons interned or in assigned residence shall be entitled to require that the decision with regard to them shall be taken by a competent body with the least possible delay.

This Article simply provides that all decisions taken shall be subject to periodical revision, without specifying the interval of time between such provisions, which might be considerable; Article 40, Civilians Convention, does, on the contrary, provide that a revision shall take place at least twice a year.

Article 40 also provides for the setting up of a court or competent administrative board; Article 60, on the contrary, only provides for a competent body which offers less adequate safeguards to the person concerned."

The Committee of Experts concluded with the following words:

"The Committee therefore wondered if interned persons in occupied territory are not as much entitled to protection as persons interned in the territory of a Party to the conflict."

These suggestions made by the Committee of Experts were considered and approved by the Coordination Committee in its Report.

For this reason, the amendment submitted by the Delegations of Afghanistan, India, Italy and Belgium is based on these suggestions and proposed to make the following stipulations in the last sentence of the second paragraph:

"This procedure shall include the right of appeal for the parties concerned. Appeals shall

be decided with the least possible delay. In the event of the decision being upheld, it shall be subject to periodical review, at least every six months, by a competent body set up by the said Power."

This was justified by the contention that it was important to ensure that persons subject to assigned residence, or interned in occupied territory, should benefit by a situation similar to that granted the same category of persons residing in the territory of the Parties to the conflict.

It may be objected that these are different situations: on the one hand the territory may be that of the Parties to the conflict; on the other, occupied territories may be involved. I am aware of this but I wonder whether this is an adequate reason to treat internees differently.

As stated by the Committee of Experts—I wish to stress this—we may well ask ourselves if interned persons in occupied territory are not as much entitled to protection as persons interned in the territory of a Party to the conflict.

However, after hearing the statement just made by the Delegate for the United States of America, I wish to say that the Belgian Delegation is prepared to support the amendment he proposed. The closing sentence of our amendment would then read as follows:

"In the event of the decision being upheld, it shall be subject to periodical review, if possible every six months, by a competent body set up by the said Power".

I think I have met the wishes of the Delegate of the United States of America and I would ask you to give favourable consideration to the amendment, slightly modified, which the Delegations of Afghanistan, India, Italy and Belgium submit to you.

The PRESIDENT: We will first vote on the amendment submitted by the Delegations of Afghanistan, Belgium, India and Italy. A change has been made in the original text of the amendment since its sponsors have agreed to replace, in the third sentence, the words "at least every six months" by "if possible every six months".

The delegations in favour of this amendment are requested to signify in the usual manner.

The amendment was adopted by 39 votes to none, with 1 abstention.

The PRESIDENT: We will now vote on the amendment submitted by the Delegation of the United States of America.

Delegations in favour of this amendment are requested to signify in the usual manner.

The amendment was adopted by 32 votes to none, with 9 abstentions.

The PRESIDENT: We will vote on Article 68 as a whole, as amended.

Delegations in favour of this Article are requested to signify in the usual manner.

Article 68, as amended, was adopted unanimously.

#### Article 69

The PRESIDENT: No amendments have been submitted.

Does anyone wish to speak? As this is not the case, Article 69 is adopted.

#### Article 70

Article 70 was adopted.

#### Article 71

The PRESIDENT: There is an amendment presented by the Delegation of India.

Mr. HAKSAR (India): In view of the amendment proposed to Article 84, the Indian Delegation desires to withdraw its amendment to Article 71.

The PRESIDENT: This amendment is withdrawn. Does anybody else wish to speak on Article 71? This not being the case Article 71 was adopted.

#### Article 72

The PRESIDENT: An amendment has been submitted by the Union of Soviet Socialist Republics Delegation.

General SLAVIN (Union of Soviet Socialist Republics): The Delegation of the Soviet Union suggests an amplification of the provision of Article 72 which states that

"The Detaining Power shall as far as possible accommodate the internees according to their nationality, language and customs"

by the words:

"...provided that internees who are nationals of the same country are not separated".

The object of the Soviet proposal is to protect the interests of internees who are nationals of the same country. It is natural that internees who are of various nationalities, but are nationals of the same country, should not be interned according to their nationality in separate camps or in separate sections of the same camp. Nationals of

the same country always have common interests and it would therefore be contrary to their interests to separate them.

In Article 20 of the Prisoners of War Convention the Conference unanimously agreed that prisoners belonging to the armed forces of the same country, independent of their nationality, should not be assembled according to their nationality in different camps or in different sections of the same camp. The Soviet amendment to Article 72 is the logical outcome of this provision.

Mr. CLATTENBURG (United States of America): The amendment presented by the Soviet Delegation strikes a very sympathetic chord in me because I remember the situation of certain American citizens interned by the Japanese where the Japanese set up certain houses as internment camps with two Frenchmen, one American, three British and perhaps a Belgian and they called that an internment camp. There might be thirty miles away another group with a different mixture. However, the draft of the Soviet amendment goes far beyond achieving a remedy for that particular situation. Suppose a country has in its hands four thousand nationals of one Power who must be interned. We had four thousand Germans interned. It was impossible to put all those four thousand Germans in one camp, and even in one camp it was necessary to divide those people into compounds for administrative purposes. You do not put four thousand people in one enclosure or one building or even one hotel without some arrangement for administrative subdivision. Therefore, the way this is framed, it leaves no leeway for administrative subdivision and it is one which will therefore cause difficulty.

There is another problem which arises. Among the Germans we had a great variety of shades of opinion. We had one chartered member of the Nazi party. We had some neo-Nazis who thought they were more loyal to Hitler than the chartered member of the Nazi party. We had other groups of people with other shades of opinion. They were all untrustworthy and some were ringleaders and caused trouble in the camp. It was necessary to segregate those people from the others and let them apply their theories to a restricted group of people instead of being in a camp where they terrorised their fellow internees. It was necessary to separate those people from their fellow nationals.

Again, you have another type of situation. You have an internee who wishes his family, his wife and children, to be interned with him. You have the women interned separately and you have bachelors. If you put all those people in the same camp you have a great deal of sociological trouble which I cannot discuss in detail. We found it necessary to separate the married couples, the unmarried females and the bachelors and any

other Detaining Powers will find the same necessity. The language of the Soviet Union's amendment would preclude that simple administrative measure. For that reason I regret, despite the laudable purposes of the Soviet amendment, that my delegation cannot support it.

Mr. WERSHOF (Canada): I am glad that the Soviet delegate is going to speak again in this case because he may be able to clear up what is perhaps a genuine misunderstanding because I do not think that anyone here disagrees with the sentiments behind his amendment.

I should like to make two points. The first is that in Article 72 as passed by Committee III the Soviet delegate apparently understands the word "nationality" in English and "nationalité" in French in a different way from the way the Canadian delegation understands it. Article 72 says that the Detaining Power shall, as far as possible, accommodate the internees according to their nationality. We understand that to mean nationality or citizenship and not anything else. Among the Canadian citizens there are some who are of French race, many of English, Scotch, Welsh, Irish and many other races, but they are all Canadian citizens and we understand the word "nationality" in this Article to mean citizenship. If I heard General Slavín correctly, he thought it meant something quite different. If that is the point behind the Soviet amendment it may be that a more precise word could be inserted—the use perhaps of the word "citizenship" instead of "nationality", and a suitable word in French to make it clear that they should be accommodated so as far as possible according to their citizenship, language and customs. Then there could be no argument about it that every effort should be made to accommodate citizens of one country according to their citizenship, regardless of racial origin.

The second point I wish to make is that the Soviet amendment really goes much too far, because it is one thing to say that a Detaining Power should try, so far as possible, to do something of this kind, but it is an entirely different thing to make a positive obligation that internees who are nationals of the same country should not be separated. In Canada we had internment camps in various parts of Canada which, after all, is a pretty big country in terms of territory. We had the problem of Western Canada and an internment camp there with Germans, together with some internees who were citizens of other enemy countries, and in Quebec, two thousand miles away, we had one internment camp with many Germans and also some citizens of other enemy countries. Would anyone argue that that is wrong? Would anyone argue that we should have brought the Germans from the province of Quebec and taken

them to Alberta, in order that all German citizens should be in one camp? I do not see why that should be necessary. I would hope, therefore, that the Soviet Delegation might be satisfied simply by a clarification of the Article as it reads. Perhaps the use of the word "citizenship" would be better.

The PRESIDENT: I think that the proposal made by the Canadian Delegate might possibly be retained. I suggest the French text should read roughly as follows:

"The Detaining Power shall as far as possible accommodate the internees according to the countries of which they are nationals, their nationality, language and customs".

I believe that this wording would take into account the different interpretations given to the word "nationality" in the Union of Soviet Socialist Republics and in other countries.

General SLAVIN (Union of Soviet Socialist Republics): The Soviet Delegation notes with satisfaction that there is, on principle, no objection to the proposal which it submitted on the assembling of interned persons.

It is evident that in submitting its amendment the Soviet Delegation had not considered the case where great numbers of persons might be interned in one camp. Nevertheless, in the text of the Article concerned it is stated "as far as possible"; this idea should be considered.

On the other hand, we suggest that so far as possible, these persons should not be separated into national groups.

In regard to the question of nationality, in the sense of the person's own nationality, that is to say, the country of which a person is a citizen, we admit that this idea may have different interpretations, but the question has been widely discussed and the majority of Committee III considered that both possibilities should be provided for, i.e. nationality in its real sense and nationality in the sense of citizenship of the country on which one depends.

Our amendment seems to clear up this question and, if I remember rightly, the Canadian Delegate did not raise any objection to it.

It will also be necessary to take into account the

number of persons who can be interned in a camp, and the conditions in which they can be housed.

As regards the question of keeping families together, I do not think that any difficulties need arise. We are of the opinion that members of the same family can be housed together if they are nationals of the same country.

I must remind you that when we adopted the decision relative to prisoners of war on this subject, it was not foreseen that large numbers of prisoners of the same nationality would be assembled in any one camp. We must never lose sight of the conditions particular to each case. For these reasons, the question of state of health, family, number of persons, etc., must be taken into consideration and our amendment does not encroach upon them.

If the Delegates of Canada and the United States of America share this view, I think we shall be able to agree on a text, in conformity with the decision taken on Article 20 of the Prisoners of War Convention.

The PRESIDENT: I would like to propose that the Drafting Committee be requested to revise this first paragraph in the form presented by the Delegation of the Union of Soviet Socialist Republics. I feel that, if this amendment were accepted, the whole Article would be incoherent.

Moreover we have a proposal made by the Delegate of Canada. I think that the delegates who have spoken are, on principle, ready to take the idea expressed in the amendment into consideration, and it would therefore be appropriate for the Drafting Committee to consider the question. We might vote subsequently on this amendment, or on a new text to be submitted to us by the Drafting Committee.

Do you agree to this proposal?

Mr. LIFSCHITZ (Nicaragua): That was precisely the proposal I was about to put forward.

The PRESIDENT: I am glad to hear it.

No objection having been raised to my proposal, I take it as adopted.

I propose to adjourn the discussion now, and to resume it this afternoon at 3.30.

*The meeting rose at 1.30 p.m.*

TWENTY-NINTH MEETING

*Thursday 4 August 1949, 3.30 p.m.*

*President: Mr. Leland HARRISON, Vice-President of the Conference*

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**Article 73**

The PRESIDENT: There is an amendment submitted by the Delegation of the United Kingdom. It proposes to insert before the words "Internment camp" the words "Whenever military considerations permit".

Mr. GARDNER (United Kingdom): The British amendment is designed to bring the Article regarding internment camps for civilians into line with the Article in the Prisoners of War Convention dealing with exactly the same matter. Committee II accepted this amendment for reasons which I will ask the Conference to allow me to give them quite briefly. My country has unfortunately had a very full experience of aerial bombing of all kinds, whether low flying, high flying, day, night or any other. We therefore claim that we can talk with some knowledge from an experience which at times was anything but comfortable. It is a small country, heavily populated and in wartime we may have that population appreciably increased by the armed forces of our allies and it would be exceedingly difficult to place any internment camp more than five or ten miles from some point which could legitimately be regarded as a military objective. If those camps are marked it is in order that the marks shall be visible to aircraft and so enable the men flying those aircraft to identify the camps, but with their identification of the camps must come the same common information as to their position, enabling them, in so far as they disclose anything at all, to find targets in the neighbourhood of those camps. In so far as the markings are effective, therefore, they will not only protect the camps but will assist the enemy to find targets which he wants to attack. More than that it would be quite impossible to convince the civilian population in the neighbourhood of a camp if it were subjected to heavy bombing that the markings of those camps did not, in fact, assist the enemy. It may be true, and I dare say it is true, that

certainly high flying attacks or fast moving low attacks could not observe the markings and therefore could not be assisted by them. That is a sound reason against having any markings but in so far as they can be observed you can never convince the civil population that those markings are not assisting the enemy attack in finding its target and dropping its bombs, and anything which inflames the civil population of a country against internees is bound to react unfavourably on the internees themselves. We therefore propose that the markings of the camps in all circumstances be subject to military considerations because we are quite sure from our own experience in our own country that if we were subjected to heavy bombing attacks again we should not dare to have camps in many of the areas marked because of the assistance such markings would inevitably give to the enemy making the attack.

The PRESIDENT: Does any delegation wish to speak? If there is no one desiring to speak we will proceed to vote on the United Kingdom amendment to Article 73. Those delegations who wish to support the amendment please signify.

The amendment submitted by the United Kingdom Delegation was adopted by 35 votes to NIL with 3 abstentions.

The Article, as amended, was adopted by 39 votes to NIL, with no abstentions.

**Articles 74, 75, 75A, 76, 77, 78, 79 and 80**

The above mentioned Articles were adopted.

**Article 81**

The PRESIDENT: An amendment has been presented by the Delegation of India. It aims to insert the words "in particular" in the last sentence of the Article, after the word "include".

Mr. HAKSAR (India): I do not think I need to say anything about this amendment other than what is said in the amendment itself.

The PRESIDENT: Does anyone wish to speak on the amendment presented by the Delegation of India? If there is no objection we will vote on the amendment.

The amendment was adopted by 42 votes, no opposition and no abstentions.

Article 81 as amended, was adopted by 42 to NIL, with no abstentions.

### Article 82

Mrs. SPERANSKAYA (Union of Soviet Socialist Republics): I request the President to put Article 82 to the vote.

The PRESIDENT: Does anyone wish to speak on this Article? We will vote on Article 82.

Article 82 was adopted by 37 votes to NIL, with 8 abstentions.

### Article 83

This Article was adopted.

### Article 84

The PRESIDENT: An amendment has been submitted by the Delegations of Afghanistan, Belgium, Burma, Ethiopia, India, Mexico and Turkey.

Mr. HAKSAR (India): Before I present the text of the amendment (*see Annex No. 331*) perhaps you will permit me to analyse the amended paragraph of the Article concerned and to point out its deficiencies, which are now being corrected. Before I do that, I would like to draw the attention of the Conference to the fact that paragraph 4 in its present form is based on an amendment presented by the Delegation of Belgium, the original text of which was in French. The English version of that text is slightly different, in the second sentence, but the difference is a material one.

Now the original text of the fourth paragraph, namely the text adopted by Committee III, lays down the following principles—I am referring to the French version and not to the English version: in the first sentence it lays down the broad principle that the Detaining Power is to take the entire responsibility for all working conditions, for ensuring that all employed internees are insured against accidents and sickness due to their work, in conformity with the national legislation, for medical attention and the payment of

wages. The second sentence in French is as follows: "Ces différents éléments"; in English it merely refers to "wages for work done". Actually, you will see the sense of the distinction: in the text in the French version it says that all these different elements referred to in the first sentence, namely conditions of work and wages, shall be determined by negotiation, and it goes on to say that even though it shall be determined by negotiation the wages and the conditions of work fixed shall not be more unfavourable than those obtaining for work of the same nature in the same district.

Therefore there are two points: first of all, not only the question of conditions of work will be the subject matter of negotiations but also the question of wages. In either case, whatever the result of the negotiations, we have laid down a minimum condition, namely that the standard for conditions of work as well as for wages is not to be more unfavourable than that obtaining for work of the same nature in the same district.

Finally, having laid down this minimum condition the article goes on to say that while determining these wages, in the course of negotiation the Detaining Power can take into account the fact that it has to provide for the internees' maintenance and for the medical attention required for their state of health. That is to say that if this fourth sentence were not to appear we should have to give to the internee, as a result of negotiation, wages which are not more unfavourable than those obtaining in the district, and if he is to be paid less, then he can only receive less by a process of deduction, which is the principle laid down in the sentence, which says "In determining wages account may be taken", but the moment we start deducting we run up against Article 71, which lays down a mandatory provision that under no circumstances shall deductions be made. Therefore there is this question to be straightened out, namely to remove the contradiction between a mandatory provision of the Convention and the wording of the text as adopted by Committee III.

All these facts have been taken into account and a new text is now presented for the consideration of the Conference. By the changes effected in the new text which is now before the Conference as the amendment jointly sponsored by several delegations, it is stated that so far as the conditions of work are concerned they shall not be the subject matter of negotiations, because the various delegations who are sponsoring this amendment felt that it is quite impossible for an internee under conditions of internment to carry on detailed negotiations on detailed matters which negotiations on conditions of work involve; therefore the text as presented lays down an objective standard of conditions of work.



With regard to wages, it is a matter entirely for negotiation, but the negotiation must be on an equal basis with a view to arriving at a wage which is equitable. By this formulation we also remove the contradiction which exists between the text as adopted by Committee III and Article 71.

Therefore, the first sentence of the fourth paragraph remains materially unaltered except in place of "insurance" we have introduced the principle of compensation. This has been done on the advice received from the International Labour Office, who contend that with the question of compensation the phraseology adopted is better because it is independent of national legislation which might exist in different territories.

The question of payment of compensation is a much wider one and if such a legislation exists, it includes the position under common law (national law) in various countries such as workman's compensation acts, and so on.

These are then, some of the considerations which underly the amendment proposed and I hope that the Conference will adopt the amendment.

The PRESIDENT: I call upon the Rapporteur.

Mr. SPEAKE (United Kingdom) Rapporteur: As to the facts, I remember very well the struggles which the second Drafting Committee of Committee III had in attempting to produce a text which met all the difficulties, particularly the difficulty about wages, and I do remember that after there had been a reference backed by the Co-ordination Committee, although the second Drafting Committee did produce this text, many of them were not entirely satisfied with what they had done to meet the difficulty. Those are the facts.

As to commentary, insofar as I am able to interpret the minds of Committee III, I think Committee III would probably wish to congratulate the delegations which have combined together to produce, what I personally would regard as an eminently satisfactory solution of the difficulties in this very technical Article.

Mr. WERSHOF (Canada): I am sorry that I am not here to join the Rapporteur in congratulating the framers of this amendment as far as the wording of it is concerned. I have no doubt that their purpose was a very good one, but in the opinion of the Delegation of Canada they have succeeded in ruining what was previously an Article that could be carried out by a government with some experience in handling civilian internees.

The objection that we have to the new draft is simply this—and this fact has been referred to by the Delegate of India in his speech—that they

have deleted a very important sentence which was in the Draft approved by Committee III, the sentence reading:

"In determining wages account may be taken of the fact that the Detaining Power has to provide for the internee's maintenance and for the medical attention required by his state of health".

In the opinion of the Delegation of Canada, there is no justification for having deleted that sentence. If the only objection to that sentence was that there was some inconsistency between that sentence in Article 84 and the provisions of Article 71, the remedy was very simple. In fact, the Delegate of India had tabled previously an amendment to Article 71 in which he proposed to delete the word "salaries" from Article 71, and if he had not withdrawn that amendment this morning I expect it would have been carried and then there would have been no inconsistency between Article 71 and the sentence which in the opinion of the Canadian Delegation, ought to remain in Article 84. I am sorry I do not understand why the Delegate of India withdrew the amendment to Article 71, but the net result is that we now have a text which, in the considered opinion of the Canadian Delegation, which represents a Government which has had some practical experience in the handling of internees, will be absolutely impossible to work. One of two things will happen in many countries: either the Government will have to make a reservation to this Article when signing the Convention, or in the alternative, if they do not make a reservation, they will find it absolutely impossible to make the Article work, and therefore they will not offer any employment to any internees. It may be that that is a good thing: it may be that no internees should ever be given a chance to work—although I personally know many internees who thought it was a very good thing for them to be given an opportunity to work, they preferred to do some work under reasonable conditions rather than to spend their time doing nothing in the internment camps. In our view, the Article as it will read after this amendment is adopted, will be quite impossible to operate, and if a Government tries to obey that Article they will not be able to offer any employment to any internee.

I repeat that if the sponsors of this amendment had left in the sentence which was in the Draft approved by Committee III, we would have been happy to vote for the other changes which they made in the drafting. The other changes are, I am sure, very good, but we think it a great mistake that they omitted that sentence and we therefore will vote against the amendment even if we are in a minority of one in this matter.

Mrs. SPERANSKAYA (Union of Soviet Socialist Republics): The object of the amendment submitted by the Delegations of Afghanistan, Belgium, Burma, Ethiopia, India, Mexico and Turkey was to add in the fourth paragraph of the Article the word "all" before the words "working conditions", and also to delete the two following passages: "In conformity with its national legislation" and "In determining wages, account may be taken of the fact that the Detaining Power has to provide for the internee's maintenance and for the medical attention his state of health may require".

The U.S.S.R. Delegation raises no objection to the addition of the word "all" in the first phrase.

It does not, however, agree to the deletion of the two passages quoted above. The first deletion makes the wording less clear by depriving it of a legal basis for determining salaries and insurance. The second sentence very aptly states that in determining salaries the Detaining Power should take into account the fact that it must provide free maintenance for the internees and grant them medical attention, especially as Article 71 prohibits any deduction from their salaries or allowances for that purpose.

For this reason, the U.S.S.R. Delegation considers that it is absolutely necessary to retain Article 84 as it was submitted by Committee III.

Mr. BMMATE (Afghanistan): Certain objections have just been raised to the amendment to Article 84 proposed by the Delegations of Afghanistan, Belgium, Burma, Ethiopia, India, Mexico and Turkey. Yet we have heard even more regrets than objections—regrets that points of secondary importance should have prevented agreement on several improvements which all the Delegations which have spoken have recognized as valuable. I would like to point out that in the wording we propose, working conditions, medical care, insurance, compensation for sickness and accidents due to work, would no longer be regulated by contract, but would form the subject of a special ruling, as the Delegate of India pointed out.

A second advantage has not been discussed, namely that an objective standard has been introduced. Both working conditions and compensation for accidents and sickness due to work shall not be inferior to those usual for labour of the same kind in the same place. This objective standard seems to me preferable to the reference in the old text to national legislation. National legislation may be altered; it is always in flux. A dishonest Power might amend it for the sole purpose of weakening the situation of those concerned. That is why the objective standard of the same work in the same place seems preferable, in my opinion.

The Delegation of the Union of Soviet Socialist Republics have expressed regret at the deletion of the reference to national legislation. I can reply that, as far as I am concerned, I have no objection to that part of the sentence being reinstated, since we think that since we consider that the objective standard we have introduced will in no way be affected by it.

Finally, we come to what is, perhaps, the most difficult point—this is the question of wages and deductions which has been raised by several delegations. Unfortunately this question may compromise the vote on the Article as a whole. We regret this and, so far as we are concerned, we are ready to reconsider the situation in order to safeguard the essential points which have been admitted by all the delegations. For this reason, we could, if necessary, set up a Working Party to conciliate the various views which have been expressed here in order not to lose what is essential for the sake of a wording upon which some delegations insisted. There has been a large number of suggestions, and we could try to agree on a text which would to a certain extent meet the situation in which we have been placed by the adoption of Article 71.

There is one very important point where there is a divergence between our new text and the old wording, namely, the provision to the effect that the Detaining Power may figure in the contracts as the employer. This point had been entirely omitted in the old text, and its importance is another reason why this new text should not be entirely deleted and why the question should be re-examined by a Working Party. We must not lose sight of the fact that in such cases the work would be done for the account of the State. This idea of public work would be abandoned and omitted if we all voted against Article 84 before having made a loyal effort on all sides to agree upon a text which would allow this question to be reserved. Further, I wonder whether the idea of wages very equitably determined may be considered adequate. To speak here of equity implies that the interests of the State are to be protected as well as the interests of other workers who might suffer by the competition of the internee. I may say once again, if in this respect the expression "fair" seems inadequate, I repeat that a Working Party should be set up to adopt a text taking the wording submitted by the Delegations of Canada and of the U.S.S.R. as far as possible into account. One or the other of these Delegations could be a member of this Working Party, and this would permit us to save the three or four important alterations which all agreed should not be sacrificed for the sake of a single question, the omission of which was, I admit, unfortunate, and which my Delegation regrets.

The PRESIDENT: Does anybody else wish to speak on Article 84? The Delegate of Afghanistan has suggested that a special Working Party might be set up in order to consider the proposals made by the Delegation of Canada and the Delegation of the Union of Soviet Socialist Republics, as suggested by the Delegate of Afghanistan. Would it be agreeable to the Assembly to set up such a Working Party?

I do not hear any objection to that proposal and I think it would be agreeable to the Assembly. I propose that the Working Party be set up to include the Delegates of Afghanistan, Canada, Belgium, Turkey, and the Union of Soviet Socialist Republics. I take it that the Assembly agrees and I request the Delegations so named to meet tomorrow morning at 9 o'clock.

Mr. MINEUR (Belgium): May I propose that the Delegate of India should also be a member of this Working Party? If the number of members is to be limited, the Delegation of Belgium would willingly step aside in favour of the Delegation of India.

The PRESIDENT: I am sorry that I omitted India and I hope that the Delegate of Belgium will still agree to serve on the Working Party.

Mr. HAKSAR (India): I am extremely grateful to the Delegation of Belgium for making this proposal but my difficulty is that I have to be in another Working Party tomorrow set up this morning to consider one of the Articles, and therefore it will be very difficult for me to be present in the two Committees at the same time. If, however, the Secretariat does not insist that the two shall meet at the same time, I shall be happy to place my services at the disposal of the two parties.

The PRESIDENT: I understand from the Secretariat that it would be very difficult to change the meeting of the other Committee. Will it be possible for the Delegate of India to assist for some time at one and the rest of the time at the other?

Mr. HAKSAR (India): I shall endeavour to perform that feat!

### Article 85

This Article was adopted.

### Article 86

The PRESIDENT: On this Article we have a suggestion presented by the Drafting Committee

and an amendment presented by the Delegation of the Union of Soviet Socialist Republics. Does anyone wish to speak?

Mrs. SPERANSKAYA (Union of Soviet Socialist Republics): The Soviet Delegation proposes to delete from the first paragraph of Article 86 of the Convention, the words "as far as possible". These words allow arbitrary violations of the provisions concerned in this Article, which authorize interned persons to retain their personal effects and personal articles. There is no valid reason to justify the change produced by adding the words "as far as possible" to the above provision.

Indeed, if any police official is to be given the right to decide what articles and personal effects an interned person may keep, this provision may come to be a pretext for evading and violating an important advantage granted to interned persons under Article 86.

The Delegation of the Union of Soviet Socialist Republics therefore proposes to delete from the text of Article 86 the words "as far as possible".

Mr. CLATTENBURG (United States of America): The words of which the Soviet Delegation is complaining were introduced into the text of Article 86 on the basis of an amendment presented by the United States Delegation. I can conceive that there is a difference—a slight shade of difference—between what the first sentence of Article 86 means to me in English and what it means to the Delegate of the Union of Soviet Socialist Republics in French. The qualification "as far as possible" is essential in the interest of good administration so far as concerns the meaning of the English text. The English text says "Internees shall be permitted to retain their personal effects and personal articles". "Personal effects" to us means everything they own that can be moved. It means their furniture, their pet elephants—and one pet elephant was presented at an internment camp in one country represented in this Conference—or a laboratory which they have got at the back of their house where they study explosives, or a revolver they have had under police permit and which they may not continue to retain, or almost anything and for that reason it is not reasonable to say that internees may take all their personal effects with them to the internment camp.

Furthermore, it is not easy to limitate the quantity or reasonable quantity. I have seen with my own eyes an internment camp where large recreation halls were filled to the ceiling with trunks and crates of personal effects that the internees could have had no conceivable use for in the camp and could not keep in their quar-

ters. Those effects stayed there for years. They used up space which was necessary for other purposes and when the end of the war came I can assure you that the internees who took too many effects with them to the camp abandoned mountains of useless material which was a great problem to dispose of. We plead for the retention of the words "as far as possible" in the interest of efficient administration and pure logic in taking care of the internees. We do not wish to deprive them of any of their effects. Their effects will stay in their houses where their relatives and friends will be able to look after them—including their elephants!

The PRESIDENT: Does any one else wish to speak?

General SLAVIN (Union of Soviet Socialist Republics): I apologize for speaking again, but I would like to reply to the United States Delegation. It would seem that their objections are based on a misunderstanding. When we proposed to delete the words "as far as possible", we were really thinking of personal articles and not of domestic animals, which may be very different according to the country. For instance, an elephant or a cow. That was not what we referred to in our amendment. We thought of absolutely personal objects, indispensable to the person. It seems to me that we cannot include in this category of objects those which have been mentioned by the United States Delegate. On the other hand, it seems to me that if these words remain in the text it will not be possible for the population to keep the personal effects which are absolutely necessary, and this is very dangerous. During the last war, the population had frequently to leave some town or district at an hour or two's notice and thus it was not possible to carry away the articles which were absolutely indispensable to the person concerned.

It seems to me that if you keep the words in question in the text there would be a danger of depriving the persons, under various pretexts for instance difficulties of transport, of the articles which are absolutely necessary to them. In order to avoid these serious consequences, we press for the deletion of the words that we have quoted, in our amendment.

Mr. SPEAKE (United Kingdom), Rapporteur: I do not think I have anything to add to the arguments. The reasons which led to the insertion of the words "as far as possible" are similar to those advanced by the Delegate of the United States of America this afternoon, and I have nothing more to add as Rapporteur except that I have been asked to mention, and this may be

a convenient opportunity for so doing, that in the French text of the fourth paragraph the Drafting Committee has approved a change of the word "aucune" to the word "une" which has not yet appeared in the French text, although the alteration appears in the English text.

Mr. CLATTENBURG (United States of America): The French and English texts of the first sentence are out of harmony. I propose that the first sentence be sent back to the Drafting Committee to determine whether the French or the English text should prevail. After that is determined, the Conference can decide, on the basis of the result, whether the Soviet amendment is applicable or not.

Mr. SÖDERBLOM (Sweden): Allow me to support the suggestion that this text should be referred back to the Drafting Committee. I wish however to make two comments. First, as regards the notion of personal effects, this term is currently used in consular practice for sailors, for instance, and is taken to mean particularly clothing and toilet articles, and so on. I think that this is a sufficiently accurate definition for international practice. Secondly, as I have said from the beginning of this Conference, I maintain my standpoint, namely to delete vague expressions such as "if possible" "reasonable", etc., which are not appropriate in legislative texts. These are questions of interpretation which depend on the general rules of law.

The PRESIDENT: It has been proposed either to set up a Working Party or to refer this question to the Drafting Committee for consideration. Is it your desire that this should be done? That would include the proposal submitted by the U.S.S.R. Delegation and the suggestion which has been made from the floor.

General SLAVIN (Union of Soviet Socialist Republics): We have proposed to delete from this text the words contained in our amendment. If we now adopt this proposal, all the rest will be clear. Perhaps we might settle this question now.

The PRESIDENT: It has been proposed by the Delegate for the Union of Soviet Socialist Republics that we should vote on his amendment to Article 86. Does anybody wish to speak, or is there any objection?

I would draw your attention to the suggestion that was made by the Drafting Committee, which relates to this Article. It would not appear to be a matter that needs to be discussed, unless any delegation so desires.

Mr. CAHEN-SALVADOR (France): I will endeavour to simplify the question now put to the meeting, for it is my impression that the Delegation of the Union of Soviet Socialist Republics is right and that of the United States of America is not wrong: they are simply arguing on different texts.

Could we not vote on the French text to which the amendment proposed by the Delegation of the Union of Soviet Socialist Republics applies? I wish to say at once that, personally, I think this alteration is justified. The French text having been voted on, we would then have to adapt the English text in such a way as to express clearly what we meant to say. I think this would be a considerable simplification. It is no longer a question of drafting, but a simple question of translation.

The PRESIDENT: Is the suggestion that has just been made by the Delegate of France agreeable to the Delegate of the United States of America?

(Mr. Clattenburg, Delegate of the United States of America, signified his agreement).

Is it the wish of the Assembly that we should proceed to vote on the amendment proposed by the Delegation of the Union of Soviet Socialist Republics to the French text of Article 86?

The amendment submitted by the Delegation of the Union of Soviet Socialist Republics is adopted by 33 votes to 2, with eight abstentions.

If it is agreeable, we will now refer Article 86 to the Drafting Committee for the concordance of the English text with the French text which you have just adopted. (*There is no objection.*)

We now proceed to Article 87.

Mr. WERSHOF (Canada): Before passing to Article 87, would it not be desirable to dispose in one way or another of the Drafting Committee's suggestion—or has it been disposed of already?

The PRESIDENT: I believe I am correct in stating that I enquired whether anybody wished to act on this recommendation of the Drafting Committee. I did not hear any suggestion. I understood that you wished to let it drop.

### Article 87

THE PRESIDENT: There are amendments presented by the Delegation of the Union of Soviet Socialist Republics, by the Delegation of Italy, and by the Delegation of India. Does anybody wish to speak on the amendments?

Mr. SINCLAIR (United Kingdom): May I suggest, in view of the different nature of the three amendments, to discuss and vote upon them separately?

The PRESIDENT: In view of the request of the Delegation of the United Kingdom, we will consider the Soviet amendment, which proposes the deletion in the first paragraph of the words "without adequate means". Does anybody wish to speak?

Mr. PASHKOV (Union of Soviet Socialist Republics): Article 87 as drafted at Stockholm provides that:

"All internees shall receive regular allowances sufficient to enable them to purchase goods and articles such as tobacco, toilet requisites, etc."

Committee III, when it dealt with this Article, introduced a restriction which was unjustified by adopting a wording according to which only internees who had not adequate means of support could receive such allowances.

We are of the opinion that this provision is not equitable. In itself, the term "without adequate means" and I underline adequate, is exceedingly vague; this is an eminently subjective criterion. It would be the task of this or that official in charge of internees to estimate and decide whether they have or have not adequate means to buy foodstuffs and other articles, the purchase of which by internees is provided for in Article 87. In such circumstances, they may in fact find themselves deprived of the rights which are granted them by that Article.

The Delegation of the Union of Soviet Socialist Republics has frequently stated during the Conference that it considered it necessary to avoid any provision which might be interpreted in an arbitrary manner, or lead to breaches of the Convention. It is for that reason and in order to defend the interests of persons interned that the Delegation of the Union of Soviet Socialist Republics proposes to specify that all internees shall receive in all cases allowances enabling them to meet their elementary requirements enumerated in Article 87, which form the very basis of existence.

Therefore the Delegation of the Union of Soviet Socialist Republics moves that the words added by Committee III, "without adequate means", should be deleted.

Mr. WERSHOF (Canada): I will make no apology for speaking against this amendment because on several occasions in this Conference, beginning long ago in April, the Canadian Delegation made it clear that it was opposed on principle to cash allowances for civilian internees. As a matter of fact we are opposed on principle even to the sentence adopted by Committee III which reads "All internees without adequate means shall receive regular allowances". But if the Plenary Conference were to adopt the Article in that form as adopted by

Committee III it might be possible for the Canadian Government, which desires to fall in with the decisions of this Conference, to accept the Article. However, we are certainly opposed to the Soviet amendment and I wish to repeat that our opposition is a matter of principle and has nothing to do with the comparatively small amount of money which might be involved.

From the beginning of this Conference there has been a conflict on what internees are and many of the delegations here who come from countries which were overrun by the Germans naturally think of internees as good, decent people who fell into the clutches of the Germans. But not all internees in the last war were exactly of that type and if there were another war there might be internees somewhere who were not all noble characters. In Canada, in the last war, out of twenty-five thousand German nationals we interned only five hundred people and I assure you that there was nothing noble about them. They had not committed any criminal offence for which they could be sent to the penitentiary, but they were mostly people who had settled in Canada and had enjoyed the hospitality of Canada and had repaid it by plotting in various ways to further the aims of the Hitler régime so that when the war broke out we naturally interned them. We treated them with great humanity and the Protecting Power and the International Committee of the Red Cross had full facilities to see what we were doing, but we did not regard them as noble characters.

May I remind you that under this Convention the Detaining Power will have to provide the following for internees—adequate food, shelter, clothing, medical services and even soap. It has been very carefully spelled out in another Article of the Convention, so I think there is no danger of these poor internees going without soap. In addition, the Convention guarantees that the internee may receive individual or collective parcels from Red Cross Societies, or from other welfare societies, from his own government, or from his own family, which in most cases will not be interned at all. With all that the Canadian authorities simply do not see why there should be an obligation for the Detaining Government to make a gift of money, of cash allowances, to the internees. We do not care what the money is going to be used for. We are opposed to it in principle, and I repeat that it is bad enough that in Article 87 it says that all internees without adequate means shall receive regular allowances. Now the Soviet Delegation thinks that we should be compelled to give regular cash allowances to the internees who have adequate means. In Canada in the last war some of the characters who were interned were quite wealthy people. Their wives and families were not interned and continued to live in comfortable circumstan-

ces and were quite capable of sending cigarettes and anything else referred to in the first sentence of Article 87 to the husband or father in the internee camp and why we should be compelled to pay out the money of the taxpayer to make a present to these internees when they do not need it, is something we do not understand and we hope that the amendment will be defeated.

Mr. MARESCA (Italy): The amendment of the Italian Delegation that I have the honour to submit is so simple that it hardly requires any comment. It proposes to insert at the end of the first sentence in the second paragraph, the following:

“as well as the income on their property within the limits laid down by the law of that country.”

May I be allowed, however, to place before you the reasons which have prompted this amendment? The first reason is one of mere common sense. Whereas Article 87, in the second paragraph, provides that internees may receive allowances, not only from their Home Power, but also from the Protecting Power or their own families, how could they be refused the subsidies which are vital to their economic requirements?

The second reason is one of plain logic. Article 104 provides that internees may manage their property and, to this effect, they shall be authorized to leave the internment camps. How could they manage their property and not benefit by at least part of the income from it?

The third reason is one of general economy, for if internees can receive part of the income accruing from their property, the relief to be provided by the Home Power or the Detaining Power might be expended upon more needy internees and a more equitable and more economical distribution could consequently be made.

I wish to draw your attention to the more elastic and less categorical drafting of this amendment. It provides that internees may draw from their accounts the amounts they require within the limits fixed by the laws of the country. To which country does this refer? It evidently applies to the Detaining Power in whose hands the property and the internees are. If it refers to protected persons in the territory of a belligerent power, then a reference from the international ruling to national legislation would naturally follow. For instance, in Italy, Article 60 of the law explicitly states the limits within which enemy nationals may have the benefit of their income. If, on the contrary, internees are in occupied territory, any reference to national legislation would be based on the international ruling. Thus, the Occupying Power may enact regulations based upon the financial resources of the internees. In any case, the wording

used gives the Detaining Power every security; for this reason the Italian Delegation adopted the point of view which I have just explained.

Colonel HODGSON (Australia): I am rising to a point of order, or rather a ruling or direction from you, Mr. President, in order to save confusion. The Delegate of the United Kingdom proposed that we deal with each amendment separately, that is the first amendment relating to paragraph 1, then the second amendment and then the third amendment; that is, that we should deal with them and vote on them separately. As it is, we have already broached the discussion of the second amendment before we have disposed of amendment No. 1 and I should like to know exactly what you propose to do.

The PRESIDENT: I would say to the Australian Delegate that he is quite correct that we were discussing the first amendment when the Italian Delegate asked to speak. It was the Chair's understanding that the Italian Delegate would speak on the first amendment. Does anyone else wish to speak on the first amendment?

Mr. QUENTIN-BAXTER (New Zealand): I should like to say a few words in support of the remarks made by the Delegate of Canada so that this Conference may have clearly in their mind the issue on which we are voting when we deal with the Soviet amendment. The principle that we will pay allowances to internees who are without adequate means is a fundamental one which Committee III established and which we believe satisfied everybody. My Delegation feels that the adoption of the Soviet amendment would produce a ludicrous situation. Internees are fed, clothed and sheltered by the Detaining Power. They are not required to work unless they wish to do so. They have the right to receive allowances from their Home Power, from the Protecting Power and from their families, and if they have no money from all those sources then they will be provided with an allowance by the Detaining Power. That would seem to us to be pretty fair treatment. It certainly is much better treatment than many people who are not interned receive in ordinary life in various parts of the world. But to suggest that people who are maintained free of charge by the State, who do not work unless they wish to work and who have money of their own should receive allowances from the Detaining Power in addition seems to us one of the most impossible amendments which have been presented to this Conference.

General SLAVIN (Union of Soviet Socialist Republics): The Soviet Delegation did not intend

to speak again, but is obliged to do so in reply to the last speaker.

The New Zealand Delegate has stated that the amendment submitted by the Soviet Delegation was absurd, or another adjective to the same effect. This attitude must, it seems, be attributed to a lack of experience on the part of the New Zealand Delegate, who, moreover, does not seem to be aware of the situation which may arise in connection with the matters we are discussing.

One cannot always represent internees (as he has done) as persons upon whom will be showered, as from a horn of plenty, relief consignments or allowances. The persons concerned are not always rich individuals who have ample means at their disposal; indeed, such cases are relatively rare.

We are here to give this question serious consideration. We willingly admit that very great difficulties may arise in this respect in certain countries. We are of the opinion, therefore, that what we must have is principles and not vague words. The terms "to a certain extent" or "provided that", etc. are only makeshifts which we should prefer to see replaced by sound principles.

In our opinion, internees require a certain minimum which will allow them to procure commodities such as tobacco, soap and many other things.

It is useless to foster the illusion that internees will have all they require, thanks to the parcels they will receive and the relief supplies which will be distributed to them.

Our amendment is based on practical experience of real life, which the New Zealand Delegate apparently lacks.

For this reason we hope that the Assembly will vote in favour of our amendment.

General OUNG (Burma): I rise to support the amendment submitted by the Delegate of the Union of Soviet Socialist Republics. While the Delegates of Canada and New Zealand took a bird's eye view of the matter as Detaining Powers, I will give you the "internee's eye view". I was an internee and a prisoner of war for 25 months. When I was brought in one dawn at 4 o'clock in the morning I weighed 16 stone; when I escaped I weighed 9 stone—practically half my weight—so I speak with some experience. We were not given sufficient rations, but leaving that aside, even if we had been given sufficient rations, there is no comfort that an internee appreciates more than the little tit-bits he could buy out of his own pocket and of his own choice.

This Article, so far as I see it, does not say "cash allowances", it says "allowances may take the form of credits or purchase coupons", so I do not think that that should worry any Detaining

Power. Tobacco and soap are not luxuries to internees; they are very essential, especially the soap, as not one of us escaped scabies. Our homes, organizations, our friends, our government may all send us comforts but hardly any of these come into the hands of an internee—at least they did not come into our hands. If you are ever internees you will find that that is a practical consideration.

I was a comparatively rich internee but because my home, my relations, my friends were not allowed to know where I was interned none of those presents or comforts which my relations and my friends wanted to send, could be sent, so whether you are rich or poor there must be a system whereby an allowance is possible. When I say I was a rich internee I do not know how I should be classed; I may have been a bad internee but yet I was interned because I was loyal to my country.

My brother Delegate of New Zealand talks about being "clothed and sheltered". Well, I hope that will be the case in the next war, after you Gentlemen and the Government which has arranged this Conference have brought the Conventions into effect, but I must say I have my doubts. I do pay a tribute to the Swiss Federal Government for thinking about the civilians. These Articles which you have passed and you, my brother Delegates, have helped to shape in this Conference, would be a godsend in future wars so why, after we have done so much, should we grudge a little allowance to the internee?

Mr. QUENTIN-BAXTER (New Zealand): I merely wish to say one word. I would not like it to be thought by the Conference that the Government which I have the honour to represent regards lightly or without feeling the plight of people interned in time of war. If we believed that the Soviet amendment could possibly do anything to improve the conditions of those people we should be happy to support it, and the small amount of money which might be involved would not deter us from doing so, but although I sympathize very greatly with the arguments put forward by the Delegate of Burma, and although I appreciate the force of the arguments put forward by the Delegate for the Union of Soviet Socialist Republics, I think that those arguments have no bearing whatever upon his amendment.

Both the previous speakers have pointed out that there will be many people without adequate means, and that is precisely the situation for which we have provided in the text of Committee III. That is why we feel that the text proposed by Committee III should be maintained. We have made provisions for the people without adequate means; we fail to see why we should take into consideration people who have adequate means.

The PRESIDENT: We will proceed to vote on the amendment proposed by the Soviet Delegation, to delete in the first paragraph of Article 87 the words "without adequate means".

The amendment submitted by the U.S.S.R. Delegation was adopted by 21 votes to 13, with 7 abstentions.

We will now discuss the amendment to Article 87, proposed by the Italian Delegation, to insert at the end of the first sentence of the second paragraph the following words "as well as the income on their property within the limits laid down by the law of that country".

Colonel HODGSON (Australia): This second paragraph of Article 87 caused considerable difficulty in the various Committees. It went back to the Drafting Committee on at least two occasions, and there were doubts almost up to the last as to its interpretation, but eventually it satisfied most delegations because it had one of the very decisive votes of the Committee, being unanimously adopted with the exception of two votes—and not at any time did the Delegate of Italy, who now suddenly submits this motion, mention it in the Committee.

If you will look at the amendment itself, and if you look at the Article itself, you will see that the effect is this—and this is what the Italian Delegate is asking you to do by voting for the adoption of his amendment. The whole of this Article, and indeed the whole of this Convention, applies and emphasizes the doctrine of non-discrimination. This very Article does. There has got to be non-discrimination by the belligerent Governments, by the home Governments, by the Detaining Authorities, in these various payments and allowances. As has been pointed out, there are all kinds of allowances provided for in this paragraph, but this amendment goes out of its way to say that an enemy alien, who may be interned and who is in the fortunate position of being able to obtain income from property, is placed in that position of discrimination. You will see that an Italian or a German, for example, who was interned in Australia during the last war, had an Article like this been then operative and he had property in Italy or Germany, could not have got it out owing to the exchange controls, but if he were fortunate enough to have property, say, in Australia itself, he would be in a very favoured position.

No doubt this translation is not a very good one, but it speaks of the "income from property within the limits laid down by the law of that country". I think "that country" may mean, or must mean, the Detaining Country. But take the case I quoted. If it says "the law of that country", we will suppose that a German interned in Australia



was deriving income from property in the United States of America. What is the law? Does Australian law apply, does the American law apply as to how much shall be transferred, or does the German law apply? That is why we cannot see the full meaning or the implication of this particular amendment.

It also means this, that if this amendment is adopted, an intolerable burden will be placed on the Detaining Authorities—all kinds of expensive accounting—and I would say that the amendment itself must cut across the law. The law of the land will decide what amount enemy aliens or interned persons shall get, and it seems to us that the Article is from that point of view not necessary at all, because the person will not be able to receive anything—at any rate in the overwhelming number of countries during the last war that was the case because the property or income from property belonging to interned enemy aliens went to the authority controlling enemy property.

I invite you to look further at the difficulties of this particular amendment applying to occupied territory. Which law operates then—the law of the Detaining Power or of the Occupying Power or of the country from which the income is derived, or does the law of the occupied State operate? We think that this amendment confuses what was reasonably clear. In our opinion it does not add anything to this Article; we think that in certain circumstances it would be operated in a way which would be absolutely bad, and it brings in the doctrine of sheer discrimination. For all those reasons my Delegation will vote for its rejection.

Mr. MARESCA (Italy): I am very much obliged to the Chief of the Delegation for Australia for the very interesting comments which he has kindly made on the subject of the amendment. I shall have pleasure in replying to him with respect and appreciation.

In the first place, the Delegate for Australia stated that it was the first time that our Delegation had proposed by way of an amendment a provision of this character. I should like to remind him of the Memorandum submitted by the Italian Government which goes back to last April, i.e., to the earliest days of the Conference. That Document contains a provision presented by the Delegation for Italy, which is the exact counterpart of that with which we are now dealing. (*See Summary Record of the Twentieth Meeting of Committee III*).

Next, the Delegate for Australia stressed the principle of non-discrimination on which our Convention is to be based. I shall take the liberty of pointing out to him that the amendment proposed by the Italian Delegation is completely in

accordance with this principle, since it would permit interned persons who have property in the country of the Detaining Power to receive payment of a part of the revenue accruing from such property. Consequently, the Detaining Power will be in a position to extend its efforts to give assistance and relief to interned persons who do not on the contrary possess any property in the country. There is therefore a chance of arriving in this way at a more equitable and better distribution of relief, since the very fact of allowing internees who possess property to make use of the revenue received from it would leave a larger share for those who are less fortunate.

The Delegate for Australia then raised a further question—what property is referred to? Does it mean property situated in the territory of the country in which the person concerned is interned or does it mean property situated in his country of origin, or in yet another country? My reply to this is that the answer to this question must naturally depend on the other Articles. Take for example Article 104. It provides that the internee may manage his property. What property does this refer to? It must mean property situated in the country where he is, for any property situated abroad could not come into consideration. We are dealing with those who are in the territory of the Detaining Power and who come under the latter's control.

The Delegate for Australia further raised the question of what law would be applied. Naturally, it would be the law of the country of the Detaining Power, the law of the country where the property in question exists, since property is always subject to the legislation of the country where it is. If, therefore, such property is in Australia, it is subject to Australian law; if it is in Italy, it will be subject to Italian law. A propos of this, I remember that in 1938, for example, there was in an Italian law an Article 307 which guaranteed to interned persons who were enemy subjects a part of the revenue accruing from their property in Italian territory.

The Delegate for Australia also stressed the heavy economic charge which would, in his view, fall on the Detaining Power if this amendment were adopted.

In reply, I would point out that nothing of the kind would happen. Quite the contrary. It is in order to relieve the Detaining Power of a proportion of the charge incumbent upon it that we propose to leave it free to allow interned persons to enjoy a part of the revenue from their property; the Detaining Power would be relieved to a corresponding extent.

Lastly, the Delegate for Australia expressed the opinion that the adoption of our amendment would be likely to increase any difficulties which

might have already arisen. Nothing of the kind would happen, and our amendment is directly in line with the Article itself. All those who think it necessary to retain that part of the sentence the deletion of which was moved, that is to say, the words "without adequate means" may logically agree that an internee shall enjoy the use of a part of this property, for this follows as a necessary complement and a logical consequence, as can be clearly seen from the use of this expression "without adequate means".

Such are the reasons for which the Delegation for Italy have decided to propose this amendment, which, far from complicating matters, tends, on the contrary, to improve the lot of internees and at the same time to facilitate the task of the Protecting Power. The Delegation of Italy strongly recommends the acceptance of this amendment.

The PRESIDENT: We will now proceed to vote on the Italian amendment to Article 87. Will delegations in favour of the amendment please signify?

The amendment submitted by the Italian Delegation was adopted by 14 votes to 9, with 19 abstentions.

We will now proceed to vote, unless anyone wishes to speak, on the amendment submitted by the Delegate of India to insert the following sentence in the third paragraph of the Article between the third and the fourth sentence:

"Internees shall at all times be afforded reasonable facilities for consulting and obtaining copies of their accounts".

Does anybody wish to speak on this amendment? If nobody wishes to speak, I will ask those in favour to signify.

The amendment submitted by the Indian Delegation was adopted by 40 votes to NIL, with 1 abstention.

Article 87 was adopted by 38 votes to NIL, with 3 abstentions.

### Articles 88 to 98

These Articles were adopted.

*The meeting rose at 6.50 p.m.*

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## THIRTIETH MEETING

*Friday 5 August 1949, 10 a.m.*

*President:* Mr. Max PETITPIERRE, President of the Conference, subsequently  
Mr. Pedro DE ALBA (Mexico), Vice-President

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### Presidential announcements

I must first point out a mistake in the Agenda of this Meeting, as it appears in the Daily Bulletin: under Article 15 no mention has been made of the Canadian amendment. This amendment has not been withdrawn, and in any case is not affected by the proposal of the Working Party which we are about to discuss; it will therefore be considered when we reach Article 15. I request you to correct this mistake.

I also have some announcements to make with regard to the final phases of the Conference's work:

We shall complete our discussion of the Civilians Convention this week and, in order to do this, we shall meet tomorrow, Saturday, both in the morning and afternoon, if necessary. We meet again on Monday afternoon to begin the consideration of the draft resolutions and recommendations. The final vote on the four Conventions will take place on Thursday next, 11 August.

Lastly, I think that the closing Meeting can be fixed for the next day, Friday 12; at this Meeting all the delegations will affix their signatures to the Final Act and those delegations who so desire may also sign the Conventions themselves immediately, so that it will probably be possible to declare the Conference closed next Friday.

Does anyone wish to speak on these announcements?

I see that no one wishes to speak.

### Approval of the text of the Final Act

The PRESIDENT: The proposal made by the Working Party entrusted with the drafting of the Final Act (*see Annex No. 384*) has been circulated. I have to make on it a statement. The Working Party has envisaged that the titles of the resolutions or recommendations might possibly be adopted in Plenary Meeting and mentioned on page 2 of the Final Act. The Secretariat has, however, drawn my attention to the fact that these draft recommendations and resolutions have no title. Moreover, it is customary in international conferences merely to number the resolutions and recommendations. In these circumstances, I suggest that you do the same and, if you agree, we shall delete the following clause to be found in the Working Party's text:

"The Conference further adopted the following resolutions and recommendations which are also attached to the present Act";

this passage would then be replaced by the following:

"The Conference further adopted the... recommendations and... resolutions which are also attached to the present Act".

The number of texts both of the resolutions and the recommendations would thus be mentioned in the Final Act.

Does anyone wish to speak on the Working Party's proposals concerning the Final Act or on the announcement I have just made suggesting certain modifications of the text submitted?

Mr. ALEXANDER (United Kingdom): My Delegation would submit to the Conference that the English version of the title of the Geneva Convention of July 27, 1929, should read as follows:

"Geneva Convention of July 27, 1929, for the Amelioration of the Condition of the Wounded and Sick in Armies in the Field".

The text before us reads "for the Relief of the Wounded and Sick". We feel that that is a mistake and it should be altered throughout the

draft established by the Working Party. The same comment would apply to figure II of the same Document; the expression should surely be changed accordingly.

The PRESIDENT: The Secretariat is requested to carry out the necessary modifications and to approach the United Kingdom Delegation with a view to readjusting the titles.

Mr. WERSHOF (Canada): I will just take a moment of your time to make two points. One is an error in the English version of the title of the first Convention. It is my impression that the title given to the new Wounded and Sick Convention is not one to which everyone had agreed. The title given here is:

"Geneva Convention for the Relief of the Wounded and Sick in Armies in the Field".

It is my impression that it was decided some time ago to make it read "Armed Forces in the Field".

However, the main reason for my speaking is this. I wish to propose a slight, but I think significant, change in the title of the Civilians Convention. The title which has been used in the past and which is used throughout this document is:

"Convention for the Protection of Civilians in Time of War".

We should like to propose a change to:

"Convention relative to the Protection of Civilians in Time of War".

At first sight you may wonder why I trouble to make this suggestion, but here are the reasons. This Convention is not a convention dealing with all aspects of the treatment of civilians in time of war. Ninety per cent of the Convention is dealing with a very limited type of civilian, namely, protected persons who are certain categories of aliens. Only part II of the Convention deals with the whole civilian population, but only for a very limited purpose. I do not wish to start a controversy this morning, but I would remind the delegates that many times in this Conference some delegations have drawn very far reaching inferences from the words of the title of the Convention. For example, because the title read "Convention for the protection of civilians in time of war" they argued that any provision which might protect some civilians somewhere was a proper one for inclusion in the Convention. I think it is a pity that a more accurate title was not found at Stockholm, but in any event a slight alteration at this stage in the direction of accuracy would, I think, be desirable. If we call it the

“Convention Relative to the Protection of Civilians in Time of War”, that is completely accurate.

The title of the Prisoners of War Convention, I would remind you, used the same form of wording, that is: “Convention relative to the Treatment of Prisoners of War”. We therefore propose that the title of the Civilians Convention throughout this Document should read:

“Convention relative to the Protection of Civilians in Time of War”.

Mr. SÖDERBLOM (Sweden): I should be glad to say a few words when the point at present under discussion has been considered.

Mr. PRESIDENT: I am sure we should all be very pleased to hear the Chairman of the Working Party speak now on the point raised by the Delegate of Canada. We will be grateful for his opinion.

Mr. SÖDERBLOM (Sweden): I think, as a matter of fact, that the title of the Report of the Working Party might be retained, since it was that title which figured on the working documents which were the basis of our deliberations.

I asked to speak in order to point out, in the name of the Working Party of which I had the pleasure to be Chairman, that the text of the Final Act now before us contains only clauses in a time-honoured and traditional style, customary in documents of this kind.

Apart from that, it should perhaps be stated that the Working Party suggested an alteration of the titles of the Conventions; namely, that they should all be known as the “Conventions de Genève”, or, in English, “Geneva Conventions”. So far, the first Convention only was known as the “Geneva Convention.”

The Working Party was unanimous in thinking that from a practical point of view, it would be preferable, particularly as the literature already generally refers to the Geneva Conventions, to give the official title of “Geneva Conventions” to all these documents, as a tribute to the city of Geneva, the headquarters of the International Committee of the Red Cross, and also to Switzerland as a whole.

The PRESIDENT: A few minutes ago the Delegate of Canada proposed a slight alteration in the title of two Conventions. In his opinion, the English text of the Convention for the Relief of the Wounded and Sick should contain the term “in Armed Forces” instead of “in Armies”. If I have correctly understood, this comment only affects the English text. The Representative of Canada also requests that, with regard to the

Civilians Convention, the term “for the Protection of civilians” be replaced by “Relative to the Protection of Civilians”. I admit that I do not attach great importance to this question.

The Chairman of the Working Party has recommended that the terms which were adopted yesterday at the Working Party should be retained. In my opinion, we should not enter upon a long discussion on this point.

Mr. COHN (Denmark): The Delegation of Denmark supports the alteration of the titles of these Conventions, particularly as regards the Civilians Convention. I must explain, however, that our point of view is not quite the same as that of the Delegate of Canada. As I have already had occasion to say with regard to the Prisoners of War Convention, we have succeeded in this Conference in agreeing on a number of humanitarian principles for the protection of prisoners of war and the civilian population. We cannot, however, accept the idea that these principles constitute the complete code of all the rights of prisoners of war or civilian populations. In our opinion, we have drafted a text concerning only certain rights of the civilian population in time of war and under occupation, but the population has many other rights and privileges which are not provided for in this Convention. It is with this in view that we support the proposed alteration in the title, which implies that the Conventions which we have established are not complete, but contain only certain principles, on which we have reached agreement.

Mr. ALEXANDER (United Kingdom): I am sorry to intervene again but in the list of changes which you read out just now, you did not mention what would be the consequential amendment if the Conference agrees to the remarks my Delegation made on the Geneva Convention of July 27th, 1929, namely, that the text would have to read:

“II. Geneva Convention for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of the Armed Forces at Sea.”

May I add that my Delegation is strongly in favour of the change in the title for the “Convention for the Protection of Civilians in Time of War” as suggested by the Delegate of Canada and as supported by the Delegate of Denmark.

The PRESIDENT: We shall consider the titles one after the other. We shall first take the Wounded and Sick Convention. The Delegation of Canada requests that the term “in Armed Forces in the Field” be adopted.

The proposal was adopted by 17 votes to 16, with 8 abstentions.

The title of the first Convention will therefore be altered; we shall likewise alter it in the various Articles of the other Conventions in which it is mentioned.

As regards the second Convention, the term "Armed Forces" will be adopted both in the English and the French texts. The comment made by the Delegate of the United Kingdom will be taken into account and the necessary correction will be made.

We must also revise the title of this Civilians Convention. The Working Party has proposed "Geneva Convention for the Protection of Civilians in Time of War". The Delegation of Canada, supported by the Delegation of Denmark, requests that this text be altered as follows: "Geneva Convention Relative to the Protection of Civilians in Time of War."

The proposal of the Delegation of Canada was adopted by 24 votes to 20, with 1 abstention.

The title of the Fourth Convention will accordingly be altered.

The delegations in favour of the text of the Final Act, as submitted by the Working Party with the amendments which we have just adopted are requested to signify in the usual manner.

The text of the Final Act was unanimously adopted.

#### CIVILIANS CONVENTION

The PRESIDENT: We will now resume our discussion of the provisions of the Civilians Convention.

General SLAVIN (Union of Soviet Socialist Republics): The agenda lists certain documents which were submitted after the expiry of the time limit, and I should like to know whether this is in accordance with the correct procedure.

#### Articles 108 and 19 C

The PRESIDENT: It appears that two documents were not submitted within the time limit laid down: these are, a corrigendum to the amendment in respect of Article 108 and a proposed new article presented by the Delegation of Australia. These documents have been handed in and circulated. We could defer our study of the Articles in question so as to observe the usual time limit; these would be Articles 108 and 19C.

General SLAVIN (Union of Soviet Socialist Republics): We have not received the Document containing the draft of Article 19C.

The PRESIDENT: I would ask the Secretary-General to ensure that the Delegation of the Union of Soviet Socialist Republics, and any other Delegation in a similar position is supplied with this Document.

#### Article 100

The PRESIDENT: Amendments have been presented by the Delegations of Belgium, India, Luxemburg, Turkey, Uruguay and Venezuela, and by the Delegation of the United Kingdom.

Mr. MINEUR (Belgium): A number of Delegations have submitted amendments on Article 100, which deals with exemption from postal dues. Our amendment (*see Annex No. 343*) only affects the second paragraph of the Article, and I shall give a brief account of the position in regard to international postal traffic.

Exemption from dues in international postal traffic is ruled in a Convention and various agreements. Such free postage is supplied for different categories of consignments and persons, and is regulated:

- 1) by the Universal Postal Convention
- 2) by Article 13 of the Agreement on Letters and Boxes with declared values
- 3) by Article 18 of the Agreement on Parcel Post
- 4) by Article 6 of the Agreement on Postal Orders.

The following are the various categories of consignments:

*a)* letters, *b)* letters and boxes with declared value, *c)* postal parcels, *d)* postal orders.

The various categories of persons are the following:

- 1) prisoners of war
- 2) military internees
- 3) civilian enemy aliens held in civil prisons or camps
- 4) official information bureaux set up for this purpose, in particular, the I.C.R.C. Central Prisoner of War Agency.

The objective in regard to correspondence by letter may be attained by means of a simple reference to the Universal Postal Convention. Under this agreement, the signatory States undertake to grant free postage for international mail destined for, or originating from, enemy alien internees.

The same does not hold in regard to letters, boxes with declared values parcels and postal orders; these are not regulated by the Universal Postal Convention, but are covered by the Special Agreements of the Universal Postal Union.

It is therefore essential, if it is desired to grant free postage abroad for letters, boxes with values, parcels and remittances of money, to make a specific

reference, not only to the Universal Postal Convention but also to the Agreements of the World Postal Union. As, however certain countries are not a party to these Agreements, it should be explicitly stated that the Contracting Parties are nevertheless bound to grant free postage for internees under the conditions specified in the various Agreements.

Finally, interned protected persons who are nationals of a neutral State or who are stateless should be able to claim the privileges in question. These persons are not covered by the Universal Postal Convention, therefore a text making specific reference to the Agreements and the Postal Convention seems essential.

The amendment presented by our respective Delegations covers the points set forth above, better than the text submitted by Committee III. The text submitted in this Document, since it mentions the Universal Postal Convention only, and not the Agreements, cannot cover the letters, boxes with values parcels sent by parcel post and remittances of money, the dispatch of which is governed by the said Agreements. We therefore provided for reference not only to the Convention itself but also to the Agreements made by the Universal Postal Union.

Secondly, the text proposed by Committee III provides for measures applicable to home postal traffic as regards matter sent by mail by internees, whereas the Universal Postal Convention, to which it refers, only deals with foreign postal traffic. This is why our amendment contains the words "in particular".

Finally, the second sentence of the second paragraph of the text submitted by Committee III is vaguely worded. In such an important matter as that under consideration, the costs and obligations to be borne by the Contracting Parties must be precisely defined. The terms used in Article 100 as it stands are inadequate. We therefore suggest that it should be specified that the exemptions provided for the interned civilians of enemy nationality should "be extended to the other interned persons protected by the present Convention." Article 100, as submitted, states:

"For this purpose, the exemption provided for in the Universal Postal Convention of 1947 shall be extended to all the categories of internees mentioned in the present Convention."

As I said, this wording is both too vague and inexact. The exemptions prescribed in the Universal Postal Convention do not apply only to the correspondence of prisoners of war, of belligerents received and interned in neutral countries and of civilians of enemy nationality retained in camps or in prisons; under the terms of the first paragraph of Article 52, they apply to correspond-

ence transmitted by the postal service, between the Postal Administrations and the International Bureau, between the Post Offices of the countries belonging to the Universal Postal Union and between these Post Offices and the Postal Administrations, etc. You see, therefore, that the exemptions stipulated do not apply only to prisoners of war or interned civilians of enemy nationality. For this reason, the sentence which we have used in our amendment is more exact and covers the cases with which we are concerned. Our wording is as follows:

"To this effect, the exemption provided in particular by the Universal Postal Convention of 1947 and by the Agreements of the World Universal Postal Union in favour of civilians of enemy nationality" (it is only these civilians who are detained in camps or civilian prisons) "shall be extended to the other interned persons protected by the present Convention."

The following objection will no doubt be raised: every country in the world, or nearly every country, is a party to the Universal Postal Convention, but certain countries are not party to the Agreements of the Universal Postal Union. I admit this point, but that is why we have concluded our amendment with the words:

"The countries not signatory to the above-mentioned agreements shall be bound to grant the exemptions in the same circumstances."

Lastly, if you will allow me to suggest another slight alteration, our amendment said: "To this effect, the exemptions provided in particular". On reflection, the term "in particular" is incorrectly placed. It would be better to say, and I request you to take the suggestion into consideration: "To this effect, in particular exemptions provided by the Universal Postal Convention...", because the exemptions which we desire to grant are not only those provided in international matters by the Convention and the Agreements in favour of the enemy civilians retained in camps or prisons but are also those relating to internal regulations which, as I have said, are not and cannot be governed by International Conventions and Agreements.

I apologize for this long and dry statement, but I believe that it was necessary, and, although I have explained my point of view in a very uninteresting way, I urge you to take it into consideration and to vote in favour of the amendment which we have the privilege of submitting to your approval.

Mr. SPEAKE (United Kingdom), Rapporteur: I think it might perhaps be helpful if I amplified very briefly by way of background what is said in the report on this Article.

A number of delegations have been instructed to attempt to secure a reference in this Article to the Universal Postal Convention. Attempts by way of amendment were made to secure the rights of internees by cross-reference to that Convention. These amendments failed to achieve their objectives: there was some danger that by cross-reference the rights of internees would be reduced or put in danger. The Drafting Committee therefore produced originally a draft which corresponds to the first sentence only of the second paragraph of Article 100. In deference to the wishes of delegations who still wanted a reference to the Universal Postal Convention, they made a second attempt to legislate by cross-reference. Again they found that the task was technically beyond them, and they therefore reproduced again the first sentence which states the rights of internees straightforwardly, and added a second sentence which it is fair to describe as simply a courtesy reference to an organisation for which many delegations have an attachment. The view of those who put in this second sentence was that it did not add to the rights of internees, and they sincerely hoped that it did not detract from them. It is, as I have said, simply a courtesy reference.

MR. GARDNER (United Kingdom): Committee II, after careful consideration of the same question cut out any reference to the Universal Postal Union in the Prisoners Convention. The United Kingdom Delegation would invite the Conference to do the same in the Civilians Convention for the same reasons as did Committee II.

In the first place, this Conference is, we suggest, not competent to speak in the name of the Universal Postal Union. That Union has designed machinery for reaching its conclusions, recording its decisions and establishing international agreements. The wording even of the somewhat innocuous sentence at the end of the second paragraph of Article 100 goes very near usurping in this Conference the rights of the Universal Postal Union by claiming to extend exemptions which are found in the documents and treaties of that Union. We suggest that it is improper for this Conference to assume to itself the right to legislate about exemptions which are within the province of the Universal Postal Union.

In the second place, as the Delegate for Belgium has recognized, there are special agreements to which some countries in this Conference are not parties, in particular, the agreement dealing with money orders and parcels, and my country is not a party to those agreements not because it objects to the principle embodied in them but because, as in all the documents of the Universal Postal Union, matters of technical administration and operation are dealt with as well as principles. The British Post Office finds itself at present

unable to accept all the technical provisions laid down in those agreements. I submit to the Conference that it would be a most improper use of its powers to attempt to impose on the British Post Office, by a majority vote in this Conference, a technical agreement which the Conference has not examined and probably does not know the contents of, by inserting a clause in this Convention. Yet that is the effect of the last sentence of the amendment proposed by the six mentioned Delegations: "The countries not signatory to the above-mentioned agreements shall be bound to grant the exemptions in the same circumstances." We submit that it is outside the competence of this Conference; using competence in the strict sense, to impose on countries technical agreements which the Conference has not examined, and which those countries have declined to accept through the international machinery recognized as proper to these matters by the United Nations Organisation.

The third reason why Committee II rejected these references is even more fundamental from the point of view of the purpose of this Conference. This Conference is seeking to establish clearly certain rights for internees and in the first sentence of Article 100 it lays down those rights, I submit, in absolutely clear and unmistakable language, and it deals only with the principle that mail including relief parcels sent by parcel post and remittances of money shall be free of postal charges. That principle it is within the competence of governments represented here to agree to. We do not attempt to go on and set out any of the technical machinery by which that principle may be implemented between the Parties to the Convention. That is essentially the business on the Universal Postal Union, but there is no guarantee that if we rest the rights of internees on the Convention and Agreements of the Universal Postal Union, we shall not at some time deprive some internees of their rights because this Conference cannot guarantee that all the Parties to these Conventions will remain for as long as the Conventions are in force Parties to the Universal Postal Union Convention or to any of the agreements under it. What I should like to emphasise to the Conference is that the first sentence of this Article does all that we are competent to do and does it without any mistake. If we then rest it, even partially, on agreements which are completely outside our control, on agreements to which governments represented at this Conference may not in future be parties, we are tending to detract from the right which we have clearly laid down in the first sentence and we may find at some future date that what looked like an innocuous reference has in fact become a limiting provision.

For those reasons the United Kingdom Delegation invites the Conference to reject the amendment presented by the six mentioned Delegations and to agree to the deletion of the last sentence of the second paragraph of Article 100.

The PRESIDENT: I shall put the two amendments to the vote in turn.

We shall first take the amendment submitted by the Delegations of Belgium, India, Luxemburg, Turkey, Uruguay and Venezuela; a correction has been made in the text of the amendment by its promoters: the term "in particular" should be inserted after the third word in the sentence, which will accordingly be worded as follows: "To this effect, in particular..."

The amendment was adopted by 24 votes to 8, with 12 abstentions.

Secondly, we will vote on the amendment submitted by the Delegation of the United Kingdom.

The amendment submitted by the Delegation of the United Kingdom was rejected by 26 votes to 9, with 7 abstentions.

We must vote on Article 100 as a whole, taking into account the first amendment, which you have just adopted.

Article 100 was adopted by 41 votes to nil, with 5 abstentions.

### Article 101

The PRESIDENT: An amendment has been submitted by the Delegate of the United Kingdom (see Annex No. 345).

Mr. GARDNER (United Kingdom): This amendment is designed to bring the Civilians Convention into line with the Prisoners of War Convention on a matter where both would normally be concerned with the same machinery. Article 65 of the Prisoners of War Convention and Article 101 of the Civilians Convention are in identical terms except for this paragraph, and there is no doubt at all that if ships or aircraft ever came into operation they would be used equally for mail affecting internees and other protected persons as well as for mail and relief supplies affecting prisoners of war. For that reason alone we suggest the Conference would be wise to keep the two Articles in identical terms and having adopted Article 65 of the Prisoners of War Convention we now bring Article 101 into line with it. The basic reason for this provision is that without it, there may arise circumstances in which relief supplies in particular could be more effectively carried to a particular place by some shipping not falling within the first paragraph of Article 101, that is,

shipping under the control of and operated by some international organisation. If such circumstances do arise then it is desirable clearly that there should be no obstacle, implied or otherwise, to inviting the belligerents concerned to grant safe conduct to such shipping and that is all that this new paragraph says.

It is a matter of historical fact that the first shipping improvised during the second World War to carry relief supplies to prisoners and shipping which continued to carry those supplies until Southern France was liberated was shipping not arranged by an international organisation or by the Swiss Foundation for Transport, because it did not exist, but shipping arranged for and chartered by the British Red Cross Society with the help of the International Red Cross Committee and the British and Portuguese post offices, and with safe conduct from all the belligerents. The sole purpose of this amendment is to keep open as many channels as possible for carrying relief supplies and mail to prisoners of war and internees in war time and I hope therefore the Conference will accept the amendment.

(Mr. de ALBA (Mexico), Vice-President  
takes the Chair)

The PRESIDENT: Does any one wish to speak on the amendment? Since nobody wishes to speak, I shall take a vote on the amendment submitted by the United Kingdom Delegation.

The amendment was adopted by 35 votes to nil, with 4 abstentions.

Article 101, together with the amendment proposed by the United Kingdom Delegation, was unanimously adopted (by 42 votes).

### Articles 102, 103, 104

Articles 102, 103 and 104, for which there are no amendments, were adopted.

Mr. BLUEHDORN (Austria): May I draw your attention to Article 103, second paragraph. By a small oversight, the text reads "l'établissement et la légalisation" instead of "l'établissement et la législation".

The PRESIDENT: The Delegate for Austria is correct, and the Secretariat will make the necessary change.

### Article 105

The PRESIDENT: One amendment has been submitted, by the Delegation of the U.S.S.R.



Mrs. SPERANSKAYA (Union of Soviet Socialist Republics): The amendment submitted by the Delegation of the U.S.S.R. proposes the restoration of the Stockholm text of the first paragraph. The purpose of the amendment is to prevent the requisitioning of the property of protected persons when interned, and of their families.

If the first paragraph is deleted, the Occupying Power will be enabled to act in an arbitrary fashion. Internment must be regarded, not as a punishment for crimes, but rather as a result of military exigencies. It would be unjust if internment which is in reality a preventive measure, were accompanied by the confiscation of property belonging, not only to the internee himself, but to his relatives.

The Soviet Delegation therefore proposes the restoration of the first paragraph of the Stockholm text of Article 105, under which the confiscation of the property of interned persons and their relatives is prohibited, and which provides that civil suits in which the internees are engaged, may, at their request or that of their agents, be suspended for the duration of the internment.

Mr. QUENTIN-BAXTER (New Zealand): I am rather sorry that it should fall to my lot to oppose another Soviet amendment this morning, but I do not consider that the Soviet Delegate has assessed correctly the effect of restoring the Stockholm text of this Article. The Stockholm text of this Article did give rise to a number of objections from different delegations in Committee III. It does appear to afford very substantial protection to internees in occupied territory, but we suggest that its real effect is a different one. That opinion was shared by some countries which had had a great experience of occupation—of being occupied during the last war. The Delegation of Belgium felt so strongly that the Stockholm text was bad that they moved to delete the Article entirely.

Now these are the reasons for which we think the Belgian Delegation was right. The Stockholm text deals separately with the case of internees who are aliens in the territory of a Party to the conflict. In their particular case the new text makes rather clearer and slightly increases the degree of protection given, but in the case of occupied territory the Stockholm text says that no measure of restraint will be allowed and it gives the internee an absolute immunity from civil proceedings. We suggest that is a most unjust provision which merely protects the internee against his fellow citizens, and it may mean that an internee, however wealthy, may be protected from a claim—a just claim—by his fellow citizens, however poor and however much the latter may need the money or the redress which the Courts

can offer. However, those objections are secondary; our real objection to this Article is that it causes a derogation from a principle which we have established in this Convention. We have established the principle that the Courts and the institutions of an occupied territory shall be preserved and shall not be interfered with more than the minimum necessary degree.

This particular Article of the Stockholm text lays the obligation upon the Detaining Power, and it is an obligation to interfere. The Occupying Power is required to intervene in the ordinary course of the law. The new text is careful to avoid such a provision and it states that the duty of the Detaining Power shall be to ensure, within legal limits, that all necessary steps are taken to prevent the internee from being prejudiced, and so on. We think that is a very much better provision. If we had to be an occupied country ourselves we would like the protection of our own people who were interned to rest with our own judges in our own Courts; we do not think that we would increase that protection by giving a discretion to the Occupying Power.

For these reasons we feel that the text adopted by Committee III is a vast improvement upon the Stockholm text.

Mr. SPEAKE (United Kingdom), Rapporteur: This Article, in my recollection, throughout the course of the Drafting Committee's meetings and the meetings of Committee III has always been treated as a straightforward Article dealing with the Courts of the territory. It has not been interpreted, so far as I remember, by anyone up to date as affecting the action which might be taken by an Occupying Power. Most people seemed to think that the actions of the Occupying Power with regard to requisitions of goods or of services were covered by the Hague Rules as amended by the earlier Articles of this Draft Convention and I do not remember anyone before having suggested in the course of the work on this Article, after the first meeting, that it affected the conduct of the Occupying Power, which is the source of the Soviet Delegation's anxiety.

General SLAVIN (Union of Soviet Socialist Republics): I, and probably other delegates also, was certain that the Delegate of New Zealand would rise to speak after the Soviet Delegate, for that has been his customary reaction throughout this Conference. It seems to me, however, that there are no grounds for his fears that we do not understand the question correctly, or rather do not realise the consequences which would result from the first paragraph of Article 105 in the Stockholm text. It is rather the Delegate of New Zealand who does not correctly visualize the

results of the objections raised to our Delegation's proposal. I should like to make it clear that we have no ulterior motive in making this proposal, and that our main object is to improve the conditions of protected persons, in this particular sphere. Allow me to read once more the first paragraph of the Stockholm text of Article 105, which we propose to restore.

This paragraph is worded as follows:

"No measure of restraint may be taken in occupied territory against internees or their dependents, during the internment of such internees and a month following their return to their domicile. Civil suits in which internees are engaged may, on their request or on that of their agents, be suspended for the duration of the internment."

In other words, the purpose of this paragraph is to ensure that, in the event of internment, protected persons may retain their rights as regards their property. I must also point out that the Rapporteur is incorrect in asserting that the legislation of the occupied country may not be altered. Unfortunately, this is precisely what is made possible by the amendment to Article 55 submitted by the Delegation of the United Kingdom, to which I draw your attention. In this amendment it is stated that the Penal Laws remain in force, except in cases where they may be altered by the Occupying Authorities. It follows that the laws may be altered and protected persons may accordingly be deprived of their property. We consider that this would be unjust. This is not the way to safeguard the interests of protected persons and, if this is true, all the delegations should support our proposal.

How can a protected person be deprived of his indisputable rights as regards his property? To avoid such an injustice, we consider that the consequences which would result from this text must be carefully weighed, if this first paragraph of Article 105 of the Stockholm text were not included in the Article. It is precisely for this reason that we propose to retain it, in order to safeguard the interests of protected persons in this respect. It is also the reason why we draw your attention to this fact, as well as to Article 55. In my opinion, everyone should be in agreement with the amendment proposed by the Soviet Delegation and I hope that the Delegate of New Zealand will adopt our point of view. He has probably incorrectly read the Soviet amendment or has not fully realised the consequences of a rejection of our amendment.

Mr. CLATTENBURG (United States of America): I was very surprised to hear the words "confiscation" and "requisition" in the first intervention

of the Soviet Delegation. The Stockholm text of Article 105 bears the heading "Moratorium". "Moratorium" is a word which has nothing whatever to do with penal clauses; it has to do with civil suits, it has to do with a man's debts, perhaps to the State, perhaps to private persons. At Stockholm, when we discussed this Article, which we re-wrote very considerably, as you can see by examining the text, we talked about civil suits, about taxes, and about other lawful incidents in the life of the protected person, and we kept this Article in a place following the Article on the transmission of legal documents and following the Article on the management of property. This Article refers to the private business affairs of the internee. It never had anything to do with penal measures. If we had been thinking of a punishment we would have put it back in a different part of this particular section where we discuss such measures.

For that reason it is my belief that the amendment of the Soviet Delegation although well meant, is based on a complete misunderstanding of the intention of the people who drafted this paragraph, and of the meaning of the paragraph itself.

The PRESIDENT: As no one has asked to speak we will take the vote.

The amendment submitted by the Delegation of the Union of Soviet Socialist Republics was rejected by 18 votes to 9, with 16 abstentions.

Article 105 was adopted by 36 votes to none, with 8 abstentions.

### Article 106

The PRESIDENT: An amendment has been submitted by the Delegation of the Soviet Union.

Mrs. SPERANSKAYA (Union of Soviet Socialist Republics): The amendment submitted by the Soviet Delegation proposes the deletion, at the beginning of the first paragraph, of the words "in so far as circumstances permit...".

The aim of this amendment is to enable protected persons to receive visitors, especially near relatives. The addition to the Stockholm text of the words "in so far as circumstances permit..." would make it possible to deprive internees arbitrarily of the right to receive visitors on various war-time pretexts such as shortage of transport, administrative difficulties over transfers, etc...

The Soviet Delegation stresses the fact that a restriction of the right to receive visitors already appears in the first paragraph of Article 106. Internees are allowed to receive visitors only at regular intervals and as frequently as possible. There is therefore no need to add further restrictions.

These are the grounds on which the Soviet Delegation presses for the deletion, at the beginning of the first paragraph, of the words "in so far as circumstances permit...".

Colonel HODGSON (Australia): I have heard the Soviet Delegation chide other delegates because they put in amendments to Articles which have had a very close vote in the Committee. I heard one Delegation chided for putting in an amendment which had been rejected by as close a vote as 16 to 15 in a thin Committee. Here is an Article which was adopted unanimously, one of the few really clear Articles in this particular portion of the Convention. No objection whatever was raised by the Soviet Delegation to the adoption of this Article and I respectfully submit that it is a waste of this Conference's time to put in an amendment of this kind at this stage.

In the second place, if the Soviet Delegate were consistent the same amendment should also apply to the first words of the second paragraph. Those words "so far as possible" equally apply and should be omitted, but our contention is that those words implying a certain degree of limitation are necessary and are reasonable. There may be many circumstances which will not enable visitors for a brief period to visit detention camps. I can myself give at least one practical illustration of what happened in my own country.

In an internment camp during the last World War there was a severe riot in the camp. Some of the guards were injured and shot, some of the internees were shot and the camp was closed to visitors. There was an enquiry and it was ascertained that visitors had been smuggling in small arms and ammunition and all kinds of illegal articles which enabled this riot to take place. The camp was closed until the Court of Enquiry had completed its investigations, made its recommendations and a tightening up of the regulations was effected as regards visitors. That is a clear indication why it is necessary to have a somewhat restrictive text like this. Finally, I should like to say this, that there is at least one delegation represented here who did not allow any visitors to go into its camps of detention and did not even allow the Protecting Powers to visit them.

The amendment submitted by the Delegation of the Soviet Union was adopted by 19 votes to 14, with 8 abstentions.

Article 106, thus amended, was adopted by 38 votes to 2, with 2 abstentions.

#### Article 107

Article 107 was adopted.

#### Article 108 (continued)

The PRESIDENT: Consideration of Article 108 must be deferred till a later meeting.

#### Articles 109, 110, 111, 112, 113, 114, 115, 116, 117, 118

The above mentioned Articles were adopted.

#### Article 119

The PRESIDENT: We have received a suggestion from the Drafting Committee. Does anyone wish to comment on this or to object to it?

Mr. CLATTENBURG (United States of America): I wish to state that the United States Delegation fully supports the suggestion of the Drafting Committee as being logical and necessary.

Mr. WERSHOF (Canada): I am not opposing this, but I merely wish to point out that there are two suggestions which are quite separate, and it might be desirable to put each suggestion separately to the Assembly.

The PRESIDENT: The first suggestion made by the Drafting Committee concerning Article 119 is unanimously adopted.

The second suggestion by the Drafting Committee is adopted by 33 votes, with 1 abstention.

Article 119, as amended, was adopted unanimously.

Mr. GARDNER (United Kingdom): The recommendation of the Drafting Committee stated that if this change was made, dividing Article 119 into two Articles, a corresponding change should be made in the Prisoners of War Convention. I would like to know whether that is going to be put to the Assembly and I would point out that it affects only the first two paragraphs; not the first three paragraphs of Article 110 of the Prisoners of War Convention.

#### PRISONERS OF WAR CONVENTION

#### Article 110 (continued)

The PRESIDENT: As pointed out by the Delegate of the United Kingdom, Article 119 Civilians corresponds to Article 110 of the Prisoners of War Convention.

If you see no objection, and since this is merely a drafting point, the correction will be made to the corresponding Article of the Prisoners of War Convention.

General SLAVIN (Union of Soviet Socialist Republics): The Soviet Delegation considers it unnecessary to alter the Prisoners of War Convention, but suggests that the corresponding Article be left as it is at present, since it has been adopted by the Assembly.

The PRESIDENT: I put to the vote the proposal submitted by the Delegate of the United Kingdom that a correction be made in the Prisoners of War Convention.

Mr. COHN (Denmark): It appears to me that it will be difficult to vote on a text which we do not have before us and which does not appear on our Agenda.

The PRESIDENT: In view of the statement which the Delegate of Denmark has just made, the vote on the proposed amendment could be postponed to a subsequent meeting.

Mr. LIFSCHITZ (Nicaragua): It appears that it is proposed to revise an Article which has already

been adopted. According to Article 33 of the Rules of Procedure, a majority of two-thirds must be obtained in order to alter an Article.

The PRESIDENT: The Delegate of Nicaragua has pointed out that a majority vote of two-thirds must be obtained in order to authorize the correction of the Article concerned. His point of view is correct; we shall now vote only on the alteration to Article 110.

The proposal to correct Article 110 of the Prisoners of War Convention in consequence to the alteration of Article 119 of the Civilians Convention is rejected, as the two-thirds majority has not been obtained, the voting being 18 votes in favour, 9 against, and 14 abstentions.

The corrections proposed by the Drafting Committee therefore apply only to Article 119 of the Civilians Convention.

#### Articles 120, 121, 122 (continued)

The PRESIDENT: The mentioned Articles, to which no amendment has been submitted, are adopted.

*The meeting rose at 1 p.m.*

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### THIRTY-FIRST MEETING

*Friday 5 August 1949, 3 p.m.*

*President: Mr. Max PETITPIERRE, President of the Conference*

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#### CIVILIANS CONVENTION

##### Article 122A

The PRESIDENT: An amendment has been submitted by the Delegation of Italy proposing to delete the sentence, after the words "or occupation" and substitute: "to assure the return to their last residence of all internees, or to facilitate their repatriation".

Mr. MARESCA (Italy): The amendment submitted by the Italian Delegation is intended only to make clear an idea which this Article logically implies and which remains the basis of the whole system provided in the following Article. This idea, which is very simple, is the following: the belligerent Power which, actuated solely by its own security needs, has ordered the internment of a protected person, thus separating him from his home for the duration of his detention, is in duty bound, when the

protected person has been released, to return him to the place at which he resided when interned. This is so true that the following Article, 122B, stipulates that "the Detaining Power shall bear the expense of returning released internees to the places where they were residing when interned". Provision must be made, therefore, not only to facilitate the return of released internees to their domicile, but also to ensure their return. For this reason the Italian Delegation considers it better to say "assure" than "facilitate" the return.

We might imagine the following case: an interned person, when released, might not wish to return to his domicile for some reason—on account of distressing memories for example—but he may request to be repatriated. In such a case, the Detaining Power is not bound to ensure his repatriation, but merely to facilitate it. This is confirmed by Article 122B which provides that in such a case the Detaining Power need not pay any costs beyond its territorial limits. For this reason, the Delegation of Italy considers it advisable to replace the sentence "The High Contracting Parties shall endeavour, upon the close of hostilities or occupation, to facilitate the return of all internees to their last residence or to their country of origin", by the following sentence "The High Contracting Parties shall endeavour, upon the close of hostilities or occupation, to assure the return of all internees to their last residence or to their country of origin".

This wording is more correct, more logical, and more in keeping with the following Article; moreover, it retains all the flexibility of the original text, for the term "shall endeavour" necessarily implies that there is a limit to what is possible and it must be borne in mind that no one can be expected to perform the impossible.

These are the reasons for which the Delegation of Italy proposes the amendment under discussion.

The PRESIDENT: There being no further speakers, we will now vote on the amendment submitted by the Delegation of Italy.

The amendment was adopted by 25 votes to 1, with 10 abstentions.

Article 122A, thus amended, was adopted by 35 votes, with 2 abstentions.

### Article 122B

The PRESIDENT: A suggestion has been made by the Drafting Committee.

Does anyone wish to oppose the suggestion made by the Drafting Committee?

Mr. CLATTENBURG (United States of America): I do not understand the suggestion of the Drafting Committee.

The PRESIDENT: Does the Drafting Committee wish to put forward its point of view?

Miss GUTTERIDGE (United Kingdom): If I may speak from the floor, the Drafting Committee were not very sure what was meant by the words "if however, the internee elects to return on his own responsibility". The place to which he was intended to return was not clear and during the discussion in the Drafting Committee one or two different interpretations were given. It was therefore agreed by the Drafting Committee to refer this again to the Plenary Assembly.

Mr. CLATTENBURG (United States of America): I am glad to know what it is that the Drafting Committee was not clear about, because I did not understand their comments. If the words "to his own country" were inserted after the words "to return" I think it would meet the point of the Drafting Committee and I know, since I am closely associated with the drafting of this Article, that it would express the ideas of those who drew it up.

The PRESIDENT: Two proposals are before us, one having been made by the Drafting Committee and the other by the Delegate for the United States of America.

Does the Drafting Committee wish to withdraw its suggestion in view of the amendment just proposed by the Delegate for the United States of America?

Miss GUTTERIDGE (United Kingdom): If I may speak on behalf of the Drafting Committee, the addition of the words suggested by the United States Delegate make the meaning perfectly clear and I would therefore suggest, on behalf of the Drafting Committee, that those words be added.

The PRESIDENT: Does anyone wish to oppose the proposal just made by the Delegate for the United States of America and approved by a member of the Drafting Committee?

I note that no one wishes to oppose this proposal. The words "to his own country" will be inserted after the words "elects to return" in the last sentence of the second paragraph of Article 122B.

Does anyone else wish to speak on Article 122B? I note that this is not the case. The article is adopted.

### Articles 123, 123A, 123 B, 123C, 124, 125, 125A, 126 and 135

The above-mentioned Articles were adopted.

**Annex I**

The PRESIDENT: An amendment has been submitted by the Delegation for Switzerland. An amendment has also been submitted by the Delegation for Burma.

Mr. STROEHLIN (Switzerland): Since you decided in the 11th Plenary Meeting to adopt the amendment of the Swiss Delegation when Annex I of the Wounded and Sick Convention was submitted for your approval, I will only ask you to confirm this decision.

The Draft Agreement relating to Hospital and Safety Zones and Localities which is now under discussion is, in fact, identical with that which was discussed on July 23rd.

At that time, objection was raised to our amendment on the grounds that it eliminated the Protecting Power from the supervision of the Safety Zones. I merely wish to point out that the Protecting Powers will have numerous opportunities of collaboration with the special Commissions to which we propose to entrust this supervision, either while they are being constituted or during their work, especially as they will probably be composed of neutral persons.

Our only desire is not to impose upon the Protecting Power duties and responsibilities which exceed the material resources and the competence of their diplomatic and consular agents, and which would for that reason, in our opinion, endanger the representation of alien interests entrusted to them.

Mrs. SPERANSKAYA (Union of Soviet Socialist Republics): The amendment of the Swiss Delegation proposes that the supervision of hospital and safety zones shall be carried out, not by the Protecting Power, but by Special Committees to be appointed by the States which have established these zones, and by the adverse Parties, or by neutral States. The structure and the formation of such Committees, together with the nomination of their members, are all complicated matters; and the liaison between these Committees and the Powers concerned is far from clear. It is difficult to understand why the Protecting Power should be excluded from the supervision of the hospital and safety zones which have been assigned to it, and why, on the contrary, neutral Powers should participate in these duties. It is obvious that the Protecting Powers will have far more authority and far greater practical opportunities to verify the observance of the provisions of the Convention in such zones, than will members of the proposed Committees consisting of representatives of neutral countries. We are all equally concerned in ensuring that the application of the provisions

regarding these zones, and the Articles in Annex I, should be supervised as effectively and as easily as possible. But the proposal under consideration tends, on the contrary, to make supervision in these zones more difficult. Moreover, as the Swiss Delegate has already pointed out, it should be noted that, when the Wounded and Sick Convention was under discussion in the Plenary Meeting, this amendment was only adopted by a very small majority (12 votes to 11, with 20 abstentions). This is a clear indication that most of the delegations found the question somewhat vague. The Soviet Delegation therefore considers that the amendment proposing the addition of a new Article 9A to Annex I should be rejected, and that the text of this Annex should be retained in its present form.

Mr. STROEHLIN (Switzerland): I apologize for speaking again, but I should like to reply very briefly to the objections just raised by the Delegate of the Soviet Union. I should like to say that if this amendment is rejected today, after having been adopted a few days ago, this would create divergences between two completely identical texts, which would be not only devoid of any *raison d'être*, but would also be incoherent and would certainly be prejudicial to the application of the Conventions, and particularly their Annexes. It would also raise obstacles to the establishment of the hospital and safety zones which we would all like to see set up.

It has been argued that it would be difficult to set up these Special Committees; but I think this is an argument which should be resisted. During the last two World Wars, a very considerable number of Mixed Medical Commissions were set up, exactly in the same way as it is proposed to establish these Special Committees, that is, by agreement between the interested Parties to the conflict, if necessary through the good offices and with the assistance of a neutral Power.

I should also like to add that this amendment is based, in the first place, on a desire to assist the Protecting Powers to carry out their duties properly, and to facilitate the establishment of hospital and safety zones. My country has had some experience as a Protecting Power. And it is precisely on the basis of such experience, some of it of quite recent date, that we urge you to adopt this amendment, for it is our belief that, if it were rejected, this would render the task of the Protecting Power extremely difficult, and even in certain cases, quite impossible.

Mr. COHN (Denmark): The Danish Delegation considers that the establishment of Special Committees referred to in the amendment of the Swiss Delegation would be useful; but on the other hand,

we agree with the Delegate of the Soviet Union that such Committees are, to some extent, alien to the structure of the Convention, and have no well-defined basis. It might be possible, in our opinion, to establish a link between these Committees and the system of Protecting Powers who have a general responsibility for ensuring that the rules of the Convention are applied. Therefore, I venture to suggest a slight alteration in the new Article 9A proposed by the Swiss Delegation. Instead of saying "neutral Powers", it would be better to say "the Protecting Powers or neutral Powers". This would create a link between these Committees and the general system of the Convention and would make the Protecting Powers jointly responsible for the setting-up and the composition of these Special Committees.

The PRESIDENT: Is the Swiss Delegation prepared to agree to the proposal of the Danish Delegate?

Mr. STROEHLIN (Switzerland): The Swiss Delegation agrees.

The PRESIDENT: We will now vote on the amendments to Annex I. We will first vote on the amendment submitted by the Swiss Delegation, which has just been amended in accordance with the Danish Delegation's proposal.

The amendment submitted by the Swiss Delegation, as above amended, was adopted by 24 votes to 4, with 10 abstentions.

General OUNG (Burma): The amendment standing in my name is an amendment to Article 6 of Annex I of the Civilians Convention (*see Annex No. 379*). It refers to the same facts as my amendment to Articles 15, 18 and 19, which as you know was defeated without discussion the other day by 14 votes to 3, with 17 abstentions. I do not dispute the voting, but my only regret is that none of the arguments deduced by me in support of my amendment received the courtesy of a refutation, even when the arguments were based on the proposals and remarks of the I.C.R.C. This being so, I can only refer you to my statement which you will see, in the verbatim report of the 24th Plenary Meeting held on 2nd August. I also request that you will refer to the Remarks and Proposals of the I.C.R.C., Article 31, on pages 15 and 17 of the English text, with special reference to sub-paragraph 6 on page 17.

That is all I wish to say on my amendment, but I would like to express my regret that a correction which I submitted yesterday morning has not yet been distributed. I will have to give it to you verbally, with the permission of the President. The correction is this: if you would

kindly look at my proposal, first paragraph, you will see that the first sentence reads "The markings proposed in Article 6 do not provide the significance necessary to secure good repute and universal recognition". The second sentence reads "They also create the acceptance for a plurality of emblems which is deplorable". The paragraph should read "The markings proposed in the first sentence of Article 6 do not provide the significance necessary to secure good repute and universal recognition. The second sentence creates the acceptance for a plurality of emblems which is deplorable". I wish to make this correction because my original proposal was sent in a hurry and some time ago, and if any misunderstanding has been created by my error of drafting I beg to be excused.

I would just repeat my proposal, which is "The markings proposed in the first sentence of Article 6 do not provide the significance necessary to secure good repute and universal recognition. The second sentence creates the acceptance for a plurality of emblems which is deplorable".

I therefore propose it in two parts: first, as you will see in this Document, and I would say that the proposed emblem—the proposed oblique red bands—is not understood by many of us. We have yet to be informed whether it has any significance, which is a necessary point. As for the second part of the amendment I will leave it to the resolution which I shall make when the time comes for it; it will be my third attempt and I hope I shall be lucky; so, with your permission, Mr. President, I should like to withdraw the second part of my amendment and only propose that the first part be adopted.

The PRESIDENT: Will the Conference now vote on the amendment submitted by the Burmese Delegate, the second part of which, as we have just heard, has been withdrawn? We are therefore voting solely on the first part of the amendment.

The amendment submitted by the Burmese Delegation, first part, was rejected by 13 votes to 5, with 22 abstentions.

We will now take a vote on Annex I, as amended by the proposal which has just been adopted.

Annex I, as a whole, was adopted, by 38 votes to 2, with 1 abstention.

## Annex II

Annex II was adopted.

## Annex III

Annex III was adopted.

**Article 11** (*continued*)

The PRESIDENT: The consideration of this Article had been postponed until the amendment proposed verbally by the Delegations of Afghanistan, Mexico, the United Kingdom and the Union of Soviet Socialist Republics had been submitted in writing. The amendment proposes to draft Article 11 as follows:

"The provisions of Part II cover the whole of the populations of the countries in conflict, without any adverse distinction based, in particular, on race, nationality, religion or political opinion, and are intended to alleviate the sufferings caused by war."

The amendment in question was adopted by 36 votes to none, with 1 abstention.

Since the amendment relates to Article 11 as a whole, it is unnecessary to take a separate vote on this Article; the vote on the amendment is valid for the Article itself.

**Article 15** (*continued*)

The PRESIDENT: A text has been submitted by the Working Party (*see Annex No. 216*), and an amendment has been submitted by the Canadian Delegation (*see Annex No. 215*).

Mr. GARDNER (United Kingdom): On behalf of the Working Party, I commend this compromise text to the Conference. The Conference will notice that Paragraph 1 gives complete protection to all hospitals. Paragraph 2 requires that the State shall take responsibility for saying by way of certification what is a hospital, and also that its buildings are not being used for any wrong purpose. It is the buildings that this Article seeks to protect; the personnel are protected by other Articles.

The third paragraph is the one which gave rise to discussion in the Working Party. Some delegations would have preferred the wording to be "civilian hospitals may be marked by means of the emblem", others felt that a stronger wording was necessary, but finally the Working Party turned to the wording in the Wounded and Sick Convention and adopted that, namely that "hospitals shall be marked by means of the emblem" etc., and only with the permission of the State so as to ensure proper control.

The last two paragraphs are unchanged from the text submitted by the original Drafting Committee.

There is one further point that I want to make clear. The fact that the duty of providing a certificate under paragraph 2 is laid upon the State does not of course mean that the State

may not delegate the actual issuing of the certificate to some proper authority within the State, the State itself remaining entirely responsible, and it might well be that some countries would choose to delegate this particular administrative function to their national Red Cross Society. If such a State did choose such action it would be its own responsibility entirely, and the State would of course remain responsible to any other High Contracting Party for the actions of the national Red Cross Society in operating this Article.

I do not myself contemplate that States would often delegate the power to a Red Cross Society, but at least one delegation thought that they might desire to do so, and asked that the point should be made clear at this Plenary Session.

Mr. WERSHOF (Canada): I hope that a majority of the Conference will vote for the Canadian amendment. Our amendment seeks to make one change in the third paragraph of the Article, to change the phrase "shall be marked" so as to read "may be marked", or, in French, to change the wording from "seront signalés" to "peuvent être signalés".

The change which the Working Party has made in this paragraph, regarding which the Delegate of the United Kingdom has just spoken, does not affect the Canadian amendment in the slightest. The reference to "permission of the State" in the document produced by the Working Party merely means that before an individual building claiming to be a hospital may fly the Red Cross it must have the permission of the State. The words "with the permission of the State" do not entitle the State to say that there is no need in that country, or in a part of that country, for a hospital to fly the Red Cross emblem.

If the delegates will kindly refer to the Report of Committee III to this Plenary Assembly, at the end of the Commentary on Article 15, they will find that the official view of Committee III is that the words "shall be marked" mean exactly what the Canadian Delegation says they mean.

Furthermore, if any delegation thinks today that the words "shall be marked" mean the same as "may be marked", there is *a fortiori* no reason whatsoever for that delegation to oppose the Canadian amendment.

The Canadian wording was defeated in Committee III by a vote of 15 to 14, which means that up to now exactly one quarter of the delegations at this Conference have voted in favour of the phrase "shall be marked".

The Canadian Delegation has the gravest misgiving about the extension of the Red Cross emblem to civilian uses, authorized in this Convention for the first time since 1864. However,



I am not trying today to reverse the majority decision to use the Red Cross for such civilian purposes. All that we ask is that the Convention should not force a Government to scatter the Red Cross emblem in areas in which, in that Government's honest judgment, there is no need at the time for it to be used. Those delegations which think it reasonable to leave a Government that much discretion will, I hope, vote for the Canadian amendment.

General OUNG (Burma): After the silence when I proposed an amendment to this Article on the 2nd August and again this afternoon the voice of my brother Delegate from Canada is very welcome although the tone is not as sweet as I could have wished. This amendment is the only remark we have heard since mine on this subject but I assure you that you will be hearing many more and that such objections will be more persistent than those you are hearing now. With reference to this amendment, in paragraph 1 of the explanation, the Canadian Delegate said that the use of the sign of the Red Cross for civil purposes are not authorized by present international law. I should like some explanations on this point by those who are well versed in international law. He also says that he does not at this time object to the Convention granting authorization. As I said in my previous remarks, although there is no objection now there will be many more objections later, both from him and from others. In the second paragraph of his explanation the Canadian Delegation argues that the phrase "may be marked" will be going quite far enough in this Convention. That is better than if it went too far and I therefore support this amendment very strongly.

Dr. DIMITRIU (Rumania): We have read with careful attention the explanatory notes submitted on the amendment of the Delegation of Canada and have heard the argument just put forward. The most important point raised is that of the danger which might be caused by the misuse of the Red Cross emblem for civilian hospitals during hostilities. I am of the opinion that all necessary arguments have been considered during the work of Committee III; even if divested of any obligatory character, the emblem might furnish innumerable pretexts to the enemy for the destruction of hospitals.

I should like further to draw attention to yet another point. We have heard the opinion of the Delegate of Canada during the debates which took place in Committee I with regard to Article 42 (abuses of the emblem) when he supported the proposal of the Delegation of the United States of America to allow the use of the Red Cross

emblem by all commercial houses. But is that not a similar misuse to that defined in Article 15 of the Civilians Convention?

There is the point of view which favours commercial interests, and that which aims solely at protecting civil hospitals, as between those two, has Canada perhaps chosen the former? In my opinion, we are here to discover the best means of ensuring the widest possible protection for civilian populations and civil institutions. For this purpose it is essential to adopt the same policy with regard to all the various articles of the Conventions. For if divergent lines are adopted, they will necessarily be at variance with the humanitarian ideals of this Conference.

Mr. BLUEHDORN (Austria): I should like to propose that the wording of the second paragraph, as submitted by the Working Party, should be slightly altered. This text provides that

"States which are Parties to a conflict shall provide all civilian hospitals with certificates showing that they are civilian hospitals and that the buildings which they occupy are not used for any purpose which would deprive those hospitals of protection in accordance with Article 16".

I do not consider that the mere fact that such buildings, at any given moment, have not been used for any unlawful purpose, is sufficient; and I think it would be better to say: "...that the buildings which they occupy *shall not* be used...".

Consequently, the wording should be, in the third paragraph, "these civilian hospitals", implying that they are civilian hospitals in possession of such a certificate.

The PRESIDENT: Does any delegation represented on the Working Party wish to make any comment on the Austrian Delegate's suggestion?

Mr. PASHKOV (Union of Soviet Socialist Republics): The Union of Soviet Socialist Republics Delegation approves the Working Party's text as it is proposed. We feel bound to add that in the event of the Canadian Delegation's amendment being adopted,—that is, if the words "shall be" are replaced by the words "may be"—our Delegation would vote in favour of the original text and against the text prepared by the Working Party, as thus amended.

Mr. GARDNER (United Kingdom): I have had a rapid consultation with some other members of the Working Party and we would prefer not to accept the amendments suggested by the Delegate for Austria because this text was arrived at with some difficulty and any change in its wording

may lead to disagreement between the members of the Working Party itself. On the whole we feel that it is not reasonable to ask anybody to certify that buildings shall not be used for some other purpose. All a certificate can really do is to certify that they are not used for other purposes, and, so long as that certificate is held in a building, responsibility for conforming to the conditions set out in the certificate is placed on the persons using that building. This, as I understand it, has the effect of providing what my friend from Austria would like to provide by turning the words "are not" into "shall not be". That is why we should prefer to have the wording of the Working Group and why, for similar reasons which I need not argue now, we should prefer not to introduce the word "These" at the beginning of the third paragraph. So I ask my friend of Austria not to press his amendment but to support the wording as it emerged from the Working Group.

Mr. BLUEHDORN (Austria): I withdraw my suggestion.

The PRESIDENT: We will now take a vote on the two amendments under consideration; first, on the amendment submitted by the Delegation of Canada.

The amendment was rejected by 17 votes to 15, with 10 abstentions.

Article 15, as submitted by the Working Party, was adopted by 39 votes to nil, with 3 abstentions.

#### Article 19A (continued)

The PRESIDENT: Amendments have been submitted by the Delegations of the United States of America, the United Kingdom and Pakistan, and by the Delegation of Canada.

The vote on these amendments had been deferred (in the twenty-fifth meeting) pending the preparation of a French translation of the United States amendment. That text, which has meanwhile been circulated, proposes to delete the sentence until "seront respectés" and substitute by the following: "Les transports de blessés et de malades civils, d'infirmités et de femmes en couches effectués sur terre par convoi de véhicules et trains hôpitaux, ou sur mer par des navires spécialement affectés à ces transports, seront respectés...".

The Conference has decided that in principle the discussion on this Article is closed; but that nevertheless Delegates could ask to speak on the new French text of the amendment submitted by the United States Delegation.

The discussion on this point is open; does anyone wish to speak?

Mr. CAHEN-SALVADOR (France): This amendment was drawn up after some discussion as to the way in which the views of the Committee had been interpreted. I wish to pay a tribute to the effort made, particularly by the United States Delegation, to meet the views of the French Delegation as far as possible—views which that Delegation had expressed and intends to adhere to.

There is an expression in this amendment which gives me some concern: "specially provided vessels". As I have already pointed out, we are dealing with the protection of the wounded, the sick and the disabled. The fact that they are transported on vehicles, in trains, or on board vessels which are not specially provided for that purpose, is certainly no reason for depriving the wounded and sick whom it is our object to protect in all possible circumstances of such protection. I fear that this adverb "spécialement" will alter the sense of the provision and might in particular cases be harmful to the wounded and sick.

What I want, therefore, is that if a vessel is carrying sick and wounded, the sick and wounded shall, even if the vessel is not specially provided for that purpose, nevertheless be protected. Such protection should also be extended to cases where the sick and wounded are conveyed in hand carts, or in trains to which ambulance cars are attached.

It would be extremely dangerous, in my opinion—and it certainly cannot be the invention of the United States Delegation—to retain this adverb "specially" which substantially alters the meaning of the Article.

Mr. CLATTENBURG (United States of America): I should like to know whether the words "specially provided" in English are not adequately translated by the word "affectés" without the word "spécialement". I believe that is the case.

The PRESIDENT: I do not know whether any delegate who is particularly familiar with questions of grammar and translations could give an opinion on this point. Mr. O'DAVOREN would perhaps be the best qualified person.

Mr. O'DAVOREN (Interpreter): I think that the word "spécialement" could be deleted, for in the word "affectés" there is already the idea of a special object. In any case "specially provided" has a fairly wide meaning in English.

Mr. CAHEN-SALVADOR (France): The French Delegation will be quite content if the word "spécialement" is deleted from the French text.

The PRESIDENT: I agree to such a proposal on condition that an assurance can be given that the

English and French texts do not differ. I think we could perhaps decide, as has just been suggested, that the word "spécialement" should disappear from the French text. This would allow us to give Article 19A its final form today. If by tomorrow one or other of the delegations, after reviewing the text, considers that there is a discrepancy between the English and the French text, we will take up the question again tomorrow. Do you agree with this procedure, which will allow us to take a decision upon the three amendments submitted to Article 19A?

I note that you agree; if the question is not taken up by any delegation tomorrow, it will be considered as finally settled.

We will now vote in turn upon the three amendments before us, beginning with the amendment tabled by the United States of America. Will the delegations who accept the amendment please signify by a show of hands?

The amendment was adopted by 29 votes to 8, with 5 abstentions.

Mr. GARDNER (United Kingdom): The United Kingdom Delegation withdraws the amendment proposed with the Delegations of the United States of America and Pakistan, as I think the other delegations will agree that it is covered adequately by the amendment put forward by the United States of America.

The PRESIDENT: I will consult the delegations concerned, those of the United States of America and Pakistan. Do you agree to the withdrawal of the amendment?

Mr. CLATTENBURG (United States of America): Yes.

The PRESIDENT: I note that the three Delegations who submitted this amendment now withdraw it.

We have now to decide upon the third amendment which was submitted by the Delegation of Canada, proposing to delete the phrase "shall be marked" and to institute the following: "in occupied territories and in zones of military operations they shall be marked." If the first amendment is defeated, the Canadian Delegation proposes that "shall be marked" be changed to read "may be marked".

Mr. WERSHOF (Canada): I also will withdraw the Canadian amendment in view of the amendment put forward by the United States of America, and if you will allow me I will explain why I withdraw that amendment. We objected to the compulsory use of the Red Cross emblem on individual ambulances because we thought that

would be an abuse of the emblem, but we have no objection to the compulsory use of the Red Cross emblem on convoys of vehicles, which is the wording we now have as a result of the amendment put forward by the United States of America.

The PRESIDENT: We will now vote upon Article 19A as a whole, together with the amendment just adopted. Will the delegations in favour please signify by a show of hands.

The Article was adopted by 35 votes to nil, with 7 abstentions.

### Article 19B

The PRESIDENT: We should now examine Article 19B, a new Article proposed by the Delegation of Australia. As it was distributed late, it will be examined during our Plenary Meeting tomorrow morning.

### Article 25 (continued)

Consideration of this Article was deferred for the same reason as applied to Article 11. In the meantime an amendment submitted by the Delegation of Afghanistan has been distributed, proposing to delete (at the end of the third paragraph proposed by Committee III) the words after "without discrimination" and substitute: "without any distinction based, in particular, on race, religion or political opinion".

A number of delegations have submitted a proposal for the adoption of a common wording for similar Articles in the four Conventions. According to Article 33 of the Rules of Procedure, a two-thirds majority of the delegations present is necessary to give effect to the proposal, since the Articles of the other Conventions concerned have already been approved by the Assembly.

We will first deal with Article 25 of the Civilians Convention, after which we shall see if it is necessary to revert to the corresponding Articles in the other three Conventions.

Mr. BAMMATE (Afghanistan): I merely wish to make a slight correction. The amendment which I submitted is in no way an innovation. It is merely an adaptation of the formula which we have just adopted unanimously for Article 11 to the cases provided for in Article 25.

The PRESIDENT: We will now vote on this amendment. The delegations in favour will please signify by a show of hands.

The amendment was adopted by 36 votes to nil, with 3 abstentions.

Article 25 thus amended was adopted by 42 votes to nil, with 1 abstention.

The PRESIDENT: The Assembly has now to decide on the proposal submitted by 10 delegations. It is to the effect that the provision laid down in Article 25 shall also be adopted for the other Conventions, so that the Article common to the four Conventions shall have exactly the same wording.

As in the case of the Articles of the other three Conventions, a reconsideration of the Article is called for. This proposal could not be accepted unless a two-thirds majority of the Delegations present approved it.

Mr. GARDNER (United Kingdom): All I want to do is to remind the Conference that the corresponding provisions in the three other Conventions are expressed in phrasing which was adopted only after prolonged consideration in Committee I and Committee II, and finally in the general Drafting Committee of the Conference.

I submit to the Conference that we cannot possibly accept a new phrasing for those Conventions without carefully examining each of the Articles in detail. The considerations which led the United Kingdom to accept this phrasing for Articles 11 and 25 do not, in our view, apply to the Articles referred to in the other Conventions.

Mr. BAMMATE (Afghanistan): The Delegate of the United Kingdom has raised an objection to the proposal submitted by the Delegations of Afghanistan, Belgium, France, India, Italy, Mexico, Switzerland, Turkey, the Union of Soviet Socialist Republics and Venezuela. The United Kingdom Delegate further raised an objection to the recommendation made by the Drafting Committee of the Conference which was contained in the Report of this Committee, and the English text of which is as follows:

"The Drafting Committee also recommends that for reasons of uniformity the wording underlined above should be adopted in all four Conventions where the same idea is expressed."

The Drafting Committee's intention is quite clear: it is to establish absolute concordance between the proposed formula so as to avoid any possibility of confusion. What is said in all the Conventions really has the same purpose in view. That purpose must be achieved, whatever draft may be adopted.

After mature reflection we have just accepted a text which we regard as an improvement on the one submitted by the Drafting Committee. I should now like merely to ask this question: if we had adopted the text proposed by the Draft-

ing Committee—the text which we consider less satisfactory—we should doubtless have been carrying out the recommendation that we should arrive at uniformity. Are we now, for the simple reason that we have drafted a text which we unanimously consider to be a better one, to give up this uniformity for which the Drafting Committee asks? May I remind you of an epigram of the great humorist Jonathan Swift who, criticising abuses of the doctrine of precedents, committed by Courts of Justice in his time, said that, as they had been wrong once, they made a point of never being right again... Even if there had ever been any justification for such criticism of the admirable work of these Courts, things have changed a great deal since then.

This morning the United Kingdom Delegation asked us to bring the text of the Civilians Convention into harmony with that of the Prisoners of War Convention.

I think that this is not a fundamental question. The Drafting Committee also clearly expressed its opinion on that point. It is simply and solely a matter of unifying the various formulae.

The PRESIDENT: Before we continue our debate, I would observe that the proposal at present being discussed does not even indicate what Articles in the other Conventions are concerned. Consequently, before we continue our discussion, it would be well for one of the delegations, signatory to the proposal, to tell us which are the Articles referred to in the other Conventions.

*(The Delegate of Denmark asks for the floor).*

The Delegation of Denmark is not among those signatory to this proposal. Moreover, other speakers are still on the list. Once more I should like one of the Delegations signatory to this proposal to indicate exactly what are the Articles which would require to be re-examined. This appears to me to be indispensable, if the Assembly is to come to a decision.

Mr. BAMMATE (Afghanistan): I did not wish to ask to speak a second time, and I was waiting for one of the delegations signatory to this proposal to address the Meeting. I may, however, reply that as this proposal was made by the Drafting Committee, we thought that it would be best to refer it back to that Committee which could then take the measures it had considered in regard to Article 25. We limited ourselves to confirming the desire addressed to the Plenary Assembly. If we had gone further we should have exceeded our terms of reference.

The PRESIDENT: You will permit me to point out that it is extremely difficult to re-examine

Articles without knowing which they are, or which, at any rate, are not clearly indicated.

Mr. GARDNER (United Kingdom): I hope that, after the last speech made by the Delegate of Afghanistan and in view of the silence of the other delegations who put their names to this amendment, the Conference will not hesitate to refuse to open a question which is a difficult one and which was discussed for far longer in Committee I and Committee II than the time spent on discussing this particular amendment by the signatories to it.

I do not know whether the Delegate of Afghanistan is really serious in suggesting that all he is proposing to the Conference is to carry out the recommendation of the Drafting Committee. The Conference will recollect that he himself came up here and challenged the recommendation of the Drafting Committee, challenged it as not appropriate to Article II, and secured reference of Article II to a Working Party. He is aware that at that Working Party he tried to obtain approval for this recommendation and the Delegation of the United Kingdom said that, while they were prepared to accept this formula for the particular circumstances of Article II and later Article 25, they were not in any circumstances prepared to accept it for the Conventions which were already settled because it was inappropriate to them. I cannot conceive why, in the face of the formulae proposed by the Drafting Committee and already embodied in the other three Conventions, he should try to claim the authority of the Drafting Committee for a formula which was worked out without reference to these other Articles in other Conventions, with regard only to two Articles in the Civilians Convention, in Part II of that Convention. Part II of the Civilians Convention does not deal with detailed treatment of persons. It deals with a series of general provisions relating to persons. A formula like this, particularly with the words "in particular" in it, is appropriate when you are dealing with the general treatment of large masses of persons, but I suggest that it is not appropriate when you are dealing with provisions relating to the detailed treatment of individual persons.

That is what the United Kingdom Delegation takes strong exception to, this attempt to introduce at the last moment a fundamental amendment to three Conventions which have been exhaustively considered in Committees, in Drafting Committees and at this Conference and adopted deliberately by the Conference. We hope the Conference will emphatically say it is not now going to re-open one of the most controversial questions we have had to face in Committees I and II, questions which we hoped we had succeeded in settling once and for all.

Mr. WERSHOF (Canada): I wish to endorse everything that has been said by the Delegate of the United Kingdom and to add a couple of brief remarks. I agree, I think, as he does, that it is not reasonable in this case for the Delegate of Afghanistan and the other countries which put down this suggestion to shift the responsibility at this point to the Drafting Committee. What we have before us now is not a proposal of the Drafting Committee but a proposal of the Delegations of Afghanistan and the other countries listed and it seems to me that it is up to those countries, if they wish to insist on their proposition, to justify it and give the detailed information required for it. I see no reason why we should now have to start sending the proposition of those delegations back to the Drafting Committee.

My next point is not an objection on a point of order but simply a suggestion. If the delegations of those countries are presenting today, as I understand they are, a motion to reopen certain Articles of other Conventions, then quite seriously—and I am not trying to score a debating point on this—it seems to me that the motion is absolutely out of order unless they put the list of Articles to be reopened in the motion. Simply to adopt a motion to reopen some unnamed and unidentified Articles would be quite absurd. Until such time, as we have before us a motion to reopen named identified Articles, I think any such motion is out of order.

In the next place, if such a motion to reopen specific Articles is carried by the Assembly here by the necessary two-thirds majority, I do suggest that at that point it would be necessary to postpone until tomorrow morning the reconsideration of the actual Articles of the other Conventions because many of us, at least, do not have before us this afternoon the text of the other Conventions and if the two-thirds majority decide here today that we are to reopen numerous other Articles of other Conventions, we need at the very least until tomorrow morning to look at those Articles and see what it is we are supported to be changing. My own hope is that the Delegate of Afghanistan might see fit to withdraw his motion.

Mr. COHN (Denmark): In my capacity as Rapporteur of the Drafting Committee, I venture to make two remarks on the method of working adopted by that Committee, in order to explain the fact that differing drafts of the texts considered as common to the four Conventions have been submitted. The explanation is very simple. The various Committees, after having considered and voted on the Articles in question, referred them to the Drafting Committee, which did its best to arrive at the clearest and most exact wording possible for the texts in question. The

Drafting Committee submitted the texts one after the other to the Assembly, as and when they were adopted. Up to now, however, the Drafting Committee has had no opportunity of comparing them and considering them as a whole. It is for this reason that the texts are to a certain extent different.

Today, the Delegate of the United Kingdom assures us that there are fundamental differences in the drafts of these texts. I cannot, therefore, assure you that the Drafting Committee will not consider itself incompetent to propose a new text. In other words, are these Articles really common to all the Conventions or not? If there are fundamental differences between the texts, the Drafting Committee cannot propose any new draft. Only if we all agree to recognise the texts as being actually identical, and as showing no difference of substance could the Committee endeavour to find a better text. If, however, there are fundamental differences between the various texts, the Drafting Committee will not, I believe, regard itself as competent to draft and submit a new text.

The PRESIDENT: I propose that we should proceed as follows: first, we will vote on the proposal submitted by a certain number of delegations. If that proposal is adopted by two-thirds of those present, we will then request the Delegations who sponsored this proposal to indicate which are the Articles to which their proposal refers. Tomorrow morning, we will examine the various Articles of the three other Conventions referred to. If the proposal submitted by these various Delegations is not approved by a two-thirds majority of votes, it will be regarded as purely and simply rejected.

The Assembly proceeded to the vote. The result was 17 votes to 18, with 7 abstentions. The two-thirds majority not having been obtained, the proposal was rejected.

### Article 108 (continued)

The PRESIDENT: An amendment to that Article was submitted by the Delegation of the United Kingdom (see Annex No. 354).

Mr. SINCLAIR (United Kingdom): In the first place I should like to explain quite shortly the reason why an amendment to this United Kingdom amendment (presented on 29 July) has been issued this morning. The reason simply is that I discovered last evening, thanks to the kindness of my esteemed and distinguished colleague, Professor Bourquin, that the provisions in Article 59 as they now stand in English and French do

not correspond, and therefore the statement made in the last paragraph of our explanatory note was not correct because what was said there would only apply to the English text. In order to see that the position was made to correspond with the French text the new amendment has now been put in.

Most cogent reasons for the amendment now presented by the Delegation of the United Kingdom have already been given in detail in the explanation following them and it should therefore suffice if I sum them up as broadly involving one important question of fact and two vital questions of principle that cannot be overlooked by any country who values fair and orderly government—particularly in regard to the unfettered exercise by judges of the jurisdiction vested in them.

In point of fact, it would be difficult to find a falser analogy than that between prisoners of war and internees in the present connection, and I think I need not trouble the Conference by going into any more detail as to this than to point out that if prisoners of war were suddenly to find themselves in a position to refuse to work, to manage their own private affairs, to receive personal visitors or to have their families and children with them, they would indeed feel that they had suddenly been conveyed to Utopia.

The first point of principle can be broadly summed up by saying that it would be quite impossible for any State to treat nationals from other countries, whom it has sheltered on the understanding that they will, for their part, show good and loyal behaviour towards it, in a manner preferential to that accorded to its own citizens. To give a practical and pertinent example, can it be seriously suggested as feasible for a Court to be told to take into account, when trying the cold-blooded murder by an internee of either an ordinary peaceful home citizen or a fellow internee, the fact that he is not a national of the country in which the offence has been committed.

The second point of principle is that the inclusion of such a provision as that at present appearing in the first sentence of the first paragraph of this Article could be creating a dangerous inconsistency with, and inroad into, one of the widely recognized principles on which the law of treason is fixed, that is that all aliens residing in such circumstances in the country that has sheltered them owe local allegiance and become guilty of treason just like citizens of that country.

There is no prospect whatever of my Government—and I should imagine that the same applies to a good many others—ever accepting provisions the only practical effect of which, it is considered, can be to bring scorn upon the work upon which many of us have laboured so long and earnestly,

together with the unadmiring wonder of specialized lawyers throughout the world. I would not envy the part of any counsel who had the temerity to bring the provisions of this Article, as they now stand, to the notice of judges in my country. Consequently, for all the reasons that I have mentioned, I commend to you amendments the merits of which I, as a somewhat ancient municipal lawyer and legal administrator, would confidently maintain on the grounds of their fairness, reasonableness and logicity before any court or assembly in the world.

Mr. GINNANE (United States of America): The United States Delegation supports the United Kingdom amendments to Article 108 for the reasons which you have read and heard. To us, the problem which justifies these amendments is as simple as this: supposing there was the unfortunate event of a war between Canada and the United States of America; in that event, there would be some Canadian citizens interned in the United States of America; if one of those interned Canadians murdered one of his fellow internees, my Delegation can think of absolutely no reason why he should get a preferred judicial treatment over the treatment which would be accorded to an American citizen who murdered another American citizen.

General SLAVIN (Union of Soviet Socialist Republics): The proposals of the Delegation of the United Kingdom in regard to Article 108 render this provision much more unfavourable.

The first amendment proposes to delete the first sentence of the first paragraph of Article 108, which provides that Courts or Authorities, in fixing the penalty, shall take into consideration to the greatest extent possible the fact that the accused is not a national of the Detaining Power.

This corresponds to the provision submitted to the Stockholm Conference.

In other terms, this means that the ruling in virtue of which Courts or Authorities of the Occupying Power may at their discretion reduce the penalty applicable to internees who have committed an offence is devoid of all common sense.

I would ask you to give careful consideration to the situation arising out of this phrase.

The proposal pressed by the United Kingdom Delegation is, in fact, very important. It is one of the principal reasons which would allow the reduction of the sentence to be passed upon an internee who commits an offence. In our opinion that should not be possible.

Further, the reasons given by the United Kingdom Delegation in support of its second proposal are equally ill-founded. This second proposal excludes the possibility of reducing the penalty

applicable to internees in the case of Courts functioning in the belligerents' territory. A proposal of this nature is absolutely contrary to the principle whereby Courts should, in fixing a penalty, take into consideration to the widest extent possible the fact that the accused is not a national of the Detaining Power.

Further, the fact that this internee has no obligation towards the Detaining Power is an important point which should be taken into consideration when he is sentenced. That is why we cannot consider as convincing the statement in the United Kingdom amendment, namely that the penalty is reduced for that reason; it would mean that, at a trial, the nationals of other countries would be treated otherwise than the nationals of the country itself. This is another proof that the amendment of the United Kingdom Delegation, if it is accepted, would considerably aggravate the situation of protected persons who are prosecuted for offences.

Nor is the third amendment to Article 108 proposed by the Delegation of the United Kingdom acceptable either. The provision is both clear and precise, since it states that the duration of confinement while awaiting trial of an internee shall be deducted from any disciplinary penalty which entails imprisonment. The Delegation of the United Kingdom proposes to supplement this text by a reservation which actually goes far to eliminate the practice of a principle of justice which figures in the Penal Code of the majority of countries.

May I draw your attention to Article 58, which has already been adopted. It is stated in that Article that Courts take into consideration the fact that the accused is not a national of the Occupying Power. Why cannot we take this into account in adopting Article 108, and why should we deprive protected persons of this benefit? This is inconsistent and, for this reason, the Delegation of the Union of Soviet Socialist Republics will vote against the Amendment to Article 108 submitted by the Delegation of the United Kingdom.

The PRESIDENT: We will now vote upon the United Kingdom amendment.

This amendment was rejected by 19 votes to 18, with 6 abstentions.

**Articles revised by the Drafting Committee :**  
3, 4, 14, 18, 37, 38, 39, 42, 45, 47, 48A, 49,  
50, 63, 72

The PRESIDENT: We will now proceed with the examination of Articles which were amended by the Assembly and subsequently revised by the Drafting Committee. The alterations made by the latter to these Articles are shown in its Report.

I draw your attention to the fact that, with the exception of Article 72, all Articles appearing in this Document have already been adopted by the Meeting.

We have not to re-examine and re-discuss them but merely to ascertain whether you approve the alterations in the form proposed by the Drafting Committee. It seems to me that we could approve the Report of the Drafting Committee as it stands, with the exception of Article 72, which has been examined by the Working Party this morning.

Delegates may ask to speak with regard to any of the Articles which have been amended by the Plenary Assembly and revised by the Drafting Committee. Articles for which no request to speak is made will be considered as having been approved.

#### **Article 108** (*continued*)

The PRESIDENT: May I interrupt the debate on this question for a moment? It has just been pointed out to me that I omitted to have a vote taken on Article 108 of the Civilians Convention. I would remind you that this is the Article on which you have just rejected the Amendment of the Delegation of the United Kingdom. The delegations who agree to adopt Article 108 of the Civilians Convention are requested to signify in the usual manner.

Article 108 was adopted by 38 votes to 2, with 5 abstentions.

#### **Articles revised by the Drafting Committee** (*continued*)

The PRESIDENT: We will now return to the examination of the Report of the Drafting Committee on the amended Articles of the Civilians Convention. The Delegate of India has asked to speak.

Mr. HAKSAR (India): I do not desire to speak.

Mr. WERSHOF (Canada): I also withdraw, as all that I wanted to mention has already been said.

Mr. COHN (Denmark): I also wish to express my thanks.

Mr. CLATTENBURG (United States of America): I believe that the comment of the Drafting Committee on Article 42 requires some consideration, because the Drafting Committee reports that it was not able to correct the text of Article 42 without a further explanation.

The PRESIDENT: This is a question of interpretation. The Drafting Committee asks the Plenary Meeting what meaning it gives to a phrase in Article 42. You all have this document before you. Do you approve the meaning and the interpretation which the Drafting Committee has given to this amendment?

Mr. COHN (Denmark): May I be allowed to explain in a few words the question placed before the Meeting. The original text contained only one ruling for the repatriation of protected persons. The Italian Delegation submitted an amendment which was approved, and which referred to the property of prisoners and internees. At the same time a condition was added to this amendment to the effect that the restitution of internees' property should be in conformity with the legislation of the Detaining Power. The question remains whether this condition, which did not appear in the original Article, refers not only to property but also to persons. According to the present drafting the condition refers to persons and to property, but the members of the Drafting Committee were not sure whether this was the object of the Italian amendment.

The PRESIDENT: Are there any objections to this, which is a literal interpretation of Article 42?

Mr. MARESCA (Italy): May the Italian Delegation make a contribution to the interpretation of this Article as just amended?

The reference to the internal legislation of the Detaining Power should be restricted exclusively to the cancellation of the measures relative to property. That was the intention of those who framed the amendment, and that should be the meaning of the rule to be derived from it.

The PRESIDENT: It seems to me that the Drafting Committee should revise the text of Article 42. According to the present wording, it is the other interpretation which seems right.

Mr. COHN (Denmark): I wish to say that I entirely agree with the Delegation of Italy. But in that case some new drafting, some new turn of phrase, perhaps a mere change in the order of the words would have to be found which would exactly render the sense of the passage.

The PRESIDENT: The Drafting Committee might request the Italian Delegation to assist it in its work on Article 42.

Does anyone else wish to speak on any of the Articles revised by the Drafting Committee?



Mr. MINEUR (Belgium): Referring to Article 68 I should like to know what were the grounds which led the Drafting Committee to substitute in the French text "quitter leur domicile..." for the former wording. I cannot see any improvement in this alteration.

The PRESIDENT: The Drafting Committee will certainly be in a position to answer that question. I must, however, point out that Article 68 appears in a Report which is not under discussion at the moment; we shall only consider it tomorrow.

Does anyone else wish to speak?

Since no-one wishes to speak, the Articles mentioned in this Report, with the exception of Article 42 which is to be revised by the Drafting Committee, are adopted in the form submitted by the Drafting Committee.

Mr. BLUEHDORN (Austria): I had wished to make a remark on Article 72...

The PRESIDENT: I have just stated that Article 72 was excepted, as it had to be revised by the Working Party. We shall not vote on it today.

### Draft Resolutions

The PRESIDENT: The drafting of some of the Draft Resolutions which are to be submitted to you on Monday is not altogether satisfactory. A Delegation has asked the Secretariat whether they could not be revised by the Drafting Committee before being submitted to the Plenary Assembly. The suggestion seems to me judicious. I hope that you will approve it, and, if so, I would request the Drafting Committee, which is to meet this evening, to revise the various Draft Resolutions which have been deposited so far. Are there any objections?

General SLAVIN (Union of Soviet Socialist Republics): It seems to me a little premature to decide on the drafting of certain of these Resolutions, since we do not yet know whether they will be adopted or not.

Miss GUTTERIDGE (United Kingdom): If these Resolutions are not looked at by the Drafting Committee before they are submitted to the Conference in Plenary Session, it is probable that when they are sent back to the Drafting Committee from the Plenary Session there may be a good many drafting amendments to be made. There would therefore have to be a further session

of the Plenary Assembly to consider certain observations and recommendations of a drafting character made by the Drafting Committee. It therefore appears to be desirable that the Drafting Committee should be allowed to look at these resolutions purely from the drafting point of view before they are submitted to the Plenary Assembly.

Mr. HAKSAR (India): I merely want to say that on compassionate grounds the Drafting Committee should be allowed to have a look at the Resolutions now rather than be asked to sit up all night later on.

The PRESIDENT: It seems to me that each of the proposed systems has its advantages and drawbacks. Speaking of the proposal a few minutes ago I called it "judicious". I am not quite sure if that was the right word. It is true that Draft Resolutions may be altered in the course of discussion, and it is mainly where alterations are made in discussion that reference to the Drafting Committee is justified. In any case, it seems to me that it would be difficult to compel a delegation to have its Draft Resolution examined by a Drafting Committee before it was submitted. The work may be superfluous and completely wasted because it is not impossible that some of the Draft Resolutions may be rejected. I therefore propose the following procedure:

The delegations which have already deposited Draft Resolutions, or who intend to do so, shall decide whether they wish to submit them to the Drafting Committee or not. This seems to me the most judicious solution of the question, and will obviate long discussions.

I must further draw the Meeting's attention to the fact that Draft Resolutions cannot be deposited up to the end of the Conference. I should like to fix a time-limit, to expire tomorrow at 2 p.m., for the deposit of resolutions or recommendations.

### Article 3A (continued)

A new document has been deposited relating to the reconsideration of Article 3A. This will be circulated this evening.

I hope that it will not be necessary to hold a meeting tomorrow afternoon and that we shall be able to finish tomorrow morning consideration of the Articles of the Civilians Convention which have been deferred.

*The meeting rose at 6.40 p.m.*

## THIRTY-SECOND MEETING

Saturday 6 August 1949, 10 a.m.

*President:* Mr. Max PETITPIERRE, President of the Conference

## CIVILIANS CONVENTION

The PRESIDENT: We will resume consideration of the provisions deferred till now, that is to say the provisions of the Civilians Convention.

**Article 19B** (*New Article*) (*continued*)

We will begin by considering a new Article proposed by the Delegation of Australia (*see Annex No. 220*).

Colonel HODGSON (Australia): You will recall that my Delegation during the discussion on Article 19 A suggested that consideration should be given to meeting the case of developing the needs of air ambulances and we suggested that the United States Delegation might see its way to adding one or two words to its proposal to meet that need. For technical reasons that was difficult and it was suggested that the Australian Delegation might draw up a new Article to fill that gap in the Convention. The explanatory note will set out the reasons. We trust you have paid us the compliment of reading that explanatory note which fully sets out the case and we commend this new Article to you and hope it will have unanimous acceptance.

The PRESIDENT: No one having asked to speak, we will take a vote on the amendment submitted by the Delegation of Australia.

The amendment was adopted by 30 votes to NIL, with 9 abstentions.

**Article 60** (*continued*)

The PRESIDENT: This Article has already been discussed at our Twenty-eighth Plenary Meeting and two amendments have been submitted. On the other hand, a third amendment submitted by the Delegations of France and India has been referred to Drafting Committee No. 2 of

Committee III which proposes a new text for the second paragraph of Article 60:

“Nationals of the occupying Power who, before the outbreak of hostilities, have sought refuge in the territory of the occupied State, shall not be arrested, prosecuted, convicted or deported from the occupied territory, except for offences committed after the outbreak of hostilities, or for offences under common law committed before the outbreak of hostilities which, according to the law of the occupied State, would have justified extradition in time of peace.”

Mr. COHN (Denmark): The Delegation of Denmark has one comment to make on the amendment to Article 60 submitted by the Delegation of Greece on 27 July 1949. This amendment considers that:

“A mere expression of opinion in time of occupation cannot lead to prosecution unless it is by nature or intention such as might instigate a rising against the Occupying Power”.

The Delegation of Denmark voted in favour of this amendment, which was rejected by a fairly large and unexpected majority. If this amendment had not been submitted and put to the vote, the Delegation of Denmark would not have considered it necessary to express an opinion on this question. The fact, however, that such an amendment has been proposed and rejected by such a large majority, compels our Delegation to state that it considers the idea contained in this amendment as one of the most important and fundamental principles concerning the protection of civilian populations. The experiences of the Danish people through a number of years prove that it is absolutely necessary for the idea to be explicitly expressed, otherwise the population will be deprived of the minimum freedom of expression which is the very foundation of human rights and independence.

On behalf of the Danish Government, which reserves the right to maintain its point of view

in this matter, I request that the present statement be inserted in the Verbatim Record of the Meeting.

The PRESIDENT: This statement will be included in the Minutes. I must, however, point out that it is not Article 60 as a whole which is under discussion, but only the second paragraph.

General SCHEPERS (Netherlands): As Chairman of Drafting Committee No. 2 of Committee III, I want to explain why this new text was approved as proposed to you. First of all, I want to make it clear that this is the only Article in the whole Convention which speaks about refugees, about people belonging to a certain government who have to be protected against that government. Then we have in this Article, first of all, to protect the real refugee, the man who flees from a country because he does not like the government, the political system or religion, or whatever it is. When such people do not commit any offence they must be protected, but on the other hand we must make sure that a refugee who commits a crime before the outbreak of hostilities and flees from his country to avoid the consequences of that act must be arrested, prosecuted, convicted and punished. We must make it possible for a man who flees from his country and, after the outbreak of hostilities, commits acts against his country—such as giving propaganda talks on the radio—to be arrested, brought to trial and convicted in his own country.

If you look at the text you will see that there are two categories of people who may be arrested. First, the man who commits offences after the outbreak of hostilities, that is a traitor as well as the normal common law criminal, and the second category is the man who flees his country because he wants to avoid the consequences of his acts, and that category can only be arrested and deported if the law of the occupied country permits or justifies extradition for this kind of offence. I must make clear that the latter condition justifying extradition in time of peace only refers to the last category, that is to say the category of people who commit a crime before the outbreak of hostilities and who flee their country to avoid the consequences and who are afterwards arrested in occupied countries. This condition justifying extradition in time of peace does not refer to the first category, the category of traitors.

It is necessary to make this distinction clear and to put it on record because it seems that the Russian translation of this text does lend itself to a wrong interpretation; an interpretation which is quite impossible in the French or in the English text, and that is why we must formally state that this is the meaning.

Mr. COHN (Denmark): Allow me to raise a small point which is, in my opinion, worth taking up. I propose to replace the words "legislation" (law of) by the words "règles en vigueur" (regulations in force in).

In certain countries—particularly in my own—the question of extradition is not settled by national law. The problem is entirely solved according to the rules of international treaties.

That is why I venture to submit to your approval the proposal which I have just described.

Mr. HAKSAR (India): The observations made by the Delegate of Denmark may have relevance to the French text but I do not see how the word "law" in the English text can be offensive. I therefore suggest that the English text should remain as it is and the amendment which the Delegate of Denmark has proposed should be incorporated, if it is thought necessary, in the French text alone.

The PRESIDENT: This discussion does not appear to me to be very important. In the English text, the word "law" corresponds, I believe, to the French term "droit".

As this is the case, I think that the French text could be worded as follows: "...selon le droit en vigueur de l'Etat dont le territoire est occupé".

Can the Delegate of Denmark agree to this wording, which would correspond to the term "law" used in the English text?

General SCHEPERS (Netherlands): Allow me to draw the attention of the Meeting to the fact that the law in force may be altered by the Occupying Power. It must therefore be made clear that what is meant is the law in force before the occupation.

In addition, I believe—though I do not know how matters stand in Denmark—that international treaties concerning extradition must as a rule be approved by the national parliaments. This is certainly the case in our country and I suppose that it must be the same elsewhere.

The PRESIDENT: We all agree, I think, on the following wording which only concerns the French text: "...selon le droit de l'Etat dont le territoire est occupé".

Is there any opposition to this new wording?

Mr. CAHEN-SALVADOR (France): I think the word "réglementation" would be preferable; for this term includes legislation, governmental regulations, and international legislation.

The PRESIDENT: Personally, I prefer the word "droit" which, in my opinion, includes the idea of

“réglementation” (regulation); but I hope that we shall not waste time discussing this point.

Mr. COHN (Denmark): I entirely agree.

The PRESIDENT: Is the French Delegate prepared to accept this wording.

Mr. CAHEN-SALVADOR (France): I am perfectly willing.

Mr. AHOKAS (Finland): I should like to have supported the proposal of the French Delegation, for the word “droit” gives an idea of something superior to legislation, while the term “droit en vigueur” would, I think, not be appropriate in a Convention.

The PRESIDENT: We will now proceed to vote. Delegations in favour of the words “...selon le droit de l'Etat dont le territoire est occupé”, are requested to signify in the usual manner.

30 Delegations accepted this wording.

Mr. CAHEN-SALVADOR (France): My vote signifies that I have withdrawn my proposal. I considered that the word “réglementation” was more correct, but I have agreed to accept the President's proposal.

The PRESIDENT: I wish to thank the French Delegate very sincerely. I consider the question is settled by the decision to adopt the word “droit”.

The text of the Drafting Committee, as above amended, was adopted by 33 votes to NIL, with 7 abstentions.

Article 60, as above amended, was adopted by 43 votes, without opposition or abstentions.

#### Article 72 (continued)

The PRESIDENT: This Article has also been referred to Drafting Committee No. 2 of Committee III for the purpose of considering the amendment submitted by the Delegation of the Union of Soviet Socialist Republics (*see Summary Record of the Twenty-eighth Plenary Meeting*).

The new text submitted by the Drafting Committee reads as follows:

“The Detaining Power shall, as far as possible, accommodate the internees according to their nationality, language and customs. Internees who are nationals of the same country shall not be separated merely because they have different languages.”

As no one wishes to speak, we will proceed to take a vote on the Drafting Committee's proposal.

The Drafting Committee's proposal was adopted by 34 votes to NIL, with 9 abstentions.

Mr. HARASZTI (Hungary): I would like to draw the attention of the Conference to the fact that despite all these corrections, this Article still contains an inaccuracy. I am speaking of the reference contained in the second paragraph to Chapter IX of the present Convention. I would point out that the Convention is divided into Parts, the Parts into Sections and the Sections into Chapters. It is impossible to refer to a Chapter without also mentioning the Part and the Section. I therefore propose that the reference be simplified by replacing the word “Convention” by “Section”. In this case, the reference would read “to Chapter IX of the present Section”.

The PRESIDENT: The remark made by the Delegate for Hungary appears to me well founded. I would ask the Secretariat to make the necessary change.

We shall now vote on Article 72 as a whole. Will Delegations in favour of this Article, as amended, please signify in the usual manner.

Article 72, as amended, was adopted unanimously.

#### Article 84 (continued)

The PRESIDENT: That Article was referred to a Working Party appointed to review the amendment submitted by the Delegations of Afghanistan, Belgium, Burma, Ethiopia, India, Mexico, and Turkey (*see Annex No. 331*). The text proposed by the Working Party which takes into account the discussion which took place during the Twenty-ninth Plenary Meeting reads as follows:

“The Detaining Power shall take entire responsibility for all working conditions, for medical attention, for the payment of wages, and for ensuring that all employed internees receive compensation for occupational accidents and diseases. The standard prescribed for the said working conditions and for compensation shall be in accordance with the national laws and regulations, and with the existing practice; they shall in no case be inferior to those obtaining for work of the same nature in the same district. Wages for work done shall be determined on an equitable basis by special agreements between the internees, the Detaining Power, and, if the case arises, employers other than the Detaining Power, due regard being paid to the obligation of the Detaining Power to provide for free maintenance of internees and for the medical attention their state of health may require. Internees permanently detailed for categories of work mentioned in the third paragraph of this

Article, shall be paid fair wages by the Detaining Power. The working conditions and the scale of compensation for occupational accidents and diseases to internees, thus detailed, shall not be inferior to those applicable to work of the same nature in the same district."

Mr. HAKSAR (India): At the beginning of the second paragraph of the English text the word "standard" should be in the plural.

The PRESIDENT: We shall now vote on the proposal of the Working Party. Will delegations who are in favour of this proposal please signify in the usual manner.

The proposal submitted by the Working Party was adopted unanimously.

The PRESIDENT: We shall now vote on Article 84 as a whole with the amendments just adopted. Will delegations who are in favour of this Article please signify in the usual manner.

Article 84, as amended, was adopted unanimously.

### Article 3A (continued)

The PRESIDENT: We shall now resume consideration of Article 3A. The Delegations of Austria, Burma, France, Sweden, Switzerland and Turkey have suggested that corrections should be made in the French text of this Article which has already been adopted by the Assembly. This new text appears in a Document (*see Annex No. 197*).

Colonel HODGSON (Australia): I would invite your attention to a mistake in Daily Bulletin No. 83, where the word "Australia" was inserted instead of "Austria". We had nothing whatever to do with this.

The PRESIDENT: That is correct. There is an error in Daily Bulletin No. 83. This proposal was signed by the Delegation of Austria and not by that of Australia. Does anyone wish to speak on this proposal?

Mr. LAMARLE (France): After the vote taken several days ago in a Plenary Meeting on Article 3A, a number of delegations distinctly felt that this Article still contained defects, or, I might even say, flaws which would allow an Occupying Power not altogether of good faith, to commit precisely those arbitrary acts which the authors of this Article intended to prohibit. This is why a number of delegations, among them the French Delegation, submitted a draft amendment (*see Annex No. 196*). At the time the amendment was submitted, and afterwards, these delegations con-

tinued to consult together and to consider the matter.

Their discussion convinced them that their anxieties were really justified, and that there was a simpler way of dealing with the matter than that proposed in the amendment submitted on August 4. In view of the fact that the discussion was far advanced, and also that the sponsors of this amendment were anxious to reconcile the divergent opinions and to reach the solution most likely to obtain unanimous approval or a large majority, they took their investigations a step further and came to the conclusion that their concern arose mainly from the French text of the Article. On examining the English text more closely, which I am sorry to say I had not considered very carefully, these delegations perceived that if the French text were improved, and were translated according to the spirit and not purely to the letter of the English text, an improvement would be achieved which would largely resolve our difficulties. This is a short account of these two successive amendments, the second of which annuls the first. I hardly think further explanations are required. I would, however, like to say a very few words on each of the three points covered by the second amendment (*revised amendment—see Annex No. 197*).

Of all the words in the text of Article 3A which caused us uneasiness, "soupçon" was assuredly the most vague and the most likely therefore to give rise to arbitrary action.

We have tried to arrive at a more exact translation—one closer to the intentions of the authors of the text. We have settled upon the words "suspicion légitime" between which and the word "soupçon" there are two distinct but related differences.

The expression "suspicion légitime" is a legal term employed in France and a number of French-speaking countries. Its meaning is therefore more precise and, in particular, more objective than that of "soupçon". The qualification "légitime", an essential part of the formula, emphasizes that there must be objective grounds for the suspicion, and that suspicion based merely on phantasy or caprice is inadmissible. This formula "suspicion légitime" would therefore usefully replace the other, and would in fact completely change the purely subjective meaning of the word "soupçon".

The other changes are printed in italics in the text; some are purely of a drafting or grammatical nature, intended simply to clarify the French text. Thus, the words "par la Convention" and "s'il est établi" merely translate in two or three words what is rendered by one word only in the English.

The replacement of the term "activité hostile" is a translating change quite as important as "suspicion légitime".

The words "activité hostile" was another expression which retained the attention of the authors of the amendment, and that certainly of other delegations, since the word "hostility" is also a subjective notion. I gave the following example: suppose that a person in German occupied territory wrote "Down with the Huns" on the walls at night. This could not be taken as a friendly activity. Yet it would undoubtedly be activity, since taking a piece of chalk and writing with it on the wall is assuredly "activity". But none of us here would wish so harmless an activity to be penalized as severely as an activity which really damaged the Occupying Power.

The term "préjudiciable à la sécurité"—and I stress the word "sécurité"—would render our meaning far better. I draw your particular attention to the word "sécurité" since the activity in question must be more than merely prejudicial to the Occupying Power. Such a prescription would give rise to grave and dangerous anomalies. For instance, a person who had stolen some clothing or anything else from the occupying troops, would undeniably have done something prejudicial to the Occupying Power. It is not this kind of prejudicial action, however, which deserves severe measures provided for in Article 3A. It is necessary that this prejudicial action should be directed against the Occupying Power's security and should jeopardize this security.

As regards the third modification, which relates to the last paragraph of Article 3A, it was still easier to find a solution since, unlike the other passages, we noticed that a literal translation of the English text would provide a far better clause than that which had figured in the French text up to now.

In the latter, the words "at the earliest possible date" had not been translated, and there was an expression which I cannot for the moment recall but which was far from being as clear as this and providing an equivalent safeguard.

We were therefore obliged to restrict ourselves to a very exact translation of the English text in order to arrive at a satisfactory French text, or, at any rate, at a text which was any material improvement on the previous one.

The PRESIDENT: I should like to draw the Assembly's attention to the fact that, according to Rule 33 of the Rules of Procedure, a proposal or motion, once adopted or rejected, cannot be reconsidered unless the Conference or the Committee so decides by a majority of two thirds of the delegations present.

In my opinion, therefore, the proposal to redraft the French text, if it were to be adopted, would require a majority of two thirds of the votes of the delegates present.

Are there any objections?  
There seem to be none.

Mr. MOROSOV (Union of Soviet Socialist Republics): I should like to support the proposal made by the President with regard to the procedure to be adopted by six delegations, including that of France with regard to Article 3A.

I think we might proceed as follows: first, take a vote to ascertain whether there is a two-thirds majority in favour of the Conference agreeing to revise Article 3A. We should then proceed to discuss the substance of the proposal; and thirdly, there would be a second vote to ascertain whether the text submitted can be accepted.

The French Delegate pointed out just now that the new French text is a translation reproducing the ideas and conceptions embodied in the English text. I should like to point out, however, that, while I am not as competent as he is in this respect, I should nevertheless like to emphasize that there can be no question of adopting a French text which differs from the English. If it was merely a drafting alteration, I should agree with him, but if it is a question of altering the principle involved, that would be quite another matter. I think that it would be a very dangerous precedent to adopt a new text which, while purporting to involve only drafting alterations, would in reality change the substance and the principles on which the text in question is based.

The PRESIDENT: You have heard what the Delegate of the Union of the Soviet Socialist Republics has to say on this subject, namely that there should be two votes in accordance with Rule 33 of the Rules of Procedure. The first vote would refer to the proposal to reconsider Article 3A; and a decision on this point would require a two-thirds majority of the delegations present. If the result of this vote is affirmative, we could then take a decision on the various proposals which might be submitted with reference to Article 3A, and a decision on that vote could be taken by a majority.

Will you therefore take a decision on this proposal?

General SCHEPERS (Netherlands): I must ask why a proposal has been made to re-open the discussion on Article 3A. None of the documents I have before me contain any such proposal.

The PRESIDENT: It is quite true that the proposal at present under consideration does not explicitly state that it is in effect a motion to reconsider Article 3A; in reality, however, we are reconsidering the French text of an Article which has been duly adopted by the Conference. This

being the case, I think it will be difficult to deny that we are in reality engaged in reconsidering an Article which has been formally adopted.

Personally, I regret to be compelled to defend this idea; but I believe that it is the only one which can under the Rules of Procedure be accepted. There seems to be no doubt that the new text proposed does actually constitute an improvement on the previous one; but the Rules of Procedure are quite explicit and I think there is no possibility of considering this question differently. I should like nothing better than to be enlightened on this point and to be able to change my opinion.

Does anyone else wish to speak?

Mr. YINGLING (United States of America): I do not understand the Chairman's last explanation. It seems to me the only thing we are debating is whether we accept a slight modification to the French text to bring it into line with the English text, and that we are not reopening the discussion on Article 3A as a whole.

Mr. SINCLAIR (United Kingdom): The United Kingdom Delegation strongly supports the statement which has just been made by the Delegation for the United States of America.

The PRESIDENT: If I have correctly understood the point of view just expressed by the United States Delegation, they consider that the French text could be altered by a simple majority.

Mr. YINGLING (United States of America): The only question which has been raised by this paper is whether certain modifications in the French text should be adopted by this Assembly in order to bring it into line with the English text. The paper specifically states that the English text is not in question and is not under discussion, and I think the President can rule whether we can adopt the modification of the French text in order to bring it into line with the English text by a simple majority or by a two-thirds vote. I personally do not wish to discuss that point.

Mr. BOURQUIN (Belgium): Belgium is not one of the Delegations which submitted the amendment under consideration; but I will say at once that they will vote for it, as they consider that it constitutes a very appreciable improvement on the existing French text. The question we are now called upon to decide is a question of procedure. I quite understand the President's hesitation, in view of Rule 33 of the Rules of Procedure, which stipulates that a proposal to reopen a discussion can only be adopted by a two-thirds majority. But after thinking over this question, I sincerely believe that this is not a question of

reopening the discussion. As someone pointed out quite rightly just now—and this argument seems to me decisive—there is no question of changing the English text; and it is a fact that the text of Article 3A is based on the English wording. It is also a fact that the French translation of this English text was, I will not say incorrect—for the translation is possibly literally exact—but from the point of view of the ideas expressed the translation is certainly inadequate. Words have been used in the French text which may formally correspond to English words, but their meaning in French is not quite the same. May I give an example which I consider characteristic? This is the famous word "soupçon", used to translate "suspected" in the phrase "faisait l'objet d'un soupçon". Unfortunately, however, "soupçon" has a much wider and more elastic meaning than the English word "suspicion". A "soupçon" can be entirely baseless, a mere figment of the imagination. The French text which was adopted therefore contains a term which is extremely unfortunate in our opinion, and does not express the meaning intended by those who were responsible for drafting the English text. Under these conditions, I personally consider that we are not required to reopen the discussion on the substance of the question. A decision has been taken, a text has been adopted; that text is the English one. There is no question of reopening the discussion on this text. The only question at issue is whether the French translation of this text can be improved or not, and whether by improving it we cannot eliminate certain dangers which might result from adopting an incorrect terminology.

Mr. MOROSOV (Union of Soviet Socialist Republics): The Soviet Delegation was the first to oppose the text of Article 3A. But, apart from this question, we must consider the point of procedure. Almost all the countries of the world are represented at this Conference, and we may therefore say of this Assembly that it is eminently qualified for the work it is doing. The basis, I may say the elementary basis, of our cooperation here is the respect we owe to each other. We cannot but forfeit this respect if we take a decision of the sort proposed to us. In other words, if we consider that the new text submitted to us now is a mere translation into French of the English text, while it is obvious that this text contains substantial alterations.

I do not wish to discuss the advantages or disadvantages of this text as opposed to the previous text. But the Soviet Delegation is formally opposed to any attempt to carry out our work under conditions which cannot be described as showing a proper sense of responsi-

ility and which are inadmissible in a highly qualified Conference like ours. With all the respect I owe to the Delegate of Belgium, I must tell him that his reading is not correct, as the question before us calls for quite another solution. It would be very dangerous to try to solve it by evading the Rules, which are very definite on this point, and which are perfectly clear.

It is a fact that if we acted in this way, tomorrow other delegations would propose further alterations of the same kind and we would have, as a result, two authentic texts, the one in English and the other in French.

In my opinion, we cannot proceed in such a fashion here. We must not alter the very meaning of Article 3A without previously having come to the decision provided for in the Rules, should it be desired to modify an Article which has already been considered. It is indeed regrettable that at this stage of our Conference we should endeavour to lead each other astray. I am convinced that this should not be, and my Delegation is unable to accept the proposal before us.

The PRESIDENT: We have before us a question of the proper reading of the Rules. Two different points of view have been expressed, the one by the Soviet Delegation, who consider that Rule 33 is applicable, and the other by the Delegate of Belgium who considers that Rule 33 is not applicable to this proposal.

I will lay this question before the Assembly.

Sir Robert CRAIGIE (United Kingdom): I think we have to be a little careful in regard to this question because, as I see it, if the Soviet Union motion is adopted and if their proposal for reopening the whole subject were to be turned down on the basis of the two-thirds majority, there would be a danger—I am not quite sure, I leave that to the President to decide—that these very valuable improvements in the new French translation would become ineffective.

The Soviet Delegate has said, in setting himself up as the authority on French and English, that these amendments in the French text go beyond the original English text. It is perhaps not for me to pit my authority against that of the Soviet Delegation, but we have the definite assurance of the French Delegate and of the Belgian Delegate that that is not the case. So far as I have any knowledge of French, I would say that these are merely improvements to bring out the real sense of the English text, and that it would be very unfortunate if the Convention were to be accepted without such verbal amendments being made.

I would therefore ask the Conference to consider very carefully whether this idea of a two-thirds

vote on reopening the debate on the substance of the Article—and we have no written proposal to that effect before us—might not have a prejudicial effect on the subsequent adoption of amendments which I am quite sure this Conference will, when it has read them carefully, adopt by a large majority.

The PRESIDENT: We must decide on a point of procedure. Delegates wishing to speak may do so, but only on the question of procedure.

Mr. MEVORAH (Bulgaria): Allow me to make a simple remark as, if I may say so—the discussion is becoming amusing.

We merely have to decide whether the new wording proposed by the French Delegation simply improves the previous text or whether, on the contrary, it changes its substance.

Some things are really so simple and obvious that they do not need discussion.

I do not know English so I shall not speak as the United Kingdom Delegate has just done, but I understand it well enough to know that the word “hostile” must have the same meaning in French and in English. Does anyone wish to argue that this English word means “préjudiciable” in French? I do not think that the Delegate for France would suggest such a thing. The word “hostile” is therefore accurately translated.

You now assert that the word “hostile” is replaced by “préjudiciable” to improve the translation. You consider that this would merely be a slight alteration.

The English text says “...is definitely suspected (or under definite suspicion) of or engaged in activities hostile...” I recognize the good intentions of the authors of the French text. This states “...si elle fait individuellement l’objet d’une suspicion légitime de se livrer...” or “...s’il est établi qu’elle se livre...”. I note, moreover, that these three words “s’il est établi” are underlined in the text. This is a laudable effort to state the point clearly.

We are not discussing the substance. We are merely endeavouring to decide whether the authors of the new text have in any way introduced anything new when retranslating the English text. I do not think that anyone could maintain the contrary. To produce a better translation of the English text, that is the only question at issue.

There is no point in discussing matters which are perfectly clear. In all countries in the world two and two make four and not five.

The PRESIDENT: We will now take a vote.

The point of view expressed by the Delegate of Belgium, according to which Rule 33 of the



Rules of Procedure is not applicable to the proposal under discussion was adopted by 29 votes to 13, with 4 abstentions.

The PRESIDENT: Does anybody wish to speak on the proposal made by the Delegations of Austria, Burma, France, Sweden, Switzerland and Turkey. Since nobody wishes to speak we will put it to the vote; will delegations in favour of this proposal please signify in the usual way.

The proposal was adopted by 38 votes to NIL, with 7 abstentions.

General SLAVIN (Union of Soviet Socialist Republics): The Soviet Delegation has protested and continues to protest against all the variations proposed for Article 3A. For this reason, it cannot accept the proposal just adopted by the Conference. Consequently my Delegation requests that the following declaration should appear in the records of the Conference:

“The Delegation of the Union of Soviet Socialist Republics, having examined the amendment proposed, on August 5th, by the Delegations of Australia, Burma, France, Switzerland and Turkey, declares that it is categorically opposed to the adoption of Article 3A in its present wording, which is no more acceptable than the various texts previously proposed, particularly as the English text remains unchanged and the new wording is at variance with the spirit and the aims of the Convention relative to the protection of civil populations.”

The Soviet Delegation requests that this declaration should be included in the records.

The PRESIDENT: That statement will be inserted in the records.

### Article 63 (continued)

The PRESIDENT: Before dealing with the Report of the Drafting Committee, we have still to vote on Article 63, which was sent back to the Drafting Committee. Yesterday we approved the alterations proposed by the latter, but this Article has nevertheless never been formally adopted by the Assembly. May I ask you to vote now on this Article, to which there has been no amendment. Will delegations in favour of Article 63 please signify in the usual way.

Article 63 was adopted by 37 votes to NIL, with 2 abstentions.

General SLAVIN (Union of Soviet Socialist Republics): The U.S.S.R. Delegation did not take part in the vote on this question, which did not

figure on the Agenda of this Meeting, and we are not quite clear what we have just voted on.

The PRESIDENT: It was a purely formal vote on an Article which, to my knowledge, had not been opposed by any delegation, and which should rightly have been adopted at yesterday's Meeting. The text of the Article in question will be handed to the Soviet Delegation at once by the Secretariat.

### Articles revised by the Drafting Committee: 11, 15, 19A, 25, 42, 61, 66, 68, 73, 81, 86, 87, 100, 101, 103, 106, 119, 122A, 122B, Annex I

The PRESIDENT: We will now proceed to consider the Articles which were amended yesterday, and revised by the Drafting Committee. The alterations made by that Committee will be found in the Report of this Committee to the Plenary Session.

I should like to draw your attention to the fact that all these above-mentioned Articles already have been adopted by the Conference; there is no question of reconsidering them or reopening the discussion on them; it is simply a question of whether you agree to the drafting alterations made by the Committee. I think we could adopt the Drafting Committee's Reports en bloc; if no-one wishes to speak of any given Article, I shall consider as adopted each of these Articles, as a whole.

With regard, however, to Article 87, the Drafting Committee recommends that the Conference should define this text more accurately. As this refers to an amendment submitted by the Italian Delegation, I should be obliged if that Delegation would make a proposal.

The Italian Delegation has submitted the following proposal, namely to specify, at the end of the first sentence of the second paragraph:

“and the income derived from their property in accordance with the legislation of the Detaining Power”,

whereas the original text read:

“as well as the income on their property within the limits laid down by the law of that country.”

The Italian Delegation therefore proposes to specify that the law of the country is the law of the Detaining Power. Would this proposal give rise to any objection? I see that this is not the case, and I therefore consider that Article 87, thus amended, is adopted.

We have now completed the consideration of the Civilians Convention. I should not like to let this opportunity pass without expressing my

warmest thanks to the Chairman of Committee III, Mr. Cahen-Salvador, to the four Rapporteurs, Colonel du Pasquier, Mr. Hart, Mr. Speake and Mr. Day for all the hard work they have done. We are very grateful to them for their Reports, and for the valuable part they have played in the long drawn out discussions on this Convention. I wish to express my very warmest thanks (*Applause*).

#### Announcement

The PRESIDENT: The proofs of the printed text of the first three Conventions will be distributed to

the Delegations this afternoon; the texts of the Wounded and Sick and the Maritime Warfare Conventions will be deposited in the Delegate's lockers at 3 p.m. and the text of the Prisoners of War Convention at 7 p.m.

Delegations are requested to inform the Secretariat, before 10 a.m. on Monday morning, whether they have any remarks to make concerning these texts.

The next Plenary Meeting of the Conference will take place on Monday at 4 p.m.

*The meeting rose at 12.15 p.m.*

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### THIRTY-THIRD MEETING

*Monday 8 August 1949, 4 p.m.*

*President:* Mr. MAX PETITPIERRE, President of the Conference

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#### Draft Resolutions submitted to the Assembly

The PRESIDENT: Today we begin our consideration of the Draft Resolutions submitted to the Assembly by the Committees or by the Delegations. In accordance with a decision taken by the Assembly, adopted resolutions will be referred to the Drafting Committee, and the texts will afterwards be annexed to the Final Act of the Conference.

I must remind you that a resolution has already been adopted (*see Summary Record of the Twenty-second Plenary Session*) which refers to disputes "relating to the interpretation or application of the present Conventions...".

#### Draft Resolution submitted by the Mixed Committee

The PRESIDENT: The first Draft Resolution on our agenda is that submitted by the Mixed Committee (*see Annex No. 400*).

Does anyone wish to speak on this draft resolution?

Mr. CAHEN-SALVADOR (France): The Draft Resolution which we have before us and which is

submitted for our approval by the Mixed Committee, concerns a question which preoccupied the French Delegation a great deal. That question concerns the procedure by which appeal should be made to the International Organization provided by Article 8 of the Wounded and Sick Convention and Article 9 of the other three Conventions, in cases where no substitute can be found for a Protecting Power. This is, in fact, a new problem of extreme importance, which has been closely studied by the French Delegation and previously by the Governmental authorities.

As you are all well aware, especially since you have followed the debates of this Assembly, the Protecting Power plays an important part in the application of our Convention. The relevant Article, namely Article 9 of the Civilians Convention, provides for substitutes for these Protecting Powers. At Stockholm we were obliged to ascertain, in the event of there being no substitutes among the neutral States for the Protecting Powers, how that would affect the Conventions and how their protection, supervision and application be assured? It was then agreed that provision should be made for a new international organization to take the place of Powers which had been able to remain neutral until the last hour, but which, in spite of all, and in spite of the more or less unanimous wish of the other countries concerned,

became unable to carry out the duties performed by Protecting Powers. This is the problem which we have again placed before the Conference. It might be well to contemplate such an international organization. Have not all the expedients and possibilities been explored in the Convention? You are thinking of an international body but what will it be? We submitted a proposal at the beginning of the Conference suggesting that this international body should be set up by calling upon eminent persons, well known for their authority, their independence, their judgment, their former life, their achievements and the gratitude they have deserved of mankind. In this way a kind of international Areopagus would be set up in peace time, which could, if there should arise the tragic contingency for which we must provide even though we hope that it will never occur, replace the substitutes for Protecting Powers at a time when none of them could act despite their desire to do so.

We drew up, as it were, a preliminary sketch of this body as we had conceived it; we were careful to add that, in presenting this outline of the future international body, we wished not only to clarify our ideas, but also to reply to those who accused us of giving the body in question its name and its essential idea, but no clear shape. We have always insisted that this was no fixed project, but rather a question submitted to the consideration of all the governments.

Thus, after the first discussion before the Meeting, which was continued in the Joint Committee and then in the Special Committee of the Joint Committee, we realized that it was perhaps a little early to ask all the delegations to vote in favour of the idea which we were laying before them. What we considered important was to draw attention to the problem, to analyse it and to ask all the governments signatory to our Conventions to note its importance.

That was the standpoint of the French Delegation, of which I was anxious to remind you. We were fortunate enough to have at the Special Committee, and later at the Joint Committee, some very understanding members who, though unwilling to adhere to any preconceived solution, were nevertheless anxious to point out the importance of the problem and to give concrete form to the result of our endeavour. Thus, thanks to the authorised intervention by the Delegation of the United Kingdom, and for which I wish to express my gratitude in the name of the French Delegation, you will find that the Draft Resolution which is submitted to your approval today gives concrete form, first to the problem which is now before you and will face you tomorrow, then to a suggested solution, and finally to the affirmation that although no final solution to the

problem has been found by this Conference, it must nevertheless be thoroughly discussed in the near future.

The suggestion has even been made at the Joint Committee that the French Government should take the initiative of holding the diplomatic conversations which are proposed in the Draft Resolution and that when these diplomatic conversations have succeeded in agreeing on a formula acceptable to all, the French Government should convene the delegations to a new conference at which the question might be finally settled.

In rising to speak, my intention has been, not only to stress once more the great importance of this problem, which is of such fundamental significance that it affects the very implementation of our Conventions, but also to thank the delegations who have expressed their whole-hearted approval, if not of the final solution, at least of the fact that the problem has been raised. I also wish to thank once more the Delegation of the United Kingdom which was the authorised spokesman of the Delegation sharing this point of view. Lastly, my purpose has been to consider the necessity of bringing this question to the notice of the Conference, on the eve of our dispersal, and to request these delegations to lose no time in drawing the attention of their Government to the fact that it is urgent to find a solution.

Mr. MOROSOV (Union of Soviet Socialist Republics): The U.S.S.R. Delegation has already stated that it considers as inadmissible the Draft Resolution relative to the advisability of setting up an international body whose functions would be to carry out, when no Protecting Power is available, the duties of the Protecting Powers in the application of the Conventions for the protection of war victims.

The arguments placed before us by the Delegate of France add nothing to what has already been said on the subject in the course of previous debates. Our attitude remains unchanged; we consider that such a project could not be realized in practice and that the draft should be rejected. The Draft Resolution is based upon an erroneous supposition, namely that in a future international conflict, there might at some particular time be no Protecting Power. This is an admission that, in a future war, all countries without exception would be drawn into the conflict.

We have on many occasions maintained that such a supposition is unreasonable. The artificial hypothesis upon which the authors have drafted their resolution has led them to use an argument which is also artificial. The proposal is to set up an international body which, according to the authors of the plan, would be composed of representatives from various countries, chosen in such

a way that, even in wartime, the organization would be, so to speak, above the Parties to the conflict. I must repeat that what is contemplated here is a case in which all countries of the world would be drawn into a conflict. If we are to admit that such a situation could arise in the world, we must also admit that the formation and functioning of such a body would then become absolutely impossible.

In reality, this international body will not be required, for, according to the Conventions, if there is no Protecting Power, the obligations normally incumbent upon it would fall to the neutral powers or welfare bodies. It may be said that the Resolution merely proposes that the establishment of this international body be studied. The Diplomatic Conference, however, is not empowered to consider certain questions merely because one of its members believes such consideration to be necessary. The duty of the Conference is to examine any question, but only when the question is of value in itself. For this reason the Soviet Delegation will vote against the resolution proposed by the Joint Committee, which should, in its opinion, be rejected by the Conference.

The PRESIDENT: Does anyone else wish to speak? We shall now take the vote. The Delegations in favour of the Draft Resolution proposed by the Joint Committee are requested to raise their hands.

The Draft Resolution was adopted by 32 votes to 8, with 4 abstentions.

#### **Draft Resolutions proposed by Committee I**

The PRESIDENT: We shall now consider the first Draft Resolution submitted by Committee I (see Annex No. 399). I would remind you that this Draft Resolution was unanimously adopted by Committee I (establishment of a model agreement concerning the relief of detained personnel, the percentage of personnel to be retained and its distribution in the camps).

Does anyone wish to speak? — As no one wishes to speak, we shall now take the vote. The Delegations in favour of this Draft are requested to raise their hands.

The Draft Resolution was adopted by 37 votes to NIL, with 8 abstentions.

The PRESIDENT: We will proceed with the second Draft Resolution (Recommendation that States and National Red Cross Societies take all necessary steps in time of peace to have medical personnel provided with badges and identity cards), also submitted by Committee I (see Annex No. 397). Does anybody wish to speak?

This not being the case, we will vote on the Draft.

The second Draft Resolution submitted by Committee I was adopted by 44 votes to NIL, with 1 abstention.

The PRESIDENT: We now come to the third Draft Resolution (Recommendation that States take measures to ensure that the emblem of the Red Cross is used only within the limits of the Convention) submitted by the same Committee (see Annex No. 398). Does anybody wish to speak?

Mr. ABUT (Turkey): In this draft we read: "...the Red Cross Emblem". It seems to us that if this text is to be coordinated with that of the Articles already adopted in the other Conventions, it would be preferable to say "...the protective emblems...". We wish to place this suggestion before the Meeting.

The PRESIDENT: You have heard the verbal amendment submitted by the Turkish Delegation. If I have understood rightly, according to this amendment the new wording would read as follows:

"Whereas misuse has frequently been made of the Red Cross emblem,

The Conference recommends that States take strict measures to ensure that the protective emblems be used only within the limits prescribed by the Geneva Convention...", etc.

Am I right?

Mr. ABUT (Turkey): You are quite right.

The PRESIDENT: We will now vote on this Amendment.

The Amendment proposed by the Delegation of Turkey was adopted by 41 votes to NIL, with 3 abstentions.

The PRESIDENT: I think, however, that this text ought to be reconsidered by the Drafting Committee. It seems to me necessary to connect the second paragraph with the first and that the passage should read: "...shall take scrupulous care that the Red Cross and other protective emblems...", in view of the fact that the first paragraph refers to the abuse of the Red Cross emblem. I should like, therefore, to ask the Drafting Committee, to which the text will be referred, to examine the question in order to obviate any discrepancies in the wording of these resolutions.

Nevertheless, we shall now proceed to vote on the Draft Resolution as a whole, taking into

account the Amendment which we have just adopted.

The third Draft Resolution proposed by Committee I, thus amended, was adopted by 44 votes to NIL, with 4 abstentions.

#### **Draft Resolution proposed by the Delegation of Italy**

The PRESIDENT: Does anyone else wish to speak on this Draft Resolution? (Creation of a Committee of Experts to examine technical improvements of modern means of communication between hospital ships and belligerent parties) (*see Annex No. 390*).

General PERUZZI (Italy): The technical study of means of communication between hospital ships on the one hand and warships and military aircraft on the other hand has not been dealt with by the present Conference. It is considered that such a study would exceed the terms of reference of this Conference and, further, that the two drafts of new Articles proposed by the Italian Delegation contain so much technical detail that neither Committee I nor the Plenary Meeting could consider them or give an opinion on them.

Nevertheless, this matter is one of very great importance. The question is that of the rights of belligerents and the protection of hospital ships. Our Government accordingly instructed us to give all possible emphasis to the point, so that, in one of the texts established by the Conference, the hope might be expressed that the High Contracting Parties should, in the near future, instruct a Committee of Experts to elaborate an international code precisely regulating the use of means of communication between belligerents and hospital ships, so as to afford the latter a maximum of protection.

That is why the Italian Delegation submitted the Draft Resolution for the approval of the Plenary Assembly.

I might repeat the remarks I have already made on other occasions in support and in justification of our proposal. But this time I will quote the opinions of other delegates.

Thus, in the thirty-fourth Meeting of Committee I, held on the 30th of June, the Canadian Delegation stated that the proposal relating to fast and clearly defined signals (wireless, radar, etc.) was interesting, and that the wording of that provision, which should be brief, could be entrusted to a Working Party.

At the same Meeting the French Delegation remarked that the regulations need not be drawn up here and now. It would be better to refer the proposal to a Working Party.

The Delegation of Monaco proposed that the regulations need not be drafted immediately but would be postponed to a later date, perhaps even till after the signature of the Maritime Warfare Convention.

In the Twelfth Plenary Meeting, held on 25 July, the French Delegation said:

“If however the Assembly does not see its way to vote in favour of this Article, it should at least adopt the idea suggested by the Italian Delegation, i.e. to invite the Governments to take this important problem into consideration, and, if necessary, call a Conference of naval experts to study it.”

The Delegation of the Union of Soviet Socialist Republics said:

“It is obvious that a message transmitted by flags or other visual means, without a preliminary agreement between the aircraft and the hospital ships, will not be understood. Similarly, transmissions by wireless can only be used provided that there is agreement on identification signals, wave lengths etc...”

“These hospital ships and the wounded and sick on board may consequently be endangered by the fact that they cannot reply to the signals in question. Naval warfare experience has thus shown that an aeroplane frequently orders a ship to stop, or transmits a message by some signal such as a burst of machine-gun fire or a bomb which just misses the ship. A hospital ship certainly cannot reply in the same way to such signals. These cases frequently occur in practice.”

At present, there are no technical regulations which could be annexed to the Convention. What I am about to say is, I submit, very important.

I will give you a real, and very sad example. A hospital ship received several times messages of the kind referred to by the Soviet Union Delegation: bursts of machine-gun fire, bombs and torpedoes. Such messages obviously leave traces. This particular ship came back to port with 54 dead and 50 wounded on board.

It is precisely with the aim of ensuring more adequate methods of communication between belligerents and hospital ships that the Delegation of Italy, by means of the Draft Resolution, ventures to draw the attention of the Conference once again to this question, which demands an adequate solution.

The PRESIDENT: We shall now take a vote on the Draft Resolution.

The Draft was adopted by 32 votes to NIL, with 9 abstentions.

### Draft Resolution proposed by the Delegation of the United Kingdom

The PRESIDENT: We shall now consider the Draft Resolution proposed by the Delegation of the United Kingdom (broadcast from hospital ships concerning their position, route and speed) (*see below*).

Mr. GARDNER (United Kingdom): The United Kingdom Delegation asks the Conference to adopt this resolution because our naval experts advise us that in the present state of naval warfare the provisions suggested are the only really effective means of securing protection for hospital ships. I am told that attack by craft on other craft is made by means of radar picking up the target, and for radar no markings on a ship will give any warning at all of its character. Therefore, if a hospital ship proceeding on the high seas is to be protected, this can only be done by constantly disclosing its position so that any enemy aircraft or vessels may be aware of the fact that it is a hospital ship which is approaching.

On the other hand, there are circumstances in which a hospital ship moving with a fleet or through a mine-field could not disclose its position without disclosing information of extreme value to an enemy, and for that reason the provision inviting High Contracting Parties to arrange for ships to broadcast particulars of their position, route and speed, is governed by the words "whenever conveniently practicable".

The Italian resolution deals with the future, but technical consultations between Powers do not as a rule produce immediate results. This resolution deals with a simple practical operation which can be put into effect at once by any Power desiring to do so. There is no incompatibility between the resolutions: rather the United Kingdom resolution is a necessary foot-note to the Italian resolution.

Dr. PUYO (France): The French Delegation approves the Draft Resolution submitted by the Delegate of the United Kingdom.

The French Delegation would, however, propose an alteration in the wording of the French text: instead of the words "prend acte de l'espoir" it would be preferable to use the term "exprime l'espoir".

Mr. SENDIK (Union of Soviet Socialist Republics): The U.S.S.R. Delegation regards as unacceptable the resolution proposed by the United Kingdom Delegation to the effect that:

"The Conference, being desirous of securing the maximum protection for hospital ships, records the hope that all High Contracting Parties

to the Convention for the Relief of the Wounded, Sick and Shipwrecked members of Armed Forces on Sea will arrange that, whenever conveniently practicable, such ships shall frequently and regularly broadcast particulars of their position, route and speed."

There is no need, in our opinion, for hospital ships, when at sea, to indicate their exact position, unless special reasons render this necessary. According to Article 13 of the Maritime Warfare Convention, adopted by Committee I, all warships of a belligerent Party shall have the right to demand that the wounded, sick or shipwrecked on board military hospital ships, and hospital ships belonging to relief societies, or to private individuals, as well as merchant vessels, yachts and other craft, shall be surrendered, whatever their nationality. If hospital ships are required to transmit, at regular and frequent intervals, full information concerning their position, course and speed, this may result, in certain special cases, in these hospital ships being stopped by warships in order that the sick and wounded who are on board may be taken prisoner. The resolution submitted by the United Kingdom Delegation might have results directly contrary to what its authors intended. The resolution in question begins by declaring that the Conference is desirous of securing the maximum protection for hospital ships. It is presumably this reason which led the United Kingdom Delegation to submit this resolution. In reality, however, the resolution may, as we have pointed out, result in lessening the protection given to sick and wounded while at sea.

May I also remind all the Delegates present today that the United Kingdom Delegation previously submitted this question to the Conference for consideration when the Maritime Warfare Convention was being discussed. The Committee rejected the proposal now made by the United Kingdom Delegation, on the ground that it was contrary to the interests of the sick and wounded on board hospital ships.

For all these reasons, the U.S.S.R. Delegation opposes the resolution which the United Kingdom Delegation has submitted today.

Mr. GARDNER (United Kingdom): I am surprised that the Soviet Union have thought it necessary to construe this resolution as an attempt to procure information which would enable hospital ships to be stopped. The United Kingdom probably sails more hospital ships on the seas in wartime than any other Power, with the possible exception of the United States, and if this is going to act contrary to the interests of hospital ships it is the United Kingdom's hospital ships which are likely to suffer most. The hard fact

is that with modern methods of attack, markings on a ship are not an effective protection either against naval attack on the sea or air attack from the air, and if the ships are to be effectively protected—and we are speaking now with the knowledge that we want our own hospital ships protected—all our naval experts are quite clear that such ships must disclose their position at regular intervals or run great risks. It is for the Power possessing the hospital ship to decide for itself in any circumstances whether the risk of being stopped and having wounded and sick removed from the ship is greater than the risk of being attacked without the attacker being aware that it is a hospital ship which he is attacking. The resolution does not impose on any Power an obligation to broadcast but it does make it quite clear—and we hope the Conference will agree—that in the normal conditions of modern naval warfare the only really effective protection for hospital ships is if they disclose their position regularly and frequently, so that enemy ships and aircraft may know where they are and avoid attacking them. It is true that the matter was raised in Committee I but it was not raised as a resolution. It was raised as an Article and when it was rejected as an Article, the United Kingdom still indicated that their naval experts regard this issue as so important in the interests of the ships, that they would invite the Conference to adopt it as a recommendation.

The PRESIDENT: The French Delegation has suggested a slight drafting change in the text of the resolution submitted by the United Kingdom Delegation. The French Delegation proposes that the words "exprime l'espoir" be substituted for the words "prend acte de l'espoir" in the second line of the French text.

Is the United Kingdom Delegation prepared to accept this alteration?

Mr. GARDNER (United Kingdom): Yes, Mr. President, and to keep the English in line I suggest the word "expresses" to replace the word "records" in line 2 of the English text.

The PRESIDENT: Is there any objection to these changes? I note that there is none. The text will therefore be corrected in accordance with the alterations proposed.

The Resolution submitted by the United Kingdom Delegation was adopted by 35 votes to 7, with 4 abstentions.

#### **Draft Resolution submitted by the Italian Delegation**

The PRESIDENT: We will now examine the Draft Resolution submitted by the Italian Delegation

(...governing the situation of Relief Societies attached to armies in the field, are applicable to the Order of Malta and other Orders) (*see Annex No. 391*). An amendment to this draft resolution has been submitted by the United Kingdom Delegation, which was circulated this afternoon at 2 p.m.

Although this amendment was presented at very short notice, I nevertheless suggest that we should admit the proposal, and, if possible, discuss it this afternoon.

As there is no opposition to my suggestion, we will consider the question forthwith.

Mr. AURITI (Italy): The Italian Delegation has already on several occasions reminded you of the good repute acquired by the Order of Malta in the course of its humanitarian activities. The Order in question is one of the oldest of such institutions.

The Final Act of the Diplomatic Conference of 1929 includes a resolution concerning the Sovereign Order of Malta. The Italian Delegation proposes that the same resolution should figure in the Final Act of the Diplomatic Conference of 1949.

The United Kingdom Delegation has submitted an amendment to this Resolution (*see below*) and the Italian Delegation is prepared to accept it. The Italian Delegation hopes that its Resolution, thus amended, will be accepted by the Assembly.

General SLAVIN (Union of Soviet Socialist Republics): First of all, the Soviet Delegation wishes to express the great bewilderment it felt on reading the Draft Resolution submitted by the Italian Delegation, which is devoid of all meaning. This resolution states that:

"...the stipulations established by the Geneva Convention, and governing the situation of Relief Societies attached to armies in the field are applicable to the National Organisations..."

Then follows an enumeration to which the United Kingdom Delegate adds an amendment which is nearly as incomprehensible as the draft of the Italian Delegation:

"and all other Relief Societies which fulfil the relevant conditions set out in the Geneva Conventions".

The Soviet Delegation formally opposes the adoption of a resolution which proposes to establish, in the name of the Conference, that the stipulations established by the Geneva Convention and governing the situation of Relief Societies attached to armies in the field are applicable to the National Organisations of the Sovereign and Military Order of St. John of Jerusalem and of Malta, to the Grand Priory of St. John of Jerusalem in England, the Order of St. John (Johanniter) and St. George

in Germany, and similar Hospitaller Orders in all countries.

This proposal cannot be accepted for the following reasons.

In the first place, the resolutions adopted by the present Conference can neither change nor complete the text of the Conventions which has been officially adopted; otherwise certain delegations would inevitably be tempted to introduce their point of view in the form of resolutions which could be interpreted as additions or complements to the Convention.

Further, it must be borne in mind that the corresponding Articles of the Geneva Convention which governs the situation of relief societies and their functions, contains no enumeration of these societies. It therefore follows that the provisions concerning these societies apply to organisations which, by their constitution and their activities, may be classified in the category of organisations known as "relief societies". We have no reason to make exceptions in favour of the organisations named in the proposal of the Italian Delegation, for in this case we should have to draw up a complete catalogue of all the other organisations which the Conference previously recognised as relief societies within the scope of the Geneva Conventions. It is hardly necessary to stress the fact that an attempt to draw up such a catalogue would be difficult for our Conference at the present time. This would lead to still greater confusion because it would be quite impossible to make the catalogue complete. We are therefore of the opinion that the Resolution proposed by the Italian Delegation should not, for legal reasons, be adopted by the Conference.

In the second place, apart from these legal reasons which make the proposition of the Italian Delegation impossible to accept, the Delegation of the U.S.S.R. finds it necessary to make a few remarks on the substance of the question, namely the recognition as relief organisations of the bodies mentioned in the Draft Resolution submitted by the Italian Delegation.

You will remember, when the work of our Conference first started, that the question was raised of the admission of the Order of Malta to this Conference in the capacity of Observer. Some delegations, in particular that of the Soviet Union, were of the opinion that, in order to settle this question, it would be necessary to examine the constitution and the results of the activities of this organisation; otherwise no solution could be reached. The majority of the delegations present at the Conference agreed with us in this matter. We must repeat the same arguments, since it is now proposed (without any previous study of the principles of the above-mentioned organisation) that the provisions established by the Geneva

Convention should be applicable to it, and that consequently it should benefit by the rights and privileges granted to Relief Societies attached to armies in the field. We cannot agree with the proposal of the Italian Delegation. During the second World War, the majority of the organisations mentioned, with the exception of the Grand Priory of the Order of St. John of Jerusalem in England, carried out their activities in the territories of Fascist Italy and Germany, where crimes against humanity were committed resulting in the death of millions and, in particular, in the mass extermination of prisoners of war, wounded and sick. The peoples of the world will always remember those crimes. In these circumstances the proposal of the Italian Delegation to state, in the name of the Conference, that these organisations should be included among the Relief Societies envisaged by the Geneva Convention would be to profane the memory of the millions of victims who were exterminated by Fascist executioners. The Delegation of the Soviet Union therefore considers that the Draft Resolution submitted by the Italian Delegation is ill-timed, unacceptable and inopportune. Both for legal reasons and for reasons which concern the very essence of the question, the Soviet Delegation moves that this proposal should be rejected.

Mr. WERSHOF (Canada): I wish to explain very briefly why the Canadian Delegation will vote against the Italian resolution, even as amended by the United Kingdom, and I would like to say, in order to avoid any misunderstanding, that the Canadian Delegation does not agree with all the reasons against the resolution given by the Soviet Delegate. We agree with some of them, but not with all of them, and I wish to make that clear.

Our reasons for voting against the resolution are mainly these:

In the first place, if this Conference is to list organisations which are deemed worthy to be regarded as relief societies within the meaning of the various Articles of the Convention, we cannot think of any reason why a few societies should be selected by the Italian Delegation, or by any other Delegation, and put into this resolution. I have no doubt there are probably a few dozen societies in various parts of the world, not counting all the national Red Cross Societies themselves, which are eligible to be regarded as relief societies within the meaning of the Convention, and, just to suggest to you how many important omissions there are from this resolution, I will mention four organisations—and there are probably forty others—the Knights of Columbus, the Young Men's Christian Association, the Salvation Army, and the Society of Friends, usually known as the Quakers. Those are four examples which came to my mind in a moment,



because they are very active, especially in North America. I have no doubt that in other parts of the world there are many other organisations that I have never heard of which are just as worthy and just as eligible to be listed as relief societies within the meaning of the Convention as are the ones listed in the Italian Resolution or those I have mentioned.

My second reason is that if the Conference seriously thought it necessary to start listing organisations, then as a responsible Conference we would have to set up sub-committees to examine the organisation, history, functions and credentials of all the organisations which we thought ought to be listed.

The idea that the Conference should adopt a resolution saying that certain organisations are eligible to be regarded in a certain light, when many of the delegations probably have not the faintest idea what these organisations are or what they do, seems to us to be a bad thing. I should like to make it clear that the Canadian Delegation itself has a very high regard and respect for the organisations listed in the Italian resolution and so far as the Canadian Delegation is concerned it has no doubt that those organisations are fully eligible and entirely worthy to be regarded as relief societies within the meaning of the several Articles in the Convention, but for the reasons I gave earlier, we feel that there is no need for any such resolution and that it would be a mistake to adopt it. Therefore we will vote against it.

Mr. LAMARLE (France): The French Delegation gladly pays tribute to the charitable and time-honoured activities of those Orders mentioned in the Italian amendment, such as the Order of Malta and the British Order of St. John of Jerusalem. I am not quite sure that it was advisable to refer also to the Prussian Order of St. John; as far as I am concerned I know of it only as a group of highly titled gentlemen, of ancient and noble ancestry, who distinguished themselves in the past in the ranks of the "Deutscher Orden"; I do not know what became of these gentlemen during the war, but in any case I can see no reason why they should be mentioned in this document.

With regard to the two other Orders, the French Delegation is glad to pay tribute to their charitable and time-honoured activities, but does not consider it necessary to single them out for mention here. There are a considerable number of national and international Orders throughout the world, and in many different countries, which have acquired the same title to our gratitude. There are some in my own country, and there are many others elsewhere. I am thinking, for instance, of the Knights of Columbus, and of those Orders to which the Delegate of the Holy See himself referred,

among them those cited by the Canadian Delegation: YMCA, the Quakers, and several others. I am also thinking of other national and international Orders whose charitable outlook, devotion to duty and self-sacrifice are equally well-known, such as the Sisters of the Order of St. Vincent de Paul. These are instances of Orders which thoroughly deserve to appear on our roll of honour; but I do not consider that there is any need here to establish a roll of honour. What is more, if we were to do so, I should say that this roll of honour was far too short.

The United Kingdom Delegation showed that it had grasped the essential truth of this when it found it necessary to add the words: "And all other similar Orders...". This is as it should be, and we pay the same tribute of gratitude to all the other similar—but anonymous—Orders; this being so, I see no reason why two or three of them should be made to discard their anonymity. I consider that the special position which we intend to accord to relief societies should not be strictly limited by any form of enumeration, and that the general term "... relief societies..." should be sufficient, since it expresses the purpose of this Conference, which is to open wide the possibility of active work for the amelioration of the condition of war victims to any society which has distinguished itself in the past by its work in this sphere and has thus earned our gratitude and our recognition.

Colonel RAO (India): The Indian Delegation has nothing against the ancient organisations which were enumerated by the Delegate of Italy but you must admit, as the Delegate of France said, that the list is by no means comprehensive. The United Kingdom modification of the Italian amendment, while rectifying these deficiencies, makes matters if anything worse. It creates a special situation with regard to the only organisations mentioned. The Indian Delegation therefore agrees with the remarks made by the Delegate of Canada and will vote against this resolution.

Mr. AURITI (Italy): With regard to the form in which this resolution was submitted by the Italian Delegation, I should like to point out, in reply to the statement made by the Soviet Delegate of the U.S.S.R., that the text simply reproduced exactly the one incorporated in the Final Act of the Diplomatic Conference of 1929.

With regards to its contents, I wish to make it clear that the allegations which the Head of the U.S.S.R. Delegation thought fit to make, are disproved by historical events, and I feel I need not say anything further on this point.

I listened carefully to the comments made by the other Delegations. The Italian Delegation might undoubtedly have suggested some adaptation

of its text, with a view to meeting the points raised by these Delegations. But in view of the differences of opinion which the discussion has revealed, the Italian Delegation considers that it is preferable to withdraw its Draft Resolution. It will not, therefore, submit it to the Conference for approval.

The PRESIDENT: The Conference duly notes that the Italian Delegation withdraws the Draft Resolution which it had submitted. The question is thus settled.

Before closing this Meeting, I have an announcement to make: the Drafting Committee will meet immediately, in order to consider the resolutions which have just been adopted by the Conference.

The next Plenary Meeting will take place tomorrow at 10 a.m., when we shall resume consideration of the Draft Resolutions which have been submitted, and shall also consider the amendment to the Final Act submitted by the Soviet Delegation.

*The meeting rose at 6.20 p.m.*

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### THIRTY-FOURTH MEETING

*Tuesday 9 August 1949, 10.10 a.m.*

*President: Mr. Max PETITPIERRE, President of the Conference*

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#### **Draft Resolution proposed by the Delegation of the Union of Soviet Socialist Republics and Motions to declare this Draft non-receivable**

The PRESIDENT: We shall consider the first item of the Agenda, which is the Draft Resolution proposed by the Delegation of the Union of Soviet Socialist Republics, and the motion to declare this Draft non-receivable (*see Annexes Nos. 395 and 396*).

The Delegation of the Union of Soviet Socialist Republics has submitted a Draft Resolution in the same terms as the Resolution which it submitted to Committee III (*see Summary Record, Fortieth Meeting, Committee III*).

On the other hand, the delegations of Australia, Brazil, Canada, Chile, China, Colombia, Cuba, the United States of America, France, Italy, New Zealand, Pakistan, the United Kingdom, Uruguay and Venezuela have submitted a letter requesting that this draft be declared non-receivable by the Conference.

This letter was submitted to Committee III when it was considering the Soviet proposal. It was distributed on August 6th.

I now put for discussion the receivability of the proposal submitted by the Delegation of the Union of Soviet Socialist Republics. This question should be settled before the other.

General SLAVINE (Union of Soviet Socialist Republics): The Draft Civilians Convention does not protect the civilian population against the effects of modern weapons of warfare, such as the atomic weapon, and bacteriological, chemical or other means of mass destruction.

If, in spite of the efforts of the nations to prevent further aggressions and to prohibit the extermination of millions of human beings and the destruction of material and cultural values, a new war were to break out, it is indisputable that the lives, safety and property of the civilian population should be protected. It is precisely for this reason that the XVIIth International Red Cross Conference convened at Stockholm in August 1948, when considering the draft Conventions for the Protection of War Victims, adopted a resolution addressed to the governments of all countries, urging them to outlaw the use for warlike purposes of atomic weapons and similar forms of energy, and likewise asphyxiating gases and bacteriological methods of warfare.

This question cannot be passed over in silence by the present Conference, which has been convened to draw up provisions for the maximum protection of the civilian population in time of war. For this reason the Soviet Delegation submitted a Draft Resolution concerning methods of mass extermination.

We consider that the Conference should condemn the use, in the event of a future war, of bacteriological, chemical, atomic and other methods of extermination of the population. We propose to declare that the use of such methods is contrary to the elementary principles of international law and is incompatible with the honour and conscience of nations. The Soviet Delegation is submitting two other complementary proposals. One proclaims that it is the duty of the governments of all countries to secure the immediate signature of a Convention prohibiting the atomic bomb as a method of mass extermination; the other declares that the Governments who have not hitherto ratified the Geneva Protocol of 1925 for the Prohibition of the use in war of asphyxiating, poisonous or other gases, and of bacteriological methods of warfare, should do so with the least possible delay.

The discussion of the Soviet proposal in Committee III made it clear that no substantial arguments could be advanced against it. That was the reason why the United States of America and the United Kingdom Delegations sought to avoid a debate on the resolution. The general feeling was against their standpoint and there have been severe criticisms of the letter, signed by these and other Delegations, which declares that the Conference is not competent to give a decision regarding our resolution. Although none of the Delegations which signed that letter gave it any serious support, the document is, nevertheless, once more placed before the Plenary Meeting. On these grounds we feel that we should reiterate the statements previously made by the Soviet Delegation in regard to this letter, which distorts the real meaning of the suggestion contained in the Draft Resolution. Of set purpose, the authors of the letter attribute to the proposals contained in the Draft Resolution an intention quite alien to it when they state that the aim of those proposals was to obtain an immediate decision by the Conference on questions connected with the prohibition of the use of atomic energy, gas and bacteriological means of warfare.

We have shown that the authors of the letter were obliged to have recourse to this distortion of the proposed resolution in order to be able to declare that the Conference was not competent to deal with questions of this nature, which, they say, are already being studied by the United Nations Organization.

In actual fact, the sole aim of the proposal of the U.S.S.R. Delegation is to put on record, in the name of the Conference, that the use of any weapon designed for the mass extermination of the population is incompatible with the elementary principles of international law and the conscience of peoples; consequently it should be the duty of the governments of all countries to obtain the

immediate signature of a Convention prohibiting atomic weapons.

The second object of the resolution has also been put in a false light. It has been said that the Soviet Delegation wished to oblige Governments who had not yet done so to ratify the "Protocol for the prohibition of the use in war of asphyxiating, poisonous or other gases and bacteriological methods of warfare" signed at Geneva on June 17, 1925; our resolution merely states that

"The Conference decides that it is the duty of all Governments ... to ratify that Protocol as soon as possible."

The statement that the resolution of the Soviet Delegation has nothing in common with the aims of the present Conference, as they were set out in the invitation of the Swiss Government, is quite groundless. Such an interpretation of the aims of the Conference is a distortion of the facts.

It should be recalled that the Draft Civilians Convention, which was circulated beforehand by the Swiss Government to all members of the Conference and approved by the Seventeenth International Red Cross Conference, laid down that it was the duty of Contracting Parties to come to an agreement in order to protect civilian populations from the horrors of war. In the same Convention it is also stated that the Contracting Parties shall undertake to apply, at any time and in any place, the ruling whereby individuals shall be protected against violence to life and limb. It also contains a provision whereby the destruction of personal or real property which is not made absolutely necessary by military operations is prohibited. The solution of these problems is closely connected with the use in wartime of means which are in themselves intended for the mass extermination of the population and the destruction of property.

The other argument advanced, namely that questions concerned with the prohibition of atomic, bacteriological and chemical weapons are dealt with by United Nations (and are consequently not within the competence of the present Conference), does not bear examination either. We have already pointed out that the resolution which we are submitting contains nothing which would tend to make the present Conference take the place of the United Nations Organization.

Determined at any cost to prove that the Soviet Draft Resolution was inadmissible, the authors of the letter of 15 July went so far as to state that we might put in jeopardy the progress we have made here through long and arduous toil. This monstrous statement was criticised and refuted by the Soviet Delegation at a previous meeting. In spite of this, the same idea is again expressed, with surprising insistence, in the letter of August 6th.

I draw the attention of the Conference to the part of the letter which states that any appeal intended to accelerate the examination of the question of the prohibition of the use in war of means of mass extermination of the population might put in jeopardy the progress made at the Conference.

There can be no doubt as to the competence of the Conference in the view of anyone who genuinely desires to solve the basic problems of protection for millions of human lives. It has become clear that none of the objections brought against the Soviet Draft Resolution have any foundation in fact. One example is the attitude of the Delegation of the United States of America in regard to the ratification of the Geneva Protocol of 1925: nearly twenty-five years have passed since this Protocol was signed. We may wonder why the United States Delegation does not wish the Conference to adopt a recommendation addressed to the relatively few Governments—among them that of the United States—which have not yet ratified this Protocol. We may wonder how many years will yet have to pass before the States, which have not signed this Protocol, carry out their moral duty, as the majority of peace-loving States throughout the world have already done.

All these attempts made on a variety of pretexts to avoid any study of the Soviet Draft Resolution should be construed as a desire to prevent the Conference from taking important decisions which would fill in the gaps in the Conventions we have drawn up and which do not protect millions of human lives against the most terrible dangers of modern war. The adoption of the Soviet Resolution would be the logical culmination of the work of this Conference.

A number of delegations—first among them those of the United States of America and the United Kingdom—are striving to prevent the adoption by this Conference of a resolution condemning the use, for warlike purposes, of atomic energy and all other methods of mass extermination of the civil population, and prohibiting chemical or bacteriological warfare. We feel that the Conference should rebut these efforts, alien as they are to the humanitarian ends which we pursue here. The Conference should resolutely resist any attempt openly to support the use, in war, of dangerous weapons likely to result in the mass extermination of the civilian population.

A Conference which has established Draft Conventions for the protection of the victims of war should protest against any recourse to atomic, bacteriological or chemical warfare.

Among numerous publications on the subject, we should like to refer to the statement which appeared in the "Times Herald" of 4 July 1949 in the United States of America, and which was approximately as follows:

"The aim of modern war is to exterminate the enemy nation, to destroy its power and to efface it as a menace to others. We are not going to arm young men for them to kill each other. We shall send aircraft at a height of 40,000 feet loaded with atomic, incendiary and bacteriological bombs and with trinitrotoluene to destroy infants in their cradles, old women at their prayers and men at their work".

A whole series of statements by statesmen of certain countries could be quoted to show perfectly clearly that under present conditions the question of the protection of civilians during wartime is closely linked with the aims pursued in the Soviet Draft Resolution. A decision upon this question cannot be shelved, especially by a Conference which has stated that its aim is to preserve humanity from a repetition of the horrors suffered during the last world war.

One cannot pretend that the series of provisions drawn up by the Conference deals exhaustively with the question of the protection of war victims.

Nobody would believe or understand it if we let this pass without comment. Our peoples expect and demand that we should seek, in a spirit of mutual understanding and collaboration, the necessary means of solving the basic issues in the protection of human life, and material and cultural values. We earnestly appeal to the Delegations present to support the Draft Resolution proposed by the Soviet Delegation.

Colonel HODGSON (Australia): Let us look at the background of this resolution as affecting this Conference.

Initially, the same underlying notion, the same objective, were contained in the Soviet resolution to Article 29A prohibiting inter alia all other means of mass extermination of populations, and the persistence with which this particular amendment was pushed indicated its significance and made clear to the majority of the Delegations that the indirect object was to write into a Convention where it had no place a prohibition against certain classes of weapons.

That amendment was decisively defeated and then we saw for the first time this resolution, which made the objective clear, presented in the form of a resolution to the Third Committee. The Chairman of that Committee ruled, and rightly ruled, that it was out of order under Article 17 of the Rules of Procedure which provided that Committee III should deal with the working out of provisions for a Convention for the protection of civilians; that ruling was challenged and it was decisively upheld that the ruling was correct. One would have thought that that would have settled the question, but no, we see it again before this As-

sembly. In the meantime certain Delegations, including the Australian Delegation, wrote to you as indicated this morning. The terms of the letter are well known to you but I emphasize that it pointed out that the original invitation from the Swiss Federal Council clearly set out the purpose of this Conference and clearly indicated that we were concerned with the alleviation of the sufferings of the victims of war and would have nothing to do with the means of war, the methods of warfare, or the weapons of war. Further, it was made clear that this subject had been, and still was, a question solely for the United Nations. Incidentally, had any Delegation thought that such a question as this was going to be raised, surely they would have provided themselves with representatives who were experts and competent to discuss this technical and political question. No, Sir. We are here without any such thought in our minds. We are here without thought of the possibility of war, without thought of the inevitability of war, but are concerned solely with the eventuality of war against the hopes and the wishes of mankind.

Now I come to the resolution itself. Frankly, in the opinion of my Delegation, this resolution should have been submitted to the Bureau of the Conference under Article 12, because it is the Bureau of the Conference and, indeed, the executive committee or bureau of any international conference, which has the responsibility of deciding what matters are placed on the Agenda. I believe that had this question come before the Bureau it would never have appeared to-day, but the point is that it never was referred to the Bureau. It was never even discussed in the Bureau and I should like to ask why not.

The justification for the introduction of this resolution has been given in connection with a similar resolution at the Stockholm Conference, a Conference with the same objectives as this. But the Soviet Union Delegates have carefully refrained from pointing out to this Conference that the Stockholm Conference was purely a Red Cross Conference and on that particular resolution it was only the majority of the national Red Cross Societies which voted for it, and that the overwhelming majority of governmental representatives refrained from voting. But this is a governmental Conference and we do vote. Any resolutions before this Assembly, all the resolutions with the exception of this one, pertain to the work of this Conference or to the Article of a particular Convention. Any resolution would be receivable if it concerned the alleviation of sufferings of the victims of war. In our opinion, even at this stage, a resolution reiterating the terms of the Kellogg Pact of 1928 abolishing war as an instrument of national policy would be in order. A resolution stating it to be the duty of the States represented here to

accede to the 1929 Conventions, would be in order and I am sure that if any Delegation, and particularly the Soviet Union Delegation, had presented such a resolution, it would have been wholeheartedly supported even if only for the sake of the amelioration of the lot of hundreds of thousands of men who are still prisoners even after the end of the war many years ago. We could also appreciate a resolution calling on State members to adhere to the statute of the International Court for the settlement of all disputes and questions arising out of the interpretation and application of the Conventions. I will remind you that the Soviet Union Delegates—and mark this, because it is germane to my further argument—both in Committee and in Plenary Assembly stated that it was outside the jurisdiction of this Conference to consider any subject which came within the purview of the United Nations. I quote a statement made in the Plenary Assembly:

“We therefore consider that the Conference is not competent to deal with this point and has no right to interfere in a matter which in reality comes within the province of the General Assembly and the Security Council of the United Nations. The Soviet Delegation therefore feels that to adopt Article 41A would constitute an unprecedented violation of established international practice and of international law”.

This is what you call in my language being hoist with your own petard! On that question my Delegation agreed with the Soviet Union Delegation. We still stand by that. We think it is a correct statement of international law. I will show you why.

This question is one solely for the United Nations, and the United Nations have been concerned with it for over two and a half years. For over two and a half years some of the best brains of the world, men actuated by the highest motives and ideals, such as de Rose of France and McNoughton of Canada, have been endeavouring to work out an agreed plan of international control of atomic energy to ensure that it is used only for peaceful purposes and for the peace and security of mankind. This same resolution which is before us now, that is the third paragraph—and the same arguments apply to the first two paragraphs—has been before the Atomic Energy Commission, the Conventional Armaments Commission, the Security Council, and the General Assembly itself, which passed the resolution of January 1946 setting up the Atomic Energy Commission and investing it with certain functions and powers.

Now this same resolution has been decisively defeated again and again: I do not go into the reasons because that is strictly a matter of substance, but I am prepared to argue that point later if

the question of substance is raised. You will notice I am keeping most strictly to procedure. Indeed, only on the 5th November last this same resolution was overwhelmingly rejected by the General Assembly in Paris, by 46 votes to 6, and let me say this—nearly all your Foreign Ministers were there: there is not one present at this Conference, and I cannot conceive of any member here voting, either on a question of substance or even of procedure, in the face of the declared view of his own Government and Foreign Minister last November.

One proposal, presented at the same epoch, was that the whole work of the Atomic Energy Commission should cease. That was viewed with alarm and consternation by all the middle and small Powers, and we got together and sponsored a joint resolution whereby the Atomic Energy Commission was to continue its work along all practicable avenues and that in the meantime the six sponsoring Powers, that is the five permanent members of the Security Council, plus Canada, were to meet with a view to arriving at an agreement on the general principle of the International Control Plan as laid down and developed in the first three reports of the Atomic Energy Commission. That resolution was approved by an unanimous vote. What happened? After twelve meetings, a fortnight ago, the Atomic Energy Commission submitted its report through the Security Council; this month, the six sponsoring Powers are to meet in order to see if they can find a common meeting ground on principles, and their report will go to the General Assembly. Therefore this question is automatically on the agenda of the General Assembly for the meeting next month in New York, and it would be quite inappropriate, and an affront—I might almost say an impertinence—to the highest international organ, for this Conference to pass a resolution in any shape or form affecting this question, upon which it has no competence. Indeed, in the opinion of my Delegation, it should not even be discussed because we say we think it to be a back-door method of getting this Conference to accept something which is completely unacceptable to the other organs—international organs—within whose competence it is.

All delegations know that my country is a firm and loyal supporter of the United Nations and of its organs. The principles of the United Nations are the basis of our foreign policy. We will never do anything to lower the prestige or the status of the United Nations; on the other hand I have, within the last days, received the most definite instructions from my Government to oppose strenuously any resolution on this subject before this Conference, on the ground that it is quite out of order and solely a matter for the United Nations. Indeed, if this Assembly sees fit to vote

any kind of a resolution on this subject I could never sign the Final Act in which this resolution would appear without reference to my Government, and I doubt whether instructions would be forthcoming.

To sum up, we think this resolution out of order and non-receivable for the following reasons:

It should have been submitted to the United Nations;

It was not in any way within the terms of the original invitation from the Swiss Federal Council;

It has always been, and is solely, a matter for the United Nations.

We are positive it is out of order.

We shall vote on the initial vote that it is non-receivable and we trust that vote will be final and dispose of a resolution which should, in all fairness to our Conference and out of respect to this Conference, never have been submitted.

Mr. MEVORAH (Bulgaria): I have listened with a great patience and attention to the long speech by the Delegate of Australia. I was particularly interested in it, because I hoped that it would contain some explanation. I hoped that it would remove a very unfortunate misunderstanding overhanging us since the day this resolution was raised in Committee III.

The letter signed by about fifteen States may be summed up as follows: the Soviet Resolution desires to make unlawful the use of atomic weapons and bacteriological and chemical methods of warfare, to urge governments which have not already done so to ratify the Geneva Protocol of 1925, and to urge the governments of all countries to secure the immediate conclusion of a Convention prohibiting the use of atomic weapons.

If the Soviet Resolution were in fact drafted in these terms, I should have understood the reticence shown by the majority of delegates, because it would indeed be out of place to propose, in a Resolution adopted by the Plenary Assembly, that a prohibition or an obligation be imposed on the Governments. Who are we, after all, to forbid all the governments of the world to use the atomic bomb? Who are we to require the governments to subscribe to a Protocol? Who are we to urge the governments to secure the immediate conclusion of a Pact prohibiting the use of atomic weapon?

There is, however, a misunderstanding. Some have considered that the terms of this letter constituted an error, and I, myself, would use the word mistake, if the authors of the letter in question were not worthy of the greatest confidence. I prefer to speak of an unintentional misconstruction, but of a very serious and regrettable misconstruction nevertheless, since none of the points

mentioned in the letter are contained in the Soviet proposal.

If you will consider the proposal of the Delegation of the Soviet Union, you will see that it is quite different. After a statement of fact constituting a Preamble, it continues, in paragraph (b):

"It is the duty of all Governments who have not hitherto ratified the Geneva Protocol of 17 June 1925 to ratify that Protocol as soon as possible"

and in paragraph (c):

"It is the duty of the Governments of all countries to obtain the immediate signature of a Convention relative to the prohibition of the atomic weapon as a means of mass extermination of the population".

What does this mean? Would the mere fact of affixing our signature to a Protocol, to Conventions or Resolutions, automatically result in an obligation? Not at all. We have here only the assertion of a moral principle. It is as if it were said: "The duty of modern society is to protect children". I do not know the French language very well, but my slight knowledge is enough to lead me to think that it would be quite incorrect to interpret that sentence as implying an automatically binding obligation.

In actual fact, we have here only an appeal, a request addressed to the Governments, or, if you prefer, only a recommendation. If it is this word, which displeases everyone, it would be a simple matter to form a committee of three or four persons in a small room, and they could very soon replace this word, if it is really a cause of misunderstanding. I find it difficult to believe this, however, because we are not children after all and we are quite capable of understanding the sentence used here in its present form: "The duty of all governments is...etc."

If this misunderstanding is removed, and we all realize that the sentence expresses a wish, or an appeal addressed to the Governments, the letter of the fifteen delegations completely loses its point. This letter was intended to frighten the Conference by saying: "What they are trying to make you do, gentlemen, is to proclaim obligations. But are you competent to decree such obligations? Not at all. The conclusion then is that we are not competent in the matter and the proposal is therefore non-receivable!"

If, however, the Soviet proposal is understood in the way in which I have just described, the letter loses its point, and the representative and Head of the Soviet Delegation, General Slavine, made clear in Committee III that this was precisely the scope of his proposal.

He also said a moment ago that his proposal was not intended to impose an obligation, but to ex-

press a recommendation. If this proposal is understood in this manner and if the sentence is interpreted accordingly, if we replace the sentence by a term such as "appeals", "invites", "recommends", or "requests", I fail to understand what there could be in this Resolution to justify such strong opposition on the part of the Delegate of Australia. We are fully competent to adopt such Resolutions. We have just done so, and there are precedents, for doing so, since we adopted a large number of Resolutions yesterday, the day before yesterday and three days ago. Nothing prevents us therefore from adopting a Resolution at our meeting and appending it to our Convention. The only consideration which could have prevented us from doing so is the possibility of such a Resolution being completely outside the purview of our prejudice, but such an idea is quite incorrect, because this is precisely what is needed to complete the Convention.

Those who read this will have the impression of a terrible void. They will wonder what the Conference Delegates have done during the four months of their deliberations; while admitting that they have worked hard they will want to know the results of this work. While they will doubtless see that a certain Article states the number of lines on the postcards which prisoners of war are allowed to send, that another Article fixes working hours and that yet another provides for certain details which, although they may appear insignificant, are often in reality of some importance, the public will nevertheless wonder, as it does already, what we have done to protect the civil population. Provision has, of course, been made for establishing safety zones, the protection of ambulances, the protection of the Red Cross emblems, but what good will it do, what will be the real use of all these protective stipulations if, in a future war, civil populations that we wanted to protect are exposed to instant destruction, to the pulverising, vaporising effect of the atom bomb, to a widespread, deadly epidemic spread by bacteria dropped from the air?

Man, we know, keeps pigs for slaughter but should this method and this reasoning be applied to the human race? Once again, what will be the good of all this protection that we seek to give war victims, and children in particular, if these unfortunate people are to be subsequently destroyed? When a man slaughters a pig it is to eat the flesh of this animal. But why exterminate children? they are surely not going to be eaten!

Thus, we revert to the same question: if one really and sincerely intends to protect the civil population, the use of arms which are in part intended for the mass destruction of that population should not be allowed. We all agree on that. In the letter in question, however, we see that

while the authors agree that something should be done to prevent such horrors, in their opinion this does not concern the present Conference. If the question in point had been to regulate and to codify the use of atomic weapons, and to establish a ruling for chemical warfare, I should agree that this was not within our scope. But this is not the point at issue; what is proposed is that the Conference should pass a recommendation and this, it seems to me, is quite within its competence.

The Australian Delegate has reminded us that for the last thirty months the United Nations General Assembly and Security Council have made no positive headway in this matter. Should we not therefore urge these high international authorities to do something concrete since it appears that our Conference is not competent? As they apparently are competent, let them act immediately. But they are inactive. The problem should therefore be placed once more before them and we should express a recommendation that action should be taken for the abolition of weapons for the extermination of entire populations and for the strict prohibition of their use.

In view of this, the opposition of some Delegations to the Soviet Resolution is difficult to explain.

If we refer to the second point of this Resolution, we see that it is merely an appeal to the States who have not yet ratified the Geneva Protocol of June 1925. This is a very simple matter: it would mean that this Meeting would repeat what was done yesterday at the suggestion of the French Delegation, i.e. to make an appeal to States which not yet recognized the competence of the International Court of Justice. Let us do the same in this matter.

Thus I cannot see any valid reason for the opposition which the proposal of the Soviet Delegation has encountered. I am certainly not deluding myself in this matter as I realise that if the question of the receivability of the Resolution is raised, there will be strong opposition to this proposal which will probably be rejected.

In doing this, however, we run the danger of jeopardising a great principle, we may even jeopardise the essential value of our Conventions. Public opinion will say that we did not have the courage to defend the humanitarian cause which is at stake here even by such mild means as a recommendation. It is therefore essential (and this need we feel keenly in common with the Soviet Delegation and other Delegations) to adopt this resolution, or at least a resolution or a recommendation along the same lines, and with the same substance, even if slightly different in wording. But a text of this description must be adopted, so that public opinion may say that, after all,

these Conference people all had good intentions, but they have shown that it is not invariably true that Hell is paved with good intentions; they have made theirs known, and it is for others to follow the way which has been shown. If we do not adopt a resolution of this nature we shall be following after Pontius Pilate who washed his hands and would have nothing to do with the matter.

We shall have been at fault if we do not follow the road opened to us by the Resolution of the Soviet Delegation, and the Conference will have omitted to take the step which had the means of taking in response to the unanimous wish of mankind.

Mrs. LUCA (Rumania): The Delegation of Rumania has closely examined both the Draft Resolution submitted by the Soviet Union Delegation and the letter addressed to the President of the Conference by certain delegations.

Contrary to the opinion expressed by the latter, we consider that the said Draft Resolution is admissible, and that it is even of great value for our work.

The following are the considerations which, we think, justify our view.

The Resolution proposed does not prohibit the use of atomic weapons and bacteriological and chemical means of warfare—which is possibly not within the terms of reference of our Conference. But it simply expresses the standpoint of our Conference on the matter, and that is not only within its terms of reference, but is its duty.

The Civilians Convention being a new Convention established according to the highest humanitarian principles, we must do all that lies in our power to ensure its efficacy. To do what we can to put out of action the weapons which cause the greatest sufferings to the people, namely weapons intended for mass destruction of the population, is quite compatible with the mission we have to fulfil here. The resolution submitted by the Soviet Union Delegation makes no attempt to encroach on the province of the Special Commission instructed by the United Nations Organisation to consider the problem of the prohibition of the atomic weapon. That resolution in no way impedes the work of the Commission; it is a document of great value, which might be of use in that work.

It in no way decrees that Governments should immediately conclude a Convention prohibiting the use of atomic weapons nor does it prescribe that Governments which have not yet ratified the Geneva Protocol of 17 June 1925 should do so; it merely brings pressure to bear on Governments to act in accordance.

Throughout the world, millions of men and women, the future victims of a possible war, demand



with urgency that the questions on which the protection of their life depends should be settled as soon as possible.

If, in a future war, the Parties to the conflict can freely employ means of extermination such as asphyxiating gases, gas chambers and atomic bombs, what is the use of our Convention? To whom can we apply it? Who will be in a position to be protected? and who will be the protectors?

I feel I must speak as one who has seen the ordeals suffered during the last war. My father, then sixty-two years old, and my two brothers with their families, were exterminated like hundreds of thousands of my fellow-countrymen. I lived for two years with the Spanish people in its terrible tragedy, I lived with the French people in the black days of June 1940. For three years, I witnessed the indescribable sufferings inflicted on the Soviet people in the zones occupied by the Germans. I still hear the cries of those women, of mothers maddened by grief in seeing their children killed by the machine-guns of aircraft at low altitude, or exterminated in barbarous destructions which were not necessitated by any military exigency. I can see before my eyes sealed railway vans, thousands of men, women and children buried, half-living, in common graves. Are so many innocent victims to be forgotten? Are they to be followed by others? Can we contemplate a new Auschwitz, Dachau, Buchenwald? Can we admit a repetition of the crimes of Lidice, Guernico, Oradour?

Hundreds of thousands of people are striving to prevent the recurrence of such things. They are the people who are striving for peace. But we, for our part, have been sent here by those very people so that we may ensure for them an effective protection in case of war. It is our duty to fight side by side with them in order to protect them against the greatest danger of all—mass extermination.

That is the reason why our Delegation supports the Resolution presented by the Delegation of the Union of Soviet Socialist Republics. We are convinced that all the Delegations who have the fate of the people and the families of that people at heart, will support the appeal to their sense of responsibility made by the Soviet Delegation, and will vote in favour of the proposed Resolution.

Mrs. KARA (Hungary): The Delegation of Hungary is of the opinion that the Conference should take the Resolution of the Delegation of the U.S.S.R. into consideration. The Hungarian Delegation wishes to point out that the Civilians Convention, in the form in which it has been adopted by the Assembly, does not offer sufficient guarantee against the mass extermination of the civilian population. The Draft Resolution submitted by the Delegation

of the U.S.S.R. expresses the feelings of all the nations of the world who experienced the sufferings of the last war and who wish to prevent their recurrence. This Conference, whose aim is the protection of War victims, must deal with the questions contained in that Resolution, especially as the adoption of the Draft would be the best means of safeguarding the civilian population.

The Hungarian Delegation is convinced that the reasons advanced by the Delegations which wish to prevent the discussion of this Draft Resolution are not sincere. We believe that those Delegations do not dare to say outright that they are not ready to condemn the use of the various weapons enumerated in the Draft Resolution. But they know very well that their attitude does not reflect the real will of their people, and they wish to avoid any discussion. The Hungarian Delegation considers that those Delegations would be acting more frankly and sincerely if, instead of entrenching themselves behind questions of competence, they would declare openly that they have no intention of preventing the mass extermination of the civilian population, and that they are not ready to abandon the weapons in question.

The Hungarian Delegation, during the discussions in the Committees, expressed its surprise on several occasions at the attitude of the Delegations whose countries were occupied during the last war by the German troops, and which had tangible proof of the various methods of extermination. Several of those countries are among the signatories of the letter addressed to the President of the Conference; these Delegations seem to have a somewhat short memory, for they now oppose the discussion of a proposal which aims at ensuring the effective protection of the civilian population. The Hungarian people has not forgotten the sufferings of the last war, which resulted in the extermination of part of the population. My Delegation is convinced that the discussion of the Soviet Draft Resolution, and the signature of a Convention for the prohibition of the weapons enumerated in this Resolution, are the sole effective means for the protection of the civilian population of our countries.

As regards the reasons fifteen Delegations advanced in their letter addressed to the President of the Conference, I must point out that the Soviet Draft Resolution does not in the least attempt to describe the weapons to be prohibited in future wars. The Draft contains no explicit obligation; it merely draws the attention of the Governments to their duties, which is to conclude agreements which will effectively protect the civilian populations. Hence there is no question, in our opinion, of going beyond the competence of the Conference. Finally the Hungarian Delegation is well aware that other international organisations are studying questions relative to the use of the weapons

mentioned. But it considers that Conference cannot ignore anything which is of such great importance for all the peoples of the world. The Hungarian Delegation is convinced that the most important task of this Conference is to interpret the feelings of peoples of the world, and to draw the attention of the competent Governments to an essential question.

The Hungarian Delegation is certain that the work done by this Conference will not be complete unless the Draft Resolution submitted by the Soviet Delegation is adopted.

Mr. BUDO (Albania): The question at present under discussion has already been very clearly stated by the U.S.S.R. Delegation and several others which preceded me. Owing, however, to the importance of this question, the Albanian Delegation wishes also to state its point of view. The question submitted by the U.S.S.R. Delegation relative to the protection of civilian populations against bacteriological and chemical methods of warfare, and also against atomic weapons and other weapons as a means of mass extermination of populations, has already been considered in Committee III.

Unfortunately, however, several irregularities occurred during the discussion in that Committee, which are by no means to the credit of those who were responsible for them. The procedure followed was such that we were faced with a situation which was prepared for the purpose of stifling the discussion of this question at all costs. And we note with regret that it is the Head of the Australian Delegation himself who has sought to justify these irregularities. For the U.S.S.R. proposal had been placed on the agenda, and it was the letter addressed to the President by several delegations which constituted the irregularities. Committee III was competent to discuss this question and should have done so, in order to enable every Delegation to state its views and to furnish the necessary explanations.

During the work of the Conference, in drawing up the Civilians Convention, we endeavoured to ensure that the provisions for the protection of civilian populations covered every detail. And the work we have accomplished will be judged in proportion as these provisions are all-embracing. Despite our efforts, it cannot be denied that certain important gaps have still been left here and there. It is quite natural that we should have been greatly concerned with problems connected with the protection of innocent populations, and perfectly normal that we should have sought to ensure that these populations should be protected against measures of mass extermination. Our work would remain incomplete if we ignored this essential problem in so far as it involves a serious threat

to the lives of millions of innocent human beings, namely the methods of destruction which are fraught with the greatest danger for the masses of the population and for the great human treasures. The last world war testified to the devastating character of modern warfare when waged by people who ruthlessly trample under foot the fundamental laws of war. Millions of human beings, villages, towns, whole districts with all their wealth, the fruit of centuries of labour, were thus annihilated.

In the course of our labours the delegations represented here have frequently appealed to humanitarian principles in support of their views. Some of them have even gone as far as to invoke these very principles in an attempt to protect war criminals. It is difficult to understand today how these same delegations can refuse to be guided by these same principles when it comes to adopting a resolution which closely concerns the protection of millions of human lives.

If we really wish to base our work on humanitarian principles; if we really have at heart the protection of innocent populations; if the extermination of whole peoples, not justified by any military reason, strikes us as profoundly unjust, we cannot refrain from discussing this question. We cannot shirk doing all in our power to achieve a satisfactory solution of this problem.

The Draft Resolution which has been submitted by the U.S.S.R. Delegation meets this need. The question at issue is whether to adopt a resolution which, on the one hand, condemns weapons for the mass extermination of populations, and, on the other, appeals to all governments to contemplate the prohibition of atomic weapons, and to sign the Geneva Protocol of 1925.

The attempts made in Committee III to represent this resolution as a prohibition, to make us believe that it was a question of binding governments which become signatories of our Conventions, is quite unfounded.

The U.S.S.R. Delegate has already proved this; and I shall not revert to this point. What we have to do is to realise what our sentiments and our humanitarian conceptions actually amount to. The point under discussion is a condemnation, and a pressing appeal to contribute to a satisfactory solution of the important problem of the protection of the victims of war. I do not really believe that anyone can be opposed to these sentiments. No one can really not wish to achieve the purpose underlying the proposal submitted by the Delegation of the Union of Soviet Socialist Republics.

It has been objected that the question is not within our competence, and that the Atomic Energy Commission of the United Nations is already dealing with this problem. The Australian

Delegate repeated this argument today. He told us, briefly, that in order to deal with this question we ought to be accompanied by politicians and technical experts.

It should be clearly stated that we do not aim at solving this question: we are merely appealing to governments and to the competent bodies to find some satisfactory solution.

As has already been pointed out on many occasions, even if we are not competent to solve this problem, we cannot, however, entirely ignore it. We cannot fail to condemn the atomic bomb, bacteriological weapons, and the use of poison gas, as methods for the mass extermination of populations. These are the points on which our debates have turned; the great mission, with which we have been entrusted in the eyes of humanity.

For all these reasons, we consider that the objections based on incompetence and non-receivability which were put forward in the letter of 14 July, give an erroneous interpretation of the text submitted by the Delegation of the Union of Soviet Socialist Republics, and are not based on any valid argument. Contrary to the statement of the Australian Delegate, the Soviet Resolution has been regularly submitted to us, for it was submitted to this Plenary Meeting within the time limits provided for in the Rules of Procedure.

In these circumstances, the Delegation of Albania ventures to urge all Delegations, including those which signed the letter of 14 July, to reconsider the position and agree to the Soviet proposal.

The adoption of a text of this kind by our Conference can only be in the interests of innocent populations.

The Delegation of Albania supports this text unreservedly.

Mr. BOLLA (Switzerland): The Swiss Delegation did not sign the letter sent on 14 July to the President of the Conference by a certain number of Delegations, but it has a special reason for considering the Draft Resolution proposed by the Delegation of the Union of Soviet Socialist Republics as non-receivable by this Conference.

During the preparatory work of the Diplomatic Conference, with a view to increasing its prospects of success, the Swiss Federal Council was called upon to give several of the Governments convened the assurance that the Conference would deal exclusively with the revision of the three Conventions of 1907 and 1929 and the establishment of the new Convention for the Protection of Civilians in time of War, and that the Conference would make no departure from the humanitarian field to embark upon questions of a political nature.

It is incumbent upon the Delegation of Switzerland to contribute by its vote to the observance of

this promise made by its Government. This promise would not be observed if the Conference decided to consider the use of certain weapons as incompatible with public international law. Our terms of reference do not include the duty of defining the tenets of international law upon this point, nor would our promise be respected if we decided that it was the duty of Governments to sign or ratify any particular agreement regarding methods of warfare. It is not for us to inform the Government which has delegated us of its duty in this field. We are still less qualified to dictate their duty to other Governments.

We not only approve of the conclusion expressed in the letter of 14 July, we also share in the wish it contains and believe we should give particular emphasis to it. After a close study, lasting four months, of the measures necessary for the protection of war victims within the all too restricted limits allowed by military requirements, it is natural that we should most fervently advocate an efficacious international mechanism for the maintenance of peace. The best end for the texts which we have established with such difficulty would be that no opportunity should ever occur for them to be applied.

In the second place, how could we remain indifferent to the immense increase of the evils of war, which may result from the entry of the human race into a new phase of its history, characterised by the multiplication of its power over natural forces, the extent of which no one can foresee? How can we conceal the anxiety born of fear that man should not be able to spend his spiritual strength solely in the pursuit of peaceful and constructive aims? International organisations are at the present time seeking a solution of the difficult questions to which the Soviet Draft Resolution referred. It is not for us to judge the activities of these organisations, and still less to give them advice, but we may perhaps express a wish and a hope that these international organisations will succeed in the task they have undertaken, for the greater benefit of all nations. The wish of a small country which possesses no material power is of little import, as we are perfectly aware, but according to the wisdom of all times and all places, it is better to light one small candle than to curse darkness.

Mr. MOROSOV (Union of Soviet Socialist Republics): Would it not be advisable to adjourn the Meeting now as it is seven minutes to one? It would perhaps be preferable to postpone the discussion till this afternoon, after the adjournment. But if you insist, I am ready to speak.

The PRESIDENT: Three more delegations have notified their wish to speak, the Delegations of the

Union of Soviet Socialist Republics, of Bielorussia and of the Ukraine. I suggest that we should continue the debate until a vote can be taken. I think the Meeting is now sufficiently well informed on the issue before us and that the Delegates still wishing to speak may be requested to do so briefly. I will ask for your opinion since you are directly concerned in this matter. The Delegations who agree that we should go on with the discussion until a vote can be taken are requested to signify in the usual manner.

The Meeting decided by 28 votes to 13, with 4 abstentions, to continue the discussion.

Mr. MOROSOV (Union of Soviet Socialist Republics): The Delegation of the Union of Soviet Socialist Republics considers it essential to reply to certain arguments advanced here against its proposal.

The Delegate for Australia certainly assumed a far from enviable task when he undertook to speak on behalf of the Delegations signatory to the letters of 14 July and 6 August. If we consider his arguments, we cannot but realise that he might, in point of fact, just as well have refrained from speaking: instead of dealing with each of the points he took up in his speech, it would have been enough to tell us that he had received instructions from his Government to oppose the resolution submitted by the Soviet Delegation and that, should this resolution be adopted by the Conference all the same, he would not sign the Final Act. He will not sign, that is all. That is what he meant to say. Why he will not sign is nobody's business. He has nothing to say on the matter because he has no arguments to advance.

This is the logical outcome of the arguments he used; they have no value whatsoever. What he actually did was to give us the history of this Soviet Resolution, and for that we are most grateful, for in doing so he clearly stressed the entirely consistent line pursued by the Soviet Delegation throughout the work of this Conference. The line followed by them was and always has been to ensure the greatest possible assistance and protection for the persons we desire to protect by our Conventions. But the conclusions he has drawn are erroneous; he stated that our Draft Resolution had already been defeated in Committee III. That is not true: if the Delegations, or at least some of them, perhaps received instructions to vote against the Soviet Resolution, that by no means constitutes a victory.

The attitude of the Soviet Delegation, and that of other delegations during this Conference, is based upon the defence of humanitarian ideals. It is for this reason that the debate which took place in Committee III, with regard to the proposal

submitted by the U.S.S.R. Delegation, must be considered as a victory. The fact that this resolution is being discussed in the present Plenary Meeting is also a victory. But it is a victory for those who drafted this resolution and who defend it, not for those who make no comment or who put forward arguments similar to those submitted by the Australian Delegate. For the latter this is a defeat. The victory is for those who seek to ensure maximum protection for the victims of any future conflict.

What is the substance of the arguments put forward by the Australian Delegate? He declared that this resolution should not be discussed here, that we had not come here for this purpose. But the true position is quite different and the head of the U.S.S.R. Delegation has already shown this clearly enough. It has been said that this question should first of all have been submitted to the Bureau of the Conference. Such a view is incorrect. Why did the Australian Representative himself not submit this question to the Bureau of the Conference? He now submits the fact as unquestionable, which in our opinion is an argument which does not bear scrutiny.

The Australian Delegate also stated that there were experts at Stockholm who were not government representatives and that, in this respect, a parallel could not be drawn between the Stockholm Conference and this Conference. This is also incorrect for there are among us some delegates who attended the Stockholm Conference as government representatives. The remark therefore is merely intended to give a wrong impression to the delegations assembled here.

The Delegate for Australia remarked that our principal aim is to alleviate the sufferings of war and he is quite right in that respect. Unfortunately the conclusion that he draws from this observation is not correct. I shall quote an example in support of my statement: Suppose a house surrounded by a fence is on fire and that the firemen begin by extinguishing the fire which is destroying the fence; suppose that they are then asked to put out the fire which is destroying the house and that they reply "this is not within our scope; our essential task is to save the fence". This allegory illustrates the conventions just put forward by the Australian Delegate.

Furthermore, the Australian Delegate has also made clear allusions to the attitude of the Soviet Delegation in regard to the recognition of the legal status of the International Court of Justice. This however has no bearing on the attitude of the U.S.S.R. Delegation at this Conference. This declaration has been made solely to confuse the Delegations. Similarly the Australian Delegate has referred to the activities of the United Nations in this matter, and has told us that we are not com-

petent to discuss this problem, since it is being discussed by that Organization.

But I must remind delegates, and the Australian Delegate in particular, that the Atomic Energy Commission wound up its work at the beginning of last month; and that it decided to do so simply because the United States Delegation had sabotaged the progressive proposals made by the U.S.S.R. Delegation.

The Australian Delegate has also told us that, if we accepted the proposal submitted by the U.S. S.R. Delegation, this would be an act of discourtesy; we can all say what we like. We are not, however, prepared to accept such an argument from anyone, even from the Australian Delegate, who is well known in the United Nations for his opposition to the progressive proposals submitted by the U.S.S.R. The Australian Delegate added that the U.S.S.R. resolution was unacceptable; but this resolution is solely intended to protect and to defend the victims of war, which is precisely the essential purpose of this Conference: namely, to assure protection of this kind, and we ought now to be considering how to guarantee such protection without wasting hours at a time, as on previous occasions, in deciding how many lines a prisoner of war shall be allowed to write on a postcard.

We sincerely hope that the Australian Delegate's views on this question are not shared by everyone; on the contrary, we hope that right-minded men will grasp the purpose of our resolution, and will support it in spite of the arguments which have been adduced here.

I should like to say that the attitude of the United Kingdom and United States Delegations on this point are of considerable interest. It will be realised that they have adopted this rather curious attitude, and no longer allude to the question, since their defeat in Committee III, although the U.S.S.R. resolution was rejected there as the result of an unprecedented violation of the Rules of Procedure in that Committee.

Now instead of letting them speak, the Australian Delegate has undertaken this task for them, for the United States and United Kingdom Delegates no longer wish to take the responsibility for this before the public opinion of the world.

I should like to know why the United States Delegate has not replied to the question which the Head of the U.S.S.R. Delegation put to him from this rostrum on the Geneva Protocol of 1925. Why has the Government of the United States not yet adhered to this Protocol?

Why does the United States Delegate fail to reply to this question? Why has he adopted a negative attitude to the resolution submitted by the U.S.S.R., which aims at condemning the mass extermination of civilian populations? Obviously, because he cannot bring forward any arguments

against the proposal made by our Delegation. This silence is far more significant than any words he might have uttered. It is a sign of weakness on the part of these delegations, revealing the weakness of the views they defend, the weakness of the struggle they are waging against the essentially humanitarian aims of the U.S.S.R. Delegation.

This also proves, as shown by the documents and statements quoted by the U.S.S.R. Delegation, that certain countries are engaged in making plans for a future war, plans involving the use of the atomic bomb and other engines of mass extermination of civilian populations. We are proud to appear here to plead for the condemnation of the use of these weapons. This is the logical consequence of the work which has so far been accomplished here.

Mr. KUTEINIKOV (Byelorussia): The Delegation of Byelorussia categorically opposes the proposal of the Delegate of Australia to have the Soviet Union Resolution withdrawn on the pretext that it does not come within the competence of the Conference. The Soviet Union Resolution is a logical consequence of the work of the Conference and the humanitarian aims which we are attempting to achieve. The Delegate of Australia has put forward purely legal arguments in opposition to the Soviet Union Resolution.

The Delegation of Byelorussia is convinced that the Conference has not done all in its power to protect the civilian population against the horrors of a future war. This is why the adoption of the Resolution submitted by the Delegation of the U.S. S.R. would rectify an omission in our work. We firmly believe that the idea expressed in the Resolution is intelligible to everyone, and will be welcomed by millions of people who would never understand the attitude of the Delegations who remain silent when such a question is under discussion.

The Delegation of Byelorussia warmly supports the Draft Resolution of the U.S.S.R. and will vote in its favour.

Mr. BARAN (Ukraine): During the second World War, the Germans exterminated millions of people by atrocious means. It is quite possible that in some future war even more advanced methods would be employed for the same purpose.

It is the duty of the Conference to establish Conventions for the Protection of War Victims. It is therefore bound to make a pronouncement on this subject and cannot pass it over in silence. It should have an opinion to express on the use of atomic energy, and bacteriological and chemical means of warfare. It should proclaim that these means of warfare should be outlawed.

The speech by the Delegate of Australia greatly surprised me. He stated that he opposed the discussion of a Draft Resolution which is quite clearly intended to prevent the mass extermination of the civilian population. All of us here present wish to prevent the possibility of such extermination.

The Delegate of Australia could have explained more briefly and simply why he wished that the procedure for discussing the Soviet Union Resolution should differ from that followed in connection with the Resolutions which we adopted yesterday and those which we will adopt today. Why should the Soviet Union Resolution be considered in a different way? It appears to me that such a proposal is made solely in order to confuse the issue.

The Delegation of Byelorussia has quite correctly pointed out that the Resolution submitted by the Soviet Union is the logical sequence of the work of the Conference. The Delegation of the Ukraine attaches great importance to the outcome of this Conference. It attaches special importance to the Resolution which has been submitted by the Soviet Union Delegation. It appeals to all the Delegations present who have at heart the welfare of the civilian populations and the peoples and nations which they represent, to vote in favour of the Resolution submitted by the Soviet Union Delegation. The Delegation of the Ukraine will itself vote in favour of this Resolution.

Colonel HODGSON (Australia): I would not have spoken again except for the second speech made by the Representative of the Soviet Union, because I have heard nothing in the speeches to contradict my arguments: these have been not refuted, and they remain irrefutable. Certain misstatements, however, have to be corrected, and certain untruths exposed.

As for the last speech, I was asked why did not treat this resolution in the same way as other resolutions yesterday. I thought I had made that clear—that every resolution on our agenda, with this exception, relates directly to the work of this Conference and to a specific article of a Convention. This does not.

Now, the Soviet Delegate said that I stated that I had instructions from my Government to oppose this Soviet Resolution. I said nothing of the kind. I said I had instructions to oppose every resolution, in whatever shape or form, on this subject, because any such resolution was outside the jurisdiction of this Conference.

I complained, after the French translation, with all respect to the magnificent work which our interpreters have done, as to how my speech was mangled. For example, I carefully said that if any resolution were passed and included in the

general Act I would not be able to sign the Final Act without referring it to my Government and receiving fresh instructions, and that I doubted whether such instructions would be forthcoming. All that statement was translated by the words "The Australian Delegation would not sign the Final Act". But that is no excuse for the Soviet Delegation to use these French mistakes, because they brought with them their best English interpreter this morning and she translated my speech direct from the English as I went along, and yet these mistakes in French were deliberately taken up.

I did not say that this Soviet Resolution was defeated in Committee III. I said the Chairman had ruled it out of order. It was ruled out of order as being unreceivable, and the Chairman's ruling was decisively upheld.

I was asked why I did not submit this thing personally to the Bureau. The agenda of the Bureau is composed by the Secretariat and put before the members for adoption.

Then came an untrue personal statement that I and the Australian Delegation were well known as the enemy of progressive measures in the field of atomic energy. In reply to that I should like to say that my foreign Minister, Dr. Evatt, was largely responsible in 1946 for laying down and working out the principles contained in the reports of the Atomic Energy Commission, which still remain. I myself was a member for a long time of that Commission and it was the Australian Delegation, on the resolution to which I referred in my first speech at the General Assembly, which refused to accept the proposition that the Atomic Commission should close down its work. It was an Australian resolution—I myself proposed it—that the Commission should be instructed to go on with its work and the sponsoring Powers should be instructed to get together and agree on principles. In effect my Delegation is being accused in this matter before the Conference of being a "stooge" for the United Kingdom and the United States. In reply I should like to say this. On the Atomic Commission itself, all the non-permanent members of the Security Council were accused again and again by Mr. Gromyko and Mr. Malik of being "stooges". We were not "stooges". It was not the United States plan of control; it was a whole world plan, subscribed to by the whole of the world with the exception of six States, and the United Kingdom and the United States had again and again to agree and compromise about things they did not want to agree or compromise about in the realm of ownership, inspection, management and control. They gave way just in the interest of humanity and in an endeavour to get a reasonable plan in the interest of peace and security.

I just felt that I should correct those mis-statements. I could not let them pass and I think it is rather a sad state of affairs, when there is no real argument to rely on, that we are, at this stage, confronted with a series of distortions such as you have just had presented by the representative of the Soviet Union.

Mr. WINKLER (Czechoslovakia): The Czechoslovak Delegation attaches very great importance to the Draft Resolution in question. We feel it is a considerable step forward in the task of effective application of the great humanitarian principles which are the very basis and leading ideas of the Convention with which our Conference is dealing. There can be no doubt whatsoever that the Draft Resolution aims at the most effective protection for the civilian population. Its purpose and its objects are therefore identical with the main purpose and with the aims of the Draft Convention relative to the protection of civilians in time of war. We cannot therefore understand why our Conference could not, and why it should not, discuss, and thoroughly examine this Draft Resolution, and after such examination, take a vote on its substance.

According to the invitations issued by the Swiss Government the purpose of our Conference was, as well as the revision of the Wounded and Sick, the Maritime and the Prisoners of War Conventions, to draw up a new Convention for the protection of civilians in time of war. Who can seriously assert that the Draft Resolution of the Soviet Delegation is not in line with this purpose of the Conference? The question of war victims and the question of weapons of war, and especially of weapons designed for the mass extermination of the population, are linked together in such a way that it is impossible to establish a definite cleavage between these two questions. It is only for this reason that the Draft Resolution deals also with certain types of weapons, but its purpose and its aims remain, nevertheless, the effective protection of victims of war from the most terrible danger in the event of a future war.

The use of atomic and other weapons designed for mass extermination of the population amounts in fact to genocide which, nobody can deny, is the very opposite of protection of the civilian population. Lewis Mumford, an American Professor at Harvard University and at other American Universities, dealing with the military strategy of one of the Great Powers, states in "The New York Herald Tribune" of July 16th, 1949: "By concentration on atomic weapons and similar air-borne agents we have publicly announced in effect that in any large struggle with an enemy power we shall abandon the methods of war and resort to the wholesale extermination of enemy population. The

exact term for this method of attack is genocide, a crime against humanity which, in the United Nations, we piously profess to abhor".

We do not think our Conference would be interfering with the competence of the United Nations and their organs by dealing with the substance of the Draft Resolution. In fact the United Nations and their organs have to examine other aspects of the atomic question, such as the control of atomic production, that of distribution of atomic energy, and so on. The Draft Resolution, however, expresses only a basic humanitarian principle in connection with atomic and other weapons designed for the mass extermination of the population. We cannot therefore agree with the arguments contained in the letter of the fifteen Delegations and with the arguments of the Honourable Delegate of Australia which we have just heard, and which relate to the United Nations, and we do not agree either with the conclusion drawn on the ground that the Atomic Energy Commission was already dealing with this question.

As my Delegation has repeatedly stated in its few interventions at this Conference, we always prefer a clear decision of the question in dispute to any formalistic pretexts preventing such a clear decision. We are even more of this point of view in connection with this question because of its great importance, which is so evident as to require no proof.

The PRESIDENT: I declare the discussion closed. We shall now take a vote.

I call upon you to vote on the motion of inadmissibility of the Draft Resolution submitted by the Delegation of the Soviet Union.

The Draft Resolution was declared inadmissible by 35 votes to 9, with 5 abstentions.

Colonel RAO (India): The Indian delegation has abstained from voting in favour of the motion for declaring the Soviet resolution non-receivable. It could not vote in favour of such a motion because it represents a purely negative, a sterile attitude, an attitude which does not take into account the fact that the Soviet Resolution presents a problem which ought to have been tackled positively and constructively.

The Indian Delegation could not vote against the motion because we do sincerely feel that the proper forum for debating the Soviet resolution is the General Assembly of the United Nations. Indeed, if such a resolution were presented in the Assembly, the Indian Delegation would sympathize with it. The Indian Delegation desires that this statement be duly recorded in the verbatim record of the proceedings.

The PRESIDENT: This declaration will be included in the verbatim report.

As the Assembly has not adopted any Draft Resolutions this morning, it is no longer necessary for the Drafting Committee to meet at 2.30 p.m.

as previously decided; it will meet instead at the end of the Plenary Meeting this afternoon, which will commence at 4.30 p.m.

*The meeting rose at 2.30 p.m.*

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### THIRTY-FIFTH MEETING

*Wednesday 9 August 1949, 4.30 p.m.*

*President: Mr. Max PETITPIERRE, President of the Conference*

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#### **Draft Resolution proposed by the Delegation of Mexico**

Mr. DE ALBA (Mexico): My friend, Mr. Cahen-Salvador, the eminent chairman of Committee III, is well aware of the origin of the Resolution proposed by the Delegation of Mexico.

The Delegation of Mexico had suggested the insertion of a sentence in the extremely able draft Preamble tabled by the Delegation of France, to the effect that the High Contracting Parties should reaffirm their wish that peace should prevail in the world. This idea met with the most generous response from Mr. Cahen-Salvador, who, speaking in the name of the French Delegation, made mention of our suggestion.

The beginning of this Preamble read more or less as follows: "The High Contracting Parties confirm their desire for peace". We realised that, in the Working Party of Committee III, everyone agreed that our Civilians Convention might contain a declaration for the preservation of peace.

The Delegation of Mexico had the honour to propose to the Assembly of the United Nations, which was convened in Paris last autumn, a motion which was supported by the Political Committee and the General Assembly; both these bodies drew the attention of the great Powers to the necessity of finding some means of solving all difficulties and conciliating all differences of opinion in order to furnish the whole world with the requisite basis for a constructive peace.

This proposal might be considered somewhat romantic, and perhaps more or less platonic.

Nevertheless, the Paris Assembly showed the greatest interest in it. It was on the basis of the Mexican declaration that Mr. Evatt, the President of the Conference, and Mr. Trygve Lie, the Secretary General of the United Nations, launched their appeal to the great Powers to endeavour to overcome the difficulties encountered within the United Nations Organisation and to find a favourable ground for the reconciliation of the existing divergencies of opinion.

When the time came to raise the blockade of Berlin, the Secretary General of the United Nations recalled in New York the Mexican proposal which had been adopted in Paris urging the Great Powers to settle their disputes within the framework of the United Nations. The meeting of the Foreign Ministers which took place two months ago in Paris may be regarded as a direct consequence of the unanimous desire expressed at the Conference for the preservation of the peace of the world. I am convinced that no fine words can be uttered, no generous acts committed in human life, without some salutary consequences if they are really inspired by a constructive purpose and a genuine desire for the well-being of humanity.

The Mexican Delegate has had the honour of submitting the proposal that we are now considering. During the past two months there has been much talk, both within these walls and elsewhere, of war and of the establishment of the humanitarian Conventions which would become applicable should war break out. The man in the street might therefore be led to believe that these Conventions, intended for the protection of war victims, had been prepared with the idea that they would be-



come immediately applicable, as if we regarded war as inevitable. But I feel sure that the idea that war is imminent is far removed from the thoughts of all the members of this Diplomatic Conference.

I believe that the peoples and the governments of the whole world, my own Government like those of all the countries which are represented here, are in favour of peace, and are all desirous of seeing peace maintained. It would help to allay the anxieties of the man in the street if this Conference were to adopt a resolution affirming that we hope that it will never be necessary to apply these humanitarian Conventions, however useful and complete they may be.

It is essential that the whole world should learn, through an official declaration, that harmony and good faith reigned at the Diplomatic Conference of Geneva, and that a perfect spirit of collaboration prevailed, which finally resulted in the completion of our great mission. Of course, there have been difficult moments, ups and downs, during our discussions. That is inevitable, for we are met here at a Diplomatic Conference convened to deal with subjects of the utmost importance. Personally, I have had the honour of taking part, during recent months and in the last few years, in several international conferences. I can affirm that very few of these conferences have dealt with more important subjects than those which we have been discussing here. All these subjects affect the very nature of man, they are problems which are not only humanitarian, but, if I may so put it, human in character, in the sense that no humanitarian conception is foreign to the work we are doing and to the spirit which inspired not only the members of Committees, but also those responsible for organizing this Conference.

The Mexican Declaration touches on a subject which has very often been dealt with by institutes of international law, and, in certain countries, by institutes of constitutional law, where the abolition of war is regarded as a means of settling disputes between nations.

For that reason, all the countries represented at this Conference should affirm the most sincere wishes that there shall never be any need to apply these Conventions. That would be a renewed affirmation of the will to peace. The most heartfelt wish of all the delegations is that peace should not be threatened, and that all great and small Powers should always succeed in settling disputes amicably in such a way as to ensure a genuine peace founded on justice. We do not aim at the establishment of a *Pax Romana*, sometimes known as "*Pax imperialis*" of the Roman Empire. We are referring here to peace in the sense attributed to it today, in the sense which corresponds to our own experience and to our own sentiments.

Our Republic once had a President whose name is famous in history. Starting as a shepherd in his youth, he finally became President of the Republic during the most dramatic period in the history of Mexico. His name was Benito Juarez. At the conclusion of the tragic civil war which raged in our country, he made a declaration stating: "Peace means respecting the rights of others". And I am thinking of this great countryman of mine when I affirm here that peace, today also, means respecting the rights of others. Nor can we refrain from thinking at this moment of another great man, President Franklin Delano Roosevelt. The peace which he preached was based on the good neighbourliness policy. Those who respect themselves must also respect their neighbours.

Inspired by this idea, with the sufferings of humanity in mind, and with the apocalyptic vision of what a future war would be, the Mexican Delegation submits its Resolution that this Conference should express the wish that the peace of the world should at all times and in all circumstances be preserved.

The PRESIDENT: Before continuing this discussion, I should like to say that a delegation has just asked me if the five-minute rule limiting the length of speeches should continue to be applied.

We have been engaged since yesterday in considering draft resolutions. I had hoped that it would be possible to suspend the rule in question, or at least to refrain from applying it too rigidly. I am very anxious, however, that we should be able to conclude the consideration of the remaining items on the agenda; for material reasons, it is essential that the two meetings fixed for Thursday and Friday should take place on these days.

In these circumstances, I shall be compelled to apply the five-minute rule more strictly than I did yesterday and this morning. I desire, however, if the Conference considers that the rule should no longer be applied, to give you the opportunity of expressing your views.

May I take it that the Conference agrees with what I have just said?

Mr. MOROSOV (Union of Soviet Socialist Republics): The U.S.S.R. Delegation wishes to support unreservedly that part of the Draft Resolution submitted by the Mexican Delegation where it is stated:

"Wishes to affirm to all the people of the world that:

Its work has been guided solely by humanitarian aims, and for that reason expresses the hope that it may never become necessary to apply these Conventions;

Its greatest wish is that the Powers, great and small, shall always find some means of adjusting their differences by international co-operation and comprehension, so that Peace shall prevail on earth for ever."

We appeal to all Delegates present today to vote for this part of the resolution. Unfortunately, however, the U.S.S.R. Delegation cannot see its way to support the first part of the resolution:

"The Geneva Conventions having been drawn up in an atmosphere of complete harmony, and a spirit of unflinching cooperation and comprehension on the part of all the Delegations, inspired by a single great ideal, namely to spare the victims of war all possible suffering".

To our very great regret, I must again repeat that we cannot vote in favour of this text, which does not face the facts of the case.

You are all aware that the Conference has, in certain cases, adopted provisions less advantageous than those prepared at Stockholm, since certain favourable stipulations have been omitted from them. The Conference, moreover, rejected the drafts of certain important provisions submitted by the U.S.S.R. Delegation, which aimed at sparing victims of the war useless suffering. May I cite for instance the adoption of Article 3A in a form worded in such a way as to make it possible arbitrarily to violate the Civilians Convention with regard to protected persons in the territory of belligerent States and in the territory of occupied countries. Another instance is the proposal originally submitted by the U.S.S.R. Delegation, and subsequently re-submitted by the Indian Delegation, which aimed at extending to all the territory of Powers which are Parties to the Convention the effect of the Articles which prohibit violence to civilians. Similarly, the proposal was also rejected which provided that the destruction of real and personal property belonging to private persons, to the State, or to Cooperative Societies should be prohibited, not only in occupied territory, but also in the territory of belligerent Powers. Other suggestions which aimed at improving the wording of the Conventions and reinforcing the protection accorded to war victims to the greatest possible extent were also rejected. We have no intention of giving a detailed summary of all the controversies which arose in the course of the struggle between different trends of opinion displayed by the various Delegations during these proceedings.

We are all conversant with the facts. The result is, unfortunately, that it is impossible to describe the conditions, under which the Geneva Conventions were drafted, in the words used in the first paragraph of the resolution we are now considering.

Therefore, we cannot support this part of the resolution.

This Declaration is in itself sufficient proof that it is impossible to recognise by a simple majority, as happened in certain cases, that the Conventions have been drawn up in the manner described in the first part of the Mexican Resolution, more particularly as the Conference only a few hours ago rejected the Resolution submitted by the U.S. S.R. Delegation which aimed at protecting civilian populations in time of war against all methods of mass extermination.

I therefore consider that the best solution would be that the authors of the proposal, without prejudice to the noble sentiments which underlie that resolution, should withdraw this part of it. If they cannot accept this proposal we would then request the President to begin by taking a vote on the first part of the resolution, and subsequently on the second part. For the reasons stated, we shall vote against the first part, for to vote in favour of it would be to mislead world public opinion as to the real conditions under which the work of the Conference was carried out.

As to the second part of the Resolution, we support it unreservedly and urge all the Delegations present to do the same.

Mr. LAMARLE (France): The French Delegation unreservedly supports the Draft Resolution submitted by the Mexican Delegation. It wishes to thank warmly the Head of that Delegation for this generous gesture which expresses very happily the atmosphere of mutual cooperation which, despite all difficulties, has prevailed throughout our proceedings. The Resolution also interprets the hopes of all the peoples whose eyes are anxiously fixed on this Conference, and doubtless also the desire of their governments.

The PRESIDENT: We will now proceed to vote. We will vote separately on the two parts of the Resolution.

Mr. DE ALBA (Mexico): I should merely like to say that, in view of the observations made by the Delegates of the United Kingdom and the statements made by the Delegates of the Union of Soviet Socialist Republics, the first of whom objected to certain expressions in the first paragraph, whilst the second objected to the first paragraph of the Resolution as a whole, my Delegation while thanking the French Delegate for his support, requests permission to withdraw this paragraph. In these circumstances, the Resolution will begin with the words: "The Conference wishes to affirm...". In this form it would seem that the Resolution could be adopted unanimously, and that was the main object of the Mexican Delegation in proposing it.

Sir Robert CRAIGIE (United Kingdom): So far as the United Kingdom Delegation is concerned, it is quite prepared to accept the proposal of the Mexican Delegate that the first paragraph should be omitted, but not for the reasons given by the Soviet Union Delegation. On that point, since I feel that there has again been a serious misrepresentation of the motives which have guided most Delegations in this Conference, I should like to put it on record that the proposals mentioned by the Soviet Delegate were rejected because they would have made more difficult the defence of protected persons against attack from outside their territory.

The PRESIDENT: I note that the Mexican Delegation has modified its Draft Resolution by omitting the first paragraph. We will now take a vote on the draft as altered.

The Draft Resolution submitted by the Mexican Delegation was unanimously adopted. (*Applause*).

**Amendment to the Final Act submitted by the Delegation of the Union of Soviet Socialist Republics and a proposal submitted by the Chair**

The PRESIDENT: Yesterday, the U.S.S.R. Delegation submitted an amendment to the Final Act which, as you will remember, was adopted in Plenary Meeting at the end of last week, during the thirtieth meeting. In order to avoid a fresh discussion on the application or the non-application of Rule 33 which gave rise to a discussion the other day, I thought, in agreement with the General Secretariat, that it would be advisable to submit a new text indicating exactly what the Final Act of the Conference is intended to express. This would avoid a discussion on procedure, and also on the substance of the Soviet Union amendment. I am not aware whether the U.S.S.R. Delegation would be prepared, in view of this new text, to withdraw its amendment (*see Annex No. 385*). (The U.S.S.R. Delegation signifies its agreement).

As the U.S.S.R. Delegation has signified its readiness to withdraw its amendment in favour of the text submitted by the Chair (*see Annex No. 386*), I declare this text open for discussion. Is there any opposition?

Mr. YINGLING (United States of America): In the English text it should read "English and French". In the French text it is all right as it says "French and English". That is in accordance with international practice where there are two languages.

The PRESIDENT: I wish to thank the United States Delegate for having drawn my attention to this mistake which will be corrected.

Sir Robert CRAIGIE (United Kingdom): I am not quite clear as to the exact grounds on which it is proposed that the word "authenticity" should be omitted. Clearly, the purpose of the Final Act is precisely to guarantee the authenticity of the text that we have produced. The United Kingdom, however, do not desire to make difficulties and will agree to the amendment on the understanding that we are declaring that the texts to which it refers are, in fact, the authentic documents produced by this Conference.

The PRESIDENT: The interpretation suggested by the Delegate of the United Kingdom is perfectly correct. I see that there is no opposition to this proposal. If no one expresses a desire to speak I shall regard it as adopted.

The President's proposal was adopted.

**Draft Resolution submitted by the Delegations of Burma and India**

Colonel RAO (India): The other day just out of interest I compiled a list of the persons and material protected by the emblem of the Geneva Conventions. The list was a long one and shook me quite a bit. I will read it out to you.

During peace time, under Article 36 of the first Geneva Convention of 1949, the following are entitled to use the emblem: National Red Cross Societies, for all their manifold activities in conformity with the principles laid down by the International Red Cross Conferences. These activities make a long list, as you well know, from milk schemes to the Junior Red Cross. Then there are the International Red Cross Organisations comprising the International Committee of the Red Cross, the League of Red Cross Societies, the International Red Cross and their duly authorised personnel. Then all vehicles used as ambulances, and all first-aid stations exclusively assigned to the purpose of giving free treatment to the wounded and sick. During war time the duties of all these societies are increased tremendously. In addition, the protection of the Convention and therefore the use of the emblem is extended.

Then, under Article 19 of the first Convention, medical personnel engaged in the search, collection, transport and treatment of the wounded and sick, in the prevention of disease and in the administration of medical units are protected, and so are chaplains. Succeeding articles extend this protection to the personnel of the Red Cross and Voluntary Aid Societies of the belligerents and neutrals engaged in similar tasks. Articles 15 and 26 of the same Convention give protection to the fixed established and mobile medical units, buildings, material and stores belonging to the medical ser-

vices, while Article 18 encourages the creation of hospital zones which are also entitled to use the emblem.

Article 34 of the Wounded and Sick Convention and Article 36 of the Maritime Warfare Convention cover medical units and aircraft. Article 40 of the Maritime Warfare Convention gives protection to military hospital ships of various categories and to small coastal rescue craft.

This is not all: Article 12 of the Civilians Convention authorises the use of the emblem in hospital localities and safety zones for civilians. Article 15 of the same Convention similarly authorises civilian hospitals of all sizes and kinds, presumably including sanatoria, nursing homes, convalescent homes, watering places, health resorts, etc. Further, under Article 18 of the Civilians Convention, persons engaged in the operation and administration of all the above institutions, including those engaged in the search for, removal and transport of wounded, sick, infirm and maternity cases, are all included. The Articles which follow extend this protection to convoys of vehicles, ships and aircraft conveying wounded and sick civilians. Maybe there are more who are entitled to the use of the emblem of the Geneva Conventions, which I have omitted. If this is not going to lead to a most deplorable confusion in war time, I feel entitled to ask you, what is? It would be easier in the long run if we were to devise an emblem, for example a bull's eye, to distinguish buildings and material not protected under the Conventions, and be done with it.

The ultimate result of all this confusion will be gross abuse of the emblem during war time, particularly if a belligerent happens to be a little unscrupulous, and consequently there will be unavoidable breaches of the Conventions, for which all the delegations assembled here today would have been directly responsible.

There is only one solution to this problem, namely to have two emblems: one conferring protection on the medical services of the Armed Forces, and the other for protecting civilian activities. It matters little to my Delegation which emblem is used, for what purpose, so long as the emblems are distinct.

Under the Conventions, an ambulance train carrying wounded and sick from the battlefield and a Red Cross freight train conveying relief supplies to civilian internees are both entitled to use the emblem. It is absurd to afford both the same degree of protection: it is encouraging the enemy to commit breaches.

It would therefore be more sensible if there were two emblems, one for the medical services of the Armed Forces, and the other as a protective emblem for the civilians. It would be an advantage if the distinctive emblem of the Red Cross Organisations and the emblem for the civilians were one and the

same because most of these activities are far removed from the fighting zones and some are continued during peace time.

The Delegate for Nicaragua has proposed an ingenious solution for a universal emblem for the Geneva Convention. Even if his solution were acceptable to all the delegations, it still would not resolve the confusion that would follow, should, unfortunately, another catastrophe overtake us and we find ourselves with one and the same emblem for the medical services of the Armed Forces, protected civilian activities, and the normal duties of the Red Cross Organisations.

I therefore commend this resolution to you. In doing so, I would like to state that the Indian Delegation is not strongly in favour of one particular emblem but is prepared to accept any. I would like to add therefore at the end of the last paragraph of the resolution before us, the words "or any other emblem strictly neutral, easily recognisable and universally acceptable". The Delegate of Burma agrees to this change.

The PRESIDENT: We shall now take a vote on the draft submitted by the Delegations of India and Burma.

The draft was rejected by 14 votes to 8, with 17 abstentions.

#### **Draft Resolution proposed by the Delegation of Australia**

Colonel HODGSON (Australia): I think this Resolution (*see Annex No. 387*) is self-explanatory. The question was first raised by my Delegation in the Working Group of Committee II. It was there most sympathetically received with practically no opposition, but it was left to the Australian Delegation to take the initiative, along with the co-operation of other delegations, including the Delegate of the Holy See, to see if they could work out a series of practical messages which could be attached as an annex to the Convention. Unfortunately, some practical difficulties arose and, in the time available, it was not possible to prepare that series of specimen messages.

My Government places very great importance on this issue. They have in mind what happened during the last war, when tens of thousands of British, including Australian, prisoners were in Japanese hands and for years they could not send any messages to their next-of-kin, or to their other relatives, and for years could receive no message in return. As you may know, neither the Protecting Power nor the International Committee of the Red Cross could do anything to organise a system of communication to and from these camps. Indeed, it was only at the end of the war that they found out there were over sixty camps of which

they had received no notification; those camps which they were able to visit in order to try to arrange some system of communication, they were not allowed to enter in their official capacity but only in their personal capacity.

The member of my Delegation who drafted this Resolution which is now before you was an airman who was shot down and was a prisoner in Japanese hands for over 2½ years, and during all that time he, and the majority of his comrades in the various camps to which they were moved from time to time, never received one message nor were they able to communicate one message, and it was not until the end of hostilities that their relatives found that in the meantime tens of thousands of prisoners had died.

As well as those efforts of the International Red Cross and the Protecting Power I would like to mention that my Government paid public tribute to the efforts of the Vatican wireless service in establishing some form of communication between the prisoners and their homeland. Both the Vatican City and the headquarters of the Apostolic Delegate in Australia worked day and night to try to get messages through to relieve the anxieties of the people at home. They were partially successful, but only partially so.

Therefore, my Government wants to see that a similar state of affairs never occurs again, and as we could not get these specimen messages attached to the Annexes in time to be passed by this Conference, we thought the next best thing would be for this Conference to request the International Committee of the Red Cross to work out, if it would be good enough to take the responsibility, a series of specimen messages for submission to Governments for their approval.

We commend this Resolution to you and hope that it will receive unanimous support.

Mr. SOKIRKIN (Union of Soviet Socialist Republics): The Delegation of the U.S.S.R. considers that the Draft Resolution submitted by the Delegation of Australia is unacceptable because it is liable to deprive prisoners of war of the rights conferred on them under the Conventions we have drawn up. This Draft Resolution proposes to restrict prisoners of war's right to correspond with their families to the use of specimen messages drawn up beforehand, which might not contain the information prisoners desired to communicate to their relatives.

The Delegation of the Union of Soviet Socialist Republics will therefore vote against the Draft Resolution of the Australian Delegation.

The PRESIDENT: We shall take a vote.

The Draft Resolution was adopted by 29 votes to 7, with 2 abstentions.

### Draft Resolution proposed by the Delegation of Denmark, and amendment submitted by the Delegation of the United Kingdom

Mr. BAGGE (Denmark): In the Draft Resolution before you (*see Annex No. 389*) our Delegation has endeavoured to clarify and to define the relationship between the Parties to the conflict and the Parties not taking part in it. In the Conventions certain rights have been conferred on a "Party to the conflict", without any further details being given.

It is, however, clear that rights which may be conferred on a Party represented by a State cannot be conferred, for example, on a group of young men who, in a commando, might find it entertaining to examine all the steamers and board all the boats on the lake of Geneva.

We have therefore sought for standards by which to decide who may be considered as Parties to a conflict and who may not. We consider that this decision might be governed by International Law. These are our reasons for submitting the Draft Resolution which I recommend to your attention and which you will, I hope, approve.

As regards the amendment submitted by the Delegation of the United Kingdom, I may say that we accept it. It proposes to delete, in our amendment, the words "which is not a State should be" and substitute "which has not been recognised as a belligerent under international law should be so...".

Mr. SOKIRKIN (Union of Soviet Socialist Republics): The Soviet Delegation is neither able to agree with the Draft Resolution submitted by the Delegation of Denmark nor with the amendment made to this Resolution by the United Kingdom Delegation. We see no need for the adoption, in general, of resolutions of that kind.

The question of deciding whether, as is stated in the text proposed by the Delegation of Denmark, a Party to the conflict which is not a State should be recognised by Parties not taking part in the conflict, (or as suggested by the United Kingdom amendment, a Party to the conflict which has not been recognised as a belligerent under international law must be recognised by Parties not taking part in the conflict) can under no circumstances be included in the framework of the four Conventions drawn up by our Conference.

The only thing that matters is the application of the Conventions, which has no effect on the legal status of the Parties to the conflict.

A similar remark figures in Article 2A, which covers conflicts not of an international character. This provision deals with the relations between all the Parties to the Convention, and there is no need for the specification made in the Danish Draft.

Resolution. It is of little consequence whether these Parties are taking part in the conflict or not.

In other words, if we remain within the framework of the Conventions, we cannot but admit that the recognition as a State of such or such a Party to the conflict is not necessarily a result of the application of the treaty provisions.

In these circumstances it is unnecessary to decide, in the Conventions we are drawing up, the question of the recognition of States. That is not our business. What we have to do is to lay down international rules for the protection of war victims. It is not advisable to lay down that the question of the recognition as a State or a Party to the conflict must be decided according to the provisions of International Law.

If we were to take up an attitude of this kind, we should be obliged to take into consideration a whole series of other problems which are within the province of International Law, and to solve them hoping for success and—an essential point—advancing reasons, which, in this case, do not exist.

That is why the Soviet Delegation considers that it is not for our Diplomatic Conference to adopt rules which concern International Law, and which obviously exceed the scope of our work.

In these circumstances the Soviet Delegation will vote against the resolution proposed by the Delegation of Denmark and amended by the Delegation of the United Kingdom.

Miss GUTTERIDGE (United Kingdom): The amendment which the United Kingdom Delegation is proposing to the Draft Resolution submitted by the Delegation of Denmark has the following purpose: The questions at issue here are wider than the Danish resolution suggests and concern not only the recognition in a non-international conflict of, for instance, insurgents as belligerents, but the problems raised by a conflict between States such as that between China and Japan in the years preceding the Second World War, when neither of the Powers concerned purported to the belligerents. The United Kingdom Delegation feels that it is of particular importance that all such questions should be decided upon according to the general rules of international law and would mention especially those which affect neutrality. There are a number of Articles in the new Conventions which refer to the action to be taken by, or in respect of, neutral Powers. The term "neutral" in international law has meaning only in relation to recognised belligerents. Recognised belligerents have certain rights and obligations towards neutral Powers and neutral Powers similarly have certain rights and obligations towards belligerents. In the absence of a recognised state of belligerency, a Party to a conflict cannot, in

the view of the United Kingdom, properly exercise any of the rights of a belligerent towards a neutral, nor can it require any other Power to observe any of the obligations of neutrality in relation to it. It is not clear to the United Kingdom Delegation, although it appears clear to the Soviet Delegation, that the introduction of this term "Party to the conflict" does not raise difficulties in these Conventions and will not raise difficulties in the future. The United Kingdom Delegation therefore considers it essential to record at this Conference that the new Conventions do not confer upon a Party to the conflict, in its relations with neutral Powers, any belligerent rights or obligations, unless such Party to the conflict has been recognised as a belligerent in accordance with the generally accepted rules of international law.

Mr. SÖDERBLOM (Sweden): This is not the first time during this Conference that the question has arisen as to whether our Conventions, which are based on humanitarian considerations, have any effect on the academic rights and obligations flowing from the concept of belligerency. I myself have always been of the view that obviously this was not the case, as has been confirmed by the Chairman of the Special Committee of the Joint Committee, with the authority conferred upon him by that function.

It has been found advisable in other cases to make special reference in some provisions of our Convention to existing international law. I feel that if there is the slightest doubt upon the point at issue, a decision should be adopted along the lines proposed by the Danish Delegation and amended by the United Kingdom Delegation.

The PRESIDENT: We will now vote upon the amendment submitted by the United Kingdom Delegation.

The amendment was adopted by 20 votes to 12, with 10 abstentions.

The PRESIDENT: We will vote on the Draft Resolution, taking into account the amendment which you have just adopted.

The Draft Resolution was adopted by 19 votes to 18, with 6 abstentions.

#### **Draft Resolution submitted by the Delegation of Turkey**

Mr. TARHAN (Turkey): Before introducing the proposal which the Turkish Delegation has the honour to submit for your approval, I venture to take this opportunity to express the deep gratitude of our Delegation towards the International Committee of the Red Cross for their invaluable work.

of several years in preparing the four Draft Conventions which have been the subject of the debates of the Diplomatic Conference of Geneva.

We are also most grateful to the International Committee for having placed their representatives at the disposal of the Conference. By their expert knowledge of the matter, they have greatly facilitated our work. In this connection I wish to offer special thanks to Mr. Paul Carry, Mr. Jean Pictet, Mr. Claude Pilloud, Mr. René Wilhelm and Mr. Frédéric Siordet.

In the same manner we also wish to express our sincere thanks to the League of Red Cross Societies and its representatives at the Conference.

We are all aware that the four Conventions for the Protection of War Victims confer important duties upon the International Committee of the Red Cross, for instance the organisation of a Central Information Agency.

Under the Conventions, the International Committee of the Red Cross should as a general rule lend its services as a humanitarian agency. It may also have to act as a substitute for Protecting Powers. To give us an idea of the extent and intricacy of the tasks incumbent upon this organisation, let me quote a few figures from the reports on the activities of the International Committee of the Red Cross during the Second World War: 40,000,000 cards made out, 120,000,000 letters received including 30,000,000 civilian messages, a staff of 4,000 to deal with this correspondence which at times reached the figure of 64,000 letters daily, 450,000 tons of relief supplies transported. These figures are, we think, self-explanatory and require no comment. From the distressing experience of a recent past, and by the examples of the present day, we know that the destructive effects of war not only continue after the close of hostilities, but that apart from world conflicts, wars of various natures exist in an almost endemic state.

All this involves uninterrupted work for the International Committee of the Red Cross. At the present time the Committee is carrying on useful and important activities in the Near East, India, Pakistan, Indo-China, Greece, etc. But in order to be able to cope with all these activities, proper financing is necessary. This leads us to examine what are the financial resources of the International Committee of the Red Cross.

In peacetime the I.C.R.C. can only rely upon voluntary contributions from Red Cross and Red Crescent Societies. Only in a crisis may the Committee appeal to the Governments who benefit most directly by its work. Experience has shown, however, that the resources thus placed at the Committee's disposal are in most cases insufficient or tardy and are liable to delays due to transfer difficulties. During the last World War the I.C.R.C. was only able to fulfil its mission as a neutral

intermediary, and to pursue its humanitarian work, owing to the generosity of the Swiss people and Government.

We are of the opinion that the Governments who are signatories to the Conventions would feel a moral satisfaction in contributing to the financial means by which the International Committee will be enabled to fulfil, without delay or obstruction, the various missions entrusted to it by the Geneva Conventions.

For this reason the Delegation of Turkey suggests that the Conference should adopt the recommendation, which would, without placing any obligations upon Governments, invite them to give voluntary financial support to the International Committee of the Red Cross, so as to allow that organisation to meet its obligations.

That Draft Resolution is submitted to the approval of the Meeting. Following the suggestion made by some Delegations, we are deleting the last paragraph. The Draft Resolution will therefore read as follows:—

“The Conference,

Noting that the Geneva Conventions require the International Committee of the Red Cross to be ready at all times and in all circumstances to fulfil the humanitarian tasks contingent upon the application of those Conventions,

recognises the necessity of ensuring regular financial support for the International Committee.”

The Turkish Delegation proposes the adoption of the Resolution thus amended.

Colonel BLANCO (Uruguay): After four months, the Diplomatic Conference of Geneva is coming to the end of its work. It is certain that there are no tasks or obligations of a more humanitarian nature than those which have just been laid down in the four Conventions. The text of these Conventions contains no obligation which cannot be fulfilled, or which is of a nature to encroach upon the national sovereignty of States. On the contrary, these provisions are, in the main, only intended to give protection and help in case of need in every form and in all circumstances. But if these Conventions provide that societies, or even the State, may be called upon to assist the sick, women, children and the aged, it is indispensable that the persons required to give their services should have at least the elementary notions which are indispensable if their activity is to be efficient; otherwise their intervention, however generous, might produce poor results. This raises the problem of preparatory work, which should be studied and for which a practical solution must be found in every country.

The greatness of the mission accomplished by the Red Cross Societies is acknowledged in several Articles of our Conventions. Due tribute has thus been rendered to the humanitarian work achieved by those institutions since nearly a century.

As to the work of the International Committee of the Red Cross, it has been fully recognised in this very place by a number of delegates who have expressed in moving terms their admiration and gratitude for the help it has given to their own countries. Now as in the past, the independence of initiative and activity of the International Committee of the Red Cross must be recognised, but we must not forget that the High Contracting Parties to our Conventions have not only a moral but a material obligation in view of the future work of the Committee. The humanitarian work it achieved during the war is immense, but it is still at work in this after-war period in many a country where the conflict is still going on, or which is plunged in intolerable misery.

The I.C.R.C. and the League of Red Cross Societies—either directly or by mandate—have, thanks to the funds placed at their disposal, shown great activity during recent years in Indonesia, Greece, Indo-China, the Middle East and other regions, thus carrying out the welfare work familiar to you all. Thousands of wounded and sick and refugees owe their lives to the devotion of the representatives of the Institution created on the initiative of a great Swiss citizen, a son of Geneva: Henry Dunant.

I think we are all agreed that one of the best ways of paying a well-deserved tribute to this work, now that our Conference is about to conclude its labours, would be to take a vote by show of hands on the Resolution which is now before us, suggesting a permanent contribution from the States. Such a contribution would certainly be the best possible investment, for the interest yielded by it would be evidenced by a greater number of lives dedicated to work and peace.

Colonel RAO (India): The Indian Delegation is entirely in sympathy with the principle contained in the resolution tabled by the Delegation of Turkey, recommending financial assistance to the subsidised activities of the International Committee of the Red Cross.

I presume that the contributions would be entirely voluntary and fixed on a national basis.

The International Committee of the Red Cross is less well-known in Asiatic countries than in Europe and America. In some Asiatic countries it is looked upon with suspicion, mainly because of its association with an emblem.

If the budget of the International Committee of the Red Cross is to be met from contributions from States, I would respectfully urge the Com-

mittee to devote more attention to Asiatic countries in order to dispel the deep suspicions that exist there.

I would suggest, if I may, the creation of a Far Eastern section of the Committee, on the lines of the regional organisation of the World Health Organisation, in order to build up good-will and sympathy similar to that found amongst all sections of the population in Europe.

India has a great deal for which to be grateful to the International Committee of the Red Cross on account of the magnificent work which it did for Indian soldiers in German and Italian hands.

I am glad therefore of the opportunity which this resolution offers to the Indian Delegation to pay a public tribute to the great work of the International Committee of the Red Cross.

The Indian Delegation fully supports the Resolution moved by the Delegate of Turkey.

Mr. AGATHOCLES (Greece): Our country has had in unfortunate circumstances the privilege of benefiting on several occasions by the services rendered by the I.C.R.C.

I am taking this opportunity of thanking the I.C.R.C. and of assuring it of the warm gratitude of Hellas. It is natural that our Delegation should whole-heartedly support the resolution proposed by the Delegation of Turkey.

The PRESIDENT: The Delegation of Turkey has amended its draft resolution by deleting the last paragraph of the draft. We shall now vote on this draft resolution, as amended.

The Draft Resolution submitted by the Delegation of Turkey was adopted by 19 votes, with no opposition, and 18 abstentions.

Mr. WERSHOF (Canada): If you will allow me, I will make a statement from my seat. The fact that the Canadian Delegation abstained from voting on this Resolution does not mean that the Canadian Government will not be sympathetic to the idea of the Resolution. However, the Canadian Delegation thought it unwise for the Conference to adopt such a resolution without full and detailed discussion, which is not possible at this late stage.

Mr. CARRY (International Committee of the Red Cross): The I.C.R.C. wishes to express its profound gratitude to this Assembly. It first desires to thank the Delegation of the Turkish Government and its Head, the President of the National Turkish Society of the Red Crescent and Vice-President of the permanent Committee of the International Red Cross, who submitted the Resolution which has just been adopted. We have been deeply moved by the kind words he has spoken on the I.C.R.C. and its delegates.



Secondly, the Committee wishes to thank the Delegates of Uruguay, India and Greece who paid warm tribute to its past activity.

We also wish to thank all those who by their vote have renewed their assurance of respect for, and confidence in, the I.C.R.C. If the governments who are entirely free to take whatever decision they please, choose to act upon the recommendation submitted to them, the I.C.R.C. will welcome their decision, not only for its own sake but for the sake of the war victims who will be cared for more effectively and speedily as our action becomes more prompt and efficient.

The I.C.R.C. knows only too well from past experience that the financial obstacles which may hinder or delay its activity inevitably result in an increase of distress and suffering. Its deepest wish is to be at all times, and whenever circumstances make it necessary, ready to undertake the humanitarian duties which devolve upon it by virtue of the Conventions.

May your Resolution be of assistance to it in the accomplishment of its tremendous task and thus help it to realise the ideal expressed in its fine slogan "inter arma caritas".

#### **Fifth Report of the Credentials Committee**

The PRESIDENT: We still have to consider the fifth report of the Credentials Committee (*see Annex No. 383*). I do not know whether the Chairman or a member of this Committee has anything to add to the written report of the Committee. I see that this is not the case.

The Fifth Report raises the question of the manner in which the Credentials of the Delegations who will sign the Conventions next December are to be verified. It proposes two alternatives: either there may be a Credentials Committee constituted ad hoc, or the verification may be effected by the Swiss Government. I should like to propose that the present Credentials Committee continue in office until the Act of signature next December. In my opinion, this is the simplest solution.

Is there any objection to this proposal? As there is no objection, it is adopted.

Does any one wish to speak on the report of the Credentials Committee? As such is not the case, this report is thus placed on record with the thanks of the Meeting to the Chairman of the Credentials Committee.

Mr. AURITI (Italy): I am in doubt with regard to the Credentials Committee. I am sure that the members of this Committee will agree with me in thanking the President for the confidence shown us by the confirmation of this body. I wonder, however, if all the present members of the Cre-

entials Committee will be present a few days before the official signature of the Conventions.

The PRESIDENT: I presume that if one or two members of the Committee were not present, that would not cause any great inconvenience. If it was eventually found at the last moment that there were too many absent members, the Committee could be completed.

#### **Communications**

The PRESIDENT: I must remind you that after the Plenary Meeting which is now coming to an end, there will be a Meeting of the Drafting Committee in Room A on the first floor.

There will be no Plenary Meeting to-morrow to allow Delegations to rest after today's long debates.

The next Plenary Meeting will be held on Thursday, 11 August at 3.30 p.m. During this Meeting we shall proceed with the final vote on the four Conventions; in view of this vote the final printed text of the Conventions will be circulated to the Delegations by Thursday morning at latest.

The Final Meeting will be held Friday morning at 10 a.m. We shall first proceed with signature of the Final Act, after which the Conventions will be signed by the Delegations who wish to do so. There will then be a short address and the Conference will be declared closed. In order not to lengthen the Meeting on Friday, I should like to request the Delegations who wish to speak to do so at the Thursday Meeting.

The Delegate of Nicaragua has asked to speak.

#### **Draft Resolution submitted by the Delegation of Nicaragua**

Mr. LIFSCHITZ (Nicaragua): The Delegation of Nicaragua greatly regrets that the Conference has not found a solution which everyone could accept to the problem of the distinctive emblems. My Delegation has endeavoured to find such a solution and has drawn up a Draft Resolution (*see Annex No. 393*). Nevertheless, it has decided to withdraw it for the following reasons:

First, it proposed what was fundamentally a compromise. A compromise can only become a satisfactory solution if there is a mutual desire to reach agreement and if each of the Parties concerned is prepared to make a sacrifice. This is unfortunately not the case, since certain countries have stated that they would oppose our proposal.

Secondly, as the Conference is on the point of bringing its work to a close and since the question has been discussed at great length, the Delegation

of Nicaragua does not wish to take the responsibility of raising it again, for it is anxious to avoid any further controversy at the end of the Conference. Although it is withdrawing its Draft Resolution, the Delegation of Nicaragua nevertheless wishes to make it clear that it is not by any means satisfied with this position, and it invites the Delegations

to consider the problem at their leisure, in view of subsequent International Conferences. It reserves the right to submit appropriate proposals in due course to the authorities of the International Red Cross.

*The meeting rose at 7.25 p.m.*

### THIRTY-SIXTH MEETING

*Thursday 11 August 1949, 3.30 p.m.*

*President: Mr. Max PETITPIERRE, President of the Conference*

#### **Final vote on the Four Conventions**

The PRESIDENT: Today we shall proceed to take the final vote on the four Conventions, in the following order:

Geneva Convention for the Amelioration of the Conditions of the Wounded and Sick in Armed Forces in the Field,

Geneva Convention for the Amelioration of the Conditions of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea,

Geneva Convention relative to the Treatment of Prisoners of War,

and, lastly,

Geneva Convention relative to the Protection of Civilian Persons in Time of War.

I should like to draw your attention to the fact that this vote is in no way prejudicial to the signature, or the ratification of the Conventions by the States represented at the Conference, or to any reservations which may be made by certain Governments at the time of signature.

A number of slight typing errors in the latest edition of the Conventions have been brought to our notice. The Secretariat will publish an Erratum which will be distributed to you tomorrow morning.

If any Delegation wishes to make a statement regarding its vote, I shall call on it to speak after we have voted on the four Conventions.

We shall now vote on the first Convention, namely the Convention for the Amelioration of the

Conditions of the Wounded and Sick in Armed Forces in the Field. The Delegates in favour of this Convention are requested to signify in the usual manner.

The Geneva Convention for the Amelioration of the Conditions of the Wounded and Sick in Armed Forces in the Field was adopted by 47 votes to nil, with 1 abstention (Israel).

The PRESIDENT: We shall now proceed to take a vote on the Convention for the Amelioration of the Conditions of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea.

The Convention for the Amelioration of the Conditions of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea was adopted by 48 votes to nil, with 1 abstention.

The PRESIDENT: We shall now vote on the Convention relative to the Treatment of Prisoners of War.

The Convention relative to the Treatment of Prisoners of War was adopted unanimously by the 49 delegations taking part in the vote.

The PRESIDENT: We shall now vote on the Convention relative to the Protection of Civilians in Time of War.

The Convention relative to the Protection of Civilians in Time of War was adopted by 47 votes to nil, with 2 abstentions.

The PRESIDENT: We have now completed the taking of these votes. Does any delegate wish to speak? (A certain number of delegations signify their desire to speak).

### Various Statements

The PRESIDENT: I shall call in alphabetical order upon the Delegations who have signified their desire to speak.

I call upon the Delegation of Albania.

Mr. BUDO (Albania): I should prefer to speak later.

The PRESIDENT: If all the Delegations whose names have been put down to speak express a wish to speak later, I shall have some difficulty in deciding in what order to call upon them.

Mr. HARASZTI (Hungary): The Hungarian Delegation voted for the four Conventions; the Delegation must, however, let it be known that it cannot approve all the provisions contained in these Conventions. This was made quite clear by the attitude of the Delegation when the various Articles were being voted.

As the Hungarian Delegation does not intend to sign these Conventions now, it reserves its right to make certain specific reservations on certain Articles at the time of signature in December.

The Hungarian Delegation requests that this declaration be in the verbatim report on this meeting.

Mr. LOKER (Israel): Throughout the whole Conference, the Israeli Delegation has collaborated wholeheartedly and unreservedly in the work of drawing up the four Conventions now completed by the Diplomatic Conference.

Our Delegation fully appreciates not only the importance of the humanitarian work which these Conventions are intended to make possible, but also the progress they represent as compared with the former Conventions.

It is therefore with the deepest regret that the Israeli Delegation finds itself compelled to abstain from taking part in the vote for the adoption of the Wounded and Sick, Maritime Warfare and Civilians Conventions.

The reason for our abstention is the wording of the provisions relating to the distinctive emblem which occur in all three of these Conventions.

The Israeli Delegation has insisted, on several occasions, that the Red Shield of David should be included among the distinctive emblems recognised by the Geneva Conventions, so that it might take the place of the Red Cross in Israel.

There is no point in repeating arguments which have already been put forward.

The Conference rejected our proposal by a very small majority, and did not decide to adopt instead a single emblem devoid of religious significance. The Conference, by taking this decision, prevented our Delegation from voting in favour of the Conventions, since the people of Israel cannot accept an emblem possessing a religious character which does not respond to its own religious feeling.

May I request that this explanation of our vote be reproduced verbatim in the report of this meeting.

Mr. DE ALBA (Mexico): I have asked to speak in my capacity as a member of the Mexican Delegation on Committee III, which was called upon to consider the protection of the civilian population in time of war. The Civilians Convention will be quite correctly called the IVth Geneva Convention of 1949.

The Convention of 1864 bears the name of the Geneva Convention, in honour of the city in which the Delegates who drew up that Convention met for the first time. It was inspired by Henry Dunant. This Conference took place under the Presidency of General Dufour. The Red Cross flag has become a symbol of human compassion and solidarity. The aim of this first Geneva Convention was the protection of the wounded and sick in armies in the field. It was the expression of a generous impulse born of the atmosphere of a city steeped in humanitarian traditions.

The Convention for the protection of civilians in time of war, which we have just approved, also has its roots in the history of Geneva's greatest citizens. We can see from the biography of Dr. Frédéric Ferrière that he was the apostle and pioneer of the idea of the protection of civilians.

Frédéric Ferrière, who had volunteered as a doctor in the 1870 war, and was later a medical officer in the field in the Balkan War, was one of the first to implement the 1864 Convention. He called for guarantees that the wounded and sick of the armed forces would be protected, but he also realised the sufferings of the civilian populations. He witnessed the taking of hostages from among civilians and was horrified to see these hostages shot without trial at the same time as prisoners. Doctor Ferrière concluded that if the wounded and sick were entitled to special protection, prisoners and civilians should also benefit from such protection, for he never forgot the scenes that had shocked him so profoundly on the battlefields on which he had served. With the intuition of a man of justice and feeling, he foresaw that future wars would be progressively more cruel and destructive to civilian populations, and

even that the sufferings of civilians might be greater than those of the fighting forces on the battlefields. On the outbreak of war in 1914, he made his appeal to the International Committee of the Red Cross on behalf of civilian populations, saying: "I cannot forsake the civilians". He began his work on a modest scale by providing facilities for communication between the civilians of France and Belgium, and the thousands of documents which passed through his hands revealed to him the tragedy of civilians: families separated by invasion, children dying of hunger, old people in distress, the difficulties of tracing scattered relatives, etc.

Dr. Ferrière created a filing system for the correspondence of civilians in his own house and kept a general register in his surgery. He also succeeded in establishing contact between the scattered members of a family and in relieving the sufferings of thousands of persons in distress. He further established relations with diplomatic and consular agencies in order to protect, as far as lay in his power, these defenceless and destitute creatures. In this way, Dr. Ferrière became a pacifist, for he realised that wars were becoming ever more pitiless for the mass of civilians, and were exacting an ever heavier toll of sacrifice. He was inspired by the spirit of Geneva, which has become identified with compassion for the sufferings of our fellow men and human solidarity transcending all differences of race, nationality or religion.

Dunant, who was deeply moved by the tragedy of the wounded and sick at Solferino, wrote his memoirs which have come down to us. Ferrière, who saw hostages and civilians executed, was intensely shocked by such acts and both he and Dunant set to work to relieve the sufferings of their fellow men. Countless voluntary workers rallied to this new crusade.

Dr. Ferrière had occasion to read thousands of letters from civilian war victims which left an indelible impression on his mind. This correspondence shows how necessary it is to rescue children wandering like shadows on the field of battle in search of their parents, to shelter women in childbirth, to succour the aged, sick or infirm wherever they may be.

The tragedy of 1914-1918 cannot be compared with the one we have just been through. Bearing in mind present day possibilities, what might not happen if a fresh conflict were to break out. Henry Dunant said in his "Souvenir de Solferino":

"New and terrible means of destruction are invented every day, inventions worthy of a better aim, and the inventors of these murderous mechanisms are applauded by the great States of Europe..."

Such are the antecedents of the Convention for the Protection of Civilian Persons in Time of War. The more we study this Convention, the more we come to realise the almost insuperable difficulties which must be borne in mind. That is why Frédéric Ferrière was always a convinced pacifist, and thought of the world of the future as a pacifist confederation of all the peoples of the earth.

Speaking of the civilian victims of war, Romain Rolland, his friend and admirer, said: "Fortunately, a man of deep feeling has been found. This is Dr. Ferrière, who was so deeply affected by the sufferings of the pariahs of war". The anonymous martyr of the last war was the civilian who endured the horrors of the concentration camp. Dr. Ferrière was thus the pioneer of the Civilians Convention which we have just now adopted. I therefore ask that his name should be inserted in the record of this Meeting, not only at the request of the Mexican Delegation but also as a tribute by the whole Assembly to the pioneer of the Convention for the Protection of Civilians. (*Applause*).

Dr. DIMITRIU (Rumania): The Delegation of the Rumanian People's Republic voted for the adoption of the four Conventions relating to the Protection of War Victims. During the discussions of these Conventions, our Delegation had occasion to express its views with regard to problems on the Agenda of this Conference. Thus, we stressed the importance of Article 10/10/10/11 (definitive numbering), relative to the substitutes of Protecting Powers. The provisions of this Article, however, do not correspond to the idea expressed in the Stockholm text. The same remark applies to Article 53 of the Civilians Convention, and also to certain provisions in the present text of the IIIrd and IVth Conventions. Moreover, the Government of the Rumanian People's Republic will, after an exhaustive study of the provisions of the four Conventions, submit any remarks it may have to make some time before the date of signature.

Sir Robert CRAIGIE (United Kingdom): While the United Kingdom Delegation have today voted in favour of each of the four Draft Conventions as a whole, they desire to place on record their view that some of these provisions will prove unacceptable to His Majesty's Government in the United Kingdom. They must, in particular, make the most express reservations in regard to the second paragraph of Article 68 (Working Document, Article 59) of the Convention relative to the Protection of Civilian Persons in Time of War. The Conference will recollect that this paragraph deals with the question of the imposition of the death penalty in occupied territory.

The examination of the Conventions as a whole reveals serious confusion in the use of the terms

“party to the conflict”, “belligerent” and “power”. The Delegation of the United Kingdom believe that it may later be necessary to take steps to remove this confusion, if the Conventions are to operate effectively.

Mgr. BERTOLI (Holy See): We have now come to the conclusion of our proceedings, so ably presided over by our distinguished President, Federal Councillor Max Petitpierre. The Delegation of the Holy See wishes to take this opportunity of paying a well-merited tribute to the representatives of the various countries assembled here for the work they have accomplished during these past months in establishing the four Conventions. I trust that the Delegation of the Holy See will be permitted to make a brief statement on a subject which is of concern to us all.

In the course of discussion in the first reading of the Conventions, all three Committees had to deal with the advisability and necessity of pre-facing the Conventions by a formal declaration to be drafted by certain working parties which were set up for this purpose. This proposal was not opposed, as is proved by the records of the meetings in which it was considered. The Delegation of the Holy See made the following suggestion, in all three Committees:

“The Delegation of the Holy See proposes that a reference should be made in the Preamble to the divine origin of all rights which protect human liberty and dignity, namely the fundamental rights of the Convention for the Protection of Civilians in time of war.”

This suggestion was approved by a considerable number of Delegations; moreover, we always insisted on the necessity of finding a wording to which no valid objection could be made. The Working Party of Committee I had proposed the following text, which was also adopted by the Drafting Committee of Committee II:

“Respect for the personality and dignity of the human being is a universal principle which is binding even without contractual undertakings. Religions proclaim its divine origin and all people consider it a fundamental of civilization.”

This sentence, which expresses an indisputable historical fact, has the merit of not requiring anyone to subscribe to a dogmatic principle to which all the Delegations might possibly not agree. The text was accepted by a substantial majority, 25 votes to 9, with 7 abstentions, at a full Meeting of Committee I, after lengthy discussion in Committee II and Committee III. Finally, however, these Committees decided that there should be no

Preamble to the Conventions. The same decision was finally taken by Committee I, although the text of a Preamble had previously been adopted at its second reading.

The reasons given for eliminating a Preamble, were, on the one hand, the differences of opinion which prevented a unanimous vote, and on the other, the tardy view that no Preamble was necessary; these conflicting views were the cause of misunderstandings during the debates, which finally resolved themselves into questions of procedure.

The Delegation of the Holy See considers it a duty to make this remark. It is also bound to state that the need for unanimity used to justify the deletion of the Preamble is a most dangerous principle which opens the doors to the right of veto.

Further, in the desire to obtain this unanimity, Committees I and II adopted a text for which, as I have just observed, no reasonable objection could be raised.

If it was not possible to come to an unanimous agreement, the fault can certainly not be laid at our door. The few Delegations who opposed the text, and I do not mean to criticise their attitude here, could not have imposed their point of view by opposing a historical truth.

During the debates some Delegates opposed the wording of the Preamble on the ground that it was propagandist in character. Others added that the insertion of a reference to religious principles would merely be literature of no practical value.

With regard to the first assertion, I earnestly wish to state once more that neither the Holy See Delegation, nor the other Delegations who supported its point of view without any distinction of creed, have ever had any propagandist intentions. We met here to establish the Conventions which have a definite object. We are not here for political purposes and this would be quite contrary to the line of conduct adopted by the Holy See Delegation.

Nor is a reminder of the principles which are (whatever one may say) the basis of all civilization merely empty phraseology. Religion and the guiding principles which are directly or indirectly the origin of all human relations are not merely abstract ideas, but represent the surest and most important of realities.

To recall these principles is neither propaganda nor empty phraseology; they may not be accepted by some of us but they still continue to be a living reality for others. To recall them is, on the contrary, to render justice to many hundreds of million men who believe in these high principles and who shape their lives accordingly.

Further, and this is very important, to lay the foundation stone of the edifice which we have tried so laboriously to build is a constructive act.

For this reason alone the Delegation of the Holy See was led to make its proposal.

The Conference Committees made a drastic decision on the subject and preferred rather to omit a Preamble from the Conventions than to discuss the question fully. The Delegation of the Holy See has refrained from re-opening the debate in the Plenary Meeting. At the close of the arduous duties of this Conference, however, the Delegation would like once more to place on record its deep regret that any mention of a religious and moral factor of vital importance should not have been inserted in our Conventions. This is a very serious matter and it is distressing for the Delegation of the Holy See to have to note this state of affairs, but it considers it a duty to make this statement, all the more so as, for an unknown reason, the reports of the Committees submitted to the meeting are somewhat reticent on the subject. We cannot, however, stifle or avoid responsibility for our actions by procedural methods.

In making these remarks, the Holy See is convinced that it is rendering a service to the cause of our Conference and that it is interpreting the feelings of the many Delegations (to whom it would like to pay tribute) who share its point of view and by whom it has been supported with ability and sincerity.

The Delegation of the Holy See requests that this Statement should be included in the Acts of the Conference.

May I finish this declaration with a wish which you will all, I am sure, share with me. May God grant that the occasion to apply these Conventions may never arise; we have all put our hearts into this cause, which is greater than ourselves and will remain a lasting monument to the good-will of governments and of the people in 1949. (*Applause*).

Mr. WINKLER (Czechoslovakia): I wish to make a short statement concerning the position of the Czechoslovak Delegation with regard to their final vote on the four Conventions, and I request that this statement be inserted in the record of this Plenary Meeting.

The Czechoslovak Delegation voted for the Conventions because it considers them to be a certain progress in the field of protection for war victims, and because it heartily welcomes every progress in this field. Our vote does not mean, however, that we are fully satisfied with the Conventions established by our Conference. We stated in our interventions during the discussions that we could not agree with some provisions of the Conventions, and we voted against some of those provisions. This concerns especially some provisions contained in Articles 10 and 11 of the Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, Articles

10 and 11 of the Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, Articles 10, 11, 12 and 85 of the Convention relative to the Treatment of Prisoners of War, and Articles 4, 5, 11, 12 and 45 of the Convention relative to the Protection of Civilian Persons in Time of War.

We can only deeply regret that our Conference has not adopted amendments aiming at the improvement of these provisions of the Convention, amendments which would, if adopted, have filled the existing gaps in them and have eliminated provisions which we consider dangerous for the humanitarian principles we have always defended.

We regret especially that our Conference has not provided—not even in the form of a resolution or recommendation—for measures protecting civilian persons against weapons adaptable to mass extermination of the population.

It is for these reasons that I must state that our vote for the four Conventions is subject to the reserves which our Government, after thorough examination of the text of the Conventions, might deem it necessary to make at the time of their signature.

General SLAVIN (Union of Soviet Socialist Republics): The Delegation of the Union of Soviet Socialist Republics declares that it wishes to make the following reservations with regard to its vote on the Wounded and Sick Convention:

(1) The obligation to take measures for the substitution of the Protecting Power, provided in Article 10, cannot be laid upon the Power in whose hands the protected persons are, except when the Government of the State of which these persons are nationals no longer exists;

(2) Interpretation of the Convention, under Article 2, does not come within the functions of the Protecting Power.

The Delegation of the Union of Soviet Socialist Republics wishes to make the following reservations with regard to its vote on the Maritime Convention:

(1) The obligation to take measures for the substitution of the Protecting Power provided in Article 10 cannot be laid upon the Power in whose hands the protected persons are, except when the Government of the State of which these persons are nationals no longer exists.

(2) Interpretation of the Convention, under Article 2, does not come within the functions of the Protecting Power.

The Delegation of the Union of Soviet Socialist Republics wishes to make the following reserva-

tions with regard to its vote on the Prisoners of War Convention:

(1) The obligation to take measures for the substitution of the Protecting Power provided in Article 10 cannot be placed upon the Power in whose hands the protected persons are, except when the Government of the State of which these persons are nationals no longer exists.

(2) Interpretation of the Convention, under Article 2, does not come within the functions of the Protecting Power.

(3) In the case of transfer of prisoners of war from one Power to another, according to Article 45, responsibility for the application of the Convention should devolve upon both Powers.

(4) In regard to Article 85, the Delegation of the Union of Soviet Socialist Republics is of the opinion that prisoners of war convicted under the legislation of the Detaining Power for war crimes against humanity, as defined by the statutes of the Nuremberg tribunal, shall be subject to the regime in force in the countries concerned for persons serving sentences.

The Delegation of the Union of Soviet Socialist Republics wishes to state that it has voted for the Convention relative to the Protection of Civilians, in Time of War, with the following reservations and comments:

(1) The obligation to take measures for the substitution of the Protecting Power provided in Article 11 cannot be laid upon the Power in whose hands the protected persons are, except when the Government of the State of which these persons are nationals no longer exists.

(2) Interpretation of the Convention, under Article 12, does not come within the functions of the Protecting Power.

(3) In the case of transfer of protected persons from one Power to another (Article 45), responsibility for the application of the Convention should devolve upon both Powers.

(4) The Delegation of the Union of Soviet Socialist Republics voted for the Civilians Convention because it contains a series of progressive provisions, in spite of serious flaws which diminish the efficacy of the measures provided for the protection of life and limb of civil populations during armed conflicts

These defects are the following:

(a) Article 5 allows for the non-application to certain groups of the civil population of the principles of the Convention for the sole reason that the State of which they are nationals has not acceded to the Convention;

(b) Article 4 may cause numerous categories of protected persons to be deprived of the rights ensured by the Convention arbitrarily.

Mr. BARAN (Ukraine): The Delegation of the Ukraine declares that in voting for the Convention just accepted by the Conference it fully associates itself with the reservations made by the Delegation of the Union of Soviet Socialist Republics as regards Articles 10 and 11 of the Wounded and Sick Convention, the Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, Articles 10, 11, 12 and 85 of the Convention relative to the Treatment of Prisoners of War and Articles 10, 11 and 45 of the Convention relative to the Protection of Civilian Persons in Time of War.

The Ukrainian Delegation asks for the insertion of this statement in the records of the present Plenary Meeting.

Mr. KUTEINIKOV (Bielorussia): The Delegation of Bielorussia declares that in voting for the Conventions accepted by this Conference this Delegation fully associates itself with the reservations made by the Delegation of the Union of Soviet Socialist Republics with regard to Articles 10 and 11 of the Wounded and Sick and Maritime Conventions, Articles 10, 11, 12 and 85 of the Prisoners of War Convention and Articles 10, 11 and 45 of the Civilian Convention, and this Delegation also associates itself with the observations made by the Soviet Delegation on this Convention.

I ask you, Mr. President, to insert this statement in the record of the present Plenary Meeting.

Mr. BUDO (Albania): We voted for all four Conventions, because, thanks to the work accomplished by the Conference, some very important decisions as regards the protection of war victims have been reached.

However, as these Conventions contain some particularly important provisions which fail to ensure adequate protection for war victims, or which contain principles at variance with our views, I wish to state that our Government will make the necessary reservations when the Conventions are signed. I wish to emphasize, by this brief statement, that our vote does not in any way prejudice our Government's right to make reservations.

Mr. LOZE (Monaco): The Conference, which is now drawing to its close under the wise presidency of Mr. Petitpierre, has sought, in an atmosphere of mutual understanding, to devise means of sparing to the utmost the suffering of war victims. The hopes of the peoples of the world have been placed in our Conference, and I may say that the Principality of Monaco has given its most careful

attention to our debates. Moreover, the interest of the Principality in the questions which have been dealt with by the Conference does not date from today.

I would remind you that Prince Louis II of Monaco, after leaving Saint-Cyr, won his spurs with the Foreign Legion and served in the French Army during the Great War. He viewed with distress all the misery of human suffering which war brings in its wake. Our soldier-Prince was concerned by the developments of the international situation; he still had keen memories of the power of destruction and the depredations which he had witnessed. He decided, in 1934, to convene an international Conference to study the means of humanizing warfare. He was quite correct in considering that as Science destroys more effectively than it preserves, it was essential to humanise war through international cooperation. He therefore called for the assistance of physicians, because they are familiar with human suffering, and of lawyers, because they have a sense of reality.

At the meetings which were held in the Palace of Monaco, fourteen physicians and lawyers, personal guests of the Prince, discussed problems such as the creation of hospital places and security cities, medical assistance provided by neutral powers, the protection of civilian populations, and the special status of medical officers and chaplains who have been taken prisoner.

Many of these points have been dealt with by the Diplomatic Conference, without, however, having been adopted in their entirety. While regretting that these suggestions have been only partially acted upon, the Delegation of Monaco, faithful to the ideas of the Prince who died a few weeks ago, has voted in favour of the revised Conventions as a whole, which do nevertheless mark very considerable progress by comparison with existing Conventions.

Mr. Leland HARRISON (United States of America): While the Delegation of the United States of America has voted in favour of all four Conventions, it desires to reserve all its rights with respect to the Civilians Convention, and especially with respect to Article 68 thereof, Working Document Article 59.

Mr. MIKAOUÏ (Lebanon): I was prevented from arriving at the time fixed for this meeting and my Delegation was therefore unable to take part in the voting. I am anxious to state that if I had been present, I would have voted for the four Conventions and I should be extremely grateful, Mr. President, if you would consider the Lebanese Delegation as being among those who voted in favour of the four Conventions.

I wish to take this opportunity of stating that

the Delegation of Lebanon fully associates itself with the declaration made by the Delegate of the Holy See on the Preamble to the Conventions.

Mr. MAJERUS (Luxemburg): The Delegation of Luxemburg is, unfortunately, in the same position as that described by the Delegate of Lebanon. I deeply regret not having arrived in time to vote. I would therefore state that the instructions of my Government authorise me to vote in favour of the four Conventions established and accepted by the Conference.

If, however, on a point of procedure, the result of the voting cannot be changed *ex post facto*, I should nevertheless be grateful to the Bureau if it would include this statement in the Verbatim Report of the Meeting.

General OUNG (Burma): While my delegation wholeheartedly supports the measures for the Protection of Civilian Persons in time of war, and pays a high tribute to the Federal Council for sponsoring, and to you, fellow-delegates, for so ably producing them, it has regretfully abstained from the vote on the Civilians Convention, merely to record that it does not agree to the extension of the International Conventions to include matters which are the domestic concern of a State—a provision which, it feels, is contrary to the principles of the United Nations Organisation and international law.

In conclusion I would like to reaffirm the pledge of cooperation, good-will and fellowship offered by us, and to renew the hope that better understanding between the various regions, races, religions and ideologies, working for the common good of all mankind, will be produced as a result of this Conference so that it may never be necessary to resort to war to settle differences.

Mr. MINEUR (Belgium): The first paragraph of Article 54 of the Civilians Convention provides that:

“The Occupying Power may not alter the status of public officials or judges in the occupied territories, or in any way apply sanctions to or take any measures of coercion or discrimination against them, should they abstain from fulfilling their functions for reasons of conscience.”

The second paragraph of the same Article lays down that

“This prohibition does not prejudice the application of the second paragraph of Article 51”,

and adds that this prohibition

“...does not affect the right of the Occupying Power to remove public officials from their posts.”



The Belgian Delegation wishes to make it quite clear that this provision does not in any way modify the obligation imposed on the Occupying Power by Article 43 of the Regulations annexed to the Hague Convention of 18 October 1907 concerning the Laws and Customs of War on Land, to respect the laws in force in the occupied countries, except if this is materially impossible. The Belgian Delegation requests that this declaration should figure in the records.

Mr. CARRY (International Committee of the Red Cross): The vote which took place just now on the Civilians Convention is the reward of several years of arduous work on the preparation and framing of texts, the urgent necessity of which had long been realised by the International Committee of the Red Cross. Remembering its painful experiences in the past when, in default of formal treaty provisions, its efforts on behalf of civilians in enemy hands were often invalidated, the International Committee of the Red Cross can congratulate itself today on the adoption of a Convention which should have concrete results. The texts which have been drawn up should serve to remedy a grave deficiency. They include fundamental provisions of great importance. Some of the Articles, however, particularly Article 3A, now Article 5 in the final text, embody restrictions dictated by reasons of national security.

The International Committee of the Red Cross, after assisting as an expert in the work of the Committees, considered that it was not within its competence to take part in the discussion of the Articles themselves, as these were within the exclusive competence of the Governments. But you can scarcely be surprised that the I.C.R.C., which is and should remain exclusively concerned with humanitarian questions, cannot forget the tragic occasions when thousands of human beings were imprisoned and cut off from the world, simply because they were regarded as constituting a danger to the security of the State, and were therefore denied the right of being visited by the Committee. As rightly stressed in Committee III, everything will finally depend on the good faith, and on the breadth of view which the Powers show in their interpretation of this Article 3A. The International Committee of the Red Cross therefore expresses the sincere hope that the High Contracting Parties will interpret this text—and also all those which involve any restrictions to the application of the Conventions—in as wide and humanitarian a spirit as possible, in order to realise to the fullest extent the ideal which has throughout inspired the work of this Conference and which is the fundamental ideal of the Red Cross, namely the elimination from war of all suffering, that is to say all unnecessary suffering.

Mr. DE ROUGÉ (League of Red Cross Societies): The League of Red Cross Societies greatly appreciated the decision of this Assembly to invite the League to attend the Diplomatic Conference in the capacity of expert. The Conventions voted here impose very heavy duties on the National Red Cross, Red Crescent, and Red Lion and Sun Societies as auxiliaries of the armed forces, and as voluntary societies devoted to humanitarian work in those fields in which they can contribute to the alleviation of suffering.

It will henceforth be incumbent on the League, as a federative link between these 68 National Societies, to help them to achieve greater understanding of both the rights and the responsibilities arising from the Conventions just established.

This immense army of over 100 million men, women and children grouped in National Societies, members of the League, will thus learn of the importance of these Conventions, and what they mean for the relief of the sufferings of wounded and sick on the field of battle, for prisoners in camps, and also for the civilian population should the scourge of war once more ravage the world.

The League, whose constant aim is to achieve an ever closer cooperation, in time of peace as in time of war, between Red Cross, Red Crescent, Red Lion and Sun Societies, is conscious that, by this unremitting effort in many different fields, it is working for peace. The League and its members are faithful to Henry Dunant's words:

"To spread the idea of fellowship in good deeds among the Nations is to combat war".

This Conference has borne witness to the common endeavour of the Governments united in their determination to ameliorate the condition of the military and civilian victims of war. The present Conventions, even more than those that preceded them, put their trust in the Red Cross. That confidence will not be betrayed, for the efforts that are required of it are the very reasons for its existence. The Red Cross will never flinch from its task, nor will it forget that it is its privilege and duty to represent one of the supreme aspects of world conscience: the aspiration of the nations towards that mutual succour which is the path to peace.

The PRESIDENT: The statements just made by the various Delegations will be included in the Minutes.

#### Signature Ceremony : December 1949

The PRESIDENT: At a preceding Meeting you decided that an official day of signature would be held

in Geneva towards the middle of December. We still have to fix the exact date of this ceremony. I suggest Thursday, the 8th of December, 1949.

Does anyone wish to make other proposals?

I note that there are no other proposals. The

8th of December is therefore the date decided on.

The next and last Plenary Meeting will take place tomorrow morning, Friday, at 10 sharp.

*The meeting rose at 5.50 p.m.*

### THIRTY-SEVENTH MEETING

*Friday 12 August 1949, 10 a.m.*

*President: Mr. Max PETITPIERRE, President of the Conference*

#### Signature of the Final Act and of the Four Conventions

The PRESIDENT: I shall now request the Delegations to proceed to the signature of the Final Act of the Conference. Those Delegations which are ready to do so are invited also to sign the four Conventions we have established; the Delegations who wish to sign only the Final Act today may sign the Conventions later. I remind you that a second official ceremony for the signature of these texts will be held on Thursday, 8 December 1949, in Geneva.

The Secretary-General will call the names of the Delegations in turn: these are requested to come up to the table at the foot of the rostrum and to affix their signature to the instruments lying on the table.

(The Secretary-General calls the roll).

The Delegations of the following States in turn affixed their signatures:

Afghanistan, Albania, Argentine, Australia, Austria, Belgium, the Byelorussian Soviet Socialist Republic, Burma, Brazil, Bulgaria, Canada, Chile, China, Colombia, Costa-Rica, Cuba, Denmark, Egypt, Ecuador, Spain, United States of America, Ethiopia, Finland, France, Greece, Guatemala, Hungary, India, Iran, the Republic of Ireland, Israel, Italy, Lebanon, Liechtenstein, Luxemburg, Mexico, Principality of Monaco, Nicaragua, Norway, New Zealand, Pakistan, Netherlands, Peru, Poland, Portugal, Rumania, the United Kingdom of Great Britain and Northern Ireland, the Holy See, Sweden, Switzerland,

Syria, Czechoslovakia, Thailand, Turkey, the Ukrainian Soviet Socialist Republic, the Union of Soviet Socialist Republics, Uruguay, Yugoslavia.

When signing for the Delegation of the Union of Soviet Socialist Republics the Final Act, General SLAVIN, the head of that Delegation, made the following statement:

"In signing the Final Act of the Diplomatic Conference, the Delegation of the Union of Soviet Socialist Republics makes the following reservations:

- (1) The Soviet Delegation regrets the fact that the resolution which it submitted condemning the use of methods of mass extermination was rejected by the Conference. The adoption of this resolution, which was in the interest of all freedom-loving nations of the world, would have considerably enhanced the role and influence of this Conference and would have helped to render as effective as possible the protection of war victims against the most disastrous consequences of war.
- (2) As regards the adoption by the Conference of a resolution recommending that consideration be given to the advisability of setting up an international body to replace the protecting Power, the Soviet Delegation sees no need to consider this question or to create such a body, since the problem of the Protecting Powers has been satisfactorily solved by the Conventions established at the present Conference."

The PRESIDENT: This statement will be placed on record.

Mr. MICHELI (Secretary-General): All the 58 Delegations present have signed the Final Act of the Diplomatic Conference.

The following Delegations were absent:

Bolivia, El Salvador, the Dominican Republic, the Republic of San Marino, Venezuela.

The following Delegations have afterwards signed the four Conventions established by the Diplomatic Conference:

Chile, Colombia, Cuba, Denmark, Ecuador, Guatemala, Liechtenstein, Monaco, Nicaragua, Norway, Pakistan, Peru, Syria, Turkey, Uruguay and Switzerland.

The Delegation of the United States of America has signed the first three Conventions. The Delegation of Austria has only signed Conventions I, III and IV.

### Closing Speeches

The PRESIDENT: Our work is over.

The Conventions we were instructed to establish are finished. Prolonged deliberations have gone to their making. For more than three months, each of the many problems raised by the protection of the victims of war has been considered in all its aspects. Divergent standpoints have been compared, and we have striven, not always successfully, to conciliate them. This long and meticulous examination of texts so framed as to win the widest possible approval has prolonged the Conference far beyond the period originally foreseen. Yet we have no reason to regret the time spent on our work. True, it is not for us to estimate its value. That requires a detachment we cannot hope to have. Yet I think we may be satisfied with the results achieved.

In spite of natural, though at times profound differences of opinion, we have done constructive work. That is due to your spirit of initiative and understanding, and to your endeavours to reconcile your own convictions, in the solutions you advocated, with a sincere wish to achieve the result desired by all. I wish to pay tribute here to the spirit of good will which has prevailed throughout our meetings. It was one of the factors in the success of our Conference.

First I wish to express my thanks to the Chairmen and Rapporteurs of all the Committees, the Sub-Committees and Working Parties. They have spared neither time nor trouble in order to guide the Conference, without hindrance, through its

various stages, and it is largely due to that enlightened guidance that the Conference has never strayed from its path.

My warmest thanks go to you all. You have given to the full of your knowledge and insight, and thus made it possible for our work to come to a dignified and effective close.

When opening the first meeting, I expressed my gratitude to the International Committee of the Red Cross for the labour it had devoted to preparing the texts which were the foundation of our Conference. Today, I wish to say how much our discussions benefited by its cooperation.

Nor must I omit to say how deeply we have appreciated the unfailing interest with which the League of National Red Cross Societies has followed our debates.

And now, having reached our goal, let us pause for a moment to look back on the way we have come.

When you began work on April 21, you had before you the Draft Conventions established by the International Committee of the Red Cross and approved, with some amendments, by the Stockholm Conference. You adopted these Drafts as the basis of your discussions and you have made very little change in their arrangement, which is in itself a tribute to their value. Yet they were far from finding unanimous adherence. It was your work to revise them Article by Article, sentence by sentence, and at times word by word.

Without wishing to enter into any close analysis of the Conventions we have established, I may be permitted to give a brief summary of them.

In a general way, the fundamental principles of the Conventions for the Amelioration of the Conditions of Wounded and Sick in Armed Forces in the Field, and the Convention which extends to maritime warfare the provisions of the 1906 Geneva Convention, have stood the test of time. But in view of the terrible sufferings caused by the last World War, they needed amplification. Apart from that, two important innovations have been made in these Conventions. Firstly, far greater protection is ensured to the civilians who, of their own free will, come to the help of the wounded, sick or shipwrecked in the armed forces, whatever may be the nationality of those forces. Secondly, provision has been made for hospital and safety zones. In this way we have tried to remedy a serious omission in the Convention of 1929.

The general ideas on which the Prisoners of War Convention of 1929 was based have been maintained. But they have been defined and clarified. At certain points, solutions had to be found for problems which had not been dealt with before. There is, for instance, the important and difficult question of resistance movements; fortunately, we were able to arrive at a solution. In the event of capture, partisans fulfilling certain con-

ditions will benefit by the provisions of the Convention.

The last Convention aims at giving civilian persons in time of war a protection which to all intents and purposes they lacked up to the present. The handful of provisions in the Regulations annexed to the Hague Conventions which were applicable to them were utterly inadequate. It had become urgent for civilians to have their own charter, like the wounded and the prisoners of war. To-day this charter is elaborated. Among the provisions of this Convention, we might mention the protection of civilian hospitals, the special measures in favour of children, the prohibiting of the taking of hostages, of torture and corporal punishment. The Convention further determines the rights and duties of an Occupying Power with respect to the population of the occupied territory, and contains a number of rules relative to the treatment of civilian internees. Some may feel that the Convention does not go far enough, that it lacks boldness, that it contains too many reserves and restrictions. We all know that modern war, which is total war, is blind and devouring, that it is not always honourable, that it does not hesitate in its choice of methods and may take on the most insidious forms. Strength must often yield to cunning. What had to be done was to establish a balance between the cruel necessities of war and the ardent desire to humanise it which moved us all. The new Convention for the Protection of Civilian Persons will not escape criticism, but its value is beyond question. It proclaims the determination of the States which are to sign it to prevent the recurrence of tragedies of which our generation was the helpless witness.

Nor must we forget certain welcome innovations which have been made in the Articles common to the four Conventions, for instance the extension of their scope to concealed or masked forms of international conflicts, and even the application of certain humanitarian principles to civil war. Thus effective measures have been taken to prevent protected persons remaining without a Protecting Power or, in the absence of a Protecting Power, without protection.

Anyone who has followed our debates can hardly fail to have been struck by the power still residing in the idea which dominated the life of Henry Dunant and became reality in the foundation of the Red Cross and in the Convention of 1864. Time has left deep and swift marks on many a diplomatic instrument. Often, the ideas by which the nations have striven to reach a mutual understanding have worn thin and become obsolete. But the determination to reduce the cruelty of war by giving relief to its victims has steadily gained strength. That is because it was born of absolute purity of thought and responds to the

profound desire for peace which every man has at heart.

It has been said that the full bearing of the idea of the Red Cross would not be grasped unless, beneath its outward forms, it was interpreted as a condemnation of war. Nothing could be truer, and it is in that light that we wish our work to be understood. For we will not give up the hope that one day our human condition will be free of that scourge. And our profoundest wish is that there will never be any occasion to apply these four Conventions, that they should never become a reality. That implies other and long endeavours. It is our wish that all the nations and all the Governments who are called upon for those endeavours will find in their faith in the destiny of man the strength and will to accomplish them.

Does any member wish to speak?

The Chief of the Australian Delegation, first Vice-President of the Conference, has the word.

Colonel HODGSON (Australia): Mr. President, fellow Delegates, we have at last reached the end of our labours after four months. In the early stages it seemed at times that we would never finish: some delegates wanted another conference, others wanted a postponement of the Civilians Convention, but we can congratulate ourselves that we persevered and completed our task; and upon me now has devolved the honour of proposing a vote of thanks to all who have made this Conference such a success.

Some proposals require support and commendation, others instinctively make their way into the hearts of all their hearers by their intrinsic worth, and this proposal surely falls into the latter category.

On behalf of you all, therefore, I would like to express our appreciation first to the Swiss Federal Council and to the Canton of Geneva for the facilities they have provided, for the courtesies they have extended, and for the arrangements they have made to make this Conference such a success. In this respect I feel that we should pay a tribute to Mr. Ricco Bezzola, the Federal Commissioner, for the preparation of this Diplomatic Conference and for having so well and truly laid its foundations.

When we speak of the Swiss Federal Council we naturally associate it with the Foreign Minister for Switzerland, our President. We were indeed fortunate to have as our President the Foreign Minister for Switzerland, and he has been no figurehead, no one could have been more hard-working, more tolerant, more understanding, more sympathetic or more just.

But there is more in it than that, and if I may speak very personally, Sir, through your wisdom, your tact, your charm of manner, you have acquired the esteem and affection of all our fellow Delegates,

and if a man has acquired all that, as you now have, he has gained something worth while in life.

I should like to pay tribute to all the Secretariat. I have been to some thirty odd international conferences during the last four years, and from the point of view of mechanics, of documentation, of general arrangements, and of staffing, no Conference has exceeded this one, and when I speak of the Secretariat, Sir, I mean everybody from the Secretary-General, Mr. Micheli, downwards, right down to the messengers and attendants. They have all been loyal and devoted servants, always courteous and obliging. It would be invidious to make distinctions, but I feel we should pay an especial tribute to the translators and the interpreters for the magnificent job they have done. They have rendered bad English speeches into good French, bad French speeches in good English, and if Mr. Morosow will excuse me, as he always reminds us, very good Russian speeches into very bad English and French! But we are indebted to the whole of the Secretariat.

Then, Sir, we must not overlook in this vote of thanks our indebtedness to the good people of Geneva and all the voluntary workers to this Conference. They have given their time, their energies and their generous hospitality to make our sejour here both pleasant and agreeable, and in this respect, at too many international conferences, the only attention as regards hospitality and reception is paid to the heads of delegations. But at this Conference the people of Geneva have not forgotten our junior staffs, and at the various receptions and tours nobody has been overlooked, and I especially thank the City of Geneva on behalf of all the deputies, the advisers and the junior staff.

Lastly, I would say this to my fellow delegates. This Conference has been a real crucible, a real melting pot of ideas. I do not suppose that any delegation got all that its government hoped or expected to get, but we have built up something lasting. We did not come here with any thought of the possibility of war, of the inevitability of war, but were concerned solely with an eventuality, to alleviate the sufferings of any victims of a future war. Surely that scourge of mankind can never come in our time, but should it ever conceivably happen, then future generations at least will bless us for the work we have done here, and that will be our posthumous award. Despite temporary brushes and disagreements, I am positive that this has been one of the few international conferences of the post-war years where there has been a genuine spirit of comradeship and unanimity. May that spirit of tolerance and cooperation which has pervaded and formed an integral part of the atmosphere of this Conference be carried on in other international spheres from year to year and from

generation to generation. That is our sincere wish.

Mr. Chairman, I will take the chairmanship temporarily out of your hands. I will call on our colleague from the Soviet Union, General Slavin, to second this vote of thanks and at the end of the translation of his speech I shall put this vote of thanks to you and I shall ask you to rise and carry it by acclamation. (*Applause*).

General SLAVIN (Union of Soviet Socialist Republics): The Delegation of the U.S.S.R. fully associates itself with the thanks so warmly expressed to the Swiss Federal Council and to the Council of State of the Republic and Canton of Geneva for the cordial welcome extended to the Delegates of this Conference during their stay in Geneva.

We also associate ourselves wholeheartedly with the thanks tendered to Mr. Max Petitpierre, Federal Councillor and Head of the Political Department.

I feel sure that I am interpreting the feelings of all of us here in saying how greatly we appreciate his experience, and the skill he has displayed in solving the difficult problems with which we were confronted in the course of this Conference. I feel sure that I am also expressing the sentiments of all the Delegates in emphasising the esteem and affection we feel for Mr. Petitpierre. (*Applause*).

We wish to express our deepest gratitude for the tremendous task he has accomplished.

I also feel sure that I am voicing the opinion of all the Delegates here in expressing our thanks to the Secretariat of the Conference, and more particularly to its chief, Mr. Pierre Micheli.

(*Applause*).

We fully realise the great difficulties and the complicated task with which the Secretary General had to deal during the lengthy and arduous discussions of this Conference, and the masterly way in which he acquitted himself. I also wish to convey my thanks to all the members of the staff of the Conference, who contributed to its success.

The Delegation of the Soviet Union warmly seconds the Australian Delegate's proposal, and, on behalf of you all, expresses its sincerest gratitude to the Swiss Government, to the Canton of Geneva, and to the President of this Conference, Mr. Petitpierre personally, to the Secretary General, Mr. Micheli, and to the entire staff of the Conference who have contributed to the success of our work.

Colonel HODGSON (Australia): Fellow Delegates, you have heard the vote of thanks as proposed and seconded. I would ask you all to rise, and I put it to you, and you will carry it by acclamation.

*The delegates rose and the Vote of Thanks was carried by acclamation.*

The PRESIDENT: Permit me to take the Chair once more for a few moments in order to express how greatly both the Secretary-General and I have been touched by the kind words of the Delegates of Australia and of the Union of Soviet Socialist Republics.

Some of these were far too laudatory, inspired as they doubtless were, like the applause with which they were greeted, by the feelings of kindly

friendship which you have expressed, and by which my country feels so greatly honoured.

I would express, in all simplicity, my liveliest gratitude, and I wish you all a pleasant return to your respective countries. (*Prolonged applause*).

I declare the Diplomatic Conference of Geneva closed.

*The meeting rose at 12.35 p.m.*

## Official Ceremony for the Signature of the Geneva Conventions of August 12, 1949, for the Protection of War Victims

*Thursday 8 December 1949, 3 p.m.*

*President: Mr. Max PETITPIERRE, President of the Diplomatic Conference*

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The PRESIDENT: Fellow Delegates, Ladies and Gentlemen,

When the Diplomatic Conference, which met in this hall from April the 22nd to August the 12th, had completed its work, several delegations stated that they were ready to sign the Geneva Conventions forthwith; others, on the contrary, asked for a certain delay, so as to enable their Governments to subject the texts to a final examination.

In order to meet those two different requirements, it was decided to hold two official signature ceremonies, one on August the 12th and the other on December the 8th. Sixteen delegations signed the four new Conventions on the 12th of August; two delegations only signed three of them. The remaining delegations reserved the right to sign them later.

There were no signatures between August the 12th and December the 8th.

In accordance with the decision taken by the Diplomatic Conference, we have invited all the States which took part in the work of the Conference to send representatives to this final meeting. The Federal Council thanks your Governments for having responded to its invitation by sending you to Geneva, and it gives me great pleasure to welcome you here in its name.

We have received a telegram informing us that the aeroplane on which the Delegation of Greece was to have travelled to Switzerland has been held up by bad weather.

We have just heard that the aeroplane on which the Delegations of the Union of Soviet Socialist Republics, the Byelorussian Soviet Socialist Republic and the Ukrainian Soviet Socialist Republic

are travelling has been held up in Vienna by fog.

We are extremely sorry that these inopportunities have occurred. The Delegations concerned will sign the Conventions on their arrival, either today or tomorrow. I propose that we should consider their signatures as having been given during the present ceremony, even if they are in fact appended to the Conventions after the conclusion of this meeting.

The Conference had decided that the Credentials Committee instituted by it should carry out its duties for the last time on December the 8th under the chairmanship of H. E. Mr. Auriti, Head of the Italian Delegation. The Committee met this morning.

I now ask Mr. Auriti to be so good as to submit his Report.

Mr. AURITI, Chairman of the Credentials Committee:

The Credentials Committee held its seventh meeting on December 8th, 1949, at 10 a.m. Five of its members were present, viz. the Delegates of Finland, Hungary, Italy, the Netherlands and Syria. The Delegations of New Zealand and Venezuela, who had also formed part of the Committee, were not present. The Delegation of the United Kingdom, Switzerland and the Union of Soviet Socialist Republics were called in to take their place. The last-named Delegation was not, however, able to take part in the meeting, as it did not arrive in Geneva in time on account of weather conditions.

The Committee examined the credentials submitted by 25 delegations for the purpose of

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signing the Conventions. They found them to be in good and due form. The Delegations concerned were those of the following States: Argentina, Belgium, Byelorussia, Bolivia, Brazil, Canada, Ceylon, Egypt, Spain, Ethiopia, Finland, France, Greece, Hungary, Israel, Italy, the Lebanon, Luxemburg, the Netherlands, the United Kingdom, the Holy See, El Salvador, Sweden, Czechoslovakia and the Union of Soviet Socialist Republics.

In the case of 12 other delegations, the Secretariat of the Conference produced telegrams or letters mentioning that the delegations in question were authorized to sign the Conventions. The Committee decided that those delegations should be allowed to sign, but should be asked to submit credentials in good and due form to the Swiss Government as soon as possible. The Committee also proposed that the latter Government should be requested to get into touch with the signatory States on the subject of the credentials which are at present lacking. Documents serving provisionally in lieu of credentials have been submitted on behalf of the Delegations of the following States: Afghanistan, Albania, Austria, Burma, Bulgaria, the United States of America, India, Iran, Mexico, the Philippines, Poland and the Ukraine.<sup>1</sup>

The PRESIDENT: I thank H.E. Mr. Auriti for his extremely precise Report and I also thank all the members of the Committee for having been willing to give us their help once again.

Are there any observations on this Report?

As no delegation wishes to speak, the Report is adopted.

I now invite you to fulfil your mandate. The Secretary-General will call out the names of delegations, who are requested to come up to the table placed at the foot of the presidential rostrum and to append their signatures to the documents which have been placed on it. Delegates who have reservations to make will please read them aloud at the time of signature.

<sup>1</sup> Twenty Delegations have signed the Conventions on 8 December 1949, or at a later date, without having been able to submit previously their credentials in good and due form. The Delegations concerned were those of:

Afghanistan	Iran	Portugal
Albania	Ireland	Rumania
Australia	Mexico	Ukraine
Austria	New Zealand	United States
Bulgaria	Paraguay	of America
China	Philippines	Venezuela
India	Poland	Yugoslavia

The Swiss Government has received from all these Delegations the credentials in good and due form. For information the Swiss Government has sent a Report to the Signatory States.

May I ask the Secretary-General to call out the names of the delegations.

The SECRETARY-GENERAL proceeded to call out the names of delegations.

In succession, the Delegations of the following States appended their signatures to the Conventions:

### AFGHANISTAN

### ARGENTINA

Mr. SPERONI, First Secretary to the Argentine Legation in Berne, made a reservation to the four Geneva Conventions (*see Vol. I, p. 343*).

### AUSTRIA

Mr. WILDMANN, Austrian Minister in Switzerland, only signed the Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, as the other three Conventions had been signed by the Austrian Delegation on August 12th.

### BELGIUM

### BOLIVIA

### BRAZIL

Mr. PINTO DA SILVA, Consul-General of Brazil at Geneva, made reservations to the Geneva Convention relative to the Protection of Civilian Persons in Time of War (*see Vol. I, p. 344*).

### CANADA

Mr. WERSHOF, Counsellor, Office of the High Commissioner for Canada in London, made a reservation to the Geneva Convention for the Protection of Civilian Persons in Time of War (*see Vol. I, p. 346*).

### CEYLON

Mr. COOMARASWAMY, C.M.G., Deputy High Commissioner for Ceylon in London, did not sign the Convention for the Protection of Civilian Persons in Time of War.

### EGYPT

### SPAIN

Mr. CALDERON Y MARTIN, Spanish Minister in Switzerland, made a reservation to the Geneva Convention relative to the Treatment of Prisoners of War (*see Vol. I, p. 346*).

### UNITED STATES OF AMERICA

Mr. VINCENT, Minister of the United States of America in Switzerland, only signed the Geneva



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Convention relative to the Protection of Civilian Persons in Time of War, the United States Delegation having signed the other three Conventions on August 12th. Mr. Vincent made a declaration. *Vol. I, p. 346.*

### ETHIOPIA

### FINLAND

### FRANCE

### HUNGARIAN PEOPLE'S REPUBLIC

Mrs. KARA made reservations (*see Vol. I, p. 346*).

### IRAN

### ISRAEL

Mr. KAHANY, Delegate of Israel to the European Office of the United Nations and to the International Committee of the Red Cross, made a declaration (*see Vol. I, p. 348*).

### ITALY

Mr. AURITI, Ambassador, made a declaration concerning the Convention relative to the Treatment of Prisoners of War and Resolutions 6, 7 and 9 of the Diplomatic Conference of Geneva (*see Vol. I, p. 348*).

### LEBANON

Mr. MIKAOUI, Minister of the Lebanon in Switzerland, made the following declaration:

"I am not speaking in order to explain a reservation, for I shall shortly have the honour of signing the four Conventions in the name of the Lebanese Government without any reservation other than that of ratification by the Lebanese Parliament.

Nor do I intend to make a speech, because I am conscious of the fact that we are taking part in a formal meeting for the signature, and not in a mere plenary meeting. But since a delegation has made a reservation concerning the use of the Shield of David, I must state that the Diplomatic Conference, having, in a final manner, in both Committee and Plenary meetings, rejected the proposal to include the Shield of David among the internationally recognized signs, my Government considers that the reservation made by that delegation has no value for the States signatories to the present Conventions.

I should be extremely grateful if the President would kindly arrange for my declaration to be included in the minutes of the present meeting."

### LUXEMBURG

Mr. STURM, Chargé d'Affaires of Luxemburg in Switzerland, made a reservation (*see Vol. I, p. 349*).

### MEXICO

### NETHERLANDS

Mr. BOSCH, Chevalier VAN ROSENTHAL, Minister of the Netherlands in Switzerland, made a declaration (*see Vol. I, p. 349*).

### PHILIPPINES

Mr. SEBASTIAN, Minister of the Philippines in Italy, made the following declaration:

"I feel highly honoured to represent my country at this Conference and to sign these four Conventions on behalf and in the name of the Government of the Republic of the Philippines.

I have been instructed, however, to make a general reservation, and make it off record, that these Conventions shall only be binding on us after their formal ratification by the Philippine Senate, in accordance with the provisions of our Constitution."

### POLAND

Mr. PRZYBOS, Polish Minister in Switzerland, made reservations concerning the four Geneva Conventions (*see Vol. I, p. 350*).

### UNITED KINGDOM

The Rt. Hon. Sir Robert CRAIGIE, Foreign Office, made a declaration (*see Vol. I, p. 352*).

### HOLY SEE

### EL SALVADOR

### SWEDEN

Mr. SÖDERBLOM, Swedish Minister in Switzerland, made the following declaration:

"In view of the requirements of the rules of our Constitution, I must add the following reservation to our signature:

subject to ratification by the Government of His Majesty the King of Sweden with the approval of the Riksdag."

### CZECHOSLOVAKIA

Mr. TAUBER, Minister of Czechoslovakia in Switzerland, made reservations (*see Vol. I, p. 353*).

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The SECRETARY-GENERAL: Is there any delegation whose name has not been called out?

The Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field has just been signed by 27 delegations. It had already been signed by 18 delegations on August the 12th. That makes a total of 45 delegations which have signed it up to today.

The Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea has just been signed by 28 delegations. It was signed by 17 on August the 12th. That makes a total of 45 delegations which have signed it up to today.

The Geneva Convention relative to the Treatment of Prisoners of War has just been signed by 27 delegations. It was signed by 18 on August the 12th. That also makes a total of 45 delegations.

The Geneva Convention relative to the Protection of Civilian Persons in Time of War has just been signed by 27 delegations. It was signed by 17 on August the 12th. That makes a total of 44 delegations.

The PRESIDENT: On the 21st of April, the Diplomatic Conference opened in this hall. Its task was to improve the lot of war victims. Taking account of the tragic experiences of the world during the past years, it had to draw up a legal system which would as far as possible protect not only wounded members of the armed forces and prisoners of war, but also civilians, from the blind brutality which any armed conflict inevitably provokes.

Our work came to an end on August the 12th. The Conventions which it was our task to draw up were finished. Your Governments had, however, intimated that they would like to examine them once again before authorizing you to sign them.

That final act has now been accomplished. You have just appended your signatures to the new Geneva Conventions. By so doing, you have shown that they have, with certain reservations, received the approval of your Governments. Your signatures, added to those which were already there, bring the number of delegations which have given their official approval to the work of the Diplomatic Conference to 45. I am certain that all those who contributed to that work are experiencing, today, a lively sense of gratification. The efforts made to harmonize the different points of view represented have not been in vain. The texts they drew up have now been accepted by the majority of States. It can be truly said that they answer a universally felt need.

On August the 12th, when closing the Diplomatic Conference, I said that it was not possible for us to judge the results of our work as we could not yet

see it in the proper perspective. Four months have elapsed since then, and during that time we have been able to go over our texts again, considering once more the solutions upon which we settled and judging the effect they will have. The opinions which have been expressed regarding the new Conventions allow us to affirm that the latter are satisfactory. If the world should ever again be torn up by a new conflict—against the will of its people, of that we may be sure—the new Conventions will prevent, or at least lessen, the horrors which have been witnessed by our generation.

Our task was clearly defined. It was not up to us either to redraft the Kellogg Pact which had outlawed war, or to revise the Hague Agreements which had attempted to establish rules for the conduct of war. We have been criticized for not exceeding the limits laid down for us. I think that if we had done so, we would have jeopardized our work. The latter, to be effective, had to take account of realities.

Without wishing to analyse the Geneva Conventions, may I remind you here of their meaning, of their value and of the spirit which breathes through them.

Their meaning. The principles of the Red Cross, on which the two Conventions of 1929 were based, had stood the test of time. Where those Conventions had been applied, they had saved thousands of lives. They had, on the whole, been respected by the countries which had signed them. If they had not made it possible to avoid all the atrocities that have been committed, that was mainly because their field of application was too limited and because their provisions were not specific enough. The new agreements make good the most serious deficiencies revealed by the last world war. While retaining the fundamental ideas which inspired the old Conventions, the new Conventions extend and develop them. They adapt them to the requirements of modern warfare. They extend the protection given so as to include civilians, providing the latter with physical and moral safeguards which they have until now been entirely without. They thus ensure that all persons who do not take part in military operations and all those who are placed hors de combat by sickness, wounds or captivity, are protected and respected.

Their value. The approval which most of the Governments of the world have just given to the Geneva Conventions gives them considerable importance. They will, however, only attain their full value when they have been ratified by all the Governments which have signed them. They will then take their place as part of the law of nations. According to the terms of their provisions, they will come into force six months after two instruments of ratification have been deposited. I hope,

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therefore, that the ratifications will take place without delay. I should be grateful if you would transmit that recommendation to your Governments. I hope that the countries which helped to draw up the Conventions, but which have not yet been able to sign them, will do so as soon as possible. Some among them have already informed us that they intend to sign before the 12th of February next. In order that the fullest possible advantage may be drawn from the Geneva Agreements, it is essential that they should be universally accepted.

Their spirit. The day after tomorrow we shall celebrate the anniversary of the Universal Declaration of the Rights of Man which was adopted by the General Assembly of the United Nations on December the 10th, 1948. It is, we think, interesting to compare that Declaration with the Geneva Conventions. Our texts are based on certain of the fundamental rights proclaimed in it—respect for the human person, protection against torture and against cruel, inhuman or degrading punishments or treatment. Those rights find their legal expression in the contractual engagements which your Governments have today agreed to undertake.

The Universal Declaration of the Rights of Man and the Geneva Conventions are both derived from one and the same ideal, which humanity pursues unceasingly in spite of passions and political strife and which it must not despair of attaining—namely that of freeing human beings and nations from the suffering of which they are often at once the authors and the victims.

In August, before dispersing, the delegates to the Diplomatic Conference unanimously adopted a Resolution expressing their earnest desire to see all the Powers settle their differences by peaceful means. We know today that a war never solves the problems which caused it to break out. It is always followed by long years of suffering for both the vanquished and the victors. The evils engendered by war are out of all proportion to the advantages gained by it.

If we can congratulate ourselves on the fact that our Conference has accomplished the aims which were planned for it, we know, nevertheless, that it has not solved—that it could not solve—any of the great problems which weigh today so heavily on the life of the nations. But we desire to express the earnest wish that the feeling of humanity, which gave birth to the idea of the Red Cross and which inspired the Conventions we have just signed, may develop and may one day give the nations a sense of their common interests, which are greater than anything that divides them. This feeling of humanity will then no longer limit itself to lessening the evils of war, but will undertake the task of fighting the very idea of war and of ensuring that peace is finally victorious. (*Applause*)

The PRESIDENT: Mr. Jacquinet, Head of the French Delegation, will now speak.

Mr. JACQUINET (Minister for Ex-Service Men and War Victims): I thank both the Town and the Republic and Canton of Geneva for the cordial and traditional welcome which they have given to the French Delegation.

I must profit by this solemn occasion to express our gratitude to the Swiss Confederation and to its Government for the help they gave to our compatriots during both the first and the second world wars—to our prisoners of war (by sending parcels and by arranging for them to receive and send correspondence), to our refugees and deported persons, to those in hospitals, to numerous children and to all classes of suffering people.

It was natural that the Conventions should be signed in the country of Dunant, the creator and organizer of the Red Cross. Nearly sixty countries have drawn them up in an atmosphere of great mutual understanding and with the firm intention of succeeding.

It was also natural that it should be the Swiss Government which, inspired by the same tradition, took the initiative of inviting the States of the whole world to take part in this work of peaceful understanding.

A very large part of its success has been due to the enlightened direction which our President, Mr. Petitpierre, Federal Councillor, has given to our work. (*Applause*)

Let us hope, Ladies and Gentlemen, that this agreement will be extended and applied to wider fields, that in spite of the hard work which has been put into these Conventions there may be no occasion to apply them, and that peace will at last reunite all peoples of good will. (*Applause*)

The PRESIDENT: Mr. Auriti, Head of the Italian Delegation, will now speak.

Mr. AURITI: It cannot be denied that the most important part of all our work has been the drafting of a Convention for the protection of civilian persons in time of war.

As has already been said, we know that we have produced a work which, like all human work, is not perfect. The mainspring of all man's activity is the desire for perfection, to which he can approach more and more closely without ever being able to attain it. Besides, our task was not to produce an ideal Convention, but one which would reconcile human rights with the requirements of war and on which all the delegations, even when they had divergent views, would finally agree. That is why some of the provisions in this Convention must be judged in the light of the spirit of compromise in which they were drafted.

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I do not think that we shall be guilty of vanity in saying that we are satisfied with the result of our work. It is unnecessary to remind you once again that the wise, impartial and sympathetic way in which our President, Mr. Petitpierre, Federal Councillor, directed our work has greatly contributed to its success.

Having thus seen our task through, we hope that a future Diplomatic Conference will take up our work again and enable it to make further progress in the application of humanitarian principles. For this purpose it will be necessary for a spirit of peace to reign throughout the world. No country has a greater desire for peace than Italy, or a greater need of it. Anyone who asserted that that was not so, would show that he did not know or did not wish to recognize the spirit of the Italian people, whose wish is to work peacefully and yet maintain their liberty and their dignity. In order, however, that peace should be firmly established and therefore lasting, it must be founded on justice in the relations both between

the sovereign States and in the interior of those States. In fact, individuals must not be swallowed up by collectivity, but must be considered, on the one hand, as entities which are superior to it, and on the other hand, as being united by a bond of fellowship with a view to achieving a common purpose at once spiritually and materially advantageous to all. (*Applause*)

The PRESIDENT: Does anyone else wish to speak? There are no further speakers.

I thank the delegates who have just spoken for their kind words.

I have just received news from Vienna that the three delegations which were held up in that town will not be able to leave today; they hope to leave early tomorrow and to arrive in Geneva in the course of the morning, which will allow them to sign the Conventions at once.

The meeting is closed. (*Applause*)

*The meeting closed at 5.30 p.m.*

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## Signatures and Reservations made from 10 December, 1949, till 12 February, 1950

### CHINA, PARAGUAY

The Delegations of China and Paraguay signed the four Conventions in Berne on December 10th.

The Delegations of the Byelorussian Soviet Socialist Republic, the Ukrainian Soviet Socialist Republic and the Union of Soviet Socialist Republics, having arrived in Berne on Monday, December 12th, signed the four Geneva Conventions, making the following reservations:

### BYELORUSSIAN SOVIET SOCIALIST REPUBLIC

Mr. KOUTEINIKOV, Head of the Delegation of the Byelorussian Soviet Socialist Republic, made reservations (*see Vol. I, p. 343*).

### UKRAINIAN SOVIET SOCIALIST REPUBLIC

Mr. BOGOMOLETZ, Head of the Delegation of the Ukrainian Soviet Socialist Republic, made reservations (*see Vol. I, p. 354*).

### UNION OF SOVIET SOCIALIST REPUBLICS

General SLAVIN, Head of the Delegation of the Union of Soviet Socialist Republics, made reservations (*see Vol. I, p. 355*).

### PEOPLE'S REPUBLIC OF ALBANIA

On December 12th, the Delegation of the People's Republic of Albania also signed the four Conventions.

Mr. MALO, First Secretary to the Albanian Legation in France, made reservations (*see Vol. I, p. 342*).

### INDIA

(16 December 1949)

### REPUBLIC OF IRELAND

(19 December 1949)

### GREECE

(22 December 1949)

### BULGARIAN PEOPLE'S REPUBLIC

(28 December 1949)

Mr. KOSTA B. SVETLOV, Minister of Bulgaria in Switzerland, made a declaration (*see Vol. I, p. 344*).

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AUSTRALIA

(4 January 1950)

THE FEDERAL PEOPLE'S REPUBLIC OF  
YUGOSLAVIA

(10 February 1950)

Mr. Milan RISTIĆ, Minister of Yugoslavia in Switzerland, made a declaration (*see Vol. I, p. 356*).

RUMANIAN PEOPLE'S REPUBLIC

(10 February 1950)

Mr. Joan DRAGOMIR, Chargé d'Affaires of Rumania in Switzerland, made a declaration (*see Vol. I, p. 351*).

VENEZUELA

(10 February 1950)

PORTUGAL

(11 February 1950)

Mr. Gonçalo CALDEIRA COELHO, Chargé d'Affaires of Portugal in Switzerland, made reservations (*see Vol. I, p. 351*).

NEW ZEALAND

(11 February 1950)

Mr. George Robert LAKING, Counsellor of Embassy in Washington, made a declaration (*see Vol. I, p. 349*).

