

INTERNATIONAL COMMITTEE OF THE RED CROSS

Report on the Work
of the
Conference of Government Experts
for the Study of the Conventions
for the Protection of War Victims

(Geneva, April 14-26, 1947)



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ABBREVIATIONS

ICRC = International Committee of the Red Cross.

Preliminary Conference (1946) = Preliminary Conference of Red Cross Societies. Geneva, July-August, 1946.

PW = Prisoner(s) of War.

CWI = Civilian War Internees.

CI = Civilian Internees.

DP = Detaining Power.

MMC = Mixed Medical Commission(s).

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REPORT ON THE WORK
OF THE
CONFERENCE OF GOVERNMENT EXPERTS
FOR THE STUDY OF THE CONVENTIONS
FOR THE PROTECTION OF WAR VICTIMS

Geneva, April 14-26, 1947

INTRODUCTION

In the pursuit of their preliminary work for the revision of the Geneva Conventions and the drafting of new humanitarian agreements, the International Committee (ICRC) suggested to the Allied Governments whose experience in this field was particularly extensive, the holding of a Conference of Experts for the consideration of the following points :

(1) — Revision of the Geneva Convention of July 27, 1929, for the Relief of the Wounded and Sick in Armies in the field, and related stipulations (Tenth Hague Convention of 1907 for the adaptation to Maritime Warfare of the principles of the Geneva Convention of 1906 ; Protection of Civilian Hospitals ; Hospital Localities and Zones ; Medical Aircraft).

(2) — Revision of the Geneva Convention of July 27, 1929, relative to the Treatment of Prisoners of War.

(3) — Establishment of a Convention relating to the Condition and Protection of Civilians in War-Time.

Following the proposal of the ICRC, the Conference decided at its opening session on April 14, to entrust the study of each of these Chapters to a separate Commission. The three Commissions started work immediately and sat for nine days. Further, in order to facilitate and speed up their work, the said Commissions nominated Sub-committees to deal with various

technical items on the Agenda. During the last three days of the meeting, the Conference discussed in plenary sessions the reports submitted by the three Commissions, and adopted them with adjunctions or amendments. Finally, the Conference gave its opinion concerning various questions of a general nature, touching upon the whole of the Agenda, viz. (1) the possible amalgamation of the treaty stipulations which had been discussed; (2) the form to be given to the Conventions; and (3) the date of the Diplomatic Conference for the discussion and ultimate adoption, in their definite shape, of the Draft Conventions prepared by the ICRC.

Below will be found a full précis of the minutes of the Conference of Government experts.

LIST OF DELEGATES ¹

Australia: — Mr. Norman Rupert Mighell, C.M.G., Deputy High Commissioner in London (III); Major-General Allan J. Boase, C.B.E., Australian Army Representative in London (II); Group-Captain Patrick G. Heffernan, A.F.C. (I); Lady Hilda Margaret Owen, Liaison Officer to the Australian Red Cross in Great Britain (III).

Belgium: M. Maurice Bourquin, Professor at the University and the "Institut des Hautes Etudes internationales", Geneva (III); M. Edmond Dronsart, Director-General of the Belgian Red Cross (I); Colonel B.E.M. René Devyver (II); Major Paul Wibin, M.D. (I); M. Léopold Adam, Attaché of Legation, Berne (III); Mlle. Simone Vercamer.

Brazil: M. Joaô Pinto da Silva, Brazilian Consul-General, Geneva (III).

Canada: M. Jean Désy, Canadian Ambassador at Rio de Janeiro (III); Mr. Henry F. Davis, Ministry of External

¹ The figures in brackets indicate the Commission or Commissions upon which the delegate was more particularly engaged.

Affairs, Ottawa (III) ; Lt. Col. J.N.B. Crawford (I) ; Major E.J.H. Barber (III) ; Dr. Fred W. Routley, National Commissioner, Canadian Red Cross (III) ; Mles. Maria Pouliot and E.J. Ross, Secretaries.

China: Colonel Ko-Shiang Wang, Military Attaché, Lisbon (II) ; Dr. Chia-Hong Wang, Counsellor of Legation, Berne (I) ; Dr. Li-Chow Tang (III).

Czechoslovakia: M. Oscar Zika, Counsellor, Ministry for Foreign Affairs (I, III) ; General Dr. Joseph Škvařil, National Defence (I) ; M. Miloslav Záloudek, Counsellor, Ministry of Health (II) ; Dr. Karel Macháček (III) ; Colonel Charles Sedláček, Military Attaché, Czechoslovak Legation, Berne (III).

France: M. le ministre Albert Lamarle, Director of Unions, Ministry of Foreign Affairs, Paris (II, III) ; Mlle. Andrée Jacob, Ministry of Ex-Service Men (III) ; M. Fernand Darchicourt (II) ; Colonel Dominique Bordat (I) ; M. Pierre Bellan (II) ; M. Claude Bourdet (III) ; M. Frédéric Simon, Under-Secretary, Ministry of Labour (II) ; Dr. Pierre Puyo (I) ; Colonel Raymond Moynier, M.D. (I) ; Dr. Daniel Boidé (I) ; Dr. Francis Borrey ; M. Georges Beauchamp, Chef de Cabinet.

Great Britain: Sir Harold Satow, K.C.M.G., O.B.E., (II) ; Mr. William Parker Speake, Home Office (III) ; Mr. Henry J. Phillimore, War Office (II) ; Brigadier E. Kenneth Page, O.B.E., D.S.O., M.C., (II, III) ; Mr. William Henry Gardner (I) ; Mr. Andrew Scott Weston (I) ; Miss Sheila M. Beckett (II) ; Miss F.A. Nightingale, Secretary.

India: Colonel B.M. Rao, I.M.S., I.A.M.O., (I, II).

Netherlands: Major-General François Daubenton, Inspector, Royal Army Medical Service (I) ; Dr. Gaston E. Mathon, Director, Legal Section, Ministry of War (II) ; Dr. van der Berg, Chief Director, Public Health Department, Ministry of Social Welfare (III) ; Staff Colonel Kornelis Metting van Rijn (II) ;

Commander Dr. Martinus Willem Mouton (I); Dr. Andries W. Mellema, Royal Navy (I, III); Dr. Franz Jacob Besier, Counsellor, Ministry of Social Welfare (III); Dr. Walter M. Bijleveld, Secretary, Legal Section, Ministry of War; Dr. Charles Jean Bernard, Delegate, Netherlands Red Cross; Jhr. Carl Hendrik Christian Flugi van Aspermont, Assistant Delegate, Netherlands Red Cross.

New Zealand: Major Alan Highet (I, II, III).

Norway: M. Frede Castberg, Professor, Oslo University (III); M. Carl Kruse-Jensen, Judge, Norwegian Supreme Court (I); Major-General August E.D. Tobiesen (II); M. Arnold Roerholt, Secretary-General, Norwegian Red Cross (II, I, III); Mlle. Christoffersen, Secretary.

Poland: Colonel Alexander Wolynski (III); M. Michal Zulkos (II).

Union of South Africa: Colonel Lennard Strickland, Director, Civil Internment Camps (III); Colonel Handrik F. Prinsloo, Commandant, Prisoner of War Camps (II); Mr. Bernardus G. Fourie, High Commissioner's Office, London (I, II, III); Colonel Reginald Noël Johnson, Medical Officer (I).

United States: Chairman: Mr. Albert Edwin Clattenburg Jr., Chief, Special Projects Division, Department of State (III); Delegates: Mr. Alwyn Freeman, Assistant Legal Adviser, Department of State (I, III); Mr. Eldred D. Kuppinger, Consultant (London) (II, III); Brigadier-General Blackshear M. Bryan, Provost Marshal General, U.S.A. (II); Col. R. MacDonald Gray, Personnel and Administration Division WDGS (I); Colonel Joseph V. Dillon, USABF (II); Harold V. Starr, American National Red Cross.

International Committee of the Red Cross: M. Max Huber, Honorary President (I, II, III); Dr. Ernest Gloor, Vice-President (I); M. Martin Bodmer, Vice-President (II); M. J. Chenevière,

Member (II) ; Mlle. S. Ferrière, Member (III) ; Mlle. L. Odier, Member (II) ; Dr. A. Cramer, Member (I) ; M. Ed. Chapuisat, Member (III) ; M. D. Schindler, Member (III) ; M. Ed. Grasset, Member (II) ; M. P. Carry, Member (III) ; M. R. Gallopin, Director-Delegate (II) ; M. J. Pictet, Director-Delegate (I) ; M. H. Cuchet, Director-Delegate (II) ; M. F. Siordet, Adviser (II).

BUREAU

Chairman: M. Max Huber, Honorary President, ICRC.

Vice-Chairmen: Mr. Norman Rupert Mighell (Australia) ; Professor Maurice Bourquin (Belgium) ; M. João Pinto da Silva (Brazil) ; M. Jean Désy (Canada) ; Colonel Ko-Shiang Wang (China) ; M. Oscar Zika (Czechoslovakia) ; M. Albert Lamarle (France) ; Sir Harold Satow (Great Britain) ; Colonel B.M. Rao (India) ; Major-General François Daubenton (Netherlands) ; Major Alan Hight (New Zealand) ; Professor Frede Castberg (Norway) ; Colonel Alexander Wolynski (Poland) ; Colonel Lennard Strickland (South Africa) ; M. Albert Edwin Clattenburg Jr. (U.S.A.)

Secretary-General: M. J. Duchosal, Secretary-General, International Committee.

BUREAU OF THE FIRST COMMISSION

Chairmen: M. E. Dronsart (Belgium).

Vice-Chairman: Colonel J.N.B. Crawford (Canada) ; M. O. Zika (Czechoslovakia) ; Colonel D. Bordat (France).

Rapporteur for the ICRC: M. J. Pictet, Director-Delegate, ICRC.

Rapporteurs of the Commission to the Plenary Session: M. E. Dronsart, M. J. Pictet.

BUREAU OF THE SECOND COMMISSION

Chairman: Sir Harold Satow (Great Britain).

Vice-Chairman: M. Lamarle (France).

Members: Colonel R. Devyver (Belgium); M. F. Darchicourt (France); Mr. H. J. Phillimore (Great Britain).

Rapporteur for the ICRC: M. C. Pilloud, Director, Legal Section.

Rapporteurs of the Commission to the Plenary Session: Sir Harold Satow, M. C. Pilloud.

BUREAU OF THE THIRD COMMISSION

Chairman: M. Jean Désy (Canada).

Vice-Chairman: Professor M. Bourquin (Belgium).

Rapporteur for the ICRC: M. M. Maier, Secretary to the ICRC.

Rapporteur of the Commission to the Plenary Session: M. Jean Désy.

Report of the First Commission

REVISION OF THE GENEVA CONVENTION AND RELATIVE STIPULATIONS

I. — GENEVA CONVENTION OF JULY 27, 1929 FOR THE RELIEF OF WOUNDED AND SICK IN ARMIES IN THE FIELD

A revised Draft of the Geneva Convention was framed in 1937, following a meeting of international experts convened by the ICRC. This was first submitted to the XVIth International Red Cross Conference (London, 1938), and then placed on the agenda of the Diplomatic Conference called by the Swiss Federal Authorities for the beginning of 1940, but adjourned owing to the outbreak of the second World War.

At the close of hostilities, the ICRC planned to take up once more the 1937 Draft, with additions based on the experience gained during six years of unprecedented warfare. To this effect, a Preliminary Conference of National Red Cross Societies was held from July 26 to August 3, 1946¹, to which the Societies brought the outcome of their experience acquired during the recent World War. The views of this meeting were included in the data submitted to the Government Experts convened from April 14 to 26, 1947. They are reproduced, when necessary, in the following report.

Below will be found the revised Draft Convention, drawn up by the First Commission, as approved and amended by the plenary assembly. The amendments made to the texts now in force, suitably commented, are printed in italics.

¹ Called hereinafter "Preliminary Conference (1946)".

GENERAL REMARKS

I. *Application of the Convention to all cases of armed conflict.*

The Conference, in plenary session, recommended the insertion in the Geneva Convention, without specifying in what chapter, of the following provisions :

The present Convention is applicable between the Contracting Parties, from the outbreak of any armed conflict, whether the latter is or is not recognised as a state of war by the parties concerned.

In case of civil war, in any part of the home or colonial territory of a Contracting Party, the principles of the Convention shall be equally applied by the said Party, subject to the adverse Party also conforming thereto.

The Convention is equally applicable to cases of occupation of territories in the absence of any state of war.

This provision should also be embodied in the P.W. Convention and in that relating to the protection of civilians in time of war ¹.

The 1937 Commission, followed by the XVIth International Red Cross Conference, unanimously agreed that the Convention should be applicable to all cases of armed conflict between States, even if no declaration of war had been made, and that the humanitarian principles contained therein should be respected in all circumstances, even if the Convention were not legally applicable. The 1937 Commission had recommended to introduce this principle into the Final Act of the future Diplomatic Conference.

Furthermore, the Preliminary Conference (1946) had proposed that the Convention should embody not only the above principle, but also the idea that, in case of civil war within any particular State, the Convention should be applied, unless one of the parties expressly announced its intention to the contrary.

¹ See below pages 102 sqq. and 272 sqq.

The 1947 Conference did not consider opportune to insert a definition of civil war in this Article. The treaty stipulations in question are binding upon the contracting party, on the sole condition that they be applied by the adverse party, wherever the civil war may take place, and even if the parties are not recognized as belligerents.

According to one Delegation, it should be clearly understood that the humanitarian obligations stipulated by the present Article should entail no juridical consequences in respect of the legal status of any body claiming governmental authority, but not recognized by another Government as enjoying such authority.

Another Delegation reserved its opinion as to the last Section of this Article.

2. *Extension of the Convention to Civilian Wounded and Sick.*

The Commission recognized that civilian wounded and sick should be protected in time of war, in accordance with the same humanitarian principles as apply to wounded and sick members of the Forces. New stipulations should be inserted on this matter in the separate Convention envisaged for the general protection of civilians.

In its report to the Conference, the ICRC had pointed out that at present the Convention applies only to members of the armed Forces and other personnel officially attached to the latter.

During the meetings of the 1937 Commission, several experts suggested that the Convention should be expressly extended to wounded and sick civilians. They pointed out that, taking into special account the development of aerial warfare, the whole of a belligerent territory was exposed to hostile action, and not only the actual combat zone, and that civilians are thus as much liable to suffer casualties as army personnel.

Despite a strong current of opinion in favour of this argument, the majority of the 1937 Commission, and in turn the XVIth International Red Cross Conference, decided not to endorse this suggested extension, on the grounds that it would outstep the

specific and traditional domain of the Convention. It was considered preferable to deal with wounded and sick civilians by means of a special Convention.

Two new stipulations were, however, included in the Geneva Convention by the 1937 Commission, one providing that the protection due to medical units and establishments, their staff and equipment shall not cease when their activities are extended to the civilian population, the other that Voluntary Aid Societies may be allowed to use the distinctive emblem in the execution during hostilities of their welfare work in favour of wounded and sick civilians.

After the experience of the recent war, the ICRC thought necessary thoroughly to review the question of the possible extension of the Geneva Convention to wounded and sick civilians, and to seek forthwith means for their better protection.

To this effect the ICRC recommended one of the three following solutions :

a) *Special Convention.* — Instead of extending the Geneva Convention to wounded and sick civilians during war time, the question would be ruled by a separate Convention, i.e. by a separate chapter on the subject, to be included in the future Convention concerning civilians of enemy nationality (Tokyo Draft). It might, however, be theoretically and practically inconvenient to extend the Geneva Convention *de facto* by reference thereto in another treaty, instead of deliberately amending the Geneva Convention itself. It is a fact that modern warfare conditions increase the liability of civilians and military personnel to suffer casualties in the same places and thus to be cared for together.

(b) *Full Extension.* — The Geneva Convention would be extended so as to give full protection to wounded and sick civilians in war time, and include the safeguarding of civilian hospitals. The title of the Convention would then have to be modified, and could be amended thus: "Geneva Convention for the relief of Wounded and Sick in Time of War". In this case there would obviously be a certain risk of more frequent

abuse or non-application of the Convention, in proportion to its enlarged field of action, and thus a danger of compromising the prestige which attaches to the Convention and its emblem.

(c) *Partial Extension.* — On the whole, the Geneva Convention would be expressly extended to civilians wounded as the result of acts of war, to the medical personnel which nurses them, and to the equipment employed. A military medical establishment would not be deprived of protection if its inmates included wounded or even sick civilians.

On the other hand, the Geneva Convention would not be extended to specifically civilian hospitals, utilised for sick civilians only. The protection of such establishments would come under a special ruling in a separate Convention, and the buildings would bear other markings than the Red Cross.

The Preliminary Conference (1946) recognized that it was absolutely necessary to ensure henceforth the adequate protection of civilian war victims ; it therefore recommended that the principles of the Geneva Convention should be extended to wounded and sick civilians, as also to the staff, buildings and equipment at their service.

The 1946 Conference did not, however, express an opinion as to the best course to achieve this end. The First Commission confirmed that it had been found impossible, during the second World War, to draw a clear distinction between civilians and members of the armed forces. However, it agreed that it was essential that the principles governing the Geneva Convention should be extended to civilian wounded and sick. The question of means of application was discussed at length.

Finally, the First Commission expressed the view that the Geneva Convention should preserve its customary field of application and protect members of the armed forces only. It considered desirable that new Articles concerning civilian wounded and sick should be embodied in the special Convention conferring general protection on civilians ¹.

¹ These Articles will be found on pages 67 sqq.

CHAPTER I. — WOUNDED AND SICK

Article I

Members of the Armed Forces and other persons officially attached to the said forces who are wounded or sick shall be respected in all circumstances; they shall be treated with humanity and cared for medically, *without any distinction of nationality, race, religion or political opinion*, by the belligerent in whose power they may be. *Women shall be treated with the consideration due to their sex.*

Nevertheless, the belligerent who is compelled to abandon wounded or sick to the enemy, shall, as far as military considerations permit, leave with them a part of his medical personnel and supplies to assist with their care.

ARTICLE I (1929) ¹. — Members of the Forces ² and other persons officially attached to the armed forces who are wounded or sick shall be respected and protected in all circumstances; they shall be treated with humanity and cared for medically, without distinction of nationality, by the belligerent in whose power they may be.

Nevertheless, the belligerent who is compelled to abandon wounded or sick to the enemy, shall, as far as military exigencies permit, leave with them a portion of his medical personnel and material to help with their treatment.

The Preliminary Conference (1946) agreed with the ICRC as to the advisability of replacing the words "without distinction of nationality" by "without any distinction whatever, particularly of nationality, race, sex, religion or political opinion". The distressing events of the recent war had shown that this principle should be clearly specified.

The ICRC, however, did not consider it opportune to include the words "of sex". It thought that the spirit of the Convention itself indicates that women in particular should be granted

¹ These Articles are those of the Geneva Convention as revised in 1929.

² This expression replaces the words "Officers and soldiers" used in the official British translation.

preferential treatment. The ICRC suggested to the 1947 Conference that the idea expressed in the P.W. Convention should be taken up: "Women shall be treated with all consideration due to their sex." The Commission adopted the above text, but first decided to delete the word "particularly" appearing in the ICRC draft, as it was thought this might lead to misunderstanding. It was also thought better to amend Section 2 of Art. 1.

Finally, the Commission considered the advisability of more clearly defining the expression: "Members of the armed forces and other persons officially attached to the aid forces", and thought that it would be desirable later on to amend the present text, on the basis of recommendations made concerning Arts. 1 and 81 of the P.W. Convention ¹.

Article 2

Except as regards the treatment to be given them in virtue of the preceding Article, the wounded and sick *of a belligerent* who fall into enemy hands shall be prisoners of war, and the general provisions of international law concerning prisoners shall be applicable to them.

Belligerents shall, however, be free to prescribe, for the benefit of wounded and sick prisoners, such arrangements as they may think fit, beyond the limits of existing obligations.

ART. 2 (1929). — Except as regards the treatment to be provided for them in virtue of the preceding article, the wounded and sick of an army who fall into the hands of an enemy shall be prisoners of war, and the general provisions of international law concerning prisoners of war shall be applicable to them.

Belligerents shall, however, be free to prescribe, for the benefit of wounded or sick prisoners, such arrangements as they may think fit beyond the limits of the existing obligations.

One Delegation having suggested that it should be stated in this Article that the P.W. Convention was applicable, the Commission decided to examine the question as to how far reference could be made in the Geneva Convention to the

¹ See below, page 102.

P.W. Convention. The same question was also raised in connexion with Art. 4, Sec. 1¹. Finally, the Commission left the matter open.

Article 3

At all times and particularly after an engagement, each belligerent shall without delay take the necessary measures to search for the wounded and dead, protect them against pillage and maltreatment, and ensure their adequate care and attention.

Whenever circumstances permit, a local armistice or a suspension of fire shall be arranged to permit the removal and transport of wounded.

Likewise, local arrangements may be concluded between belligerents for the removal of wounded and sick from a besieged or encircled zone, and for the passage of medical personnel and equipment bound for the said zone.

ART. 3 (1929). — After each engagement the occupant of the field of battle shall take measures to search for the wounded and dead, and to protect them against pillage and maltreatment.

Whenever circumstances permit, a local armistice or a suspension of fire shall be arranged to permit the removal of the wounded remaining between the lines.

Re Section 1.

The Preliminary Conference (1946) and the ICRC had already, for similar reasons, proposed to amend the wording of this Section. The First Commission adopted a slightly different wording, which seems better adapted to the conditions of modern warfare.

Re Section 2.

The ICRC had no comments to offer on this Section. One Delegation, however, proposed to add the words "and the transport of wounded", and to delete "between the lines", to

¹ See below, pages 15 sqq.

allow transport of wounded from one district to another, since there were districts rather than actual lines during the recent war.

Re Section 3.

During the meeting of the 1937 Commission, the Bulgarian Red Cross proposed the adjunction to Art. 3 of a stipulation that belligerents should grant passage through their lines to the necessary medical staff and equipment bound for a besieged or blockaded area, and allow the removal of the wounded and sick. This question was the subject of several resolutions passed by International Red Cross Conferences (Resolutions XII (1921), IX (1928) and XXIV (1930).

The 1937 Commission preferred not to modify the Convention on this point, on the grounds that this was a possible case for *ad hoc* agreements between belligerents, according to Art. 2, Sec. 2.

However, the ICRC pointed out, in its reports to the Preliminary Conference (1946) and the present meeting, that during the recent war certain besieged towns or areas held out for months, and even years. In several cases (islands and "pockets" occupied by the German forces on the French Atlantic coast and in the Channel, for instance), the delegates of the ICRC were allowed to enter the besieged areas, bringing relief and rendering useful assistance.

The First Commission desired to endorse this new principle by the above text, while leaving the belligerents the option of concluding such agreements.

Article 4

Belligerents shall communicate to each other, as soon as possible, *according to the procedure described in Article 77 of the 1929 Prisoners of War Convention*, the names of the wounded, sick and dead *discovered or collected*, together with any indications which may assist in their identification. They shall establish and transmit to each other *by the same channel* certificates of death *or, in lieu thereof, duly authenticated lists of the dead*.

They shall likewise collect and exchange, *by the same channel*, all articles of a personal nature *having an intrinsic or sentimental*

value which are found on the dead, especially one-half of their identity discs, which should be of a standard pattern, the other half to remain attached to the body.

Bodies shall not be cremated except for imperative reasons of hygiene, or for religious motives. In case of cremation, the circumstances and motives shall be stated in detail in the death certificate of the cremated person.

The belligerents shall ensure that burial or cremation of the dead is preceded by a careful, and if possible medical examination of the bodies, with a view to confirming death, establishing identity and enabling a report to be made.

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, *assembled if possible, and marked so that they may always be found*. To this end, at the commencement of hostilities, they shall organise officially a graves registration service, *in order to allow eventual exhumations and to ensure the identification of bodies, whatever may be the subsequent site of the grave. These stipulations also apply as far as possible to the ashes, which shall be kept by the graves registration service until the close of hostilities.*

As soon as circumstances permit, and at latest at the end of hostilities, they shall exchange a list of graves and of dead interred in their cemeteries and elsewhere.

ART. 4 (1929). — Belligerents shall communicate to each other reciprocally, as soon as possible, the names of the wounded, sick and dead, collected or discovered, together with any indications which may assist in their identification.

They shall establish and transmit to each other the certificates of death.

They shall likewise collect and transmit to each other all articles of a personal nature found on the field of battle or on the dead, especially one half of their identity discs, the other half to remain attached to the body.

They shall ensure that the burial or cremation of the dead is preceded by a careful, and if possible medical, examination of the bodies, with a view to confirming death, establishing identity and enabling a report to be made.

They shall further ensure that the dead are honourably interred, that their graves are respected and marked so that they may always be found.

To this end, at the commencement of hostilities, they shall organise officially a graves registration service, to render eventual exhumations possible and to ensure the identification of bodies whatever may be the subsequent site of the grave.

After the cessation of hostilities they shall exchange the list of graves and of dead interred in their cemeteries and elsewhere.

Re Section I.

Under the terms of the present Geneva Convention provision is made for the exchange of the names of wounded, sick and dead, but it is not stated through what channels this exchange shall take place. As regards wounded and sick in enemy hands, information is forwarded through the official P.W. Information Bureaux, set up in pursuance of Art. 77 of the P.W. Convention, through the intermediary of the Central Agency, such wounded and sick being P.W. The same applies to P.W. deceased during captivity. During the recent war, information concerning casualties on the battle-field was, in fact, conveyed equally by the official bureaux and by the Central Agency. The Preliminary Conference (1946) recommended that the system of notification should be unified. The insertion of the following wording in this Section was proposed: "Through official information bureaux set up by Art. 77 of the Convention of 1929 relating to the treatment of P.W., and through the Central P.W. Agency."

The First Commission concurred with this view, but adopted a slightly different wording.

The ICRC had further pointed out, concerning this Section, that during the recent war difficulties arose in connection with the identification of the dead. The ICRC stressed that it devolved on Army medical experts to decide whether some other means of identification, for instance, a kind of Bertillon system, or the measurement or even radiography of skulls of army personnel, should be resorted to.

The Preliminary Conference (1946) considered, for its part, that it was not competent to deal with the question, and that such measures should be eventually taken by the Powers concerned, independently of the Convention, which already

contains general provisions to this effect : firstly, that belligerents shall exchange all data to assist in the identification of the dead ; secondly, that burial or cremation shall be preceded by a careful and, if possible, medical examination of the bodies.

The First Commission, for their part, were opposed to the establishment of a compulsory system of identification and considered that each State should be left free to make its own decisions.

Re Section 2.

The ICRC had proposed two amendments of this Section. The first covered the procedure by which death certificates should be forwarded. By adopting the insertion of the words " by the same channel ", the Commission agreed in principle that death certificates should be drawn up and forwarded according to the procedure laid down in Art. 77 of the P.W. Convention.

The second amendment dealt with the expression " certificates of death ". The present text of the Convention does not stipulate the form of death certificate to be established. In point of fact, belligerents adopted various methods for this purpose, but some utilized the unified and detailed form set out by the ICRC, which facilitated the communication to next of kin of numerous details attending the circumstances of death.

The First Commission was anxious to take into account the various methods employed by the belligerents during the recent war and therefore made Sec. 2 more general. Not only will belligerents be able to use individual death certificates, but they will have the option of employing duly authenticated lists of the dead, which will have the same value as the death certificates themselves.

Re Section 3.

This Section governs transmission of what are called " personal belongings " found on the battle-field or on the dead, especially one-half of their identity discs.

The ICRC had made no suggestions as regards the stipulations concerning the identity disc, but merely pointed out that they were often disregarded by belligerents. However, the Commission considered it desirable to stipulate in the Convention that such discs should be of a standard pattern.

As regards personal belongings proper, the Commission thought that it should specify what articles of a personal nature should be returned to next of kin of deceased. It was desired to restrict these to essentials, and the above wording was adopted. Furthermore, the Commission recommended the deletion of the word "battle-field", in order to take conditions of modern warfare into account. It is obvious, however, that not only articles found on the dead, but also those which might be discovered close to them should be considered as personal belongings.

The ICRC had recommended that the same channel should be followed for transmission of personal belongings as for information concerning the dead. The Commission endorsed this recommendation by introducing the words "likewise by the same channel" into this Section.

Re Section 4.

The ICRC had adopted the proposals submitted by the Associations for religious and intellectual relief to P.W., which met in Geneva in March, 1947, to the effect that cremation of bodies, except for imperative reasons of hygiene or for religious motives, should be forbidden. If cremation is resorted to, the circumstances and motives should be stated in detail in the death certificate of the cremated person. The Commission shared these views.

Re Section 6.

The Commission examined an ICRC proposal, already approved by the Preliminary Conference (1946), and by the Associations which met in March 1947, that the dead should be buried according to the rites of the religion to which they

belonged. The Commission considered that such a stipulation might be inserted in the Convention, but recommended that it should be preceded by the words "if possible", in view of the fact that the rites prescribed by certain religions or sects are sometimes difficult to observe (e.g. sacrifice of an animal or use of rare ingredients).

The Commission also decided to provide that graves must, if possible, be assembled and marked so that they may always be found. Finally, the Commission was of opinion that when bodies are cremated, according to Sec. 4, the ashes should be regarded like interred bodies, as far as possible, and kept by the graves registration service until the close of hostilities.

Re Section 7.

The Commission adopted the above-mentioned amendment and noted that lists of graves and of dead interred in cemeteries and elsewhere had often been communicated to the adverse party before the close of hostilities, and that this practice should be encouraged.

The Commission then discussed at length a proposal made by one Delegation to insert the following clause :

" After the close of hostilities, the belligerents shall come to an agreement and grant all facilities for the possible return to the home country of bodies and ashes ."

The majority of the meeting were not in favour of this insertion, and the proposal was withdrawn.

Article 5

The military authorities may appeal to the charitable zeal of the inhabitants to collect and afford medical assistance, under their direction, to the wounded and sick of armies, and may accord to persons, who have responded to this appeal special protection and certain facilities. *In case of occupation, the enemy belligerent shall grant to these persons the same protection and facilities.*

Similarly, the military authorities shall allow and encourage the civilian population, even in occupied regions, to collect and care for enemy wounded or sick, on condition that the latter shall not be withheld from the eventual control of national or occupying authorities. The civilian population shall protect these combatants and abstain from offering them any kind of violence.

ART. 5 (1929). — The military authorities may appeal to the charitable zeal of the inhabitants to collect and afford medical assistance, under their direction, to the wounded or sick of armies, and may accord to persons who have responded to this appeal special protection and certain facilities.

It was pointed out by the ICRC that there seemed to be a gap in the present wording of Art. 5, which provides that military authorities who have appealed to inhabitants to help in nursing the wounded and sick, shall afford them special protection and certain facilities. It does not stipulate, however, that other military authorities, particularly the enemy, shall act likewise. There can be no doubt that the spirit of the Geneva Convention demands that this Article shall be given the widest interpretation ¹.

In compliance with these views, the Commission recommended that Art. 5 should be completed by a stipulation that, in case of occupation, the enemy belligerent should grant the same protection and facilities to these persons.

Furthermore, the ICRC and one of the Delegations proposed the addition of a second clause to Art. 5.

The ICRC took up the proposal made by the Belgian Red Cross during the Preliminary Conference (1946), that “inhabitants, even in occupied regions, may not be prohibited from giving spontaneous help to the wounded and sick, on condition that the latter shall not be assisted to elude the possible control of the occupying authority”. The ICRC pointed out that the civilian population should, in all circumstances, be able to fulfil its humane service to the wounded of all national-

¹ Evidence of this is furnished by the wording of this stipulation in the Geneva Convention of August 22, 1864.

ities. The ICRC recommended the explicit approval of this principle, since during the recent war, some inhabitants were prohibited from giving such charitable assistance, or had afterwards been punished by the occupants, or even by their national authorities. Finally, in order to reconcile the demands of humanity with military considerations, it should be stipulated that no inhabitants may assist the said wounded and sick to elude the possible control of the occupying authority. The picking up and care of wounded military personnel, such as parachutists, should not serve as a pretext for assisting either tactical manœuvres or espionage.

The other proposal, worded in the same spirit as that of the ICRC, ran as follows :

“ The military authorities shall urge the civilian population to grant humane treatment, comprising emergency measures and first aid to enemies captured by them. No coercion, except that which may prove necessary to prevent them from escaping, shall be exercised by civilians on wounded and sick. shall be exercised by civilians on these combatants.

“ Civilians are invited to protect them and to hand them over as soon as possible to the military authorities. ”

The Commission adopted the first clause of this second proposal, after amendment, as it was considered that the proposed measure should be couched in positive terms. The amendments concerned the word “ urge ”, which was considered too categorical and was replaced by “ encourage ”, and to the phrase “ even in occupied regions ”; this was added as being the essential element of both proposals.

The Commission then discussed at length what limitation should be placed on the freedom the Article would leave to the population to give spontaneous care to wounded and sick. Some Delegations pointed out that one might feel repugnance to compelling the civilian population to hand over the wounded they collected to the occupying authorities. These Delegations thought that in a Convention based on humanitarian principles no such allowance should be made for military requirements. Other Delegations replied that a provision of this kind served above all to shield civilians from the occupying authorities.

Finally, the Commission agreed on the text of the new Section quoted above, but deleted the obligation for the civilian population to hand over to the occupant wounded and sick cared for by them. The only conditions imposed on the civilian population are that it shall not withhold such army personnel from the possible control of national or occupying authorities, and that it shall refrain from offering them any violence.

The ICRC asked the Commission where the stipulation contained in Art. 5 should be inserted. The ICRC was of opinion that such a provision would be better placed at the close of Chapter III relating to Medical Personnel, than in the chapter devoted to Wounded and Sick. The Commission was of opinion that this question could not be settled until a final draft of the Convention had been framed, and that it was impossible to come to any decision at this stage.

CHAPTER II. — MEDICAL FORMATIONS AND ESTABLISHMENTS

Article 6

Fixed establishments and mobile hospital units of the Medical Service may in no circumstances be the object of attacks, but shall at all times be respected and protected by the belligerents.

If they fall into the hands of the adverse party, they shall be free to pursue their duties, as long as the capturing Power has not itself ensured the necessary care of their wounded and sick.

ART. 6 (1929). — Mobile medical formations, that is to say, those which are intended to accompany armies in the field, and the fixed establishments of the medical service, shall be respected and protected by the belligerents.

Re Section I.

The ICRC asked whether the definition of mobile medical units as "those which are intended to accompany armies in the field" is not too narrow, or superfluous. It is certain that,

in the spirit of the Convention, all units wholly devoted to the care of the wounded and sick must be protected. The ICRC therefore thought that it would doubtless suffice to state that "Fixed establishments and mobile units of the Medical Service shall be respected and protected by the belligerents". The Preliminary Conference (1946) considered this amendment of the wording to be desirable. The First Commission also endorsed it.

The Commission also desired to state explicitly that medical units and fixed establishments may in no circumstances be attacked, as it was not considered sufficient to say that they should be respected and protected.

Re Section 2.

This provision is new. The Commission having, as shown below (Arts. 10 and 17), foreseen that members of the medical personnel who fall into enemy hands should be P.W., and that medical equipment should be subject to the laws of war, considered it necessary to specify here that medical units and establishments shall continue to function, as long as the capturing Power has not itself provided the necessary care to the wounded and sick nursed therein.

Article 7

The protection to which medical units and establishments are entitled *shall cease only* if they are used to commit acts harmful to the enemy *and after due warning which has met with no response.*

ART. 7 (1929). — The protection to which medical formations and establishments are entitled shall cease if they are made use of to commit acts harmful to the enemy.

The new wording adopted heightens the protection granted to medical units and establishments. It is clearly specified that this protection shall cease in one case only: if such units or establishments are used to commit acts harmful to the enemy.

Furthermore, loss of protection cannot become effective except after due warning given, and which has met with no response. It is anticipated that this procedure will, in many cases, allow extreme measures to be avoided.

Article 8

The following conditions are not considered to be of such a nature as to deprive medical units or establishments of the protection guaranteed by Art. 6 :

(1) that the personnel of the unit or establishment is armed, and that they use the arms in their own defence, or in that of the sick and wounded in charge ;

(2) that in the absence of armed orderlies the unit or establishment is protected by a picket or by sentries ;

(3) that small arms and ammunition taken from the wounded and sick, which have not yet been transferred to the proper service, are found in the unit or establishment ;

(4) that personnel and material of the veterinary service are found in the unit or establishment, without forming an integral part of it ;

(5) *that the humanitarian activities of medical units and establishments or those of their personnel are extended to civilians.*

ART. 8 (1929). — The following conditions are not considered to be of such a nature as to deprive a medical formation or establishment of the protection guaranteed by Article 6 :

(1) that the personnel of the formation or establishment is armed, and that they use the arms in their own defence, or in that of the sick and wounded in charge ;

(2) that in the absence of armed orderlies the formation or establishment is protected by a picket or by sentries ;

(3) that small arms and ammunition taken from the wounded and sick, which have not yet been transferred to the proper service, are found in the formation or establishment ;

(4) that personnel and material of the veterinary service are found in the formation or establishment, without forming an integral part of the same.

The 1937 Commission having rejected the idea of deliberately extending the scope of the Convention to civilian wounded and sick, nevertheless decided to insert here a stipulation providing that "the protection due to medical units and establishments, to their personnel, equipment and medical transport shall not cease if their humanitarian activities are extended to the civilian population".

The Preliminary Conference (1946) thought that the principles of the Geneva Convention should be extended to wounded and sick civilians; it recommended, however, should Governments refuse to adopt this proposal, the insertion in the Convention of the provision drafted in 1937 and quoted above.

Finally, the 1947 Conference did not endorse the extension of the Geneva Convention to wounded and sick civilians and expressed a preference for new articles intended for their safeguard¹. A new Section was therefore added to Art. 8 to this effect.

Article 9 (new)

Belligerents may conclude particular agreements for the creation of hospital zones, to ensure better protection for the wounded and sick of armed forces therein assembled, to the exclusion of any utilisation for military purposes.

The Commission decided to insert a provision to this effect when discussing the question of hospital localities and zones.

The report submitted by the ICRC recalled that the idea of assembling certain persons in localities for their better safeguard was not new, for it was conceived by Henry Dunant himself. It was taken up in 1929 by General Georges Saint-Paul, of the French Army Medical Service, and further by the Congress for Military Medicine and Pharmacy in Monaco.

The studies of the Monaco Congress were handed to the ICRC, who continued, with the cooperation of government experts and of national Red Cross Societies, to pursue this subject.

¹ See above pages 8 sqq.

In 1938, a commission of experts framed a " Draft Convention on Hospital Localities and Zones ", in eleven Articles, which could either become a separate treaty or be embodied in the Geneva Convention itself.

During the recent war, the ICRC on several occasions recalled this draft to Governments, suggesting that it might serve as a basis for agreements, and also be extended to various classes of the civilian population. Further, attempts were made, mostly by private initiative, to set up hospital localities.

The Preliminary Conference (1946) did not go into the details of the 1938 Draft. It merely recommended that the ICRC should study, with the cooperation of experts, the insertion in the Geneva Convention of provisions for the safeguard of such zones.

The First Commission thus had two essential questions to settle :

(1) Has the idea of setting up hospital localities and zones still any value ?

(2) If so, would it be advisable to take up again the provisions of the 1938 Draft, or at least some of its essential provisions, and try to embody them in the Geneva Convention ?

The ICRC representative pointed out that under the present Geneva Convention it is possible to set up hospital zones in the open country. Since every hospital unit is shielded as such by the Convention, it must be admitted that several adjacent hospital units would also be protected. However, the Convention cannot be used to consider as protected a place where, besides members of the armed forces, members of the civilian population are also present. The First Commission restricted its studies to the creation of hospital localities, exclusive of zones, as it was considered that the latter term implied extensive areas. One Delegation pointed out that almost insurmountable obstacles would be encountered in that case, such as the defence of these zones against invasion by unauthorized persons ; the removal of military objectives ; the establishment of such zones away from lines of communication ; and finally, the prohibition to aircraft to fly over such zones.

As regards hospital localities, the Commission thought that it could only suggest, in the Convention, that belligerents should allow such localities to be set up by particular agreements.

Article 9 (new) was drafted to this effect, and contains a summary definition of hospital zones, in order to avoid any misunderstanding ¹.

CHAPTER III. — PERSONNEL

In its report to the Conference, the ICRC pointed out that repatriation of members of the Medical Personnel, based on Art. 12 of the present Geneva Convention was infrequent during the recent war.

The reason for this was, first, that the belligerents, profiting by the words "in the absence of agreements to the contrary" (Sec. 2) and by Art. 14, Sec. 4 of the P.W. Convention, agreed to hold in their camps a large percentage of medical personnel, for the care of their P.W. compatriots, this course being taken in the interests of the men themselves. Thus certain States retained two doctors, one dentist, one chaplain and six orderlies for every 1,000 prisoners. In some cases, however, an excess number of Medical Personnel were retained; in others, such members had nothing to do and were required to perform non-professional work.

The ICRC therefore considered that it would be necessary in future to state what rules should be applied in this matter of retaining members of the Medical Personnel (percentage, criteria, etc.)

In its report to the Preliminary Conference (1946), the Belgian Red Cross also suggested the inclusion in the Geneva Convention of the principle that members of the Medical Personnel could be retained for the care of their P.W. compatriots, but that such a course could not free the Detaining Power from its obligations.

¹ As regards Security Zones, see below, page 300.

Further, the ICRC stressed the necessity of stipulating in detail, either in the Geneva Convention, or in the P.W. Convention, the status and treatment of detained Medical Personnel, which are barely indicated in the present texts. During the recent war, certain belligerents claimed that detained Medical Personnel must be assimilated to P.W.—a course obviously contrary to the Geneva Convention. It is clear, however, that detained Medical Personnel can only enjoy liberty to an extent compatible with military discipline and life in camp. During the war, the ICRC had requested belligerents, and often succeeded in obtaining their consent, that Medical Personnel detained by them should be granted certain facilities for the pursuit of their welfare duties, and also certain privileges. The points upon which the ICRC thinks this ruling should bear are particularly the following: (1) the confirmation that Medical Personnel can never be assimilated to Prisoners of War, but that they shall enjoy at least the privileges granted to the latter; (2) that Medical Personnel shall be exclusively employed for the care of their prisoner compatriots; (3) that Medical Personnel shall have quarters separate from P.W., either in the infirmaries or close by. Furthermore (4) fixed pay; (5) supplementary rations; (6) extra parcels; (7) permission to go outside the camp and take walks, etc.

The Commission of the Preliminary Conference (1946) for the study of the revision of the Geneva Convention, framed a series of new Articles endorsing the retention of Medical Personnel, should the state of health and number of P.W. justify this step, and defining the status of the said personnel retained in camps. It had already been specified that this option could not release detaining Powers from their obligations, and that the selection of men to be retained could not be influenced by considerations of race or of political opinion.

The Preliminary Conference (1946), in plenary session, did not, however, vote these Articles, as it feared that such provisions might too seriously weaken the privileged position of members of the Medical Personnel. The matter was left for further study by experts.

Before undertaking the study of each Article, the First Commission endeavoured to solve the question of principle, raised by certain delegations : should members of the Medical Personnel continue to enjoy special safeguards, or should they be considered as P.W. when they fall into enemy hands ? Supporters of the view that members of the Medical Personnel could not be P.W. advanced the following chief arguments :

(1) The entire purpose of the Geneva Convention is that wounded and sick shall be properly cared for. It is thus in the interest of these sick and wounded that Medical Personnel should be able to assist them freely, both on the battle-field and in camps.

(2) If deprived of their immunity, doctors possibly, and above all the subaltern personnel, might do their work less conscientiously and with less devotion to duty.

(3) If the Medical Personnel is not released, it will be attached to the care and nursing of P.W., thus relieving the Detaining Power of this duty. If this excess personnel remains unoccupied, it may be employed on work outside its own field.

(4) Finally, to decide on retention of Medical Personnel in enemy hands means the overthrow of the whole Geneva Convention and the abandonment of the great humanitarian principle laid down in 1864.

The adversaries of unconditional repatriation of Medical Personnel pointed out, among other things, that :

(1) The Convention should not grant more particular attention to one group of persons than to another, its first aim being the relief of wounded and sick, whether they are P.W. or combatants.

(2) The Detaining Power never has sufficient Medical Personnel available to care for P.W. ; furthermore, the latter greatly prefer to be attended by doctors of their own nationality.

(3) Repatriation of Medical Personnel in war-time is a matter of great difficulty, requiring long and arduous negotiations.

Meanwhile, the members of the Medical Personnel share the P.W.'s life and are treated practically in the same way, since it is difficult, for military reasons, not to subject them to the same camp discipline.

(4) If the protection afforded to P.W. is granted to Medical Personnel, the scope of that enjoyed by P.W. will be widened. There is a tendency at present to grant better treatment to members of the forces in enemy hands.

(5) In modern nations the army forms a single unit. Comradeship requires that when men are captured together they should all have the same status. P.W. find it very difficult to understand why their medical comrades should be able to return home, when they themselves are detained.

(6) Repatriation of Medical Personnel often takes place a long time after their capture and creates a risk of espionage.

(7) Members of the medical and religious personnel have dedicated themselves to the care of the men in their charge, and are most unwilling to desert them before the close of the war.

Adversaries and supporters of the retention of Medical Personnel agreed on the two following principles :

(1) Medical Personnel must enjoy the greatest possible degree of freedom, in order to carry out their functions to the best purpose.

(2) Medical Personnel should be retained only when their presence in camp is necessary. Excess staff should be repatriated as soon as possible.

The Commission then unanimously adopted the following Articles, except one Delegation which reserved its opinion for the whole of this Chapter.

Article 10 (former Art. 9)

Medical personnel exclusively engaged in the search, collection, transport and treatment of the wounded and sick, and in the

prevention of disease, personnel exclusively engaged in the administration of medical units and establishments, and chaplains attached to armed forces, shall be respected and protected under all circumstances. If they fall into the hands of the enemy, they shall be treated as prisoners of war, subject to the provisions of Article 12.

(Section 2 is deleted.)

ART. 9 (1929). — The personnel engaged exclusively in the collection, transport and treatment of the wounded and sick, and in the administration of medical formations and establishments, and chaplains attached to armies, shall be respected and protected under all circumstances. If they fall into the hands of the enemy, they shall not be treated as prisoners of war.

Soldiers specially trained to be employed, in case of necessity, as auxiliary nurses or stretcher-bearers for the collection, transport and treatment of the wounded and sick, and furnished with a proof of identity, shall enjoy the same treatment as the permanent medical personnel, if they are taken prisoners while carrying out these functions.

Besides the question of the status of Medical Personnel, the Commission raised that of personnel engaged in prevention of disease.

The Preliminary Conference (1946) had already suggested amending Art. 9 so as to ensure that Medical Personnel engaged in prevention of disease should have the same safeguards as the personnel engaged in the care of sick and wounded.

The 1947 Commission likewise noted that in all belligerent armies the medical personnel includes staff whose task is the prevention of disease ; these are called upon, especially when there is risk of an epidemic, to vaccinate troops and ensure proper administration and hygiene. The Conference, however, while recognizing the necessity of including this personnel in the Convention, set certain limits to its protection. Only the personnel engaged exclusively on this work would enjoy such protection. Combatant personnel engaged, in case of epidemics, in duties connected with the health of troops shall not have such protection. In order to supply a clearer definition of medical personnel than that given in Art. 9, Sec. 1, the Preliminary Conference (1946) had already recommended amendment of its

wording. The First Commission was also of opinion, when proposing the above text, that the personnel engaged in the search of wounded and sick should have the same protection as that ensured to staff employed for the collection, transport and treatment of the wounded, and also for the administration of medical units.

The essential amendment of Art. 9 was adopted, as mentioned above, after prolonged debate. The last clause of the Article constitutes a kind of compromise between the theory of immunity of medical personnel, and that of their capture. Medical Personnel, once they have fallen into enemy hands, shall be treated as P.W., but with certain reservations contained in Art. 13.

The Commission unanimously decided to delete Sec. 2 of the present Art. 9. This Section was inserted in 1929, on the request of the French Delegation. Its aim was to grant the safeguard of the Convention to personnel temporarily engaged in medical work.

The Preliminary Conference (1946) had already discussed the maintenance or suppression of this category of protected personnel, but finally decided in favour of maintenance.

The 1947 Conference pointed out that during the recent war it was almost always impossible to grant temporary personnel any privileges. First, it was difficult to provide all concerned with certificates of identity vouching for their status ; furthermore, many combatants were also trained to give first aid to wounded and sick in case of need. Motor-truck drivers often transported wounded and sick as well as ammunition ; finally, and above all, when P.W. are taken in large numbers, it is impossible to determine, when sorting them, which men were engaged on ambulance work at the moment of capture. The Commission was of opinion that, to ensure genuine protection of permanent Medical Personnel, no generalization should be made ; it was thus unanimously decided to delete Sec. 2. When the military command makes temporary use of combatants for medical work, the latter shall not enjoy the protection of the Geneva Convention.

Article 11 (former Art. 10)

The personnel of Voluntary Aid Societies, duly recognised and authorised by their Governments, who may be employed on the same duties as the personnel mentioned in *Article 10*, are placed on the same footing as the personnel contemplated in that Article, provided that the personnel of such societies are subject to military laws and regulations.

Each High Contracting Party shall notify to the other, either in time of peace or at the commencement of, or during hostilities, but in any case before actual employment, the names of the societies which it has authorised, under its responsibility, to render assistance to the regular medical service of its armed forces.

ART. 10 (1929). — The personnel of Voluntary Aid Societies, duly recognised and authorised by their Governments, who may be employed on the same duties as the personnel mentioned in the first paragraph of Art. 9, are placed on the same footing as the personnel contemplated in that paragraph, provided that the personnel of such societies are subject to military law and regulations.

Each High Contracting Party shall notify to the other, either in time of peace or at the commencement of or during the course of hostilities, but in any case before actually employing them, the names of the societies which it has authorised, under its responsibility, to render assistance to the regular medical service of its armed forces.

The Commission made no change in this Article. In its report, however, the ICRC pointed out that the Geneva Convention makes no mention (except in Art. 24) of Red Cross Societies as such, but refers only to "Voluntary Aid Societies". The Red Cross Societies are Voluntary Aid Societies *par excellence*, and constitute almost the entire body of such societies recognised in pursuance of Art. 10. In order to abolish present ambiguity, the ICRC therefore recommended that National Red Cross Societies should be expressly mentioned. The Preliminary Conference (1946) suggested the adoption of the following wording :

"The personnel of National Red Cross (Red Crescent, Red Lion and Sun) Societies, duly recognized by their respective Governments, are placed on the same footing as the personnel contemplated in Section 1 of Article 9, provided that they are

employed in the same functions and are subject to the same military laws and regulations.”

The Preliminary Conference however made no decision regarding the omission or maintenance of the mention of other Voluntary Aid Societies, side by side with National Red Cross Societies; it considered that this question should be dealt with by the Governments concerned. Such Aid Societies, although not attached to the Red Cross organization, are recognized by their respective Governments as auxiliary members of the Army Medical Services. There are not more than ten such societies, of which the most important are the Orders of Malta, of St. John of Jerusalem, and of St. John and St. George.

The proposal made by the ICRC gave rise to debates within the Commission. Some Delegations were of opinion that an Article which had, up to now, proved satisfactory should not be amended; others feared that the express mention of Red Cross Societies might provoke similar demands from other aid societies.

The amendment proposed by the ICRC, to mention “relief Societies... and particularly National Red Cross Societies”, was finally rejected by 6 votes to 5.

The Conference in plenary assembly did not consider it useful to open a fresh debate on this point.

Article 12 (former Art. 11)

A recognised Society of a neutral country can only afford the assistance of its medical personnel and units to a belligerent with the previous consent of its own Government and the authorization of the belligerent concerned. *The neutral Government shall notify this consent to the adversary of the State which accepts this assistance.*

The belligerent who accepts such assistance is bound to notify the *adverse party* thereof before making any use of it.

Under no circumstances shall this assistance be considered as interference in the conflict.

The members of the personnel named in Section 1 shall be duly furnished, before leaving the neutral country to which they belong, with the identity cards provided for in Article 24.

ART. 11 (1929). — A recognized society of a neutral country can only afford the assistance of its medical personnel and formations to a belligerent with the previous consent of its own Government and the authorization of the belligerent concerned.

The belligerent who accepts such assistance is bound to notify the enemy thereof before making any use of it.

Re Section 1.

The addition proposed by the Commission dates from 1937 already. The 1937 Commission, accepting a proposal of the Netherlands Red Cross, recognized the advantage for the neutral State to have its assent notified compulsorily and direct to the enemy belligerent, in addition to notification by the belligerent receiving such assistance. The purpose of this adjunction was simply to unify a procedure which had led to some uncertainty, and to show that the neutral State took responsibility for the aid given.

The Preliminary Conference (1946) also recommended the adoption of this amendment.

The Commission thought moreover opportune to replace the words "to the enemy" by "to the adversary (*partie adverse*)".

Re Section 3.

This Section was also proposed in 1937 by the Netherlands Red Cross. The latter observed that whereas this stipulation appeared obvious, in practice the loan of assistance had been misunderstood on past occasions; this showed the necessity for its precise definition in the Convention. The Preliminary Conference (1946) also considered such an amendment desirable.

The Commission, in its turn, approved this proposal.

Re Section 4.

This Section was added, without discussion, on the proposal of one Delegation.

Article 13

The members of personnel named in Articles 10 and 11 shall be held captive in so far as the state of health, the spiritual needs and

the number of prisoners of war demand. Under the authority of the Detaining Power and particularly of its Medical Service, they shall continue to carry out their medical or spiritual duties, in accordance with their professional ethics, for the benefit of prisoners of war, preferably those of their own nationality.

The foregoing provision does not relieve the Detaining Power of its obligations as regards medical and spiritual care to prisoners of war.

Members of personnel mentioned in Section I of the present Article shall enjoy all the rights of prisoners of war. To allow them to carry out their humanitarian duties under the best possible conditions, the detaining authorities shall grant them, as far as is necessary, certain facilities, especially as to accommodation, food, correspondence relating to their particular duties, the election of a spokesman among themselves and such travel facilities, with or without escort, as may be necessary for their work.

In this Article, the Commission approved the principle that Medical Personnel should be retained, in so far as the state of health, the spiritual needs and the number of P.W. demand.

Furthermore, at the request of certain Delegations, it is stated that Medical Personnel shall continue to carry out their duties under the authority of the Detaining Power, and particularly of its Army Medical Service.

It is stipulated in Sec. 2 that the foregoing does not relieve the Detaining Power of its obligations as regards P.W.'s health and spiritual needs.

During the plenary session one Delegation asked that it should be stipulated that medical personnel shall continue to carry out their duties "in accordance with professional ethics". The Delegation observed that, during the last war, it happened fairly often that doctors were compelled by the Detaining Power to do work contrary to professional ethics.

Finally, the Commission recognized that it was in the interest of wounded and sick P.W. themselves that Medical Personnel in captivity should be granted priority as regards accommodation, food, correspondence relating to their particular duties, election of a spokesman among themselves, and such travel facilities, with or without escort, as may be necessary for their work.

Article 14

Members of personnel named in Articles 10 and 11, whose retention in captivity is not made indispensable by the exigencies mentioned in Article 13, shall be returned to the belligerent to whom they belong, as soon as a route is open for their return and the military situation permits.

On their departure, they shall take with them the effects, instruments, arms and means of transport belonging to them.

The Commission here followed the terms of Article 12 of the present Convention.

It should be stressed that this Article (which is applicable only to medical personnel whose retention in captivity is not indispensable in pursuance of Art. 13) is categorical. It therefore offers the belligerents no option to conclude agreements forgoing repatriation of Medical Personnel.

One Delegation recommended that the classes of personnel eligible for repatriation should be confined to medical officers and orderlies.

Article 15

The selection of repatriates shall be made irrespective of any consideration of race, religion or political opinion, but preferably according to the chronological order of their capture.

As from the outbreak of hostilities, belligerents may determine by special arrangement the percentage of personnel to be retained in captivity, in proportion to the number of prisoners of war.

The Commission found it necessary to mention the considerations which have no bearing on the selection of repatriates. The members were of opinion that the main factor of repatriation should be the chronological order of capture.

Finally, the Commission admitted the necessity of leaving belligerents the option of concluding special arrangements as from the outbreak of hostilities, to determine the percentage of personnel to be retained in captivity, proportionately to the number of P.W.

Article 16 (former Art. 12 and 13)

The persons designated in *Article 12* may not be retained after they have fallen into the hands of the *adverse party*.

Unless otherwise agreed, they shall be *authorised to return to their country, or if this is not possible, to the territory of the belligerent in whose service they were*, as soon as a route for their return is open and military considerations permit.

Pending their return, they shall continue their work under the direction of the *adverse party*; they shall preferably be engaged in the care of the wounded and sick of the belligerent *in whose service they were*.

On their departure, they shall take with them their effects, *personal articles and valuables*, instruments, arms and the means of transport belonging to them.

Belligerents shall secure to *this* personnel, while in their power, the same food, lodging, allowances and pay as are granted to the corresponding personnel of their armed forces.

ART. 12. (1929). — The persons designated in Articles 9, 10 and 11, may not be retained after they have fallen into the hands of the enemy.

In the absence of an agreement to the contrary, they shall be sent back to the belligerent to which they belong as soon as the route for their return shall be open and military considerations permit.

Pending their return, they shall continue to carry out their duties under the direction of the enemy: they shall preferably be engaged in the care of the wounded and sick of the belligerent to which they belong.

On their departure, they shall take with them the effects, instruments, arms and means of transport belonging to them.

ART. 13 (1929). — Belligerents shall secure to the personnel mentioned in Articles 9, 10 and 11, while in their hands, the same food, the same lodging, the same allowances and the same pay as are granted to the corresponding personnel of their own armed forces.

At the outbreak of hostilities, the belligerents will notify one another of the grades of their respective medical personnel.

The status of Medical Personnel belonging to recognized Aid Societies of a neutral country remains the same as under the 1929 Convention. This personnel is not subject to capture and must be repatriated unconditionally. The wording of the Article was slightly amended.

The Commission having spent some days in discussing the chapter on Medical Personnel, the ICRC drew attention to the case of nationals of occupied or annexed countries who enlisted voluntarily or under coercion, in the medical services of the occupying Forces. After the liberation of the country, these persons often became liable to sentence for high treason, under the military penal code of their home country.

While it may be true that the Medical Service, though unarmed, does form part of the Army, the spirit of the Geneva Convention and the principle of the Red Cross (which require the care of war victims irrespective of nationality) are opposed to such persons being subjected to the same penalties as those who took up arms against their own country. Although it seems improbable that the Convention can provide for such cases, the ICRC thought that this point might perhaps be raised in the Final Act of the future Diplomatic Conference.

The Commission did not take up discussion of this problem.

One Delegation reserved its opinion for the whole of the chapter on Medical Personnel.

CHAPTER IV. — BUILDINGS AND MATERIAL

Article 17 (former Art. 14 and 15)

The buildings, material and stores of fixed medical establishments and of mobile medical units of the armed forces shall remain subject to the laws of war, but may not be diverted from their purpose, as long as they are required for the care of wounded and sick.

Nevertheless, the commanders of troops in the field may make use of them, in case of urgent military necessity, provided that they make previous arrangements for the welfare of the wounded and sick who are being treated therein.

ART. 14 (1929). — Mobile medical formations, of whatsoever kind, shall retain, if they fall into the hands of the enemy, their equipment and stores, their means of transport and the drivers employed.

Nevertheless, the competent military authority shall be free to use the equipment and stores for the care of the wounded and sick; it (they) shall be restored under the conditions laid down for the medical personnel, and as far as possible at the same time.

ART. 15 (1929). — The buildings and material of the fixed medical establishments of the army shall be subject to the laws of war, but may not be diverted from their purpose as long as they are necessary for the wounded and the sick.

Nevertheless, the commanders of troops in the field may make use of them, in case of urgent military necessity, provided that they make previous arrangements for the welfare of the wounded and sick who are being treated therein.

Re Section 1.

The ICRC submitted no proposal to amend Art. 14 and 15 of the present Convention.

During the Commission's sitting one Delegation proposed an important amendment, namely, to delete the restitution of equipment of mobile medical units, as a logical corollary of the retention of Medical Personnel. Already in 1906 it was proposed that the equipment of mobile medical units might be captured, but the opinion prevailed that it should be returned. Some members observed that during the war belligerents had usually requisitioned such equipment. The Commission endorsed this view and decided to amalgamate the two Articles covering the equipment of mobile units and fixed establishments. This equipment shall be liable to capture, but shall not be diverted from its purpose as long as it is required for the care of wounded and sick.

The Commission also decided to subject stores and equipment to the same regulation.

Article 18 (former Art. 16)

The buildings of aid societies which are admitted to the privileges of the Convention shall be regarded as private property.

The material of these societies, wherever it may be, shall similarly be considered as private property.

The right of requisition recognised to belligerents by the laws and customs of war shall be exercised only in case of urgent necessity, and only after the welfare of the wounded and sick has been ensured.

ART. 16 (1929). — The buildings of aid societies which are admitted to the privileges of the Convention shall be regarded as private property.

The material of these societies, wherever it may be, shall similarly be considered as private property.

The right of requisition recognised for belligerents by the laws and customs of war, shall only be exercised in case of urgent necessity and only after the welfare of the wounded and sick has been secured.

The 1937 Commission was of opinion that the text of Art. 16 would suffice to protect equipment belonging to aid societies everywhere, consequently even when such material was being transported by land, sea, or air. The Commission however decided to add after the words "wherever it may be", the words "or in whatever conditions".

The 1947 Commission considered it preferable, however, not to amend this text, so as to avoid risk of abuse.

CHAPTER V. — MEDICAL TRANSPORTS

Article 19 (former Art. 17)

Transports of wounded and sick, or of medical equipment shall be respected and protected in the same way as mobile medical units. The same shall apply to vehicles temporarily employed for the above purposes, for the time that they are so employed.

When such transports or vehicles fall into the hands of the adverse party they shall be subject to the laws of war, on condition that the belligerent who captures them shall in all cases undertake the care of the wounded and sick whom they contain.

The civilian personnel and all means of transport obtained by requisition shall be subject to the general rules of international law.

ART. 17 (1929). — Vehicles equipped for the evacuation of wounded and sick, proceeding singly or in convoy, shall be treated as mobile medical formations, subject to the following special provisions :

A belligerent intercepting vehicles of medical transport, singly or in convoy, may, if military exigencies demand, stop them and break up the convoy, provided he takes charges in every case of the wounded and sick who are in it. He can only use the vehicles in the sector where they have been intercepted, and exclusively for medical requirements. These vehicles, as soon as they are no longer required for local use, shall be given up in accordance with the conditions laid down in Article 14.

The military personnel in charge of the transport and furnished for this purpose with authority in due form, shall be sent back in accordance with the conditions prescribed in Article 12 for medical personnel, subject to the condition of the last paragraph of Article 18.

All means of transport specially organized for evacuation and the material used in equipping these means of transport belonging to the medical service shall be restored in accordance with the provisions of Chapter IV. Military means of transport other than those of the medical service may be captured, with their teams.

The civilian personnel and all means of transport obtained by requisition shall be subject to the general rules of international law.

Acting on the request of the Belgian Red Cross, the Preliminary Conference (1946) recommended the introduction into this Chapter, relative to medical transport, of a prefatory Article laying down general principles, as is the case for medical units, since Art. 17 regulates matters of detail only. The Conference considered, however, that the introduction of a new Article should not be undertaken without the most careful scrutiny, in order to ensure perfect concordance between the said Articles and the stipulations already contained in Article 17. It therefore confined itself to laying down the following general principles, establishing the immunity of medical transports :

« Transports of wounded and sick and the medical staff and material employed for that purpose, including the means of conveyance, shall under all circumstances enjoy the protection ensured by the present Convention to hospital establishments. Transports of medical equipment shall enjoy the same facilities, on condition that all steps to ensure strict observance of the principles laid down in the Convention are taken by the belligerent to whom they belong. »

The First Commission noted that the proposed wording no longer conformed with the new provisions concerning medical equipment. The above wording was then decided upon.

Re Section 1.

The Commission decided to grant protection in the Convention to vehicles temporarily employed for medical purposes, such protection to be extended only during the time they are so employed.

Re Section 2.

The Commission brought this Section into line with the wording of Art. 17, and deleted all restitution of transports or vehicles once they have fallen into enemy hands, on condition that the belligerent who captures them shall in all cases undertake the care of the wounded and sick nursed therein.

Article 20 (former Art. 18)

Aircraft defined in the present Article and used as a means of medical transport may not be the object of attack, but shall be respected by belligerents during the time they are exclusively employed for the removal of wounded and sick, or the transport of medical personnel and material.

They shall be painted white and shall bear, clearly marked, the distinctive emblem prescribed in *Article 22*, together with their national colours, on their lower, upper and lateral surfaces.

Unless agreed otherwise, flights over land or maritime war zones, military objectives or units, whether on land or sea, and territories belonging to the enemy or occupied by him, shall be prohibited.

Medical aircraft shall obey every summons to land.

In the event of landing thus imposed, or of an involuntary landing in enemy territory, or territory occupied by the enemy, the wounded and sick, *the medical personnel of the aircraft, as well as the crew shall be prisoners of war.*

ART. 18 (1929). — Aircraft used as means of medical transport shall enjoy the protection of the Convention during the period in which they are reserved exclusively for the evacuation of wounded and sick and the transport of medical personnel and material.

They shall be painted white and shall bear, clearly marked, the distinctive emblem prescribed in Article 19, side by side with their national colours, on their lower and upper surfaces.

In the absence of special and express permission, flying over the firing line, and over the zone situated in front of clearing or dressing stations, and generally over all enemy territory or territory occupied by the enemy, is prohibited.

Medical aircraft shall obey every summons to land.

In the event of a landing thus imposed, or of an involuntary landing in enemy territory or territory occupied by the enemy, the wounded and sick, as well as the medical personnel and material, including the aircraft, shall enjoy the privileges of the present Convention.

The pilot, mechanics and wireless telegraph operators captured shall be sent back, on condition that they shall be employed until the close of hostilities in the medical service only.

The Commission referred the study of the articles concerning medical aircraft to a sub-committee of specialists, whose report it then discussed.

In the report to the Conference, the ICRC recalled the fact that at the Diplomatic Conference of 1929, the question of medical aircraft was summarily settled by the adoption of Art. 18 of the Geneva Convention, and that in its Final Act the Conference recommended that the whole question of the use of medical aircraft should be regulated at a later date. Consequently, at the XIVth Red Cross Conference (Brussels, 1930), the ICRC submitted a draft adaptation of the principles of the Geneva Convention to aerial warfare, framed by MM. Ch. Julliot and P. Des Gouttes; this draft was adopted. The Conference invited the ICRC to transmit the draft to the Swiss Government, for discussion by the Diplomatic Conference fixed for 1940, but postponed owing to the war.

The ICRC again submitted the 1930 draft to the experts and stressed a certain number of points which required amendment.

The majority of the experts, considered, however, that Art. 18 of the Geneva Convention had met with very limited application during the recent war. Removal of the wounded by air was

usually effected under the protection of fighting craft, without any recourse to the safeguard of the Geneva Convention. The experts thought that the technical progress made in this field, particularly with regard to increased speed and anti-aircraft guns, rendered illusory any attempt to develop the use of protected medical aircraft. They were, nevertheless, willing to admit that the substance of Art. 18 could be maintained and adapted for flights over neutral territories.

Re Section 1.

The 1929 text was adopted with slight alterations.

Re Section 2.

To enhance its visibility, the distinctive emblem should also be marked on the lateral surfaces of aircraft.

Re Section 3.

The Commission adopted this new Section in order to reduce to a minimum the danger of espionage by medical aircraft, some Delegations having pointed out that photographs could be taken by such aircraft, and that it was therefore expedient to indicate clearly the regions over which flights were prohibited.

For this reason, the Commission mentioned in the text that flights over land or maritime war zones, as well as military objectives or units, whether on land or sea, belonging to the enemy or occupied by him, should be prohibited.

Re Section 5.

In connexion with the decisions made regarding medical personnel, the Commission wished to introduce a special stipulation into the Convention that the medical personnel of aircraft, as well as the crew, shall be treated as P.W., thus eliminating Section 6 of Art. 18.

Article 21 (new)

Medical aircraft shall have free passage over the territories or territorial waters of neutral countries, on condition that such passage be previously notified to the latter.

The aircraft shall obey every summons to land.

In the event of a thus imposed, or involuntary landing, the wounded and sick shall be detained by the neutral State, so that they may not be able to take part again in military operations. The medical personnel and material, as well as the aircraft and crew, shall be subject to the general rules of international law.

The costs of accommodation and treatment shall be borne by the State to which the wounded and sick belong.

The Commission considered that medical aircraft should have the option of flying over neutral countries, on condition that their passage was previously notified, and that they obeyed every summons to land. These stipulations should be worded in the spirit of Art. 14 of the Fifth Hague Convention, 1907, relative to the rights and duties of neutral Powers and persons in case of war on land.

Two Delegations reserved the opinions of their Governments with regard to Art. 20 and 21.

CHAPTER VI. — THE DISTINCTIVE EMBLEM

Article 22 (former Art. 19)

As a compliment to Switzerland, the heraldic emblem of the red cross on a white ground, formed by reversing the federal colours, is retained as the emblem and distinctive sign of the medical service of armed forces.

Nevertheless, in the case of countries which already use, in place of the Red Cross, the Red Crescent or the Red Lion and Sun on a white ground as a distinctive sign, these emblems are also recognised by the terms of the present Convention.

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Re Section 2.

A lively debate took place in the Commission with regard to the possible omission of this section, as proposed by the 1937 Commission, thus restoring the unity of the emblem of a red cross on a white ground. The Preliminary Conference (1946) had fully discussed the question and finally decided to leave the Section in its present form.

Some Delegations pointed out that combatants were sometimes not sufficiently instructed, and that it was difficult to make them grasp the obligation of respecting several different emblems. The Chinese delegation observed that in its country both military personnel and civilians were quite familiar with the Red Cross emblem.

On the other hand, the Indian delegation stressed that Muslims are strongly opposed to the Red Cross emblem, and that it was essential to maintain the protection of the Red Crescent.

The Commission finally decided to maintain this Section.

Article 23 (former Art. 20)

The emblem shall figure on the flags, armlets, and on all material belonging to the medical service, with the permission of the competent military authority.

ART. 20 (1929). — The emblem shall figure on the flags, armlets, and on all material belonging to the medical service, with the permission of the competent military authority.

Article 24 (former Art. 21)

The personnel mentioned in Articles 10, 11 and 12 shall wear, affixed to the left arm, a *water-resistant* armlet bearing the distinctive sign, issued and stamped by the military authority.

Such personnel shall also carry an identity card, attesting their status, and which can be put in the pocket. It shall be water-resistant, bear the photograph and finger-prints of the owner, and shall be embossed with the stamp of the military authority.

The identity card shall be uniform throughout the same armed forces, and, so far as possible, of similar type in the armed forces of the Contracting Parties. At the outbreak of hostilities, belligerents shall inform each other of the model in use in their armed forces.

All identity cards shall be established at least in duplicate, one copy being issued to the owner and the other kept by the Power of origin.

Under no circumstances may the personnel mentioned above be deprived of their armlets or identity cards. In case of loss they are entitled to duplicates.

ART. 21 (1929). — The personnel protected in pursuance of Articles 9 (Paragraph 1), 10 and 11, shall wear, affixed to the left arm, an armlet bearing the distinctive sign, issued and stamped by a military authority.

The personnel mentioned in Article 9, Paragraphs 1 and 2, shall be provided with a certificate of identity, consisting either of an entry in their small book (paybook) or a special document.

The persons mentioned in Articles 10 and 11 who have no military uniform shall be furnished by the competent military authority with a certificate of identity, with photograph, certifying their status as medical personnel.

The certificates of identity shall be uniform and of the same pattern in each army.

In no case may the medical personnel be deprived of their armlets or the certificates of identity belonging to them.

In case of loss they have the right to obtain duplicates.

Re Section 1.

The Commission made a purely formal change in this Section by adding the provision that armlets should in future be water-

resistant. This was considered useful in view of experience gained during the war.

The ICRC had drawn attention to the fact that during the recent war many members of the Medical Personnel who fell into enemy hands were unable to substantiate their right to repatriation, or experienced great difficulties in so doing, because they did not hold the identification documents prescribed by the Convention. Since the beginning of 1940, the ICRC instituted an enquiry which showed that most countries had not adhered strictly to the provisions of the Convention relative to identification papers of medical personnel. The ICRC therefore expressed the hope that the distressing experiences of the recent war would induce States to take henceforth all possible steps to provide their Medical Personnel with regulation documents, and suggested that a recommendation (to be included in the Final Act of a Diplomatic Conference) should stress this necessity.

The Commission concurred and thought the Final Act of the future Diplomatic Conference should recommend that : " States and National Red Cross Societies shall take all necessary measures, already in peace time, to ensure that Medical Personnel shall be duly provided with the emblems and identification documents mentioned in this Article ".

Re Section 2.

In this Section the Commission wished to subject identity cards to certain conditions. The ICRC had stressed the desirability of unifying all identification documents in use in the various States. Should such unification prove impossible, it would be at any rate expedient that all belligerents should inform each other, at latest on the outbreak of hostilities, of the type of document in current use in their forces.

The ICRC further observed that pay books are often too large to be carried in a uniform pocket, and that medical orderlies are therefore prone to put them in their packs, which they leave behind when they go to pick up the wounded. Moreover, the book is often kept in base offices. It thus seems desirable that

Army Medical Personnel be furnished with an identity card small enough to be slipped in the pocket, and provided with a photograph.

The Commission endorsed the proposals made by the ICRC and recommended the adoption of an identity card small enough to be put in the pocket, and water-resistant ; it should bear the finger prints of the holder and the embossed stamp of the military authorities, to avoid all chance of forgery.

One Delegation, however, reserved its Government's opinion as regards finger prints and embossed stamp.

Re Section 3.

The ICRC had pointed out, as is mentioned above, that in order to obviate the recurrence of difficulties quoted, from which so many members of the Medical Personnel suffered, provision should be made for unifying the identity cards for all ranks of medical personnel for every State, as such unification would simplify formalities and preclude differences of opinion.

The Preliminary Conference (1946) also recommended unification by all States of the identification documents issued to Medical Personnel of all categories, and the adoption by all States of a uniform identity card.

The 1947 Conference was also in favour of unification of identification documents for all armies and, as far as possible in all armies of contracting Powers with notification by the belligerents at the outset of hostilities, of the type employed in their forces.

Re Section 4.

By inserting this new Section the Commission aimed at reducing the difficulties encountered by medical personnel having lost their identity cards.

Article 25 (former Art. 22)

The distinctive flag of the Convention shall be hoisted only over such medical units and establishments as are entitled to

be respected under the Convention, and with the consent of the military authorities.

In mobile units, as in fixed establishments, it may be accompanied by the national flag of the belligerent to whom the unit or establishment belongs.

Nevertheless, medical units which have fallen into the hands of the enemy shall not fly any other flag than that of the Convention.

Belligerents shall take the necessary steps, so far as military exigencies permit, to make clearly visible to the enemy forces, whether land, air or sea, the distinctive emblems indicating medical formations and establishments, in order to avoid the possibility of any offensive action.

ART. 22 (1929). — The distinctive flag of the Convention shall be hoisted only over such medical formations and establishments as are entitled to be respected under the Convention, and with the consent of the military authorities. In fixed establishments it shall be, and in mobile formations it may be accompanied by the national flag of the belligerent to whom the formation or establishment belongs.

Nevertheless, medical formations which have fallen into the hands of the enemy, so long as they are in that situation, shall not fly any other flag than that of the Convention.

Belligerents shall take the necessary steps, so far as military exigencies permit, to make clearly visible to the enemy forces, whether land, air, or sea, the distinctive emblems indicating medical formations and establishments, in order to avoid the possibility of any offensive action.

Re Section I.

The 1937 Commission recommended the division of this Section into two paragraphs, the first referring to the Convention flag, the second to the national flag. It also recommended that the use of the latter should be unified, by laying down that both mobile units and fixed establishments be simply authorised to display it. It was observed that the national flag, which is a symbol of belligerence, might sometimes favour attack.

The Commission adopted the proposed text, quoted above, without debate.

Re Section 3.

The Commission decided to delete the words " so long as they are in that situation ", for they were relevant only if practically immediate repatriation of medical units was foreseen. Since the latter were to remain in enemy hands, the use of the Red Cross flag would depend on the Detaining Power.

The ICRC recalled in its report that the 1937 Commission had discussed the question of the marking and camouflage of medical units and establishments, in connexion with this Article.

The 1937 Commission proposed no amendment as regards camouflage, but invited a sub-commission, with General Schickelé in the chair, to study these questions from the technical point of view. Dr. Schickelé's views were published in annex to the 1937 Report on the revision of the Geneva Convention. He recommended especially not to resort to camouflage of medical units, except during the time strictly necessary to the secrecy of military operations, and to mark such units immediately on engaging battle, when the military command need no longer conceal anything from the enemy.

In the First Commission, most of the Delegations stressed that modern tactics usually prevented the marking of front line medical units, as this would provide the enemy with information concerning the position and number of troops engaged. The Commission expressed doubt, moreover, as to the usefulness of marking medical units and establishments in the combat zone.

Article 26 (former Art. 23)

The medical units belonging to neutral countries which shall have been authorised to lend their services under the conditions laid down in Article 12, shall fly along with the flag of the Convention, the national flag of the belligerent to whose army they are attached, *should the latter make use of the faculty conferred on him by Article 25.*

Subject to orders to the contrary by the responsible military authorities, they may, on all occasions, fly their national flag, even if they fall into the hands of the adverse party.

ART. 23 (1929). — The medical units belonging to neutral countries which shall have been authorised to lend their services under the conditions laid down in Article 11, shall fly, along with the flag of the Convention, the national flag of the belligerent to whose army they are attached.

They shall also have the right, so long as they shall lend their services to a belligerent, to fly their national flag.

The provisions of the second paragraph of the preceding article are applicable to them.

In its report, the ICRC had reproduced these two proposals, as made by the 1937 Commission. The First Commission endorsed them, thus making the use by medical units or establishments of the national, belligerent or neutral flag uniformly optional.

Article 27 (former Art. 24)

With the exception of the cases mentioned in the last three Sections of the present Article, the emblem of the red cross on a white ground and the words " Red Cross " or " Geneva Cross " may not be employed, either in time of peace or in time of war, except to protect or to indicate the medical units and establishments, the personnel and material protected by the Convention.

The same shall apply to the emblems mentioned in *Article 22*, Section 2, in respect of the countries which use them.

The Voluntary Aid Societies mentioned in *Article 11* and in particular the *National Red Cross Societies*, may in accordance with their national legislation, use the distinctive emblem in time of peace as in time of war, in so far as the size of the emblem and the conditions of its use are such that it cannot, in time of war, be considered as conferring the protection of the present Convention.

In the same conditions, the organs of the International Red Cross shall be similarly authorised to make use of the emblem of the Red Cross on a white ground, at all times.

As an exceptional measure, in conformity with national legislation and with the express authority of one of the National Red Cross (Red Crescent, Red Lion and Sun) Societies, use may be made of the emblem of the Convention in time of peace, to

identify ambulances and to mark the position of aid stations exclusively reserved for the purpose of giving free treatment to the wounded or the sick.

ART. 24 (1929). — The emblem of the red cross on a white ground and the words "Red Cross" or "Geneva Cross" shall not be used, either in time of peace or in time of war, except to protect or to indicate the medical formations and establishments and the personnel and material protected by the Convention.

The same shall apply, as regards the emblems mentioned in Article 19, Paragraph 2, in respect of the countries which use them.

The Voluntary Aid Societies mentioned in Article 10, may, in accordance with their national legislation, use the distinctive emblem in connexion with their humanitarian activities in time of peace.

As an exceptional measure, and with the express authority of one of the National Societies of the Red Cross (Red Crescent, Red Lion and Sun), use may be made of the emblem of the Convention in time of peace to mark the position of aid stations exclusively reserved for the purpose of giving free treatment to the wounded or the sick.

Re Section 1.

The above amendment was adopted by the Commission, following the proposal made by the Preliminary Conference (1946). The latter recommended a purely formal amendment on this point, indicating that the general principle expressed by this Article admits of the exceptions quoted in the last three Sections of Art. 24.

Re Section 3.

The 1937 Commission, confirming well-established usage, recommended that the text of this Article should include a sentence stipulating that National Red Cross Societies shall be able to employ the Red Cross emblem when carrying out, in war time, their welfare activities in behalf of sick or wounded civilians.

There are, as the ICRC recalled in its report, two uses of the Red Cross emblem.

In the first case—and this is its essential meaning—the emblem may be described as *constitutive* of protection, when it is

displayed on buildings, personnel and material protected by the Convention. In practice, this use is important in time of war and in the zone of military operations. The emblem is then, usually, of a large size in order to be easily recognized, particularly from the air.

In the second case, the emblem is used in a *descriptive* manner only, both in peace time and in time of war, outside the fighting zone, without carrying any protection. Its object is to draw public attention to buildings, printed matter, etc. The emblem is then always of a small size.

Obviously, when the emblem may be considered as conferring protection, the greatest and most particular care must be taken to ensure that the Red Cross is used only within the limits fixed by the Convention, or by explicit agreement between the Powers concerned. These precautions are essential to secure the respect it demands and to safeguard its authority. The presence, in a war zone, of buildings or objects on which the Red Cross emblem is displayed in unwarranted fashion is liable to imperil the security of those who wear it legitimately.

Inconsiderate extension of the use of the emblem, even in a descriptive manner, is liable to reduce the prestige attaching to the emblem, and thus to compromise the reputation enjoyed by the Red Cross itself—the more so as it is sometimes difficult in practice for the enemy to distinguish the descriptive from the constitutive and protective use.

During the recent war cases of alleged abuse of the Red Cross emblem were brought to the knowledge of the ICRC, which did not fail to recommend the National Society of the country concerned to approach its Government on the subject. In some cases, especially during the final phase of hostilities in Europe, serious abuses of the emblem were noted by ICRC delegates. Motor-trucks displaying the Red Cross were used to transport troops or war material, and the ICRC itself repeatedly approached the Government concerned.

The ICRC therefore believes that the emblem should be employed in strict agreement with the stipulations of the Geneva Convention, subject to such amendments as may be held necessary.

The First Commission, by adopting Sec. 3 amended, wished to record a factual situation, and to allow, under certain circumstances, the descriptive use of the emblem.

According to the former text of this Section, National Red Cross Societies are not entitled to use the emblem in war-time for all the humanitarian work they do outside their function as auxiliaries of the Army Medical Service.

The Commission wished to remove this anomaly, as Sec. 3 of Art. 24 was never strictly applied during the recent war.

Re Section 4 (new).

The ICRC pointed out an obvious gap in the Geneva Convention which should be filled. Neither the ICRC nor the League is mentioned in the Convention as a body which is authorised to employ the Red Cross emblem in peace time as in time of war. However, no one has ever questioned the right of the ICRC to use this emblem and to supply its delegates with a white armlet bearing a red cross, since the Committee employed it thus even before the existence of the Geneva Convention, and may even be considered to be its inventor.

The Commission was anxious to permit the use of the emblem to the "international Red Cross organizations", i.e. the ICRC, the League of National Red Cross Societies, and the Standing Commission of the International Red Cross Conference.

Re Section 5.

The Preliminary Conference (1946) left this Section as it stands. On due consideration, the ICRC thought that the possible employment of the emblem by first aid stations should, perhaps, be extended to ambulances not connected with the Red Cross.

The Commission considered that here, too, it was a matter of confirming a practice already established in most countries, if not in all. It pointed out that the Red Cross is well-known to the public, and that if it is displayed on an ambulance (with the permission of the National Red Cross Society concerned), other drivers observe the rule of the road and give it priority.

Furthermore, to obviate certain difficulties of application, the Commission decided to insert a clause (which was certainly implied), namely, the words "in obedience to national legislation", which do not appear in the present text.

Finally, the Commission unanimously regretted the numerous abuses of the emblem. It therefore thought desirable that the Final Act of the next Diplomatic Conference should include a recommendation that States must take the greatest care that the Red Cross emblem is used solely within the limits of the Geneva Convention, in order to safeguard its authority and preserve its high significance.

CHAPTER VII. — APPLICATION AND EXECUTION OF THE CONVENTION

Article 28 (former Art. 25)

The provisions of the present Convention shall be respected by the High Contracting Parties in all circumstances.

If a belligerent is not a party to the Convention, its provisions shall, nevertheless, be binding as between all the belligerents who are parties thereto.

ART. 25 (1929). — The provisions of the present Convention shall be respected by the High Contracting Parties in all circumstances. If, in time of war, a belligerent is not a party to the Convention, its provisions shall, nevertheless, be binding as between all the belligerents who are parties thereto.

The Commission decided to retain the present wording, but to delete, in Sec. 2, the phrase "in time of war", as this seemed superfluous in conjunction with the word "belligerent".

Article 29 (former Art. 26)

The belligerents, acting through their commanders-in-chief, shall arrange the details for carrying out the preceding Articles,

as well as for unforeseen cases, in accordance with the instructions of their respective Governments and in conformity with the general principles of the present Convention.

In no case shall measures of reprisal be taken against the wounded and the sick, the buildings, personnel or equipment protected by the Convention.

ART. 26 (1929). — The Commanders-in-Chief of belligerent armies shall arrange the details for carrying out the preceding Articles, as well as for cases not provided for, in accordance with the instructions of their respective Governments and in conformity with the general principles of the present Convention.

Re Section 1.

The effect of the change of wording adopted by the Commission is to heighten the obligation incumbent on States.

Re Section 2.

The 1937 Commission had already recommended the insertion in the Geneva Convention of a principle similar to that embodied in Art. 2, Sec. 3 of the PW Convention, forbidding measures of reprisal.

The Commission also considered that the insertion of this principle was necessary.

Article 30 (former Art. 27)

The High Contracting Parties shall take, *in time of peace as in time of war*, the necessary steps to make known the text of the present Convention, to instruct their armed forces, and in particular the *medical personnel and the chaplains*, in its provisions, and to bring them to the notice of the civil population.

ART. 27 (1929). — The High Contracting Parties shall take the necessary steps to instruct their troops, and in particular the personnel protected, in the provisions of the present Convention, and to bring them to the notice of the civil population.

The Commission unanimously agreed that the Geneva Convention was not sufficiently well known, and that knowledge of this document should form part of the instruction of all members of the armed forces.

The other changes of wording were adopted to bring the text into line with modern military terminology and with the amendments made to Arts. 10 and following.

CHAPTER VIII. — SUPPRESSION OF ABUSES AND INFRACTIONS

Article 31 (former Art. 28)

The High Contracting Parties whose legislation is not at present adequate for the purpose, *shall take the measures necessary to prevent at all times :*

(a) the use of the emblem or of the designation " Red Cross " or " Geneva Cross " by private individuals or associations, firms or companies other than those entitled thereto under the present Convention, as well as the use of any sign or designation constituting an imitation, *whatever the object of such use ;*

(b) by reason of the compliment paid to Switzerland by the adoption of the reversed federal colours, the use by private individuals or associations, firms or companies of the arms of the Swiss Confederation or marks constituting an imitation, whether as trade-marks or as parts of such marks, or for a purpose contrary to commercial honesty, or in circumstances capable of wounding Swiss national sentiment.

The States not party to the Convention of July 27, 1929, and which may subsequently ratify the said Convention or adhere thereto, shall take the measures required at all times to prevent acts such as those mentioned under (a) and (b), so that the said interdiction may become operative five years at latest after the said ratification or adhesion.

The prohibition to adopt a trade or commercial mark which is contrary to the above interdictions, already enacted by the Convention of July 27, 1929, is maintained.

In States not party to the present Convention, and which may subsequently ratify it or adhere thereto, it shall no longer be legal, as from the filing of the act of adhesion, to adopt a trade or commercial mark contrary to these prohibitions. Within five years, at most, from the coming into effect of the Convention, the trade-marks, commercial titles and names of associations or firms which are contrary to these prohibitions shall be amended, whatever the previous date of their adoption.

ART. 28 (1929). — The Governments of the High Contracting Parties whose legislation is not at present adequate for the purpose, shall adopt or propose to their legislatures the measures necessary to prevent at all times :

a) the use of the emblem or designation “ Red Cross ” or “ Geneva Cross ” by private individuals or associations, firms or companies, other than those entitled thereto under the present Convention, as well as the use of any sign or designation constituting an imitation, for commercial or any other purposes ;

b) by reason of the compliment paid to Switzerland by the adoption of the reversed federal colours, the use by private individuals or associations, firms or companies of the arms of the Swiss Confederation, or marks constituting an imitation, whether as trade-marks or as parts of such marks, or for a purpose contrary to commercial honesty, or in circumstances capable of wounding Swiss national sentiment.

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 as from the date fixed by each legislature, and not later than five years after the coming into force of the present Convention. From the date of such coming into force, it shall no longer be lawful to adopt a trade-mark in contravention of these rules.

Re Section I.

The 1937 Commission had already proposed that the words “ the High Contracting Parties ” should be substituted for the terms “ The Governments of the High Contracting Parties ”. The earlier wording might endanger the practical scope of the provision, in case legislative bodies should decline to vote the

laws which Governments may propose in obedience to the spirit of this Section.

The First Commission adopted this amendment and, in the same spirit, replaced the words " or propose to their legislatures " by the words " shall take the measures necessary ".

Re (a).

The amendment adopted by the Commission, bearing entirely on wording, was put forward by the 1937 Commission and endorsed by the Preliminary Conference (1946).

Re Section 2.

The new wording of Sec. 2 had been proposed by the 1937 Commission and endorsed by the Preliminary Conference (1946).

The main effect of this new wording is to define, with all due clearness, since some doubt on the matter still appeared to exist—unnecessarily in the opinion of the ICRC—that all trade-marks contrary to the provisions of the Convention must be abolished within five years at most, whatever the previous date of their adoption.

One Delegation abstained for the whole of this Article.

Article 32 (former Art. 29)

Should their penal laws be inadequate, *the High Contracting Parties* shall take the necessary measures for the repression, in time of war, of any act contrary to the provisions of the present Convention.

They shall communicate to one another, through the Swiss Federal Council, the provisions relative to such repression, not later than five years from the ratification of the present Convention.

ART. 29 (1929). — The Governments of the High Contracting Parties shall also propose to their legislatures, should their penal laws be inadequate, the necessary measures for the repression in time of war, of any act contrary to the provisions of the present Conventions.

They shall communicate to one another, through the Swiss Federal Council, the provisions relative to such repression not later than five years from the ratification of the present Convention.

Re Section I.

The Preliminary Conference (1946) had recommended the insertion in Sec. 1 of the amendments as to wording already recommended for Sec. 1 of Art. 28, i.e., that the words "The Governments of the High Contracting Parties" be replaced by the words "The High Contracting Parties". The Commission shared this view.

Article 33 (new)

Any wilful violation of the present Convention, leading to the death of persons protected by its provisions, to grave ill-treatment of the said persons, or serious damage to hospital buildings and equipment, shall be considered as a war crime. The responsible persons shall be liable to appropriate penalties.

The High Contracting Parties undertake to insert in their penal and military legislation provisions for the punishment of any infractions of the stipulations of the present Convention.

Discussion of the present Article 30 led the Commission to set up this new one. Independently of the procedure of investigation foreseen in this text, the Commission thought necessary that the law of the land should punish infractions of Convention provisions, and that the most serious of these infractions should be considered as war crimes and punished as such.

This new stipulation is of a general nature, and the plenary Assembly agreed that it might also be inserted, subject to adaptation, in the Conventions relating to P.W. and civilians.

In the report submitted by the ICRC, it was pointed out that public opinion was generally desirous that grave violations of the laws of war should be suitably punished. Up to now, however, the humanitarian Conventions provided no ruling on this point, and the matter was still left more or less to national

legislations, which are often inadequate. Furthermore, there is a strong tendency in favour of international repression of such breaches.

The ICRC had indicated a few of the proposed solutions, namely, extension of the procedure of investigation, transmission of fact-finding reports to the United Nations Security Council, setting up of a special international tribunal, assimilation to war crimes, appeals to public opinion, and so forth.

The text adopted by the Commission was purposely worded in a very general manner. It lays on the contracting States the obligation to pass special measures, should their legislation be inadequate. Further, the Commission's object, in describing serious and intentional infractions of the Conventions as war crimes, was to warn all persons entrusted with the application of the Conventions of the possible consequences of their acts.

As international world organization stands at present, the Commission did not feel able to aim at the setting up of an international penal jurisdiction, but the wording now adopted does not preclude recourse to such a solution in the future. Furthermore, this text does not specify which authority would be entrusted with the prosecution of offenders. In consequence every contracting State itself may, on the basis of its own legislation, punish the culprits it detains, or hand them over to another State for trial. Thus, the principle of universality of punishment, without being made obligatory, is nevertheless tacitly admitted.

One of the Delegations reserved its Government's opinion as to this Article.

Article 34 (former Art. 30)

Any High Contracting Party alleging a violation of the present Convention may demand the opening of an official enquiry.

This enquiry shall be carried out as soon as possible by a Commission instituted for each particular case, comprising three neutral members selected from a list of qualified persons drawn up by the High Contracting Parties in time of peace, each Party nominating four such persons.

The plaintiff and defendant States shall each nominate one member of the Commission. The third member shall be designated by the other two and, in case they are not able to agree, by the President of the International Court of Justice.

As soon as the enquiry is closed, the Commission shall report to the Parties concerned on the reality and nature of the alleged facts, and may make appropriate recommendations.

All facilities shall be extended by the High Contracting Parties to the Commission of Inquiry, in the fulfilment of its duties.

ART. 30 (1929). — On the request of a belligerent, an enquiry shall be instituted, in a manner to be decided between the interested parties, concerning any alleged violation of the Convention ; when such violation has been established the belligerents shall put an end to and repress it as promptly as possible.

The ICRC had recalled in its report that the 1937 Commission unanimously recognized that Article 30, in its present form, was inadequate, and that it was necessary to widen its scope. Taking into account the diplomatic character of certain aspects of the question, the Commission however considered that their duty was, rather than draft a definite text, to clarify the main principles on which the revision of Article 30 might be founded.

The recommendations of the Preliminary Conference (1946), given below, are chiefly based on the work of the 1937 Commission, who had given the most careful attention to this matter. A few additions, however, were adopted, on the suggestion of the Belgian Red Cross. The recommendations run as follows :

(1) That the procedure of investigation shall be instituted as rapidly as possible and in a practically automatic fashion.

(2) That the enquiry may be instituted on the demand of any Party to the Convention directly concerned, whether belligerent or neutral.

(3) That a single central and permanent agency, foreseen by the Convention, shall be instructed to appoint the commission of enquiry, as a whole or in part.

(4) That the commission of enquiry shall be appointed for each particular case, immediately the request is made, as the result of an alleged violation of the Convention.

(5) That the members of the commission of enquiry shall be appointed by the above-mentioned body from lists, kept up-to-date, of qualified and available persons whose names have been already suggested by the Governments.

(6) That special agencies shall be appointed in advance to undertake, in urgent cases, the rapid verifications which may be urgently required.

(7) That the report of a commission of enquiry may, if necessity arises, contain, besides evidence of facts, recommendations to the Parties concerned.

Furthermore, the Conference recommended the adoption of the two following principles :

Each belligerent State shall facilitate the investigations of the said agency on the territory where the said State exercises authority.

The agency charged with the constitution of the Commission of Enquiry—see (3)—should be the International Court of Justice.

Though all the Delegations agreed on the principle of investigation and procedure, the constitution of the commission of enquiry gave rise to lively debates.

The majority were opposed to the idea that a single central and permanent agency, foreseen by the Convention, should be instructed to nominate the commission of enquiry. They pointed out that in the history of pacific settlement of international disputes, States have always claimed the right to appoint themselves a proportion of the members of arbitration tribunals and commissions of enquiry. This would apply even more strongly to the case of a commission instructed to investigate in belligerent territory and, more often than not, in the zone of military operations.

It was therefore decided to adopt the principle of a commission of three, the plaintiff and defendant States each to nominate one member, the third member to be designated by the other

two and, in case they should not agree, by the President of the International Court of Justice. For this office of supreme arbitrator certain Delegations had proposed the President of the ICRC. The representatives of this body stressed that the ICRC undertakes chiefly, in time of war, wide-scale welfare and practical activities in behalf of war victims ; they drew attention to the risk that a belligerent might put an end to this work, by considering as an unfriendly act any participation in the constitution of a commission of enquiry directed against itself.

In the opinion of the Commission, the duty incumbent on the President of the International Court of Justice would attach to him personally, wherever he might be, and even if the Court should cease to sit.

The First Commission stressed, moreover, that the true purpose of such a commission of enquiry is to investigate into violations of the Convention, and not to pass judgment, as might a tribunal. The commission of enquiry would transmit, by methods to be decided later, the results of its investigations to the countries concerned, requesting them to take the necessary measures. Later, international tribunals called upon to pass judgment on breaches of the Convention would be in possession of facts investigated at the time when they occurred.

On the other hand, the Commission considered it desirable that, as soon as an international Court of Penal Justice is created, this Court should be charged with the repression of violations of the Convention, either directly or in the capacity of a Court of Appeal for the national tribunals.

One Delegation reserved the opinion of its Government as to the whole of this Article.

II. — PROTECTION OF WOUNDED AND SICK CIVILIANS IN WAR TIME

As already stated ¹ the Conference rejected the idea of extending to civilians the Geneva Convention as it stands, and approved the application of certain broad principles of the

¹ See above page 9.

said Convention to wounded and sick civilians, by inserting new Articles in the draft Convention for the protection of civilians in general ¹.

The First Commission, for the revision of the Geneva Convention, and the Third Commission, which dealt with the protection of civilians, drafted conjointly the following new articles.

Article 1

Independently of the general protection granted to civilians by the present Convention, the wounded and the sick shall be the object of particular regard and protection. They shall receive, as far as possible, the care they may require.

In so far as military considerations permit, each belligerent shall facilitate the steps taken to search for killed or wounded civilians, and shall protect them against pillage and ill-treatment.

Re Section 1.

In drafting this Article, the Commission first wished to follow the terms of Art. 1 of the Geneva Convention, namely: "Wounded and sick civilians shall be respected and protected in all circumstances", with the addition of: "They shall receive the necessary care without delay."

It was, however, pointed out that the first clause would impair the safeguards due to civilians in general. Consequently, the following wording was preferred: "Independently of the general protection granted to civilians by the present Convention, the wounded and the sick shall be the object of particular regard and protection."

Certain Delegations further pointed out, as regards the second clause, that no Government would accept such an obligation for its own population, and would refuse it *a fortiori* for the enemy population in war-time. It was observed, moreover, that it would be extremely difficult to draw a clear distinction between civilians who were sick and those who were not. The following wording was therefore adopted: "They shall receive, as far as possible, the care they may require".

¹) See below page 269.

The question arose further whether expectant mothers should be expressly mentioned, as well as the wounded and sick. It was considered that such women were assimilated to the sick in general.

Re Section 2.

This was adopted without discussion.

Article 2

Local agreements may be concluded between belligerents for the removal of the wounded and sick, and maternity cases from a besieged or encircled zone, and for the passage of medical personnel and material bound for the said zone.

The Commission did not reopen the debate on this Article. The matter was considered to have been exhaustively dealt with during examination of Art. 3 of the Geneva Convention ¹.

Article 3

Civilian hospitals, recognised as such by the State and organised to afford permanent care to wounded and sick, or to maternity cases, shall in no circumstances be the object of attack, but shall at all times be respected and protected by the belligerents.

The ICRC had recalled, in their report, that under present legislation, civilian hospitals do not enjoy the protection of the Geneva Convention and cannot display the emblem of a red cross on a white ground. As regards bombardment, they are governed by the very general and summary provisions contained in Art. 27 of the Regulations annexed to the Fourth Hague Convention of 1907, and of Art. 5 of the Ninth Hague Convention of the same date, which run as follows :

Article 27, Fourth Convention: In sieges and bombardments all necessary steps must be taken to spare, as far as possible, buildings dedicated to religion, art, science, or charitable purposes, historic

¹ See above pages 14 sqq.

monuments, hospitals, and places where the sick and wounded are collected, provided they are not being used at the time for military purposes.

It is the duty of the besieged to indicate the presence of such buildings or places by distinctive and visible signs, which shall be notified to the enemy beforehand.

Article 5, Ninth Hague Convention: In bombardments by naval forces all the necessary measures must be taken by the commander to spare as far as possible sacred edifices, buildings used for artistic, scientific, or charitable purposes, historic monuments, hospitals, and places where the sick or wounded are collected, on the understanding that they are not used at the same time for military purposes.

It is the duty of the inhabitants to indicate such monuments, edifices, or places by visible signs, which shall consist of large stiff rectangular panels divided diagonally into two coloured triangular portions, the upper portion black, the lower portion white.

Red Cross conferences and commissions of experts have long since agreed that civilian hospitals should enjoy better protection.

The ICRC had already raised the question, during the Preliminary Conference (1946), as to the manner of limiting the protection granted to hospital buildings, according to their nature. The Preliminary Conference (1946) agreed that buildings which sheltered civilian wounded and sick, and which were authorized by the State, should alone enjoy protection under the Geneva Convention and have the right to display the Red Cross emblem.

The First Commission, for its part, raised the question whether the degree of protection granted to civilian hospitals should be determined by their size. Thus, those only would enjoy protection which were able to accommodate 20 persons at least. One Delegation pointed out that the number of establishments thus protected would be very large and might compromise the entire scheme.

Finally, the Commission considered that the question of the size of the civilian hospitals requiring protection was a secondary matter, and it subjected such hospitals demanding protection to two conditions :

- (1) that they should be recognized as such by the State ;

(2) that they should be able permanently to care for wounded, sick and maternity cases.

Furthermore, the expression "protection of civilian hospitals" means, in the eyes of the Commission, not only protection against bombardment, but also against any form of requisition by the occupying Power.

Finally, in order to define the protection due to these hospitals, the Commission used practically the same wording as Art. 6 of the Geneva Convention proper. It was considered preferable, however, to replace in this text the words "shall not be attacked" by "shall in no circumstances be the object of attack", as it was held that the former wording was weaker and that it did not so emphatically preclude unintentional attacks.

Article 4

Protection due to civilian hospitals shall not cease unless they are used to commit acts harmful to the enemy, and after due warning given without effect.

The fact that wounded or sick members of the forces are nursed in these hospitals, or that small arms and ammunition, taken from these persons and not yet handed over to the responsible service, are discovered there shall not be considered as an act harmful to the enemy.

Re Section 1.

The Commission followed the wording of Art. 7 of the Geneva Convention.

Re Section 2.

The Commission considered that such a clause was necessary, as a corollary to the provision inserted in Art. 8 of the Geneva Convention, and that the fact of civilians being nursed in a military hospital should not deprive the latter of the protection due to it.

Article 5

Civilian hospitals may pursue their activities in enemy or enemy-occupied territories, and shall be protected against pillage.

The buildings and equipment of these hospitals shall remain subject to the right of requisition recognised to belligerents by the laws and customs of war, but shall not be diverted from their purpose, except in case of urgent necessity, and after the care of the wounded and sick they accommodate has been ensured.

The Commission considered it desirable to bring this Article into line with the provisions of the Geneva Convention covering military medical establishments fallen into enemy hands.

Article 6

Members of the personnel of civilian hospitals shall be protected and respected by the belligerents. They shall hold identity cards certifying the capacity of the bearers and provided with the photograph and finger-prints of the holder, and the embossed stamp of the responsible authority.

The management of every civilian hospital shall at all times have a correct list of its staff and patients, giving all relevant particulars as to identity, especially the date of admission of patients.

Re Section 1.

The experts raised the question whether any scheme of protection and regulation should be set up, similar to that which the Geneva Convention provides for military medical personnel, and applicable to all persons engaged in the care of civilian wounded and sick, or if such protection should be limited to personnel of civilian hospitals alone. The latter view was adopted.

The Commission considered that members of the civilian medical personnel should also hold identity cards, certifying the qualification of the bearer and provided with his photograph and finger-prints, and the embossed stamp of the responsible authority. One Delegation, here too, reserved its Govern-

ment's opinion with regard to finger-prints and embossed stamp.

Another Delegation considered that members of the staff of civilian hospitals should be allowed to wear the Red Cross armlet.

Re Section 2.

The Commission discussed this Section at length. Certain Delegations were anxious that strict measures should be taken, to ensure the general protection of civilian hospitals, by laying on the managements the obligation of having at all times available a correct list of their staffs and patients. Other Delegations objected to this requirement, as they considered it incompatible with medical professional ethics.

The supporters of the regular listing of patients and staff of civilian hospitals finally prevailed. One Delegation considered that the provisions of Art. 6 should extend to hospitals, infirmaries and places of internment set up by a Detaining Power for civilians.

Article 7

Civilian hospitals shall be marked by means of the emblem of the Red Cross (Red Crescent, Red Lion and Sun) on a white ground, subject to the consent of the military authorities.

As far as military considerations permit, belligerents shall take the necessary measures to render clearly visible to enemy land, air or naval forces the distinctive emblems marking civilian hospitals, in order to obviate the possibility of any aggressive action.

During the Preliminary Conference (1946), the ICRC asked the meeting whether it considered that specifically civilian hospitals might display, as a protective measure, the emblem of the red cross on a white ground or if, on the contrary, a special distinctive marking should be introduced. The ICRC pointed out that during the recent war, some belligerents distinguished civilian hospitals by means of a red square placed in the centre of a white background. The Conference considered, for its part, that civilian hospitals should be authorized to use

the emblem of the Geneva Convention, and that the creation of a new emblem, which might lead to confusion, should be avoided.

Notwithstanding a certain current of opinion among members of the First Commission, during discussion of the use of the Red Cross emblem in the Geneva Convention, in favour of restricting this use, the Commission was unanimous in choosing the Red Cross emblem to distinguish civilian hospitals. One Delegation, however, reserved its Government's opinion with regard to this extension of the distinctive emblem.

Article 8

Belligerents may conclude special agreements for the creation of hospital localities, to ensure better protection for the wounded and sick assembled therein, all military utilisation of such zones being excluded.

The Commission considered it desirable to insert in this Chapter on the protection of civilians in time of war, an Article concerning the creation of hospital localities. The wording of Article 9 of the Geneva Convention was used ¹.

II.

TENTH HAGUE CONVENTION OF OCTOBER 18, 1907, FOR THE ADAPTATION TO MARITIME WARFARE OF THE PRINCIPLES OF THE GENEVA CONVENTION OF JULY 6, 1906

General Observations

The first Peace Conference, held at the Hague in 1899, led to the drafting of a Convention making the principles of the Geneva Convention of 1864 applicable to maritime warfare.

¹ See above, page 26.

At that time the Hague Convention comprised ten Articles only. Regarded as inadequate, it was revised and extended in 1907, at the time of the second Peace Conference, and became the Tenth Hague Convention of 1907 for the adaptation to maritime warfare of the principles of the Geneva Convention of 1906. Duly ratified by 47 States, it has remained in force up to the present day.

The evolution in methods of warfare, and above all the fact that the Geneva Convention was itself revised in 1929, made it necessary to consider the redrafting of the Tenth Hague Convention, many of its provisions having become obsolete. After preliminary study, the ICRC drew up in 1937, with the assistance of naval experts delegated by Governments and National Red Cross Societies, a revised draft Convention. This was approved by the XVIth International Red Cross Conference and placed on the agenda of the Diplomatic Conference which the Swiss Federal Council had convened for 1940, but which had to be postponed on account of the war.

After the close of the war, the ICRC once more took up the 1937 draft, with a view to completing it in the light of experience gained during the conflict. The Preliminary Conference (1946), had occasion to study the question and approved a few amendments to the draft.

The present Conference nominated a sub-committee of specialists to study the Tenth Hague Convention, on account of the peculiarly technical nature of the agreement. Their report was examined by the First Commission of the Conference and submitted, with their comments thereon, to the plenary Session.

Before examining each Article of the Maritime Convention, the Commission made the following general observations :

(1) The question was discussed whether the essential amendment made to the Geneva Convention (assimilation of Medical Personnel to Prisoners of War) should also be inserted in the Maritime Convention. The majority of the Commission considered that hospital-ships are in an exceptional situation, and that special immunities should be granted to the Medical Personnel of these vessels.

(2) Taking into account the above reservation, the Commission was of opinion that, in so far as the text of the Maritime Convention could be adapted to that of the Geneva Convention, the amendments made to the latter should be considered as approved also in respect of the Maritime Convention.

(3) The representative of one Government pointed out that he had received no instructions regarding the revision of the Maritime Convention, but he had no doubt that his Government would give serious consideration to the opinions expressed by the Commission.

(4) The Commission was of opinion that the text of the revised Maritime Convention should be embodied in the Geneva Convention. All the stipulations proper to maritime warfare should, however, be assembled in a distinct Chapter which might, if necessary, contain references to the general stipulations of the Geneva Convention.

The Conference further expressed the recommendation that the Governments of Maritime Powers should send the ICRC lists of cases noted during the recent war where the Tenth Hague Convention did not find proper application. These lists might usefully complete the data to be furnished to the future Diplomatic Conference.

The Commission took as the basis of its discussions the revised draft Convention established in 1937 by a commission of naval experts delegated by their Governments and National Red Cross Societies.

A new draft was made, of which the text is given below, followed by the 1907 Articles, and references to the corresponding articles of the 1929 Geneva Convention.

CHAPTER I. — WOUNDED, SICK AND SHIPWRECKED

Article 1

Sailors and soldiers on board ship and other persons officially attached to the land, sea and air armed forces who are wounded, sick or shipwrecked, shall be respected and protected in all circum-

stances. They shall be treated with humanity and cared for, without any distinction of nationality, race, religious or political convictions, by the belligerent in whose power they may be. Women shall be treated with the particular consideration due to their sex.

The benefit of the foregoing provisions shall also extend to wounded, sick and shipwrecked of all vessels victims of a hazard of war.

ART. II (1907). — Sailors and soldiers on board, when sick or wounded, as well as other persons officially attached to fleets or armies, whatever their nationality, shall be respected and tended by the captors.

ART. I (1929) : see page 12.

Re Section 1.

It should be noted that this paragraph relates to the protection of sick, wounded and shipwrecked persons, whereas the corresponding provision of the Hague Convention refers to the first two categories only. The addition, which is suggested by the ICRC, does not express any new idea, but is merely intended to define the scope of the provision. Obviously, the authors of the 1907 Convention never intended to make any difference between the treatment accorded to the wounded and sick on the one hand, and to shipwrecked persons on the other. It has never been disputed that shipwrecked persons, whose situation is, to say the least, as precarious as that of wounded or sick, are entitled to similar protection.

Re Section 2.

This Section, which is new, extends the scope of the Convention to cover civilian victims, whereas up to the present it referred only to sick, wounded and shipwrecked members of forces.

It had been pointed out that the protection of civilian victims of maritime warfare was only a special instance of protection of civilians in time of war—a question which was debated later on, when revision of the Geneva Convention was being discussed. The 1937 experts, however, unanimously decided to introduce

this new paragraph without delay into the revised draft Maritime Convention, even if the Geneva Convention should not be extended to cover civilians. They remarked that the organization of relief for civilians was far better on land than at sea, where it is practically non-existent.

The Article was adopted without discussion. However, one Delegation made a reservation regarding members of the Mercantile Marine, whose rights should not be restricted, and raised the question whether the protection granted to shipwrecked persons is also valid in cases of shipwreck due to natural causes, and not to a hazard of war.

Article 2.

Shall be regarded as prisoners of war the wounded, sick or shipwrecked of one belligerent who fall into the hands of the adverse party. The latter shall decide, according to circumstances, if it is expedient to hold them, or to convey them to a port situated in its own territory, in a neutral country, or even in enemy territory. In the last case, the prisoners thus returned to their home country may no longer do active service for the duration of the war.

ART. 14 (1907). — The shipwrecked, wounded, or sick of one of the belligerents who fall into the power of the other belligerent are prisoners of war. The captor must decide, according to circumstances, whether to keep them, send them to a port of his own country, to a neutral port, or even to an enemy port. In this last case, prisoners thus repatriated can not serve again while the war lasts.

ART. 2 (1929). — See above, page 13.

The First Commission decided to make of Art. 2, Sec. 2 of the 1929 Convention a distinct and separate stipulation, to form Article 29 of the Draft.

One Delegation proposed to maintain the first Section of this Article and to replace the two last by the clause: "They shall be treated in accordance with the stipulations contained in the Prisoner of War Convention".

Another Delegation enquired whether it should not be exactly determined what kind of occupation should be allowed or

prohibited in respect of these repatriated prisoners. A third Delegation observed that the case had been provided for under Article 74 of the P.W. Convention.

Article 3

All warships of a belligerent Power shall have the right to demand the surrender of the wounded, sick or shipwrecked on board military hospital-ships, hospital-ships of relief societies or private persons, merchant vessels, yachts and other craft, whatever their nationality.

ART. 12 (1907). — Any warship belonging to a belligerent may demand that sick, wounded or shipwrecked men on board military hospital-ships, hospital-ships belonging to relief societies or to private individuals, merchant ships, yachts, or boats, whatever the nationality of these vessels, shall be handed over.

With a view to restricting the right of recapture, one Delegation proposed the insertion of a new Section, reading thus :

“ However, when the route of a hospital-ship has been notified to the adverse party the naval forces of the latter shall observe the special agreements concluded in view of that particular voyage. ”

Another Delegation pointed out that a safe-conduct system of this kind would greatly reduce the immunity and usefulness of hospital-ships, the more so as special agreements are always possible, according to the terms of Art. 29. Furthermore, this system would restrict the right of belligerents to inspect hospital-ships, whereas it must be possible to exercise this right in all circumstances.

Another Delegation proposed that this Article be amended so as to ensure that belligerents cannot claim the seriously wounded and sick eligible for repatriation who may be on board hospital-ships.

Article 4

If wounded, sick or shipwrecked persons are taken on board a neutral warship, steps shall be taken to ensure that they can no longer participate in warlike operations.

ART. 13 (1907). — If sick, wounded, or shipwrecked persons are taken on board a neutral warship, every possible precaution must be taken that they do not again take part in the operations of the war.

By deleting the words "as far as possible" in Art. 13 of the Hague Convention 1907, the Commission wished to make the principle embodied in this article more imperative.

One Delegation recommended that this stipulation should be brought into line with Article 74 of the P.W. Convention.

Article 5

Wounded, sick or shipwrecked persons who are disembarked by the warships of belligerents in a neutral port, with the consent of the local authorities, and in the absence of contrary arrangements between the neutral and belligerent Powers, shall be so guarded by the neutral Power that they cannot take part again in war operations.

The costs of hospital accommodation and internment shall be borne by the Power to which the wounded, sick and shipwrecked persons belong.

If wounded, sick or shipwrecked persons are disembarked in a neutral port by neutral and private merchant ships, vessels, yachts or airships, which have assumed no obligation whatever towards one of the belligerent Powers, the said wounded, sick or shipwrecked persons shall be free.

All warships arriving in a neutral port shall have the option, with the consent of the neutral Power, of disembarking wounded, sick or shipwrecked persons who may be on board.

ART. 15 (1907). — The shipwrecked, sick, or wounded, who are landed at a neutral port with the consent of the local authorities, must, unless an arrangement is made to the contrary between the neutral State and the belligerent States, be guarded by the neutral State so as to prevent them again taking part in the operations of the war.

The expenses of tending them in hospital and interning them shall be borne by the State to which the shipwrecked, sick, or wounded persons belong.

Re Section 1.

This Section reproduces, in an improved form, the principle of Art. 15, Sect. 1 of the Hague Convention. The 1937 Commission thought fit to stipulate that the persons referred to should be the wounded, sick and shipwrecked persons put ashore by belligerent warships, the case of wounded, sick, and shipwrecked persons picked up by neutral warships or merchant vessels being dealt with elsewhere (See Art. 5, Sec. 3). The term "warship" is apparently taken to mean any vessel flying a belligerent flag, with the exception of hospital-ships, whose case is dealt with below. It is true that the Commission gave no considered opinion on this point, but it appears evident that the term "warship" must in the present case be taken to include all ships liable to capture. Merchant vessels and other belligerent craft would therefore come within this category; wounded, sick and shipwrecked persons whom they might have picked up would be interned, on landing in a neutral port. The ICRC however think it would be preferable to make this principle explicit in the text of the Convention itself.

Re Section 3.

This Section is new, but it is merely the codification of a rule which was implicitly admitted in 1907 already.

The Hague Convention is however, silent as to the fate of wounded, sick, or shipwrecked persons landed in a neutral port by hospital-ships.

Two views were held by the 1937 Commission. The representatives of the American, Belgian, Italian, Japanese, Norwegian and Polish Red Cross Societies, as well as the International Committee of Military Medicine and Pharmacy, were of opinion that persons landed by hospital-ships were liable to internment, and that, in consequence, it was desirable to mention these vessels in Art. 5, Sec. 1 relating to belligerent warships. On the other hand, the naval and military experts of the French and German Red Cross Societies, as also the representative of the Netherlands Red Cross—the latter basing his arguments on

historical precedents—considered that wounded, sick, and shipwrecked persons landed by hospital-ships should enjoy the same treatment as if they had been landed by neutral mercantile vessels, and that their case should be regulated by Art. 5, Sec. 3 of the Draft.

According to the course chosen, it will be necessary to add either to Sec. 1 of Art. 5 the words “and hospital-ships” (after the words “belligerent warships”), or to Sec. 3 the words “by hospital-ships” (after the words “in a neutral port”).

Re Section 4.

This Section follows a proposal made by the International Committee of Military Medicine and Pharmacy. Starting from the view that accommodation of wounded in a port is better than on board a warship, the said Committee suggested that a new provision might be introduced here, making it obligatory for warships arriving in a neutral port to declare and land all wounded and sick persons on board, neutrals being for their part obliged to receive such ships and their wounded.

The 1937 Commission, however, was in general of the opinion that such an obligation would be too onerous and that it would be preferable to make it optional, leaving the final decision to the captains of warships and the authorities of the neutral States. It may also be pointed out in this connexion that if warships arriving in a neutral port were compelled to land all sick, wounded or shipwrecked, they would try to avoid neutral ports when carrying wounded of their own nationality, but would hasten to land any enemy prisoners on board, as a convenient means of being relieved of them, by securing their internment.

The 1947 Commission adopted the principle of this Article as it appears in the heading.

One Delegation proposed to insert the words “neutral warships and hospital-ships” before the words “merchant ships”. The Commission asked itself whether a distinction should not be drawn between neutral and belligerent hospital-

ships, as it would hardly be in the latter's interest to disembark enemy wounded and sick in neutral countries, if it were certain that they would thus become free. Two other Delegations made reservations as regards their Governments' point of view on this possible addition.

Another Delegation reserved its opinion regarding the mention of airships.

Another Delegation further pointed out that the determinant factor of internment or release of wounded, sick or shipwrecked persons put ashore in a neutral port should be their personal status, and not the status of the vessel disembarking them. Consequently, combatants on board any vessel should be interned, whereas civilians would be free. Lastly, another Delegation pointed out that this proposal would restrict the protection granted to wounded, sick or shipwrecked combatants.

Article 6

After each engagement, belligerents shall take all possible measures to search for the shipwrecked, wounded and sick, and to protect them and the dead against pillage and ill-treatment.

ART. 16 (1907). — After every engagement, the two belligerents, so far as military interests permit, shall take steps to look for the shipwrecked, sick and wounded, and to protect them, as well as the dead, against pillage and ill-treatment.

They shall see that the burial, whether by land or sea, or cremation of the dead shall be preceded by a careful examination of the corpses.

Art. 3 (1929). — See page 14.

The words "after each engagement" were purposely maintained, on account of the conditions prevailing at sea.

One Delegation proposed the following text: "...to search for and collect the shipwrecked, wounded, sick and dead", in order to include in the search those apparently dead.

Article 7

Belligerents shall communicate to each other as soon as possible, according to the procedure prescribed in Article 77 of the 1929 Convention on the treatment of prisoners of war, the names of the wounded, sick and dead, discovered or collected, together with any indications which may assist in their identification.

They shall establish and transmit to each other by the same channel certificates of death or, in lieu thereof, duly authenticated lists of the dead.

They shall likewise collect and exchange by the same channel all articles of a personal nature and of intrinsic or sentimental value found on the dead, especially one-half of their identity discs, which should be of a standard pattern, the other half to remain attached to the body.

Bodies shall not be cremated except for imperative reasons of hygiene or for religious motives. Should cremation be carried out, the circumstances and motives which made it necessary shall be noted in detail on the death certificate of the person cremated.

The belligerents shall ensure that burial on land or at sea, or cremation of the dead is preceded by a careful, and if possible medical examination of the bodies, with a view to confirming death, establishing identity and enabling a report to be made.

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, assembled and marked so that they may always be found. To this end, at the commencement of hostilities, they shall officially organise a graves registration service, in order to allow eventual exhumations and to ensure the identification of bodies, whatever the subsequent site of the grave. These stipulations also apply as far as possible to the ashes, which shall be kept by the graves registration service until the end of hostilities.

As soon as circumstances permit, and at latest at the end of hostilities, they shall exchange a list of graves and of dead interred in their cemeteries and elsewhere.

Should wounded, sick or dead be collected by neutrals, the latter shall assume as regards the belligerents, the obligations indicated in the preceding sections.

ART. 17 (1907). — Each belligerent shall send as early as possible, to the authorities of their country, navy, or army the military marks or documents of identity found on the dead and the description of the sick and wounded picked up by him.

The belligerents shall keep each other informed as to internments and transfers, as well as to the admissions into hospital and deaths having occurred among the sick and wounded in their hands. They shall collect all the objects of personal use, valuables, letters, etc., which are found in the captured ships, or which have been left by the sick or wounded who died in hospital, in order to have them forwarded to the persons concerned by the authorities of their own country.

ART. 4 (1929). — See page 16.

Re Section 8.

This Section is new. The 1937 Commission unanimously agreed that the obligations arising under Sec. 1, 2, 3 and 4 of the present Article should also apply to neutral powers.

Article 8

Belligerents may appeal to the humanitarian sentiments of commanders of merchant vessels, yachts or other neutral craft, to take on board and care for wounded, sick or shipwrecked persons.

Vessels which have responded to this appeal, and those having spontaneously collected wounded, shall benefit by special protection and facilities to carry out such assistance.

They may in no case be captured on account of such transport; subject to promises made to them, they shall, however, remain liable to capture for any violations of neutrality they may have committed.

ART. 9 (1907). — Belligerents may appeal to the charity of the commanders of neutral merchant ships, yachts, or boats to take on board and tend the sick and wounded.

Vessels responding to this appeal, and also vessels which have of their own accord rescued sick, wounded, or shipwrecked men, shall

enjoy special protection and certain immunities. In no case can they be captured for having such persons on board, but, apart from special undertakings that have been made to them, they remain liable to capture for any violations of neutrality they may have committed.

ART. 5 (1929). — See page 21.

One Delegation suggested that this Article should be placed in Chapter II, because it deals with vessels rather than with personnel. The chapter could then be entitled "Hospital-Ships and Neutral Craft".

CHAPTER II. — HOSPITAL-SHIPS

Article 9

Military hospital-ships, that is to say, ships built or fitted out by States specially and solely with a view to assisting the wounded, sick or shipwrecked, and whose names and description have been communicated to the belligerent Powers at the commencement or during the course of hostilities, in any case before they are employed, shall be respected and may not be captured.

ART. 1 (1907). — Military hospital-ships, that is to say, ships constructed or assigned by States specially and solely with a view to assisting the wounded, sick, and shipwrecked, the names of which have been communicated to the belligerent Powers at the commencement or during the course of hostilities, and in any case before they are employed, shall be respected, and can not be captured while hostilities last.

These ships, moreover, are not on the same footing as warships as regards their stay in a neutral port.

ART. 6. (1929). — See page 23.

One Delegation proposed that not only the notification of hospital-ships should be required, but also an acknowledgment of such notification. It was pointed out that such requirements might reduce the protection granted by the Convention to hospital-ships, and that it would be a means for the adverse Party to refuse all recognition of the hospital-ships notified.

The same Delegation further proposed that the contents of the notification should be defined in the Convention ; it was, however, objected that each belligerent had lists of all hospital-ships.

Article 10

Hospital-ships utilized by private individuals or by officially recognised relief societies shall likewise be respected and exempt from capture, if the belligerent Power to whom they belong has given them an official commission and notified their names to the hostile Power, at the commencement or during the course of hostilities, and in any case before they are employed.

These ships must be provided with certificates from the responsible authorities, stating that the vessels have been under their control while fitting out, and on final departure.

ART. 2 (1907). — Hospital ships, equipped wholly or in part at the expense of private persons or officially recognized relief societies, shall be likewise respected and exempt from capture, if the belligerent Power to whom they belong has given them an official commission and has notified their names to the hostile Power at the commencement of or during hostilities, and in any case before they are employed.

These ships must be provided with a certificate from the competent authorities declaring that the vessels have been under their control while fitting out and on final departure.

The words “utilized by”, which replace “equipped wholly or in part at the expense of”, were suggested in 1937 by the French Red Cross. The amendment was unanimously approved, as it is of no importance to know at whose expense hospital-ships have been equipped, nor if they are or are not the property of relief societies or of private persons mentioned in Art. 10.

Article 11

Hospital-ships utilized by private persons, or by officially recognised relief societies of neutral countries, shall be respected and exempt from capture, on condition that they have placed themselves under the control of one of the belligerents, with the previous consent of their own Governments and with the authoriza-

tion of the belligerent himself, and that the latter has notified their names to the adversary at the commencement, or during the course of hostilities, and in any case before they are employed.

ART. 3 (1907). — Hospital ships, equipped wholly or in part at the expense of private individuals or officially recognized societies of neutral countries shall be respected and exempt from capture, on condition that they are placed under the control of one of the belligerents, with the previous consent of their own Government and with the authorization of the belligerent himself, and that the latter has notified their names to his adversary at the commencement of or during hostilities, and in any case, before they are employed.

Some delegations further suggested the insertion of additional Articles into the new Convention, namely :

(1) One Delegation proposed the insertion here of a new Article fixing the minimum tonnage allowed for hospital-ships. This figure would be 6,000 tons. Another Delegation proposed a minimum of 2,000 tons. A third Delegation suggested, to obviate difficulties arising from the various kinds of tonnage (registered tons, displacement tons, metric tons, etc.) that this question be settled not on the basis of tonnage, but of size, and more particularly of surface.

The Commission agreed (one Delegate's opinion being reserved) upon the principle of stating the minimum tonnage, but did not consider itself competent to determine an exact figure. The points to be considered in settling the necessary definition to be inserted in the Convention are, firstly, visibility and, secondly, proper accommodation for the sick.

The question of the use of speed-boats for saving airmen from the sea was discussed. For reasons of military security—speed itself constituting sufficient protection—the Commission considered that these boats should not have the protection of the Convention.

(2) One Delegation suggested the insertion of a new Article to protect life-boats of low speed and attached to a fixed base, which cannot be assimilated to the speed-boats mentioned above, nor to hospital-ships, whose tonnage will be determined by the

Convention. In case of occupation, the Occupying Power should be able to control the use of such craft.

On the other hand, the Commission considered the position of a hospital-ship in an occupied port. In this case, the vessel would not be captured, but "seized", and the Commission asked whether it should be left free to pursue its journey. One Delegation made a comparison between hospital-ships in an occupied country and captured medical units; another Delegation thought that this comparison could not stand, because a hospital-ship does not belong to any particular unit, but is employed on successive and independent missions, a fact which does not apply to medical units. If a country had only one or two hospital-ships, the seizure of one or both would be very detrimental to its wounded and sick.

(3) One Delegation proposed the insertion of a new Article to prohibit the notification of a hospital-ship in a besieged port.

Article 12

The ships mentioned in Articles 9, 10 and 11 shall afford relief and assistance to the wounded, sick and shipwrecked of the belligerents, without distinction of nationality.

Governments undertake not to use these ships for any military purpose.

These vessels shall in no wise hamper the movements of the combatants.

During and after an engagement, they will act at their own risk.

ART. 4, Sec. 1-4 (1907). — The ships mentioned in Articles 1, 2, and 3 shall afford relief and assistance to the wounded, sick, and shipwrecked of the belligerents without distinction of nationality.

The Governments undertake not to use these ships for any military purpose.

These vessels must in no wise hamper the movements of the combatants.

During and after an engagement they will act at their own risk and peril.

One Delegation took up the proposal made by the Preliminary Conference (1946) to insert, at the close of this Article, a new

section as follows: "All hospital-ships escorted by warships or included in a convoy of merchant ships are presumed to waive protection under the Convention." The Commission thought that this clause might entail abuses and that, in any case, there can be no question, even in such an event, of depriving hospital-ships of all protection.

Article 13

The belligerents shall have the right to control and search the ships mentioned in Articles 9, 10 and 11. They can refuse them help, order them off, make them take a certain course, and put a commissioner temporarily on board; they can even detain them for a maximum period of seven days, if the gravity of circumstances requires.

As far as possible, the belligerents shall enter into the log of the hospital-ships, in a language intelligible to the commander of the ship, the orders which they give them.

Belligerents may, either unilaterally or by particular agreements, put on board their hospital-ships neutral observers, who shall verify the strict observation of the stipulations contained in the present Convention.

ART. 4, Sec. 5 and 6 (1907). — The belligerents shall have the right to control and search them; they can refuse to help them, order them off, make them take a certain course, and put a commissioner on board; they can even detain them, if important circumstances require it.

As far as possible, the belligerents shall enter in the log of the hospital-ships the orders which they give them.

This Article reproduces the text of Art. 4, Sec. 5 and 6 of the Hague Convention, with the exception of the words "and put a commissioner on board; they can even detain them", which are replaced by the words "and put a commission temporarily on board; they can even detain them for a maximum period of seven days". The object is to avoid the risk of disguised capture of hospital-ships. The 1937 Commission had already proposed the phrase "even provisionally detain them".

The same Commission had further recommended that States should place neutral observers on board hospital-ships, as was done in 1917, as the result of a Franco-German agreement.

The duty of these observers would be to see that no misuse was made of hospital-ships. They would in no case have power to take control or issue orders to the captain, who must keep his full liberty of action. The Commission considered it feasible, however, to provide for neutral observers on board hospital-ships, whose main function would be to ascertain facts and be able to report thereon. Their evidence would make it possible to verify possible breaches, or to exonerate the captain from unfounded charges, thus avoiding reprisals. While not instructing the captains, the neutral observers could at least draw their attention to the possible consequences of their acts.

Two Delegations reserved the opinion of their Governments as to this Article.

Article 14

Vessels mentioned in Articles 9, 10 and 11 are not assimilated to warships as regards their stay in a neutral port.

ART. 1, Sec. 2 (1907). — These ships, moreover, are not on the same footing as war-ships as regards their stay in a neutral port.

Article 15

Merchant vessels which have been transformed into hospital-ships cannot be put to any other use throughout the duration of hostilities.

This new Article was unanimously adopted by the 1937 Commission and introduced into the revised Draft to avoid risk of abuse.

Two Delegations to the Conference reserved the opinions of their Governments as to this Article.

Article 16

The protection to which hospital-ships and sick-bays are entitled shall cease only if they are used to commit acts harmful to the enemy, and after warning which has met with no response.

In particular, hospital-ships provided with wireless or any other means of communication shall not be in possession of a secret code. All their communications shall be made in clear.

The following conditions shall not be considered as justifying the withdrawal of protection:

(1) *the fact that the crew of these ships is armed for the maintenance of order and for the defence of the sick and wounded;*

(2) *the presence on board of apparatus exclusively intended to facilitate navigation or communication;*

(3) *the discovery on board hospital-ships or in sick-bays of portable arms and ammunition taken from the wounded, sick and shipwrecked, and which have not yet been handed to the proper services.*

ART. 8 (1907). — Hospital-ships and sick wards of vessels are no longer entitled to protection if they are employed for the purpose of injuring the enemy.

The fact of the staff of the said ships and sick wards being armed for maintaining order and for defending the sick and wounded, and the presence of wireless telegraphy apparatus on board, is not a sufficient reason for withdrawing protection.

ART. 7 and 8 (1929). — See pages 24-25.

This new wording had been proposed by the Preliminary Conference (1946) and was duly approved by the First Commission.

CHAPTER III. — PERSONNEL

Article 17

The religious, medical and hospital staff of hospital-ships and their crews shall be respected and protected; they may not be captured during the time they are pursuing their duties, whether or not there are wounded and sick on board.

As already mentioned, the majority of the Commission was in favour of special immunity being granted to the medical

personnel of hospital-ships, in view of the character of these vessels. The introduction into this Article of the words "whether or no there are wounded and sick on board" clearly indicates that this personnel may not be captured while officially attached to a hospital-ship, and forming part of its permanent staff.

Article 18

The religious, medical and hospital staff of any captured ship shall be respected and protected; they may continue to carry out their duties as long as this is necessary for the care of wounded and sick.

On landing, they shall be subject to the stipulations provided for captured hospital staff by the Geneva Conventions and by the Eleventh Hague Convention of 1907.

ART. 10, Sec. 1 (1907). — The religious, medical, and hospital staff of any captured ship is inviolable, and its members cannot be made prisoners of war. On leaving the ship they take away with them the objects and surgical instruments which are their own private property.

ART. 9 and 12 (1929). — See pages 32 and 39.

The Commission thought that the adaptation to maritime medical staff of the stipulations of the Geneva Conventions should be thoroughly studied later, in view of the special conditions obtaining at sea.

One Delegation reserved their opinion as to the whole of this Chapter.

CHAPTER IV. — MATERIAL

Article 19

In case of fighting on board warships, the sick-bays shall be respected and spared as far as possible. The said sick-bays and their equipment shall remain subjected to the laws of warfare, but they may not be diverted from their purpose so long as they are

required for the wounded and sick. The commander into whose power they have fallen may, however, apply them to other purposes, in case of urgent military necessity, after ensuring the proper care of the wounded and sick who are nursed there.

ART. 7 (1907). — In the case of a fight on board a warship, the sick wards shall be respected and spared as far as possible.

The said sick wards and the material belonging to them remain subject to the laws of war; they cannot, however, be used for any purpose other than that for which they were originally intended, so long as they are required for the sick and wounded.

The commander, however, into whose power they have fallen may apply them to other purposes, if the military situation requires it, after seeing that the sick and wounded on board are properly provided for.

ART. 15 (1929). — See page 41.

This Article is practically identical with Art. 7 of the Hague Convention, but is more closely adapted to the Geneva Convention. The question arose in 1937 whether modern naval warfare might not preclude the possibility of fighting on board ship and if, consequently, the stipulation of Art. 7 of the Hague Convention should not be omitted, as being obsolete. Since this stipulation is in no way objectionable, the 1937 Commission decided to maintain it.

Ten years later, the Conference of Government Experts shared this view.

CHAPTER V. — MEDICAL TRANSPORT

Article 20

The provisions of Articles 20 and 21 of the Geneva Convention are applicable to hostilities at sea, in particular as regards sea-planes used as medical aircraft.

Belligerents may conclude agreements to ensure the benefit of the said Convention to medical aircraft entrusted with the search and transport of wounded, sick and shipwrecked at sea.

ART. 18 (1929). — See page 45.

This Article is new, as it was in 1929 only that general provisions concerning the use of medical aircraft were inserted into the Geneva Convention (Art. 18). In any case, these provisions are applicable to both naval and land operations. The 1937 Commission considered it sufficient to add a clause providing for medical seaplanes on a similar basis, and the Conference agreed with this view.

Furthermore, the 1937 Commission was asked to discuss the question whether belligerents might make use of medical seaplanes for the purpose of discovering and individually assisting war victims on the high seas.

The First Commission solved the question by adding Sec. 2 to this new Article, making the matter subordinate to mutual agreements.

Article 21

Hospital-ships, and all ships chartered to this end shall be authorized to transport medical equipment, provided their routes and tasks have been notified to the adverse Power. The latter, duly advised, shall preserve the right to board, but not to capture them.

In agreement with the belligerents, neutral observers may be placed on board these ships to verify the medical equipment carried.

On their return journey, hospital-ships shall transport no cargo except medical supplies.

The question of transporting medical equipment by sea in war-time was raised in 1937; it was then observed that, under the 1907 Hague Convention, hospital-ships carrying such equipment might be considered as transporting contraband of war, and thus captured.

The First Commission advised settling the question by the above wording.

Two Delegations reserved the opinion of their Governments as to the whole of this Chapter.

CHAPTER VI. — THE DISTINCTIVE EMBLEM

Article 22

The emblem of the Red Cross shall be displayed on the flags, brassards and all equipment belonging to the Medical Service, with the consent of the responsible military authority.

ART. 20 (1929). — See page 48.

The Commission adopted the above Article without debate ; it simply follows the wording of Art. 20 of the Geneva Convention.

Article 23

The personnel named in Articles 17 and 18 shall carry, affixed on the left arm, a water-resistant armband marked with the distinctive emblem, issued and stamped by the military authority.

Such personnel shall also carry an identity card attesting their status. This card should be able to be put in the pocket and be water-resistant. It shall carry the photograph and finger-prints of the owner and be embossed with the stamp of the military authority.

The identity card should be uniform throughout the armed forces of a belligerent, and, in so far as possible, be of the same type in the armed forces of the Contracting Parties. At the outbreak of hostilities, belligerents shall inform each other of the model in use in their armed forces.

Identity cards shall be established at least in duplicate, one copy to be given to the owner and the other kept by the Power of origin.

Under no circumstances may the personnel mentioned above be deprived of their armband or identity card. In case of loss they may obtain duplicates.

ART. 21 (1929). — See page 49.

One Delegation reserved the opinion of their Government as regards the introduction of finger-prints and embossed stamp.

Article 24

The ships referred to in Articles 9, 10 and 11 shall be distinguished by being painted white outside with a horizontal red band, about a metre and a half in breadth.

The boats of the ships above mentioned, as also small craft which may be used for hospital work, shall be distinguished by similar markings.

The decks, funnels, and superstructures of the ships mentioned in Section I of the present Article shall be painted white and bear large red crosses, so as to render their distinctive emblems plainly visible to the enemy land, air, or naval forces.

All hospital-ships shall make themselves known by hoisting, besides their national flag, the white flag with a red cross, and further, if they belong to a neutral State, by flying at the mainmast the national flag of the belligerent whose control they have accepted.

Hospital-ships which, in accordance with Article 13, are provisionally detained by the enemy, shall haul down the national flag of the belligerent to whom they belong.

The above-mentioned ships and craft which may wish to ensure by night the freedom from interference to which they are entitled, must, subject to the assent of the belligerent they are accompanying, take the necessary measures to render their painting and distinctive emblems sufficiently apparent.

ART. 5 (1907). — Hospital-ships shall be distinguished by being painted white outside with a horizontal band of green about a meter and a half in breadth.

The ships mentioned in Articles 2 and 3 shall be distinguished by being painted white outside with a horizontal band of red about a meter and a half in breadth.

The boats of the ships above mentioned, as also small craft which may be used for hospital work, shall be distinguished by similar painting.

All hospital-ships, shall make themselves known by hoisting, with their national flag, the white flag with a red cross provided by the Geneva Convention, and further, if they belong to a neutral State, by flying at the mainmast the national flag of the belligerent under whose control they are placed.

Hospital-ships which, in the terms of Article 4, are detained by the enemy must haul down the national flag of the belligerent to whom they belong.

The ships and boats above mentioned which wish to ensure by night the freedom from interference to which they are entitled, must, subject to the assent of the belligerent they are accompanying, take the necessary measures to render their special painting sufficiently plain.

ART. 22 and 23 (1929). — See pages 52 and 54.

Re Section I.

This Section combines Sec. 1 and 2 of Art. 5 of the Convention. The 1937 Commission unanimously agreed to unify the methods of marking hospital ships mentioned in Art. 10 and 11, by the adoption of the red band for all.

As all distinction between military and other hospital-ships has been abolished and their legal status will henceforth be identical, it was considered useless to make any exception with regard to markings.

The Preliminary Conference (1946), while approving the principle of unification, nevertheless expressed the following recommendation :

“ The use of green or red colour should be studied anew by experts, who would decide which of the two colours is more easily recognizable, by night as well as by day.”

In 1947, the following proposals were made regarding this Article :

(1) The purpose of marking hospital-ships being to make them recognizable, one Delegation suggested painting them orange-yellow throughout, a colour which is particularly visible from the air. Red crosses on a white ground could also be painted on them as a supplementary indication.

(2) One Delegation, supported by a second, proposed that the red crosses be painted in the centre of each side of a hospital-ship, on the deck and on the funnels, so as to be visible from all directions. The same Delegation also proposed that the ship's name should be inscribed on the bows (port and starboard) and on the stern.

(3) The same Delegations proposed to stipulate that hospital-ships must be lit up from sundown to sunrise, if they wish to

benefit by immunity. This ruling would apply to funnels, hulls and decks, and to all distinctive markings.

(4) One Delegation proposed the insertion of the following new Section: "As soon as technically possible, all hospital-ships shall be provided with radar apparatus, to allow their identification by the detecting apparatus of belligerents and neutrals".

Re Section 3.

This Section is new. In 1937, the experts thought that the development of modern methods of warfare, and especially of aircraft, made the markings provided for under the Hague Convention inadequate, since they had been selected at a time when air warfare was still unknown, and when it was sufficient that the marking should be visible from other ships.

The ICRC therefore proposed that the deck, funnels and superstructures of hospital-ships should be provided with large red crosses on a white ground.

It should be noted that although the 1937 Draft never became a Convention, most of the belligerent Powers during the second World War, adopted this type of marking (red crosses on the deck and superstructures) ¹.

¹ During the war in the Far East, many protests were lodged in regard to destruction of hospital-ships, and it seems that lack of modern markings was the chief cause of these incidents.

From a report by the United States Government, communicated to the ICRC by the American Red Cross in reply to protests lodged by the Japanese Red Cross, it is gathered that out of nine Japanese hospital-ships alleged to have been attacked, four were lying close to military objectives, and were not marked in the stipulated manner. The others bore no distinctive signs, or only such as were invisible from the air. One hospital-ship bore markings which became recognizable only when photographs taken at the time of the attack were examined through a magnifying glass. Another hospital-ship, attacked by night, illuminated its distinctive markings only after the attack.

The United States Government therefore proposed that the Japanese Government should follow its example, by brilliantly lighting up their hospital-ships continuously from sunset to sunrise, placing distinctive markings on the decks and illuminating the funnels and hull, so that the red cross emblems might be distinguishable from the air. If a hospital-ship chose to black-out under certain circumstances, it did so at its own risk.

CHAPTER VII. — APPLICATION AND EXECUTION
OF THE CONVENTION

Article 25

The provisions of the present Convention shall be respected by the High Contracting Parties in all circumstances.

In time of war, if one of the belligerents is not a party to the Convention, these provisions shall, nevertheless, remain binding as between the belligerents who are parties thereto.

ART. 18 (1907). — The provisions of the present Convention do not apply except between Contracting Powers, and then only if all the belligerents are parties to the Convention.

ART. 25 (1929). — See page 58.

Article 26

In case of hostilities between belligerent land and naval forces, the provisions of the present Convention shall apply only to forces on board. For forces put ashore, the provisions of the Geneva Convention of July 27, 1929, shall immediately become operative.

ART. 22 (1907). — In case of hostilities between belligerent land and naval forces, the provisions of the present Convention apply only to forces on board.

Article 27

Belligerents shall ensure, through their respective commanders-in-chief, the proper implementing of the preceding Articles, and shall arrange for unforeseen cases, in accordance with the instructions of their Governments and in conformity with the general principles of the present Convention.

ART. 19 (1907). — The commanders-in-chief of the belligerent fleets must see that the above articles are properly carried out; they will have also to see to cases not covered thereby, in accordance with the instructions of their respective Governments and in conformity with the general principles of the present Convention.

ART. 26 (1929). — See page 59.

Article 28

The High Contracting Parties shall take the necessary steps, in peace-time as in war-time, to publish the text of the present Convention, to instruct their armed forces, and in particular the medical personnel and the chaplains, in its provisions, and to bring them to the notice of the civilian population.

ART. 20 (1907). — The signatory Powers shall take the necessary measures for bringing the provisions of the present Convention to the knowledge of their naval forces, and especially of the members entitled thereunder to immunity, and for making them known to the public.

ART. 27 (1929). — See page 59.

Article 29

Belligerents shall be at liberty to conclude, beyond the obligations arising under the present Convention, the particular agreements which they may deem necessary.

ART. 2, Sec. 2 (1929). — See page 13.

CHAPTER VIII. — SUPPRESSION OF ABUSES AND INFRACTIONS

The Commission considered that this chapter should contain Articles similar to those of the corresponding chapter of the Geneva Convention, taking into account the provisions of Art. 21 of the Tenth Hague Convention.

Report of the Second Commission

CONVENTION CONCLUDED IN GENEVA ON JULY 27, 1929, RELATIVE TO THE TREATMENT OF PRISONERS OF WAR

The following is the report of the Second Commission of the Conference entrusted with the study of the revision of the 1929 Convention relative to the Treatment of Prisoners of War. The Commission did not, in principle, draft a new text of the Convention, but indicated in what sense each Article could be revised. The present report therefore deals separately with each Article, sometimes with each Section. Under each heading the present wording of the Article or Section (1929 text) appears in small print, followed by the conclusions of the Commission in italics, and lastly by the commentaries.

PART I

GENERAL PROVISIONS

Article 1

The present Convention shall apply, without prejudice to the stipulations of Part VII :

- (1) to all persons referred to in Articles 1, 2 and 3 of the Regulations annexed to the Hague Convention of October 18, 1907, concerning the laws and customs of war on land, who are captured by the enemy ;
- (2) to all persons belonging to the armed forces of belligerents who are captured by the enemy in the course of operations of maritime or aerial war, subject to such exceptions (derogations) as the conditions of such capture render inevitable. Nevertheless, these exceptions shall

not infringe the fundamental principles of the present Convention; they shall cease from the moment when the captured persons shall have reached a prisoners of war camp¹.

I. *With regard to the cases of armed conflict to which the Convention should apply, the Commission recommended the adoption of the following text:*

"The present Convention is applicable as between the Contracting Parties, at the outbreak of any armed conflict, whether the latter has, or has not been recognised as a state of war by the parties concerned.

"In case of civil war in any part of the home or colonial territories of a Contracting Party, the principles of the Convention shall also be applied by the said Party, subject to the adverse party also complying therewith.

"The Convention is also applicable in the case of occupation of territories, without a state of war existing."

II. *As regards the persons whose protection is the purpose of the Convention, the Commission considered:*²

¹ The following is the text of Articles 1 to 3 of the Regulations annexed to the Hague Convention concerning the Laws and Customs of War on Land:

"Article 1. — The laws, rights, and duties of war apply not only to armies, but also to militia and volunteer corps fulfilling the following conditions: (1) to be commanded by a person responsible for his subordinates; (2) to have a fixed distinctive emblem recognizable at a distance; (3) to carry arms openly; and (4) to conduct their operations in accordance with the laws and customs of war. In countries where militia or volunteer corps constitute the army, or form part of it, they are included under the denomination "army".

"Article 2. — The inhabitants of a territory which has not been occupied, who, on the approach of the enemy, spontaneously take up arms to resist the invading troops without having had time to organize themselves in accordance with Article 1, shall be regarded as belligerents if they carry arms openly and if they respect the laws and customs of war.

"Article 3. — The armed forces of the belligerent parties may consist of combatants and non-combatants. In the case of capture by the enemy, both have a right to be treated as prisoners of war."

² The following is a précis of the recommendations adopted by the Commission in this connexion.

(a) *That the Convention should itself enumerate these classes of persons and not make partial reference for this purpose to the Hague Regulations.*

(b) *That the classes of persons mentioned below should benefit by the protection of the Convention when they fall into enemy hands.*

1. *Members of armed forces, including forces fighting with a belligerent and claiming to be under an authority not recognized by the enemy, provided that the idea of armed forces covers both combatants and non-combatants.*

2. *Militia and volunteer corps who fulfil the four conditions laid down in Art. 1 of the Hague Regulations.*

3. *The inhabitants of non-occupied territories carrying out mass recruiting, at the approach of an invader, as indicated in Art. 2 of the Hague Regulations.*

4. *Persons in occupied territory who form a military organisation to resist the occupying Power and fulfil certain conditions, to be determined.*

5. *Crews of the mercantile marine and civilian members of air-crews attached to the armed forces, it being understood that the PW status of these persons does not imply any ruling as to their status of combatants.*

6. *Persons following the armed forces, without belonging thereto, and who are in possession of an identity card issued by the commanders of the armed forces they accompany. This card shall be of a uniform international type, and belligerents shall inform each other (as provided by Art. 21) of the categories of persons to whom such cards will be issued, and the ranks to which they correspond.*

7. *Combatants arrested in occupied territory, in their sole capacity as members of the armed forces of the occupied State.*

8. *Military internees in neutral or non-belligerent countries, subject to whatever exceptions may be justified by the non-enemy character of such countries, in regard to the military personnel whom they shelter.*

III. *As regards the operative period of the Convention, the Commission agreed upon the following text:*

"The stipulations of the present Convention shall be respected by the High Contracting Parties in all circumstances and until the prisoners of war are repatriated or released."

The Commission made a reservation with regard to the implementing of the Convention in exceptional circumstances.

I. CASES OF APPLICATION OF THE CONVENTION

(See pages 272 sqq. of this Report.)

II. PERSONS PROTECTED BY THE CONVENTION

The present wording of Art. 1 is the result of a compromise between two opinions voiced during the 1929 Diplomatic Conference: the first considered that the Convention should apply only to persons mentioned in Art. 1, 2 and 3 of the Hague Regulations, in order to preserve close connexion with these Regulations, the drafting of which had caused great difficulties (but this would imply restricting such application only to prisoners of war captured on land); the second desired to extend the benefit of the Convention to naval and air forces, and wished to speak only of armed forces in general, omitting all reference to the Hague Regulations.

The latter opinion was unanimously confirmed by the Second Commission, particularly as regards reference to the Hague Regulations. It was argued against any such reference that the new Convention must contain all stipulations relating to Prisoners of War; further, that the Convention was intended for the use of both officers and men, and that the wording should be easy to understand and convenient to handle; finally, that it was not advisable to refer to stipulations of forty years standing, which were liable to revision.

With regard to the substance of Art. 1, the ICRC stressed, in their report that experience gained during the War showed

that this Article (which is in fact complemented by Art. 81) no longer satisfies present conditions in its enumeration of the classes of persons to whom the Convention should apply. Further, this enumeration should be more clearly defined and, in particular, include certain groups of military personnel who should normally have been considered as PW, but who suffered hardship through the fact that they were not explicitly named in the Convention.

The delegations readily shared these views and thought opportune to take up once more, in the order suggested by the ICRC, the study of the classes of military personnel, present or future, to whom the Convention should apply.

1. *Members of the Armed Forces.*

The ICRC had proposed to adopt the term "armed forces" in preference to that of "army" used in Art. 1 of the Regulations. This suggestion was approved and the question arose as to the advisability of giving a more exact description of armed forces, particularly by stating, as in the Hague Regulations, that the term covers both combatants and non-combatants. The delegations came to the conclusion that this fact was usually implicit in any general reference to armed forces. They preferred to let this mention stand in its present form, as it raised almost no difficulties during the recent war. Any attempt to complete the text might lead to the exclusion of certain categories.

In its report, the ICRC stressed that certain States had denied the status of belligerents to combatant units subject to a Government or authority which these States did not recognise; this despite the fact that these units (e.g. the French forces constituted under General de Gaulle) fulfilled all the conditions required for the granting of PW status. The Commission approved the ICRC's proposal that these armed forces should enjoy PW status, irrespective of the Government or authority under whose orders they might claim to be. The Commission thought, however, that the wide scope of the proposal might cover armed bands in occupied territory, and that it would therefore be preferable to limit the suggestion to forces claiming

to be under the orders of an authority not recognised by the enemy and fighting in conjunction with the armed forces of a belligerent State, i.e. a State recognised as a regular belligerent by the enemy.

2. *Militia and Volunteer Corps.*

The ICRC proposed in its report to delete the mention of militia or volunteer corps, as these, wherever they exist, usually form a regular part of the armed forces. One delegation observed that exceptions to this general rule were still fairly numerous, and the Commission thought preferable to maintain the mention of militia and volunteer corps as it appears in the Hague Regulations.

3. *Mass Levies.*

Although the situation to which Art. 2 of the Hague Regulations refers almost never occurred during the last war, the Commission considered that the stipulation might be kept and inserted in its present form in Art. 1 of the revised Convention.

4. *Partisans.*

This term usually denotes persons in occupied territory who take up arms against the occupying Power and its allies. Their status is not at present regulated by any definite treaty stipulation. Art. 2 of the Hague Regulations applies only to the inhabitants of a non-occupied territory, and the reference to the principles of the law of nations which appears in the Preamble of the said Convention, with regard to cases not included in the Regulations, does not offer a sufficient basis for the protection of the persons concerned. This fact was observed by the ICRC during the last war, on the many occasions when it was called upon to demand that partisans who had respected the laws and customs of war should be granted PW status. The ICRC consequently stressed in its report the necessity of this class

of persons being granted, under certain conditions, PW status on falling into enemy hands.

This opinion was unanimously shared by the delegations. In view, however, of the difficulty of agreeing upon the conditions that partisans should fulfil, a sub-commission was set up to examine the question, and tabled the following text for consideration :

“ Where an individual in an occupied territory takes up arms against the occupying Power, he shall not be punished on capture without a fair trial.

Where individuals in an occupied territory form a military organisation to resist the occupying Power and gain effective, albeit temporary control of a region, then provided that the individual members of such organisation :

- (1) are led by a person responsible for his subordinates ;
- (2) habitually and consistently display a fixed distinctive sign recognizable at a distance ;
- (3) bear arms openly, and provided that they comply with the regulations and rules of war and treat those members of the occupying Power captured by them in accordance with the principles of the Convention, it is the opinion of the Nations that members of such organisations, captured by the occupying Power, should receive similar treatment.

Note. — The procedure of a fair trial under reference in paragraph 1 should either be that provided by the new Convention relative to civilians, or that prescribed in the Convention for PW, or could be the object of a special regulation. ”

The first paragraph was unanimously approved. It lays down a general principle for the protection of all civilians in occupied territory, with, as a special object, the case of individual resistance against the occupant, as opposed to organised resistance, for which the remainder of the text provides. In this sense, the subject of the paragraph falls within the scope of the regulations governing the case of the civilian population of an

occupied territory, which was the concern of the Third Commission ¹.

Certain delegations stressed, however, that the paragraph may also concern the application of the PW Convention ; in cases where membership of an organized resistance movement is disputed, a fair trial can alone decide whether the defendant shall be considered as a partisan and eventually treated as a PW.

The majority of the delegations agreed in principle that the essential condition preliminary to granting PW status to partisans was their forming a body having a military organization. They also agreed upon the necessity of stipulating the four points included sub (1), (2) and (3), which are approximately the conditions laid down in the Hague Regulations for militia and volunteer corps ; the only difference being the provision that partisans should "habitually and consistently" display a distinctive sign—two notions as to which, however, certain delegations reserved their opinion on the grounds that they might be differently interpreted.

No agreement could be reached with regard to the condition for partisans to gain the effective, albeit temporary, control of a region. The following three main objections were raised :

(1) This condition would be considered effective by the occupying Power only if large territories were wholly occupied and administered by the partisans. In this case, however, they would constitute a *de facto* army, and the Convention would become applicable to *de facto* warfare, without the question of partisanship being involved. In all other cases, the occupying Power would almost always gain control of the lines of communication of a given region, and would therefore deny that partisans controlled the said area.

(2) This condition would tend to nullify the Article concerning mass levies. In modern warfare, where the occupation of enemy territory is sometimes carried out with great rapidity, one may imagine that a popular rising, in the sense of the said

¹ See below, page 285.

Article, could only be fully organised once the territory was occupied by the enemy. The partisans would thus not have the control of any specified region and might thus be deprived of protection under the Convention.

(3) Lastly, it should be borne in mind that further limitation of the partisans' right to PW status might induce them to disregard the laws of war, thus making the position of the occupying Power more difficult and the conflict more pitiless.

The delegations who were in favour of the conditions relating to the control of a given territory pointed out that the four conditions which had been unanimously accepted were difficult to verify. The occupying Power would always claim that one or other had not been fulfilled and would, in any case, never accept to grant PW status to persons who, for instance, were employed on the land during the day and joined in raids by night. From what moment do partisans fulfil the required conditions? The answer cannot depend upon the unilateral decision of the parties concerned, but solely upon certain definite criteria. The Commission thought that the most satisfactory criterion for both parties is that of controlled territory.

Finally, one delegation proposed that protection under the Convention should be granted to partisans who fulfil the conditions of the Hague Regulations and on whose behalf their Government or responsible leader has notified the occupying Power of their opening hostilities. According to the same delegation, notification to the enemy, which is quite as objective a criterion as the control of a territory, should meet with the approval of all concerned. Should this condition fail, the control of a territory by partisans could then only be stipulated.

5. *Merchant Seamen.*

According to Art. 5 of the Eleventh Hague Convention, 1907, merchant seamen were not liable to capture, but this Article is no longer applied. During the last war, merchant seamen were always held captive by the enemy. Sometimes they were treated as PW, sometimes as CI. Not being compelled to work

and receiving no pay, they were always badly off. The necessity of more closely defining the status of merchant seamen in war-time was generally admitted.

The majority of the delegations agreed that it was desirable for these men to be treated as PW. It was observed that in time of war their functions are similar to those of armed forces, that they were accustomed to discipline and that their internment in civilian camps often led to difficulties. The Commission admitted, however, that the application of the Convention to merchant seamen did not imply that they enjoyed the status of combatants.

The suggestion that these men should be free to choose between PW and CI status did not meet with approval; some delegates objected that the DP would thus be obliged to adopt two different kinds of internment for merchant service crews, and this they would decline to do. One delegation, however, particularly insisted on the situation of merchant seamen in enemy ports on the outbreak of hostilities; these, it considered, should be classed as CI.

6. Members of Forces arrested in Occupied Territory.

It frequently occurred in occupied territory during the last war that the occupying Power, for security reasons, arrested demobilised army personnel, especially officers having served in the armed forces of the occupied State. These men were usually granted PW status, but only after repeated steps by the ICRC and the Governments concerned. In its report, the ICRC proposed that PW status should be definitely granted to these persons. This suggestion was warmly approved by several delegations, and was supported by the Commission, which adopted the above recommendation, adding that it should not be allowable for the DP, by any unilateral administrative measure (e.g. demobilisation or transformation into civilian workers), to deprive PW of their rights under the Convention.

7. Military Internees in Neutral Countries.

The situation of military internees in neutral countries is governed only by two brief references in the Fifth Hague

Convention of 1907. Reference thereto is also made in Art. 77 of the PW Convention (institution of an official information bureau). Although the matter did not, on the whole, give rise to difficulties during the war, it should apparently be more closely defined. In its report, the ICRC suggested that military internees and escaped PW in neutral countries should enjoy the same treatment as PW. The ICRC pointed out that this was merely a question of application by analogy, since the obligations of internees towards the country which shelters them are usually not the same as those of PW towards the Power which detains them. Certain provisions which are especially favourable for PW would not be justified where a neutral power is concerned. Further, such application implies only a minimum standard of treatment, as military internees would as a rule be better off in a neutral country than in enemy territory.

Although the Commission agreed to this proposal, it considered that the application should not extend to escaped PW, as it might affect the right to which they are entitled by Art. 13 of the Fifth Hague Convention to leave the neutral country where they have temporarily taken shelter. Further, the Commission held that the adjective "non-belligerent" was preferable to "neutral", experience gained during the war having shown the importance of the former term.

8. *Persons following the Armed Forces without being part thereof.*

The Commission, having previously recommended that Art. 1 should include all classes of persons to whom the Convention applies, accepted the ICRC proposal to embody therein the substance of Art. 81.

As regards the various groups mentioned in the latter Art., the list given shows this clause to be old-fashioned, if not obsolete: such persons are today generally included in the regular armed forces. On the other hand, new classes of persons have arisen who are more or less part of the armed forces (e.g. military labour units and welfare personnel), and whose position when captured has given rise to difficulties.

The Commission considered it preferable, on the whole, to maintain the present system, whereby PW status is granted only to persons holding identity cards, even if some of them (as in the last war) were deprived of this status owing to the loss of their cards. The Commission also recommended that certain classes should still be listed, but stressed that this listing should serve only as an example, and that the wording should be brought up to date. One delegation asked that the term "contractor" should be kept, as such persons are frequently found on board warships.

It was further remarked that certain Powers, on the eve of their being occupied, issued identity cards to numerous unqualified civilians, so that the enemy had great difficulty in distinguishing those who were really following the armed forces. In order to avoid such abuses, the proposal was made to invite all belligerent States, on the outbreak of hostilities, to communicate to each other the classes of persons to whom identity cards are issued, and the ranks to which they correspond. The Commission unanimously agreed to the suggestion and recommended that, to simplify matters, the identity cards should (as suggested for medical personnel in Art. 21 of the revised Geneva Convention) be of a uniform model for all countries.

III. OPERATIVE PERIOD OF APPLICATION

1. *Beginning of Application*

The only exceptions for which Art. 1 now provides concern PW captured during maritime or aerial warfare. It might be concluded that PW taken during land operations are entitled to the protection of the Convention immediately after capture, the more so as the Convention contains rulings as to their evacuation. It can hardly be conceived, however, that the Convention should always be made fully applicable in the fighting area. The question of the beginning of its application in respect of PW captured during land operations was highly controversial during the last war, and was not settled satis-

factorily. The ICRC therefore suggested in its report that, if exceptions were to be maintained, they should be extended to all warlike operations ; it should further be stipulated that such exceptions could not impair the essential rights conferred upon PW. The delegations agreed that, on the whole, the Convention should apply in principle as soon as PW fall into enemy hands, but that, in practice, the DP might experience some difficulty in applying the Convention in all its details from the outset. To meet the situation, it was suggested that PW should, on capture, be treated in accordance with the fundamental principles of the Convention and that the other stipulations should be applicable as soon as circumstances allow. This, to the mind of some, was the moment when PW are registered in a camp. The majority of the delegations stressed, however, that by thus making two classes of stipulations (i.e. fundamental principles and technical provisions), there was a danger of the latter being considered as more or less optional, whereas they may be as vital for the PW's daily welfare as the former. The discussion on this point showed how difficult it would be to determine which provisions should have the value of fundamental principles.

The Commission then rejected two further suggestions—the first, that any DP which may be unable, for purely material reasons to apply all the stipulations of the Convention should be obliged to notify the fact to the ICRC ; the second, that exceptions may only be made in cases of absolute necessity. The majority finally agreed that it was preferable to maintain solely the principle of strict application of the Convention immediately on capture, and to refrain from any explicit mention of possible exceptions. Thus no grounds would be furnished to DPs for the non-fulfilment of their obligations ; those States which, for material reasons, might be forced to make exceptions, would be obliged to furnish proof of such impossibility.

With regard to the term “captured”, it was observed that combatants might be taken prisoner without, strictly speaking, having been “captured”, and that it was preferable to employ the wider term “fall into enemy hands”.

2. *Duration of Application*

In its report the ICRC mentioned cases of PW who suffered a change of status at some given time and who were thus deprived of their privileges under the Convention, after the capitulation of their home country, or through agreements concluded between Governments. In view of the possible nature of such agreements when concluded between an occupied State and the occupants, the ICRC, following a recommendation made by the Preliminary Conference (1946), proposed that the Convention should confirm the intangible rights conferred upon PW, and specify that there must be no change in its application until the complete and final liberation of PW.

This suggestion was warmly approved by several delegations, who stressed that the rights of PW, regarded as human individuals, must be respected in all circumstances, and that when the sovereignty of PW's home country has been curtailed, the men should not be left at the discretion of the DP. Other delegations were emphatic in objecting that it seemed difficult, in an international convention, to stipulate rights which today are recognized to States alone; in their opinion the Convention was, in fact, not so much a declaration of principle as a series of bilateral agreements between belligerents who are signatories thereto. To introduce into the Convention stipulations tending to curtail the option of two sovereign belligerents to accept, at a later date, derogations thereto by mutual agreement, might conceivably induce numerous States to refuse ratification of the Convention. Further, if both parties to an agreement are not on an equal footing (a fact which might be disadvantageous for the PW of one of the parties), the situation could not be amended by any treaty stipulation.

The question was also raised whether derogations could be allowed, in the period between the end of hostilities and the final liberation of PW, to meet the difficult position in which some DPs then find themselves. The majority of the delegations replied in the negative, on the grounds that it was inadmissible that PW should be less well treated after the close of hostilities than before. As regards the imperative reasons

which might justify certain derogations, the delegates confirmed the view already expressed concerning possible derogations at the beginning of the application of the Convention.

Article 2

Purpose of Captivity.

In its report, the ICRC proposed to add an introductory section to this Article, to the effect that the sole purpose of captivity is to prevent PW taking any further part in the war, and that, from the time of their capture, they shall not be allowed to perform or suffer any hostile acts. Cases have occurred where PW thought it their duty, or were even instructed to try to harm the DP, despite inadequate means to this effect, and this usually worsened the situation of PW in general. The ICRC considered that the proposed additional clause would bring to PW's notice the grave consequences which might arise from such action, and would define more clearly the nature of the DP's obligations with regard to their treatment. The majority of the delegations considered, however, that the idea of a PW ceasing to be a combatant, though desirable in theory, had no practical value. In reality, a PW never loses the feeling (which is essential for his morale) that he can and must still serve his country during captivity, if only by the spreading of rumours likely to demoralize nationals of the DP.

Another objection to the suggestion made by the ICRC was that it did not give a complete definition of the purpose of captivity. The fact of holding PW involved great responsibilities and expense, and DPs were anxious to reap the fullest possible benefit of having PW in their hands.

Section 1.

Prisoners of war are in the power of the hostile Government, but not of the individuals or formation which captured them ¹.

The Commission was in favour of maintaining this Section and thought that the particular question of transfer of PW as

¹ The wording quoted in this Report is that of the official British translation.

between belligerent Powers should be expressly mentioned therein. It recommended that no transfers of PW should take place except between Powers signatory to the Convention.

Though this stipulation raised no difficulties it does not settle the special question of transfer of PW as between belligerent Powers, which was practised on a large scale during the war. The ICRC therefore proposed to make express provision for it in the Convention. The Commission approved the proposal to prohibit any transfer of PW from a signatory to a non-signatory Power.

With regard to transfers of PW as between signatory Powers, the Commission discussed the matter at some length without coming to an agreement, particularly as to which of the Powers should be responsible for implementing the Convention. Some Delegations proposed to stipulate joint responsibility for both Powers concerned, in order to avoid possible worsening of conditions for PW so transferred. Other Delegations considered that joint responsibility would be a difficult matter in practice and that, further, it might furnish the enemy with opportunities of creating friction between the Powers concerned. In their view, it is one of the fundamental principles of the Convention that its application is the responsibility of the Power actually holding PW and not of the Power which captures them. Finally, the Commission decided to place on record the divided opinions on this point. ✓

Section 2.

They shall at all times be humanely treated and protected, particularly against acts of violence, from insults and from public curiosity.

The Commission recommended that this provision should be kept, but that the expression "against acts of violence" should be replaced by "against all acts of violence".

The Commission unanimously thought that the wording of the principle expressed in this Section was satisfactory and that it should be kept, with the above-mentioned slight amendment, intended to strengthen it.

In its report the ICRC had drawn attention to the fact that acts of violence were committed against PW by their own comrades. Several cases of this kind occurred during the war, and it was asked whether special provisions should not safeguard PW in this respect. The Delegations held that this was an administrative matter which should be settled by the DP, and that explicit mention in the Convention was not required.

Section 3.

Measures of reprisal against them are forbidden.

The Commission recommended that this Section should be kept in its present form.

When this principle was inserted in 1929, it was argued that in case of illegal acts connected with treatment of PW, reprisals or threats of reprisal were one of the only means of returning to normal state of affairs. This argument was finally rejected, in view of the impossibility of admitting that unoffending and defenceless men should be held indirectly responsible for acts committed by their home Governments.

The Commission shared this view; some delegations even recognized, on the grounds of their experience, that reprisals were useless in relation with PW treatment. The proposal made to list in this section certain forms of reprisal, such as handcuffing, holding up of mail, and so forth was not entertained, the present wording appearing adequate to prevent any kind of reprisals on any sort of pretext.

Article 3

Section 1, Clause 1.

Prisoners of war are entitled to respect for their persons and honour.

The Commission thought that this clause required no amendment.

In connexion herewith the question of propaganda among PW by the DP may arise, as such practice may effect the men's morale. In its report the ICRC pointed out that this kind of

propaganda played an important part during the recent war and asked if it should not be prohibited. Though the majority of the Commission shared this view, the latter thought that propaganda was too difficult to define, for the matter to be explicitly mentioned in the Convention. Some Delegations pointed out that, considering the nature of modern warfare, it was normal for a DP to try to undermine PW's morale by all possible means, and in particular by propaganda ; consequently, such a prohibition would always be circumvented.

Section 1, Clause 2.

Women shall be treated with all consideration due to their sex.

The Commission proposed to add the following clause: "and their treatment shall in no case be inferior to that accorded to men".

This Section represents a particular and categorical application of the general principle of Art. 4, Sec. 2 relating to preferential treatment of certain PW. The ICRC had pointed out in its report that, owing to the much larger number of women now enrolled in the forces, it would be advisable to complete this summary stipulation, particularly as regards mothers or pregnant women. The Commission did not, however, approve this view; on the contrary, it considered that, as women in many countries were still placed on an inferior footing and received less consideration than men, it should be specified that women PW should enjoy treatment equal to that accorded to men.

Section 2.

Prisoners retain their civil capacity.

The Commission recommended that this Section should be worded as follows:

"PW shall retain their full civil capacity; they may acquire and exercise all rights granted them by the DP."

The present stipulation covers essentially PW's civil capacity in their home country. The wording is however misleading,

and PW often thought it could serve for purposes of marriage or of legal business in the country of detention. The ICRC had therefore suggested in its report that this Section should be clarified and stipulate, among other things, that PW be free to exercise their civil rights in their home countries. Certain delegations even wished it specified that PW should enjoy no civil capacity in the detaining country, so as to obviate situations such as arose during the recent war, where PW were treated as citizens of the country of residence. Other delegations, on the contrary, pointed out that it would be unadvisable to debar PW from exercising rights that the DP might wish to grant them. This opinion prevailed and the Commission finally adopted the above text.

Article 4

Section 1.

The Detaining Power is required to provide for the maintenance of prisoners of war in its charge.

The Commission recommended the following amended version: "The DP is required to provide PW gratuitously with the maintenance and the medical care their condition may demand."

The general principle implied in this Section and embodied in Art. 10 to 17, 23 and 34 of the PW Convention does not seem to have led to any difficulties or divergent interpretations during the recent war. The ICRC had proposed, however, to specify plainly that maintenance shall be gratuitous, and the Commission agreed. Certain Delegations wished the Convention to include a detailed statement of the obligations of the DP in respect of "maintenance", but it was pointed out that the essential purpose of this provision is to determine who shall be responsible for maintenance of PW; the various obligations under consideration are already clearly specified in the Articles mentioned above. The Commission therefore thought it unnecessary to define the idea of maintenance beyond mention of free medical care.

Section 2.

Differences of treatment between prisoners are permissible only if such differences are based on the military rank, the state of physical or mental health, the professional abilities, or the sex of those who benefit from them.

The Commission recommended the following amendment: "Privileges of treatment as between PW are permissible only if they are based on military rank, physical or mental health, age, professional capacity or sex of those benefited."

This stipulation, like Section 1, embodies a general principle, particular cases of which are cited in subsequent Articles (Art. 3, Sec. 1 : treatment of women ; Art. 14 : sick PW ; Art. 22, 23, 27 ; Sec. 1 and 49 : treatment of officers and persons of equivalent status ; Art. 29 : employment of PW on work for which they are physically suited). It has therefore not often been applied as it stands. However, it often happened that privileged treatment was accorded for political ends to certain PW, owing to their nationality, race or opinions. Certain Delegations recommended that such discrimination should be clearly forbidden, as it generally proved harmful to the morale of PW as a whole. The Commission rejected this recommendation, as it held that this prohibition was implied in the present stipulation.

It was stressed, furthermore, that it was preferable to refer to "privileges" rather than to "differences", as the latter might arise from sometimes unavoidable outside circumstances (e.g. geographical situation of camps), while the DP alone can grant privileges. This expression stresses more effectually the fact that this Section should not serve as an excuse for the DP to treat certain PW less favourably than is required by the Convention.

Finally, the Commission agreed to the Committee's proposal, to add age to the reasons justifying preferential treatment.

PART II
CAPTURE

Article 5

Section 1.

Every prisoner of war is required to declare, if he is interrogated on the subject, his true names and rank, or his regimental number.

The Commission recommended that this Section be replaced by the following:

“Every PW questioned on the subject is required to state only his true name and rank, date of birth, regimental number or equivalent details.”

By virtue of the present stipulation, a PW is at liberty to declare his regimental number only. The Central Agency's extensive experience shows that this indication alone is quite inadequate for the identification of PW and for the working of information bureaux. The ICRC therefore suggested the stipulation that PW must furnish at least their names and regimental numbers. The Commission agreed to this proposal ; it desired, however, to stress that the details included in this Section form the maximum information which the DP may require of PW regarding their identity.

One Delegation recommended that the identification of PW should be based on an identity card of a standard pattern for all members of the armed forces of a given country, which every combatant should carry and hand to the DP on capture ; this would speed up identification formalities. It was objected that such cards are often lost or exchanged, and that they could in no way replace verbal information furnished by PW.

Section 2.

If he infringes this rule, he exposes himself to a restriction of the privileges accorded to prisoners of his category.

The Commission thought desirable to clarify this Section as follows :

“Should the PW deliberately infringe this rule, he may be liable to restriction of the privileges granted to PW of his rank or status, over and beyond the rights conferred by the Convention on PW in general.”

Though the present wording implies that PW infringing the rule laid down in Section 1 lose the privileges accorded by the Convention to officers and NCOs, it does not make this fact sufficiently clear. The ICRC had therefore proposed to replace the word “category” by that of “rank”. This proposal was approved by the Commission, who decided to add the word “status”, in order to cover the situation of certain members of the armed forces, such as war correspondents who without holding any rank, yet have officer status. Furthermore, the Commission desired to stress that infringement of Section 1 must be deliberate. Although it might entail loss of the privileges foreseen for officers and those of similar status by virtue of Art. 18 (Sec. 3), 21, 22 and 23 (Sec. 3), 27 (Sec. 2 and 3), and 49 of the Convention, it should in no case involve loss of all the other benefits contained in these provisions.

Section 3.

No pressure shall be exerted on prisoners to obtain information regarding the situation in their armed forces or their country. Prisoners who refuse to reply may not be threatened, insulted, or exposed to unpleasantness or disadvantages of any kind whatsoever.

The Commission recommended that this Section should be completed by adding, at the end of the first clause, the word “or their personal situation”, and, at the end of the Section the clause: “All moral or physical torture is prohibited.”

The Commission unanimously agreed that this Section needed strengthening, by the prohibition of maltreatment of any kind whatsoever.

One Delegation pointed out that, during the recent war, certain DPs succeeded, by coercion, in obtaining information

from PW about their personal situation, or that of their relatives, thus enabling these Powers to impound sums of money belonging to PW, or even to arrest members of their families. The Delegation therefore proposed that coercion applied for this purpose should also be forbidden. The Commission approved this proposal.

Section 4.

If, by reason of his physical or mental condition, a prisoner is incapable of stating his identity, he shall be handed over to the Medical Service.

The Commission recommended the addition to this Section of a clause stating that, whenever possible, the finger-print system shall be used for identifying PW covered by Section 4.

Two Delegations recommended that PW's finger-prints should be taken; this was endorsed by the Commission. It was however pointed out that this method should be purely optional, since, to be really useful, finger-prints must have been registered previously in the home country, and this is not yet done in all armies.

Article 6

Section 1.

All personal effects and articles in personal use—except arms, horses, military equipment and military papers—shall remain in the possession of prisoners of war, as well as their metal helmets and gas-masks.

The Commission recommended that this Section be completed as follows:

“All personal effects and articles in personal use—except arms, horses, military equipment and military papers—shall remain in possession of PW, as well as their metal helmets and gas-masks. They shall also retain possession of effects and articles necessary for purposes of food and clothing, even if these effects and articles are part of their regulation military equipment.”

It was evident that certain Delegations wished to obviate that PW should be deprived of strictly personal property, as

was often the case during the war, on the plea that these articles, such as riding boots, military belts, and rain-coats, usually form part of military equipment. The experts instructed to draft a new Section 1 therefore desired to exempt certain articles of military equipment from the general rule of confiscation; this exemption was, however, limited to those articles and effects necessary for purposes of feeding and clothing.

The Commission desired to maintain the principle laid down in Section 1, to the effect that the private property of enemy PW must be respected. The limitations set to this principle by the recommendations made in respect of Sections 2 and 3 should here be borne in mind.

Sections 2 and 3.

Sums of money carried by prisoners may only be taken from them on the order of an officer and after the amount has been recorded. A receipt shall be given for them. Sums thus impounded shall be placed to the account of each prisoner.

Their identity tokens, badges of rank, decorations and articles of value may not be taken from prisoners.

The Commission recommended that, in the new wording of these two Sections, the following points should be taken into consideration:

- 1. Sec. 3 should be placed immediately after Sec. 1.*
- 2. Only articles having a commercial value may be impounded by the Detaining Power.*

- 3. Sec. 2 should be completed as follows:*

"Sums of money and articles of value carried by PW may only be taken from them on the order of an officer and after the amount has been recorded. Receipts shall be given. Sums thus impounded shall be credited to each PW according to the methods prescribed in Art. 24."

- 4. PW must never be completely deprived of identification papers.*

Though the Commission approved the ICRC proposal to put Sec. 3 immediately after Sec. 1, to which the former is complementary, a prolonged debate took place as regards the impounding of valuables of the PW. Several Delegations pointed out that PW had succeeded in escaping, thanks to articles of value which they had kept; other Delegations stressed that some of these articles, such as wedding rings and others, whose commercial value was often negligible, might have a sentimental one, and thus constitute a kind of moral support which should not be underestimated. This opinion finally prevailed and the Commission agreed that only articles having a commercial value should be taken from PW.

Having agreed on this point, the Commission thought necessary to foresee the obligation for the DP to give receipts for articles of value impounded from PW, as the Convention prescribes in the case of sums of money. It was urged that this was the more necessary, as many members of the armed forces, and many merchant seamen also, usually carry with them all they possess. Some Delegations thought, however, that the issue of a receipt was insufficient, experience during this war having shown that very often articles of value thus impounded had never been returned to PW, despite the existence of a receipt. One delegate then proposed to lay on the DP the obligation to grant PW financial compensation for articles of value taken and which cannot return to the owner. Though the Commission was unable, through lack of time, to take up this matter, the idea was advanced that such financial compensation was incumbent rather upon the home country of the PW concerned, but that the DP should be obliged to replace impounded articles which the PW may need during captivity.

The question of confiscating identity documents was debated at length. In its report the ICRC had stressed that many PW had their pay-books impounded, which formed their sole identity document. This measure placed them in an awkward situation, particularly when they were no longer able to furnish evidence of their rank and thus benefit by the corresponding treatment. The debates showed that the difficulty consisted in the fact that some documents issued to members of the

forces, such as pay-books or army-books, were simultaneously military papers (to be impounded by virtue of Sec. 1) and identity documents, which by virtue of Sec. 3 cannot be impounded. The majority of the Delegations finally agreed that PW cannot be left without identity documents, and that if they held only a single one, whatever its nature, it should never be confiscated. One Delegation stressed that the pay-books of combatants may form, immediately following capture, such a valuable source of military information that no DP can be expected to undertake not to seize them. In this Delegation's opinion, the only means of obviating the difficulty would be to adopt the identity card recommended in Art. 5, and which would contain no information of a military nature.

The Commission unanimously approved the Committee's proposal to assemble in Art. 24 all stipulations relative to financial matters; it therefore appeared opportune not to embody in Art. 6 the procedure for placing to PW's credit sums of money impounded from them, but to refer to Art. 24 in this connection.

PART III

CAPTIVITY

SECTION I. — EVACUATION OF PW

Article 7

As soon as possible after their capture, prisoners of war shall be evacuated to depots sufficiently removed from the fighting zone for them to be out of danger.

Only prisoners who, by reason of their wounds or maladies, would run greater risk by being evacuated than by remaining may be kept temporarily in a dangerous zone.

Prisoners shall not be unnecessarily exposed to danger while awaiting evacuation from a fighting zone.

The evacuation of prisoners on foot shall in normal circumstances be effected by stages of not more than 20 kilometres per day, unless the necessity for reaching water and food depots requires longer stages.

The Commission recommended that the following provisions should be embodied in the Convention:

(1) *that in all circumstances removal of PW shall be carried out in humane conditions;*

(2) *that these conditions shall be, as far as possible, those granted to the forces of the DP when they are moved;*

(3) *that sufficient food, water, clothing and shelter shall be furnished to each PW during removal.*

The discussion showed the necessity of reinforcing the guarantees covering removal of PW from the fighting zone to the first place of internment, and of drawing a clear distinction between this removal and the transfer of PW considered under Articles 25 and 26.

As regards such guarantees one Delegation had proposed that the conditions under (3) above (food, water, clothing, etc.) should be stated in detail. The Commission thought, however, that it was preferable to lay down a still more general rule, namely to assimilate PW to the forces of the DP as regards conditions of removal. It further appeared desirable to specify that in all circumstances removal of PW shall be carried out in humane conditions.

These stipulations might, the Commission thought, be added to Section 1, or constitute a new Section 2. The other three Sections are intended to protect PW in a physically weak condition, and require no amendment. The view was, however, expressed that Section 4, referring to stages of not more than 20 kilometres a day, would be covered by this new Section and might therefore be deleted.

Article 8

Belligerents are required to notify each other of all captures of prisoners as soon as possible, through the intermediary of the Information Bureaux organised in accordance with Article 77. They are likewise required to inform each other of the official addresses to which letters from the prisoners' families may be addressed to the prisoners of war. As soon as possible, every prisoner shall be enabled to correspond personally

with his family, in accordance with the conditions prescribed in Article 36 and the following articles.

As regards prisoners captured at sea, the provisions of the present article shall be observed as soon as possible after arrival in port.

The Commission recommended the deletion of this Article.

The ICRC had pointed out that Section 1 is entirely duplicated and its subject more clearly specified by Article 77. Further, Section 2 was covered by Article 36, and Section 3 referred to an exception (derogation) already included among exceptions foreseen in Article 1, point 2. It was therefore proposed to delete Article 8, and the Commission unanimously approved this proposal.

SECTION II. — PRISONER OF WAR CAMPS

The Commission was of opinion that this heading should be replaced by "Internment of Prisoners of War".

In its report, the ICRC had pointed out that the stipulations of Section II do not concern PW camps only, but that they apply to all places where PW are permanently held, and it therefore proposed to replace the heading by "Detention of Prisoners of War". The Commission shared this view, but preferred the word "internment" to that of "detention", as the latter should be kept for confinement for a common law offence.

Article 9

Prisoners of war may be interned in a town, fortress, or other place, and may be required not to go beyond certain fixed limits. They may also be interned in fenced camps; they shall not be confined or imprisoned except as a measure indispensable for safety or health, and only so long as circumstances exist which necessitate such a measure.

The Commission expressed the following recommendations:

1. *The enumeration of places of internment should be more fully worded, so as to include the largest number of possibilities, and in particular, camps under canvas, which are very widely employed.*

2. *Except in special cases, which may prove to be in PW's own interest, PW shall not be detained permanently in penitentiaries.*

3. *Places where PW are detained shall in all circumstances be situated on land.*

4. *The Committee's proposal to prohibit confinement or imprisonment of PW as a security measure should be considered.*

The Commission approved the recommendations covered by points 1 and 3, as proposed by the ICRC. Whereas the latter considered that it was not desirable to condemn *a priori* any particular installations for internment of PW, and that even penitentiaries may have provided satisfactory material conditions—a view which was shared by several Delegations—the majority were of opinion that such places of internment created painful impressions on PW inmates. Internment in these places should be forbidden, as far as possible.

The ICRC had also stressed that confinement or imprisonment as a security measure, as quoted in the Hague Regulations, was no longer justified, considering how easy it is, as a rule, to supervise fenced camps; on the contrary, this kind of internment might lead to abuses. The Commission therefore approved its abolition.

Section 2.

Prisoners captured in districts which are unhealthy or whose climate is deleterious to persons coming from temperate climates shall be removed as soon as possible to a more favourable climate.

The Commission proposed a slight amendment of this Section as follows:

"PW interned in areas which are unhealthy or whose climate is harmful to them shall be removed as soon as possible to a more favourable climate."

It was pointed out that the prohibition embodied in Section 2 was intended to cover interned PW, as removal of recently captured PW was already dealt with in Article 7. The ICRC

had shown that, following the extension of the war to all parts of the world, a climate suitable for PW from temperate regions would not necessarily be bearable for PW from other areas, especially from the tropics. This view, shared by various Delegations, was approved; it led the meeting to replace the words "to persons coming from temperate climates" by "to them".

The ICRC had also mentioned altitude as a possible cause of harm to PW's health, which would justify their removal. The Commission thought that this case was covered by the proposed wording and that explicit mention was unnecessary.

Section 3.

Belligerents shall as far as possible avoid bringing together in the same camp prisoners of different races or nationalities.

The Commission recommended that this Section be replaced by the following:

"PW shall, whenever possible, be quartered with those speaking the same language and having similar customs."

The Commission admitted that Section 3 had given rise to abuses, and duly noted the recommendation made by the meeting of religious Associations, convened in March by the ICRC, according to which this Section should be so worded as to exclude segregation of PW in view of less favourable treatment. The Commission thought that the above abuses were due to application of the Section in a spirit contrary to that of the Convention, and that amendment of the wording seemed superfluous. Furthermore, the Commission placed on record the suggestion of two Delegations, whereby segregation of PW of the same nationality should be subject to the consent of their home country.

One Delegation pointed out that the wording of this stipulation did not correspond to its genuine purpose, which is to ensure the best possible living conditions to PW: on the contrary, it gave rise to the idea that a certain discrimination, based on considerations of race or nationality was permitted. In this

Delegation's opinion, the best course would be to stipulate that PW speaking the same language and having similar customs should be quartered together ; this provision would take into account the principle of equality as between PW, while leaving the necessary administrative freedom to the DP. The Commission endorsed this suggestion, as it was held to be in accordance with the spirit of the Convention.

The ICRC had also proposed, in this connexion, that the DP should be bound to facilitate the reunion in the same camp of PW who are close relatives. Owing to the difficulties which several Delegations thought this measure would involve, the Commission did not approve it.

Section 4.

No prisoner may at any time be sent to an area where he would be exposed to the fire of the fighting zone, or be employed to render by his presence certain points or areas immune from bombardment.

The Commission proposed the adjunction, at the end of this Section, of the following clause :

"Protective shelter against air bombardment and other war hazards shall be given to PW to the same extent as to the local civilian population."

Furthermore, it recommended that belligerents should notify each other, through the Protecting Power or the ICRC, of the location of PW camps, and that these camps should be made known to the enemy by characteristic markings, visible by day, which the belligerents shall notify to each other.

In its report, the ICRC had stressed that the wording of Section 4 seemed inadequate, owing to the technical development of warfare (air bombardment in particular), and no longer safeguarded PW from attendant risks. The ICRC suggested that this Section should be rendered more detailed and accurate by introducing provisions relating to notification and location of camps, and to their markings.

As regards location, the Commission were unanimous that camps must not be placed near military objectives. It did not,

however, entertain the proposal made by the ICRC and other Delegations, that this point should be fully dealt with in the Convention ; any mention of "military objectives" might, it was feared, raise practical difficulties. A prohibition couched in general terms appeared preferable, and Section 4 therefore seemed adequate. The same reasons prompted the Commission to decline the Committee's proposal to prohibit the establishment of camps near large urban centres. The Commission agreed to the idea of defining the minimum protection to which PW are entitled in case of bombardment : it therefore recommended that the men should have air-raid shelters, like the local civilian population. One Delegation recommended that it should be specified that air-raid precautions for PW should be organized by themselves and for their sole benefit.

The recommendation concerning mutual notification of the geographical situation of camps, proposed by the ICRC, was agreed to. It was, however, specified that belligerents would not be required to communicate this location to each other in any detail.

As regards the marking of camps, the Delegations agreed that night marking of camps would assist the enemy air force and might even constitute a danger for PW. By day, however, markings might afford them a certain degree of protection and should thus be recommended, even if it gave them priority over the civilian population. In order to avoid loss of time arising from routine discussions regarding choice of a marking and its notification, the Commission recommended the letters PG and PW as standard markings for PW camps.

Section relative to Liberty on Parole.

The Commission recommended that liberty on parole should be explicitly foreseen in the Convention, and that it should be recommended to belligerent Powers not as a general measure, but as optional and justifiable in certain individual cases.

In connexion with Article 9, the Commission thought useful to take up the question of liberty of PW on parole, mentioned in Articles 10, 11 and 12 of the Hague Regulations, which are

still in force as between Powers signatory to these Regulations. It had been recommended, when considering Article 1, that all reference to the Hague Regulations should be omitted from the Convention, in order to have a self-contained PW Convention. The Commission therefore recommended that these three provisions should be embodied in Article 9, perhaps in the form of a new Section.

As regards the idea underlying this Article, which was the chief concern of the Commission, certain Delegations stated that their countries, though generally speaking adverse to liberty on parole being granted to members of their own armed forces, were led to conclude arrangements with the enemy for temporary liberty on parole of certain PW who required exercise. The insertion of an optional clause of this kind was then approved, as it would be particularly valuable to disabled PW awaiting repatriation.

CHAPTER I. — INSTALLATION OF CAMPS

Article 10

In its report, the ICRC proposed to fix a time-limit in which PW camps ought to fulfil the conditions laid down by the Convention. Experience has shown that the necessary improvements in camps were often made only after considerable delay. The Commission was unable to share this view; it held that a DP called upon to meet the requirements of a large mass of PW, might be unable, even if prompted by the best intentions, to observe such a time limit.

Section 1.

Prisoners of war shall be lodged in buildings or huts which afford all possible safeguards as regards hygiene and salubrity.

The Commission proposed to replace this Section by a stipulation based on the following:

“Conditions of accommodation of PW shall be as favourable as those granted to the forces of the DP stationed in the same district.

“These conditions shall take into account the manners and customs of PW, and shall in no case be prejudicial to their health.”

The question often arose, during the war, whether the use of tents as quarters for PW was in accordance with Article 10, even if this use involved no discomfort to them. The Commission discussed this question at length, and agreed that the use of tents should be authorized, subject to certain conditions (climate, customary employment by the forces of the DP). It was, however, considered that it would be too complicated to list these various cases in Section 1, and that they should be governed by a general principle. One of two solutions then appeared possible: (1) to stipulate that living quarters should not be inferior to those specified in an annex to the Convention; (2) to prescribe that they should be equal to those for the forces of the DP. This second rule, which the majority of the Delegations approved, led to the question of accommodation of PW in countries where the home forces are accustomed to a definitely lower living standard than was prevalent in the PW's own countries. Anxious to afford PW in such a position maximum protection, but not to grant PW in general accommodation superior to that of the DP's own forces, the Commission thought that these needs might be met by the above wording.

Section 2.

The premises must be entirely free from damp, and adequately heated and lighted. All precautions shall be taken against the danger of fire.

The Commission recommended that this Section should be completed by adding, at the end of the first clause, the words: “especially between nightfall and lights out”.

The ICRC had alluded, in its report, to the frequent complaints of PW that the absence of heating and especially lighting

prevented their enjoying the few hours of liberty left to them, i.e. the time between nightfall and lights out. To meet these complaints, the Commission decided to amplify Section 2 to this effect, while specifying that this new stipulation in no way contradicted the rule that camps should not be lit up at night.

Section 3.

As regards dormitories, their total areas, minimum cubic air space, fittings and bedding material, the conditions shall be the same as for the depot troops of the detaining Power.

The Commission recommended that this Section should be replaced by the following:

"The dormitories, furniture and bedding, including blankets, shall be sufficient to ensure the well-being and health of PW."

The rule assimilating PW to depot troops of the DP as regards sleeping quarters led to numerous difficulties, due mainly to the particular habits of certain armies, or to insufficient definition of the term "depot troops". The ICRC therefore suggested certain minimum conditions, applicable in all circumstances, in particular as regards the number of blankets, the absence of which was sometimes keenly felt. The Commission did not think opportune to go into the details involved by such minimum conditions, nor to entertain the rule of assimilation to "depot troops" of the DP; it decided to keep to the general principle set out above.

In view of the possibly divergent readings of this principle, particularly in countries having a very low standard of living, the Commission found necessary to add a provision similar to that embodied in Section 1, stipulating that in no case shall conditions of internment be deleterious to the health of PW whose race and customs are not those of nationals of the DP. To avoid repeating this provision in Sections 1 and 3, it was proposed to embody it in a new Section 4.

Transit Camps.

The Commission recommended the insertion in the Convention of the following two principles:

The stay of PW in transit camps shall be as short as possible.

Transit camps situated outside the combat zone shall be installed in conditions as similar as possible to those required for permanent camps.

The ICRC had pointed out that during the recent war, PW were sometimes held a very long time in so-called transit camps. On the plea that such camps were only temporary, PW were not as a rule granted adequate conditions of internment, apart from the fact that the right to have visits of supervisory agencies or to notify their presence to the Central Agency in Geneva was often refused them. To avoid similar abuses in future, the ICRC recommended that this type of camp should be explicitly mentioned in the Convention.

The discussion showed that the idea of "transit camp" may satisfy two very different needs: (1) transit camps are set up for the reception of PW captured during a specific military operation and are most often situated in the combat zone or its neighbourhood; (2) transit camps are set up beforehand; they are permanent and usually serve as clearing or screening camps.

The Commission unanimously admitted that it was impossible to stipulate that the first kind of transit camp should provide quarters in conformity with the provisions of the Convention, seeing the emergency conditions and the material difficulties which accompanied their installation; it also found it difficult to specify minimum conditions for their establishment. The Commission therefore merely recommended the insertion in Article 7 of a clause stating that PW should be detained as short a time as possible in this first kind of transit camp; it further thought that the other provisions of Article 7 gave sufficient safeguards as regards conditions of internment.

Turning to the second type of transit camp, several Delegations said that it would be dangerous to tolerate conditions there

which might be inferior to those laid down in the Convention for permanent camps. The Commission approved this view and endorsed the second principle quoted above, which might, in its opinion, appear in Article 10.

CHAPTER II. — FOOD AND CLOTHING OF PRISONERS OF WAR

Article 11

Section 1.

The food ration of prisoners of war shall be equivalent in quantity and quality to that of the depot troops.

The Commission proposed to replace this Section by a text worded as follows:

The food rations shall be sufficient in quantity, quality and variety to keep PW in good health and to prevent loss of weight. Account shall also be taken of the habitual diet of PW.

The ICRC had pointed out in its report that the food rations of PW were badly defined and that a standard should be adopted which would allow DPs to know the extent of their obligations, and visiting delegates to appreciate the implementing of these obligations.

The majority of the Delegations recognized the cogency of these remarks, but did not entertain the ICRC's proposal to keep to the rations of "depot troops", as in some armies such troops did not exist. The ICRC tried to find a definition acceptable to all: the terms "static troops" and "troops at army bases" (army base troops) in particular were suggested, but no agreement was reached. The Commission merely recorded in its minutes the explicit recommendation made by the ICRC that a comparison should be maintained in this Article with the food ration of the DP's own forces.

The following proposals were made by various Delegations to define food rations for PW:

1. According to caloric content of foodstuffs.

This solution was rejected. On the one hand, it is difficult to fix values acceptable in all latitudes; on the other, too many details would have to be included, to ensure a sufficiently varied allocation of calories.

2. By comparison with the rations of the civilian population.

This standard was rejected, because it failed to take into account the frugality of some populations, and the fact that civilians can buy non-rationed commodities or black market goods. One Delegation further remarked on the wide differences of diet due to the habits and customs of various populations. The Commission decided to meet these objections in their new text.

3. Periodical checking of PW's weight.

It has been maintained that, since weight is the best indication of health, periodical checking would reveal the adequacy or inadequacy of food rations. The difficulty of providing all camps with weighing machines and of arranging for regular weighing was mentioned, but not considered insuperable. Some delegates thought that weight is not an infallible indication of health, but the Commission thought it advisable to consider this principle.

After debate, the Commission endorsed the ICRC proposals concerning general conditions which PW rations must satisfy, namely :

Food must be sufficient to keep PW in normal health, as shown by medical examination,

Food should be varied and take into account the habitual diet of PW and climatic conditions,

Food must be in proper relation to the work expected of PW, or to their poor state of health.

A more general statement of these principles will be found in the final recommendations made.

Section 2.

Prisoners shall be afforded the means of preparing for themselves such additional articles of food as they may possess.

The ICRC had proposed to leave this Section unchanged; the Commission shared this view and suggested the transfer of this Section to the Chapter on camp organisation.

Section 3.

Sufficient drinking water shall be supplied to them. The use of tobacco shall be authorized. Prisoners may be employed in the kitchens.

The Commission advised that this Section should remain unchanged and proposed to include the names of any other articles in the annexed Regulations.

The ICRC had asked in its report whether coffee, alcoholic drinks or other commodities should be mentioned in this Section, and if it would be possible to make incumbent on the DP to provide some of these.

Section 4.

All collective disciplinary measures affecting food are prohibited.

The Commission recommended that this Section should not be changed.

Article 12

Section I.

Clothing, underwear and footwear shall be supplied to prisoners of war by the Detaining Power. The regular replacement and repair of such articles shall be assured. Workers shall also receive working kit, wherever the nature of the work requires it.

After some debate, agreement was reached upon the following slightly amended version of the ICRC's text:

"Sufficient clothing, underwear and footwear shall be supplied to PW by the DP, which shall take largely into account the climate of the country where PW are detained. Uniforms of the forces to which PW belong, seized by the DP, shall be used whenever

possible as PW clothing. Repairs and replacements shall be regularly ensured by the DP. Workers shall also receive appropriate working kit, wherever the nature of their employment requires."

The ICRC had stressed that the first clause of the Article was incomplete, in so far as it did not state to what extent the DP shall be bound to supply PW with clothing, underwear and footwear. It should be stipulated (1) that sufficient articles be issued and (2) that the DP should take account of the climate prevalent in the areas where the camps are situated.

The Commission adopted the ICRC's proposal.

Opinions differed as regards issue of uniforms to PW. The ICRC was anxious to avoid in future that PW be compelled, as was the case during the late war, to wear garments liable to wound their national sentiments (enemy uniforms), or clothing of a degrading character (convict's dress), and had suggested that the amended Convention should state that clothing must be in accordance with the regulations in force in the army to which PW belong.

Speakers observed that the ICRC's proposals raised some difficulty; it cannot be expected that a DP, whose factories are already fully occupied and barely able to satisfy the needs of its own armed forces and civilians, should also supply foreign uniforms. The ICRC then asked that the DP should be forbidden to compel PW to wear enemy uniform; here again strong objections were raised, as it was alleged that PW preferred wearing enemy uniform to no uniform at all. At this point the proposal of a Red Cross Society was taken up, that all uniforms seized from the enemy by the DP as war booty should be turned over to PW. This principle was approved by the majority and adopted in a somewhat more liberal form.

Two other proposals were tabled, but not entertained, namely :

1. That the ICRC should undertake to devise a type of uniform for PW and ensure issue to the Governments concerned.

2. That provision should be made for distribution to PW of "security wear" (gas-masks, helmets, special garments for dangerous work, etc.).

Re Sections 2 and 3.

The Commission endorsed the suggestion to make a separate Article of the stipulations relative to canteens (Sections 2 and 3 of Article 12).

Section 2.

In all camps, canteens shall be installed at which prisoners shall be able to procure, at the local market price, food commodities and ordinary articles.

The Commission recommended that this provision be kept in its present form.

It was proposed to replace the expression "local market price" by "prices charged to the DP's forces in the same area", but this was rejected for two reasons: (1) special arrangements are made so that members of DP forces may enjoy certain priority rates; (2) the civilian population might object to PW being granted reduced prices.

Section 3.

The profits accruing to the administration of the camps from the canteens shall be utilized for the benefit of the prisoners.

The Commission recommended the following wording, after debate:

The profits accruing to camp administrations from the canteens shall be used for the benefit of PW; a special fund shall be set up to this effect. The spokesman shall have the right to participate in the management of the canteen and of the said fund.

When a camp is closed down, the canteen profits shall be used for the benefit of PW of the same nationality.

In case of general repatriation, any profits accruing shall be distributed by agreement between the Governments concerned.

During the plenary session of the Commission this text was considered inadequate and amended as follows :

Replace " a special fund", by "a welfare fund" ;

The camp spokesman shall sit on the managing committee of these funds ; he shall have the right to check the account-books and shall be consulted as to the sharing of profits ;

The whole or part of the funds may be used for PW of the same nationality ;

Final decision regarding the use of the funds shall remain with the DP.

The ICRC had observed that during the war, canteen profits were too often used in an arbitrary way by the DP ; it proposed that PW should be directly associated through their spokesman in the managing of canteens and the sharing of profits.

The Commission went even further and contemplated setting up a special welfare fund, to which PW should have the above rights. It rejected the proposal made by one Delegation, that the DP should be allowed to keep part of the profits, to repair damage done to quarters by PW. This last clause was considered too risky ; during the recent war, it was applied by certain belligerents and led to numerous abuses.

The Commission, however, insisted on stating explicitly that the final decision on the use of funds should remain with the DP. This was the logical consequence of giving the spokesman merely the right to check accounts (in the proposed text), and a right to consultation (in the second).

The ICRC had also considered the use made of profits when camps are shut down ; it was opposed to any sharing out among PW. This was sometimes done during the war and often gave rise to serious difficulties, as each PW laid claim to his share when leaving a camp. The ICRC therefore proposed that when a camp is closed down, any profits should be handed to the camps situated on the territory of the DP that are most in need of such financial assistance.

The Commission adopted this solution, in a more general form, and proposed that on the closing of a camp, welfare funds

should be used for the benefit of PW of the same nationality.

The ICRC had suggested, in case of general repatriation, that profits should be handed over to PW's home country for the benefit of repatriated PW in general. The Commission thought preferable to leave it to the Governments concerned to settle by agreement the question of disposal of profits.

CHAPTER III. — HYGIENE IN CAMPS

One delegate proposed that, if there is an annex to the amended Convention, the provisions contained in this Chapter (Articles 13 to 15) should be embodied therein under the heading "Installation and Organisation of Camps".

The majority of the Commission recommended this course, which would leave one general Article in the body of the Convention, reference being made to the annex for details.

Article 13

Sections 1 and 2.

Belligerents shall be required to take all necessary hygienic measures to ensure the cleanliness and salubrity of camps and to prevent epidemics.

Prisoners of war shall have for their use, day and night, conveniences which conform to the rules of hygiene and are maintained in a constant state of cleanliness.

No change suggested.

Section 3.

In addition, and without prejudice to the provision as far as possible of baths and shower-baths in the camps, the prisoners shall be provided with a sufficient quantity of water for their bodily cleanliness.

The Commission approved the proposal contained in the ICRC's report; the amended Section would therefore now run as follows:

In addition and without prejudice to the provision of baths and shower-baths in the camps, PW shall be furnished with

sufficient quantities of water and soap for their bodily cleanliness, and for laundering; they shall also be granted facilities for the latter work.

The ICRC had drawn attention to the fact that the Convention (1) does not settle the question of laundering, which is generally done by the men themselves, and (2) does not make it clear whether it is incumbent on the DP to furnish PW with soap both for laundry purposes and for personal use. The Commission thought that the general obligation of maintenance by the DP covered supplies of soap.

The Commission therefore approved the ICRC's proposals *in toto*.

Section 4.

They shall have facilities for engaging in physical exercises and obtaining the benefit of being out of doors.

The Commission held that this Section would be better placed in Article 17.

Article 14

Section 1.

Each camp shall possess an infirmary, where prisoners of war shall receive attention of any kind of which they may be in need. If necessary, isolation establishments shall be reserved for patients suffering from infectious and contagious diseases.

The following text was proposed by the Commission:

Each camp shall have an adequate infirmary, where PW shall have attention of any kind which they may require, and suitable diet. PW shall not be prevented from presenting themselves to the medical officers for examination. If necessary, isolation wards shall be provided for patients suffering from infectious diseases.

The two additions in the redrafted Section were suggested by the ICRC, the object being (1) that PW may benefit by a diet favourable to their recovery, and (2) that they should not be subject to the discretionary powers of camp commandants

who, through scarcity of labour, often prevented PW from having medical attention. As regards the latter point, the text proposed by the ICRC was slightly altered. The Commission preferred the wording "medical officers".

Section 2.

The expenses of treatment, including those of temporary remedial apparatus, shall be borne by the detaining Power.

The Commission recommended the adoption of the following text:

The costs of treatment, including all apparatus necessary to keep PW in good health, especially dentures and spectacles, shall be borne by the DP.

The ICRC had suggested to stipulate in this section that the DP should not only supply temporary prostheses, but also permanent apparatus, if captivity was prolonged to such an extent that temporary apparatus might be inadequate, and even an obstacle to the recovery of wounded PW.

The observations made by a Delegation with considerable experience in this field, led the Commission to argue that orthopedic treatment varies in each country, and to recommend that no reference should be made in the revised text of Section 2 to temporary or permanent prostheses, except in a purely general way, such as "all apparatus necessary to keep PW in good health". This clause constitutes a sufficient safeguard for wounded and sick PW.

The Commission unanimously agreed, however, that the DP should bear the cost of dentures and spectacles.

Section 3.

Belligerents shall be required to issue, on demand, to any prisoner treated, an official statement indicating the nature and duration of his illness and of the treatment received.

The following text was proposed by the Commission:

Belligerents shall be required to issue, on demand, to every PW treated, an official certificate showing the nature and duration of

his illness, and the treatment he has received. Duplicates of these certificates shall be forwarded to the Central Prisoners of War Agency.

Speakers urged the importance of this stipulation ; it was in fact, the only means whereby PW who were victims of a working injury might successfully claim compensation after repatriation. On many occasions, during the last war, certificates issued to PW were, under various pretexts, confiscated at the time of repatriation.

For these reasons, and to give better safeguards to PW, the Commission decided that a duplicate of the certificate issued to the PW should be forwarded by the belligerent concerned to the Central Prisoners of War Agency.

Section 4.

It shall be permissible for belligerents mutually to authorize each other, by means of special agreements, to retain in the camps doctors and medical orderlies for the purpose of caring for their prisoner compatriots.

Sharing the views expressed by the ICRC, the Commission considered that Section 4 (which is wholly out of place in the Chapter dealing with health conditions in camps) should be removed and embodied in the Geneva Convention proper, in the chapter concerning the status of PW medical personnel (Chap. 3).

Section 5.

Prisoners who have contracted a serious malady, or whose condition necessitates important surgical treatment, shall be admitted, at the expense of the detaining Power, to any military or civil institution qualified to treat them.

The Commission recommended, firstly, the insertion here of a new stipulation, reading as follows :

PW shall, whenever possible, be treated by the medical personnel of their own country.

It then recommended the revision of Section 5 as follows :

PW whose condition necessitates specialised or hospital treatment shall be admitted at the DP's expense to any military or civil establishment qualified to care for them, even if they should be due for early repatriation. Special facilities shall be granted for the care and training of the blind.

As regards insertion of the above provision, the Commission concurred with the views of one delegation, that wounded or sick PW preferred treatment by doctors of their own nationality, who employ methods to which they are accustomed. This point is of particular importance when the belligerents are of different races.

The ICRC had suggested an addition to the effect that treatment should be given even if repatriation is due in the near future. It had often been noticed that PW awaiting repatriation were assembled in camps for some weeks previous to their departure, and that those requiring a surgical operation were not operated, on the grounds that repatriation was expected daily.

The Commission also approved the suggestion that particular reference should be made to blind PW.

Article 15

Medical inspections of prisoners of war shall be arranged at least once a month. Their object shall be the supervision of the general state of health and cleanliness, and the detection of infectious and contagious diseases, particularly tuberculosis and venereal complaints.

The Commission recommended that radioscopy and weighing should be mentioned in this article.

The ICRC, without making any definite proposal for revised drafting, had placed various suggestions before the meeting. In particular, it recommended stricter measures to combat infectious diseases, e.g. by more frequent medical examinations, the organisation of mobile medical missions by National Red Cross Societies or the ICRC, and large-scale vaccination to prevent epidemics.

The Commission thought impossible to frame Articles which should be entirely complete and perfect in this respect, and held Article 15 in its present form to be satisfactory. It nevertheless recommended that X-ray examinations and regular weighing should be mentioned.

CHAPTER IV. — INTELLECTUAL AND MORAL NEEDS OF PW

Article 16

Section 1.

Prisoners of war shall be permitted complete freedom in the performance of their religious duties, including attendance at the services of their faith, on the sole condition that they comply with the routine and police regulations prescribed by the military authorities.

The Commission recommended that the words "and police" should be deleted in this section.

In this respect it agreed with the opinion formed by the ICRC after discussions with certain religious associations, who worked with it during the war. The Commission considered that their views on the matter should be followed.

Section 2.

Ministers of religion, who are prisoners of war, whatever may be their denomination, shall be allowed freely to minister to their co-religionists.

The Commission adopted the following text:

PW, who are ministers of religion of any denomination whatever, shall be permitted to minister freely to those of their faith. With this end in view, the DP shall ensure their proper allocation between the various camps and also grant them, in case of need, all facilities for travelling from one camp to another.

Any PW who can furnish to the DP evidence that he is a minister of religion shall be exempted from work.

During the war it happened that some camps included several ministers of the same religion, whereas neighbouring camps had none. For this reason, the ICRC proposed in its report that ministers of religion should be allotted to the various camps and that, in case of need, they should be allowed to travel between camps and labour detachments.

The Commission approved this proposal, as also the recommendation of the religious associations that ministers of religion should be exempted from work, on condition that they furnish the DP with proof of their office.

The other recommendations made by these associations, such as the encouragement of religious practices in camps, special facilities for priests and theological students to communicate with the representatives of ecclesiastical and religious agencies, the setting apart in camps of premises strictly reserved for church services, were considered scarcely acceptable and were not included in the final text.

One Delegation also proposed the following :

“Representatives of religious organisations shall be allowed to visit camps holding PW of the same denomination. They shall minister to their spiritual needs, subject to the consent of the belligerent Power concerned. Such representatives should preferably be nationals of neutral countries. When this is not possible, they should be nominated by the Protecting Power or the ICRC, with the belligerents' consent. These representatives shall enjoy the privileges of neutrals, in so far as their religious duties with regard to PW are concerned.”

The Commission was unable to entertain this suggestion, for it raises matters connected with reasons of State security, and these might cause some difficulty. Due note was however taken of the proposal, and the suggestion was passed on to the Governments concerned, for their favourable attention.

Article 17

Belligerents shall encourage as much as possible the organisation of intellectual and sporting pursuits by the prisoners of war.

The text proposed by the ICRC was adopted, namely:

Belligerents shall encourage the intellectual, educational, recreative and outdoor pursuits organized by PW and shall take the necessary steps to ensure their exercise. The individual liberty of PW shall be respected in all circumstances.

Further, Section 4 of Article 13 should be included here:

PW shall have facilities for engaging in physical exercises and obtaining the benefit of being out of doors.

In its report, the ICRC stressed the importance of satisfying the intellectual and recreational needs of PW. The Convention was too vague on this point and allowed the DP to adopt a passive attitude towards these essential activities. Consequently, the new text, based on suggestions made by the relief societies, will contribute widely to PW maintaining or recovering their morale.

All technical questions with regard to the despatch of books, magazines, etc. were referred to Articles 38 and 39.

CHAPTER V. — INTERNAL DISCIPLINE OF CAMPS

Article 18

Section 1.

Each prisoner of war camp shall be placed under the authority of a responsible officer.

The Commission recommended that the new Convention should stipulate that the responsible officer shall be "an officer of the armed forces of the DP", and "this officer shall also be responsible for the implementing of the Convention in labour detachments and subordinate camps, and, in particular, for the camp guards being familiar with the Convention".

The Commission thus proposed to increase and to define the responsibility of the camp commandant. One Delegation observed that the camp staff and guard were too often insufficiently familiar (and in some cases quite unacquainted) with

the provisions of the Convention. The camp commandant should therefore ensure that his subordinates are instructed in it. The Commission further agreed with the suggestion made by the ICRC, and supported by one of the Delegations, that the camp commandant must be an officer of the DP's forces, thus preventing the recurrence of certain unpleasant incidents. It did not, however, think necessary, as proposed by the ICRC, to ask that camp commandants be selected in obedience to certain rules, to allow them to cope with their difficult task and the responsibility they incur.

Section 2.

In addition to external marks of respect required by the regulations in force in their own armed forces with regard to their nationals, prisoners of war shall be required to salute all officers of the Detaining Power.

After discussion, the Commission adopted the following text proposed by the ICRC, with the addition of the words "other than officers".

PW other than officers shall be required to salute all officers of the DP and show them the marks of respect required by the regulations of their own armed forces.

The ICRC pointed out in its report that the form of salute owed by PW was not specified in the Convention. It seemed, however, that the authors of Article 18, Section 2, intended to oblige PW to show the marks of respect and carry out the salute required by the regulations of their own armed forces.

The Commission thought unacceptable that PW should be compelled to salute according to the regulations for the armed forces of the DP and adopted the suggestion of the ICRC. It considered, however, that for officers to return the salute was a matter of courtesy and did not call for precise ruling.

Section 3.

Officer prisoners of war shall be required to salute only officers of that Power who are their superiors or equals in rank.

The Commission proposed to keep this section, with the addition of the words: "the camp commandant shall be saluted, whatever his rank".

With regard to this Section, two contradictory suggestions were made :

1. The ICRC stated that, during the war, some belligerents had required PW to salute the camp commandant, even if inferior to them in rank, and that this had led to numerous complaints. The ICRC proposed that this practice should not be approved, and moreover that the word "equals" should be deleted, so that officer PW should no longer be obliged to give the first salute to officers of equal rank belonging to the DP.

2. One delegation maintained that while it was normal for PW to salute camp commandants, whose functions made him representative of the highest authority, the exchange of salutes between equal ranks was so much a matter of courtesy that the Convention could not enter into such matters of detail.

The Commission preferred the second opinion.

Article 19

The wearing of badges or rank and decorations shall be permitted.

The Commission suggested that this Article should be amplified as follows :

The wearing of badges of nationality and rank, and of decorations, shall be permitted.

One delegation endorsed the views of the ICRC, by recommending that this Article should clearly specify that PW may wear badges, whatever their dress may be. It too frequently occurred during the war that badges disappeared when uniforms were changed, or that they were not allowed to be worn with the standard uniforms issued to PW.

The majority of the Commission preferred to leave to this Article its more general form, but, in agreement with the ICRC, it added to badges of rank and decorations those of nationality,

as they had already stipulated in Article 6, Section 3 that PW should not be deprived of such insignia.

Article 20

Regulations, orders, announcements and publications of any kind shall be communicated to prisoners of war in a language which they understand. The same principle shall be applied to questions.

The following text, proposed by a Delegation to replace and suitably amplify the former wording, was adopted without discussion by the majority of the Commission:

“Regulations, orders, notices and proclamations of every kind which govern the conduct of PW must be communicated to them in a language which they understand, by posting them in a conspicuous place to which PW have access, and by delivering copies thereof to the PW spokesman. All orders or commands directed to individual PW must likewise be given in a language which they understand.

The same principle shall be applied to questionings.”

CHAPTER VI. — SPECIAL PROVISIONS CONCERNING OFFICERS AND PERSONS OF EQUIVALENT STATUS

The Commission considered that the title of Chapter VI should be amended so as to cover all PW, without distinction of rank.

Article 21

Section 1.

At the commencement of hostilities, belligerents shall be required reciprocally to inform each other of the titles and ranks in use in their respective armed forces, with the view of ensuring equality of treatment between the corresponding ranks of officers and persons of equivalent status.

The Commission recommended mentioning in this Article that belligerents should communicate to each other the titles and ranks of all persons named in Article 1. It also suggested that the ICRC

be invited to assemble, already in time of peace, the lists of titles and ranks in use in their armed forces, and to communicate such lists on the outbreak of hostilities. It was also noted that if new titles and ranks are created after the outbreak of hostilities, they should also be notified.

Some Delegations observed that, through lack of precision, this Article had led to difficulties during the war, and that the titles and ranks of all persons named in Article 1 should be communicated, to prevent belligerents refusing to grant PW the treatment to which their rank entitles them.

Other Delegations proposed, to enlarge the scope of the present text, (1) that mercantile marine crews should also be mentioned, (2) to replace in the French text the word "armée" by "forces armées"¹, and (3) to add the words "bearers of commissions". The Commission preferred, however, the more general expression "all persons alluded to in Article 1 of the Conventions".

Belligerents having been on many occasions slow in establishing and communicating the lists mentioned in this Section, the Commission thought that, to avoid such deficiencies, the text adopted should invite the ICRC to start assembling these lists in peace time, and to notify them on the outbreak of hostilities.

One Delegation also proposed that the Convention should allude to the creation and notification of new titles and ranks after the outbreak of hostilities, so as to allow PW concerned to benefit thereby. The Commission agreed with this proposal.

Section 2.

Officers and persons of equivalent status who are prisoners of war shall be treated with due regard to their rank and age.

No proposals for modification were made.

Article 22

Section 1.

In order to ensure the service of officers' camps, soldier prisoners of war of the same armed forces, and as far as possible speaking the same

¹ As has been done in the official British text.

language, shall be detached for service therein in sufficient number, having regard to the rank of the officers and persons of equivalent status.

The Commission recommended the adjunction of the following words: "They shall not be compelled to do any other work."

Although recognizing that these were matters of detail, the ICRC suggested that this Section could be clarified in several respects: (1) by stating the minimum number of orderlies, account taken of the rank of the officers to whose service they are detailed; (2) by requiring that the men should be selected by reason of their ability; (3) by giving preference to those who have already done similar duties in their own forces.

The Commission, believing that the Convention should not be burdened with too many stipulations of minor interest, took note of the ICRC's third proposal, which was supported by one delegation who tabled the above wording. By requiring that orderlies shall not be compelled to do any other work, the practice will be avoided of officers being given orderlies in theory only. During the war, it often occurred that camp authorities allotted officers an adequate number of orderlies, but compelled the latter to do a certain number of other duties or additional hours besides, so that their usefulness as orderlies was practically nullified.

Section 2.

Officers and persons of equivalent status shall procure their food and clothing from the pay to be paid to them by the detaining Power. The management of a mess by officers themselves shall be facilitated in every way.

The Commission recommended that this Section should be omitted, but that the principle whereby "PW shall be associated in the cooking of meals" should be clearly specified.

During the discussion, the views of the delegations agreed with those of the ICRC in its report. While it was highly desirable to grant officers a certain degree of liberty in the management of their mess, experience had shown that the difficulty

in obtaining foodstuffs and the rationing measures in force during a modern war prevented PW of all ranks from meeting their own needs as regards food and clothing. Consequently, the first clause of Section 2 (which constitutes, in fact, an exception to the general rule (Art. 4) that the DP is responsible for PWs' maintenance) should be omitted. Officers would thus be on the same footing with all other PW as regards food and clothing.

The majority of the Commission considered desirable, however, that this Section should uphold the principle that officers should be associated in the management of their mess.

CHAPTER VII. — PECUNIARY RESOURCES OF PW

The Commission agreed as to the advisability of assembling all provisions relative to financial matters in a single chapter of the Convention (i.e., Art. 6, Sec. 2; Art. 23, 24, 26, Sec. 3 and 4; Art. 34 and 38, concerning remittances), and to have them discussed by a Sub-committee. To assist the latter in their work, the Commission made the following general recommendations:

1. *The amounts paid out to PW by the DP shall be limited, so that a maximum sum may be available for PW's next of kin.*
2. *The amounts paid shall be determined by rank or status.*
3. *Credit balances shall be made easily transferable to PW's next of kin.*

(A) Pay.

Article 23

Subject to any special arrangements made between the belligerent Powers and particularly those contemplated in Article 24, officers and persons of equivalent status who are prisoners of war shall receive from the detaining Power the same pay as officers of corresponding rank in the armed forces of that Power, provided, however, that such pay does not exceed that to which they are entitled in the armed forces of the country in whose service they have been. This pay shall be paid to them in full, once a month if possible, and no deduction therefrom shall be made for expenditure devolving upon the detaining Power, even if such expenditure is incurred on their behalf.

An agreement between the belligerents shall prescribe the rate of exchange applicable to this payment; in default of such agreement, the rate of exchange adopted shall be that in force at the moment of the commencement of hostilities.

All advances made to prisoners of war by way of pay shall be reimbursed, at the end of hostilities, by the Power in whose service they were.

Following the report of the Financial Sub-committee, the Commission recommended that, when drafting new Articles on financial questions, the following recommendations should be taken into account:

(a) *The DP shall pay all PW mentioned in Article 1, monthly allowances calculated by converting into the currency of the detaining country the following amounts:*

Class I (below sergeants): 8 Swiss gold francs.

Class II (sergeants and other NCOs and PW of equivalent rank): 12 Swiss gold francs.

Class III (Army officers below the rank of major and PW equivalents, including warrant officers having officer status in their own forces): 50 Swiss gold francs.

Class IV (Army majors, lieutenant-colonels and colonels and PW equivalents): 60 Swiss gold francs.

Class V (general officers and PW equivalents): 75 Swiss gold francs.

(b) *Belligerents may, by special agreements, modify the amounts payable to the above classes.*

(c) *The DP shall be under obligation to accept from the State of origin, additional sums to be credited to PW of that country, provided the same amount is paid to all PW of the same class.*

In its report, the ICRC had observed that, as a rule, the DP had made payments to officer PW based upon the stipulations of this Article. The ICRC asked whether the principle of payment without deduction to officers should be maintained, or

whether it would not be simpler to say that their free maintenance should be ensured by the DP, allowances paid being limited to part of the total amount due.

The ICRC further asked whether it would not be advisable to provide for a minimum allowance to be paid to all PW, especially to those not working or in hospital. The ICRC stressed that the ratio between rates of pay for nationals of the DP and of the Home Power, as at the outbreak of war, should be maintained, no matter what monetary conditions might be. Discussion of these questions led the Commission to adopt several of these suggestions, as shown above.

The Commission did not intend the amounts given above to be considered definite. The figures might be modified in the case of certain States, should they appear too high in proportion to the rates paid by them to their own nationals.

(B) Wages.

Article 34

Prisoners of war shall not receive pay for work in connection with the administration, internal arrangement and maintenance of camps.

Prisoners employed on other work shall be entitled to a rate of pay, to be fixed by agreements between the belligerents.

These agreements shall also specify the portion which may be retained by the camp administration, the amount which shall belong to the prisoner of war and the manner in which this amount shall be placed at his disposal during the period of his captivity.

Pending the conclusion of the said agreements, remuneration of the work of prisoners shall be fixed according to the following standards :

(a) Work done for the State shall be paid for according to the rates in force for soldiers of the national forces doing the same work, or, if no such rates exist, according to a tariff corresponding to the work executed.

(b) When the work is done for other public administrations or for private individuals, the conditions shall be settled in agreement with the military authorities.

The pay which remains to the credit of a prisoner shall be remitted to him on the termination of his captivity. In case of death, it shall be remitted through the diplomatic channel to the heirs of the deceased.

The following recommendations were made by the Commission:

(a) *The DP shall determine the rate of wages due to PW who work, provided that this rate shall never be less than a quarter of a Swiss gold franc for a whole day's work. The DP shall notify to the Government to which PW belong, through the Protecting Power, the rate of wages it may determine.*

(b) *Where PW are continuously employed on work in connexion with the administration, internal arrangement and maintenance of camps, they shall be paid wages by the DP benefiting by their employment.*

(c) *PW employed on work in connexion with the administration, internal arrangement and maintenance of camps for the benefit of PW themselves (e. g. spokesmen, cooks, canteen managers) shall receive wages at rates to be determined by the spokesman, approved by the camp commandant, and paid out of the PW welfare fund. Where there is no such fund the DP shall pay wages at the rates it may determine.*

The ICRC observed in its report that it was not fair that PW employed permanently on camp administration or upkeep, or having an occupation within the camp (cooks, instructors, orderlies) should receive no pay. It proposed that PW continuously employed on work in connection with the administration, internal arrangement and maintenance of camps, or on artisanal work should receive wages.

The ICRC further asked if it was not advisable to delete Section 3 of Art. 34 (which allows the camp management to make deductions from PW wages), or at least to specify the maximum amount which may be retained.

With regard to fixing the rate of pay for PW, the ICRC considered it would be opportune to decide on a figure proportionate to the wages earned by workers of the DP for similar jobs. It also suggested that as soon as they commence work, PW should receive from the DP full details of the salary they will earn, the tariff upon which it has been based, the methods of payment and the manner in which they may make use of

it. PW should be informed immediately of any changes made in the above and allowed by the camp management regularly to check their accounts with the camp management.

The ICRC was lastly of opinion that Section 5 should be maintained in its present wording.

After a short discussion, the Commission adopted the above recommendations.

(C) Credit Balances.

Article 24

At the commencement of hostilities, belligerents shall determine by common accord the maximum amount of cash which prisoners of war of various ranks and categories shall be permitted to retain in their possession. Any excess withdrawn or withheld from a prisoner, and any deposit of money effected by him, shall be carried to his account, and may not be converted into another currency without his consent

The credit balances of their accounts shall be paid to the prisoners of war at the end of their captivity.

During the continuance of the latter, facilities shall be accorded to them for the transfer of these amounts, wholly or in part, to banks or private individuals in their country of origin.

The Commission made the following recommendations:

Every camp shall keep an account for each PW showing substantially:

(a) *the pay to which he is entitled under the above provisions (see A);*

(b) *the total wages earned by him;*

(c) *any sums, in the currency of the country of detention, which were taken from him under Art. 6 of the Convention;*

(d) *all earnings from any other source;*

(e) *all payments made to him;*

(f) *all payments made on his account and at his request;*

(g) all sums transferred by him to his home country under Section 4 below (see D);

(h) all sums impounded in accordance with Art. 6, and not placed to PW's credit, as they are not in DP currency, shall appear in his account, if he requests that the said foreign monies be converted into the currency of the DP. Otherwise, these monies shall be returned as received, to PW on repatriation.

Every entry in a PW's camp account shall be countersigned by him or by the camp spokesman on his behalf.

PW shall at all times have reasonable access to their accounts, which shall be open to inspection by representatives of the DP who may visit the camp.

When PW are removed from one camp to another, their accounts shall also be forwarded; the same applies to transfers from one DP to another.

In case of repatriation or decease, a voucher for the balance of PW's personal account shall be sent to the Government of his home country. Repatriated PW shall be provided with similar documents¹.

The Commission was unable to reach unanimous agreement concerning credit balances.

In the opinion of one delegation, the DP should make arrangements to issue to repatriated PW the balance due to them at the end of captivity,

Two other delegations thought it incumbent on the Government in whose forces PW served to decide what should be paid as credit balances. To this end, the DP should communicate to the said Government the total amount of the credit balances. The latter should be taken into account when adjustments are made between Governments after the cessation of hostilities (see D (3) below).

A few suggestions made by the ICRC were noted by the Commission when drafting the above stipulations.

¹ One Delegation considered that this document should include the following details: (1) monthly payments received according to (A); (2) period during which these payments have been made; (3) total of the amount received; (4) total amount transferred to the home country at PW's request; (5) balance remaining to PW's credit.

(D) Transfers of Funds.

The Commission made the following recommendations :

Should a PW inform the DP that he desires, with the consent of his own Government, to have a payment made in his own country out of his credit balance with the DP, the said Power shall forward through the Protecting Power to the Government to which the PW belongs a notification showing :

- (a) particulars of the prisoner ;*
- (b) particulars and address of the payee ;*
- (c) the amount payable in the currency of the country where the PW is detained.*

This notification shall be signed by PW and countersigned by the spokesman and the camp commandant.

The Commission further adopted the following :

1. Pay under (A), letters (a) and (b), shall be regarded as advances made on behalf of the Government to which PW belong. These advances and any payments made by the said Government under (D) shall be matters for adjustment between the belligerents concerned after the cessation of hostilities.

2. The balance of welfare funds belonging to PW shall remain in the hands of the DP, subject to contrary agreement between the belligerents concerned.

3. Pay and additional allowances mentioned under (A), letters (a) and (b), and all sums transferred as under (D), shall be made the subject of settlement between the Governments concerned after the close of hostilities.

CHAPTER VIII. — TRANSFERS OF PW

Under Articles 25 and 26 will be found a detailed study of the provisions of this Chapter, in the order in which they appear in

the present Convention. On examining the matter, the Commission remarked on the unsatisfactory lay-out of these provisions and decided to recommend that the whole chapter be remodelled in the revised Convention as follows :

1. *The title of the Chapter should specify that it deals with "Transfers between Base Camps", to avoid any confusion with the removal of PW towards the rear immediately after their capture.*

2. *General conditions of transfer for all PW should be given (to be effected in humane fashion and as far as possible under the same conditions as for DP forces and, in any case, under normal security conditions).*

3. *Detailed conditions (lists of transferred PW ; previous notification of new postal addresses ; amount of personal effects allowed, etc.).*

4. *Special conditions for the wounded and sick.*

5. *Sections 3 and 4 of Art. 26 to be omitted, the conditions they contain being transferred to Chapter VII (Pecuniary Resources of PW).*

Article 25

Unless the course of military operations demands it, sick and wounded prisoners of war shall not be transferred, if their recovery might be prejudiced by the journey.

This principle was approved by all the delegates, who proposed its retention. Some points should, however, be more closely defined.

Wounded and sick PW should be removed in the same manner as the wounded and sick of the DP. On this point, Art. 25 could refer to the conditions for the transfer of able-bodied PW contained in Art. 26, which states that transfers may only be effected :

- (1) in case of absolute necessity ;*
- (2) if they are carried out in humane fashion ;*
- (3) if they cannot be harmful to the health of the sick.*

The ICRC pointed out in its report that this Article could be understood in two different ways :

(1) The DP is authorised to remove wounded and sick PW, even when this course is likely to be detrimental to their recovery, should they otherwise, through events of war, escape the control of the DP and fall into enemy hands. Though not to be recommended, this interpretation was the one most usually followed.

(2) In the future it should be taken that wounded or sick PW who cannot be removed in suitable conditions must remain on the spot, even should they then fall into enemy hands.

In support of the latter view, several Delegations observed that PW's interests should be predominant. The Commission therefore recommended that transfers should be made only "in case of absolute necessity" and "in humane fashion".

The discussion with regard to protective marking of PW convoys and special measures for their protection was referred to Art. 26.

In view of experience gained during the war, when PW were often removed under very bad conditions, the Commission decided to recommend that PW should have adequate safeguards, the best guarantee appearing to be similar treatment to that afforded by the DP to its own troops. As this principle should apply to all PW and not only to the wounded and sick, it was decided that it should be discussed with Article 26, and Article 25 should merely contain a reference thereto.

One Delegation objected to this course, in view of the difficulties which with the DP would have to contend, particularly when removing large numbers of PW towards the rear. It was however specified that this Chapter only dealt with transfers between camps, or to places in the territory of the DP, whereupon the Delegation concerned joined the majority.

Section I.

Article 26

In the event of transfer, prisoners of war shall be officially informed in advance of their new destination ; they shall be authorised to take

with them their personal effects, their correspondence and parcels which have arrived for them.

After discussing Article 26, the Commission made the following recommendations:

(a) *Transfer conditions.*

Transfers of PW between base camps should be effected under the same conditions as transfers of forces belonging to the DP.

(b) *Security of PW during transfers.*

Due note was taken of the desire expressed by the ICRC that removals of PW from one place to another should be made sufficiently apparent to the enemy to ensure their protection. This rule was, however, considered too difficult to observe in practice for it to be embodied in the Convention, and the Commission agreed to the general ruling by which the DP shall take all security measures necessary for the protection of PW convoys.

(c) *Notice to PW of removals.*

The rule contained in Section I in its present wording is maintained, but the word "destination" is replaced by "address": it will thus suffice for the DP to inform PW of their new camp postal address. The DP shall also establish lists of the PW removed.

(d) *Specified amount of kit.*

The present wording should be kept, with additional mention of the amount of kit which the PW may, in all cases, take with them.

(e) *Transfers in combat zones.*

When the combat zone draws near a camp, PW may only be removed under normal security conditions, or if their safety demands.

(a) *Conditions of Transfer.*

In its report, the ICRC quoted several examples of cases where the minimum treatment compatible with the respect

of the human individual had not been observed, particularly during mass removals.

The Commission's recommendation followed a brief discussion, in which all delegates agreed upon the necessity of better safeguards to PW during transfers. Assimilation to conditions in force when the DP is moving its own troops (as suggested by the ICRC) seemed to meet with the approval of the majority.

(b) *Security of PW during Transfers.*

The ICRC pointed out that during the war, convoys of PW, particularly those by sea, had often been exposed to attack by their own forces, and that a great many men were thus killed. The ICRC therefore proposed that the DP should be compelled to take steps for the protection of PW during such transports, and recalled the suggestions it made during the war to this effect, which were shortly as follows :

1. To supply PW convoys with all the means of protection in use to-day (life-boats, life-belts, etc. for transports by sea ; anti-aircraft protection for those by land).

2. In the case of maritime transports, to adopt a special marking, informing the enemy that PW were on board, and ruling out the presence of any war material or armed forces, except PW guards. It should be understood that the ships bearing the markings must be considered unarmed, take no part in defensive or offensive action, and are liable to capture.

3. To resort to conveyance of PW by sea only for imperative reasons.

Several Delegations were in favour of the principle of marking, this having been accepted for camps (Art. 9, Sec. 4). There was in fact no reason why it should be refused *a priori* to transports. Moreover, if PW are to be exposed to risks inherent in war, the DP should not be negligent in furnishing them with all safeguards.

Other Delegations, however, objected to this rule on several grounds. Belligerents might make use of such markings for

the transport of their own forces. In reply it was observed that the enemy was free to act as he pleased with the regard to such convoys, to which the markings did not confer immunity.

Practical difficulties were also quoted ; for instance, PW are often carried by the same vessels as troops ; special transport ships for PW would not always be available.

After prolonged debate, opinions remained divided and the Commission decided to place on record the ICRC's suggestion with regard to marking PW transfers. The Commission did not entertain the other suggestions put forward by the ICRC, except with regard to a new stipulation, that the DP must take all safety measures required to protect PW convoys.

(c) *Notice to PW of Transfer.*

In this connection the ICRC had raised two questions in its report :

1. How long in advance should PW be informed by the DP of their removal ?
2. Should PW be informed of their new destination ?

As regards (1), the ICRC suggested that at least 24 hours notice should be given, to allow PW to collect their kit and make preparations for their departure. The words "in advance" in the present text are too vague.

Although agreeing that the rule of giving previous notice was a good one, the Commission did not consider necessary to name a time-limit.

With regard to question (2) opinions were divided.

For security reasons, some Delegations stated that it should no longer be incumbent on the DP to inform PW of their new destination.

Other delegates, on the contrary, thought that PW should be notified in advance, to allow them to inform their next of kin. In this connection, it was even proposed that the DP should in future send to the Protecting Power or the Central

Prisoners of War Agency cards giving the PW's new camp addresses.

A compromise was finally reached, that the present ruling should remain unchanged ; to satisfy military requirements, the destination could be indicated by a cipher (e. g. Camp 74 C), and the word "destination" could therefore be replaced by "address".

Further, the Commission unanimously adopted the proposal of one Delegation, that it should be compulsory for the DP to establish, before the removal, a list of all PW concerned. These lists would be most valuable, particularly in cases of shipwreck or bombing of convoys.

(d) *Minimum Kit.*

The ICRC recalled in its report that PW are naturally much attached to their personal belongings and try to take with them as much kit as possible, whereas the aim of the DP is to reduce baggage to a specified amount. In order to avoid difficulties under this heading, the Commission adopted the ICRC's proposal that the weight of the baggage which PW may take with them should be specified.

The ICRC had also asked if a ruling could be made with regard to community kit, in case of transfer. Could this matter, which up to the present had been entirely in the hands of the DP, at least be dealt with in agreement with the camp leader?

The Commission did not enter into discussion on this point ; Art. 12, however, gives the ruling with regard to canteen profits, which also form part of community kit.

(e) *Transfers in Combat Zones.*

With a view to preventing the tragic incidents which occurred towards the end of the war, when PW were removed from their camps on the approach of the enemy, together with the forces of the DP, and were exposed during their retreat to all the risks of battle, the ICRC suggested the text quoted above¹,

¹ Page 166 (e).

which is intended to save PW from hasty removal under enemy fire.

The majority of the Commission shared this view, but one Delegation, on the grounds that belligerents cannot be compelled to give up their PW, only accepted the proposed text with reservations as to its practical application.

Sections 2, 3 and 4.

All necessary arrangements shall be made so that correspondence and parcels addressed to their former camp shall be sent on to them without delay.

The sums credited to the account of transferred prisoners shall be transmitted to the competent authority of their new place of residence.

Expenses incurred by the transfers shall be borne by the detaining Power.

The Commission did not discuss the text of Section 2, and apparently considered that it should be kept in its present form.

It considered advisable to transfer Sections 3 and 4 to Chap. VII (Pecuniary Resources of PW).

SECTION III. — WORK OF PRISONERS OF WAR

CHAPTER I. — GENERAL OBSERVATIONS

Article 27

Section I.

Belligerents may employ as workmen prisoners of war who are physically fit, other than officers and persons of equivalent status, according to their rank and their ability.

The Commission recommended the following text:

With the object of keeping PW in physical and moral health, belligerents may employ as workmen PW, other than officers and persons of equivalent status, who are physically fit, due regard being paid to their age, sex, rank and physical ability. The

fitness of PW for work shall be verified by periodical medical examinations. The DP may require that PW medical officers, chaplains and medical personnel of other ranks shall pursue their duties in behalf of their own nationals, or of their allies.

In its report, the ICRC pointed out that the minutes of the Hague meetings in 1899 and 1907, relative to the Regulations concerning the laws and customs of war on land, clearly show that the main object of making PW work is to give them an occupation to combat the idleness inseparable from captivity, and to keep them in good bodily and moral health.

The experience of the war made the very serious effects of prolonged idleness fully apparent. The ICRC were concerned about this situation and raised the question whether, in the interest of the PW themselves, work should not be made compulsory for all, whatever their rank.

To dispel any scruples PW might have about working for the DP, the ICRC suggested the advantage of defining the idea of PW work, as above.

The Commission shared this view, and due account of its opinion is taken in the new wording of Article 27, Sec. 1.

During the war, officer PW were often called upon to direct camps or labour detachments, comprising their own nationals. Results were usually excellent and led the ICRC to propose that this experience should be fully considered in the revised Convention.

The attention of the meeting was then drawn to the opportunity of embodying in this Section the criteria of age, sex and physical ability, which should be applied when allotting work to PW.

The ICRC further proposed that PW should have regular medical examinations, to verify whether they are fit to carry out the work allotted to them. The members of Mixed Medical Commissions who met in Geneva in September, 1945, even went so far as to propose that neutral medical commissions should undertake such supervisory examinations.

One Delegation recommended that this Article should embody a provision authorizing the DP to demand that PW medical personnel and chaplains should work in behalf of their own nationals.

Most of these proposals were approved.

Section 2.

Nevertheless, if officers or persons of equivalent status ask for suitable work, this shall be found for them as far as possible.

The Commission was of opinion that PW officers should remain free to decide as to their work, and preferred to leave this Section as it stands.

The ICRC had made no special comments on this provision in its report.

One Delegation remarked that it would be opportune to employ officers and persons of equivalent status in some way or other (administrative business, or work to improve general comfort), in countries where civilians have to put forth an immense war effort.

Several Delegations objected that it is an officer's duty not to work for the enemy; those who did so were frequently court-martialled by their home authorities after the war.

The Commission concluded that it was better to leave this matter to the officers' own conscience and patriotism; they should themselves decide whether to work or not.

Section 3.

Non-commissioned officers who are prisoners of war may be compelled to undertake only supervisory work, unless they expressly request remunerative occupation.

Subject to a general ruling being adopted relating to wages for supervisory work, the Commission accepted the ICRC proposal, as follows:

PW NCOs may be compelled to undertake supervisory work only. Those who are not obliged to do such work may request suitable employment ; this shall be found for them as far as possible.

During the debate several Delegations considered that NCOs should work and that no discrimination should be made in their case. They were thus in favour of omitting this Section. Other Delegations, on the contrary, considered that on no account should NCOs be compelled to work.

Finally, the majority approved the wording proposed by the ICRC, as above.

Section 4.

During the whole period of captivity, belligerents are required to admit prisoners of war who are victims of accidents at work to the benefit of provisions applicable to workmen of the same category under the legislation of the detaining Power. As regards prisoners of war to whom these legal provisions could not be applied by reason of the legislation of that Power, the latter undertakes to recommend to its legislative body all proper measures for the equitable compensation of the victims.

The Commission concurred with the ICRC, which proposed the following :

PW who are employed and who are victims of accidents or disease arising from their work shall receive every attention their condition requires. They shall further be given a medical certificate allowing them to obtain recognition of their rights after repatriation. A duplicate of this certificate shall be forwarded to the Government of the home Power through the ICRC.

The ICRC had pointed out in its report that the present stipulation proved inapplicable in practice, if the effects of the accident extended beyond repatriation of PW. It therefore recommended deletion of the Section and insertion of a text stipulating the obligation of the home country to compensate members of its armed forces for accidents having occurred during captivity. The ICRC further recommended that a

detailed medical certificate should be issued to such PW, enabling them to have their rights recognized in their own country.]

The ICRC also proposed that PW incapacitated owing to an accident should continue to receive half their wages until recovery or repatriation.

[One Delegation objected that the Convention was not concerned with relations between PW and their own government.] It was also remarked that if the principle were admitted that DP should allow PW a certain sum for pocket money (Art. 24), it would be superfluous to provide that PW having suffered an accident should receive half their wages.

[The ICRC agreed with these observations and proposed a new text, which the Commission approved. The latter observed, however, that PW continue in their country's service during captivity and may thus expect to receive compensation from the latter, if they suffer an accident or contract a disease during compulsory work.]

One Delegation proposed, as regards the medical certificate, that a duplicate should be sent to the home country through the ICRC; the Commission approved this proposal.

The new text submitted by the ICRC, thus amplified, was adopted as above.

CHAPTER II. — ORGANISATION OF WORK

Article 28

The detaining Power shall assume entire responsibility for the maintenance, care, treatment and the payment of the wages of prisoners of war working for private individuals.

The Commission recommended the adoption of the following text:

The treatment of PW working for private employers shall be at least in accordance with the Convention. The DP shall ensure supervision and assume entire responsibility. Such PW shall have the right to remain in touch with the spokesmen of the camps to which they belong.

In its report, the ICRC had drawn attention to the frequently unfortunate situation of PW under the orders of employers who are completely ignorant of the Convention ; it had proposed a text, which was accepted by the Commission, making the DP responsible for supervision of the living conditions of these men.

The Commission completed this text by adding a provision allowing such PW to contact the spokesman of their camp whenever they find it necessary.

Article 29

No prisoner of war may be employed on work for which he is physically unsuited.

The Commission adopted the following text :

PW who state they are unfit for work shall have the right to see a doctor. PW medical officers shall have the right to recommend that PW whom they consider physically unfit should be exempted from work.

The ICRC had suggested to delete this Section, as it simply repeats Sec. 1 of Art. 27, which the ICRC proposed.

During the debate, one Delegation observed that if Art. 27 laid down that PW medical officers may look after their compatriots, it might be stipulated here that they may recommend certain PW for exemption from work.

This view was shared by the Commission.

Article 30

The duration of the daily work of prisoners of war, including the time of the journey to and from work, shall not be excessive and shall in no case exceed that permitted for civil workers of the locality employed on the same work. Each prisoner shall be allowed a rest of twenty-four consecutive hours each week, preferably on Sunday.

The Commission recommended the following text :

"The duration of the daily work of PW, including the time of journey there and back, shall not be excessive and shall in no case

be longer than that permitted for civilian workers of the area, who are nationals of the DP and are employed on the same work.

PW must be granted a break of one hour in the middle of the day's work and a rest of 24 consecutive hours each week, preferably on Sundays.

Any PW having worked one year shall moreover be granted a rest of eight consecutive days, during which time his wages shall be paid him."

It was also decided to insert the following clause concerning piece-work:

"Application of methods of work such as piece-work shall not lead to excessive hours."

In its report the ICRC remarked that assimilation of PW to civilian workers of the area often led to unfortunate results. To avoid henceforth the abuses which occurred during the war, the Committee proposed to fix a maximum number of working hours, account being taken, however, of the various types of work which PW may be compelled to perform, and perhaps of the climate of the country in which they are detained.

The ICRC also thought that PW should be allowed a break at midday, and that after a year's work they should be granted eight consecutive days' rest, with pay.

Finally, attention was drawn to the question of piece-work and jobbing, and the question was raised whether this should not be explicitly forbidden.

During the debates one Delegation proposed to assimilate PW to civilian workers of the DP, while fixing a maximum number of working hours a day or week, whereas another Delegation wished to keep the Article as it stands.

The majority of the Commission finally decided not to insert any maximum duration of PW work, as this would constitute discrimination in favour of PW, which would not be acceptable to the civilian population of the DP.

The question of piece-work was then taken up, and the Commission had to decide in favour either of the DP (to whose

advantage it is that PW should work as much as they can) or of the PW themselves, who think it their duty to do as little as possible for the enemy. The above text was finally adopted.

CHAPTER III. — PROHIBITED WORK

Article 31

Work done by prisoners of war shall have no direct connection with the operations of the war. In particular, it is forbidden to employ prisoners in the manufacture or transport of arms or munitions of any kind, or on the transport of material destined for combatant units.

In the event of violation of the provisions of the preceding paragraph, prisoners are at liberty, after performing or commencing to perform the order, to have their complaints presented through the intermediary of the prisoners' representatives whose functions are described in Articles 43 and 44, or, in the absence of a prisoners' representative, through the intermediary of the representatives of the protecting Power.

The Commission agreed upon the following points:

1. *The experience of the last war has shown that Article 31 needs revision.*

2. *The Commission's attempts at drafting a new wording did not find the support of the majority.*

3. *The text proposed by the Sub-committee instructed to study Articles 31 and 32 shall nevertheless appear in the minutes, in order to assist the ICRC in its work, namely:*

"With the exception of work connected with the removal of mines, bombs or similar devices laid by themselves or by other members of their armed forces, PW shall not be employed on work directly connected either with active military operations or with war production of an exclusively military character. They may not be employed, in particular, in the manufacture, handling or transport of munitions, gas, explosives or any other offensive substance; nor may they be employed in the construction, handling or transport of any weapon of war, or of equipment or material of an exclusively military character. They shall not be employed to

deliver any material to combatant units, or to depots from which such material is issued direct to such units, nor may they work in such depots. They shall not be employed to construct or repair fortifications, installations or earth-works which may be used for the conduct of active military operations.

In the event of any violation of the above provisions, PW are entitled to exercise their right of complaint in accordance with Article 42."

4. *As a useful contribution to the revision of this Article, the Commission recommended that Delegations should ask their Governments to send drafts of a revised Article 31 to the ICRC.*

Subsequently a new draft Article 31, approved by three other Delegations, was handed to the Secretariat. It runs as follows:

"The work which PW are obliged to perform shall have no direct connection with the pursuit of active military operations, nor with war production of an exclusively military nature." 6

In its report, the ICRC had stated that this provision had led to great difficulties, as belligerents could never agree on its scope. It further remarked that it was apparently most difficult to find an ideal solution of the problem, since to-day most work can be looked upon as being more or less a contribution to the war effort of the State. However, without having any solution to suggest, the ICRC thought that better results might be obtained by either of the following two methods: (1) closer and more explicit description of prohibited work, or, on the contrary, (2) listing employments which alone would be permitted.

Finally, the ICRC recommended to omit Section 2, which it considered superfluous.

During the debate, the Commission decided to instruct a Sub-committee to draft a new Article 31, which, as it stands, gives rise to numerous difficulties. This Sub-committee suggested the above text.

Various points of view were thereupon expressed. It was remarked that the proposed wording did not clearly indicate that demining by PW must be effected only in areas distant from the combat zones, or where hostilities have ceased. Other

Delegations even observed that the clause relative to demining is contrary to the spirit of the Convention ; it was also suggested that demining should be left to volunteer squads. Other Delegations, adopting one of the two solutions proposed by the ICRC, said they were in favour of enumerating types of authorized work. The majority were, however, in agreement with the essential principle suggested by the Sub-committee, namely that PW should be employed only on the various types of labour required for peace economy, while prohibiting all other work likely to furnish the DP with means of making war against the home country of PW. The Commission finally came to unanimous agreement upon the above points.

Article 32

It is forbidden to employ prisoners of war on unhealthy or dangerous work. Conditions of work shall not be rendered more arduous by disciplinary measures.

The Commission unanimously approved the following text:

No PW shall be employed on work which could be regarded as degrading, if performed by a soldier of the DP. No PW may be employed on work of an unhealthy or dangerous nature, unless he has first received adequate training, has been provided with all necessary safeguards and enjoys proper living conditions, especially as regards accommodation, food, outfit, etc., which may not be inferior to those granted to nationals of the DP employed on similar work.

Conditions of work shall not, in any case, be rendered more arduous by disciplinary measures.

The ICRC had remarked in its report that in several belligerent States, PW were employed as miners and in factories producing deleterious or dangerous chemicals. It therefore asked whether the revised Convention should not prohibit work in mines.

Furthermore, PW were detailed for the removal of land mines, obviously a dangerous job. The ICRC thought that if explicit prohibition of such work is not considered desirable, the Con-

vention should at least stipulate that PW compelled to perform it must be first given adequate technical training, that they must have proper equipment and that all security measures must be taken.

Finally, the ICRC considered that it should be clearly stipulated in Section 2 that all prolongation of working hours as a disciplinary measure is prohibited.

The Commission agreed with some of these proposals and made several suggestions intended to help the Sub-committee dealing with Articles 31 and 32. The spirit of these suggestions was embodied in the above text.

CHAPTER IV. — LABOUR DETACHMENTS

Article 33

Section 1.

Conditions governing labour detachments shall be similar to those of prisoners of war camps, particularly as concern hygienic conditions, food, care in case of accidents or sickness, correspondence, and the reception of parcels.

The Commission recommended that this provision should be kept as it stands.

In its report the ICRC proposed that the present text should be kept and made more explicit (mention of visits by delegates, election of camp spokesmen, etc.).

The Commission thought that these additions were advisable, but that they would be better placed in the Articles dealing with camps visits and camp spokesmen; it therefore recommended that the text should remain unchanged.

Section 2.

Every labour detachment shall be attached to a prisoners' camp. The commandant of this camp shall be responsible for the observance in the labour detachment of the provisions of the present Convention.

The Commission recommended the following text:

Every labour detachment shall be subordinate to a PW camp. The military authorities and the camp commandant shall be

responsible for the observance in the labour detachment of the provisions of the present Convention. The camp commandant shall keep a correct list of labour detachments subordinate to his camp, and shall communicate it to the delegates of the Protecting Power and of the ICRC, or of other humanitarian organisations who visit the camp.

This text was suggested by the ICRC and adopted after slight amendment.

CHAPTER V. — PAY

Article 34

See Article 23, which deals with all financial matters.

SECTION IV. — RELATIONS OF PW WITH THE EXTERIOR

Article 35

On the commencement of hostilities, belligerents shall publish the measures prescribed for the execution of the provisions of the present section.

The Commission adopted the following text:

At the outbreak of hostilities, and after every amendment, belligerents shall inform PW and their home country, through the Protecting Power, of the measures prescribed for the implementing of the provisions of the present Section.

The ICRC had stressed the fact that during the war it received a large number of requests for information and complaints from authorities or private persons who were insufficiently informed as to the measures adopted by the enemy with regard to PW mail. The ICRC emphasised the advisability of improving the wording of this Article, and urged the necessity for giving information both to the home country and to the PW themselves.

The Commission agreed with these suggestions and thought

it useful to specify that belligerents shall inform each other, through the Protecting Power, of all measures taken for the implementing of these provisions.

Article 36

Section I.

Each of the belligerents shall fix periodically the number of letters and postcards which prisoners of war of different categories shall be permitted to send per month, and shall notify that number to the other belligerent. These letters and cards shall be sent by post by the shortest route. They may not be delayed or withheld for disciplinary motives.

As regards the first clause, the Commission proposed that the revised Convention should here include the following principles:

(1) *The Convention should affirm the principle that PW are not only entitled to send, but also to receive a sufficient number of letters.*

(2) *The ICRC's suggestion of a minimum of two letters and four cards per month should be considered.*

(3) *The legislators shall be informed of the recommendation made by eight Delegations (out of thirteen), to insert in a possible annex a standard model card and letter, showing the minimum number of words or lines authorized.*

(One Delegation proposed 100 words per letter and 50 words per card.)

The end of the paragraph should read as follows: "These letters and cards shall be conveyed by the quickest means. They may not be delayed or withheld for disciplinary motives."

In its report, the ICRC recalled that at the beginning of hostilities, belligerents had shown a marked tendency not to limit the number of letters and cards exchanged between PW and their next of kin. The great increase in the number of PW, due to the extension and rapidity of operations, soon led to restrictive regulations, since means of transport and censorship arrangements could not cope with their task. Most of the

Powers therefore very strictly limited the number of letters and cards that each PW had the right to send or to receive ; other Powers applied similar restrictions for next of kin. Later on, the situation became easier and by the end of 1940, the ICRC noticed that most of the countries concerned, having no adequate means of control, ceased to place any limit on the number of letters and cards PW might receive, and cut down the monthly outgoing mail to a minimum of two letters and four cards. These figures remained practically unchanged.

Experience has shown that it would be advisable to stipulate minimum figures, such as two letters and four cards monthly ; these figures might be embodied in the new Article.

The ICRC did not, however, recommend that the Convention should prescribe printed correspondence forms with attached reply leaf, as introduced by certain Powers to facilitate censorship and sorting. Whatever the advantages of this system might be, the ICRC thought the rights of PW were restricted thereby.

The ICRC also recalled that rapid transmission of mail was rendered almost impossible by the blockade, which hampered and endangered sea transports, by large scale operations, and above all, by air bombardments, which paralysed land transports. The only route that remained open to a certain extent was the air. The ICRC therefore thought advisable that the Convention should stipulate that mail must be conveyed by the quickest means, without specifying that it should be carried by air, as even this means may be superseded by new technical developments.

The debate showed that opinions were divided as to the number and length of the letters PW should be allowed to send. Some Delegations were in favour of a standard model for letters and cards. It was proposed to have these printed beforehand in various languages, forwarded to PW through the Protecting Power or the ICRC, PW having then only to strike out irrelevant matter. Others recommended that the Convention should name the minimum number of words or lines the letters or cards might contain ; some thought that it was sufficient to uphold the principle of adequate mail, since there was a danger of

belligerents stopping all mail on account of censorship difficulties. The above compromise was finally adopted.

The texts suggested by the ICRC for clauses 2 and 3 of this Section were approved without discussion.

Sections 2 and 3.

Not later than one week after his arrival in camp, and similarly in case of sickness, each prisoner shall be enabled to send a postcard to his family informing them of his capture and the state of his health. The said postcards shall be forwarded as quickly as possible and shall not be delayed in any manner.

As a general rule, the correspondence of prisoners shall be written in their native language. Belligerents may authorise correspondence in other languages.

The text proposed by the ICRC was adopted by the Commission with slight amendments ; it now reads as follows :

“As soon as possible and not later than one week after arrival in camp, and similarly in case of sickness or transfer to hospital, every PW shall be enabled to send a postcard direct to his relatives and to the Central Prisoners of War Agency, informing them of his capture and state of health. The said postcard shall be forwarded as quickly as possible, and shall not be delayed in any manner.

The Commission also recommended that specimens of the above-mentioned cards should be attached in a possible annexe.

The Commission thought that Section 3 should be maintained in its present wording.

During the war, the ICRC noticed that DP Information Bureaux invariably required some time to notify captures and transfers. The ICRC therefore suggested to the DPs the despatch to the Central Agency at Geneva of printed cards, called “Capture Cards”, filled in by the men themselves. Such cards should be forwarded to the Central Agency on capture or arrival in camp, as also in case of transfer to another camp or to hospital. It sometimes occurred that, through the priority granted to ICRC mail, these cards arrived in Geneva several months before the official lists. For this reason, the ICRC submitted a clause to the Conference, allowing PW to send capture cards

to their next of kin and to the Central Agency, as indicated above.

The Commission agreed with this suggestion; the only objections that were raised concerned the week's delay proposed by the ICRC. Some delegations wished to omit reference to any time-limit, on the grounds that such a limit would be useless; it would certainly be prolonged by the DP, if necessary for security reasons. Other delegations suggested that DPs should furnish the reasons for any delay in forwarding capture cards. The Commission finally agreed upon the above text.

Article 37

Prisoners of war shall be authorised to receive individually postal parcels containing foodstuffs and other articles intended for consumption or clothing. The parcels shall be delivered to the addressees and a receipt given.

The Commission proposed that the revised Convention should embody the following general principle, to be introduced at the beginning of Art. 37.

"PW shall be authorised to receive through postal or other channels, individually or collectively, parcels containing foodstuffs, clothing and other articles of a recreational, intellectual and devotional character which may promote their comfort or welfare. Medical supplies shall, as a rule, be sent in collective parcels, subject to the regulations of the home country."

The Commission also recommended the adoption of the following principles for individual relief:

(a) *If it should become necessary to limit or to modify the application of Art. 37, either with regard to despatch or distribution of individual parcels, such measures should, when required, be the subject of special agreements between the parties concerned. (These agreements should be concluded without losing sight of the obligations incumbent on the Detaining Power, the particular circumstances of the case and the available means of relief).*

(b) *Books (which are subject to censorship under Article 39) may not be included in parcels of clothing and foodstuffs.*

In its report, the ICRC had emphasized that practical application of this Article was seriously hampered during the recent war ; it referred particularly to the technical difficulty of ensuring rapid censoring and issue of individual parcels in camps holding large numbers of PW, and the delays caused by the frequent transfers of PW. For these reasons, several DPs restricted the number of individual parcels each man was allowed to receive monthly, and even went as far as to prohibit all such parcels.

In the light of these facts the ICRC came to the following conclusions :

(1) That the principle embodied in Art. 37, authorizing PW to receive individual relief, should be firmly upheld.

(2) That DPs shall not, on their own initiative, prohibit or restrict the issue of individual parcels.

(3) See above, under (a).

The Commission agreed with these general principles and recommended the adoption of a very general text, covering both individual and collective relief ; this is quoted above.

As regards individual relief more particularly, the Commission thought that in the interest of PW themselves, it is preferable that parcels containing foodstuffs, medicaments or clothing should not include books, as these require careful censoring and thus considerably delay the issue of parcels.

Collective Relief.

The Commission accepted the ICRC's proposal and recognized the necessity of embodying in Art. 37 a series of regulations outside the Convention proper, which acquired great importance during the war and which apply to collective relief. The Commission approved the ICRC proposals after slight amendments. Essential rulings only regarding collective relief should be inserted in the Convention, all secondary points being dealt with in annexed Regulations.

(a) *The essential principles which should be embodied in the Convention itself would run as follows :*

(1) *The right of spokesmen to take over, allot and dispose of relief supplies. A provision of this kind would be better inserted in the suggested new clause than in Art. 43, where it now stands. To this privilege of the spokesman should be added every possible facility enabling him to carry out these duties.*

(2) *Endorsement of the principle that collective consignments in no way relieve the DP of the obligation deriving from the Convention.*

(3) *The right of the representatives of the Protecting Power, of any competent international body, or of any other neutral intermediary responsible for consignments, to check their issue.*

(4) *The right of PW to receive collective consignments without any unreasonable restriction, excepting such as might be proposed by the representatives of the Protecting Power or of any competent international body, account being taken of the needs of PW and of circumstances.*

(5) *Both in detaining and transit States, collective consignments to be transported free of charge and not subjected to levies, such as customs dues, registration fees, import duties, etc.*

(b) *The Commission recommended the adoption of the following text for the annexed Regulations :*

(1) *Spokesmen should be able to carry out issues of collective relief in the base camps, in all branch camps and in all labour detachments, including prisons and hospitals.*

(2) *The head spokesman, his representatives and assistants, should have an administrative office at their disposal in the camps and receiving depots for supplies. They should also have a certain amount of office furniture, writing-paper, typewriter, etc.*

(3) *The spokesmen should be at liberty freely to correspond with the organisations responsible for dispatch and allotment of supplies, i.e. the Protecting Powers, any competent international body, and any other neutral intermediary entrusted with this task. This right is embodied in Art. 44.*

In the same connection, spokesmen should be able to look into the matter of issue of supplies in all parts of the camp, and should

be authorized, together with the chief medical officers in the hospitals, to fill up technical questionnaires and forms relating to the distribution of relief consignments.

(4) The spokesmen should be able to check the quality and quantity of the supplies received, in order to draw up detailed reports for the donors ; to this end, they should be able to travel to the railway stations and other places where the supplies for issue in their camps arrive.

(5) The spokesmen should be empowered to keep sufficient stocks of collective supplies in the camps, to meet the needs of PW and if necessary, to satisfy those of new convoys of PW arriving in camp. They should therefore have adequate warehouses at their disposal.

Allocations should be carried out equitably, in accordance with the plans drawn up by the spokesmen, and following the instructions of the donors, transmitted by the Protecting Power or the competent international body.

With regard to warehouses put at the disposal of the spokesmen, a system was employed during the last war which gave entire satisfaction. Each warehouse was provided with two locks ; the spokesman had the keys of one, while the camp commandant held those of the other, so that the store could only be opened by the spokesman and the camp commandant acting jointly.

(6) Collective relief should be issued to PW, if possible as soon as they are captured, and even before they are conveyed to a permanent camp.

The representatives of the Protecting Power and of the competent international body should be authorized, with the consent of the DP, to purchase relief supplies for PW in the detaining countries themselves ; such purchases should be confined to commodities available in the open market.

(7) Subject to authorization by the DP, the representatives of the Protecting Power and of the competent international body should benefit by all possible administrative, technical and financial facilities (permits for priority of transport ; permits for transfer of funds ; general import, export or transit permits).

(8) *If collective consignments of clothing are made, each PW should receive one complete set of clothing as his absolute property. If a PW has more than one set of clothing, the spokesman should be empowered to withdraw excess clothing and to hand it to other PW who are less well provided for.*

The ICRC had also thought advisable to insert the following two points in the annexed Regulations :

(a) To prevent PW from hoarding stocks of foodstuffs, the spokesman should be able to demand the immediate consumption of food parcels.

(b) In cases of extreme distress, the distributors of collective relief (representatives of the Protecting Power and of the ICRC ; spokesmen) should be empowered to issue, at their own discretion, relief to PW irrespective of their nationality, if the health or lives of the men are seriously endangered.

In this connexion, it is noticeable that in some camps PW themselves shared the relief supplies they had received with PW of other nationalities in the same camp. In such cases, of course, the State to which the latter PW belong should repay the donors the value of the supplies thus distributed.

The Commission thought, however, that (a) should be abandoned, as being too difficult to apply, and that the powers conferred upon distributors of relief supplies would be unacceptable to donors. In cases of emergency, a distributing agent might make a decision of this kind and justify the steps taken, without it being necessary to give him such authority beforehand.

These two points were therefore rejected.

The Commission did not deal with the question of sea and air transport of relief supplies, which the ICRC had raised in its report. It recommended that Red Cross navigation should be instituted, and accepted the suggestion of the ICRC to convene a conference of maritime experts. Furthermore, the Commission placed on record the proposal of one Delegation, as follows :

“To facilitate conveyance of mail and other authorized articles sent to PW, according to Art. 36 to 39, the ICRC, or

any other humanitarian organisation approved by the belligerents concerned, shall be requested by the adverse parties signatory to the Convention, to procure the required means of transport (ships or planes), which shall be registered in a neutral country, and sail under the flag and the emblem of the ICRC, or of any other approved organisation. These means of transport shall be used for the said purpose by the above organisation, by virtue of safe-conducts which belligerents signatory to the Convention undertake to deliver. These means of transport shall also be available for dispatch to consignee countries of mail and reports from the Central PW Agency, according to Art. 79; for the dispatch to the said Agency by the information office of each belligerent of details and reports concerning the PW detained; and, finally, for the dispatch to the belligerent concerned of reports and mail from the Protecting Power, the ICRC or any other approved organisation. The costs incurred by the use of these means of transport shall be borne proportionately by the belligerents whose nationals benefit by such facilities."

Article 38

Sections 1 and 2.

Letters and remittances of money or valuables, as well as postal parcels addressed to prisoners of war, or dispatched by them, either directly or through the intermediary of the information bureaux mentioned in Article 77, shall be exempt from all postal charges in the countries of origin and destination and in the countries through which they pass.

Presents and relief in kind intended for prisoners of war shall also be exempt from all import or other duties, as well as any charges for carriage on railways operated by the State.

The Commission recommended that individual parcels should be carried free of charge, whatever the means of transport employed.

With regard to collective consignments, the Commission drew a distinction between:

- (1) *rail transport, which it thought should be free of charge;*
- (2) *road transport, which should be free of charge in the territory of the DP;*

(3) *maritime transport, about which the Commission preferred not to express an opinion, referring the matter to the future meeting of maritime experts, and merely stressing the desirability that such relief supplies be conveyed free of charge.*

The Commission further proposed to maintain in the revised Convention the stipulation relating to remittances of money or valuables.

In its report, the ICRC had stressed that air transport rendered very great service in carrying mail for PW, and the fact that some belligerents exempted from postage dues all PW mail sent by air over certain routes. The ICRC therefore thought advisable to extend the principle of free postage of letters and cards to air transport.

The ICRC further pointed out that in the revised Convention the exemption foreseen in Section 1 should not be restricted to postal parcels, as these might obviously be forwarded to PW by other means than the postal service, in particular by rail or by road.

It would also be desirable to make it compulsory for Post Office authorities to institute enquiries in case of loss or non-delivery of PW parcels, as is done in the civilian postal service generally. So far the Post Office has refused to do so, on the grounds that PW parcels are exempted from dues.

Finally, the ICRC had noted that Article 38 mentions only carriage charges on railways operated by the State and does not allude to any other means of transport, such as road haulage or privately owned railways. It seemed necessary to abolish these restrictions, which had been the cause of a great many difficulties.

The Commission recommended that individual postal parcels should be carried absolutely free of charge, whatever the means of transport employed.

Opinions varied as regards collective consignments. Some Delegations thought that, seeing the welfare and humanitarian nature of these consignments, they should enjoy absolutely free transport over the whole route, as was the case in some countries during the war; others maintained that this would

meet with practical difficulties, many maritime and overland transport companies being in private hands ; it would therefore be preferable that in territories under the control of the DP, the latter should bear transport costs, and that costs arising from carriage of such supplies in transit countries should be paid by the responsible home country.

Agreement was finally reached on the above suggestions.

Section 3.

Prisoners may, in cases of recognised urgency, be authorised to send telegrams on payment of the usual charges.

The Commission approved the ICRC proposal to authorize the use of the telegraph for PW whose places of internment are at a great distance from their home country.

The question of reduced cable charges was left open, it being difficult of application.

Several Delegations emphasised the importance in their countries of telegraphic messages, similar to the standard postcards, and on which the telegraph office merely had to fill in the addresses. They recommended the adoption of this system, which would be of great practical value.

The Commission thought undesirable, however, to go so far, and merely adopted the principle which the ICRC had suggested in its report.

The question of dues was left open, on the grounds that most cable companies are privately owned.

Article 39

Prisoners of war shall be permitted to receive individually consignments of books which may be subject to censorship.

Representatives of the protecting Powers and of duly recognised and authorised relief societies may send works and collections of books to the libraries of prisoners' camps. The transmission of such consignments to libraries may not be delayed under pretext of difficulties of censorship.

The Commission recommended the following text:

PW shall be permitted to receive individually consignments of books, which may be subjected to censorship.

Representatives of the Protecting Powers and of duly recognised and authorised relief societies may send works and collections of books to PW camps, as also church plate, musical instruments, sports equipment, material enabling PW to prosecute their studies or artistic pursuits, and scientific equipment. The transmission of such consignments may not be delayed under plea of difficulties of censorship.

The text adopted, without comment, was that proposed by the ICRC in its report to the Conference.

Article 40

The censoring of correspondence shall be accomplished as quickly as possible. The examination of postal parcels shall, moreover, be effected under such conditions as will ensure the preservation of any foodstuffs which they may contain, and, if possible, be done in the presence of the addressee or of a representative duly recognised by him.

Any prohibition of correspondence ordered by the belligerents for military or political reasons, shall only be of a temporary character and shall also be for as brief a time as possible.

The Commission adopted the following text:

"The censoring of correspondence shall be done as quickly as possible. The examination of postal parcels shall be carried out in conditions such as will not expose to damage the foodstuffs these parcels may contain; if possible, it shall be done in the presence of the addressee or of a fellow-prisoner duly delegated by him. Consignments shall be censored only by the sender and receiver States and, if possible, once only by each of them."

The Commission considered it unnecessary to discuss Section 2, which therefore stands.

The ICRC had mentioned in its report that censoring was one of the main causes of delay in the delivery of mail and parcels to and from PW. During the war, Geneva received

numberless complaints and made repeated representations to the belligerents in order to secure speedier work by the censor. The organisation of the censor's office is a purely internal affair and the Convention can, in this respect, contain only general stipulations, so that the ICRC did not think advisable to ask for any substantial amendment of Article 40. It seemed useful, however, to propose that sender and receiver States only should be authorized to exercise supervision, and this once only by each of them.

The Commission agreed to the ICRC proposals, slightly amended.

Furthermore, it took due note of one Delegation's recommendation which ran as follows :

"In the event of belligerents being unable to provide a sufficient number of their own nationals to ensure prompt censorship of letters, they shall endeavour to obtain, either from the ICRC or from neutral countries, such additional qualified censors as will enable correspondence to reach PW with the least possible delay."

Article 41

Belligerents shall accord all facilities for the transmission of documents destined for prisoners of war or signed by them, in particular powers of attorney and wills.

They shall take the necessary measures to secure, in case of need, the legalisation of signatures of prisoners.

The Commission voted the following text:

Belligerents shall ensure all facilities for the transmission, through the intermediary of the Protecting Power or any competent international body, in particular the Central PW Agency, of official papers or documents destined for PW or signed by them, especially powers of attorney and wills. In all circumstances, PW shall be authorised to consult a lawyer who may be in their camp.

The ICRC had found unnecessary to amend this Article. It stressed however the important role played by the Protecting

Power and the ICRC in forwarding such documents. The Commission noted this observation and recommended mention of Protecting Powers and of any competent international body, in particular of the Central PW Agency.

One Delegation suggested that, to facilitate the drawing up of legal documents, PW should be authorised to consult a lawyer in their camp. The Commission approved this suggestion and proposed the insertion of a relevant clause.

The Commission also approved the principle of notification between Governments of promotions of PW during captivity, and suggested the insertion of this new stipulation in Art. 21.

SECTION V. — RELATIONS BETWEEN PW AND THE AUTHORITIES

CHAPTER I. — COMPLAINTS OF PW RESPECTING CONDITIONS OF CAPTIVITY

Article 42

Prisoners of war shall have the right to bring to the notice of the military authorities, in whose hands they are, their petitions concerning the conditions of captivity to which they are subjected.

They shall also have the right to communicate with the representatives of the protecting Powers in order to draw their attention to the points on which they have complaints to make with regard to the conditions of captivity.

Such petitions and complaints shall be transmitted immediately.

Even though they are found to be groundless, they shall not give rise to any punishment.

The Commission recommended that the wording of Section I should be kept, and that the rest of this Article should run as follows :

They shall also have unlimited right of communication, either through the spokesman, or if necessary direct, with representatives of the Protecting Powers or any competent international body, to draw their attention to the complaints they have to make with regard to conditions of captivity.

Such petitions and complaints shall be transmitted immediately. Even if found to be groundless, they shall not lead to any punishment.

Spokesmen may send to the representatives of the Protecting Power or of any competent international body short periodical reports on conditions in camp and on the needs of PW.

(a) In its report, the ICRC had remarked that it would be useful to embody in the new Convention the principle, practised in several countries during the war, of sending complaints through the spokesman, who endorsed those he considered justified. These thus carried more weight and allowed the authorities concerned to sort them more quickly.

The ICRC also asked whether complaints addressed to representatives of the Protecting Power should not go through the camp commandant's hands, who would thus be able to forward them to the addressees with his observations. Several Delegates thought that it would be preferable that complaints should be made by the spokesman only, who should get a receipt from the addressee for each complaint sent in. Other Delegations, on the contrary, were in favour of the right of personal complaint for PW, as laid down in the present Convention, and recommended a camp register in which PW could inscribe their complaints against a receipt.

The Commission finally agreed on the above text.

(b) During the war, military authorities sometimes denied PW the right to forward complaints about their treatment to the ICRC. This is contrary to the spirit of the Convention, and the ICRC suggested that its name should be mentioned, as well as that of the Protecting Powers. The Commission thought preferable, however, to use the more general term of "competent international body", although several Delegations pointed out that PW would not know what the competent body was, unless it was expressly named in the Convention.

(c) The ICRC had also stressed the necessity of laying down clearly, in any revised Convention, the right of all PW to voice their complaints freely in writing.

The ICRC also suggested that spokesmen should send short periodical reports to the representatives of the Protecting Power and of the ICRC, written on a standard and numbered form and giving a brief account of conditions in camp, asking for delegates to visit the camp if need be, indicating the relief supplies required, etc. The ICRC thought this course desirable in order to avoid the recurrence of cases where PW's complaints were systematically held back by the military authorities.

The Commission approved this suggestion, but thought that the Convention could not make it the spokesman's duty to send such reports ; it could only leave him the option to do so.

(d) The ICRC recommended that no change be made in Sections 3 and 4.

The Commission recommended that these provisions should stand. Several Delegates would have liked it to be specified that complaints should be transmitted "without alteration of their essential contents" or "without amendment".

CHAPTER II. — REPRESENTATIVES OF PW

Article 43

In any locality where there may be prisoners of war, they shall be authorised to appoint representatives to represent them before the military authorities and the protecting Powers.

Such appointments shall be subject to the approval of the military authorities.

The prisoners' representatives shall be charged with the reception and distribution of collective consignments. Similarly, in the event of the prisoners deciding to organise amongst themselves a system of mutual aid, such organisation shall be one of the functions of the prisoners' representatives. On the other hand, the latter may offer their services to prisoners to facilitate their relations with the relief societies mentioned in Article 78.

In camps of officers and persons of equivalent status the senior officer prisoner of the highest rank shall be recognised as intermediary between the camp authorities and the officers and similar persons who are prisoners. For this purpose, he shall have the power to appoint an officer prisoner to assist him as interpreter in the course of conferences with the authorities of the camp.

The Commission recommended the adoption of the following new draft:

In all places where PW may be, they shall be authorised to hold freely half-yearly elections of camp spokesmen, to represent them in dealings with the military authorities and the Protecting Powers, and any other competent international body. These spokesmen shall be re-eligible.

In camps for officers and equivalent ranks, the senior PW officer of the highest rank shall be recognised as camp representative; he shall be assisted by a committee chosen by his fellow-officers.

Such appointments shall be subject to the approval of the military authorities. The reasons underlying possible refusal shall be communicated to the Protecting Power.

Spokesmen shall contribute to the physical, moral and intellectual well-being of PW. In the event of PW deciding to organise amongst themselves a mutual aid society, this institution shall be one of the concerns of the spokesmen.

Spokesmen may appoint any necessary assistants from amongst the PW. They shall have all material facilities in the discharge of their duties, particularly a certain liberty of movement necessary for carrying out their task (visits to labour detachments, reception of supplies, etc.).

In its report, the ICRC had stressed the importance of making the appointment of spokesmen compulsory, whereas it is merely optional in the present Convention. Attention was also drawn to the need of periodical re-election of spokesmen, to avoid the consequences of an unhappy choice weighing on PW throughout their captivity.

The ICRC further recalled that when PW of different countries were held in the same camp, some DPs allowed each national group to appoint a representative. The ICRC thought that this rule should be embodied in the revised Convention.

Further amendments of detail and wording were suggested. The most important was to comprise the spokesman's duties in a more general provision, which would cover all the new competencies bestowed on him in practice. This would enable him to choose assistants among his fellow-prisoners, and would

oblige the DP to communicate to the Protecting Power the reasons for any opposition to his appointment.

The Commission approved the majority of the amendments proposed by the ICRC. Besides making a few slight alterations, it thought advisable to assist the spokesman in camps for officers and equivalent ranks by a committee, elected by his fellows, to which he should apply for assistance and advice.

Considering the importance, past and present, of benevolent funds, the majority of the Commission recommended that they should be mentioned once more in Article 43.

Article 44

Section I.

When the prisoners' representatives are employed as workmen, their work as representatives of the prisoners shall be reckoned in the compulsory period of labour.

Turning to the matter of spokesmen's wages, the Commission decided to refer to the conclusions of the financial Sub-committee. The following text relating to spokesmen's work was then adopted:

"Spokesmen shall not be obliged to work if, by so doing, they have greater difficulty in carrying out their duties."

The Commission placed on record the recommendation made by several Delegations namely: "In all camps or detachments containing more than fifty men, the spokesman should be exempted from all work. If he represents less than this number of PW, he should be granted two free days weekly, apart from Sundays."

During the war, the DPs agreed, as a rule, that spokesmen should not be compelled to do other work than that connected with their duties. However, exemption from work depends on the number of PW the spokesman represents. The ICRC thought useful to quote in its report the proposal made by the French spokesmen in German PW camps, which appears above.

The Commission did not consider it necessary, however, to embody these provisions in the Convention, and remarked that it was also in the DP's own interest that the spokesman should be able to devote sufficient time to his duties as PW representative.

Section 2.

All facilities shall be accorded to the prisoner's representatives for their correspondence with the military authorities and the protecting Power. Such correspondence shall not be subject to any limitation.

The Commission agreed on the following text:

All facilities shall be granted to spokesmen for their postal and telegraphic correspondence with the DP, the Protecting Powers, the ICRC and their delegates, the Mixed Medical Commissions, and duly recognised and authorised relief societies. Spokesmen in labour detachments shall have the same facilities as those in main camps. Such correspondence shall not be limited nor considered as part of the quota mentioned in Article 36.

In its report, the ICRC had proposed, as the only amendments to this Section, that spokesmen should also be enabled to dispatch telegrams, which are particularly necessary in relief matters; furthermore, that they should have all facilities for corresponding not only with the military authorities and the Protecting Power, but also with the ICRC and duly recognised relief Societies.

The Commission approved the text proposed by the ICRC, with an amendment mentioning both the ICRC and the Mixed Medical Commissions, specifying that the spokesmen of labour detachments shall have the same facilities as those in main camps for their correspondence with the latter, and recommending that spokesmen's mail shall not be included in the quota mentioned in Article 36.

Section 3.

No prisoners' representative may be transferred without his having been allowed the time necessary to acquaint his successors with the current business.

The Commission recommended the adoption of the ICRC's text, amended as follows:

No spokesman shall be transferred without having been allowed the time reasonably needed to acquaint his successors with current

business. In case of dismissal, the reasons for this step shall be communicated to the Protecting Power.

In its report, the ICRC drew attention to the vagueness of the term "time necessary", to be allowed to camp leaders by the DP in order to acquaint their successors with current business, and proposed that a minimum limit of one week should be granted. It was also considered that this Article should state the obligation for the DP to communicate to the Protecting Power the reasons for possible disqualification of a camp leader (spokesman).

During the debate, several Delegations were in favour of a time-limit, but the majority did not think this necessary. The ICRC's second suggestion met with general approval, as shown above.

CHAPTER III. — PENAL SANCTIONS WITH REGARD TO PW

I. — *General Provisions*

The Commission desired to express two general recommendations :

(a) *The lay-out of Chapter 3 should be revised and amended. This Chapter should include three Sections : (1) general provisions applicable to all penal sanctions ; (2) all clauses relative to disciplinary punishment and escape ; and (3) judicial penalties. Each Section should be worded in the clearest possible language ; (2) and (3) should be self-contained, even, at the cost of some repetition.*

(b) *The English translation of this Chapter should also be revised and amended in several respects.*

The Commission unanimously agreed upon the necessity of improving the lay-out of this Chapter, especially in order to make it more intelligible for those concerned with its application, who may not always be lawyers. With regard to the section on disciplinary punishment, the Commission considered that the relevant articles might be classified as follows :

(1) General Articles stipulating the nature and length of disciplinary punishment ;

(2) Articles relating to escapes ;

(3) Articles relating to procedure in disciplinary proceedings ;

(4) Articles regarding the execution of sentences.

The Section dealing with judicial punishment could be arranged on the same lines, with the necessary adjustments.

While acknowledging that the translation of legal provisions into another language may be somewhat difficult, owing to the fact that they may refer to institutions which are not common to all countries, or which are not everywhere identical in form, the Commission stressed the importance of drafting an official text which would have the same meaning in whatever country it is to be applied. In this respect, attention was drawn to the faulty translation of the term "arrêts préventifs" in Art. 47, Sec. 1, and "arrêts" in Art. 54, Sec. 1.

Article 45

Prisoners of war shall be subject to the laws, regulations, and orders in force in the armed forces of the detaining Power.

Any act of insubordination shall render them liable to the measures prescribed by such laws, regulations, and orders, except as otherwise provided in this Chapter.

The Commission recommended that the following points should be noted when drafting the new version of Article 45:

I. PW should, as a rule, be tried by courts-martial, except where by the laws of the DP, a civil court is the only competent tribunal for a particular offence committed by a member of its own armed forces.

II. Special legislation or orders discriminating against PW should be permitted only to meet exceptional and unforeseen situations, arising from PW's internment. The penalties prescribed by such legislation or orders should be expressly limited by the provisions of the Convention, which should in any case forbid the death penalty in this connection.

III. Two essential principles should govern all clauses relating to proceedings and sentences concerning PW, and should be specifically stated in Art. 45, namely:

(a) as a rule, PW are not nationals of the DP, to which they owe no allegiance;

(b) as members of forces they owe a duty of obedience to their home country.

IV. With regard to PW accused of war crimes:

1. PW should enjoy the benefits of the Convention until a prima facie case is made out against them and they are indicted of war crimes. When PW lose the benefits of the Convention, the Protecting Power should be informed.

2. PW indicted of war crimes and thus losing the benefits of the Convention should be covered by some international protection based on treaty stipulations which guarantee them:

(a) fair treatment, so that they may be in a condition to plead their case;

(b) a fair trial, i.e. a trial which provides all those guarantees as to means of defence afforded by the legal systems of civilised countries.

V. As regards offences committed before capture, the DP keeps its right to punish guilty PW for breaches of its penal laws which are not war crimes, but the said PW must then preserve their PW status.

I. The Commission agreed that it would be very difficult, from the strictly juridical point of view, to set up a special penal code for PW. Experience had proved the need for reverting to the fundamental principle of Art. 45, which assimilates PW to nationals of the DP. The Commission thought that the only means of protecting PW against the grave consequences which might arise from this assimilation—particularly in countries where penalties are very heavy—was by amplifying and specifying the rules of procedure applicable to all PW who are prosecuted for some offence. With regard to the applicable

code, and the competent tribunal (civil or military), the Commission admitted that, on the whole, it was to PW's advantage to appear before a civil tribunal. In view of the special powers allotted to courts-martial by most States in time of war, it was preferable that Art. 45 should take account of this state of affairs. The Commission thought, however, that an exception should be made for countries where through long-standing custom civil tribunals alone can deal with certain offences.

II. Strong opposition was raised by several Delegations with regard to the laws and regulations concerning PW published by some DPs during the war, whereby PW accused of acts of insubordination were sentenced to very heavy penalties and in some cases to death. It was, however, observed that the serious defect of these special laws and regulations did not arise from their origin; it was normal that a DP should be led to cope by such means with situations caused by the presence of PW on its territory (for instance, relations with the civilian population). The fault lay in the arbitrary nature of this legislation and the excessive penalties incurred thereby, whereas the offences which involve heavy penalties are, as a rule, already included in the penal laws and codes in force before hostilities begin. The delegations which supported this opinion considered that there was no question of depriving the DP of the *per se* normal right to institute special laws and regulations for PW, but that this right should be restricted. In agreement with this opinion, the Commission made the above recommendation.

III. The majority of the delegations considered that the term "insubordination" in the second paragraph is inadequate, as it may give rise to the impression that the PW owes allegiance to the DP, which is not the case. For this reason, the ICRC, had enquired if certain offences which imply such allegiance, for instance mutiny, should form the subject, as for escapes, of special ruling in the Convention. Without going to this extreme, the Commission thought that a stipulation should be introduced to remind the court that enemy PW brought before it for judgment are not nationals of the country, but that they owe obedience to the home country, even if (as one delegation observed)

they are subject to the disciplinary regulations of the armed forces of the DP.

The Commission was further anxious to specify, without making a recommendation to this effect, that as a member of the armed forces of his own country, a PW remains subject to its military law. He may therefore be made answerable for his actions before the courts of his country, after repatriation, in which case he cannot (although such cases have occurred) plead in defence that, in accordance with Art. 45, national legislation is not applicable.

IV. In its report, the ICRC drew attention to the fact that the Convention does not cover the very important matter of offences committed before capture, which may be tried by the DP by virtue of its legislation. This applies to acts committed against nationals of the DP or against the DP itself, and especially against certain rules embodied in the laws and customs of warfare, breaches of which are usually termed "war crimes".

With regard to the question of war crimes, it was stressed that in obedience to a principle of international common law, the origin of which reaches far back in history, a captured combatant who is convicted of a war crime may no longer claim the benefit of the Convention. The majority of the members agreed with this point of view: the question which then arises is twofold:—

1. From what time onwards can a PW be considered as a war criminal, and consequently lose his PW status? Is it sufficient that he should be simply accused of a war crime, or does he, on the contrary, remain subject to the Convention until his guilt has been established by the court?

2. As soon as a PW war criminal is deprived of his PW status, what protection does he enjoy? As was remarked, PW then benefit solely by the guarantees usually offered by the laws of civilised nations.

The ICRC, while stressing its unequivocal condemnation of crimes against principles it is itself anxious to safeguard, has been taught by experience that the facts constituting war

crimes can be more easily circumscribed than exactly defined. There is consequently a certain risk of arbitrary action, especially in cases where to be accused of such a crime is sufficient to deprive a man of PW status, or where the expression "civilised nation" is rather a matter of theory. It also appeared to the ICRC to be in the best interests, both of PW and of civilised countries, that PW shall be, and shall remain until their liberation, covered by a precise and clearly defined status—even if this implies undeserved privileges in certain cases—and especially that they shall not be deprived of all international protection.

After considering the ICRC's statement, the Commission endorsed the view that some degree of international protection is necessary, even for PW accused of war crimes, and agreed upon the above principles (sub IV), which certain Delegations considered as a minimum.

With regard to guarantees for a fair trial of PW accused of war crimes, the Commission considered that the final draft could usefully refer to Article 16 of the Act of August 8, 1945, instituting the International Military Tribunal of Nuremberg.

V. As regards offences committed before capture and which are not war crimes, the Commission considered that the DP keeps its right to punish guilty PW who fall into its hands. It was thought, however, that in this case the PW preserves his PW status, which is to his advantage.

Article 46

Section 1.

Prisoners of war shall not be subjected by the military authorities or the tribunals of the detaining Power to penalties other than those which are prescribed for similar acts by members of the national forces.

The Commission recommended that this Section should be completed by a stipulation to the effect that PW shall not be brought before special courts, either military or civilian, which do not afford essential guarantees of judicial independence.

The ICRC pointed to the unsatisfactory wording of Section 1. This Section had allowed special courts, which are usually

unfavourable to defendants, to sentence PW, and even to inflict penalties of an administrative character, such as confinement in a concentration camp. The Commission acknowledged that practices of this kind should be stopped, but experienced difficulty in finding a wording to meet the case. Some delegations proposed to make general reference to the guarantees afforded by civilized nations in the administration of justice ; others considered that the point should be emphasised and that PW should be entitled to such guarantees, by stipulating certain minimum rules of procedure which the DPs should embody in their national legislation to meet the case. The Commission finally agreed to the latter suggestion.

Section 2.

Officers, non-commissioned officers or private soldiers, prisoners of war, undergoing disciplinary punishment shall not be subjected to treatment less favourable than that prescribed, as regards the same punishment, for similar ranks in the armed forces of the detaining Power.

The Commission proposed to replace in this section the word "disciplinary" by "any".

The Commission thus adopted the suggestion of the ICRC, that the stipulation should not be limited to disciplinary punishment.

Section 3.

All forms of corporal punishment, confinement in premises not lighted by daylight and, in general, all forms of cruelty whatsoever are prohibited.

The Commission believed that this stipulation, which is of a very general character, could be maintained as it stands and that the question of prison regime (which is not ruled by the Convention) should be defined in the Section dealing with judicial punishment.

Section 4.

Collective penalties for individual acts are also prohibited.

The ICRC had proposed that this Section should be completed by a stipulation that, as a result of acts committed by individuals, PW should not be collectively deprived of extra privileges not mentioned in the Convention. This proposal was not accepted.

Article 47

Section I.

A statement of the facts in cases of acts constituting a breach of discipline, and particularly an attempt to escape, shall be drawn up in writing without delay. The period during which prisoners of war of whatever rank are detained in custody (pending the investigation of such offences) shall be reduced to a strict minimum.

The Commission recommended that:

(a) *the period of preventive confinement (pending disciplinary proceedings) should not exceed fourteen days;*

(b) *treatment during preventive confinement should be specified as follows:*

This treatment shall in no case comprise restrictive measures other than those prescribed for military prisoners, according to the laws of the DP, particularly as regards food, mail, reading matter and tobacco. Except the fact that they are confined, PW should continue to benefit during this period by all provisions under the Convention.

A general desire was expressed that this Article should be more clearly defined, to enhance its practical value. The Commission complied by fixing the maximum period of preventive confinement, pending disciplinary proceedings, at fourteen days. Treatment during preventive confinement not being defined by the Convention (with the exception of the prohibitions contained in Art. 46, Sec. 3), it frequently happened that PW in preventive confinement were deprived of essential privileges. The Commission therefore decided to rectify the omission by inserting a clear and detailed stipulation.

Section 2.

The juridical proceedings against a prisoner of war shall be conducted as quickly as circumstances will allow. The period during which prisoners shall be detained in custody shall be as short as possible.

The Commission proposed:

(a) *that the period spent in preventive confinement pending judicial proceedings should be reduced to three months at most;*

(b) *that PW should be submitted during this time to the same treatment as that applied in the case of confinement pending disciplinary proceedings.*

This proposal was based on the same reasons as those given in connection with Section 1.

Section 3.

In all cases the period during which a prisoner is under arrest (awaiting punishment or trial) shall be deducted from the sentence, whether disciplinary or judicial, provided such deduction is permitted in the case of members of the national forces.

The Commission recommended that the present text be maintained, but that the clause "provided such deduction is permitted in the case of members of the national forces" should be deleted.

The Commission thought that the deduction of preventive confinement from the total sentence was in such general practice among civilized nations that the exception provided in 1929 was no longer justified.

Article 48

Section 1.

After undergoing the judicial or disciplinary punishments which have been inflicted on them, prisoners of war shall not be treated differently from other prisoners.

The Commission considered that no alterations were required.

Section 2.

Nevertheless, prisoners who have been punished as the result of an attempt to escape may be subjected to a special regime of surveil-

lance, but this shall not involve the suppression of any of the safeguards accorded to prisoners by the present Convention.

The Commission recommended that the special surveillance under reference in Section 2 should fulfil two conditions:

- (1) that it does not affect PW's physical or mental wellbeing;*
- (2) that it is undergone in a PW camp.*

During the last war some DPs established special camps for PW who had attempted to escape. The discipline of these camps was so strict that the inmates, without being absolutely deprived of PW privileges, were, in the long run, affected in their physical and mental wellbeing. Furthermore, the supervision laid down in Section 2 was applied to PW not in consequence of attempted escape, but for political security reasons, because of their status or duties in their home country. Such PW were often detained away from the camps holding other nationals. For this reason the Commission thought proper to reinforce the guarantees in favour of PW subjected to special supervision, and recommended that this regime, whatever its occasion might be, should be subjected to the two conditions named above.

Article 49

Section 1.

No prisoner of war may be deprived of his rank by the detaining Power.

The Commission proposed to complete this section by stipulating further that PW may not be deprived of the right to wear their badges of rank.

In view of the agreement (see Art. 6) that badges should remain in PW's possession, and that they should be allowed to wear them in all circumstances (Art. 19), the Commission agreed to the ICRC's suggestion that Section 1 should be completed as indicated.

Section 2.

Prisoners on whom disciplinary punishment is inflicted shall not be deprived of the privileges attaching to their rank. In particular,

officers and persons of equivalent status who suffer penalties entailing deprivation of liberty shall not be placed in the same premises as non-commissioned officers or private soldiers undergoing punishment.

The Commission recommended that this Section should be made more explicit and clearly indicate that it only applies to PW undergoing disciplinary punishment.

The wording of clause 2 of this Section "entailing deprivation of liberty" could apply to judicial sentences and thus imply that even PW serving such sentences may not be deprived of privileges due to their rank. In view of the experience gained during the war, the Commission unanimously thought that it was not possible to institute discriminatory treatment in PW penitentiaries, and observed that in nearly all armies officers having incurred judicial punishment lost their privileges during detention. This stipulation should, therefore, only concern PW undergoing disciplinary punishment.

Article 50

Section 1.

Escaped prisoners of war who are re-captured before they have been able to rejoin their own armed forces or to leave the territory occupied by the armed forces which captured them shall be liable only to disciplinary punishment.

Section 2.

Prisoners who, after succeeding in rejoining their armed forces or in leaving the territory occupied by the armed forces which captured them, are again taken prisoner shall not be liable to any punishment for their previous escape.

The Commission recommended that the Convention should give the exact definition of a successful escape and that the wording and drafting of Art. 50, Sec. 1 and 2 should be made to agree with this definition. The following text was suggested to this effect:

"PW shall be considered as having successfully escaped:

(1) on reaching neutral or non-belligerent territory, or territory not occupied, but under the authority of their own country or of an ally;

(2) on rejoining their own armed forces or those of an allied Power ;

(3) on reaching the high seas ;

(4) on boarding, in the territorial waters of the DP, a merchant vessel or warship flying the flag of their home country or of an allied Power, and not under the authority of the DP."

With regard to the use of arms against PW attempting to escape, the Commission recommended the insertion of the following clause :

"Arms shall not be used against PW except to prevent escape or to enforce discipline. Such use shall only serve as a last resort; and shall always be preceded by appropriate warning."

The Commission further endorsed the suggestion that recaptured PW should be notified to the home country, as provided in Art. 8, should notice of his escape have already been given.

The Commission was unanimous that while the rulings with regard to escapes had, in principle, raised no difficulties of application, they should however be more clearly specified. It was, in particular, found necessary to draw a clearer distinction between an attempt at escape and a successful escape, and to give a definition of escape, based on instances which occurred during the war. These are, as a rule, not covered by the present Section 1 (e.g., escapees reaching neutral territory, allied forces, or the high seas).

One Delegation proposed a definition of successful escape which appeared comprehensive, and this was adopted by the Commission ; the latter further recommended that the text should appear at the head of the clauses concerning escapes, so that reference thereto need no longer be made in the Sections as at present. Thus, Art. 50, Sec. 1, might read as follows : "PW who attempt to escape and who are recaptured before having succeeded (i.e. before having fulfilled one of the four conditions which constitute a successful escape, as specified above) shall be liable only to disciplinary punishment." Sec. 2 would then read : "PW recaptured after a successful escape shall not be liable to any penalty for their previous escape."

The ICRC had proposed that if the use of arms against PW attempting to escape could not be prohibited, it should at least be subject to regulations. The Commission endorsed this opinion and considered that more extensive ruling should be made regarding the use of arms against PW, in view of the many deaths caused by abuses in this respect.

On many occasions, PW were notified to the Central PW Agency as having escaped, but not as being recaptured. This caused confusion in the work of the Enquiry and Control Sections of the Central Agency; by approving the ICRC's proposal the Commission hoped that this difficulty would be avoided in future.

Article 51

Attempted escape, even if it is not a first offence, shall not be considered as an aggravation of the offence in the event of the prisoner of war being brought before the courts for crimes or offences against persons or property committed in the course of such attempt.

After an attempted or successful escape, the comrades of the escaped person who aided the escape shall incur only disciplinary punishment therefor.

The Commission did not entertain certain proposals submitted by the ICRC, whereby attempted escape should form an extenuating circumstance in appraising common law offences connected with escapes, and proposed no amendment to this Article.

Article 52

Sections 1 and 2.

Belligerents shall ensure that the competent authorities exercise the greatest leniency in considering the question whether an offence committed by a prisoner of war should be punished by disciplinary or by judicial measures.

This provision shall be observed in particular in appraising facts in connexion with escape or attempted escape.

The Commission recommended:

(1) *that the two sections should be more closely related;*

(2) *that it should be clearly stipulated that offences closely connected with escapes and committed against persons (but without violence) or against property (with no intent of personal profit), e.g. the wearing of civilian clothing or the forging of identity documents, shall lead to disciplinary proceedings only, since the offender shows no criminal intent and merely obeys his duty as a soldier.*

Reference was made by the ICRC in its report to the proposal made by one of the National Red Cross Societies to the effect that, inasmuch as the Convention admits implicitly that PW have a right, and even a moral duty, to try and regain their liberty (Art. 50, Sec. 2), it was logical to admit that the element of "wilfulness" was absent from all acts required to assist a PW to escape. These acts should not, therefore, be liable to judicial penalties. By making the above recommendation, the Commission was in part agreement with this opinion; it also wished to prevent DPs (as sometimes happened) from passing heavy sentences for minor offences which usually occur during escapes, with the object of discouraging indirectly all such attempts.

Section 3.

A prisoner shall not be punished more than once for the same act or on the same charge.

Although the general principle contained in this Section was not always respected during the war, the Commission did not propose any amendment thereto.

Article 53

Section 1.

No prisoner who has been awarded any disciplinary punishment for an offence and who fulfils the conditions laid down for repatriation shall be retained on the ground that he has not undergone his punishment.

The Commission proposed to specify in this Section that the repatriation under reference is that carried out during hostilities.

Section 2.

Prisoners qualified for repatriation against whom any prosecution for a criminal offence has been brought may be excluded from repatriation until the termination of the proceedings and until fulfilment of their sentence, if any ; prisoners already serving a sentence of imprisonment may be retained until the expiry of the sentence.

The Commission recommended that, contrary to present practice, PW proceeded against or sentenced judicially shall nevertheless benefit by repatriation, should this be considered necessary by the Mixed Medical Commission, and if the DP consents.

The ICRC had stressed in its report that, according to Art. 75, PW proceeded against or sentenced judicially were not excluded from repatriation at the close of hostilities, when the offence concerned was of a disciplinary nature, and that similar measures should be provided for PW due for repatriation during hostilities, particularly as the men concerned were usually wounded or sick. By the above recommendation, the Commission showed their anxiety to emphasise this point.

Section 3.

Belligerents shall communicate to each other lists of those who cannot be repatriated for the reasons indicated in the preceding paragraph.

The present wording was approved.

2. — *Disciplinary Punishments*

The Commission recommended that the Convention should also specify guarantees as regards procedure in disciplinary matters and that penalties should only be inflicted under the following conditions :

- (1) *PW shall be present when sentence is passed ;*
- (2) *PW shall have opportunity to present their defence ; they shall be assisted by an interpreter when necessary, and allowed to call witnesses ;*
- (3) *the PW camp leader (spokesman) concerned shall be in attendance.*

The differences between national legislations as regards regulations for disciplinary proceedings are much greater than in the case of the regulations for judicial proceedings, and some PW suffered great disadvantage thereby; the passing of disciplinary sentences was even, in some cases, wholly arbitrary. In this respect, the Commission thought that the Convention showed a deficiency which should be filled by stipulating the minimum guarantees of procedure for the application of disciplinary penalties.

Article 54

Section I.

Imprisonment is the most severe disciplinary punishment which may be inflicted on a prisoner of war.

The Commission recommended that this section should be replaced by the following text:

(a) *disciplinary punishments shall in no case deprive sentenced PW of certain essential rights, to be listed in the Article (mail — complaints — visits of the Protecting Power — exercise, etc.);*

(b) *these punishments can only be of certain kinds, to be explicitly specified (restriction of additional privileges — fines, to be fixed by the drafters — confinement — disciplinary drill or extra labour of the same kind as the usual work, these last two not to exceed two hours extra per day). Penalties applicable to officers or equivalent ranks should also be specified;*

(c) *such penalties shall not be brutal, inhuman, nor injurious to health.*

Several delegations agreed with the point raised by the ICRC, to the effect that the principle contained in this Section does not clearly specify if certain disciplinary penalties, and disciplinary drill in particular, were consistent with the Convention. Other delegations stated, from experience, that confinement does not constitute a really effective penalty. All Delegations, however, agreed that serious abuses had occurred in the application of disciplinary punishment, and that Section I should be thoroughly amended, to ensure the protection of PW serving a sentence.

It was at first thought that better safeguards would be found in specifying which penalties were authorised and what might be their duration. This system, however, involved such difficulties that the Commission finally decided to list five kinds of disciplinary penalties: (1) restriction of supplementary privileges; (2) fines; (3) disciplinary drill; (4) extra labour; (5) confinement, and to introduce additional guarantees in respect of the application of these penalties, e.g. maximum duration and conditions in which they should be served. As regards the conditions, the two principles stated sub (a) and (c) above were adopted. Duration is ruled by Section 2, which provides for a limit of thirty days, and which remains unaltered. Objections were raised that, even thus defined, two kinds of penalties were apparently too severe, namely, disciplinary drill and extra labour. The Commission therefore found advisable to limit the maximum daily period to two hours and to assimilate extra labour to ordinary work.

Sections 2, 3 and 4.

The duration of any single punishment shall not exceed thirty days.

This maximum of thirty days shall, moreover, not be exceeded in the event of there being several acts for which the prisoner is answerable to discipline at the time when his case is disposed of, whether such acts are connected or not.

Where during the course or after the termination of a period of imprisonment, a prisoner is sentenced to a fresh disciplinary penalty, a period of at least three days shall intervene between each of the periods of imprisonment, if one of such periods is of ten days or over.

The Commission thought that the principles embodied in these three clauses called for no amendment, except with regard to Section 4, which should be altered as follows:

“When a PW undergoing a term of confinement is sentenced to a further disciplinary penalty.”

Article 55

Sections 1 and 2.

Subject to the provisions of the last paragraph of Article 11, the restrictions in regard to food permitted in the armed forces of the

detaining Power may be applied, as an additional penalty, to prisoners of war undergoing disciplinary punishment.

Such restrictions shall, however, only be ordered if the state of the prisoner's health permits.

The Commission recommended that this Article should be omitted.

The ICRC had suggested that, in spite of the restrictions which accompany it, the penalty provided by this Article should be abolished, on the grounds that restrictions in regard to food might prove too serious in some cases. In view of the new wording of Art. 54, the Commission agreed with this suggestion.

Article 56

In no case shall prisoners of war be transferred to penitentiary establishments (prisons, penitentiaries, convict establishments, etc.) in order to undergo disciplinary sentence there.

Establishments in which disciplinary sentences are undergone shall conform to the requirements of hygiene.

Facilities shall be afforded to prisoners undergoing sentence to keep themselves in a state of cleanliness.

Every day, such prisoners shall have facilities for taking exercise or for remaining out of doors for at least two hours.

The Commission recommended the following:

(a) *the three last Sections relative to material conditions of premises where disciplinary punishments are served, should be worded in accordance with the new Art. 54, and completed by the mention of certain essential guarantees, in particular concerning bedding and hygiene;*

(b) *it should be stipulated that the time elapsing between the passing of the disciplinary sentence and its execution shall not exceed one month.*

The Commission admitted that, in some cases, material conditions in a penitentiary might be better than in a camp prison, but considered that the principle expressed in Section I should be upheld, having regard to military dignity and honour.

The conditions prevailing in many camp guard-rooms were rendered more unsatisfactory by the fact that PW were sometimes detained for very long periods without reason. The Commission judged essential to complete the safeguards for PW serving terms of confinement and, in particular, to stipulate that delegates of control organisations should be allowed to visit them.

On many occasions, too much time elapsed between the sentence and its execution, which was contrary to the natural sequence of offence and punishment. The Commission therefore proposed the above ruling sub (b).

Article 57

Section 1.

Prisoners of war undergoing disciplinary punishment shall be permitted to read and write, and to send and receive letters.

Although the right of prisoners serving disciplinary sentences to send and receive mail had already been provided by the new wording suggested for Art. 54, the Commission held that the more detailed wording of Section 1 could be kept.

Section 2.

On the other hand, it shall be permissible not to deliver parcels and remittances of money to the addressees until the expiration of the sentence. If the undelivered parcels contain perishable foodstuffs, these shall be handed over to the infirmary or to the camp kitchen.

The Commission thought that parcels addressed to PW serving disciplinary sentences should be handed to their camp leaders, who would make over to the camp infirmary, and to this only, any perishable food found therein. The other contents should be put aside for the addressees.

The Commission thus stressed the general tendency to give camp leaders greater powers as regards the issue of relief parcels.

Article 58

Prisoners of war undergoing disciplinary punishment shall be permitted, on their request, to present themselves for daily medical

inspection. They shall receive such attention as the medical officers may consider necessary and, if need be, shall be evacuated to the camp infirmary or to hospital.

The Commission suggested the following amendment to clause 2 :

"... They shall receive such attention as their state of health requires..."

PW serving disciplinary sentences have too often been deprived of proper treatment. The Commission wished, by the above wording, to make both the DP and the camp doctor responsible for giving adequate attention.

Article 59

Without prejudice to the competency of the courts and the superior military authorities, disciplinary sentences may only be awarded by an officer vested with disciplinary powers in his capacity as Commandant of the camp or detachment, or by the responsible officer acting as his substitute.

The Commission recommended the following amplification :

"... Disciplinary sentences may only be awarded by an officer vested with disciplinary powers in his capacity as commandant of the camp or detachment, or by the responsible officer to whom he has delegated his disciplinary powers, provided this delegate is in reality an officer."

In its report, the ICRC raised the question of disciplinary powers delegated to the PW themselves, i.e. to the camp leader or to a PW tribunal, as happened during the war, in particular with regard to offences committed by PW against their comrades. This practice did not meet with the approval of the Commission, who thought that it might lead to abuses, and that many cases thus dealt with should have been referred to "courts of honour" or tribunals of PW's home country, after their return.

Some delegations also recalled that in very large camps, the necessity for referring to the camp commandant every case calling for disciplinary penalties, caused regrettable delay and confusion. They proposed that disciplinary powers should be

delegated to the officers in charge of the camp compounds, and this suggestion met with general approval.

3. — *Judicial Proceedings*

Article 60¹

At the commencement of a judicial hearing against a prisoner of war, the detaining Power shall notify the representative of the protecting Power as soon as possible, and in any case before the date fixed for the opening of the hearing.

The said notification shall contain the following particulars :

- (a) civil status and rank of the prisoner ;
- (b) place of residence or detention ;
- (c) statement of the charge or charges, and of the legal provisions applicable.

If it is not possible in this notification to indicate particulars of the court which will try the case, the date of the opening of the hearing and the place where it will take place, these particulars shall be furnished to the representative of the protecting Power at a later date, but as soon as possible and in any case at least three weeks before the opening of the hearing.

The Commission made the following recommendations :

(1) *The distinction between detailed and incomplete notification might be dropped, and the two Sections combined in one, stipulating that all necessary particulars shall be furnished to the Protecting Power at least three weeks before the opening of the hearing.*

(2) *The particulars to be furnished to the Protecting Power shall be :*

(a) *name of PW, rank, regimental or serial number, date of birth and if necessary, occupation ;*

(b) *and (c) no change ;*

(d) *particulars of the court which will try the case, date and place fixed for the hearing.*

¹ As regards judicial assistance to PW without a regular Protecting Power, see Art. 86.

(3) *No judicial proceeding against PW to be pursued unless at the opening of the trial evidence is furnished to the court that the details specified reached the Protecting Power at least three weeks prior to the hearing.*

(4) *It should also be stated that the time-limit of three weeks shall run only from the moment when notification has reached the protecting Power, at the address the latter has communicated beforehand to the DP.*

(5) *The summary notification to be also communicated to the spokesman.*

The recommendations appearing under (1), (2) and (4), which were proposed by a Delegation, were unanimously approved by the Commission. They tend to remedy technical deficiencies now inherent in Art. 60 and apparent to all those called upon to apply it. The present Sections 1 and 3 are contradictory, for the complementary notification mentioned in Section 3 must be supplied to the Protecting Power at least three weeks prior to the opening of the hearing, whereas no time-limit is fixed for the notification of proceedings containing all necessary particulars mentioned in Section 1. Furthermore, the time-limit of three weeks should run only from the moment when notification has reached the Protecting Power, and not from that when it was sent; this point is not now specified, and often gave rise to delays, thus preventing the Protecting Power from acting in time.

The Commission wished to fill these two gaps, while amplifying the particulars of identity concerning the defendant PW which must appear in the notification of proceedings.

In order to enhance yet more the guarantees of intervention by the Protecting Power, in the event of judicial proceedings against a PW, the Commission agreed to the proposal embodied in point (3). The evidence mentioned should be provided by the public prosecutor.

Taking up a suggestion made by a Red Cross Society, the ICRC had recommended that notification of proceedings should also be made to the spokesman of the PW concerned. Some

Delegations were against this, for they looked on it as a fresh obligation laid on the DP. It was observed that this system proved invaluable for PW of certain nationalities during the war, particularly when PW had no regular Protecting Power. The Commission finally agreed with this view, and thought it did not foresee intervention in the penal proceedings by the spokesman or by the legal advisor (usually one of the spokesman's assistants), the option therefor was provided by stipulating in Art. 62 that PW may be assisted by a fellow-prisoner.

Article 61

The Commission recommended the insertion of a provision laying down the principle that no PW shall be sentenced without having been defended by qualified counsel.

The Convention makes no one responsible for the costs of the defence. Should the Protecting Power be without sufficient funds to ensure the defence of PW, and if such PW are unable to bear the costs themselves, they may find themselves, as sometimes happened, without any defence at all. The ICRC had adduced this situation and suggested as a remedy that the DP should henceforth be under obligation to supply counsel for these cases. The Commission did not, however, consider it desirable to lay this supplementary obligation on the DP. The introduction of the above principle would apparently compel the parties concerned to take practical measures in each individual case, to settle the exceptional situation of PW without any advocate.

Section 1.

No prisoner of war shall be sentenced without being given the opportunity to defend himself.

This clause embodies a universally recognised principle and the Commission considered no change was required in its wording.

Section 2.

No prisoner shall be compelled to admit that he is guilty of the offence of which he is accused.

The Commission recommended a more comprehensive wording, as follows: "No moral or physical coercion shall be brought to bear on PW to induce them to admit that they are guilty of the charges brought against them."

Although the meaning of the Section is perfectly clear, the Commission considered that it did not cover sufficiently certain forms of pressure which were brought to bear on PW, to admit their guilt of offences they had not committed.

Article 62

Section 1.

The prisoner of war shall have the right to be assisted by a qualified advocate of his own choice and, if necessary, to have recourse to the offices of a competent interpreter. He shall be informed of his right by the detaining Power in good time before the hearing.

The Commission recommended that the following addition should be made to this Section: "PW may also be accompanied and assisted by a fellow-prisoner", and also that it should be specified that PW may be defended by qualified counsel.

According to procedure under certain military laws, the accused may have the assistance of a third party, who cannot, however, call witnesses nor address the court; some DPs even allowed PW to choose counsel among their fellow-prisoners. The Commission thought that this system created certain difficulties; in particular, PW counsel might be unfamiliar with local rules of procedure. The Commission thought opportune to extend the rule whereby PW may be assisted by a fellow-prisoner. By replacing the word "assisted" (present text) by "defended", the Commission wished to stress that this assistance did not go as far as regular defence, which can be assumed only by officially approved counsel.

As regards the privilege of PW to choose counsel, the question was put whether PW may select counsel resident abroad. The Commission thought that this right was limited by the law of the land, which subjects the right to defend a third party before the courts to several conditions which a foreigner cannot fulfil—if at all—before a considerable lapse of time. The Commission did not think necessary to amend the Section on this point; in practice, PW mostly rely on the Protecting Power for the choice of counsel.

Section 2.

Failing a choice on the part of a prisoner, the protecting Power may procure an advocate for him. The detaining Power shall, on the request of the protecting Power, furnish the latter a list of persons qualified to conduct the defence.

The Commission recommended that this Section should be replaced by three provisions:

(a) *The first would add to the present text of Section 2:*

(1) *that the Protecting Power must be granted one week at least to nominate counsel for PW;*

(2) *that counsel nominated by the Protecting Power or by PW themselves shall be given reasonable time before the opening of proceedings, to prepare the defence. This minimum time should be named in the Convention.*

(b) *The second would specify that accused PW shall be furnished with copies, written in a language they can understand, of the charges against them and indication of the legal provisions applicable to their case.*

(c) *The third would stipulate that the advocate shall have all facilities for the preparation of the defence, even in the case of an appeal; that he shall be able to converse freely and privately with the accused, and with the witnesses for the defence he may think fit to consult.*

The Commission agreed on the necessity of specifying the time-limit allowed to PW or to the Protecting Power for the

choice of an advocate, and to the latter to prepare the defence. Experience has shown that quite frequently advocates were informed too late and thus unable even to arrive at court in time. The Commission also approved the ICRC's suggestion to increase facilities granted to counsel pending expiration of the time-limit for appeal, taking into account the situation of PW. In many cases the lack of necessary permits for visiting PW in camp and interviewing witnesses, hampered the advocate in his work.

Sections 3 and 4.

The representatives of the protecting Power shall have the right to attend the hearing of the case.

The only exception to this rule is where the hearing has to be kept secret in the interests of the safety of the State. The detaining Power would then notify the protecting Power accordingly.

The ICRC had quoted, in its report, a suggestion to grant representatives of the Protecting Power the right to ensure themselves the defence of PW under their care. This system would allow PW to be defended by neutral counsel, who would no doubt feel at greater liberty in pleading for the defendant.

After a long debate on this point, the Delegations were of opinion that, on the whole, the national advocates were conscientious in the discharge of their professional duties on behalf of PW. The Commission finally concluded that though the option of defence of PW by a representative of the Protecting Power should not be precluded, it was unwise to stipulate it in the Convention.

As regards the ruling in Section 4, the Commission recognized the danger inherent in this restriction, but thought that it answered an undoubted need, adding that the DPs have recourse to it only in rare cases.

Article 63

A sentence shall only be pronounced on a prisoner of war by the same tribunals and in accordance with the same procedure as in the case of persons belonging to the armed forces of the detaining Power.

The Commission proposed the following addition:

"And it shall be legally valid only if the provisions of the present Chapter have been complied with by the Detaining Power."

It was further recommended that a new Section should be inserted relating to penitentiary regime, assimilating PW to members of the armed forces of the DP, subject to the new stipulations of Article 54.

The principle laid down in this Article amplifies that of Article 46. A recommendation having been made, in connection with this Article, that sentences by special courts should be prohibited, the Commission thought unnecessary to take this point up again concerning Article 63, as was suggested. The adoption of the above proposal was intended to supplement the guarantees relating to the judgment of PW, and to prevent judges dismissing an appeal based on non-observation of Convention stipulations, on the plea that the latter were not embodied in the national legislation.

The Commission thought that the assimilation of PW to members of the DP's armed forces should also extend to the serving of sentences, as the Convention refers to penitentiary regime only in a very general way (Art. 46). However, such assimilation should not deprive PW of the fundamental guarantees afforded by Art. 54. The ICRC had particularly recommended a stipulation authorizing visits by the representatives of the Protecting Power, or of the ICRC, to PW detained in prison. During the war, such permissions were obtained only after prolonged negotiation in each individual case. The Commission recommended that these guarantees, including visits, should be explicitly mentioned in Article 63.

The Commission further supported the ICRC's suggestion that PW confined in prison should be allowed to receive parcels. This depended during the war on the good will of the prison commandants. It seemed, however, advisable to restrict the number of these parcels to one per month. Finally, penalties inflicted upon PW serving judicial sentences should be subject to the regulations applicable to disciplinary penalties and foreseen in Art. 54.

Article 64

Every prisoner of war shall have the right of appeal against any sentence against him in the same manner as persons belonging to the armed forces of the detaining Power.

The Commission proposed to amplify this Article as follows:

“ Every PW shall have the right of appeal, with a view to the quashing of a sentence or of retrial, against any judgment passed on him, in the same manner as members of the armed forces of the DP.”

In its report, the ICRC has stressed the advisability of specifying the procedures of appeal, in particular appeal for fresh trial, which is particularly useful to PW sentenced for offences committed before captivity ; at the time of trial these men are very often not in a position to produce evidence in their favour. The Commission approved this suggestion.

Some Delegations pointed out that their legislations provided for exceptional modes of appeal, but these were available only to their own nationals, and should not be made open to PW by Article 64.

Article 65

Sentences pronounced against prisoners of war shall be communicated immediately to the protecting Power.

The Commission agreed on the following points:

I. *A distinction should be drawn between two kinds of communication to the Protecting Power concerning judgments on PW:*

(a) *a brief notification containing the decision and verdict of the court, which would be sent to the Protecting Power immediately (even if the judgment still has to be confirmed, as under some legislations) ;*

(b) *a detailed notification, sent only if a PW is declared guilty and sentenced ; this would be forwarded to the Protecting Power as soon as the necessary details have been collected.*

2. *The detailed communication should include:*
 - (a) *the judgment and the grounds adduced ;*
 - (b) *a brief summary of the enquiry and proceedings, stressing the arguments for the defence ;*
 - (c) *particulars of the penitentiary where the sentence is to be served.*

3. *As regards the exact address to which these communications should be sent, the procedure laid down in Article 60 would be applicable.*

4. *The brief notification should also be sent to the PW spokesman concerned.*

During the war, the word "judgment" was variously interpreted by DPs, both as regards the kind of decision to be communicated (judicial investigation, dismissal of charges, etc.), and the scope of this communication. Some Powers gave only the wording of the judgment, others also the grounds adduced. The Delegations were unanimous that the Protecting Power should receive the fullest possible information about the proceedings and the result of the trial. It was therefore specified what details should appear in a notification of judgment.

The Commission recognised, however, that the assembling of these details might take the DP some time, whereas the Protecting Power had a primary interest in being informed as soon as possible of any judgment relating to PW (particularly in order to lodge an appeal within the given time-limit). The Commission therefore attempted to reconcile these two requirements by providing for two kinds of notification, one summary and the other detailed.

Though Article 65 foresees dispatch of the notification to the Protecting Power, in practice the notification was sent to that Power's representative. The Commission therefore wished to approve this practice, while abolishing an ambiguity which sometimes led to regrettable loss of time.

As in the case of Article 60, the Commission took up the suggestion of a National Red Cross Society that the PW spokes-

man should also be sent a brief notification of sentences passed on the PW he represented.

Article 66

Section 1.

If sentence of death is passed on a prisoner of war, a communication setting forth in detail the nature and the circumstances of the offence shall be addressed as soon as possible to the representative of the protecting Power, for transmission to the Power in whose armed forces the prisoner served.

Detailed notification being now required for all judgments, the Commission proposed to delete this Section.

Section 2.

The sentence shall not be carried out before the expiration of a period of at least three months from the date of (the receipt of) this communication (by the protecting Power)¹.

The Commission considered it desirable to extend the time-limit from three to six months. The time-limit should be calculated according to the procedure mentioned in Article 60.

As regards the death sentence the Commission recommended:

(1) *that PW and the Protecting Power should be exactly informed in advance of all the offences which may involve the capital penalty;*

(2) *that a stipulation should draw the attention of the tribunal passing such sentence on PW, to the fact that the latter are in the hands of the DP as a result of exceptional circumstances, which were beyond their control, and above all that they owe the said Power no allegiance.*

Though the case of PW sentenced to minor penalties is usually examined and dealt with on the spot by the representatives of the Protecting Power, that of PW liable to the death sentence is generally transmitted for examination to the home

¹ The words in brackets have apparently been added in the official British translation; they are not in the French text, nor in the official American translation.

country, which can thus, if necessary, undertake diplomatic negotiations to obtain a reprieve. In these circumstances, the Commission did not think the time-limit of three months sufficient. It furthermore desired to specify how the time-limit should be calculated, for the present lack of precision in the Convention may lead to extremely serious consequences.

As regards the death sentence itself, the ICRC had suggested that it should be abolished, or at least confined to certain crimes. One Delegation concurred and proposed to restrict it to murder and rape. Other Delegations pointed out the great differences existing in this field between national legislations ; furthermore, a State which generally refuses to inflict the death penalty may find it necessary to allow for it in exceptional circumstances. In their opinion, it would be better not to insert into the Convention stipulations that might reduce the number of signatories to a revised Convention, or oblige certain States, unable to observe these clauses, to have too frequent recourse to the reservation of "war necessity", even if this should be applied *bona fide*. Such a course would lead, in the long run, to the weakening of the Convention. Nevertheless, the Commission considered, on the whole, that in the matter of the death penalty, the arbitrary proceedings of certain belligerents during the recent war must be prevented in the future. The principle laid down in Article 45, that PW owe the DP as a rule no allegiance, is particularly applicable to cases involving the death penalty. The two recommendations given above were therefore considered desirable. The possibility of adjourning execution of the death sentence until the close of hostilities was also considered, but finally rejected, for the same reasons as those advanced against any limitation of the death penalty.

Article 67

No prisoner of war may be deprived of the benefit of the provisions of Article 42 of the present Convention as the result of a judgment or otherwise.

The Commission was of opinion that this stipulation, which is covered by the recommendations relating to Article 63, might be omitted.

PART IV

END OF CAPTIVITY

SECTION I. — DIRECT REPATRIATION AND ACCOMMODATION IN NEUTRAL COUNTRIES

The report submitted by the ICRC with regard to this Section was chiefly based on the conclusions reached by two meetings of neutral members of Mixed Medical Commissions, whom the ICRC consulted in 1945 and 1946 in respect of Articles 68 to 74.

The Commission decided to nominate a Sub-committee to examine this somewhat technical matter. The recommendations of this Sub-committee were, with a few exceptions, approved by the Commission, and its suggestions may be taken to be those of the Commission as a whole.

Article 68

Belligerents shall be required to send back to their own country, without regard to rank or numbers, after rendering them in a fit condition for transport, prisoners of war who are seriously ill or seriously wounded.

Agreements between the belligerents shall therefore determine, as soon as possible, the forms of disablement or sickness requiring direct repatriation and cases which may necessitate accommodation in a neutral country. Pending the conclusion of such agreements, the belligerents may refer to the model draft agreement annexed to the present Convention.

The Commission recommended that Section 1 should be kept as it stands. It was proposed to omit Section 2 and to substitute:

“The following shall be repatriated direct:

“(1) sick and wounded who, according to medical opinion, are not likely to recover within one year, their condition requiring treatment and their mental or physical fitness appearing to have suffered considerable diminution;

“(2) incurably sick and wounded whose mental or physical fitness appears to have suffered considerable diminution;

“(3) sick and wounded who have recovered, but whose mental or physical fitness appears to have suffered considerable diminution.

“The following may be accommodated in neutral countries :

“(1) sick and wounded, whose recovery within one year is expected, such recovery appearing more certain and more rapid if the said sick and wounded are given the benefit of the resources offered by the neutral country ;

“(2) PW whose mental or physical health appears, according to medical opinion, to be seriously threatened by continuance in captivity.

“While belligerents shall be free, if they so desire, to conclude special agreements in order to determine forms of disablement and sickness necessitating direct repatriation or accommodation in a neutral country, such matters shall normally be decided on the grounds of the Model Draft Agreement annexed to the present Convention.”

In its report the ICRC drew attention to the following principles :

1. It should be clearly stipulated that man for man exchanges are prohibited.
2. The Protecting Powers, or in their absence the ICRC would arrange for the practical carrying out of repatriations.
3. It might be stipulated that no PW may be repatriated against his will.
4. Should provision be made for cases where the DP voluntarily consents to the repatriation of PW ?
5. Obligatory posting up of the Model Agreement.
6. It should be provided that, failing special agreements between belligerent States, the Model Agreement must be automatically applied.
7. The Model Agreement should be revised.
8. The option of accommodation in neutral countries, mentioned in Article 68, Section 2, could be made obligatory.

The Commission did not think useful to amend Section 1. One Delegation pointed out, however, sub 3, that explicit reference should be made in this Article to the fact that PW cannot be repatriated against their will during hostilities.

Some Delegations desired that accommodation of specified classes of PW in neutral countries should be obligatory ; others objected that no such obligation could be imposed on neutral countries. Furthermore, practical considerations, especially financial arrangements, might make it impossible for belligerents to fulfil such an obligation.

The majority of the Commission shared this point of view.

Article 69

On the opening of hostilities, belligerents shall come to an understanding as to the appointment of mixed medical commissions. These commissions shall consist of three members, two of whom shall belong to a neutral country and one appointed by the detaining Power ; one of the medical officers of the neutral country shall preside. These mixed medical commissions shall proceed to the examination of sick or wounded prisoners and shall make all appropriate decisions with regard to them.

The decisions of these commissions shall be decided by majority and shall be carried into effect as soon as possible.

The Commission adopted the following text :

Mixed Medical Commissions (MMC) shall be nominated to examine sick and wounded PW and to make decisions regarding them. The appointment, duties and functioning of MMC shall be in accordance with the provisions laid down in the Annex to the present Convention.

Nevertheless, PW who, in the opinion of the medical authorities of the DP, are manifestly seriously injured or sick, shall be repatriated without the formality of examination by a MMC.

The Commission considered it preferable, moreover, to remove certain Articles from this Section and to put all details concerning nomination, duties and functioning of MMC in an annex. The following text for the said Annex was recommended :

1. The MMC mentioned in Art. 69 shall, as therein laid down, consist of two neutral members and a third member ap-

pointed by the DP. One of the neutral members shall take the chair.

2. The two neutral members shall be designated, in consultation with the Protecting Power, by the ICRC, acting at the request of the Power holding the PW to be examined by the said MMC. The neutral members may, as is most convenient, be persons domiciled in their country of origin, or resident in a neutral country or in the territory of the belligerent.

3. The neutral members shall be approved by both belligerents, who shall notify the ICRC and the Protecting Power. As soon as this notification is made, the neutral members shall be considered to have been duly appointed.

4. At the time when the titular neutral members are designated, or as soon as possible thereafter, a sufficient number of substitutes shall also be nominated, to replace the titular members, if need be.

5. If for any reason the ICRC is unable to act, the designation of the neutral members shall be made by the Protecting Power in the country where PW are to be examined.

6. One of the neutral members shall, as far as possible, be a surgeon and the other a physician.

7. The neutral members shall be entirely independent as regards the belligerent States, which shall be bound to give them all possible facilities in the execution of their duties.

8. The terms of service shall be arranged, in consultation with the belligerent on whose territory the neutral members are to function by the ICRC, when making the designations mentioned in paragraphs 2 and 4.

9. As soon as the neutral members have been duly approved, the MMC begin to function with all possible speed, and in any case not later than three months from the date of approval.

10. The MMC shall then undertake the examination of all seriously ill or seriously wounded PW who have been selected, made the necessary application or been presented or nominated according to Art. 70. The MMC shall recommend the repatriation,

rejection or putting back of the candidates. Their decisions shall be made by a majority vote.

11. *Within one month of examination, the decision of the MMC regarding each particular case shall be notified to the DP, to the Protecting Power and to the ICRC. Notification to PW's own Government shall be made through the Protecting Power or the ICRC. The MMC shall also notify their decision to every PW who has been examined, and shall hand certificates to those recommended for repatriation.*

12. *The DP, duly notified of the decisions made according to paragraph 11, shall carry into effect the decisions of the MMC within three months from the date of notification.*

13. *If there are no neutral doctors resident in a country where the creation of a MMC is considered necessary, and if it is impossible for any reason to designate neutral doctors resident in another country, the DP, acting in agreement with the Protecting Power, shall nominate a Medical Commission which shall act as substitute for the MMC. In that case, the procedure outlined in paragraphs 1, 2, 3, 4, 5 and 8 shall not be observed, but in all other respects the Medical Commission shall assume the same duties as a MMC.*

14. *The MMC shall function continuously and visit each camp at intervals not exceeding six months.*

In its report the ICRC made the following suggestions :

A. *Composition of Mixed Medical Commissions (MMC)*

1. *Number of Members :*

MMC shall consist of three Members, two of whom shall belong to the DP.

2. *Substitute Members :*

A sufficient number of neutral substitutes shall be nominated when appointing the neutral members of a Commission.

3. Nomination of Members :

The ICRC shall nominate the titular neutral members, following proposals by the Protecting Power concerned. In the absence of such Protecting Power, the ICRC shall undertake this task. Should the Committee not be in a position to take action, nominations shall be effected by some neutral State chosen by the home country of PW.

B. *Recruiting of Members*

1. Choice of Medical Officers :

Whenever possible army doctors shall be chosen in preference to civilian practitioners. The co-operation should be sought as far as possible of neutral doctors resident in their home countries, rather than of those domiciled in the territory of the DP. Should conditions of war prevent the sending of army doctors to the belligerent countries, civilian practitioners belonging to a neutral State and resident in the territory of the DP may be appointed as members of MMC.

2. Specialists :

Of the neutral practitioners sitting on each Commission, one should, whenever possible, be a surgeon, and another a specialist in internal medicine.

3. List of candidates :

The Army Medical Services of neutral countries shall prepare a list of qualified medical officers, willing to sit on MMC. This list shall be held at the disposal of the Protecting Powers and the ICRC.

4. Appointment of Chairmen :

The appointing body of MMC shall also appoint the Chairmen, account being paid to age, rank, qualifications and preferences of neutral Members of each Commission.

5. Approval :

The list of medical officers nominated as neutral Members of MMC is submitted to the belligerents for their approval. Such approval is the preliminary condition to the working of any MMC.

C. Status of MMC

1. Autonomy :

Neutral members of MMC enjoy complete autonomy in regard to belligerent States. The DP shall, however, grant them all facilities in the execution of their duties.

2. Superior Authorities :

While MMC are functioning, neutral members who are army doctors are not subordinate to the military authorities, but to the body by which they were nominated, and to which their reports must be handed.

D. Duties of MMC

1. It might be advisable to fix a time-limit for the setting up and functioning of MMC. This limit could be from three to six months.

2. Should MMC be authorized to examine repatriated PW, after their return to their home countries ?

Re Section 2 :

1. The term "as soon as possible" should be clearly defined ; a three months' time-limit could be considered.

2. Should not MMC supply certificates to PW due for repatriation ?

3. Should it be stipulated that compatriot doctors or spokesmen may assist MMC ?

The Commission based their work on these proposals and approved several suggestions put forward by the ICRC.

One Delegation proposed that the following practical methods of repatriation and of accommodation in neutral countries should be inserted in Article 69, but the Commission did not agree. The suggestions were as follows :

- (a) PW may consult the retained PW doctor ;
- (b) he may be accepted or refused ;
- (c) if accepted, he shall go before the doctor of the DP who shall decide as to repatriation ;
- (d) if refused, he shall go direct before the doctor of the DP, who shall decide as under (c) ;
- (e) if refused by the doctor of the DP, the PW may, if he wishes, appeal to a MMC.

Article 70

In addition to those prisoners of war selected by the medical officer of the camp, the following shall be inspected by the mixed medical commission mentioned in Article 69, with a view to their direct repatriation or accommodation in a neutral country :

- (a) prisoners who make a direct request to that effect to the medical officer of the camp ;
- (b) prisoners presented by the prisoners' representatives mentioned in Article 43, the latter acting on their own initiative or on the request of the prisoners themselves ;
- (c) prisoners nominated by the Power in whose armed forces they served or by a relief society duly recognised and authorised by that Power.

The Commission proposed the following text :

Besides those who are designated by the camp doctor of the DP, the following sick and wounded PW may appear before, and be examined by the MMC mentioned in Article 69 :

- (a) *sick and wounded designated by a PW medical officer of the same nationality, or by a PW medical officer of an allied belligerent ;*
- (b) *sick and wounded presented by their recognised spokesman, acting on his own initiative or on the request of a PW medical*

officer of the same nationality, or by a PW medical officer of an allied belligerent ;

(c) sick and wounded proposed by the Power in whose forces they have served, or by a relief society duly recognised and authorised by the said Power ;

(d) if neither (a) nor (b) is available to the PW, he may nevertheless present himself for examination, but the MMC shall examine first the cases presented under (a), (b) and (c), and then those under (d).

In its report, the ICRC had stressed the necessity for redrafting this Article. The large number of PW who came before the MMC led to congestion of work and the MMC were much hampered thereby. Two proposals were made: (1) to provide for an adequate number of MMC in every country, or (2) to revise Article 70 so as to diminish the number of candidates.

The ICRC considered that the new Articles should maintain the right of every PW to go before a MMC. In view of the fact that, in practice, PW doctors and camp leaders are influential in persuading men whose health is not seriously impaired, not to go before the MMC, the ICRC suggested that some reference to PW doctors and camp leaders should be made in the new Convention.

The ICRC further raised the question of posting the Model Agreement in camps, as a likely means of reducing the number of PW wishing to be examined by the MMC; it also thought that a fixed period of three months should elapse before PW who have been refused for repatriation may again go before the MMC. Further, it considered that previous notice of the sittings of MMC should be given in all PW camps and labour detachments.

The wording voted shows that the Commission agreed with most of the proposals submitted.

Article 71

Prisoners of war who meet with accidents at work, unless the injury is self-inflicted, shall have the benefit of the same provisions as regards repatriation or accommodation in a neutral country.

The Commission recommended that the present wording be kept.

The ICRC had suggested no amendment to this article, except that it should be compulsory for the DP to give MMC all useful information regarding the circumstances of any accident.

Article 72

During the continuance of hostilities, and for humanitarian reasons, belligerents may conclude agreements with a view to the direct repatriation or accommodation in a neutral country of prisoners of war in good health who have been in captivity for a long time.

The Commission recommended that the words "and for humanitarian reasons" be deleted.

In its report, the ICRC emphasised the distressing situation of PW who had spent over five years in captivity; their morale was affected to such a degree that their return to normal life becomes extremely difficult. It recommended compulsory direct repatriation or accommodation in neutral countries for all men having undergone such prolonged captivity; the same remark applied to elderly PW. The ICRC was not, however, able to suggest the maximum time-limit after which repatriation should take place; this question should be dealt with by the States concerned.

The Commission did not consider it opportune to go so far; it merely recommended the deletion of the words "and for humanitarian reasons", for they led large numbers of PW to believe, quite wrongly, that they were eligible for repatriation, with resulting frustration and disappointment.

Article 73

The expenses of repatriation or transport to a neutral country of prisoners of war shall be borne, as from the frontier of the detaining Power, by the Power in whose armed forces such prisoners served.

Having decided that merchant seamen and crews of civil aircraft should be treated as PW, the Commission recommended

that the words "the Power in whose armed forces such prisoners served" be deleted and replaced by the words "their own Government".

The ICRC thought that this Article needed no revision. The Commission made the slight amendment indicated above.

One Delegation suggested, that the words "équipages d'avions civils" (crews of civil aircraft) should be replaced by "équipages civils d'avions" (civilian air crews). In its opinion, the clause "Power in whose forces PW have served" should be kept, with the addition of the words "or their own Government"—this in view of the fact that, like some merchant seamen and civilian air crews, certain combatants do not necessarily serve in the armed forces of their own Government.

Article 74

No repatriated person shall be employed on active military service.

The Commission found it impossible to define "active military service" in a manner both appropriate and acceptable, and therefore recommended the maintenance of this Article.

In its report, the ICRC had recalled the various opinions expressed on this Article.

According to some, it should be deleted, in view of modern warfare conditions. Others desired, on the contrary, that its scope should be widened so as to cover not only active military service, but also all work contributory to the war effort. The opinion was also expressed that the term "active military service" should be more clearly defined.

Following this last suggestion, one Delegation proposed that the expression "in the armed forces" should replace "active military service".

None of these proposals being entertained by the Commission, the present text was left unchanged.

SECTION II. — LIBERATION AND REPATRIATION
AT THE END OF HOSTILITIES

Article 75

Section I.

When belligerents conclude an armistice convention, they shall normally cause to be included therein provisions concerning the repatriation of prisoners of war. If it has not been possible to insert in that Convention such stipulations, the belligerents shall, nevertheless, enter into communication with each other on the question as soon as possible. In any case, the repatriation of prisoners shall be effected as soon as possible after the conclusion of peace.

The Commission approved by a majority the principle that PW should be repatriated as soon as possible after the close of hostilities.

As regards the practical aspect of repatriation, it was considered that:

(1) *PW should be advised as to steps taken about their repatriation;*

(2) *repatriation should be to the home countries of PW.*

Some Delegations were of opinion that this Section was no longer adapted to conditions of modern warfare. War may cease without any peace treaty, or even armistice. Thus PW may be kept in captivity for a very long time, whereas the essential aim of this clause was apparently to lay down that repatriation should start as soon as possible after the close of hostilities. These views concurred with those of the ICRC, which had stressed that captivity was one of the three methods of making the enemy helpless and that it should therefore cease, as soon as the military situation no longer induced PW to seek to harm the detaining country, i.e. on the cessation of hostilities. Though the Commission, with the exception of one Delegation, agreed that the principle of linking repatriation with the close of hostilities should be emphasized in Section I, several Delegations objected that these two circumstances were obviously connected and that many reasons, chiefly of a

material kind, might prevent a DP releasing its PW for a certain time. The Commission desired to make its position clear by the following suggestion :

“Since it is desirable that PW should be repatriated as soon as possible after the conclusion of hostilities, any armistice drafted by belligerents should, therefore, as a matter of principle, include stipulations relative to PW.

“If it is not found possible to insert such stipulations in the armistice convention, or if no armistice is concluded, belligerents shall nevertheless enter into communication on the matter at the earliest possible moment.

“In any case, PW shall be repatriated as soon as possible after the conclusion of peace.”

It was pointed out that these clauses might prove difficult to apply, should belligerents be unable to contact each other owing to the disappearance, or splitting up, of either government concerned, or in the momentary, or definite absence of a peace treaty. These two cases had been confirmed by experience. The Commission rejected the idea of any time-limit for repatriation, some members remarking that it was impossible to cover such peculiar situations by any explicit provision. Others thought, on the contrary, that the best course would be to delete the third clause of Section 1 which, in their view, laid down a principle contrary to that already adopted. The clause might also be replaced by a statement that repatriation should in all circumstances take place as soon as possible after the end of hostilities. The obligation to repatriate PW would thus be unilateral, and implementing would no longer be hindered by the difficulty, in some cases, of obtaining the consent of both parties.

In its report, the ICRC had raised several points with regard to the practical aspect of repatriation.

The report suggested that PW should be informed of the steps taken in view of their repatriation. The Commission agreed to this.

The extremely bad effect on PW's morale of discriminatory repatriation was stressed in the report, which suggested that

the only conditions of repatriation should be those quoted in Article 4, Section 2 (health, sex, etc.).

The Commission thought that this question raised very complex problems, which it was not competent to deal with, and that a certain latitude should be left to DPs in this respect.

The ICRC also drew attention to the distressing cases of PW repatriated against their will (which sometimes led to suicide), and of PW anxious to be sent home to another country than their country of origin, usually for family or residential reasons. The Commission did not think it possible to make exceptions in view of these special cases, owing to the difficulties they would involve, particularly in countries with strict immigration laws. While recommending that these particular situations should be settled by the Governments concerned, the Commission decided to maintain the general principle of repatriation of all PW nationals of a given country to that country.

Section 2.

Prisoners of war who are subject to criminal proceedings for a crime or offence at common law may, however, be detained until the end of the proceedings, and, if need be, until the expiration of the sentence. The same applies to prisoners convicted for a crime or offence at common law.

The ICRC had alluded in its report to the repatriation of PW guilty of common law offences. Two alternative courses were adopted—some DPs repatriated PW serving sentences not exceeding a certain number of years; others sent home PW undergoing long periods of detention and handed their records to the home country, for any use the latter might think fit to make. The ICRC also emphasized the ill-defined character of the expression “common law”. The Commission duly noted these remarks, and one member proposed that all sentences, which are always more severe in war-time, should be revised at the close of hostilities. Finally, the Commission decided to leave the text as it stands.

Section 3.

By agreement between the belligerents, commissions may be instituted for the purpose of searching for scattered prisoners and ensuring their repatriation.

This Section gave rise to no comment.

PART V

DEATHS OF PRISONERS OF WAR

Article 76

Section 1.

The wills of prisoners of war shall be received and drawn up under the same conditions as for soldiers of the national armed forces.

The Delegation of the ICRC observed that the term "national armed forces" should be interpreted as "armed forces of the DP", and suggested that Section 1 should be modified accordingly. The Commission preferred to keep the present text without amendment.

Section 2.

The same rules shall be followed as regards the documents relative to the certification of the death.

The Commission adopted the text proposed by the ICRC:

"In the absence of any standard form, adopted as far as possible by all belligerents, the same rules shall be followed as regards the certification of deaths."

The Commission recommended the inclusion of a model death certificate in annex to the Convention.

The majority of the Delegation also recommended that an individual death certificate should be made out for every deceased PW; some Delegations did not agree with this rule, which would deprive the DP of the option of making out collective lists.

The adoption of a standard form, which proved most useful during the war, seemed a desirable simplification. It was recommended by the Commission, as suggested by the ICRC.

One Delegation asked, however, that individual death certificates for all deceased PW, should be made compulsory. This would be fairer to next of kin, and the information thus given was always more detailed than on collective lists.

Another Delegation pointed to the additional clerical work which would be thrown on an already overburdened staff, and proposed that the DP should be left free to establish collective lists, which could contain all adequate information. This Delegation also argued that an individual system was inapplicable in the fighting zones, but it was replied that the discussion referred to PW having died in captivity, and not to men killed in action. (See Geneva Convention, Art. 4.)

The majority of the Commission voted for individual death certificates, but three Delegations opposed this decision and preferred the option of drawing up lists.

Section 3.

The belligerents shall ensure that prisoners of war who have died in captivity are honourably buried, and that the graves bear the necessary indications and are treated with respect and suitably maintained.

The Commission agreed to the text submitted by the ICRC, reading thus:

“Belligerents shall ensure that PW who have died in captivity are honourably buried, if possible according to the rites of their religion, and that the graves bear the necessary indications and are treated with respect and properly maintained.”

The Commission further recommended the addition of the following clause:

“PW shall be interred in individual graves, except in cases of necessity, where the use of collective graves is compulsory”.

With regard to cremation, the Commission referred to the decision of the First Commission under this heading.

Furthermore, it recommended to provide stipulations with regard to cases of violent death or serious injury to PW in camps. The general outline of these stipulations should be as follows:

1. *Whenever a PW is killed or seriously wounded, either by a guard, another PW, or any other person, the DP shall at once inform the representative of the Protecting Power and cause an official enquiry to be held. A PW shall be regarded as seriously wounded in all cases where he has to be admitted as an in-patient to a hospital or an infirmary.*

2. *At the enquiry, the evidence of any other PW who witnessed the accident shall be taken.*

3. *When the enquiry is ended, the DP shall communicate to the Protecting Power the findings of the court or officer holding the enquiry, and a statement of the evidence at the enquiry, including the evidence of any PW called as witness.*

4. *If the enquiry shows that any person or persons, is or are culpably responsible for the injury, the DP shall take steps for the prosecution of the said person or persons.*

(a) *Burial and Cremation.*

The ICRC had observed in its report that the term "honourably" was inadequate, and asked that, whenever possible, PW dying in captivity should be buried according to the rites of their religion.

This proposal was carried. As regards prohibition to cremate PW, the Commission advised reference to the decision of the First Commission under this heading (See Geneva Convention Article 4, Section 5).

One Delegation stressed the number of crimes cloaked by burial of PW in collective graves and the consequent distress of next of kin; it suggested that individual burial of PW should be made compulsory. It was objected that too strict a ruling in this matter was impossible and that in some cases collective graves were quite admissible and in no way dishonourable. Agreeing to the principle and taking this last remark into account, the Commission cast about for a suitable wording and

finally adopted the above text, which stipulates that collective graves shall be used only when conditions made them compulsory

(b) *Stipulations relating to cases of violent death of PW in camps.*

One Delegation informed the Commission of their country's experiences during the war. Incidents sometimes arose in which PW were seriously wounded or killed by the guards ; the Governments concerned then agreed on special procedure to punish the guilty persons. The Delegation therefore proposed that similar provisions should be inserted in the Convention, to render sentinels less hasty by the threat of adequate penalties.

The Commission greeted this proposal and recognized that it would prevent, to a certain extent, murders or wilful attacks against PW being hushed up. It recommended the adoption of all stipulations listed under (1) to (4) above.

PART VI

RELIEF AND INFORMATION BUREAUX
CONCERNING PW

Article 77

Section I.

At the commencement of hostilities, each of the belligerent Powers and the neutral Powers who have belligerents in their care, shall institute an official bureau to give information about the prisoners of war in their territory.

The Commission proposed to keep the present text, replacing "the PW in their territory" by "the PW captured by them or under their control".

In its report, the ICRC recalled the recommendation expressed by the majority at the Preliminary Conference (1946), that National Red Cross Societies should be nominated by their Governments to undertake the work defined in this Section.

The Commission did not think advisable to make any such addition to the present wording, which already allows Governments to meet the wishes of these Societies, as they sometimes did during the last war.

Experience has shown that PW under the care of an official bureau may be located outside the territory of the DP. This led the Commission to propose the above amendment.

Sections 2 and 3.

Each of the belligerent Powers shall inform its Information Bureau as soon as possible of all captures of prisoners effected by its armed forces, furnishing them with all particulars of identity at its disposal, to enable the families concerned to be quickly notified, and stating the official addresses to which families may write to the prisoners.

The Information Bureau shall transmit all such information immediately to the Powers concerned, on the one hand through the intermediary of the protecting Powers, and on the other through the Central Agency contemplated in Article 79.

The Commission proposed the following wording for these two Sections:

“Every belligerent Power shall notify its Information Bureau as soon as possible of all PW captured by its armed forces. Neutral Powers shall do likewise in respect of military internees in their territory.

“The Information Bureau shall immediately forward to the Powers concerned, by the quickest means available, all particulars allowing rapid notification to next of kin, and including the addresses to which relatives can send mail for PW. Such details shall be transmitted through the Protecting Powers, on the one hand, and the Central Agency mentioned in Article 28, on the other.”

The Commission also recommended the adoption of a standard identity card for communicating captures and other PW movements to the Central Agency.

Whereas Article 77, Section 1, provides that neutral Powers shall set up an information bureau, the rest of the Article does not state to whom, and by what means, information shall be

communicated. It has happened that certain neutral Powers, adhering strictly to the letter of the Article, refused to furnish the Central Agency with information concerning military internees and escaped PW in their territory. As a rule, it is an advantage for military internees in neutral territory to have their names indexed by the Central Agency. The Commission therefore agreed with the ICRC's suggestion that neutral States should be assimilated to the belligerent Powers as regards the transmission of information. The Commission having decided in connection with Article 1, not to make the Convention applicable to escaped PW in neutral territory, the information furnished would only concern military internees in a neutral country. The term "military internees" will however apply, as one Delegation suggested, to PW accommodated in neutral countries by virtue of Article 68 and following.

The ICRC had pointed out that the clause "furnishing them with all particulars of identity... may write to PW" would be better placed in Section 3, as it lays an obligation on the official bureau of the DP. The Commission agreed with this proposal.

Information concerning PW was usually transmitted to the Central Agency by post or courier. Owing to war conditions, these means of communication were often extremely slow; in some instances, the Agency met this deficiency by a system of transmission by cable. Considering that this means should be generally employed in future, and that the forwarding of information should take place by the most modern methods (wireless, for instance), the Commission adopted the ICRC's proposal to add the words "by the quickest means available" after the words "to the Powers concerned" in Section 3.

The ICRC observed in its report that information about PW reached Geneva during the war in the most varied ways—lists, identity cards, photostats, cables, etc. This did not facilitate the insertion of the data into the card index, nor the transmission to the home countries. To meet the difficulty, the ICRC proposed the adoption, for general use, of a uniform identity card of standard size, filled in by the PW themselves, and endorsed by the DP. This card would comprise four sections, one for the DP, one for the Protecting Power and two for the Central

Agency ; one of the last-named sections would be sent to the home country. Some delegations objected that the filling-in of four sections would make too much work for the camp staff and that a great many PW would not be able to fill in their cards themselves. The Commission, refraining from going into technical arguments and details, recommended in principle the adoption of a standard identity card.

Sections 4 and 5.

The Information Bureau, being charged with replying to all enquiries relative to prisoners of war, shall receive from the various services concerned all particulars respecting internments and transfers, releases on parole, repatriations, escapes, stays in hospitals, and deaths, together with all other particulars necessary for establishing and keeping up to date an individual record for each prisoner of war.

The Bureau shall note in this record, as far as possible, and subject to the provisions of Article 5, the regimental number, names and surnames, date and place of birth, rank and unit of the prisoner, the surname of the father and name of the mother, the address of the person to be notified in case of accident, wounds, dates and places of capture, of internment, of wounds, of death, together with all other important particulars.

Apart from their recommendation relating to the standard identity card, the Commission did not think itself competent to discuss the technical details contained in parts of Article 77, particularly Sections 4 and 5. It decided to invite the ICRC to collect and study the various proposals made on the subject, the most important being that the Committee should prepare a hand-book showing the methods adopted by the various international information bureaux, in order to facilitate the implementing of Article 77.

Section 6.

Weekly lists containing all additional particulars capable of facilitating the identification of each prisoner shall be transmitted to the interested Powers.

The Commission proposed to amend the wording of this section as follows :

Information concerning the state of health of wounded or sick PW shall be furnished regularly, if possible every week.

The provision as it stands was not in general use during the last war, and the Central Agency, either spontaneously or by request, applied to DPs for particulars that weekly lists would probably not have given in sufficient detail.

The ICRC had, however, made an observation, in which it was supported by several delegations, with regard to the necessity of regular information about the state of health of wounded or sick PW. A new Section 6, proposed to this effect, met with the unanimous approval of all delegations, one of which, however, would have preferred this information to be restricted to seriously wounded and sick.

Sections 7 and 8.

The individual record of a prisoner of war shall be sent after the conclusion of peace to the Power in whose service he was.

The Information Bureau shall also be required to collect all personal effects, valuables correspondence, pay-books, identity tokens, etc. which have been left by prisoners of war who have been repatriated or released on parole, or who have escaped or died, and to transmit them to the countries concerned.

No comments were made with regard to Article 7.

In view of the remarks made by several delegations regarding Section 8, the Commission decided to invite the ICRC to study the matter. Some of the remarks referred to the ICRC's query about the forwarding of personal effects of deceased PW to the home countries.

Article 78

Societies for the relief of prisoners of war, regularly constituted in accordance with the laws of their country, and having for their object to serve as intermediaries for charitable purposes, shall receive from the belligerents, for themselves and their duly accredited agents, all facilities for the efficacious performance of their humane task within the limits imposed by military exigencies. Representatives of these societies shall be permitted to distribute relief in the camps and at the halting places of repatriated prisoners under a personal permit issued by the military

authority, and on giving an undertaking in writing to comply with all routine and police orders which the said authority shall prescribe.

For the above Article, the Commission adopted the text proposed by one Delegation, namely:—

“It is accepted as a matter of principle that relief agencies shall be permitted, subject to such regulations as the DP may be obliged to prescribe to meet minimum demands of security, or any other reasonable necessity, to deliver to PW relief supplies and recreational, educational and devotional material, regardless of the origin of such supplies and material. Such agencies may be indigenous to the countries where PW are detained, or established in other countries, or international in character.

“It shall be permissible for a DP to limit the number of such agencies which may be authorized to function in areas under its control, provided, however, that such limitation shall not preclude the effective operation of adequate relief measures for all PW.

“The special position of the ICRC in this field shall at all times be recognized and respected.

“Receipts shall be given by the administrative authorities of any camp to which relief supplies or recreational, educational and devotional material are delivered, and either at the time of delivery, or within a short period thereafter, receipts signed by the PW representative in the camp covering each shipment shall be forwarded to the relief agency from which the supplies were received.”

The present Article 78 is the exact replica of Article 15 of the Fourth Hague Convention of 1907, which referred to welfare societies acting in their own territory in behalf of PW detained therein; but the wording is too vague to meet present conditions; it may apply to welfare work in behalf of PW nationals in enemy hands, or of enemy PW, although the second alternative is now exceptional; it could even include the ICRC's work in the field of relief.

In its report, the ICRC referred to the recommendation made by the Preliminary Conference (1946), that National Red Cross Societies should be named in Article 78. The ICRC also

submitted a resolution passed by the Conference of religious Associations for PW relief, that Article 78 should mention "national and international relief agencies acting with the consent of the belligerents in whose territory they may carry out their work".

The text adopted for Article 78, proposed by one delegation, was unanimously approved. It is suited to present-day conditions for relief work in behalf of PW, and does not limit to Red Cross Societies only the charitable purposes set out in this Article.

Although the ICRC's qualification as a recognised Aid Society has never been questioned, and though its work in favour of PW has been duly approved by the recommendations adopted in respect of Art. 39, 86, and 88, the Commission wished to define in Art. 78 the special position of the ICRC in regard to other relief societies. Thus, when the suggestion was made that the societies designated by Article 78 should be authorised to issue relief supplies to PW wherever they might be situated, several Delegations intimated that, whereas their governments had no desire to restrict the ICRC's relief activities, they would never agree to other societies enjoying treaty rights that would allow them to travel to all parts of their territories.

Section 4 of the revised text, which concerns the forwarding of receipts to the relief agencies, may be considered, from the latter's point of view, as a confirmation of the resolution adopted in respect of Article 37.

Article 79

A Central Agency of information regarding prisoners of war shall be established in a neutral country. The International Red Cross Committee shall, if they consider it necessary, propose to the Powers concerned the organisation of such an agency.

This agency shall be charged with the duty of collecting all information regarding prisoners which they may be able to obtain through official or private channels, and the agency shall transmit the information as rapidly as possible to the prisoners' own country, or the Power in whose service they have been.

The provisions shall not be interpreted as restricting the humanitarian work of the International Red Cross Committee.

The Commission recommended that Section I should also specify that the Central Agency shall receive from belligerents all facilities for such forwarding of news.

Further, it recommended that the governments concerned should grant the ICRC a special wavelength and all necessary facilities for broadcasting.

The Commission furthermore expressed the wish that governments should study with care the question of the financing of the Central Prisoners of War Agency.

No difficulties had arisen regarding the implementing of this Article, of which the wording is sufficiently general to meet all war-time emergencies. This applied in particular to the establishment of branch offices of the Agency, which was practised to some extent during the war, and which was recommended by the Preliminary Conference (1946). The ICRC did not, therefore, suggest any amendment to the principle of Article 79, which the Commission unanimously agreed should be retained.

The ICRC recalled in its report that during the last months of the war, the Swiss authorities granted it the use of a short-wave station for the Central Agency's broadcasts. In view of the rapidity and value of these broadcasts, the ICRC thought that Article 79 should stipulate that the Central Agency shall be allowed a special wavelength. While recognising the value of this suggestion, with which it in principle agreed, the Commission thought that it was not qualified to make any ruling on the subject. The question should first be settled by the international organisations concerned, in particular by the International Telecommunications Union.

The ICRC also drew attention to the financing of the Agency, for which no provision whatever is made in the Convention. No insuperable difficulties arose in this connexion during the recent war, but this was due to the grants made by countries directly concerned with its activities. A solution should be found to ensure the most efficient working of the Agency. Without entering into the merits of the case and its technical aspects, the Commission unanimously concluded that the ICRC

should receive all necessary financial support, and that the financing of the Agency should be given the most careful consideration.

Article 80

Information Bureaux shall enjoy exemption from fees on postal matter as well as all the exemptions prescribed in Article 38.

The Commission decided to invite the ICRC to propose to the responsible bodies that the Central PW Agency should also be granted postal franchise. Telegraphic franchise should further be granted, as also to Information Bureaux, as far as possible (either total exemption, or reduction of charges).

Article 80 is a complement to Article 38, which provides for exemption from postal charges on letters, remittances and parcels for PW; it is confirmed by Article 49 of the World Postal Convention of Buenos Ayres. Although mentioning official information bureaux, this Convention makes no special reference to the Central PW Agency. The latter had, therefore, at the beginning of the war, to demand confirmation of its rights under Article 80. During the course of the war, the Central Agency asked, and was granted, exemption from postal charges on its mail and consignments for PW and for all classes of war victims. The Commission agreed that the World Postal Union should be requested to confirm this factual situation by an explicit ruling.

Cable charges were also an extremely heavy burden on the Central Agency, and could only be resorted to on the understanding that these costs would be refunded by the States concerned. The Preliminary Conference (1946) recommended that the Central PW Agency should be enabled to send or receive telegraphic communications free of charge, since this would be of great advantage and a relief to the Agency's financial commitments.

The Commission concurred in this recommendation, but observed that total exemption from charges might be more difficult to secure in this field, owing to the fact that some cable systems were not under State ownership.

PART VII

APPLICATION OF THE CONVENTION TO CERTAIN CLASSES OF CIVILIANS

Article 81

(See Article 1).

PART VIII

EXECUTION OF THE CONVENTION

SECTION I. — GENERAL PROVISIONS

Article 82

Section 1.

The provisions of the present Convention shall be respected by the High Contracting Parties in all circumstances.

The Commission agreed on the following text:

“The provisions of the present Convention shall be respected by the High Contracting Parties in all circumstances, and until repatriation and release of PW.”

The Commission made however a reservation as regards application of the Convention in exceptional circumstances.

(See commentary to Article 1, III, 2, Operative Period of Application, p. 118).

Section 2.

In time of war, if one of the belligerents is not a party to the Convention, its provisions shall, nevertheless, remain binding as between the belligerents who are parties thereto.

The Commission did not propose to amend this clause.

Article 83

Section 1.

The High Contracting Parties reserve to themselves the right to conclude special conventions on all questions relating to prisoners of war, concerning which they may consider it desirable to make special provision.

By a large majority, the Commission approved the following text, submitted by the Delegation of the ICRC:

In the absence of the special agreements explicitly provided for in Articles, the High Contracting Parties reserve the right to conclude particular conventions on all questions relating to PW, concerning which it may appear desirable to make special provision. Such conventions shall in no circumstances reduce the standard of treatment for PW, as regulated by the present Convention.

In its report, the ICRC remarked that Section 1, taken in connection with Section 2, should be so interpreted that special agreements concluded between belligerents could not have as their object to worsen PW's situation. During the war, agreements were nevertheless concluded which deprived PW of some of their essential rights; the ICRC therefore proposed that the above principle should be embodied in the Convention.

The majority of the Commission approved this text, all the Delegations stressing that it was inadmissible that belligerents should conclude agreements creating exceptions to the Convention and unfavourable to PW.

Three Delegations, however, rejected the above proposal and explicitly reserved their opinions on the following grounds:

The right of sovereign States to conclude special agreements cannot be restricted without running the risk of frequent violations of the Conventions. Furthermore, one can scarcely foresee whether an agreement favourable to PW when it is concluded, may not become unfavourable at a later date.

Section 2.

Prisoners of war shall continue to enjoy the benefits of these agreements until their repatriation has been effected, subject to any provisions

expressly to the contrary contained in the above-mentioned agreements or in subsequent agreements, and subject to any more favourable measures by one or the other of the belligerent Powers concerning the prisoners detained by that Power.

The Commission did not amend this Section.

Section 3.

In order to ensure the application, on both sides, of the provisions of the present Convention, and to facilitate the conclusion of the special conventions mentioned above, the belligerents may, at the commencement of hostilities, authorise meetings of representatives of the respective authorities charged with the administration of prisoners of war.

The Commission did not entertain the proposal to replace the word "may" by "must", thus making the clause compulsory, and agreed that the present wording should be kept.

The conclusions reached by the Preliminary Conference (1946) induced the ICRC to propose in its report that the optional meetings quoted in this Section should be made obligatory for belligerents. Such meetings were fairly successful during the first World War, but were never resorted to during the recent conflict.

The Commission agreed on the desirability of representatives of belligerent Powers meeting during hostilities, but did not believe this obligation should be imposed on the contracting Parties, for the following reasons :

It is better to leave belligerents the option of meeting, if they desire ; even if such meetings were made obligatory, it would be impossible to compel participants to discuss and make decisions.

In the case of civil war, nothing could be done if one party refused to recognize the other.

Should two allies agree not to treat separately with the common enemy, either of them could not take part singly in a meeting with the adversary.

Lastly, practical difficulties would often make any such provision impossible of application.

Article 84

Section 1.

The text of the present Convention and of the special conventions mentioned in the preceding article shall be posted, whenever possible, in the native language of the prisoners of war, in places where it may be consulted by all the prisoners.

The Commission agreed as to the necessity of completing the Convention, by providing that:

(1) *the text shall be brought to the knowledge of PW and, to this effect shall be posted in the camps, in the language of the PW concerned;*

(2) *the DP shall instruct guards and personnel of PW camps in the stipulations of the Convention;*

(3) *Governments should, as far as possible, bring the said stipulations to the knowledge of their forces.*

The ICRC pointed out that the wording of the present Article lacked precision, and proposed that it should be completed as follows :

(a) All PW must be informed of the contents of the Convention, which must therefore be posted in all camps and labour detachments.

(b) The camp guard and management must be instructed in the provisions of the Convention.

(c) Governments shall be requested to make instruction in the Convention part of the training of armed forces.

The ICRC further quoted the proposal made by a Red Cross Society, that all signatories to the Convention should undertake to include the essential parts of the Convention in their military regulations.

Several Delegations objected that, from the practical point of view, it would be difficult to provide copies for all, and particularly to have the Convention taught in the forces, as recruits already have more than enough to do.

The Commission recognized, however, the value of these suggestions ; wider publication of the Convention was necessary in order to ensure its better application, and the above difficulties could be overcome with governmental support. It was thus decided to recommend the said principle in the above wording.

One Delegation remarked that the final draft of this Section should take account of the recommendation accepted in connexion with Article 18, Section 1, which is similar to that quoted sub (2).

Section 2.

The text of these conventions shall be communicated, on their request, to prisoners who are unable to inform themselves of the text posted.

The Commission passed this Section without debate.

Article 85

The High Contracting Parties shall communicate to each other, through the intermediary of the Swiss Federal Council, the official translations of the present Convention, together with such laws and regulations as they may adopt to ensure the application of the present Convention.

The Commission approved a proposal made by a Delegation to complete the text of this Article by the addition, after "Swiss Federal Council", of the words "and during hostilities through the intermediary of the Protecting Power".

Other Delegations having alluded to several translation problems which had arisen during the study of the Convention, the Commission recommended that when the revised Convention is signed, at least two authentic texts, one in French and one in English, should be adopted.

SECTION II. — ORGANISATION OF CONTROL

Article 86

The High Contracting Parties recognise that a guarantee of the regular application of the present Convention will be found in the possibility

of collaboration between the Protecting Powers charged with the protection of the interests of the belligerents ; in this connection, the Protecting Powers may, apart from their diplomatic personnel, appoint delegates from among their own nationals or the nationals of other neutral Powers. The appointment of these delegates shall be subject to the approval of the belligerent with whom they are to carry out their mission.

The representatives or the protecting Power or their recognised delegates shall be authorised to proceed to any place, without exception, where prisoners of war are interned. They shall have access to all premises occupied by prisoners and may hold conversation with prisoners, as a general rule without witnesses, either personally or through the intermediary of interpreters.

Belligerents shall facilitate as much as possible the task of the representatives or recognised delegates of the Protecting Power. The military authorities shall be informed of their visits.

Belligerents may mutually agree to allow persons of the prisoners' own nationality to participate in the tours of inspection.

The Commission, by a majority vote, expressed the following recommendations :

1. *A treaty stipulation should provide for the protection of PW in case a belligerent's interests are no longer defended by a Protecting Power.*

The following text might be considered :

2. *In the event of a belligerent's interests not being defended by a Protecting Power, the ICRC or some other impartial humanitarian organization may accept to transmit the notifications and information, the exchange of which is provided for by the present Convention, between the Detaining and the Protecting Powers.*

3. *The camp visits by delegates of the ICRC, should be mentioned in Article 86. Subject to considerations of military security, the delegates should be authorized to visit PW camps. The right for the DP to refuse its approval to any delegate not having its confidence should, however, be reserved.*

4. *The right to visit camps should be extended to delegates of other recognized international organizations.*

5. *In Section 2, the words "as a general rule" should be deleted; further, in the second clause the words "and in places where they work" should be added after the words "occupied by prisoners".*

6. *The frequency and duration of visits should not be limited, and delegates should be entirely free to choose the camps they may desire to visit.*

7. *In the absence of any regular Protecting Power, the matter of legal assistance to PW should be entrusted to a neutral and independent organization.*

It should be obligatory on the DP to take all necessary steps to secure the co-operation of such an organization, should the home Government no longer be able to do so.

It is not desirable to specify beforehand what this organization shall be, nor, in consequence, to nominate the ICRC, which has itself indicated the limits it encountered when acting as substitute for a Protecting Power in the field of legal assistance¹.

As regards repression of breaches of the Convention, or of abuses committed in its application, the Commission decided to approve the principles laid down by the First Commission, which are embodied in Article 33 and 34 of the revised Geneva Convention for the Wounded and Sick. It was remarked, however, and duly noted, that since Protecting Powers exist for the supervision of the implementing of the PW Convention—a circumstance which is not provided for in the Geneva Convention—the principles laid down in Article 34 (mode of enquiry in case of violation) can only be embodied in the PW Convention on the assumption that such Protecting Powers really exist.

In its report, the ICRC recalled the work it had done in behalf of PW, and the fact that it was often compelled to invite belligerent States to respect treaty stipulations. The work of the ICRC was pursued side by side with that of the Protecting Power, in so far as the latter existed. As a rule, useful co-operation was thus established. It must be admitted, however, that supervision of the treatment of PW often proved inadequate

¹ See Art. 60.

during the war. The chief causes of this failure were, firstly, the lack of good-will on the part of certain States ; secondly, the inadequacy of present treaty stipulations. The Preliminary Conference (1946) recommended, in agreement with the ICRC, that means of supervision should be reinforced. The ICRC submitted a number of suggestions to the Conference, made either by itself or by National Red Cross Societies, as follows :

1. The Convention should provide for the possible absence of any Protecting Power able to act in behalf of PW of a given nationality. The appointment of a substitute should be foreseen. The ICRC considers that the DP is under the obligation to supply this deficiency in some way or another. !

2. It would be desirable that ICRC delegates should enjoy certain privileges, in particular rapid means of transport and travel permits.

The following opinions were expressed during the Preliminary Conference (1946) in this connexion :

(1) the role of the ICRC delegates should be mentioned in Article 86 ;

(2) future treaty stipulations should state clearly how their application shall be supervised ;

(3) the status of delegates entrusted with this duty should no longer depend, as hitherto, on arrangements between their principals and each belligerent or neutral State, but on treaty stipulations, obligatory for all signatories to any future agreement.

If this proposal is adopted, it would be advisable to confer upon the ICRC representatives rights similar to those of the representatives of the Protecting Power, as these rights result from the present Article, with certain differences due to the aims pursued by each of these institutions. Provision should then be made for the ICRC delegates who are not diplomatists, and whose financial resources are not assured, to enjoy certain travel facilities (travel permits, priorities, free transport in army vehicles and trains).

Mention of ICRC delegates in treaty stipulations should not, however, restrict their freedom of action.

3. Delegates charged with control duties should be entitled to make their visits at any time and without previous notice ; they should therefore have general permits to visit all the camps situated in the territory of a belligerent.

4. One National Red Cross Society, in a draft revision of the Convention, suggested that permanent neutral delegates should be established in all camps holding a very large number of PW, e.g. over 20,000.

5. Interviews with PW should be without witnesses.

6. Certain Red Cross Societies suggested that the option offered by Section 4, allowing persons of PW's own nationality to visit the camps, should become general and compulsory. It should be stipulated that such nationals might work exclusively in co-operation with the representatives of the Protecting Power, and be subordinate to them.

7. The present text of this Article makes it appear that neutral delegates are normally able to visit PW in prisons, penitentiaries or guard rooms. It might be advisable expressly to mention this right of neutral representatives to visit PW detained in these places.

Such are the means suggested by the ICRC for reinforcing the control of the application of the Convention.

It must be confessed, however, that all these measures will remain ineffective, if no sanctions are provided for flagrant and constant violations of the Convention. The present Convention supplies none. Various kinds of sanctions may be contemplated, and the ICRC had enumerated some of them.

The ICRC had moreover proposed the following methods for making good the absence of a Protecting Power :

The Protecting Power's task to be entrusted to :

- (a) the National Red Cross of the DP ;
- (b) the diplomatic representatives of a neutral State ;

(c) the Protecting Power of a State allied to the home country of the PW concerned ;

(d) a group of neutral Powers.

During the debate on this Article, the Commission unanimously agreed that the Protecting Power must be non-belligerent and neutral in the conflict. The text quoted above was supported by a large majority. Some members preferred, however, that the ICRC should not be expressly mentioned and wished to substitute the terms "any independent and neutral agency" for "the ICRC or some other neutral humanitarian agency", in order not to exclude action by a neutral Government. It was objected that the Convention should provide for automatic substitution of the Protecting Power, particularly if a country is occupied and therefore unable to appoint a Protecting Power.

When discussing the role of ICRC delegates, the Commission recommended that they should be mentioned in Article 86 and have permission to visit camps, subject to considerations of military security of the DP.

The Commission, however, rejected the permanent establishment of delegates in PW camps, arguing that, sooner or later, they would come to be assimilated to the camp personnel and thus lose PW's confidence.

The proposal of some Red Cross Societies to render obligatory the option left to belligerents to allow persons of PW's own nationality to participate in visits, was not entertained. The desire expressed by a Delegation to add the words "without prejudice to the role of the representatives of the Protecting Power" was duly noted.

Finally, the Commission adopted the whole of the above recommendations.

Article 87

In the event of dispute between the belligerents regarding the application of the provisions of the present Convention, the protecting Powers shall, as far as possible, lend their good offices with the object of settling the dispute.

To this end, each of the protecting Powers may, for instance, propose to the belligerents concerned that a conference of representatives of the latter should be held, on suitably chosen neutral territory. The belligerents shall be required to give effect to proposals made to them with this object. The protecting Power may, if necessary, submit for the approval of the Powers in dispute, the name of a person belonging to a neutral Power or nominated by the International Red Cross Committee, who shall be invited to take part in this conference.

The Commission recommended that this Article be worded in more general terms. Opportunity should be left to the Protecting Power to convene a meeting of representatives of the belligerents concerned, not only in the event of dispute (as proposed in the present text), but whenever the Protecting Power considers such a meeting necessary in the interests of PW.

One Delegation even asked that the convocation of these meetings be made obligatory.

The ICRC had made no suggestions in respect of this Article.

Article 88

The foregoing provisions do not constitute any obstacle to the humanitarian work which the International Red Cross Committee may perform for the protection of prisoners of war with the consent of the belligerents concerned.

The Commission, considering that this Article does not cover one of the most important and useful activities of the ICRC in time of war, i.e. material and intellectual relief for PW, proposed to amend it as follows:

The provisions of the present Convention do not constitute any obstacle to the humanitarian work which the ICRC may perform for the protection and relief of PW, with the consent of the belligerents concerned.

SECTION III. — FINAL PROVISIONS

Articles 89 to 97

The Commission decided to entrust the revision and wording of these Articles to legal experts.

Report of the Third Commission

CONDITION AND PROTECTION OF CIVILIANS IN TIME OF WAR

INTRODUCTION

The following report comprises a Preamble and two Parts.

Part I, which concerns the protection of Civilian Enemy Aliens, consists of draft treaty stipulations, and four annexed Regulations. Part II deals with the protection of Civilian Population in general.

In its reports to the Conference, the ICRC had proposed the examination of a number of principles applicable to all civilians, whatever their nationality and wherever they might be ; these principles would thus be valid for the nationals of a belligerent also. The members of the Conference agreed upon the necessity of protecting civilian populations in general, but did not go into any detailed regulations. They were satisfied with expressing recommendations on the points which should be covered by treaty stipulations, and entrusted exhaustive study of these points to the ICRC.

The Regulations annexed to Part I were drawn up by a drafting committee, chiefly on the basis of texts framed by Delegations, and in agreement with the principles adopted by the Commission.

The draft scheme of treaty stipulations annexed to the Report completes Part I. This draft was submitted by a Delegation to the Conference and amended on certain points by two other Delegations. It was neither discussed nor amended by the Commission who, nevertheless, decided to include it in the Report for reference.

PREAMBLE

On attacking the problem of giving civilian populations in war time the protection to which they are entitled from a humanitarian point of view, the Conference was faced from the outset with fundamental difficulties. These arise from the fact that existing conventions and agreements provide a legal definition of the state of war, but that this definition does not always apply to situation such as have occurred in recent years and which in reality corresponded to a state of war.

In certain cases the aggressors eluded the obligation of implementing the Conventions to which they were signatory, by refusing to recognise the existence of a state of war. At other times, the setting up of puppet Governments served to disguise a de facto state of war under apparently legal conditions of peace. In yet other instances, a legal state of war subsisted—since hostilities had not been brought to a conclusion by recognised legal procedure—although existing conditions were no longer, in reality, conditions of war.

The Conference considered itself unable to make recommendations of any value unless these referred to a factual state of war, even if this state of war were defined by the Powers concerned in terms that implied no recognition of any such state. The Conference had in mind, in particular, terms like "legitimate self-defence", "penetration", "protection", "necessity for the maintenance of internal security", and "factual armed conflicts", including civil wars. These general observations must be borne in mind when reading the recommendations made by the Commission.

Whenever the term "competent international body" was used, the Conference wished to imply that its recommendations on some particular point could be usefully implemented only if some internationally recognised agency was able to assume, in the absence of any Protecting Power and for executive purposes at least, some of the obligations formerly devolving on the said Protecting Power. The Conference did not wish to anticipate future decisions as regards the nature of the said agency. The use in the text of the expression "competent international body" is justified by the

fact that certain functions could hardly be undertaken by the ICRC—e.g. those which concern the protection of nationals of a given country, should the Protecting Power cease to act. The expression should, therefore, not be considered as restricting in any way the competency of the ICRC in the field of humanitarian work, where it is peculiarly qualified to pursue its customary activities. The expression allows for the creation, by a particular or general agreement, of a new international body, whose competency would then be defined.

Referring to the idea of an international competent body, one Delegation expressed the view that this new organization should be the ICRC, who would be the moving spirit, but to whom other bodies would lend their support. This would allow the new organization to fulfil the tasks entrusted to it.

Other Delegations were of opinion that the ICRC alone should be understood by the term “competent international body”, and that the Committee should therefore assume the tasks foreseen by the Convention. Several Delegations thought, however, that the ICRC should not be asked to undertake certain duties of a political nature, in order to avoid endangering its humanitarian activities.

Consequently, it would be desirable to set up another international organization side by side with the ICRC, the latter to carry out the functions natural to its customary mission. The division of competency would be settled later.

Such was the point of view which led to the text adopted by the Conference. The meeting also thought that the presence of some new organization would be necessary, should the ICRC be unable to function, owing to hazards of war.

PART I

PROTECTION OF CIVILIAN ENEMY ALIENS IN TIME OF WAR

CHAPTER I. — GENERAL PROVISIONS

Article I

The present Convention is applicable between the contracting Parties from the outset of any armed conflict, whether the latter has or has not been recognised as a state of war by the parties concerned.

In case of civil war in any part of the home or colonial territory of one of the contracting Parties, the principles of the Convention shall be equally applied by the said Party, on condition that the adverse Party also observes them.

The Convention is applicable also in the event of territorial occupation in the absence of any state of war.

This Article was adopted in order to make the Convention applicable to all cases of armed conflict, whatever their juridical nature, and to every occupation of territories, even should this occupation not be forcible. It also lays down the rule that the principles of the Convention shall be implemented in case of civil war.

The Commission, following the proposal of two Delegations, expressed the opinion that Art. 1 of the future Convention should specify that the term "belligerent", which occurs repeatedly in the treaty text, must also apply, by way of corollary, to all signatory Powers placed in the positions named in Art. 1, and that the use of this term can in no way restrict the scope of the said Article.

Article 2

The civilians to whom the stipulations of the present Conventions apply, are the persons who fulfil the following conditions:

(a) *That of not belonging to the armed forces, as defined in the Convention relative to the treatment of Prisoners of War ;*

(b) *That of being nationals of an enemy country ;*

(c) *That of being either in the territory of a belligerent, on board a vessel of the latter's nationality, or in territory occupied by him, or of having fallen by any other means into his hands.*

In its report, the ICRC had proposed the following text :

“(a) That of not belonging to the armed forces, as defined in the PW Convention ;

“(b) That of being nationals of an enemy country and of residing in the territory of a belligerent, or in a territory occupied by him.”

As regards (a), the members of the Conference considered that the text defining armed forces should not perpetuate reference to the Regulations attached to the Fourth Hague Convention. The definition should be taken from the PW Convention, and would refuse to so-called “partisans” protection under the Convention relating to civilians, the Conference having considered “partisans” to be members of armed forces, when they fulfil certain conditions. As regards (b), the Delegates preferred, for the sake of clarity, to divide the clause into two parts, and to place the condition of belonging to an enemy country in a separate Section.

The third condition (territorial) was completed by the addition of the words “on board a vessel of the latter's nationality”, thus extending protection under the Convention to seamen of enemy nationality serving on board vessels belonging to belligerents, while merchant seamen captured during hostilities would be treated as PW. The words “or of having fallen by any other means into his hands” reaffirm the idea expressed in Art. 12 of the Tokyo Draft¹, and were added to cover all future contingencies.

¹ Art. 12, Tokyo Draft: “Enemy civilians who for any reason may be brought into the territory of a belligerent during hostilities shall benefit by the same guarantees as those who were in the territory at the outset of military operations”.

One Delegation drew attention to the fact that Art. 5 and 6 of the XIth Hague Convention of 1907 are contradictory to the decisions made by the Conference. In view of the present draft, the Delegation considered that the Detaining Power is free to apply either Art. 6 of the XIth Hague Convention, the Convention relative to Civilians, or the PW Convention.

Another Delegation submitted the following interpretation of the Articles proposed by the two Commissions with regard to merchant seamen. In its opinion, merchant seamen should be considered as civilians, but treated as PW if interned. The same Delegation also observed that Art. 5 and 6 of the XIth Hague Convention of 1907 had become obsolete.

Article 2 (Section 2)

No measures taken by the occupying Power with regard to an occupied country, such as alleged total or partial annexation of territory, changes in institutions or government, and so forth, can deprive the civilian population of the rights and protection guaranteed under the present Convention.

In its report, the ICRC had proposed the following text :

“ In case of annexation of the whole or part of an occupied State by the occupying Power, the civilian population of the occupied country shall, until the signature of final peace treaties, enjoy the rights guaranteed by the present Convention ”.

One delegate pointed out that this wording seemed to recognize, to a certain degree, the legality of a total or partial annexation during hostilities. To obviate this misunderstanding it was decided to add the word “ alleged ” before “ total or partial annexation ”. The Conference, going further than the ICRC proposal, considered it useful to provide also for the case of changes in institutions or government carried out by the occupying State. The meeting was further of opinion that the expression “ until the signature of the peace treaties ” was ambiguous and inadequate, and that it should be deleted.

Article 3

All other civilians who are not nationals of the belligerent State in whose hands they are, shall in all circumstances enjoy treatment at least as favourable as that afforded to enemy civilians.

This text was proposed by the ICRC in its report. Its object was to place under the protection of the Convention all civilians not nationals of the belligerent State in whose hands they might be, so as to cover stateless persons, neutrals, nationals of satellite or subject States, and so on. This provision makes the words "enemy civilians", which appear in the various clauses of the Convention, also apply to other civilians who are not nationals of the State in whose power they are.

Article 4

Enemy aliens shall, in all circumstances, be respected, protected and treated humanely.

Women shall be treated with all consideration due to their sex, and children with all consideration due to their age and helpless condition.

Articles 4 to 8 inclusive are of a general nature and apply to all civilians, wherever they may be. Article 4 provides in comprehensive terms for the special protection due to women and children.

Article 5

Measures of reprisal are prohibited

The ICRC had proposed that reprisals against civilians, whether in the territory of a belligerent or in occupied territory, should be prohibited. The Conference shared this view.

Article 6

The taking of hostages is prohibited.

The ICRC had suggested that the taking of hostages should be forbidden in all cases, thus going beyond the Tokyo Draft

which prohibited the taking of hostages among civilians in the territory of a belligerent, but allowed it in occupied territories, in exceptional circumstances and subject to the provision that such hostages should never be put to death, nor subjected to corporal punishment. The Conference adopted the Committee's proposal.

Article 7

No physical violence, nor any means of intimidation shall be employed, to oblige enemy aliens in a belligerent territory to give information.

No coercion shall be placed upon them, in order to secure information concerning the activities of members of their families.

The Hague Regulations of 1907 (Art. 44) forbid a belligerent "to force the inhabitants of territory occupied by it to furnish information about the army of the other belligerent, or about its means of defence". The Tokyo Draft (Art. 18) refers, on this matter, to the Hague Regulations; as regards civilians in the territory of a belligerent it stipulates that these civilians shall be "protected against measures of violence, insults and public curiosity". The Commission thought that matters should be taken further, and that a distinction should be drawn between information of a general kind and that of a family nature. As regards the first class of information, civilians may be submitted to a certain degree of constraint, in so far as this does not include physical or moral torture. Any form of constraint to obtain information of a family nature from civilians is, however, prohibited.

Article 8

Belligerent States shall grant civilians adequate medical and hospital treatment. They shall allow medical personnel of all categories to carry out their duties.

The conditions under which these principles shall be applied are given in Annex A to the present Convention.

This Article establishes the generally recognized principle of aid to wounded and sick civilians. The Commission considered that provisions covering wounded and sick civilians should appear in the Convention relative to the Protection of Civilians, and not in that for the Relief of Wounded and Sick in Armies in the Field. The meeting thought, however, that the conditions of application of the principle stated in Art. 8 should be embodied in an Annex to the Convention, so as not to make the latter too unwieldy.

CHAPTER II. — ENEMY ALIENS IN BELLIGERENT TERRITORY

Article 9

Civilians who may desire to leave the territory at the outset of military operations, may do so under the conditions named in Annex B. They shall have the right to provide themselves with the necessary funds for their journey, and to take with them their belongings and articles for personal use.

Article 10

Such repatriations shall be carried out with due regard to the laws of hygiene, salubrity, security, and nutrition. The manner of such repatriations may form the subject of particular agreements between belligerents. In all cases, particular appeals may at all time be lodged with the Protecting Power, or the competent international body, who shall have the right to demand the institution of an enquiry and to be informed of the result thereof within a space of three months.

Annex B: Repatriation (See page 302).

Tokyo Draft

Art. 2. — Subject to the provisions of Art. 4, enemy civilians who may desire to leave the territory at the outset of military operations shall

be granted, as rapidly as possible, the necessary authorizations, as well as all facilities compatible with such operations.

They shall have the right to provide themselves with the necessary funds for their journey and to take with them at least their personal effects.

Art. 4. — Only civilians belonging to the following categories may be detained :

(a) Those who are eligible for immediate mobilisation, or mobilisation within one year, under the laws of their country of origin or of the country of residence ;

(b) Those whose departure may reasonably be opposed on grounds involving the security of the Detaining Power.

In either case, appeal to the Protecting Power shall always be permitted. The said Power shall have the right to demand that an inquiry be opened, and the result communicated to it within three months of its request.

In its report, the ICRC had stressed the difficulty of defining "eligible for mobilisation" in modern warfare ; it had further observed that the idea of security of the Detaining Power is extremely elastic. The meeting recognized that events had greatly outstripped the provisions of the Tokyo Draft, and worked out a new system, based on a text submitted by one of the Delegations ; in this the essential principle is upheld that civilians cannot be repatriated against their will. Distinctions are drawn among those who are anxious to go home. Unskilled women and unaccompanied children (up to sixteen years of age for boys), the sick and the aged should be repatriated in all cases, if they so desire. Men between sixteen and sixty, and skilled women capable of aiding the enemy's war effort should be repatriated only on the basis of exchange. Finally, the Detaining Power is not bound to repatriate a third class of persons, namely, those whose repatriation is declared contrary to the security of the said Power.

Supervision of the implementing of these Articles and their Annex should always be carried out by the Protecting Power, or by the competent international body.

Article 11

Enemy aliens who are in preventive detention, or who are serving a sentence involving confinement shall, on their liberation, benefit by the provisions of the present Convention. The fact of being a national of an enemy State shall not increase the severity of the treatment to which they are subjected.

This Article reproduces the text of Art. 5 of the Tokyo Draft.

Article 12

Enemy civilians who are in belligerent territory shall enjoy the treatment to which aliens are usually entitled, and shall benefit, as far as possible, by the particular measures taken during hostilities in favour of the population in general, subject to such measures of control or security as may be ordered, and subject to the provisions of Art. 19, 20 and 21 of the present Convention.

Tokyo Draft. Art. 6.

Enemy aliens who have remained in the territory, like those who have been held in application of Art. 4, shall enjoy the treatment to which aliens are ordinarily entitled, except for measures of control or security which may be ordered, and subject to the provisions of Section III. With these reservations, and in so far as military operations permit, they shall have the opportunity of carrying on their occupations.

Following on a proposal by the ICRC, the meeting laid down the principle that enemy civilians should benefit by war legislation passed in favour of the population in general.

Article 13

They shall be enabled to send news of a strictly private character to their relatives and to receive similar news in reply. Such mail shall be forwarded as speedily as possible.

Restrictions concerning this correspondence, arising from postal or administrative difficulties, shall apply only to the measurements or the form of letters, and not to their number or frequency.

These restrictions shall not go beyond the obligatory use of standard message forms, with a maximum number of twenty-five freely chosen words.

Tokyo Draft. Art. 7, Section 1.

Subject to the measures applied to the population in general, enemy civilians shall have the possibility of giving news of a strictly private character to relatives, and of receiving such news.

The Conference considered that the reservation named in Art. 7 of the Tokyo Draft should be dropped, and that the "right to news" of civilians should be clearly specified. As suggested in the Committee's report, the principle was also approved that civilian messages should always be forwarded with all possible speed; restrictions affecting these messages should refer only to their size and form.

Article 14

They shall also be permitted to receive relief supplies.

Tokyo Draft. Art. 7, Section 2.

With the same reservation they shall also have the possibility of receiving relief.

The wording adopted by the Conference expresses much more clearly than the Tokyo Draft the right of civilians to receive relief supplies.

Article 15

They shall have every facility of making application to the Protecting Power, to the competent international body or to relief societies functioning in the country, and whose purpose is to act as intermediaries for welfare work.

To this end, these various organisations shall be granted all facilities by the Authorities, so far as military considerations permit.

Tokyo Draft. Art. 8.

Enemy civilians shall have every facility of applying to duly recognised Relief Societies, whose object is to act as intermediaries in welfare work.

These Societies shall receive, for this purpose, all facilities from the authorities, within the limits compatible with military considerations.

The meeting was of opinion that the words "duly recognized Relief Societies" used in the Tokyo Draft and in other humanitarian conventions lacked clarity and led to misunderstandings. One Delegation further remarked that the above expression was too restrictive, as it seems to exclude appeals to an international body or to the Protecting Power. Some Delegations asked that the Red Cross should be explicitly mentioned.

Article 16

Enemy aliens in belligerent territory who have lost their gainful occupation owing to the war, shall be given the possibility to maintain themselves, either by the creation of opportunities for paid employment under the conditions provided by Article 17, or by an allowance sufficient for their support, granted by the Power in whose territory they reside. The said Power may, at the close of hostilities, demand from the Power of origin, should this exist, the reimbursement of the amounts paid. Enemy aliens may in all cases receive allocations from their home country, the Protecting Power or the international body mentioned above.

Article 17

Work done etc. (Text of Arts. 31 and 32 of the PW Convention, as revised).

As suggested by the ICRC in its report, the meeting laid down the principle that it is incumbent on the Detaining Power to ensure the maintenance of enemy aliens in its territory, either by furnishing them with opportunities for work, or by paying them relief allowances. As regards work to be done by civilians, this should not be in direct connexion with the conduct

of the war, nor injurious to health. The delegates therefore asked that the wording adopted in the revised PW Convention should appear in the Convention on Civilians.

Article 18

Enemy aliens in belligerent territory shall be protected against acts of violence, insults and public curiosity.

Tokyo Draft. Art. 9.

Enemy civilians shall be protected against acts of violence, insults and public curiosity.

Article 19

Should the belligerent country consider inadequate the measures of control or security mentioned in Art. 12, it may not have recourse to other measures than assigned residence or internment, in obedience to the provisions of Arts. 20 and 21.

Tokyo Draft. Art. 13 and 14.

Should a belligerent country judge the measures of control or security mentioned in Art. 6 to be inadequate, it may have recourse to assigned residence or internment, in conformity with the provisions of the present Section.

As a general rule, the assigned residence of enemy civilians in a specified district shall be preferred to their internment. In particular, those who are established in the territory of the belligerent shall, subject to the security of the State, be thus restricted.

The ICRC has observed in its report that during the war persons in confinement were often worse off, materially speaking, than the internees. The Commission thereupon decided to abandon the idea of confinement and to replace it by the more liberal one of assigned residence. In order to make it more imperative, the clause in the Tokyo Draft "it may have recourse" was amended to "it may not have recourse to other". This excludes all methods of control or security except internment or assigned residence.

Article 20

The internment of enemy civilians in fenced camps may only be ordered if the security of the Detaining Power requires.

Any civilian who makes voluntary application for internment, through the intermediary of the Protecting Power or of the competent international body, and whose situation renders this course necessary, shall be interned by the Detaining Power.

Tokyo Draft. Art. 15.

The internment of enemy civilians in fenced camps may only be ordered in one of the following cases :

- (a) where the civilians are eligible for mobilisation under the condition set forth in Article 4 (a) of the present Convention ;
- (b) where the security of the DP is involved ;
- (c) where the situation of the enemy civilians renders it necessary.

Here, too, the ICRC had stressed the difficulty of defining the term " eligible for mobilisation " in a limitative sense.

The meeting thought that this idea should be abandoned, and that, in practice, the idea of security of the Detaining Power should alone be taken into account.

As regards Section 2, the Commission approved the Committee's conclusions and considered that the wording of the Tokyo Draft : " Where the situation of the enemy civilians renders it necessary " was dangerous, as it might lead, by extensive interpretation, to the inclusion of all civilians without exception. One Delegation proposed to replace the wording of the Tokyo Draft by " if the civilian himself asks to be interned ". It was objected that the Convention should not oblige the Detaining Powers to accede to the civilian's demand. It was finally decided to combine both ideas by adding the supplementary guarantee in favour of the civilian concerned ; this consists in the obligation of making application through the Protecting Power or the competent international body. The civilian will thus be assured that his request will be considered by the authorities of the Detaining Power. The latter, moreover, will not be burdened with inconsidered requests.

Article 21

Measures of internment shall be taken according to regular procedure, to include the right of the enemy alien to appeal to the responsible national authorities against the decision of internment, as also against any later decision leading to any change in his status.

In any case, the decisions made by the Detaining Power, as also the result of any appeal, shall be rapidly brought to the knowledge of the Protecting Power, or of the competent international body.

✓ In its report, the ICRC had suggested that any new treaty should adopt the practice of setting up special courts for enemy civilians, as was done in English-speaking countries, with excellent results. The meeting recognized the value of this system; aware that it was impossible to limit the Detaining Power's liberty of judgment as regards the idea of security, it agreed on the necessity of regular judicial procedure, supervised by the Protecting Power or the competent international body

Article 22

Enemy aliens in the hands of a belligerent Power shall not be transferred to a Power not signatory to the present Convention, except for purposes of repatriation or return to the country where they were domiciled.

When they are transferred to a Power signatory to the Convention, the responsibility of implementing the Convention devolves upon both Powers (wording of the Second Commission).

The Third Commission, on this point, decided to adopt the wording adopted for PW. However, the Second Commission (for PW) were unable to come to a decision (see above, page 120). Some Delegations were in favour of the principle of sole responsibility, either of the transferring or of the receiving Power. Other Delegations, on the contrary, recommended joint responsibility. Finally, seven Delegations voted for joint responsibility and five for the sole responsibility of the receiving Power.

Whatever course may be adopted with regard to PW, the Third Commission considered that the same course should be followed in the Convention relative to Civilians.

CHAPTER III. — CIVILIAN POPULATION IN A TERRITORY OCCUPIED BY A BELLIGERENT

One Delegation observed that the stipulations contained in the present Chapter should be made distinct from those concerning enemy aliens in belligerent territory. Two separate Conventions on this subject would be preferable.

Article 23

No collective or individual measures contrary to the dignity of the individual may be taken in respect of the inhabitants of an occupied country.

Prosecutions, penalties or arrests on grounds of nationality, race, religion, creed or opinion are strictly prohibited. No person whose individual responsibility has not been proved in court, may be convicted. No prosecutions, penalties or arrests may take place for offences of a military or political nature, for opinions voiced before the occupation, or during a temporary suspension of such occupation. These rules do not apply to war crimes.

Collective penalties, destruction of towns and villages and all other means of intimidation or terrorism are prohibited.

This article embodies a number of rulings which had been recommended by the ICRC. Its purpose, couched in very general terms, is to prohibit any kind of inhuman treatment ; it forbids collective penalties and all means of intimidation taken against the inhabitants of an occupied country ; it proscribes arbitrary prosecution for purely " political " reasons, thus countering the idea of " illegal opinions " .

The text on which the Article is based was submitted by one of the Delegations. In Section 2, the Commission replaced the original wording " All discriminatory measures on grounds

of ” by “ Prosecutions, penalties or arrests ”, which appears more precise. The ICRC had asked that the repression by the occupying Power of acts committed before the occupation or during its temporary suspension, should be prohibited. This suggestion was approved by the Conference, which added the interdiction of prosecution for opinions voiced during the above periods, and made an exception for war crimes.

Article 24

The inhabitants of the occupied country who may have committed offences against the occupying forces or authorities shall not be convicted except by a court, which shall deal with them according to rules established previous to the offence committed and consistent with the law of nations and the general principles of law, especially as regards the principle of the proportionate nature of penalties.

The accused shall in no case be assimilated to common law defendants of the occupied country, and arrests under common law shall continue to be made in conformity with the law of the land.

Accused shall have the benefit of counsel, freely chosen, and of an interpreter. They shall be entitled to call witnesses.

The defence shall be guaranteed full liberty of action.

All violence or intimidation, in any circumstances whatever, is prohibited.

Furthermore, all judicial inquiries, judgments and sentences are subject to the provisions of the regulations on judicial measures annexed to the present Convention (Annex C).

Part of this Article is based on the text submitted by one Delegation, as follows: “ The inhabitants of the occupied country who may have infringed orders or regulations published by the occupying authorities and consistent with the law of nations, may only be brought before a court that shall deal with them according to the general principles of justice.

“ The accused shall have the benefit of freely chosen counsel ; the defence shall be ensured full liberty of action.

“ No violence of any kind shall be permitted during the inquiry or in any circumstances whatever ”.

The same Delegation stressed the need for separating “ political prisoners ” from common law defendants. The Commission fully agreed with this ruling, and the distinction is now based on the status of the persons or authorities against whom the offence has been committed. Persons guilty of offences against the occupying Power should (as already suggested by the ICRC in its report) appear before the ordinary courts of justice, and the judgments should be subject to the supervision of the Protecting Power or of the competent international body.

Rules for trials and their supervision will be found in the annexed regulations.

Article 25

Any civilian arrested by the occupying Power for security reasons shall be subjected, in the country where he is domiciled, to internment conditions similar to those for aliens arrested for security reasons in a belligerent territory.

These conditions shall be consistent with the stipulations of Chapter IV hereafter and the Annex thereto. The same internment rules shall apply to civilian under prosecution or indictment, and referred to in Article 24, until judgment has been passed.

Section 1 is based on the suggestions made by the ICRC.

It appeared difficult to prevent the Detaining Power from arresting civilians for security reasons and on unspecified charges ; such persons must however be treated humanely. The Commission amplified the Committee's suggestion, by assimilating the status of civilians under prosecution, until their judgment, with that of civilians arrested for security reasons (See Section 2).

Article 26

Any civilian sentenced to a penalty involving confinement shall serve his sentence in the country of his arrest or permanent residence, subject to the application of the rules of extradition.

The conditions of detention shall be consistent with the stipulations of Chapter IV hereafter and of the Annex thereto.

The Commission agreed that the occupying Power should be prohibited from making civilians in occupied territory sentenced to confinement, serve such sentences in the territory of the said Power. In agreement with the Committee's proposal, this stipulation forbids the deportation of accused and convicted civilians, since it constitutes an additional penalty.

Article 27

Individual or collective deportations or transfers, carried out under physical or moral constraint, to places outside occupied territories, and for whatever motives, are prohibited.

This prohibition applies to all persons in the said territories. It shall not constitute an obstacle to the general evacuation of an area by the occupying Power, if military operations make it necessary. Such evacuation shall not involve the transfer of the population beyond the occupied territory, unless it cannot possibly be effected within the limits thereof.

Collective transfers within an occupied territory shall only be enforced to meet the security requirements of the occupying Power.

The occupying Power shall carry out such transfers and removals with all due regard to the rules of hygiene, salubrity, security and nutrition, not only during the transfer, but also in the area in which the evacuees will be accommodated.

The conditions under which transfers and removals are carried out shall be verified by the Protecting Power, or by the competent international body.

In no case shall the above removals and transfers constitute a disguised form of internment or assigned residence.

Tokyo Draft. Art. 19 (b).

Deportations outside the territory of the occupied State are forbidden, unless they are evacuations intended, on account of the extension of military operations, to ensure the security of the inhabitants.

The Commission thought that a clearer distinction should be drawn than in the Tokyo Draft, between deportations and evacuations (removals). The conditions of evacuation are now better defined than in the Draft, and deportations outside occupied territories are strictly prohibited. The purpose of Section 2 is to protect against deportation all political refugees who are nationals of the occupying State, and who are not included in the classes of civilians to whom the Convention applies. Some delegations defined the term "deportation" as follows: "any transfer of persons outside the country where they reside, whether they are nationals thereof or domiciled therein". The text adopted is even more general, for it also prohibits the deportation of persons who happen to reside in the country.

Article 28

Civilians shall not be compelled to work except under the following conditions:

- (1) *The work shall be done in the occupied territory.*
- (2) *It shall be consistent with the stipulations of Art. 31 of the Convention relative to PW, as revised.*
- (3) *Requisitions may only be carried out in accordance with Art. 52 of the Regulations annexed to the Fourth Hague Convention of 1907 (or revised text). Further, if the work to be done lasts longer than... hours, such compulsory labour shall consist only of the usual employment, and may only be executed in the usual places.*
- (4) *In any case, requisitions of labour shall only be a temporary nature, and shall in no case lead to the mobilisation of workers for the duration of hostilities.*

No contract, agreement or regulation shall impair the right of workers, whether voluntary or not, wherever they may be, to appeal to the Protecting Power or to the competent international body.

Artificially created unemployment and systematic measures for restricting the occasions normally offered to workers of an occupied territory, in order to lead them to work for the occupying Power, are prohibited.

Art. 52, Regulations annexed to the IVth Hague Convention, 1907.

Requisitions in kind and services shall not be demanded from municipalities or inhabitants except for the needs of the army of occupation. They shall be in proportion to the resources of the country, and of such a nature as not to involve the inhabitants in the obligation of taking part in military operations against their own country.

Such requisitions and services shall only be demanded on the authority of the commander in the locality occupied.

Contributions in kind shall as far as possible be paid for in cash ; if not, a receipt shall be given and the payment of the amount due shall be made as soon as possible.

In its report, the ICRC gave its opinion that populations should not be compelled to work beyond the right of requisition provided by Art. 52 of the Hague Regulations, and that work done within these limits should fulfil the conditions laid down for prisoners of war.

One delegate observed that a distinction should be drawn between three classes of civilian workers : (a) voluntary civilian workers ; (b) workers enlisted under direct compulsion ; (c) workers subject to indirect coercion. Treaty stipulations should cover classes (b) and (c).

Another delegation objected, however, that even voluntary workers had often been influenced in their choice by various means (e.g. closing down of works, monopoly of employment). To avoid such practices in future, the Convention should prohibit all mass or long-term recruiting of workers. As regards the kind of work to be done, the Commission thought that the matter should be dealt with in the same way as for PW. The drafting of a list of prohibited occupations or in its stead, a list of authorized employments, was considered, but the meeting came to no agreement in this matter.

Article 29

The occupying Power is responsible for the maintenance of a proper level of subsistence and public health in the occupied country.

Recognised neutral and international humanitarian organizations, such as the ICRC, shall have access to occupied countries, in order to determine and report to world opinion whether this obligation is being fulfilled. If other countries desire to send relief supplies (food, medicaments and clothing) to the civilian populations of occupied countries, all belligerents, including the occupying Power, are bound to give their consent, if the level as determined is below standard, subject to reasonable conditions based only on considerations of security. Allocation of relief supplies shall be under the responsibility of a neutral welfare agency. If relief shipments are made, the occupying Power is bound to agree that these will not furnish a plea for withdrawing native produce, or limiting imports into the occupied country. The neutral agency, acting as guarantor of proper allocation, shall be provided with the means of verifying whether the occupying Power is actually fulfilling these obligations. In other words, relief shipments from abroad shall in no way absolve the occupying Power from its responsibility for the general welfare of the occupied country.

Subject to reasonable conditions of security, the occupying Power may in no case refuse to receive the shipments of relief which other Powers may send to occupied territories. All relief shipments received in occupied territories shall be duty-free, and the occupying Power shall ensure their transport free of charge and without delay.

States through whose territory these shipments are conveyed shall waive the reimbursement of charges and costs due to them, or to local authorities.

The above text is based on a draft submitted by one Delegation, which did not however include exemption from customs dues for the entry of relief supplies into an occupied country — an exemption which was recommended by the ICRC and approved by the Commission. The ICRC had also asked for free

transport and postal facilities, but the Commission thought that it was not possible to go further than to oblige the occupying Power to organise the forwarding of relief supplies in occupied territory free of charge.

With regard to the obligation for the occupying Power to accept relief shipments, the Commission did not think possible to follow the Committee's suggestion, and reserved the occupying Power's right to refuse relief consignments for security reasons. Turning to the obligation for all belligerents to allow the passage of relief supplies for occupied territories, which had been suggested both by the ICRC and the Preliminary Conference (1946), the Commission held that this obligation should comprise two important restrictions. The passage of relief consignments shall only be authorised by the Powers concerned if (1) the nutritional standard has been determined to be inadequate by international humanitarian organizations; (2) the security of the Powers is not imperilled thereby.

Article 30

Correspondence within totally or partially occupied territories shall not be interrupted, nor shall it be unduly delayed in transit by the presence of various systems of occupation in different zones.

Civilians resident in occupied territory shall have the opportunity of giving news of a strictly private character to next of kin abroad, and of receiving replies, in as short a time as possible.

The competent international body shall determine, in agreement with the State concerned, the means of ensuring the fulfilment of these obligations, in the best possible conditions.

Tokyo Draft. Art. 19 (c).

Enemy civilians shall have the possibility of giving news of a strictly private character to next of kin in the interior of occupied territory, and of receiving such news.

The same opportunities shall be granted them for correspondence with the exterior, subject to the measures applied to the population of the occupying Power, in general.

With the same reservation, enemy civilians shall have the possibility of receiving relief.

This Article confirms the "right to news" of civilians, which the ICRC recommended in its report, and it embodies the principle of a rapid exchange of messages. One Delegation suggested that the exchange of business, as well as private correspondence should also be allowed. Several Delegations objected that the inclusion of business correspondence would outstep the traditional limits of the humanitarian Conventions, and might prove prejudicial to the entire draft. Another Delegation spoke in favour of a clause permitting legal correspondence. The ICRC pointed out that the Civilian Message Scheme was successfully operated during the war, precisely owing to the fact that these messages were of a strictly family nature.

The Commission finally decided that correspondence, whatever its purpose, should not be interrupted within an occupied territory, but that mail for the exterior could be limited by the belligerents to family messages of a strictly private character.

Article 31

The inhabitants shall have every opportunity of applying to the National Red Cross Society of the occupied country, and to other relief societies also recognised before occupation by the State whose territory is occupied.

They shall also be entitled to apply to the Protecting Power and to the competent international body.

Tokyo Draft. Art. 19 (d).

Enemy civilians shall also benefit by the provisions of Art. 8 of the present Convention.

A discussion took place concerning the sense of the phrase "relief societies also recognized", which was taken from the Tokyo Draft. The delegates agreed that the term should apply to societies recognised by the government of the occupied country and, necessarily, by the occupying Power. They also thought proper to stipulate that recognition should be effected before hostilities. One delegate emphasized that the Red Cross should be expressly named in the humanitarian Conventions.

Article 32

National Red Cross Societies and other relief societies mentioned in the preceding Article shall be empowered to pursue their activities freely during occupation, without the occupying Power introducing changes into their structure or their managing staff.

The above Article was suggested by the ICRC, supported by a Delegation. They asked that precautions should be taken to prevent changes being introduced by the occupying Power into the management of relief societies.

CHAPTER IV. — RULES CONCERNING CIVILIAN WAR INTERNEES

Article 33

By Civilian War Internees shall be understood ;

(1) *Persons arrested and interned in belligerent territory.*

(2) *Persons arrested and detained in occupied territory for reasons of security, but who are not under indictment ; further persons accused and indicted for acts committed against the forces or the administration of the occupant, and who are detained before or during judicial enquiry.*

(3) *Persons sentenced to confinement in respect of acts committed against the forces or the administration of the occupant.*

In its report, the ICRC drew a distinction between civilians arrested for definite motives and due to appear before a court of law, and those arrested for indeterminate reasons. The report added that the rules for internment should apply to persons of the second category.

Several Delegations observed that, in practice, the occupying Power almost always brings definite charges against arrested persons, and that it is therefore able to deprive detainees of the treatment to which they are normally entitled. The Com-

mission granted the point and agreed that it was necessary to include under the heading "civilian war internees" persons arrested for offences against the occupying authorities. Among these civilians, those accused or indicted should benefit by more favourable treatment than those serving sentences. The same heading would include civilians arrested in a belligerent territory for security reasons. These various groups of civilian war internees would benefit by the discriminatory treatment provided in the annexed regulations for internment.

With regard to the treatment applicable to internees, the ICRC had proposed that the stipulations of the PW Convention should be applied by analogy to Civilian Internees, with additional clauses to cover special questions relating to civilians (e.g. family camps, right to visits, etc.). Clauses which apply to military personnel only, such as privileges due to rank, etc., would be omitted. The ICRC proposal, if adopted, would have given treaty confirmation to the practice adopted during the recent war. The Commission considered, however, that the position of civilian internees required a special statute, since it could not be compared to that of captured military personnel. The regulations in annexe are, however, based upon the PW Convention, with the changes necessitated by the situation of civilians, and with the discriminatory treatment provided for the various classes of internees.

Article 34

The places of internment for the various classes named in Art. 33 shall be distinct from the internment camps for PW, and the places of detention for prisoners under common law.

These places of internment may not be established in districts which are unhealthy, or whose climate would be harmful to the health of the inmates.

Tokyo Draft. Art. 16.

Internment camps for enemy civilians shall be separate from internment camps for prisoners of war.

These camps cannot be set up in unhealthy districts, nor where the climate would be injurious to the health of the internees.

Article 35

The general rules of humanity and of the law of nations are applicable to the treatment of Civilian War Internees as a body. The principles of the protection of the classes named in Art. 33 are defined in the Regulations on the treatment of Civilian Internees annexed to the present Convention (Annexe D).

CHAPTER V. — FINAL PROVISIONS

Article 36

(This Article will deal with sanctions)

The text of Art. 31 and 32 of the Geneva Convention, revised and adopted by the First Commission, could be inserted into the Convention for Civilians. One Delegation suggested that in Art. 31 the words "serious damage to hospital buildings and material" should be replaced by the words "serious damage to property".

Another Delegation expressed the opinion that sanctions should be speedy and efficient.

Article 37

The High Contracting Parties shall communicate to one another, through the channel of the Swiss Federal Council, the Protecting Power or the competent international body, the official translations of the present Convention and the regulations annexed thereto, as well as the laws and regulations they may be led to adopt to ensure its application.

Article 38

The High Contracting Parties recognise that the regular application of the present Convention shall be guaranteed by the possibility of co-operation between the Protecting Powers appointed

to safeguard the interests of the belligerents. To this effect the Protecting Powers may, besides their diplomatic staff, nominate delegates among their own nationals, or among those of other neutral Powers. These delegates shall be subject to the approval of the Power on whose territory they will carry out their duties.

The representatives of the Protecting Power and of the competent international body shall be allowed to visit all parts of the occupied territories and all places, without exception, where Civilian War Internees are detained. They shall have access to all buildings occupied by Civilian War Internees, with whom they may converse without witnesses, direct or through an interpreter, but not with internees of the second class who are in solitary confinement.

The Powers shall facilitate to the greatest extent possible the work of the representatives or delegates approved by the Protecting Power or the competent international body. The civil and military authorities, as well as the authorities in charge of the places of internment, shall be informed of their visits. The Detaining or Occupying Power, the Protecting Power and, in case of need, the Power of origin may arrange that persons of the same nationality as the populations or internees visited shall be allowed to participate in such tours of inspection.

Article 39

In cases of disagreement between the Parties to the conflict as to the application of the stipulations of the present Convention, the Protecting Powers and the competent international body shall offer their services for a settlement of the dispute.

To this effect, the Protecting Powers and the competent international body shall propose to the Parties to the conflict to hold a meeting of their representatives, ultimately in a convenient neutral territory. The belligerent parties shall be under obligation to accept proposals made to them to this effect. The Protecting Power and the competent international body shall, if necessary, submit to the approval of the Powers concerned the name of a neutral national, who shall be invited to the meeting, together with the delegates of the Protecting Power or Powers, and of the international body.

The above provisions shall also apply in case of difference of opinion between a Power and a Protecting Power acting on behalf of a Power which is occupied, or unable to defend its point of view.

The above articles are those of the Tokyo Draft, with slight amendments, so as to include the competent international body.

Article 40

The above provisions shall not be an obstacle to the humanitarian activities carried out by the ICRC for the protection and the supply of relief to Civilian War Internees and Civilian Populations, subject to the approval of the belligerents concerned.

The above Article, adapted for Civilians, is taken from Art. 88 of the PW Convention, with the amendments suggested by the Commission.

PART. II

PROTECTION OF CIVILIAN POPULATIONS IN GENERAL

(1) *Right to News.*

In its report, the ICRC expressed the opinion that all civilians, to whatever country they belonged and wherever resident, should be able to exchange news in all circumstances. The ICRC wished that the Convention should permit the use of family messages by all civilians, so that the latter might continue to correspond with their relatives when world events made direct correspondence impossible. The Third Commission acknowledged, in principle, that civilians should have a "right to news", but limited itself to the following recommendation :

The Commission approves, in general, the points raised by the ICRC in Vol. III of their Report concerning the "right to news" of civilians and the Civilian Message Scheme.

The Commission recommends that the Conference should invite the ICRC to study the question in the light of its experience and to submit its proposals to the Governments concerned in due course, in order that they may be discussed by the XVIIth International Red Cross Conference (or by the Diplomatic Conference, should this be held previously).

(2) *Dispersed Families.*

The ICRC had given in its Report an account of their efforts in behalf of members of the same family who were forcibly separated by the events of war. It described, in particular, the establishment of a central card-index, recording the names and addresses of persons enquiring for a member of their family, and all data with regard to civilians under enquiry. It further explained the issue of "Dispersed Family Cards", for which free postage was obtained. The ICRC expressed the hope that the new Convention would contain stipulations obliging belligerents to allow and encourage national and international

organisations to pursue in their territory, or in occupied areas, attempts to maintain or to re-establish contact between families separated by the war.

The Commission recognised the importance of this question and made the following recommendation :

The Commission approves, in a general way, the ideas expressed by the ICRC in Vol. III of their Report, with regard to the efforts which should be made to unite Dispersed Families.

They pay tribute to the work achieved by the ICRC during the war and invite it to continue the study of the question and to submit suggestions in due course to the Governments concerned, for discussion by the XVIIth International Red Cross Conference (or by the Diplomatic Conference, should this be held previously).

(3) *Safety Localities.*

The ICRC had proposed the creation of safety localities and zones to shelter : (a) children up to 16 years of age ; (b) expectant mothers and women with children under four ; (c) persons over 60 years of age ; (d) personnel specially employed for the transport and care of the persons designated under (a), (b) and (c).

The meeting ruled out the idea of safety zones, as they had already done concerning hospital zones. With regard to safety localities, they admitted the possibility of this scheme, in the same conditions as for hospital localities (see above, page 26), and made the following recommendation :

The Third Commission place on record the conclusion of the First Commission with regard to hospital localities :

They recommend that the ICRC should be invited to study the conditions under which similar protection could be afforded to civilians, and to submit relevant proposals to the Governments concerned.

(4) *Protection of Women and Children.*

In its report, the ICRC had asked for measures to ensure particular protection of children, expectant mothers and women

with young children. It was proposed that persons who benefit by this protection should be neither enlisted in armed forces, nor employed on any work or activity connected with the war, nor be compelled to do work for which they are physically unfit. They should on no account be considered as enemies or prisoners, but should have facilities as regards priority accommodation, food, medical attendance and special rations. All care should be taken for the identification and registering of children. It should be stipulated that in all circumstances the honour, decency and dignity of women must be respected.

The Commission considered that these measures were indispensable for the protection of women and children, and that all efforts should be made to reinforce all guarantees in their favour. To this effect, they made the following recommendation :

The Commission agree in a general way with the ideas submitted by the ICRC in Vol. III of their Report with regard to special treaty stipulations concerning women and children of all nationalities (Chapters II and III).

They consider these guarantees as a minimum which it is desirable to amplify and define.

The Commission recommend that the Conference should invite the ICRC to study the question, in conjunction with other organizations whose co-operation may be of assistance, particularly the International Union for Child Welfare, and to submit their suggestion in due course to the Governments concerned, for discussion by the XVIIth International Red Cross Conference (or by the Diplomatic Conference, should this be held previously).

Annexes

ANNEX A

PROTECTION OF WOUNDED AND SICK

See above, page 23, the text included in the report issued by the First Commission.

ANNEX B

REPATRIATION

(A) *Compulsory Repatriation.* — The opposing belligerents shall be obliged to repatriate, as soon as possible after the outbreak of hostilities or after the determination of applicable facts in a given case, the following categories of civilians :

(a) Unskilled women and unaccompanied children, including male children who on January 1 of the year in which hostilities commenced had not yet attained their sixteenth birthday.

(b) The senile, insane and diseased, including persons classifiable under both A and B of Chap. II of the Model Agreement annexed to the Geneva PW Convention of July 27, 1929 (which Model Agreement is hereby made by reference an annex to this Convention), or under the corresponding provisions of any document which may be adopted as a successor to that Model Agreement, which successor document will become automatically by this reference an annex to this Convention.

Nominations for examination of individuals under this heading may be made by any interested party (Government, authority, or society) and examination may be made either by local medical authority or by a Mixed Medical Commission with neutral members, or by both. A favorable decision by any examining authority shall be and remain binding. An unfavorable decision shall be reviewed if the request is made by any one with authority to nominate for examination, but no individual shall be entitled to more than two examinations within a calendar year.

Certificates regarding all such examinations shall be issued and copies delivered to the person examined or his guardian, to the nearest representative of the neutral Power representing the interests of the country of the examined person's allegiance (hereinafter referred to as the Protecting Power), and to the competent local authority.

Repatriation of the persons specified under (a) and (b) above shall be effected by category and without reference to the numbers involved

on either side. In the event that special transport facilities must be provided to effect such repatriation movements, and that the number of persons concerned on the opposing sides are clearly disproportionate, so that an appreciable portion of the facilities might remain unused for part of the journey, the Protecting Powers or the competent international body shall lend their good offices to arrange, if possible, for the simultaneous accommodation of individuals who may be eligible for repatriation under other Conventions and might fill space that would otherwise be vacant.

(B) *Discretionary Repatriation.* — The opposing belligerents shall be under obligation upon the outbreak of hostilities to register Enemy Aliens of the following categories, who may apply to them direct or through the Protecting Power with a view to repatriation :

(a) Men of military age (16 to 60) ; skilled women capable of aiding the enemy's war effort ; the immediate relatives of such individuals, to the extent that they are unwilling to be repatriated without the member of the family classified under this heading.

(b) Persons whose repatriation is deemed contrary to the national security, by virtue either of special skill or knowledge.

The belligerents shall be under obligation to repatriate individuals classified under (a) above only if offered in exchange an equivalent number of persons of equivalent skill and physical condition. Persons so exchanged shall be accompanied by their *bona fide* unskilled dependents, without regard to number, except for those individuals who themselves qualify under (a).

There shall be no obligation to repatriate individuals classified under (b), but if the number so classified exceeds seven per cent of the total number of persons considered for repatriation, the Protecting Powers for both belligerents, or the competent international body shall formally declare to the Government making such classification that abuse of this classification imperils the attainment of the humanitarian purpose of this Convention. Such declaration may be omitted only in case the Detaining Power establishes to the full satisfaction of both Protecting Powers that there exists an unusual and perilous situation arising from belligerent acts of the enemy, whereby agents not truly civilians were infiltrated purposefully into the territory of the Detaining Power. Nothing in this Convention shall be construed as precluding agreements between belligerents to exchange individuals classified under (b), on an individual basis or otherwise.

Persons repatriated under (a), and in applicable cases those repatriated under (b), shall be required to execute a personal pledge not to engage in combat duty during the continuation of hostilities. Violators of this parole shall be summarily dealt with by the military authorities.

ANNEX C

REGULATIONS ON JUDICIAL MEASURES

Article 1

When judicial proceedings are opened against a Civilian War Internee¹, the Detaining Power shall notify the representative of the Protecting Power, or of the competent international body, as soon as possible, and always prior to the date fixed for the opening of the hearing.

This notification shall include the following particulars : status and description ; place of internment ; indication of the charge or charges (with mention of the legal provisions applicable) ; specification of the court which will hear the case ; place and date of the first hearing.

No legal proceedings may take place unless evidence is produced, at the opening of the first hearing, that the above information has been furnished to the Protecting Power, or to the competent international body, at least three weeks prior to the said hearing, the period to run from the time the Protecting Power or the competent international body shall have received communication of this information at the address which they furnished to the Detaining Power.

Article 2

No CWI shall be sentenced without having had an opportunity for his or her defence.

No physical or moral pressure shall be brought to bear on the CWI to make him or her plead guilty to the charges.

Article 3

All accused shall be entitled to the assistance of qualified counsel of their own choice, and to have recourse, if necessary, to the services of a competent interpreter. They shall be informed of their rights by the Detaining Power, in due time prior to the opening of the hearing.

In the absence of any choice by the accused, the Protecting Power or the competent international body shall procure them counsel. The Detaining Power shall furnish the Protecting Power or the competent international body, on the latter's request, with a list of persons qualified to present the defence.

The representatives of the Protecting Power, or of the competent international body, shall be entitled to be present at the hearing of the case.

¹ Abbreviation : " CWI ".

Exceptions to this rule shall be allowed only if the proceedings must be held *in camera* for reasons of State security. The Detaining Power shall in such cases notify the Protecting Power and the competent international body.

The defence shall have all facilities to prepare their case. They shall be allowed free access to the accused, both before judgment and until the expiration of the time-limit for appeal.

Article 4

Judgment can be passed on CWI only by the regular civil and military courts of the Detaining Power, to the exclusion of all political, police or irregular tribunals. The procedure followed shall be the same as that applied to free civilians of the territory where the internee may be.

No sentence may be passed unless the provisions of the present Regulations have been observed by the Detaining Power.

Article 5

Convicted defendants shall have the right of appeal, with a view to the quashing or revision of any sentence.

Article 6

Sentences passed shall be communicated in brief to the Protecting Power, or to the competent international body, immediately after sentence, and in detail as soon as the necessary data have been collected. This detailed notification shall include the verdict, the statement of grounds, a summary report of the preliminary investigation and of the hearings, and indication of the place where the sentence shall be served.

Article 7

In the case of a death sentence, execution shall not take place before the expiration of a period of three months, as from the notification of the sentence and of its reception by the Protecting Power, or by the competent international body.

The population of the occupied territory, all CWI, the Protecting Power or the competent international body shall be informed previously of the facts entailing the death penalty under the laws, orders and regulations enacted by the occupying or detaining Power.

Prior to any judgment liable to entail the death penalty, the attention of the court shall be drawn to the fact that the accused is in the hands of the Detaining Power following circumstances beyond his or her control, and that he or she owes no allegiance to the said Power.

In no case shall the condemned be deprived of the right of appeal for mercy.

ANNEX D

REGULATIONS RELATIVE TO CIVILIAN WAR INTERNEES (CWI)

I. General Provisions

Article 1

The present Regulations are applicable to the whole of the persons named in Art. 33 of the Convention relating to the protection of Civilian Populations in wartime.

Article 2

CWI are in the power of the enemy State, but not of the individuals, military or police forces who have arrested them. They shall be treated at all times with humanity, and protected, especially against all acts of violence or of intimidation, and against insult and public curiosity. All tattooing, all bodily markings and signs are prohibited.

This stipulation does not constitute a derogation to the principle of the personal responsibility of individuals who commit acts contrary to the fundamental rules for protection laid down by the Convention, nor shall these persons be released from this responsibility on account of the official functions with which they may be invested, or the orders they may have received from superior authorities.

Measures of reprisals against CWI are forbidden, in conformity with Article 5 of the Convention.

Article 3

CWI are entitled to respect for their persons and their honour. Women shall be treated with all consideration due to their sex. CWI retain their full civil capacity. All political pressure or action by the Detaining Power on these internees or their next of kin is forbidden.

Article 4

The Power detaining CWI is under obligation to provide for their free maintenance. Differences of treatment within the three classes named in Art. 33 are permissible only if such differences are based on the physical or mental health, sex, professional abilities of workers or internees, or the gravity of the sentence passed by the Court. In any case, the minimum living conditions granted to CWI shall be equal at least to the optimum conditions granted to common law detainees in the penitentiary establishments of the occupied country.

II. Conditions of Internment

Article 5

Bodily ill-treatment, intimidation, violence or moral torture may in no case be exercised on CWI to obtain information regarding the situation of their forces or their country, that of third parties or their own situation.

Article 6

CWI shall remain in possession of all personal effects and articles. Monies in their possession may only be taken from them on the order of an officer or a magistrate, and after the amount has been recorded. Receipts shall be given. The sums thus impounded shall be paid to the account of each internee. A general and accurate record of cash and articles shall be kept by the Detaining Power, and a copy communicated to the competent international body.

Decorations and articles of a personal or sentimental value only may not be taken from them. Identity documents shall not be taken unless replaced by other papers issued by the detaining authorities and showing the identity of the persons concerned.

Article 7

CWI shall not be maintained otherwise than temporarily in a zone exposed to danger either by warfare, climatic or sanitary conditions, unless by reason of their physical weakness, illness, wounds, or age, they would run greater risks by removal than by remaining on the spot. Transfers on foot may only be effected if their age, sex or state of health permit them with certainty. In this case, the longest stages shall be fifteen kilometres per day and the rate of marching shall be proportionate to the internees' strength. Transport by rail shall be carried out under conditions at least equal to those applicable to forces of the Detaining Power¹.

Article 8

Any arrest of civilians covered by Art. 33 shall be notified as rapidly as possible to the Power whose nationals they are or in whose territory they reside, or to the Protecting Power, and in any case to the competent international body.

¹ One Delegation proposed that the stipulations of Art. 7, 22 and 23 (Sec. 4 and 5) of Annex D should be assembled in a single Article. Another Delegation proposed a redraft on the basis of the above suggestion, which appears in the draft provisions not revised by the Third Commission, under Article 22, new. These draft provisions, as mentioned above, are attached to the present Report for information. (See p. 330.)

All CWI shall be enabled, as soon as possible, to correspond with their next of kin, in accordance with the conditions laid down in Art. 3 of the present Annex.

Article 9

CWI may be interned on land in a town, fortress, or other place, under the obligation not to go beyond certain fixed limits. They may also be interned in fenced camps and in all buildings that satisfy the required hygienic conditions.

CWI of the first class may be lodged in prisons only as a temporary measure, pending transfer to appropriate places of internment. This transfer shall be effected as speedily as possible.

CWI of the second and third class may not be imprisoned in penitentiaries of the occupied country, otherwise than in special divisions, distinct from the divisions used for common law prisoners.

Civilians arrested in areas which are unhealthy, or whose climate is harmful to them, shall be removed as soon as possible to a more favourable climate.

As regards places of collective internment or detention, the Detaining Power shall avoid assembling in the same premises or camp. CWI of different nationalities, except in the case of those belonging to the same family.

When members of one family are interned in premises for collective internment or detention, they shall be lodged together, unless circumstances make it materially impossible.

No CWI may be sent to an area particularly exposed to air bombing, or be employed to render by his or her presence certain points or areas immune from bombing.

CWI shall enjoy the same conditions of protection against air bombing as the civilian population. In camps and other places of collective internment or detention, all facilities shall be granted them to organise such protection themselves. The Detaining Power shall notify the enemy Powers of the geographical location of the places of internment, and shall mark them with a particular sign.

CWI of the first and second class shall have the right to receive visits from their nearest relatives, at regular intervals and as frequently as possible. Visits may only be suspended or stopped exceptionally, and when the security of the Detaining Power requires. Internees in solitary confinement may not receive visits.

With the same reservations, CWI of the first class may visit their nearest relatives in urgent cases.

Special camps shall be installed for interned families of the first and second class. In these camps, CWI shall be enabled to lead a proper family life, and be given separate accommodation. Children shall have facilities for continuing their education and shall be provided with open-air playgrounds.

III. Places of Internment

Article 10

CWI shall be lodged in buildings or quarters which afford all possible safeguards as regards hygiene, salubrity and protection against weather conditions.

The buildings shall be entirely damp-proof, adequately heated and lighted between dusk and lights out. All precautions shall be taken against the risk of fire. The total sleeping space, minimum cubic air-space, bedding, accommodation and material shall not be inferior to that of army base troops of the Detaining Power.

No obstacle shall be made to community living habits, in a manner likely to harm the internees' health.

Hygiene and salubrity conditions in camps and places for screening and transit shall, as far as possible, be similar to those of permanent places of internment.

Article 11

Food rations for CWI shall be sufficient in quantity, quality and variety to maintain health and prevent loss of weight, and shall take into account the diet to which the internees are accustomed.

CWI shall be given the means of preparing themselves such additional articles of food as they may possess.

Sufficient drinking water shall be supplied to them. Smoking shall be allowed. Internees may be employed in the kitchens.

Moderate workers shall receive additional food having an energy value of 750 calories above the basic ration. Heavy workers shall receive an additional 1500 calories above the basic ration. The food supplying these additional calories shall contain proportionate amounts of the foodstuffs listed for the basic ration.

In calculating the rations of CWI no account shall be taken of the foodstuffs supplied by the International Committee of the Red Cross or by other agencies.

The food shall be wholesome and edible. Adequate facilities for maintaining the required preservation of food shall be provided.

Expectant and nursing mothers, infants and all other children shall be given additional food allowances, according to their physiological needs.

In tropical climates or during warm weather, additional salt and water shall be provided, commensurate with bodily exertion, temperature and atmospheric humidity.

Qualified representatives of the Protecting Power or of the competent international body shall periodically survey CWI camps, to determine the nutritional adequacy of the diets and the nutritional state of the inmates.

Disciplinary measures affecting food may only be taken for acts committed during internment by the CWI himself, and provided his health is not affected thereby.

Article 12

CWI shall be given all facilities when arrested, to provide themselves with the indispensable clothing, change of underwear and personal belongings, and to procure further supplies later, if required. Further, repairs and supply of extra underwear, and of essential effects and personal belongings which the internees have not been able to procure, shall be ensured, or furnished free of charge by the Detaining Power.

CWI shall in all cases keep their own clothing. If outward markings are worn on clothing, they shall be neither ignominious nor ludicrous. Workers shall receive working kit, whenever the nature of the work requires.

All places of internment shall be provided with canteens where internees may procure, at the local market prices, food commodities, essential articles and tobacco.

In all places of collective internment, internee committees shall have the right of checking the canteen management, and particularly of seeing that canteen profits are used for the internees' benefit.

Article 13

The Protecting Power is under obligation to take all necessary hygienic measures to ensure the cleanliness and salubrity of places of internment, and to prevent epidemics.

CWI shall have for their use day and night sanitary conveniences which conform to the rules of hygiene and are maintained in a constant state of cleanliness.

In addition, and without prejudice to the provision in places of internment, as far as possible, of baths and shower-baths, CWI shall have sufficient quantities of water daily for their bodily cleanliness, and their laundry. They shall be given periodically an adequate amount of soap. They shall be allowed sufficient time for this work and for their hygiene and cleanliness.

Article 14

Every place of internment shall have an adequate infirmary, under the direction of a certified civilian practitioner or military doctor of the Detaining Power, or of a certified civilian or military doctor of the inmates' nationality, where CWI may receive the attention of all kinds which they may require. If necessary, isolation wards shall be set aside for cases of infectious disease. The costs of treatment,

including those of any apparatus required for the maintenance of health, shall be borne by the Detaining Power.

The Detaining Power shall be required to issue on demand to every CWI treated, an official certificate indicating the nature and duration of illness, and the treatment given. A duplicate shall be forwarded to the competent international body.

All CWI, with the exception of those in solitary confinement, shall have the attention of doctors of their own nationality. To this effect, the Detaining Power shall have the right to detail to places of internment doctors and nurses for the care of their interned compatriots.

CWI suffering from serious disease, or whose condition necessitates a major surgical operation, shall be admitted at the expense of the Detaining Power to any military or civil institution qualified to treat them, even if their release is anticipated in the near future. They shall receive treatment which shall not be inferior to that for similar cases among forces of the Detaining Power.

The blind shall have all specific care necessitated by their infirmity.

Article 15

Medical inspections of CWI shall be arranged at least once a month. Their object shall be the supervision of the general state of health and cleanliness, and the detection of contagious diseases, particularly tuberculosis and venereal complaints. They shall include general and periodical radioscopic examinations and checking of weight.

Article 16

CWI shall be given complete latitude in the performance of their religious duties, including attendance at the services of their faith, on the sole condition that they comply with the disciplinary routine prescribed by the Detaining Power.

Interned ministers of religion, whatever their denomination, shall be allowed to minister freely to their co-religionists. To this effect, the Detaining Power shall ensure their proper allotment between the various places of internment and detention. In case of need, they shall benefit, within the limits of security measures, by facilities for travelling from one camp to another. The services of ministers of religion who are prisoners of war, may be called upon in the same conditions.

Further, representatives of religious organisations, chosen by agreement between the Detaining and the Protecting Powers, or the competent international body (preferably from among nationals of neutral countries) shall be authorised to visit CWI, subject to the approval of the Detaining Power, and to minister to their spiritual needs.

Article 17

The Detaining Power shall encourage intellectual, educational and recreational pursuits amongst CWI, and shall guarantee their free exercise. CWI shall have opportunities for physical training and outdoor exercise. To this effect, open spaces shall be set aside in all places of collective internment.

Article 18

All places of internment for CWI shall be under the authority of a responsible officer or official, chosen from the regular military forces or the permanent civil administration of the Detaining Power, but excluding any irregular organisation, political militia or police force. The officer or official in charge of the place of internment shall be furnished with printed copies of the present Convention, in his own language, and shall be responsible for its application. The text of the present Convention shall also be posted inside the place of internment, in the language of the CWI, or shall be in the possession of the internees' Camp Committee.

Article 19

Regulations, orders, notices and publications of every kind shall be communicated to CWI, and posted inside the internment places in a language which the inmates understand.

IV. Financial Resources of Internees

Article 20

CWI of the first and second class shall be paid allowances sufficient to enable them to make canteen purchases of tobacco and necessary toilet requisites. These allowances shall be credited or paid in canteen coupons. They shall be paid regardless whether CWI perform labour, or not.

As the cost of maintenance, food, clothing and shelter is borne by the Detaining Power, no amounts may be deducted to meet such cost from the allowances, wages or credits of CWI.

The scale of wages due to working CWI of the various classes are shown elsewhere in the Convention. CWI shall have the right to pay into their purchase accounts in camp canteens or other authorised shops, the whole or a substantial portion of their allowances, wages or credits ¹.

¹ A supplementary Section to Art. 20 will be found below in the Draft Provisions not revised by the Third Commission. (See p. 330.) This Section was suggested by one Delegation.

Article 21

At the time of their internment, CWI of the various classes shall be authorised to keep in their possession a minimum amount, for possible conversion into purchase coupons. All excess withdrawn or withheld from a CWI, and any monies deposited by him, shall be put to his account and may not be converted into another currency without his consent.

On discharge or repatriation, CWI shall receive the equivalent in currency of their credit balances, or an official certificate stating the amount due to them ¹.

V. Transfers

Article 22

Wounded or sick civilians may not be transferred except in case of absolute necessity, and provided such transfers are in no way prejudicial to their health and are carried out with humanity.

Article 23

In the event of removal, CWI shall receive previous official notice as to their new destination. They shall be allowed to take with them their personal effects, their correspondence and parcels which have arrived for them, to a minimum weight of 20 kilograms, if transport conditions do not allow a larger weight. All necessary steps shall be taken so that correspondence and parcels addressed to the former place of internment or detention may be forwarded immediately.

The sums credited to CWI's account shall be transmitted to the competent authority of their new place of residence.

The cost of removal shall be borne by the Detaining Power.

If fighting operations draw near to the place of detention, CWI shall be transferred only if their removal can be effected under normal conditions of security, or if their safety demands.

The Detaining Power shall in no case order transfers that are hurried or injurious to CWI's health, simply to avoid their capture or liberation.

¹ The proposal to add supplementary Sections to Art. 21, the text of which would be that adopted by the Second Commission concerning PW (Sects. 3, 4, 5, 7 and 8, see above page 56) appears in the Draft Provisions not revised by the Third Commission. (See p. 330.) It was suggested to replace the word "camp" by "place of internment", "prisoner" by "civilian war internee", and "spokesman" by "delegate of the committee of the place of internment".

VI. Employment

Article 24

The Detaining Power shall not employ as workers CWI of the first and second class, except as volunteers. If CWI of these two classes apply for suitable work, this shall be found for them, as far as possible.

CWI shall be free to give up this work if they wish, and at any moment, without incurring any penalty.

The Detaining Power may employ as workers CWI of the three classes covered by these regulations only if they are able-bodied, taking into account their age, sex and ability, and within the limits of work permitted under the present regulations.

The working capacity of CWI of the third class and that of CWI of the first and second class who are voluntary workers, shall be checked by periodical medical examinations.

These stipulations constitute no obstacle to the right of the Detaining Power to employ doctors or persons of equivalent status and male nurses of the first two classes, in their professional capacity and in behalf of their interned compatriots, nor to the right of the Detaining Power to employ CWI of the first two classes for administrative and maintenance work in places of internment and for the care of the inmates.

(A supplementary Sec. on industrial accidents to be inserted here.)¹

Article 25

The treatment of CWI working in establishments other than their original place of internment shall be in all respects in conformity to the present Convention. The Detaining Power shall assume entire responsibility of supervision, care, maintenance and payment of wages.

Article 26

No CWI shall be employed on work, even on a voluntary basis, for which he or she is physically unfit. Internees' fitness for work shall be determined by doctors of the Detaining Power. Doctors of the CWI's own nationality shall supply their considered opinion ; this

¹ The Third Commission decided to follow the wording adopted in respect of PW. The Second Commission did not, however, draft a text ; it merely concurred with the International Committee in considering " that it devolves on the home Power to compensate PW for accidents or illness and that duplicates of the certificates handed to PW should be forwarded to the home Power, through the International Committee ".

The Third Commission was not supplied with the text of this recommendation.

shall be shown on a certificate of fitness, copy of which shall be forwarded to the competent international body, and by the latter, after enquiry, to the Home or Protecting Power.

Article 27

The duration of daily work for CWI, including the time of the journey there and back, shall not be excessive, and shall in no case be superior to that permitted for civilian workers of the same district in the occupied territory, or—as regards internees of the first category—to that for nationals of the Detaining Power engaged on similar work. Every CWI shall be compulsorily granted a break of one hour in the middle of the day's work, and a rest of 24 consecutive hours each week, preferably on Sunday.

Piece or jobbing work shall not be permitted for non-voluntary workers.

Articles 28 and 29

(The revised text of Art. 31 of the 1929 PW Convention to be inserted here).¹

Article 30

Employment of CWI on unhealthy or dangerous work is forbidden. Conditions of work shall not be rendered more arduous by disciplinary measures.

Article 31

Conditions in labour detachments shall be similar to those in CWI camps, in particular as regards hygiene, food, care in case of accident or sickness, mail and reception of parcels, and the right to be visited by delegates of the Protecting Power and of the competent international body.

All labour detachments shall be subordinate to a camp or other place of internment for CWI. The authorities and the commandant of this place of internment shall be responsible for the observance in the labour detachment of the provisions of the present Convention. The commandant shall keep a correct list of the labour detachments subordinate to him, and shall communicate it to delegates of the Protecting Power and of the competent international body who visit the camp.

¹ The Draft Provisions, not revised by the Third Commission, include a supplementary Section to Art. 31 of the 1929 PW Convention, proposed by a Delegation and concerning CWI of the third class. (See p. 331.)

Article 32

(The text of the Articles of the revised 1929 PW Convention which deal with wages to be inserted here).¹

VI. Mail

Article 33

As from the outbreak of hostilities and after every amendment, the Detaining Power shall inform CWI and the Home Power, through the Protecting Power or the competent international body, of the measures taken for implementing the provisions of the present Section.

Article 34

Every Detaining Power shall fix periodically the number of letters and postcards which CWI of all categories shall be allowed to send and receive monthly. The number shall not be less than two letters and four cards for CWI of the first class at all times, and for CWI of the second class, after the first month following their arrest. For CWI of the third class, the number shall not be less than two letters, letter-cards or postcards per month. Letters and cards shall be forwarded by the quickest possible means; they may not be delayed or withheld for disciplinary reasons. CWI of the second category shall not be deprived of regular mail for more than one month after their arrest. Further, within a maximum period of one week after arrest, arrival in a new place of internment, and, in case of illness, transfer to hospital, each CWI shall be enabled to send to next of kin and to the competent international body, a postcard stating his arrest, state of health and address. This card may be of a standard type, bearing no other written indications than the signature, the address of the recipient, and the striking-out of irrelevant printed matter. These cards shall be forwarded with all possible speed and shall not be delayed in any way.

As a general rule, CWI mail shall be written in their own language. The Detaining Power may authorise correspondence in other languages.

Article 35

CWI shall be permitted to receive individual or collective postal parcels containing articles necessary for their personal convenience and

¹ See also the proposal made by a Delegation in the Draft Provisions not revised by the Third Commission (page 331).

use. This rule applies without restriction and at all times for CWI of the first class: it applies without restriction for CWI of the second class, as from the second month following their internment.

During the first month of internment, the Detaining Power may limit the contents of parcels to foodstuffs, clothing and toilet accessories.

For CWI of the third class, the Detaining Power may limit the number of parcels to parcels of kilograms per month, to be exclusively composed of foodstuffs, clothing and toilet accessories.

Books, printed matter or manuscripts liable to censorship may not be included in these consignments.

The Detaining Power shall refrain from preventing or restricting, on its own initiative, the issue of individual parcels. In cases where restrictions in, or regulations concerning the application of the present Article appear necessary in regard to the forwarding or issue of individual parcels, such changes shall be settled by special agreements between the Detaining Power and the Protecting Power, or the competent international body.

Parcels shall be handed to the addressees, who shall sign receipts, to be sent to the Protecting Power or the competent international body. The issue of individual parcels to a community of CWI may be done by the addressee only.

Article 36

The Detaining Power shall in no way restrict the forwarding by the Home Power, the Protecting Power, the competent international body, or any other organisation duly authorised by agreement between the Detaining Power and the competent international body, of collective consignments of foodstuffs, clothing, and toilet and hygienic articles.

These consignments shall not, at any time, release the Detaining Power from the obligations laid upon it by the present Convention.

The delegates of the Protecting Power and of the competent international body shall be granted all material facilities for checking the distribution of these consignments.

In places of collective internment all facilities shall be granted to the camp committee to take delivery, apportion and distribute these consignments. In places of individual internment, where no such committees exist or are able to function, the distribution shall take place under the personal responsibility of the commandant of the place of internment.

The delegates of the Protecting Power and of the competent international body may order the issue to internees, immediately on their arrest, of a first instalment taken from the collective relief supplies.

The delegates of the Protecting Power and of the competent international body shall be authorised, in view of the organisation of collective relief, to purchase relief supplies in the country of detention itself, or in the country under occupation. To this effect they shall enjoy all necessary administrative, technical and financial facilities.

(The clauses relating to the relief activities of camp committees; whose functions are similar to those of camp spokesmen for PW, should apparently be inserted in the Articles concerning the said committees.)

Article 37

Letters and remittances of money or valuables, as well as individual parcels intended for CWI, or sent by them, either direct or through the intermediary of the competent international body, shall be exempt from all postal charges, customs or other dues, particularly carriage charges, both in countries of origin or destination, or in transit countries. Collective consignments shall be exempt from all customs dues, and shall be forwarded by the Detaining Power and transit States in the manner defined in Article 29 of the Convention for the protection of Civilian Populations with regard to collective relief to free civilian populations.

CWI shall be allowed, in admittedly urgent cases, to send telegrams on payment of the usual charges, or at reduced rates for CWI who are detained in places far distant from their home country.

Article 38

CWI of the first and second class shall be authorised to receive individual book parcels, which may be subject to censorship.

For all three classes, the representatives of Protecting Powers, the competent international body and the relief societies recognised by agreement between Detaining Power and the international body, may send to the places of internment of the various categories of CWI books (singly or in bulk), church vestments and plate, musical instruments, outfits for physical exercises and games, material allowing CWI to pursue their studies or artistic activities, as well as scientific, medical and surgical equipment.

The transmission of such consignments shall not be delayed under plea of censorship difficulties.

Article 39

The censoring of mail shall be carried out as quickly as possible. The checking of consignments shall not be effected in conditions dangerous to the preservation of the foodstuffs which these consignments may contain. The control shall be carried out, if possible, in the presence of

the addressee, or of a fellow-internee acting on his behalf. Censoring and control of consignments shall be effected by the sending and receiving States only and, if possible, once only by each.

Article 40

The Detaining Power and the other Powers concerned shall grant all facilities for the transmission, through the intermediary of the Protecting Power or of the competent international body, of official papers or documents intended for CWI or signed by them, in particular powers of attorney or wills.

In all cases, except ultimately the accused of the second class in solitary confinement, they shall be granted opportunities to consult a lawyer.

VIII. Relations of CWI with the Authorities

Article 41

In places of individual or collective internment, the disciplinary régime of the various classes of CWI shall be compatible with humanitarian principles, and shall in no circumstances include regulations imposing on CWI physical exertion dangerous to their health, or involving physical or moral victimization.

In particular, segregation of a CWI from fellow-internees, which is not required for reasons of security, furthermore, prolonged roll-calls or standing in the open air, abuse of punishment drill, military drill and manoeuvres, creation of other classes than the three existing under the Convention, or those consequent upon the various degrees of punishment for CWI of the third class, are prohibited.

Article 42

CWI shall have the right to submit to the authorities in whose power they are, petitions concerning the conditions of captivity to which they are subjected.

They shall also have the right to communicate without restriction, through the internee committee, if it exists, or if necessary direct with the representatives of the Protecting Powers or of the competent international body, in order to draw their attention to the points on which they have complaints to make with regard to conditions of captivity.

Such petitions and complaints shall be forwarded immediately. Even though they are found to be groundless, they shall involve no penalty.

Internee committees shall be able to communicate to the representatives of the Protecting Power or of the competent international body, short periodical reports on the situation in places of internment and on the needs of the CWI.

Article 43

In all places where CWI may be found, and unless this is impossible owing to the isolation of detainees from each other, CWI shall freely elect every six months by direct uninominal and secret ballot the members of a committee empowered to represent them in dealings with the Detaining Power, the Protecting Powers and the competent international body, as also all other agencies which might be approved later. The members of this committee shall be re-eligible.

These elections shall be subject to the approval of the Detaining Power. The reasons underlying possible refusal shall be communicated to the Protecting Power and to the competent international body.

Should the Detaining Power entrust certain executive or control functions to delegates nominated by these internee committees, a proportion of the committee equal to at least one third of the members may request from the Detaining Power the duplication of its nominations, so that representatives of the minority of the committee may share in these functions.

Article 44

Internee committees shall contribute to the physical, moral and intellectual welfare of the inmates. Should the CWI decide to organise amongst themselves a mutual benefit scheme, this organisation shall be within the competency of the committee. The committee may appoint amongst the CWI the assistants it may require. All material facilities shall be granted to the committee's representatives, in particular a certain liberty of movement necessary to the carrying out of their duties (visits to detachments, receiving of supplies, etc.).

The committee, or its representatives, shall be able to issue collective relief supplies in places of collective internment where such a committee is instituted, and in subordinate places or detachments having no committee, including prisons and hospitals annexed to the said places of internment.

The Committee shall have administrative offices, premises for the reception and storage of supplies, and a certain amount of office furniture and stationery.

All facilities shall be granted to the committee for its postal and telegraphic correspondence with the authorities of the Detaining Power, the Protecting Power, the competent international body and its delegates, as well as with all relief societies recognised by agreements between the Detaining Power and the Protecting Power, or the competent international body.

The committees shall have every facility for checking the quality and quantity of supplies received.

They shall have every facility for maintaining in places of internment adequate stocks of collective relief supplies, and for carrying out distributions which shall be effected impartially, according to the donors' instructions, transmitted by the Protecting Power or by the competent international body.

The committees shall be enable to make equitable issues of collective consignments of clothing, in proportion to the articles already in the CWI's possession, and, generally speaking, to make every endeavour to satisfy the needs of the CWI who are most badly off.

Article 45

Members of committees, whose numbers are proportionately less than one in fifty of the total number of CWI, shall be exempted from work, even if they belong to the third class. If the proportion is higher, they shall nevertheless, even if employed, have two free days a week, besides Sunday. Generally speaking, committee members shall not be compelled to work, if this should increase the difficulties of their task.

No internee representative may be transferred without having been allowed the time necessary (one week at least) to acquaint his (or her) successor with current business. In case of dismissal, the reasons for this step shall be communicated to the Protecting Power and to the competent international body.

IX. Penal Regulations

*Article 46*¹

CWI shall be subject to the laws, regulations and orders in force in the territory of the country where they may be.

No special laws or orders concerning CWI published by the Detaining Power shall include penal proceedings as a form of sanction.

The stipulations of the present Chapter however remain applicable.

Article 47

CWI may not be punished for acts committed after their arrest except by the military or administrative authorities in charge of camps, and by the courts of the Detaining Power, who may not sentence them

¹ Two Delegations drafted a text which might replace this. (See non-revised Draft Provisions, page 331 below.)

to other penalties than those provided for the same offences in respect of the civilian population of the country where the place of internment may be.

All corporal punishment, all imprisonment in premises without daylight and, generally speaking, all forms whatsoever of cruelty, insult or assault are prohibited.

Collective punishments for individual acts are also prohibited.

Article 48

Acts constituting breaches of discipline and, in particular, attempts at escape shall be enquired into immediately. Preventive detention pending disciplinary action shall not exceed two weeks. Conditions of preventive detention shall not be more severe than those for detained civilians of the country where the place of internment may be.

Preventive detention in the case of judicial enquiry shall be restricted to three months at the most, and enquiries shall be carried out as rapidly as circumstances permit.

The duration of preventive detention shall be deducted from the penalty inflicted as a disciplinary or judiciary measure, in so far as this deduction is permitted for civilians of the country where the place of internment may be.

Article 49

After having served judicial and disciplinary sentences passed for acts committed during detention, CWI may not be treated differently to other internees. However, CWI sentenced in consequence of an attempt at escape may be subjected to special supervision, which may not include the cancelling of any of the guarantees granted to CWI by the present Convention, and which shall not, in particular, affect the physical health and moral welfare of the internee.

Article 50

Escaped CWI of the first and second class who are recaptured by the authorities of the Detaining Power shall not be liable to other than disciplinary penalties for such an attempt.

Escaped CWI of the third class who are recaptured by the authorities of the Detaining Power shall be sentenced to confinement only, and shall continue to benefit by the provisions of the present Convention covering CWI of their class.

Article 51

Attempted escape, even if not a first offence, shall not be considered as an aggravating circumstance, in the event of the CWI being brought

before the court for crimes or offences committed in the course of such an attempt.

After an attempted or successful escape of CWI of the first and second class, fellow-internees who aided in the escape shall be liable to disciplinary penalties only.

In the case of CWI of the third class, fellow-internees may be sentenced only to confinement and shall continue to benefit by the provisions of the present Convention for their class.

Article 52

The Powers signatory to the Convention, in particular the Protecting Power, as also the competent international body, shall ensure that the authorities of the Detaining Power exercise the greatest leniency in deciding whether an offence committed by CWI entails disciplinary or judicial penalties.

Offences committed in the course of escape against persons, but without violence, or against property without intent of personal profit (e.g. wearing of clothing without special markings, and forging of identity papers) shall not be liable to judicial penalties.

CWI shall not be sentenced more than once for the same act, or on the same charge.

Article 53

No CWI sentenced to a disciplinary penalty and who is eligible for release may be retained on the ground that he has not served his sentence. CWI eligible for release and against whom penal proceedings are pending may lose the privilege of release until the close of the proceedings, and until the sentence, if any, has been served. Those already serving a sentence passed by a court for acts committed during detention may be retained until the expiry of the sentence.

However, Mixed Medical Commissions may demand from the Detaining Power anticipated release, even in the latter case.

Article 54

Confinement is the severest disciplinary penalty which may be inflicted on CWI.

The duration of any single sentence shall not exceed thirty days.

The same limit of thirty days may not be exceeded, even if the CWI is guilty of several breaches of discipline at the time when judgment is passed, whether such breaches are connected or not.

If, during the course or at the close of a period of confinement a CWI is sentenced to another disciplinary penalty, a period of at least three days shall separate the periods of confinement, if one of these is of ten days or more. Disciplinary penalties may in no circumstances

deprive CWI of the benefit of certain essential rights laid down in the Convention, such as the right to correspondence, the right to complaints, contact with the delegates of the Protecting Power or of the competent international body, physical exercise, etc.

Disciplinary penalties shall in no circumstances be brutal or dangerous to health. They shall comprise only the following : restrictions of privileges granted to certain classes of internees ; segregation ; extra labour (for working internees the labour shall be of the same kind as the usual work ; extra labour may not last more than two hours per day) ; fines not exceeding a certain percentage of allowances or wages. Penalties bearing on food are prohibited, in so far as they consist in a diminution of quantity or of nutritive value, or may be prejudicial to health.

Article 55

In no circumstances may CWI serving a disciplinary sentence be transferred to common law divisions of penitentiaries. Nor may CWI of the first class be removed to penitentiaries, nor even to special divisions for CWI.

Premises in which disciplinary penalties are served shall meet the requirements of hygiene, and CWI serving sentences shall be enabled to keep themselves in a state of cleanliness.

They shall enjoy daily facilities for taking exercise or for remaining out of doors during two hours at least.

Not more than one month shall elapse between the passing of a disciplinary sentence and its execution.

Article 56

CWI serving disciplinary sentences shall have permission to read and write, and to send and receive letters.

Parcels and remittances of money, however, may be withheld from the addressees until the expiry of the sentence. If undelivered parcels contain perishable foodstuffs, the latter shall be handed over to the infirmary of the place of internment.

Article 57

CWI serving disciplinary sentences shall be permitted, if they so request, to present themselves for daily medical inspection. They shall receive such medical attention as their state of health requires and, if need be, shall be removed to the infirmary of the place of internment or to a hospital.

Article 58

Without prejudice to the competency of the courts and the superior authorities, disciplinary penalties may only be awarded by an officer

or official vested with disciplinary powers in his capacity as commandant of the place of internment, or by the qualified officer or functionary.

Article 59

Judicial proceedings against CWI for acts committed during detention are subject to the provisions of Art. 24 of the present Convention and of the Regulations on Judicial Measures (Annex C). Furthermore, these proceedings are subject to the particular provisions of the following Articles.

Article 60

Internee committees shall be notified of any legal proceedings against CWI for whom they are responsible : the said notification shall be made simultaneously to them and to the Protecting Power, or to the competent international body.

Article 61

CWI who have been convicted shall not be subject to common law régime, except for offences punishable under the common law of the country where they are interned. In all other cases, they shall be subject, if sentenced to confinement, to conditions provided for CWI of the third class.

Article 62

No CWI shall be deprived, following on a judgment or otherwise, of the benefit of the provisions of Art. 42 of the present Regulations, relative to petitions and complaints of CWI to the detaining Authorities, the Protecting Power or the competent international body.

X. Release and Accommodation in Neutral Countries

Article 63

The Detaining Power shall be under obligation to release, or should it prefer, to accommodate in a neutral country, subject to this country's consent, CWI who are seriously ill or wounded, or to repatriate CWI of the first class, if they so desire.

Should accommodation in a neutral country or repatriation prove impossible, no CWI shall be released against his will.

Agreements between belligerents shall therefore determine, as soon as possible, what cases of disablement or sickness are eligible for release, or accommodation in neutral countries, or for repatriation. Pending the conclusion of such agreements, belligerents may refer to the Model Draft Agreement annexed to the present Regulations.

Article 64

Mixed Medical Commissions shall be nominated for the purpose of examining sick and wounded CWI, and shall make decisions regarding them. The appointment, duties and functioning of these Commissions shall conform to the provisions of Art. 65 below.

CWI who in the opinion of the medical authorities of the Detaining Power are clearly seriously sick or wounded, shall be released or accommodated in neutral countries or repatriated without the formality of examination by a Mixed Medical Commission.

Article 65

(This Article shall reproduce the wording of the annex to the Second Commission's Report, relative to Mixed Medical Commissions—see above (pp. 232-241), replacing "prisoners" by "civilian war internees" and, in Sec. 8, "the belligerent in whose territory neutral members shall function" by "the Detaining Power").

Article 66

In addition to CWI selected by the medical officer of the place of internment, the following sick and wounded internees shall have the faculty of presenting themselves for examination by the Mixed Medical Commissions mentioned in Art. 64 :

- (1) Sick and wounded nominated by an internee doctor ;
- (2) Sick and wounded presented by the internee committee of the place of internment ;
- (3) Sick and wounded proposed by their home country, by the Protecting Power, or by the competent international body.

CWI who cannot invoke the stipulations of the foregoing paragraph may nevertheless present themselves for examination, but the Commissions shall first examine the cases covered by the above paragraphs.

Article 67

The present Articles covering wounded and sick refer to all cases of serious sickness or injury, except injuries or diseases which have been voluntarily inflicted or contracted.

Article 68

As regards CWI of the first class, the belligerents may, during hostilities, conclude agreements for the direct repatriation or the accommodation in neutral countries of able-bodied internees who have been detained for a long time.

Article 69

The costs of removal of CWI to neutral countries as from the frontier of the Detaining Power, shall be borne by the home country.

Article 70

All released CWI shall continue to benefit by the provisions of the present Convention which protect free civilian populations.

CWI sent back to their home country or to an allied country, with the consent of the Detaining Power, may not be employed on active military service.

Article 71

Belligerents who conclude an armistice convention shall, in principle, cause to be included therein stipulations concerning the voluntary repatriation of CWI of all classes.

The repatriation of internees shall in any case be carried out as soon as possible after the close of hostilities.

CWI against whom penal proceedings are pending for a crime or an offence other than those named in Art. 24 of the Convention relating to the protection of civilians, may be retained until the close of such proceedings and/or until they have served their sentence, if any. CWI prosecuted or convicted for an offence under common law may, however, be handed over at the close of hostilities by the Detaining Power to the authorities of the Power in whose territory they were at the time of their arrest.

In agreement with the Detaining Power and the home country or the Protecting Power, commissions may be set up after the close of hostilities or of the occupation of territory, to search for dispersed internees and to ensure their repatriation, or their return to their country of residence.

Article 72

Certification of deaths of CWI shall be effected by the authority in charge of the place of internment, assisted by the doctor of the Detaining Power and a doctor of the same nationality as the deceased. A death certificate showing the cause and conditions in which the death occurred shall be made out by the detaining Authorities and countersigned by a doctor of the place of internment and a doctor of the nationality of the deceased. Copies of this certificate shall be sent to the Protecting Power and to the competent international body.

The wills of CWI shall be received and registered under the same conditions as for the civilian population of the country where the place of internment is situated.

The Detaining Power shall ensure that CWI who have died in captivity are honourably buried, whenever possible according to the rites of their religion, and that the graves bear the necessary indications, are treated with respect and suitably maintained. The bodies shall be interred in individual graves, unless unavoidable circumstances necessitate the use of collective graves.

The death or serious wounding of a CWI caused by a sentry, a fellow-internee or any other persons, shall immediately give rise to an official enquiry by the detaining Authorities. The circumstances of the death and the opening of an enquiry shall be immediately communicated to the Protecting Power and to the competent international body. All evidence given by witnesses shall be collected, a report shall be made and communicated to the Protecting Power or the competent international body. Where the responsibility of one or of several persons is involved, the Detaining Power shall take adequate judicial measures against the offenders.

XII. Relief and Information Bureaux

Article 73

At the outbreak of hostilities and in all cases of occupation for which the present Convention provides, the Powers who have ordered internments, and the neutral Powers who have given shelter to internees or escapees, shall open an official information bureau in behalf of the internees in their hands.

Within the shortest possible time, each of the above-mentioned Powers shall notify their Information Bureaux of all civilians interned under the conditions named in the present Convention. Neutral Powers shall take similar action for internees accommodated in their territory.

The Information Bureaux shall, by the most rapid technical means available, transmit all such information to the Protecting Power and to the competent international body.

The Information Bureaux shall receive from the Detaining Power all details of identification in the latter's possession, to allow rapid notification to next of kin, and the official addresses where the relatives of the interned may send correspondence.

(Sections 4 to 8 inclusive of Art. 77 of the amended 1929 PW Convention to be inserted here.)

Article 74

(Insert here Art. 78 of the amended 1929 PW Convention, substituting "Civilian War Internees" for "Prisoners of War" and "Camp Committee" for "Representative").

Article 75

A Central CWI Information Agency shall be set up in a neutral country. This Agency may be the same as the Central Prisoners of War Agency, provided for by the PW Convention.

If it should consider necessary, the competent international body may suggest to the Powers concerned the setting up of this Agency. The Agency shall collect all information obtainable regarding internees from official or private sources. It shall transmit the information by the most rapid means to the home countries of the internees, or the countries where they resided, as well as to the Protecting Power¹.

Article 76

The Information Bureaux and the Central CWI Agency shall be granted free postal facilities and, as far as possible, exemption from telegraphic charges.

Article 77

The High Contracting Parties preserve the right of concluding particular conventions on all questions relative to CWI for which they may consider it desirable to make special provision. These agreements shall, in no case, entail less favourable conditions for CWI than those provided by the present Convention.

Article 78

The text of the present Convention and the various regulations annexed thereto shall be posted in all places of internment, in the language of the CWI concerned. Commandants of places of internment shall possess a copy in their own language, and the responsible personnel shall be instructed regarding its stipulations. The text of the Convention and of the Regulations shall be communicated, at their request, to the internees who are unable to consult the posted copy.

¹ One Delegation pointed out that in the Third Commission's Draft Art. 75 is covered by the general provisions of the Preamble, which states that the expression "competent international body" in no way restricts the competency of the International Committee of the Red Cross in the sphere of humanitarian activities, where it is particularly qualified to continue its traditional work. The wording of Art. 75 would obviously in no way restrict the scope of the general remarks contained in the Preamble.

DRAFT TREATY PROVISIONS NOT REVISED
BY THE COMMISSION

Re Annex D

IV. Provisions concerning the pecuniary resources of internees

See above, page 312.

Re Article 20

Additional Section:

The Detaining Power shall accept from the Government on which internees depend, a financial contribution which shall be allotted in equal parts to all internees of the first and second class, and at the discretion of the Detaining Power, to all or part of the third class.

Re Article 21

Additional Sections:

Text of the corresponding Article of the amended 1929 Convention (Sec. 3, 4, 5, 7 and 8).

V. Transfers

See above, page 313.

One Delegation proposed to assemble in a single Article the stipulations of Arts. 7, 22 and 23 of Annex D.

This new Article might run as follows:

New Article 22

Transfers of CWI shall only take place if they can be carried out under normal conditions of security, or if the safety of the CWI demands. In particular, CWI may be temporarily detained in a zone endangered by hazards of war, climate or health conditions, only if, in a consequence of physical debility, wounds, sickness or age, they would run greater risks by removal than by remaining on the spot.

Removals may only be made on foot if the age, sex and state of health of CWI allow them to be safely undertaken. In such cases, the day's march shall not exceed 15 kilometres. Transport by rail shall be effected under the same conditions at least as for the troops of the Detaining Power.

The Detaining Power shall in no case order hurried removals, or such as may be prejudicial to CWI's health, with a view to preventing their falling into the hands of the adverse party.

VI. Employment

See above, pages 314-316.

Article 25 (Nature of Work)

CWI of the third class shall not be employed on any work referred to in Art. 31 of the PW Convention (actual or amended text).

Article 32 (Wages)

Wages and all other working conditions for CWI of the first and second class, who are voluntary workers, shall be determined by agreements between the CWI, the employers and the Detaining Power. CWI of these classes who are called upon for camp administration, camp upkeep, or the medical service, shall be paid worker's wages by the Detaining Power.

The Detaining Power shall pay to CWI of the third class, when working, a monthly wage amounting to at least. . . which shall also be paid to the personnel of this class who are employed with the commandant's consent, on work for the benefit of the internees themselves.

IX. Penal Regulations

See above, page 321.

Article 46

CWI shall be subject to the laws, regulations and orders momentarily in force in the countries where they may be, and to the regulations and special orders of the places where they are interned.

CWI guilty of breaches of such laws, orders or regulations shall be liable to the consequences foreseen by these laws, orders or regulations. No laws or orders enacted specially in respect of CWI by the Detaining Power may involve penal proceedings. Whenever possible, minor breaches of the laws in force in the territory concerned shall be treated as breaches of the regulations or orders of the place of internment and shall lead to disciplinary measures only.

The stipulations of the present Section remain applicable ¹.

¹ This wording takes into account the observations submitted by one Delegation.

General Questions dealt with by the Conference in plenary Session

1. Possible Amalgamation of the various humanitarian Conventions.

Without desiring to settle a question which will depend upon the Diplomatic Conference entrusted with the final drafting of the Conventions, the Conference requested the International Committee of the Red Cross, while leaving them all latitude in this respect, to assemble the various subjects under consideration into a single draft diplomatic instrument. This draft would contain separate Chapters, corresponding to existing or possible Conventions and which, while being as homogeneous as possible, in respect of their form, could be easily separated, should the Diplomatic Conference consider opportune. These Chapters might be preceded by a General Part, embodying the main principles common to the various Chapters.

2. Form of Treaty Stipulations.

The Conference was of the opinion that stipulations of a particularly technical and detailed nature might, whenever it appears useful, be embodied in one or several attached regulations. Such regulations shall have the same scope and the same weight as the Convention itself.

3. Date of the future Diplomatic Conference.

The Conference recommended that Governments should be informed of its desire to have convened as soon as possible, and before April 30, 1948, the Diplomatic Conference competent to sign the amended or new Conventions on the matters under consideration.

4. Final Recommendation.

The Conference, while submitting to the Governments for study Draft Conventions relative to wounded and sick, prisoners of war and civilians, in the drafting of which it has participated, desires to have placed on record its earnest hope that war may never again devastate the world.