THE GENEVA CONVENTIONS OF AUGUST 12, 1949

Analysis for the use of National Red Cross Societies

VOL. II

ARTICLES COMMON TO THE FOUR CONVENTIONS

GENEVA CONVENTION NO. III RELATIVE TO THE TREATMENT OF PRISONERS OF WAR

GENEVA CONVENTION NO. IV RELATIVE TO THE PROTECTION OF CIVILIAN PERSONS IN TIME OF WAR

INTERNATIONAL COMMITTEE OF THE RED CROSS
GENEVA

1950

Colonel Howard S. Levie Collection

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Legal Center and School
United States Army
Charlottesville, Virginia

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FOREWORD

The first Volume of this work provided a commentary for National Red Cross Societies on what are for them the most interesting provisions of the First and Second Geneva Conventions of August 12, 1949.

The first of these, incidentally, is the final form assumed by the Geneva Convention of August 22, 1864, for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, revised in 1906 and again in 1929.

As the First Convention relates back to the original instrument from which all Red Cross law derives, a particularly detailed study of it was required.

The second Volume, divided into three Sections, groups commentaries which should be of particular interest to National Red Cross Societies:

(1) — On the Articles common to the four Geneva Conventions of August 12, 1949.

(2) — On the Third Convention relative to the Treatment of Prisoners of War, which revises the corresponding Geneva Convention of July 27, 1929.

(3) — On the Fourth Convention relative to the Protection of Civilian Persons in Time of War.

Although the conception of aiding prisoners of war is more recent in date than that of assisting the wounded, it none the less, during the two World Wars, represented an important part of the work of the National Societies and of the International Committee.

Neither the Committee nor the Societies have waited for the signature of the Fourth Geneva Convention to do everything in their power to protect the civilian victims of war. But the new charter incorporates a body of rulings into International Law, drawn from the experience of the two Wars and eliminating for the future what has proved to be a most unfortunate hiatus.

PART I

ARTICLES COMMON TO THE FOUR GENEVA CONVENTIONS OF AUGUST 12, 1949

International treaties often contain clauses of a general nature in which the guiding principles and the extent and conditions of application are stated.

In the 1929 Geneva Conventions, clauses of this nature—they were quite brief—occurred either in the body of the Conventions, or in the Final Provisions. In the 1949 Conventions, on the other hand, they are found mostly in the first few Articles, and their wording is practically identical in the four Conventions. This position at the head of the text makes them all the more impressive ; the identity of wording precludes divergent interpretation and the disputes it may give rise to. It is possible to see from the outset what each Convention is about, what is its object and what is the general spirit which informs it.

It would be outside our scope to examine the background of each of the Articles common to the four Conventions, or to comment on them in detail. We shall therefore confine our study to those provisions which fix the scope of the Conventions, or directly or indirectly interest the Red Cross, insofar as they modify or extend the other agreements.

Article 1. — Respect for the Conventions. [1]

In proposing the new formula : " The High Contracting Parties undertake to respect and to ensure respect for. . . ", [2] and in making it Article 1, the draftsmen wished to emphasise the particularly solemn nature of the engagement entered into, and underline the imperative character of the Convention.

The part which the Red Cross can play in assisting Governments in this connexion is dealt with below (See p. 13, Articles 47/48/127/144).

Articles 2 and 3. — Application of the Conventions.

Articles 2 and 3 are among the most important. Their object is to extend as far as possible the field of application, hitherto confined to international conflicts and more or less left for the States themselves to delimit ; one Party to a conflict, by arguing that no state of war existed, could, it seems, have contested the right of applying the Conventions.

The new Articles show a tendency of signatory Governments to accept the Red Cross conception that respect for the human person and assistance to the suffering are not limited to cases provided for in the Conventions. The principle is valid at all times and in all places ; it is not a product of the Conventions— rather are the Conventions its expression. Moreover, the Red Cross must aim ultimately at having the Conventions regarded, not as reciprocal agreements, but as unconditional engagements. The memory of too many cases of persons being completely deprived of protection—and even of the relief which the Red Cross was ready to bring them—because a belligerent Power denied the applicability of the Conventions, contributed largely to the adoption of the new texts.

In the terms of Article 2, the new Conventions shall henceforth apply in " *all cases of declared war or of any other*

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[1] When the Common Articles do not bear the same number, the four numbers given indicate the Conventions in their proper order : 1. Sick and Wounded ; 2. Maritime ; 3. Prisoners of War ; 4. Civilians.

[2] The 1929 Conventions said simply : " *The provisions of the present Convention shall be respected...*" — Wounded and Sick, Article 25 (*seront* in French), and Prisoners of War, Article 82 (*devront* in French).

declared conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them", and in all cases of occupation, *"even if the said occupation meets with no armed resistance"*.

To quote only two examples : if the new Conventions had been in force during the recent War, they would have been applicable as between Germany and Poland, even after the Reich had suppressed the Polish State and considered that a state of war no longer existed ; the same would have applied throughout the occupation of Denmark.

There remains the instance when not all the belligerents are party to the Conventions. Here, the 1929 Convention had already improved on its predecessors ; signatory States, even if not always bound in relation to a non-signatory State, were at least bound in their reciprocal relations.

Following suggestions put forward by the International Committee, the Diplomatic Conference recognised the necessity for completing the Conventions on this point. It only went halfway, however, limiting itself to stipulating that the Powers party to the Convention *"shall, furthermore, be bound by the Convention in relation to a Power not so bound, if the latter accepts and applies the provisions thereof"*. Incomplete as the addition is, and weakened by the condition of reciprocity, it is to be welcomed. Not only is it evidence of a praiseworthy intention, and a new step towards the unconditional application of humanitarian principles, but it may well be the means of saving life. It will be sufficient, henceforth, that the Power which is not signatory should make a unilateral declaration and begin to apply the Conventions, for the other Party to continue to be bound, whether it so wishes or not.

Article 3. — Conflicts not of an international character.

Article 3 is perhaps the most striking example of the evolution of legal conceptions in the new Conventions. It does no less than extend the Conventions to civil war, and, in general, to all conflicts which cannot be classed as international war. In its first drafts, the Committee expressly mentioned *"civil wars,*

colonial wars and wars of religion ". The Stockholm Conference, and the Geneva Conference after it, rejected this reference, but did so only because too rigid a definition might allow belligerents to escape their obligations, by claiming that the conflict in which they were involved was not provided for.

It was not easy to draw up provisions which would apply to civil war. We cannot describe here the background of Article 3 and tell in detail of its transformations, from the formula proposed by the Committee to the Preliminary Conference of Red Cross Societies in 1946, to the final wording accepted in 1949. [1]

Till very recently, the idea of extending the Conventions to cover a domestic conflict was thought to be impossible from a legal point of view, and wholly incompatible with state sovereignty. Much blood had to be shed in another World War and great changes made in the conceptions of International Law, before this idea could even begin to be accepted by Governments. Once the idea was more or less agreed to, powerful obstacles had still to be overcome before it could be reduced to an acceptable formula. The following were the principal difficulties :

(1) — The impossibility, from a legal point of view, of binding non-signatory parties. The Conventions, it was said, can bind only Governments; an illegal rebel group, which, even if it acquires coherence, may never be recognized as a Power by any of the signatory States, could not be so bound.

(2) — Many Government representatives feared that a Government obliged to apply the Convention to civil war would have its hands tied in the legitimate suppression of rebellion. They especially thought that the application of the Conventions might reinforce the position of a group of insurgents, in having it considered as a belligerent.

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[1] A fuller account will be found in an article by Frédéric SIORDET : " Les Conventions de Genève et la guerre civile " reprinted from the *Revue internationale de la Croix-Rouge*, February-March, 1950. Geneva, 1950, p. 44. English version in the English Supplement to the *Revue*, August, 1950, and ff.

(3) — What standard should be taken to decide whether a conflict is or is not international, in the sense understood by the Convention ? Where unrest continues over a period, it is often very difficult to say at what moment it becomes civil war. Is it enough that a small group of rebels should give itself the title of Government for the Convention to apply automatically ? Shall the legal Government of the country concerned be itself the judge of the nature of the conflict, or shall the decision be left to some international body ?

(4) — It is clear that, as many provisions of the Conventions concern only war between nations, their application would be materially impossible in domestic conflicts.

These misgivings, it must be confessed, were not without foundation. It is therefore all the more remarkable that the Geneva Conference was able to agree upon a text which, without making all the provisions of the Conventions imperative in civil war, at least imposes on all Parties to the conflict the duty of respecting the essential principles. The obligation is limited, it is true ; but it is absolute, and—it should be emphasised—not subject to any condition of reciprocity. As worded, Article 3 has the double merit that, a potential way of saving human lives, it also is the means of allaying apprehension. In case of domestic troubles, the rebel party will be prompted to respect the Conventions, if only to show that its followers are not criminals, but are fighting as soldiers in a cause which they believe just.

As far as the legal Government is concerned, there is no reason why the fact of applying these agreements should constitute an obstacle to the legitimate suppression of rebellion. As a Delegate said at the Diplomatic Conference, a Government which every day applies the elementary principles of humanity to thieves and murderers, in granting them legal safeguards and giving them essential food and attention, should not have any particular difficulty in applying to insurgents, even if it considers them simply as criminals, the strict minimum provided for in

Article 3. In actual fact, the application of the Article in no way restricts the right of a legal Government, apart from suppression by arms, to prosecute and condemn rebels, in conformity with municipal law. Finally, good care was taken, in the last paragraph of the Article, to specify that "*the application of the preceding provisions shall not affect the legal status of the Parties to the conflict*". By that, the insurgents are prevented from taking advantage of the fact that they respect the principles of the Convention, to secure recognition as a belligerent Power.

In continuing, a non-international conflict may take on the character and dimensions of international war. The position of the population, especially the sick and wounded, prisoners of war, internees and so forth, is then such, that respect for the principles of the Conventions is not alone sufficient ; it becomes desirable to make detailed regulations for their treatment and relief. A paragraph of the Article makes such provision by stipulating that the "*Parties to the conflict should further endeavour to bring into force, by means of special agreements, all or part of the other provisions of the present Convention*".

A clause of particular interest to the Red Cross is that reserving its right of initiative : "*An impartial, humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict*".

We shall see later, in dealing with Article 9/9/9/10 (Activities of the ICRC) the importance, in a general way, of this mention of the right of initiative. It is also essential that it should be made in the clauses referring to non-international conflicts. It will, in future, be difficult to maintain, as was sometimes done in the past, that any offer of help by the Committee is an inadmissible interference in domestic affairs. Relief is made possible at shorter notice, and above all, on a more comprehensive scale, than was, for example, the case in the Spanish Civil War. [1] It must not be forgotten that the first concern of the ICRC, if it intervenes in a domestic conflict to which the Conventions do not, as of law, apply, is to obtain *de facto* recognition of the Conventions, or at the very least, of their principles.

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[1] See F. SIORDET, *loc. cit.*, pp. 9-10.

Articles 6/6/6/7. — Special Agreements.

The 1929 Conventions (Sick and Wounded, Article 2; Prisoners of War, Article 83) empowered belligerents to conclude special agreements. The first of these Conventions stated that such arrangements might be made *beyond* the limits of the existing obligations—in other words, that the provisions of the Conventions were to be considered as a minimum.

Articles 6/6/6/7 of the 1949 Conventions, renewing the authorization to conclude agreements for all matters concerning which belligerents may deem it suitable to make special provision, take care to stipulate that "*no special agreement shall adversely affect the situation of protected persons* (the wounded and sick, prisoners of war, civilians, etc.) *as defined by the Conventions, nor restrict the rights conferred upon them*". It is thus established beyond question that the provisions of each of the four Conventions constitute a minimum which must be respected.

Articles 7/7/7/8. — Non-renunciation of Rights.

During the recent War, prisoners of various nationalities were, with or without their consent, often induced to give up prisoner of war status and to accept some other relationship in regard to the Detaining Power. Although this new situation gave many of them appreciable advantages, it nevertheless submitted all to the will and pleasure of the Detaining Power. Moreover, it exposed them, in certain cases, to the risk of being considered as traitors or deserters.

It was a main concern, from the Preparatory Conferences of 1946 and 1947, to prevent the recurrence of such situations. The Committee had provided in its drafts that persons protected under the new Conventions might in no case be induced, by force or by any other method, to give up, partially or totally, the rights assured to them. The Diplomatic Conference, following the Stockholm Conference, went still further. Henceforth, persons protected under any of the four Conventions, cannot, in any case, give up such rights, partially or wholly. Thus, they are no longer protected only against an enemy Power, but against

themselves—in other words, against decisions they might make of their free will, but which, perhaps involuntarily, would place them in a very delicate situation with regard to their home country.

Articles 9/9/9/10. — Activities of the International Committee.

This Article is of great importance to the Red Cross. It reproduces, and slightly extends, Article 88 of the 1929 Prisoners of War Convention. [1] This short clause allowed the Committee during the War, to make 11,000 camp visits, to obtain improvements without number in prisoners' conditions, and to get through relief supplies worth 3,400 million Swiss francs to the camps, in spite of war fronts and blockades. This relief came from National Red Cross Societies ; it passed only because the Committee existed, and only to camps where that body was authorized to control distributions.

We recall once again that many of the Committee's attempts were fruitless, because the persons it was desired to help were not covered by any Convention. We again see how important it is that the right of initiative—limited up to now to action in behalf of prisoners of war—should find its place in each of the four Conventions. If these new Articles had been in force during the War, the Red Cross would have been able to enter the many concentration camps from which it was rigidly excluded, or could at least have sent relief to them.

It should be noted that the new texts expressly refer to "*humanitarian activities*" and apply not only to the Committee but to "*any other impartial humanitarian organization*".

Articles 8/8/8/9. — Protecting Powers.

Articles 10/10/10/11. — Substitutes for Protecting Powers.

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[1] 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.*"

When two Powers break off diplomatic relations—and with the more reason, when they go to war—each requests a third Power to represent its political, economic and other interests with the other, and, similarly, protect its citizens.

Previously, only the 1929 Prisoner of War Convention provided for such Protecting Powers. Under Article 86, the Parties recognize *"that a guarantee of the regular application of the present Convention will be found in the possibility of collaboration"* of the Protecting Powers. The representatives of the latter were authorized to visit any place where prisoners of war were interned and converse freely with them.

During the recent War, certain Protecting Powers interpreted their role very widely. Going on Section II of the 1929 Convention (Articles 86, 87 and 88 : Organization of Control), they did in fact watch over its application. The 1949 Conference, recognizing the value of this practice for a better application of the Conventions, expressly extended the reference in all four Conventions, making control part of the Protecting Powers' mission.

The Conference even went further. There may be no Protecting Power, and whole categories will be without the additional safeguard which the presence of this neutral mandatory of their own country represents. Too many cases in point are known—Polish or Free French prisoners in Germany, for example. No neutral State could, by law, be accredited to the Reich to represent the interests of a Poland or a Free France which Germany refused to recognize as sovereign States. Similar was the case of German prisoners of war in Allied hands, after the 1945 capitulation had wiped out the German State and the German Government.

In such cases the International Committee endeavoured, in its special field, to undertake some at least of the duties entrusted by the 1929 Convention to Protecting Powers. Its success varied with the degree of comprehension shown by the Powers which it approached unofficially and on its own initiative.

The Diplomatic Conference tried to clear up the difficulty by providing for substitutes for the Protecting Power. The

Committee, which its own experiences in this field seemed to qualify, pointed out that it could not be considered as any real "substitute" for the Protecting Power. As a simple, private body, it has none of the diplomatic or other means of action open to a sovereign State. Further, its position and role debar it from assuming the political, economic and legal duties which fall by definition to a Protecting Power. Such duties arise from a "mandate"; the Committee can never in this sense be the "mandatory" of a State, because it must always jealously maintain the independence of the Red Cross.

Provision is therefore first made in Articles 10/10/10/11 for the intervention of a State, or of a body capable of acting as substitute for the missing Protecting Power. It is only when protection cannot be ensured in this way that the Detaining Power should call upon "*a humanitarian organization, such as the International Committee of the Red Cross*" to take over the humanitarian tasks—and only these—assigned by the Conventions to the Protecting Power. The Detaining Power, also, must accept an offer of service spontaneously made by the said body.

Thus, the Committee will act always in full independence, following its own plans, and with its own resources. The change is that there is now specific legal recognition for such action—something that did not exist in the 1929 texts.

Articles 11/11/11/12. — Conciliation Procedure.

The text of Article 87 of the 1929 Prisoner of War Convention has been reproduced almost word for word as regards the application of the Convention. There is an addition to the effect that, in case of disagreement as to interpretation, the Protecting Powers shall lend their good offices with a view to settling the disagreement. There is now also the possibility, in conciliation meetings proposed by the Protecting Powers, of having recourse to a representative nominated by the International Committee.

Articles 47/48/127/144. — Dissemination of the Conventions.

These Articles are worthy of note, as being among the happiest innovations in the new Conventions. The High Contracting Parties undertake, in time of peace as in time of war, to disseminate the text of the Conventions "*and, in particular, to include the study thereof in their programmes of military and, if possible, civil instruction*", so that their principles may be made known to the entire population, including the armed forces.

In modern war, every individual, whether man, woman or child, civilian or military, may need to claim protection under one or other of the Conventions, or in some sense, to become an agent in carrying it out. Many breaches, some of them serious, were committed during the recent War because of ignorance of the Conventions on the part of subordinates. In war-time, the value of the Conventions will depend largely on public knowledge, if not of the four hundred and twenty-nine Articles of the Four Conventions, at least of their universally recognized principles. As we have seen, in Article 1, the Contracting Parties undertake to respect, *and to ensure respect for*, the Conventions. The best method of fulfilling this engagement is to make the contents as widely known as possible in advance.

It is here that the Red Cross as a whole, and in each of its national and international components, has an important part to play : to second the authorities in spreading among nations the knowledge of those principles which the Red Cross has championed since 1863, and which it has succeeded in having recognized by all Governments. The role of the Red Cross, in this task, is of the first order.

Final Provisions.

The Conventions provide, in conclusion, identical Articles dealing with signature, ratification, adhesion and denunciation. We need note only that each of the Conventions comes into force, as between the first two ratifying Powers, six months after the second instrument of ratification has been deposited at Berne. Each shall come into force for each of the other High Contracting

Parties six months after deposit of its instrument of ratification. Any Power in whose name the Conventions have not been signed, may adhere as soon as the Conventions enter into force. Adhesions become effective six months after date. [1]

Denunciations take effect after the lapse of one year from the date of their notification to the Swiss Federal Council.

In case of war, ratifications and adhesions shall take effect immediately, even before the expiration of the six months period. Denunciation shall not take effect, even after the period of a year, as long as peace has not been concluded, and in any case, until after the operations connected with the release and repatriation of persons protected by the Conventions have been terminated.

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[1] Switzerland, Jugoslavia, Monaco, Liechtenstein, Chile and India have already ratified the four Conventions. Jugoslavia deposited its instruments of ratification on April 21, 1950: the four Conventions were therefore open for adhesions as from October 21, 1950, the date on which they became operative as between the first two countries named above.

PART II

GENEVA CONVENTION No. III RELATIVE TO THE TREATMENT OF PRISONERS OF WAR OF AUGUST 12, 1949

INTRODUCTION

The Convention relative to the Treatment of Prisoners of War is the only one of the new Geneva Conventions which does not specifically mention the National Red Cross Societies. Reference is made only to "Relief Societies". Does this come from the historical fact that the first organizations which proposed to assist prisoners of war during the XIXth century were not the Red Cross Societies—which, at this period, were concentrating all their efforts on aiding the military sick and wounded ? At the beginning of the XXth century, however, following up previous initiatives, the Red Cross formally decided to include assistance to prisoners of war amongst its activities. The National Societies then saw opening before them an unlimited field of action, and they have since devoted themselves to this work, often with such a wealth of means, such energy and, one may truthfully say, success, that for the prisoners themselves, "Red Cross" and "Relief Society" have come to be almost interchangeable terms.

The National Societies would therefore have been justified in thinking themselves entitled to specific mention in the revised Convention. If, in actual fact (as we shall see further in dealing with Article 122), they spontaneously abandoned any such claim,

it is perhaps because they felt that they were nevertheless mentioned in the Convention through reference in several Articles to the International Committee—that part of the Red Cross organization which has always, in time of conflict, been the artisan and principal intermediary of their relief work. They did so, moreover, in the conviction that the essential for the Red Cross Societies was to find, in the revised Convention, an adequate legal basis for their work for prisoners of war. The new Convention does, as a matter of fact, take into account their experience of the 1929 Convention, and satisfies most of their wishes, particularly in matters that more or less directly concern them.

What follows is an analysis of the regulations which have been made to apply. They are examined in the order in which they occur in the Convention, grouped under two main headings :

(1). — Relations of Prisoners of War with the Exterior (Part III, Section V).

This part of the analysis will refer to provisions relating to correspondence (Art. 71) and relief supplies (Art. 72 and 73, and Annex III). The cognate provisions dealing with exemptions (Art. 74), transport (Art. 75), censorship and examination (Art. 76) will be discussed at the same time as each of the two questions mentioned above. The whole will be preceded by the examination of Article 70 (capture cards), which, incidentally, might also have been considered in connexion with the question which follows.

(2). — Information Bureaux and Relief Societies for Prisoners of War (Part V).

The analysis will deal here with Articles 122 (National Bureaux), 123 (Central Agency), and 125 (Relief Societies), the provisions of Article 124 (exemptions) being treated at the same time as Articles 122 and 123.

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For the Red Cross Societies, the interest of the new Third Convention will largely reside in the matters referred to. But their examination should be preceded by a brief glance at *innovations* in the Convention, with which National Societies should certainly be acquainted, even if their concern is only indirect. It is naturally outside our present scope to consider the whole of the Convention, which, in any case, follows very closely on that of 1929.

« Definition » of Prisoners of War.

Article 4 is of primary importance among the opening provisions ; it lists, in two paragraphs, the categories of persons entitled to the benefit of the Convention, dividing them into those who fall into the enemy's power and those who are already in enemy hands or have passed under the control of a neutral Power, but who should, by analogy, also have the benefit of the treatment accorded to prisoners of war.

Some of these categories were not included in the previous Conventions. Particularly important are *partisans*, i.e. members of organized resistance movements in occupied territory. These, for the future, are given the same standing as militias and volunteer corps, and must fulfil the same conditions (Art. 4, A, sub-par. 2). Reference is also made to members of regular armed forces who profess allegiance to a Government not recognized by the Detaining Power (Art. 4, A, sub-par. 3), crews of merchant ships and civil aircraft (Art. 4, A, sub-par. 5), and finally, persons arrested in enemy territory, solely because they belong to the armed forces of the occupied country (Art. 4, B, sub-par. 1).

Other categories are also specified, such as military internees in neutral countries (Art. 4, B, sub-par. 2), or persons who accompany the armed forces without actually forming part of them (Art. 4, A, sub-par. 4). This second category should particularly interest Red Cross Societies, as it could include units responsible for the well-being of troops. To be entitled to prisoner of war status, persons who accompany the armed forces should have obtained authorization to do so and be supplied with an

identity card, as provided for in the Annex to the Convention (Annex IV, A) ; the possession of a card is not, however, a condition *sine qua non* of status.

Two other points deserve mention. The Article applies not only to troops who are "captured", but to all who fall into enemy hands during the conflict, and consequently to the members of armed forces who capitulate *en masse*. It makes an express reservation (Article 4, C) concerning the status of retained religious and medical personnel. This status is defined by the First Geneva Convention. The 1929 Convention made no such reserve.

Article 5 also represents an important advance. Should any doubt arise as to whether persons having committed a belligerent act belong to any of the categories enumerated in Article 4, such persons shall enjoy the protection of the Convention until their status has been determined by a competent tribunal. An end had to be made—and the practice outlawed—of summary executions, without trial, of men who afterwards prove to have been regular belligerents.

General Protection of Prisoners of War.

In Part II of the Convention, corresponding to the General Provisions of the 1929 text, it is forbidden to transfer prisoners to a Power which is not party to the Convention ; in case of transfer to a Power which is party to the Convention, the Power which has ceded them continues to have a contingent responsibility for their treatment, and the transferring Power is even obliged to receive them back again on its territory if their treatment is not satisfactory (Art. 12, Par. 2 and 3).

Article 15 provides expressly that the Detaining Power shall be bound to give free, the medical attention required by prisoners ; this obligation is discussed more fully in Article 30.

Regulations for the Internment of Prisoners.

The Articles dealing with internment reintroduce the principle of release on parole, for which provision was made in the Hague

Regulations. Release on parole should be accorded *"particularly in cases where this may contribute to the improvement"* of the state of health of prisoners (Art. 21, Par. 2).

Prisoners now have better protection against air attack. The Detaining Powers shall notify each other of the location of the prisoner of war camps, and now, therefore, relatives should know where the prisoners are. Moreover, prisoner of war camps (and only such camps) shall be indicated by the letters "PG" or "PW", whenever military considerations permit (Art. 23, Par. 4).

We shall come back, when dealing with relief, on the provisions relating to food and clothing. For the moment, we may mention that uniforms of enemy forces captured by the Detaining Power should, if suitable for the climate, be made available to clothe prisoners of war (Art. 27).

Again, when a camp is closed down, the canteen profits shall be handed *"to an international welfare organization, to be employed for the benefit of prisoners of war of the same nationality as those who have contributed to the fund »* (Art. 28, Par. 3).

Religion and Medical Care.

Particular attention was devoted to religion, medical care, and intellectual and physical activities. For practical reasons, and for the benefit of Camp Commandants, the stipulations of the First Convention dealing with the status and privileges of medical and religious personnel retained to assist prisoners of war were reproduced in Articles 33 and 35 of the Third Convention. Moreover, doctors and ministers of religion not attached to the Army Medical Service, or not official Army Chaplains, who, consequently, become prisoners of war if they fall into enemy hands, may be called upon by the Detaining Power to act as doctors or chaplains for the benefit of their comrades. In such case, they are to be treated as retained personnel (Art. 32 and 36). Finally, we note that under Article 30, Paragraph 3, prisoners of war shall have the attention preferably of medical personnel of the Power on which they depend (whether their home country or an ally), and if possible, of their nationality.

Transfers, Labour and Financial Reserves.

Safeguards surrounding the transfer of prisoners have been reinforced in Chapter VIII, especially in case of transport by sea or by air. In both these cases, full nominal rolls shall be drawn up before departure (Art. 46, Par. 3). The Detaining Power may limit the weight of the luggage each prisoner may take, but in such case the Camp Commandant shall, in agreement with the prisoners' representative, ensure the transport of collective goods (in particular, stocks of relief supplies, and community kit) and the baggage the prisoners are not authorized to take with them (Art. 48, Par. 3).

The work of prisoners is more strictly regulated. The categories of labour on which they may be employed is given in a limitative list (Art. 50). Dangerous work, especially the removal of mines, is strictly prohibited, unless the prisoners volunteer for it (Art. 52).

In Section IV, dealing with financial resources, Article 60 provides for a monthly payment, called "an advance of pay", to all prisoners, and not to officers only. Thus, men who, because of sickness or any other reason, are unable to work and draw pay, will not for the future be left without money for their canteen purchases (Art. 60). Furthermore, remittances from prisoners to their relatives are ensured under the procedure laid down in Article 63, Paragraph 3.

Prisoners' Representatives (Spokesmen).

Articles 79 to 81 make more explicit the functions and prerogatives of the spokesman, whose duty it is to represent them in dealings with the Protecting Powers, the International Committee, or "*any other organization which may assist them*". We shall later on see this matter in more detail.

Penal and Disciplinary Sanctions.

The Chapter dealing with penal and disciplinary sanctions is now more complete; the following points are of particular interest.

Prisoners prosecuted for acts committed prior to capture shall retain the protection of the Convention (Art. 85); Article 99

states explicitly the principle that penal law may not be made retrospective ; Article 101 increases to at least six months the period which must elapse between the communication of the death sentence to the Protecting Power and the execution ; and Article 105 forms a catalogue of the minimum rights and means of defence to which an accused prisoner of war is entitled.

Repatriation and Accommodation in Neutral Countries.

Articles on the repatriation of prisoners or their accommodation in neutral countries during hostilities deserve special attention. The Convention gives the categories of wounded or sick who are entitled to automatic repatriation and indicates what cases may lead to accommodation in neutral countries. The principles are stated in Article 110 ; particular cases are decided in accordance with the Model Agreement annexed to the Convention (Annex 1), which, in spite of its title, is made prescriptive, failing special agreements between the interested Powers (Art. 110, Par. 3 and 4).

The appointment, duties and functioning of Mixed Medical Commissions, whose task it is to designate the prisoners eligible for repatriation or accommodation in neutral countries, are henceforth regulated in detail in the fourteen Articles of the Regulations concerning Mixed Medical Commissions, annexed to the Convention (Art. 112 and Annex II). These Regulations are prescriptive ; to meet a need which made itself felt during the recent War, the Medical Commissions are made to depend more closely on one single, central organization, namely the International Committee.

Accommodation of prisoners in neutral countries is maintained, even though it proved impracticable throughout the last War. Certain types of wounds and illnesses are mentioned (Art. 110, Par. 2) ; so are prisoners who have been a long time captive (Art. 109, Par. 2), and even other categories, when circumstances suggest (Art. 111). Detaining Powers "*shall endeavour, with the co-operation of the neutral Powers concerned, to make arrangements for the accommodation in neutral countries*" of prisoners (Art. 109, Par. 2).

Among wounded and sick prisoners submitted for examination to the Mixed Medical Commissions should be included those proposed by the Power on which they depend, or by an organization recognised by that Power, and « *giving assistance to the prisoners* » ; this latter expression could obviously cover National Red Cross Societies (Art. 113).

The situations which arise at the end of a modern war have shown that the 1929 Convention, in making the repatriation of prisoners coincide with "*the conclusion of peace*", could be distinctly unfavourable for the men concerned. In future, under Article 118, prisoners must be repatriated « *without delay after the cessation of active hostilities* ». In default of agreement between the interested States on this point, each Detaining Power shall at once draw up and carry out a plan of repatriation in conformity with the above principle.

Death of Prisoners.

We shall have occasion, in discussing Information Bureaux, to revert to Article 120, dealing with the death of prisoners of war, death certificates, wills, etc. We may note here the care which the new Convention devotes to questions of burial or cremation and the upkeep of graves (Art. 120, Par. 3 to 6). The last Paragraph in particular, following similar provisions of the First Geneva Convention, obliges the Detaining Power to set up a Graves Registration Service for prisoners who die in captivity ; among its duties is to transmit lists of graves to the Power of origin.

Application of the Convention.

Article 126 makes provision for the Delegates of the Protecting Powers to supervise the application of the Convention. Such Delegates are, for the future, authorized to travel to the points of departure, passage, or arrival of transferred prisoners.

The last Paragraph of the Article gives the visits of the Committee's Delegates the same standing, by providing that they "*shall enjoy the same prerogatives*" as the representatives of the Protecting Powers.

I. — RELATIONS OF PRISONERS OF WAR WITH THE EXTERIOR

CAPTURE CARDS

I. — General Provisions.

A prisoner of war is not, by virtue of his captivity, a criminal, and may not be held in close confinement. The fact of his capture may not be kept secret, but should be made known at the earliest possible moment to the outside world, in particular to his next of kin and the Power on which he depends.

Under the 1929 Convention, notification was to be given in two ways : firstly, by the prisoner himself, who was authorized, under Article 36, to send a postcard to his relatives, informing them of his capture ; secondly, by the Detaining Power, which was obliged to give the adversary, through its official Bureau, all details necessary for the identification of prisoners held.

Experience has shown that considerable delay sometimes occurred in the transmission of information by the Detaining Power ; this might be caused by a sudden influx of prisoners, breakdown of transport, arrears of work in the official Bureaux, or the priority given to matters of national defence. Serious delays might similarly occur in forwarding cards written by the prisoners themselves.

To overcome the above drawbacks, the 1949 Conference unanimously decided to provide, in Article 70 of the new Convention, for an additional means of notification, put into use by the International Committee during the recent War. Prisoners shall in future announce their capture to the Central Prisoners of War Agency in Geneva by means of a *capture card.* The uniform type and limited contents of this card, and the fact that it is addressed to the Agency, should facilitate rapid trans-

mission and allow the information to be forwarded at once to the families concerned.

The Third Convention does not restrict the prisoner's liberty of writing to his relatives. The reference to the two cards, i.e. one for the Agency and one for next of kin, is in Article 70 and, contrary to the 1929 text, very properly separated from the clauses which deal with prisoner of war correspondence.

The system of capture cards in no way interferes with the third manner of notification, for which the Detaining Power continues to be entirely responsible. The obligation has even been reinforced, as will be shown below in commenting on Article 122 (Information Bureaux).

II. — Forwarding of Cards.

To be of value, the capture cards must, as far as possible, be dispatched as soon as the prisoner is taken. Under the 1929 Convention, the card addressed to relatives was to be forwarded not later than one week after the man's arrival in camp. Despatch was, however, sometimes delayed indefinitely, on the plea that the men had not yet reached their permanent place of internment. To eliminate this practice, the Convention specifies that the time limit of one week shall apply even in the case of purely temporary or transit camps.

Article 70 also states that prisoners *"shall be enabled"* to write the said cards. The Detaining Power must therefore ensure that all assembly centres are provided with sufficient quantities of cards. These must be made available in such centres even if, by reason of military operations, the centres are at some distance from the permanent camps.

The cards named in Article 70 do not merely notify capture ; they are also intended to give the Central Agency, and through it, the men's relatives, a clear and, if possible, up-to-date idea of the prisoner's actual condition. Prisoners are therefore also permitted, under the new text, to send cards when they are transferred to another camp, i.e. whenever their address is changed. The same applies to men who are ill, whenever there is any significant change in their state of health.

In the event of transfer from one camp to another, cards may be dispatched before departure, under Article 48. This provides that prisoners shall be officially informed of their removal in sufficient time for them to notify their next of kin. Should the new address be unknown at the time of departure, or subsequently altered, or should the journey be of long duration, it may be assumed that cards must also be despatched on arrival at the final destination.

III. — Contents of Cards.

Article 70 says that the cards for relatives and or the Agency shall, as far as possible, be similar to the model annexed to the Convention (Annex IV B). A distinction must here be drawn, which could perhaps have been more clearly made in the Article itself.

The model suggested in the Annex is only for the Central Agency card ; this is clear from the wording on the front and the details given on the reverse side, which are necessary for the Agency, but not for the family.

What should then be the type of card for the next of kin ? The first essential is that it should not be delayed in transmission, nor held up by the censor. Instead of following the model shown in Annex IV C (1), the capture card for next of kin should, we believe, give formal and general information only, similar to that contained in the card for the Agency. [1]

The Committee proposes, after careful examination, to submit a model card to the High Contracting Parties which will meet all the requirements.

The model capture card for the Agency was based on the experience acquired by that Bureau in handling thousands of cards of this description. The only details recorded are those which are essential for identification, and the items are tabulated in a form which allows them to be rapidly and easily filled in. Under Article 17, the writers need not give all particulars shown on the card, but may confine themselves to items 2, 3, 5, 7 and 8.

[1] The front could, for instance, be similar to that of the card shown in Annex IV C (1), and the back could show items 10 to 13.

Further reference to this point will be made when discussing Article 122 (Information Bureaux).

In order to avoid any unpleasantness for men who are nationals of a Power other than the one they have served, the term "nationality" (which appeared on the capture card used during the last War) has been replaced by the expression *"Power on which the prisoner depends"*. This expression recurs, in fact, throughout the new Convention, to designate the Power in whose armed forces the prisoner served.

The capture card must be printed in at least two languages—that of the prisoner and that of the Detaining Power. In any case, one of the languages used must be a language the prisoners understand. [1]

During the recent War, the Committee itself drafted most of the capture cards intended for prisoners of war and placed them at the disposal of the belligerents. The model annexed to the new Convention and the accompanying instructions should, in future, allow the High Contracting Parties to do this work, in which, it need hardly be said, they could be usefully assisted by the National Red Cross Societies.

The establishing of capture cards by each of the countries concerned will, however, only be effective if the model suggested by the Convention is strictly followed, in particular as regards size (15 by $10^1/_2$ centimetres), and the order and lay-out of the items. These cards are, in fact, intended for insertion direct in uniform card-indexes, and cannot be handled with rapidity and ease unless wholly identical.

IV. — Transmission of Cards.

The Convention repeats the categorical principle adopted in 1929 : transmission must be effected as rapidly as possible and may not be delayed in any manner.

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[1] " Central Prisoners of War Agency, International Committee of the Red Cross " is the essential part of the address. It may always happen that the Agency, or the departments concerned, would have to be set up provisionally elsewhere than at Geneva, according to the geographical circumstances attending the conflict.

It may be deduced from this that the cards should have priority over all other transmissions concerning prisoners of war, and even over ordinary civilian mail. They should, wherever possible, be sent by air. The cards will, of course, be carried postage-free; in this respect, though not mentioned in Article 74, they evidently come under the term "correspondence".

With regard to censorship, a distinction may be drawn between the capture card for the Central Agency and that for relatives. Both, even the first-named are, in principle, subject to censorship, but that for the Agency should obviously require no more than cursory examination. For all practical purposes, the wording of the card prevents the prisoner from sending out information illicitly, or the Detaining Power from gathering information about the enemy from it. Furthermore, the cards are addressed to a strictly neutral body, which would use the information received only for a humanitarian purpose. It is therefore desirable that the despatch of capture cards to the Central Agency should not be delayed by any form of censorship.

The cards sent to next of kin may conceivably be submitted by the Detaining Power to close scrutiny. As already stated, this examination would be much facilitated if such cards were also of the simplified and uniform type to which we have alluded.

PRISONER OF WAR MAIL

The recent War has again abundantly shown the great importance which prisoners and their relatives attach to a regular postal service. Even the most favourable living conditions do not compensate, in the eyes of the prisoner, for absence of news or slowness in mail delivery. Considerable attention was therefore paid, both during the preparatory work and actually in the Conference, to the question of prisoner of war mail. Endeavours were made to find a solution to a number of problems which occurred in practice, and for which the text of the 1929 Convention was not, as a rule, responsible. The new provisions

relating to correspondence will be found in Article 71, while free postage and censorship are dealt with in Articles 74, 75 and 76.

Apart from the clauses relating to prisoner of war mail in general, we should also consider the facilities granted to two categories, namely, the camp representatives (spokesmen) and those prisoners who enjoy the same status as medical personnel and chaplains.

(A) — PRISONER OF WAR MAIL IN GENERAL

I. — Basic Principles.

The 1929 Convention failed to safeguard the prisoner's essential right to correspond with the outside world. In the new Convention, this right is clearly stated in Article 71, Paragraph 1, as follows : *"Prisoners of war shall be allowed to send and receive letters and cards"*. A more general wording might perhaps have been desirable, to avoid naming two forms of correspondence only. It is certain, however, that the terms employed are by no means intended to exclude other means of corresponding, such as telegrams (which the Article expressly mentions), the telephone (we shall later consider its use by camp representatives), or other suitable means of communication which modern science may introduce. The object of Paragraph 1 is to emphasize, at the outset, the right of every prisoner to receive or give news, i.e. his right to dispatch correspondence and to receive it.

II. — Limitations — Censorship.

The essential right had not merely to be confirmed—its exercise had also to be realistically safeguarded in the light of experience during the last two Wars. Belligerents must perforce censor all written matter which may leave their territory ; this is the first limitation imposed on the content of prisoner of war mail. Experience has shown that increase in the number of prisoners, and their anxiety to correspond with next of kin may lead to congestion in the censor's office. To avoid this, Detaining Powers were inclined to restrict the number of cards or letters dispatched or received.

The new Convention is particularly concerned to preclude misuse of the second restriction (limitation of number). A clear distinction is drawn between *(a)* outgoing and *(b)* incoming mail.

(a) — As in 1929, the Third Convention allows Detaining Powers to reduce the number of letters and cards despatched individually, but attaches two specific conditions, which in themselves constitute a new departure. Firstly, the number of communications allowed shall not be less than two letters and four cards monthly for each man. These figures are based on experience and are generally regarded as a minimum. Secondly, such reductions are permissible only if the Detaining Power "*deems it necessary*". The wording implies impartial appreciation ; it would be inadmissible for a great Power, holding a small number of men whose language is no obstacle to censoring, to place any restriction on their correspondence.

It may be difficult, however, if there are prisoners speaking a language little known in the detaining country, to find sufficient qualified censors, and it may be in the interest of the prisoners themselves that the Detaining Power should be authorized to restrict correspondence beyond the monthly limit given above. This was the final opinion of the Geneva Conference, expressed in the third sentence of Article 71, Paragraph 1 ; but the drafters showed great prudence, since alone the Protecting Power is given the right of making the decision. Only if there are good reasons for believing that the limitation, in view of the censorship difficulty, is in the real interest of the prisoners, will the Detaining Power be allowed to impose it. It is obvious that such reduction is to be considered as altogether exceptional.

When correspondence is limited, letters and cards, as far as possible similar to the models in Annex IV (C 1 and C 2), are to be used. The cards (to contain about 100 words) and letters (which fold over to form an envelope, to contain about 250 words) are on the model successfully employed during the War and, by simplifying the work of the censor, should considerably speed up the post. Thus their use is indicated, even though not made obligatory. Moreover, there is no reason whatever why these models should not be used, even when there is no limitation.

The Convention does not say where or how the prisoners may obtain the paper or forms for their mail; they presumably come under the *"ordinary articles in daily use"* to be obtained in the canteens (Art. 28, Par. 1). Most usually, and particularly in the case of special forms, Detaining Powers have supplied the paper free, and one can only hope that this practice will continue.

(b) — Correspondence which prisoners receive may not in any case be limited by the Detaining Power. The Conference wished thereby to abolish the system of reply-forms, by which the prisoner had to write on a form having a detachable sheet for the reply, failing which his relations could not themselves write. The system was unsatisfactory ; the form was sometimes lost or held up, causing delay and consequent anxiety.

If its censorship is unable to cope with increasing mail, the Detaining Power has no alternative but to inform the Power on which the prisoners depend (Art. 71, Par. 1, fourth sentence) ; if limitations must be placed on correspondence, they will be taken by the latter on its own territory, and relatives will be called upon to use restraint. National Red Cross Societies could do useful work by giving relatives information, helping them, and, as some have done, providing them with standard forms which make delivery and censorship more easy and rapid than by ordinary letter.

Efficient and quick censoring is therefore essential. The principle was clearly expressed in 1929 (Art. 40), and did not need revision : *"The censoring of correspondence shall be accomplished as quickly as possible"*.

Article 76, Paragraph 1, excludes additional censorship in transit countries, which often caused long delays and was quite useless. Henceforth, mail will be censored only by the despatching State and the receiving State, and once only by each, it being understood that there is only one despatching and one receiving State. The obligation on Parties to the Convention not to censor mail in transit on their territory is compensated by the requirement in the last Paragraph of Article 71, that the sacks containing it must be securely sealed and labelled, so as clearly to indicate the contents.

The last Paragraph of Article 76 reproduces, in the same form as in 1929, the clause allowing the Detaining Power, for military or political reasons, to prohibit all correspondence. Such prohibitions seldom occurred. The clause has been retained, however, since imperative military necessities may oblige a Detaining Power to apply it ; prohibition is, however, only legal if, as the text indicates, it is temporary and imposed for as short a period as possible. The prohibition, in respect to prisoners of war, seems to correspond to similar measures taken with regard to the population in general on the occasion of military operations.

III. — Forwarding of Mail — Free Post.

There was a certain extension of air mail for prisoners' correspondence during the War. This has led to the clause (Art. 71, Par. 1, last sentence) that correspondence must be forwarded by *"the most rapid method"*. A more precise formula was not sought, to avoid excluding other methods which might be more rapid than airmail. It is not "the most rapid method" in the abstract, but that *"at the disposal of the Detaining Power"*. As between the methods normally used for the transport of mail, the quickest should be reserved for prisoner of war mail. And even if the Convention mentions only the Detaining Power, it may reasonably be presumed that the rule applies also for transit countries and for the country of destination.

In wartime, mail has often to go a roundabout way in order to pass through neutral countries, and it may be completely held up as a result of military operations. The latter risk is henceforth ruled out, thanks to the means of transport which the Detaining Power or neutral agencies, such as the International Committee, are authorized to put into service in order to maintain the liaison between opposing belligerents. This is provided for in Article 75, which we shall examine in detail when dealing with relief. But such an eventuality should be exceptional ; as the Article clearly shows, the High Contracting Parties are responsible for ensuring the transport of articles for prisoners of war, and their correspondence in particular.

We saw above, in dealing with censorship, the obligation under the last Paragraph of Article 71, to seal and label clearly the sacks containing prisoner of war mail ; this can only facilitate and speed up transport.

Complete exemption from postal charges for correspondence to or from prisoners of war, already admitted by the Hague Conventions and now contained in Article 52 of the current Universal Postal Convention, is reproduced without change in Article 74, Paragraph 2. [1]

IV. — Telegrams.

The fact that prisoners of war may often, under modern conditions, be interned at great distances from home has increased the importance of telegraphic communication for them. The matter is dealt with in Articles 71, 74 and 124. Where the 1929 Convention mentioned only one case when the Detaining Power would authorize prisoners to send telegrams, the 1949 has four :

(a) — Emergency.

(b) — Prisoners who have been without news of their relatives for a long time (during the War, three months generally constituted "a long time").

(c) — When prisoners are separated by very great distances from their relatives (British prisoners in Japan were a case in point).

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[1] The relevant extract of the Postal Convention (which must be slightly altered in its references to the Geneva Conventions) reads :

" With the exception of articles marked with a trade charge, correspondence intended for prisoners of war or despatched by them is also exempt from all postal charges, not only in the countries of origin and destination, but in intermediate countries.

" The same privilege is accorded to correspondence concerning prisoners of war, despatched or received, either directly by, or through the agency of, the Central Agency of information regarding prisoners of war prescribed by Article 79 of the International Convention of Geneva of 27th July, 1929, or the Information Bureaux established on behalf of such persons in belligerent countries or in neutral countries which have received belligerents on their territories."

(d) — When they cannot get into touch with, or be reached by, relatives through the ordinary channels (prisoners retained by a Power which is completely surrounded).

The War showed that it was cheaper and more rapid to forward telegrams *en bloc*, reducing the text to very simple, or even stereotyped forms. Suggestions were made that all telegraphic correspondence of prisoners should pass in this way, but the Conference decided to make a recommendation only (Resolution No. 9) on this point, considering that prisoners, in certain cases, should be free to make their telegrams personal and adapted to circumstances.

" Whereas Article 71 of the Geneva Convention relative to the Treatment of Prisoners of War of August 12, 1949, provides that prisoners of war who have been without news for a long period, or who are unable to receive news from their next of kin or to give them news by the ordinary postal route, as well as those who are at a great distance from their home, shall be permitted to send telegrams, the fees being charged against the prisoners of war's accounts with the Detaining Power or paid in the currency at their disposal, and that prisoners of war shall likewise benefit by these facilities in cases of urgency ; and

whereas to reduce the cost, often prohibitive, of such telegrams or cables, it appears necessary that some method of grouping messages should be introduced whereby a series of short specimen messages concerning personal health, health of relatives at home, schooling, finance, etc., could be drawn up and numbered, for use by prisoners of war in the aforesaid circumstances ;

the Conference, therefore, requests the International Committee of the Red Cross to prepare a series of specimen messages covering these requirements and to submit them to the High Contracting Parties for their approval."

The Committee, availing itself of its own extensive experience, is now studying the question thus raised. It will also call upon the National Societies and other organizations which have operated in this field. The results will be submitted to the High Contracting Parties, and when acceptable formulae have been found, they will be communicated to all National Societies.

A chief obstacle to the use of telegrams by prisoners is the heavy cost. Articles 74 and 124 invite the Contracting Parties to reduce the charges as far as possible for telegrams sent or received either by the prisoners themselves or by the Information Bureaux. The question of free postage, provided for in the 1929 Convention, was dealt with in detail in the Universal Postal Convention ; partial or total exemption of telegram charges for prisoners should be similarly provided for. The Committee proposes, as soon as States have ratified the new Convention, to draw their attention to this matter, and meanwhile to study with the competent international organizations the best manner of translating Articles 74 and 124 into practice.

The National Societies may have an important part in arranging cables for prisoners. During the War, telegrams were not, in general, sent by the prisoners themselves but by their representative, a National Society, or one of the Committee's Delegates. Again, when the question arose of establishing liaison by telegram between prisoners in Japan and the Powers on which they depended, the National Societies of the countries concerned decided to bear the cost. Even if prisoners in future are given the benefit of largely reduced charges, the help of the National Societies, either in sending or paying for the messages, may still be important. There is no express provision for this in the new Convention, but there is certainly nothing against it.

V. — Correspondence of Prisoners of War serving a Sentence.

The fundamental right of prisoners to correspond applies equally to prisoners under sentence. To eliminate any possible doubt on this point, the Convention clarifies and extends what was already said on the subject in the 1929 Convention.

Prisoners undergoing disciplinary punishment *"shall have permission to read and write, likewise to send and receive letters"*, (Art. 98, Par. 5, corresponding to Art. 57 in 1929). Although letters only are mentioned, it is clear, as the beginning of Article 98 shows, that such prisoners shall, in so far as circumstances allow, have the benefit of all provisions dealing with correspondence. This right should therefore not be restricted as compared

with other prisoners, either in regard to number or form (letter, card, telegram).

Prisoners serving a judicial sentence seem to be in a slightly different position. They are certainly authorized *"to receive and despatch correspondence"* (Art. 108, Par. 3). Nevertheless, in the spirit of the Article, prison conditions shall resemble those in force for nationals of the Detaining Power, in so far as they afford prisoners certain essential rights, such as that of correspondence.

The inference is that the rules of the prison rather than the detailed regulations of Article 71 would govern such cases, especially in regard to the number of communications.

(B) — CORRESPONDENCE OF SPECIFIC CATEGORIES OF PRISONERS OF WAR

I. — Prisoners' Representatives (Spokesmen).

For the Red Cross as a whole, the correspondence of the prisoners' representative is of great importance ; he is the mouthpiece for his comrades in relation to all agencies which may help them, including National Societies. The 1929 Convention devoted Article 44 to this correspondence ; the provision is further extended and clarified in Article 81, Paragraph 4.

The clause, following the practice adopted during the War, expressly confirms the right of the spokesmen to correspond, as part of their functions, with their own Red Cross Societies, the latter being included in the more general term *"bodies which give assistance to prisoners of war"* (this definition is dealt with under Article 125). [1] Under Article 81, the representative's correspondence may not be limited—a necessary precaution in view of the extensive information which he is required to furnish in writing (material needs, communication of nominal rolls, inquiries, etc.).

Cable facilities might be vital, for example, in informing relief agencies of urgent needs. It is well, therefore, that there should

[1] See p. 74.

be express provision in Article 81. Here, incidentally, more than anywhere else, total or partial exemption of charges would be particularly useful. The text does not go as far as mentioning telephone communication, which raises more delicate questions of control. Opportunities were often given to representatives during the last War ; they will depend largely on individual circumstances, and above all, on the confidence of the detaining authorities in the spokesmen.

Finally, there are three provisions which reinforce and detail the correspondence rights of the spokesmen in particular fields.

Article 78 (Complaints of Prisoners of War) authorizes the representatives to send periodic reports to the Protecting Powers on conditions in camp and the needs of prisoners. Although the Protecting Power only is mentioned in regard to the principal object of this Article, there is no doubt that such reports, especially where they concern the needs, might also be sent, with the approval of the Detaining Power, to an agency such as the International Committee.

The Regulations concerning Collective Relief (see Annex III, examined in detail later) have two express references to the correspondence of the representative with donors. One (Art. 3) refers to detailed reports which the representative may send on the quality and quantity of goods received, and the other (Art. 5) to questionnaires—dealing with collective relief—which he will fill up, or have filled up by the spokesmen of working groups or the doctors in charge of infirmaries or hospitals.

II. — Prisoners who are Ministers of Religion or who practise as Doctors.

Prisoners who are clergymen in their own country, or who exercise medical functions, but who are not enlisted as chaplains or as members of the Medical Services, become prisoners of war on falling into enemy hands. They may nevertheless be required by the Detaining Power, in virtue of Articles 32 and 36, to fulfil religious or medical functions in regard to their fellow prisoners. While retaining their status, such prisoners must be accorded

the advantages which the Detaining Power is required to give to non-prisoner medical and religious personnel retained to assist the prisoners. [1] Such privileges include the facilities necessary for correspondence dealing with their duties. Clergymen must be allowed to correspond freely with the ecclesiastical authorities in the detaining country or with international religious organizations.

It may be said, therefore, that the prisoners of this category are placed more or less on the same footing as the prisoners' spokesmen.

RELIEF

I. — Principles.

Amongst the many things National Societies do for prisoners of war, the sending and distributing of relief is certainly the oldest in date. This work has become so extensive that in many countries the Red Cross is asked to co-ordinate and supervise it generally. Moreover, the peculiar circumstances of the last War, particularly the blockade and the critical food situation in certain countries, made relief to the prisoners interned in them of decisive importance. Accordingly, the specialists and experts who assisted in the revision of the Prisoners of War Convention devoted particular care to the question of relief, and the Geneva Conference was able, in large measure, to adopt their recommendations.

As in 1929, the main provisions on relief are found in the Section " Relation of Prisoners of War with the Exterior ". They are Article 72 (Relief Shipments, General Principles), 73 (Collective Relief) and 74, 75 and 76, dealing with cognate questions (Transport, Exemptions and Control). The Regulations annexed to the Convention (Annex III), to which Article 73 refers, will be considered with that Article.

The above provisions, however, do not exhaust the subject. For one thing, they refer only to relief in material shape, including one form of " moral " relief, namely, books. Direct

[1] See remarks on Article 28 of the First Convention, Vol. I, p. 41.

moral aid to prisoners of war is essentially the territory of Articles 23 to 38 (Religious, Intellectual and Physical Activities), as well as, to some extent, Article 125 (Relief Societies) which will be examined in detail later. Moreover, money (which also comes under the heading " Material Relief ") is dealt with in the Section on Financial Resources, in Art. 63, Par. 1, authorizing prisoners to receive remittances.

Again, Articles 72 and 73 treat the question of relief from the point of view of the beneficiaries, namely, the prisoners themselves, whereas donors and organizations permitted to issue parcels direct to prisoners come under Article 125 (Relief Societies). The first object of Articles 72 and 73 is to reaffirm, with the necessary additions and detail, the right of every prisoner to receive relief. This is, like the right to correspondence, one of the inalienable rights which characterise war captivity.

But one danger had to be avoided: that of inferring, from this right, the material existence of such relief, and from that, the obligation of the Powers on which the prisoners depended before capture to supply them regularly. Care was taken in the new Convention to state clearly that relief shipments *"shall in no way free the Detaining Power from the obligations imposed upon it by virtue of the present Convention."* (Art. 72, Par. 2).

Three essential obligations are here referred to:

(1) That of *feeding* the prisoners. Article 11 of the 1929 Convention, by making prisoners' rations the same as those for the base troops of the Detaining Power, sometimes led to insufficient feeding, which relief only would bring to a normal level. This difficulty appears to be eliminated by the wording of the new Article 26 dealing with food: *"The basic daily food ration shall be sufficient in quantity, quality, and variety to keep prisoners of war in good health and to prevent loss of weight or the development of nutritional deficiencies. Account shall also be taken of the habitual diet of the prisoners."*

(2) Article 27 obliges the Detaining Power to supply prisoners with sufficient *clothing, underwear and footwear,* making allowance for the climate.

(3) Finally, under Article 30, sick and wounded prisoners are to have the *medical treatment* they require, and consequently, the appropriate medicines. Other requirements of lesser importance are the provision of facilities, premises and equipment for the intellectual, educational and recreational activities of prisoners. (See, *inter alia*, Art. 38.)

II. — General Observations.

Article 72 groups four general principles concerning relief which are examined below under separate headings.

(1) — CATEGORIES OF RELIEF

(A) — Individual and Collective Relief.

With the exception of a passing reference to collective relief in its relation to the functions of the prisoners' representative (spokesman), the 1929 Convention provided (Art. 37) only for parcels addressed individually and by name. Such parcels gave rise to serious difficulties during the last War : (1) the feeling of injustice of men who received none ; (2) difficulties of control due to the varying composition of parcels ; and (3) difficulties in distribution because of frequent transfers.

It was therefore natural to prefer relief shipments on a uniform model, intended for all prisoners in the same camp, and divided between them by their spokesman. For this, the new Convention makes express provision under the term "*collective relief*". At the request of the Red Cross Societies, prisoners shall still be able to receive, from whatever country, individual parcels which form direct links with home, and thus help to maintain morale.

The essential difference is that individual parcels come directly to the addressee, while collective relief has, in addition, to be divided up and distributed. The bodies responsible and the method of carrying out their work had to be defined, so that donors could have maximum safeguards. This is the object of Article 73 and the Regulations in Annex III ; both

will be examined in detail in connexion with the reception of relief.

(B) — Methods of Forwarding.

The 1929 Convention, besides confining itself to individual relief, speaks only of "*postal parcels*". Collective shipments, unless broken up into small packets—a most inconvenient method—would have to be made into parcels considerably larger and heavier than those usually accepted for international postal traffic. Such parcels have therefore to travel in the same way and with the same transport as other heavy goods. The 1929 text had accordingly to be extended; this is done in Article 72, Paragraph 1: "*by post or by any other means.*"

(C) — Contents of Relief Parcels.

The 1929 Convention appeared to limit the contents of parcels to well-defined objects, namely, books, and articles of food and clothing. Experience showed the need for increasing the range of items which could be sent. Therefore, Article 72 now also mentions medical supplies, and is worded generally so as to include objects for religious, educational, and recreational purposes. It was logical that the text should likewise refer to shipments of books, individual or collective; the special provision made for them in 1929 (Article 39) and in the Stockholm draft, was therefore dropped.

Article 72 even goes further. The expression "*in particular*", which precedes the objects named, shows that the list is in no sense limitative, and that in principle, parcels may contain still other articles for which a need is felt. The Detaining Power may, however, for security reasons or because of difficulties of control, conceivably prohibit the sending of certain objects not included in the list. In practice, the Power on which the prisoners depend should come to an agreement with the Detaining Power on this subject. As we shall see in dealing with the forwarding of books and medical supplies, the necessity for control and security, in the case of certain articles expressly authorized, has been borne in mind.

(2) — Restrictions on the Sending of Relief

As in the case of correspondence, experience has shown that it is sometimes in the interest of the prisoners themselves to limit, either permanently or for a time, the number of parcels they may receive. Such limitations have been justified by various circumstances: overtaxing of control offices, damage to contents of parcels while in transit, or the discontent of an under-nourished population which sees quantities of foodstuffs arriving for prisoners only. Rather than ignore such cases, the Conference provided for them expressly in Art. 72, Par. 3. Detaining Powers are thus debarred from arbitrarily restricting the number of parcels prisoners may have and tampering with their fundamental right to receive them.

The Conference decided that limitation would be admissible only on the proposition of the Protecting Power, or of the body forwarding relief. In practice, the Detaining Power would doubtless take the lead, by explaining the necessity of reducing the quantity of relief sent. If these bodies consider that the situation of the prisoners and that of the country of detention justify the request, they shall "*propose*", in the sense of Article 72, the necessary restrictions and request the forwarding countries and organizations to reduce the size of their shipments.

Turning to the respective roles of the Protecting Power and of the relief organizations, we notice two essential differences deriving from the text itself. First, the forwarding agency shall not propose limitations, except in regard to its own shipments. It would obviously be ill-advised, and even dangerous, to allow it this power in respect of relief which does not concern it and on which, therefore, it could have exact knowledge neither of the needs, nor of the special problems. Secondly, it is natural that the Protecting Power, which is normally informed of everything concerning prisoners under its protection, should be able to propose limitations in regard to all shipments, even when it is not responsible for their transmission.

Moreover, the relief organization responsible for sending or forwarding relief may now propose limitations "*on account*

of exceptional strain on transport or communications." The Convention could have mentioned several other instances of this kind, and the reference should not be taken as limitative.

It therefore seems that, taking the spirit rather than the letter of Art. 72, Par. 3, relief organizations may propose limitations which are necessary, materially and temporarily, whereas the Protecting Power will be called upon to make such proposals more for reasons of principle, or for causes likely to continue valid.

(3) — Forwarding of Relief

The Detaining Power is authorized in principle to examine all individual or collective relief parcels before delivery. Such measures of control will be all the more protracted, according as parcels differ in weight, dimensions, composition, and method of packing. Thus during the last War, donors were led to adopt a standard parcel. Going on this experience, it was considered that it would be worth while to arrange the methods of forwarding by special agreement between the interested Powers, with a view especially to speeding up the system of control.

Such agreements are provided for in Art. 72, Par. 4, which goes still further and makes express provision on two headings : (1) books may not be included in parcels of clothing and foodstuffs ; (2) medical supplies shall, as a rule, be sent in collective parcels—"*as a rule*" only, because it was not desired to prohibit here the exceptional inclusion in a family parcel of a medicament required by the particular state of health of a prisoner, and which would not be sent in a collective shipment of medical relief.

Provided these two rules are respected, the Detaining Power may in no case use either of the two provisions—particularly if the parcels contain some of the articles mentioned in Art. 72, Par. 1,—as a pretext to hold up the issue of relief. Paragraph 4 is explicit on this point.

We need hardly stress the very important role which Red Cross Societies may, as they have already done, play in this sense, either by instructing relatives in the best methods of

packing to ensure rapid transport, or in taking this work in hand themselves, in order to standardize parcels and thus make them indirectly more useful.

(4) — Reception of Relief — Receipts — Control

The 1929 Convention provided that parcels should be handed over to the addressee against receipt ; the receipt thus seemed to be an essential condition of delivery. The new Convention departs from this system. The Detaining Power is obliged, exactly as for prisoners of war mail, to see that the parcels reach their addressees, that is to say, the men's representative (for collective relief), or the individual prisoner. This obligation is independent of any question of receipts. Nevertheless, it seems natural that the Detaining Power should require the addressees, for practical purposes, to sign receipts, as is done by certain postal services.

In reality, receipts are a matter rather for the donors ; they are a part of the more general problem of ensuring safe delivery. It is probably for this reason that the question of receipts is dealt with in Art. 125, Par. 4, which refers to Relief Societies. As we shall see, the context indicates that the Paragraph refers primarily to receipts for collective shipments.

The donor of an individual parcel, which he dispatches himself or through an organization, should of course be as a rule personally advised and thanked by the recipient. He will thus be informed of what has happened to his parcel. As this can be done in the ordinary way by the prisoner in his correspondence, no express provision was required. On the other hand, the volume and value of collective shipments and the responsibility undertaken towards donors by forwarding agencies require that receipts should be formally established on the reception of the goods.

Apart from receipts, formal or otherwise, donors and, even more so the Powers which represent them, can obtain safeguards for their shipments through the Protecting Powers or the ICRC, which visit prisoners of war and look after their

welfare. The functions of the ICRC, in particular, should naturally extend to the proper reception by prisoners of the relief addressed to them. As will be seen later, this is expressly laid down for collective shipments ; it does not any the less concern the forwarding and reception of individual relief.

III. — Transport and Exemptions.

(A) — Ordinary Transport

In cases of armed conflict and especially when war becomes generalized, the conveyance of relief raises particularly intricate problems—the difficulty of arranging for transport between belligerents, combined with general mobilization for military purposes. The new Convention was therefore expanded at this point and new material introduced here, as also on the related question of exemption from charges.

The fundamental principle—not found in the 1929 text—is implied in Art. 75, Par. 1 : the interested Powers are bound to ensure the transport of relief and other shipments for prisoners of war.

" Interested Powers " here means neutrals or belligerents through whose hands the goods pass in transit, as much as the Power which detains the prisoners, or that on which they depend. Therefore, no Power involved only in transit operations will be able, should it fail in this obligation, to argue that the shipments do not concern it directly. Only the situation named in Article 75—a hindrance resulting from military operations—can free an interested Power ; this will be examined below in connection with special transports.

Should priority be granted to relief shipments, as was so usefully done in certain cases, and by certain States ? The new Convention implies such priority for prisoners' mail (Art. 71, Par. 1), but does not expressly so provide for relief. It may however be inferred, from the spirit and even from the letter of the Convention, that the transport of relief should, in any case, be made in satisfactory conditions. This follows

naturally from the expression, "*their obligation to assure*"; it follows also from the provisions of Article 76 (Censorship and Examination), which shows the importance the Convention attaches to the shipments reaching their destination before they have deteriorated.

In this matter of transport also, Red Cross Societies can play a role completely in accord with the general spirit of their work for war victims. Apart from actual transport (examined below under C), they might induce the authorities to eliminate needless delays, or give priority for certain consignments, such as medical supplies and clothing, where justified by the urgency of the men's needs.

(B) — Exemption from Postal and Transport Charges

Free transport is obviously one of the best methods to stimulate relief and ensure its rapid transmission. This was already recognized in Article 16 of the Hague Regulations (1907), reproduced almost word for word in Article 38 of the 1929 Convention. Article 74 of the new Convention follows in the same lines, but is much improved, particularly on the following points :

(1) — It clearly states, in Par. 1, the principle : "*All relief shipments for prisoners of war shall be exempt from import, customs and other dues.*"

The entry of goods intended for prisoners and their storage in a country party to the Convention should not give rise to any dues. The clause is now sufficiently wide and clearly stated to cover all charges of this kind, and especially the many resulting from the systems of protection and planned national economy which became prominent after the first World War.

(2) — Article 74 makes a clear distinction between two kinds of charges made on the movement of relief goods :

(a) — Postal consignments (coming within the weight limits for international postal traffic) must be exempted from all charges. This is as in 1929.

This obligation also applies to States party to the Convention who have not adhered, inside the Universal Postal Union, to certain arrangements about parcels. It was to take account of such countries that the Conference finally rejected the idea of any reference to the Universal Postal Convention. So far as possible, the wording was made to agree with the provisions of that Convention which refer to free postage for the benefit of prisoners.

(b) — For shipments not passing by post (that is to say, in general, collective but sometimes individual shipments also), the 1929 Convention limited exemption to transport by State railways. During the War, relief organizations had these exemptions notably increased, but the 1949 text goes still further.

Henceforth, a Power party to the Convention shall, on its own territory, bear all the costs of transport. The word " territory " here should be taken in the widest sense, to include not only its own territory, but also the areas which it represents in an international sense, such as Colonies, Protectorates and mandated areas. The mandatory Power must bear such costs *" in all the territories under its control."* This expression covers territory occupied by the Detaining Power in which, as has often happened, it can establish and maintain prisoner camps.

These regulations apply irrespective of the means of transport employed. No matter how goods are usually transported over a certain route, whether by sea, land, or air, the same means must be employed, free of charge, for shipments to prisoners. There is no longer any distinction between private companies and State agencies. If exemption is not accorded in a country where it should be, the State is responsible, and the matter must be taken up with it, not with the private company. In other words, in countries where ordinary transport is not State-owned, there should be suitable agreements between the State and the companies concerned.

Negotiations which the ICRC had to undertake on many occasions to have relief accorded the exemptions it was entitled to, were due principally to the ignorance of junior administra-

tive staff. In case of war, therefore, Red Cross Societies should draw the attention of the national authorities to the provisions which deal with free transport.

(3) — While the exemptions under the new Convention go much further than in 1929, they still fail to cover the following cases when consignments do not go by post :

(a) — Transport by sea ;

(b) — Transport on the territory of a State not party to the Convention ;

(c) — Entry, customs and other charges levied by States not party to the Convention.

Under Art. 74, Par. 4, transport and other costs in such cases shall be arranged by special agreement between the interested Powers. In default of such agreement, the costs are borne by the sender. This appears merely common sense, but disputes which arose on this point showed that it was necessary to state the rule *expressis verbis*.

(C) — Special means of transport

As we have noted above, Powers party to the Convention are released from their obligation to ensure transport of relief to prisoners of war only when they are prevented from doing so by military operations. But they must then agree to an organization undertaking the transport of such shipments on routes where traffic is threatened or held up. This is the purpose of Article 75.

The Article has its antecedents in the active part which certain Red Cross Societies, and the ICRC above all, were called upon to take in the transport of relief during the last War. The methods and usages established, and the conditions for such transport, might have been taken up and developed in the Convention or the annexed Regulations. During the preparatory work, and in the Conference itself, it was considered preferable not to go further than stating the essential principles governing the creation of such special transport. It was rightly

held that methods should be worked out in practice, in the light of past experience. [1]

(1) — *Application of Article 75.*

Special means of transport are justified when "*military operations preven the Powers concerned from fulfilling their obligations to ensure the transport of (relief) shipments*". Military operations must be the cause of the inability.

The expression "*military operations*" is not to be taken in the narrow sense of "army movements", but rather of the military situation which results from such movements, or even in the sense of war conditions. Thus the situation contemplated in Article 75 could arise even in a neutral country where, if circumstances prevent replacement of rolling stock which has left the country, it could not ensure the transport of relief.

The connection between military operations and the impossibility of conveyance, may be *direct* (a belligerent is surrounded by enemies), or *indirect* (a State is no longer able to forward relief because of the destruction of vehicles by enemy action).

More important still, the hindrance need not be absolute. If, because of the war, relief cannot be forwarded in the ordinary way, it may be claimed that the conditions required by Article 75 are present. Should a belligerent be surrounded, one route, if only a very roundabout one, might still be open ; or, if the means of transport were destroyed, it might still be possible to forward a small part. In either case, inevitable delays will generally make transport so much a matter of chance that special means are called for.

The situation visualised in Article 75 may thus extend to a number of Powers, but may also affect one only, without in any way detracting from the force of the Article.

(2) — *Employment of Special Transport.*

What bodies are competent when Article 75 becomes applicable ? The text allows any capable agency to take the initiative

[1] The reader might usefully refer to the detailed account in the Committee's *General Report, 1939-1947*, Vol. III, pp. 127-183.

—the Protecting Powers concerned, the ICRC, or *"any other organization duly approved."* The last-named may be any body *"giving assistance to prisoners"*—an expression which is used in the Convention as a rule to cover national or international Relief Societies. [1] It could therefore also, if necessary, include bodies whose ordinary functions do not comprise assistance to prisoners of war—for example, a State agency, or even purely commercial companies.

The wording also gives the interested Powers the safeguards they have the right to expect, when called upon to tolerate an outside body in a domain which they generally monopolize, and perhaps even near, or actually on, the scene of military operations. The Protecting Powers and the ICRC will *ipso facto* have the confidence of the interested Powers. But, according to Article 75, any other organization must be *"duly approved."* Such approval may be implicit in a general authorization given at the beginning of hostilities ; in a particular case, it might also concern an organization expressly set up to inaugurate special transport.

Whatever the organization authorized, the Convention shows clearly by the words *" may undertake to ensure the conveyance "* that the attempt may not necessarily succeed. No organization can be required to guarantee success in advance, or be made responsible for failure unless there should be evident incompetence shown.

(3) — *Attitude of the High Contracting Parties.*

As we have seen, a Power unable to ensure transport must accept an offer of special conveyance. Obviously, the Power concerned may itself ask a particular organization, or its own Red Cross Society, to undertake the transport (as has happened), or even a foreign organization of its choice.

This right is safeguarded in Art. 75, Par. 3. The need for the provision is, however, open to question. For if the interested Powers themselves create special transport, they are merely

[1] On the question of terminology, see the commentary on Article 125 (Relief Societies), page 74.

fulfilling the primary obligation of forwarding relief, and outside initiative is not called for. In any case, a Power unable to provide for the required transport may not take advantage of the provision to refuse the offer of a competent body.

Subject to the above, the attitude of Parties to the Convention towards a body which, with the approval of the belligerents directly interested, undertakes the required transport should be (Par. 1, last sentence) to facilitate its task. This is demanded not only of Powers directly interested, but of all, since it is in the general interest. At the same time the words "*shall endeavour*" take account of circumstances and possibilities.

In this connection, a distinction may be drawn between the two facilities expressly named in the last sentence of Paragraph 1. The agency concerned can require the High Contracting Parties to "*endeavour to supply [it] with such transport*"; obviously, however, the response will vary greatly according as the Powers have extensive means, are Parties to the conflict, and are directly affected by the hostilities. On the other hand, technical or administrative difficulties alone can impede the circulation of such traffic and the granting of safe-conducts, —and such difficulties should be solved in the ordinary way. One could, at most, agree to belligerents refusing such authorization because so obliged by military considerations—subject to the refusal being temporary, and operative for as short a period as possible.

Lastly, the Convention does not deal with a question which may be of great importance : protection against enemy action. No general obligation to protect and respect special transports is mentioned, apart from that implied in the obligation to permit them. This is one of the questions to be dealt with by separate agreement as to conditions, routes and markings, by which the Powers concerned bind themselves to respect the transport as completely as possible. Usage during the last War offers useful precedents.

It should be recalled that the special transport organized by the ICRC was, with the approval of the Powers concerned, placed under the Red Cross emblem and under the protection which attaches to it. Under the new provisions, which give

the International Red Cross Organizations [1] the right to use the emblem, the ICRC would be entitled to display the red cross on a white ground on any special transport it might be called upon to set up.

(4) — *Freight permitted by Special Transport.*

Article 75 has been examined in connection with relief shipments—the main object of special transport. These are not, however, the only purpose, as is clear from the list given in the first sentence, and its complement, Paragraph 2. Two inferences may be drawn :

(a) — Special transport is used for everything which concerns prisoners of war directly or indirectly, including correspondence of official organizations about prisoners, and that of private organizations and Relief Societies which aid them.

(b) — It forwards any articles—whatever their origin—which concern prisoners. A relief organization which successfully undertakes to ensure transport over a certain route may not, in principle, limit such transport to affiliated Societies, but must extend it to every other organization which regularly assists prisoners, since in the spirit of the Convention, it is only helping out, in time of war and over certain routes, postal, railway or maritime services of universal use and interest.

(5) — *Apportionment of costs.*

Art. 75, Par. 4 deals with the costs of operating special transport, but not with the expense of establishing it. On the latter point the Convention is silent, and the cost will presumably be covered jointly by the creating agency and the Powers interested. We recall the facilities to which the agency is entitled in such case, in particular the transport which the Parties "*shall endeavour to supply*"—in other words, provide free of cost.

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[1] See remarks on First Convention, Article 44, in Vol. I, page 81.

Operating costs are simply apportioned between the Powers whose citizens benefit, and the creating agency will decide the proportions.

The Convention, however, makes the rule of proportional division subject to amendment by special agreement. It could, in fact, happen that a belligerent, who was short of money, would be little inclined to use, let alone set up, special transport, while the adverse Party might be prepared to undertake all the costs. It would in such case be regrettable if the rule, being too absolute, could hinder the organization of special transport.

IV. — Collective Relief.

(A) — Special Regulations

Examination of the general principles of relief shipments showed one main difference between individual and collective relief : the second requires an additional operation, namely, a sharing out which must be so supervised as to give all reasonable safeguards to donors. The principles only of such supervision are found in the actual Convention (Art. 73). It was held preferable to include in the Regulations annexed to the Convention (Annex III) the clauses which deal generally with the more technical and less important aspects ; in addition, because of the nature of the clauses, express provision is made in Article 73 that the Powers concerned, namely, the Detaining Power and the consigning Power, may agree to replace the Annex by another detailed agreement.

Two remarks are called for :

Even if the clauses of the Regulations are technical, they none the less apply methods adopted after long experience in the issue of collective relief. It is, therefore, unlikely that the Powers concerned will, in general, wish to depart from them by special agreement. In the absence of such agreement—which will be most often the case—the clauses of the Annex will, it should be emphasized, be imperative. They must be applied

at the same time, and in the same way, as the clauses of the Convention.

Again, they go further than the simple matter of reception and distribution of relief, implicit in the title "*Regulations concerning Collective Relief*". As a matter of fact, Articles 8 and 9 contain very important rules, which might have been embodied in Article 73 itself. They should in any case be kept in mind, and we shall, for this reason, examine them, with the essential principles, in the following chapters.

(B) — Essential Principles

(a) — In view of the extent and value of collective relief, its reception and distribution had to be regulated in such a way as to give the greatest possible safeguards to donors. Experience during the last War confirmed that such safeguards were best assured if the control was entrusted to the spokesman who, both by his nationality and his position, was most qualified to act in the interests of all. Three fundamental and inalienable rights are, therefore, formally recognized to him: (1) to take possession of collective consignments, (2) to make issues, and (3) to handle the goods in the general interest. These rights are clarified and precisely stated in the provisions of the Regulations, examined below [1].

These rights do not in any sense imply that the relief shipments become the spokesman's personal property. They remain the property of the prisoners as a whole to whom they are addressed, and naturally, when they can be divided up (foodstuffs, clothing), [2] they become the property of individual prisoners after their distribution. The spokesman should be regarded as only having the management, and his administration should be guided by the general interest of the men.

(b) — Spokesmen in general have shown a fine spirit of independence. But it is always possible, and has sometimes

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[1] See below, page 56.

[2] Blankets, however, even after distribution remain, for obvious reasons, collective property.

happened, that one of them, through lack of character or under pressure from the Detaining Power, does not put the intention of the donors and the interests of his comrades first, in dealing with the relief he has received. It was therefore thought necessary to institute an additional check by an agency which, through its nature and functions, has an interest in seeing that distribution is proper and fair, and in accordance with the donors' wishes. In general, blockading Powers consider such control a *sine qua non* to raising the blockade in order to allow the passage of relief for prisoners.

Art. 73, Par. 3 accords such right of control to the representatives of the Protecting Power and of the ICRC. Where relief is conveyed to prisoners through some other organization, the right of control is likewise accorded to it, but only, as the text implies, for its own shipments.

What organization is here meant ? The words *"giving assistance to prisoners"* (which we shall study at greater length in dealing with Relief Societies) show that welfare organizations only are referred to. In addition, the said organizations must be responsible for forwarding the shipments. Is every welfare organization which has a part in conveying relief from donors to prisoners, entitled to this right of control ? In other words, is its representative, though of foreign nationality, automatically empowered to enter into the camps, or even on the territory of the Detaining Power ? This does not follow from the text. The organization referred to should be considered in conjunction with the Relief Societies mentioned in Article 125, whose representatives, as we shall see, may aid prisoners and enter directly in contact with them only after having received the approval of the Detaining Power. In our opinion, reference must be made to Article 125 to show the sense that should be given to the words *"responsible for the forwarding of collective shipments"*, as well as for conditions in which the representatives of the agency would have the right to supervise the distribution of the said consignments.

Even if the relief is forwarded without the intervention of a welfare organization, the sender may ask the Protecting Power or the ICRC to check its distribution. The text would

indeed permit the two latter to exercise a control additional to that of the forwarding agency.

The Convention does not specify what the control is to be, or how far it is to go. Most usually, representatives instructed to exercise it can do so by obtaining the necessary information and confirmation from the spokesman and from the authorities in charge. Nevertheless, the words *"to supervise their distribution to the recipients"* give such representatives the right, within the limits imposed by Article 125, to attend the issue of collective relief, wherever it may take place, and to make contact with the prisoners themselves, to verify that the division has been equitably made.

(c) — The method of distributing collective relief provided for in Article 73 and the annexed Regulations, refers to the ordinary situation of prisoners, i.e. to those who (1) are attached to a permanent camp, (2) have a spokesman, and (3) are visited periodically by the Protecting Power and the ICRC. It was necessary, however, to prevent the Detaining Power from drawing the inference that it had thereby a pretext for refusing the right to collective relief to prisoners whose situation is other, and in particular, to men on their way from the place of capture to an internment camp.

At the same time, forwarding agencies had to be left free to distribute otherwise than through the spokesman. As an example, we recall the issues made at the end of the War on the German highways directly to individual prisoners. The principle of Article 9 of Annex III is intended to cover such cases.

(d) — The tendency expressed in Article 9—allowing the representatives of forwarding and distributing agencies to adapt the issue of relief to local conditions—is still more marked in Article 8 of the Annex. Authority is given to such agencies to buy relief for prisoners in the country of the Detaining Power, and the latter is invited to facilitate the necessary transfers of money, and similar operations. This clause is particularly opportune in view of the difficulties (particularly, exaggerated exchange rates), through which certain Powers made it almost impossible to purchase such supplies.

Going still further, Article 8 stipulates that such facilities shall be accorded by all the High Contracting Parties. There are, it is true, limits and reserves. For example, the provision can be applied more easily and on a wider scale in countries little, or not at all, affected by the War, and therefore having less need for drastic economic, financial, and food regulations. It remains, none the less, that the general obligation in Article 8 relative to purchase for collective relief, is a notable innovation and as important, if not more so, than the stipulations dealing with its transport and free carriage.

(C) — REGULATIONS IN ANNEX III

Apart from Articles 8 and 9, the Regulations annexed define the rights and duties of spokesmen in the reception and issue of relief, as well as the facilities which should be given them for the purpose. Most provisions of the Regulations are clear and simple, and do not call for remark. The following points may be noted :

(i) — Facilities accorded in the Regulations to the spokesman are implicitly contained in Article 81, dealing with his prerogatives. He is entitled, in virtue of the said Article, to travel facilities, staff and necessary equipment (stores, offices, typewriters, etc.).

(ii) — The spokesman may not distribute as he likes. Under Article 2 he must draw up a plan which shall take into account

(a) — donors' instructions,

(b) — recommendations of the Chief Medical Officers concerning medical supplies,

(c) — the demands of equity.

(iii) — In principle, the spokesmen is obliged to issue the collective relief he receives to the prisoners he represents. He has, however, a certain liberty in two directions :

(a) — under Article 6, he is allowed to build up stocks to meet contingencies.

This clearly-stated provision will avoid, in future, the difficulties that arose during the War about reserves, which certain Detaining Powers wished to abolish.

It is obvious that the right of inspection of agencies responsible for supervising the issue of relief, extends also to warehouses where collective relief is stored.

(b) — under Article 7 the spokesman may withdraw surplus clothing from prisoners in order to supply others who are in greater need of it.

This point also raised difficulties, this time on the part of the prisoners themselves, and the necessary authority had to be confirmed.

(iv) — Another question has often arisen in practice, although the Regulations do not refer to it : has the spokesman the right, as a form of punishment, to withhold collective relief from certain prisoners ?

The answer is, no. A stipulation in Article 96—not in the 1929 text—prevents the spokesman assuming disciplinary rights over his comrades.

V. — Inspection of Shipments by the Detaining Power.

Inspection of shipments (see Article 76) is, like correspondence, a matter where the new text most closely follows Article 40 of 1929.

The prohibition of double censorship was not extended to relief shipments, because of the right in principle of intermediary States and blockade authorities to examine parcels which pass under their control. The obligation of avoiding damage to foodstuffs contained in the parcels applies with still greater force to possible checking in transit. It was considered preferable, chiefly for security reasons, that, unlike food parcels, collective or individual book parcels should not be censored in the presence of the addressee. Neither the absence of the addressee during the examination, nor the examination itself, should delay the issue of such parcels.

With the reserves made, if the addressee cannot attend, his proxy must be present. Under the 1929 text, only the spokesman could be the proxy; this is no longer so. This slight change will safeguard the prisoner, should he fear—as is hardly likely—that the spokesman might neglect or wilfully ignore his interests.

II. — PRISONERS OF WAR INFORMATION BUREAUX AND RELIEF SOCIETIES

PRISONERS OF WAR INFORMATION BUREAUX

I. — Introduction.

Red Cross Societies wishing to give wide-scale relief to prisoners of war must know the exact number, the address, and the general condition of the prisoners they are to assist. Hence the importance for the Societies of the Articles dealing with the Official Bureaux, whose duty it is to collect and issue such information.

These Articles may affect Red Cross Societies even more directly. Governments may, as they have frequently done, call upon Societies to organize the Bureaux, and, in general, attach great importance to their efficient working.

There was a unanimous desire to re-draft the relevant stipulations (now Article 122). In view of the inadequacy or negligence shown by a few of these Services during the last War, certain Delegations would even have preferred to regulate in detail all the functions of the Information Bureaux. This view was not upheld, and it was thought better to keep to essentials. Much improvement was, however, made on the 1929 text. The Conference, while not accepting all the recommendations of the 1946 Preliminary Red Cross Conference, took careful account of the Stockholm draft, as the most recent considered opinion of the Societies. It very happily extended and strengthened the suggested provisions on a number of points.

II. — Constitution of Information Bureaux.

The desire to avoid misunderstanding is manifest from the start in Article 122. Belligerents must not only, on the outbreak of hostilities, set up a Bureau to give information about prisoners held, but also (Par. 1, second sentence) ensure that the Bureau has the accommodation, equipment, and staff it requires.

The Detaining Power will occasionally have difficulties, as, for example, in finding staff who have the necessary language qualifications. Hence, the third sentence very sensibly recognizes a practice which has proved most useful and which facilitates organization : the employment of prisoners of war as office staff. To meet certain objections, it is stipulated that prisoners thus employed shall not lose any of their rights under Articles 49 to 58 (labour in general), especially in relation to hours and conditions of work, and working pay. Similarly, such prisoners must be repatriated with their comrades at the end of hostilities.

Besides increasing the usefulness of the Information Bureau, Paragraph 1 also extends its field of action. The terms of reference of the Bureau are all prisoners " *who are in the power* " of the Detaining State, not, as in 1929, only those in its territory. The new text therefore covers prisoners in occupied territory and those who capitulate *en masse*.

Finally, Article 122 applies equally to neutral Powers with regard to belligerent personnel interned on their territory. Provision already made in 1929 is now more expressly defined, in order to avoid disputes—even though it is made in a general way in Article 4, Paragraph B, sub-section 2.

III. — Information and its Transmission.

(A) — *Collection of Information.*

Good organization and working methods may be nullified unless each of the interested Powers fulfils an additional obligation : to provide the details of enemy personnel in its hands (in conformity with Art. 122, Par. 2 and 5), and to make

sure that its responsible military administration communicates regularly to the official Bureau, and as rapidly as possible, all information it possesses about the capture of prisoners of war, their transfer, escape, hospital treatment, etc. On this point, the 1929 text was already quite clear ; it did not, however, stipulate what this information should consist of—particularly the "*preliminary notice*" that immediately follows capture—and confined itself to the formula "*all particulars of identity at its disposal*".

The important innovation here is that the new Convention defines precisely the minimum information that the administrative services must communicate to the Bureau—a minimum to which each of them shall add information from its own branch (dates of capture, transfer, hospital treatment, etc.). Paragraph 4 provides for information under eleven headings, as follows :

1. Surname
2. First name or names
3. Rank
4. Army, regimental, personal or serial number
5. Full date of birth
6. Place of birth
7. Indication of the Power on which the prisoner depends
8. First name of the father
9. Maiden name of the mother
10. Name and address of the person to be informed
11. Address to which correspondence for the prisoner may be sent.

Two remarks are called for : (1) The above items are on the whole those provided for in the 1929 Convention (Art. 77, Par. 5), but only in connection with the organization of the Bureau card-index. We shall come back on this point later. (2) The information implies that the Detaining Power shall question each prisoner with a view to ascertaining his identity.

During the Conference certain Delegations expressed the desire to have this obligation specifically referred to. The new Article 17, dealing with interrogation immediately after capture, considers the matter rather from the point of view of the prisoner, who must be protected against pressure used to make

him divulge military information. Although the Conference rejected the above suggestion, the obligation of the Detaining Power, under Article 122, to determine the identity of each prisoner is none the less categorical.

Although the Detaining Power is obliged to require information under the eleven headings given above, the prisoner himself is not obliged to answer on all of them ; under Article 17 his obligation extends to the first five only. It was thought that the other items might be a source of danger ; as experience has proved, they might, for example, enable the Detaining Power to penalize the prisoner's family or near relations. Such cases would, however, be exceptional, and apply only to citizens of an occupied country, or even, possibly, those of the Detaining Power itself. As a rule, members of the armed forces should be instructed to give, in case of capture, all the information named in Article 122 ; this would greatly facilitate the work of the Information Bureaux and speed up identification. The latter point is one to which Red Cross Societies might profitably draw the attention of their Governments.

Finally, every belligerent must (Art. 17, Par. 3) furnish all persons under his jurisdiction who are exposed to capture, with an identity card containing at least the first five items listed, and if the authorities so decide, the remaining six, and even still others. A card on these lines will facilitate identification, the more so if established in duplicate, as is recommended, one copy being then handed to the capturing authorities and sent by them to the Information Bureau.

In this case also, Red Cross Societies could usefully draw the attention of Governments to the value of the duplicate card.

(B) — *Transmission of Information.*

The 1929 Convention did not specify what information exactly the official Bureau is called upon to transmit to the adverse Party.

The consequence of this hiatus was that certain official Bureaux gave the Central Agency (responsible for transmitting it) information which was wholly unsatisfactory both in its

details and its manner of presentation. Moreover, information was communicated under the most diverse forms—lists, index-cards, photos, telegrams—and this facilitated neither the work at Geneva, nor retransmission. The Agency therefore proposed the uniform adoption of an index-card in quadruplicate, suitable for insertion in the relevant indexes.

Neither during the preparatory stages, nor at the Conference itself, was it considered possible to embody this system into the Convention. It was thought, probably with reason, that the internal organization of the official Bureau was essentially a matter for each individual Power. For this reason, the 1929 clauses relative to the individual card to be filled in by the Information Bureaux for each prisoner, were dropped. Standardization in the working methods of the national Bureaux was none the less felt to be desirable. The fact that the Conventions do not allude to any such standardization is an additional incentive to the Central Agency and the ICRC to secure it by other means—e.g., publication of a descriptive manual on working methods.

Thus, instead of placing the emphasis on the internal organization of the official Bureau, the new Convention, following the Stockholm Draft, places it on the information which the Bureau must transmit to the adverse Party—and which, in reality, is far more important.

Under Article 122, Paragraph 4, this information is grouped under the eleven headings indicated above. The prisoner is not, as we have seen, obliged to reply on all of them ; in practice therefore, the Bureau can transmit only such information as he chooses to give. [1] This fact is responsible for the reservations made in this paragraph.

Finally, the question of content apart, the authenticity of the information forwarded is guaranteed by the new obligation made on each official Bureau (Art. 122, Par. 8) to complete all

[1] Mention may also be made here of prisoners who, because of their physical or mental condition, are unable to indicate their identity and must, in conformity with Article 17, Par. 5, be handed over to the Medical Service. This Service will then endeavour to establish identity, but may find out one or two items only of the information desired.

written communications by a signature or a seal. Where communications not in writing are concerned, the means used to transmit them will generally afford adequate proof of their authenticity.

What has been said applies principally to the " first information " about a prisoner—that which is indispensable to both the Central Agency and the Bureau of the country on which he depends, in establishing his index-card, or his individual file. For the subsequent information, relating to the events which generally mark captivity (transfers, hospital treatment, release, etc.), the new Convention, as that of 1929, merely obliges the Information Bureau to communicate these details, as soon as received, to the interested Powers.

Although the Convention does not refer in detail to this subsequent information, the importance it attaches to completeness and precision in the first communication makes it clear that further details should also be satisfactory, and enable the receiving Bureau to identify at once the prisoner to whom they refer.

Two reserves must however be made.

(1) — Inadequacy of information has been felt more particularly in the case of notifications of death, which, apart from the effect on relatives, may have important legal consequences for the next of kin. The new Convention here makes a welcome improvement ; this, however, results, not from Article 122, but from Article 120, which, for convenience, deals not only with the death of prisoners of war in captivity but also with the question of death certificates.

Under Article 120, Paragraph 2, the Detaining Power must supply to its Information Bureau (and the latter subsequently must notify the adverse Party) a certain minimum of information about each deceased prisoner of war. The information, in addition to essential details of identity (the first five items listed above) should always include also at least the six following :

1. Place of death
2. Date of death
3. Cause of death

4. Place of burial
5. Date of burial
6. All particulars necessary to identify the grave

Information shall be given either on lists certified by a responsible officer, or on individual death certificates which, so far as possible, will conform to the model annexed to the Convention (Annex IV D).

The model death certificate, recommended by the Central Agency as a result of experience—which has proved it to be extremely valuable—includes, in addition to the items named in Article 120, two headings which are of deep interest to relatives : personal effects of the deceased, and details of his last moments. It is hence most desirable, if only for the sake of uniformity, that the model death certificate should be adopted by the largest possible number of national Information Bureaux. Red Cross Societies, sometimes called upon to certify deaths of prisoners of war, could do much to ensure general use of this form.

(2) — The transmission of weekly lists, with any new information, provided for in 1929 (Art. 77, Par. 6), did not in general take place during the last War. It was the Central Agency itself which began the custom of enquiring for the information it needed from the national Bureau. It was therefore not thought necessary to reproduce this provision. On the other hand, during the preparatory work, the desirability was emphasised of periodical transmission, weekly as far as possible, of information relating to those seriously wounded or sick. The Conference embodied this recommendation (Art. 122, Par. 6).

In arranging for the ways in which national Bureaux should transmit information to the adverse Party, the new Convention adopted the system of double transmission of 1929—one by the Protecting Power, the other by the Agency. This system proved entirely satisfactory. Under the new Convention, however, not only is the information to be forwarded urgently : it is to be sent " *by the most rapid means* ". The reference here is not, as we saw in dealing with prisoners' correspondence, to the means at the Detaining Power's disposal, but to what is, in

general, the most rapid means. Information Bureaux should therefore endeavour, wherever possible, to utilise the quickest means of communication which modern science makes available (micro-film, photostats, etc.). Their employment could be facilitated by partial or total exoneration from payment for telegrams and for ordinary post. Such exoneration, provided for in Article 124, has been examined in relation to prisoners' correspondence and we need not revert to the question.

IV. — Other Activities of the Bureau.

The Bureau is given two further duties.

(1) — The first is, as the Bureau's name indicates, to reply to enquiries about prisoners. This work is of primary importance. However complete the information regularly transmitted may be, additional details are often required from the Detaining Power. The 1929 Convention mentioned this incidentally, as a matter of secondary importance. In the new Article 122 (Par. 7), it is made a clearly defined obligation, applying equally to the case of prisoners who die in captivity.

Satisfactory replies presuppose careful investigation, which has too often been neglected. The Information Bureau is now required *" to make any enquiries necessary to obtain the information which is asked for, if this is not in its possession "* (Par. 7).

Finally, the Conference decided, contrary to a suggestion put forward, not to specify who should be entitled to ask for information. In general, requests come from official or unofficial organizations, including the Central Agency ; the absence of exact definition shows clearly that it was desired to leave private individuals, wherever they might be, free to apply directly to official Bureaux.

(2) — The second task has little to do with information. Provided for in 1929, and repeated in Article 122, it is that of collecting and transmitting to the home country, personal property left by prisoners of war who have been repatriated,

who have escaped or who have died. Such property is sometimes referred to as " estate "—*objets de succession* in French.

The Bureau's real job is to transmit the objects ; the Detaining Power is responsible for seeing that they are carefully collected and forwarded.

The new wording introduces many improvements. It replaces " personal effects " by the more exact description " *personal valuables* ". A much more important innovation, shown by experience to be necessary, is that the Bureau is bound to forward such objects in sealed packets, with an inventory and full particulars of the owner.

The last sentence of the Paragraph shows that the Bureau is concerned essentially with objects and documents of value, small enough to come under the free postage regulations. The transport of other personal effects, such as clothes, books, musical instruments, works of art, and so on, might be expensive ; they shall therefore be " *transmitted under arrangements agreed upon between the Parties to the conflict concerned* ". Such arrangements will no doubt settle matters of transport and payment.

The last sentence also reproduces, in a much briefer form, the ruling of the new Convention (Art. 119, Par. 4) concerning the excess baggage and property which prisoners must leave behind on repatriation.

THE CENTRAL PRISONERS OF WAR AGENCY

I. — Introduction — Constitution.

There was scarcely a Red Cross Society, whether or not called upon to function as an official prisoner of war Information Bureau, which, during the last War, did not have to call on the services of the Central Agency at Geneva. It is true that, under the 1929 Convention, the Agency appeared as an organisation mainly at the disposal of belligerent States ; it none the less remained what it had been from its foundation—a source of information to next of kin. The Red Cross Societies are clearly the most practical means of communication with it.

The Societies will note with satisfaction that the new Conventions pay tribute to the efficiency and universal scope of the Agency, not only reproducing the original clauses of the 1929 Convention, but still further reinforcing them.

Nothing could better underline the importance which attaches to the Agency than the attitude of certain Delegations at the Conference. The Agency is obviously needed ; its existence is implied in several Articles ; was it not therefore necessary to modify Article 123, Paragraph 1, second sentence, making it obligatory for the ICRC to set it up more or less automatically ? On second thoughts, they agreed that the present wording is much preferable and is sufficiently flexible to allow the Committee to meet any situation which may arise. For example, hostilities may not continue long enough to justify the organization of the Agency. On several occasions—e.g., during the Balkan War of 1912—the Agency (or some of its Services) was transferred to a country more accessible to the belligerents. [1]

II. — Functions of the Agency.

Article 123 does not modify in any way the 1929 clauses concerning the functions of the Agency. These are not, however, limited only to what the stipulations themselves specify, namely : collection and transmission to the States concerned of all information obtainable through official or private channels about prisoners of war. Another, and perhaps even more important duty, is the transmission to the National Bureaux and the filing and preservation in its records, of information, documents and objects, which the Powers themselves must communicate to it. The relevant obligation imposed by Article 122 on belligerents and neutrals has been examined, but other Articles also apply.

Article 30, Paragraph 4 : A duplicate of all medical certificates issued to prisoners of war shall be forwarded to the Agency.

[1] Resolution XVII of the XVIIth International Red Cross Conference invites Governments to accord the ICRC all facilities, should a transfer of this nature be necessary.

Article 54, Paragraph 2 : The same applies to medical certificates issued to prisoners injured in working accidents.

Article 68, Paragraph 2 : The Detaining Power shall transmit through the Agency a copy of the statements issued to prisoners in case of non-restitution of impounded valuables or sums of money.

Article 77, Paragraph 1 : Legal documents, particularly powers of attorney, shall be forwarded through the Protecting Power or the Agency.

Article 120, Paragraph 1 : If a will is transmitted, at the request of a prisoner of war or after his death, to a Protecting Power, a certified copy shall be sent to the Agency.

A further activity, now expressly mentioned, is the reception and filing of capture cards, and the forwarding of the information they contain. This matter was discussed above (Article 70).

Finally, the very title of the Agency implies its responsibility for dealing with the questions which any conflict must provoke and the researches they render necessary.[1] Investigations would be greatly facilitated if requests were always made on cards uniform with the capture cards (15 by 10½ centimetres). The National Societies could prepare stocks and supply them on demand.

One of the primary conditions for the success of the Agency is the speed with which it can make communications, in particular to the Information Bureaux. Article 123, Paragraph 2, is, like the 1929 text, explicit on this point : the Agency shall transmit the information it collects to the interested Powers "*as rapidly as possible*".

Great distances and the tardiness of postal communications often obliged the Agency to cable. This, however, was very costly, and the Agency often had difficulty in obtaining the reimbursement it was obliged to claim from the States concerned. The use of telegrams is now simplified by Article 124, which provides that the Agency shall also, so far as possible, be exempted from such charges, or be accorded reduced rates. It is to be hoped that this principle will be widely recognised in Postal Conventions and in practice.

[1] For a complete picture, see the Committee's *General Report*, 1948. Volume II (320 pages) deals exclusively with the subject.

The Agency had found little difficulty, during the War, in having extended to it the free postage which National Information Bureaux enjoy in virtue of the Universal Postal Convention. The extension is now provided for expressly in Article 124. When the Postal Convention is revised, this point should be borne in mind.

Among the new clauses which are relevant at this point, that which has the greatest apparent importance for the Agency is the following (Art. 123, Par. 2) : " *It shall receive from the Parties to the conflict all facilities for effecting such transmissions* ".

As exemptions, and financial aid to the Agency are expressly dealt with elsewhere, we may presume that the facilities referred to here are material rather than financial : the wording implies a certain priority for Agency postal, telegraphic or telephonic communications, subject of course to military exigencies. If this applies to belligerents, it should apply even more so to non-belligerents.

The stipulation also acquires particular value in relation to wireless, used more and more by the Agency at the end of the War. [1]

Therefore, on the request of the ICRC (supported by the Red Cross Societies) the International High-Frequency Broadcasting Conference, held in Mexico in 1947, decided to attribute to the Swiss Confederation for the ICRC, a certain number of frequency-hours, for the use, when necessary, of the Agency. This represents the first application of the provision examined above.

The provision further implies that Parties to the Convention shall not interfere in any way with these broadcasts and even that they should place their technical equipment at the disposal of representatives or departments which the ICRC may have abroad, to allow more rapid contact with Geneva, or wherever else the Agency may be located.

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[1] The radio can play a very important part in the reception and transmission of information, subject to the condition that it does not serve for military purposes or propaganda. An obvious drawback, however, is the risk of distorting proper names.

III. — Agency Expenses.

During the preliminary work of revision, the attention of Governments was drawn to a matter not provided for in 1929 —the running costs of the Agency.

The ICRC, called upon "*to propose the organization of such an Agency*" has always met the initial costs out of its own funds. When the Agency has to expand suddenly, as it did during the last War, the Committee's limited resources may prove insufficient. Accordingly, it was up to the interested Powers to ensure that the necessary funds would always be available.

Under the Stockholm Draft, the belligerents were to share expenses in proportion to the services rendered. But this idea, leaving aside accounting difficulties, ignores two facts: the Agency up to a point, benefits not only the prisoners' home country but also, indirectly, the Detaining Power; furthermore, prisoners sometimes have no Government which can face these charges, and none the less need the Agency quite as much as other prisoners—and perhaps even more.

For these reasons, the Conference finally decided to give up the idea. The wording of Article 123, Paragraph 3, although less imperative than the Stockholm Draft, seems to draw the attention of Governments to the fact that the functioning of the Agency should not, in view of its importance, be impeded in any way through lack of the necessary funds. If it asks for the support not only of belligerents, but also of all States party to the Convention, it is because all implicitly recognize the Agency's utility and universal character.

IV. — Similar Activities by other Relief Organizations.

In 1929, the organization of the Central Agency was the only activity of the ICRC expressly mentioned. [1] It is therefore

[1] Except for the right of initiative, likewise recognized in a general way. (Art. 88 of the 1929 Prisoner of War Convention).

stipulated (Art. 123, Par. 4), that this mention in no way restricts the Committee's work for prisoners in other spheres.

The Convention now further provides specifically for ICRC relief, camp visits and so on. The last paragraph of the 1929 text, again reproduced, should now be interpreted in a very general sense—that of a reserve, additional to the clauses which entrust specific tasks to the ICRC. The implication is that no such clause shall have the power of binding the ICRC to its exact terms. The Committee is left free to assist prisoners according to circumstances, with or without the help of the Red Cross Societies.

Paragraph 3 (1929) has been reproduced, however, with the words *" or of the relief Societies provided for in Article 125 "* added.

At first sight the relevance of the addition to what goes before is not clear. If the implication is that Relief Societies may undertake some of the functions of the Central Agency, this might have been more suitably provided for elsewhere—in Article 125, for instance. The explanation may be that a rather unlikely possibility needed only a casual reference.

It may happen—there are precedents for it—that a Relief Society would, with the consent of the interested Powers (and although no express provision is made in Article 125) successfully develop a system for transmitting and centralizing information about prisoners of war. Such development could be distinctly useful to many prisoners, and it would be regrettable if a belligerent could nullify it on the pretext that only the Agency was competent. The object of the addition is to forestall any such refusal.

But there is a qualification : If a belligerent accepts the services indicated from a Relief Society, he is none the less bound to give the Agency regular information about the prisoners. In other words, there is a clear distinction between the obligation, comprehensive and binding, of States towards the Agency and their cooperation—obviously restricted and optional —in the same sphere, with a Relief Society. Nothing should be allowed to lessen the force of Article 123, which requires the centralisation in a single, entirely neutral Service, of all informa-

tion which deals with prisoners of war. Such centralisation alone renders it possible to make the best use of the available information for the benefit of the prisoners themselves. The experience of two World Wars has proved this point sufficiently well, and it is one subject on which the Diplomatic Conferences of 1929 and 1949 expressed no doubts.

THE RELIEF SOCIETIES

I. — Introduction.

When, during the Franco-German War of 1870, large numbers of French prisoners were interned in Germany, committees were set up (e.g. in Basle and Brussels) to bring them aid. It was suggested that these precedents should be formally recognized in International Law, by means of a clause in the Brussels Declaration of 1874. The proposal was not then adopted, but was taken up successfully in identical terms at the Hague Conferences of 1889 and 1907. It became Article 15 of the Hague Regulations and, later, Article 78 of the 1929 Prisoner of War Convention ; it served hitherto as a legal basis for the work of relief organizations—including the National and International Red Cross—during two World Wars.

Although the Article proved adequate to meet the most varied requirements, the organizations concerned none the less felt that it should be brought more into line with present-day usage. This did not apply to the fundamental principles, which are as valid today as when first expressed : respect and humane treatment for prisoners of war, and—what interests us here—the opportunity given to private individuals to come voluntarily and directly to their aid. [1]

Spontaneous assistance to prisoners had likewise to take an organized form and fulfil certain conditions and restrictions

[1] These two principles have a parallel in those which apply in the case of wounded and sick military personnel : respect, without distinction, for the enemy wounded or sick, and the opportunity for individuals to help in their care.

before obtaining treaty recognition. The principles, however, remain intact, despite the regulations which the new Article 125 finds it necessary to impose ; and these principles it is which make the Article so valuable for the entire Red Cross.

II. — The Nature of Relief Societies.

The need for clarification of Article 78 of the 1929 Prisoner of War Convention arose precisely from its way of indicating the Societies it covered. Its application to the major international relief organizations was not very clear—naturally, since the original provision was designed for national committees in neutral territory.

How was this Article to cover Red Cross relief to prisoners ? The IXth International Red Cross Conference (Washington, 1912) had proposed that National Societies should hand over relief collected for prisoners to the ICRC, for distribution to their own nationals. It should, therefore, be primarily to the ICRC that Article 78 would apply. Even though no doubts were ever expressed on this point, it was thought desirable that the fact should be expressly stated in the Convention.

In 1912, it was also visualised, within the terms of the provisions dealing with relief, that a National Society should assist enemy prisoners on its own territory. This idea had little practical application during the two Wars. It was taken up again by the Preliminary Conference in 1946, referred to Stockholm and adopted there as Resolution XXVI—to be also borne in mind when revising the Convention. [1]

The new Article 125 incorporates these recommendations. Paragraph 1, last sentence, reads : " *Such Societies or organizations may be constituted in the territory of the Detaining Power, or in any other country, or they may have an international character* ". Thus, there is full recognition for any Red Cross action in the spirit of Resolution XXVI.

[1] The text reads : " The XVIIth International Red Cross Conference, recommends that National Societies contribute to the relief of enemy prisoners of war and civilian internees..... on the basis of the most complete impartiality ".

During the last War, reflecting a general tendency, public or semi-public institutions for aid to prisoners were set up, to which the term " Relief Societies " could not be applied. The scope of the term had therefore to be extended, without losing the goodwill which the name " Relief Society " carries. This was done by adding the words : " *or any other organization assisting prisoners of war* ". The extended formula recurs several times in the Convention (e.g. Articles 72, 75, and 79). [1]

The terms were chosen to include organizations whose work for prisoners is incidental to their main activity, and restricted to war-time. The humanitarian aspect might thus be temporary only. On the other hand, an organization that might incidentally help prisoners, from time to time, would not be entitled to the quality and privileges of a Relief Society.

We have shown above (see pp. 15-16) that National Red Cross Societies would have had good claim to a particular mention amongst Relief Societies, such as they are given in the new First Convention (Art. 26). A proposal in this sense, submitted to the Preliminary Conference (1946), was, in the end, withdrawn. It was pointed out then, that contrary to what took place in the case of the wounded and sick, institutions other than Red Cross Societies aided prisoners—sometimes to a very appreciable extent. The meeting of Government Experts in 1947, discussing a similar proposal, believed that, precisely on account of the contribution just mentioned, their Governments would probably hesitate to name only Red Cross Societies ; there was a risk of competition as to what Societies should or should not be named—a result which would clearly be deplorable.

The Special Commission of the Red Cross Societies unanimously accepted this point of view. It was, therefore, the Red Cross itself which spontaneously abandoned the suggestion of naming the National Societies : their prestige and services would automatically secure them a priority, should they earn and deserve it.

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[1] The working methods of the Conference did not always allow complete standardization ; thus, in French, the expressions " *organisation humanitaire* " and " *organisme humanitaire* " are used as interchangeable terms in Articles 9, 10 and 28.

The word " relief " clearly includes spiritual aid, and Religious Societies did not find much difficulty in having their work included in virtue of Article 78. They nevertheless desired to see explicit provision made ; the Conference met their wish by a formal reference in Paragraph 1.

The mention of religious organizations precedes the reference to *" relief societies, or any other organization assisting prisoners of war "* This does not, however, imply any priority. The order is followed for convenience, and because it is reasonable, in making a list, to give precedence to the spiritual.

III. — Attitude and Obligations of Detaining Powers.

The Convention obliges the Detaining Power to allow private societies—most often foreign—to operate on its territory ; it, obviously, could not do so without giving the Detaining Power adequate security safeguards, especially against espionage. Even the former Article 78, dating from an era of less extensive and specialised warfare, imposed such limitations as were dictated by military necessity (e.g. the authorization of the military command, obedience to military regulations, etc.).

Article 125 now covers these requirements in its opening words : *" Subject to the measures which the Detaining Powers may consider essential to ensure their security or to meet any other reasonable need..."*.

On the other hand, it drops the former condition that Relief Societies should be regularly constituted under their municipal law. This condition, apart from the fact that compliance often raised difficulties for international organizations, is of no real concern to the Detaining Power, and should not be allowed to furnish the pretext for a refusal.

The Detaining Power is thus entitled to exclude a Relief Society only under the clause quoted above, and on condition that the interpretation is made in good faith. Belligerents will probably tolerate only such organizations as by tradition, constitution, and quality of work inspire confidence—the more so in

respect to foreign Societies. The Red Cross ideal, conscientiously applied, offers adequate safeguards to the Detaining Power.

A Detaining Power, however, may distrust or disapprove of certain Societies, or receive too many offers to help. Article 125, Paragraph 2, accordingly gives the Detaining Power the right to limit the number of Relief Societies it will authorize to operate on its territory, with the reserve that such limitation *" shall not hinder the effective operation of adequate relief to all prisoners of war "*. It is true that *" the effective operation of adequate relief "* can be interpreted in many ways. Therefore, the question of limitation should not be left to the Detaining Power to decide. The matter seems primarily one for the Protecting Powers, responsible for supervising the application of the Convention, and for the ICRC, as the organization perhaps best qualified by past experience.

The Convention also provides (as did the 1929 text), that the individual delegates must be approved by the Detaining Power ; this approval is therefore additional to that of the Society itself.

Approval once given, the Detaining Power must (as in 1929), accord Relief Societies and their delegates all necessary facilities.

These facilities cannot be specified in advance. Permission to move about, and the means of transporting relief supplies—under the terms of Article 74—are obvious examples. They also are subject to the reserves made at the beginning of Paragraph 1 ; this is perhaps less clearly marked than in 1929, but it is quite evident from the general spirit of the Article.

IV. — Duties of the Relief Societies.

The 1929 Convention used the expression *" their humane task "*, to cover the duties of Relief Societies, Experience showed that the formula was inadequate, and the new Article is more comprehensive in the first sentence of Paragraph 1, without, however, being exhaustive.

Three points deserve attention :

(1) — The oldest and most characteristic work of such Societies—distribution of relief.

This must be taken in a wide sense, as meaning bulk consignments to various places of internment rather than individual issues, which always remain possible. Distribution need not be made personally by the delegates of the Societies. Their role, on the other hand, is not limited merely to sending relief. The whole spirit of the provision implies active participation : attending and checking distributions, discussion with spokesmen, arranging transport, and so on.

On the nature of relief which may be issued, the formula in Article 125 corresponds largely with that in Article 72—with one addition : relief may be "*from any source*". The Detaining Power may not, therefore, refuse relief because of its origin. This formally recognizes the Red Cross principle : aid shall be given without distinction, and accepted in the same spirit, if offered disinterestedly.

(2) — Religious organizations are now included.

In the Stockholm Draft, their work was dealt with in the section devoted to religion ; in particular, provision was made for visits—the more justified since spiritual aid requires direct and personal contact.

The Diplomatic Conference preferred to include religious organizations under Article 125, and accordingly stated there the right to visit. All relief organizations now have this right, including the National Red Cross Societies.

The visiting of prisoners, however, by Relief Societies, belongs essentially to the charitable aspect of their mission : its object is to aid the prisoners materially or spiritually, and to organize their free time (see below). Should visiting extend, even involuntarily or by implication, to other aspects of captivity, there is a risk of it becoming a supervision on the application of the Convention. The Conference had intended to reserve such supervision exclusively to the Protecting Power, its possible substitutes, and the ICRC. It had, for this reason, expressly deleted

the mention of Relief Societies which, in the Stockholm Draft, occurred in Article 126 (dealing with supervision). Belligerents would scarcely tolerate activity of this sort by Relief Societies, and the probable result would be to restrict the Societies in all their other and much more important tasks.

The Societies should therefore use their right of visiting with the greatest circumspection and caution.

(3) — Relief Societies are authorized to aid prisoners "*in organizing their leisure time within the camps*".

Assistance can be given in this sense principally by forwarding and issuing books, musical instruments, and articles for recreative, educative, or artistic purposes, as provided for in Article 72.

Under Article 125, delegates of Relief Societies play an even more direct part, by helping in the actual organization of leisure. It will be recalled that Article 38 obliges the Detaining Power to encourage recreational activities, while respecting individual preferences; the terms were chosen to prevent such activities from being made a pretext for propaganda. The right now given to Relief Societies cannot do, other than reinforce this safeguard in the prisoners' eyes.

V. — Special Position of the ICRC.

The new Convention provides, under Articles 123 and 126, for specific tasks of the ICRC (Agency and Camp Visits). During the first World War, and even more so during the second, the Committee's relief work increased to a remarkable extent [1]; it was not therefore surprising that the Article dealing with Relief Societies should name the Committee. This great increase doubtless led the Government Experts (1947) to suggest the insertion of the wording which has finally become Paragraph 3 of Article 125, to the effect that, "*the special position of the International Committee of the Red Cross in this field shall be recognized and respected at all times*". During the Geneva Conference, two

[1] See *General Report, 1939-1947*, Vol. III, Relief Activities, 539 pages.

Delegations questioned the necessity for this stipulation. Its omission, after adoption in the Stockholm Draft, while elsewhere the Committee's other duties are expressly recognized, would have depreciated the importance of the work done by the ICRC in the field of relief.

Such was not the intention of the Delegations concerned; the majority desired, on the contrary, that the Paragraph should mark the fact that the restrictions in regard to Relief Societies should not in principle, and only in the last resort, apply to the ICRC. The Paragraph was unanimously accepted.

VI. — Receipts on Delivery of Relief.

We have seen (Article 72) that receipts are no longer required from prisoners who receive relief. The spokesman, and those responsible for supervising the application of the Conventions, afford sufficient guarantees to donors as to the proper disposal of consignments ; this applies particularly to collective relief.

When issues are made with the help of delegates of donor societies, such safeguards may appear superfluous. However, delegates cannot always be present ; they may not fulfil the intentions of the donors, or be mistaken about the real interests of the recipients. A safeguard is therefore given in the shape of receipts signed by the spokesman and the camp authorities. To the donors, the most important receipts are those signed by the spokesman (Art. 125, Par. 4) ; such receipts must be sent to the Relief Societies themselves, and not merely handed to their delegates.

PART III

FOURTH GENEVA CONVENTION OF AUGUST 12, 1949, RELATIVE TO THE PROTECTION OF CIVILIAN PERSONS IN TIME OF WAR

INTRODUCTION

The Fourth Geneva Convention of August 12, 1949, relative to the Protection of Civilian Persons in Time of War, is entirely new. In the evolution of protective international legislation, it is of the greatest importance. There is a temptation, given its novelty, to take the text as a whole and its practical application as our terms of reference. But a commentary of this nature would necessarily be long and complex, and would not give the National Red Cross Societies, for whom this Analysis is intended, what they are looking for. We have, therefore, selected the Articles of most obvious interest, and will briefly examine each, emphasizing points which give Societies an active part in implementing this new law and an influence in its future development.

We need not repeat here the historical outline which serves as Preface to the Committee's edition of the Conventions—an indispensable companion to this commentary[1]. We may, however, recall that the ICRC and the Red Cross as a whole, have a just claim to be considered as pioneers in this field. As far back as 1921, the Xth International Red Cross Conference (Geneva),

[1] *The Geneva Conventions of August 12, 1949.* — Published by the ICRC, Geneva, 1950. Second revised edition (249 pages) with a Preface (22 pages).

on the proposal of the ICRC, laid down the principles on which the texts adopted by the 1949 Diplomatic Conference are based.

The explanation of Red Cross interest in the protection of civilians is easily found; it flows from changes in the methods of warfare, and in war itself. Civilians in time of war are nowadays often almost as dangerously placed as those who, from 1864, have had first call on Red Cross concern—the combatant forces.

* * *

The Civilian Convention contains four Parts.

Part 1 (Art. 1-12) includes ten general Articles (Art. 1-3 and 6-12), which are common to the four Conventions and have already been examined. [1]

Article 4 defines the persons protected. Their number does not include nationals of the Contracting Parties—an important exception which must be borne in mind. From the start, we must also take Article 5 into account, since it makes derogations to the protection accorded by Article 4, in order to facilitate defence against treason or sabotage. These two Articles define the scope of the Fourth Convention and are dealt with below.

Part 2 (Art. 13-26) concerns the "General Protection of Populations against certain Consequences of War". As such, it counteracts the limitations just mentioned to the scope of the Convention. The fourteen Articles, in fact, cover the entire population, including nationals; they exceed the economy of the Convention and could with good reason be made the object of a separate diplomatic instrument. They extend provisions originally conceived for the wounded and sick of armies in the field, to include certain civilians particularly in need of protection: the wounded and sick, invalids, pregnant women, children and old people. As opposed to able-bodied civilians, these persons would be unable to take up arms, and are accorded a kind of two-fold protection—that of Article 4, and the special protection

[1] See above, pp. 3-14.

given in Part 2. " Nationals " belonging to the above categories of civilians come under these fourteen Articles, but are excluded from the benefit of the rest of the Convention.

It should be noted, however, that Part 2, as its title indicates, protects the population only against " *certain* " effects of war. A distinction has to be made between the various risks to which civilians are exposed in wartime.

Some dangers are inherent in war itself, i.e. in the employment of force and of arms. Such has been the extension of warfare—which is no longer limited to the fighting zone—that civilians to a large extent share the same dangers as combatants. They are, for instance, similarly exposed to attack from the air.

Other dangers of war are independent of the action of armed forces. They arise from the State, its agencies, or even single officials, who may, by force of circumstances, be invested with power over individuals—persons of enemy nationality in particular. Most often the same people are exposed to both risks—a civilian internee, by the mere fact of being in a country at war, is also exposed to air-raids. Protection against the second type of danger is a main purpose of the Convention.

Protection against the perils inherent in war raises problems which the Conference was not called upon to solve. This question was made the subject of the Regulations annexed to the Fourth Hague Convention of 1907 on the Laws and Customs of War. The revision of these Regulations would have alone required an assembly on the same lines as the Geneva Conference, so involved and far-reaching is the problem.

Part 3 (Art. 27-141) is wholly concerned with the status and treatment of the persons protected. It has five Sections, differing considerably in subject-matter. *Section 1* (Art. 27-34) contains provisions common to protected persons in *(a)* the territory of Parties to the conflict and *(b)* occupied territory. *Section 2* (Art. 35-46) concerns aliens in the territory of a Party to the conflict, while *Section 3* (Art. 47-78) deals with occupied territories. *Section 4* (Art. 79-135 : Regulations for the treatment of internees) applies equally in the territory of the Parties to the conflict and in occupied territory. *Section 5* (Art. 136-141) is

also common to both categories of persons mentioned, and deals with the collection of information about protected persons and its transmission by National Bureaux and the Central Agency.

Part 4 (Art. 142-159), among formal stipulations, contains several important Articles relative to the execution of the Convention and the supervision of its application.

The Convention concludes with three Annexes :

(1) — Draft Agreement relating to Hospital and Safety Zones and Localities ;

(2) — Draft Regulations concerning Collective Relief ;

(3) — Model Correspondence Forms.

We shall now examine, Part by Part, the Articles which principally interest the National Red Cross Societies.

PART I

General Provisions

Article 4. — This, as already stated, calls for particular attention. It may be considered as the key to the Convention. It defines "*protected persons*" : with the reserve of what has been said about Part 2, the protection of such persons was the essential object of the Convention.

The wording of the Article is not very explicit ; the definition will be easier to understand, if we start by noting the following principal categories :

(A.) — In the territories of States at war, protection is given, in the sense of Article 4, *to all persons of alien nationality and to the stateless.*

This definition is clear, but there are a series of exceptions. It excludes the following :

(1) — Nationals of a State which is not bound by the Convention.

The reason for this exception is evident : the Geneva Conventions, in spite of their declarations of principle, are, like all treaties, based on reciprocity. There is nothing, however, to prevent the *de facto* application of the Convention to the citizens of a State, pending its adhesion. In such case, only a categorical refusal on its part to accord the benefit of the Convention, by reciprocity, to citizens of the enemy State will deprive its own citizens of such benefits.

(2) — Nationals of a neutral or co-belligerent State which has normal diplomatic representation in the State where they happen to be.

The protection of aliens is a matter for the Diplomatic and Consular representation of their own countries. While normal diplomatic relations exist, they cannot be considered as being without protection.

(3) — Persons under letter (A), who have the protection of one of the three other Geneva Conventions of August 12, 1949.

Taking prisoners of war as an example, it will be seen that they are persons of alien nationality ; they are in the territory of a State at war and, in the absence of special provisions, they would be "protected persons" in the sense of Article 4. To avoid ambiguity, Article 4 specifies that only the Third (Prisoner of War) Convention shall apply, and they consequently cannot seek protection under the Fourth (Civilian) Convention. This is common sense and removes any doubt as to which Convention applies.

(B.) — In occupied territories, protection is given, in the sense of Article 4, to all persons who are not nationals of the Occupying Power. Exceptions are also made here :

(1) — Nationals of a State which is not bound by the Convention. As under A (1) above.

(2) — Nationals of a co-belligerent State, as long as it has normal diplomatic representation in the Occupying State.

In occupied territory, as opposed to territories of Parties to the conflict (see A (2) above), neutrals have the protection of the Convention.

(3) — Persons defined under letter (B) but protected under one of the three other Conventions.

Similar to the exception under letter A (3).

The definition of "protected persons" may at first sight seem rather complicated. There are, however, two main categories.

(1) — Enemy nationals on the home territory of each of the Parties to the conflict.

(2) — The entire population of occupied territories, nationals of the Occupying Power excepted.

Distinctions and exceptions extend or restrict the categories, but make no fundamental difference. These are the two categories which the Tokyo Draft (1934) also sought to protect.

The Draft adopted by the Stockholm Red Cross Conference, of 1948, did not exclude persons who still have normal diplomatic protection (See A (2) and B (2). The distinction is, however, negligible ; not mentioned in the Convention, such persons would have had twofold protection. Clearly, diplomatic protection would have taken precedence over protection under the Convention. The abandoning of twofold protection is of small account, provided that treaty protection is *automatically* substituted from the moment diplomatic protection, for whatever reason, is wanting. This is precisely the point of using the words : *" normal diplomatic representation "*.

Article 5. — The position is otherwise, however, in regard to the derogations in this Article. These were not contained in the Stockholm Draft and are fairly important.

In the terms of Article 5 : *"Where in the territory of a Party to the conflict, the latter is satisfied that an individual protected person is definitely suspected of or engaged in activities hostile to the security of the State, such individual person shall not be entitled to claim such rights and privileges under the present Convention as would, if exercised in the favour of such individual person, be prejudicial to the security of such State.*

" Where in occupied territory an individual protected person is detained as a spy or saboteur, or as a person under definite suspicion of activity hostile to the security of the Occupying Power, such person shall, in those cases where absolute military security so requires, be regarded as having forfeited rights of communication under the present Convention."

The effect of this provision is to deny many of the safeguards of the Convention to persons who, on the actual territory of Parties to the conflict, may endanger the security of the State. This applies to suspects equally with offenders : in occupied territory it goes less far, affecting only rights of communication.

It might have been considered that the right of a Power to defend itself against espionage and fifth column agents was sufficiently established in International Law for the Conference to have dispensed with the addition of this Article, and to have contented itself with an appropriate reference to the laws and customs of war. Governments, however, were unwilling to curtail their right of action in matters involving a grave menace to their security.

But the Conference wished clearly to set limits to the breach thus made in the system of treaty protection, and, so far as possible, shield the innocent from arbitrary action. The precautions taken in this sense will have been noted: the suspicion of hostile activity must be founded, and the persons concerned individually suspect. These two conditions rule out the possibility of depriving persons of protection by categories, without bringing definite charges against each individually. Similarly, only those "*rights and privileges under the Convention*" may be withdrawn, the exercise of which would "*be prejudicial to*" the security of the State. Finally, in occupied territory, derogations will apply only in cases where "*absolute military security so requires.*"

Moreover, the Conference took care to specify for all these persons certain minimum safeguards—the imperative need for which mere application of the laws and customs of war would, in the absence of Article 5, have otherwise made apparent—and which may in no case be withdrawn from them. Article 5 therefore stipulates that, "*In each case, such persons shall nevertheless be treated with humanity and, in case of trial, shall not be deprived of the rights of fair and regular trial prescribed by the present Convention. They shall also be granted the full rights and privileges of a protected person under the present Convention at the earliest date consistent with the security of the State or Occupying Power, as the case may be.*"

The Conference, by thus qualifying the derogations authorized in Paragraph 1, showed its evident desire that such derogations should be applied as restrictedly as possible.

PART 2

General Protection of Populations against certain Consequences of War

The general character and evident humanitarian interest of Part 2 make it of particular interest to National Societies; we shall make a brief general comment.

Article 13 specifies that the thirteen Articles which follow are "*intended to alleviate the sufferings caused by war*". The expression may appear modest enough, but it is realistic. Modern war, despite all regulations aimed at limiting its effects, inevitably brings great suffering upon the civil population, and any hope of entirely eliminating its evils is vain.

Part 2 covers the whole population, "*without any adverse distinction based, in particular, on race, nationality, religion or political opinion*". This phrase recurs several times in this and the other three Conventions, and was adopted by the Conference after careful consideration. Its object is to exclude discrimination absolutely. Several Articles of Part 2 regulate for special cases, as for example Article 20, dealing with staff of civilian hospitals. By this, the field of application is necessarily more limited than is implied by Article 13. Other Articles, however, as Articles 25 (Family News) and 26 (Dispersed Families) show to full advantage the general intention of Article 13.

Article 14 (Hospital and Safety Zones and Localities). This adopts an idea studied for a very long time by the ICRC and the National Societies: how zones could be established where the wounded and sick, and civilians who are engaged

neither directly nor indirectly in warfare, could take shelter and be protected against the effects of war—against air attacks in particular. Article 14 is not imperative. States bound by the Convention are not obliged to establish such zones, but the problem is officially recognized and the wording of the Article lays full emphasis upon the necessity for such protection. It is undoubtedly true that the evolution of a war, the distance of some States at war from the scene of fighting, and changes in the methods of warfare, may sometimes make the establishment of safety zones difficult, or even inexpedient. Article 14 could not therefore be imperative. But whenever the establishment of such zones is not ruled out by the exceptions mentioned, we may presume that the measures contemplated in the Convention will be put into practice.

The Article does not specify how hospital and safety zones are to be established and recognized. The Draft Model Agreement annexed to the Convention, however, gives useful details. In many cases the Agreement could be used as it stands.

States may establish these zones in peacetime ; they may set aside certain localities and make the necessary installations. Failing such preparations, they may create zones on the outbreak of hostilities.

Article 14 defines the categories of persons who may take refuge in these zones, namely " *wounded, sick and aged persons, children under fifteen, expectant mothers and mothers of children under seven* ". They are all persons who will need the care of medical and welfare personnel—to be found in the ranks of the National Societies. This will open new ground, and National Societies will certainly wish to make ready by giving members suitable training. It is quite possible that in some States, the organization of hospital and safety zones will be left entirely to the National Red Cross, or one of its branches.

Article 15. — Neutralized zones are slightly different from hospital and safety zones. Established in regions where fighting is taking place, they would give refuge to non-combatants. They would be necessarily less permanent, and would, in most cases, be set up by agreement between the commanders of

advanced units. As soon as fighting ceased in the particular region, the need for the zone would disappear.

The idea has potentialities, and in fact, neutralized zones have been established with success during recent conflicts: e.g. in Shanghai in 1937, Madrid, during the Spanish Civil War, and Jerusalem, in 1948, where the ICRC co-operated. It is evident that, in future, the Committee and the National Societies may be called upon in setting up neutralized zones, and may, in some cases, be asked to take full responsibility.

Article 16. — The first of the series of seven Articles (16 to 22) on the general subject of protection for wounded and sick civilians, which state the essential principles of the First Convention in relation to civilians. Two methods were open—either to include civilians under the First Convention, or to adopt similar provisions in the Fourth. The Conference preferred the second alternative, which certainly makes for clarity.

Article 16 lays down the general principle of respect and protection for the wounded, the sick, the infirm and for expectant mothers; its consequences are set out in the succeeding Articles. The precise sense of the words "protection" and "respect" was commented in dealing with Article 12 of the First Convention. [1] The term "particular" emphasizes the fact that protection, accorded in a general way to civilians, is doubly due to those who are wounded or sick.

Of particular importance during an occupation are the measures prescribed in Paragraph 2, in regard to search for the killed and wounded, and aid to the shipwrecked and others in grave danger. It may be inferred that civil defence, lifeboat and other services shall, as far as possible, continue in occupied territory. This Paragraph has also an application in national territory—for instance, the crew of an enemy vessel, wrecked near the coast, shall always be helped.

Article 17 deals with the removal of certain inhabitants from besieged or encircled areas, and the passage to such areas

[1] See Vol. 1, pp. 4 and 55.

of ministers of religion and medical personnel and equipment. While the Article is not imperative, a moral obligation is imposed on belligerents. The situation provided for hardly occurred at all during the first World War; but during the second, limited areas or pockets, although encircled by the enemy, frequently held out for months. On several occasions, the ICRC, thanks to the goodwill of the military commanders, succeeded in evacuating part of the population. Article 17 thus sets approval on past experience.

Because circumstances can vary so much, this Article could not be made imperative. The text merely states a principle; "*local agreements*" will work it out in practice.

The role of local Red Cross Branches in such operations will no doubt be important. Whether inside the encircled territory or in its immediate proximity, they will probably assist in the evacuation, and may be called upon to organize and carry it out.

Article 18 (Protection of Civilian Hospitals). — The Article defines civilian hospitals as being "*organized to give care to the wounded and sick*"; they are recognized by the State, which shall deliver "*certificates showing that they are civilian hospitals and that the buildings which they occupy are not used for any purpose which would deprive these hospitals of protection in accordance with Article 19*". This definition holds good in all Articles where reference is made to civilian hospitals (Art. 19, 20, 56, and 57, for instance). Like military hospitals, they may in no circumstances be attacked; they shall at all times be respected and protected by the Parties to the conflict. [1]

If the State so authorizes, civilian hospitals may be indicated by the Red Cross emblem (Red Crescent, Red Lion and Sun); a reference to Article 38 of the First Convention provides for the appropriate regulations. [2]

Article 18 will, it may be hoped, prove adequate. During the recent War, there was considerable confusion on the subject.

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[1] See Vol. I, pp. 26 et seq.

[2] *loc. cit.*, pp. 76 et seq.

In some countries, civilian hospitals had been militarized and were therefore entitled to use the Red Cross emblem. In others, they were marked by a red square on a white ground, while in still others, they had no distinguishing markings at all. National Societies, which frequently own, or are in charge of, civilian hospitals, will naturally be interested by the new regulations ; they should arrange that, in time of war, hospitals are duly marked.

Article 19 deals with the circumstances which may deprive hospitals of the protection to which they are entitled. The provisions are similar to those of Articles 21 and 22 of the First Convention, to which the reader should refer. [1]

Article 20 is entirely devoted to civilian hospital staff. It was only after long consideration that the Conference decided to afford special protection to such staff as a whole, and, with this idea in view, to allow them to wear an armlet issued by the State and bearing the Red Cross (Red Crescent, Red Lion and Sun). The use of the emblem on civilian hospitals was the only extension that the ICRC had had in mind. But the Stockholm Conference advocated the extension to all personnel detailed to caring for the civilian wounded and sick.

The ICRC itself felt very dubious, fearing the extension might seriously diminish the degree of protection conferred. It might be asked whether it was logical to afford special protection to this category of civilians. The Conference finally adopted a middle course. Giving up the idea of granting special protection and the right to use the emblem to everyone caring for the sick, it stipulated this protection and right only to the staff of civilian hospitals. The extension is thus considerably lessened, and, in the opinion of the Delegations, was justified by the dangers to which the staff are exposed. Measures are taken to prevent abuse in the issue and employment of armlets. Vigilance will, however, be necessary; such abuse might altogether deprive the emblem of its traditional protective value.

[1] See Vol. I, pp. 27-30.

Article 20 first sets forth the general principle of protection and respect of the staff of civilian hospitals; this protection is independent of their identity cards and the armlets which distinguish them. The identity card is issued by the "*responsible authority*". This term is somewhat vague, but a more precise definition was purposely not given, because of the difficulty of drafting so as to cover the many conditions which vary from country to country. The responsible authority may be the Army Medical Service, the Ministry of the Interior, or the Ministry of Health, or even, by delegation, the hospital administration. The armlet must be "*issued by the State*". Here again, the term used is wide enough to allow for flexibility; nevertheless, it is the State that will be responsible.

The management of every civilian hospital must hold a staff list, up-to-date, at the disposal of the national or occupying authorities.[1] The provision will likewise help to prevent abuses.

Article 21. — Transport of the wounded and sick provided for in this Article is protected by the Convention and may, "*with the consent of the State*", display the Red Cross (Red Crescent, Red Lion and Sun). This applies, nevertheless, on land, to organized convoys or ambulance trains only, and, at sea, to hospital ships. Both must be relatively important; the Article does not appear applicable to isolated transports. There could, for instance, be no question of displaying the Red Cross on a private car taking a patient to hospital. The Conference considered that if such use were sanctioned, control would be impossible.

It may be noted that Article 44 of the First Convention provides that the emblem may, with the express permission of the National Society, be employed in time of peace, to identify vehicles used as ambulances.[2] This would not be possible in wartime; but if such vehicles are used in convoy to transport the wounded and sick, they could, with the

[1] The list, it should be emphasized, concerns staff, and not patients.
[2] See Vol. I, pp. 81 et seq.

authorization of the State, display the protective emblem. Operating with the Army Medical Service, they would, individually, be protected.

Article 22 (Transport of the Wounded and Sick by Air) more succinctly expresses provisions similar to those of Article 36 of the First Convention. [1]

The Article is the last of the series dealing with the protection of sick and wounded civilians.

Article 23 takes up an entirely different subject. It seeks to temper the effects of blockade regulations which belligerents may impose. The text is detailed and states various conditions to be fulfilled, if consignments are to pass the blockade. During the War, this matter was the subject of frequent negotiations —through the intermediary of the Protecting Powers and the ICRC—between opposing parties. The same will conceivably happen also in future. Article 23, at any rate, obliges belligerents to grant free passage to medical supplies, foodstuffs and clothing. In spite of reservations to this principle—left to the appreciation of the Parties in conflict—the Article is clearly a very useful basis on which to negotiate the forwarding of such consignments.

National Red Cross Societies will doubtless be interested in these provisions ; they have frequently been the consignees of medical supplies, foodstuffs and clothing, and have undertaken their distribution.

Article 24 deals with measures relating to child welfare.

Paragraph 1 provides for education and accommodation, Paragraph 2 for the accommodation of children in neutral countries, for the duration of the conflict.

During the War, the Societies of several neutral States arranged to take children from belligerent countries ; Article 24 gives a legal basis to such schemes.

The subject of Paragraph 3 is the identification of children, which National Societies can either undertake completely or

[1] See Vol. 1, pp. 68 et seq.

in conjunction with the authorities. The experience of the War makes it unnecessary to emphasize the importance of such measures.

Article 25 is the first of those under examination which specifically mentions the National Red Cross Societies. It deals with the transmission of family news ; the general sense of the Article has already been referred to. It applies to all persons on the territory of States at war. Need we recall the fact that the ICRC, with the assistance of the National Societies, organized the transmission of civilian messages without there being any legal basis in the Convention ? The services rendered to millions are well known, and the functioning of the system was explained at length in the Committee's *General Report (1939-1947)*. [1] The success of the scheme is a striking example of what can be done, through the neutral intermediary of the ICRC, by co-operation between the National Societies of countries separated by war.

Certain Delegations at the Diplomatic Conference—no doubt because their information was incomplete—suggested deleting the mention of the National Societies. The ICRC representative had little difficulty in showing how opportune the mention was, and in having it retained. [2]

Article 26 The reunion of dispersed families is also a task which National Societies can undertake during and after war.

The Article provides that each Party to the conflict shall "*encourage the work of organizations engaged on this task*" of research and enquiry. The National Societies are clearly first amongst those qualified to benefit by such facilities.

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[1] See Vol. II, pp. 63 et seq.

[2] The mention clearly carries with it the obligation for the National Societies and for the ICRC to be prepared. Preparations should therefore be made now, and the ICRC would gladly furnish any additional information that may be required.

PART 3

STATUS AND TREATMENT OF PROTECTED PERSONS

Section I (Art. 27 to 34) deals with provisions common to the territories of Parties to the conflict and to occupied territories.

Article 27 deserves particular mention, as it contains the essential rules for the treatment of civilians : *" Protected persons are entitled, in all circumstances, to respect for their persons, their honour, their family rights, their religious convictions and practices, and their manners and customs. They shall at all times be humanely treated and shall be protected especially against all acts of violence or threats thereof and against insults and public curiosity "*.

Here, the guiding principle of the Convention is stated. This fundamental Article conditions all the provisions relating to protected persons, and if some situation should arise not specifically provided for in the Convention, it must be dealt with in the spirit of Article 27. It will therefore be frequently cited, and must inform the application of the Convention as a whole.

We may note, in passing, that the Article makes particular mention of the protection of the honour of women. The wording was drawn up by agreement between several women's associations and the ICRC, and was accepted without amendment by the Conference.

Article 30 grants protected persons *" every facility for making application "* to the Protecting Powers and relief organizations, amongst which the ICRC and the National Societies are mentioned by name.

This provision calls for attention. If Article 30 formally recognized the right of recourse to National Societies, it is because the Conference thought that these Societies would be able to give moral or material aid. Under what form shall this aid be given ? There are two distinct aspects of the question.

(A) — *On the territory of the Parties in conflict* " protected persons " are (in the sense of Article 4) aliens, generally of enemy nationality. We cannot over-emphasize the need for National Societies to develop their programmes of assistance to the victims of war, whatever their nationality. The Stockholm Conference fully appreciated this fact and devoted two Resolutions to it. Resolution No. XXV reads :

The Conference...

Requests all National Societies which may not have already done so, to provide in their statutes for assistance to all war victims, both civilian and military, without distinction of nationality, race, religion or opinions,

Expresses the hope that their respective Governments and, in so far as may be opportune, the Conventions will recognize the right for National Societies, not only to afford care and relief to the wounded and sick of armies in the field, but also to come to the assistance of civilian war victims and prisoners of war.

Resolution No. XXVI is still more precise on the question under discussion :

The Conference...

Recommends that National Societies contribute to the relief of enemy prisoners of war and civilian internees, such relief to be afforded on the basis of the most complete impartiality.

Article 30 recognizes to the Societies the right claimed for them by the Stockholm Conference to operate relief for civilian victims of war. National Societies will no doubt amend their Statutes to allow them to organize such relief, should it prove necessary.

Relief to enemy citizens requires impartiality to a degree which the public does not always understand. The Red Cross principle must, however, be respected, no matter how difficult for the individual Society it may be.

(B) — *In occupied territory,* the category of protected persons includes almost the entire population. Therefore, the National Society will mostly be working for its countrymen. The importance of this privilege does not need underlining; had this right existed during the last War, when persons arrested or detained were unable to inform their relatives or apply to any institution which could help them, much suffering could have been avoided. If, however, National Societies wish to retain the privilege, they must be extremely strict, and avoid supporting, under cover of relief activity, acts hostile to the occupant; misdirected patriotism can only too easily undo what has been so painfully achieved.

Section II (Art. 35 to 46) lays down detailed regulations to cover aliens on the territory of a Party in conflict. The most important innovation is the right accorded to protected persons who have been sentenced to internment, to appeal and demand that their case be periodically reviewed.

Section III (Art. 47 to 78) refers to occupied territories; the necessity for it is obvious. The Hague Regulations gave the general principles to which the Occupying Power must conform in its treatment of the local population, but the new Convention has detailed legislation which applies to the most varied aspects of daily life in occupied territories. Amongst the provisions of the Section — all of them of very great interest—**Articles 56 and 57,** dealing with public health in civilian hospitals, take first place. Hospital services and medical care are within the ordinary competence of the National Societies, and are as a rule specified in the programme of work. The two Articles mentioned provide that the health services shall be allowed to continue normally, and that the population shall not be deprived of the care it needs; as a result, medical

establishments and hospitals have the right to continue, and their medical personnel, of whatever standing, are entitled to carry on with their work. Civilian hospitals, in the terms of Article 57, may be requisitioned *" only temporarily and only in case of urgent necessity "*. It is further stated that the material and stores of civilian hospitals shall not be requisitioned *" so long as they are necessary for the needs of the civilian population "*.

Article 63 refers to what has been a main Red Cross problem for many years: the status and activities of National Red Cross Societies in occupied countries. In 1938, the XVIth Red Cross Conference (London) recommended that the problem be studied by a Commission. This was set up for the purpose in 1939, but the War broke out before the matter could be regulated by treaty, and several National Societies were arbitrarily treated by occupation authorities, who modified their structure, limited their activities or even dissolved them. The question was therefore again raised at the meetings held at Oxford and Geneva in 1946, and taken up by the Stockholm Conference.

The ICRC, working since 1945 on the draft Conventions, had felt the need for a clause which would protect National Societies in occupied countries. Its propositions were slightly modified at Stockholm, and finally accepted by the Geneva Conference without important change.

(1) — Article 63 first lays down the right of National Societies to continue their work in the occupied territory, in conformity with Red Cross principles. These principles, it must be borne in mind, derive not only from the Geneva Convention of 1864, and its revised forms (1906, 1929, and 1949) but also from the Resolutions taken by various International Red Cross Conferences. [1]

The guiding principles are : impartiality, political, religious and economic neutrality, universality of the Red Cross, and equality of the National Societies.

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[1] See *Manuel de la Croix-Rouge*. Tenth edition, Geneva, 1942.

(2) — The Occupying Power may not require any changes in the personnel or structure of the National Societies which would prejudice traditional Red Cross activities. The interpretation is here somewhat more delicate, but it can be clearly inferred that leaders of Red Cross Societies who work in the Red Cross spirit may not be summarily dismissed, especially if their presence is a guarantee of that spirit.

These two safeguards accorded to National Societies in occupied countries are extremely important. Their corollary is that the leaders of the Societies shall observe strict impartiality, and that their Societies shall remain entirely neutral to political or military considerations. The personnel must carry out their duties conscientiously and in accordance with instructions. This line of conduct will not always, perhaps, be understood in an occupied country, or easy to maintain. But if National Societies, despite the circumstances, are to be allowed to continue, it is essential that their leaders and personnel observe the conditions laid down. Otherwise, the Occupying Power will invoke the reserve at the beginning of the Article and take "*temporary and exceptional measures imposed for urgent reasons of security*". It was to cover this case that the reserve was introduced.

Articles 59 to 61. — The provisions of Article 63 are all the more important because Articles 59 to 61 provide for the possibility of importing relief into occupied territory, if the lack of food or general health conditions so demand. Such relief has generally been addressed to the National Society in the occupied country, and that Society is also responsible for distribution. The same remark applies to the ICRC.

If the system is to succeed, the Red Cross must be sufficiently independent to have the confidence of both the consignor and the Occupying Power—a confidence which will be best earned by impartiality, by concentration on the humane aspects of the work, and by the readily apparent value of the scheme in itself.

Section IV (Art. 79 to 136) is entitled " Regulations for the Treatment of Internees ".

The Tokyo Draft devoted two Articles only to civilian internment. Having laid down the principle that internee camps should be distinct from prisoner of war camps and situated in healthy areas (Art. 16), the Draft limited itself to providing (Art. 17) : " *For the rest, the Convention of July 27, 1929, relative to the Treatment of Prisoners of War, is applicable by analogy to civilian internees. The treatment of civilian internees may not in any case be inferior to that laid down by the said Convention* ".

The Diplomatic Conference considered (as did the Stockholm Conference) that this simple reference was inadequate, and that it would be necessary to incorporate regulations in the Convention to govern the internment of civilians ; these regulations would omit the provisions which apply only to military personnel (rank, saluting, pay, etc.), and add clauses adapted to civilians (relations with the family, business journeys, etc.). The Regulations thus comprise 58 Articles—almost a third of the entire Convention.

Nevertheless, they correspond, on the whole, very closely to those referring to prisoners of war.

This is hardly surprising : during the War, internees were nearly always coupled with prisoners in the negotiations of Relief Agencies, and much the same thing happened during the preliminary work on the new Conventions. [1]

Consequently, commentaries on the chief questions affecting prisoners of war and which directly interest the National Societies, are equally valid on the subject of internees ; we therefore refer back to the Chapters on Mail (p. 27), Capture Cards (p. 23), and Relief (p. 37). These three Chapters can be considered almost unchanged for the following Articles of the Fourth Convention : Art. 104 (Correspondence of Internee Committees with Relief Societies) ; Art. 106 (Internment Card) ; Art. 107 (Correspondence) ; Art. 108 to 112 (Relief)—with the exception of Art. 108, par. 2, and Art. 110, par. 2.

[1] In 1946, the Preliminary Conference dealt in the same Committee with both prisoner of war and civil internee regulations.

We may note, however, that Art. 114 (Management of Property), Art. 115 (Facilities for Preparation and Conduct of Cases), and Art. 116 (Visits) have not their parallels in the Third Convention. They temper internment for persons who, not being subject to military discipline, may, in certain cases, be treated less strictly than prisoners. There is one major difference as far as work is concerned; while prisoners of war (except officers) may be compelled to work, internees may not be employed as workers "*unless they so desire*" (Art. 95). Except that the work of internees is wholly voluntary, it is governed by the same rules as for prisoners.

Some additional comment is called for. It is interesting, for instance, to consider the new Convention within the general framework of humanitarian law, and to emphasize the role which the National Societies may be called upon to play in its evolution.

When the ICRC, at the beginning of the War, tried to have Governments apply the Tokyo Draft, it was successful only with respect to persons "of enemy nationality", then "on belligerent territory". Thanks to the Committee's intervention, however, about 160,000 civilians were given "by analogy" the treatment laid down for prisoners of war. Their names were registered at the Geneva Prisoners of War Agency; they received mail and relief, and their camps were visited by ICRC Delegates.

But, after the occupation of several countries, this represented only a very small minority of civilians who were cut off during the War from normal life by deportation, by forced labour, or through persecution. Whenever the question of interning civilians arose, the only guarantee that could be quoted in their favour was that of the summary rules of the Hague Regulations. The point is important; in Germany alone in 1945, there were about eighteen million aliens, some of them interned, who had been taken more or less forcibly from their own countries and their ordinary occupations.

The great advance made by the new Convention is that henceforth such civilians have a status similar to that of prisoners of war. The situation which some enjoyed at the

beginning of the War is now expressly extended to all. This is the sense of Article 79: *" The Parties to the conflict shall not intern protected persons except in accordance with the provisions of Articles 41, 42, 43, 68 and 78".*

The first three of these Articles refer to aliens living at the opening of hostilities on the territory of a Party to the conflict ; they state the principle that *" the internment or imprisonment in assigned residence of protected persons may be ordered only if the security of the Detaining Power makes it absolutely necessary"* (Art. 42, Par. 1) and that *" any protected person who has been interned or imprisoned in assigned residence shall be entitled to have such action reconsidered as soon as possible by an appropriate court or administrative board designated by the Detaining Power for that purpose"* (Art. 43, Par. 1).

Articles 68 and 78 cover occupied territories. The first stipulates that internment (or simple imprisonment) shall be the only punishment for an offence *" which is solely intended to harm the Occupying Power, but which does not constitute an attempt on the life or limb of members of the occupying forces or administration, nor a grave collective danger, nor seriously damage the property of the occupying forces or administration or the installations used by them".*

Article 78 states the same principles as Articles 42 and 43, but takes into account the fact that internment has to be organized during the occupation by the hostile Power, and that reference cannot be had to a *" court or administrative board"* set up beforehand (see Art. 43 above). Furthermore, review of the internee's case every six months, compulsory on the territory of the belligerent, is optional only in occupied territory.

Thus, the internment of " protected persons " either on the territory of Parties in conflict or in occupied territory, is governed by rules which, if they had been in operation during the War, would have been a safeguard for millions.

The regulations are clear and detailed. They concern : Places of Internment (Art. 83 to 89), Medical Attention and Inspec-

tions (Art. 91 and 92), Religious, Physical and Intellectual Activities (Art. 93 to 96), Personal Property and Financial Resources (Art. 97 and 98), Administration and Discipline (Art. 99 to 104), Internees' Relations with the Exterior (Art. 105 to 116), Penal and Disciplinary Sanctions (Art. 117 to 126), Transfers (Art. 127 and 128), Deaths (Art. 129 to 131), Release, Repatriation and Accommodation in Neutral Countries (Art. 132 to 135).

These provisions do not require the intervention of the National Societies, except in the distribution of relief and for correspondence. Both these points were dealt with in discussing the Third Convention. [1] National Societies should, however, be well informed on the question of internment, because they may at any moment be called upon to act either on their own initiative, or in co-operation with the Protecting Power or the ICRC.

Being "national" and "recognized by the State", the Societies have obviously a special position with the authorities, and will be the appropriate intermediary in humanitarian matters.

As certain new conceptions of law appear, it seems likely that this role will be even greater.

One of the organizations consulted by the Economic and Social Council of the United Nations wrote recently [2]: "In order to avoid the consequences of the traditional notion in International Law that individuals, for whose benefit treaty provisions are drawn, have no standing to raise a question of the violation of such provisions, unless they can secure the aid to which the obligation formally runs, recourse may be had to the legal figure of "relator" which exists in English Common Law, and [they may] adapt it to the international field." If International Law were to evolve in this sense, National Societies could assume this role of "relator" for the benefit of those protected by the Conventions.

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[1] See above, pp. 54 and 31.

[2] Consultative Council of Jewish Organizations: *United Nations Documents*, E/C.2/239, p. 6. (Jan. 1950).

It should be remembered that citizens of the Contracting Parties are not "protected persons". Citizens or subjects remain outside the field of application of the Convention. [1] The autonomy of sovereign States is, in principle, entirely respected. The Fourth Convention remains faithful to the classic idea of International Law. The individual is subject to law only inside the framework of the State, and the Convention ignores differences which may exist between the State and its nationals. This is a serious matter, when one considers how certain Governments behaved during the last War. Welfare institutions, though left without any legal arguments in favour of such nationals, cannot remain indifferent. The ICRC, in collaboration with several National Societies, was able, despite difficult circumstances, to assist many thousand persons of this class during the War. Even the absence of treaty provisions would not prevent National Societies from insisting on humane treatment for "non-protected" persons. In support, the Societies can obviously not do better than refer to the Regulations for Internment given in the Convention.

The doctrine, which is now an outline only, may one day become authoritative in International Law, and the individual will have rights against the State of which he is a citizen. The Universal Declaration of Human Rights is still only a common ideal towards which peoples and nations are striving. The Conventions have gradually taken in the wounded and sick on the field of battle, then the prisoners of war, and finally, civilians, to the exclusion of "nationals"; it does not seem impossible that they will one day cover the actual citizen, thus realizing in law the original and guiding idea of the Red Cross, that suffering should be relieved wherever it may be found, without any political consideration, in the sufficient name of the dignity of the human person.

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[1] Except for the 14 Articles of Part II, which concern the establishment of security zones, protection of hospitals, forwarding of family information and the reunion of families—Articles which, as we have said above, are absolutely general (See p. 82).

Section V (Art. 136 to 141) deals with Information Bureaux and the Central Agency.

Here again the commentary on the Central Prisoners of War Agency applies [1]. Article 140 says: "*The International Committee of the Red Cross shall, if it deems necessary, propose to the Powers concerned the organization of such an Agency, which may be the same as that provided for in Article 123 of the Geneva Convention of August 12, 1949, relative to the Treatment of Prisoners of War.*"

The clause takes the experience of the last War into account. Enemy aliens interned on the territory of belligerents were given prisoner of war status and registered like them at the Central Agency in Geneva. One essential difference should, however, be noted.

In the case of prisoners, information about them must be sent to the Power in whose forces they served. For civilians, such information is to be communicated "*to the countries of origin or of residence of the persons concerned, except in cases where such transmissions might be detrimental to the persons whom the said information concerns, or to their relatives*".

Civilians who have fled from persecution are generally anxious to leave their former authorities in the dark and, even on the question of giving their relatives news, are themselves the best judges of when it may be opportune to reveal their whereabouts. The Conference endorsed this point of view for reasons of humanity, and embodied it in the Convention.

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[1] See above, p. 67.

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