

GENEVA CONVENTIONS FOR THE PROTECTION OF WAR VICTIMS

HEARING

BEFORE THE

COMMITTEE ON FOREIGN RELATIONS

UNITED STATES SENATE

EIGHTY-FOURTH CONGRESS

FIRST SESSION

ON

**EXECUTIVES D, E, F, AND G
82D CONGRESS, 1ST SESSION**

**THE GENEVA CONVENTIONS FOR THE PROTECTION OF WAR VICTIMS,
OPENED FOR SIGNATURE AT GENEVA ON AUGUST 12, 1949**

JUNE 3, 1955

Printed for the use of the Committee on Foreign Relations



COMMITTEE ON FOREIGN RELATIONS

WALTER F. GEORGE, Georgia, *Chairman*

THEODORE FRANCIS GREEN, Rhode Island	ALEXANDER WILEY, Wisconsin
J. W. FULBRIGHT, Arkansas	H. ALEXANDER SMITH, New Jersey
JOHN SPARKMAN, Alabama	BOURKE B. HICKENLOOPER, Iowa
HUBERT H. HUMPHREY, Minnesota	WILLIAM LANGER, North Dakota
MIKE MANSFIELD, Montana	WILLIAM F. KNOWLAND, California
ALBEN W. BARKLEY, Kentucky	GEORGE D. AIKEN, Vermont
WAYNE MORSE, Oregon	HOMER E. CAPEHART, Indiana

FRANCIS O. WILCOX, *Chief of Staff*

CARL MARCY, *Consultant*

JULIUS N. CAHN, *Counsel*

PAT M. HOLT, *Consultant*

ALWYN V. FREEMAN, *Consultant*

C. C. O'DAY, *Clerk*

MARY ANN SAMES, *Assistant Clerk*

CONTENTS

Statements by—	Page
Brucker, Wilber M., General Counsel, Department of Defense.....	6
Bunker, Ellsworth, president, the American National Red Cross.....	35
Cassidy, John E., counsel, John B. Canepa Co., Chicago, Ill.....	52
Clifford, Clark M., attorney, representing A. P. W. Paper Co., Inc., New York.....	43
Dirksen, Hon. Everett M., United States Senator from the State of Illinois.....	12
Murphy, Hon. Robert, Deputy Under Secretary of State.....	2
Perry, Kenneth, vice president, Johnson & Johnson, New Brunswick, N. J.....	45
Rankin, J. Lee, Assistant Attorney General.....	15
Smith, Robert P., attorney, representing the Grand Imperial Ecclesi- astical and Military Order of the Red Cross of Constantine.....	50
Tydings, Hon. Millard E., former United States Senator from the State of Maryland.....	37
United States Shoe Corp., Cincinnati, Ohio.....	53
Appendix:	
Letters submitted by—	
Brucker, Wilber M., General Counsel, Department of Defense..	57
Rankin, J. Lee, Assistant Attorney General.....	58
Secretary of State John Foster Dulles, together with enclosure..	60
Underwood, Thomas I., attorney, representing Red Cross Chem- ical Works, Chicago, Ill.....	68

GENEVA CONVENTIONS FOR THE PROTECTION OF WAR VICTIMS

FRIDAY, JUNE 3, 1955

UNITED STATES SENATE,
COMMITTEE ON FOREIGN RELATIONS,
Washington, D. C.

The committee met, pursuant to notice, at 10:30 a. m., in room 318, Senate Office Building, Senator Walter F. George (chairman) presiding.

Present: Senators George, Sparkman, Mansfield, Barkley, Smith of New Jersey, Hickenlooper, Aiken, and Capehart.

The CHAIRMAN. The committee will come to order.

A number of the members of the committee will be here shortly we hope. Here is Senator Capehart now.

We are meeting to give consideration to four conventions for the protection of war victims, negotiated at Geneva on August 12, 1949.

The four conventions are the Geneva convention for the amelioration of the condition of the wounded and sick in armed forces in the field; the Geneva convention for the amelioration of the condition of wounded, sick, and shipwrecked members of armed forces at sea; the Geneva convention relative to the treatment of prisoners of war; and the Geneva convention relative to the protection of civilian persons in time of war.

STATUS OF CONVENTIONS

These conventions were first transmitted by the President to the Senate on April 26, 1951. Not long afterward, however, developments in the Korean war resulted in a suggestion by the Department of State that action by the Senate be deferred. In consequence, no further steps were taken to perfect the ratification of the conventions.

On March 29 of this year the Secretary of State transmitted a further statement to the Senate, urging favorable action on the conventions. In that statement Secretary Dulles pointed out that 47 nations have now ratified or acceded to the conventions, and that there was no further reason to delay action by our Government.

Since the United States has long been associated with efforts to prescribe humane standards of treatment for prisoners of war, sick and wounded in the Armed Forces, and for the members of the civilian population in time of war, we welcome the opportunity to proceed with these four humanitarian instruments whose purpose is to relieve and reduce the suffering of those caught in the maelstrom of armed conflict.

We do so in the hope that a benign providence may prevent any occasion from arising in which they may have to be given application. Because of the manifold, highly complicated elements involved in these

documents, the committee will no doubt wish to explore the effect of their provisions in some detail.

COMMITTEE PROCEDURE

In the meantime, the committee will hear the representatives of State and other departments who are appearing here today, and if it is agreeable to the committee, we will first hear these witnesses' formal statements, and thereafter ask of them any questions that we may wish to ask. That will probably expedite the hearing.

The Honorable Robert Murphy, Deputy Under Secretary of State, is the first witness scheduled for this morning.

Mr. Murphy, you may come around. You have your confreres with you, and you may call them, if you wish.

Mr. MURPHY. Thank you, Mr. Chairman.

The CHAIRMAN. If it is agreeable to you, you may make such formal statement as you wish to make, to be followed by others, and thereafter any questions that any member of the committee wishes to ask will be asked, if that is agreeable.

Mr. MURPHY. Thank you, Mr. Chairman. That is most agreeable.

The CHAIRMAN. We will be very glad to hear you now, sir.

STATEMENT OF HON. ROBERT MURPHY, DEPUTY UNDER SECRETARY OF STATE

Mr. MURPHY. Mr. Chairman, I am very grateful for this opportunity to appear before your committee. As you know, the executive branch is requesting advice and consent to the ratification of the Geneva conventions as the culmination of the efforts the United States has contributed to an international endeavor to provide improved protection for the victims of war. These conventions are the product of long, hard, though unspectacular, labor. They represent a steady evolution of international law built upon experience. They were drawn up by the Diplomatic Conference held in Geneva from April to August 1949, which worked conscientiously and in a spirit in which it can be truthfully said political differences were largely subordinated to humanitarian objectives. The conventions have been in force since October 1950; they have been ratified by 47 states; and they now represent an established body of international law. Action by the United States is being sought at this time, not in order to meet a present emergency, or with the thought that war is inevitable; we desire rather to confirm our support of a humanitarian cause and to extend the protection of the conventions to our own citizens should it ever become necessary.

THREE OF THE CONVENTIONS MODIFY PREVIOUS INTERNATIONAL LAW

Three of the conventions—those on the treatment of prisoners of war, the wounded and sick and the wounded and sick at sea—modify previous international law on the same subject. This basic law had already been codified in treaties that the Senate has previously considered and approved and to which the United States is a party. The 1949 conventions represent improvements suggested as a result of

World War II experiences shared by many countries, including the United States. In some respects they afford more complete protection, and in others they are more practical than earlier international statutes. The 1949 Prisoners-of-War Convention, for example, presented a difficulty in the provision that prisoners of war were to be given rations equivalent to those of garrison troops of the detaining power. Under that standard the health of prisoners held by a country whose garrison forces subsisted on a low-calorie diet was gravely impaired. The new convention obligates a detaining power to furnish food rations sufficient in quantity, quality, and variety to keep prisoners of war in good health. Among other improvements, the convention provides for fair-trial procedures for all offenses committed by prisoners of war and establishes criteria for legitimate activity by resistance groups.

THE FOURTH CONVENTION CODIFIES PRESCRIPTIONS REGARDING CIVILIANS

The fourth convention—that on the treatment of civilians—is new in form and affords protection to categories of civilians who are particularly exposed to mistreatment in time of war. The need for this convention has long been recognized and had been particularly urged by the European countries who were victims of Nazi aggression. The problems of enforcement by the United States would not be novel in most respects. The treatment envisaged for enemy aliens in this country largely corresponds with past United States practice. During the last war, civilian internees were afforded many of the benefits of the prisoners-of-war convention by mutual agreement and the present convention formalizes and extends these benefits. As to occupied territory, the convention amplified the 1907 Hague regulations concerning the treatment of the general population and it places restraints upon an occupying power from undertaking actions which are not reasonably necessary for the conduct of military operations. The convention for the first time codifies prescriptions regarding civilians in one body of legislation.

GROUNDWORK FOR THE CONVENTIONS

The groundwork for all four conventions was carefully prepared. Prior to the Geneva Conference, two meetings enlisting authoritative and competent opinion were held, the meeting of government experts in 1947 in Geneva and the International Red Cross Conference in 1948 in Stockholm, in both of which American representatives participated. These meetings drafted working papers for the 1949 Geneva Conference.

UNITED STATES PLAYED MAJOR ROLE IN PREPARATORY STEPS AND CONFERENCE PROCEEDINGS

A large and representative number of states—59 in all—attended the 1949 Conference at Geneva, including several Asian states. Delegations from former enemies—Germany and Japan—took part in an observer capacity. The United States, because of its traditional regard for the welfare of war victims, played a major role both in the

preparatory steps and in the Conference proceedings. The large number of states which have already ratified represents a major portion of world opinion approving the work of the Geneva Conference.

UNITED STATES POSITION VIS-A-VIS RUSSIAN AND OTHER RESERVATIONS

The Soviet Union deposited its ratification last May. It has thereby gained a propaganda advantage which it has been quick to use in recent international meetings. It has maintained three reservations which it put forward at the time of signature. As set forth in the letter from the Secretary of State to the chairman of this committee, the United States is unable to accept these reservations and the similar reservations made by other states of the Soviet bloc. At the same time, it is in the interest of the United States that the rules of the Geneva conventions be applied as widely as possible in the event of armed conflict. This is true even in relationship to countries which have made reservations unacceptable to the United States. We would expect, therefore, to state in our instrument of ratification that, in becoming a party to the conventions, the United States accepts treaty relations with reserving states on all matters not covered by reservations.

If a reserving state later, through unwarranted use of its reservations, should seek to evade its obligations under unreserved portions of the conventions, with the effect of nullifying the objectives and broad humanitarian purpose of the Geneva rules, the United States would be free to consider whether in such circumstances it should continue to assume obligations under the convention vis-a-vis a defaulting state. We believe an appropriate caveat on this score should also be indicated in our instrument of ratification.

UNITED STATES RESERVATION TO CIVILIAN CONVENTION

The executive branch wishes to maintain the single reservation which the United States for its part made at the time of signing the civilian convention. The present text of article 68 of that convention provides that the occupying power may impose the death penalty upon protected persons only in cases involving espionage, serious acts of sabotage, or offenses causing the death of one or more persons, and, furthermore, only if such offenses were punishable by death under local law in force before the occupation began. This text was adopted by a majority of states at the Geneva conference who feared abuse of the death penalty in occupied territory or who had abolished the death penalty in their own domestic legislation.

The United States is willing to agree not to impose the death penalty except for the three specified offenses. It is unable, however, to accept the limitation that the death penalty should not be applied if it were not provided for the same offense by local law existing before the occupation started. The United States feels that the protection of its own forces in occupied territory requires reserving to itself the power to enforce extreme legal action against illegal activities, if it should prove necessary.

MECHANISMS THE CONVENTIONS PROVIDE

The conventions may present a first aspect of being complicated and untried. In actual fact, most of the prisoner-of-war provisions have stood the test of practical experience in the last two great wars. The mechanisms and institutions provided for are substantially the same and could start operating when required, making use of established patterns and precedents. The innovations the conventions present are the result of a conscientious effort to correct abuses and to increase efficiency.

EXPERIENCE OF KOREAN CONFLICT EMPHASIZED IMPORTANCE OF THE CONVENTIONS

The experience of the Korean conflict emphasized the importance of the conventions. Our side, in fact, applied their humanitarian provisions and offered victims the protection these were designed to achieve. The enemy's ruthless behavior was exposed by their disregard of the Geneva rules. There is reason to believe that the moral acceptance of the conventions as a general norm did have some effect on the enemy. The Communists to some extent improved their treatment and eventually did repatriate a number of sick and wounded as well as numbers of other prisoners after hostilities. With further regard to the Korean conflict, our unified command, in giving effect through the Armistice Agreement to the principle of release and repatriation employed in the prisoners-of-war conventions, successfully confirmed that a detaining power has the right to offer asylum to prisoners of war and is not obligated to repatriate them forcibly. These fundamental points have been upheld by an overwhelming vote in the United Nations General Assembly.

CONVENTIONS REFLECT ENLIGHTENED PRACTICES AS CARRIED OUT BY UNITED STATES

The Geneva conventions are another long step forward toward mitigating the severities of war on its helpless victims. They reflect enlightened practices as carried out by the United States and other civilized countries and they represent largely what the United States would do whether or not a party to the conventions. Our own conduct has served to establish higher standards and we can only benefit by having them incorporated in a stronger body of conventional wartime law. We know that many nations have looked to us for an indication as to what they should do and have supported and acted favorably on the Geneva conventions in the expectation that we would do the same.

RATIFICATION OF CONVENTIONS IN INTEREST OF UNITED STATES

We feel that ratification of the conventions now before you would be fully in the interest of the United States.

That concludes my statement, Mr. Chairman.

The CHAIRMAN. Thank you very much. Please remain with us, because there may be some questions that the Senators will ask.

Hon. Wilber M. Brucker, General Counsel, Office of the Secretary of Defense.

Mr. Brucker, will you come around. Good morning, sir. Have a seat, and we will hear your formal statement, subject to subsequent questions, if any, by members of the committee, if that is agreeable with you.

**STATEMENT OF HON. WILBER M. BRUCKER, GENERAL COUNSEL,
DEPARTMENT OF DEFENSE, ACCOMPANIED BY RICHARD R.
BAXTER, CONSULTANT, OFFICE OF THE GENERAL COUNSEL**

Mr. BRUCKER. It is agreeable, yes, sir.

Mr. Chairman and members of the committee, may I introduce myself, because I may be a stranger to some. I am Wilber M. Brucker, General Counsel of the Department of Defense, ranking as an Assistant Secretary of Defense.

I am a former Governor of Michigan, former attorney general of that State, have been a practicing lawyer since 1916, and have been in charge of a law firm until I joined the Department of Defense in April of 1954, and my experience has been since that time as the head of the Legal Department of the Department of Defense.

The General Counsel is charged with the legal responsibility of all of the Department of Defense, including the three separate military services, and also the Office of the Secretary of Defense, with all of the assistants there, too, and I speak for the Department when I make this formal statement to you this morning.

The four Geneva conventions of August 12, 1949, for the protection of war victims, which are now before the Senate for advice and consent, combine the old and the new in a particularly significant way.

**CONVENTIONS ARE LARGELY REFINEMENTS AND IMPROVEMENTS OF
EXISTING CONVENTIONS**

They borrow from the past in the sense that they are largely but refinements and improvements of existing conventions, which are themselves revisions of still earlier texts. Currently, the United States is a party to Convention No. IV of the Hague of 1907, which in annexed regulations deals comprehensively with the conduct of warfare on land; to Convention No. X of the Hague for the adaptation to maritime warfare of the principles of the Geneva Red Cross Convention; and to the Geneva wounded and sick and prisoners' of war conventions of 1929. Indeed, compliance with the law of war and solicitude for the victims of war form part of a longstanding tradition of our Armed Forces. It was the United States, in the famous General Orders 100 of 1863, entitled "Rules for the Government of Armies of the United States in the Field," which was the first Nation to codify the law of war to be observed by its forces.

Since that time, the United States has been a party to virtually every important treaty regarding the protection of prisoners of war and of the wounded and sick on land and at sea, the conduct of hostilities, and the occupation of enemy territory. The Armed Forces have always attempted to comply scrupulously with these important humanitarian treaties.

The Geneva conventions of 1949 constitute a refinement, a modernization, and a supplementation of the older conventions which dealt with these subjects. The widespread and deliberate evasion of the principles of civilized warfare which was displayed by a number of states during World War II pointed forcibly to the need of a thorough overhauling of the existing treaties in order to make them responsive to the techniques and problems of modern warfare.

PRACTICALLY ALL NEW CHANGES ARE A CONSEQUENCE OF PROBLEMS
ENCOUNTERED IN WORLD WAR II

As a result, practically every change and every new provision which has been incorporated in the new treaties is a consequence of problems encountered in the protection of war victims during that conflict. I think it is fair to say that these four new conventions are no more than an attempt to adapt to contemporary warfare those fundamental principles of respect for the rights of noncombatants and of helpless persons which have animated both past conventions and our own conduct.

To draft in haste and without adequate preparation treaties having such important consequences as these for the conduct of warfare and for the protection of war victims would clearly have been unwise.

MILITARY INTERESTS RECEIVED PROPER CONSIDERATION DURING
CONVENTIONS' PREPARATION

Actually, 4 years of deliberation preceded the Diplomatic Conference of Geneva of 1949, which itself lasted from April to August of that year.

Throughout this preparatory process, the Department of Defense was kept fully informed and was consulted on all matters of consequence to it. Technical advisers from the Armed Forces, persons particularly familiar with the military problems dealt with in the conventions, formed part of the United States delegation to the Geneva Conference. Military interests were thus given proper consideration throughout the preparation of the conventions.

SOME IMPORTANT CHANGES IN LAW ENTAILED BY CONVENTIONS

A description of all of the provisions of four treaties containing a total of well over 400 articles would obviously be impossible. I would, however, like to mention, more by way of example than of enumeration, some of the important changes in the law which the conventions will entail.

Of the four conventions, those dealing with the wounded and sick of armed forces in the field and with the wounded, sick, and shipwrecked members of armed forces at sea make the least change in the existing law.

MORE EXTENSIVE PROVISIONS ON RETENTION AND STATUS OF MEDICAL AND
AUXILIARY PERSONNEL

On such matters of increasing consequence as the designation and operation of medical aircraft, however, more extensive provisions have been included. Detailed stipulations are provided regarding the retention and status of medical and auxiliary personnel, and it is now ex-

pressly stated that medical personnel and chaplains may, instead of being repatriated, be retained by the capturing power so far as the state of health, the spiritual needs, and the number of prisoners require.

PROBLEM OF BELLIGERENT PERSONNEL AND ACTIVITIES

Probably of greatest consequence to the Armed Forces is the Prisoners of War Convention of 1949, which, in relations between the parties thereto, will replace the corresponding Geneva Convention of 1929. The emergence of categories of belligerent personnel, such as resistance forces and the troops of governments in exile, which had not been considered in earlier conventions, created particular problems for the draftsmen of this treaty.

Essentially the problem was one of reconciling the fact of belligerent activities by persons not belonging to the recognized armed forces of the belligerents with the need of the military to protect themselves against clandestine hostile activity carried on by persons purporting to be civilians.

The 1949 convention deals with this problem by providing that members of organized resistance movements, whether in occupied or unoccupied territory, are entitled to be treated as prisoners of war only if they are commanded by a responsible person, wear a fixed distinctive sign, carry arms openly, and conduct operations in accordance with the law of war.

By providing that members of regular armed forces who profess allegiance to a government or authority not recognized by the detaining power are to come within the protection of the convention, the treaty gives prisoner-of-war status to the forces of governments in exile and of governments ousted from power by an occupying force. To preclude persons being summarily deprived of standing as prisoners of war, the Prisoners of War Convention requires that persons whose status is doubtful must be treated as prisoners of war until their standing is determined by a competent tribunal.

These provisions give due weight to the need of the armed forces to defend themselves against hostile attacks by persons purporting to be peaceful civilians. The stringent requirements laid on resistance movements mean that only those guerrilla and underground fighters who conduct themselves much like the regular armed forces will qualify for prisoner-of-war treatment. "Unlawful belligerents" may be visited with the penalties provided by customary international law.

MEDICAL EXPERIMENTATION ON PRISONERS PROHIBITED—PRISONERS' NUTRITIONAL STANDARD RAISED

A number of other innovations of importance to the Armed Forces have been incorporated in the Prisoners of War Convention. Brutal experiments during World War II led to the new express prohibition of medical experimentation on prisoners. The nutritional standard for prisoners has, as the result of hardships experienced by American and European prisoners fed on Oriental rations, been changed from that prevailing in the armed forces of the detaining power to that necessary to maintain prisoners in a good state of health without loss of weight.

PROVISIONS ON PERMISSIBLE LABOR, DISCIPLINARY PUNISHMENT, AND JUDICIAL PROCEEDINGS OF PRISONERS

The somewhat ambiguous provisions of the Geneva convention of 1929 on the permissible labor of prisoners have been replaced by a more specific enumeration of those types of work on which prisoners may be employed. A simplified system of crediting pay and allowances to prisoners has been worked out. A long and detailed section of the convention provides a system of safeguards in connection with disciplinary punishment and judicial proceedings involving prisoners of war.

Notable among these is a requirement that prisoners tried either for offenses committed prior to or subsequent to capture, including war crimes, must be tried under the same substantive law and procedure as members of the armed forces of the detaining power.

CONVENTION FOR PROTECTION OF CIVILIAN PERSONS IN TIME OF WAR

The Geneva convention of 1949 for the Protection of Civilian Persons in Time of War is unlike the other three new conventions in that it is not entirely a revision of an earlier treaty. It would be going too far, however, to say that it deals with an aspect of warfare which has not previously been subject to regulation.

Many of its provisions regarding the rights and duties of a belligerent occupant of enemy territory are an outgrowth of Convention No. IV of The Hague of 1907 regarding the conduct of warfare on land. To the extent that it concerns the treatment of interned persons, it finds its origins in the customary international law and treaties regarding prisoners of war, to whom civilian internees are often analogized for legal purposes. The convention makes a careful distinction in the field of application of various of its sections.

One group of provisions applies to the general protection of the populations of belligerents, a second to both the territories of the parties to the conflict and to occupied territories, a third to aliens in the territory of a party to the conflict, and a fourth to occupied territory alone. The articles of general application deal with some of the fundamentals—hospitals and the institution of hospital and safety zones, family welfare, and prohibitions of coercion, corporal punishment, torture, reprisals, pillage, and the taking of hostages. The section on occupied territories, which possesses a special interest for the armed forces, regulates some aspects of public life, relief shipments, the labor of the civilian population, hospitals, the provision of food, and like subjects.

A particularly comprehensive group of articles gives to the population of occupied territory many of the safeguards of due process they would enjoy under national systems of law.

A final section deals with the treatment of internees, whether in occupied territory or within the territory of one of the parties to the war.

ARTICLES COMMON TO ALL FOUR CONVENTIONS

Three aspects of a group of articles common to all four of the Geneva conventions are deserving of notice. An article found in all of the conventions provides, during hostilities not of an international character—notably civil wars—certain basic safeguards which are

to be extended to those persons taking no active part in the hostilities, including the wounded and sick and prisoners. The article forbids murder, torture, and other conduct which outrages the conscience of the civilized community. As provided in past conventions, the protection of the interests of the victims of war is to be entrusted to protecting powers, appointed from among the neutral nations.

A new provision invokes the assistance of humanitarian organizations and other substitutes for the protecting power in the event of inability to obtain the services of a neutral nation. Impartial scrutiny and inspection by the protecting powers or their substitutes are considered to be essential to the effective functioning of the treaties.

Finally, reference is made in the conventions to criminal sanctions for the violation of their provisions, and certain of the most heinous offenses have been characterized as "grave breaches" subject to a special regime under the four conventions.

CONVENTIONS NOT PREJUDICIAL TO SUCCESS OF OUR ARMS IN BATTLE

The Department of Defense would be failing in its duty if it had neglected to give consideration to the impact of these admittedly humanitarian provisions on the operations of the armed forces. We have subjected the four conventions to the most careful examination with this end in view, and we have encountered nothing which would prejudice the success of our arms in battle.

In the first place, the conventions are largely but a statement of how we would treat, and have already treated the wounded, the sick, the shipwrecked, prisoners of war, and the civilian victims of war. One cannot help being struck by the close parallel which exists between many of the provisions of the conventions and the course of conduct we ourselves have pursued in recent wars.

Indeed, the fair and just treatment of such persons as the inhabitants of occupied territory has been found, as a matter of military experience, to contribute to success in battle by providing those conditions of order and stability which permit a belligerent to devote its real efforts to the defeat of the enemy armed forces.

In the second place, the four conventions deal almost exclusively with those aspects of warfare in which conditions are somewhat stabilized—with hospitals, with prisoner-of-war camps, with internee camps, with occupied territory.

The conventions impose no limitations on the types of weapons used. They speak but little of combat and when they do, their injunctions are such obvious ones as not to make civilian hospitals the object of attack.

Thirdly, the conventions have already been applied by us in one important conflict—that in Korea—without prejudice to the needs of the forces. These hostilities demonstrated also the thoroughness with which problems that can arise in connection with the protection of victims of war have been anticipated by the draftsmen of the conventions. The conventions give us the means of dealing with the problems we encountered in Korea and forbid those very acts which so outraged our conscience. The conventions, for example, impose no impediment to restoring and keeping order in prisoner of war camps; indeed, they require it. They allow a genuine grant of asylum to prisoners of war. They do not authorize "brainwashing." They for-

bid those very killings, acts of torture, and forms of harsh treatment for which our enemies were justly condemned.

To the question whether the conventions will be complied with by our enemies in a possible future war, no certain answer can be given. The Department of Defense has been encouraged by the great number of states which have already ratified the conventions, and we hope that those nations which have not yet done so may be inspired to act promptly.

CONVENTIONS CREATE STANDARD OF CONDUCT RECOGNIZED BY OVERWHELMING MAJORITY OF CIVILIZED STATES

Actually, the great virtue of the four treaties is that they create a standard of conduct recognized by the overwhelming majority of civilized states.

While it is our firm belief that the reservations which a number of states have made as regards substitutes for the protecting power, responsibility for transferred prisoners of war, and convicted war criminals should not be maintained by them, it is clearly to the interest of the United States and its Armed Forces that such reserving states be bound toward the United States on all those matters as to which they have entered no reservations.

It is therefore reassuring that we can find ourselves in agreement with those states on the vast majority of the articles of the conventions. For the states which have ratified, the law will be agreed; it will have been made more fixed, more certain, and more precise. If the enemy fails to comply with the conventions, there can be little real quarrel about the law, and to the extent that we have removed this source of controversy, we have made the humane treatment of the wounded and sick, prisoners of war, and civilians that much more probable of attainment.

ADVANTAGE OF UNIVERSAL CHARACTER OF CONVENTIONS

The universal character of the conventions also means that world public opinion will be mobilized against the violator of the treaties, who will have broken not just a bilateral treaty, but the universal law of the civilized community itself.

WHAT IF WAR COMES AND OUR ENEMY DOESN'T COMPLY WITH CONVENTIONS?

Should war come and our enemy should not comply with the conventions, once we both had ratified—what then would be our course of conduct? The answer to this is that to a considerable extent the United States would probably go on acting as it had before, for, as I pointed out earlier, the treaties are very largely a restatement of how we act in war anyway.

If our enemy showed by the most flagrant and general disregard for the treaties, that it had in fact thrown off their restraints altogether, it would then rest with us to reconsider what our position might be. We hope that that occasion will never arrive, and we believe that the acceptance of the conventions by the maximum number of states possible is one means of avoiding that outcome.

RATIFICATION OF CONVENTIONS IN BEST INTERESTS OF THE UNITED STATES

The Department of Defense is firmly of the belief that the ratification of the Geneva conventions of 1949 would be in the best interests of the United States and respectfully recommends that the Senate give its consent to that action.

The CHAIRMAN. Thank you.

Senator BARKLEY. Mr. Chairman, I would like to ask one question.

The CHAIRMAN. Senator, we had this understanding with the witnesses that we would hear the three, and then ask questions.

REASON FOR DELAY IN SENATE CONSIDERATION OF CONVENTIONS

Senator BARKLEY. Maybe the chairman can answer the question. Why has there been such delay in the presentation of this to the Senate, if we signed it in 1949?

The CHAIRMAN. It was at the request of the State Department, as I understand it. During the Korean war, it was not thought advisable to go into the matter. I believe that is correct.

Mr. MURPHY. Yes, Mr. Chairman, that is correct.

Senator HICKENLOOPER. Mr. Chairman, Senator Dirksen wants to appear and insert a memorandum in the record, but he has to go to the Judiciary Committee and the Appropriations Committee, and he wants to leave. He wonders if you would permit him merely to insert the statement at this time to be included at the proper place in the record. He doesn't want to read it.

The CHAIRMAN. Yes; we will be pleased to have you do so, Senator.

**STATEMENT OF HON. EVERETT M. DIRKSEN, UNITED STATES
SENATOR FROM THE STATE OF ILLINOIS**

Senator DIRKSEN. Mr. Chairman, this memorandum relates to the use of the Red Cross insignia by American users, who used it at some prior date. There have been some 23 attempts over the years to prevent them from doing so.

Congress has legislated on this matter as far back as 1900, again in 1905, again in 1910, and again in 1948. There have been a good many court decisions on it, and I appear here in behalf of some people in Illinois who have been using this insignia since 1897.

I think when Congress established the policy, that settled it. It seemed to settle it, so far as the Supreme Court was concerned.

There was a very excellent opinion on the matter by Judge Learned Hand, and there is a provision in the pending treaty, article 53 and article 54, which would interdict the further use of this insignia.

Frankly, I think it would be a confiscation of a property right without due process, and I think it involves this whole question that we have had with respect to the Bricker amendment; in other words, barring by treaty what these people have been doing for a long, long time, and what has been sanctioned by law and made a policy by the Congress; so in that connection, Mr. Chairman, I should like to submit this memorandum for the record.

The CHAIRMAN. Senator Dirksen, you may do so.

(The memorandum referred to is as follows:)

MEMORANDUM OF THE A. P. W. PRODUCTS CO., INC.

This is a memorandum by the A. P. W. Products Co., Inc., addressed to the Department of State of the United States, requesting the aid of the Department in preventing an injustice which will occur to petitioner, and others similarly situated, if the Geneva Convention for the amelioration of the condition of the wounded and sick in armed forces in the field of August 2, 1949, should, in its present form, be submitted to the Senate of the United States.

The foregoing convention, which is the first of four adopted at the Geneva Conference and treated as a group under the title of "Geneva Conventions of August 12, 1949, for the Protection of War Victims," contains certain provisions, particularly articles 53 and 54,¹ which would terminate all use in the United States of the red cross, symbol or words, as a trademark. The prohibition of this trademark use would apply to all firms and companies in the United States regardless of the length of time the trademark has been used, and regardless of the fact that Congress by express legislation has heretofore preserved unimpaired the right of those companies to use the mark that used it prior to 1905.²

Petitioner has used the symbol of a Greek red cross and the words "Red Cross" to designate certain of its paper products since 1897, more than 54 years.

In addition to petitioner there are approximately seven other companies engaged in substantial interstate commerce whose right to use the red cross to identify their goods has been protected by the several acts of Congress.³ Certain of these companies have used the mark for more than 70 years.

The use of the red cross as a trademark by those few companies that are permitted to use it under restrictions of existing law was well established before the American National Red Cross was out of its swaddling clothes. The valuable property rights built up in these brands by long continued usage (in no way connected with the American National Red Cross) should not be stricken down and destroyed by provisions of the Geneva convention which conflict directly with a legislative policy recognizing the equity of the longtime users of the mark which has been in continuous effect for more than half a century.

A few representatives of the American National Red Cross, however, have insisted for years upon complete forfeiture of the rights of petitioner, and other companies similarly affected, without regard to the protection afforded by the fifth amendment of our Constitution and the fact that Congress settled the issue definitely in 1910. In *Loonen v. Deitsch* (189 F. 487, 492) (Circuit Court S. D., N. Y.), Judge Learned Hand, as long ago as 1911, in speaking of the acts of

¹ Article 53 of the Geneva Convention of August 12, 1949, for the amelioration of the condition of wounded and sick in armed forces in the field provides in part (p. 42):

"The use by individuals, societies, firms, or companies, either public or private, other than those entitled thereto under the present Convention, of the emblem or the designation "Red Cross," or any sign or designation constituting an imitation thereof, whatever the object of such use, and irrespective of the date of its adoption, shall be prohibited at all times."

Article 54 of said convention provides (p. 42):

"The High Contracting Parties shall, if their legislation is not already adequate, take measures necessary for the prevention and repression, at all times, of the abuses referred to under Article 53."

² The act of June 6, 1900, incorporating the American National Red Cross, placed no limitation on trademark use of the red cross, though this subject had then been before the Congress a number of years.

By sec. 4 of the American Red Cross Act of January 5, 1905 (36 U. S. C., sec. 4), Congress made it unlawful "for any person or corporation, other than the Red Cross of America, not now lawfully entitled to use the sign of the Red Cross, hereafter to use such sign or any insignia colored in imitation thereof for the purposes of trade or as an advertisement to induce the sale of any article whatsoever."

The foregoing section was amended by the act of June 23, 1910 (36 U. S. C., sec. 4), the Congress clarifying its exemption as follows:

"That no person, corporation, or association that actually used or whose assignor actually used the said emblem, sign, insignia, or words for any lawful purpose prior to January fifth, nineteen hundred and five, shall be deemed forbidden by this Act to continue the use thereof for the same purpose and for the same class of goods."

The provision of the act of 1910 was reenacted by the Congress in codification of the United States Criminal Code in 1948 as amended 1949 (18 U. S. C. A., sec. 706).

³ It is believed that the following is a complete list of all companies whose use of the red cross as a trademark is protected by existing statutory enactment; J. B. Canepa Co., of Chicago, users since 1872, more than 75 years (food products); Charles B. Silver & Son, users since 1876, more than 74 years (canned vegetables); Johnson & Johnson, users since 1879, more than 70 years (pharmaceutical products); A. P. W. Products Co., Inc., users since 1897, more than 54 years (toilet tissues); United States Shoe Corp., users since 1898, more than 53 years (ladies shoes); and Red Cross Chemical Works, users since 1876; and New York Mattress Co. and Southern Spring Mattress Co., users since an unknown date prior to 1903, nearly, if not actually, a full half century.

MEMORANDUM OF THE A. P. W. PRODUCTS CO., INC.

This is a memorandum by the A. P. W. Products Co., Inc., addressed to the Department of State of the United States, requesting the aid of the Department in preventing an injustice which will occur to petitioner, and others similarly situated, if the Geneva Convention for the amelioration of the condition of the wounded and sick in armed forces in the field of August 2, 1949, should, in its present form, be submitted to the Senate of the United States.

The foregoing convention, which is the first of four adopted at the Geneva Conference and treated as a group under the title of "Geneva Conventions of August 12, 1949, for the Protection of War Victims," contains certain provisions, particularly articles 53 and 54,¹ which would terminate all use in the United States of the red cross, symbol or words, as a trademark. The prohibition of this trademark use would apply to all firms and companies in the United States regardless of the length of time the trademark has been used, and regardless of the fact that Congress by express legislation has heretofore preserved unimpaired the right of those companies to use the mark that used it prior to 1905.²

Petitioner has used the symbol of a Greek red cross and the words "Red Cross" to designate certain of its paper products since 1897, more than 54 years.

In addition to petitioner there are approximately seven other companies engaged in substantial interstate commerce whose right to use the red cross to identify their goods has been protected by the several acts of Congress.³ Certain of these companies have used the mark for more than 70 years.

The use of the red cross as a trademark by those few companies that are permitted to use it under restrictions of existing law was well established before the American National Red Cross was out of its swaddling clothes. The valuable property rights built up in these brands by long continued usage (in no way connected with the American National Red Cross) should not be stricken down and destroyed by provisions of the Geneva convention which conflict directly with a legislative policy recognizing the equity of the longtime users of the mark which has been in continuous effect for more than half a century.

A few representatives of the American National Red Cross, however, have insisted for years upon complete forfeiture of the rights of petitioner, and other companies similarly affected, without regard to the protection afforded by the fifth amendment of our Constitution and the fact that Congress settled the issue definitely in 1910. In *Loonen v. Deitsch* (189 F. 487, 492) (Circuit Court S. D., N. Y.), Judge Learned Hand, as long ago as 1911, in speaking of the acts of

¹ Article 53 of the Geneva Convention of August 12, 1949, for the amelioration of the condition of wounded and sick in armed forces in the field provides in part (p. 42):

"The use by individuals, societies, firms, or companies, either public or private, other than those entitled thereto under the present Convention, of the emblem or the designation "Red Cross," or any sign or designation constituting an imitation thereof, whatever the object of such use, and irrespective of the date of its adoption, shall be prohibited at all times."

Article 54 of said convention provides (p. 42):

"The High Contracting Parties shall, if their legislation is not already adequate, take measures necessary for the prevention and repression, at all times, of the abuses referred to under Article 53."

² The act of June 6, 1900, incorporating the American National Red Cross, placed no limitation on trademark use of the red cross, though this subject had then been before the Congress a number of years.

By sec. 4 of the American Red Cross Act of January 5, 1905 (36 U. S. C., sec. 4), Congress made it unlawful "for any person or corporation, other than the Red Cross of America, not now lawfully entitled to use the sign of the Red Cross, hereafter to use such sign or any insignia colored in imitation thereof for the purposes of trade or as an advertisement to induce the sale of any article whatsoever."

The foregoing section was amended by the act of June 23, 1910 (36 U. S. C., sec. 4), the Congress clarifying its exemption as follows:

"That no person, corporation, or association that actually used or whose assignor actually used the said emblem, sign, insignia, or words for any lawful purpose prior to January fifth, nineteen hundred and five, shall be deemed forbidden by this Act to continue the use thereof for the same purpose and for the same class of goods."

The provision of the act of 1910 was reenacted by the Congress in codification of the United States Criminal Code in 1948 as amended 1949 (18 U. S. C. A., sec. 706).

³ It is believed that the following is a complete list of all companies whose use of the red cross as a trademark is protected by existing statutory enactment; J. B. Canepa Co., of Chicago, users since 1872, more than 75 years (food products); Charles B. Silver & Son, users since 1876, more than 74 years (canned vegetables); Johnson & Johnson, users since 1879, more than 70 years (pharmaceutical products); A. P. W. Products Co., Inc., users since 1897, more than 54 years (toilet tissues); United States Shoe Corp., users since 1898, more than 53 years (ladies shoes); and Red Cross Chemical Works, users since 1876; and New York Mattress Co. and Southern Spring Mattress Co., users since an unknown date prior to 1903, nearly, if not actually, a full half century.

1905 and 1910, which permitted the use of the red cross as a trademark, stated (p. 492) :

"Whatever may have been the policy before, Congress has now definitely declared in the proviso of the latter act that it would permit such marks if they antedated 1905. Congress had power so to legalize the use of it; the question of public policy was for it and for it alone, and it is now finally closed."

However, despite the unequivocal language of the act of 1910 there have been recurrent unsuccessful assaults in Congress and in the courts upon the rights of petitioner and other longtime users to continue the use of their trademarks.⁴ Confirming the view of Judge Hand, above, the Supreme Court stated at page 202 of petitioner's case cited below :

"* * * the fact remains that the good faith use of the mark by the pre-1905 users was intended to be preserved unimpaired."

The prohibition proposed in the Geneva convention of 1949 is merely another attempt to achieve indirectly what the few representatives of the American National Red Cross have not been able to achieve by presenting the issue directly to the Congress. The present effort is clearly one to bypass the Congress. As we understand it, this effort is based on an assumption of fact (that all use of the symbol derives from the Geneva convention of 1864) and a conclusion of law (that legally the trademark property rights may be, and morally should be, terminated) of our two delegates to the Conference and of their advisers there. This assumption of fact was indulged without affording any opportunity to the trademark owners or others to be heard. It is based on nothing more than unsupported assertion. The conclusion of law that legally the trademark property rights may be thus terminated is denied as contrary to the letter and spirit of our Constitution. Most important, the question whether morally the trademark property rights should be expropriated is a question for the Congress. The Congress has assumed jurisdiction and considered this question more than a score of times over the past 60 years. This is not a question for the conclusion of two delegates and their advisers at a conference. It is difficult to believe that the Department of State would thus lend itself to an effort to use a treaty to conclude an issue of fact, to conclude thus a question of law, and in doing so to usurp the jurisdiction of the Congress and even to repeal an act of Congress.

Accordingly we request that a complete review be made of the matter with appropriate weight being given to the history of the issue, the legislative intent of the Congress and the decision of our courts.

Such a review, we believe, will convincingly demonstrate that the Department of State should not request unconditional ratification of the convention by the United States Senate for the following reasons :

1. If the convention should be construed to be self-executing, it would destroy without due process the commercial use of the red cross as a trademark by the present lawful users, and hence would violate constitutional limitations upon the treaty-making power of the Executive.

2. Ratification of the treaty without reserving their property rights to the present lawful users would present grave constitutional issues which might result in invalidation of the entire convention as a binding obligation of our Government instead of merely the sections affecting petitioner's rights.

3. Expropriation of the property rights of the present lawful users would be inherently unjust, at variance with the best American traditions, clearly unconstitutional as taking private property without compensation, entirely unnecessary to protect the legitimate interests and objectives of the American National Red Cross, and contrary to the will of the Congress.

It is therefore proposed that the Department of State, in submitting the treaty to the Senate for ratification, shall acquiesce in, or shall not oppose, a reservation reading in substance :

"Resolved (two-thirds of the Senators present and concurring therein), That the Senate advise and consent to the ratification of Executive —, Eighty-fourth Congress, first session, the Geneva convention of August 12, 1949, signed at Geneva, Switzerland, on August 12, 1949, for the amelioration of the condition

⁴ Up to and including April 9, 1942, there were 23 separate efforts made by the American National Red Cross and others to obtain legislation in the Congress which would abolish the user rights of those protected by existing legislation. Congress rejected all such efforts. The Supreme Court in *Federal Trade Commission v. A. P. W. Paper Company* (328 U. S. 193 (1946)), affirmed the congressional policy by striking down efforts to forbid the use of the red cross words and symbol by petitioner.

of the wounded and sick in armed forces in the field: *Provided*, That irrespective of any provision or provisions in said convention to the contrary, nothing contained therein shall make unlawful, or obligate the United States of America to make unlawful any use within the United States of America and its Territories and possessions of the Red Cross emblem, sign, insignia, or words which was lawful on the date of this ratification."

Unless such a reservation is contained in the treaty, and if the treaty should be construed to be self-executing, long-established rights of American citizens will be terminated contrary to the express statutory will of Congress and the constitutional guaranty of the fifth amendment.

The A. P. W. Products Co., Inc. respectfully requests the State Department to acquiesce in the aforementioned reservation in order that the legal and equitable rights of the A. P. W. Products Co., Inc., and the other companies referred to may not be put in jeopardy.

If after considering the foregoing there is any further information the State Department would like to have from us in connection with this matter we trust you will afford us the opportunity of presenting it.

All of which is respectfully submitted.

Senator DIRKSEN. Senator Tydings informs me that John B. Canepa, who used the red cross on one of the old shields in Italy, had been using it in the United States since 1872, and so, Mr. Chairman, I would like to submit this for the record, and I know there will be other testimony on this point.

The CHAIRMAN. You may submit it, and there will be other testimony. We hope to get to it today, Senator.

Hon. J. Lee Rankin, Assistant Attorney General, is the next witness on the list this morning, and, for the benefit of those who were not here at the beginning, it was agreed by the committee to hear the witness for the State Department, and the General Counsel, who has just spoken, from the Department of Defense, and then from the Assistant Attorney General, and perhaps one other witness before we would ask questions, but they will be here and will be available for questions.

You may proceed, Mr. Rankin.

STATEMENT OF HON. J. LEE RANKIN, ASSISTANT ATTORNEY GENERAL, DEPARTMENT OF JUSTICE

Mr. RANKIN. Mr. Chairman, members of the committee, I am here primarily to state the views of the Department of Justice on those provisions of the Civilian Convention, which would govern the treatment of alien enemies in this country in time of war.

TREATMENT OF ALIEN ENEMIES IN TIME OF WAR AS RELATED TO UNITED STATES INTERNAL SECURITY MEASURES

We have examined these provisions with great care, because some of them relate to certain aspects of the security of the United States. It is our conclusion that none of these provisions of the Civilian Convention will prevent us from applying necessary internal-security measures in time of war. At the same time, we believe that they represent a humane step forward in the development of international law.

Until now, there have been no international conventions governing the treatment of civilians who find themselves in the position of alien enemies in the home territory of a belligerent state.

ALIEN ENEMY INTERNEES NEED GENERAL TYPE OF PROTECTION ACCORDED
PRISONERS OF WAR

The mistreatment of American civilians abroad during World War II demonstrated that such civilians, particularly if they are interned, need the general type of protection accorded to prisoners of war. In fact, during World War II, the United States voluntarily applied the 1929 Prisoner of War Convention so far as applicable to alien enemies interned in this country.

PROVISIONS RE "PROTECTED PERSONS"

Section II of the Civilian Convention, comprising articles 35 through 46, deals with "protected persons" in the territory of a party to a conflict. "Protected persons" as used here means alien enemies and those neutral and cobelligerent aliens who lack the protection of normal diplomatic representation.

An important provision is that such protected persons may leave the territory of a belligerent at the outbreak of or during a war "unless their departure is contrary to the interests of the State."

This provision is consistent with past United States practice. It is further provided that a protected person who is denied permission to depart shall be entitled to have his application reconsidered by a court or administrative board designated for that purpose.

While we do not believe that these are appropriate matters for courts to decide, we agree that reconsideration by some kind of advisory board would be a useful check against mistaken or oppressive action by a single official.

Articles 27, 28, 31, 32, and 33 generally prohibit cruel or brutal treatment of protected persons. These are matters covered by every civilized criminal code. It is unthinkable that the United States would ever resort to such treatment.

Other provisions of the Civilian Convention deal with the economic position of alien enemies and other protected persons who find themselves in a belligerent country.

Thus, if protected persons are subjected to such security controls (e. g., internment) that they are unable to support themselves, the government in whose hands they are must support them and their dependents. It is also provided that protected persons other than alien enemies may be compelled to work to the same extent as nationals of the country, but that alien enemies may only be compelled to do specified types of work which are not directly related to the conduct of military operations. Since protected persons may engage voluntarily in any kind of work, these provisions would not hamper the United States.

Article 27 also provides that—

the parties to the conflict may take such measures of control and security in regard to protected persons as may be necessary as a result of the war.

This recognizes that a belligerent government will control alien enemies in such respects as exclusion from prohibited areas, travel, possession of weapons and cameras, et cetera.

INTERNMENT OF "PROTECTED PERSONS"

The most drastic preventive security measure applied to alien enemies by the United States has been internment pursuant to the Alien Enemy Act of 1798. Article 42 provides that—

The internment or placing in assigned residence of protected persons may be ordered only if the security of the detaining power makes it absolutely necessary.

Under article 43, an alien enemy or other protected person who has been interned or placed in assigned residence must be accorded an opportunity for reconsideration of such decisions by an appropriate court or administrative board.

These provisions do not require a belligerent government to hold a hearing before it interns an alien enemy in time of crisis. However, they do require that the internment weapon be used with discrimination and common sense, and that opportunities for reconsideration be provided as a safeguard against mistakes. The internment policies and procedures followed by the United States in World War II would comply with articles 42 and 43.

At that time, there were about 1,000,000 alien enemies in the United States. The internment program was summarized briefly in the annual report of the Attorney General for the fiscal year ended June 30, 1944, pages 7 and 8, as follows:

The detention of alien enemies rests on a process of individual hearings before alien enemy hearing boards to determine whether the person is dangerous to the internal security of the nation. Uniformity of standards is insured by transmitting the recommendations of the boards to the War Division of the Department for review and submission to the Attorney General, who issues an appropriate order of release, parole or internment. The process is a continuing one, and reconsideration is given to the cases in the light of changed internal conditions and of the conduct of the individuals involved. The result has been a decrease in the number held in internment. At the beginning of the fiscal year, 4,132 resident alien enemies had been ordered interned; 3,716 had been paroled; and 1,273 had been released. At the close of the fiscal year the resident alien enemies interned numbered 2,525; those paroled, 4,840; and those released, 1,926.

Here again we believe that the device of group reconsideration as a safeguard against mistakes and to take into account changed conditions is a useful device, as we found it to be during World War II.

However, I should like to emphasize at this point that the executive branch understands that the administrative boards contemplated in articles 35 and 43 to reconsider departure and internment decisions, and the competent bodies contemplated in article 78 to review internment cases in occupied territory, may be created with advisory functions only.

PROBLEM OF INTERNAL SECURITY RELATED TO CORRESPONDENCE ABROAD OF
"PROTECTED PERSONS"

The Civilian Convention provides that alien enemies and other protected persons shall be permitted to correspond with their families abroad and to communicate with representatives of the protecting power and of the International Committee of the Red Cross. Such correspondence is subject to censorship.

The problem of the occasional serious security case is covered by article 5, which provides that—

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 favor of such individual person, be prejudicial to the security of such State.

This provision permits a government to do whatever is genuinely necessary for its security, while making it clear that people are not to disappear to death or slavery under the name of security.

TRADING WITH THE ENEMY ACT

Nothing in the Civilian Convention would cut across the Trading With the Enemy Act or any other legislation which Congress may enact with respect to enemy property.

TREATMENT OF CIVILIAN INTERNEES

Articles 79 through 135 consists of detailed regulations governing the treatment of civilian internees whether in the home territory of a belligerent or in occupied territory. These provisions parallel many provisions of the Prisoner of War Convention in such matters as housing, clothing, food, medical care, religious life, recreation, canteens, disciplinary and penal treatment, correspondence rights, transfer, and death. They very largely embody the standards of treatment which the United States voluntarily applied in World War II.

RATIFICATION OF CIVILIAN CONVENTION URGED

In brief, the provisions of the Civilian Convention governing the treatment of alien enemies in the home territory of a belligerent embody the standards of treatment which we apply in any event. We urge that the Civilian Convention be ratified by the United States so as to obtain better treatment for American citizens who may find themselves in enemy hands at the outbreak of a war.

Senator SMITH. Is the Department of Justice only dealing with this Civilian Convention and none of the others? I am not quite clear on that point.

Mr. RANKIN. We were asked to deal with that in particular.

The CHAIRMAN. You may proceed, Senator Smith, and ask any questions of any one of the three who have appeared: Mr. Rankin, Mr. Brucker, and Mr. Murphy.

QUESTION OF STATUS OF MEDICAL PERSONNEL FALLING INTO HANDS OF THE ENEMY

Senator SMITH. I think I would like to ask Mr. Murphy some questions, and the first one is this, Mr. Murphy.

Just how does the new convention modify the status of medical personnel who fall in the hands of the enemy? Under the 1929 convention, I am advised that detention of such personnel was prohibited. Now, I am not clear how they are treated under the new convention, and why, if there was a change made, it was deemed necessary.

Mr. MURPHY. Senator, may I ask that Defense reply to that question?

Senator SMITH. Yes, indeed.

The CHAIRMAN. Governor Brucker, will you please come around. Will you three gentlemen please sit together?

Senator SMITH. Mr. Brucker, I don't know whether you heard the question that I asked Mr. Murphy, but I will repeat it for your benefit.

My question was, Just how does the new convention modify the status of medical personnel who fall into the hands of the enemy?

I understand that under the 1929 convention, detention of such medical personnel was prohibited. How are they treated under the new convention, and if there was a change made, why was the change deemed necessary? Can you answer that?

Mr. BRUCKER. The medical personnel may be retained by the capturing power because the medical personnel may be needed for the purpose of medically and surgically treating the prisoners of war of the nationality of the country of the medical personnel. And instead of having the medical personnel and chaplains, because they are in the same bracket, sent back or turned over pending the continuance of the holding of prisoners of war, it was felt that the detaining power should have the right to continue to detain the medical personnel so that the individual soldier, sailor, marine or airman would receive proper medical attention; humanitarian, I think is the reason why he should be retained.

But that is the difference between the 1929 and the 1949 in that regard.

Senator SMITH. Mr. Brucker, wouldn't the medical attention be limited to prisoners who were of the same nationality as the medical group?

Mr. BRUCKER. That's right.

Senator SMITH. The medical men wouldn't be compelled to give medical treatment to the occupying or detaining power?

Mr. BRUCKER. That is correct, Senator, and I refer you to article 28, which my associate, Mr. Baxter, hands to me here, that provides for that difference.

Senator SMITH. I am glad to get that in the record, because I wasn't quite clear. The question had been asked me, and that is why I asked you.

Mr. BRUCKER. When I spoke of article 28, I mean article 28 of the Wounded and Sick Convention, because there are the four, and I think I should designate each one.

Senator SMITH. Now I have a question with regard to the convention on the wounded and sick in the Armed Forces in the field.

QUESTION OF RESERVATION TO PROTECT PRIOR USERS OF THE RED CROSS EMBLEM

Article 54 of that convention, and this point was raised by Senator Dirksen just a minute ago, prohibits the use of the Red Cross emblem by private individuals or companies. Apparently there is no exception in favor of prior users, persons or companies who may have used the emblem of the Red Cross in their business before the date of the treaty.

Now, my question is whether there would be any objection to a reservation protecting the rights of such users from being affected by the convention.

Mr. MURPHY. May I answer, Mr. Chairman?

It has been the opinion of the Department of State that we would prefer to have no reservation.

However, if the committee, in its discretion, wishes to consider one, we would be very happy to examine any proposed language and to give the committee our views, on that basis.

Senator SMITH. Then you would not object if we did propose some reservation to protect the prior users?

Mr. MURPHY. That is correct, Senator.

We understand that feature of the problem, and want to be cooperative on it.

Senator SMITH. I think a number of us have constituents who have been very much concerned with this matter. I know in my own State, New Jersey, is the home of the famous Johnson & Johnson Co., which has been using the Red Cross emblem for many years.

Mr. MURPHY. Those representatives, incidentally, have been before our Department, and perhaps Governor Brucker might want to add any comment as respects the Department of Defense.

Senator SMITH. My good friend, Mr. Perry, is here, from Johnson & Johnson, and we will hear from him later, but I would like to hear from Mr. Brucker, too, on that point.

Mr. BRUCKER. Mr. Chairman and Senator Smith, the official position of the Department of Defense is the same as that announced by Deputy Under Secretary Murphy.

However, if the question came up, I was instructed to say to the committee that the Armed Forces point out that the problem involved is with respect to the marking by Red Cross, and identifying of buildings and places which, because of bombing and other matters, have great and close and intimate relations to the troops; and that we feel that while it is entirely a matter for the Senate to make or consider such reservations as it sees fit, we couldn't remain silent without calling to the attention of the Senate that this relates very much to the danger to the life and the welfare of the troops themselves, and that whatever is done in that regard should have that closely in mind, if there is any reservation considered.

But to that extent, we now say that we have no objection to the consideration of a reservation by the Senate, if it sees fit to do it.

Senator SMITH. I assume that the Department of Defense would be willing, Mr. Brucker, to collaborate with the committee, if we want to consider such a reservation, so that the point you make would be adequately protected.

Mr. BRUCKER. Very much, sir, and we would be glad, if it gets to that point, to confer with your staff or the members of the committee or others, but we just would like to emphasize or have it borne in mind that this relates to human lives, and that whatever is done in that regard should have some relationship to that, because of our representation of the Armed Forces.

The CHAIRMAN. Senator Mansfield?

Senator MANSFIELD. Mr. Chairman, I have several questions. I don't know to whom these should be addressed, but I will start out with Governor Brucker.

PROBLEM OF ORGANIZED UPRISING IN PRISONER-OF-WAR CAMPS

Is there any adequate basis in the Convention on Prisoners of War for dealing with organized uprising in the camps, such as that which occurred in Korea and which the Communists made such propaganda use of?

Mr. BRUCKER. I would just like to take a moment here, if I may.

Senator MANSFIELD. Perhaps Secretary Murphy would like to make a comment on that, too.

Mr. MURPHY. Yes, I will.

I might say, just as a preliminary remark, that there is nothing in the conventions which impose any restrictions on the right of the detaining power to maintain law and preserve order in the prisoner-of-war enclosures.

Senator MANSFIELD. Of course, you remember, Mr. Secretary, how embarrassing a situation arose because of the deliberate, premeditated uprisings on the part of Chinese and Korean Communist prisoners of war in the camps under the control of our forces. It was very embarrassing, as I recall the situation, so far as we were concerned, and it seemed to me at that time that all we lacked was a Marine first sergeant to take over control and handle an outbreak of that kind.

But I am wondering, in view of the fact that they were able to get away with that at that time, to a limited extent, although eventually these uprisings were put down, if there is anything being considered in the conventions before us which would seem to preclude the possibility of such an event or series of events occurring again.

Mr. MURPHY. I know full well whereof the Senator speaks, because I visited those enclosures and I remember the conditions very well. Without being critical of any individual matter, I think that related rather to detaining power administration, and the conduct of its responsibilities, rather than to the character of the provisions of the conventions.

I think that within the conventions we had ample authority, which was a matter of exercising that authority rather than the addition of any further text.

Mr. BRUCKER. May I add to that that there are provisions that contemplate sanctions and punishment and that discipline should be observed and compelled in connection with these prisoners of war, and the problem that you have just mentioned, sir, and that is the problem that occurred in Korea, from the standpoint of the Department of Defense was something which grew to proportions which was not recognized until it had gotten to the trouble stage.

But there is nothing in the conventions that either prohibits or inhibits in any way nipping that in the bud.

Mr. MURPHY. Might I just refer also to article 82, which reads as follows:

A prisoner of war shall be subject to the laws, regulations, and orders in force in the Armed Forces of the detaining power. The detaining power shall be justified in taking judicial or disciplinary measures in respect of any offense committed by the prisoner of war against such laws, regulations or orders.

Senator MANSFIELD. Of course, Mr. Secretary, as I recall that, several officers, one of them a general, were captured by these Communist prisoners, and it was quite difficult to trace down the instiga-

tors of this revolt because methods of intimidation, force, and brutality were used to bring this thing out into the open and to allow it to gain the proportions it did.

All I want to say is that I hope that the Department of State and the Department of Defense are fully aware of this problem, and will consider its relationship insofar as it affects the convention before us.

Mr. MURPHY. Yes, sir.

Mr. BRUCKER. Senator, I may say that as a result of what occurred there, there has been some considerable indoctrination in the Armed Forces by way of prevention, to see that that doesn't get underway again, and that that matter has been the subject of numerous conferences by the Secretary and others since that time, and that we would contemplate that chapter 3, article 82, giving us full authority, ought to be exercised.

Senator MANSFIELD. So if such occurrences again take place, proper and prompt steps will be taken to handle them?

Mr. BRUCKER. That's right, sir.

SOVIET RESERVATION RE WAR CRIMES CONVICTIONS

Senator MANSFIELD. The second question I have, and this is directed to Secretary Murphy, is with respect to the Soviet reservation in article 85, that is, loss of protection where prisoners are convicted of Nuremberg war crimes, since the reservation goes to the entire heart of the convention, and pervades the whole instrument, is the suggestion of the Department that we enter into treaty relations with the Soviet bloc on the other provisions a realistic one?

Mr. MURPHY. Senator, we feel that it is realistic to the extent that it gives us a protection which we would not have in the absence of the balance of the text of the Convention.

Obviously, in those areas where there is no meeting of the minds, where the Soviet reservation covers a specific point, there would be no agreement. I don't know whether you have in mind that that would be misleading as it relates to the balance of the agreement or not, but in respect to that point, obviously there would be no meeting of the minds.

Senator MANSFIELD. It is to that point in particular that I was directing the question, because I can envisage a possibility of Nuremberg trials, perhaps being conducted in reverse at some future date because the precedent has been set.

That is all, Mr. Chairman.

QUESTION OF INVOLUNTARY REPATRIATION OF PRISONERS OF WAR

The CHAIRMAN. While you are on that particular point, may I ask what specific provision in any one of the conventions—the applicable convention, of course—is there with respect to the involuntary repatriation of the prisoners of war? That question did arise, of course, in the Korean conflict.

Mr. MURPHY. Yes, Mr. Chairman; that was a very acute question in Korea.

That relates to article 118 which, in effect, indicates that the prisoner is to be released immediately after the cessation of hostilities.

We, however, are of the opinion that the prisoner has the right of asylum and that the detaining power has a discretion which will not oblige it to forcibly repatriate the prisoner of war.

The CHAIRMAN. That is our position?

Mr. MURPHY. That is our position, sir.

The CHAIRMAN. And there is nothing in the convention that would militate against that?

Mr. MURPHY. No, sir. We feel that article 118 did not change existing law and practice in that respect.

Under the 1949 convention, as under prior conventions, a detaining power may grant asylum to a prisoner of war. We feel that the detaining power is under no obligation whatsoever to grant asylum. It decides that for itself, and it has an option, in our opinion, to respect a prisoner's claim to asylum.

Article 109 of the Prisoners of War Convention of 1949 imposes a duty to respect this claim only in the case of sick and wounded prisoners of war during hostilities. That is, generally, the outline of our position.

The CHAIRMAN. I take it, Mr. Secretary, that our position would probably be that we would not by force eject a prisoner of war if we decided to give him asylum.

Mr. MURPHY. That is correct, sir.

The CHAIRMAN. We would not use force.

Senator HICKENLOOPER?

Senator HICKENLOOPER. Mr. Chairman, I only want to say at this time that I am interested in the principle involved in the provisions against the use of the Red Cross, and that at a little later date I will go into that. I shall not take the time this morning. Senator Smith has opened the subject, and you gentlemen have expressed yourselves.

EFFECT OF CONVENTION ON CONGRESS' POWER TO ENACT PENAL LEGISLATION

But I would like for you to comment on article 49, on page 41 of this compilation which we have here before us, specifically referring to repression of abuses and infractions.

Have I sufficiently identified the provision?

Mr. MURPHY. Yes, Senator.

Senator HICKENLOOPER. It is a provision in the first treaty in this compilation.

Mr. MURPHY. The wounded and sick?

Senator HICKENLOOPER. That is right.

The first sentence in that article is as follows:

The High Contracting Parties undertake to enact any legislation necessary to provide effective penal sanctions for persons committing, or ordering to be committed, any of the grave breaches of the present Convention defined in the following article.

And article 50 defines broadly the grave breaches which are referred to. Now, this is the question: To what extent does that sentence or that article enlarge the powers of the Congress to enact penal legislation over and above that which it already possesses under the Constitution?

Mr. MURPHY. Senator, by agreement, Governor Brucker will answer that.

Senator HICKENLOOPER. Either one of you gentlemen can answer that question. I don't know who to direct it to—perhaps the Attorney General's Office.

Mr. BRUCKER. May I suggest that my associate, Mr. Baxter, who is with us here, be permitted to answer that, since he is an expert in that field.

Senator HICKENLOOPER. I would be delighted for anyone to answer it.

Mr. BAXTER. Senator, this particular sentence of article 49 is not designed to create an international penal code. It does, however, impose upon the United States an obligation to enact effective legislation to preclude grave breaches of the convention.

Now, immediately following this common article, which appears in article 49 of the convention, there is a succeeding article, article 50. This article 50, and corresponding articles of the other conventions, lists those acts which are considered to be grave breaches.

I think it is safe to say that it would be difficult to find any of these acts which, if committed in the United States, are not already violations of the domestic law of the United States.

Senator HICKENLOOPER. What domestic law—the laws of the States or laws of the Federal Government?

Mr. BAXTER. I think it is safe to say, sir, that these acts are condemned both by Federal and State law.

You will notice that they consist of such matters, sir, as willful killing, torture, or inhumane treatment, including biological experiments, willfully causing great suffering or serious injury to body or health, and extensive destruction or appropriation of property not justified by military necessity, and carried out unlawfully and wantonly.

Senator HICKENLOOPER. Well, we are dealing with a rather important subject here, and I am not quite satisfied to let it go as a rather nebulous conclusion that it does not enlarge the power of the Federal Government.

I may or may not object to it. I am merely trying to find out what this section, which is common, as you say, to the other treaties, does to the constitutional rights which the Federal Government now has under our Constitution. I ask it because it is going to be a question in connection with these treaties. I think we ought to have the answer to it.

Mr. RANKIN. Senator, we would not, as a matter of fact, consider that it would enlarge—

Senator HICKENLOOPER. I am not considering the matter of practice. I am considering the legal rights or the legal prohibitions under the Constitution, and what effect this provision has to do with those.

I am not concerned with what the present policy might be of present administrators of the law and people who have charge of it. I am interested in what considered opinion is as to whether or not this paragraph in fact and in law and under the Constitution enlarges the authority of the Federal Government, restricts it, or leaves it as it is now.

Now, that is my question, and I think we are going to have to have a reliable answer to that question, a legal answer to that question by way of the best opinion we can get, which would be our legal officers in the State Department, the Department of Justice, et cetera.

I am not asking you to answer it right at this moment, if you are not prepared to give such an answer. I would not try to get you to answer that now, but I ask the question and I hope that we can have a categorical answer to that question, or the questions involved, before the hearings are over.

Mr. RANKIN. I think, then, Senator, that we should give you a letter to the committee that would cover this subject.

Senator HICKENLOOPER. I would want a statement, an official statement, upon which I could rely, and, as I say again, I don't know that I approve or disapprove of these provisions. I am at the moment just stating the issues.

Mr. MURPHY. Would that form, Senator, of a letter from the Attorney General then be responsive?

Senator HICKENLOOPER. If it is agreed to by the Legal Adviser of the State Department, I would think that would be a sufficient answer.

Mr. MURPHY. Of course, it has been our opinion that there is no enlargement here, but we will give you a formal reply in the form of a letter, and perhaps concurrence of the three departments, if that is agreeable to you.

Senator HICKENLOOPER. I raise it because the question will be raised. I think it is well to have the considered opinion of the departments involved here for my guidance and the guidance of others.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Barkley?

Senator BARKLEY. In that connection, it might be worth while pointing out to the departments who are to advise the committee on this point, that the Federal Government and the States have the power already to enact the legislation which is stipulated in this article 50, so that it is not any enlargement of their powers.

They could already legislate on that subject, and it is not a restriction of their powers because it merely emphasizes the power they already have to enact legislation of this sort against cruelty, brutality, and other violations of the human code as well as the legal code. I submit that for your consideration in replying to the interrogatory.

Mr. MURPHY. Thank you, Senator.

ILLEGAL DETENTION OF AMERICAN AIRMEN BY COMMUNIST CHINA

Senator BARKLEY. Of course, these conventions were written in 1949 before the Korean difficulties, and a good many things have happened since then that were not anticipated at that time. Is there anything in the treaties that deals with the situation which has given us all so much concern in recent months, the illegal imprisonment of our aviators and others in Communist China?

Mr. BRUCKER. Senator, while we do not have the details of what has occurred in the last few days, we have the details of what has occurred prior to that time with respect to the prisoners of war of Red China.

Senator BARKLEY. It was our contention, I believe, that those men were illegally detained.

Mr. BRUCKER. It was, and is.

Senator BARKLEY. It is our contention that they were illegally detained. Assuming our assumption is correct that men in the uniform of the United States armed services were illegally detained, do any of these treaties deal with that?

Mr. BRUCKER. Under the Prisoner of War Convention there are requirements for accounting, fair trial, humane treatment, and repatriation, which have not been followed in Communist treatment of American prisoners, and that includes treatment by Red China.

Moreover, under the Armistice Agreement itself, the Communists were in violation of the requirement of direct repatriation of all prisoners who desired to return home.

We take the position, sir, in further answer to your question, that there is nothing in the convention considering this aspect which has developed, both in and since the Korean war, to in any way change our opinion that the conventions give full authority, with sanctions and discipline, to deal with the situation, and that it also requires that these Chinese Communists, North Koreans, and others should repatriate prisoners at once, and there is nothing in the situation in Korea which has shown a necessity for a change in the language of the conventions in order to protect the situation. In other words, the law is there.

I also call your attention to article 118, which has been just discussed:

Prisoners of war shall be released and repatriated without delay after the cessation of active hostilities.

It is broad, and yet it is as definite and penetrating a statement as could be given.

Senator BARKLEY. If they are illegally held, they are not legally prisoners of war, are they?

Mr. BRUCKER. I would say that although in a sense they are not strictly prisoners of war, they still are entitled to the protection of prisoners of war under the conventions.

Senator BARKLEY. That is all, Mr. Chairman.

The CHAIRMAN. Senator Capehart?

Senator CAPEHART. Thank you, Mr. Chairman.

LEGISLATION REQUIRED ON PENAL SANCTIONS

Going back to page 41 of the compilation, article 49 sets forth that the contracting parties will—

undertake to enact any legislation necessary to provide effective penal sanctions for persons committing * * * any of the grave breaches of the present convention—

and so forth. Then in article 50 certain grave breaches are specified.

Now, my question is: Are there listed in article 50 or thereafter all of the specific things that might well be legislated upon?

Mr. MURPHY. We think, Senator, that those headings certainly comprise the bulk of the possible crimes that could be envisaged here, and it was the total list on which agreement could be achieved at Geneva.

Senator CAPEHART. But it is not necessary to limit it to those listings?

Mr. MURPHY. No; in the sense that the legislation of most countries will cover a vast list of other criminal acts which their present legislation already takes care of.

But these were the principal ones that came out of the experiences of World War I and World War II.

Senator CAPEHART. I believe you stated a moment ago that it was your impression all of these items were now covered by law, state or Federal law, or both; is that correct?

Mr. MURPHY. Yes, sir; that was the opinion of the Attorney General's Office, yes, sir.

Senator CAPEHART. Well, is the big reason for this provision then that many of the nations that are party to these treaties do not have any laws whatsoever on the subject, or do not have sufficient law?

Mr. MURPHY. Really not that, Senator, because most of them do, but they wanted to provide a certainty that there would be punishment flowing from the commission of those criminal acts.

It was designed, really, to sharpen it up and to make it clear that the intention of the signatories would be that there should be no escape from punishment where there was evidence of the commission of such heinous crimes. That was the thought.

Senator CAPEHART. But if our laws covered all those crimes and if other nations' laws covered them, then why put something in the conventions which is unnecessary?

Mr. MURPHY. Perhaps the Assistant Attorney General would want to answer that.

Mr. RANKIN. Senator, I believe the purpose of that particular article was to try to provide a procedure by means of which, if the person was not tried under the law of the locality, he could be extradited to the other country and there tried by proper extradition procedures, and in that manner he could not avoid paying the penalty in one country or the other.

Senator CAPEHART. I am not quite clear on what you just said. Would you repeat it, please?

Mr. RANKIN. There is a provision that the person will either be tried or extradited in the event of grave breaches, as defined.

Senator CAPEHART. Will you give me an example, please?

Mr. RANKIN. Well, if a person committed a crime and they did not try him, and the person was a prisoner of the United States, and the United States saw fit not to try him for the commission of a crime—

Senator CAPEHART. You mean, if he committed a crime in the United States?

Mr. RANKIN. It could be committed in an occupied area.

Senator CAPEHART. In other words, does it apply where a prisoner commits a crime before he is a prisoner, or after?

Mr. RANKIN. Before.

Senator CAPEHART. He has committed a crime in the United States?

Mr. RANKIN. No. I was thinking of in some other area.

Senator CAPEHART. In other words, he has committed a crime in some other country before he became a prisoner?

Mr. RANKIN. Yes.

Senator CAPEHART. But he becomes a prisoner and is, let's say, brought to the United States?

Mr. RANKIN. Yes.

Senator CAPEHART. And then what?

Mr. RANKIN. And would be subject to trial within the United States for the commission of the crime.

If we did not see fit to try him, and another country, say France, wanted to have that person tried for the commission of that crime.

Senator CAPEHART. We agree in these treaties to return him immediately to France?

Mr. RANKIN. Upon proper extradition proceedings, like we have treaties for.

Senator CAPEHART. We definitely agree to do that?

Mr. RANKIN. Yes. And otherwise we will try him ourselves. The obligation is to either try him under the laws of the party in possession of the individual or follow the extradition procedure.

Senator CAPEHART. Now, under this chapter, then, we are agreeing that if we have no laws that cover the specific subject, then we will pass such laws; is that it?

Mr. RANKIN. As a matter of fact, we have laws that cover all those subjects.

Senator CAPEHART. If we have them, I don't know why this provision is here.

Mr. RANKIN. There are nations that did not have all of the laws covering all of these grave breaches. This is to cover a great many nations of the world.

Senator CAPEHART. One of my questions was: Is the purpose of this primarily that other nations fail to have the necessary laws to cover these subjects that are listed here?

Mr. RANKIN. That wasn't the primary purpose. The primary purpose was that the person not be able to get out of being tried, one place or the other, for the crime.

Senator CAPEHART. If you are going to permit him to be returned to the scene of the act and there tried for violating a given law, then why isn't that sufficient in itself, or why not just simply permit them to be returned to where the crime was committed?

Mr. RANKIN. That would be compliance, but during World War II there were a number of war criminals who avoided the punishment by going to some neutral nation for sanctuary, and this is to avoid that situation, and there could be a situation in which the United States would feel that it should try the individual under our procedures instead of giving him up under extradition, but the nations agreed that one or the other method should be followed in order to make certain that the person not avoid punishment for the crime.

Senator CAPEHART. Yes; but article 49 says:

The High Contracting Parties undertake to enact any legislation necessary to provide effective penal sanctions for persons committing, or ordering to be committed, any of the grave breaches of the present Convention defined in the following Article.

Now, these breaches are listed in article 50.

Mr. RANKIN. That's right.

Senator CAPEHART. You say at the moment we have sufficient laws in our States or the Federal Government to cover this?

Mr. RANKIN. Yes. We also have all of our laws with regard to military crimes that would apply to prisoners of war.

Senator CAPEHART. We have those laws now, too?

Mr. RANKIN. That's right.

Senator CAPEHART. Therefore, we have already complied with this section; is that right?

Mr. RANKIN. We conceive that the United States has fully—

Senator CAPEHART. You would make the statement, then, that we have already complied with this, and it will not be necessary to pass any additional laws.

Mr. RANKIN. We foresee no additional legislation required to comply with this portion of chapter 9.

Senator CAPEHART. Can additional breaches be added to article 50 and the common articles and become binding on the United States, without coming back to the Senate for confirmation?

Mr. RANKIN. No; that cannot be done.

Mr. BRUCKER. Positively no; on that.

Senator CAPEHART. Then this article is not intended for the United States, but for other nations?

Mr. RANKIN. Well, because the article is broader than merely providing for the enactment of legislation, it requires that but it also requires that the United States, as well as other contracting parties, would have to either try the individual or provide for extradition.

Senator CAPEHART. The treaty provides for both; does it not?

Mr. RANKIN. An election.

Senator CAPEHART. That is, the nation who holds the prisoner may elect either to try him under its own laws or return him?

Mr. RANKIN. That's right. That is the second paragraph of article 49.

Senator CAPEHART. Well, I am just going over the same ground, but I am a great one to go over the same ground. I think repetition is a good thing. Let me repeat again to see if I understand this.

Then it is your opinion that it will not be necessary to change any laws or enact any new laws, either of any of our States or the Federal Government, to comply with this chapter?

Mr. RANKIN. That's right.

Senator CAPEHART. And that you put it in here simply because other nations do need to change some of their laws or to enact new laws?

Mr. RANKIN. Well, and also to be sure that the person will either be tried or extradited, which is a further part, but there is no necessity, as we conceive—

Senator CAPEHART. We could have the latter, that you just mentioned, without agreeing to enact new legislation, could we not?

Mr. RANKIN. That's right, but we wouldn't have the coverage—

Senator CAPEHART. It isn't necessary to agree to enact new legislation in order to agree that you will either try or return; is it?

Mr. RANKIN. No; that was put in to cover other nations and be certain that it would be uniform.

USE OF THE RED CROSS EMBLEM BY INDIVIDUALS AND CONCERNS

Senator CAPEHART. Now, Mr. Chairman, I want to go into this Red Cross business, but do you want to withhold that until later?

The CHAIRMAN. We have witnesses here on that, Senator Capehart.

Senator CAPEHART. I wanted to ask these gentlemen some questions about it.

The CHAIRMAN. Go right ahead.

Senator CAPEHART. I gather that your main concern over the use of the insignia of the Red Cross, which has been used by some companies for many, many years, is that in case of war they might use it in such a way that it might cause the loss of lives of the military, as well as civilians.

Mr. RANKIN. That's right.

Senator CAPEHART. Would a suggestion be in line? I don't know that it would require any legislation. If these concerns refrain from putting any such insignia on the top of their factories or near their factories where they could be seen from the air, that certainly would cover the matter; would it not?

Mr. BRUCKER. Senator, we would want to examine any proposal along that line very carefully.

Senator CAPEHART. Well, I can well understand that.

Mr. BRUCKER. Because we have the duty of considering what is going to be the effect, practically, of having the continuance of a Red Cross either on a building, or whatever it may be, we would want to examine it very carefully, if there were language of a reservation proposed.

Mr. RANKIN. I think that further answer should be that there should be legislation in that area, regardless of what the Senate decides, or Congress decides to do. You now have on the statute books a penal statute prohibiting the use of the Red Cross except as to usage prior to 1905, as I recall.

Senator CAPEHART. I don't think there is any question about that.

Mr. RANKIN. So you would want to amend that to cover the situation.

Senator CAPEHART. I don't think there is any question but what you would want to do that. But I was just wondering, inasmuch as these concerns have used this insignia for so many, many years, if there weren't some way that the problem which the General Counsel of the Defense Department raised could be avoided.

Well, then, we can get into that later.

Thank you, Mr. Chairman. Those are the only questions I have.

NATIONS WHICH HAVE RATIFIED THE CONVENTIONS

Senator BARKLEY. Mr. Chairman, I would like to ask, How many nations have subscribed to these conventions?

Mr. MURPHY. Forty-seven have ratified.

Senator BARKLEY. Does it include any with whom we are not now having diplomatic relations?

Mr. MURPHY. We have diplomatic relations with most of the present parties to the conventions. There are a few exceptions. We broke off relations with Bulgaria in 1950. The United States has no formal diplomatic relations with the Holy See. In a few other cases—Liechtenstein and the two constituent Republics of the U. S. S. R., because of their constitutional arrangements—our relations are carried on through another power which is responsible for the conduct of that party's foreign affairs. In the case of Monaco, France represents them here.

Senator BARKLEY. Has Red China in any formal way or otherwise adopted the principles set out in the conventions?

Mr. MURPHY. Well, during the Korean hostilities Red China announced that it would recognize, I believe that was the wording, recognize the provisions of the conventions, and some of its actions subsequently indicated that it was paying some attention to them. It, of course, is not a signatory.

Senator BARKLEY. No.

Mr. MURPHY. And it has, of course, not ratified.

Senator BARKLEY. That is all.

The CHAIRMAN. Senator Mansfield?

APPLICATION OF ARTICLE 49 OF SICK AND WOUNDED CONVENTION

Senator MANSFIELD. Mr. Rankin, just to clarify one point in the reply you made to Senator Capehart, does article 49 apply to any private person committing the grave breaches, or does it apply only to Government officials?

Mr. RANKIN. It would apply primarily to Government officials.

Senator MANSFIELD. You say "primarily"?

Mr. RANKIN. Yes.

In considering the articles, the parties were not able to determine, and did not determine, whether there were any possible occasions when a private civilian could commit a grave breach.

CONVENTIONS DO NOT AUTHORIZE BRAINWASHING

Senator MANSFIELD. Governor Brucker, in your statement you said that the conventions give us the means of dealing with the problems we encountered in Korea and that they do not authorize brainwashing. Have any conventions prior to this time authorized brainwashing?

Mr. BRUCKER. Not affirmatively authorized any brainwashing, but there was a void which was not sufficiently plugged up, we felt, and we felt that the language of these conventions is more definite with regard to its sanctions and provisions than the old conventions of 1929 and prior.

Senator MANSFIELD. How would you prove brainwashing?

Mr. BRUCKER. It is a very difficult subject. It is amorphous, nebulous, and it is hard to prove.

But we have in our intelligence services of the three military departments men who are thoroughly skilled in the study of that subject, who are not only oriented and trained but who conduct schools among the doctors and those who are in the Intelligence Branch, what we refer to sometimes as the CIC, and others, in that connection, in order to detect methods by which, when prisoners of war return, we can find out the way in which brainwashing is done, the methods by which it has been successfully accomplished.

Senator MANSFIELD. So what you are trying, Governor, is to work out something in these conventions which will stop or forbid brainwashing at the same time you are developing practices among personnel of the Armed Forces and other parts of our population to do what can be done to counteract this new weapon of warfare?

Mr. BRUCKER. That is correct, sir; we are attempting to do that.

Senator MANSFIELD. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Smith?

SANCTIONS WHICH CAN BE EMPLOYED FOR VIOLATIONS OF CONVENTIONS

Senator SMITH. I have one question, Mr. Brucker, I would like to ask you, probably because of my ignorance of all of the provisions of these conventions. I am wondering what the practical sanctions for violations are—just world opinion? Is there any way to enforce the conventions?

Mr. BRUCKER. Senator, the sanctions for the four conventions are largely world opinion.

There is no way, short of armed conflict, force, in war itself, and belligerency, to enforce things that these others, the other nations, ought to do, and the only real resort is resort to the court of world opinion, enlightened opinion, the publication of what occurs, so that everyone may know, and to that extent be aroused about violations.

Now, in the Korean affair, the Department of Defense feels that the press, in giving the story about what happened, gave the world a great deal of valuable information that helped world opinion, and which, in the end, helped to get some of the things resolved that were very outrageous on the part of the North Koreans. While the Red Chinese didn't do a completely good job, they were aware of world opinion, and there were some noticeable improvements.

While I don't want to go into details of that, we know that world opinion did something in that direction.

Now, may I also, if I can, add to the answer that I just previously gave, because the two questions are similar.

Secretary of Defense Wilson has been giving attention to this problem of prisoners of war and to the problem of brainwashing, particularly over the period of the last 2 years. First, the committee of the three armed services, the Army, Navy, and the Air Force, of course the Marines being part of the Navy, were asked to appoint ad hoc committees on the local levels. They, together with the Provost Marshal and others, gave attention to it, at the instance of the Secretary.

Then he appointed a formal ad hoc committee that grouped all of that information together and made a report, and that report recommended that there be appointed a formal committee, including civilians, to consider the whole prisoner-of-war problem with reference to this matter of brainwashing and breaking down the resistance of the individual and making him tell things that are untrue, under the pains and penalties of this torture that they put on.

Senator MANSFIELD. And which are contrary to the conventions already agreed to.

Mr. BRUCKER. And which are contrary to the very conventions that we are talking about here today.

And that committee has been appointed within the last fortnight and is going to meet throughout the summer and take up the very question of brainwashing and these other techniques that have been imported into modern warfare.

Now, to more completely answer your question, let me say, yes, that is being done, and we are giving attention to the subject matter, and the conventions here will cover, to the extent of the language, the opportunity to see that world opinion is aroused in that connection.

Beyond that, no, Senator, there is no resort to any world court, or anything else.

It is to world opinion, when it comes to the final analysis.

Senator SMITH. I was at the U. N. last year as a delegate from the United States, and we had there the problem of the American airmen who were shot down, tried, convicted, and so on, and the U. N. unanimously, except for the satellites, voted to condemn that action. We instructed Mr. Hammarskjold to get those prisoners released—period. But there were no definite sanctions up to that point.

They may come later if we don't get results, but it would seem as though the sanction for a convention of this sort is similar to what we were trying to do there, develop world opinion, and get the strength of world opinion moving in on the problem before resorting to any more strenuous, possibly warlike methods. Is that the general approach?

Mr. BRUCKER. That is the general approach, and I think the success of the method employed by the United Nations, as you have described, Senator, was successful to the point where world opinion did a great deal to bring about the very result that is now beginning to emerge.

Senator MANSFIELD. Will the Senator yield?

Senator SMITH. I yield to Senator Mansfield. I am through, as a matter of fact.

Senator MANSFIELD. I just wanted to follow up on your thought.

Isn't there another way besides the use of world sanctions, so to speak, which are quite general and nebulous? Do we not reserve to ourselves, under certain circumstances, the right to take counteraction against countries which have agreed to observe these conventions and which have failed in their agreements?

Mr. BRUCKER. Most certainly. The answer is, "Yes," to that.

Mr. MURPHY. Of course, as a matter of procedure, Mr. Chairman, we would invoke the regular procedures of diplomatic protests through neutral nations, as a starting point, appeals to world opinion through several channels, the U. N. and others, and of course the consideration of our legal position, vis-a-vis the offending power.

EFFECT ON WORLD OPINION OF A RESERVATION ON USE OF RED CROSS EMBLEM

Senator SMITH. Mr. Murphy, I just have one more question about using this Red Cross emblem.

Would a reservation of article 53, along the line we have talked, have adverse effects on world opinion, so far as the United States is concerned? Have you had that in mind at all?

Mr. MURPHY. We have had that very much in our mind. There undoubtedly would be some, perhaps, minor repercussions.

I think that we would make an effort to have all of the signatories understand the legal position in which we are. I wouldn't fear that there would be too much embarrassment from that source.

Senator SMITH. I understand there are some other countries interested in the emblem, besides the United States?

Mr. MURPHY. Oh, yes, sir.

Senator SMITH. They might make a reservation similar to ours; it would be generally understood that would be a violation?

Mr. MURPHY. So far I have not understood there are any specific reservations to the same effect, but it is not impossible.

Senator CAPEHART. Mr. Chairman, one more question, please.

The CHAIRMAN. All right, Senator Capehart.

WAR CRIMINALS LIKE THOSE TRIED AT NUREMBERG

Senator CAPEHART. What is there in the treaties that deals with war prisoners of the type that were tried at the Nuremberg trials? How are they to be treated? Are they covered in this treaty?

Mr. MURPHY. They were, for one thing, the subject of one of the Soviet reservations.

Senator MANSFIELD. I think it is article 85.

Senator CAPEHART. I might ask this question: Have we made any effort to try to describe what constitutes that type of a war criminal?

Is it still up to the winner to say that everybody that he might care to say is a war criminal?

Mr. MURPHY. No; that has been avoided. The conventions are limited to the specific crimes mentioned in the article to which you referred, that is article 50. There is no attempt here to set up—

Senator CAPEHART. There is nothing in these treaties to attempt to describe who might be a war criminal, in the sense of the Nuremberg trials?

Mr. MURPHY. That's right, and there is no attempt here to set up an international form of court.

Senator CAPEHART. We still would have the same situation we did have, namely, the winner could designate, of course, anyone he cares to as a criminal, and try him as they did at Nuremberg?

Mr. MURPHY. That would be a matter for another agreement. It would not be covered by the conventions we are now discussing.

Senator CAPEHART. In other words, we established this Nuremberg precedent, which means that if there is a next war, and if we should ever lose the war, there isn't anybody, I presume, in this room, sitting around this table, who will not be subject to being prosecuted as a war criminal. Has there been nothing done in that respect at all?

Mr. MURPHY. Nothing been done in that respect.

Senator CAPEHART. Nobody has made an effort to undo what, in my opinion, was an almost unforgivable sin in this Nuremberg business, by simply calling in everybody and saying that they were war criminals, and trying them, including generals in the Army, and admirals. There is nothing in this treaty that covers that at all?

Mr. MURPHY. No, sir.

I might, if you will be patient, read just a very brief outline which might clarify your thinking.

The Geneva conventions impose upon a party to the conventions an alternative obligation to try, in its own courts, or hand over to others persons accused of grave breaches of the convention.

It is clear that the provisions of the conventions dealing with these grave breaches do not constitute an international penal code. Rather, the record of the Geneva conventions shows that parties to them are obligated to provide in their own domestic penal laws, where necessary, for the trial and punishment of persons accused of violations of the conventions, which are enumerated as grave breaches.

The violations which will constitute grave breaches include many traditional war crimes, such as the murder of prisoners, but do not deal with such concepts as crimes against peace which were before the International Military Tribunal at Nuremberg.

The conventions do not obligate the United States or any other party to participate in any future international trial of war crimes.

Instead, the conventions make no reference to international war crimes tribunals, thereby leaving to the future whether such tribunals should be created, and what their jurisdiction should be.

Senator CAPEHART. That is as far as these treaties go?

Mr. MURPHY. Yes, sir.

Senator CAPEHART. No efforts have been made to try to undo what might prove in the future to be a very, very harmful thing?

Mr. MURPHY. That was beyond the scope of this particular negotiation.

Senator CAPEHART. It isn't any trouble for the winning nation, you know, to prove, as in our case in the United States, that every governor, every Senator, every general and every admiral was part and parcel of a criminal conspiracy. Nothing has been done to undo what I consider to be almost an unpardonable sin?

Mr. MURPHY. That was considered beyond the scope of these particular negotiations.

Senator CAPEHART. That is all, Mr. Chairman.

Senator BARKLEY. Mr. Chairman, have these Soviet reservations been put in the record?

Mr. MURPHY. Yes, sir; they are in the record. They are published in the document.

Senator BARKLEY. In this document?

Mr. MURPHY. Yes, sir; pages 252-253.

The CHAIRMAN. Thank you, gentlemen. You may wish to stay anyway, and probably will want someone want to remain here to represent you, if any further questions should arise.

We will be very glad now to have the president of the American National Red Cross, the Honorable Ellsworth Bunker, accompanied by Mr. Starr, counselor, come forth and make such statement as he may wish to make. We would like to finish the hearing this morning, if possible. We will remain in session for at least a reasonable time, to see if we cannot hear the witnesses from out of the city.

Mr. Bunker, we will be very glad to hear from you, sir.

STATEMENT OF ELLSWORTH BUNKER, PRESIDENT, THE AMERICAN NATIONAL RED CROSS

Mr. BUNKER. Thank you, Mr. Chairman. I appreciate the opportunity to appear before your committee.

HISTORY AND ROLE OF THE RED CROSS

It has already been noted by the members of the executive branch of the Government that these four conventions represent, for the most part, an elaboration and expansion, a strengthening and a supplementation, really, of the principles laid down in the treaty of 1864. It is more than 90 years ago that the first multilateral treaty specifically concerned with the care and protection of sick and wounded members of opposing military forces was negotiated. Those negotiations and the resulting international compact were directly attributable to the work of a committee of five individuals. The committee has been in continuous existence ever since and for more than seventy-five years has been known as the International Committee of the Red Cross.

To facilitate the accomplishment of its objectives to insure the care, protection and treatment of the sick and wounded members of competing armed forces, the treaty made provision for the "neutrality" of the personnel and installations employed in these humanitarian tasks. The treaty envisioned the formation of official volunteer agencies whose personnel, acting under the direction and control of the armed forces to which they were attached, would assist the medical corps of the armies to provide "impartial" care of the sick and wounded.

Because the distinctive sign reserved for personnel and installations engaged in these humanitarian tasks was the Red Cross, the volunteer agencies established or recognized by the adhering government have been known in all Christian countries as Red Cross societies. For the same reason, the original treaty and its various successors have almost universally been called the Red Cross treaties.

It was natural and consistent with that origin and history that the Red Cross organizations have provided encouragement and otherwise facilitated the elaboration and extension of the original treaty and assumed other humanitarian duties envisioned by revisions and additions to the original terms.

Following the close of hostilities in World War II, the International Red Cross invited governments to give prompt attention to the experience of World War II and to consider the elaboration and extension of existing treaties in the light of that experience. The drafts developed at the ensuing International Red Cross Conference formed the basis for the texts finally arrived at in the Diplomatic Conference.

But the role of the Red Cross, both internationally and nationally, is vastly different today than was the case in 1864. Today, all civilized governments accept responsibility to afford that degree of protection to defenseless persons consistent with the attainment of war's objectives that respect for human dignity demands. Furthermore, the complexity and total nature of modern war are such as to involve in the formulation of those treaties considerations of a technical, professional and political nature that Red Cross societies are neither authorized nor equipped to appraise. But it is still the role of the Red Cross to enlist, in support of their humanitarian ideals, the "conscience of the world."

Today, perhaps more so than ever before, National Red Cross societies must be ready and able to provide such assistance to their governments in carrying out their international humanitarian commitments as may be required and requested.

I am both happy and proud to advise the committee that the official volunteer agency established by this Government to serve in matters of relief under the treaties—the American National Red Cross—has remained strong and that the people of this country have manifested their intention to lend it such support as may be required to carry out the functions that may be entrusted to it by this Government under the treaties in the unhappy event that we should again have to resort to arms. Should that occur, the application of the terms and principles of these treaties would represent a further, significant advance of Red Cross ideals. Hence it goes without saying that the American Red Cross hopes that the treaties would be in effect and universally applied.

AMERICAN NATIONAL RED CROSS URGES RATIFICATION OF CONVENTIONS

Meanwhile, a large number of governments have ratified the treaties and others are moving in that direction. The peoples of the world have rightly learned to expect from America leadership in the field of humanitarianism no less than in other fields. Failure to ratify these treaties could weaken that faith. The American National Red Cross earnestly hopes that they will be ratified without delay.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much.

Are there any questions?

Senator MANSFIELD. Mr. Chairman, may I just say that I am delighted, and I know the committee is, that Ambassador Ellsworth Bunker is before us. He did an outstanding job as our representative to Italy after the war, and he is doing just as good a job with the American Red Cross.

Mr. BUNKER. Thank you, Mr. Senator.

Senator SMITH. Mr. Chairman, I am glad to echo that sentiment, and welcome Mr. Bunker here.

Mr. BUNKER. Thank you, sir.

The CHAIRMAN. Senator Tydings.

STATEMENT OF HON. MILLARD E. TYDINGS, FORMER UNITED STATES SENATOR FROM THE STATE OF MARYLAND

Mr. TYDINGS. Mr. Chairman, we would like to finish today, and I know the committee would, and I was wondering if you could give us some idea of when you would recess, and we would try to allocate the time so as to give those who want to be heard in particular reference to the matter I speak on an equal opportunity. Can you sit to 1 o'clock, or is that too late?

The CHAIRMAN. I think some of us will be here until 1 o'clock before we recess.

Mr. TYDINGS. Thank you.

HUMANITARIAN OBJECTIVES OF CONVENTIONS FAVORED

Mr. Chairman, and gentlemen of the committee, I would like to say that those for whom I speak are heartily in favor of the humanitarian objectives contained in this treaty.

We think it is a good treaty, and we hope it will be ratified. There are certain facts, law, and equity in regard to about 8 or 9 concerns in the United States which we think are worthy of some special consideration by this committee.

COMPANIES USING THE RED CROSS EMBLEM

These are shown on this chart, the Canepa Co. of Illinois, Silver & Son of Maryland, the Red Cross Chemical Works of Illinois, Johnson & Johnson, the famous surgical dressing people, A. P. W. Paper Co., and the United States Shoe Corp.

All of these concerns, six in number—and there may be a couple not represented here—have used the red-cross symbol or trademark many, many years before the United States took any official recognition of any international convention of any kind, shape, or form.

For example, the Canepa Co. have used the symbol since 1872, the Silver Co. since 1873, the Red Cross Chemical Works since 1876 Johnson & Johnson since 1879, and two other companies since 1897 and 1898.

PROTECTION OF PRE-1905 USERS OF RED CROSS TRADEMARK

Now, we think it would be a manifest injustice after nearly 80 years of the use of the red-cross symbol and the expenditure of millions and millions and millions of dollars in advertising to create good will and knowledge of the products covered under these red-cross trademarks by these respective companies, to take those rights away from them. For, after all, they are property.

They have so been held by the courts of the United States, by the highest trademark official in the Patent Office and by the Congress itself in many, many pieces of legislation, in all of which these respective companies, not by name but by reservation or by congressional act, have been exempted from the prohibition of the use of Red Cross symbol and trademark.

The first use, limited use, of the trademark, was in 1905, and then the use was limited to those who acquired trademarks prior to 1905. That was an act of Congress.

In 1910 the use was limited for the same purposes and for the same class of goods as used prior to 1905.

In 1946 the Supreme Court decided that pre-1905 users may continue. It has likewise been held universally in the United States district courts.

Now, here is the congressional history of all treaties, legislation, and propositions that have come before the Congress and you will note that down until the year 1905 Congress took no action on any Red Cross use of trademarks.

Following 1905, as I have previously pointed out, the use was limited to those concerns that had used the Red Cross trademark prior to 1905, so that we had a right to use this trademark long before the United States took any legislative action concerning this thing.

And we feel we are in a special class, and that those who used the trademark after 1905, of course have no right to use it, but we who have used it before any legislation or congressional action was taken on the use of it, obviously have a right which no other concerns using the Red Cross trademark heretofore have the right to do.

And, indeed, Congress has prohibited its use to all other concerns who did not use it prior to 1905. I will leave these charts here for some time, in case members would like to familiarize themselves with the facts thereon.

Some people scoff at the use of a trademark. I am going to pick out 2 or 3.

VALUE OF A TRADEMARK

Suppose, for example, Lucky Strike had to change the name of its cigarette after hundreds of millions of dollars had been spent over the years in advertising and calling its merits to the attention of the American public. Obviously, a tremendous injustice would be done, and it would be a confiscation or an expropriation of property without due process of law, as provided for under the fifth amendment.

traditionally used this symbol as a combination of the National Red Cross Flag of Switzerland and in the treaty itself noted that the language is entirely different because Switzerland had this vested right, going back long years before, but over here there is no provision made to take care of these people who have a vested interest in the use and continued use of this particular trademark.

Congress has been mindful always that when a trademark has been created, and if it is for humanitarian purposes and if it is for charity or for the building of citizenship, to protect its users.

The Girl Scouts of America, the Boy Scouts of America, the United States Civil Air Patrol, the American Red Cross, the 4-H Club, the United States, these words, United States Olympic Association, and so on. We only ask for the same right because we have had this right now for nearly 80 years, long before the year 1905 when Congress first took cognizance of this particular matter.

Senator SMITH. Senator, what is meant by saying those are now prohibited? What does that mean?

Mr. TYDINGS. The use is prohibited except to those who used it prior to the act of Congress. In other words, these trademarks were set up for these particular organizations by congressional act, and it said nobody else can use them except those who used them before the Congress passed the act.

Why shouldn't we have equal treatment, particularly where we have millions and millions of dollars involved?

Now, I am going to leave with the committee here, because I think this may be of some particular value, a short legislative history printed here for your convenience, and I will leave some extra ones for the committee. And here is still another out of many. I don't want to burden the committee with them, but I thought they might be useful in your deliberations when we are not here.

Now, what can we do to show our good faith to aid this treaty, and at the same time give to those for whom I speak that measure of justice to which all Americans are entitled?

QUESTION OF A RESERVATION CONCERNING USE OF RED CROSS EMBLEM

Did we come up here without contacting the various departments of the Government to try to arrive at a solution? We did not.

I have been down to the State Department several times trying to find that language which would accomplish the purpose desired, and at the same time would evoke the minimum, if not the complete, obliteration of any objection that the State Department might have.

The State Department, naturally, takes the position, in view of the international complexion of this treaty, that it cannot come up here and favor reservations, but I think in due fairness, Mr. Murphy went pretty far in showing that the reservation we have worked out after conference with the State Department on several occasions, is not one to which they are bitterly opposed, and the equities of which he recognizes.

Likewise, we have been to the Attorney General's office and submitted this reservation, and I don't want to mention any names, but the highest legal authority in our Government, from the standpoint of conducting cases and so forth, can see no objection to it, and I think

I might even say it was a matter of basic right, and we were entitled to this reservation.

So out of those efforts we have devised a reservation which I will read, and which I think is so transparently fair and just that it would be difficult for me to believe that any Senator or House Member would oppose it, assuming that he or she knew the facts.

LANGUAGE OF RESERVATION PROPOSED BY PRE-1905 USERS

Here is the reservation :

Whereas the United States under its domestic law has recognized and protected certain rights and uses, which have continued from a time prior to 1905, of the emblem of the Red Cross, the Greek red cross on a white ground, signs or insignia made or colored in imitation thereof, and the words "Red Cross" and "Geneva Cross", including any combination of these words, the United States, in ratifying the Geneva convention for the amelioration of the condition of the wounded and sick in armed forces in the field dated August 12, 1949, does so with the reservation that irrespective of any provision or provisions in said convention to the contrary, nothing contained therein shall make unlawful, or obligate the United States of America to make unlawful, any use or right of use within the United States of America and its Territories and possessions of the Red Cross emblem, sign, insignia, or words as was lawful by reason of domestic law and a use begun prior to January 5, 1905.

REASONS FOR THIS PARTICULAR LANGUAGE

That particular language was selected because it is self-explanatory. It shows that no new rights are being given to people who want to use the Red Cross insignia, but it simply protects the rights of those who had the use of the Red Cross symbol long before the Congress took any cognizance whatsoever of the use of the Red Cross trademark.

Now, this reservation with which the State Department and Justice Department are familiar, I think speaks for itself. I think it is inoffensive, I think it is self-explanatory, and any reasonable government should see the grave justice interwoven in every word of the reservation.

QUESTIONS ABOUT THE PROPOSED RESERVATION

Senator BARKLEY. Would this reservation have to be agreed to by the other signatories?

Mr. TYDINGS. No. I would rather the State Department answer that, but it is our position, and that remains our position in ratifying the treaty, but I am not profound on that.

I have had no occasion to look into it, and I might be wrong, and I would prefer to have someone else speaking for the Government answer that.

Senator CAPEHART. Is there some way that you might protect against the thing that the General Counsel of the Defense Department was afraid of, too?

Mr. TYDINGS. Oh, yes, sir.

Understand, all the users of this trademark, Senator Capehart—

Senator CAPEHART. Is it six of them?

Mr. TYDINGS. There are six here. There may be a couple who are not represented, in a very minor way, but the six here do not put the red-cross symbol on their factory stacks.

What they want is the use of it on their products only, and the President of the United States, under his wartime powers, as every member of this Foreign Relations Committee knows, could issue an order that all Red Cross trademarks must be removed from any factory or stack or roof, in the event they are there, and it becomes necessary for him, under this wartime powers, to make such a ruling. So in my judgment, that is a moot question.

I think every member here will concede that in time of war the President could eliminate the use of those trademarks on factories and stacks. We are not concerned with that. We don't do it anyway.

But if any of us did do it, we would welcome the elimination of such trademarks. Our point is this:

Starting way back in 1872 and 1873, as my neighbor in Havre de Grace, Md., T. Silver & Son, packers of vegetables, began the use of this trademark. They used it for 33 years before Congress even took any recognition of the Red Cross.

They spent thousands and thousands and thousands—yes, hundreds of thousands and millions of dollars, these users have, in advertising their product, and if you gentlemen would ratify this treaty without protecting them, it would mean a gigantic financial loss to them to take any other trademark and have to readvertise it all over again. And I want to conclude—

Senator CAPEHART. Will the Senator yield?

Mr. TYDINGS. Yes, I will.

Senator CAPEHART. I must go, but I must say that I am sold on the idea of a reservation.

Mr. TYDINGS. Thank you very much.

I only ask the committee, because I would like to talk longer, but I want to share my time with others, to consider one fact.

Suppose you had been using this trademark since 1872 or 1875. Suppose you had spent tens of millions of dollars advertising any particular product, such as Lucky Strike cigarettes or Coca Cola or Johnson & Johnson surgical dressings.

How would you like it if your own Government took that right away and set at naught your entire investment without any compensation whatsoever?

Gentlemen, this reservation has been drawn in close communion with the State Department and the Department of Justice. I think it is eminently fair, and I think it will appeal to the fairness of this committee and I tender it for your consideration, with the fervent hope that as the courts and the Congress and the traditions are all on our side, that the reservation may become a proper part of this treaty.

Senator SMITH. Mr. Tydings, I would like to ask one question.

Mr. Brucker referred to some danger to our Armed Forces that might be involved in this matter. Does that only apply to the Red Cross signs on top of buildings?

Mr. TYDINGS. That is what they had reference to, Senator, I am pretty sure, because in our discussion that fact came up, and every one of us said we don't use it anyway, but if we ever did, the President of the United States could even make a request, and it would come off that quick. He wouldn't have to issue an order.

Senator SMITH. I would agree with you on that.

Mr. TYDINGS. Yes, sir.

And in wartime, as you well know, he would have the authority, as Commander in Chief of the Army and as President of the United States, to order them all off.

Senator SMITH. Apparently this insignia cannot be used outside of the United States of America and its Territories and possessions.

Mr. TYDINGS. I think that is correct. That is a matter I have not gone into, but I think that is correct.

Senator SMITH. I am just wondering if, for example, Johnson & Johnson sent a lot of Red Cross materials abroad, would they have to take their red cross off the containers of those shipments?

Mr. TYDINGS. If they were food, shelter and clothing, in time of war or in time of peace, and there were only eight people who used this red-cross symbol prior, in my opinion it would not be necessary in international trade, either in war or in peace, to take that insignia off for these particular people, particularly if the reservation is granted.

It would take the matter out of the field of all controversy.

Senator SMITH. The way article 53 of this convention reads now, apparently all prior users are supposed to give up the use of this in 3 years.

Mr. TYDINGS. I think that is correct. The things that concern us mostly are paragraphs 53 and 54. In 53, if you will note, there is a prohibition to anybody using the red cross.

Senator SMITH. That's right.

Mr. TYDINGS. Now, in negotiation, it is always necessary to put in very general terms affecting everybody, and then where the equities and law and traditions interfered, to make a reservation.

I don't blame our negotiators for not putting it in over there because then the other fellow would have said, "If you want one for your country, I have got something else I would like for mine," and we get into logrolling.

But I think our departments recognize the fairness and justice of our position and, so far as I have heard here this morning, I do not believe there has been any serious objection raised to the reservation I submitted affecting only those who used the trademark prior to 1905.

The CHAIRMAN. All right, Senator Tydings.

Mr. TYDINGS. Senator George and gentlemen of the committee, I thank you for the opportunity to be heard.

The CHAIRMAN. Thank you very much.

Mr. Clifford, do you wish to help us out on this matter also?

STATEMENT OF CLARK M. CLIFFORD, REPRESENTING A. P. W. PAPER CO. OF NEW YORK

Mr. CLIFFORD. Mr. Chairman and gentlemen of the committee, I represent A. P. W. Paper Co. of New York, a large manufacturer of paper tissues and paper towels, which has used this emblem and trademark since 1897. The company I represent is in a rather interesting position because it went through a lengthy and vigorous period of litigation over this particular trademark.

A. P. W. PAPER COMPANY'S LITIGATION OVER USE OF RED CROSS TRADEMARK

I believe if I were to describe that briefly, it would be of benefit to this committee. In 1942 the Federal Trade Commission brought an

action against my client, the A. P. W. Paper Co., to investigate its use of the red cross and trademark, and to determine whether it had the right to continue to use it.

After lengthy hearings took place in 1943 and 1944, the Federal Trade Commission issued its order on my client, ordering it to cease and desist from using the red-cross insignia and name, because the Federal Trade Commission contended that it had a tendency to mislead the public and deceive the public that there was some connection between the products of my client and the American National Red Cross.

A. P. W. Products Co. appealed that decision to the Second Circuit Court of Appeals. After argument there, the Second Circuit Court of Appeals reversed the Federal Trade Commission, holding that A. P. W. Paper Co. had a right, under the statute of 1905, to use the insignia and name.

The Federal Trade Commission took it on up by certiorari to the Supreme Court of the United States. The matter was fully briefed and argued there.

The Supreme Court of the United States held without dissenting opinion that the A. P. W. Paper Co. had the right to use the insignia "Red Cross" and the name and, in the course of the opinion of the Supreme Court of the United States, they commented rather fully upon the legislative background of the 1910 act, and they pointed out that when the Congress enacted this law in 1910, the committee of Congress said in its report:

We are not only protecting the position of the American National Red Cross, but we are also protecting the vested property right of these companies who used this trademark prior to 1905.

And after that discussion, and based upon that principle of law enunciated in that opinion, the Supreme Court of the United States held without dissent that the A. P. W. Paper Co. had the right to use that insignia.

Now, it also said, however, that if the Federal Trade Commission wished to order this company and others to use some language which would negate any connection between that commercial company and the American National Red Cross, that the Trade Commission could do so. The Trade Commission did that.

So that since 1946 my recollection is each one of these companies, as it uses its trademark and insignia on the label of its file and on its advertising, says some language, "not connected with American National Red Cross," or something of that kind.

And since the order went into effect in 1946 or 1947, there have been no other proceedings of any kind by the Federal Trade Commission for any violation of any sort of such an order.

ESTABLISHED PROPERTY RIGHTS SHOULDN'T BE TAKEN AWAY
FROM THESE USERS

I would like to close on this note: The Congress of the United States has seen fit to recognize the rights of these 8 or 10 companies who have used this mark prior to 1905. The Supreme Court of the United States in 1946 reaffirmed and recognized the legal right given to these companies by that legislative enactment of 1910.

We suggest to this committee that it would be unthinkable to us, perhaps the word "unconscionable" is not too strong a word, if by treaty our established property rights, both legislatively and judicially established, would be taken away from these companies.

That is all, and I thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much, Mr. Clifford.

A. P. W. PAPER CO. FAVORS PROPOSED RESERVATION

Senator BARKLEY. Do you concur in the reservation Senator Tydings left here with us?

Mr. CLIFFORD. Yes, Senator Barkley.

We have sat in on the conferences that took place with the State Department representatives, and I believe that all of counsel representing the companies involved agree on the language finally arrived at in this reservation.

EFFECT OF THE PROPOSED RESERVATION

The CHAIRMAN. This is a simple reservation, however, and actually it merely interprets our understanding of the treaty. It doesn't necessarily bind the other man, the other countries.

I think that is the correct rule unless, of course, in accepting the treaties, under our ratification of the treaty, they assented to it.

Mr. CLIFFORD. That is my understanding of it, Senator, that it applies to the attitude existing within this country.

The CHAIRMAN. It is our understanding in ratifying the treaty, that it is a mere reservation.

Mr. Perry—

Senator SMITH. Mr. Chairman, I am very happy to just say a word on Mr. Perry. He is an old friend of mine and he lives near me in New Jersey, and I just want to welcome you here before the committee, Mr. Perry. He is representing Johnson & Johnson, of which he is counsel.

The CHAIRMAN. He is not a near neighbor of mine, but he is known down in Georgia as a very fine man.

I have known Mr. Perry; in fact, I think we had some legislation here in the Congress since I came here, dealing with this very subject matter, where we did put an exception into an act. What was the date of the act?

Mr. PERRY. 1944, sir.

Senator BARKLEY. You are not a member of the law firm of Johnson, Johnson, Johnson & Johnson, are you?

Mr. PERRY. No, sir.

The CHAIRMAN. All right, Mr. Perry. We will be very glad to hear you.

STATEMENT OF KENNETH PERRY, VICE PRESIDENT, JOHNSON & JOHNSON, NEW BRUNSWICK, N. J.

Mr. PERRY. Thank you, Mr. Chairman, and thank you, Senator Smith, for those very gracious remarks.

I prepared a statement which I think has largely been covered by the two gentlemen who preceded me, Senator Tydings and Mr. Clark Clifford, and if I may offer it for the record, I think that will suffice.

The CHAIRMAN. Yes.

Mr. PERRY. If I may do that, sir.

The CHAIRMAN. Yes; you may put your entire statement in the record.

Mr. PERRY. Mr. Freeman has the copies there which may be put before the members.

(The prepared statement submitted by Mr. Perry follows:)

STATEMENT OF KENNETH PERRY, OF JOHNSON & JOHNSON CO., ON THE GENEVA CONVENTION FOR THE AMELIORATION OF THE CONDITION OF THE WOUNDED AND SICK IN ARMED FORCES IN THE FIELD OF AUGUST 12, 1949

This is a memorandum in support of a reservation that will leave the domestic law of the United States unchanged.

This convention, which is the first of four adopted at the Geneva Conference and treated as a group under the title of "Geneva Conventions of August 12, 1949, for the Protection of War Victims," contains certain provisions, particularly articles 53 and 54,¹ which would terminate all trademark use in the United States of the red cross, symbol or words. This prohibition would apply to all use in the United States, regardless of the length of time the trademark has been used, and regardless of the fact that Congress by express legislation has heretofore recognized and preserved, unimpaired, use commenced prior to 1905.²

There are 9 or 10 parties engaged in substantial interstate commerce whose right to use the red cross to identify their goods has been so recognized and protected by the several acts of Congress. Four of these parties have used the mark for more than 75 years; all of them for more than 50 years.³

The use of the red cross as a trademark by these companies was well established before the American National Red Cross was out of its swaddling clothes. The valuable property rights built up in these brands by long continued usage (in no way connected with the American National Red Cross) should not be struck down and destroyed by provisions of a treaty that conflict squarely with a legislative policy of Congress.

A few have insisted for years upon complete forfeiture of these trademark properties without regard to the protection afforded by the fifth amendment of our Constitution and the fact that Congress settled the issue definitely in 1910. In *Loonen v. Deutsch* (189 F. 487, 492) (Circuit Court S. D., N. Y.), Judge Learned

¹ Article 53 of the Geneva convention of August 12, 1949, for the amelioration of the condition of wounded and sick in armed forces in the field provides in part (p. 42):

"The use by individuals, societies, firms, or companies, either public or private, other than those entitled thereto under the present Convention, of the emblem or the designation 'Red Cross,' or any sign or designation constituting an imitation thereof, whatever the object of such use, and irrespective of the date of its adoption, shall be prohibited at all times."

Article 54 of said convention provides (p. 42):

"The High Contracting Parties shall, if their legislation is not already adequate, take measures necessary for the prevention and repression, at all times, of the abuses referred to under Article 53."

² The act of June 6, 1900, incorporating the American National Red Cross, placed no limitation on trademark use of the red cross, though this subject had then been before the Congress a number of years.

By sec. 4 of the American Red Cross Act of January 5, 1905 (36 U. S. C., sec. 4), Congress made it unlawful "for any person or corporation, other than the Red Cross of America, not now lawfully entitled to use the sign of the Red Cross, hereafter to use such sign or any insignia colored in imitation thereof for the purposes of trade or as an advertisement to induce the sale of any article whatsoever."

The foregoing section was amended by the act of June 23, 1910 (36 U. S. C., sec. 4), the Congress clarifying its exemption as follows:

"That no person, corporation, or association that actually used or whose assignor actually used the said emblem, sign, insignia, or words for any lawful purpose prior to January fifth, nineteen hundred and five, shall be deemed forbidden by this Act to continue the use thereof for the same purpose and for the same class of goods."

The provisions of the act of 1910 were reenacted by the Congress in codification of the United States Criminal Code in 1948 as amended 1949 (18 U. S. C. A., sec. 706).

³ The following is a list of parties whose use of the red cross as a trademark is protected by existing statutory enactment: J. B. Canepa Co. of Chicago, user since 1872, some 83 years (macaroni products); Charles B. Silver & Son, user since 1876, some 79 years (canned vegetables); Johnson & Johnson, user since 1879, some 75 years (surgical dressings); A. P. W. Products Co., Inc., user since 1897, some 58 years (toilet tissues); United States Shoe Corp., user since 1898, some 57 years (ladies' shoes); Red Cross Chemical Works, user since 1876, some 79 years (toothache drops); and Southern Spring Mattress Co., International Salt Co., and Red Cross Drug Stores of Wisconsin, users since a date unknown to us, prior to 1905.

Hand, as long ago as 1911, in speaking of the acts of 1905 and 1910 which permitted the use of the red cross as a trademark, stated:

"Whatever may have been the policy before, Congress has now definitely declared in the proviso of the latter act that it would permit such marks if they antedated 1905. Congress had power so to legalize the use of it; the question of public policy was for it and for it alone, and it is now finally closed."

Despite the unequivocal language of the act of 1910, there have been recurrent unsuccessful assaults in Congress and in the courts upon the rights of long-time users to continue the use of their trademarks.⁴ Confirming the view of Judge Hand, above, the Supreme Court stated at page 202 of the case cited below:⁵

"* * * the fact remains that the good faith use of the mark by the pre-1905 users was intended to be preserved unimpaired."

The prohibition proposed in the present treaty is merely another attempt to achieve indirectly what the few proponents of forfeiture have not been able to achieve by presenting the issue directly to the Congress. The present effort is clearly one to bypass the Congress.

The Congress has assumed jurisdiction and considered this question on more than a score of occasions over the past 65 years. This is not a question for the decision of two delegates at a Diplomatic Conference in Geneva who would thus repeal an act of Congress unless a reservation is asserted.

We request a reservation that will leave unchanged the domestic, internal law of trademark use of the red-cross symbol within the United States. We suggest as language that may be appropriate:

"Whereas the United States under its domestic law has recognized and protected certain rights and uses, which have continued from a time prior to 1905, of the emblem of the Red Cross, the Greek Red Cross on a white ground, signs or insignia made or colored in imitation thereof, and the word 'Red Cross' and 'Geneva Cross,' including any combination of these words, the United States, in ratifying the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field dated August 12, 1949, does so with the reservation that irrespective of any provision or provisions in said convention to the contrary, nothing contained therein shall make unlawful, or obligate the United States of America to make unlawful, any use or right of use within the United States of America and its territories and possessions of the Red Cross emblem, sign, insignia, or words as was lawful by reason of domestic law and a use begun prior to January 5, 1905."

Dated: Washington, D. C., June 3, 1955.

Respectfully submitted,

JOHNSON & JOHNSON,
By KENNETH PERRY,
Vice President.

⁴ Up to and including 1944, some twenty-and-odd bills. (See chart entitled "Congressional History of Red Cross Trademarks.") Congress rejected all such efforts.

⁵ The Supreme Court in *Federal Trade Commission v. A. P. W. Paper Company* (328 U. S. 193 (1946)), confirmed and enforced the congressional policy.

Congressional history of Red Cross trademarks

1881	Incorporation of American Association of the Red Cross under laws of District of Columbia.	-----	No proposal to prohibit trademark use.	
1882	United States adheres to Geneva Convention.	-----		
1887	H. R. 11001: To incorporate the American Committee of the Red Cross Association.	No action taken-----		
1888	H. R. 36998: Same as H. R. 11001.	do-----		
1890	S. 4262 and H. R. 11566: Incorporation bills, to prohibit trademark use.	do-----		
1892	H. R. 9266 and S. 3404: To prohibit trademark use.	do-----		
1893	H. R. 49: To prohibit trademark use.	do-----		
1894	H. R. 5580: To prohibit trademark use; but Senate Foreign Relations Committee amended to strike out this provision.	President did not sign-----		
1897	S. 19193: To prohibit use by other charities.	Passed Senate; rejected in House.		
1900	{ S. 2931: Prohibits use by other charities.	Became act of June 6, 1900.		No law limiting trademark use until 1905.
	{ H. R. 8061: Same as S. 2931.	1st Federal statute.		
1904	{ S. 5704: Reincorporation; limited commercial use to those then "lawfully entitled to use the sign."	Became act of Jan. 5, 1905.		
	{ H. R. 16449: Same as S. 5704.	2d Federal statute.		
1909	H. R. 27473 and S. 9281 and S. 496: To limit use to marks registered.	No action taken.		
1910	S. 6877 and H. R. 22311: Limited use to (a) pre-1905 users, and (b) "for the same purpose and for the same class of goods."	Passed House; no Senate action.		
1919	H. R. 14430: To prohibit trademark use.	Became act of June 23, 1910.		
1919	H. R. 14430: To prohibit trademark use.	3d Federal statute.		
1936	S. 4667: Limits use of white cross on red ground to those who had used "for 10 years next preceding" effective date.	Became act of June 23, 1910.	Law now in force.	
	H. R. 12792: Same as S. 4667.	3d Federal statute.		
1942	{ H. R. 6911, H. R. 7221, H. R. 7337, H. R. 7420, and S. 2441 of 77th Cong., and S. 469, S. 470, and S. 1398 of 78th Cong. To terminate trademark use (periods of discontinuance ranging from 1 to 25 years).	Extensive hearings; 1 bill passed Senate, but not House; no floor action on others.		
1943				
and				
1944				
1946	Supreme Court decides that pre-1905 users may continue.			
1947	S. 591: Amended charter of American National Red Cross Society.	Hearings in House only; no further action.		
1948	Recodification of Criminal Code reaffirms rights of trademark owners.	Became law of June 20, 1936.		
1951	Geneva Convention of 1949: Would terminate trademark use, contrary to all earlier acts of Congress.	Passed House only after assurance in floor debates that bill would not change status of trademark users; became act of May 8, 1947.		
		4th Federal statute.	Now before Senate.	
		Became act of June 25, 1948; 5th Federal statute.		
		Submitted for ratification.		

Mr. PERRY. I would like to confine myself to answering 1 or 2 questions that have arisen, and any other questions that may be brought up.

QUESTION OF COMPANIES' OUTDOOR USE OF THE EMBLEM

First, on the outdoor use, no company of which we are aware makes outdoor use or has made outdoor use since 1942, and I can speak, I am sure, for all those six here, as Senator Tydings did, that none expects to or intends to. I think, therefore, it is rather academic.

There is implementing legislation to be offered with regard to these treaties, and if there should be in that implementing legislation a provision which I understand is contemplated, prohibiting the outdoor use, none of those with whom I am familiar would have any objection to it at all, and I think possibly that is the proper solution to that particular problem.

The CHAIRMAN. The size of the lettering on any outdoor—

Mr. PERRY. Any use at all, sir, on outdoor.

The CHAIRMAN. Well, any, but the size certainly could be controlled.

Mr. PERRY. Yes, sir.

NOT AWARE OF ANY USERS' SHIPMENTS ABROAD BEARING THE EMBLEM

Now, as to the shipments overseas, none are made of which I am aware. I am certain, for instance, that Johnson & Johnson does not make any shipments or use the symbol in any export.

PROBLEM OF INVENTORY DISPOSAL

Thirdly, Senator Smith, I believe that section 53 permits no time at all. I believe the provisions of the treaty in sections 53 and 54 are either self-executing or, in any event, obligate our Congress to pass legislation prohibiting the use immediately without any time allowed at all.

And, of course, that is an extremely great hardship, because many of us have millions, and I mean literally millions, of these small products, cotton, gauze, bandage, and adhesive on druggists' shelves and in wholesale inventory, and we estimated in 1951, when this was coming up for ratification, we had then on the shelves, outside of our own inventory, 31 million of those products on trade shelves.

I don't know how we could possibly handle the matter of ridding that inventory, getting rid of it, the day after this treaty is ratified, without reservation.

I think it brings up, too, the fact that the treaty is not the proper method of handling this problem: that if there should be any additional limitation proposed or needed, it is one for legislation and not for a treaty operation.

EFFECT OF THE PROPOSED RESERVATION

Finally, Senator George, as to whether or not this would require assent on the part of the other adhering powers, it is my understanding of a recent decision of the World Court, contrary to an earlier suggestion in the Law Division of the United Nations, that a reservation, especially one that does not go to the substance and affects, as this one does, only domestic internal use within the United States, does not affect the validity of the treaty, as a whole.

It certainly does not in the absence of a dissent usually within 6 months—and you will notice there is a period of 6 months for going into effect of this treaty after ratification—unless there be a dissent by some other hearing power.

But in the particular case, and we have given study to this, too, as citizens, and we think we are interested in seeing these treaties fully in effect in protection of our Armed Forces and our citizenry, that this does not go to the substance. It is strictly a matter of domestic internal use within the United States.

We think it is an improper matter for treatment of a treaty, and we don't think it affects the validity of the treaty.

DESIRE RESERVATION LEAVING DOMESTIC LAW UNCHANGED

All we ask, very respectfully, is that there be a reservation that leaves the internal domestic law unchanged. Now, as I said, I want to spare this committee the burden of cumulative evidence, so I merely thank you very much.

Senator SMITH. Mr. Perry, I didn't quite understand whether you approve this draft that Senator Tydings presented.

Mr. PERRY. Yes, Senator Smith, most heartily.

Senator SMITH. That covers your point?

Mr. PERRY. Yes, sir; it does.

And, as Senator Tydings says, we have worked long and diligently and ardently with everyone whom we thought at all concerned, in an effort to arrive at one that would be satisfactory to all parties.

The CHAIRMAN. Mr. Robert P. Smith.

Before you proceed; did you wish to make a statement, Governor?

Mr. BRUCKER. I did, Senator, when the people are through with the presentation of the Red Cross matter, and I would be very happy to yield at this point to Mr. Smith.

**STATEMENT OF ROBERT P. SMITH, ATTORNEY, REPRESENTING
THE GRAND IMPERIAL ECCLESIASTICAL AND MILITARY ORDER
OF THE RED CROSS OF CONSTANTINE**

Mr. SMITH. Mr. Chairman, and members of the committee, I shall not tarry very long. I represent the Masonic organizations, and particularly the Red Cross who have used the names and emblems of these organizations many, many years prior to the institution of the American Red Cross.

I have a statement which is very short, and I think that the presentation here by the industrial organization applies as well to us, and that the reservation which has been proposed here will protect fully all of the Masonic organizations and other organizations that have used these insignia and emblems.

Senator MANSFIELD. Mr. Smith, may I ask a question there?

Mr. SMITH. Yes, sir.

Senator MANSFIELD. Would it be all right if you were to file your statement and allow us to ask you a few questions?

The CHAIRMAN. The stenographer will incorporate your statement in the record.

(The prepared statement of Mr. Smith is as follows:)

**STATEMENT OF ROBERT P. SMITH, COUNSEL, GRAND IMPERIAL COUNCIL OF THE
IMPERIAL ECCLESIASTICAL AND MILITARY ORDER OF THE RED CROSS OF
CONSTANTINE AND APPENDANT ORDERS FOR THE UNITED STATES OF AMERICA,
MEXICO, AND THE PHILIPPINES, WASHINGTON, D. C.**

Mr. Chairman and members of the committee, I represent the Red Cross of Constantine, one of the Masonic group of organizations, founded on religious principles, which organization existed as early as 313 A. D. It existed in England and Scotland as early as 1760 and was brought to this country in 1783 and has continued to exist in the Western Hemisphere since that date, deriving its authority from the British Conclaves, and conclaves were instituted in this country and Canada as early as 1869, long prior to the founding and establishment of the American National Red Cross. The organization thus acquired by constant usage a right to the use of the name "Red Cross", which is a property right protected by our Constitution and the common law. Many of the Masonic bodies and religious organizations use the "Red Cross" as its emblem and insignia and I speak also in behalf of those organizations.

Under the proposed treaty which is now before your committee for study and recommendation for ratification by the Senate, article 53 thereof seeks to prevent the use by individuals, societies, firms or companies, either public or private, of the emblem or designation "Red Cross" or "Geneva Cross" and seems to grant such prior users of the emblems, designations, signs or marks a limit of 3 years to discontinue such use.

The American National Red Cross was incorporated by act of Congress on June 6, 1900, and by numerous subsequent acts of Congress the charter has been amended, but in each case the legitimate prior users of the red cross emblems, designations, signs, or marks have been protected. On May 15, 1900, a bill was introduced in Congress providing, among other things, "That it shall be unlawful for any person or association of persons within the jurisdiction of the United States to wear or display the sign of the "red cross." This bill was amended to add thereto, "except where the same is now used by any secret organizations," and particular reference was made to the Order of the Red Cross in Masonry. The amendment passed, and since that date, in all the more than 20 efforts of the American Red Cross to have a similar provision written into law, Congress has resisted such legislation and has continued to protect the rights of legitimate prior users.

By the provisions of article 53 of this treaty, they are attempting to do by treaty what they were prohibited from doing by legislation.

The American National Red Cross, as it is chartered, is not possessed of the right of condemnation or eminent domain, but even if it were so possessed, under eminent domain and condemnation proceeding, property rights cannot be stricken down or destroyed except through the payment of just compensation.

The enactment of a law by Congress that would have taken away the legitimate rights of prior users of the word "Red Cross" would doubtless have been held to be unconstitutional under the authority of the cases of *Siegel v. Federal Trade Commission* (327 U. S. 608, 66 S. Ct. 758) and *Federal Trade Commission v. A. P. W. Paper Company* (328 U. S. 193, 66 S. Ct. 932). See also the decision in the case of *Loonan v. Deitsch* (189 Fed. 489), decided by the Court of Appeals for the Second Circuit, and the well-written opinion by Judge Learned Hand, one of the most eminent jurists of the country, defining the rights of the American National Red Cross with respect to legitimate prior users of the emblems and designations. Attention is also directed to 27 *Atlantic Law Review* (2d) 948, involving the case of the American Gold Star Mothers, and a well-reasoned decision by the Court of Appeals for the District of Columbia, in which most of the authorities pertaining to the protection of property rights in cases similar to this are collected. Property rights to use of names in this country are protected to the same extent that trade names and trademarks are protected.

The right to use the new "Red Cross" by the legitimate prior users is a sacred right protected by our Constitution and such right cannot be stricken down or destroyed without violating the "due process" clause of the fifth amendment.

There has been no confusion or interference by our organization with the activities of the American National Red Cross and, while we recognize the tremendous importance of the American National Red Cross and its activities and the difficulties of our State Department in dealing with these problems in concert with other nations, we, nevertheless, hold that there are other things in this country that are sacred and inviolate, and we here desire to raise our voice against the violation and destruction of these rights. We do not believe that persons designated to represent this country in a convention similar to the Geneva convention should be permitted to barter away these sacred rights guaranteed us by the Constitution and by our common law, and we suggest that this treaty be ratified with a suitable reservation protecting the legitimate prior users of the red-cross emblems, signs, and designations, and not permit the American National Red Cross to do by treaty what it could not do by legislation through many efforts.

I suspect that if this treaty is ratified without such a reservation, it will be in direct conflict with the rights and privileges guaranteed to citizens by our Constitution under the "due process" clause of the fifth amendment. We doubt that the simple reservation protecting property rights of prior usage of the emblems will materially affect the treaty. I wholeheartedly endorse the reservation suggested by the industrial concerns represented here today, which said reservation will likewise fully protect us.

QUESTION OF OUTDOOR ADVERTISING

Senator MANSFIELD. You do not use any outside advertising of any kind, do you?

Mr. SMITH. Except the wearing of the emblem.

Senator MANSFIELD. I mean you don't do any advertising on roofs or sides of factories or on the sides of automobiles?

Mr. SMITH. No, sir.

Those provisions would not affect us. We have nothing to sell. We are simply engaged in social work.

Senator MANSFIELD. What you are saying, in effect, Mr. Smith, is that your arguments would be practically the same as the arguments presented previously, and you would be in accord with those arguments?

Mr. SMITH. And I am in accord with the reservations made.

Senator MANSFIELD. That is all, Mr. Chairman.

The CHAIRMAN. Any questions?

(No response.)

The CHAIRMAN. Thank you very much, Mr. Smith.

Mr. SMITH. Thank you.

STATEMENT OF JOHN E. CASSIDY, ATTORNEY, REPRESENTING THE JOHN B. CANEPA CO., CHICAGO, ILL.

Mr. CASSIDY. Mr. Chairman and members of the committee, I am a practicing attorney in Illinois, and I am appearing as the personal counsel of the John B. Canepa Co., of Chicago.

I first wish to state that we have been in repeated conferences and closely associated with the other counsel representing companies in the same class described by Senator Tydings.

We are in thorough accord, and our company wishes to adopt the resolution—I mean, speak in favor of the resolution offered by Senator Tydings.

We would like the opportunity to present this very brief factual statement of the Canepa Co., which we believe obviously will demonstrate its equities in support of the right we are claiming here.

BACKGROUND OF THE CANEPA CO.

The company is a family corporation, and has been manufacturing macaroni and spaghetti products at its Chicago plant since 1860.

When their factory was rebuilt in 1872, after the great Chicago fire, they adopted the symbol and words "Red Cross" as their business trademark. August 1, 1899, the Canepa Co., then owned by two brothers, registered this trademark in the United States Patent Office, and then declared of record the red cross had been used continuously as their trademark since April 1872.

The Canepa Co. was incorporated in Illinois in 1905. However, before its incorporation, when it was a partnership, Canepa Bros. was the business name. Presently, it does business in 15 States, has 135 employees, and in 1954 its gross sales of Red Cross macaroni products were approximately \$3 million. It produces about 125,000 packages a day, carrying the trademark that I mentioned.

The Canepa macaroni business was founded in Chicago by David Tobino, stepgrandfather of the current president and vice president, John V. and James V. Canepa, respectively.

When Mr. Tobino retired, the business was carried on by his stepsons, John B. and James A. Canepa, uncle and father, respectively, of the present executives.

The manufacture of macaroni products is an inherited trade of the Canepa family. For several generations on both sides of the present executives the Canepas have been manufacturers of macaroni products. Even prior to that, their forebears were in the macaroni business in their native Genoa, Italy.

The adoption of their red cross trademark in 1872 was presumably inspired by the fact that red cross was the emblem or code of arms of the Duke of Genoa. Mr. Canepa, the president, who is here, has asked me to state his opinion that his company's red cross trademark has such an immeasurable value that he would not attempt to fix its value in dollars and cents, but if deprived of its use, they would suffer an irreparable property injury.

Thank you so much for the opportunity.

The CHAIRMAN. Thank you very much.

Mr. Thomas I. Underwood.

Mr. TYDINGS. I would like to say that he has been associated with us in the presentation of this reservation. He is not here this morning.

SOUTHERN SPRING MATTRESS COMPANY

The CHAIRMAN. I would like to make further inquiry. There is a manufacturer of mattresses down in Georgia that manufactures a Red Cross mattress, and did manufacture it, I think, prior to 1905, and I just wonder if he is represented here.

Mr. PERRY. Mr. Schwab is represented by Mr. Ernest Rogers—by his law firm in Atlanta, and we are, in a sense, speaking for him. We have collaborated and worked with him in preparation of the material and the presentation.

The CHAIRMAN. I suppose he would get whatever benefit there is if the facts in the case brought him within the terms of this reservation, if this reservation is approved as part of the treaty.

Mr. PERRY. I am sure, Mr. Chairman, this reservation would be totally satisfactory to that company.

Mr. TYDINGS. Mr. Chairman, I think the name of that company is the Southern Spring Mattress Co.; is that correct?

The CHAIRMAN. That is correct.

Mr. JACOBS. Mr. Chairman, there is sitting here the president of the United States Shoe Corp., which manufactures Red Cross shoes. I don't think we want to take the time to make a statement, but I have a short typewritten page showing the length of time they have been in business and the volume of their business, and so forth, which I would like the privilege of filing.

The CHAIRMAN. You may do so. Will you give the reporter your name?

Mr. JACOBS. My name is Carl M. Jacobs, Cincinnati, Ohio.

The CHAIRMAN. Thank you very much, Mr. Jacobs.

(The prepared statement submitted on behalf of the United States Shoe Corp. is as follows:)

My name is Joseph S. Stern and I am chairman of the board of directors of the United States Shoe Corp., with headquarters in Cincinnati, Ohio. I have been in the shoe business almost 40 years.

About 60 years ago, a cousin of mine started manufacturing Red Cross shoes and Red Cross shoes have been made continuously since that time. During that period there has been an almost uninterrupted progress until today the United

States Shoe Corp. employs 3,500 men and women in 7 factories, located in Ohio and Indiana; has an annual volume of \$30 million and has more than 1,500 stockholders scattered throughout the United States.

Our entire business has been built on advertising the Red Cross shoe and millions of dollars have been spent advertising this name. This trademark represents our very business and millions of women throughout America know the Red Cross shoe for the quality of our product.

In my opinion, if we were deprived of the use of this name and insignia, the company, our employees, and our stockholders would suffer irreparable damage.

The CHAIRMAN. I believe that completes the list of the witnesses that were scheduled.

Now, Governor Brucker, we will be glad to hear from you.

BALANCING THE EQUITIES IN CONNECTION WITH ANY RESERVATION

Mr. BRUCKER. Mr. Chairman and members of the committee, the purpose of my appearing before you again is in connection with this reservation that is proposed for the Red Cross emblem.

And I would like to say just a few words in that connection from the standpoint of the military, the Armed Forces.

The CHAIRMAN. We will be very glad to hear you, Governor.

Mr. BRUCKER. The problem here with respect to the use of the emblem in raising the equities that are involved is one that should be considered carefully, because on the side of the Armed Forces there is this to be said, and I am a great respecter and believer in the property values that have been mentioned here:

That the use of the Red Cross label, if it occurs out of doors upon buildings and upon trucks and other places where the label would be used or might be used, might raise a serious question in connection with the conduct of a war, and would dilute to a very serious extent the observation by the enemy of our markings of our hospitals and our places where the wounded and the sick and others are for purpose of treatment.

We must also think of it in connection with bombings, strafings, low flying and other raids, because while property is being considered, there must be balanced along with that the bodies and the lives and the health and the welfare of these people who are in the military services, and also now the general public.

I think from the defense standpoint, that it ought to be brought to the attention of the committee that we are not opposed to the observance of proper equities as far as the business, the industrial firms of this country are concerned, but that balanced against that, we have a very serious international problem with 46 other countries which, if we unilaterally make reservations that dilute the Red Cross emblem, are going to bring perhaps not only repercussions but failure to recognize even our own marked spots for the Red Cross emblem, both abroad and here.

So we have got to be mighty careful as to what the language of the reservation is, if it is to be made unilaterally, which, of course, is our only power to do.

I haven't had the opportunity to see this proposed reservation, and I will be very glad to go over it. I think that if we have the opportunity to study it, to see what its effect would be, that we could probably very much better comment than I can here upon the spur of the moment.

Our concern about it is not for the purpose of implementing some Federal Trade Commission objection or of helping some person who is a competitor, or any thing of the kind. Our objection, if it may be called that, is simply cautionary.

I know the great interest of the chairman and other members of this committee in world affairs. We must do nothing which will interfere with our international relations, and certainly in connection with any belligerency or active hostility or war.

And it is only because of that cautionary feeling that I have that this dilution of the Red Cross label might come about, that I urge upon the committee to give attention to this unilateral action and to the language of the proposed reservation itself.

The CHAIRMAN. Governor, the committee will be very happy if you will take a copy of this reservation and file with the committee your observations and your comments.

The committee will be very glad, if you will call any member of the committee's staff in connection with it. I may say that the committee has a good staff, and there are members of that staff who are familiar with this problem, and we would be very glad for you to take this suggested language here, and furnish us with your comments.

Mr. BRUCKER. Thank you very much, Mr. Chairman. I will be glad to do it.

Mr. TYDINGS. Mr. Chairman, would it be improper if we would ask that any suggestions or papers filed by Governor Brucker with the committee, that we have a chance also to look at them?

The CHAIRMAN. Oh, yes; the committee will be happy to see that you have copies.

Mr. TYDINGS. If the Governor will be kind enough to send me a copy.

Mr. BRUCKER. I most certainly will.

LETTER FROM FORMER SECRETARY OF THE NAVY FORRESTAL ON USE OF RED CROSS EMBLEM

Mr. PERRY. Mr. Chairman, may I offer a letter from Secretary James Forrestal, addressed to the very point that Governor Brucker was making?

Back in 1942 and 1944, during the war, the suggestion was that there would be some jeopardy to our Armed Forces and to our people in the continued use during the war of the symbol of the Red Cross as a trademark.

There were lengthy hearings held for 3 years, 1942, 1943, and 1944. Mr. Sol Bloom, chairman of the Foreign Affairs Committee, wrote to the Secretary of the Army and the Secretary of the Navy separately after the war was over, in 1946, asking whether there had been evidence, a single instance, where there had been any jeopardy or any hazard or any detriment in the continued use of the trademark.

I have here a photostatic copy of the letter that Secretary Forrestal wrote to Mr. Bloom under date of September 24, 1946. Mr. Forrestal was Secretary of the Navy at that time. It reads as follows:

DEAR MR. BLOOM: This will acknowledge your letter of September 15, 1946, regarding the use of the Red Cross name and emblem.

Navy Department files again have been thoroughly searched without disclosing any instance or record of complaints from any source concerning the use of the Red Cross name or emblem.

If you have any specific details pertaining to your query I shall be glad to receive them.

And a letter of similar import was received from the War Department, dated October 1, 1946. I think these letters are an answer to the apprehension that the commercial people might have misused the symbol during the war period. There was not a single instance of confusion or difficulty of any character. The reservation we request would merely leave us in exactly the same position we were then.

The CHAIRMAN. Very well.

This ends the public hearing on these conventions.

The committee will be glad to receive any statement from the only witness which did not appear, Mr. Thomas I. Underwood, who may wish to submit a statement by way of a brief. The staff will communicate with Mr. Underwood.

(Whereupon, at 1 p. m., the committee adjourned.)

APPENDIX

DEPARTMENT OF DEFENSE,
OFFICE OF GENERAL COUNSEL,
Washington 25, D. C., June 6, 1955.

HON. WALTER F. GEORGE,
Chairman, Committee on Foreign Relations,
United States Senate.

DEAR SENATOR GEORGE: This is in response to the request which you made during the hearings on the Geneva conventions for the protection of war victims of August 12, 1949, that the executive branch consider and comment on the draft reservation to the conventions submitted on behalf of a group of pre-1905 users of the Red Cross emblem.

While I am fully cognizant of the considerations calling for the continued use of the Red Cross emblem of pre-1905 users, I nevertheless, consider it important that proper respect be accorded to the Red Cross emblem so that it may continue to provide effective protection to the wounded and sick, and those who minister to them. The fact that the conventions have broadened the categories of persons and facilities enjoying the right to be identified by the Red Cross serves to emphasize the need for preventing the use of this emblem in a manner inconsistent with its humanitarian purposes.

We have examined with care the draft reservation submitted on behalf of a group of pre-1905 users. We are, however, deeply concerned by the fact that the draft reservation places no restrictions whatsoever upon the specific types of outdoor uses to which the emblem may legally be devoted by pre-1905 users. The marking of buildings and other structures or of motor vehicles with the Red Cross, particularly in time of war or when war is imminent, could jeopardize the protection of all facilities, objects, and persons who are authorized by the Geneva conventions of 1949 to bear this identifying sign. Although a number of pre-1905 users have, through their counsel, given assurances that they will not mark their buildings with the Red Cross emblem, I, nevertheless, think it desirable to include provisions in this regard both in any proposed reservation and also in such legislation as may hereafter be enacted for the protection of the Red Cross emblem.

In order to preclude the employment of the Red Cross emblem in such a way as to cause confusion between persons and objects which are protected and those which are not, we think that the draft reservation should be amended by striking the period at the end thereof, substituting a comma therefor, and adding the following words: "Provided such use by pre-1905 users does not extend to the placing of the Red Cross emblem, sign, or insignia upon aircraft, vessels, vehicles, buildings or other structures, or upon the ground."

If the Foreign Relations Committee of the Senate should, in its discretion, decide that a reservation to articles 53 and 54 of the Geneva convention for the amelioration of the condition of the wounded and sick in armed forces in the field of August 12, 1949, is desirable, the executive branch would have no objection to such a reservation in the form indicated above.

I am authorized to say that the Departments of State and Justice concur in this letter. A copy of this letter is being sent to counsel for the proponents of the reservation.

Sincerely yours,

WILBER M. BRUCKER,
General Counsel.

DEPARTMENT OF JUSTICE,
Washington 25, D. C., June 7, 1955.

HONORABLE WALTER F. GEORGE,
United States Senate, Washington, D. C.

MY DEAR SENATOR GEORGE: During the hearing before the Senate Committee on Foreign Relations on June 3, 1955, on the Geneva conventions of 1949, several members of the committee raised questions which deserve more detailed answers.

Thus, Senator Hickenlooper inquired whether the articles of the convention dealing with "grave breaches" would, upon ratification of the conventions by the United States, enlarge the legislative powers of Congress. The articles in question are articles 49 and 50 of the convention for the amelioration of the condition of the wounded and sick in armed forces in the field, articles 50 and 51 of the convention for the amelioration of the condition of the wounded, sick and shipwrecked members of armed forces at sea; articles 129 and 130 of the prisoner of war convention; and articles 146 and 147 of the civilian convention. These articles dealing with grave breaches are identical in the four conventions except the enumeration of the violations of a particular convention which constitute grave breaches varies somewhat with the subject matter of the conventions.

Article I, section 8, clause 10, of the Constitution expressly empowers Congress "to define and punish * * * offenses against the law of nations." In *United States v. Arjona* (120 U. S. 479) the Supreme Court sustained the power of Congress, under article I, section 8, to enact a criminal statute prohibiting counterfeiting of foreign currency within the United States. More recently in *Ex parte Quirin* (317 U. S. 1) and *In re Yamashita* (327 U. S. 1) the Supreme Court held that Congress had power under article I, section 8, to provide for the trial and punishment of offenses against the law of war (as a part of the law of nations) as defined in the Hague Regulations or elsewhere in international law. It is significant that neither the *Quirin* nor *Yamashita* cases involved any treaty obligation of the United States to provide penal sanction for violation of the law of war.

Independently of the existence of offenses against the law of nations or of any treaties for the protection of war victims, Congress has broad authority under the Constitution to provide penal sanctions for the mistreatment of such persons. Under its war powers as set forth in the Constitution, Congress could regulate the treatment accorded by the United States to enemy sick and wounded, prisoners of war, civilian internees, and the inhabitants of territory occupied by our Armed Forces. It can enact the criminal sanction required to prevent interference with the discharge of these necessary war functions. Also, such legislative power may be found in more specific provisions of the Constitution. Thus, exercising its power under article I, section 8, clause 14, "to make rules for the government and regulation of the land and naval forces," Congress could provide penal sanctions for the mistreatment of such persons by members of our Armed Forces. Consequently, the conventions would not create in the Congress a power to impose penal sanctions in this area which it would otherwise lack under the Constitution.

A review of existing legislation reveals no need to enact further legislation in order to provide effective penal sanctions for those violations of the Geneva conventions which are designated as grave breaches. Under the Uniform Code of Military Justice, military courts already have jurisdiction to try for violations of the laws of war members of our own Armed Forces, captured enemy military personnel, and the inhabitants of occupied territory. Moreover, since most of the acts designated as grave breaches would violate our Federal and State penal laws, they could be tried in our civil courts if committed within the United States.

In a related question, Senator Mansfield asked whether the articles dealing with grave breaches could result in imposing criminal liability upon persons without official status. Generally, the acts designated as grave breaches are to be treated as such only when they are in some way the result of action by civilian or military agents of a detaining or occupying power in violation of the conventions. Moreover, as a practical matter, only persons exercising governmental authority ordinarily would be in a position to commit grave breaches against protected persons, such as the serious mistreatment of prisoners of war, sick and wounded of the armed forces, civilian internees, or the inhabitants of occupied territory. We are reluctant to state that the mistreatment of a person protected by the conventions by a private person (e. g., the killing of a wounded airman) could never constitute a grave breach no matter what the intent and

circumstances. However, it is entirely clear that these provisions of the conventions were not intended to convert into grave breaches every common crime in which the victim happens to be a person protected by the conventions.

During the hearing before the committee on June 3, there may have been a misunderstanding as to whether, upon ratification of the conventions, it will be necessary for the United States to enact any legislation to implement and comply with the conventions. Actually, the United States will be required to enact only relatively minor legislation clearly within the power of Congress. The problem of continued use of the Red Cross emblem by commercial users in this country has already been presented to the committee. In addition it should be noted that title 18 United States Code 706 presently limits the use of the Red Cross emblem to the American National Red Cross and to the medical services of the Armed Forces (in addition to the pre-1905 commercial users). However, the Geneva conventions of 1949 for the first time authorized the use of the protective Red Cross emblem by the International Committee of the Red Cross, civilian hospitals and their personnel, and convoys of vehicles, hospital trains, and aircraft conveying wounded and sick civilians. It would seem to be appropriate to amend section 706 to permit such additional uses of the emblem, and the agencies concerned will recommend to the Congress legislation to this effect.

Article 53 of the convention for the protection of the sick and wounded also prohibits private or commercial use of the emblems of a red crescent on a white background and a red lion and sun on a white background, which are used, respectively, by Turkey and certain other Moslem countries and by Iran, in place of the Red Cross emblem. However, this prohibition of article 53 is by its express terms "without any effect upon any rights acquired through prior use." Since we have no legislation restricting the use of these emblems, the United States will be obligated to enact legislation (as by amending 18 U. S. C. 706) prohibiting the private and commercial uses of such emblems, excepting the rights acquired by prior use.

Similarly, article 23 of the Prisoner of War Convention provides that only prisoner of war camps shall be marked "PW" or "PG" (prisonniers de guerre), while article 82 of the Civilian Convention provides that no place other than internment camps shall be marked "IC". It would seem that the United States should provide penal sanctions for misleading use of these designations.

Depending upon whether civilian internees in a future conflict work for public or private employers, and depending upon the type of work they perform, it might be necessary to implement article 95 of the Civilian Convention with legislation providing workmen's compensation protection where it would not be available under existing Federal and State legislation. However, consideration of such legislation might be deferred until such time as the problem may be presented in more specific form.

Article 74 of the Prisoners of War Convention and article 110 of the Civilian Convention provide that all relief shipments for prisoners of war and civilian internees shall be exempt from import, customs and other duties. Although title 19 United States Code 1318 provides that during a war or national emergency the President may authorize the Secretary of the Treasury to permit the duty-free importation of food, clothing, and other supplies for use in emergency relief work, it was apparently considered necessary in World War II to enact specific legislation (act of June 27, 1942, 56 Stat. 461, 462) to implement article 38 of the 1929 Prisoner of War Convention by providing for the exemption from all duties and customs charges of articles addressed to prisoners of war and civilian internees in the United States. Accordingly, it may be appropriate to revive this statute to comply with the Geneva conventions of 1949.

I may say that the Departments of State and Defense concur in the views stated above. Please advise me if I can be of further assistance to the committee.

Sincerely yours,

J. LEE RANKIN,
Assistant Attorney General, Office of Legal Counsel.

LETTER OF MARCH 29, 1955, FROM SECRETARY OF STATE TO CHAIRMAN OF THE
FOREIGN RELATIONS COMMITTEE, AND ENCLOSURE

DEPARTMENT OF STATE,
Washington, March 29, 1955.

HON. WALTER F. GEORGE,
United States Senate.

DEAR SENATOR GEORGE: From April 21 to August 12, 1949, at the invitation of the Government of Switzerland, a Diplomatic Conference for the Establishment of International Conventions for the Protection of War Victims was held in Geneva, Switzerland. Fifty-nine governments sent delegations to participate therein. The main purpose and chief result of the Conference was the formulation and adoption of four conventions, usually referred to as the "Geneva Conventions of 1949," namely, (1) convention for the amelioration of the condition of wounded and sick in armed forces in the field; (2) convention for the amelioration of the condition of wounded, sick, and shipwrecked members of armed forces at sea; (3) convention relative to the treatment of prisoners of war; and (4) convention relative to the protection of civilian persons in time of war.

On April 26, 1951, the conventions were transmitted to the Senate with a request for consideration and advice and consent to ratification. Subsequently, the Department of State suggested that the Senate should not act on them in view of the Korean conflict. At the present time, however, 47 nations have ratified or acceded to the conventions, making it a matter of importance to the United States, and to many other nations, that the Senate take action with respect to the conventions. Therefore, I am transmitting herewith a statement supplementing the report and detailed commentaries accompanying the Presidential message by which the conventions were referred to the Senate (S. Ex. D, E, F, and G, 82d Cong., 1st sess.). The supplementary statement now transmitted contains new material, and deals with the present status of the conventions, the character of the various reservations made to the conventions by certain states, and the application of the conventions in Korea, particularly with reference to article 118 of the Prisoners of War Convention and the question of asylum. It is believed that this information will be of particular importance and interest to the Senate in connection with its consideration of the conventions.

At the time the conventions were submitted to the Senate, a request was made that, in the event the Senate advises and consents to the ratification of the convention relative to the protection of civilian persons in time of war, it do so subject to a reservation regarding the right to impose the death penalty in accordance with the provisions of article 68, paragraph 2, without regard to whether the offenses referred to therein are punishable by death under the law of the occupied territory at the time the occupation begins. The executive branch still desires that the Senate approval be accompanied by such a reservation.

Certain reservations have been made by other governments to articles 10, 12, and 85 of the respective conventions as explained in the accompanying statement. It is particularly recommended that this Government should not accept these reservations. The United States should, however, express its intention to enter into treaty relations with the reserving states so that they will be bound toward the United States to carry out all the provisions of the conventions on which no reservations were specifically made. It should be clear that we hope that the reserving states will at some time elect to withdraw their reservations and become bound by the reserved balance of the conventions. If they do not, and if in the event of conflict reserving states seek to use their reservations in an unwarranted fashion so as to defeat the broad humanitarian purposes of the conventions, the United States would, of course, be in a position to consider that it was not required further to apply the conventions vis-a-vis such defaulting states. The executive branch is prepared to discuss with the Committee on Foreign Relations a statement with this general effect to accompany the United States instruments of ratification.

Experience in World War II made apparent the need for revision of the previous conventions applicable to prisoners of war and the wounded and sick, and for a separate convention defining the treatment to be accorded certain categories of civilians in wartime. The conventions as formulated generally reflect United States practice and prescribe methods of conduct which the United States would attempt to pursue in absence of such treaties. Historically, this Nation has always taken pride in its leading role of helping to establish and apply

humane standards for the protection of the wounded, sick, and defenseless in time of war. The United States from the beginning supported the initiative taken by the International Committee of the Red Cross in the fall of 1945 to revise and extend the previous conventions.

Accordingly, I believe the United States should no longer delay action; that it should clearly manifest its interest in these humanitarian conventions by ratification of them. I say this not in the belief of the inevitability of armed conflict, but with the thought that this Nation should associate itself with conventions which are designed to alleviate the sufferings of any victims in the event of a future conflict. Our participation is needed to enlist the authority of the United States in their interpretation and enforcement and to enable us to invoke them for the protection of our nationals.

For the foregoing reasons, it is hoped that the conventions may receive early and favorable consideration by the United States Senate.

Sincerely yours,

JOHN FOSTER DULLES.

(Enclosure: Statement on the Geneva Conventions of 1949.)

STATEMENT OF THE GENEVA CONVENTIONS OF 1949

I—STATUS OF THE CONVENTIONS

The four conventions, which entered into force on October 21, 1950, have been ratified by the following signatories: Austria, Belgium, Bulgaria, Byelorussian Soviet Socialist Republic, Chile, Cuba, Czechoslovakia, Denmark, Ecuador, Egypt, El Salvador, Finland, France, Guatemala, Hungary, the Holy See, India, Israel, Italy, Lebanon, Liechtenstein, Luxembourg, Mexico, Monaco, the Netherlands, Nicaragua, Norway, Pakistan, the Philippines, Poland, Rumania, Spain, Sweden, Switzerland, Syria, Turkey, Ukrainian Soviet Socialist Republic, the Union of Soviet Socialist Republics, and Yugoslavia. Adherences have been deposited by the Federal Republic of Germany, Japan, Jordan, Liberia, San Marino, Thailand, the Union of South Africa, and Vietnam.

II—RESERVATIONS TO THE CONVENTIONS

At the time of signing the conventions, reservations were made by certain of the signatory states. Those reservations have been confirmed by each of the reserving states which has since ratified the conventions upon deposit of its instrument of ratification. It is anticipated that the other reservations will likewise be maintained when ratification takes place. Subject to the possibility that a state which is or becomes a party should seek to establish that the reservations are such as to preclude the reserving states from becoming a party at all in the absence of consent from all states concerned, the conventions have come or will come into force for the reserving states with their reservations maintained.

RESERVATION BY THE UNITED STATES AND OTHER STATES TO ARTICLE 68 OF THE CIVILIAN CONVENTION

The United States only reservation at time of signature was with respect to article 68 of the convention relative to the protection of civilian persons wherein there are set forth certain restrictions upon the imposition of the death penalty in occupied territory. The article provides that the occupying power may impose the death penalty upon protected persons in occupied territory for violation of its penal provisions issued and promulgated under articles 64 and 65 only in cases where the person is guilty of espionage, of serious acts of sabotage against the military installations of the occupying power, or of intentional offenses which have caused the death of one or more persons. The United States was willing to bind itself not to impose the death penalty for violation of occupying orders except for these three offenses. However, article 68 further provides that even in those cases the death penalty can be imposed only if such offenses were punishable by death under the law of the occupied territory in force before the occupation began.

Adoption of this limitation at the Geneva Conference was brought about by those countries with recent experience under military occupation in which the death penalty was imposed upon a wholesale basis and by those countries which have abolished the death penalty in their penal systems. The United States and

the United Kingdom strongly opposed the limitation in terms of the local law upon the ground that, unless an occupying power possessed power to take drastic legal action against illegal combatant activities, it would be unable to protect itself against such activities. For these reasons the United States signed the Civilian Convention with a reservation which reserves the right to impose the death penalty in accordance with the provisions of article 68, paragraph 2, without regard to whether the offenses referred to therein are punishable by death under the law of the occupied territory at the beginning of the occupation. A similar reservation to article 68 was also made by Canada, New Zealand, the Netherlands, and the United Kingdom. Argentina also made a reservation with respect to article 68, but phrased it in general terms and did not relate it specifically to paragraph 2 thereof.

COMMON ARTICLE 10

Common article 10 (art. 11 of the Civilian Convention) provides for substitutes for protecting powers when protected persons for any reason do not benefit by the activities of such a power. In such an event, the detaining power is required unilaterally to request a neutral state or an impartial humanitarian organization to undertake the functions performed by a protecting power. If such protection cannot be arranged, the detaining power is obligated to request or accept the offer of the services of a humanitarian organization, such as the International Committee of the Red Cross, to assume the humanitarian functions performed by protecting powers.

These provisions were opposed at the Geneva Conference by the delegations of the Soviet bloc states (Albania, Bulgaria, Byelorussia, Czechoslovakia, Hungary, Poland, Rumania, the Ukraine, and Union of Soviet Socialist Republics), Portugal, and Yugoslavia on the basis that they diminish the belligerent rights of the state on which the protected persons depend. Accordingly, each of those states made a reservation thereto which stated that it will not recognize the validity of requests made by the detaining power to a neutral state or to a humanitarian organization to undertake the functions performed by a protecting power unless the consent of the government of the state of which the protected persons are nationals has been obtained.

ARTICLE 12 OF THE PRISONERS OF WAR CONVENTION

Article 12 of the Prisoners of War Convention (art. 45 of the Civilian Convention) contains provisions regulating the transfer of prisoners of war or protected persons from the capturing power to another power. Transfers between parties to the convention are recognized, but in such cases the transferring power must satisfy itself of the willingness and ability of the transferee power to apply the convention. Nevertheless, if the transferee power fails to carry out the convention, the transferring power, upon being so informed by the protecting power, must take effective measures to correct the situation or have the transferred persons returned to it. The transferee power is obligated to honor a request for their return. These provisions are a compromise between the view that once a transfer was made the transferring power should be relieved of further responsibility and the view that responsibility for transferees should at all times be joint. The Soviet bloc states and Yugoslavia supported the latter view and made reservations to the effect that they do not consider as valid the freeing of a detaining power, which has transferred prisoners of war and protected persons to another power, from responsibility for the application of the convention to such persons while in the custody of the power accepting them.

ARTICLE 85 OF THE PRISONERS OF WAR CONVENTION

Article 85 of the Prisoners of War Convention relates to the treatment of prisoners of war who are prosecuted and sentenced for precapture offenses. It provides that prisoners of war prosecuted under the laws of the detaining power for acts committed prior to capture shall retain, even if convicted, the benefits of the convention. The question whether such prisoners who might be war criminals should benefit in full by the guaranties of the convention the same as other prisoners of war was the subject of extensive controversy at the Geneva Conference. The Soviet bloc states proposed to add to the article: "Prisoners of war convicted under the laws of the country where they are in captivity for

war crimes or crimes against humanity, in accordance with the principles laid down at Nuremberg, shall be subject to the prison regime laid down in that country for persons undergoing punishment." This amendment was rejected by a large majority of the Conference, resulting in a reservation by the Soviet bloc states to the effect that they did not consider themselves "bound by the obligation, which follows from article 85, to extend the application of the convention to prisoners of war who have been convicted under the law of the detaining power, in accordance with the principles of the Nuremberg trial, for war crimes and crimes against humanity, it being understood that prisoners convicted of such crimes must be subject to the conditions obtaining in the country in question for those who undergo their punishment."

MISCELLANEOUS RESERVATIONS

Certain other reservations were made at the time of the signature of the conventions. Argentina, in addition to the reservation noted above, signed the conventions with a reservation that it would consider common article 3 (conflicts not of an international character) to be the only article, to the exclusion of all others, which would be applicable in the case of armed conflicts not of an international character. Brazil made two express reservations to the Civilian Convention; one in regard to article 44 (treatment of refugees) on the ground that it was liable to hamper the action of the detaining power, and another in regard to article 46 (cancellation of restrictive measures) on the ground that the matter dealt with in the second paragraph thereof was considered to be "outside the scope of the convention, the essential and specific purpose of which is the protection of persons and not of their property." Italy reserved in respect of the last paragraph of article 66 (settlement of prisoners of war accounts) of the Prisoners of War Convention.

As well as making a reservation regarding article 68, New Zealand also signed the civilian convention subject to the reservation that "in view of the fact that the General Assembly of the United Nations, having approved the principles established by the charter and judgment of the Nuremberg Tribunal, has directed the International Law Commission to include these principles in a general codification of offenses against the peace and security of mankind, New Zealand reserves the right to take such action as may be necessary to ensure that such offenses are punished, notwithstanding the provisions of article 70, paragraph I."

The Prisoners of War Convention was signed on behalf of Luxembourg with a reservation that its existing national law shall continue to be applied to cases now under consideration. Spain made a broad reservation to that convention, stating that in matters regarding procedural guaranties and penal and disciplinary sanctions, Spain will grant prisoners of war the same treatment as is provided by its legislation for members of its own national forces. Also, with respect to the phrase "international law in force" in article 99 (judicial proceedings against prisoners of war), Spain declared that thereunder it only accepts international law which arises from contractual sources or which has been previously elaborated by organizations in which it participates.

Portugal, along with the reservation to common article 10 previously mentioned, reserved the right to apply the provisions of common article 3, insofar as they may be contrary to the provisions of Portuguese law, in all territories subject to its sovereignty in any part of the world. With respect to article 13 of the Sick and Wounded Convention and article 4 of the Prisoners of War Convention, relating to categories of persons protected, the Portuguese Government made a reservation regarding the application of those articles "in all cases in which the legitimate government has already asked for and agreed to an armistice or the suspension of military operations of no matter what character, even if the Armed Forces in the field have not yet capitulated." Another Portuguese reservation provides that, with respect to article 60 (advances of pay) of the Prisoners of War Convention, Portugal in no case binds itself to grant prisoners a monthly rate of pay in excess of 50 percent of the pay due to Portuguese soldiers of equivalent appointment or rank on active service in the combat zone.

Finally, the failure of the Geneva Conference to accept the Red Shield of David as one of the distinctive signs and emblems provided for in the Sick and Wounded Conventions, evoked a reservation from Israel that it would use that emblem on the flags, armlets, and on all equipment employed in the medical services, and as the distinctive sign provided for in the Civilian Convention.

III—APPLICATION OF THE GENEVA CONVENTIONS IN THE KOREAN CONFLICT

APPLICABILITY OF THE CONVENTIONS

The Prisoners of War Convention

When the Korean conflict broke out, none of the early participants was party to the Geneva convention relative to the treatment of prisoners of war of 1949. During the course of hostilities, a number of the governments contributing troops to the unified command in Korea did ratify the convention. It was, however, the unified command, exercised by the United States, which acted as the detaining power in the Korean conflict, and not the various States contributing troops.

While the convention was not recognized as being in force with respect to the parties to the Korean conflict, both sides stated they would apply its principles. Statements by the United States, the Republic of Korea, and the North Korean regime had been made to this general effect by July 15, 1950, were never disavowed, and were supplemented by further statements on both sides.

There is no record that the Chinese Communist regime or the commander of its "volunteers" explicitly undertook to abide by the convention. However, the Foreign Minister of the Communist regime during the course of the Korean hostilities, on July 16, 1952, informed the Swiss Government that the Chinese Communist Government had decided to "recognize" the Geneva Conventions of 1949, subject to certain reservations.

The General Assembly of the United Nations made clear its belief that the convention should be regarded as applicable to the Korean conflict. Such was the basic assumption underlying the debate on release and repatriation of prisoners in the Assembly at the end of 1952. The General Assembly resolution of December 3, 1952, included the following:

"II. The release and repatriation of prisoners of war shall be effected in accordance with the Geneva Convention relative to the Treatment of Prisoners of War, dated 12 August 1949, the well-established principles and practice of International law and the relevant provisions of the draft armistice agreement."

Similarly, the prisoner of war agreement annexed to the armistice provides, in regard to the activities of the Neutral Nations Repatriation Committee: "This Commission shall ensure that prisoners of war shall at all times be treated humanely in accordance with the specific provisions of the Geneva Convention, and with the general spirit of that Convention."

The other three conventions (sick and wounded, sick and wounded at sea, civilian)

Like the Prisoners of War Convention, the other three conventions did not become legally applicable in Korea. While the statement of the North Korean authorities regarding the voluntary application of the principles of the Prisoners of War Convention was limited to that convention, statements of the United Nations' side and the "recognition" by the Chinese Communists referred to all four conventions.

The United Nations command in its treatment of the wounded and sick under its control in Korea acted in conformity with the humanitarian principles of the two 1949 conventions for the amelioration of the wounded and sick of forces respectively in the field and at sea. There was, of course, little or no naval action such as envisaged by the convention relating to personnel at sea.

Similarly throughout the conflict such civilians as were the responsibility of the United Nations command were treated in conformity with the humanitarian principles of the 1949 Civilian Convention. The International Committee of the Red Cross was informed regarding such persons, and its delegates had access to them. However, the applicability of the Civilian Convention was limited so far as the United Nations command was concerned. Political authority in southern Korea remained in the Republic of Korea and the United Nations command did not, in general, assume responsibility for the civilian population.

CENTRALIZED RESPONSIBILITIES FOR PRISONERS OF WAR IN THE UNITED NATIONS COMMAND AND THE UNIFIED COMMAND

Shortly after the opening hostilities in Korea, the Security Council of the United Nations on July 7, 1950, requested members to contribute forces to a unified command under the United States and asked the United States to designate the commander. The other U. N. members which contributed units placed them under this command. By agreement Republic of Korea forces also came

under this command. The fact that the centralized command was established before other U. N. units entered the field, and that few other contingents were of sufficient size to handle prisoners of war, resulted in centralized responsibility for prisoners in the hands of the United Nations command. The United Nations command—the military authority in the field—acted as the capturing force. The United States Government as the unified command—which exercised political authority over the United Nations command—acted as the detaining power.

TREATMENT OF PRISONERS OF WAR IN THE LIGHT OF THE PRISONERS-OF-WAR CONVENTION

Although both sides in the conflict stated that they would apply the humanitarian principles of the Geneva convention, there was a stark difference in the treatment which the two sides in fact accorded to prisoners of war captured by them. The United Nations command, from the very beginning of hostilities until the release or transfer of the last prisoners in its hands following the armistice, scrupulously lived up to the principles of the convention. The United Nations command sent lists of captured personnel to the International Committee of the Red Cross, as provided for in the convention, which in turn transmitted them to the Communists. The United Nations command welcomed the offer of services by the ICRC, admitted its representatives to its prisoners-of-war camps, gave them every reasonable facility for inspection and reporting on the treatment of prisoners of war. The humane treatment of the prisoners was especially noteworthy in view of provocation by some Communist prisoners and their repeated efforts to foment disorder. The reports of the ICRC on the conditions in UNC camps were almost uniformly favorable.

On the other hand, the Communists, while claiming they were abiding by the convention, failed to live up to it in virtually every important respect. Except for 2 token lists totaling 110 names transmitted to the ICRC in the early days of hostilities, the Communists did not inform the UNC through the ICRC, or in any other official manner, of the identity of captured personnel during more than 18 months of fighting. It was not until hostilities had been in progress for a year and a half, and after repeated insistence by the UNC armistice negotiators, that the Communists provided any lists of captured prisoners. The Communists failed to designate an impartial humanitarian organization such as the ICRC, and they rejected the persistent efforts of the ICRC to obtain entry into the Communist prisoners-of-war camps. Until almost the very end of hostilities, they refused to exchange relief packages, and even mail was not exchanged for most of the period and then only on a limited basis. The Communists did not report on the health of prisoners of war, and until the final stage of the conflict (April 1953) refused to exchange seriously sick and wounded. The Communists failed to give the accurate location of their prisoners-of-war camps and to mark them properly. They situated camps in positions of danger in proximity to legitimate military targets. Most serious was the record, established after careful investigation, of killings, beatings, starvation, and other atrocities against UNC troops taken prisoner by the Communists.

These were respects in which the Communists were known to be violating the Geneva convention during the course of hostilities. Other violations could not be investigated because the Communists had refused to allow inspection of their camps by representatives of an impartial humanitarian organization like the ICRC, in direct violation of the Geneva convention. After the close of hostilities, returning prisoners of war brought additional evidence of numerous violations of the principles of the Geneva convention. The Communists have not yet returned nor satisfactorily accounted for many prisoners of war, a number of whom are known to be still alive and in their custody.

THE ISSUE OF RELEASE AND REPATRIATION OF PRISONERS OF WAR

Development of the issue in the armistice negotiations

The most difficult issue in the Korean armistice negotiations concerned the release and repatriation of prisoners of war which was to follow the end of hostilities. The issue was the subject of negotiations over a period of a year and a half.

As increasing numbers of prisoners came into UNC hands, it became clear that a substantial number of them believed that they would suffer death or injury if returned to the Communists. Many of them made it clear that they would violently resist such return. The U. N. command, with the unanimous agreement of

the governments with forces in Korea, concluded, therefore, that the UNC should not use force to return to the Communists any prisoners who resisted repatriation.

The UNC negotiators emphasized that the UNC did not wish to retain a single prisoner of war, nor did it wish to send a single prisoner to any particular destination. It agreed that all prisoners who wished to be repatriated were entitled to be repatriated; it was willing to repatriate all who desired repatriation, but it would not agree that force should be used to repatriate any one of them who resisted. The UNC offered the Communists numerous proposals and agreed to consider any reasonable proposal so long as it was consistent with the principle that force should not be used to repatriate any prisoners.

The Communists insisted that in fact there were no prisoners who refused to be repatriated and that those who were alleged to have refused repatriation were intimidated into doing so. At the same time they refused to agree to any plan for impartially determining the true attitudes of individual prisoners.

The Communists also insisted that the so-called principle of nonforceable repatriation was contrary to the Geneva Convention. They cited in particular article 118 which provides in part, "Prisoners of war shall be released and repatriated without delay after the cessation of active hostilities." This provision, they insisted, required that every prisoner be handed back to the side he had fought on and allowed for no exceptions.

The UNC, on the other hand, insisted that the Geneva Convention of 1949 did not impose a duty on the prisoner of war to return. It did not impose on the detaining power the duty to return prisoners of war by force against the prisoner's wishes. It did impose on the detaining power the duty to offer every prisoner an unrestricted opportunity to go home. The UNC's position was thus premised on the traditional right of a government to grant asylum to prisoners of war, as well as civilians. Neither article 118 nor any other provision of the Geneva Convention was designed to terminate the right of the detaining power to grant asylum if it so desired; the negotiating history of the Geneva convention of 1949 so indicated and international practice, including the practice of the Soviet Government, affords authority for the granting of asylum to prisoners.

The United Nations General Assembly had recognized in General Assembly Resolution 427 (V) of December 14, 1950, dealing with the problem of Axis prisoners of war not yet repatriated or accounted for by the Soviet Union, that the Geneva Convention relative to the treatment of prisoners of war of 1949 and existing international law establish that the principle of release and repatriation means that prisoners should "be given an unrestricted opportunity of repatriation."

Outcome of the issue

The issue of release and repatriation in Korea was fully debated in the United Nations General Assembly at its eighth session at the end of 1952. Secretary Acheson put the legal position of the unified command succinctly in his report to the General Assembly on October 24, 1952, at the outset of its debate: "a detaining state retains discretion as to whether it shall honor a claim for asylum or not. It may, of course, exercise that right; it would be unthinkable for anything else to be the case." The Problem of Peace in Korea, 84 (Department of State Publication 4471, October 1952). The Communist side was presented by the Soviet bloc, which made it clear that they conceded no right of asylum to a prisoner of war, who, they maintained, remains subject to military discipline and must be repatriated whether or not he so desires.

The position taken by the unified command won overwhelming support in the General Assembly. On December 3, 1952, at the end of the debate, the General Assembly adopted Resolution 610 (VII), in which it affirmed that in the Korean conflict "force shall not be used against prisoners of war to prevent or effect their return to their homelands," that "they shall at all times be treated humanely in accordance with the specific provisions of the Geneva Convention and with the general spirit of the Convention" and that "the release and repatriation of prisoners of war shall be effected in accordance with the 'Geneva Convention Relative to the Treatment of Prisoners of War,' dated 12 August 1949, the well-established principles and practice of international law and the relevant provisions of the draft armistice agreement." The Soviet bloc voted against this resolution and maintained their position.

The agreement on prisoners of war subsequently entered into by both sides at Panmunjom and made part of the armistice agreement provided an unrestricted opportunity of repatriation to all prisoners of war in the following manner.

(a) It required that both sides "without offering any hindrance, directly repatriate and hand over in groups all those prisoners of war in its custody who insist on repatriation to the side to which they belonged at the time of capture."

(b) It further required that both sides "hand over all those remaining prisoners of war who are not directly repatriated to the Neutral Nations Repatriation Commission for disposition in accordance with the following provisions."

(c) The provisions referred to established a Neutral Nations Repatriation Commission "in order to ensure that all prisoners of war have the opportunity to exercise their right to be repatriated following an armistice." They established procedures for "explanations and interviews." They provided that "No force or threat of force shall be used against the prisoners of war * * * and no violence to their persons or affront to their dignity or self-respect shall be permitted in any manner for any purpose whatsoever," except, of course, that the Commission was authorized "to exercise its legitimate functions and responsibilities for the control of the prisoners of war." The Commission was required, at the end of a specified period, and in the absence of other provision by the projected political conference, to "declare the relief from prisoners of war to civilian status of any prisoners of war who have not exercised their right to be repatriated." Provision was made for such persons to be assisted if they should seek to go to neutral nations.

The General Assembly returned to the problem of Axis prisoners of war in Soviet hands in December of 1953 and, over the opposition of the Soviet bloc, reconfirmed the view of its resolution of December 14, 1950, as above quoted, that the principle of release and repatriation means granting an unrestricted opportunity of repatriation (General Assembly Resolution 741 (VIII) of December 7, 1953).

The Korean experience has served to clarify and strengthen the humanitarian meaning and effect of article 118. In short, the history and terms of the 1949 convention, the resolutions and debates of the United Nations General Assembly, and the terms and effect of the Korean Armistice Agreement, show that article 118 is fully satisfied if the detaining power affords an unrestricted opportunity of repatriation, and that the principle of release and repatriation in this article permits the grant of asylum to a prisoner of war. In any case, the provisions of the convention for impartial scrutiny would apply.

IMPLEMENTATION OF THE PRISONER-OF-WAR PROVISIONS OF THE ARMISTICE AGREEMENT

The position of the unified command in regard to nonforceable repatriation was fully vindicated in the experience following the armistice. The UNC cooperated with the Neutral Nations Repatriation Commission as required by the Armistice Agreement. The overwhelming majority of the prisoners whom the UNC had turned over to the custody of the Commission, however, made it quite clear that they would not accept repatriation to the Communists, and generally they even refused to hear "explanations" from the Communists.

The UNC refused to agree to reopen or extend the period for the explanations and insisted that the timetable established in the Armistice Agreement must be scrupulously observed. When the Commission, instead of declaring the release of the prisoners in its custody to civilian status, as required by the Armistice Agreement, proposed to return the prisoners to the custody of the two sides, the UNC permitted the prisoners to return as persons entitled to their freedom through expiration of the time set in the Armistice Agreement.

The UNC thus respected the right of all prisoners of war in its custody to be released from prisoner-of-war status in accordance with the Armistice Agreement and article 118 of the Geneva Convention. It is clear, however, that the Communists have not yet released all the prisoners whom they hold and have not even accounted satisfactorily for all prisoners captured by them. Although the Communists continue to deny that there are other prisoners, they have, in effect, admitted violation of the Geneva Convention and the Armistice Agreement by retaining United States Armed Forces personnel, 11 of whom they recently sentenced as spies, despite the fact that they were shot down in uniform during the Korean hostilities. This action has been condemned by the U. N. General Assembly, which asked the Secretary-General to make efforts to obtain the release of those prisoners and all other captured personnel of the UNC still detained. These efforts are now in process.

VI. RELEVANCE OF KOREAN EXPERIENCE

The Korean experience is only a partial and special example of how the conventions may affect the United States in any future conflict. It does show, however, that the United States, because of its traditional regard for human rights, welfare, and dignity, would support the humanitarian standards laid down in the conventions in the event of future hostilities and would wish to be in the best position to invoke these standards. To the extent that the Geneva Conventions represent a standard of humanitarian behavior which world opinion recognizes, they may accordingly be expected to constitute a deterrent to excesses in the treatment of victims of war. United States ratification of the Geneva Conventions, by lending further support to their standards, should influence favorably future behavior toward prisoners of war. In short, the legal and psychological sanctions by which inhumane treatment may be minimized or prevented should be strengthened by extending the binding character of these conventions.

WINSTON, STRAWN, BLACK & TOWNER,
Chicago, June 3, 1955.

Re Geneva Convention for the Amelioration of the Condition of the Wounded and the Sick in the Armed Forces in the Field, of August 12, 1949

C. C. O'DAY,
Clerk, Committee on Foreign Relations,
United States Senate, Washington, D. C.

DEAR SIR: Please be referred to your wire to me of June 1 and our subsequent telephone conferences relating to the public hearing by the Senate Foreign Relations Committee on the above treaty. You advised me in our telephone conversation today that the hearings were completed this morning but that the committee would like to have my statement for the record, which statement I am only too glad to give you.

I represent Red Cross Chemical Works, a partnership doing business at 2338 North Seeley Avenue, Chicago, Ill. This partnership and its predecessors have been using the Red Cross trade name and Red Cross trademark since 1876. The present partnership has, since 1902, been manufacturing and selling toothache drops, which product is a temporary alleviation of toothache until the patient can consult his dentist.

Considerable goodwill has been built up over the years, which good will cannot be disassociated from the name of the partnership and the product. This goodwill has not been confused with and is not dependent upon the name and trademark of American National Red Cross.

The position of my client does not differ from that of the other commercial users who appeared before the committee today. My client does not seek any more privileges or greater rights than it has had since the act of June 23, 1910, but, at the same time, it feels that it should not be deprived of rights it has enjoyed prior to and since that time. In other words, our position is that those rights heretofore recognized by Congress and the courts of the United States should be preserved. Those rights are derived not only from congressional action but from common law, the laws of the various States, and the United States Constitution.

I am advised that Senator Tydings presented a reservation to the treaty at the hearing this morning. Red Cross Chemical Works is familiar with this reservation and it meets with its approval.

I trust that the Senate will see fit to approve of the reservation, concurring with us that it will in no way affect the condition of the wounded and the sick in the Armed Forces in the field but will preserve the rights, as far as internal domestic law is concerned, of citizens within the United States.

I appreciate this opportunity to express these opinions on behalf of my client and I appreciate your courtesy, Mr. O'Day, in keeping me posted as to hearings.

Sincerely yours,

THOMAS I. UNDERWOOD.