

# FINAL RECORD

OF THE  
DIPLOMATIC CONFERENCE OF GENEVA  
OF 1949

VOL. II

SECTION A



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*Diplomatic Conference for the Establishment of International  
Inventions for the ...*

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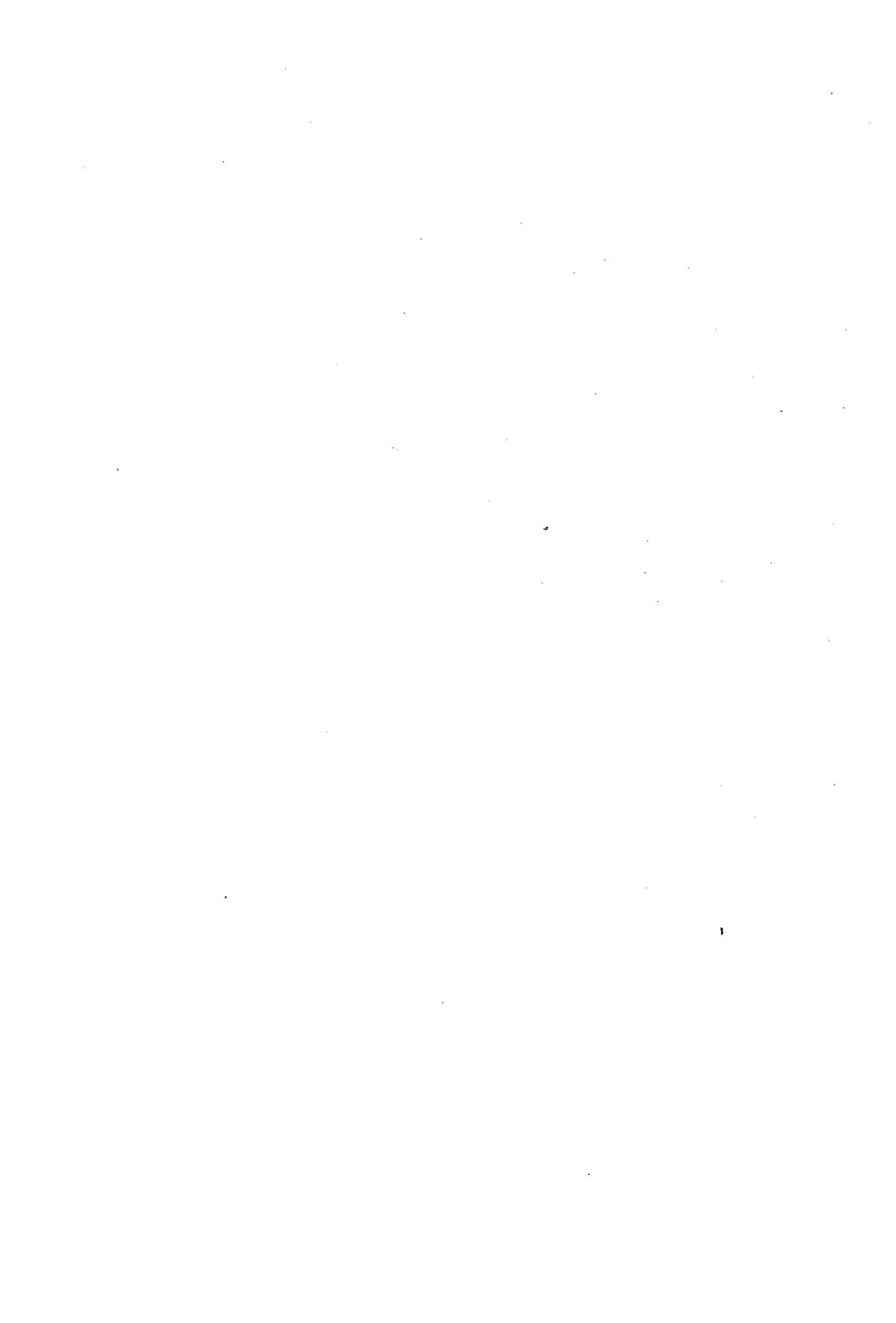
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## VOL. II

### SECTION A

## CONTENTS

	Page
<i>Minutes of the first seven Plenary meetings . . . . .</i>	9
<i>Committee I</i>	
Summary Records of 39 meetings . . . . .	45
Report to the Plenary Assembly . . . . .	183
Text drafted for the Wounded and Sick Convention . . . . .	207
Text drafted for the Maritime Convention . . . . .	221
<i>Committee II</i>	
Summary Records of 36 meetings . . . . .	235
Summary Records of 26 meetings of the Special Committee . . . . .	413
Summary Records of 16 meetings of the Sub-Committee on Penal (disciplinary) Sanctions . . . . .	483
Summary Records of 10 meetings of the Sub-Committee of Financial Experts . . . . .	529
Report of the Committee of Financial Experts to the Special Committee . . . . .	553
Report to the Plenary Assembly . . . . .	559
<i>Committee III</i>	
Summary Records of 51 meetings . . . . .	619
Report to the Plenary Assembly . . . . .	812
Text drafted for the Civilians Convention . . . . .	847



MINUTES  
OF  
PLENARY MEETINGS

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MEETINGS OF :

21, 22, 25, 28 APRIL, 10 and 15 MAY 1949

The following meetings took place at the indicated date, after the submission of the Summary Records and Reports by the Committees.



## PLENARY MEETINGS

### FIRST MEETING

*Thursday, 21 April 1949, 11 a.m.*

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The meeting was declared open at 11 a.m. by Mr. Max PETITPIERRE, Federal Councillor, Head of the Swiss Federal Political Department, who proceeded to make the following speech :

Fellow Delegates, Ladies and Gentlemen,

Your Governments have been good enough to accept the invitation issued by the Federal Council some months ago. They have appointed you as their delegates at Geneva to establish new Conventions for the protection of war victims. May I first ask you to thank them warmly on my behalf, and then wish you a cordial welcome in the name of the Federal Council and Switzerland as a whole?

On August 22nd next, it will be exactly eighty-five years since the first Convention for the relief of wounded members of armies in the field was signed in the Salle de l'Alabama, the historic hall in which the heads of your delegations met yesterday. With this Convention, a new conception was introduced into the law of nations—that of human solidarity prevailing over warfare during and in spite of war. The idea of mitigating, as far as possible, the sufferings inseparable from war responded to so profound a feeling among the nations of the whole world that the first Geneva Convention has become the most widely known, the most highly valued and certainly one of the most enduring the modern world has known.

The Convention of 1864, first conceived by Henry Dunant, a citizen of Geneva, has come to form part, as it were, of the spiritual heritage of mankind. It is one of the steps mankind has climbed in its endeavours to raise the standard of civilization. One by one, almost every State in the world has come to adhere to the Act of 1864. For all its shortcomings and imperfections, it has become the foundation of an edifice which

has not ceased to grow. It was revised in 1906, and again in 1929 when a Convention relative to Prisoners of War was added to it. The work of the present Conference will consist in revising the two Conventions of 1929, as well as the Xth Hague Convention of 1907, and in adapting them to the conditions of modern warfare.

The last war, more than any earlier ones, exposed humanity to indescribable sufferings. Total warfare strikes cruelly and at random. It spares no one. The evils and disasters which it brings in its train are appalling. Unfortunately, the Conventions of 1929 have often proved inadequate to alleviate those sufferings. It is our duty never to lose sight of the tragic experiences the world has seen and to remedy as far as possible the deficiencies revealed in the texts of 1929.

There are many such deficiencies. It would be impossible for me to enumerate them all here. Yet there are some whose importance is such that I wish to call attention to them now, at the opening of our Conference.

Firstly, the bearing of the Conventions and their field of application have not yet been sufficiently clearly defined. From the humanitarian point of view, which is ours, the application of the Conventions should be as wide as possible. They should be able to exercise their influence whenever circumstances require. We should do all that lies in our power to prevent those who suffered in the last war because the Conventions of Geneva were not applicable to them from having such sufferings inflicted on them a second time.

Again, the Agreements of 1929 made practically no provision for the repression of violations of the Conventions. This deficiency must be remedied if the Conventions are to have their full value. The problem is one of great difficulty, but I trust that we shall succeed in finding a solution.

Most important of all, the second World War showed that the Geneva Conventions would be incomplete if they did not also assure the protection of civilians. It has become an imperative necessity to give such persons certain moral and material guarantees. In 1859 it was the groans of the wounded abandoned on the battlefield of Solferino which upset Henry Dunant. Today another still more tragic appeal is being made to us — that of the millions of civilians who perished in the horrors of the concentration camps or died a miserable death, even though they had taken no part in military operations.

It lies with us to give civilians the protection which has become a necessity. This is perhaps the most important part of our mission. It will also, in all probability, be the most difficult, since here everything has to be created for the first time.

If the protection of civilians is to be effective, the wording of the provisions on which it is based must take account of the requisites of war. Otherwise they run the risk of remaining a dead letter. If our work is to be of value, we must always keep realities in view, and avoid laying down rules which cannot be applied. We must go as far as possible, and yet never transgress the bounds beyond which the value of the new Convention will become an illusion. That has been the guiding principle of the authors of the drafts submitted to you. It is essential that we should endeavour not to depart from it.

This assembly has been preceded by long preparatory work. A Preliminary Conference of National Red Cross Societies, and a Conference of Government Experts met here in 1946 and 1947 respectively at the invitation of the International Committee of the Red Cross. They laid down certain important principles, and made recommendations on which the International Committee of the Red Cross based the Draft Conventions submitted to the XVIIth International Red Cross Conference held at Stockholm last summer. After having amended them in certain respects, the Conference approved them, and it is these Drafts which have been submitted to you. May I pay tribute to the important and thoughtful work done by the International Committee of the Red Cross in establishing these drafts? I feel sure that all those who have been called upon to study the texts in question will share my appreciation.

The questions before you are of great importance, and our debates will be closely followed by most countries in the world. Let us not betray the trust placed in us, and let us also be in a position to refute any criticisms to which our work may give rise. In various quarters it has been claimed that to set up rules for warfare is to prepare for

war. I need hardly say that this conception is completely mistaken. If it had been adopted by our predecessors, the Conventions of 1864, 1906 and 1929 would never have come into being. Experience has shown that, once a conflict has broken out, it is useless to attempt a reconciliation between the belligerents. It is, therefore, an imperative duty to establish Conventions in peace-time for the protection of war victims. Our recognition of this duty in no way prevents us from earnestly hoping that the nations of the world may be freed once and for all from the threat of war.

We often hear the remark "The Geneva Conventions did not prevent the atrocities which occurred during recent wars. What can be the use of preparing new texts which will not in any case be respected?" I wish to lodge an emphatic protest against such a pessimistic and negative attitude. It is unfortunately true that the treaties of 1929 were repeatedly violated; but it must be admitted that as far as they were applied—and they were applied in no small measure—thousands of lives were saved by them. The idea of making war more humane should not be abandoned simply because it has not been possible to realize it as completely as was hoped. On the contrary, it should be pursued unceasingly in the hope that some day nations may abandon war as a means of settling their differences.

The task which we hope to accomplish will not be complete, if it is not universal. I trust, therefore, that the countries which are not represented here will adhere to the conventions which we hope to establish, and will join us on that higher impartial plane of pure humanity where differences of a political nature should have no place. It is with this hope, Ladies and Gentlemen, that I declare the Conference open. (*Applause.*)

I call upon Mr. Charles Duboule, President of the Council of State of the Republic and Canton of Geneva:

Mr. Charles DUBOULE, President of the Council of State of the Republic and Canton of Geneva:

Mr. President, Ladies and Gentlemen,

It is a very great pleasure to me to be able to address you at this, your opening meeting, in my capacity as President of the Council of State of the Republic and Canton of Geneva. The honour you have thus shown to the representative of the Genevese authorities will enable me to speak, not only as the President of a government, but also as a citizen of that city to which the International Red Cross is bound by the strongest and most enduring ties.

It was not by chance that it was to our city that the Swiss Federal Council invited the new Diplomatic Conference for the revision or establishment of international conventions for the protection of war victims. The appalling catastrophe which convulsed the world for years showed clearly, on the one hand, how dreadful are the ravages of war, but on the other, how spontaneous and generous the response of the sufferings of others can be. By choosing Geneva as the seat of the Conference, the Swiss Federal Council and all the delegates who are to take part in your work wished to proclaim their fidelity to the principles of humanity of which Henry Dunant became the ardent advocate in 1859.

If we reflect on the long tradition of charity and brotherly love whose first concrete results were achieved within the walls of our city, we shall feel to the full the heavy responsibility which has been laid upon us. It is with no feeling of mere self-satisfaction that Geneva welcomes the delegates of nearly sixty foreign States. A legitimate pride at having been the object of so flattering a choice moves her rather to turn back to the past in order to recall those great and splendid achievements whose spiritual heritage has been placed in her keeping.

I should like to tell you, in the name of the whole population of Geneva, how glad we are to welcome you to our Republic. The difficult mission which you have been called upon to discharge in a spirit of collaboration and mutual understanding cannot leave the Genevese of 1949 indifferent, for they thus have the honour of seeing the splendid work which was inaugurated in Geneva in 1862 continued today, in their territory, but by your endeavours.

Henry Dunant would have been happy to be present at your meeting today. He was a man who never feared to seek audience with the great ones of the world in his efforts to secure a greater measure of mutual help among men. During the battle of Solferino, on June 28th, 1859, he had set to work with his own hands, tending the wounded and giving help to the dying. Not long was to pass before he put before the world in his pamphlet "A Memory of Solferino", published in November 1862, his suggestion for the creation of corps of auxiliary volunteers. It was received with acclamation all over the world.

It is, as you can imagine, with pride and pleasure that I, as representative of the authorities of Geneva, remind you that the organization which was later to become the International Committee of the Red Cross was first formed by members of the "Société genevoise d'utilité publique".

Henry Dunant's idea gained ground so rapidly that by 1864 the Swiss Federal Council was able to take the initiative of convening a diplomatic

conference at Geneva, which ended in the signature of the first international Convention for the protection of war victims.

This Convention, which was called the Geneva Convention and dealt with the relief of wounded members of armies in the field, has served as a basis for all the subsequent discussions, the most important of which took place in 1906 and 1929. During the present Conference, the relief of wounded members of the armed forces will again be the subject of careful consideration and of innumerable discussions.

Another aspect of the protection of war victims, which became of importance as the years passed, was the treatment of prisoners of war. Their experience in the recent World Wars has led the International Committee of the Red Cross to submit suggestions to the Governments for improvements in the existing rules which, although they have stood the test of time, must be adapted to the conditions of modern warfare if they are to preserve all their value.

Conditions of modern warfare have, in fact, changed with such rapidity that it has even become necessary to contemplate the signature of a special convention for the protection of civilian persons in time of war.

Let us glance back to the time of the Italian campaign and picture Henry Dunant tending the wounded and dying on the field of Solferino, and we shall realize the changes which have come about in the course of time. I refer, in particular, to the fact that the conflicts arising between the nations are becoming more and more universal in character. War now spares nobody. Total war has become the scourge of entire peoples.

It is tragic to think that in this modern age it has become necessary to take measures for the protection of the civilian population. But it would be unpardonable to blind ourselves to the necessities of our time. The relief of suffering must spread with the spread of the effects of war.

That, Ladies and Gentlemen, is the great and noble mission which has been entrusted to you. The documents which have been prepared for you are the result of painful experience and of long and patient study. In the course of the coming weeks, it is you who, following the tradition which began in 1859, will have to complete the great work undertaken for the relief of war victims.

There are soldiers among you, who have themselves been wounded, also ex-prisoners of war, and others who have taken part in war away from the battlefields. Your minds still bear the impress of your experiences. As you went through your ordeal, the meaning of the dignity of man appeared to you clearer, more splendid, than before. You set yourselves an ideal, and have come to Geneva to try, with others, to turn it into reality.

## 1st PLENARY MEETING

The International Red Cross, in a spirit of complete impartiality and independence, has endeavoured to provide you with documents which can serve as a basis for your discussions. These, however, are but the material elements of a task whose value resides essentially in its moral character.

Mr. Max Huber, a former President of the International Committee of the Red Cross, spoke very truly when he said:

“Institutions must live, subsist and enter into history by virtue of their fidelity to moral values, in spite of the changes imposed upon them by time and their own desire to adapt themselves to changing conditions.”

It is in the name of these moral values that the Republic which is your host during your work can offer you complete liberty of speech, and is glad to hear the opinion of each of you expressed according to the convictions and the spirit of the various nations.

I should be sorry not to remind you, also, that the offices of the Central Prisoners of War Agency were housed for several years in the very building in which you will meet. If I refer to this fact before concluding, it is because I feel it to be symbolic. On the one hand, we have the discussion and drawing up of texts; on the other, the endeavour to put into practice the international conventions which have been drawn up. And all this takes place in the same building. These activities go on under the same roof. This unity is not only admirable; it is indispensable. And it is the pledge of the success of your work.

May the year 1949 prove to be a milestone on the road on which humanity set out on August 22nd 1864, when the first Geneva Convention was signed. (*Applause.*)

Mr. PETITPIERRE, Federal Councillor, Head of the Swiss Federal Political Department: I invite the Conference to appoint its President. Are there any proposals?

I call upon Mr. J. J. B. Bosch, Chevalier van Rosenthal, Head of the Netherlands Delegation.

Mr. BOSCH, Chevalier VAN ROSENTHAL (Netherlands):

Fellow Delegates, I feel sure that I am faithfully interpreting your sentiments when I express our deep gratitude to Mr. Petitpierre, Federal Councillor, and to the President of the Council of State of the Republic and Canton of Geneva for the words of welcome they have spoken.

In 1864 and 1929 two Conferences on the protection of the wounded and sick and the treatment of prisoners of war were held in the city where

Henry Dunant, founder and father of the Red Cross, was born.

We are extremely grateful to the Swiss Government for having had the happy idea of once more calling the nations of the whole world together in Geneva, because the last war has shown, more than ever, how necessary it is that everything possible should be done to prevent unnecessary suffering in the future.

I thank the Swiss Government, the Council of State of the Republic and Canton of Geneva and the authorities of the town of Geneva for their hospitality, and, referring to what was said by the Belgian delegate at yesterday's meeting of the Heads of Delegations, I propose, Gentlemen, to call upon the outstanding ability of Mr. Petitpierre, Federal Councillor, and to ask him to be good enough to continue to act as President of the Conference which is opening today. I would ask you to pass that by acclamation. (*Loud applause.*)

Mr. Max PETITPIERRE, Federal Councillor, Head of the Swiss Federal Political Department: Are there any other proposals?

I note that there are no other proposals.

Fellow Delegates, Ladies and Gentlemen,

The Head of the Netherlands Delegation has very kindly invited you to elect me as President of this Conference. I thank him most sincerely, and I wish to express my deep gratitude to you for supporting that proposal. I accept the task you have entrusted to me. I accept it both as an honour and as a duty; as an honour because our Conference is called upon to carry out a great task, and I am proud to be able to assist in carrying it out; as a duty because Switzerland attaches the greatest importance to the Geneva Conventions whose trustee she is. These Conventions have now to be revised and supplemented, and it will be your duty to carry out this task; I therefore feel obliged to place myself at your disposal.

I fully realize that my task will entail numerous difficulties. I hope, however, that I shall be able to overcome them, for I know that I can count on your cooperation. I would specially ask you never to lose sight of the fact that the Conventions for the protection of war victims must be of a universal nature, and never to let particular opinions or interests which you may wish to safeguard make you forget the interests of mankind as a whole. It is only thus that we shall be able to attain the goal we have set ourselves.

I feel certain that in emphasizing this fundamental rule I am interpreting your own views. This enables me to enter upon our work with confidence, and it gives me a conviction that we

## 1st, 2nd PLENARY MEETINGS

shall be able to bring them to a successful conclusion.

I hope we shall be able to coordinate the various points of view which will be expressed here, and so order our efforts that our discussions may result in clear and effective provisions.

That is the wish I should like to formulate at the outset of this Conference, and now, Ladies and Gentlemen, our work is awaiting us.

If there are no further speakers, I propose to adjourn the meeting, and invite you to meet again this afternoon at 3 p.m. A Plenary Meeting will then be held in the Conference building.

Does anyone else wish to speak? No!  
I declare the meeting closed.

*The meeting rose at 11.55 a.m.*

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## SECOND MEETING

*Thursday 21 April 1949, 3 p.m.*

*President:* MR. MAX PETITPIERRE, President of the Conference

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The PRESIDENT: Before starting on the Agenda I have a few remarks to make.

I should be grateful if you would fill in the forms which you will find in front of you and leave them in your places at the end of the meeting so that the Secretariat can collect them. Delegates who wish to speak during the discussion are asked to hold up the card which they will find on their desks so that the name is visible from the platform.

In conclusion, I must ask all speakers to come to the platform each time they speak, even if they only wish to make a very brief statement, and to indicate their name on each occasion. That is very important for the purpose of the verbatim reports of the proceedings.

Our Agenda for to-day was distributed to you this morning and is therefore known to you. If there are no objections, I will consider it adopted.

Does anyone wish to speak on one or other of the remarks which I have just made? No!

### Rules of Procedure

The PRESIDENT: Draft Rules of Procedure have been drawn up by the Swiss Federal Political Department and distributed to all delegations.

The United Kingdom Delegation (*see Annex No. 1*) proposes that a committee of seven members should be formed to discuss this draft together with any amendments to it which may be proposed, with a view to submitting a final text

for approval by the Plenum of the Conference. This procedure was unanimously approved yesterday at an informal meeting of the Heads of Delegations. I therefore recommend that you should adopt the Draft Resolution submitted to you and that you should decide that the committee referred to should be composed of the following countries: China, the United States of America, the United Kingdom, Sweden, Switzerland, Turkey and the Union of Soviet Socialist Republics.

Are there any objections? No!

Are there any observations or proposals concerning the composition of the Procedure Committee? No!

I therefore regard the proposed Draft Resolution as adopted, and the Committee as being composed of the countries I have mentioned. It will hold its first meeting tomorrow at 10 a.m. The place of meeting will be notified in the official Bulletin.

In conclusion, I beg all delegations who wish to propose amendments to the Draft Rules of Procedure, to be good enough to submit the written text of such amendments in duplicate to the Secretary-General's Office this evening, so as to enable the requisite documentary material to be available for the meeting of the said Committee.

Pending the receipt of the Report of this Committee, we must have rules for the conduct of our discussions. I propose, therefore, that the Rules of Procedure drawn up by the Swiss Federal Political Department be adopted provisionally.

There are two changes which I shall ask you to be good enough to make in the provisional Rules of

## 2nd PLENARY MEETING

Procedure so as to comply with the views expressed at yesterday's meeting of the Heads of Delegations. In the first place, it is proposed to appoint five Vice-Chairmen instead of three, and Article 7 of the Rules of Procedure will have to be modified accordingly. The Heads of Delegations further decided that all meetings of the Plenary Conference and of its Committees should, as a general rule, be public, except where otherwise decided by the Conference or the Committees. I propose that you should adopt that principle and in consequence modify Article 44 of the Rules of Procedure to read as follows:

"The plenary meetings and meetings of Committees shall be public, unless the Conference or the Committees decide otherwise."

The Procedure Committee will later submit a new text for this Article.

Are there any observations in regard to the two suggestions put forward by the meeting of Heads of Delegations?

As no one wishes to speak, I infer that the Conference agrees to the two suggestions.

In conclusion, does anyone wish to speak on the subject of the provisional application of the Draft Rules of Procedure with the modifications I have indicated?

As no one wishes to speak, the Draft Rules of Procedure are adopted provisionally.

### Adoption of the Agenda of the Conference

The PRESIDENT: The Swiss Federal Council has convened this Diplomatic Conference in order that it may revise three international conventions at present in force, viz. the Geneva Convention of July 27th, 1929 for the Relief of the Wounded and Sick in Armies in the Field, the Hague Convention of October 18th, 1907, for the Adaptation to Maritime Warfare of the Principles of the Geneva Convention of July 6th, 1906, and the Convention concluded at Geneva on July 27th, 1929, relative to the Treatment of Prisoners of War, and also in order that it may establish a new Convention for the Protection of Civilian Persons in Time of War.

With the agreement of the Heads of Delegations, I propose that you should adopt the above Agenda. We thought it necessary for the scope of the Conference to be exactly defined.

I shall also ask you to adopt, as a basis for discussion, Working Documents Nos. 1, 2, 3 and 4, as drawn up by the Swiss Federal Political Department. These documents contain drafts of the revised conventions and of the new convention as approved by the XVIIth International Red Cross Conference held at Stockholm last summer.

Does anyone wish to speak either on the Agenda of the Conference itself or on the documents which I have mentioned?

I observe that no one wishes to speak; the agenda and Documents Nos. 1 to 4 are accordingly approved, and the documents in question adopted as a basis for discussion.

### Admission of the Byelorussian and Ukrainian Soviet Socialist Republics

General SLAVIN (Union of Soviet Socialist Republics): The Governments of the Byelorussian and Ukrainian Soviet Socialist Republics have expressed a desire to take part in drawing up the conventions in question, and their request has been communicated to the Swiss Government. The two Republics are both members of the United Nations Organization. I beg you to be good enough to include in the Agenda the following item:

"Invitation of Byelorussia and of the Ukraine to the Conference."

The PRESIDENT: I propose to place this item on the Agenda of to-morrow's Plenary Meeting. Are there any objections to the proposal?

As there are no objections, the question will be discussed to-morrow, April 22nd.

### Election of the Secretary-General

The PRESIDENT: Under Article 14 of the Draft Rules of Procedure, the Secretariat of the Conference is composed of the Secretary-General and of assistants placed at the disposal of the Conference by the Swiss Government.

The Swiss Federal Political Department and other Government Departments of the Confederation, in conjunction with the Federal Commissioner for the Preparation of the Diplomatic Conference, have formed a Secretariat, which will, I hope, function to the entire satisfaction of all the Delegations. In accordance with the custom observed at international conferences, it is for the country convening a conference to submit a candidate for the post of Secretary-General. After consultation with the Heads of Delegations, I propose the appointment as Secretary-General of a member of the Swiss Delegation, Mr. Pierre Micheli, Legation Counsellor, Deputy Head of the International Organizations Section of the Federal Political Department. Are there any other proposals?

There being no other proposals, Mr. Micheli is appointed Secretary-General of the Conference. I beg him to assume his new functions forthwith. (*Applause.*)

## 2nd PLENARY MEETING

### Constitution of the Credentials Committee

The PRESIDENT: The Credentials Committee is composed of seven members. The Conference elects this Committee at its first Plenary Meeting, as provided in Article 5 of the Rules of Procedure which also lays down the duties of the Committee; the latter will itself have to determine the standards according to which the validity of the credentials submitted will be judged.

After having consulted the Heads of Delegations yesterday evening, I propose that you should invite the Delegations of the following countries to appoint one representative each to the Credentials Committee: Finland, Hungary, Italy, New Zealand, the Netherlands, Syria and Venezuela.

Are there any other proposals?

There being no other proposals, the representatives of the seven Delegations which I have mentioned will constitute the Credentials Committee. This Committee will meet to-morrow April 22nd, at 10 a.m.; the place of meeting will be notified to the Delegations concerned in the Daily Bulletin. I take this opportunity of requesting any delegations which have not yet done so, to hand their Credentials in as soon as possible to the reception office in the entrance hall of the building, Room 21.

### Participation of Observers and Experts

The PRESIDENT: The Agenda includes the question of the participation of the International Committee of the Red Cross in the work of the Conference as an expert. Article 3 of the Provisional Rules of Procedure provides that the Conference may invite experts not belonging to a delegation to take part in its work. You are aware of the very important part played by the International Committee of the Red Cross in the preparation of the draft Conventions. It was it which convened the Conference of Red Cross experts in Geneva in 1946, and that of the Government experts in 1947 in order to study the revision of the Conventions for the protection of members of the armed forces and civilians. It was also it which prepared the drafts submitted to the XVIIth International Red Cross Conference at Stockholm in 1948. The Heads of Delegations are unanimously of the opinion that our work will be greatly facilitated if the International Committee takes part in it in the capacity of expert.

Mr. AURITI (Italy): I have a slight amendment to make to the proposal I submitted yesterday at the first meeting of the Heads of Delegation on the subject of the participation of the League of Red Cross Societies in the work of the Conference.

My proposals concerned Item 8 on the Agenda for the meeting of Heads of Delegations (Participation of Observers) and not Item 7 (Participation of the International Committee of the Red Cross as an expert).

Mr. DE GEOUFFRE DE LA PRADELLE (Monaco): The Delegation of Monaco has the honour to propose that the Conference should invite the International Committee of Military Medicine and Pharmacy to take part in its work. Our Delegation is aware that the above Committee is already very well represented at the Conference both as regards numbers and quality. But we think that, apart from this indirect form of representation, it is most important to recognize at the beginning of our discussions the very considerable effort made by this organization during the past twenty years. The International Committee of Military Medicine and Pharmacy has studied the principal questions that we are proposing to discuss and the Monegasque Delegation cannot forget that these labours have culminated in a draft known as the "Monaco Draft". In gratitude it ventures to request that the Conference itself should invite the Secretary-General of the International Committee of Military Medicine and Pharmacy, General Voncken, to attend the Conference as an expert under Article 3 of the Rules of Procedure.

The PRESIDENT: We have before us three proposals, one for the participation of the International Committee of the Red Cross in the work of the Conference as an expert, the second, for the participation of the League of Red Cross Societies as an observer, and lastly a third proposal—to invite the International Committee of Military Medicine and Pharmacy to take part in the work of the Conference as an expert. I propose to take these three proposals separately and in succession. Does anyone wish to speak on the first proposal?

Noone wishes to speak. There is, therefore, no objection to the International Committee of the Red Cross being invited to participate in the Conference as an expert.

Does anyone wish to speak on the second proposal, namely, to invite the League of Red Cross Societies also to take part in the work of the Conference as an observer? May I remind you that yesterday the Heads of Delegations took the view that the presence of this organization would be of value.

I note that there is no objection to this second proposal, which I consider as adopted.

There remains the third proposal, to invite the International Committee of Military Medicine and Pharmacy to take part in the work of the Conference as an expert.

Does anyone wish to take the floor?

## 2nd PLENARY MEETING

Mr. GARDNER (United Kingdom): The International Committee of Military Medicine and Pharmacy is a committee with which my country has been associated for many years. We regard it as a valuable instrument for the exchange of technical knowledge on medical matters affecting the armed forces of the various countries of the world, but that Committee, as we understand it and participate in it, is not a body which ought to express views on political and other similar questions, and we feel, in particular, that they can only confuse the issue if they are regarded as experts on the matters which are to be dealt with in the Conference. The Committee consists of delegates from the various Governments and the views of those Governments will be fully expressed by the delegates at this Conference. We would therefore regret it if the Conference were to invite that Committee to be associated with its work as experts on these matters, but we would be very happy if any Committee of the Conference felt at any time that this Committee could give advice of value to the Conference Committees on points coming before us, and it should then be specially invited for that purpose. There is already a long list of people, bodies and organizations who ought to be regarded as having an active interest in the Conference. There is none amongst them who can claim to be an expert on these Conventions in the sense in which the International Committee of the Red Cross is undoubtedly an expert, and we feel that to introduce any of these other bodies as experts at this stage would only invite applications from many organizations—very estimable organizations no doubt—in the world who would like to have a voice in the matters which the Conference is to discuss.

We hope the Conference will decide not to invite this Committee to be associated with it as an expert, but will let the Committee know that if any point should arise on which it is felt that they can be of particular assistance, any Committee of the Conference will then be at liberty to ask for that assistance immediately.

Mr. LAMARLE (France): The French Delegation does not agree entirely with the views of the United Kingdom Delegation; I only propose to echo the final observations of the United Kingdom Delegate to the effect that on questions on which the opinion of the International Committee of Military Medicine and Pharmacy would be valuable, we shall certainly refer to it. The Conference or its Committees would not only have the right to consult that body in such cases, but would be in duty bound to do so. That is all we ask; and I gather from what the United Kingdom Delegation has said, that it itself anticipates that contingencies and circumstances will arise, and discussions will

take place, in connection with which the opinion of the International Committee of Military Medicine and Pharmacy would be very valuable.

I think, if I may go somewhat further into the matter, that I should add that the International Committee of Military Medicine and Pharmacy has already made a definite and important contribution to the preparation and study of the Conventions the drafts of which are before us, and further that this body studied a large part of the problems with which we are now confronted at one its Congresses, which was, I think, held at Liège. It may be that its activities do not extend to all the questions which we are going to have to discuss; but they certainly extend to a large number of them. That, in the French Delegation's opinion, makes it desirable not to take action in regard to this body which might be considered discriminatory, since it has already made an important contribution to the study of the Conventions in question. I do not think, therefore, that my opinion differs very greatly from that of the United Kingdom Delegation, since the latter itself seemed to feel that the International Committee of Military Medicine and Pharmacy might give valuable opinions, and I have just given concrete proof of that fact.

There is another point which I apologize for not having referred to before. I gathered that Mr. Auriti, correcting his proposal of yesterday, asked that the League of Red Cross Societies should be admitted merely as an observer. The French Delegation does not feel that this distinction should be made between the International Committee of the Red Cross and the League of Red Cross Societies, since both these organizations have the same status as members of the International Red Cross, and have similar and equal representation on the Standing Committee. I hasten to say that the International Committee of the Red Cross has acquired very great experience in all the fields of activity in which we are interested, and that that experience can, and should, be of great value to us. But I think that the League, in view of the fact that it extends to all the countries of the world, deserves to be heard here as an expert in the same way as the International Committee. I should be glad to have the opinion of the President on the matter, and also that of the Assembly.

The PRESIDENT: The proposal of the Monegasque Delegation to invite the International Committee of Military Medicine and Pharmacy to take part in the work of the Conference as an expert is opposed.

Heads of Delegations who accept the proposal of the Monegasque Delegation are requested to show their approval by raising their hand.

Twenty delegations have voted against the Monegasque Delegation's proposal, which is accord-

## 2nd, 3rd PLENARY MEETINGS

ingly rejected under Article 36 of the Rules of Procedure.

A few minutes ago, the Delegate of France proposed reconsidering the decision taken by the Conference to invite the League of Red Cross Societies to take part in the work of the Conference as an observer. Does the French Delegate wish this matter to be put again to the Conference for discussion, as provided for in Article 34 of the Rules of Procedure which say that "when a resolution or motion has been adopted or rejected it shall not be reconsidered unless the Conference or Committee decide otherwise by a majority of two-thirds of the Delegates present"?

If, therefore, the French Delegate persists in his motion, the opinion of the Conference on the question will have to be taken.

The Head of the French Delegation indicates, I see, that he wishes the question to be reconsidered by the Conference. We shall, therefore, take a vote by roll-call as to whether the Conference wishes to reconsider the point.

Mr. ALEXANDER (United Kingdom): I have a point of procedure which I wish to raise. I want

to ask on behalf of the United Kingdom Delegation whether the League of Red Cross Societies can really be considered as an observer. It is neither a governmental organization nor an inter-governmental organization.

The PRESIDENT: If the League of Red Cross Societies is to be invited to take part in our work as an observer, it will be necessary to alter Article 2 of the Rules of Procedure. It cannot be regarded as either a governmental or an inter-governmental observer. The point is one which the Procedure Committee should consider.

I think we can leave the consideration of this question to the time when the final Rules of Procedure are adopted. For the moment, therefore, the decision taken in regard to the participation of the League of Red Cross Societies will be provisional. •

Do you agree to this arrangement?

There do not appear to be any objections. The question is therefore deferred.

*The meeting rose at 4.15 p.m.*

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### THIRD MEETING

*Friday 22 April 1949, 5 p.m.*

*President: Mr. Max PETITPIERRE, President of the Conference*

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#### Dates and Times of Meetings

The PRESIDENT: You will have noted today's Agenda in this morning's Daily Bulletin.

The various services of the Secretariat want a decision as soon as possible on whether there will be any meetings tomorrow, so that the necessary arrangements may be made. I shall ask you, therefore, to begin with the last item on today's Agenda (Dates and times of meetings).

Also, at the meeting of the Heads of Delegations which has just taken place, it was suggested that the appointment of the Drafting Committee should be deferred until a later meeting and that the Procedure Committee should be instructed to consider the question of a possible increase in the number of members of that Committee. I therefore suggest that the item reading "Constitution of

the Drafting Committee" should be removed from the Agenda.

As there are no observations, I conclude that you agree to the Agenda, subject to the amendments I have mentioned.

As several delegations having expressed a desire that there should be no Plenary or Committee meetings on Saturdays, I suggest that as a general rule our programme of work should run from Monday morning to Friday afternoon. Meetings may therefore take place on any day of the week other than Saturday and Sunday, but not on Saturday or Sunday unless in exceptional circumstances.

Are there any remarks on this subject?

As no objection has been raised to this proposal, I consider it is adopted.

The different Committees will elect their Chair-

### 3rd PLENARY MEETING

men and Vice-Chairmen on Monday morning. If the Procedure Committee cannot finish its task this evening, it will also meet on Monday morning. I therefore propose that you should reserve Monday morning for Committee meetings and hold a further Plenary Meeting on Monday afternoon. At that meeting we shall consider in particular the procedure for dealing with the four Conventions.

I note that there is no opposition to this proposal, and I therefore consider it as adopted.

#### Report of the Credentials Committee

The PRESIDENT: The Credentials Committee met this morning and is now ready to submit its first Report. I therefore ask the Chairman of the Credentials Committee to be good enough to read it.

Mr. AURITI (Italy), Chairman of the Credentials Committee: The Credentials Committee held its first meeting on April 22nd at 10 a.m. Delegations of the following countries were present: Finland, Hungary, Italy, New Zealand, the Netherlands, Syria, and Venezuela. My colleagues did me the honour of asking me to take the Chair.

The Committee considered the credentials submitted by 42 delegations.

The credentials submitted by 35 of the delegations were found to be in good and due form for their participation in the work of the Conference. The delegations concerned were those of the following States:

Afghanistan	Luxemburg
Albania	Mexico
Austria	Monaco
Burma	Netherlands
Colombia	Nicaragua
Costa Rica	Norway
Denmark	Pakistan
United States of America	Portugal
Finland	United Kingdom
Greece	The Holy See
Guatemala	Sweden
Hungary	Switzerland
India	Syria
Ireland	Turkey
Israel	Union of Soviet Socialist Republics
Italy	Uruguay
Lebanon	Venezuela
Liechtenstein	

The Committee proposes that the Plenary Meeting should recognize the validity of the above credentials. It points out, however, that in certain cases no mention is made of authority for signing

the Conventions which will be adopted by the Conference.

The documents submitted by 7 other delegations consist of telegrams or letters which can be provisionally accepted in lieu of credentials. The delegations concerned were those of Australia, Bolivia, Chile, China, New Zealand, Peru and Thailand.

The Committee proposes that the Plenary Assembly should request the above seven Delegations to present the credentials to which the telegrams or letters refer, in good and due form, as soon as possible. Pending the arrival of these credentials, the Committee suggests that the documents submitted to the Committee should be considered sufficient.

Finally the Committee noted that 14 other Delegations had not so far submitted either credentials or papers which can be accepted in lieu. It therefore proposes that the Plenary Assembly should invite them to submit credentials in good and due form as soon as possible, and that pending the arrival of the latter the Delegations concerned should be provisionally permitted to take part in the work of the Conference.

The Committee will meet again as soon as the credentials which have not so far been submitted are in the hands of the Secretary-General of the Conference.

The PRESIDENT: I would like to thank the Credentials Committee, and in particular its Chairman, for the rapid and business-like manner in which they have carried out their task.

Are there any observations on this Report?

Mr. EL DJABRI (Syria): At the meeting of the Credentials Committee this morning I made a reservation concerning the participation of the Israeli Envoy. I would ask the Chairman of the Credentials Committee to be good enough to note this reservation. This has not so far been done.

Mr. AURITI (Italy), Chairman of the Credentials Committee: The statement just made by the Syrian representative makes it necessary for me to make a further statement. I agree that I made no reference to the question he has just raised, but I understood that his intervention during the Committee meeting this morning was not a reservation but an objection. I was under the impression that the question had been settled, and that my explanations to him were sufficient. I stated that the competence of our Committee was defined by its title "Credentials Committee", that our powers were limited accordingly, and that we had no authority to make any decision in this matter. It is true that the Syrian Delegate raised an objection, to which I replied that the question

### 3rd PLENARY MEETING

he had raised was beyond our competence, the latter being limited to the verification of delegates' credentials. I repeat that I did not think the Syrian Delegate had made a reservation. Unless I am mistaken, he did not state that he was making a reservation; he merely submitted an objection. I understood that the matter would be left at that. I should like, however, to acknowledge the fact that he raised an objection in the Committee.

The PRESIDENT: Are there any further remarks concerning the Report of the Credentials Committee?

As there are no further remarks, I regard the Report of the Credentials Committee as adopted.

#### Composition of the Procedure Committee

The PRESIDENT: At its last Plenary Meeting the Conference set up a Procedure Committee consisting of seven members, among them the United States of America. I was afterwards informed by the United States Delegation that it wished to relinquish its seat on the Committee. We have, therefore, to elect a country to replace the United States of America. By agreement with the Heads of Delegations, it was proposed that the Lebanon should be elected as a member of this Committee.

Are there any objections to this proposal?

As nobody wishes to speak, I assume that the meeting agrees to the Lebanon being elected to the Procedure Committee in place of the United States of America.

#### Participation in the Conference of the Byelorussian and Ukrainian Soviet Socialist Republics

The PRESIDENT: The Soviet Delegation has proposed that this question should be placed on the Agenda of the present Meeting. The Swiss Delegation has submitted a Draft Resolution on the subject, which has been distributed to Delegations.

Are there any observations?

Mr. BOLLA (Switzerland): The Swiss Federal Council did not send out invitations to the Diplomatic Conference of Geneva in an arbitrary manner. It followed the procedure which you will find laid down in Rule One of the Draft Rules of Procedure and invited to this Conference all countries which had adhered to the Conventions under revision. As the Byelorussian and Ukrainian Soviet Socia-

list Republics had not adhered independently to one or both of the Geneva Conventions, they did not receive an invitation.

However, during the course of this morning's meeting of the Committee entrusted with the preparation of the Rules of Procedure (of which the copy you have received is merely a draft), the Swiss Delegation proposed that the scope of Rule One should be extended so as to admit to the Diplomatic Conference, not only the delegates of countries which have signed one or other of the Conventions, but also countries which have not so far received an invitation from the Swiss Federal Council. The above proposal received the unanimous approval of the Procedure Committee. The proposal will no doubt be referred to you on Monday. The Plenary Assembly is not, however, bound by the provisional Rules of Procedure; it can modify them at any time, and can decide, here and now, to send an invitation asking Byelorussia and the Ukraine to send delegates to the Conference. There are excellent reasons in favour of such an invitation. Firstly both countries are, as you know, independent members of the United Nations Organization. Secondly, as the Union of Soviet Socialist Republics signed the Geneva Convention of 1929 for the Relief of the Wounded and Sick in Armies in the Field, both Byelorussia and the Ukraine are in fact bound by that Convention. We are indeed only too pleased if other countries wish to participate in our work and are willing to sign the Conventions which will, we hope, result therefrom.

The Swiss Delegation, therefore, submits the following Draft Resolution:

"The Conference,

In view of the fact that the Union of Soviet Socialist Republics was a signatory to the Geneva Convention of 1929 for the Relief of the Wounded and Sick in Armies in the Field,

And that a wish has been expressed that the Byelorussian Soviet Socialist Republic and the Ukrainian Soviet Socialist Republic should be allowed to participate as independent members in the work of the Conference,

Requests the Swiss Federal Council to invite the Byelorussian and the Ukrainian Governments to send delegates to the Conference."

General SLAVIN (Union of Soviet Socialist Republics): The Governments of the Byelorussian and Ukrainian Soviet Socialist Republics sent a declaration to the Government of the Union of Soviet Socialist Republics for transmission to the Swiss Government, expressing their desire to take part in the work of the Diplomatic Conference of Geneva for the establishment of Conventions for the protection of war victims.

### 3rd PLENARY MEETING

The Government of the Union of Soviet Socialist Republics sent a memorandum to the Swiss Government informing them of the desire expressed by the Governments of the Republics mentioned above.

As you are aware, the two Republics in question are already members of the United Nations Organization and are taking part in several international Conferences. Their collaboration in the present Conference appears to be just as necessary as that of all the other nations which have been invited. It would appear to be all the more necessary in view of the fact that the aims pursued by the Diplomatic Conference of Geneva are of a high humanitarian order.

It is for the above reasons that the Soviet Delegation has suggested the Governments of the Byelorussian and Ukrainian Soviet Socialist Republics should be invited to send delegates to take part in the work of the Conference.

The PRESIDENT: Does anyone wish to take the floor?

Nobody wishes to do so. I note that no objection has been raised to the Draft Resolution submitted by the Swiss Delegation. It is therefore adopted by the meeting.

#### **Election of Vice-Presidents of the Conference**

The PRESIDENT: This question has been unofficially examined by the Heads of Delegations at the same time as that of the nomination of the Chairmen and Vice-Chairmen of the various Committees.

With the agreement of the Heads of Delegation, I propose the following as Vice-Presidents of the Conference:

Colonel W. R. Hodgson, O.B.E., Head of the Australian Delegation, as First Vice-President ;

The Right Hon. Sir Robert Leslie Craigie, P. C., G.C.M.G., Head of the United Kingdom Delegation, as Second Vice-President ;

General Nikolai Slavin, Head of the Soviet Delegation, as Third Vice-President ;

The Hon. Leland Harrison, late Minister of the United States of America in Switzerland, as Fourth Vice-President ;

M. Pedro de Alba, Ambassador, Permanent Delegate of Mexico to the International Labour Office, as Fifth Vice-President.

Are there any remarks or proposals ?

There being none, the meeting unanimously elects the Delegates I have named as Vice-Presidents of the Conference. (*Applause.*)

#### **Constitution of the Coordination Committee**

The PRESIDENT: With the agreement of the Heads of Delegation, I propose that the Coordination Committee should be constituted as follows :

Afghanistan, Austria, Belgium, Burma, Brazil, Bulgaria, United States of America, Egypt, Greece, Ireland, Italy, Mexico, Norway, New Zealand, Pakistan, Peru, Portugal, Thailand, United Kingdom, Union of Soviet Socialist Republics.

Are there any other proposals ?

There are no other proposals. The Coordination Committee will therefore be constituted in the manner which I have just indicated.

#### **Participation in the Conference in the capacity of Observers of International Organizations invited by the Swiss Government**

The PRESIDENT: Rule 2 of the draft Rules of Procedure provides that "the admission of governmental or intergovernmental observers to take part in the work of the Conference may be granted by the Conference in each case as it arises". The Swiss Federal Council considered it desirable to invite the following intergovernmental organizations to participate in the Diplomatic Conference of Geneva in the capacity of observers :

United Nations Organization  
International Labour Organization  
International Refugee Organization  
World Health Organization  
Universal Postal Union  
International Telecommunications Union  
Head Office of International Railway Transport.

Certain of the problems which we shall touch upon are within the province of these organizations and directly concern them. The observers which may be sent to us by them should be able to help us by illuminating our discussions and by giving us the benefit of their experience.

Mr. AURITI (Italy): I have the honour to propose that the Sovereign Order of Malta should also be invited to take part in our work as an observer.

The Order of Malta has already taken part in the Stockholm Conference in that capacity. An invitation issued to the Order by this Conference should constitute a high tribute to its humanitarian achievements both in peacetime and in wartime.

The PRESIDENT: Rule 2 of draft Rules of Procedure, which apply until the final Rules have been adopted, provides only for the participation of

### 3rd, 4th PLENARY MEETINGS

governmental or intergovernmental observers. The Item of the Agenda now under discussion does not expressly mention any other observers. The question under consideration is that of the participation of international organizations which have been invited by the Swiss Government. I think the Italian Delegation should submit its proposal either during the discussion in the Procedure Committee or when the Rules of Procedure in their final form are adopted by the Conference.

M. BOLLA (Switzerland): As things now stand, we cannot send an invitation to the Order of Malta. The terms of Rule 2 of the draft Rules of Procedure, which have been adopted as provisionally valid, do not permit it. I would like, however, to add that the Procedure Committee, at its meeting this morning, decided to propose that Rule 2 of the final Rules of Procedure should be supplemented in such a way as to enable us

to invite other organizations, which are not governmental or intergovernmental in character, to take part in our work as observers. I suggest, therefore, that discussion of the proposal put forward by the Italian Delegation should be postponed until the meeting on Monday afternoon, by which time we shall have determined the final wording of Rule 2 of our Rules of Procedure.

The PRESIDENT: The proposal of the Italian Delegation will be discussed later, when the Rules of Procedure for the Conference have been adopted.

I note that nobody has objected to invitations being sent to intergovernmental organizations by the Swiss Federal Council. I therefore propose to invite these organizations to send delegates to our Conference in the capacity of observers.

*The meeting rose at 6.05 p.m.*

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#### FOURTH MEETING

*Monday 25 April 1949, 3 p.m.*

*President:* Mr. Max PETITPIERRE, President of the Conference

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The PRESIDENT: Several delegations have not yet handed in to the Secretariat the form which they were asked to complete, specifying which of their members would take part in the work of Committee I, II and III. I request them, therefore, to be good enough to transmit these forms to the Secretariat as soon as possible.

#### **Procedure for the Discussion of the Articles Common to all four Conventions**

The PRESIDENT: Today's Agenda deals exclusively with one subject, namely, the procedure to be adopted for discussing Articles which are common to the four Conventions. The Conventions contain a certain number of common Articles of considerable importance. The question of, how and when these common Articles should be examined was discussed at a meeting of the Heads of Delegations, various views being expressed.

It was suggested, for instance, that these common Articles should be discussed straightaway by

the Plenary Assembly. It was also suggested that they should be discussed independently by Committees I, II and III, each of which would communicate the result or its examination to the Coordination Committee. Another proposal was that consideration of the common Articles should be entrusted to one of the three main Committees. Lastly, there was a proposal to appoint an *ad hoc* Committee, which might be the Coordination Committee, enlarged so as to include representatives of all the countries.

There were also various opinions as to when the common Articles should be discussed. Two views, in particular, were put forward. According to one, the discussion ought to take place at the beginning of the Conference, so that the principles agreed upon would act as a guide to the Committees in the remainder of their work. The other view was that the discussion should be deferred for a certain time, in order that the Conference should not be confronted at the very outset with the provisions which would raise the greatest difficulties.

#### 4th PLENARY MEETING

It was also suggested that there should, to begin with, be a first reading of the common Articles. The purpose of a first reading would be to make an exchange of views possible, and not to take any immediate decisions.

I have carefully considered the problem, and have endeavoured to reconcile these different points of view, each of which has its advantages and disadvantages. I have arrived at the conclusion that consideration of the common Articles should be entrusted to the three Committees, I, II, and III, meeting together under the chairmanship of the Chairman of Committee II. This arrangement would enable all delegations, even the least numerous ones, to take part in the discussion. If the discussion were to be entrusted to a single Committee, some of the smaller delegations might have difficulties in the event of their wishing to take part at the same time in the work of another Committee.

At first sight there does not seem to be very much difference between the Plenary Assembly and a joint meeting of all three Committees; but, on reflection, it will be realized that there is in reality a very definite difference. Discussions in the Committees are of a less official and formal character than those in the Plenary Assembly. They thus make it easier to try to find satisfactory solutions. Moreover, this method makes it possible to keep to the principle, an essential one in my opinion, that all Articles should be discussed in committee before they are submitted to the Plenary Assembly.

As to the appropriate time for discussing these common Articles, I consider it desirable that the discussion should commence at once. They might be submitted to a first reading, which would afford an opportunity for an exchange of views between the various delegations. On the conclusion of the first reading, a decision could be made regarding the second reading which might be carried through fairly rapidly. During this second reading the Articles would be given their final form. It is of course understood that the Plenary Assembly will have the last word and will take a final decision after the drafts prepared by the Committees have been discussed by them. The Draft Resolution which I have submitted to you, which was distributed before today's meeting, takes these various factors account. If you are prepared to agree to it, the work of the Committees might, I think, be arranged as follows: Committees I, II and III would meet in joint session at 10 a.m. daily, in order to discuss the provisions common to the four Conventions, and separately in the afternoon, to consider all the other provisions of the Draft Conventions for which they are responsible.

The Indian Delegation has submitted a Draft Resolution which does not appear to differ greatly

from the one which I have had distributed. The Head of the Indian Delegation will shortly have the opportunity of stating his point of view.

Lastly, the United Kingdom Delegation has submitted a Draft Resolution specifying the Articles which should be regarded as common to the four Conventions. May I ask you also to state your views on this Draft Resolution in a few minutes'time.

The discussion is now open on these Draft Resolutions.

Colonel HODGSON (Australia): I support the proposal submitted by our President. When this question was raised at the informal meeting of the Heads of Delegations, various points of view were expressed, and it was clear from the outset that the solution of the problem was going to be a difficult one.

For example, some delegations desired the question of the common Articles to be tackled immediately, while others wanted them to be left until the end. Some, again, desired that they should be discussed by the Conference in full Plenary Session, while others preferred that they should be left to each of the individual Committees, which would, so to speak, take them in their stride along with other portions of the Conventions and, in due course, refer them to the Coordination Committee.

In addition, there were suggestions that we might set up an *ad hoc* Committee, or that the Bureau of the Conference might deal with them. It will be realized that there were a great many different ideas, and that the question was one which could have been discussed for a whole week.

The solution now put before us is, I venture to suggest, one which will meet most of the objections raised against the other proposals—for every proposal meets with objections. It should, we think, meet the viewpoint of the majority of delegations.

There seems to be some confusion regarding the terminology used. Some call "common Articles" those which are common to all four Conventions. But a common Article may also be one which is common to two or three Conventions only. We hope that this Assembly or the Joint Committee, when it is established, will deal with each of the Articles in consecutive order, and not start with those Articles only which are common to all four Conventions, or attempt to establish an order of priority, an order based on the relative importance of the Articles; if that were done, the result would be great confusion. My Delegation hopes that we, like the Joint Committee, shall tackle all the common Articles in proper consecutive order from the beginning to the end, as the Joint Committee should do, and that all the Committees will work

#### 4th PLENARY MEETING

in the same way. It may be that for the first two or three days there will be a time-lag so far as the work of the Joint Committee is concerned. But it should easily catch up with the work of the other Committees, and we trust that the Joint Committee, when it agrees on a common Article, will immediately send it to the other Committees who can then dovetail it into its proper place, so that each Committee can proceed with its work in an orderly and methodical manner.

There may be some objections to this idea of having a Joint Committee. On the whole, Joint Committees work well and have proved satisfactory. It may be argued that they prove too large and unwieldy; but that is not the case here; for I think that this Joint Committee will not be any larger than one of our ordinary Committees. It will, I hope, consist of the Heads of Delegations with their Chief Adviser or Expert in the particular field of the common Articles. It gives every delegation an opportunity of hearing every other point of view and of expressing its own. As has been said, it will, in fact, be rather like a small Plenary Assembly, and will therefore meet the desiderata of, for example, the Soviet Delegation which wanted the common Articles to be discussed in full Plenary Session. Therefore, because we think that the solution submitted by the President is a reasonable and practical one and will furnish the best results in this conflicting situation, my Delegation will support it and commends it to the other delegations.

The PRESIDENT: I shall now ask you to take a decision. I shall first take a vote on the Draft Resolution submitted by the United Kingdom Delegation, regarding the Articles which are to be regarded as common to the four Conventions. Are there any objections?

Mr. COHN (Denmark): Our Delegation has not yet received this Draft Resolution; we think we should have it in front of us, so as to know what we are voting on.

The PRESIDENT: I understand that the draft was distributed this morning. Are there any other delegations which have not yet received a copy?

Mr. BUSTAMANTE (El Salvador): My Delegation has not yet received a copy.

Dr. DIMITRIU (Rumania): Nor has the Rumanian Delegation.

The PRESIDENT: I will read out this Draft Resolution which is a very simple one:

Draft Resolution submitted by the United Kingdom Delegation:

“The following are the Articles of the Draft Conventions to be dealt with as Common Articles, viz:

Wounded and Sick	Maritime Warfare	Prisoners of War	Civilians
Art. 1	Art. 1	Art. 1	Art. 1
2	2	2	2
4	5	5	5
5	6	6	6
6	8	7	7
7	7	8	8
8	9	9	9
9	10	10	10
38	42	117	128
39	43	119	130
40	44		

and also the “Final Provisions”, viz:

43-52	46-55	120-130	131-140”
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Sir Dhiren MITRA (India): The Resolution standing in the name of the Indian Delegation was submitted before we had an opportunity of examining the full text of the Resolution submitted by the President of the Conference. If that Resolution is accepted, the Indian Delegation do not propose to move the Resolution standing in their name.

Sir Robert CRAIGIE (United Kingdom): I am sorry that this Resolution has not reached all the members of the Conference; but, as our President has said, it is very simple. What it comes to is this: unlike the Australian Delegation, we propose that we should for practical purposes only regard as common Articles those Articles which are common to the four Conventions. If we were to go beyond that—if we were to take Articles common, say, to two Conventions—we should find that an enormous number of provisions would have to be considered by the Committee it is proposed to set up, which will in any case have its hands very full.

The United Kingdom Delegation has therefore suggested (taking the case of the Prisoners of War Convention as an example) that the Committee we propose to establish should take the first ten articles of the Prisoners of War Convention with the exception of Articles 3 and 4 which are not common to all the Conventions. The other Articles mentioned in our Resolution are, for the main part, formal Articles (Articles relating to ratification, signature and so on) which would in any case not come up for consideration until the end of our discussion.

## 4th, 5th PLENARY MEETINGS

I think our United Kingdom proposal has the added advantage that it would allow Article 3 of the Prisoners of War and Civilians Conventions, dealing with the definition of the persons to be protected, to be considered in the Committees responsible for those Conventions. I believe that it would be found to facilitate the work of each of those Committees, if Article 3 could be taken at a fairly early stage in their proceedings.

I believe that we shall find, by following the procedure proposed in our President's Resolution, the best method of dealing with the whole problem of the common Articles. Our Delegation will therefore support that Resolution.

The PRESIDENT: I am surprised to hear that the Draft Resolution submitted by the United Kingdom Delegation has not yet reached certain delegations. I have just received confirmation that this document was distributed this morning. I wonder if all the delegations have looked in the pigeon-holes with their names on them in the Entrance Hall. May I ask them to do so and, if they do not find a copy of the draft, kindly to apply to the Secretariat. For the moment, I should like to suggest that even though certain delegations have not yet studied the draft we should adopt it at least provisionally today; and, if one of the delegations which have not yet seen

it finds later that it does not agree with it, then I will put the question on the Agenda of the next Plenary Meeting, so as to give the delegation concerned an opportunity of making comments or stating objections. In view of the nature of this Resolution, which is an extremely simple one, it would, I think, be unreasonable to adjourn the discussion solely because two or three delegations have not yet taken cognizance of it. Do you think you can agree to this procedure?

As no Delegate wishes to speak, I take it that you are in agreement with the proposal I have put forward. The Draft Resolution submitted by the United Kingdom Delegation is therefore adopted provisionally. Its provisional adoption will become final, if no delegation asks, before the next Plenary Meeting, for the question to be placed on the Agenda.

With reference to the method of proceeding with our work, the Indian Delegation has withdrawn its Draft Resolution. The only matter to discuss is, therefore, the draft which I submitted to you. I declare the discussion open.

As no Delegate has asked for the floor, and as there is no opposition to this draft, I shall regard it as adopted by the Assembly.

*The meeting rose at 4 p.m.*

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## FIFTH MEETING

*Thursday 28 April 1949, 10 a.m.*

*President:* Mr. Max PETITPIERRE, President of the Conference

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The PRESIDENT: You have all received the Agenda for this meeting. Are there any comments on it?

As there are no comments, I shall regard it as adopted.

### **Report of Procedure Committee**

The PRESIDENT: The Committee entrusted with the consideration of the Draft Rules of Procedure, concluded its work on Monday evening, and its Report (*see Annex No. 2*), together with the Rules of Procedure (*see Annex No. 3*) which it

has submitted for your approval, were distributed yesterday morning. I call upon the Chairman of the Procedure Committee to submit his report to the meeting.

Mr. MIKAOUI (Lebanon), Rapporteur: The Procedure Committee of which I have the honour to be the Chairman, concluded its work on Monday, 25 April. Thanks to the perfect spirit of cooperation and to the very real understanding shown by all the delegations, it was possible to reach almost complete agreement on each of the various Articles, 42 out of the 45 being adopted unanimously.

## 5th PLENARY MEETING

The amendment proposed to Article 2, with the object of widening as far as possible the basis on which the Conference rested by admitting non-governmental observers (owing to the interest the Conference has for a large number of bodies), was accepted by a majority of 4 votes to 3. As you will see from the text before you, non-governmental observers will enjoy, provided the Conference accepts the new wording of Article 2, the same rights as governmental observers except as regards the right to speak.

It was proposed that the Committees whose Chairmen were to be *ex officio* members of the Bureau of the Conference, should be enumerated in Article 10, in order to avoid confusion when fresh Committees were formed. Certain delegations considered that, in accordance with the usual practice followed at international conferences, the Chairman of the Credentials Committee ought not to be a member of the Bureau. The Committee did not, however, accept this point of view, and the amendment was adopted by 3 votes to 2, with one abstention.

The third point on which a vote was taken in committee referred to the proposed amendment to Article 20, namely, that the number of the members of the Drafting Committee should be increased from 7 to 9. Opinions differed on this point, as certain delegations thought that a Drafting Committee should be as small as possible, whereas others considered that the greatest possible number of linguistic groups should be represented on it. The latter view prevailed, as shown by the voting (5 votes for, 1 against, with 1 abstention).

I have to submit to the Assembly a proposal made by the Delegations of Costa Rica, Greece, Guatemala, Liechtenstein and Nicaragua concerning the possibility of a small delegation being represented at meetings of Committees by another delegation. In view of the obvious interest of this proposal, and the many problems, both legal and practical, which it raises, the Committee, after a fairly lengthy discussion, found itself unable to come to a decision, and recommended that the Plenary Meeting of the Conference should appoint a Working Party of 5 members selected from among the eminent jurists present, which would be entrusted with the task of reporting to the Conference.

In conclusion, I wish to thank the Representatives of the Swiss Government on behalf of the Committee for the Draft Rules of Procedure which served as a basis for discussion; they were of great assistance to the Committee in its work.

The PRESIDENT: I wish to thank the Procedure Committee and its Chairman for their excellent work. As you have seen, the Procedure Committee has submitted two Draft Resolutions. I propose that we now consider the first of these Draft Reso-

lutions which you will find in Annex I to the Report and according to which the Conference approves the Report of the Committee and adopts the text the latter has drawn up.

May I also point out that we have this morning received a proposal from the Soviet Delegation for the omission of the second paragraph of Article 2 of the Rules of Procedure as proposed by the Procedure Committee.

The Bureau of the Conference, at its meeting yesterday, considered that amendments of this nature should not be subject to the 24 hours rule laid down in the Rules of Procedure for proposals or amendments which are submitted to the Conference by a delegation.

I suggest, in order to simplify and clarify the discussion, that you should consider the Draft Rules of Procedure drawn up by the Committee, chapter by chapter. I propose, therefore, to open a separate discussion on each chapter of the Rules of Procedure. I take it you are in agreement with the suggested procedure.

Mr. DUPONT-WILLEMIN (Guatemala): Having had the honour and privilege of explaining the reasons for the amendment to Article 22 to the Procedure Committee on behalf of several of my colleagues who are the authors of that amendment, I should like to take this opportunity of expressing, on their behalf, my warmest thanks to the Committee for the sympathetic reception accorded to the amendment in question. The Committee recognized its importance, but considered that it raised various difficult practical and legal questions. That is why I propose that it should be submitted for examination to a sub-committee of 5 experts in public international law. I therefore venture to ask the meeting to be good enough, in its turn, to accept the Resolution contained in Annex II to the Report. One final recommendation...

The PRESIDENT, intervening: Your suggestion, Sir, is premature. We are now engaged in discussing Draft Resolution No. I, and we shall come to Draft Resolution No. II in a short while.

Mr. DUPONT-WILLEMIN (Guatemala): I have finished. I venture to express the hope that the Working Party contemplated in this Resolution will allow one or more of the authors of the amendment to be present at their discussions, of course only as observers. I thank them in anticipation.

Mr. MOROSOV (Union of Soviet Socialist Republics): In the Procedure Committee, the Soviet Delegation, supported by the United Kingdom and Swedish Delegations, opposed the amendment of Article 2 of the Rules of Procedure by the addition

## 5th PLENARY MEETING

of words providing that, in addition to observers representing governmental and inter-governmental organizations, the Conference might in special cases authorize representatives of other organizations to take part in its proceedings as observers.

This second type of observer would in fact have the same rights as observers representing governmental and intergovernmental organizations. They would have the right to be present at all meetings of the Conference without exception, to have access to all documents, and to speak at Plenary Meetings of the Conference and at any meetings of its subordinate bodies. The only difference between the two categories of observers would be that the former would have the right to request the Conference and its subordinate bodies to allow them to speak, whereas observers of the second category would only be entitled to speak when the Conference specifically requested them to do so.

We know that the delegations which have supported the proposal to extend the circle of observers wish to see as many organizations as possible assisting in the work of framing the texts of the Conventions for the Protection of War Victims, because they think such organizations might play a useful part in doing so. But the difficulties inherent in unduly increasing the number of observers must not be lost sight of.

Whereas the first category, that is to say representatives of governmental or inter-governmental bodies, can be defined according to strictly objective criteria, the second category provided for in the second paragraph of the Rules of Procedure cannot be defined with any exactitude. This will mean that a large number of delegations will propose that various organizations should be invited as observers. We shall thus waste a considerable amount of time at Plenary Meetings in discussing whether observers should be invited or not.

Secondly, if the Conference decides to invite many observers representing organizations which could be described as "other organizations", the number of observers at the Conference would assume such proportions as to run the risk of exceeding the limits of the wide hospitality granted to us by the Swiss Government. One can imagine to what extent such a state of affairs might hamper and complicate our proceedings; it would threaten to our Conference into a futile debating society.

Thirdly, the Soviet Delegation considers that the observers at the Diplomatic Conference (where practically all the States of the World are represented) should only be admitted by a special decision of the Conference, and should be limited to the following persons:

- (1) Representatives of Governments who are not for any particular reason represented at the Conference by delegates.

- (2) Representatives of inter-governmental organizations, in other words organizations created as a result of special agreements concluded between Governments for the purpose of solving problems of major international interest.

To invite representatives of "other organizations" would involve examining their status in each case, and determining whether they are competent to take part in the work of the Conference and whether there would be any practical use in their doing so. The Soviet Delegation, for all the above reasons, proposes the omission of the second paragraph of Rule 2 relating to the participation of observers other than those which represent governmental or inter-governmental organizations.

Sir Robert CRAIGIE (United Kingdom): The representative of the Union of Soviet Socialist Republics has covered so ably the ground which I was going to cover that I think I need detain you only a short time. In fact my Soviet colleague has not only used all the arguments I was going to use, but one or two more besides.

I do feel, and my delegation are unanimous in feeling, that the second paragraph of Rule 2 is a little dangerous in that it opens the door wide and may prolong the work of this Conference unduly, which we are all anxious to avoid. My conclusion from that argument is, I think, slightly different from that of the Soviet Delegation. My suggestion would be that we strike out the second paragraph of Rule 2 altogether, and that we define Rule 3 a little more clearly.

Rule 3 says "The Conference may invite experts not belonging to a delegation to take part in its work". I had assumed that this meant that experts would only address the Conference of take part in its work if invited to do so, but I am told that there is doubt on that point. It seems to the United Kingdom Delegation that the help of experts and organizations which have expert advice to offer would no doubt be very welcome to our proceedings; but I suggest that they should not be invited to take part in the discussion (even when they are present) unless in each individual case they are invited to do so by the Conference or by one of its Committees. Therefore my suggestion is to add at the end of Rule 3:

"They may be requested by the Conference or its Committees to express their opinion on any question or to take part in a discussion."

By that means those organizations which are anxious to be represented here will be able to be represented, although I hope that the number will be restricted to those who can really offer a useful

## 5th PLENARY MEETING

contribution to our discussion. They will be able to do so and to speak when invited by the Conference or its Committees.

Mr. CAHEN SALVADOR (France): There is one point which may lead to confusion, and since we are discussing it at present, I should like it explained so that a clear and accurate form of wording should result from our discussions. I am alluding to the status of observers and experts.

I have questioned a certain number of delegates and well qualified persons in vain in order to ascertain the exact difference between observers and experts. There is in fact no difference between them in the original draft Rules of Procedure, except that observers were sent by governmental or inter-governmental bodies, whereas experts were not. The only difference, therefore, really consisted in the origins of the persons thus described. This point of view was supported by the fact that in my own opinion, they are all experts in varying degrees. But the proposal which has now been made tends, as the Soviet Delegate has emphasized, to make confusion worse confounded, since if observers need be neither governmental nor inter-governmental, why should they be described as observers when they have already been classified as experts.

The simplest solution, I think, would be to revert to the original draft, and to reject the proposal which has been made by the Procedure Committee on this point.

I should nevertheless like to add a remark which will govern my voting. If we revert to the original wording, the word "observer" will mean the representatives of governmental and inter-governmental bodies, while the word "expert" will be reserved exclusively for persons representing private institutions or organizations. In other words there will be a kind of label indicating the respective origins of the two categories. But there are also groups whose status we do not know, and the vote which the French Delegation proposes to give on this point must be clearly understood to mean that the list of experts has not been closed, and that we shall all be at liberty to propose one, two or three organizations.

As I like clear-cut statements, I will say at once that the organization which I have in mind, and in regard to which there cannot, I think, be any hesitation, is the League of Red Cross Societies, an organization which represents a federation of the different national Red Cross Societies of all our countries. These societies have shown that they can take an active part in distributing relief in the case of conflicts affecting their own or other countries, and they furnish a valuable example of solidarity. Not to invite the League of Red Cross Societies to attend our proceedings

and to answer any questions which we may wish to ask them would in the first place be a grave injustice which might cause serious prejudice to our national Red Cross Societies. But there are two further reasons, in my opinion, for inviting them to attend as experts.

In the Middle East which is at present torn by a conflict and the scene of deplorable human suffering, the United Nations have entrusted the distribution of relief to two organizations both of which equally deserve our gratitude: The International Committee of the Red Cross to which we are unanimous in paying tribute, and the League of Red Cross Societies. If my information is correct, the work has even been divided: In Palestine it is the International Committee of the Red Cross which is carrying out the task entrusted to it by the United Nations, whereas in the Arab countries the same task is being carried out by the League of Red Cross Societies. This being so, it is surely essential to call upon the latter to give us the benefit of its experience.

Moreover, at the Stockholm Conference last year, the International Committee of the Red Cross and the League of Red Cross Societies, agreed to set up a joint body known as the "Standing Commission of the International Red Cross" for the purpose of coordinating the various activities of the two organizations. This Commission had the late lamented Count Bernadotte as its Chairman. It includes two representatives of the International Committee of the Red Cross, two representatives of the League of Red Cross Societies and three or four other members chosen for their personal qualifications.

I consider that for all these reasons, we should open the doors of our Committees to the League of Red Cross Societies, which has the advantage of representing all the national Red Cross Societies, and which deserves to be called upon to assist us in our discussions by reason of its organization, the nature of its activities, and the part it is called upon to play in the application of the Conventions. I am quite aware that this is not the question under discussion. I merely wish, as we are now formulating a recommendation bearing on the principle, to state clearly and quite frankly the object we have in view.

To sum up: we have only one category of observers (governmental and inter-governmental observers) and one category of experts. When the time comes for doing so, I shall propose that the League of Red Cross Societies be associated with our discussions.

The PRESIDENT: We will now take a vote on the two amendments proposed by the Soviet Delegation and the United Kingdom Delegation respectively. The proposal made by the French

## 5th PLENARY MEETING

Delegation, to admit the League of Red Cross Societies as an expert, will be placed on the Agenda for discussion at a subsequent Plenary Meeting.

May I ask you to vote first on the Soviet Delegation's amendment proposing the omission of the second paragraph of Rule 2 of the Draft Rules of Procedure submitted to the Conference by the Procedure Committee.

Will Heads of Delegations in favour of the amendment, that is in favour of deleting the second paragraph of Article 2, please raise their hands. The Interpreters will kindly act as tellers.

Twenty-two delegations have voted in favour of the amendment.

Heads of Delegations, who wish to reject the amendment and therefore to retain paragraph 2 of Article 2, are requested to raise their hands.

Fifteen delegations have voted against the amendment.

The amendment is adopted by 22 votes to 15; the second paragraph of Article 2 is therefore deleted.

You have now to vote on the amendment proposed by the United Kingdom Delegation, namely the addition to Article 3 of the following sentence:

"They may be requested by the Conference or its Committees to express their opinion on any question or to take part in a discussion."

Will Heads of Delegations in favour of the amendment raise their hands.

Thirty-five Delegations adopted this amendment.

Heads of Delegations, who wish to vote against this amendment, are requested to raise their hands.

Two Delegations have voted against this amendment which is therefore adopted by 35 votes to 2.

We will now open the discussion on Chapter II of the Draft Rules of Procedure and the Chapters following it.

After being voted upon separately, Chapters II to XII are adopted.

I will now ask you to approve the first Draft Resolution submitted by the Procedure Committee (Annex I of the Report). It reads as follows:

"The Conference—

- (1) Approves the Report of the Procedure Committee.
- (2) Adopts the text established by the Procedure Committee for the Rules of Procedure of the Conference."

A clause should be added to this Draft Resolution to the effect that the text adopted for the Rules of Procedure of the Conference is subject to the decisions which have just been taken by the Assembly in regard to Rules 2 and 3.

Does anyone oppose this Draft Resolution?

No one opposes this Draft Resolution which is therefore adopted by the Assembly.

We will now deal with the second Draft Resolution submitted by the Procedure Committee, which appears in Annex II of the Report. This Draft Resolution provides for the setting up of a Working Party of five members, whose task will be to examine the legal questions raised by the amendment to Rule 22 submitted by a group of delegations, and to draw up a report on the question of whether effect can be given to the proposal contained therein.

I propose that you should vote on this Draft Resolution. Then, if it is adopted, I shall place suggestions before you for the composition of the Working Party.

Does anybody wish to speak on the Draft Resolution submitted by the Procedure Committee?

As no one wishes to speak, I consider this Draft Resolution adopted.

I propose that you should call upon five legal experts specializing in questions of international law to act as members of the Working Party. The following names have been proposed:

Mr. Raymund Yingling, Assistant Legal Adviser, Department of State, member of the United States Delegation.

Mr. Erik J.S. Castrén, Professor of International and Constitutional Law at Helsinki University, Head of the Delegation of Finland.

Mr. Platon Dmitrievitch Morosov, Deputy Head of the Soviet Delegation.

Mr. Michel Pesmazoglou, Legal Adviser to H.M. the King of Greece, ex-Minister, Head of the Greek Delegation.

Mr. Frede Castberg, Professor of Law at Oslo University, Legal Adviser on International Law to the Ministry for Foreign Affairs, Head of the Norwegian Delegation.

Does the Assembly wish to vote immediately on these proposals, or does it wish the question to be referred to the Bureau? Are there any other proposals?

As there are no other proposals, I assume that you all agree that the composition of this Working Party should be as proposed above.

### Second Report of the Credentials Committee

The PRESIDENT: The Credentials Committee, which held a Meeting yesterday, is ready to submit its Second Report. I request the Chairman of the Committee to be so good as to read it to us.

## 5th PLENARY MEETING

Mr. AURITI (Italy), President of the Credentials Committee: The Credentials Committee held its Second Meeting on April 27 at 3 p.m. The Delegations of Finland, Hungary, Italy, New Zealand, the Netherlands and Venezuela were represented.

The Committee verified the credentials presented by the Delegations of eleven States, and found them to be in good and due form: The States concerned were: Australia, Byelorussian Soviet Socialist Republic, Bolivia, Bulgaria, Canada, Egypt, El Salvador, Spain, Ethiopia, Rumania, and the Ukrainian Soviet Socialist Republic. Before the Conference was opened, the Canadian Delegation had submitted credentials, and the Ethiopian Delegation a telegram which could be accepted in lieu of credentials; but these two documents were not placed before the Committee at its First Meeting.

The Committee proposes that the Plenary Meeting should recognize the credentials of these 11 delegations, thus raising to 46 the number of Delegations who have presented credentials in good and due form.

The Committee also examined telegrams and letters concerning the Delegations of Belgium, Brazil, Cuba, Ecuador and Iran. It considers that these documents may provisionally serve as credentials. It proposes that the Plenary Assembly should ask these 5 Delegations to present formal credentials as soon as possible, and that pending the receipt of such credentials, it should consider the documents submitted as satisfactory.

The Committee further found that two Delegations have not so far presented credentials or documents acceptable in lieu.

The Committee will meet again when the Delegations whose credentials are not entirely satisfactory, or have not been presented, have submitted formal credentials to the Secretary-General.

The PRESIDENT: I thank the Credentials Committee and in particular its Chairman for this Report. I declare the discussion on the subject open. Does anybody wish to speak?

As no one wishes to do so, the Report of the Credentials Committee is adopted.

### Nomination of the Drafting Committee

The PRESIDENT: The text which you have just adopted for the Rules of Procedure, provides in Rule 19 that a Drafting Committee of nine members shall be constituted by the Conference.

The Bureau discussed the composition of this Committee yesterday, and unanimously proposes that you should elect the Delegations of the following countries as members of the Drafting Committee: Canada, Chile, Denmark, France, Hungary, Monaco, United Kingdom, Switzerland and Union of Soviet Socialist Republics.

Does any Delegation wish to speak on this subject? Are there any other proposals? There are none, I therefore consider that the Assembly accepts the proposals of the Bureau.

The Drafting Committee will hold its first meeting tomorrow morning, April 29, at 10 a.m. to elect a Chairman, a Vice-Chairman and a Rapporteur.

### Extension of the terms of reference of the Joint Committee

The PRESIDENT: At the last Plenary Meeting, the Conference provisionally adopted a Draft Resolution submitted by the United Kingdom Delegation, enumerating the various Articles of the four Conventions with which the Joint Committee was to deal. It was agreed that each Delegation would have the right to submit amendments to that Resolution within a space of 24 hours. The Netherlands Delegation has taken advantage of this right and proposes that the work assigned to the Joint Committee should be increased by adding Articles 118 of the Prisoners of War Convention and 129 of the Civilians Convention to the common Articles proposed by the United Kingdom.

As you are aware, the United Kingdom Delegation has stated that it agrees to this amendment. Are there any objections to the amendment? I note that there are no objections to this amendment. It is adopted.

*The meeting rose at 11.40. a.m.*

6th PLENARY MEETING

SIXTH MEETING

Tuesday 10 May 1949, 3 p.m.

*President:* Mr. Max PETITPIERRE, President of the Conference

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The PRESIDENT: The Agenda of the meeting has been distributed. Have you any observations to make on it? No!

Then, the Agenda is adopted.

**Third Report of the Credentials Committee**

The PRESIDENT: The Credentials Committee held a further meeting this morning, and is now ready to submit its report. I call upon the Chairman of the Committee to submit it.

Mr. AURITI (Italy), President: the Credentials Committee has examined the credentials presented by the Delegations of France, New Zealand and Czechoslovakia, and found them to be in good and due form. It recommends that their validity should be recognized by the Assembly.

A provisional document has been presented by the Delegation of the Argentine Republic pending the arrival of regular credentials. The Committee recommends that it should be recognized as valid.

The Committee once more asks Delegations which have only so far been accredited by provisional documents to submit credentials in good and due form as soon as possible.

The Committee also wishes to remind the meeting that several of the forty-nine credentials hitherto submitted only empower the Delegations concerned to take part in the work of the Conference and not to sign the Conventions.

The PRESIDENT: I wish to thank the Credentials Committee, and more particularly its Chairman, for this Report. Are there any observations?

There are none. The Third Report of the Credentials Committee is adopted.

**Participation of Observers and Experts in the work of the Conference**

The PRESIDENT: The Head of the Delegation of Nicaragua has submitted an application for the admission of the Republic of San Marino as an

observer. According to Rule 2 of the Rules of Procedure, Governments which have not been invited to participate in the work of the Conference, can be invited to send observers, if the participation of the latter is agreed to by the Conference.

I therefore submit this application to you. The Bureau of the Conference recommends that it should be accepted.

Mr. LIFSCHITZ (Nicaragua): The reasons underlying this proposal I have made are explained in my letter to the President of the Conference; I should be obliged if the Secretary-General would be so good as to read it.

The SECRETARY-GENERAL: "Sir,

"I beg to suggest that the Swiss Federal Council invite the Republic of San Marino to appoint an observer to take part in the work of the Diplomatic Conference. Permit me to suggest the following reasons.

"The Republic of San Marino, which I have the honour to represent as Consul in Liechtenstein with the consent of the Government of Nicaragua, is a very small but entirely independent country enjoying full democratic sovereignty. Founded in 301 A.D., it is the oldest Republic in the world.

"According to the information I have received, the Republic of San Marino was not invited by the Swiss Federal Council to participate in our Conference, because it had not signed the various international Red Cross agreements.

"The view taken by the Swiss Federal Council which, in its capacity as custodian of the Conventions, sent out the invitations to the Conference, is officially correct. But, in this instance, it is not a case of the participation of a Delegation of San Marino, but simply of an observer who would only attend meetings of the Committees in an advisory capacity.

"Our Conference is dealing with problems of a universal character. War, the greatest scourge of the world, does not recognize any human fron-

tiers; and that is why I consider that any countries which are ready to assist us in our work should be given the opportunity of doing so.

"That is the reason why we shall also vote in favour of the participation of the Sovereign Order of Malta, which enjoys the same prerogatives as a sovereign State.

"I consider that San Marino has a very special right to be admitted as an observer since, although it remained completely neutral throughout the last war, it was bombed by Allied aircraft owing to a misunderstanding. The bombing led to the loss of many human lives, the destruction of the railway and of a number of buildings representing a value of several million dollars."

The PRESIDENT: Is anybody opposed to this motion?

No! The motion is therefore adopted.

The Conference decided at its second Plenary Meeting to defer the question of the participation of the League of Red Cross Societies until the Rules of Procedure of the Conference had been adopted. The Rules of Procedure have been adopted and the Bureau of the Conference has considered this question.

As the Rules do not permit the participation of non-governmental organizations as observers, the Bureau of the Conference unanimously recommends that the League of Red Cross Societies should be invited to take part in the work of the Conference with the status of expert, in accordance with Article 3 of the Rules of Procedure.

The proposal of the Bureau is open to discussion.

As nobody has indicated that he wishes to speak, I consider that there is no opposition to the proposal of the Bureau, which is therefore adopted.

Are there any further observations on the second item of the Agenda?

Mr. AURITI (Italy): The Diplomatic Conference held in Geneva in 1929 made, among others, the following recommendation which appears in Paragraph II of the Final Act of that Conference:

"Faced with an application from the Sovereign and Military Order of the Hospitallers of St. John of Jerusalem, known as the Knights of Malta, the Conference is of the opinion that the provisions established by the Geneva Convention, regulating the situation of voluntary aid societies with armies in the field are applicable to the national organizations belonging to the above Order."

At one of the first meetings of the present Conference, the Italian Delegation suggested that the Sovereign Order of Malta should be invited to send one of its members to assist in our work, with the status of observer. It was in that same

capacity that this Order participated in the work of the XVIIth International Red Cross Conference at Stockholm. The Italian proposal was seconded by the Head of the Swiss Delegation.

Nevertheless, as the Rules of the Procedure of the Conference were being drafted, and had not yet been approved, the Italian Delegation reserved the right to renew its proposal when the Rules had been approved.

When the Rules of Procedure had been approved, the question was considered by the Bureau of the Conference, which was of the opinion that neither Rule 2 nor Rule 3 of the Rules of Procedure justified an invitation to the Sovereign Order of Malta to send one of its members, either as an observer or as an expert.

In these circumstances, the Italian Delegation has decided not to renew its proposal, although it had reserved the right to do so at the meeting to which I have just referred.

The Italian Delegation wishes to take advantage of this opportunity, however, to draw attention to the high standing of the Sovereign Order of Malta, the only institution of its kind to which a number of States have accorded the right to receive and to send diplomatic representatives. The Sovereign Order of Malta has been active not only in peacetime, but also during the first and second World Wars.

I will confine myself to quoting a few examples from the last war. I should like to remind you of the fact that this Order placed its hospitals at the disposal of those who were wounded and sick as a result of the war, and opened other hospitals for their use. It also organized a number of hospital-trains at its own expense, some of which never returned from Germany; to carry out this work it employed special personnel, with military status, wearing the uniform of the Order. After the arrival of the Allies in Italy, the Sovereign Order of Malta gave very able assistance in the distribution of the relief supplies furnished by the Allies. At the present time the Order still looks upon its humanitarian work as its principle activity.

Mr. DE GEOUFFRE DE LA PRADELLE (Monaco): At the Second Plenary Meeting, I asked you to support my proposal that an invitation should be sent by the Bureau of the Conference to the International Committee of Military Medicine and Pharmacy, which the Delegation of Monaco considers should take part in this Conference. My proposal was made under Article 2 of the Rules of Procedure (i.e., my idea was that the above Committee should be invited to take part in our work as an expert).

The above proposal was rejected as the result of an intervention by the United Kingdom Delegate, who did not share the views of the Delegation of

Monaco. I take the liberty of reminding you of the remarks of the United Kingdom Delegate (which appear, incidentally, in the minutes of the Second Plenary Meeting) to the effect that the rejection of my proposal cast no slur whatever on the good name and standing of the International Committee of Military Medicine and Pharmacy, and that even though it did not appear desirable to invite this organization as a permanent expert, the United Kingdom Delegate was prepared to recognize the desirability of sending it a special invitation to attend whenever, at Plenary or Committee Meetings, it was found necessary to do so.

In view of the tribute paid by the United Kingdom Delegate to the International Committee of Military Medicine and Pharmacy, I now request you to give favourable consideration to a proposal by the Delegation of Monaco that this organization should be invited to take part in the work of the Conference, not as an expert, even on special occasions only, but as an observer.

It is unnecessary to recall the merits of the organization concerned, which, both from a social and a moral point of view, justify my proposal. The International Committee, which was formed at Liège in 1921, has, since 1930, carried on activities of a scientific and moral nature which undeniably coincide with our own humanitarian directives. At a time when authorities were unwilling to alarm public opinion by undertaking to complete the revision of the laws of warfare which had been initiated in 1929, it was, thanks to this Committee, that a second revision was started, a revision which is now reaching its final stages in the discussions of the present Conference.

On all essential points—and it is those we are discussing—recourse to the work of the Committee would be of value. I will not stress any further the social, moral and scientific claims of this organization to be invited to the Conference as an observer. Speaking as a jurist to other jurists, I venture to say that the above qualifications are supplemented by others of a legal character which are in complete accordance with the stipulations contained in Rule 2 of the Rules of Procedure.

I am aware that, in obedience to the Rules of Procedure, you cannot invite the International Committee of Military Medicine and Pharmacy as an observer unless it fulfils the conditions laid down in Article 2 of the Rules of Procedure, i.e. unless it has the characteristics of a governmental or inter-governmental organization. This Committee was certainly not formed as the result of an international Convention. While, however, it has not the status of a governmental organization formed directly by the State, it must be admitted that such status nevertheless exists by virtue of the conditions under which its statutes were established and communicated to Governments and,

in particular, by virtue of the conditions under which it exercises its functions.

Its statutes, drawn up in 1930 by a conference of senior officers of Army Medical Services, called together for the purpose by the Belgian Government, were communicated to all Governments by the Belgian Ministry of Foreign Affairs. All the meetings of the International Committee of Military Medicine and Pharmacy are convened in the name of the Government of the country issuing the invitations to the meetings. Further, a detail which is not without its importance is the fact that the subscriptions to this Committee are paid by Governments on a scale not unlike that of the Specialized Agencies of the United Nations Organization or that of international Unions, and go to increase the scientific and humanitarian research fund of the Committee.

I do not wish to press further a proposal which I consider as one which must be put before the meeting. Whatever your decision may be, the services which the International Committee of Military Medicine and Pharmacy renders unceasingly to the great cause of humanity, services, which I should describe as the separation of scientific and medical authority from political authority, will continue. I feel however that, if the Bureau of the Conference is good enough to ask you to vote on the question of whether the International Committee of Military Medicine and Pharmacy is to be admitted forthwith to take part in our work as an observer and if that question is answered in the affirmative, the Conference will have conferred on that institution a recognition which will be a pledge that a great effort, directed to further the common ends of the whole of humanity, whom we represent here, will proceed.

The PRESIDENT: I note, in the first place, that the Italian Delegation has made no proposal with regard to the admission of the Order of Malta as an observer or as an expert. Nobody can question the merit of the Order of Malta or the great services it has rendered to humanity. If the Order of Malta wishes to make known to the Conference its point of view on questions in which it is particularly interested, it is free, like any other organization interested in the work of the Conference, to submit a memorandum upon them.

With regard to the proposal of the Delegation of Monaco to invite the International Committee of Military Medicine and Pharmacy to participate in the work of the Conference as an observer, I should like to remind you that, at the Second Plenary Meeting, the Conference rejected a proposal that this organization should take part in our work as an expert. The question was again considered last week by the Bureau, which decided

against the Committee's participation on the grounds that it was a private organization, although certain governmental departments were represented in it.

Besides, the Bureau noted that the aforesaid Committee was in fact represented by certain of its members who belong to one or other of the delegations here. In deciding not to bring the matter before the Assembly again, the Bureau agreed that if it was found necessary to consult the International Committee of Military Medicine and Pharmacy on any special point, the Committees would be free to do so.

The proposal made by the Delegation of Monaco is now open to discussion.

As no delegate has asked for the floor, I will take a vote on the above proposal.

The proposal of the Delegation of Monaco is rejected by nineteen votes to eighteen.

Does anyone else wish to speak on the second item of the Agenda?

As this is not the case, we will now take the next item.

The PRESIDENT: During the discussions in the Joint Committee, the question arose of which was the proper organ of the Conference to deal with the Preamble to the Conventions. The Bureau, after some discussion, unanimously agreed that the best course would be to instruct Committees I, II and III each to consider separately the Preamble to the Convention for which it was responsible. Later, if the decisions taken by the three Committees did not agree, they could be communicated to the Coordination Committee for reconsideration.

Does any delegate wish to speak?

As no one wishes to speak, I conclude that you accept the views of the Bureau.

The Delegations of Austria, Denmark, Finland, France, Monaco and the Netherlands have submitted a Draft Resolution proposing that the Joint Committee should be instructed to consider the possibility of introducing into the Conventions a provision regarding the procedure to be followed for settling any differences which may arise in connection with the interpretation and application of the Conventions; it is proposed that this question should be examined in connection with the consideration of Articles 10 and 119 of the Draft Prisoners of War Convention, and the corresponding Articles of the other Conventions.

Are there any observations?

I call upon the Delegate of Denmark.

Mr. COHN (Denmark): The Conventions for the Protection of War Victims which we are engaged in drawing up, constitute a very important piece of international legislation. They embody a great many special rules which have already given rise

at previous meetings to fairly detailed discussions concerning the different conceptions and interpretations to which they are open. We hope that these deliberations and discussions have helped to settle the difficulties connected with the interpretation and application of the Conventions; but we cannot feel convinced that these difficulties have been finally solved, and still less, that new, unforeseen cases demanding a solution, will not arise in the future.

The practical effect and the importance of this essential work of legislation, would certainly be consolidated if it were possible to begin by creating a competent international body to which the parties concerned could refer in order to obtain an impartial and final solution of difficult and doubtful cases.

We hope that our deliberations will result in a piece of genuine international legislation dealing with war victims and legally and practically binding on the States. But the difference between vague principles with no binding force, left to the arbitrary and subjective judgment and to the varying interests of the Parties concerned, and a prescription of law, legally binding on the Parties, consists precisely in this; is there, or is there not, in existence an impartial body competent to give a final decision on doubtful points, or on those on which agreement cannot be reached—a body not only competent to express an opinion as regards the working of the rules laid down in the Conventions and their interpretation, but also to decide whether those rules have actually been complied with by the parties in the spirit in which they are established, or whether such rules have been infringed? This is why the Danish Delegation believes that if the work on which the Conference is now engaged is to constitute a genuine contribution to international law, it is most important that the Contracting Parties should agree to include among the Articles common to the Conventions, a clause requiring them, in the event of disagreement concerning the interpretation or the application of the Conventions, to submit the question to a competent and impartial body, instead of leaving it to the subjective and arbitrary judgment of the Parties themselves.

The best way of making certain of an objective solution would undoubtedly be to submit cases of this kind to the Permanent Court of International Justice at the Hague, which fulfils all the requisite conditions for taking the necessary decisions.

That is why the Danish Delegation has proposed that the Joint Committee would consider, in connection with Articles 10 and 119 of the Prisoners of War Convention and the corresponding Articles of the other Conventions, the possibility of inserting the following clause in the articles common to these Conventions:

"In the event of two or several Contracting Parties differing as to the interpretation or application of the provisions of the present Convention, or as to the compensation due to one of their nationals or to one of the persons placed under their protection, or as to other legal consequences arising from an infringement of the said provisions, each of the Parties may in the form of a request, submit the dispute to the International Court of Justice set up by the United Nations Charter. The Parties shall undertake to accept the decision of the Court."

In conclusion, may I add that there is at present no question of voting on the substance of the proposal (on the receivability or non-receivability of such a clause) but only of deciding whether the Joint Committee should be authorized to consider the question, and, if necessary, submit a proposal to the Conference. This seems to me a modest and legitimate recommendation. After all, we are here to consider these problems, and we should like to know the views of the various Delegations regarding the possibility of taking a step forward in this field of international law and humanitarian activities. We hope therefore, that the Conference will give the Joint Committee authority to study this important question.

The PRESIDENT: The debate is open on the Draft Resolution which has been submitted. I call on the Representative of Monaco.

MR. DE GEOUFFRE DE LA PRADELLE (Monaco): As part author of the proposal which has been submitted to the Conference, I take the liberty of dwelling on the great importance of its wording. The proposal is to allow the Joint Committee, whose terms of reference depend directly on your decision in Plenary Meeting, to extend its field of research beyond the common Articles at present submitted to it for consideration, into a sphere—that of justice—which is obviously connected with international law, but which has a very great bearing on humanitarian problems.

It is customary, in international conventions of importance, to provide for clauses known as arbitration clauses. In the texts which you have before you this necessity is recognized, but the necessary legal provisions are couched in obscure and ambiguous terms, which vary according to the Convention concerned.

I will briefly explain the importance of the divergencies between the Conventions which, in my opinion, finally end by causing a gap, a very obvious gap, in the legal provisions of the texts we are drawing up.

In two of the Conventions (the Wounded and Sick and the Maritime Warfare Conventions) the

procedure for settling these differences is the subject of two separate provisions. The first provision (contained in Article 9 or 10, it does not matter which) refers to what the text erroneously calls "Procedure of Conciliation" (it is not really conciliation which is meant). There is also a second provision (Article 41 or 45), headed "Procedure of Enquiry" or "Investigation Procedure", which envisages the possibility of disputes concerning the application of the Convention and proposes to apply the method known in international law as "enquiry"; the enquiry is followed by conciliation, which may itself end in the imposition of a decision binding on the Parties to the dispute. This is what is understood by international arbitration in the strict sense of the term.

There are therefore two Conventions, each of which contains an Article, wrongly entitled "Conciliation", and another with the heading "Investigation Procedure" or "Procedure of Enquiry".

If we wish to study this problem, we should entrust it to the Joint Committee, giving the latter the necessary authority to consider the Articles 41 and 45 which I have just mentioned (which envisage a procedure based on a Commission of Enquiry), with a view to coordinating them with Articles 9 and 10, which undoubtedly fall within the terms of reference of the Joint Committee. This coordination will make it possible to decide whether the problem of the peaceful settlement of disputes has been solved or not.

The problem is one of the settlement of normal international disputes. You will note that there is no question of the introduction of penal provisions, which are provided for elsewhere in the Convention and concern the repression of individual acts committed in violation of the rules laid down.

That, then, is the purpose of the proposal submitted to you.

There are obviously two ways in which the idea of articles common to all Conventions can be conceived. One is the literal way which consists in comparing the wording of the texts without trying to understand them; after reading the texts and finding that each of them contains passages which, if not identical, are at least similar, one comes to the conclusion that they fall within the terms of reference of the Joint Committee. The other is the logical approach, which consists in deciding on the Articles which should be common to all Conventions and which it is essential to include in the preliminary drafts which we are studying.

It is the latter idea which we ask you to adopt. If you agree with this view, it is essential that you should give the Joint Committee authority when it is considering a common Article, to examine at the same time any Articles presenting closely allied features.

## 6th, 7th PLENARY MEETINGS

What we really wish in short, is that Articles 41 and 45, for instance, should appear, not only in two Conventions, but in all four. I therefore request you to authorize the Joint Committee to examine, as it should be examined, in all its aspects, the problem of differences regarding the application or interpretation of the Conventions.

The PRESIDENT: There seems to be no opposition to this Draft Resolution. Does anyone wish to speak?

Mr. GARDNER (United Kingdom): I have no desire to prolong this debate by discussing the theoretical position in which we might conceivably find ourselves. We have come here to achieve practical results; and all I want to say, on behalf of my Delegation, is that we should be very glad to see the terms of reference of the Joint Committee extended in this way, so long as it is quite clear that the Plenary Meeting is not prejudging the

question of whether there should be a compulsory form of procedure for settling disputes or not.

The PRESIDENT: There are no further speakers. I note that the Draft Resolution is unopposed. It is therefore adopted.

I also wish to draw your attention to the Exhibition which opened last Friday, May 6th, at the Public Library of Geneva. It is dedicated to Henry Dunant and the Geneva Conventions of 1864, 1906 and 1929. Among the documents on view you find the originals of these Conventions, together with letters and publications throwing light on the life of Henry Dunant and on the ideals of which he was the first advocate. These documents recall in vivid fashion the first 90 years of the great work of human solidarity which our Conference must carry on. I am convinced that the Exhibition will be of the greatest interest to those of you who have not yet seen it.

*The Meeting rose at 4.45 p.m.*

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## SEVENTH MEETING

*Wednesday 25 May 1949, 10 a.m.*

*President: Mr. Max PETITPIERRE, President of the Conference*

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The PRESIDENT: You have received the Agenda of today's meeting. Are there any observations? There are none. The Agenda is adopted.

### **Fourth Report of the Credentials Committee**

The PRESIDENT: The Credentials Committee, which held a meeting yesterday, is ready to submit its Fourth Report. I shall ask the Chairman of the Committee to be good enough to read it.

Mr. AURITI (Italy), President of the Credentials Committee: The Credentials Committee has examined the credentials submitted by the Delegations of the following States: Belgium, Chile, Cuba, Iran, Peru and Thailand. They were found to be in good and due form. The Credentials Committee therefore proposes that this Meeting should recognize their validity.

Of the fifty-nine Delegations taking part in the work of the Conference, fifty-five have now submitted credentials in good and due form. In the case of the other four Delegations, provisional documents have been considered sufficient pending the receipt of regular credentials.

The PRESIDENT: I wish to thank the Committee, and in particular its Chairman, for this report. Are there any observations concerning it?

There are none. The Fourth Report of the Credentials Committee is adopted.

### **Extension of the Terms of Reference of the Joint Committee**

The PRESIDENT: At its last meeting, the Conference unanimously adopted a Draft Resolution submitted by the Delegations of Austria, Denmark,

Finland, France, Monaco and the Netherlands. This Resolution aimed at making the Joint Committee responsible for studying a provision regarding the procedure to be adopted for the settlement of any differences which might arise in connection with the interpretation and application of the Conventions.

This decision of the Plenary Assembly, and its full significance, were discussed by Committee I in order to determine whether the adoption of the Resolution by the Conference implied that Article 41 of the Wounded and Sick Convention and Article 45 of the Maritime Warfare Convention had been referred to the Joint Committee. These Articles deal with the procedure of enquiry and are, therefore, closely connected with the general problem to be examined by the Joint Committee.

The Bureau, which had been consulted on the matter by the Chairman of Committee I, considered that the Joint Committee should deal with the problem as a whole. The Bureau unanimously proposes that the Conference should give a liberal interpretation to the decision taken at the Sixth Plenary Meeting and include the consideration of Article 41 of the Wounded and Sick Convention and Article 45 of the Maritime Warfare Convention in the terms of reference of the Joint Committee.

Are there any observations or objections regarding this proposal?

There are none. The proposal of the Bureau is adopted.

#### **Report of the Working Party entrusted with the examination of the amendment to Rule 21 of the Rules of Procedure**

The PRESIDENT: At the Fifth Plenary Meeting the Conference set up a Working Party to examine the amendment to Rule 21 of the Rules of Procedure (Rule 22 of the draft prepared by the Swiss Federal Political Department) submitted by the Delegations of Costa Rica, Greece, Guatemala, Liechtenstein and Nicaragua. This amendment provides for the possibility of voting by proxy at Committee meetings.

The Working Party has now finished its work and its written report has been submitted to you (*see Annex No. 4*).

I will ask the Chairman of the Working Party to present his report.

Professor CASTBERG (Norway), Chairman of the Working Party: I should like to mention first that as Mr. Pesmazoglou, Head of the Greek Delegation, was prevented from taking part in the work of the Working Party, it only comprised four members. The Working Party, thus constituted, was able to agree on the solutions to most of the legal questions raised by the amendment.

The votes were equally divided, however, on the question of the advisability of amending the Rules of Procedure so as to take some account of the proposal of the five Delegations. The Working Party has not, therefore, submitted any proposal. This was also the case with the question of whether the Working Party should or should not submit draft texts to the Assembly.

As regards the legal aspect of the problem, the Working Party recognizes unanimously that it is legally possible to give a delegation to an international conference the right to vote by proxy. The Working Party also recognizes unanimously that a Conference such as ours is at liberty either to exclude an arrangement of this kind from its Rules of Procedure, or to include it with certain reservations. The majority of the Working Party considers that under international law, the condition governing the admissibility of a vote by proxy should be that any delegation availing itself of that facility must be authorized to do so by its Government.

As the Working Party has not submitted a proposal, I do not intend to enlarge on the principle of voting by proxy, this question appearing to be of only very minor importance to our Conference.

I shall, therefore, as Delegate of Norway, merely submit to you, in the name of my Delegation, the draft amendment which we, together with the United States Delegation, propose should be inserted in the Rules of Procedure of the Conference (*see Annex No. 5*).

The PRESIDENT: I thank the Working Party and its Chairman for their report. As you will have noticed, the Working Party was unable to agree whether, or to what extent, the Conference should implement the proposal submitted by the five Delegations whose names I mentioned earlier.

The Delegations of the United States of America and Norway then submitted an amendment to allow, in certain circumstances, voting by proxy at the meetings of Committees and Sub-Committees.

The authors of the amendment submitted by the five Delegations have informed us that they are prepared to withdraw the text they suggested and to support the proposal of the Delegations of the United States of America and Norway (with the exception of the few words stating that a vote by proxy must be expressly authorized by the Government concerned).

In these circumstances, we have only to deal now with a single formal proposal, namely, that submitted by the United States and Norwegian Delegations. However, as certain divergencies of opinion exist between these two Delegations, it will be necessary to take separate votes on the text containing the reservation proposed by the Norwegian Delegation and the text submitted by

the United States Delegation, which does not contain that reservation.

Let us not lose sight of the fact that this question, although it presents a certain interest to several small Delegations, is really only concerned with a subsidiary point of procedure. It is to be hoped, therefore, that we shall arrive at a speedy decision.

The discussion is open. I call upon the Representative of the United States of America.

Mr. Leland HARRISON (United States of America): Rule 34 of the Rules of Procedure provides that each member country of the Conference shall be entitled to one vote in the Conference and in Committees I, II and III. You will note that it does not state that each large country or each country with a large delegation shall have one vote in Committees I, II and III, but that each member country without exception shall have one vote. This is as it should be. Each of the countries in question is a sovereign State, a full member of the community of nations, interested with all other nations in the formulation of international law, and particularly in the application of those humanitarian principles which are vital to the protection of citizens of all countries. Each of these countries has been invited to take a full part in this Conference.

This being the case, this Conference should do all that is legally and practically feasible to ensure that countries with small delegations shall be able to exercise their right to vote in Committees I, II and III, which are the main working committees of the Conference. Since these Committees meet simultaneously, delegations of less than three members cannot exercise their right to vote unless proxy voting is permitted in these Committees. You have just heard the report of the Working Party that there is no legal obstacle to such proxy voting.

The United States and Norwegian Delegations have proposed an amendment to Rule 21 of the Rules of Procedure to permit any delegation of less than three members to vote by proxy in Committees I, II and III under proper safeguards. The United States Delegation feels that this is the right and proper thing to do. It hopes that the other delegations of the Conference feel likewise.

Mr. DUPONT-WILLEMEN (Guatemala): Speaking on behalf of the five Delegations mentioned a moment ago, I should like to thank the Working Party, and in particular the United States Delegation, for having considered our proposal. That is all I wish to say.

Mr. MOROSOV (Union of Soviet Socialist Republics): The question of ensuring that delegations of small countries shall be able to take part in the

work of the Conference is certainly one of primary importance. If the problem was really being considered in the way that is should be, the Soviet Delegation would be the first to support the amendment. But we are faced with a proposal which would not, we think, if adopted, attain the desired end.

If you refer to the document before you, you will realize that the whole matter is really one of transferring a small nation's right of vote to another nation in order that the latter may express the decision taken by the former. But I ask you, is the formal vote really the most essential part of the participation of a delegation in the work of our Conference, particularly during this first stage, when we are drafting texts in detail? Is it only thus that we should envisage the participation of the delegations in our work? As far as I am concerned, my reply is in the negative, because if that were the case it would be sufficient for each one of us to remain in the capital of his own country, and to make known his decisions merely by employing modern means of long-distance communication. It would be something like the games of chess played between players who are separated sometimes by thousands of kilometres, but who are not prevented by that fact from conducting their game according to all the rules. It appears to me that such a situation has nothing in common with the purposes of the present Conference.

In our opinion, the amendment to Rule 21 proposed by the delegations of certain small countries would not, if adopted, enable the representatives to take a more active part in the work of the Conference, since even if it were adopted, these delegates could not take part in the discussions in all the Committees.

It is proposed to allow small countries to cede their vote to representatives of other countries from time to time when decisions have to be taken by the Committees. But generally speaking, a formal vote is the outcome of an exchange of views and of a discussion. The general discussion on different questions within the Committees, is the most essential and valuable part of the collaboration of participating States; at this stage, when preliminary decisions are being made, it is impossible to separate artificially the delegates' right of vote from their other functions, in particular, from their active participation in the discussions which shape the collective will of the Conference.

Once involved in the procedure of proxy voting, we should run the risk of distorting that collective will, especially in the Committees and Sub-Committees. The result would be that a representative who had delegated his vote would not hear the arguments of his colleagues, and would not vote

## 7th PLENARY MEETING

as he would have done had he heard or taken part in the discussions. It is not desirable that arguments submitted during meetings should have no influence on the participants. I cannot conceive a situation where I would say to myself: "Well, I have come to this meeting with such and such instructions, and whatever arguments may have been raised against this point of view, I will not alter my vote." It should not be forgotten that a vote taken during the preliminary drafting period within the Committees is not final, as the final decisions will only be taken at Plenary Meetings of the Conference.

If, therefore, we accepted the proposal made by the Delegations of the United States of America and of Norway, not only would we not ensure the effective participation of the small delegations in the work of our Conference, but we would, on the contrary, distort the collective will; we would, in fact, be bringing into play the votes of those who, had they been present personally at the meeting and the debates, might have altered their point of view under the influence of the various opinions and arguments expressed by other delegates during the discussion.

It is established, both in law and in fact, that up to the present time the only exceptions in diplomatic conference procedure have been those where a State whose representative was not present at the Conference has allowed another State to safeguard its interests. There is no precedent for the proposal to allow certain delegates to nominate other delegates as their representatives; to do so would not only be in contradiction to established diplomatic practice, but would run the risk of obstructing the normal work of the Diplomatic Conference.

The only example quoted in support of this proposal is the procedure adopted at the Telecommunications Conference, where it was agreed to replace Government delegates by representatives of various telegraphic, telephonic and radio organizations. But that Conference dealt with purely technical matters and it is obvious that such an example cannot be quoted as an argument for adopting a similar procedure at the Diplomatic Conference. I feel that the absence of any precedent is no mere coincidence, and if we accept the proposal submitted to us, we will by doing so be making a new departure and founding a precedent.

The Soviet Delegation will therefore vote against the proposal of the United States and Norwegian Delegations regarding the participation (as it is called in the draft amendment) of the delegations of small countries in the work of the Conference.

The PRESIDENT: I call upon the Delegate of Burma.

General OUNG (Burma): As the only Delegate of Burma, I should like to thank the President, the Bureau, and all the delegates for the patience shown on this subject; the question is indeed of great importance to countries represented like mine by a small number of delegates. There are, I think, two points at issue: the desire of States like mine to take an active part in the work of the Conference, and their desire to exercise a vote.

For my part that is the situation. I have the desire to take an active part in the preliminary work of the Conference, but I have also a desire not to record my vote on a subject which has been discussed in my absence. I still have the opportunity to vote when the final decision is made. I therefore request my colleagues from those countries which have the advantage of having large delegations, to give us an opportunity of taking part in important discussions whenever the latter take place in these Committees. I am also confident that the very able Chairmen of the Committees will, whenever possible, give us an opportunity to take part in important decisions. What has been done by some of the small delegations such as mine is to keep in touch with the work of the various Committees, and whenever an important subject is to be discussed, I endeavour to be present. I am grateful to many of my colleagues who have helped me to keep in touch with the discussions in the Committees.

I therefore suggest that we be given the opportunity of participating in the discussions, and that Rule 21 of the Rules of Procedure should not be amended.

Sir Robert CRAIGIE (United Kingdom): I have listened to the discussion on this matter with the greatest interest, in particular to the arguments put forward by the Head of the United States Delegation. Without desiring to prolong the discussion by going into details, particularly the legal aspects, over again, I should like to say that in my personal opinion this cannot be regarded as a minor matter of procedure only affecting our Conference. We shall be setting a precedent for this type of diplomatic conference, and therefore it behoves small delegations to consider very carefully where we are going.

There are so many difficulties and even dangers in the course which is contemplated that I would ask the Conference to consider carefully whether what they are doing is so important that we must take a decision of this character in order to meet it. Not all the smaller delegations, I believe, are in favour of this course. In fact, I notice that the seats of the representatives of quite a number of smaller delegations are vacant and that implies a certain lack of interest in this particular problem. On the other hand, it is the very honest desire

## 7th PLENARY MEETING

of the United Kingdom Delegation that every possible facility should be given to the smaller delegations not only to exercise their vote but, as the Representative of Burma has just said, to take part in these important discussions.

The practical position is this. The proposal applies to three Committees, I, II and III. Committee I will have completed most of its important voting in the course of another week or two; and we must assume, I think, that the proposal could not in any case come into force at once, because there must be equality for all the smaller delegations, and certainly some would wish to have further instructions from their Governments before it came into force. So, if we look at the practical aspects, I believe it would not be unfair to say that in practice the proposal will only affect Committees II and III, and surely the Secretariat would not find very much difficulty in arranging that when the more important voting takes place in these Committees, their meetings should be held one in the morning, one in the afternoon, or at separate times. Certainly, so far as the United Kingdom Delegation is concerned, we would put our full weight behind any practical solution of that kind which would enable the smaller delegations to take their full part in the discussions and voting. For this reason, so far as my Delegation is concerned and so far as the United Kingdom Government is concerned, we feel that it would be unwise to proceed with the proposal for this amendment.

Mr. HARASZTI (Hungary): The matter we are dealing with at the moment is not a legal question; it raises above all certain problems concerning the efficiency of the work of the Conference. In the work of the Committees, the important thing is not so much the voting as the discussion of the questions which arise. Therefore, the most important task of the delegations participating in the Conference lies not in voting (the votes of Committees are not final), but in contributing to the best possible solution of the problems which arise. In my opinion, the only solution is the one proposed by the Head of the Delegation of the United Kingdom.

By accepting this amendment, which would enable the delegations of the big countries to procure for themselves an advantageous position in international conferences, we would be creating a dangerous precedent. I have the impression that the Delegations which proposed this amendment (those of the United States of America and Norway) are not themselves really convinced that their amendment is without danger, since they wish to restrict the number of votes of any one State to two. If this amendment is in the interests of the small countries, why this reservation? Is its

object to prevent the big countries from being in a similar position to that of the main shareholder of a limited company?

The Hungarian Delegation considers, as the delegation of a small country, that the amendment proposed by the United States and Norwegian Delegations is not in the interests of the small countries. It will therefore vote against it.

Mr. ZANNETTOS (Greece): The fact that Greece appears among those countries which submitted the original proposal is due to a mistake or a misunderstanding. I request that this mistake be rectified by deleting the name of Greece from the list of countries who submitted the original proposal.

The PRESIDENT: We take note of the fact that Greece should no longer figure as one of the signatories to the proposal which was examined by the Working Party, and that the Greek signature appeared at the end of the amendment in error.

Mr. WINKLER (Czechoslovakia): In discussing the question of the amendment to Article 21 of the Rules of Procedure, we should bear in mind not only the working possibilities of small delegations but also the whole result of our work.

There is no doubt that small delegations have to make great efforts in order to keep up with our work in all fields, and voting is certainly one of the easiest of their tasks. The small delegations have to study thoroughly hundreds of amendments and other documents and then take up a position in the discussions on them.

I doubt whether the procedure proposed by the Delegations of the United States of America and of Norway would be even practicable. The small delegations would still be unable to fulfil their part because a delegation of one or two members would have difficulty in informing the delegation to which it gave its mandate to vote, exactly what the intentions and views of its Government were. There might, furthermore, be divergencies between the opinions of such a delegation and those of the delegation which it authorized to vote on its behalf.

Most of the Nations represented at this Conference are members of the United Nations. When the Charter and the Rules of Procedure of the General Assembly of the United Nations were being worked out, those concerned were aware of the difficulty which small nations had in taking part in the work of all the committees and other organs of the United Nations. Nevertheless we do not find any such article in any of the above documents. In the Czechoslovakian Delegation's view this Conference should profit by the expe-

rience of the most important international body and should be guided by the reasons which caused the United Nations not to accept a similar provision.

For the above reasons the Czechoslovakian Delegation will vote against the amendment proposed by the Delegations of the United States of America and Norway; it hopes that other delegations will adopt the same attitude and continue with the smooth work of our Conference.

Mr. DA SILVA (Brazil): The question is a very simple one and we are enlarging on it unnecessarily.

I move that our President asks the Credentials Committee if the delegates, according to the terms of their credentials, can transfer their right to express opinions and vote to the representatives of a country other than their own.

Mr. MEVORAH (Bulgaria): My only object in addressing the Meeting is to point out that all small States and all small delegations who are primarily interested in this question are against the amendment. And I believe that it is their opinion which is of greatest importance.

Although the Bulgarian Delegation only comprises two Delegates, it would find great difficulty in empowering another country to represent its interests. If a question of which I was ignorant was to be discussed, it would be impossible for me to give prior instructions to the representative of another State as to how he should vote on behalf of my Delegation, as I would not myself know in what light the matter would present itself after the discussion. It would therefore be necessary for me to give him a general mandate to act in place of a delegate of my own country and vote as he saw fit. That would be an impossible position.

I shall therefore support the proposals made by the Delegates of Burma and of the United Kingdom.

Colonel FALCO BRICENO (Venezuela): Venezuela is always ready to support any arrangement which would be in the interests of the small countries. But in this case we do not consider that the amendment proposed by the Delegations of the United States of America and Norway would be in actual fact—and I emphasize the words “in actual fact”—to the advantage of the small countries.

The Delegation of Venezuela is entirely in agreement with the arguments of the Delegate of the United Kingdom, and would like to draw your attention to the fact that the Governments have given their delegates full powers to sign the Conventions established by the Diplomatic Conference of Geneva, but not to alter the usual procedure which has always governed diplomatic conferences.

Mr. HAKSAR (India): The Indian Delegation feels that, being neither a large nor a particularly small delegation, it cannot put itself in the exact position of a one or two-men delegation; the Indian Delegation realizes that the wearer alone knows where the shoe pinches. I for one would have liked to have heard more of the views of those who are pinched. So far, unfortunately, we have not had the advantage of hearing the views of members of such delegations. That is one aspect of the matter.

There is, however, a second aspect of the matter, namely, that the question, if it had to be discussed at all, ought to have come a bit earlier in the day; I think it has come too late, because, assuming for a moment that we do proceed to adopt the Resolution, then our Governments will have to be briefed as to the particular points of principle on which they should authorize delegations or authorize somebody else to vote in a particular manner. I for one shudder to think what would happen if anyone exceeded the delegated powers.

There is a third aspect of the matter. It is this, that the matter is not entirely legal. The Indian Delegation has a profound respect for the eminent jurists who constituted the Working Party; but with all respect the Indian Delegation does submit that the matter cannot be disposed of by the citation of one maxim of a Chairman or by an oblique reference to certain more or less well-known cases in diplomatic history. So far as the Indian Delegation is concerned, it is not unaware of those cases. We also know that those cases are not all the same. In the opinion of the Indian Delegation the matter requires deeper consideration than we have been able to give, and for these reasons the Indian Delegation will be forced to vote against the proposed amendment.

The PRESIDENT: Since no one else wishes to speak, we shall proceed to vote. Two successive votes appear to be necessary.

The first will be conditional and provisory, and will enable the Assembly to decide, should this prove necessary, between the two texts submitted to it by the United States and Norwegian Delegations respectively. The difference between these two texts is that the United States Delegation proposes to omit the words “provided that it has been expressly authorized to do so by its Government” at the end of the first sentence. I will ask you to decide, by your first vote, in favour of either the text proposed by the United States Delegation or that proposed by the Norwegian Delegation.

In the second vote, which will be final, I shall place before you on the one hand, the text adopted as a result of the first vote, and on the other, the proposal submitted by a number of delegations

## 7th PLENARY MEETING

that no amendment whatever should be made to Rule 21 of the Rules of Procedure.

Mr. MOROSOV (Union of Soviet Socialist Republics): I should like to submit an observation regarding the proposed voting procedure. The first thing to be decided is the question of principle. Does the Assembly consider an amendment to Rule 21 of the Rules of Procedure necessary or not? We cannot vote on the two amendments submitted to us until this question of principle has been settled.

The suggested procedure might place certain delegations in a difficult position. I refer to those delegations which are opposed to any amendment whatsoever, but which, if the proposed procedure is adopted, will have to decide in favour of one or other of the two texts. This situation might cause some confusion.

That is the reason why it would be better to begin by voting on the principle of whether Rule 21 is to be amended or not, and later to select, if necessary, either the Norwegian amendment or that of the United States.

The PRESIDENT: It is, of course, possible to consider several methods of voting. Before the meeting, I reviewed them in order to decide how today's vote could best be organized. I considered among others the method just suggested by the Soviet Delegate. I think, however, that it is essential that, before a meeting decides on principle for or against an amendment, it should know the purport of that amendment. That is why the procedure I have indicated seems to me the soundest.

Delegations which have voted, during the provisional vote, for or against one of the two proposed texts will, of course, be able to vote against any kind of amendment at the final vote. They remain in full possession of their right to oppose any amendment whatsoever.

I therefore propose that we should proceed in the manner I suggested a few minutes ago.

Mr. MOROSOV (Union of Soviet Socialist Republics): I did not quite understand the order of voting proposed.

In what way, and how far, will the Soviet Delegation, for example, be bound if it votes for the Norwegian proposal? That is the first question.

Secondly, what will the second motion be?

Thirdly, will those delegations which are opposed to all amendments to Rule 21 have the opportunity of voting against any change whatsoever? What is to be the third motion which will give the Delegations the opportunity of voting for or against an amendment?

The PRESIDENT: I shall reply to the specific questions which I have been asked.

No Delegation will be bound by the opinion it has expressed at the first vote which, I repeat, is provisional in character.

The second vote will give delegations the opportunity of voting on the question of principle, namely, is the delegation in favour, or not in favour, of any amendment whatever. The second vote will, therefore, be final in character.

Mr. COHN (Denmark): In my opinion the two amendments submitted by Norway and the United States of America are two different amendments, and entirely independent of one another. I wonder, therefore, if it would not be best to take a vote first of all on the Norwegian amendment, which is the more specific, then on the United States amendment, and finally on the question of whether the Meeting decides to amend the present text of Rule 21 or not.

Mr. YINGLING (United States of America): The United States Delegation would like to withdraw its amendment in favour of the Norwegian amendment, since there is no essential difference between the two amendments but only a technical difference. To do so will simplify the whole matter, and allow a vote to be taken on the Norwegian amendment.

The PRESIDENT: I wish to thank the United States Delegation for their statement. Their gesture will greatly facilitate our work, since now we shall only have to take one vote. You are now, therefore, asked to vote for or against the amendment submitted by the Norwegian Delegation and seconded by the Delegation of the United States of America.

A vote was taken, eight Delegations voting for the Norwegian amendment and twenty-four against it.

The PRESIDENT: You have decided, by 24 votes to 8, to reject the amendment; consequently no change will be made in Rule 21 of the Rules of Procedure.

### Procedure and Acceleration of the Work

The PRESIDENT: At its meeting on May the 24th, the Bureau dealt with the progress of the Conference. Its members decided unanimously that it was not desirable, merely for the sake of saving a week or two, to proceed with undue haste when drawing up such important Conventions as those on which we are working here; such a course might actually detract from their value. Nevertheless,

## 7th PLENARY MEETING

the Bureau considered how the work might be speeded up without the results suffering. It came to the conclusion that two recommendations should be made to the Committees.

The first recommendation was that the discussions on the various Articles of the draft Conventions should not be unduly prolonged, and repetitions should be avoided. The Bureau thinks that it would be difficult to impose any general and uniform time-limit on the speeches made in the Committees or in the Plenary Meetings. On the other hand, it wishes to remind speakers of Rule 27 of the Rules of Procedure which confers on the Conference in Plenary session, and on the Committees in their meetings, the right at any time to limit the length of speeches. The Bureau recommends that the Committees make use of this right whenever circumstances permit.

Secondly, according to Rule 31 of the Rules of Procedure, a delegation may move the closure of a discussion. The Bureau recommends that the Committees make use of this right also, should the need arise.

The question of the actual duration of the work of the Conference was also discussed by the Bureau. The Bureau decided that it was impossible to take any decision on the subject at the present stage of the Conference's work. The Bureau intends to discuss this question again in the near future.

Does anyone wish to speak on what I have just said?

Since nobody wishes to do so, I assume that the Meeting shares the views of the Bureau.

### Announcement by the President

The PRESIDENT: I should like to draw your attention to the fact that Ascension Day, which is tomorrow, Thursday, May the 26th, and Whit Monday, which is on June the 6th this year, are public holidays in Switzerland. I imagine, and so does the Bureau, that the Conference will hold no meetings on those days. Nevertheless, I wish to ask whether you have any objection to there

being no meetings tomorrow, Thursday the 26th May or on Monday week, June the 6th?

Colonel DU PASQUIER (Switzerland): The Drafting Committee of Committee III decided yesterday to sit tomorrow, Ascension Day, after the Morning Service. I should like to know whether it has the right to do so.

The PRESIDENT: The Drafting Committee mentioned has obviously the right to meet if it wishes, just as other Committees, sub-Committees or Working Parties have the right to do so on days when there are, as a general rule, no meetings—for example, on Saturdays. There is no objection to a Working Party, a Sub-Committee or a Committee meeting on a Saturday if it finds it necessary. We are simply deciding a question of principle which may be disregarded by any section of the Conference which wishes to do so.

A number of delegates have expressed a wish to visit the Central Prisoners of War Agency which was created in 1939 by the International Committee of the Red Cross in accordance with Article 79 of the Prisoners of War Convention. During the war, offices of the Agency occupied the entire building in which we are now working. To make room for our Conference, they were transferred to the headquarters of the International Committee of the Red Cross at Pregny, and have had to be considerably reduced. Although most of the services have ceased to exist except in the form of records, they may nevertheless be of some interest to the delegations. The International Committee of the Red Cross will be happy to receive any of you who are interested in what was, during the war, the technical organization of the Central Prisoners of War Agency, and would like to see for themselves the results of some of the enquiries it undertook. Will delegates wishing to take part in such visits be good enough to hand in their names to the Enquiry Bureau of the Conference.

I declare the meeting closed.

*The meeting rose at 12.30 p.m.*

# COMMITTEE I

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REVISION OF :

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

AND OF

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



**COMMITTEE I**  
**(WOUNDED AND SICK, AND MARITIME WARFARE CONVENTIONS)**

**FIRST MEETING**

*Monday 25 April 1949, 10 a.m.*

*Chairmen:* Colonel W. R. HODGSON (Australia), Vice-President  
of the Conference; subsequently  
Sir Dhiren MITRA (India)

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**Election of Chairman**

The CHAIRMAN opened the proceedings by asking the Committee to elect its Chairman. On the proposal of Mr. GARDNER (United Kingdom), Sir Dhiren MITRA (India) was unanimously elected Chairman.

Sir Dhiren MITRA took the Chair.

**Election of two Vice-Chairmen and Rapporteur**

Mr. RYNNE (Ireland) proposed Mr. TARHAN (Turkey) and Mr. PINTO DA SILVA (Brazil) as Vice-Chairmen. The proposal was approved.

On the proposal of Mr. GARDNER (United Kingdom), General LEFÈVRE (Belgium) was elected Rapporteur.

**Agenda for the next meeting**

The CHAIRMAN proposed the following Agenda:

- (1) Election of a Drafting Committee;
- (2) Consideration of the Wounded and Sick Convention;
- (3) Miscellaneous.

With regard to the first item, he suggested that the Drafting Committee should be composed of five members and asked if the Committee wished to start the proceedings by discussing his suggestion.

On the proposal of Mr. GARDNER (United Kingdom), the discussion was adjourned until the next meeting, the delegations being requested to communicate to the Secretariat by the early afternoon any proposals they might wish to make.

The CHAIRMAN called the next meeting for Tuesday April 26.

*The meeting rose at 11.35 a. m.*

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## SECOND MEETING

*Tuesday 26 April 1949, 3 p.m.*

*Chairman:* Sir Dhiren MITRA (India)

**Election of Drafting Committee**

The CHAIRMAN announced that the Delegations of the following countries had been suggested as members of the Drafting Committee: Australia, Bulgaria, United States of America, France, Italy, Mexico, Pakistan, United Kingdom, Sweden, Switzerland and Union of Soviet Socialist Republics.

The Bureau of the Committee proposed that the Drafting Committee should be composed of seven countries, viz., United States of America, France, Mexico, Pakistan, United Kingdom, Switzerland and Union of Soviet Socialist Republics. If it was considered desirable to increase it to nine members, Australia and Bulgaria (or Sweden) might be included.

Mr. GARDNER (United Kingdom) considered that it would be best to limit membership to seven countries.

The Drafting Committee as proposed by the Bureau was approved. It was decided that the Rapporteur of Committee I should convene the Drafting Committee and act as its Chairman.

On the proposal of Mr. ABERCROMBIE (United Kingdom), seconded by the Delegation of the United States of America, the Expert Representative of the International Committee of the Red Cross was invited to take part in all meetings of the Drafting Committee as an Adviser.

**Procedure for the consideration of the Wounded and Sick Convention and the Maritime Warfare Convention**

On the proposal of Mr. ABERCROMBIE (United Kingdom) the Committee decided not to entrust the consideration of the Maritime Warfare Convention to a Sub-Committee, but to undertake that task itself.

In order to accelerate and facilitate the work it was decided to consider the Wounded and Sick Convention and the Maritime Warfare Convention simultaneously, chapter by chapter. The Committee thanked the Naval Experts for their informal discussion of the Maritime Warfare Convention and asked them to continue the said discussions.

## WOUNDED AND SICK CONVENTION

**Article 3**

Mr. PICTET (International Committee of the Red Cross) said that Article 15 of the Vth Hague Convention of 1907, on the rights and duties of Neutral Powers, provided for the application of the Wounded and Sick Convention to the wounded and sick interned in neutral countries. The International Committee of the Red Cross considered it desirable to introduce into the draft under discussion by the Committee a provision to that effect, but in more precise form covering also the case of medical personnel. Furthermore, he suggested that the word "interned", at the end of the Article, should be replaced by the word "received", as it was not obligatory for belligerent medical personnel entering neutral countries to be interned.

Mr. GARDNER (United Kingdom) observed that the adoption of Article 3 was liable to raise difficulties of interpretation. The Wounded and Sick Convention was directed against abuses which could only be due to the action of belligerents and was only applicable in wartime; it would not be right to impose on neutrals obligations which only concerned belligerents in the field. Again, the Wounded and Sick Convention protected only the wounded and sick of armies on the battlefield, and contained no provisions truly applicable to neutrals. The wounded and sick, if they were captured, became prisoners of war and fell *ipso facto* under the protection of the Prisoners of War

Convention. The United Kingdom Delegation would propose to Committee II that a special provision be included in the Prisoners of War Convention referring to this obligation incumbent on neutrals.

General LINDSJÖ (Sweden) informed the Committee that his Delegation had submitted an amendment which proposed the acceptance of the Article in the form proposed by the International Committee of the Red Cross or, failing that, its omission.

General JAME (France) was of the opinion that the object of Article 3 was not to impose rules on neutral Powers, but rather to protect them from criticism by belligerent Powers regarding favourable treatment accorded by a neutral Power to the sick and wounded of an enemy belligerent.

Mr. GARDNER (United Kingdom) gave examples of the difficulties likely to be met with if the Wounded and Sick Convention were extended by analogy to neutral Powers (particularly in the case of Article 35). He was in favour of omitting Article 3.

General LINDSJÖ (Sweden) proposed the adjournment of the discussion on Article 3 until the question of the status of medical personnel had been settled.

Mr. BAGGE (Denmark) accepted the Article in the form proposed by the International Committee of the Red Cross, substituting, however, the words "received or interned" for the word "interned" at the end of the Article.

Mr. GARDNER (United Kingdom) remarked that the Vth Hague Convention applied to interned persons in neutral territory. Had the Prisoners of War Convention then been in existence, Article 15 of the Vth Hague Convention would almost certainly have referred to the Prisoners of War Convention and not to the Wounded and Sick Convention. He suggested that the discussion be adjourned until the whole Convention had

been examined. The Committee would then be in a better position to judge whether certain of its provisions should be applied by neutral Powers.

Mr. PICTET (International Committee of the Red Cross) observed that the Vth Hague Convention specifically provided that the Wounded and Sick Convention applied to wounded and sick interned in neutral territory. The reference to medical personnel was new. It might be included in the Prisoners of War Convention if the provisions regarding medical personnel were to form part of that Convention.

The Committee adopted the United Kingdom Delegation's proposal and decided to adjourn the discussion.

#### **New Article**

Mr. PICTET (International Committee of the Red Cross) proposed the introduction of a new Article, based on Article 4 of the Prisoners of War Convention and Article 4 of the Civilians Convention, fixing the duration of the application of the Convention. The proposed new Article would provide that retained medical personnel, like prisoners of war, should have the benefit of the Convention up to the moment of their final repatriation. It might be worded as follows: "The present Convention shall apply to persons under its protection who fall into the hands of the adverse Party up to the moment of their final repatriation."

The CHAIRMAN suggested a postponement of the discussion on the question until a decision had been taken on Article 3.

Mr. GARDNER (United Kingdom) raised a point of order. Could the Committee take note of an amendment which had not been submitted by a Delegation in accordance with the Rules of Procedure? He asked the Chairman to consider the question with the President of the Conference.

*The meeting rose at 4 p.m.*

## THIRD MEETING

Wednesday 27 April 1949, 3 p.m.

Chairman: Sir Dhiren MITRA (India)

**Communication by the Chairman**

The CHAIRMAN announced that the point of order raised by Mr. Gardner, Delegate of the United Kingdom, at the previous day's discussion would be considered by the Bureau of the Conference during the afternoon.

## MARITIME WARFARE CONVENTION

**Article 3**

Article 3 was adopted subject to such modifications as the Drafting Committee might find it necessary to make in the event of the United Kingdom amendment to Article 11 being accepted.

**Article 4**

The Committee decided to defer consideration of Article 4 as in the case of the corresponding Article 3 of the Wounded and Sick Convention.

## WOUNDED AND SICK CONVENTION

**Article 10**

Amendments to Article 10 had been submitted by the Canadian and Netherlands Delegations. An amendment from the United Kingdom Delegation had also been received, but had not yet been distributed.

The CHAIRMAN suggested that before opening the discussion the Committee should await the distribution of the United Kingdom amendment which proposed alterations of a fundamental character. The Canadian and Netherlands amendments, being concerned only with the wording, could be dealt with by the Drafting Committee.

The Canadian, Netherlands and United Kingdom Delegations agreeing, the proposal was adopted.

**Article 11**

Mr. ABERCROMBIE (United Kingdom) proposed an amendment (the text of which would be distributed later) omitting the last part of the Article after the words "shall be prisoners of war". He did not think the Convention should refer to provisions of international law.

Mr. PICTET (International Committee of the Red Cross) did not consider there was any great objection to allowing the passage in question to stand. It might even be useful to have it made clear that it was the specific law in regard to prisoners of war which was applicable in the case in question.

The United Kingdom amendment was put to the vote and defeated by 17 votes to 3. Article 11 was accordingly adopted without modification.

**Article 12**

Mr. ABERCROMBIE (United Kingdom) proposed the addition of a clause to Article 12 allowing local arrangements to be made between belligerents for the collection of wounded and their return to their respective armies. The second paragraph of the Article provided for local armistices but such armistices were so difficult to arrange that it might be desirable to give the military authorities the possibility of making simpler and more direct arrangements.

Colonel CRAWFORD (Canada) wondered how such arrangements could be made in the case of an army which had been driven from the battlefield and wished to send medical personnel to recover its wounded. He would prefer to see the text of the United Kingdom amendment before pursuing the discussion.

On the CHAIRMAN's suggestion, the Committee decided to ask a working party composed of the Delegates of the United Kingdom and Canada and the Representative of the International Committee of the Red Cross to consider Article 12.

General JAME (France) observed that Article 3 of the Geneva Convention of 1929 referred to the removal of the wounded "remaining between the lines".

### Article 13

General WILKENS (Netherlands) read the two amendments proposed by his Delegation (*see Annex No. 29*) and contained in the memorandum submitted by the Netherlands Government.

Mr. PICTET (International Committee of the Red Cross) supported the Netherlands proposal.

Mr. ABERCROMBIE (United Kingdom) reminded the Committee that his Government's memorandum also proposed amendments to Article 13. He considered that Article 13 should be brought into line with Articles 110 and 111 of the Prisoners of War Convention. He proposed the appointment of a Sub-Committee consisting of representatives of Committees I and II for the purpose.

Mr. McCANON (United States of America) preferred to refer the question to the Coordination Committee. His own Delegation also proposed to submit amendments to Article 13.

General JAME (France) drew attention to the difference existing between the Wounded and

Sick Convention which concerned the dead on the battlefield, and the Prisoners of War Convention which referred to those who had died in captivity.

At the CHAIRMAN's suggestion, the discussion was suspended on the understanding that Mr. Abercrombie would submit his proposal to the Bureau of the Conference.

### Article 14

Amendments to Article 14 were submitted by the Delegations of Finland and Greece.

Mr. ZANETTOS (Greece) read the amendment proposed by his Delegation (*see Annex No. 31*).

Mr. BAGGE (Denmark), in the absence of the Finnish Delegation, supported the amendment submitted by that Delegation (*see Annex No. 30*).

Mrs. KOVRIGINA (Union of Soviet Socialist Republics) informed the Committee that her Delegation was proposing to submit an amendment to the effect that any attempt on the life of a wounded person should be considered as a crime against humanity.

The CHAIRMAN proposed that the discussion be postponed until the United Kingdom amendment to Article 10 had been distributed.

The proposal was adopted.

*The meeting rose at 4.35 p.m.*

## FOURTH MEETING

Thursday 28 April 1949, 3 p.m.

Chairman: Mr. Ali Rana TARHAN (Turkey)

## WOUNDED AND SICK CONVENTION

## Article 10 (continued)

Colonel WATCHORN (Australia) stated that his Delegation had submitted an amendment to Article 10 which had not yet been distributed (see Annex No. 28).

General WILKENS (Netherlands), commenting on the Netherlands amendment, pointed out the desirability of incorporating the enumeration which figured in Article 3 of the Prisoners of War Convention, in the text of Article 10; a mere reference to another Convention was not very convenient. For that purpose the text of Article 3 of the Prisoners of War Convention would have to be slightly modified. In sub-paragraph 2 the words "Detaining Power" would have to be replaced by "adverse Party" and sub-paragraph 6 would have to be omitted. He observed that the United Kingdom amendment was very similar to the Netherlands Delegation's own, and his Delegation would be prepared to approve the new Article proposed by the United Kingdom Delegation provided it embodied the modifications asked for by the Netherlands Delegation.

Mr. PICTET (International Committee of the Red Cross) approved the proposed amendments on condition that the enumeration suggested did not become restrictive, implying that only the wounded and sick belonging to the categories mentioned were to be protected and respected. It was a matter of drafting.

General LEFEBVRE (Belgium) suggested that the Article might begin with the words "The wounded and sick will be respected and protected in all circumstances". The enumeration proposed might be incorporated in Article 11, which would solve the problem.

Mr. SWINNERTON (United Kingdom) introduced the amendments proposed by his Delegation. They were as follows:

- (1) To delete "Members of the armed forces and the other persons designated in Article 3 of the Convention of . . . . . relative to the treatment of Prisoners of War", and substitute "The persons referred to in Article 9 B". Article 9 B was new, and would include the enumeration contained in Article 3 of the Prisoners of War Convention.
- (2) To delete the second paragraph and substitute the following: "They shall be treated with humanity and cared for by the belligerent in whose power they may be with the same consideration as members of the forces of that belligerent. No discrimination shall be exercised against any wounded or sick person referred to in the first paragraph on account of his race, nationality, religious belief or political opinion".
- (3) To add at the end of the third paragraph "provided that in no circumstances shall their treatment be less favourable than that given to men".

Dr. Puyo (France) observed that the Preamble suggested by the International Committee of the Red Cross ("Remarks and Proposals", p. 8) covered all eventualities and proposed that the Committee should recommend its adoption. Furthermore, the French Delegation agreed that the text of Article 3 of the Prisoners of War Convention should be included in the Wounded and Sick Convention, but would prefer a note in italics at the bottom of the page. As regards the United Kingdom amendment to the second paragraph of Article 10, he thought that the question was settled by Article 14 of the Prisoners of War Convention.

General JAME (France) added that the French Delegation wished in any case to retain the last sentence of the second paragraph.

Colonel MEULI (Switzerland) was of the opinion that the text of the Article, as adopted at Stockholm, should be accepted, taking into account the amendments proposed by the I.C.R.C. ("Remarks and Proposals", p. 11) and adding as a footnote at the bottom of the page the text of Article 3 of the Prisoners of War Convention.

Mr. ABERCROMBIE (United Kingdom) considered that the drafting of the first paragraph could be left to the Drafting Committee. He pointed out, however, that there might be certain legal objections to adding Article 3 of the Prisoners of War Convention as a footnote. Moreover, the Committee could not recommend the adoption of the Preamble, since it was common to all four Conventions and must therefore be studied by the Joint Committee. The United Kingdom Delegation was opposed to retaining the last sentence of the second paragraph concerning the priority of medical treatment. It was not possible to impose on States by an international law a provision with which they might in certain circumstances be unable to comply.

Colonel RAO (India) opposed the United Kingdom amendment to the second paragraph which he wished to retain in its original form.

Mr. BURDEKIN (New Zealand) supported the United Kingdom amendment to the third paragraph.

On the CHAIRMAN's suggestion, the question of the incorporation of Article 3 of the Prisoners of War Convention in the first paragraph of Article 10 was referred to the Drafting Committee for report.

The Chairman put to the vote the United Kingdom amendments to the second and third paragraphs of Article 10.

The amendment to the second paragraph was rejected by 17 votes to 8.

The amendment to the third paragraph was adopted by 15 votes to 3.

The Australian amendment to the second paragraph of Article 10 was referred to the Drafting Committee.

Colonel WATCHORN (Australia) stated that the Australian Delegation would submit a further amendment proposing to add a new paragraph to Article 10, making it clear that the Convention applied only to persons who found themselves "for the time being on land".

The CHAIRMAN, noting that the above amendment was not seconded, did not put it to the vote.

#### Article 12 (*continued*)

Colonel CRAWFORD (Canada) said that on further consideration of the United Kingdom amendment he withdrew the objections he had submitted on the previous day.

The CHAIRMAN noted that the working party, which was to have been set up, had become unnecessary. He accordingly put Article 12 for discussion.

Mr. ABERCROMBIE (United Kingdom) introduced the amendment of his Delegation for the addition of the words "and for the restoration to one another of the wounded left on the field after a battle" at the end of the third paragraph.

Article 12, amended as above, was adopted unanimously.

#### Article 14 (*continued*)

Colonel NORDLUND (Finland) introduced the amendment presented by his Delegation (*see Annex No. 30*). He was of the opinion that the activity of the civilian population on behalf of the wounded and sick should not be restricted and that the words "first aid" should be replaced by the word "relief".

Mr. KRUSE-JENSEN (Norway) was of the same opinion.

Mr. ABERCROMBIE (United Kingdom) also supported the amendment. He observed, however, that under the second paragraph the civilian population would be obliged to hand over the wounded in their care to the enemy occupying their territory—and that, by virtue of a humanitarian Convention! He pressed for the omission of any such obligation.

In general the Article was badly drafted, and called for review by the Drafting Committee. The mandatory clause which figured in the second paragraph should, in his view, be placed before the permissive clause in the first paragraph.

General JAME (France) insisted on the importance of retaining the third paragraph in any new draft of the Article.

Colonel RAO (India) said that his Delegation had submitted an amendment which proposed adding to the first paragraph, after the words "necessary protection and facilities", the words "which may be withdrawn for reasons of security or similar reasons".

This amendment not being seconded, the CHAIRMAN did not put it to the vote.

Colonel HODGSON (Australia) observed that there was nothing in the Rules of Procedure to the effect that amendments not seconded could not be put to the vote.

The CHAIRMAN agreed, explaining that in his previous ruling he had been following the precedent set by other international conferences. He put the Indian Delegation's amendment to the vote.

The amendment was rejected by 15 votes to 3.

Mr. BURDEKIN (New Zealand) supported the United Kingdom Delegation's proposals.

General WILKENS (Netherlands) emphasized

the point that the aid given by the civilian population to the wounded must not under any circumstances be made obligatory. If the words "first aid" were to be replaced by the word "relief", it must be made clear that these attentions were purely voluntary. The third paragraph might then be omitted, which he would prefer, differing on that point from the French Delegation.

General JAME (France) and Mr. BAGGE (Denmark) pressed for the retention of the third paragraph.

Upon the CHAIRMAN's proposal, the Committee decided to leave it to the Drafting Committee to consider the amendments submitted and to recast the Article in a more satisfactory form.

*The meeting rose at 5.15 p.m.*

## FIFTH MEETING

*Friday 29 April 1949, 3 p.m.*

*Chairman:* Mr. Ali Rana TARHAN (Turkey)

### Questions of Procedure

Dr. PUYO (France) asked whether it would not be preferable to concentrate on the examination of one Convention in its entirety and then proceed to the second, rather than study the two Conventions on the Agenda simultaneously and chapter by chapter. The amendments proposed for the Maritime Warfare Convention were numerous and required careful study. The Sub-Committee unofficially instructed to examine that Convention had hitherto only been able to make slow progress, and the respective chapters of the two Conventions did not always correspond. The Committee might decide to consider them separately, as Article 33 of the Rules of Procedure of the Conference authorized it to do, if a majority of two-thirds of the delegations was in favour of this course. He further suggested that the Committee should invite the unofficial Sub-Committee of Naval Experts to continue its work, and should invest it with a more official status.

After a discussion, in which Mr. GIHL (Sweden) and Mr. ABERCROMBIE (United Kingdom) raised

various objections, the CHAIRMAN put the French Delegate's proposal to the vote. It received only 18 votes, i.e. less than two-thirds of the delegates present, who numbered 30, and was therefore rejected.

Mrs. KOVRIGINA (Union of Soviet Socialist Republics) considered it preferable to set up small sub-committees as and when the work advanced and the need for them was felt.

Dr. PUYO (France), agreeing, withdrew his proposal to invest the Sub-Committee of Naval Experts with a more official status.

### MARITIME WARFARE CONVENTION

#### Article 11

Mr. ABERCROMBIE (United Kingdom) explained the new text proposed by his Delegation (*see Annex No. 62*). It contemplated amongst other things a wider sphere of application and the extension of the protection of the Convention to all wounded, sick and skipwrecked persons at sea,

including, mainly on practical, grounds, civilians. It proposed that all shipwrecked persons, whatever the circumstances of their shipwreck, should be equally protected. It was possible that such proposals might necessitate a modification in the title of the Convention; but that might be left to the consideration of the Coordination Committee.

The amendment of the United Kingdom had not included the passage in the text of Article II which dealt with discrimination. The sentence might, however, be reinserted, if it was made quite clear that the only forms of discrimination prohibited were those which were prejudicial. The amendment of the United Kingdom also covered children and provided, as did Article 10 of the Wounded and Sick Convention, that the treatment of women and children might not in any circumstances be less favourable than that of men.

Captain MELLEMA (Netherlands) explained the amendment proposed by his Delegation. It proposed in the first place that, as in the case of Article 10 of the Wounded and Sick Convention, the enumeration in Article 3 of the Prisoners of War Convention should be reproduced in the text of Article II. Secondly, it contained a proposal, similar to that of the United Kingdom, for extending the protection of the Convention to all persons.

General PERUZZI (Italy) proposed to omit the word "medical" in the last sentence of the last paragraph but one of Article II. He considered that all references to persons other than members of the armed forces would be better placed in the Civilians Convention. Generally speaking, the text adopted at Stockholm appeared to him very liberal, especially where discrimination was concerned, and he accordingly advocated its adoption.

Colonel CRAWFORD (Canada) said that an amendment submitted by his Delegation proposed adding the text of Article 3 of the Prisoners of War Convention as a footnote to the Article. He awaited the Drafting Committee's opinion on the matter. He agreed with the United Kingdom Delegate as to discrimination. It ought to be possible to authorize preferential treatment in certain cases. Some such form of wording as "will not be subjected to adverse treatment for reasons of..." might be inserted in the Article.

Commander HUNSICKER (United States of America) thought it was for the Civilians Convention to protect shipwrecked civilians. As to discrimination, he thought that the problem had already been dealt with in Article 10 of the Wounded and

Sick Convention. Article II should be brought into line with the latter. Its text, as it had emerged from the 17th International Conference of the Red Cross at Stockholm, seemed to him adequate. The wider interpretation of the term "shipwrecked" suggested by the United Kingdom Delegation should be considered by the Drafting Committee.

Colonel SAYERS (United Kingdom) said that the extension to civilians of the protection accorded under Article II had been proposed for purely practical reasons. In the matter of discrimination, he was surprised at the attitude taken up by the Committee the previous day in regard to Article 10 of the Wounded and Sick Convention. He was afraid that the Delegates of France and India in particular had been the victims of a misunderstanding. Since it was evident that unfavourable discrimination must be prohibited, it was equally evident that in certain cases favourable discrimination must be authorized. For example, it should be possible to give to a prisoner who was a native of the tropics more blankets than to a prisoner of a Nordic race. Again, priority of medical treatment could only be admitted if it was to be interpreted as priority in time. In this connection, the proposal of the Italian Delegation to delete the word "medical" appeared to be sound.

General JAME (France) thought that the text of Article II was clear, and did not appear to authorize discrimination except in a favourable sense.

Mr. PICTET (International Committee of the Red Cross) agreed with that opinion. The priority referred to was obviously priority in time. When the question of the extension of the Maritime Warfare Convention to civilians was raised in 1937 at a meeting of the Conference of Experts which undertook the first revision of the Maritime Warfare Convention, the principle was accepted and embodied in a short clause. Later, when the draft of the Civilians Convention was in preparation, the same provision was incorporated in it. It certainly seemed essential that the provisions of the Maritime Warfare Convention should be extended to civilians in more explicit terms than had hitherto been the case. For this purpose a suitable provision might either be introduced into the "General Provisions" of the Maritime Warfare Convention or it might be included in the Civilians Convention, the attention of Committee III being drawn to the fact that it should be made more comprehensive than it was in the draft. In any case Committee I should get into touch with Committee III.

The CHAIRMAN summarized the discussion. The amendment to introduce, either in the text of Article 11 or as a footnote, the substance of Article 3 of the Prisoners of War Convention might be left to the Drafting Committee as in the case of Article 10 of the Wounded and Sick Convention.

The Committee decided to leave it to the Drafting Committee to find a wording which would make it clear that it was only discrimination in an unfavourable sense that was forbidden.

With regard to the extension of the Maritime Warfare Convention to cover civilians, the CHAIRMAN pointed out that there were two proposals, one suggesting the introduction of a clause in the Maritime Warfare Convention to cover civilians, the other proposing to deal with their case in the Civilians Convention.

Mr. BAGGE (Denmark) proposed that they should first make contact with Committee III, but the CHAIRMAN did not think that would be necessary unless Committee I decided not to extend the Maritime Warfare Convention to civilians. He put the question to the vote.

The Committee decided, by 17 votes to 11, that the provisions relating to the protection of shipwrecked civilians should figure in the Civilians Convention.

The CHAIRMAN said that he would inform Committee III of the above decision.

### Article 12

Mr. ABERCROMBIE (United Kingdom) said that his Delegation's amendment to Article 12 (*see below*) should be considered together with the amendments to Articles 14 and 15. He proposed that if the Committee shared his view that these amendments raised questions of form only, they should be left to the Drafting Committee for consideration.

General PERUZZI (Italy) considered that the United Kingdom amendment to Article 12 raised

a question of substance, since it proposed the deletion of the last paragraph, which had been added on the motion of the Italian Delegation at Stockholm, providing that uninjured shipwrecked persons need not be taken, or detained, against their will on board a hospital ship. He pressed for the retention of the provision in question.

Mr. MCCAHERN (United States of America) said that an amendment submitted by his Delegation proposed that the last paragraph should be omitted as it did not seem realistic and might defeat its own ends.

Mr. ABERCROMBIE (United Kingdom) was of the same opinion.

The CHAIRMAN put the United States of America's amendment for the deletion of the last paragraph of Article 12 to the vote.

The amendment was adopted by 11 votes to 4.

The CHAIRMAN put to the vote the United Kingdom amendment to replace the text of Article 12 by the following :

"Any persons mentioned in Article 11 belonging to the categories set forth in Article 3 of the Prisoners of War Convention (*here insert a footnote making clear the name of the new Convention*) who fall into the hands of a belligerent at sea may either be detained, or taken to one of the belligerent's own ports, or sent to a neutral port or a port of another belligerent, or set free at sea ; in this last case, adequate measures must be taken to ensure their safety."

The amendment was rejected by 8 votes to 6.

Captain MELLEMA (Netherlands) having informed the Committee that the Netherlands Delegation withdrew their amendment to Article 12, the CHAIRMAN proposed the adoption of Article 12 with the last paragraph deleted.

The proposal was approved.

*The meeting rose at 6 p.m.*

## SIXTH MEETING

Monday 2 May 1949, 3 p.m.

Chairman: Sir Dhiren MITRA (India)

## MARITIME WARFARE CONVENTION

## Article 13

General PERUZZI (Italy) observed that Article 13 could not be applied in practice. There was no available space in a warship, whereas a hospital ship had all the necessary space and equipment. Furthermore, in the case of a belligerent boarding a hospital ship and demanding the surrender of wounded of his own nationality, who would be competent to decide who was to remain on the hospital ship? In other words, who would be responsible for determining the scope of the limitation provided for in Article 13? Was it the commander of the hospital ship, or the commander of the warship, or was it the Chief Medical Officer? The responsibility was great. It would be even greater if the belligerent insisted on the surrender of the wounded of the adverse party, since this would amount to capture. The result would be that hospital ships would try to escape when hailed, in which case they would be pursued.

Moreover, the Maritime Warfare Convention, and Article 23 in particular, offered the belligerent other and more legitimate ways of obtaining possession of the wounded on board a hospital ship. The amendment proposed by the Italian Delegation was intended to make Article 13 clearer and more acceptable and to prevent a belligerent who cared little for his humanitarian duties from misapplying it. The text of the Italian amendment was as follows:

“All warships of a Belligerent Power shall have the right to demand the handing over of wounded, sick or shipwrecked persons, whether nationals or allies, on board military hospital ships, or militarized hospital ships belonging to relief societies or to private individuals, and the surrender of wounded, sick and shipwrecked persons on board merchant vessels, yachts or other craft, whatever the nationality of such vessels or crafts, in so far as the warship can provide for their care, and the wounded and sick are in a fit state to be moved, and provided those who are prisoners of war consent to their repatriation.

“The belligerent Power which has demanded the surrender of wounded, sick or shipwrecked nationals or allies, shall undertake that they take no further part in operations of war.”

Mr. ABERCROMBIE (United Kingdom) thought that the Stockholm text should be adopted. There must no doubt be various occasions when Article 13 could be applied; surely it had not lost any of its value since 1907. The resumption by belligerents of their wounded, even where the latter were on board an enemy hospital ship, was quite normal, and the practice was recognized in land warfare. Furthermore, a warship could not always escort a hospital ship to a port to disembark wounded, and must, therefore, be able to take the wounded on board. It was impossible not to authorize a belligerent to retake wounded of his own nationality, in whose fate he was naturally interested, when he found them on board an enemy hospital ship.

General PERUZZI (Italy) said that the discussion really turned on the question of whether belligerents had the right to engage in acts of war against a hospital ship? To accept that position would not be progress — certainly not from the humanitarian standpoint. Belligerents should be authorized to retake wounded of their own nationality, but not to capture enemy wounded; that would be dishonourable.

Mr. DE GEOUFFRE DE LA PRADELLE (Monaco) did not think that the age of the text of Article 13 was an argument in favour of its retention. In modern warfare warships were too busily engaged in escorting convoys, if not in naval combat, to be used for the “recapture” of the wounded and sick of their nationality on board hospital ships. The dangers created for them by the submarine were, moreover, considerable. In the circumstances, there was very little point in giving warships the possibility of stopping at great risk to themselves in order to board a hospital ship. The

Committee might go even further than the Italian amendment and give hospital ships complete immunity, with control of their purely medical work on board by an observer, neutral or belligerent, of the same nationality as the wounded. He advocated, the adoption, in any case, of the Italian Delegation's amendment.

Colonel CRAWFORD (Canada) observed that if there had been no occasion to apply Article 13 in the past, as had been stated, there was little reason to think that it would be applied in the future. It must not, however, be forgotten that if all wounded found sure refuge in hospital ships, doubtful individuals might also take advantage of their shelter. If it was desired to afford every safeguard for the treatment of the wounded, the words "... and that the warship can provide adequate facilities for the necessary medical treatment" might be added at the end of Article 13.

Dr. PUYO (France) appreciated the spirit which had prompted the Italian amendment, but he thought that the Stockholm text, which was itself an advance on 1907, was satisfactory and acceptable. So, for that matter, was the Canadian proposal, to which the French Delegation was prepared to agree.

General PERUZZI (Italy) once more urged the necessity of protecting hospital ships from all acts of war. Furthermore, seriously wounded cases could not be transferred from one ship to another on the high seas without risk, and they would in any case be less well taken care of in a warship.

The CHAIRMAN put the Italian amendment to the vote.

It was rejected by 13 votes to 4.

The CHAIRMAN then put to the vote the Canadian Delegate's proposal to add at the end of the Article the following words: "and that the warship can provide adequate facilities for the necessary medical treatment".

The proposal was adopted by 16 votes to 1.

Dr. PUYO (France) observed that the proposal of the Delegate of Canada also figured in the Italian amendment, except in the English text from which it had been omitted. He suggested that the amendment should therefore be described as Italo-Canadian.

Mr. BURDEKIN (New Zealand) gave notice of an amendment by his Delegation to Article 13 to replace the final words by the following:

"... provided, however, that no action may be taken which will deprive any sick or wounded person of necessary care and attention or otherwise endanger his or her recovery".

#### Articles 14 and 15

On the suggestion of the CHAIRMAN, Articles 14 and 15 were referred to a Working Party composed of Delegates of the following countries: Australia, China, United States of America, France, United Kingdom and Sweden.

#### Article 16

No amendments having been submitted, Article 16 was adopted.

#### Article 17

The CHAIRMAN observed that Article 17 was similar to Article 13 of the Wounded and Sick Convention, the examination of which had been referred to a Joint Sub-Committee of Committees I and II. The same procedure might be followed in the case of Article 17.

Mr. ABERCROMBIE (United Kingdom) reported that the United Kingdom Delegation in Committee II was intending that day to make certain proposals on the subject. He suggested, that the Bureaux of the two Committees might meet and submit joint proposals to their respective Committees.

The Committee adopted the above suggestion.

#### Article 18

Mr. ABERCROMBIE (United Kingdom) said that the amendment submitted by his Delegation proposed the omission from the last paragraph of the addition adopted by the Stockholm Conference and the retention of the text as it had been proposed at that Conference ("... for any violations of neutrality they may have committed.") The United Kingdom Delegation was averse to introducing into the present Conventions any references to other international legislation, especially in the case of Article 18 where such references were vague. The United Kingdom Delegation proposed that the point be referred to the Drafting Committee.

The Committee adopted that suggestion.

Commander SMITH (Australia) said that the amendment of the Australian Delegation proposed to omit the words "as far as possible" from the second paragraph. It was essential that comman-

ders of ships who took wounded on board should know that the protection afforded to them would in all cases be complete. The Australian Delegation would accept the opinion of the Drafting Committee regarding this point.

The Australian proposal was referred to the Drafting Committee.

Mrs. KOVRIGINA (Union of Soviet Socialist Republics) informed the Committee that the Soviet Delegation had submitted an amendment for the addition of a New Article (10 A or 11 A) to Chapter II of the Wounded and Sick and Maritime Warfare Conventions respectively, because it was known that the provisions of Article 1 of the Geneva Convention of 1929 and Article 2 of the Xth Hague Convention of 1907 had been violated by many belligerent powers during the last war. Many Soviet wounded and sick had been deprived of medical assistance and even put to death or tortured. The new Article which would be placed at the beginning of Chapter II of the two Conventions would read as follows:

“The Contracting Parties shall undertake to consider as a very serious crime any act endangering the life of the wounded and sick, including: killing any wounded man; exterminating the sick; any form of torture, including medical experiments; deliberately leaving the wounded and sick without medical care; the creation of conditions exposing them to contagion”.

Mr. ABERCROMBIE (United Kingdom) had no objection to the amendment, but wondered if it would not be more appropriately placed in Chapter IX of the two Conventions, consideration of which had been entrusted to the Joint Committee. He therefore proposed a postponement of the discussion.

The CHAIRMAN deferred discussion of the question to the next meeting.

*The meeting rose at 5 p.m.*

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## SEVENTH MEETING

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

*Chairman:* Sir Dhiren MITRA (India)

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### Communication by the Chairman

The CHAIRMAN said that the Working Party which had been set up the previous day for the consideration of Articles 14 and 15 of the Maritime Warfare Convention, had asked that there should first be a short general discussion on the two Articles in the Committee itself. He proposed that the discussion should take place at the next meeting.

The proposal was approved.

### MARITIME WARFARE CONVENTION

#### New Article (11 A) *(continued)*

The discussion was resumed on the amendment A, submitted the previous day by the Delegation of the Union of Soviet Socialist Republics, proposing the introduction of an Article 11 A.

Mr. McCAGON (United States of America), sharing the opinion of the United Kingdom Delegation, proposed to refer the amendment, the proper place for which appeared to be in the chapter on Penal Sanctions, to the Joint Committee.

Mrs. KOVRIGINA (Union of Soviet Socialist Republics) considered that it would be more appropriate for the proposed Article to be studied first by Committee I, and that its proper place was certainly in Chapter II dealing with the wounded and sick.

The proposal of the United States Delegation, put to the vote, was approved by 21 votes to 6, and the amendment of the Soviet Delegation was referred to the Joint Committee.

## WOUNDED AND SICK CONVENTION

**Article 15**

General WILKENS (Netherlands) gave some explanations regarding his Delegation's amendment to insert in the first paragraph, after the words "Medical Service", the words "exclusively engaged in the search, collection, transport and treatment of the wounded and sick". He drew attention to the fact that the French text spoke of "formations sanitaires mobiles", whereas the English text referred to "mobile hospital units". But "formations sanitaires mobiles" might include hygiene units, which was not so in the case "mobile hospital units". The Netherlands Delegation had based its amendment on the English text but it seemed now that the amendment went beyond its object, and considerably further than the French text. His Delegation now proposed to replace the word "exclusively" by "especially" or "in the first instance". The presence of the word "exclusively" would make it possible, for example, to withhold protection from a hospital unit giving preventive treatment (*e. g.* vaccination)—which was not the intention of the Netherlands Delegation. On the other hand, the French expression "formations sanitaires" could mean that all hygiene units, including labour squads, would be afforded protection. That would be going too far and would react unfavourably on the position of the personnel most entitled to protection—viz. those engaged in the transport and treatment of the wounded and sick. The rejection of the Netherlands Delegation's amendment would mean that all hygiene units would be protected by the Convention, which would necessitate a modification of the English version of the text of Article 15. If, however, it was felt that the protection of medical personnel should be to some extent restricted, then the French text would have to be modified.

The Netherlands Delegate proposed that the question should be examined by a group of experts who would be asked to establish a precise and clear text of the first paragraph in the two languages.

General JAME (France) would have preferred the question to be discussed in connection with Article 19. In any case, he considered that all permanent medical personnel engaged in the prevention or treatment of sickness should be covered by the Convention.

On the proposal of the CHAIRMAN, the Committee invited the Delegates of Canada, France and the

Netherlands to meet as a group to study the question.

Colonel SAYERS (United Kingdom) said that the amendment submitted by his Delegation proposed that the second paragraph of Article 15 should be omitted as it was difficult to apply under the conditions of modern warfare. Furthermore, it was for the belligerents themselves to decide the location of their hospitals.

The amendment of the United Kingdom Delegation was put to the vote, and rejected by 18 votes to 9.

A second vote, taken at the request of the United Kingdom Delegation, which thought there had been some confusion, showed 17 votes against the amendment and 11 votes in its favour.

**Article 16 (and Article 17)**

On the proposal of the CHAIRMAN, an amendment submitted by the Indian Delegation, which was purely a matter of drafting, was referred to the Drafting Committee.

Mr. ABERCROMBIE (United Kingdom) introduced the amendment submitted by his Delegation. The amendment contained two proposals.

- 1) to substitute the words "harmful to the enemy" for the words "not compatible with their humanitarian duties";
- 2) to omit the words "naming a reasonable time limit".

The first proposal reverted more or less to the text of 1929 which had never given rise to any difficulties and had the advantage of being logical, whereas the Stockholm text seemed to be a source of confusion. A hospital, which notified the route of enemy aircraft to its army because it wished to protect itself from bombardment, would not be committing an act incompatible with its humanitarian duties, but would be committing an act harmful to the enemy.

As to the second proposal, the "warning" seemed sufficient in itself; further concessions would be inexpedient. A time limit could not always be granted, and the end of the protection might sometimes depend only on the repetition of an act harmful to the enemy.

The United Kingdom Delegate asked delegations who had reasons for opposing his proposals to explain their views on this important question quite frankly.

Mr. PICTET (International Committee of the Red Cross) was of the opinion that the text of

1929 was clearer than that by which the Stockholm Conference, in their anxiety to be precise, had replaced it. But if it was really desirable to change the text of 1929, it would be necessary to find a better definition than that of acts harmful to the enemy. In any case, Article 16 would become more intelligible if it were combined with Article 17 to form one single Article 17, as was done with the corresponding Article 29 of the Maritime Warfare Convention.

Article 16 and the beginning of Article 17 would then together read as follows:

“The protection to which medical units and establishments are entitled shall not cease unless the said units or establishments take advantage of it to commit, outside their humanitarian duties, any acts the purpose or the effect of which is to harm the adverse Party, by facilitating or impeding military operations. Protection may, however, cease only after due warning, naming a reasonable time limit, which warning remains unheeded.

“The following acts shall not be considered as being harmful to the enemy in the sense of the above paragraph...”.

With regard to the second proposal in the United Kingdom amendment, the Representative of the International Committee of the Red Cross said that the idea of “warning” had been introduced in order to give hospitals a chance to evacuate their wounded before fire was opened; and the idea of a time limit—to allow the hospital time to carry out the evacuation.

Dr. PUYO (France) agreed that the Stockholm text was not very satisfactory; but he did not agree with the idea of reverting to the text of 1929. He asked the Committee to consider the proposal of the International Committee of the Red Cross and suggested that the question should be referred to a study group.

Mr. ABERCROMBIE (United Kingdom) was prepared to refer the first part of his amendment, as well as the proposal of the International Committee of the Red Cross, to the Drafting Committee. On the other hand, he wanted second part of his amendment to be discussed and adopted.

The CHAIRMAN reminded the Committee that the proposal of the International Committee of the Red Cross envisaged the amalgamation of Articles 16 and 17. The Belgian Delegation had, however, submitted an amendment to Article 17 which proposed to add, at the end of sub-paragraph 2, the words “or by an escort”.

Commander SMITH (Australia) said that the amendment submitted by his Delegation to

Article 16 had as its object the harmonizing of that Article with Article 15 and to that end the replacement of the words “The protection to which medical units and establishments are entitled” by the words “The protection to which fixed establishments and mobile hospital units of the Medical Service are entitled”.

The CHAIRMAN suggested that Articles 16 and 17 should be referred to the Drafting Committee for consideration. The United Kingdom amendment referring to a time limit could be examined when the Drafting Committee had finished the study of those Articles.

Dr. PUYO (France) thought that the Committee should first study the question of a time limit, so that the Drafting Committee could get on with their work.

Mr. DE GEOUFFRE DE LA PRADELLE (Monaco) considered that the stipulation regarding a time limit must be retained, if only to permit the evacuation of the wounded in a hospital. In general, he considered it the duty of delegates conscientiously to draw up texts taking into account the protection of the victims of war rather than the material interests of the belligerents.

Mr. McCANON (United States of America) said that his Delegation accepted Article 16 as worded by the Stockholm Conference.

The CHAIRMAN suggested that the Committee should defer its discussion on the subject until the Drafting Committee had prepared a text taking into consideration the views expressed up to the present.

The proposal was approved.

### Article 18

An amendment had been submitted by the United Kingdom Delegation to replace Article 18 as adopted at Stockholm by the following text:

“In time of peace the Contracting Parties, and, after the outbreak of hostilities, the Parties who are belligerents may establish, in their own territory and, if the need arises, in occupied areas, hospital zones and localities so organized as to protect from the effects of the war the wounded and sick.

“Upon the outbreak and during the course of hostilities, the recognition of zones and localities established under this Article shall be dependent on mutual agreement between the Contracting Parties concerned, who may, for this purpose, implement the provisions of the

Draft Agreement annexed to the present Convention, with such amendments as they may consider necessary.

"The Protecting Powers and the International Committee of the Red Cross are invited to lend their good offices in order to facilitate the institution and recognition of these hospital zones and localities."

Mr. ABERCROMBIE (United Kingdom) indicated that the proposed new text left the third paragraph of the Stockholm text as it stood and only changed the form of the first paragraph; as regards the second paragraph, the obligatory sense was removed, the creation of hospital zones being made to depend on agreement between the belligerent Powers.

Mr. PICTET (International Committee of the Red Cross) said that the creation of hospital zones was always possible, even according to the text of 1929. It was enough for that purpose to put side by side a number of mobile hospital units. He suggested that the United Kingdom amendment should be referred to the Drafting Committee for consideration.

General WILKENS (Netherlands) said that the Netherlands Delegation intended to submit in Committee III an amendment (*see Annex No. 203*) to Article 12 of the Civilians Convention which

dealt with hospital and security zones. He suggested that the Committee should wait until that Article had been discussed before continuing the discussion.

Colonel CRAWFORD (Canada) said that Committee III had already discussed the Article in question. In that connection certain newspapers had hinted that his Delegation was opposed to the humanitarian principles underlying the conception of security zones. But the Canadian Delegation approved the Stockholm text, and merely associated itself with the reservation made by the United Kingdom Delegation.

Mr. PICTET (International Committee of the Red Cross) said that it had never been the intention of the authors of the Stockholm text to give it an obligatory character. It was for that reason that he had proposed to refer the amendment of the United Kingdom to the Drafting Committee for consideration, as he did not consider that it concerned a matter of substance, but only one of form.

The CHAIRMAN, observing that the Committee was agreed that Article 18 should not have an obligatory character, proposed to refer it to the Drafting Committee.

The proposal was approved.

*The meeting rose at 5.30 p.m.*

## EIGHTH MEETING

*Wednesday 4 May 1949, 3 p.m.*

*Chairman: Sir Dhiren MITRA (India)*

### Communication by the Chairman

The CHAIRMAN announced that the Joint Committee would not be sitting on Thursday and Friday, May 5 and 6, and that Committee I would therefore be able to meet in the morning and the Drafting Committee in the afternoon at 3 p.m.

### Consideration of the letter of the United Kingdom Delegation of 28 April 1949

Mr. ABERCROMBIE (United Kingdom) suggested that the Committee should limit itself that day

to fixing the date (perhaps Friday, May 6) when the questions of substance raised in the letter of the United Kingdom Delegation (*see Annex No. 61*) could be discussed. As it was desirable that the delegates of Committee II should take part in the discussion, the date should not coincide with a meeting of Committee II.

Mr. LAMARLE (France) said that the French Delegation was prepared to agree to Mr. Abercrombie's suggestion, provided that the proposed arrangement did not delay the work and, in particular, that the decisions taken at the proposed joint meeting of Committees I and II did not

in any way prejudice the status of protected personnel. The French Delegation had very important observations to make on the question of the status of protected personnel, observations based on the experience of French doctors during the war. All too frequently French doctors had been unable, during their captivity, to exercise their profession freely for the benefit of their comrades. For example, roll calls, petty vexations putting them on the same footing as the lowest category of prisoners, or orders by German doctors kept them away from their duties or prevented them from carrying them out according to their conscience. It was important that the provisions adopted should not constitute a retrograde step compared to previous texts.

Colonel CRAWFORD (Canada) suggested that discussion on the substance of the question should be left to the joint meeting proposed by the United Kingdom Delegation.

Mrs. KOVRIGINA (Union of Soviet Socialist Republics) thought that the proposals in the letter of the United Kingdom Delegation were not sufficiently clearly worded, nor were the provisions to which they referred.

Mr. ABERCROMBIE (United Kingdom), replying to Mr. McCAHON (United States of America), explained that he did not propose a meeting of a joint committee of Committees I and II, but only that the time and date of the meeting of Committee I should be so fixed that delegates of Committee II could attend.

The CHAIRMAN proposed to adjourn discussion of Chapter IV of the Wounded and Sick Convention concerning personnel till Friday May 6, on which day Committee II would not be meeting.

The proposal was approved.

## MARITIME WARFARE CONVENTION

### Articles 14 and 15

Articles 14 and 15 were discussed at the request of the Working Party which had been instructed to study them (*see the Sixth Meeting*) as it was anxious for further guidance.

Mr. GIHL (Sweden) said that the amendment submitted by his Delegation proposed that the words "merchant vessels" in the first paragraph and the words "neutral or" in the third paragraph be omitted.

If wounded, sick or shipwrecked persons were disembarked in a neutral country by a merchant ship, belligerent or neutral, they should be free. According to a general rule of the law of neutrality, shipwrecked crews of a belligerent warship were not interned if they arrived in a neutral country, since, being deprived of their ship, they would not be able to use neutral territory as a base for warlike operations. Furthermore, a neutral warship enjoyed immunity, and shipwrecked belligerents picked up by her could not be claimed by an enemy ship. On the other hand, the neutral State was under obligation to intern such shipwrecked persons. The rule was different in the case of merchant ships, from which it was permissible to take any wounded, sick or shipwrecked persons they might have on board. The neutral State had therefore no reason to intern shipwrecked persons who disembarked from such vessels in its ports.

Captain IPSEN (Denmark) approved the amendments submitted by the Delegations of the United Kingdom (*Annexes 64 and 65*) and Australia (add, to the Stockholm text, the words "or a neutral military aircraft") in particular the United Kingdom amendment to Article 15 which provided that crews of such merchant ships and civil aircraft as reached a neutral port should be free. He proposed, however, to add the words: "... shall be free except for imperative reasons of security of the neutral Power". Wounded and sick could always be more or less supervised, but not shipwrecked persons. The Delegation of Denmark, like that of the Netherlands, considered that the Articles should be drafted in such a way as to be easily understood by mariners. He accordingly urged that the Drafting Committee should word them as clearly as possible, especially those passages which concerned the rights and duties of neutral and belligerent vessels.

Mr. SENDIK (Union of Soviet Socialist Republics) said that it was not known to which category of persons the Articles were to apply, since Article 3 of the Prisoners of War Convention, the text of which it had been decided to add to Article 11 of the Maritime Warfare Convention, had not yet been adopted by Committee II. He therefore proposed that the discussion be postponed until Article 3 had been adopted.

Commander HUNSICKER (United States of America) pointed out that the words "on the high seas" in Article 14, called for a definition of the notion of "territorial waters" which would raise considerable difficulties. His Delegation's amendment, therefore, was to delete the words "on the high seas".

The amendment to Article 15 proposed to omit the words "by the warships, hospital ships or merchant vessels of belligerents" from the first paragraph. No distinction should be made between the categories of ships which disembarked wounded, sick or shipwrecked persons in a neutral port.

The amendment proposed, further, to omit the third and fourth paragraphs as being redundant.

Commander SMITH (Australia) said that the amendment submitted by his Delegation to Article 14 proposed to add, after the words "neutral warship", the words "or a neutral military aircraft", so as to cover the case of an aircraft landing on the sea to rescue the shipwrecked persons.

The amendment to Article 15 proposed to add aircraft to the enumeration of vessels appearing in the first, third and fourth paragraphs and was the logical sequel to the amendment to Article 14.

Mr. RYNNE (Ireland) said that the amendment submitted by the Delegation of Ireland to Article 15 was similar to that of Denmark, though more precise. It proposed to add the following sentence: to the third paragraph "Should, however, conditions not permit of their immediate repatriation, the neutral Power may, in the interests of its own security, or as a police measure, subject them to restrictions and, if necessary, intern them."

Mr. BURDEKIN (New Zealand) supported the point of order raised by the Delegation of the Union of Soviet Socialist Republics.

After a discussion, in which the CHAIRMAN, Mr. SENDIK (Union of Soviet Socialist Republics) and Colonel CRAWFORD (Canada) took part, the CHAIRMAN put to the vote the Soviet Delegation's proposal to postpone discussion on Articles 14 and 15 both by the Committee and by the Drafting Committee until a decision regarding Article 3 of the Prisoners of War Convention had been reached by Committee II.

The motion was adopted by 14 votes to 11.

## WOUNDED AND SICK CONVENTION

### New Article

Colonel WATCHORN (Australia) stated that his Delegation had submitted an amendment for the introduction of a new Article, worded as follows after Article 15:

"Civilian hospitals, recognized as such by the State and organized on a permanent basis to include, apart from civilian patients, wounded and sick of the armed forces, may in no circumstances be attacked, but shall at all times be respected and protected by the Parties to the conflict.

"The recognition of such establishments by the State shall be certified by a document delivered to each of them."

The protection that the Civilians Convention accorded to civilian hospitals did not seem sufficient, and it was necessary to ensure in the Wounded and Sick Convention that a civilian hospital which took in military patients would have the right to protection. That provision should, in fact, figure in both Conventions.

Mr. PICTET (International Committee of the Red Cross) reminded the Committee that Article 15 of the Civilians Convention already protected civilian hospitals. Moreover, the proposed provision was not within the scope of the Wounded and Sick Convention. On the other hand, Articles 16 and 17 of the Civilians Convention already provided that civilian hospitals might take in military patients without losing the right of protection. That provision would seem to meet the Australian Delegation's wishes. If, however, the Committee thought that these Articles should be further expanded, it would be advisable to get into touch with Committee III.

Upon the CHAIRMAN's proposal, consideration of this amendment was postponed.

*The meeting rose at 5 p.m.*

## NINTH MEETING

*Thursday 5 May 1949, 10 a.m.*

*Chairman: Sir Dhiren MITRA (India)*

## MARITIME WARFARE CONVENTION

## Article 19

Commodore LANDQUIST (Sweden) explained that the Swedish Delegation considered it indispensable to extend the scope of Article 19 to cover hospital ships of less than 1,000 tons. Only to authorize tonnages in excess of that figure would be to favour the great maritime Powers; smaller countries were only able to launch hospital ships of a few hundred tons. The Swedish coast was studded with small islands and navigation was difficult for large ships. Moreover, the Swedish Health Services often used small boats with a high speed which permitted the rapid transport of the wounded. Experience had shown the value of such craft, although their speed admittedly made it difficult to recognize the protective signs. That fact should not, however, prevent their being placed under the protection of the Convention as was the case with motor ambulances, the speed of which was even greater. The Swedish Delegation had not submitted a formal amendment; if its proposal were accepted in principle, the Drafting Committee would be able to cast it in its final form.

Mr. KRUSE-JENSEN (Norway) pointed out that if either Article 19, which provided for military hospital ships with a minimum tonnage of 1,000 tons, or the United Kingdom amendment raising the tonnage to 2,000 tons were adopted, the greater part of the Norwegian coastal hospital ships would be deprived of protection. He proposed, therefore, that the tonnage limit be lowered. On the other hand it should be clearly stated that hospital ships could not only not be captured, but that they could not be requisitioned by an Occupying Power. He suggested that Articles 19 and 20 should be referred to a working party for consideration.

Captain MELLEMA (Netherlands) said that his Government considered it essential to limit the right to protection to hospital ships of not less

than 2,000 tons. Only those of a certain tonnage possessed installations sufficiently spacious to ensure the proper care of the wounded and sick, permitted the display of protective signs of an adequate size and were sufficiently visible from afar. The use of ships of lesser tonnage would create difficulties and would hinder the application of the Convention. It might, however, be authorized in special cases by agreement under Article 5. Furthermore, an amendment had been submitted by the Delegation of Colombia to extend protection under the Convention to hospital ships operating on lakes and rivers. The proper place for that proposal would, he thought, be the Wounded and Sick Convention.

Captain IPSEN (Denmark) supported the Swedish Delegation's proposal. He observed that the English term "lifeboat" (*canot de sauvetage*) could also be used to describe the lifeboats carried by big ships. He would prefer it to be replaced by the term "rescue boat".

Colonel RAO (India) shared the views of the Swedish Delegation.

General PERUZZI (Italy) stated that his Government also was anxious for the 1,000 ton limit to be lowered so as to afford protection to coastal lifeboats. The Hague Convention had determined the dimensions of the protective signs; they were such that the free-board of a hospital ship would have to measure not less than 4 metres to accommodate them. The use of ships of an adequate size would thus be ensured. He then gave some particulars of the fate of Italian hospital ships, all of which, although subjected to frequent attack, had fulfilled their task satisfactorily, particularly the small boats. His Delegation, therefore, desired that small hospital ships should enjoy the protection of the Convention and it too supported the Swedish proposal. It would, however, agree to the minimum tonnage being fixed at 1,000 tons.

Mr. SENDIK (Union of Soviet Socialist Republics) said that the amendment submitted by his Delegation proposed the deletion of the clause in Article 19 regarding minimum tonnage. To limit the tonnage would be contrary to the spirit and even to the title of the Convention and would prevent such rescues of shipwrecked persons as only small boats could achieve. The protection of the Convention must be extended to cover any ship able to save wounded, sick and shipwrecked persons.

General URAL (Turkey) supported the proposal that no tonnage be specified, provided that ships were notified to the adverse Party within the time-limits laid down in Articles 19 and 20.

Mr. McCAHON (United States of America) said that at Stockholm the Delegation of the United States had proposed fixing the minimum tonnage at 2,000 tons, but in the face of opposition from numerous countries had agreed to accept the figure of 1,000 tons. It was impossible to lower it further for the reasons given by the Netherlands Delegation.

Mr. ROCHA SCHLOSS (Colombia) supported the Soviet amendment. If it was accepted his Delegation would withdraw their amendment (*see Annex No. 66*) proposing the extension of the protection to cover hospital ships operating on lakes and frontier rivers. They proposed, however, to submit a new Article to the same effect for inclusion in the Wounded and Sick Convention.

Colonel FALCON BRICENO (Venezuela) was of opinion that a minimum of 1,000 tons was still too high.

Dr. DIMITRIU (Rumania) shared this point of view.

Commander OROZCO SILVA (Mexico) concurred.

Mr. ABERCROMBIE (United Kingdom) said that the amendment submitted by his Delegation raised several problems (*see Annex No. 68*). Article 19 made protection dependent on notification by the Protecting Power thirty days before the ship was put into service. The provision in question, which had already been criticized by the International Committee of the Red Cross, was not included in the United Kingdom amendment, which proposed to delete the words: "and that the handing out of this notification has been confirmed by the Protecting Power thirty days before the said ships are employed". On the other hand, hospital ships were used almost exclusively for the transport of wounded, sick and shipwrecked and it would therefore be necessary to add after the words:

"... sick and shipwrecked...", the words: "... or to transport them ...". Thirdly, the United Kingdom amendment suggested the addition of the following paragraph: "The details which shall be given in the notification must include gross registered tonnage, length from bow to stern, and number of masts and funnels". Experience had shown that a standardization of the required particulars was essential.

The United Kingdom Delegation, like the Netherlands Delegation, was of opinion that the amendment proposed by the Delegation of Colombia should be included in the Wounded and Sick Convention. That point should be settled by the Coordination Committee. Regarding the matter of tonnage limitation, the experience of both the British and United States Navies had shown that the protection of the Convention could hardly be extended to small vessels which were difficult to recognize, whose use was economically unsound and which were not adequately equipped to ensure the comfort of the wounded. The United Kingdom Delegation therefore formally moved that the minimum tonnage be raised to 2,000 tons. As regards the Swedish proposal to extend the protection of the Convention to fast small craft, the United Kingdom Delegation must wholly reserve the position of its Government on that point.

The CHAIRMAN asked if the Committee wished to examine the amendments or whether it would prefer them to be referred to a working party on which the Delegations of Colombia, the United States of America, the Netherlands, the United Kingdom, Sweden and the Union of Soviet Socialist Republics might be represented.

Colonel CRAWFORD (Canada) suggested that a working party should be set up to consider and harmonize the proposals relating to the limitation of tonnage and the use of fast small craft.

Captain MOUTON (Netherlands) explained the reason why the clause laying down that the notification must be confirmed by the Protecting Power thirty days before protection became effective, had been adopted at Stockholm. Would not the fact that the adverse Party had received notification of the hospital ship and had had sufficient time to communicate it to its own vessels, increase the degree of protection enjoyed by the wounded, sick or shipwrecked? However the Netherlands Delegation would not oppose a reduction in the period of time mentioned.

Mr. SENDIK (Union of Soviet Socialist Republics) feared that the working party proposed by the Delegate of Canada might be unable to discuss

the subject effectively owing to a lack of directives. He proposed that the Committee should first endeavour to lay down the essential principles.

Mr. BURDEKIN (New Zealand) supported the Canadian proposal. Before this matter was put to the vote it would be necessary to reconcile the two divergent points of view. If the working party should be unable to do so it could submit two different texts to the Committee.

Dr. PUYO (France) said that the arguments against the limitation of tonnage, a limitation which the French Delegation had supported at Stockholm, appeared to him to be so strong that he felt he must consult the head of his Delegation. He therefore requested the Committee to suspend the discussion of this point for the moment. Consideration of the question could later be entrusted to a small committee which should be given definite directives by Committee II.

Mr. ABERCROMBIE (United Kingdom) saw no objection to the proposal. He nevertheless considered that a working party which examined proposals as to substance did not need directives as a drafting committee did.

Mr. SENDIK (Union of Soviet Socialist Republics) and Mr. LIFSCHITZ (Nicaragua) supported the French Delegation's proposal.

Colonel CRAWFORD (Canada) much regretted that it had not been decided to entrust the task of reconciling the different points of view to a working party; there did not appear to be much hope of a compromise. He therefore regretfully withdrew his proposal.

The French Delegation's proposal to suspend discussion of Article 19 was unanimously approved.

## Article 20

Mr. ABERCROMBIE (United Kingdom) wished to hear the views of other Delegations before introducing the amendment submitted by the United Kingdom. But he was prepared at once to suggest that Articles 20 and 21 might be amalgamated and discussed together.

Colonel CRAWFORD (Canada) withdrew the amendment proposed by his Delegation.

General URAL (Turkey) explained that the amendment submitted by his Delegation proposed the omission of the third paragraph of Article 20 and the introduction of a new Article 20 A which

would read as follows: "Under the same conditions as laid down in Articles 19 and 20 coastal lifeboats of small tonnage attached to a fixed base and belonging to official organizations, to private persons or to officially recognized relief societies, as also the installations on land of these lifeboats, shall enjoy the same protection as the vessels mentioned in Articles 19 and 20."

Captain MELLEMA (Netherlands) said that it was the Netherlands Delegation which, at Stockholm, had requested the addition to Article 20 of a third paragraph relating to coastal lifeboats; it seemed reasonable to protect these boats which were frequently used and almost always respected by the belligerents. The procedure to be followed for the purpose of their recognition and identification might be based on the lists published every year by the International Lifeboat Association. With regard to the Turkish amendment to extend protection to installations on land of these lifeboats, he thought the proper place for its discussion would be in connection with the Civilians Convention.

In the matter of the observations made by the Danish Delegation concerning Article 19 and the English term "lifeboat", the Oslo Conference of the International Lifeboat Association had used this term in the same sense as the Convention. There was therefore no object in changing it. He proposed, in conclusion, that the Committee give its opinion on the principle of whether coastal lifeboats should enjoy protection under the Convention. The other problems which arose in this connection could be left to the Drafting Committee, to which he offered his services.

Mr. SENDIK (Union of Soviet Socialist Republics) said that the amendment submitted by his Delegation concerned the limitation of tonnage and could not therefore be discussed immediately. It proposed the omission of the words "tonnage and" in the first paragraph.

General LINDSJÖ (Sweden) stated that the amendment submitted by his Delegation proposed on the one hand to authorize the use of ships under 1,000 tons, and on the other not to limit the speed of coastal boats, so as to make it possible to give rapid assistance to the wounded and sick. He pointed out that nobody thought of limiting the speed of motor ambulances. Why then should that of lifeboats be limited?

Captain MELLEMA (Netherlands) observed, in this connection, that the speed of a boat operating in uncontrolled areas could not be compared to that of an ambulance which travelled on roads that could always be controlled. More-

over, a craft with high speed could be used for reconnaissance, and on account of its speed it was not suitable for the transport of wounded.

Mr. KRUSE-JENSEN (Norway) thought that the third paragraph of Article 20 marked a great step forward. Its wording, however, was not entirely satisfactory. A more accurate definition should be found than the term "canots de sauvetage" ("coastal lifeboats"). Furthermore, the question of fixed installations should be considered. In Norway lifeboats often operated from temporary bases. Besides, these boats were not always "employed by officially recognized relief associations", being built, equipped and operated by private persons. Again, it would seem necessary in their case to simplify the procedure for notifying the names and characteristics of the boats and

for the confirmation of this notification by the Protecting Power. Another point was that these craft could not be requisitioned by the military authorities without great inconvenience; their operation, financed by the poor coastal population, would be greatly interfered with. It was, moreover, impossible to provide them with the distinctive marks required under Article 40. That problem, together with the preceding questions, should be carefully studied by a working party.

Upon the CHAIRMAN'S proposal, the discussion was postponed. As the next meeting was reserved for the examining of Chapter IV of the Wounded and Sick Convention, the present discussion could not be resumed until the following week.

*The meeting rose at 1 p.m.*

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## TENTH MEETING

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

*Chairman:* Sir Dhiren MITRA (India)

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### WOUNDED AND SICK CONVENTION

#### Chapter IV (Articles 19 to 25)

Mr. PICTET (International Committee of the Red Cross) gave a general survey of the problem of the retention of medical personnel, i.e. of Articles 19, 22, 23 and 24 which, he said, should be considered as a whole. During the last war the belligerents agreed to retain a considerable percentage of medical personnel and chaplains in the camps, and repatriations were few. In many cases medical personnel were retained above normal requirements and remained without occupation or were forced to do non-medical work. At the Preliminary Conference of National Red Cross Societies in 1946 it was suggested that the principle that a proportion of medical personnel might be retained in order to take care of prisoners of war should be introduced into the Wounded and Sick Convention. Furthermore, the International Committee of the Red Cross proposed to determine the status of medical personnel in the Conventions, which were silent on the point. At the 1947 Confe-

rence of Government Experts some delegations suggested that medical personnel should be considered as prisoners of war and not be liable to repatriation, while others opposed that view and urged the maintenance of the old principle. The Conference chose a middle course: the medical personnel were to become prisoners of war but were to enjoy facilities permitting them to carry out their duties, and personnel above requirements were to be repatriated. The I.C.R.C. in the drafts it submitted at Stockholm had, at the request of certain governments and Red Cross Societies, dropped the idea of giving retained personnel the status of prisoners of war. The Stockholm Conference had gone even further and decided to stipulate expressly that retained medical personnel must not be considered as prisoners of war. It seemed now that divergencies of opinion concerned questions of form rather than of substance. All countries appeared to admit that the status of retained medical personnel should be similar to that of prisoners of war, but that they should have special facilities and in particular the possibility of repatriation. The only question, there-

fore, that remained to be decided was whether medical personnel should be considered as prisoners of war or not. The I.C.R.C.'s view was that the definition "prisoners of war" should be reserved exclusively for combatants.

General LEFEBVRE (Belgium) said that the ideas put forward in the letter dated April 28 from the United Kingdom Delegation had caused a certain amount of stir among some delegations, since it revived an old discussion which had been going on for more than a year. The United Kingdom memorandum had already shown that that country did not agree with the point of view adopted at Stockholm. Therefore, at the beginning of the Conference the doctors in many of the delegations had met to try and arrive at an agreed solution. Such a solution had been found and was set out in the amendment submitted by the Delegation of Switzerland (*see Annexes No. 33*). Two different solutions were therefore submitted for the Committee's consideration—the one explained in the letter and amendment of the United Kingdom Delegation (*see Annexes Nos. 61 and 32*), and that contained in the Swiss amendment. On certain points these two proposals agreed for example on the principle that some of the captured medical personnel should be retained in prisoner of war camps while the remainder should be repatriated, and also that retained personnel should enjoy certain privileges. On the other hand, the United Kingdom amendment suggested that the best way of protecting retained medical personnel was to declare them prisoners of war, whereas according to the Swiss amendment they were not to be called prisoners of war but were to be treated in accordance with the provisions of the Prisoners of War Convention. The United Kingdom amendment was essentially intended to lighten the task of the Detaining Power and of camp commandants. But that was not what the Convention was for. Moreover, a doctor, if he was a prisoner of war, had what some might regard as a duty to try to escape, which was inadmissible. In conclusion, the Belgian Delegation suggested that the Swiss proposal should be taken as the basis for discussion, the United Kingdom proposals being regarded as amendments to the Swiss proposal.

Mr. GARDNER (United Kingdom) stated that his Government considered it of the highest importance that the new Conventions should take into account existing conditions. Certain passages had been left in the drafts submitted which were no longer in the least applicable to modern warfare. When the United Kingdom Delegation arrived in Geneva, they felt that their point of view was not shared by a number of Delegations, but the conversations referred to by the Delegate of Belgium

seemed to hold out the hope of reaching an agreement which would not be a compromise but a happy synthesis.

The two main principles of the Geneva Convention were, on the one hand that the wounded on the field of battle should be protected, and on the other that the persons who collected and looked after them should enjoy similar protection. In Henry Dunant's time such persons were in fact neutral and the manner in which battles were then fought allowed of such neutrality. Today, battles sometimes lasted for weeks, medical science had made immense progress and medical personnel now constituted an integral part of the vast war machine represented by a modern army. They could, therefore, only be considered as neutral when they were actually caring for the wounded, which was now only part of their duties. The United Kingdom Delegation did not accept the argument that a doctor who was a prisoner of war had a duty to escape. The duty of a doctor was to remain with those who had need of him.

Admittedly, medical personnel and chaplains who fell into enemy hands would not be repatriated for a long time. Up to the present the status of retained personnel had not been determined and theoretically none of the rights enjoyed by prisoners of war under the Prisoners of War Convention should be accorded to them. If they had finally been accorded such rights, it was because the belligerents had agreed to treat them as prisoners of war. It seemed essential, therefore, to confer these rights on them, and that could best be done by declaring them prisoners of war. Some delegations thought that recognition of doctors and chaplains as prisoners of war might impair the prestige attached to their respective callings. Although not sharing those fears, the United Kingdom Government in its proposals had been careful to avoid bracketing medical personnel and chaplains with prisoners of war. On the other hand it was opposed to any phrase suggesting that such personnel should not be considered as prisoners of war.

The United Kingdom proposals laid down two principles:

- (1) that the rules concerning all captured medical personnel and chaplains should be incorporated in the Convention which defined the rights and duties of captured persons, i. e. in the Convention dealing with prisoners of war, and
- (2) that the provisions relating to such personnel should not form a separate part of the Convention, but should be inserted individually in the appropriate chapters of the Convention.

The difference between the Swiss and United Kingdom amendments was a difference of method rather than of form. One point, however, of the Swiss amendment called for reservations, namely, the proposal to insert Chapter IV of the Wounded and Sick Convention in the Prisoners of War Convention. The chapter in question protected medical personnel on the field of battle and should therefore remain in the Wounded and Sick Convention. In conclusion, he pointed out that the problem of the protection of medical personnel implied a serious revision of the Articles dealing with the subject not only in the Wounded and Sick Convention, but also in the Prisoners of War Convention. He proposed, therefore, that a joint sub-committee of Committees I and II, should be set up for the purpose, all Delegations interested in the matter being represented on it.

Dr. BOGOMOLETZ (Ukrainian Soviet Socialist Republic) regretted that the point dealt with in the second paragraph of Article 9 of the 1929 Convention namely, the question of auxiliary nursing staff and stretcherbearers, had been deleted from Article 19. He pointed out that the rapid removal of the wounded, whose number was increasingly large under the conditions of modern warfare, required the use of auxiliary stretcherbearers. There was every reason, therefore, to extend the protection of the Convention to them also. Consequently the Ukrainian Delegation proposed adding the second paragraph of Article 9 of the Convention of 1929 to Article 19 of the Wounded and Sick Convention.

The CHAIRMAN said that the Ukrainian amendment would be discussed when the Committee considered the individual Articles of Chapter IV.

Mr. BAGGE (Denmark) wished to keep to the Stockholm text. He thought that a doctor would work better as a free man than as a prisoner of war. But that was not all. During the occupation of Denmark, for instance, a large number of Danish doctors would have been deported to camps in Germany, leaving the population without medical care, if it had been possible to make doctors prisoners of war.

General JAME (France) agreed with the Danish Delegate's point of view. As the head of the French Delegation had already observed at a previous meeting, to be able to ensure the care of the sick and wounded in captivity, medical personnel must enjoy the fullest possible freedom. That view now seemed to be accepted. What remained to be defined was the status to be given to medical personnel above requirements retained pending repatriation. It was important that such

persons should not be considered as prisoners of war, but their status should be similar to that of prisoners of war. Furthermore, he considered that the clauses relating to medical personnel should be treated as a whole and should remain in Chapter IV of the Wounded and Sick Convention, though the chapter might also be included in the Prisoners of War Convention. The Stockholm text should be taken as the basis for discussion.

Colonel MEULI (Switzerland) first summed up the position of the United Kingdom Government on the problem as a whole. Proceeding, he said that the proposals of the Swiss Delegation were based on the principle that medical personnel were non-combatant, which implied that they could not be made prisoners of war. The fighting troops knew well enough that the medical staff could only fulfil their duties owing to the exceptional position they enjoyed. Since 1934 the doctors themselves had proposed that the care of prisoners of war should be undertaken by retained medical personnel of the same nationality. In short, the Swiss amendment harmonized the points of view of the different Delegations and might be taken as a basis for discussion. Furthermore, like the Delegations of Denmark, France and the Ukraine, the Swiss Delegation proposed the retention of Chapter IV of the Wounded and Sick Convention, and in particular of Articles 19, 20, 21 and 22. Article 22 might be modified, but should not be dropped altogether; nor should the whole of Chapter IV be omitted in order to transfer it to the Prisoners of War Convention. It might however be repeated in that Convention.

If medical personnel could be declared prisoners of war there was the risk that military authorities might use them too sparingly on the battle-field, and that health services would suffer accordingly. Furthermore, the threat of captivity might deter medical personnel from assisting enemy wounded, and it was certain that far fewer volunteers would come forward to assist in the collection of the wounded. In any case, medical personnel could not possibly be considered either as neutrals or as prisoners of war. It was true that the Wounded and Sick Convention needed modification, but the United Kingdom's proposals appeared to go a little too far.

On the CHAIRMAN's proposal, it was agreed to adjourn the discussion to the next meeting which was to take place in the afternoon at 3.30 p.m.

*The meeting rose at 1.15 p.m.*

## ELEVENTH MEETING

Friday 6 May 1949, 3.30 p.m.

Chairman: Sir Dhiren MITRA (India)

## WOUNDED AND SICK CONVENTION

## Chapter IV (Articles 19 to 25) (continued)

General WILKENS (Netherlands) observed that everyone had the same object, namely, to give medical personnel and chaplains every facility to carry out their duty towards the wounded and sick in the most efficient manner possible, both on the battlefield and in the camps. Opinions only differed as to the means to that end. The Netherlands Delegation had formulated proposals which would be explained in detail on a future occasion. For the moment he would confine his remarks to certain principles. Medical personnel should not be considered as prisoners of war, either in name or in status, for only the knowledge that he could not be made captive would permit a medical officer to accomplish his task in all freedom and to the end. Furthermore, the opinion—an utterly wrong opinion, and never more so than at the present day—that it was dishonourable to be a prisoner, diminished the prestige that all medical officers must preserve, especially in a camp. How could a doctor be a prisoner of war? A prisoner of war was a soldier who had laid down his arms and a doctor carried no arms!

The amendment to Article 22 submitted by the Netherlands Government (see Annex No. 34) proposed the omission of the clause providing for the appointment of a spokesman for medical personnel in each camp. Medical personnel should be free to carry out their duties according to their own recognized hierarchy.

The Netherlands Delegation was further ready to accept as a basis for discussion the amendment presented by the Swiss Delegation, with which it was substantially in agreement. In particular they had accepted, after some hesitation, the principle of giving surplus personnel awaiting repatriation the status of prisoners of war.

In conclusion, the Netherlands Delegation thought that all the principles under discussion should figure in the Wounded and Sick Convention

only, because medical personnel ought to be able to tell from the only regulations that concerned them what their status would be if they were taken by the enemy.

Colonel CRAWFORD (Canada) said that his Delegation had tabled amendments to Articles 19 and 22, the detail of which could be discussed later. The Canadian Delegation would be prepared to withdraw both proposals if final agreement could thus be reached. Since the distribution of the amendments an informal working party had met and had evolved a compromise wording, the text of which would be found in the Swiss amendment. The Swiss amendment and the United Kingdom proposals differed only in respect of method. The chief difference was on the question whether medical personnel were or were not to be called prisoners of war. But that was only a question of words and there again concessions were perhaps possible.

The Canadian Delegation thought that the status of medical personnel should have its place in the Wounded and Sick Convention; but it was important that there should also be some reference to it in the Prisoners of War Convention. There might, for example, be a clause stating clearly that medical personnel and chaplains retained by a belligerent Power, as well as those awaiting repatriation, should be covered by Articles 19 to 25 of the Wounded and Sick Convention. The Articles in question might be placed in a footnote at the bottom of the page or added as an Annex to the Convention.

In conclusion, the Canadian Delegation agreed in principle with the proposals put forward by the Swiss Delegation and urged that they should form a basis for mutual agreement.

Major STEINBERG (Israel) observed that the present discussion on medical personnel was taking place almost exactly on the anniversary of Henry Dunant! The best and most immediate help could only be given to wounded on the

battlefield if medical specialists were available in the near proximity. If, however, they were liable to be made prisoners of war, what general staff would take the responsibility of putting them so near the front? Again, it was essential that officers of a Detaining Power should consider captured enemy medical personnel as their equals; and it was certain that a medical officer would have more influence over his wounded if he was known by them not to be a prisoner of war but to be outside the conflict. The Delegation of Israel, in short, supported the amendment of the Swiss Delegation.

Mr. KRUSE-JENSEN (Norway) reminded the Committee that Article 21 of the Annex to the IVth Hague Convention of 1907 already contained a provision to the effect that "The obligations of belligerents with regard to the sick and wounded are governed by the Geneva Convention". Again, the Geneva Convention of 1929 clearly stated in Article 9 that medical personnel and chaplains were not to be treated as prisoners of war. Those were old-established principles which had stood the test of experience; and very weighty arguments, which up to the present did not seem to have been advanced, would be required to justify their modification. The Norwegian Delegation accordingly urged that the text of 1929, as modified by the Stockholm Conference, should be taken as the basis for discussion.

Mr. BAISTROCCHI (Italy) observed that everyone seemed to be in agreement on the principles, and it ought, therefore, to be possible to reach an understanding. He did not agree with the Delegate of the United Kingdom that the technique of modern warfare had altered the role of the medical corps. On the other hand, it was not desirable that the facilities which they were giving medical personnel should have the effect of creating a special category of privileged people. In short, the proposals formulated by the Swiss Delegation constituted a satisfactory basis for discussion. He agreed especially with the proposal to repeat Chapter IV of the Wounded and Sick Convention in the Prisoners of War Convention. He also approved the amendment to Article 19 proposed by the Ukrainian Delegation.

Mr. McCANHON (United States of America) said that the United States Delegation approved the drafts drawn up at Stockholm, subject to any amendments it thought could be adopted. On the other hand, his Delegation opposed the proposal of the United Kingdom to set up a joint sub-committee of Committees I and II. Such a step could only lead to confusion. Each Committee should stick to its own task, and leave it to the delegations themselves

or, if necessary, to the Coordination Committee to ensure the necessary coordination.

Mr. GARDNER (United Kingdom) said that Committee I would not be able by itself to discuss amendments relating to the Prisoners of War Convention. He hoped therefore that his proposal would be adopted. He proceeded to answer some of the arguments that had been put forward, notably the contention of the Norwegian Delegation that the text of the 1929 Convention should be retained. The 1929 Convention contained no provision whatever in regard to the status of retained medical personnel; and it was only because belligerents had agreed to treat medical personnel as prisoners of war that they had been able to accomplish their task.

Another argument, that the fear of being made a prisoner of war restrained volunteers from going to collect the wounded, was simply not borne out by experience.

The Swiss Delegation had stated that in 1934 the doctors had asked that medical personnel should remain in the camps to look after prisoners. But the Prisoners of War Convention of 1929 already provided for agreements between belligerents for the retention of medical personnel.

The Netherlands Delegation had said that the term "prisoner of war" was reserved for persons who carried arms. It was pertinent to observe that Article 3 of the Prisoners of War Convention included persons who were not armed. Besides, the United Kingdom Delegation did not propose that captured medical personnel and chaplains should be called prisoners of war. The essential point was the treatment which such personnel would receive.

If in the case of the Wounded and Sick Convention being made the charter of the protection of medical personnel, he feared that a Power which had only been willing to sign that Convention and not the Prisoners of War Convention might refuse if it was opposed to the principles of the treatment of medical personnel, to sign either of them.

The CHAIRMAN suggested the appointment of a working party composed of delegates from Committees I and II.

General JAME (France) asked the Chairman to put to the vote the proposal of the United States Delegation not to set up a joint sub-committee of Committees I and II, and to refer the two Committees back to their respective tasks.

After a discussion between the CHAIRMAN, Mr. McCANHON (United States of America) and Mr. GARDNER (United Kingdom), the Committee decided to vote on the United Kingdom proposal,

as having been made first, viz., the proposal to appoint a joint sub-committee of Committees I and II to study Chapter IV of the Wounded and Sick Convention, with special reference to Articles 22 and 24.

The proposal was rejected by 17 votes to 9.

The Committee then decided, by 14 votes to 4, to adjourn the discussion.

*The meeting rose at 5.30 p.m.*

## TWELFTH MEETING

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

*Chairman: Mr. Ali Rana TARHAN (Turkey)*

### MARITIME WARFARE CONVENTION

#### Articles 19, 20 and 21

The CHAIRMAN reminded the Committee that the French Delegation had asked that the Working Party appointed to examine Article 19, should be given general instructions by the Committee.

Mr. BAGGE (Denmark) said that in order to harmonize the different points of view, the Danish Delegation had put forward new proposals (*see Annexes Nos. 67, 69 and 72*), the text of which would be distributed on the following day. The Danish suggestions were already partly covered by the Italian Delegation's proposals, which had only just become known to the Danish Delegation. The latter suggested that Article 19 should mention, on the one hand, the large military hospital ships of more than 2,000 tons, and on the other hand, those which were of a smaller tonnage but also under military control. Article 20 would then be devoted to hospital ships belonging to individuals, to Red Cross Societies or to other officially recognized relief societies. These hospital ships would enjoy full protection in the same way as those mentioned above. A new Article would cover lifeboats and coastal rescue boats, to which the same protection would be accorded in principle, while taking into account the risks they ran. (20 A.)

General PERUZZI (Italy) said that the amendments submitted by his Delegation to Articles 20 and 21 proposed the protection of military hospital ships of small tonnage as well as lifeboats, and

specified the measure of protection to be accorded to them (*see Annexes Nos. 70 and 73*). He gave particulars of the organization and working of Italian hospital ships during the last war, in particular ships of large tonnage and small ships of about 500 tons operating from fixed bases.

Mr. SENDIK (Union of Soviet Socialist Republics) said that his Delegation did not agree with the Italian amendments. Under the Italian amendment to Article 20, ships of the Red Cross Societies would not be protected. In addition, the refusal to allow small hospital ships to search for shipwrecked persons would prevent a great number of nations from organizing a life-saving service under the protection of the Convention. Moreover, the stipulation that those ships were not to go to sea without orders transmitted by radio ignored the possibility of such orders not being understood or even received and would also permit the enemy fleet to intercept the hospital ship and capture the wounded. The Soviet Delegation considered that the protection of the Convention should be extended to all hospital ships, whatever their dimensions, and consequently proposed in its amendments to Articles 19, 20 and 21 that all reference to tonnage should be omitted.

General PERUZZI (Italy) explained that the expression "utilized by the naval forces" in the Italian amendment to Article 20, also covered privately owned hospital ships and those belonging to Red Cross Societies.

Mr. BAGGE (Denmark) explained that the Danish amendment proposed to establish three groups of hospital ships:

- (1) Military hospital ships of over or less than 2,000 tons (Article 19),
- (2) Private or Red Cross Societies' coastal hospital ships (Article 20),
- (3) Lifeboats and coastal rescue boats.

The same protection was proposed for all three categories, but it was recognized that craft in the last category were exposed to certain risks owing to the fact that it was difficult to mark them so that they could be recognized at a distance.

Commander HUNSICKER (United States of America) said that the United States Delegation was in favour of the Stockholm text on the ground that for practical reasons it was not possible to protect small hospital ships. The amendment they had submitted to Article 20 proposed the omission, in the third paragraph, of the words "In the same conditions" and the insertion of the words "so far as is practicable" between the words "shall benefit" and the words "by the same protection".

Mr. ABERCROMBIE (United Kingdom) urged that, if Article 19 was to limit tonnage, the limit should not be lower than 2,000 tons; that figure was based on the practical experience of two of the greatest Naval Powers in the world. Otherwise, it would be better to revert to the Hague Convention of 1907, which had been applied without much difficulty. Whatever decision was taken, the protection of wounded, sick and shipwrecked persons was assured in any case by the existing provisions. He deprecated a vote on Article 19 at the present stage; it would be better to refer the Article to the Working Party with a view to reconciling the various points of view.

The Committee decided unanimously that the discussion which had taken place would permit the Working Party to study Article 19 and formulate proposals.

After a discussion in which the CHAIRMAN, Mr. BAGGE (Denmark), Mr. McCANON (United States of America), Dr. PUYO (France) and Captain MELLEMA (Netherlands) took part, the Committee further decided that after it had had a general discussion on Articles 20 and 21, the Working Party should examine them in conjunction with Article 19, with which they formed a whole.

The CHAIRMAN said, in reply to Dr. PUYO (France), that the Working Party was composed of

the Delegations of the following States: Colombia, United States of America, France, Netherlands, United Kingdom, Sweden and Union of Soviet Socialist Republics.

Dr. PUYO (France) proposed that Italy should also be included in the Working Party.

The above proposal was approved.

Dr. PUYO (France) asked if the Danish and Italian Delegations, in proposing a number of different categories of protected hospital ships, wished to institute different categories of protection.

Mr BAGGE (Denmark) answered that the amendments submitted by his Delegation were not intended to create varying degrees of protection. They merely proposed that in the case of coastal rescue boats certain reservations should be made on the grounds of difficulties of recognition.

Dr. PUYO (France) observed that, if a less complete protection was provided for hospital ships of small tonnage than for hospital ships of large tonnage, the two views expressed could be reconciled.

General PERUZZI (Italy) explained that the Italian amendment did not propose to make any difference in the protection given, but only to define hospital ships of different tonnage.

Mr. ABERCROMBIE (United Kingdom) explained that an amendment submitted by his Delegation was to omit Article 21; the United Kingdom Delegation proposed that Articles 20 and 21 should be formed into a single Article (*see Annex No. 71*).

The CHAIRMAN said that preliminary consideration of the other amendments to Article 21 might be left to the Working Party; he referred the three Articles 19, 20 and 21 to the Working Party.

## Article 22

Mr. ABERCROMBIE (United Kingdom) said that his Delegation's amendment proposed to delete Article 22. If the ship notified was really a hospital ship, there was no reason for not protecting it; if it was not a hospital ship, the interceptor had the right to seize it. The Article was therefore unnecessary.

Mr. McCAHON (United States of America) explained that the Article had been inserted at Stockholm in order to prevent last minute notifications.

Mr. PICTET (International Committee of the Red Cross) remarked that, if the Article was adopted, the reference to Article 21 in the first sentence would have to be omitted. Article 21 referred to hospital ships of neutral countries, and one could not, and would not wish to, prevent such ships from serving as hospital ships, since they were not in any case subject to capture.

The CHAIRMAN put the United Kingdom amendment to the vote, and it was approved by 10 votes to 9.

Article 22 was accordingly deleted.

### Article 23

Article 23 was adopted without modification.

### Article 24

Mr. ABERCROMBIE (United Kingdom) said that the amendment submitted by his Delegation proposed the omission of Article 24 as well, as it was only a simple statement of the established practice.

Captain MOUTON (Netherlands) considered that the Article should be retained. A belligerent, finding a hospital ship in a port occupied by its forces, might claim that he had not "captured" the ship, but "seized" it in accordance with the Hague Regulations. It was therefore desirable to lay down specifically that a hospital ship was authorized to leave an occupied port.

Mr. SENDIK (Union of Soviet Socialist Republics) agreed, and wished the Article to be retained.

Mr. ABERCROMBIE (United Kingdom) agreed that the objection raised was well founded, and withdrew his amendment.

Article 24 was adopted.

### New Article 24A

Mr. ABERCROMBIE (United Kingdom) said that his Delegation had submitted an amendment proposing the inclusion of the following new Article:

"Hospital ships are protected from bombardment from the land; likewise, establishments ashore entitled to the protection of the Red Cross are also entitled to protection from bombardment by ships."

He said that hospitals were protected from shore bombardment by Article 27 of the Regulations annexed to the IVth Hague Convention of 1907, and from sea bombardment by the IXth Hague Convention of 1907. As the Xth Hague Convention was being revised, it was desirable that it also should include the above provisions on grounds of consistency.

Mr. SENDIK (Union of Soviet Socialist Republics) agreed with the amendment submitted by the United Kingdom Delegation.

Mr. PICTET (International Committee of the Red Cross) supported the United Kingdom's proposal; he considered, however, that the Drafting Committee should redraft the new Article and decide on its place in the Convention. He also said that the Conventions at present in force, especially the Geneva Convention of 1929 and the Maritime Warfare Convention, already seemed to cover the cases envisaged by the United Kingdom amendment.

Dr. PUYO (France) approved the principle of the amendment, but thought it was already covered, particularly by Article 19. He considered that there might be a danger in being too specific, and moved accordingly that the amendment be rejected.

Mr. McCAHON (United States of America) proposed that the question of the usefulness of the Article be referred to the Drafting Committee for consideration.

Put to the vote the United Kingdom amendment and the United States Delegate's proposal were approved unanimously.

*The meeting rose at 1 p.m.*

## THIRTEENTH MEETING

Tuesday 10 May 1949, 10 a.m.

Chairman: Mr. Ali Rana TARHAN (Turkey)

## MARITIME WARFARE CONVENTION

## Article 25

Mr. ABERCROMBIE (United Kingdom) explained that the amendment tabled by his Delegation (*see Annex No. 74*) proposed, in the first place, to amalgamate the second and third paragraphs into one paragraph, in order to make governments responsible for the movements of hospital ships, and in the second place, to insert in the last paragraph, after the words "During and after an engagement", the words "or in the proximity of legitimate targets...", in order to cover aerial bombardment. The amendment also proposed to include civilian wounded and shipwrecked persons in the first paragraph; but in the light of the discussions which had taken place with regard to Article 11 of the Wounded and Sick Convention and the conclusions reached by the Drafting Committee, the United Kingdom Delegate did not press that point.

In reply to Mr. McCANON (United States of America), Mr. ABERCROMBIE (United Kingdom) said that the first paragraph of the amendment did not refer to Article 21, as his Delegation proposed the amalgamation of Articles 20 and 21. If that proposal was not accepted there would clearly have to be a reference in Article 25 to Article 21.

Mr. SENDIK (Union of Soviet Socialist Republics) thought that the proposal to make Governments responsible for the movements of hospital ships involved great risks. Ships' captains might think that their national authorities had taken all necessary measures for their safety, which it was obviously not possible for the latter to do. Accordingly, the Soviet Delegation was in favour of the Stockholm text.

Mr. McCANON (United States of America) supported the Soviet point of view.

Mr. ABERCROMBIE (United Kingdom) was impressed by the argument. He would like to have time to think it over. He proposed that the United Kingdom amendment should be referred to the Drafting Committee.

Captain MOUTON (Netherlands) supported the above proposal. He did not approve of the term "legitimate targets".

Mr. BURDEKIN (New Zealand) proposed the omission, both in the first paragraph of the Stockholm text and in the United Kingdom amendment, of the words "of the belligerents", on the ground that non-belligerent wounded or shipwrecked persons should also be protected.

Captain IPSEN (Denmark) agreed.

The CHAIRMAN proposed to return to the question after the United Kingdom amendments had been discussed or referred to the Drafting Committee.

Mr. ABERCROMBIE (United Kingdom) explained, at the request of Dr. PUYO (France), that the part of his amendment dealing with the second and third paragraphs of the Stockholm text might be referred to the Drafting Committee in order to give the latter time to think over the argument put forward by the Soviet Delegate. The change proposed in the final paragraph might be dealt with in the same way, unless the Committee preferred to put it to the vote.

Captain MELLEMA (Netherlands), reverting to the proposal made by the Delegate of New Zealand, thought it was already covered by sub-paragraph (4) of Article 29. With regard to the amalgamation of the second and third paragraphs the Netherlands Delegation repeated that it shared the views of the Soviet Delegation. The proposed modification to the last paragraph might be left to the Drafting Committee.

The CHAIRMAN put the two last paragraphs of the United Kingdom amendment to the vote. They were rejected by 13 votes to 7.

The CHAIRMAN then put to the vote the proposal of the Delegate of New Zealand to omit the words "of the belligerents" in the first paragraph.

The proposal was adopted by 12 votes to 10.

Article 25, amended as above, was adopted.

#### Article 26

Captain MELLEMA (Netherlands) said that the amendment presented by his Delegation proposed, in the first place, to insert in the first paragraph, after the words "make them take a certain course", the words "control the use of their wireless". Secondly, he proposed, in the same paragraph, to define the duties of the Commissioner by adding, after the words "They may temporarily put a commissioner on board", the words "whose sole duty shall be to ensure the carrying out of such orders".

Mr. ABERCROMBIE (United Kingdom) supported the Netherlands amendments. He further proposed to replace the words "for a maximum period of seven days from the time of interception" in the first paragraph by the word "temporarily". He saw no reason, at first sight, to specify the duration but he would be prepared to withdraw his proposal if convinced of its necessity.

Captain MELLEMA (Netherlands) explained that the period of seven days was chosen in 1947 for practical reasons; it conformed roughly to the maximum period a hospital ship could stay at sea and also to the maximum period during which medical treatment could be interrupted.

Mr. ABERCROMBIE (United Kingdom) deferred to Captain Mellema's arguments.

General PERRUZZI (Italy) indicated that the amendment proposed by his Delegation only formulated recommendations to the Conference concerning the status and position of the Commissioner.

The CHAIRMAN put the two amendments submitted by the Netherlands Delegation to the vote. They were adopted unanimously.

Article 26, as amended, was adopted.

#### Article 27

Article 27 was adopted without discussion.

#### Article 28

Mr. ABERCROMBIE (United Kingdom) introduced his Delegation's amendment which proposed deleting the Article. There was no reason whatsoever to restrict the sovereign rights of belligerents, who alone had the right to decide whether it was desirable or not to reconvert a hospital ship into a merchant ship.

Captain MOUTON (Netherlands) said that the Article, inserted in 1947, was useful; it gave increased protection to hospital ships and avoided abuses and confusion. It was possible to visualize a government converting a large merchant ship into a hospital ship to enable her to cross the ocean or dangerous zones, with the intention of reconverting her eventually into an ordinary ship. It would be an abuse of the Convention to give such a ship safe conduct to zones where the belligerent wished to use her. Furthermore, the Article allowed the list of hospital ships to be restricted. Most countries had only a limited number of hospital ships, the few names and descriptions of which could be easily registered by the authorities of the adverse Power responsible for applying the Convention. The constant changing of names and descriptions might give rise to confusion and the possibility of mistakes. The Netherlands Delegation urged the retention of Article 28.

Mr. SENDIK (Union of Soviet Socialist Republics) shared that opinion.

Mr. PICTET (International Committee of the Red Cross) explained that the new Article had been included in the Draft Convention established by the Conference of Experts in 1937 for submission to the Diplomatic Conference in 1940. The objects aimed at then were the same as those which had just been explained by the Netherlands Delegation and they still retained all their value. It would be pertinent to remark, however, that Article 19 by its reference to "... ships built or equipped ... specially and solely with a view to assisting...", already prevented many abuses.

The CHAIRMAN put the United Kingdom amendment to the vote. It was rejected by 15 votes to 7.

Article 28 was adopted.

**Article 29**

Mr. McCAYON (United States of America) said that since Article 16 of the Wounded and Sick Convention had been referred to the Drafting Committee, the same procedure should be adopted in the case of Article 29, which corresponded to it.

Mr. ABERCROMBIE (United Kingdom) said the amendment submitted by his Delegation covered four points:

- (1) the omission, in the first paragraph, of the reference to sick-bays, as the idea seemed to be out of date. The United Kingdom Delegation would only press that point if others agreed to it;
- (2) the deletion, in the first paragraph, of the words "... and after due warning, naming a reasonable time limit, which warning is unheeded", for the same reasons as those which led to the proposal to delete the same terms in Article 16 of the Wounded and Sick Convention. The argument put forward against the latter proposal, namely, that it was necessary to give hospitals time to evacuate their wounded, could not be put forward in the case of the Maritime Warfare Convention;
- (3) the deletion of sub-paragraph (4) of the third paragraph. However, in view of the decision taken in regard to Article 11, the United Kingdom Delegation now approved the retention of that sub-paragraph;
- (4) the replacement of sub-paragraph (2) of the third paragraph by the following clause: "The presence on board of W/T apparatus, without which a hospital ship would be unable to give from time to time adequate notification of its position, course and speed."

The best means of protecting a hospital ship was, in fact, to broadcast its position regularly; it would appear wisest, however, that the condition should not be in the form of an obligation but in the form of a recommendation which it was essential to bear in mind.

Captain PERRY (Australia) said that the amendment tabled by his Delegation proposed, on the one hand, the introduction, in the first paragraph, of a reference to Article 25, the third paragraph of which, in particular, was related to Article 29, and on the other hand, the addition to the third paragraph, sub-paragraph (2), of a reference

authorizing the presence on board of equipment for avoiding collisions, such as radar, echo-sounding apparatus, etc., the employment of which was now universal. The Australian Delegation further approved the proposal of the United Kingdom Delegation regarding the use of W/T apparatus. They suggested that the above proposals should be referred to the Drafting Committee.

Mr. GIHL (Sweden) supported the amendment submitted by the United Kingdom Delegation.

Dr. DIMITRIU (Rumania) said that his Delegation was in favour of the Stockholm text because it protected the humanitarian work of the hospital ships on behalf of civilians. He approved the retention, in the first paragraph, of the passage regarding a reasonable time limit.

Colonel RAO (India) said that the amendment tabled by his Delegation only concerned questions of wording and could be referred to the Drafting Committee.

Dr. PUYO (France) thought that, in order to allay the anxieties of the United Kingdom Delegate concerning the broadcasting of the position and route of a hospital ship, it would be sufficient, in the second paragraph, to replace the words "provided with" by "using" and the words "be in possession of" by "utilize". Furthermore, it might be desirable to adapt Article 29 to Article 17 of the Wounded and Sick Convention by incorporating in the third paragraph, sub-paragraph (1), the words "and that they use the arms in their own defence". But he adhered to the Stockholm text and thought that the modifications could be left to the Drafting Committee. As to the mention of "sick-bays", the French Delegate thought it should be retained; he cited a case, during the last war, when a battle had taken place on a warship which had necessitated the protection of the sick-bays.

Mr. ABERCROMBIE (United Kingdom) approved the proposal of the French Delegate regarding the third paragraph, sub-paragraph (1) and the Australian proposal regarding radar.

The CHAIRMAN put to the vote the French proposal to refer Article 29 to the Drafting Committee with the amendments relating thereto.

The proposal was adopted unanimously.

*The meeting rose at 12.40 p.m.*

## FOURTEENTH MEETING

Wednesday 11 May 1949, 10 a.m.

Chairman: Mr. Ali Rana TARHAN (Turkey)

## WOUNDED AND SICK CONVENTION

## Article 19

Mr. McCahon (United States of America) made certain reservations concerning the proposal to add the second paragraph of Article 9 of the Geneva Convention of 1929 to Article 19. Stretcher-bearers were only required on the battlefield and would be repatriated before the doctors. Furthermore, the clause would open the door to many abuses. His Delegation agreed, however, with the Swiss amendment, particularly because it stated clearly that auxiliary personnel must be respected when carrying out their duties.

Mr. Gardner (United Kingdom) said that Article 19 dealt only with protection from attack. Protection after falling into enemy hands was dealt with in Articles 22, 23 and 24. United Kingdom stretcher-bearers were trained and used for the care of wounded off the battlefield as well as on it. The United Kingdom therefore desired not only that they should be protected whilst collecting and treating wounded and sick on the fields of battle, but also that, like other medical personnel, they should be available to be used, if necessary, to assist in the care of prisoners of war.

Colonel Crawford (Canada) reminded the Committee that he had withdrawn the amendment of his Delegation in favour of that of Switzerland.

Colonel Meuli (Switzerland) proposed that the second sentence of Article 19 of the Swiss amendment (*see Annex No. 33*) should constitute a second paragraph. In that case the reference to Article 19 in the Swiss amendment to Article 22 should be modified and should apply only to the first paragraph of Article 19. A clear distinction must be made between the treatment to which permanent medical personnel were entitled and that to which temporary personnel were entitled.

Dr. Bogomoletz (Ukrainian Soviet Socialist Republic) said that the amendment submitted by his Delegation proposed to add the second paragraph of Article 9 of the 1929 Convention to Article 19. Since temporary personnel were being used they must be protected.

General JAME (France) enumerated the categories of medical personnel in question, namely, permanent personnel, personnel trained as auxiliaries, and combatants occasionally detailed for service as stretcher-bearers. It was the last category only that did not appear to him to be entitled to protection.

Mr. Pictet (International Committee of the Red Cross) explained that in 1929 it had not been thought desirable to extend the protection of the Convention to the last category for fear of abuses. The last sentence of the Swiss amendment, however, appeared to admit of such extension; it therefore called for very close consideration. In order to qualify for protection temporary personnel must have received special training and be furnished with proof of their identity. The second paragraph of Article 9 of the 1929 Convention had been inserted at the request of the French Delegation, owing to the fact that bandsmen of the French Army were specially trained as stretcher-bearers. The Conference of Experts of 1947 had proposed the omission of the paragraph, considering that the protection of medical personnel must not be too general if it was to be effective.

Colonel Meuli (Switzerland), at the request of the Chairman, agreed to the insertion of the words "specially trained and provided with an identity card" in the second sentence of the Swiss amendment (now becoming the second paragraph), before the words "shall be respected".

Colonel Sayers (United Kingdom) pointed out that the United Kingdom amendment (*see Annex No. 32*) was in agreement with the Swiss amendment regarding the protection of stretcher-bearers while on the battlefield.

Mr. McCahon (United States of America) wished the word "armies" in the English text to be replaced by the words "armed forces".

General Lefebvre (Belgium) considered that on the battlefield everybody taking care of the wounded should be protected. He did not think therefore that the special duties undertaken by auxiliary personnel should be defined in Article 19. Their definition might be included in Articles 22 or 23.

The Chairman put to the vote Article 19 as presented in the Swiss amendment with the modification proposed by the Delegation of the United States of America.

The amendment thus modified was adopted.

### Article 20

Mr. Pictet (International Committee of the Red Cross) urged, on behalf of all the National Red Cross Societies, that reference to them should not disappear from Article 20, as proposed in an amendment submitted by the United Kingdom Delegation. The "recognized" Voluntary Aid Societies were almost exclusively Red Cross Societies with the exception of a dozen or so, among which were the Order of the Knights of Malta and the Order of St. John of Jerusalem. Since 1906 the Red Cross Societies had been greatly expanded. They had accomplished such important work that they did not deserve that their names should disappear from the Geneva Convention, which was their Charter. It was on the battlefields that they had acquired the right to have their name mentioned in the Convention.

Mr. Pictet's point of view was strongly supported by General JAME (France), Mr. DE RUEDA (Mexico), Mr. BAGGE (Denmark), Colonel FALCON BRICENO (Venezuela), and Mr. McCahon (United States of America).

Colonel SAYERS (United Kingdom) acknowledged the great work accomplished by the Red Cross Societies, and he certainly had no desire to belittle it, but an international convention was not the proper place to record tributes, and it would be unfair to mention only the Red Cross Societies and not, for example, the Order of St. John of Jerusalem, which was a very old society. However, in view of the general feeling in the Committee, he withdrew the amendment presented by his Delegation.

Article 20 was adopted.

### Article 21

Colonel RAO (India) considered that Article 21 should state clearly that neutral societies which lent their assistance to one of the belligerents were placed under its control.

Mr. PICTET (International Committee of the Red Cross) was in favour of the above amendment. The Stockholm text might give rise to confusion concerning the status of neutral personnel. The reference to Article 33 in the last paragraph was a case in point. The identity cards required under Article 33 were issued by the belligerent who employed the personnel. It was not clear, therefore, how neutral personnel could be provided with such identity cards before leaving their own country. The Indian proposal would prevent any confusion arising.

Mr. KRUSE-JENSEN (Norway) remarked that a neutral government could prohibit personnel of its own country from giving assistance to a belligerent and consequently it had the right to bring criminal proceedings against those who disobeyed that order. It was not likely that the Norwegian authorities would agree to modify their criminal law on the matter.

Mr. McCahon (United States of America) observed that the introduction by the Conference of Experts of 1947 of the fourth paragraph of Article 21 was not due to any misapprehension. It was thought indispensable—and the experiences of his own country had shown that it was so—that the belligerent should, at the time he gave his assent, send identity cards to the neutral personnel.

Article 21, with the Indian amendment, was adopted.

### Article 22

Colonel CRAWFORD (Canada) reminded the Committee that his Delegation's amendment had been withdrawn in favour of the Swiss amendment (*see Annex No. 33*).

General WILKENS (Netherlands) said that the amendment tabled by his Delegation had already been introduced at the eleventh meeting. However, the Swiss amendment being similar, he withdrew the Netherlands amendment in its favour. He mentioned however that the term which figured in the French text of the Swiss amendment in the fourth sentence of the third paragraph—"un représentant qui jouera le rôle d'un homme de confiance"—was not so good as the English text "a representative who will act in the capacity of spokesman", and should be revised.

Mr. McCANON (United States of America) said that his Delegation was ready to accept the Swiss amendment. He then pointed out that, in consequence of the decision taken regarding Article 19, the reference in the first paragraph should be amended as recommended by the Delegate of Switzerland. He further proposed that the words "under the authority" in the third paragraph of the Swiss amendment should be replaced by the words "subject to the military laws and regulations", and the words "the medical profession" in the second sentence of the penultimate paragraph by "the medical profession or the Church", in order to include chaplains.

Dr. DIMITRIU (Rumania) felt that they must not lose sight of the principle underlying Article 22, namely the safeguarding of the neutrality of medical personnel, whatever the technical and strategical developments of modern warfare might be.

Dr. PUYO (France) said that his Delegation would be ready to support the Swiss amendment. He had, however, two observations to make on its wording. In the second paragraph he proposed replacing the words "shall be treated in accordance with" by "shall benefit by"; furthermore, the text proposed by the Netherlands Delegation concerning "spokesmen" seemed preferable to the Swiss text. He suggested that the Swiss amendment should, therefore, be referred to the Drafting Committee.

General LEFEBVRE (Belgium) said that in the main his Delegation supported the Swiss amendment. There were, however, in the amendment presented by the United Kingdom a certain number of points which deserved close study. For instance, it might be as well to repeat at the beginning of Article 22 the clauses of Article 15 which clearly laid down the treatment to be accorded to medical personnel between the time they were captured and the time when they entered a prison camp. Furthermore, the United Kingdom proposed that at the outbreak of hostilities the belligerents should agree on the numbers of medical staff and chaplains to be retained. Such a provision would prevent abuses. On the other hand, it would be better, in the third paragraph of the Swiss amendment, to omit the clause laying down that retained personnel were to be allowed the same rations as personnel of the Detaining Power. It was desirable too, to specify the advantages that would accrue to retained personnel who did work; although not prisoners of war, such personnel should be granted advantages similar to those given to prisoners of war who worked. The view expressed in the United Kingdom pro-

posal authorizing medical personnel and chaplains to visit labour detachments and hospitals should also be borne in mind.

Mr. BAGGE (Denmark) said that his Delegation was also prepared to support the Swiss amendment; it agreed, however, with the French proposal to replace the words "shall be treated in accordance with" in the second paragraph by "shall benefit by", as well as with the Netherlands proposal regarding "spokesmen".

Mr. GARDNER (United Kingdom) observed that the Swiss amendment had not yet been formally submitted to the Committee and there seemed to be some fear that it did not provide sufficient protection for medical personnel. The decision to entrust the study of the question to Committees I and II independently was likely to create confusion. Committee I could not examine Articles 22, 23 and 24 before knowing what Committee II had decided concerning them. His Delegation, therefore, reserved its attitude except in respect of the amendment to Article 22 which, since it dealt with the situation on the battlefield, could be discussed by Committee I, though not before Committee II had given its opinion regarding it.

The CHAIRMAN was of the opinion that the Swiss amendment might be considered as having been formally submitted to the Committee.

Mr. GARDNER (United Kingdom) accepted the ruling of the Chair.

The CHAIRMAN proposed to conclude the discussion of Article 22.

Mrs. KOVRIGINA (Union of Soviet Socialist Republics) considered that the rights and duties of retained medical personnel were adequately defined in the Swiss amendment. She thought, however, that the enumeration of the duties of the spokesman in the third paragraph of the amendment was too long and should be omitted.

Colonel WATCHORN (Australia) said that the amendment tabled by his Delegation proposed replacing the third paragraph of the Stockholm text by the following paragraph: "The Detaining Power shall grant such personnel all facilities necessary to enable them to carry out their medical or spiritual duties under the best possible conditions and, in particular, shall provide suitable accommodation and food and shall permit such correspondence and freedom of movement, with or without escort, beyond that already guaranteed by this Convention, as may be necessary to their work." The difference in the wording might be referred to the Drafting Committee.

Mr. BURDEKIN (New Zealand) said that his Delegation supported the amendment submitted by the United Kingdom Delegation (*see Annex No. 32*). As there were still questions of principle to decide, it did not seem appropriate at present to refer the Article to the Drafting Committee.

Colonel MEULI (Switzerland) noted that the majority of Delegations appeared to be in favour of the Swiss amendment; the modifications proposed, in particular by the Delegations of Belgium, the United States of America and the Netherlands, were interesting and should be referred to the Drafting Committee. His Delegation also approved the proposal to incorporate the principal clauses of Chapter IV of the Wounded and Sick Convention in the Prisoners of War Convention. But to leave those provisions out of the Wounded and Sick Convention would be equivalent to depriving it of its normal and necessary content. With regard to the Danish and French proposals to say "shall benefit" instead of "shall be treated", he thought that the latter expression had been adopted principally because it was more precise and to meet the wishes of the United Kingdom Delegation.

General JAME (France) said that his Delegation was prepared to second the Swiss proposals which would seem to reconcile best the different points of view; but he urged that nothing should be changed in the essential principle of Article 22, namely that medical personnel must not be considered as prisoners of war.

Mr. BURDEKIN (New Zealand) explained, at the request of the CHAIRMAN, that his observations were not intended to raise a point of procedure, but merely to state his Delegation's position.

Mrs. KOVRIGINA (Union of Soviet Socialist Republics) said, in reply to a question by the CHAIRMAN, that she agreed to have her proposal referred

to the Drafting Committee on the understanding that the whole of Article 22 would be similarly referred.

The CHAIRMAN proposed that Article 22 and its amendments should be referred to the Drafting Committee and that the latter should take the amendment presented by the Swiss Delegation as a working basis.

In the absence of objections, the proposal was adopted.

The CHAIRMAN asked the Committee if it desired, before continuing the discussion, to wait until Committee II had considered the Articles of the Prisoners of War Convention corresponding to the subsequent Articles.

Mr. McCAHON (United States of America) reminded the meeting that it had been decided at the eleventh meeting, on Friday May the 6th, that Committee I should proceed independently with the consideration of Chapter IV of the Wounded and Sick Convention, without regard to the work of Committee II. That decision could not be modified except by a majority of two thirds of the delegations present.

The CHAIRMAN thought that the decision that had been taken was merely not to set up a joint sub-committee for the consideration of Chapter IV.

Mr. GARDNER (United Kingdom) shared the view of the Delegate of the United States of America.

The CHAIRMAN proposed that the discussion of Chapter IV should be continued at the next meeting.

The proposal was approved.

*The meeting rose at 1.40 p.m.*

## FIFTEENTH MEETING

*Thursday 12 May 1949, 10 a.m.*

*Chairman:* Sir Dhiren MITRA (India)

## WOUNDED AND SICK CONVENTION

**Article 23**

The CHAIRMAN drew attention to a difference in the second paragraph of Article 23 between the French text which spoke of "les effets, objets personnels, valeurs et instruments" and the English text which spoke of "the effects, instruments, arms and means of transport". He asked on which version the Committee desired to base their discussion.

Mr. PICTET (International Committee of the Red Cross) said that it was the French text which corresponded to the intentions of the authors of the draft.

Mr. McCAHON (United States of America) accordingly withdrew the second part of the amendment tabled by his Delegation, the purpose of which had been to make the two texts agree. The first part of the amendment proposed omitting the last sentence of the first paragraph, the substance of which was already covered by Article 22.

Colonel CRAWFORD (Canada) considered that the sentence should, on the contrary, be retained, as it dealt with retained medical personnel and chaplains awaiting repatriation, whereas Article 22 dealt with personnel retained for duty.

General JAME (France) agreed with the Canadian Delegate. He considered further that the clause in Article 22 to the effect that "Belligerents shall grant such personnel the same allowances and the same pay as to the corresponding personnel in their own forces" should be repeated in Article 23.

Mr. McCAHON (United States of America) suggested referring Article 23 to the Drafting Committee, as had been done in the case of Article 22.

Colonel MEULI (Switzerland) supported Mr. McCahon's proposal. He proposed an addition to the amendment presented by his Delegation, viz., a change in the references in the first paragraph of the Article, which should read (by reason of the modification to Article 19): "in Articles 19, first paragraph, and 20". The amendment itself proposed replacing the last sentence of the first paragraph by: "The foregoing reservations shall not apply to personnel whom it has been decided to return to their country of origin and who, while awaiting transportation, do not perform any medical duties". The object of the proposal was to make quite clear the situation of medical personnel during the time they were pursuing their duties and at the same time to take the United Kingdom point of view into account.

On the proposal of the CHAIRMAN the United States amendment was referred to the Drafting Committee.

Mr. BURDEKIN (New Zealand) thought that Articles 23 and 24 should be deleted and be incorporated in the Prisoners of War Convention, as suggested by the United Kingdom amendment, which he would support if it was officially submitted. The New Zealand Delegation would like to limit repatriation to doctors and nurses, and they would in the near future submit a formal proposal to that effect.

Colonel MEULI (Switzerland) agreed to his Delegation's amendment being referred to the Drafting Committee.

The CHAIRMAN thereupon proposed that the whole of Article 23, together with the amendments relating to it, should be referred to the Drafting Committee.

The proposal was approved.

**Article 24**

Article 24 was adopted without modification.

**Article 25**

An amendment by the Delegation of Finland (to delete the words "if possible" from the fourth paragraph) was not formally moved.

Article 25 was adopted without modification.

## MARITIME WARFARE CONVENTION

**Article 30**

Mr. ABERCROMBIE (United Kingdom) observed that the English phrase "during the time they are pursuing their duties" did not correspond exactly with the French phrase "pendant le temps où ils exercent leurs fonctions"; it seemed to him more restrictive. The Drafting Committee could perhaps examine the point.

Article 30 was adopted, subject to an improved English translation by the Drafting Committee.

**Article 31**

The CHAIRMAN proposed to refer the Canadian and United States amendments to the Drafting Committee. The United States amendment proposed, in the first place, to replace the words "Under the authority" in the second paragraph by the words "Subject to the military laws and regulations", and secondly to omit the last sentence of the fourth paragraph.

Colonel CRAWFORD (Canada) said that the amendment presented by his Delegation also proposed the omission of the last sentence of the fourth paragraph. He suggested that Articles 31 and 32 should be referred to the Drafting Committee since the corresponding Articles 22 and 23 of the Wounded and Sick Convention had been so referred.

General PERUZZI (Italy) said that the amendment tabled by his Delegation proposed that the words "or shipwrecked" be inserted in the first paragraph, after the words "of any captured".

Captain MELLEMA (Netherlands) supported the Italian amendment.

The CHAIRMAN proposed to refer Article 31, together with all the amendments, to the Drafting Committee.

The proposal was approved.

**Article 32**

The CHAIRMAN proposed that Article 32 should be referred to the Drafting Committee, as had been done in the case of the corresponding Article 23 of the Wounded and Sick Convention.

The proposal was approved.

**Article 33**

Article 33 was adopted without modification.

**New Article**

Captain PERRY (Australia) said that his Delegation considered it necessary to introduce an Article at that point similar to Article 20 of the Wounded and Sick Convention, in order to extend the protection of the Maritime Warfare Convention to the staff of National Red Cross Societies and that of other Voluntary Aid Societies duly recognized and authorized by their Governments. The services rendered by the personnel in question justified such an extension.

Mr. PICTET (International Committee of the Red Cross) said that recognition of the Red Cross Societies under the Geneva Convention had so far been considered sufficient. Furthermore, Articles 20 and 21 of the Maritime Warfare Convention protected Red Cross hospital ships. If it was thought, however, that there was the least doubt as to the complete protection accorded to personnel of the recognized relief societies at sea, the introduction of such an Article would be useful.

Mr. ABERCROMBIE (United Kingdom) supported the Australian amendment.

Mr. SENDIK (Union of Soviet Socialist Republics) saw no justification for the introduction of such an Article. Article 31 already protected the personnel of all ships.

Colonel CRAWFORD (Canada) shared the Soviet view. He was opposed to the inclusion of any unnecessary Article.

Captain PERRY (Australia) said that the proposed addition was to cover all eventualities, which Articles 20 and 21 did not do, and to ensure adequate protection to all personnel.

Captain MELLEMA (Netherlands) shared the view of the Soviet and Canadian Delegations.

The Australian amendment, put to the vote, was rejected by 11 votes to 9.

## WOUNDED AND SICK CONVENTION

Dr. BOGOMOLETZ (Ukrainian Soviet Socialist Republic) said that his Delegation reserved the right to submit an amendment to Article 19 of the Wounded and Sick Convention.

**Article 26**

Mr. SWINNERTON (United Kingdom) said that the amendment submitted by his Delegation (*see Annex No. 36*) proposed to replace Article 26 by the text which had been submitted to the Stockholm Conference. There were two points in the final text adopted at Stockholm which did not appear satisfactory. First, it established in the first paragraph a priority of treatment similar to forms of treatment which had already been criticized at the present Conference. Secondly, it obliged belligerents not to divert fixed establishments from their purpose so long as wounded and sick were accommodated therein. That was too heavy an obligation to impose on belligerents.

Mr. PICTET (International Committee of the Red Cross) explained that the text submitted to the Stockholm Conference included important alterations in respect of Articles 14 and 15 of 1929. Those alterations had been introduced by the Conference of Experts in 1947, who considered that it would be better to suppress the restitution of mobile medical material, as medical personnel could be retained in larger numbers. The International Committee of the Red Cross had agreed to that text, but, when submitting it at Stockholm, had observed that in merging Articles 14 and 15 of the 1929 Convention—a course which was justified by the fact that medical units were no longer to be restored, as before, to the Powers to which they belonged—the Government Experts were not perhaps fully conscious of the fact that the protection due to mobile medical units was to some extent impaired thereby. In the 1929 text it was clearly stated that mobile medical units falling into enemy hands should keep their equipment and stores, their means of transport and their drivers. Moreover, the 1929 Convention stipulated that the captor State might only use such equipment for the care of the wounded and sick, whereas the buildings, equipment and means of transport of fixed establishments were considered as spoils of war, and might, therefore, be diverted to other purposes, including military purposes. According to the revised text submitted at Stockholm the equipment of mobile units might also be regarded as spoil of war. The Stockholm Conference considered that it was necessary to make a distinction between mobile equipment and stores which

remained for the use of the wounded and sick and that of fixed establishments which became war booty. It was for the experts of the present Committee to say whether such a distinction was possible.

Commodore LANDQUIST (Sweden) said that the amendment presented by his Delegation proposed adding the following paragraph: "The stores, buildings and material mentioned in this Article shall never be intentionally destroyed". It was necessary to cover the case of a commander who, forced to withdraw his troops, might attempt to destroy medical supplies which he could not take with him in order to prevent them falling into the hands of the enemy.

Mr. SWINNERTON (United Kingdom) said that there was an important difference of principle between the text submitted to the Stockholm Conference and that which was adopted. The first said that commanding officers could make use of buildings, provided they made arrangements for the wounded treated therein, whereas the second said that the buildings could not be diverted from their purpose so long as they were required for the wounded accommodated therein. It would be enough, therefore, for a few wounded to remain in a building to make it unusable by the Detaining Power. The text submitted at Stockholm was therefore better.

Mrs. KOVRIGINA (Union of Soviet Socialist Republics) agreed.

Dr. PUYO (France) suggested that the Article should be referred to a working party.

Mr. SWINNERTON (United Kingdom) supported the French proposal, and suggested the Delegates of France, the United Kingdom, Sweden and the Union of Soviet Socialist Republics as members of the working party.

The proposal was approved.

**Article 27**

Mr. ABERCROMBIE (United Kingdom) said that his Delegation's amendment proposed to insert the word "neutral" in the first paragraph, before the words "aid societies". The property of societies of belligerent countries must be considered as national property and, in the case of capture or loss, it was for the governments to present claims for indemnity. Only societies of neutral countries should be covered by Article 27.

Mr. PICTET (International Committee of the Red Cross) said that equipment, stores and all other property, fixed or mobile, belonging to aid societies was private property. The distinction proposed by the United Kingdom Delegation had been suggested as far back as 1906, but that Conference had considered, according to the Legal Consultant Louis Renault who was Rapporteur, that to admit that material belonging to aid societies could become spoils of war would hamper the development of the societies and render their task more difficult.

Mrs. KOVRIGINA (Union of Soviet Socialist Republics) opposed the amendment of the United Kingdom, the adoption of which would be equivalent to withdrawing protection from property belonging to the Red Cross Societies of the belligerents.

Mr. DRONSART (Belgium) made a similar observation. He also proposed that the second paragraph of Article 27, as it appeared in the text submitted to the Stockholm Conference, should be reintroduced.

General JAME (France) shared the Belgian point of view.

Mr. ABERCROMBIE (United Kingdom) regretted that the United Kingdom proposal raised such opposition, and withdrew it. He was, however, against the insertion of the second paragraph, as proposed by the Delegate of Belgium, as it was already covered by the beginning of the first paragraph.

Article 27, as it appeared in the Stockholm text, was adopted.

General WILKENS (Netherlands) asked whether the English term "real and personal property" corresponded sufficiently closely to the French term "biens mobiliers et immobiliers".

According to explanations by Mr. McCANON (United States of America) and Mr. PICTET (International Committee of the Red Cross) that was the case.

#### MARITIME WARFARE CONVENTION

##### Article 34

Article 34 was adopted without modification.

*The meeting rose at 12.45 p.m.*

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### SIXTEENTH MEETING

*Friday 13 May 1949, 10 a.m.*

*Chairman:* Sir Dhiren MITRA (India)

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#### WOUNDED AND SICK CONVENTION

##### Article 28

Colonel CRAWFORD (Canada) said that an amendment tabled by his Delegation proposed the omission of the last sentence of the first paragraph, which provided for the protection of vehicles temporarily employed for the transport of wounded. The provision in question would make it possible for belligerents to protect all kinds of military

vehicles simply by placing a few wounded in them and marking them with a red cross. Such an extension of the protection given would be most imprudent and would inevitably result in decreasing the respect shown for the emblem.

Mr. PICTET (International Committee of the Red Cross) observed that, as the first sentence of the paragraph in question did not stipulate that such vehicles must be especially equipped for medical transport, there was no reason why the

second sentence should not be deleted. However, in order to take the arguments put forward by the Delegation of Canada into account, it would be necessary to specify that the first paragraph referred to vehicles specially equipped for medical transport.

Article 17 of the 1929 Convention laid down the principle of the restitution of vehicles. Hence the provision for two distinct categories, viz. specially equipped vehicles belonging to the medical services, and ordinary military vehicles which would not be returned. The Stockholm Conference, however, had abandoned the principle of handing back medical equipment. It might therefore be considered that the distinction drawn between specially equipped and temporarily employed vehicles was no longer justified, and that all vehicles used for the conveyance of wounded and bearing the Red Cross emblem should be protected. This raised the question of whether the temporary use of the Red Cross emblem was permissible. The arguments put forward by the Delegation of Canada were new to the I.C.R.C. and required careful consideration.

Colonel CRAWFORD (Canada) observed that nothing in the Article as proposed would prevent a belligerent from using the Red Cross emblem to protect military transport returning from the front. The last sentence of the first paragraph should be omitted.

The Canadian amendment was put to the vote and adopted by 12 votes to 5.

Mr. McCAGON (United States of America) said that in view of the adoption of the Canadian amendment, his Delegation would withdraw its amendment which had proposed adding the words "and marked as indicated in Article 31" at the end of the first paragraph.

Mr. ABERCROMBIE (United Kingdom) explained that his Delegation had submitted an amendment (*see Annex No. 37*), because it supported the third paragraph of the text submitted at Stockholm, which had not been included in the text adopted.

Mr. PICTET (International Committee of the Red Cross) said that the paragraph in question should be considered as part of the text submitted to the present Conference. It had been omitted in error. Besides, it appeared in the Working Document which the delegates had in front of them.

He added that in order to give effect to the vote just taken on the Canadian amendment, it would be necessary to ask the Drafting Committee to modify the wording of the first paragraph

since as it stood it permitted the employment of vehicles temporarily used for medical purposes.

Mr. MARESCA (Italy) observed that the reference at the end of the third paragraph to "general rules of international law" was not precise; the word "applicable" should be added. Similarly, in the second paragraph, it was necessary to specify what the duties of a belligerent were towards wounded persons whom it had taken into custody after capturing their vehicles.

General JAME (France) pointed out that the last paragraph did not refer to ordinary civilians or ordinary transport, but specifically referred to those which had been "obtained by requisition". The provision was therefore an important one, and might also possibly be included in the Civilians Convention.

Article 28, with the addition of the last paragraph of the text submitted at Stockholm, was adopted by 36 votes.

### Article 29

Mr. CASTRÉN (Finland) said that his Delegation and that of Monaco had presented amendments to Articles 29 and 30, which superseded those contained in the memorandum submitted by the Government of Finland. He hoped that discussion on the Articles in question could be postponed so as to enable the Delegate of Monaco, who would be absent until May the 16th, to take part. If that was not possible, the Delegate of Monaco should be allowed to take part in the work of the Drafting Committee when the latter discussed the two Articles in question.

He further explained that the amendment to Article 29 (*see Annex No. 39*) proposed first to modify the Article itself, and secondly to add two new Articles. Article 29, as proposed, corresponded in broad outline to the first paragraph of the Stockholm text. Article 29A contained provisions regulating the recruitment of private aircraft; its object was to exclude the possibility of abuse. The second paragraph of Article 29B replaced the second paragraph of the Stockholm text, the last sentence of which appeared superfluous. It also seemed possible to omit the third paragraph of the Stockholm text, which, like the United Kingdom amendment (*see Annex No. 38*), would be very difficult to apply in practice. On the other hand, the innovation proposed in the first paragraph of Article 29B appeared useful and, indeed, essential.

The present amendment authorized flying over enemy territory for humanitarian reasons, which must prevail. Unlike the Stockholm text, the

amendment made no distinction between involuntary and forced landings, so far as the fate and treatment of aircraft, crew and wounded were concerned.

After a discussion in which the CHAIRMAN, Mr. NAJAR (Israel), Mr. CASTRÉN (Finland) and Mr. ABERCROMBIE (United Kingdom) took part, the Committee decided to continue with the consideration of Articles 29 and 30, and agreed that the Delegate of Monaco should attend the meetings of the Drafting Committee when the Articles in question were being considered by the latter.

General MARULLI (Italy) thought that flying over enemy country for humanitarian reasons should be allowed, subject to certain restrictions. He supported the amendments of Finland, Monaco and the United Kingdom. As to landings, his Delegation agreed with the Stockholm text, which made a clear distinction between forced and involuntary landings.

Mr. McCAHON (United States of America) did not consider that the amendment submitted by the Delegations of Finland and Monaco improved the Stockholm text which, with slight modifications, seemed preferable. The amendment submitted by his own Delegation proposed, first, that the words "painted white and bear" should be omitted from the second paragraph of Article 29 — the colour would not improve visibility and the emblem would seem to be sufficient — and, secondly, to add the following sentence to the fifth paragraph: "In the event of such landing, the aircraft with its occupants may continue its flight after examination, if any". That addition would make the last paragraph unnecessary.

Mr. CASTRÉN (Finland), replying to a question put by the CHAIRMAN, said that he wished to reserve his comments until the second reading of the Articles.

The CHAIRMAN having intimated that there might not be a second reading, a discussion took place on the point, the Chairman, Mr. BAGGE (Denmark) and Mr. CASTRÉN (Finland) taking part.

Finally, the Committee approved a suggestion by Mr. McCAHON (United States of America) that only those Articles which had been referred to the Drafting Committee or to a working party should be reconsidered by the main Committee, not Articles that had been adopted.

Mr. CASTRÉN (Finland) having proposed that the Article together with its amendments should

be referred to a working party, Mr. McCAHON (United States of America) objected that the main principles should first be decided by the Committee.

The CHAIRMAN then put to the vote the amendment to Article 29 submitted by the Delegations of Finland and Monaco.

The amendment was rejected by 15 votes to 2.

The CHAIRMAN put the United Kingdom amendment for discussion.

Mr. ABERCROMBIE (United Kingdom) said that in modern aerial warfare the markings on hospital aircraft were altogether insufficient to ensure their protection, and left the door open to the worst possible abuses. There was really today only one way of making certain that they were protected. That was to make hospital aircraft fly on fixed routes, at heights and times agreed to by the enemy. The third paragraph of the Stockholm text had a provision to that effect, but it was not sufficient. If the United Kingdom amendment were accepted, the third paragraph might be omitted. The last sentence of the second paragraph should, for the same reasons, be made mandatory.

Colonel WATCHORN (Australia) and General WILKENS (Netherlands) supported the above amendment.

Colonel CRAWFORD (Canada) also was strongly in favour of the amendment, the more so since, having acted at Stockholm as Rapporteur to the sub-committee entrusted with the study of the question, he realized that the wording finally proposed was not entirely satisfactory. He further approved the proposal of the United States of America to abolish white paint for hospital aircraft; the paint merely added to the weight of the machine.

Put to the vote, the United Kingdom amendment was adopted by 21 votes to 1.

On the CHAIRMAN'S proposal, the Committee decided to leave it to the Drafting Committee to modify Article 29 in accordance with the vote just taken.

The CHAIRMAN then put to the vote the amendment submitted by the United States of America; it was adopted unanimously.

### Article 30

Mr. CASTRÉN (Finland) said that the amendment tabled by the Delegations of Finland and Monaco

proposed a new wording for Article 30 and the introduction of a new Article 30A (*see Annex No. 41*).

He considered that the proposed texts were more liberal than that of Stockholm. The first paragraph of Article 30A did not provide for previous notification to the neutral Power, and all landings were permitted. For the same humanitarian reasons the neutral Power would not be entitled to make flying over its territory subject to conditions. The second paragraph of Article 30A corresponded in general to the last paragraph of the Stockholm text. The third paragraph of Article 30 A prohibited the retention of the hospital aircraft and its crew by the neutral Power.

Mr. PICTET (International Committee of the Red Cross) considered that certain points in the amendment should be retained, in particular the provisions dealing with the case of wounded who were landed voluntarily, and with the right of aircraft to continue their flight. In its proposals, the I.C.R.C. had tried to reconcile the difficulty of imposing on neutrals an obligation to let hospital aircraft fly over their territory, with the necessity of such flights. Accordingly the flights had been authorized, but neutral Powers had been given the right to restrict them in special circumstances. Two absolute restrictions were imposed on belligerents, namely, prior notification of any flight over neutral territory, and the obligation on the part of the aircraft to obey any summons to land. The territory of a neutral State must be understood

as being defined in Article 2 of the Chicago Convention on International Civil Aviation of December 7th, 1944.

Put to the vote, the amendment submitted by the Delegations of Finland and Monaco was rejected by 7 votes to 1.

The CHAIRMAN then put to the vote the first part of the United Kingdom amendment (*see Annex No. 40*) which followed logically from the adoption of a similar amendment to Article 29, it proposed adding the following sentence to the first paragraph:

“They will be immune from attack only when flying on routes, at heights and times specifically agreed between all belligerents and the neutral Power concerned.”

The first part of the amendment was adopted by 14 votes to 1.

Mr. ABERCROMBIE (United Kingdom) explained that the second part of his amendment had been drafted before Article 10 of the Wounded and Sick Convention, with which it was connected, had come up for discussion. Consideration of that Article had been deferred pending the adoption of Article 3 of the Prisoners of War Convention, and he proposed that the same should apply in the case of the present amendment.

The proposal was adopted.

*The meeting rose at 12.45 p.m.*

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## SEVENTEENTH MEETING

*Monday 16 May 1949, 10 a.m.*

*Chairman: Sir Dihren MITRA (India)*

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### MARITIME WARFARE CONVENTION

#### Article 40

The CHAIRMAN proposed that as Article 40 was closely related to Articles 19, 20 and 21, it should also be referred to the Working Party now studying those three Articles.

The proposal was adopted.

#### Article 35

Mr. ABERCROMBIE (United Kingdom), when introducing his Delegation's amendment proposing the omission of Article 35, said that the first and second paragraphs of the Article made the protection of hospital transports at sea depend on agreements between the belligerents. But belligerents could conclude any necessary agreements under Article 5. The agreements for which

Article 35 provided did not seem sufficiently urgent or essential to justify their being mentioned in a special Article ; Article 5 seemed to be sufficient. With regard to the third paragraph, his Delegation recognized that it might be useful; they would not, therefore, press for its deletion. It might, however, be better placed in Article 29.

Mr. SENDIK (Union of Soviet Socialist Republics) said that the despatch of urgently needed hospital supplies should not have to depend on prolonged negotiations between the belligerents, which would be the case if one relied entirely on the agreements provided for in Article 5. Article 35 authorized a much quicker procedure, and he therefore urged that the first two paragraphs of the Article should be retained.

Dr. PUYO (France) said that although he feared that the provisions of Article 35 would lead to incidents, he was nevertheless in favour of retaining all three paragraphs. He thought, however, that the third paragraph would have to be modified in order to prevent abuses. He proposed that the whole Article should be referred to the Drafting Committee.

General PERUZZI (Italy) considered that the first two paragraphs should be omitted, but pressed for the retention of the third. It might, he thought, be included under Article 22. The experience of the Italian Navy had shown the importance of the provision contained in the third paragraph.

Captain MELLEMA (Netherlands) was in favour of retaining the first two paragraphs as representing a more adequate safeguard. With regard to the third paragraph, he asked the Delegate of the United Kingdom what the position of supernumerary personnel would be in the case of a hospital ship being boarded by the enemy.

Dr. DIMITRIU (Rumania) said that he was in favour of the Stockholm text, which made it possible for medical equipment to be transported rapidly. The presence on board of neutral observers should be sufficient to avert the abuses which the Delegate of France feared.

Mr. PICTET (International Committee of the Red Cross) said that for obvious humanitarian reasons the possibility of protecting ships carrying medical equipment should be carefully considered. Article 35, as it stood, did not seem to be quite clear ; it was essential, first of all, to make certain what it was intended to mean. What was meant by saying that the "duties" of a ship carrying medical equipment must be approved by the adverse

Power? Did it mean that the conveyance of medical equipment was, if the latter was not to risk capture, in all cases subject to the agreement of the adverse Power? If that was the case, the Article appeared to be completely lacking in effective force. Further, the term "medical equipment" was too vague and should be specified. In short, before the Article was voted on, it should be redrafted in such a way that it would take account of humanitarian requirements, and at the same time make clear the exact extent to which the belligerents were bound by it.

Mr. McCAHON (United States of America) said that his Delegation was in favour of retaining the Article in its present form.

Mr. ABERCROMBIE (United Kingdom) was ready to agree to the Article being referred to the Drafting Committee, but only in order that its wording could be made clearer and more precise.

In reply to the Delegate of the Netherlands, he said that the treatment of medical personnel embarked as passengers was provided for in Chapter IV.

Mr. BURDEKIN (New Zealand) said that he had been prepared to agree to the omission of the third paragraph which might lead to abuses ; he would, however, now support the proposal of the French Delegate which aimed at introducing a clause to prevent such abuses.

The CHAIRMAN proposed to instruct the Drafting Committee to redraft Article 35.

Mr. SENDIK (Union of Soviet Socialist Republics) asked whether the Drafting Committee would be instructed to improve the Stockholm text or to consider its deletion. The Drafting Committee should be given some guidance.

Dr. PUYO (France) considered that the Drafting Committee should be asked to harmonize the various opinions expressed and to prepare a clear text. But that was a task for a working party rather than for the Drafting Committee.

Captain MELLEMA (Netherlands) said that it was necessary to decide, first of all, whether or not Article 5 covered the case for which the first two paragraphs of Article 35 provided.

After a discussion in which the CHAIRMAN, Mr. BAGGE (Denmark), Mr. McCAHON (United States of America), Mr. SENDIK (Union of Soviet Socialist Republics), Mr. ABERCROMBIE (United Kingdom), Captain MELLEMA (Netherlands) and Dr. PUYO (France) took part, the CHAIRMAN put

to the vote the United Kingdom amendment proposing the omission of the first and second paragraphs of Article 35.

The amendment was rejected.

The CHAIRMAN proposed that the Drafting Committee should be asked to improve the wording of the first two paragraphs so as to make their meaning clearer, and to decide in which Article the third paragraph should be incorporated.

The proposal was adopted.

### Article 36

The CHAIRMAN proposed that the Article should be referred to the Drafting Committee, so that it could be brought into line with Article 29 of the Wounded and Sick Convention to which it corresponded.

Mr. McCahon (United States of America) approved the proposal. He explained that his Delegation's amendment (*see Annex No. 75*) corresponded to that submitted in connection with Article 29 above.

Captain PERRY (Australia) said that the amendment submitted by his Delegation introduced provisions which had been adopted in principle by the Committee when they were discussing Article 29 above. He, too, agreed with the Chairman's proposal.

Mr. de Geouffre de la Pradelle (Monaco) regretted that he had not been able to be present at the meeting at which the amendment to Article 29 of the Wounded and Sick Convention, submitted by the Delegations of Finland and Monaco, had been discussed.

He observed that Article 36 provided for situations which sometimes differed from those to which Article 29 of the Wounded and Sick Convention applied. In particular, enemy territorial waters might cover immense distances. That problem should be closely studied. Also, and there again the Stockholm text seemed inadequate, provision should be made for the possibility of reinforcing the strength of the fleet of hospital aircraft from neutral sources, with commercial aircraft and seaplanes immobilized by the war, which might be lent to the belligerents. Furthermore, it seemed more than probable that the agreements referred to in the fourth paragraph would never see the light of day and that naval hospital aircraft would thus be condemned to inactivity.

He regretted that none of the great Powers had proposed the complete immunity of hospital

aircraft, which would obviously be the best solution from the humanitarian point of view. In conclusion, he proposed that the Articles concerning hospital aircraft should be referred to a working party to which he would be ready to lend his assistance.

The CHAIRMAN put the above proposal to the vote. It was rejected by 16 votes to 8.

At the suggestion of the CHAIRMAN, the Committee agreed to instruct the Drafting Committee to bring Article 36 into line with Article 29 of the Wounded and Sick Convention.

### Article 37

The CHAIRMAN proposed to refer Article 37 to the Drafting Committee for coordination with the corresponding Article 30 of the Wounded and Sick Convention.

Mr. Abercrombie (United Kingdom) said that suggestions for improving the wording of the two Articles, which had been made to him outside the meeting, would be taken into account.

The Chairman's proposal was adopted.

## WOUNDED AND SICK CONVENTION

### Article 31

Mr. Beelaerts van Blokland (Netherlands) drew attention to the difficulty of the problem presented by the existence of several different emblems. The only possible solution, he thought, would be to adopt a new emblem which would be truly neutral and at the same time have a meaning. Charity was the very foundation of the work of the Red Cross. The new emblem might therefore be a red heart. For practical reasons it might be given the conventional form of an inverted equilateral triangle. The sacrifice which such a change would demand, particularly on the part of Switzerland, would, he was sure, be willingly accepted.

Mr. Tarhan (Turkey) said that Turkey had only adhered to the various Geneva Conventions on condition that the Red Crescent, which had been recognized by the Convention of 1929, was authorized. At the preliminary Conference of National Red Cross Societies in 1946 the Egyptian Red Crescent, supported by the Turkish Red Crescent and the British Red Cross, had stated that any proposal for the unification of the emblem

would remain inoperative. The fact that the Stockholm Conference had passed no resolution on the matter appeared to prove that it had considered it inopportune to raise the question.

Analysing the suggestions of the International Committee of the Red Cross for the establishment of a universal emblem, he remarked that the first proposal (to fix a time-limit to allow populations to be educated in the idea of accepting the Red Cross emblem) seemed to him inadmissible. No government would wish to go against the beliefs of its people. Nor was the second proposal (that the national emblem of the country be relegated to a corner of the flag, the Red Cross occupying the centre) acceptable. The third proposal (that all the emblems other than the Red Cross be unified) would mean abandoning symbols which the populations held dear; such action did not appear to be either necessary or justifiable.

Turkey would have no objection to the adoption of a universal emblem replacing all other emblems, including the Red Cross; but until such an emblem was adopted, the Turkish Delegation considered it essential that the recognition given to the Red Crescent in Article 31 should be maintained.

Mr. DRONSART (Belgium) said that, since the purpose of the Convention was the protection of the wounded and sick, he thought that there could not be a better way of achieving it than by standardizing the protective sign. The reaction of the combatant on seeing the sign must be spontaneous and immediate. A multiplicity of emblems could only cause confusion. The 1929 Conference had been opposed to the new symbols which had been proposed. The pamphlet published by Mr. Pictet, the Representative of the International Committee of the Red Cross, showed clearly that the Red Cross was not a religious symbol. Combatants from Moslem countries who did not accept the cross must nevertheless respect it. The distinction already made at Stockholm between the protective sign and the descriptive sign might offer a solution. The symbol selected by the various countries might serve as a descriptive sign, the Red Cross being recognized everywhere as the protective sign.

He added that representatives of Moslem countries had given him to understand that they would agree to a return to the Red Cross, provided all countries did the same.

*The meeting rose at 1 p.m.*

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## EIGHTEENTH MEETING

*Tuesday 17 May 1949, 3 p.m.*

*Chairman: Sir Dhiren MITRA (India)*

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### WOUNDED AND SICK CONVENTION

#### Article 31 (continued)

Mr. PICTET (International Committee of the Red Cross) explained that the problem before the Committee was two-fold: on the one hand, there was the recommendation of the Stockholm Conference with regard to Article 31, and, on the other, the amendment tabled by the Delegation of Israel (*see Annex No. 42*) proposing the introduction of a new distinctive sign.

He reminded the meeting that the universal nature of the sign had been established in 1864; but since 1876, first Turkey, and then Persia had demanded another symbol. Unity was maintained in the Convention of 1906, but Turkey only adhered to that Convention on condition that it could

employ a red crescent. The Conference of 1929, on the other hand, admitted other symbols, but only for countries already using them. Other Moslem countries subsequently asked to be allowed to use a red crescent, and the International Committee of the Red Cross had not felt that it could refuse recognition to their relief societies; it had not, however, agreed to recognize other emblems which had been proposed to it.

The Conferences of 1906 and 1929 had declared that in adopting a red cross they had intended to establish an international emblem without religious significance, since the principle of the Red Cross was to assist those who suffered, irrespective of frontiers or creeds. The emblem was to be absolutely neutral and universally accepted. By reversing the colours of the Swiss flag, the Conferences had robbed the sign of any religious

significance, if it had ever had any. The Red Cross emblem was the Greek cross, and not the Christian or Latin cross. Besides, a cross is the simplest of all signs, the one most instinctively used.

The problem had been studied by the various Conferences of Experts held since 1929. That of 1937 was unanimously in favour of reverting to a single universal emblem. At the Conference of Red Cross Societies in 1946, a number of delegations had also asked for a return to the universal sign; certain Moslem countries, while declaring that it was not yet possible to introduce the Red Cross in their countries, had nevertheless not excluded such a possibility in the future. Similar discussions had taken place at the Conference of Experts in 1947 and at Stockholm.

He suggested several possible solutions :

- (a) The Convention to cease in the future to recognize special emblems otherwise than temporarily, and to fix a period during which all such signs were to disappear. Populations should not be asked to adopt a Christian symbol, but should be made to understand that the Red Cross had no religious significance.
- (b) The Red Cross emblem to be used by all States, certain countries being authorized to add a small distinctive emblem in one corner of the Red Cross flag.
- (c) A single, entirely new sign to be devised, acceptable to all countries, the use of which would be authorized besides the Red Cross emblem.
- (d) Iran to agree to forego her special emblem, leaving the Red Cross and the Red Crescent as the only authorized emblems.

In conclusion he observed, in connection with the Delegate of the Netherlands' proposal to adopt a red heart as the only emblem, that the Diplomatic Conference was competent to decide on the sign that was to protect hospital buildings, equipment and personnel, but not to change the name of a private institution known as the Red Cross. Only the International Conference of the Red Cross would be competent to discuss such a measure.

The Netherlands' proposal came too late. Today the Red Cross was too well-known, too instinctively and generally recognized, to be abolished. But a red heart might possibly be adopted as the only special emblem by those countries which did not wish to use a red cross.

Mr. TARHAN (Turkey), referring to a remark made on the previous day by the Delegate of Belgium, said that he spoke at the Conference as a Delegate of his Government, and not as President of the Turkish Red Crescent. The

opinions expressed by representatives of Moslem countries in the course of the conversations to which the Belgian Delegate had referred, did not in any way correspond to the views of the Turkish Delegation.

Moreover, respect for the Cross emblem did not necessarily mean its adoption. His Delegation would have no objection to the universal adoption of a new emblem, and considered the Netherlands proposal as embodying that principle. In the event of the Netherlands proposal being rejected, the Turkish Delegation would demand the retention of the Red Crescent.

SAFWAT BEY (Egypt) entirely agreed with the above opinion.

Mr. BMMATE (Afghanistan) observed that the recommendation made by the Stockholm Conference qualified very considerably the approval it had given to the retention of the Red Crescent. Moral, psychological and practical arguments had been advanced.

Attempts had been made to free the Red Cross from all religious significance by denying that of the cross on the Swiss flag. He cited in reply three ancient texts which showed the Christian origin of the white cross which figured on the arms of the Canton of Schwyz. The sign of the Cross was inevitably associated with the Christian message of charity and love. It was impossible to consider them apart and it would be wrong to wish to do so. On the contrary, the emblem should retain its full significance.

The same was true of the crescent. A number of nations, some of which had never formed part of the Ottoman Empire, had for a long time past adopted the crescent as a symbol of their Islamic faith. For them also the crescent carried a message of love and charity. That fact could not be ignored.

In defending the use of the Red Crescent one was following a principle which ran right through: the Conventions, namely, respect for the diverse religions and their rites. The practical objections to the retention of the Red Crescent were discounted in the light of experience. For seventy years the sign had proved itself on the fields of battle. To eliminate it would be to rob, without any real justification, millions of human beings of an emblem that was dear to them.

Mr. BOHNY (Switzerland), reverting to the proposal of the Netherlands Delegation, which required certain countries to agree to a sacrifice, stated that Switzerland would be prepared to renounce the Red Cross if to do so meant that the wounded and sick would be better protected. But it would seem impossible to day to abolish

without detriment to the wounded and sick, a symbol of more than eighty years' standing, a symbol, moreover, which, used throughout the world and known to all, had become a universal sign of impartial help to the suffering. It was not possible to imagine medical personnel, hospital staff and auxiliaries renouncing the Red Cross sign. Turkey had used the Red Crescent for seventy-three years; but her armed forces respected the Red Cross of their adversaries. The 1929 Convention had agreed to two exceptions; but it would be inadvisable to admit others. The Swiss Delegation therefore advocated the adoption of one special sign on which the countries concerned would have to reach agreement. He proposed that the countries concerned should form a sub-committee to consider the matter. If it was not possible to reach agreement, it would be better to go back to the 1929 text.

Mr. BEELAERTS VAN BLOKLAND (Netherlands) said that his proposal had not been a formal motion. It was rather a suggestion to which he had wished to draw the Conference's attention. His Delegation reserved the right to submit a similar suggestion in the future to an International Red Cross Conference. Its purpose was to create a really universal protective emblem. What other symbol was more expressive and more neutral than the heart, even when given the conventional form of a triangle? He hoped that the next informal meeting of the Red Cross Delegates taking part in the Conference would be able to examine the suggestion at their leisure.

Mr. NAJAR (Israel) asked the Delegates of the Netherlands and Belgium whether they intended to present a formal amendment proposing the unification of the sign. Both having replied in the negative, he pointed out that the true basis of discussion was still the 1929 Convention which recognized three distinctive signs, namely the Red Cross, the Red Crescent and the Red Lion and Sun.

In support of his Delegation's amendment he said that it was a strange confusion of values to believe that one symbol was as good as another. The Red Shield of David had been in effective use in Palestine for the past twenty years. It would be revolutionary not to recognize it in the Convention. It was difficult to imagine the Medical Service of the Israeli Army consenting to the replacement of the Red Shield of David by another sign. He reminded the Committee of the ancient and sacred origin of the symbol which went back three thousand five hundred years and which, after having marked the Jewish victims of Hitlerism, must to-day become the symbol of life and charity. Some Delegates feared

the adoption of a multiplicity of emblems, but it was rare for an emblem to be at the same time ancient, universally known and in effective use for twenty years. A Convention intended to cover all nations must take account of differences of sentiment throughout the world. Such questions could not be settled by a vote.

He feared that a decision adopted as the result of a premature vote by the Committee would meet with opposition in Israel. He maintained that it was for the present Diplomatic Conference, and not for International Red Cross Conferences to take decisions regarding the use of distinctive signs. He hoped that the decision taken would be the logical one; i. e. the recognition and not the elimination of a sign that was actually in use.

Mr. DRONSART (Belgium) said that the essential questions to be decided were practical ones. While Red Crescent had already been in effective use for a long time, it must be admitted that the Red Shield of David had only been used recently. If the latter emblem were adopted, it would be sufficient for a country to start using a new emblem at the end of one conference in order to have it accepted at the next. He proposed that Article 31 should be approved as it stood, and that the International Committee of the Red Cross should be asked to continue to consider the problems connected with the unification of the sign.

Mrs. KARDOS (Hungary) considered that since emblems other than the Red Cross had been recognized, there was no reason to exclude that of Israel, recognition of which would have the effect of further extending the protection given by the Convention. She therefore supported the amendment tabled by the Delegation of Israel.

Colonel RAO (India) suggested the creation of a new single protective sign for use only during wartime. The International Committee of the Red Cross and the National Red Cross Societies would thus be able to continue to use their traditional distinctive emblems.

The CHAIRMAN proposed to put the Israel amendment to the vote.

Mr. NAJAR (Israel) said that, in view of the importance of the question, it would, he thought, come up again for discussion in the Plenary Assembly. He asked for a vote by roll-call.

The amendment, put to the vote by roll-call, was rejected by 21 votes to 10, with 8 abstentions, 19 delegations being absent.

Article 31 was adopted.

*The meeting rose at 5.30 p.m.*

## NINETEENTH MEETING

Wednesday 18 May 1949, 10 a.m.

Chairman: Sir Dhiren MITRA (India)

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## WOUNDED AND SICK CONVENTION

**Article 32**

Colonel WATCHORN (Australia) said that his Delegation's amendment proposed to reverse the order of the clauses in Article 32, so as to place them in their logical sequence. The Article would then begin with the clause which came last in the Stockholm text.

The CHAIRMAN proposed to refer the amendment to the Drafting Committee.

The proposal was adopted.

**Article 33**

Mr. GARDNER (United Kingdom) said that the Article did not specify the particulars which must appear on the identity cards of medical personnel. Article 112 of the Prisoners of War Convention, however, specified the particulars required for the identification of prisoners of war. His Delegation suggested, therefore, that a reference to Article 112 of the Prisoners of War Convention should be included in Article 33. An amendment to the above list of particulars would incidentally be submitted in Committee II by the United Kingdom Delegation which hoped that the references to place of birth and nationality would be omitted, the latter being replaced by a reference to the nationality of the army to which the prisoner was attached. He suggested that the list of particulars should be considered by a special sub-committee. He would, incidentally, have no objection to the list being repeated in Article 33 instead of a mere reference being made to Article 112 of the Prisoners of War Convention.

Lieutenant FERRAZ DE ABREU (Portugal) suggested that the blood group should also be mentioned in the list of particulars, and that a model

identity card should be prepared and approved by the Conference with a view to obtaining uniformity.

Mr. BURDEKIN (New Zealand) would prefer Article 33 to repeat the proposed list of particulars rather than merely refer to Article 112 of the Prisoners of War Convention. He thought that the list should be examined by a sub-committee of Committee I rather than by a joint sub-committees of Committees I and II.

Mr. PICTET (International Committee of the Red Cross) also thought the inclusion of the proposed list of particulars in Article 33 was desirable. He said that he had prepared a draft model identity card which was at the Delegates' disposal. He thought that the particulars indicated in the second and third paragraphs, which the United Kingdom proposed to omit (*see Annex No. 44*), should, in some measure, be retained. Experience had shown that the clauses of the 1929 Convention concerning identity cards for medical personnel had only rarely been complied with. The I.C.R.C. had had to make numerous efforts to furnish medical personnel in captivity with duplicates of identity cards they were without. The purpose of the second and third paragraphs of Article 33 was to standardize the procedure and to ensure that medical personnel should always have their identity cards with them, the said cards being pocket-size and water-resistant.

Mr. BOUTROV (Union of Soviet Socialist Republics) thought that Article 33 as proposed was acceptable in its entirety. He suggested however that fingerprints, which in the Soviet Union were taken only from criminals, should be replaced by signatures.

Colonel FALCON BRICENO (Venezuela) also thought the text of Article 33 should be retained. The proposal to print the identity card in the

national language as well as in French and English had been made by his Delegation at Stockholm, and he pressed for the retention of that provision.

Mr. McCahon (United States of America) approved the proposal made by the United Kingdom Delegate and suggested that it should be studied by a working party composed of members drawn only from Committee I. He suggested a modified version of the Soviet amendment, the proposed wording stipulating that the identity card should "bear... either the signature of fingerprints... or both".

General JAME (France) supported the foregoing proposals.

Mr. Gardner (United Kingdom), summarizing the discussion, observed that the Committee were agreed on the following points:

- (1) That identity cards should be standardized ;
- (2) That they should be identical with those issued to prisoners of war but should, in addition, have the sign of the Red Cross on the front and give an indication of the professional qualifications of the holder ;
- (3) That they should be water-resistant and bear a photograph embossed with the stamp of the issuing military authority, together with any particulars necessary for the identification of the holder.

The above points, together with the question of language, could be left to be studied by a working party, which could, he agreed, be composed exclusively of members of Committee I, provided the conclusions it arrived at were acceptable to both Committees.

General JAME (France) suggested that the working party — the conclusions of which might be coordinated with those of a similar working party formed from Committee II — should also examine the possibility of having a standard colour for the identity cards.

General WILKENS (Netherlands) said that the amendment submitted by his Delegation (*see Annex No. 43*) proposed that medical personnel in captivity should be authorized to wear the armband. The provisions of the 1929 Convention did not lay down clearly that they could wear it, and camp commandants had considered themselves authorized to refuse to let them do so.

Colonel WATCHORN (Australia) said that the amendment submitted by his Delegation proposed to insert the words "as well as an identity disc"

in the second paragraph, after the word "carry". The possession of such a disc would be of value in cases where identity cards were lost. He supported the proposals made by the United States Delegate.

Dr. DIMITRIU (Rumania) thought that the Stockholm text was preferable to that of the United Kingdom amendment, which did not draw a sufficiently clear distinction between medical personnel and other prisoners.

He supported the Soviet amendment.

The CHAIRMAN proposed to refer Article 33 and its amendments to a working party composed of members of the Delegations of Australia, the United States of America, Netherlands, the United Kingdom and the Union of Soviet Socialist Republics.

The proposal was approved.

#### Article 34

Article 34 was adopted without modification.

#### Article 35

Colonel WATCHORN (Australia) said that his Delegation's amendment substituted the word "may" for the word "shall" in the first paragraph, in order to avoid making the provision in question obligatory.

Mr. PICTET (International Committee of the Red Cross) said that the last clause of the sentence would in that case become meaningless and should be omitted.

Colonel MEULI (Switzerland) observed that the second paragraph, as proposed, was self-contradictory. He preferred the second paragraph of Article 23 of the 1929 Convention.

Mr. BOUTROV (Union of Soviet Socialist Republics) did not agree with the Australian amendment, for the reasons given by the Representative of the International Committee of the Red Cross.

The Australian amendment, put to the vote, was rejected by 23 votes to 7.

Mr. PICTET (International Committee of the Red Cross) observed that the Swiss Delegate's remark regarding the second paragraph was correct: there was a contradiction. But that paragraph quite rightly reserved the position of the military authorities of the belligerents, who

had the right to order that the emblem should not be displayed. He proposed that the Drafting Committee should be asked to improve the wording of the paragraph.

The CHAIRMAN put to the vote the Swiss proposal to replace the second paragraph of the Stockholm text by the second paragraph of the text of the 1929 Convention.

The proposal was rejected by 15 votes to 8.

Article 35, as worded in the Stockholm text, was adopted.

### Article 36

The CHAIRMAN proposed that Article 36 should be discussed paragraph by paragraph.

Mr. McCAHON (United States of America) said that the amendment tabled by his Delegation proposed that in the first paragraph, the words "the Convention" should be replaced by the words "this or other international Conventions". He added that that was merely a suggestion.

The amendment, put to the vote, was adopted unanimously.

Mr. ABERCROMBIE (United Kingdom) said that the amendments (*see Annex No. 45*) submitted by his Delegation proposed, first, to replace the second paragraph by the following text:

"The Voluntary Aid Societies mentioned in Article 20 may, in accordance with their national legislation, use the distinctive emblem in connection with their humanitarian activities in time of peace."

He pointed out that the Conference of Experts in 1947, and later the Stockholm Conference, had made substantial modifications of international law in the matter of the use of the Red Cross emblem. The National Red Cross Societies had been formally authorized to use the emblem both in peace time and war time. The right to use the emblem had also been conferred on the International Committee of the Red Cross, the League of Red Cross Societies, the International Red Cross Conference and the Standing Committee of the International Red Cross.

Since 1947 the United Kingdom Delegation had urged the dangers of such an extension. The amendment proposed by his Delegation, however, took into account the distinction between the protective and the descriptive sign which had since been so clearly defined by Mr. Pictet, Representative of the International Committee of the Red Cross, in his book "The Sign of the Red

Cross". His Delegation's amendment had been studied by Mr. Pictet who had unofficially submitted an alternative proposal for Article 36, which, subject to certain changes, his Delegation would be prepared to accept instead of its own amendment.

Mr. PICTET (International Committee of the Red Cross) thought that the discussion should cover the entire Article since it formed an indivisible whole. It was not until 1943 that it was realized that a distinction must be drawn between the protective and the descriptive signs. Failure to recognize that distinction had been responsible for the confusion that had reigned on the subject at the 1929 Conference. The protective sign was intended to mark everything that the Convention decreed should be protected. It should, if possible, be large. The descriptive sign, on the other hand, served to show that a person or an object was associated with the Red Cross. The conditions of its use must make it impossible for it ever to be considered as conferring protection.

Strict observance of the text of the 1929 Convention would have required Red Cross Societies to discontinue the use of the Red Cross sign during wartime, but it had apparently never been applied. The proposed text of the Article was intended to emphasize the above distinction, and to permit Red Cross Societies to make normal use of the sign. Although its wording might not be perfect and could no doubt be improved by the Drafting Committee, he thought the principle laid down in it should be retained. The United Kingdom amendment had the same object in view.

Some delegates felt that the second paragraph was not very clear. The Drafting Committee could certainly improve it, and also the third paragraph. The second paragraph laid down that Red Cross material and personnel forming part of medical services would have the right to use the emblem, under the conditions laid down in the first paragraph. That provision followed, indeed, by implication from the first paragraph. The reason why the Stockholm Conference had thought it advisable to specify it was that there was no actual mention of Red Cross Societies or other societies in the first paragraph. A clause might, however, be added to the second paragraph to the effect that the Red Cross Societies and the other recognized societies were not to have the right to use the distinctive emblem conferring the protection of the Convention except within the limits laid down in the first paragraph of the Article.

The United Kingdom proposal to limit the size of the protective sign, had the advantage of offering a clear-cut solution, but had also the

disadvantage of reverting to the principle of the 1929 Convention, under which National Red Cross Societies were bound, as soon as war broke out, to remove the emblem from everything not belonging to the medical services. If it was necessary to fix the size of the protective sign, he would suggest one metre for buildings and five centimetres for persons and articles.

In conclusion, he proposed that the principles laid down at Stockholm should be adopted, and that the Drafting Committee should be asked to improve the wording, taking into consideration the United Kingdom amendments. Generally speaking, he thought that whenever a text was not completely clear, it should automatically be referred to the Drafting Committee.

Mr. DRONSART (Belgium) approved the principles underlying the United Kingdom proposals, as well as the procedure suggested by Mr. Pictet. The proposals did not, however, take sufficiently into account the fact that the Red Cross Societies continued nearly all their peacetime activities in wartime.

He warned the Committee of the ridicule that might attach to fixing the size of the emblem to the centimetre in the Convention. It was undoubtedly necessary to provide for a distinction between the emblems, but not to enter into the details of its application which were a matter for national legislation.

The United Kingdom Amendment No. 1 had probably been drafted before the vote on Article 20 which had been taken at the fourteenth meeting. The amendment in question no longer seemed necessary.

The Stockholm text of the fourth paragraph should be maintained. It was obvious that the Standing Committee of the International Red Cross, for instance, could not be prohibited from using the emblem.

The whole Article raised questions of substance which should be examined by a working party rather than by the Drafting Committee.

General JAME (France) said that his Delegation attached great importance to the retention, in its present form, of the second paragraph which protected the personnel of National Red Cross Societies and other Societies on the battlefield. Provisions concerning the use of the sign in peacetime should appear in the third paragraph.

Colonel CRAWFORD (Canada) said that by laying too much stress on the rights and privileges of the Red Cross Societies, the Committee ran the risk of lessening the protection given to the wounded and sick, which depended upon respect of the emblem. That respect varied inversely with the number of symbols used. There was no question of depriving the Red Cross Societies of their emblem; what was required was to lay down clearly the dimensions of the protective and the descriptive signs. There was nothing ridiculous in doing so. The Drafting Committee might be entrusted with the task.

Mr. BOHNY (Switzerland) supported the proposal of the Representative of the International Committee of the Red Cross to approve the principles embodied in the Stockholm text, and to refer it to the Drafting Committee.

Mr. McCANON (United States of America) shared the above opinion.

Mr. GARDNER (United Kingdom) was also in favour of referring the Article and all the United Kingdom amendments to the Drafting Committee provided that in examining them the latter never lost sight of the fact that their first task was the protection of the wounded and sick. That consideration applied particularly to Amendment No. 4.

Mr. BAGGE (Denmark) supported the Belgian Delegate's contention. He considered that, in the interests of the wounded and sick themselves, due consideration should be given to the protection of the Red Cross Societies.

He drew the attention of the Drafting Committee to the fact that the Civilians Convention provided for the protection of Red Cross Societies in occupied territories. The period between the time of war and the time of peace should also be provided for, perhaps by using the expression "after the cessation of hostilities".

The CHAIRMAN proposed to refer Article 36 and its amendments to the Drafting Committee, instructing the latter to establish a draft which would take account of the different points of view expressed in the course of the discussion.

The proposal was adopted.

*The meeting rose at 12.50 p.m.*

## TWENTIETH MEETING

*Thursday 19 May 1949, 10 a.m.*

*Chairman:* Sir Dhiren MITRA (India)

## MARITIME WARFARE CONVENTION

**Article 38**

General URAL (Turkey) observed that his Delegation's amendment was similar to that of the Indian Delegation, which proposed to add to Article 38 a paragraph identical with the second paragraph of Article 31 of the Wounded and Sick Convention.

Colonel RAO (India) confirmed the Turkish Delegate's statement. He said that if his proposal was approved, it would be necessary to draw the attention of the Working Party to the modifications which would have to be made to Article 40 of the Maritime Warfare Convention.

Mr. PICTET (International Committee of the Red Cross) supported the proposal.

Mr. NAJAR (Israel) also supported the proposal; he pointed out, however, that the second paragraph of Article 31 of the Wounded and Sick Convention, which in was proposed to add to Article 38, should be the paragraph as finally adopted by the Plenary Meeting of the Conference, and not the one which the Committee had just adopted. If there was any doubt about the matter, the Delegation of Israel would present an amendment in that sense.

The CHAIRMAN stated that he could not prejudge the decision of the President of the Conference on that point.

He put the Indian amendment, which was similar to that of Turkey, to the vote. It was adopted unanimously.

The CHAIRMAN informed the Delegate of Israel that if changes were subsequently introduced into the Wounded and Sick Convention, the corresponding changes would certainly be made in the Maritime Warfare Convention.

Mr. NAJAR (Israel) was satisfied with the Chairman's explanation.

**Article 39**

Mr. SENDIK (Union of Soviet Socialist Republics) said that the amendment to Article 39 submitted by his Delegation was identical with that submitted in respect of Article 33 of the Wounded and Sick Convention (*see Plenary meeting*).

The CHAIRMAN proposed that the Drafting Committee be asked to bring the two Articles into line.

Dr. PUYO (France) reminded the meeting that Article 33 of the Wounded and Sick Convention had been referred to a Working Party for consideration. He drew the attention of the Working Party to his Delegation's proposal that there should be a standard colour for all identity cards issued to medical personnel. The Netherlands Delegation's proposal regarding the wearing of the armlet might be clearly stated in the first sentence of the fourth paragraph of Article 33 in the following words :

"In no circumstances may the said personnel be deprived of their identity cards or insignia, or of the right to wear the armlet on their left arm."

The CHAIRMAN proposed to refer Article 39 together with the amendment to it submitted by the Union of Soviet Socialist Republics to the Working Party entrusted with the consideration of Article 33 of the Wounded and Sick Convention.

The proposal was approved.

**Article 40 (continued)**

The CHAIRMAN reminded the meeting that the Committee had already decided to refer Article 40 to the Working Party entrusted with the consideration of Articles 19, 20 and 21.

**New Article (40 A)**

Mr. ABERCROMBIE (United Kingdom) said that his Delegation had submitted an amendment proposing the insertion of a new Article immediately after Article 40 (*see Annex No. 76*). The proposed text reproduced the substance of Article 6 of the Xth Hague Convention of 1907. He suggested that the amendment in question should be referred to the Working Party.

Captain MELLEMA (Netherlands) supported the United Kingdom proposal. It introduced a provision which appeared to have been forgotten when the Convention was drafted.

Mr. PICTET (International Committee of the Red Cross) also thought that it would be desirable to introduce the Article in question.

On the CHAIRMAN's proposal, the amendment was referred to the Working Party entrusted with the consideration of Articles 19, 20, 21 and 40.

## WOUNDED AND SICK CONVENTION

**Article 37**

Colonel WATCHORN (Australia) said that the only purpose of the amendment submitted by his Delegation (*see Annex No. 46*) was to improve the wording of the first paragraph of Article 37.

He further suggested that the enumeration which appeared in the second paragraph should be modified to read: "...the wounded, sick, personnel, buildings or equipment...".

He proposed that the two amendments be referred to the Drafting Committee.

Mr. BURDEKIN (New Zealand) supported the proposal (put forward by the International Committee of the Red Cross in "Remarks and Proposals") to make two distinct Articles of the two paragraphs of Article 37, which dealt with different subjects.

The CHAIRMAN suggested referring the Australian and New Zealand proposals to the Drafting Committee.

The Chairman's suggestion was adopted.

**Article 38**

The CHAIRMAN said that Article 38 was a "common Article" and the Committee was not, therefore, responsible for considering it.

## MARITIME WARFARE CONVENTION

**Article 41**

Captain PERRY (Australia) said that his Delegation's amendment was identical with that submitted in respect of Article 37 of the Wounded and Sick Convention.

On the CHAIRMAN's proposal, Article 41 together with the amendment were referred to the Drafting Committee.

**Article 42**

The CHAIRMAN said that Article 42 was a "common Article" and should not, therefore, be considered by the Committee. It corresponded to Article 38 of the Wounded and Sick Convention.

## WOUNDED AND SICK CONVENTION

**Article 41**

Mr. McCAHON (United States of America) said that, as far as he could recollect, Article 41 had been considered to be a common Article and had been referred to the Joint Committee.

The CHAIRMAN asked the Secretary to verify the point. A difference of opinion had arisen regarding the interpretation of the minutes of the Sixth Plenary Meeting, and the matter should, therefore, be referred to the Bureau of the Conference for decision.

**Article 42**

Mr. McCAHON (United States of America) said that the amendment tabled by his Delegation proposed the omission of the whole of Article 42. That amendment was, however, based on the assumption that Articles 36 and 39 would remain unchanged. He proposed, therefore, that consideration of Article 42 should be postponed until the Drafting Committee had been able to examine Article 36, and the Joint Committee Article 39.

Mr. PICTET (International Committee of the Red Cross) drew attention to the complex character of Article 42. He understood and approved the motives underlying the amendment submitted by the United States of America, though he could not go so far as to suggest the deletion of Article 42, which had a number of useful features. The Stockholm text could be simplified and strengthened. The I.C.R.C. had made some suggestions

to that effect in its pamphlet "Remarks and Proposals". He agreed with the Delegate of the United States of America that they should postpone consideration of Article 42 until the result of the examination of Articles 36 and 39 were known. Article 42 might possibly be referred to a working party for consideration.

General JAME (France) proposed that the Article should be referred, like Article 36, to the Drafting Committee.

Mr. ABERCROMBIE (United Kingdom) said that the Delegation of the United States of America might have important comments to make on the Article; it would be as well for the Committee to hear them first.

The CHAIRMAN accordingly proposed to postpone consideration of Article 42 until the results of the work of the Drafting Committee on Article 36 and of the Joint Committee on Article 39 were known. The Committee would then decide whether to refer Article 42 to the Drafting Committee or to a working party.

The proposal was approved.

#### Agenda for the next meeting

The CHAIRMAN announced the composition of the Working Parties and enumerated the Articles which each Working Party had to study. They were as follows:

Article 15 of the Wounded and Sick Convention—Canada, France and the Netherlands;

(Colonel CRAWFORD (Canada) having informed the Committee that the Working Party had finished its task, the CHAIRMAN said that the report on its work would be included in the Agenda of the next meeting.)

Article 26 of the Wounded and Sick Convention—France, the United Kingdom, Sweden and the Union of Soviet Socialist Republics;

(Dr. PUYO (France) proposed that the study of Article 26 should be deferred until Article 19 and the following Articles of the Wounded and Sick Convention had been discussed.

The CHAIRMAN said that he would ask the Rapporteur to see that those Articles received priority.)

Article 33 of the Wounded and Sick Convention and Article 39 of the Maritime Warfare Convention—Australia, the United States of America, the Netherlands, the United Kingdom and the Union of Soviet Socialist Republics;

Articles 14 and 15 of the Maritime Warfare Convention—Australia, China, the United States of America, France, the United Kingdom and Sweden;

Articles 19, 20, 21, 40 and 40A of the Maritime Warfare Convention—Colombia, the United States of America, France, Italy, the Netherlands, the United Kingdom, Sweden and the Union of Soviet Socialist Republics.

*The meeting rose at 12.30 p.m.*

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## TWENTY-FIRST MEETING

*Monday 23 May 1949, 3 p.m.*

*Chairman:* Sir Dhiren MITRA (India)

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#### **Procedure to be followed for the reference to the Joint Committee of the new Articles 10 A of the Wounded and Sick Convention and 11 A of the Maritime Warfare Convention, proposed by the Delegation of the Union of Soviet Socialist Republics**

The CHAIRMAN said that the Committee, at its seventh meeting, had decided to refer to the Joint Committee the amendments submitted by the Soviet Delegation proposing the inclusion

of a new Article 10A in the Wounded and Sick Convention and a new Article 11A in the Maritime Warfare Convention. He proposed to send a copy of the Summary Record of the meeting at which the decision had been taken to the Secretary-General and to ask the Soviet Delegation to submit the question to the Bureau of the Conference.

Mr. MOROSOV (Union of Soviet Socialist Republics) said that the Committee's decision was

regrettable and would be opposed by his Delegation.

The Soviet proposals concerned the first two Conventions and not the Prisoners of War Convention or the Civilians Convention. A delegation could not be compelled to submit an amendment to a Convention when it did not consider one necessary. The Committee's decision was without precedent in the annals of diplomatic conferences. The Soviet Delegation requested that it should be reversed, and that the Committee should proceed to discuss the substance of the Soviet amendments.

Besides, only the Plenary Assembly had the right to refer a question to the Joint Committee. The latter was responsible for the consideration of Articles common to all four Conventions. To make it possible for the Soviet amendments to be referred to it, another delegation would have to take up the proposals and move their inclusion in the Prisoners of War and Civilians Conventions. So far no delegation had done so.

When considering the Soviet amendment to Article 29 of the Civilians Convention, which, in the opinion of the United States Delegation, corresponded to those now under discussion, Committee III had decided to discuss the substance of that amendment they did so against the wishes of the United States Delegation which had asked for it to be referred to the Joint Committee. It had been the same with the Soviet proposals relating to Article 12 of the Prisoners of War Convention, which had been submitted to Committee II.

It was impossible, therefore, to maintain that Article 10A of the Wounded and Sick Convention and Article 11A of the Maritime Warfare Convention were proposals applying to all four Conventions. The Soviet Delegation proposed that the Committee should reverse its decision on the subject.

Mr. McCANON (United States of America) said that the decision of May the 3rd had been taken by a large majority. The Committee had taken the view that the Soviet proposals should be considered in connection with the chapter on penal sanctions. He supported the Chairman's proposal.

Dr. DIMITRIU (Rumania) thought that the penal sanctions which must be provided for all the different cases of violation, could not be distributed over a number of chapters without running the risk of making it impossible to apply them. The Soviet amendment should be discussed as a whole. It introduced a new point of view and offered better safeguards for the protection of the wounded and sick. It defined clearly the

crimes that must be prevented. Here was a case where the jurists should defer to the opinion of the doctors.

The Rumanian Delegation supported the Soviet amendment, and wished it to be included in the first two Conventions. It might be left to the jurists to specify the details of the penalties to be prescribed in the chapter on penal sanctions.

Mr. HARASZTI (Hungary) also supported the Soviet amendment which laid down a fundamental principle and should, therefore, be included in the chapter dealing with the protection of the wounded and sick. The chapter on penal sanctions only dealt with questions of penal procedure.

Colonel CRAWFORD (Canada) proposed that as the Soviet Delegation did not consider that its proposal applied to all four Conventions, the Committee itself should decide, in view of the importance of the proposed Article, that it was common to all four Conventions and that it should, therefore, be considered by the Joint Committee. The Canadian Delegation agreed with the principle of the amendment, but thought that its wording should be improved.

Mr. ABERCROMBIE (United Kingdom) supported the point of view of the Delegation of the United States of America, but did not wish any delegation to feel that it was deprived of its rights. He shared the views expressed by the Delegate of Canada, and agreed with his remarks regarding the wording of the Soviet amendment.

Mr. MOROSOV (Union of Soviet Socialist Republics) repeated that the amendment submitted by his Delegation was exclusively concerned with the first two Conventions. No delegation had taken it up in order to submit it to Committees II and III. The Delegation of the United States of America was at liberty to do so if it wished.

He regretted the discussion, and was surprised that anyone should oppose the consideration of the substance of the amendment by advancing arguments regarding procedure. Attempts by certain delegations to impose their will on others must be resisted, as such attempts were contrary to the spirit of collaboration which was so essential. The Soviet Delegation would like its proposal to be voted on by roll-call.

Captain MELLEMA (Netherlands) said that his Delegation had submitted an amendment to the Joint Committee on the subject of penal sanctions. The amendment supported the proposals made by the International Committee of the Red Cross on page 33 of their pamphlet "Remarks and Proposals". Article 44—which was proposed there

for the Maritime Warfare Convention, but which should appear in each of the four Conventions—was substantially the same as the Soviet amendment. It would seem best, therefore, to defer all discussion until that Article had been adopted or rejected.

Mr. BURDEKIN (New Zealand) observed that a number of delegations approved the principles underlying the Soviet amendment, but were opposed to its discussion by the Committee. A vote by roll-call would therefore be regrettable, since it might give the impression that the delegations in question were not in agreement with the principle of the amendment.

Mr. MOROSOV (Union of Soviet Socialist Republics) said that it would be out of order for the Committee to vote on the Netherlands proposal before voting on the Soviet amendment.

In regard to the opinion expressed by the Delegate of New Zealand, he would observe that the Soviet Delegation, without in the least wishing to impose its will, merely desired to have its proposals considered with due courtesy. He thought that a vote by roll-call was necessary. It was important that everyone should know which delegations had sought by procedural expedients to avoid all discussion of the substance of the amendment.

Colonel CRAWFORD (Canada) said that his Delegation was in favour of the principle underlying the Soviet amendment. On the other hand, he opposed the manner in which the amendment was presented to the Committee, and disapproved of the way in which delegations of good will were forced to vote against a principle of which they approved.

General JAME (France) said that if the Soviet amendment only consisted of the enumeration of what was regarded as a crime without the introductory sentence of Article 10A, it would be easy to incorporate it in Article 10. The first sentence might subsequently be included in the chapter on penal sanctions. Such a modification, which was purely a matter of drafting, would certainly reconcile the various points of view.

Colonel WATCHORN (Australia) said that under Article 36 of the Rules of Procedure it was for the Committee to decide whether it would take a vote by roll-call. Let them vote first of all on that issue.

Mr. MOROSOV (Union of Soviet Socialist Republics) took Article 36 of the Rules of procedure to mean that any delegation could ask for a vote by rollcall.

Replying to the Delegate of France, he pointed out that the latter's proposal could not be considered until the Committee had reversed its decision of May the 3rd.

He added that the Soviet Delegation had no objection on principle to possible modifications to its amendment.

General LEFEBVRE (Belgium) agreed with the Canadian Delegate. If a vote was really necessary, it should only be taken on the question of procedure. He proposed that the vote should be deferred until the next meeting, in order to give the French and Soviet Delegations an opportunity to reconcile their respective points of view.

The CHAIRMAN adjourned the discussion until the next meeting.

*The meeting rose at 5.30 p. m.*

TWENTY-SECOND MEETING

Tuesday 24 May 1949, 3 p.m.

*Chairmen:* Sir Dhiren MITRA (India); subsequently  
Mr. Ali Rana TARHAN (Turkey)

**Procedure to be followed for the reference to the Joint Committee of the new Articles 10 A of the Wounded and Sick Convention and 11 A of the Maritime Warfare Convention proposed by the Delegation of the Union of Soviet Socialist Republics** (*continued*)

Captain MOUTON (Netherlands) observed that some of the serious breaches enumerated in the Soviet amendments were already referred to in the pamphlet "Remarks and Proposals" published by the International Committee of the Red Cross. The Joint Committee had already begun to study those proposals which should be considered jointly with the other provisions dealing with penalties for breaches of the Conventions. Nevertheless, the Netherlands Delegation thought it desirable that each Convention should contain a provision enumerating serious breaches of the Convention in question. It would consequently agree to the discussion by Committee I of the principle of the Soviet amendments, the wording of which might be somewhat improved. They could later be referred to the Drafting Committee. In that case the Netherlands Delegation would reserve the right to revert to the question when the problem as a whole came up for discussion in the Joint Committee.

(Mr. Tarhan (Turkey) took the Chair.)

The CHAIRMAN having proposed to ask the Committee, in accordance with the Rules of Procedure, whether it approved of the vote being taken by roll-call, Mr. MOROSOV (Union of Soviet Socialist Republics) reminded the Committee that on a previous occasion such a vote had been taken without first consulting the Committee. He would be sorry to think that a different procedure was being adopted where the Union of Soviet Socialist Republics was concerned.

The proposal of the Netherlands Delegation appeared to offer a satisfactory solution, and the

Soviet Delegation was prepared to agree to it. What the amendments proposed by his Delegation really aimed at was the inclusion, at the beginning of the Convention, of a declaration by the Contracting States that all attempts on the lives of the sick and wounded were prohibited. The penalties incurred for each breach of the Convention would be enumerated later, in another part of the Convention. Should the Committee adopt the Netherlands proposal to approve the Soviet amendments in principle and to refer them to the Drafting Committee, he would withdraw his demand for the reversal by a roll-call vote of the decision adopted by the Committee on May the 3rd. The Netherlands' proposal could, in his opinion, be adopted without the necessity of reversing the decision of May the 3rd.

The CHAIRMAN said that in the case of the first vote by roll-call no delegation had raised the point of order which had been put on the occasion of the request by the Soviet Delegation. The point of order in question was raised in accordance with an Article of the Rules of the Procedure, and was consequently valid. A chairman could not choose whether to follow a precedent or the Rules of Procedure. He was bound to follow the latter.

As regards the proposal made by the Netherlands Delegation, it was necessary to ascertain whether its acceptance would involve an alteration in the decision of May the 3rd. If that were the case, it could only be adopted by a two-thirds majority. He wished first to hear the opinion of the Committee on that point.

General JAME (France) considered that the Netherlands proposal was a new proposal. Whereas the vote of May the 3rd referred what was thought to be a common Article to the Joint Committee, the present proposal was to add the second part of the Soviet amendments to Article 10 of the Wounded and Sick Convention and to Article 11 of the Maritime Warfare Convention.

Mr. MOROSOV (Union of Soviet Socialist Republics) concurred in that view.

Colonel CRAWFORD (Canada) was of the same opinion. There was no question in the present case of referring a common Article to the Joint Committee, but of instructing the Drafting Committee to find a better wording for the statement of a principle that had already been adopted, and decide on its place in the Convention.

Mr. McCANHON (United States of America) read the statement he had made on the subject at the meeting on May the 3rd; it was as follows:

"It is the view of my Delegation that the amendment submitted by the Delegation of the Union of Soviet Socialist Republics warrants full and careful consideration. It would appear, however, from the substance of the proposed amendment that it should more properly be considered under the Penal Sanctions Section of the Conventions. My colleague of the United Kingdom yesterday called your notice to the fact that the Articles dealing with penal sanctions are by agreement of this Conference being dealt with in the Joint Committee as common Articles. The United States Delegation is of the opinion that the amendment under consideration should not be debated in Committee I, but should rather be referred by this Committee to the Joint Committee for appropriate consideration there."

His Delegation was still of the same opinion and, while agreeing with the principle of the Soviet amendment, it still considered the Joint Committee the most competent body to deal with it.

The CHAIRMAN asked the Committee whether it agreed that reference of the Soviet amendments to the Drafting Committee did not imply a reversal of the decision of May the 3rd. If such was the Committee's decision, there would be no occasion for recourse to the procedure provided in Article 33 of the Rules of Procedure.

The Chairman's interpretation was approved by 29 votes to 5.

The CHAIRMAN then put to the vote the proposal to refer to the Drafting Committee the Soviet amendments proposing the addition of a new Article 10A to the Wounded and Sick Convention and a new Article 11A to the Maritime Warfare Convention.

The proposal was adopted by 28 votes to 4.

### **Procedure to be followed for the consideration of Article 13 of the Wounded and Sick Convention and Article 17 of the Maritime Warfare Convention in conjunction with Committee II**

Mr. ABERCROMBIE (United Kingdom) suggested that the Articles should be studied by a working party of Committee I, which would keep in touch with Committee II, so as to preclude the possibility of the texts drawn up by the two Committees contradicting one another.

Mr. McCANHON (United States of America) supported the above proposal. He suggested that the working party should be the same as the one which had been entrusted with the consideration of Article 33 of the Wounded and Sick Convention and Article 39 of the Maritime Warfare Convention; that Working Party had been composed of Delegates of the following countries: Australia, the United States of America, the Netherlands, the United Kingdom and the Union of Soviet Socialist Republics.

The proposal was adopted.

### WOUNDED AND SICK CONVENTION

#### Article 3

Mr. GIHL (Sweden) said that the amendment submitted by his Delegation proposed to replace the word "interned" by the word "received" for the reasons given by the International Committee of the Red Cross in its booklet "Remarks and Proposals". The word "received" avoided the necessity of taking any line on a question of the law of neutrality, which the present Convention was not called upon to settle.

Mr. KRUSE-JENSEN (Norway), Colonel MEULI (Switzerland) and Mr. PICTET (International Committee of the Red Cross) agreed with the above point of view.

Mr. ABERCROMBIE (United Kingdom) reminded the Committee that his Delegation (*see Summary Record of the Second Meeting*) had proposed, and obtained, an adjournment of the discussion on the Article. It considered that the Article was no longer relevant and that, if it had to be maintained, it should contain, if not the actual provisions that neutrals were to apply, at any rate a list of the Articles in which those provisions were to be found. But it was impossible at the moment to say with any certainty what the provisions of the two Conventions they were studying would be. He accordingly proposed that the discussion should be adjourned.

The proposal was adopted.

**Report of the Working Party entrusted with the consideration of Article 15 of the Wounded and Sick Convention**

General WILKENS (Netherlands) explained that in the Working Party's opinion neither the French nor the English text of the first paragraph of Article 15 provided a satisfactory definition of the units, in particular the mobile units, of the Medical Services. The expression "formations sanitaires", in the French text, could be interpreted to mean that hygiene units in the widest sense of the term were to be respected and protected. That interpretation would not be in accordance with the spirit of the Convention. On the other hand, it was not certain that units connected with the Medical Services, such as those responsible for transporting the wounded and sick, would be included in the definition.

The expression used in the English text—"hospital units"—certainly excluded all hygiene units, even those of a purely medical nature such as laboratories; it also excluded the units used for transporting the wounded and sick. Moreover the medical supply units responsible for the supply of medical stores on the battlefield were not protected either by the French or by the English text.

The Working Party, wishing on the one hand to make it clear that it was the medical function which was the decisive factor in the question of whether a unit should be protected or not, and on the other to find a corresponding expression in both languages, proposed that the words "formations sanitaires" in the French, and "hospital units" in the English text of this Article should be replaced respectively by "formations médicales" and "medical units".

Mr. PICTET (International Committee of the Red Cross) was of the opinion that the expression "formations médicales" was no better than "formations sanitaires"; on the contrary, it might be taken to imply the presence of a doctor in the unit. But a "formation sanitaire" must be protected, even if no doctor was present. The expression "formation sanitaire" had been in use for a very long time. If it was not considered clear, it would be better to make it so by defining it.

Colonel MEULI (Switzerland) agreed.

General WILKENS (Netherlands) objected that no definition could cover all the units needing protection now or in the future.

Colonel CRAWFORD (Canada) observed that the question was one of language. The English term "sanitary formations" had quite a different meaning

from the French expression "formations sanitaires" and could not be used in the present Article. On the other hand, the English expression "medical units" had not the restrictive meaning which the corresponding expression appeared to have in French. If he could be assured that the term "formations sanitaires" would not be translated into English otherwise than as "medical units", he would be in favour of the proposal of the Representative of the International Committee of the Red Cross.

Mr. PICTET (International Committee of the Red Cross) said that it would be best to use a term which covered everything the Convention was designed to protect personnel, buildings and equipment. The French word "médical" could not be applied to personnel or to buildings. On the other hand, the word "sanitaire" covered units, personnel and equipment.

General JAME (France) pointed out that medical personnel had been defined in Article 19. Medical units could be defined in the same way in the present Article.

General LEFEBVRE (Belgium) suggested the deletion of the word "sanitaires". Whatever expression was adopted should also be appropriate for use in Articles 16, 17 and 26.

Colonel MEULI (Switzerland) proposed the adoption of the expression "medical units" in English and "formations sanitaires" in French.

The CHAIRMAN put to the vote the proposal of the Belgian Delegate to delete the word "sanitaires". The proposal was rejected by 12 votes to 7.

The Working Party's proposal to adopt the expression "formations médicales" in the French text was rejected by 9 votes to 1.

The proposal to retain the expression "formations sanitaires" in the French text was adopted unanimously.

The Working Party's proposal to adopt the expression "medical units" in the English text was adopted unanimously.

**Report of the Working Party entrusted with the consideration of Articles 14 and 15 of the Maritime Warfare Convention**

Mr. GIHL (Sweden) informed the meeting that Sweden had made a reservation regarding the Working Party's opinion on Article 14 (*see below*). The Stockholm text, by adding the words "on the high seas" to the Hague text of 1907, laid down a rule of international law which was actually

in force. That addition marked an advance on previous texts, since shipwrecked persons rescued in neutral territorial waters were, by that very fact, exempt from capture by enemy forces, irrespective of whether they had been rescued by warships or merchant vessels. It was not therefore necessary to introduce a special rule obliging the neutral State to intern the rescued persons.

In the case of Article 15, the Delegation of Sweden had withdrawn its amendment and agreed with the majority of the Working Party, which had decided in favour of retaining the text of Article 15 of the Xth Hague Convention of 1907, it being understood that each Contracting State would have complete liberty of interpretation.

Mr. ABERCROMBIE (United Kingdom), Rapporteur, submitted the Report of the Working Party, making brief comments upon it:

The Working Party set up by Committee I to study Articles 14 and 15 of the Maritime Warfare Convention consisted of Representatives of Australia, China, the United States of America, France, the United Kingdom and Sweden. The Working Party met on Friday morning, May 20th, the United Kingdom Representative being elected Rapporteur. A Representative of the Union of Soviet Socialist Republics was present throughout the discussions and associated himself with the conclusions reached.

#### *Article 14*

In addition to the text of the Working Document, the Working Party had been instructed to consider amendments tabled by the Delegations of Australia and the United States of America (*see Eighth Meeting*), the Netherlands (*see Annex No. 63*) and the United Kingdom (*see Annex No. 64*).

The Working Party had agreed that the suggestion put forward by the Netherlands Delegation would probably be realized when Article 11 of the Maritime Warfare Convention had received its final form. The United Kingdom amendment had been withdrawn in view of the decision taken by Committee I regarding Article 12 of the Convention.

The Working Party had unanimously decided to recommend that the Committee should adopt the Australian amendment.

After some discussion, the Working Party had also decided to recommend the adoption of the amendment proposed by the United States of America. The Delegate of Sweden had, however, entered a reservation on that point. He held that the text of the Working Document accurately represented the present

state of international law on the subject, and for that reason he could not agree with the United States amendment.

The text of Article 14 which the Working Party recommended for adoption was accordingly as follows:

"If wounded, sick or shipwrecked persons are taken on board a neutral warship or a neutral military aircraft, it shall be ensured that they can take no further part in operations of war."

#### *Article 15*

In addition to the text of the Working Document, the Working Party had been called upon to consider amendments submitted by the Delegations of Australia, Denmark, the United States of America and Ireland, the Netherlands (*Annex No. 63*) and the United Kingdom (*see Annex No. 65*) and Sweden (*see Eighth Meeting*).

The position in regard to the Netherlands and United Kingdom amendments had been agreed to be the same as in the case of Article 14. The Rapporteur had pointed out that the amendment proposed by the United States of America was the furthest removed from the text in the Working Document: for that reason it had seemed best to discuss it first. It had also appeared that the adoption of the amendment would, by implication, make all the other amendments listed above irrelevant. The United States Delegate had explained that the effect of his amendment would be to restore the text of Article 15 of the Xth Hague Convention of 1907. The Swedish Delegate pointed out that there were many questions of law affecting the position of neutral States which had not been settled by the Xth Hague Convention, and that in the event of the United States amendment being adopted, it would be desirable for the views of the Working Party regarding those legal questions to be stated.

The Working Party had agreed, after discussion, to recommend the adoption of the United States amendment, and to record that their decision was not intended in any way as an expression of opinion on the interpretation of international law regarding landed survivors. The Delegate of France had stated, however, that he would prefer to see the text of Article 15 adopted as it appeared in the Working Document, modified only by the amendments proposed by Australia, by the International Committee of the Red Cross and by Denmark.

The text of Article 15 which the Working Party recommended for adoption was accordingly as follows:

“Wounded, sick or shipwrecked persons who are landed in neutral ports with the consent of the local authorities, shall, failing arrangements to the contrary between the neutral and the belligerent Powers, be so guarded by the neutral Power that the said persons cannot again take part in operations of war.

“The costs of hospital accommodation and internment shall be borne by the Power on whom the wounded, sick or shipwrecked persons depend.”

The Working Party had desired to add the following supplementary remarks and suggestions:

(a) The order in which Articles 13, 14 and 15 of the Xth Hague Convention were set out seemed to be clearer than the order in which the corresponding Articles appeared in the Working Document. For that reason it was suggested that the Articles in the Working Document should be placed in the following order:

Article 14;  
Article 12;  
Article 15.

The Working Party recognized that Article 13 was outside its terms of reference, but expressed the hope that the Committee would agree to remove that Article from its present position, where it interrupted the sequence of the three Articles just mentioned.

(b) If the Committee's final decision on Article 11 had the effect of bringing within the scope of the Convention categories with special rights (such as civilian crews of merchant vessels) it would be necessary to reserve the position of such categories in Articles 14 and 15.

(c) Finally, the Working Party suggested that the attention of the Coordination Committee should be drawn to the question of whether the second paragraph of Article 15 (which was drafted 22 years before the Prisoners of War Convention) should continue to be included in the Maritime Warfare Convention.

Lieutenant FERRAZ DE ABREU (Portugal) thought that Article 14 should be adopted in the form proposed by the Working Party. The Stockholm text of Article 15 should, however, be retained. Experience had shown that shipwrecked persons picked up by a neutral State in time of war should retain their freedom when landed in a neutral port. Moreover it seemed logical and normal that shipwrecked persons who reached neutral

ports by their own efforts should remain free. His Delegation therefore proposed that a provision to that effect should be added to the Stockholm text.

The text of Article 14, as proposed by the Working Party, was approved.

Mr. ABERCROMBIE (United Kingdom), Rapporteur, pointed out that in the Stockholm text there was a contradiction between the first and third paragraphs of Article 15. A merchant vessel of a belligerent was in fact a private merchant ship. The contradiction would disappear if the Swedish proposal was adopted; but the latter would have the effect of radically changing the doctrine adopted in 1947, which was supposed to be an agreed legal doctrine. It might be held that the situation when a belligerent merchant ship brought prisoners of war to a neutral port was different from that which existed when a neutral merchant ship picked up survivors and took them to a neutral port. Opinions varied. For that reason the text proposed by the Working Party seemed preferable and should be adopted.

Mr. GIHL (Sweden) shared the above point of view. There was very little to be said against the Working Party's proposal to maintain the 1907 text, provided it was made quite clear that the Contracting Powers retained their freedom of interpretation; on the other hand any modification of the text would have to be very complete and detailed, which did not appear practicable under the circumstances.

Captain MELLEMA (Netherlands) said that Article 15 should not be separated from Article 14, if it was desired to maintain the existing meaning intact. He considered that there was no reason for interning persons who were landed in a neutral country by a neutral merchant ship, or who reached a neutral coast by their own efforts. He proposed the adoption of the Stockholm text with the amendment tabled by the Delegation of Sweden.

Mr. PICTET (International Committee of the Red Cross) said that Article 15, as now proposed, was the outcome of the work of the Committee of Experts which met in 1937 for the revision of the Hague Convention. The third paragraph was intended by that Committee to confirm a rule which had been admitted by implication in 1907, as was shown by a passage from the Report on the Second Peace Conference. That passage showed that wounded, sick or shipwrecked persons landed by a neutral merchant ship in a neutral port were free.

Mr. BAGGE (Denmark) said that if the Stockholm text was to be maintained, the amendment presented by his Delegation should be taken into consideration. Experience in Denmark had shown that neutral States must be able, if necessary, to

intern shipwrecked persons or persons pretending to have been shipwrecked, who reached their shores.

*The meeting rose at 6.30 p.m.*

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## TWENTY-THIRD MEETING

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

*Chairman: Mr. Ali Rana TARHAN (Turkey)*

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### **Report of the Working Party entrusted with the study of Articles 14 and 15 of the Maritime Warfare Convention (continued)**

Mr. SENDIK (Union of Soviet Socialist Republics) said that if Article 14 as proposed by the Working Party was adopted, Article 15 must also be adopted. He did not share the view of the Portuguese Delegation which was opposed to Article 15. If that view was accepted, shipwrecked persons from the same ship, but picked up and disembarked in a neutral country by different categories of vessels, would not be accorded the same treatment. That would be inadmissible. He therefore proposed that Article 15 be adopted in the form proposed by the Working Party.

Mr. BAGGE (Denmark) observed that if Article 15 was adopted, all persons disembarked in a neutral country would have to be so guarded that they could not again take part in operations of war. He thought that shipwrecked persons picked up by chance by a neutral ship and disembarked in a neutral country should remain free.

Mr. GIHL (Sweden) shared that point of view. His Delegation had only agreed to the conclusions of the Working Party on the understanding that the Contracting States should retain complete freedom of interpretation.

Mr. ABERCROMBIE (United Kingdom), Rapporteur, said that it was a universally accepted practice for neutral Powers to regard themselves as being under no obligation to intern wounded, sick or shipwrecked persons landed in their territory by

neutral merchant vessels. The Working Party's recommendations could not affect that practice.

Captain MELLEMA (Netherlands) thought that Article 15 would in any case give rise to misunderstandings. There were cases where shipwrecked persons reaching neutral countries must remain free. He therefore proposed that the Stockholm text of the Article should be retained.

Lieutenant FERRAZ DE ABREU (Portugal) pointed out that shipwrecked persons picked up by neutral merchant vessels could be taken prisoner by the warships of the belligerents. It would be desirable for that category of shipwrecked persons to be subject to special treatment; they should remain free when landed in a neutral country.

Commander HUNSICKER (United States of America) said that the Working Party had abstained from modifying international law on the question on the ground that any such modification was likely to lead to useless controversy. They had therefore thought it best to maintain the Hague text. He recommended the adoption of Article 15 as proposed.

Article 15, as proposed by the Working Party, was adopted by 23 votes to 2.

The CHAIRMAN, at the instance of Mr. ABERCROMBIE (United Kingdom), asked the Committee if it approved the three remarks and suggestions made by the Working Party at the end of their Report.

The three remarks and suggestions were approved.

**Report of the Working Party entrusted with the consideration of Articles 19, 20 and 21 of the Maritime Warfare Convention**

The Working Party, composed of Representatives of the Delegations of Colombia, the United States of America, France, Italy, the Netherlands, the United Kingdom, Sweden, and the Union of Soviet Socialist Republics, submitted the following Report to the Committee:

From the first meeting of the Working Party onwards it was clear that four different opinions existed.

First, there was a group comprising the Delegations of the United States of America, France and the Netherlands, which wanted to limit the gross tonnage of hospital ships to a minimum of 2,000 tons, but wished at the same time to give practical protection to coastal lifeboats of limited speed.

The arguments advanced by that group may be summarized as follows:

To ensure maximum comfort for the patients on board, it is highly desirable that hospital ships should be as large as possible, especially when the patients must be transported over long distances. Moreover, it is clear that only large hospital ships can be marked sufficiently clearly to be recognized as such by the enemy's surface vessels and aircraft. At the same time it is desirable to protect small craft of limited speed used for coastal rescue work, in order that they may be able to carry out their humanitarian task.

A second group, comprising the Delegation of the Union of Soviet Socialist Republics, did not want any tonnage limit for hospital ships, but thought it desirable that coastal life boats should be limited in speed.

The arguments put forward by the second group may be summarized as follows:

- (1) All hospital ships should have an equal right to protection under the Convention, irrespective of their tonnage.
- (2) There should not be any restrictions as to the minimum tonnage of hospital ships mentioned in the Convention, nor should there be any recommendations or exhortations concerning their size (tonnage). The size of hospital ships should be left to the discretion of the country concerned.
- (3) The acknowledgment of the notification of a hospital ship should be communicated through the Protecting Power not less than thirty days before the actual use of the said ship. This period of thirty days was the

essential guarantee that the notification had been communicated in time to all surface ships, submarines and air forces operating at sea and to all land forces operating along the coast.

- (4) Coastal lifeboats operating from a permanent base should be afforded the same degree of protection as hospital ships, but their speed should not exceed 12 knots. Such a restriction was necessary so as to prevent the utilization of coastal lifeboats for reconnaissance or other purposes of a military nature.
- (5) The Soviet Delegation therefore proposed that the Stockholm draft of Articles 19, 20 and 21 should be maintained with the exception that the words indicated in the amendments submitted by the Soviet Delegation (*see 9th and 12th Meetings*) (tonnage limit) should be omitted.

A third group, comprising the United Kingdom Delegation, wanted a tonnage limit of a minimum of 2,000 tons for any protected ship.

The following is a summary of the arguments submitted by the third group:

In the case of the tonnage limit on hospital ships, the arguments were the same as those of the first group. As regards coastal rescue boats, it was clear that a belligerent, facing an opponent in narrow waters, could not tolerate a large number of small craft of the adverse party operating along its own coast, especially where the belligerent in question had the control over those waters.

A fourth group, comprising the Delegations of Italy, Colombia and Sweden, felt that there should be no limitation whatsoever.

The following is a summary of the fourth group's arguments:

For large hospital ships, the same arguments applied as in the case of the second group (Union of Soviet Socialist Republics). High speed coastal rescue craft and lifeboats were necessary for the quick transportation of the wounded and shipwrecked, so that they could be given the necessary treatment ashore with the least possible delay.

In order to meet the objections of the four groups as far as possible, the Italian and Netherlands Delegates redrafted the Articles under discussion. The Netherlands draft was accepted as a basis for discussion.

After a prolonged discussion, the Netherlands draft was adopted by a majority of votes.

The text proposed for Article 19 read as follows:

“Military hospital ships, that is to say, ships built or equipped by the Powers specially and solely with a view to assisting, transporting and treating the wounded, sick and shipwrecked, may in no circumstances be attacked or captured, but shall at all times be respected and protected by the belligerents, on condition that their names and descriptions have been notified to the belligerent Powers and that the delivery of this notification has been confirmed by the Protecting Power thirty days before the said ships are employed.”

“The details which shall be given in the notification must include gross registered tonnage, length from bow to stern and number of masts and funnels.”

This Article was agreed to by the Delegates of Colombia, the United States of America, France and the Union of Soviet Socialist Republics. The Delegates of the United Kingdom and Sweden proposed the omission of the words “and that the delivery of this notification has been confirmed by the Protecting Power thirty days”.

The Delegates of Italy and of the Netherlands would have liked to have seen the period of notice reduced from thirty to ten days.

The text proposed for Article 20 read as follows:

“Hospital ships utilized by National Red Cross Societies, by officially recognized relief societies or by private persons shall likewise be respected and exempt from capture, if the belligerent Power on which they depend has given them an official Commission, in so far as the provisions of Article 19 concerning notification have been complied with. These ships must be provided with certificates from the responsible authorities, stating that the vessels have been under their control while fitting out and on departure.”

Article 20 was adopted unanimously.

The text proposed for Article 21 read as follows:

“Hospital ships utilized by National Red Cross Societies, officially recognized relief societies, or private persons of neutral countries shall be respected and exempt from capture, on condition that they have placed themselves under the control of one of the belligerents, with the previous consent of their own governments and with the authorization of the belligerent concerned, in so far as the provisions of Article 19 concerning notification have been complied with.”

Article 21 was adopted unanimously.

The text proposed for Article 21A read as follows:

“The protection mentioned in Articles 19, 20 and 21 will be applied to hospital ships of every size and to the lifeboats of those hospital ships, regardless of where they are operating. However, in order to ensure maximum comfort and safety, belligerents shall endeavour to utilize, for the transport of sick, wounded and shipwrecked over long distances or on the high seas, only hospital ships of more than 2,000 gross registered tons.”

Article 21A was adopted by the Delegates of the United States of America, France, Italy, the Netherlands, the United Kingdom and Sweden.

The Delegates of the Union of Soviet Socialist Republics and Columbia were unable to accept it.

The Delegates of the United States of America, France, the Netherlands and the United Kingdom stated, on the other hand, that they could not adopt Articles 19, 20 and 21, unless Article 21A was adopted likewise.

The text proposed for Article 21B read as follows:

“Small boats used for coastal rescue work, such as coastal lifeboats which are employed by governments or by officially recognized lifeboat institutions, shall be respected and protected likewise, so far as operational requirements permit and the provisions of Article 19 concerning notification have been complied with.”

Article 21B was adopted by the Delegates of Columbia, the United States of America, France, Italy, the Netherlands, the United Kingdom and Sweden.

The Soviet Delegate did not accept it.

Mr. BAGGE (Denmark) considered that the new proposals represented a real advance. He wondered, however, if it would not be possible to standardize the wording relating to the protection accorded to the different types of vessels mentioned in the five Articles. That task might be entrusted to the Drafting Committee.

Mr. SENDIK (Union of Soviet Socialist Republics) said that in the opinion of his Delegation the proposals raised the following important questions:

- (1) Was it necessary for the Convention to mention a minimum tonnage for hospital ships?
- (2) Was it possible to agree to that limitation being mentioned in the form of a mere recommendation and on the understanding that smaller ships would also be protected?

- (3) Was it necessary to name the period which must elapse between the delivery of the notification concerning a hospital ship through the intermediary of the Protecting Power, and the employment of that hospital ship?
- (4) Was it necessary to limit the speed of small coastal lifeboats?

He considered that the proposed restriction regarding the minimum tonnage of hospital ships was unacceptable as it would prevent a number of small countries from possessing hospital ships and, consequently, from rescuing shipwrecked persons. Nor did he agree to the inclusion of a mere recommendation that their tonnage should be so limited, as the tonnage of hospital ships was a domestic matter which concerned the States themselves. Furthermore, such a recommendation would tend to create two categories of hospital ships, one of which conformed entirely to the requirements of the Convention and the other to a lesser degree: an attack on ships belonging to the second category would involve less moral responsibility.

With regard to the confirmation by the Protecting Power of the delivery of the notification, the waiting period of thirty days before the hospital ship could be used, agreed to at Stockholm, appeared to be necessary, if particulars of all hospital ships were to be communicated in time to the naval and air forces of the enemy.

It was also necessary to limit the speed of small coastal vessels to 12 knots, in order to prevent any abuse.

His Delegation therefore proposed the adoption of the Stockholm text of Articles 19, 20 and 21, subject to the omission of the limit on the tonnage of hospital ships.

Mr. ABERCROMBIE (United Kingdom) supported the proposals of the Working Party, subject, on the one hand, to the drafting modifications proposed by the Delegation of Denmark and, on the other, to the omission of the reference to a thirty days' waiting period following confirmation of the delivery of the notification.

The recommendation regarding a minimum tonnage for hospital ships, which had been considered useless by the Soviet Delegation, was, on the contrary, necessary. Experience had shown that belligerents could not always be relied upon to equip hospital ships of sufficient size to ensure not only the adequate care and comfort of the sick and wounded, but also easy visibility. For that reason, his Delegation wanted a minimum tonnage to be fixed for such ships. However, in view of the arguments which had been advanced, they had agreed to accept the proposed limitation in the form of a recommendation, but would be opposed to any further concession.

His Delegation thought that it was undesirable to stipulate that a period of notice must follow confirmation by the Protecting Power of the delivery of the notification regarding a hospital ship. There might be circumstances where there was no Protecting Power. So far as he was aware, no hospital ship had ever been attacked because the relevant instructions had not been received by the attacker. On the contrary, specifying a time-limit might render hospital ships liable to deliberate attack on the pretext that instructions had not yet been received.

Commodore LANDQUIST (Sweden) shared that opinion. The Maritime Warfare Convention must protect hospital ships from the first hour of war, just as land medical units were protected under the Wounded and Sick Convention. It was inconceivable that those ships should, during a certain period, be liable to legitimate attacks. Sweden was prepared to communicate in peacetime all details concerning her hospital ships and coastal lifeboats. Such communications, which could be made through the intermediary of the Swiss Government, with whom the "Red Cross" Conventions were deposited, would obviate the necessity of making similar communications at the outbreak of hostilities.

Mr. PICTET (International Committee of the Red Cross) also thought that, in view of the dangers to which attention had been drawn, the provision in question should be omitted. In point of fact, during the last war, a number of belligerent countries had no Protecting Power regularly acting for them. That was why the I.C.R.C. had always been opposed to any reference which implied that intervention by an organization such as a Protecting Power was an essential condition for protection. Moreover, the provision was unnecessary. It only operated in favour of a belligerent who put a hospital ship into service; but such a belligerent could, if he wished, in any case ask the Protecting Power to confirm notification of the ship before putting it into service.

Mr. MAYATEPEK (Turkey) reminded the meeting that the amendment to Article 20 submitted by his Delegation (*see 9th Meeting*) contained two proposals. The first, which concerned the extension of protection to lifeboats belonging to official organizations, had been taken into consideration by the Working Party when drafting Article 20. The Working Party had, however, come to no decision regarding the second, which aimed at including coastal installations in the protection given. He would be glad if the Representative of the International Committee of the Red Cross would make proposals on the subject.

Captain MOUTON (Netherlands) said that Article 21A was a compromise between widely divergent views. Delegations which had received instructions to limit the tonnage of hospital ships had made large concessions, and had gone to the limit of their instructions in accepting Article 21A. They had only been able to agree to Articles 19, 20 and 21 on condition that the Convention recommended a minimum tonnage for hospital ships. For that reason, he invited the other delegations to make similar concessions and to accept the new Article 21A.

Mr. KRUSE-JENSEN (Norway) reminded the Committee that he had proposed that hospital ships and lifeboats should be exempt from requisition by the Occupying Power. Realizing that his proposal had little chance of being accepted, he would withdraw it. He pointed out, however, that the exemption of lifeboats from capture was already assured under Article 4 of the XIth Hague Convention of 1907. He also was in favour of omitting the reference to the period of thirty days notice following confirmation by the Protecting Power of the delivery of the notification giving the required particulars of the hospital ship.

Captain IPSEN (Denmark) approved the proposals of the Working Party, but was in favour of the period of notice mentioned above. He asked for a separate vote on that point.

Mr. BURDEKIN (New Zealand) agreed with the above view, as well as with that of the Delegate of the Netherlands regarding Article 21A. He considered, however, that the word "treating" in Article 19 might give rise to abuses and he thought it would be desirable to distinguish between first aid treatment which could be given in lifeboats and more extensive medical treatments which could only be carried out in hospital ships. The point could be left to the Drafting Committee.

Mr. PICTET (International Committee of the Red Cross) considered that the protection of coastal installations could be assured by mentioning such installations in Article 21B. It was the Maritime Warfare Convention and not the Civilians Convention which should provide for the protection of those installations. He thought that it would be advisable to ask the Drafting Committee also to revise Article 21B.

Mr. SENDIK (Union of Soviet Socialist Republics) did not share the opinion of the Netherlands and United Kingdom Delegates regarding the recommendation of a minimum tonnage for hospital ships. It was not for the Conventions to recommend to the belligerents what measures they

should take in regard to their own nationals. They only laid down the obligations incumbent upon governments in regard to the wounded and sick of the adverse Party.

He considered that the protection of hospital ships would be more adequately safeguarded if the time-limit for notification was included in the Convention. Thirty days would appear to be essential to ensure that all enemy forces should receive the notification. It was true that all hospital ships were protected; but, if their particulars were not notified, they might be attacked inadvertently, especially if visibility was poor.

Furthermore, he did not approve the Turkish Delegate's proposal that coastal installations should be protected, for they could easily be used as a base for fighting units. The protection provided for in Article 20 of the Stockholm text seemed to be adequate.

Captain MELLEMA (Netherlands), Rapporteur of the Working Party, approved the formal amendment proposed by the Delegation of Denmark. The reference to the period of notice in the new Article 19 followed logically, he thought, from the preceding clause. He proposed that the motion by the Delegation of Turkey should be referred to the Working Party. He observed, with reference to the point raised by the Delegate of Norway, that the XIth Hague Convention was not sufficient, as it only prohibited capture on the high seas.

Replying to the Delegate of New Zealand, he said that he personally thought that the distinction between hospital ships and lifeboats had been made sufficiently clear. Replying to the Soviet Delegation's arguments against the inclusion of the recommendation regarding minimum tonnage, he remarked that the recommendation in question affected all the Powers, since a hospital ship was called upon to assist wounded, sick or shipwrecked persons, whatever their nationality. Finally, he agreed with the proposal made by the Representative of the International Committee of the Red Cross regarding the protection of coastal installations.

The CHAIRMAN suggested that a vote should be taken on the proposal to omit from the new Article 19 the sentence referring to confirmation by the Protecting Power of the delivery of the notification thirty days before hospital ships were employed.

Mr. SENDIK (Union of Soviet Socialist Republics) thought that a vote should first be taken on the proposals put forward by the Working Party.

Mr. PICTET (International Committee of the Red Cross) observed that the sentence which was

proposed to be omitted contained two elements: (1) confirmation of the delivery of the notification and (2) the period of notice required. One or other of those elements, or both, could be omitted.

Captain MELLEMA (Netherlands), Rapporteur, added that he could see three possible ways of solving the problem: the sentence might be omitted altogether, the reference to the thirty days' notice might be retained, or the period of notice might be reduced, say, from thirty to ten days.

The CHAIRMAN put to the vote the reference to confirmation by the Protecting Power of the delivery of the notification.

It was decided, by 17 votes to one, to omit the reference in question.

The CHAIRMAN then put to the vote the question of whether mention should be made of a period of notice prior to the employment of military hospital ships.

The mention of a period of notice was agreed to by 15 votes to 8.

The CHAIRMAN put to the vote the proposal that the period of notice should be thirty days.

The proposal was rejected by 15 votes to 8.

The CHAIRMAN put to the vote the proposal that the period of notice should be ten days.

The proposal was adopted by 12 votes to 9.

The CHAIRMAN next proposed that the Committee should vote on the whole of the five Articles as drafted by the Working Party.

Mr. BAGGE (Denmark) proposed that the five Articles should be adopted in principle and referred to the Drafting Committee.

Mr. SENDIK (Union of Soviet Socialist Republics) made a formal request that the Articles be voted upon separately.

The CHAIRMAN first put to the vote Article 21A, certain members of the Working Party having said they would not be able to accept Articles 19, 20 and 21 unless Article 21A was adopted.

Article 21A was adopted by 18 votes to 6.

Articles 19, 20 and 21 were adopted unanimously.

In view of the existence of the Turkish amendment the CHAIRMAN proposed that Article 21B should be referred back to the Working Party.

The proposal was approved.

*The meeting rose at 1.30 p.m.*

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## TWENTY-FOURTH MEETING

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

*Chairman:* Sir Dhiren MITRA (India)

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### **Consideration of a proposal to refer the Articles already adopted by the Committee to the Coordination Committee of the Conference**

The CHAIRMAN proposed that the Articles already adopted should be referred to the Coordination Committee. They would in any case come before Committee I again after consideration by the Coordination Committee.

The proposal was approved.

### **Consideration of Preambles for the Wounded and Sick and Maritime Warfare Conventions**

Mr. PICTET (International Committee of the Red Cross) said that the I.C.R.C. had really intended that the text suggested in "Remarks and Proposals" should form the first Article of the Conventions rather than a Preamble to them.

The 1929 Geneva Convention already had a very short Preamble, which he read. The XVIIth Inter-

national Red Cross Conference had introduced an Article headed "Preamble" in the Civilians Convention. The I.C.R.C. had thought that the same idea might well be introduced in the other Conventions and, acting on a suggestion made by one of the National Red Cross Societies, had drawn up a draft Preamble which could be used for all four Conventions; the text in question was intended to serve as a basis for discussion for the Diplomatic Conference. The first two paragraphs would be identical in the four Conventions, whereas the third paragraph, which included the substance of Article 1 of the Stockholm draft, would be adapted in each case to the Convention concerned.

The text as a whole was intended to express in a few words the great fundamental principle underlying the Geneva Conventions, a principle on which the Red Cross too was founded, namely respect for those who suffered, and for those who, being disarmed, were no longer friends or foes, but simply defenceless beings. In order to have greater force, such an Article should be brief and incisive.

Again, it did not appear feasible for the populations of all countries to be fully instructed in all the innumerable provisions contained in the four Conventions, as one clause in those Conventions laid down that they should be. It would therefore be an advantage if those provisions were to be summarized in one Article of a general character placed at the beginning of each Convention. The 1929 Geneva Convention began by giving, in its first Article, a brief survey of the objects in view. That Article was now the tenth of the Wounded and Sick Convention. It would be useful to have an initial Article explaining the purpose of the Convention.

The draft text had already been studied by another Committee, and several Delegations had agreed to it in principle. He hoped that that would also be the case in Committee I.

Mr. DE RUEDA (Mexico) approved of the text drawn up by the International Committee of the Red Cross and proposed that it should be referred to the Coordination Committee.

Msgr. COMTE (Holy See) wished to renew the proposal already submitted by his Delegation to Committee III, namely that there should be some reference to the Deity in each Preamble. Nations appeared to be steadily losing interest in international conferences and conventions; every effort should, therefore, be made to arouse interest in the present Conventions. The great majority of the peoples of the world believed in a Supreme Being. To take account of that all but universal belief would be sound democracy. The name of God invoked in the Preamble would help to increase

the confidence of the peoples of the world who anxiously awaited the results of the Conference's work; it would help to allay their doubts as to the effectiveness of the Conventions. Furthermore, such an affirmation would give those who had in the future the arduous task of applying the Conventions, a greater sense of their responsibility.

Mr. RYNNE (Ireland) supported the Holy See's proposal. It could not but enhance the effect of the Convention.

Mr. ABERCROMBIE (United Kingdom) was glad to learn that the International Committee of the Red Cross intended that the draft Preamble should become Article I of the Conventions. The relevant passages in "Remarks and Proposals" had left some doubt on that point.

If the proposed Preamble was to become an Article and therefore part of the Convention, it should be reworded in an appropriate form. The second and third paragraphs of the draft prepared by the International Committee of the Red Cross contained nothing which was not already included in some part of the Convention. A text should be drafted which applied to the Convention as a whole. That difficult task should be entrusted to a working party set up for the purpose.

Dr. PUYO (France) asked if other Committees had already considered the draft Preamble and, if so, to what conclusions they had come.

Mr. BAMBATE (Afghanistan) said that Committee III had set up a Special Committee which was about to meet to consider the Preamble.

Dr. PUYO (France) suggested that some members of Committee I should be nominated to take part in the work of the Special Committee.

Mr. McCAHON (United States of America) thought that the first question to be decided was whether a preamble was necessary or not in the case of the Wounded and Sick and Maritime Warfare Conventions. If it was considered necessary to have one, consideration of the proposals put forward by the International Committee of the Red Cross could be entrusted to a working party set up for the purpose.

Mr. PICTET (International Committee of the Red Cross) supported the above proposal.

The CHAIRMAN pointed out that Committee I was only concerned with the revision of two existing Conventions, whereas the Committee which

was dealing with the Civilians Convention was working out an entirely new draft. The first two Conventions had never had a Preamble, and it might not be absolutely necessary for them to have one. He therefore proposed to put to the vote, first of all, the question of whether a Preamble, in the strict sense of the word, was considered necessary or not.

Dr. PUYO (France) said that the Mexican Delegation had submitted a formal proposal to adopt the text suggested by the International Committee of the Red Cross and subsequently to refer it to the Coordination Committee. He felt, therefore, that a vote should first be taken on that proposal.

Mr. PICTET (International Committee of the Red Cross) felt that the Committee should first vote on the question of whether general provisions should be inserted at the beginning of both Conventions. It would then be for the Committee itself or for a working party to decide whether those provisions should be in the form of a Preamble or of an initial Article. Furthermore, the Plenary Assembly of the Conference having referred the consideration of the Preamble to each of the three Committees,

Committee I was not bound by the decisions of Committee III, but was completely free to take any decisions it thought fit.

The CHAIRMAN put to the vote the question of whether general provisions, as set forth in the proposal of the International Committee of the Red Cross, should be inserted at the beginning of the Wounded and Sick and Maritime Warfare Conventions.

The proposal was adopted by 12 votes to 7.

The CHAIRMAN then proposed that a working party should be asked to study the wording of the provisions in question and decide on their final form. Members of the Delegations of Afghanistan, the United States of America, France, Ireland, Mexico, the United Kingdom and the Holy See might be included in the Working Party.

Mr. TAUBER (Czechoslovakia) proposed that the Delegation of the Ukrainian Soviet Socialist Republic should also be included.

The two proposals were adopted.

*The meeting rose at 11.15 a.m.*

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## TWENTY-FIFTH MEETING

*Tuesday 7 June 1949, 10 a.m.*

*Chairman:* Sir Dhiren MITRA (India)

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### **Report of the Working Party entrusted with the consideration of Article 26 of the Wounded and Sick Convention**

Dr. PUYO (France), Rapporteur, gave a brief account of the Working Party's meeting.

The French Delegation had pointed out that the provisions governing medical equipment and stores were, to some extent, related to those dealing with medical personnel, and had proposed that the Committee should therefore defer consideration of Article 26 until Chapter IV concerning personnel had been adopted. The

Working Party, however, preferred to proceed at once to the discussion of the amendments submitted to it by the Committee. The Delegate of France did not press the point, but reserved the right to raise the question again at an opportune moment.

The first paragraph of the United Kingdom amendment (*see Annex No. 36*) radically altered the meaning of the Stockholm text. The latter laid down that the equipment and stores of mobile medical units would continue to be used for the care of the wounded and sick. Unlike that of fixed medical establishments, the mate-

rial in question was not subject to the laws of war and might not be diverted from its purpose. The text submitted by the United Kingdom, on the other hand, laid down that both categories of material would be subject to the laws of war. The Working Party had preferred to retain the Stockholm text. The Delegate of the United Kingdom had then proposed the omission of the words "by priority those of the same nationality as the said units" at the end of the first paragraph of the Stockholm text. The Working Party had supported that proposal and decided to adopt the first paragraph of the Stockholm text subject to the proposed modification.

The first paragraph of the Stockholm text having been adopted, the second paragraph of the United Kingdom amendment could only refer to the buildings, material and stores of fixed medical establishments. It was adopted. To avoid any possible confusion, it had been decided to incorporate it in the second paragraph of the Stockholm text, where it would become the second sentence, after the words "accommodated therein" in the first sentence had been deleted.

The Swedish amendment proposed the addition of the following paragraph:

"The buildings, material and stores mentioned in this Article shall never be intentionally destroyed."

The Delegate of the United Kingdom had said that the above ruling could not be applied to buildings, but only to the material and stores. The Working Party had supported that view and had omitted the word "buildings".

The Delegate of the Union of Soviet Socialist Republics had proposed that the word "never" should be replaced by the word "not". The word "never" was too absolute in character and did not take into account the realities of war. The motion was approved.

The Swedish amendment had accordingly been adopted together with the two proposed modifications. It would become the third paragraph of Article 26.

The Representative of the International Committee of the Red Cross had also proposed that the first paragraph should specify, as the second did, that the material referred to was that of units of the armed forces; that would avoid any possible confusion with the material belonging to neutral or private units, which was dealt with in Articles 25 and 27 respectively.

The new text proposed by the Working Party for Article 26, read as follows:

"The material of mobile medical establishments of the armed forces, if they fall into the

hands of the enemy, shall be retained for the care of wounded and sick.

"The buildings, material and stores of fixed medical establishments of the armed forces shall remain subject to the laws of war, but may not be diverted from that purpose as long as they are required for the care of wounded and sick. Nevertheless, the commanders of forces in the field may make use of them, in case of urgent military necessity, provided that they make previous arrangements for the welfare of the wounded and sick who are nursed in them.

"The material and stores defined in the present Article shall not be intentionally destroyed."

That text had been adopted in the Working Party by the Delegates of France, Sweden and the Union of Soviet Socialist Republics. The United Kingdom Delegate had reserved his position with regard to the first two paragraphs.

Mr. SWINNERTON (United Kingdom) considered that the text proposed by the Working Party would be impossible to apply in practice. Experience had shown that a considerable time must elapse before the material of medical units could be returned by the State which had captured it; if unused it quickly became valueless. It should be subject to the laws of war.

Likewise, the Swedish amendment, as incorporated in the Article, was unsatisfactory, because, in the event of a belligerent being obliged to destroy a building of a fixed medical establishment, the wounded and sick could easily be evacuated, but it was not always possible to remove the material. The principle of the Swedish amendment was good, but he felt that its wording should be modified.

The CHAIRMAN proposed that the Working Party be asked to consider both the above observations.

Dr. PUYO (France) said that the Working Party had already spent a considerable time considering them, and had taken them into account as far as possible. It was certainly difficult in practice always to respect medical material, but that was not a sufficient reason for omitting the general rules. Besides, if the Swedish amendment were modified too much, its substance might be lost.

The CHAIRMAN put to the vote Article 26, as worded by the Working Party, mentioning at the same time that the Article would still have to be referred to the Drafting Committee.

The Article was adopted by 21 votes to 4.

**Report of the Working Party entrusted with the consideration of Article 33 of the Wounded and Sick Convention and Article 39 of the Maritime Warfare Convention**

Colonel WATCHORN (Australia), Rapporteur, summed up the Report submitted by the Working Party, and drew particular attention to the following points:

The first paragraph of Article 33 had not given rise to any observation.

With regard to the second paragraph, the following decisions had been taken:

(a) The amendment submitted by the Australian Delegation proposed that the words "in addition to an identity disc" should be inserted after the words "shall carry" in the second paragraph. The Working Party had decided not to insert the reference to the identity disc in the second paragraph, but in the first paragraph after the words "shall wear". The final wording had been referred to the Drafting Committee which would also have to consider whether the disc should be mentioned too in Articles 20 and 21.

(b) After some discussion the Working Party had decided to replace the words "This card, worded in the national language, likewise in French and in English," in the second sentence of the second paragraph by the words "This card shall be worded in the national language,".

(c) As regards the photograph, the Working Party had declared itself unanimously in favour of the Stockholm text.

(d) At the instance of the United States Delegate, the Working Party decided that the words "the signature or the fingerprints of the owner or both" should be substituted for the words "fingerprints of the owner".

(e) The Working Party had decided that the particulars which had to appear on the identity card should be enumerated at the end of the second paragraph. Subject to a final drafting by the Drafting Committee, the sentence added would read as follows: "The identity card shall show the owner's name, rank, date of birth, army number, qualification and/or medical duty for which trained".

The following decisions were taken with regard to the third paragraph:

(a) The Delegation of the Union of Soviet Socialist Republics was unable to agree to the compulsory provision that identity cards must be uniform as regards form, colour and size. They thought that the traditions of different armies

should be considered, and that there should be a certain amount of freedom regarding the matter.

The Working Party unanimously decided that the distinctive emblem (red cross, red crescent, etc.) should appear on the identity card provided for in Article 33.

(b) The Working Party decided to recommend to the Committee that the words "if possible" should be inserted after "shall be established" in the third sentence of the third paragraph. Nevertheless, the Working Party's report mentioned the reservation made by the United States Delegate, who supported the Stockholm text.

With regard to the fourth paragraph, the Government of the Netherlands had proposed an amendment (*see Annex No. 43*). The Working Party, with the agreement of the Netherlands Delegation and taking account of a suggestion by the French Delegation, unanimously adopted the following wording: "In no circumstances may a member of the said personnel be deprived of his badges, identity card or the right to wear an armlet on the left arm".

The United Kingdom Delegate had tabled an amendment proposing that a new paragraph should be inserted in Article 33, to the effect that "Stretcher-bearers shall wear on the left arm a white armlet marked with the letters 'S.B.' in red". Such a provision would ensure that Stretcher-bearers enjoyed the protection afforded by Article 19 of the Convention.

The Delegates of the United States of America and of the Union of Soviet Socialist Republics considered that the questions raised by the above amendment were beyond the terms of reference of the Working Party as laid down by Committee I. A discussion on the subject took place without result.

The Working Party accordingly drew the attention of Committee I to the United Kingdom amendment which raised problems upon which it had not been able to agree.

In conclusion, the Rapporteur pointed out that the remarks made in regard to Article 33 of the Wounded and Sick Convention were equally applicable to Article 39 of the Maritime Warfare Convention which was identical.

The CHAIRMAN put the additional paragraph proposed by the United Kingdom for discussion.

Mr. SWINNERTON (United Kingdom) said that the purpose of the proposal was to introduce into the Convention a practice which had been current for a very long time, at any rate, in the United Kingdom. Article 19 only conferred protection in

theory; it was essential that stretcher-bearers should be provided with a distinctive badge which would afford them effective protection.

Mr. PICTET (International Committee of the Red Cross) reminded the Committee that that important question had already been considered by former diplomatic conferences. The 1929 Conference had considered that it was not possible to allow temporary medical personnel to use the Red Cross sign, since that would introduce a dangerous principle, that of the removability of the distinctive sign. Such personnel were only intermittently engaged on tasks of a medical nature and might even be called to fight during the intervals. The resulting situation would be confused, and abuses would occur. According to the provisions of the 1929 Convention, such personnel were not protected on the battlefield; on the other hand, if they were captured, they did not become prisoners of war.

The texts now proposed provided exactly the contrary: temporary medical personnel, if captured, became prisoners of war, and should accordingly be protected on the battlefield. As it would be impossible to place such temporary personnel under the sign of the Red Cross, since the principle of the irremovability of the distinctive sign must be safeguarded, the proposal submitted by the United Kingdom would seem to offer a satisfactory solution, provided always that it did not apply solely to stretcher-bearers but to all the personnel referred to in the second paragraph of Article 19 as adopted by Committee I (*see Summary Record of the Fourteenth Meeting*). Moreover, it must be clearly understood that the new armlet could only be worn when carrying out duties of a medical nature.

Mr. BOUTROV (Union of Soviet Socialist Republics) thought that the proposal submitted by the United Kingdom introduced an innovation which might be dangerous and give rise to abuses.

General LEFEBVRE (Belgium) considered that, since it was now felt to be desirable to protect temporary personnel, such personnel should be provided with a distinctive sign and an identity card.

Colonel CRAWFORD (Canada) pointed out that an identity card afforded no protection to personnel on the battlefield; what was needed was a visible sign, but a sign other than the red cross. He agreed that the United Kingdom proposal should cover all temporary medical personnel.

The CHAIRMAN put to the vote the principle of the United Kingdom amendment, stating at the same time that it would be for the Drafting Committee to decide what emblem should appear on the armlet.

The proposal of the United Kingdom was adopted by 21 votes to 6.

The CHAIRMAN then opened the discussion on the various paragraphs of Article 33 of the Stockholm text.

The first paragraph was adopted.

The second paragraph was adopted and referred to the Drafting Committee, together with the Working Party's suggestion regarding the language in which the identity card should be written. The proposals of the Working Party regarding fingerprints were adopted. The enumeration of the compulsory particulars proposed by the Working Party was referred to the Drafting Committee.

In regard to the third paragraph, Commander HUNSICKER (United States of America) stated that his Delegation considered it most desirable that an identity card in duplicate with one detachable portion should be issued to medical personnel. Such a procedure might reduce delays in the making out of capture cards; the Detaining Power would simply detach one portion of the card, leaving the other in the possession of the captured man; it was, of course, essential that each of the two parts should contain complete particulars regarding the identity of the bearer.

Major HIGHET (New Zealand), Rapporteur of the Drafting Committee of Committee II, said that his Drafting Committee, which had already studied the problem in connection with Article 15 of the Prisoners of War Convention, considered that the enumeration of the particulars which had to be entered on the identity card should not be exclusive, as certain belligerents might desire to add others. His Drafting Committee had been unable to arrive at a decision regarding the language in which the card should be made out; an exchange of views between Committees I and II on that point might be useful. His Drafting Committee had further decided that the issue of duplicates in case of loss should be the responsibility of the Detaining Power; he hoped that a similar decision would be taken by Committee I.

Mr. STARR (United States of America) said that his Delegation did not agree with the Working Party's decision to insert the words "if possible" in the third paragraph.

Mr. SWINNERTON (United Kingdom) said that his Delegation did not consider the issue of two copies of an identity card, one of which would be retained by the Power of origin, to be necessary. Such a formality would place a heavy burden on the administrative authorities. It was for that reason that the Delegation of the United Kingdom

had proposed inserting the words "if possible" in the third sentence of the third paragraph of the Stockholm text.

The United States proposal to issue perforated duplicate identity cards had more to be said for it. He did not, however, think it was necessary to make the provision mandatory. It should be left to the various countries to decide the matter as they thought fit.

The CHAIRMAN then put to the vote the United States proposal that the words "if possible" should not be inserted in the third paragraph.

The proposal was rejected by 12 votes to 5. The Working Party's suggestion was accordingly adopted.

The fourth paragraph was adopted without discussion.

The whole Article, together with the proposals of the Working Party, was referred to the Drafting Committee.

Major HIGGET (New Zealand), reverting to the question of duplicate identity cards, observed that the United States proposal did not refer to duplicates which had to be handed over to the Detaining Power, but to a double card which must be in the possession of the holder. He considered that it would be enough to say simply "Identity cards should be issued in duplicate."

Mr. PICTET (International Committee of the Red Cross) pointed out that there were two distinct problems according to whether the identity cards referred to were those of prisoners of war or those

of medical personnel. The latter must be able to prove, when captured, that they were entitled to a special status and to repatriation. In 1940 many members of the medical services who were captured by the Germans had been unable to prove their identity, or had only been able to do so after numerous representations had been made by the International Committee of the Red Cross; such cases had given rise to very considerable difficulties. That was why it was essential that absolute proof that the person concerned was actually a member of the medical personnel should be always in existence and readily available.

#### WOUNDED AND SICK CONVENTION

##### Annex I.

The CHAIRMAN asked if the Committee would like to consider Annex I themselves, or whether they would prefer to refer it to a working party.

Colonel CRAWFORD (Canada) proposed that it should be referred to a working party for consideration.

The proposal was approved.

After some discussion, the Working Party was constituted as follows: Canada, Egypt, United States of America, France, Netherlands, Rumania, United Kingdom, Ukrainian Soviet Socialist Republic, with a member of the Canadian Delegation in the Chair.

*The meeting rose at 12.45 p.m.*

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#### TWENTY-SIXTH MEETING

*Monday 13 June 1949, 10 a.m.*

*Chairman: Mr. Ali Rana TARHAN (Turkey)*

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#### Communication by the Chairman

The CHAIRMAN informed the Committee that the President of the Conference had received letters from the International Union of Catholic Women's Leagues (The Hague), from the "Pax Romana" International Movement of Catholic Intellectuals

(Fribourg), and from the "Pax Romana" International Movement of Catholic Students (Fribourg). Those three institutions requested that the name of God should appear in the Conventions.

The Secretary-General was holding a copy of the letters at the disposal of any Delegates who wished to consult them.

**Article 3 of the Wounded and Sick Convention and Article 4 of the Maritime Warfare Convention**

Commodore LANDQUIST (Sweden) reminded the meeting that his Delegation had submitted an amendment (*see Summary Record of the Twenty-second Meeting*) proposing that the word "interned" should be replaced by the word "received"; he saw no objection, however, to the Article being omitted altogether.

Mr. SWINNERTON (United Kingdom) pointed out that his Delegation had already proposed the omission of the two Articles in question. Belligerents always had diplomatic representatives in neutral countries who could look after the welfare of their nationals.

Mr. SENDIK (Union of Soviet Socialist Republics) said that the attitude of a neutral Power towards foreign nationals interned or received in their territory should not be dependent upon the goodwill of their diplomatic representatives, but should be governed by the provisions of a Convention. Wounded and sick persons must be protected in all circumstances. For that reason the Soviet Delegation pressed for the retention of the two articles.

Mr. PICTET (International Committee of the Red Cross) reminded the meeting that according to Article 15 of the Vth Hague Convention of 1907, the Geneva Convention (of 1906) applied to wounded and sick belligerents in neutral territory. It only seemed logical that the same should hold good for the Geneva Convention at present under revision. Moreover, Article 3 of the Prisoners of War Convention also provided that that Convention should apply by analogy to military internees in neutral countries. The two provisions corresponded.

On the other hand, Article 3 of the Draft Wounded and Sick Convention would now extend the protection of the Convention to medical personnel received in a neutral country. The absence of that clause from the Vth Hague Convention was certainly a serious omission.

He noted that, up to the present, no major argument in favour of the omission of the Article had been submitted; for his part, he considered that its retention was desirable and that the amendment introduced by the Swedish Delegation should also be adopted.

Commander HUNSICKER (United States of America) was of opinion that Article 3 of the Wounded and Sick Convention and Article 4 of the Maritime Warfare Convention embodied a principle well

established in international law: it should be maintained. On the other hand, he supported the Danish amendment to substitute the words "received or interned" for the word "interned".

Mr. SWINNERTON (United Kingdom) said that Article 1 should suffice, since neutral Powers which had signed the Conventions were included in the term "High Contracting Parties". Nevertheless, as the Committee appeared to be in favour of maintaining of Article 3, his Delegation would agree, provided that the word "interned" was replaced by "received or interned", and that the words "by analogy" were replaced by an exact list of the Articles which neutral Powers would be called upon to apply.

Mr. SENDIK (Union of Soviet Socialist Republics) did not consider that Article 1 was sufficient, and thought that Article 3 was far from being superfluous. Nor did he agree with the last proposal made by the United Kingdom, for no list could provide for all possible cases. The Soviet Delegation supported the Danish amendment, which had the advantage of covering the two situations in which wounded or sick persons and medical personnel might find themselves on arriving in neutral territory.

Captain IPSEN (Denmark) pointed out that the words "shipwrecked persons" did not appear in the English text of Article 4 of the Maritime Warfare Convention as adopted at Stockholm.

The CHAIRMAN put to the vote the United Kingdom Delegation's proposal to replace the words "by analogy" by a complete list of the Articles to be applied by neutral Powers.

The proposal was rejected by 17 votes to 6, with 4 abstentions.

The CHAIRMAN put the Danish amendment to substitute the words "received or interned" for the word "interned" to the vote.

The amendment was adopted unanimously.

Article 3 of the Wounded and Sick Convention and the corresponding Article 4 of the Maritime Warfare Convention, thus amended, were adopted.

WOUNDED AND SICK CONVENTION

**New Article (to follow Article 15)**

Colonel WATCHORN (Australia) explained his Delegation's amendment which proposed the introduction of a new Article immediately after Arti-

cle 15 (see *Summary Record of the Eighth Meeting*), for the purpose of protecting wounded and sick members of the armed forces who were under treatment in civilian hospitals. He considered that Article 15 of the Civilians Convention, as adopted by Committee III, should also be included in the Wounded and Sick Convention in case the first of those Conventions was not ratified by all belligerent States.

Mrs. KOVRIGINA (Union of Soviet Socialist Republics) did not share that view. She stressed the fact that the second paragraph of Article 16 of the Civilians Convention clearly provided for the protection of civilian hospitals, even when caring for military patients. The introduction of that provision into the Wounded and Sick Convention was therefore unnecessary.

Mr. BURDEKIN (New Zealand) thought the above point of view illogical, since it was in contradiction with the views adopted by the Soviet Delegation in regard to Article 3 of the Wounded and Sick Convention.

For his part, he supported the Australian Delegation's amendment, but felt that its wording might be improved by a working party. It was not certain that the Civilians Convention would be ratified by as many States as the Wounded and Sick Convention. The Australian proposal, if it were adopted, would in any case ensure the protection of wounded and sick members of the armed forces who had been admitted to a civilian hospital.

Mrs. KOVRIGINA (Union of Soviet Socialist Republics) protested against the charge of inconsistency. She pointed out that the Australian amendment was not intended to protect wounded and sick persons, but civilian hospitals, and that the latter were already protected by the Civilians Convention.

Commander HUNSICKER (United States of America), agreed with the principle underlying the Australian amendment, but thought that it should not be included in the Wounded and Sick Convention. It was unnecessary to repeat there a provision which already existed in the Civilians Convention, where it was in its proper place.

Colonel WATCHORN (Australia) agreed that the wording of the amendment might be improved, but insisted that its principle should be introduced into the Wounded and Sick Convention.

Dr. DIMITRIU (Rumania) considered that the Civilians Convention offered sufficient protection to civilian hospitals to which wounded and sick of the armed forces had been admitted.

Mr. PICTET (International Committee of the Red Cross) maintained the point of view which he had already expressed with regard to the matter during the Eighth Meeting. The provisions introduced into the Wounded and Sick and Civilians Conventions appeared to be adequate and, until he saw evidence to the contrary, he did not think it necessary to replace them by more extensive provisions.

The CHAIRMAN put the Australian amendment to the vote. It was rejected by 17 votes to 9, with 3 abstentions.

#### **Report of the Drafting Committee on Chapter IV of the Wounded and Sick and Maritime Warfare Conventions**

General LEFEBVRE (Belgium), Rapporteur, said that the Drafting Committee was composed of Delegations of the following countries: the United States of America, France, Mexico, Pakistan, the United Kingdom, Switzerland and the Union of Soviet Socialist Republics.

The new text proposed by the Drafting Committee for Article 19 read as follows:

#### **Article 19**

"Medical personnel exclusively engaged in the search, collection, transport and treatment of the wounded or sick, or in the prevention of disease, staff exclusively engaged in the administration of medical units and establishments and chaplains attached to armed forces, shall be respected and protected in all circumstances.

"Members of the armed forces specially trained to be employed, should the need arise, as hospital orderlies, nurses or auxiliary stretcher-bearers, for the collection transport or treatment of the wounded and sick, and in possession of ... (*Committee I will have to consider whether to provide for carrying an identity disc, an identity card or a brassard*) shall likewise be respected and protected if they are carrying out these duties at the time when they come into contact with the enemy or fall into his hands."

The new wording took into account the Swiss amendment (*see Annex No. 33*) which in its turn incorporated part of the Ukrainian amendment. It also took account of the United States proposal recommending the substitution of the words "the armed forces" for "the armies". In the second paragraph, the question of whether temporary medical personnel should be provided with identity discs, identity cards or brassards remained open. The words "a special identity card" might perhaps be used.

Dr. PUYO (France) suggested that that question could be dealt with by referring the Article back to the Drafting Committee.

He further observed that in the French text the first words of the second paragraph should be "Les militaires" (Members of the armed forces) and not "Le personnel" (Personnel). That was no doubt a mistake.

Mr. BURDEKIN (New Zealand) thought that the new text was very vaguely worded and did not define sufficiently clearly the various categories of medical personnel covered (dentists, ambulance drivers, etc.).

He supported the proposal to refer the Article back to the Drafting Committee.

He suggested that the identification of temporary personnel should be ensured by an armband worn on the right arm rather than by a special identity card.

Dr. PUYO (France) proposed that the second paragraph should become a separate Article. That would meet the New Zealand Delegate's desire for greater clarity and would simplify references made elsewhere in the Convention to the protection of permanent or temporary medical personnel.

General LEFEBVRE (Belgium) said that the definitions appearing in Article 19 also appeared in the 1929 text and seemed perfectly clear. The first paragraph dealt with permanent personnel and the second with temporary personnel. All persons whoever they might be, who belonged to the Medical Services of the armed forces were covered by the first paragraph.

Colonel CRAWFORD (Canada) agreed with General Lefebvre that no confusion was possible. He moved the adoption of the new version of Article 19.

Mr. PICTET (International Committee of the Red Cross) agreed that the second paragraph should start with the words "Les militaires" (Members of the armed forces) and not "Le personnel..." (Personnel).

It was unnecessary for this Article to mention the means of identification to be issued to temporary personnel, since Chapter VII already contained all the requisite provisions on the subject. The words "and in possession of..." should therefore be omitted.

The word "infirmières" (nurses) might also be omitted from the French text as the word "infirmiers" (hospital orderlies) was sufficient. (The change did not affect the English text.)

Colonel MEULI (Switzerland) shared the above views.

He did not think it was possible to draft a better text than that which was proposed. It appeared to cover all the cases which the Delegate of New Zealand wished to have enumerated. He moved that the text should not be referred back to the Drafting Committee, but considered and approved by Committee I without further delay.

Mr. DE GEOUFFRE DE LA PRADELLE (Monaco) supported the French Delegate's proposal to divide the text into two Articles in order to avoid any possible confusion between the two distinct categories of personnel referred to.

Mr. BURDEKIN (New Zealand) also supported the French proposal.

The CHAIRMAN proposed to put each paragraph of the new text of Article 19 to the vote.

Dr. PUYO (France) thought that would be premature. Chapter IV should first be considered as a whole before voting on it in detail. That would give the Delegations time to think the matter over.

Colonel MEULI (Switzerland) said that the Drafting Committee's Report on Chapter IV had actually been distributed on May the 25th. There was therefore no reason for a further postponement. The Committee could very well take a decision on Article 19 forthwith.

Dr. PUYO (France) did not think that the Committee should vote too hastily upon a text, when the proposed amendments to it were not yet in the Delegates' hands.

The CHAIRMAN proposed that each paragraph should be voted upon separately. He read out the first paragraph of the Drafting Committee's text.

The first paragraph was adopted by 27 votes to nil, with 2 abstentions.

The CHAIRMAN then read out the second paragraph, including the proposed modifications, i.e. substituting the words "Les militaires" (Members of the armed forces) for "Le personnel" in the French text, omitting the word "infirmières" in the French text, and omitting the words "and in possession of..." (et munis de) in both the French and English texts.)

The second paragraph, thus amended, was adopted by 20 votes to nil, with 3 abstentions.

**Article 19A**

The CHAIRMAN then put to the vote the proposal that the second paragraph of Article 19 should become a separate Article.

The proposal was adopted by 12 votes to 11, with 1 abstention.

The second paragraph of Article 19 accordingly became Article 19A.

*The meeting rose at 1.20 p.m.*

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**TWENTY-SEVENTH MEETING**

*Wednesday 15 June 1949, 10 a.m.*

*Chairman:* Mr. Ali Rana TARHAN (Turkey)

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**Report of the Drafting Committee on Chapter IV of the Wounded and Sick Convention (continued)**

**Article 20**

The CHAIRMAN noted that Article 20 (Stockholm text) had already been adopted by the Committee.

**Article 21**

General LEFEBVRE (Belgium), Rapporteur, reminded the Committee that Article 21 had been referred to the Drafting Committee with instructions to incorporate in it the Indian amendment proposing that neutral societies should be placed under the control of the belligerent making use of them (*See Summary Record of the Fourteenth Meeting*). The last sentence of the first paragraph gave effect to the above proposal. The text proposed by the Drafting Committee read as follows:

“A recognized Society of a neutral country can only lend the assistance of its medical personnel and units to a belligerent with the previous consent of its own Government and the authorization of the belligerent concerned. That personnel and those units shall be placed under the control of that belligerent.

“The neutral Government shall notify this consent to the adversary of the State which accepts such assistance. The belligerent who accepts such assistance is bound to notify the adverse Party thereof before making any use of it.

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

“The members of the personnel named in Section 1 shall be duly furnished with the identity cards provided for in Article 33 before leaving the neutral country to which they belong.”

Mr. BURDEKIN (New Zealand) said that the word “Section” in the last paragraph of the English text should be replaced by “paragraph”.

The above proposal was approved and Article 21 adopted.

General LEFEBVRE (Belgium), Rapporteur, said that the preceding Articles were concerned only with the protection of medical personnel on the battlefield. The Committee had, however, considered that there were various categories of medical personnel—military personnel, who might be permanent or temporary, personnel belonging to national relief societies, and personnel of neutral relief societies which lent their aid to one or other of the belligerents. The following Articles would prescribe the treatment to be accorded to such personnel in the event of their falling into the hands of the enemy.

**Article 22**

The text proposed by the Drafting Committee was as follows:

“Personnel designated in Article 19, first paragraph, and personnel placed on the same footing in accordance with Article 20, who fall into the

hands of the adverse Party, shall be retained only in so far as the state of health, the spiritual needs and the number of prisoners of war require.

“Personnel thus retained shall not be prisoners of war. They shall nevertheless benefit by all the provisions of the Convention of ..... relative to the treatment of prisoners of war. They shall further enjoy the following facilities for carrying out their medical or spiritual duties:

- (a) Within the framework of the laws and military regulations of the Detaining Power and under the authority of its competent service, they shall continue to carry out, in accordance with their professional ethics, their medical and spiritual duties, on behalf of prisoners of war, preferably those of the armed forces to which they themselves belong.
- (b) They shall be authorized to visit periodically the prisoners of war in labour units or hospitals outside the camp. The Detaining Power shall put at their disposal the means of transport required.
- (c) In each camp the senior medical officer of the highest rank shall be responsible to the military authorities of the camp for the professional activity of the retained medical personnel. To that end, from the outbreak of hostilities, the belligerents shall agree about the equivalence of the ranks of their medical personnel, including those of the societies designated in Article 20. In all questions arising out of their duties, this medical officer, and the chaplains, shall have direct access to the military and medical authorities of the camp who shall grant them the facilities they may require for correspondence relating to these questions.
- (d) Retained personnel in a camp shall be subject to its internal discipline. They shall not, however, be required to perform any work outside their medical or religious duties.
- (e) During hostilities the belligerents shall make arrangements for relieving where possible retained personnel, and shall settle the procedure of such relief.

“None of the preceding provisions shall relieve the Detaining Power of the obligations imposed upon it with regard to the medical and spiritual welfare of the prisoners of war.”

General LEFEBVRE (Belgium), Rapporteur, explained that the purpose of the Article was to ensure the protection of permanent medical personnel and personnel belonging to national relief societies.

Although the Committee had decided, contrary to the provisions of the 1929 Convention, that it was impossible, in view of prisoners' requirements, to return all medical personnel falling into enemy hands, it had nevertheless reasserted the principle that it was the Detaining Power which was responsible for the treatment of the captured persons. Consequently it had decided to limit the number of retained personnel.

In the first paragraph of the Article the Drafting Committee had sought to provide exclusively for the requirements of prisoners. The United Kingdom Delegation had desired to limit the return of medical personnel to doctors, dentists and nurses only, i.e. to the personnel who had the longest specialized training.

The French Delegation, on the other hand, would have liked it to be stated at that point, notwithstanding the conditions laid down in Article 24 on the subject of repatriation, that the medical requirements of the prisoners could only refer to their current needs. Thus only medical personnel who were not highly specialized would be retained.

Moreover, as the Article would also be applicable to the Maritime Warfare Convention, the French Delegation had drawn the Committee's attention to the fact that Navies needed specialized medical personnel very badly owing to the dispersal of such personnel in numerous small isolated vessels.

In the light of the Committee's decisions with regard to Article 19, the words “first paragraph” would have to be deleted from the first sentence of the first paragraph of Article 22.

Mr. DE GEOUFFRE DE LA PRADELLE (Monaco) said that he would like to confine his criticisms to drafting points. He pointed out that, under the heading of facilities to be granted to retained personnel, the Drafting Committee's text for Article 22 contained provisions which could not in any way be regarded as “facilities”.

First, under (a), a definition was given of the mission of retained personnel which should constitute a separate clause, as it was one of the main provisions.

Secondly, (c) and (d) contained provisions regarding the obligation to reside within the camp, responsibility and discipline, which did not refer in any way to facilities. The Article should therefore be redrafted.

General LEFEBVRE (Belgium), Rapporteur, continuing his report, explained that, since it had been admitted in the second paragraph that some such personnel might be retained, the question of their status had had to be considered.

Two solutions had been put forward, each intended to ensure the maximum of respect and

protection for such personnel. The first, advocated by the United Kingdom Delegation, was that such personnel should be deemed to be prisoners of war. The second did not accept that point of view, preferring to state that they should not be deemed prisoners of war. Incidentally there was an error in the English text: it should read "shall not be deemed prisoners of war".

The second of these contentions having prevailed, the Committee had had to define the status of retained personnel. The Drafting Committee had therefore provided that they should benefit by all the provisions of the Prisoners of War Convention, but that, as they were only retained in order to carry out their medical duties, they should be accorded in addition certain facilities for the discharge of those duties. The facilities in question were specified in sub-paragraphs (a), (b), (c), (d) and (e).

The Swiss Delegation had pointed out, however, that the provisions contained in sub-paragraphs (a) and (e) did not constitute facilities. It had accordingly proposed slight changes in the wording of the text.

The French Delegation had maintained that, although the protection of retained medical personnel was thus sufficiently safeguarded, the respect due to such personnel under Article 19 had become, on the other hand, very much less than it had been in 1929. Article 13 of the 1929 Convention laid down that retained medical personnel should enjoy the same food, the same lodging, the same allowances and the same pay as were granted to the corresponding personnel of the belligerents. The Swiss amendment reverted to that provision, whereas the Canadian amendment and that of the United States of America rejected it. The Drafting Committee had decided upon the latter solution and had omitted the provision in question.

The Article as a whole had been adopted by the majority of the Drafting Committee, subject to certain reservations by the United Kingdom Delegation which felt that the provisions under consideration would be better placed in the Prisoners of the War Convention.

Colonel MEULI (Switzerland) proposed that the words "first paragraph, and personnel placed on the same footing in accordance with Article 20" in the first paragraph should be replaced by the words "and 20". The beginning of the Article would then read: "Personnel designated in Articles 19 and 20...".

He further proposed that the text of sub-paragraph (a) should be inserted between the second and third sentences of the second paragraph. Sub-paragraphs (b), (c) and (d) would then become (a), (b) and (c) respectively, and sub-paragraph (e)

could become a normal independent paragraph. He suggested that sub-paragraph originally marked (d) might be worded as follows: "Although retained personnel in a camp shall be subject to its internal discipline, they shall not be required to perform any work outside their medical or religious duties".

Mr. BAGGE (Denmark) agreed with the point of view expressed earlier in the meeting by the Delegate of Monaco. He considered that, since it was agreed that retained personnel should not be deemed prisoners of war, there was no point in keeping the first sentence of sub-paragraph (d).

Mr. AGATHOCLES (Greece) said that his Delegation, which had already tabled an amendment for the same purpose, proposed that the words "at least" be inserted in the second sentence of the second paragraph, after the word "benefit".

Mr. SWINNERTON (United Kingdom) explained that his Delegation had consistently maintained that medical personnel and chaplains in the hands of an enemy should be treated in the same way as prisoners of war and that any less protection than that provided in the Prisoners of War Convention was to the disadvantage of the persons concerned. He was not so much concerned about what they were called, but the manner in which they were treated was of great importance. The United Kingdom Delegation were of opinion that the wording adopted by the Drafting Committee was inadequate as it did not ensure that such personnel remained in the hands of the military authorities. Whilst understanding, but not agreeing with, the objection to calling them "prisoners of war", he did not understand why the wording of the Swiss amendment (*see Annex No. 33*) had been changed. This was exceedingly dangerous as it might be argued that use of the word "benefit" was intended to put medical and religious personnel under a special disciplinary regime. It would be clear from what he had said that the United Kingdom Delegation must vote against Articles 22 and 23, as in their present form they exposed medical and religious personnel to grave dangers. The United Kingdom Delegation would not, however, object to the special provisions contained in Article 22 as most of them had been taken from the United Kingdom amendment (*see Annex No. 32*).

Captain MELLEMA (Netherlands) expressed his appreciation of the excellent work done by the Drafting Committee. He was in favour of the proposals put forward by the Delegates of Denmark and Monaco.

He also suggested that in the English text of sub-paragraph (a), the word "military" should be placed before the word "laws".

Colonel CRAWFORD (Canada) observed that Chapter IV, as proposed by the Drafting Committee, was a remarkable compromise between conspicuously divergent points of view.

The Danish Delegation's proposal would, as experience had proved, be impossible to apply in practice. It was essential for medical personnel and chaplains to be subject to camp discipline.

He suggested that the wishes of the United Kingdom Delegation might be met by reverting to the wording of the second paragraph of Article 22 as it appeared in the Swiss amendment. The text would then read as follows:

"Personnel thus retained shall not be prisoners of war, but shall be treated in accordance with the provisions of..."

Colonel MEULI (Switzerland) supported the proposals put forward by the Delegates of Denmark and the Netherlands.

In reply to the Delegate of Canada, he said that the passage in question in the Swiss amendment had been intended to reconcile opposing points of view, but had not been accepted by the United Kingdom Delegation. It had, therefore, been modified to bring it closer to the 1929 text. But if the United Kingdom Delegation were now prepared to reverse their decision and accept the Swiss amendment, he would also be prepared to propose its acceptance, subject, however to the modifications introduced by the Drafting Committee.

The work entrusted to personnel of the medical services was of the greatest importance, and combatants had always understood that the duties incumbent upon such personnel placed them in a special position when taken prisoner. He quoted a passage from a book written by the Surgeon-General of the United States Army, showing the vital part played by the medical services of that country during the late war. At the same time he was certain that all medical personnel, even if trained for national service, would always act in a spirit of international charity.

The Swiss amendment in the form adopted by the Drafting Committee, though it might not be universally accepted, should at any rate satisfy the great majority of the delegations. He appealed to the United Kingdom Delegation to join that majority.

General JAME (France) also thought that the Drafting Committee's text, though it did not meet the wishes of the United Kingdom Delegation, should be supported by the majority of the Committee. Medical personnel enjoyed full liberty of movement on the battlefield but might fall into the hands of the enemy owing to the shifting of the

battle-front; it was not normal that some of them should, in such cases, be retained in captivity for the care of prisoners. It was right that it should be made perfectly clear that such personnel could not be regarded as prisoners of war. As regards their future status, which had still to be defined, he supported the latest proposal made by the Swiss Delegation; if that text were adopted, however, it would be necessary to add the words "at least", as suggested by the Delegate of Greece.

Mr. BURDEKIN (New Zealand) said that he had been instructed by his Government to support the proposal that captured medical personnel should become prisoners of war. The different points of view put forward had, however, been reconciled sufficiently to allow of their being embodied in a single text. Like the Canadian Delegate, he thought it best to reach agreement on the basis of the original Swiss amendment.

Major STEINBERG (Israel) also supported the proposals made by the Canadian and Swiss Delegations. It was essential to uphold the prestige of medical personnel; for in the all too frequent case of local conflicts that personnel fulfilled a very important role.

Colonel WATCHORN (Australia) also supported the Canadian proposal as amended. He would have preferred however that the last four words of the second paragraph of the Swiss amendment should be replaced by the last sentence of the opening sub-paragraph of the second paragraph of the Drafting Committee's text.

Colonel FALCON BRICENO (Venezuela) was in favour of the original Swiss amendment.

The CHAIRMAN put to the vote the Canadian proposal to replace the words "They shall nevertheless benefit by all the provisions of..." in the second paragraph of Article 22 (Drafting Committee's text) by the words "but shall be treated in accordance with the provisions of..."

The Canadian proposal was rejected by 14 votes to 12.

The CHAIRMAN proceeded to put to the vote the proposal made by the Delegation of Greece and supported by that of France, to insert the words "at least" after the word "benefit" in the second paragraph.

General JAME (France), interposing, said that he had only supported the Greek proposal subject to the Canadian proposal being adopted.

Mr. AGATHOCLES (Greece) maintained his proposal.

The Greek proposal was rejected by 9 votes to 7.

The CHAIRMAN put to the vote the Danish proposal that the first sentence of sub-paragraph (d) should be omitted.

The Danish proposal was rejected by 16 votes to 8.

The CHAIRMAN moved the adoption of the Netherlands proposal to place the word "military" before the word "laws" in the English text of sub-paragraph (a).

The Netherlands proposal was adopted.

The CHAIRMAN put the following Swiss proposals to the vote:

- 1) That the text of sub-paragraph (a) should be inserted between the second and third sentences of the second paragraph, the letter (a) being omitted.
- 2) That sub-paragraphs (b), (c) and (d) should consequently become sub-paragraphs (a), (b) and (c).
- 3) That sub-paragraph (e) should be made into an ordinary paragraph, the letter (e) being omitted.
- 4) That the word "Although" should be inserted at the beginning of sub-paragraph (d), and the whole sub-paragraph cast into a single sentence.
- 5) That the reference in the first paragraph should be to "Articles 19 and 20".

The Swiss proposals were adopted by 26 votes to 2.

The new Article 22 as adopted then read as follows:

"Personnel designated in Articles 19 and 20, who fall into the hands of the adverse Party, shall be retained only in so far as the state of health, the spiritual needs and the number of prisoners of war require.

"Personnel thus retained shall not be deemed prisoners of war. They shall nevertheless benefit by all the provisions of the Convention of . . . . relative to the treatment of prisoners of war. Within the framework of the military laws and regulations of the Detaining Power, and under the Authority of its competent service, they shall continue to carry out, in accordance with their professional ethics, their medical and spiritual duties on behalf of prisoners of war, preferably those of the armed forces to which they themselves belong.

"They shall further enjoy the following facilities for carrying out their medical or spiritual duties:

- (a) They shall be authorized to visit periodically the prisoners of war in labour units or hospitals outside the camp. The Detaining Power shall put at their disposal the means of transport required.
- (b) In each camp the senior medical officer of the highest rank shall be responsible to the military authorities of the camp for the professional activity of the retained medical personnel. To that end, from the outbreak of hostilities, the belligerents shall agree about the equivalence of the ranks of their medical personnel, including those of the societies designated in Article 20. In all questions arising out of their duties, this medical officer, and the chaplains, shall have direct access to the military and medical authorities of the camp who shall grant them the facilities they may require for correspondence relating to these duties.
- (c) Although retained personnel in a camp shall be subject to its internal discipline, they shall not be required to perform any work outside their medical or religious duties.

"During hostilities the belligerents shall make arrangements for relieving where possible retained personnel, and shall settle the procedure of such relief.

"None of the preceding provisions shall relieve the Detaining Power of the obligations imposed upon it with regard to the medical and spiritual welfare of the prisoners of war."

Put to the vote, Article 22 was adopted by 26 votes to 2.

Dr. PUYO (France) considered that Article 22 should lay down the rules governing the selection of those members of the medical personnel who were to be retained. Such a provision obviously went hand in hand with the stipulation that the Detaining Power was responsible for ensuring that prisoners of war received all necessary care. Medical specialists, who were seldom required in the camps, must be protected. If provision were not made to ensure their repatriation, they would not be sent to the front by the Medical Services, which would be to the detriment of the wounded. He therefore proposed the addition of a paragraph worded as follows :

"The choice of personnel to be retained shall be settled as far as possible by agreement

between the two Parties concerned, in accordance with the regulations settled at the beginning of hostilities and taking into account the need for specialists at the front."

He explained that the case for which his proposal made provision was not covered by Article 24.

Mr. STARR (United States of America) said that his Delegation were not prepared to vote on an amendment, the text of which was not in their hands. He thought the subject-matter of the amendment was covered by Article 24; that Article had already been adopted by the Committee on May 12th, and could not be further amended.

Dr. PUYO (France) replied that as the object of his proposal was to determine the choice of personnel to be repatriated, it clearly came under Article 22. He had had an opportunity, on the occasion of a recent visit of the Conference Delegates to the Swiss Medical Corps, of fully realizing the importance of providing for the repatriation of medical specialists.

The CHAIRMAN asked the French Delegation to submit their amendment in writing.

#### Article 22A

The text proposed by the Drafting Committee was as follows:

"If personnel designated in the second paragraph of Article 19 or personnel placed on the same footing in accordance with Article 20 fall into the hands of the enemy, they shall be prisoners of war but shall be employed on their medical duties in so far as the need arises."

General LEFEBVRE (Belgium), Rapporteur, said, first of all, that in the first sentence, the words "the second paragraph of Article 19" should read "Article 19A".

The Drafting Committee also suggested that the words "or personnel placed on the same footing in accordance with Article 20" should be omitted. Article 20 referred to personnel temporarily employed in a Red Cross unit. But as Article 19A stipulated that such personnel must be specially trained; they would automatically become members of the Red Cross and so be protected under Article 22. Persons who did not fulfil those conditions would be civilians, and would be protected by the Civilians Convention. The proposal to introduce a new Article 22A was in conformity with the Committee's similar decision in the case of Article 19; their intention

was to make a clear distinction between temporary and permanent personnel.

Article 22A was adopted with the above modifications.

#### Article 23

The text proposed by the Drafting Committee was as follows:

"Personnel whose retention is not indispensable by virtue of the provisions of Article 22 shall be returned to the belligerent to whom they belong, as soon as a road is open for their return and military requirements permit.

"Pending their return, they shall not be prisoners of war but shall enjoy all the provisions of the Convention of ..... concerning the treatment of prisoners of war. They shall continue to fulfil their duties under the orders of the adverse Party and shall preferably be engaged in the care of the wounded and sick of the belligerent in whose service they were.

"On their departure, they shall take with them the effects, personal belongings, valuables and instruments belonging to them."

General LEFEBVRE (Belgium), Rapporteur, said that the United Kingdom Delegate had made the same reservation regarding the words "shall not be prisoners of war" in the second paragraph as he had made in connection with Article 22.

The Swiss amendment (*see Annex No. 33*) provided that personnel awaiting repatriation should benefit by the provisions of Article 22 if employed, but if not employed, should only benefit by the provisions of the Prisoners of War Convention. That distinction was not made in the proposed text.

Mr. STARR (United States of America) thought that in the English text the wording of the first sentence of the second paragraph ("...but shall enjoy...", etc.) should be the same as the corresponding wording in Article 22.

The CHAIRMAN noted the United States Delegate's observation.

Dr. PUYO (France) suggested that a paragraph should be added to Article 23 specifying the conditions of maintenance and accommodation which must be accorded to medical personnel awaiting departure. Such a provision was contained in Article 13 of the 1929 Convention. There was no reason for omitting that provision, which might be included in the form in which it appeared in the fifth paragraph of Article 25 of the Stockholm text.

Colonel CRAWFORD (Canada) did not share that opinion. It was natural that medical personnel and chaplains who were carrying out their normal duties should enjoy special treatment; but it would be wrong to give special privileges to personnel who were being returned because they had nothing to do. Doctors could not be accorded privileges in such cases merely because they were doctors.

Dr. PUYO (France) agreed, but remarked that such medical personnel would certainly be called upon to perform their duties while awaiting repatriation.

The CHAIRMAN put to the vote the French Delegation's proposal to add a new paragraph to Article 23 incorporating the terms of the fifth paragraph of Article 25 of the Stockholm text.

The proposal was rejected by 10 votes to 2, and Article 23, as proposed by the Drafting Committee, was adopted.

#### Articles 24 and 25

The Stockholm wording of Articles 24 and 25 had already been adopted by the Committee.

The CHAIRMAN noted that Chapter IV of the Wounded and Sick Convention had therefore been adopted.

General LEFEBVRE (Belgium), Rapporteur, said that at the end of their amendment the Swiss Delegation had recommended that the whole of Chapter IV should be included in the Prisoners of War Convention. The Drafting Committee considered that it should be left to Committee II to decide on whether it should be included or not and, if included, what its form and its place in the Convention should be.

Mr. SWINNERTON (United Kingdom) said that his Delegation was still opposed to the repatriation of surplus personnel other than doctors, dentists and nurses. They remained unconvinced by the arguments put forward to justify such repatriation. He saw no reason why the personnel in question should be regarded as neutral; because if they were so regarded, they could be compelled to remain in enemy hands in order to look after enemy wounded and sick.

Mr. BURDEKIN (New Zealand) said that his Delegation, also, reserved its position in regard to the same two Articles 23 and 24.

*The meeting rose at 1.20 p.m.*

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## TWENTY-EIGHTH MEETING

*Thursday 16 June 1949, 10 a.m.*

*Chairman:* Mr. Ali Rana TARHAN (Turkey)

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### Report of the Drafting Committee on Chapter IV of the Maritime Warfare Convention (*continued*)

#### Article 30

General LEFEBVRE (Belgium), Rapporteur, stated that in the opinion of the Drafting Committee which had been instructed to bring the English text of the Article into line with the French version adopted by Committee I the change involved was one of substance. The French text

proposed by the Majority of the Drafting Committee said "pendant le temps où ils exercent leurs fonctions" (during the time they are carrying out their duties), whereas the English version was: "during the time they are in the service of the hospital ship". There was, therefore, a divergence between the two texts, to meet which the French and United Kingdom Delegations had submitted an amendment replacing the words in question by "pendant le temps où ils seront affectés au service de ces navires" in the French text, and by "during the time they are posted to these ships" in the

English. It was now up to the Committee to give a decision. The text proposed by the Drafting Committee was as follows:

“The religious, medical and hospital personnel of hospital ships and their crews shall be respected and protected; they may not be captured during the time they are in the service of the hospital ship, whether or not there are wounded and sick on board.”

Mr. SENDIK (Union of Soviet Socialist Republics) considered that the amendment in question amounted to a radical alteration of the text. Its adoption might have dangerous consequences. Thus, it would be enough for a member of the medical personnel to have served one day on a hospital ship for him to be able thereafter to claim protection under the Convention. He proposed that the text submitted by the Drafting Committee should be adopted.

Mr. STARR (United States of America) agreed.

The CHAIRMAN put the amendment submitted by the Delegations of France and of the United Kingdom to the vote.

The amendment was rejected by 11 votes to 6.

The CHAIRMAN then requested the Committee to decide between the two versions of the Article, French and English. He reminded the Committee that Article 30 in its French version had already been adopted on May the 12th and that the Drafting Committee had been asked to improve the English text. Consequently, if the Committee now decided to adopt the English text rather than the French, the decision could only be taken by a majority of two-thirds of the Delegations present.

To sum up, the Committee could either confirm their decision and ask that the English version should be a literal translation of the French, or else adopt the two versions as submitted, deciding that they expressed identical principles. A third solution would be for the Committee to reverse its decision and to adopt the English version, requesting that the French text should be a literal translation of the English.

After some discussion in which the CHAIRMAN took part, as well as Commander SMITH (Australia), Colonel CRAWFORD (Canada), Dr. PUYO (France), Captain MELLEMA (Netherlands), Mr. SENDIK (Union of Soviet Socialist Republics), Mr. STARR (United States of America), Mr. SWINNERTON (United Kingdom), Colonel FALCON BRICENO (Venezuela) and General LEFEBVRE (Belgium), the Committee decided by 18 votes to 6—26 Delegations being present—to reverse its decision and to adopt the English version, requesting that the

French text should be brought into line with the English.

The wording adopted was “pendant le temps où ils sont au service de ces navires” (in English: “during the time they are in the service of the hospital ship”).

### Article 31

The text proposed by the Drafting Committee was as follows:

“The religious, medical and hospital personnel assigned to the medical or spiritual care of the persons designated in Articles 11 and 11A shall, if they fall into the hands of the enemy, be respected and protected; they may continue to carry out their duties as long as this is necessary for the care of the wounded and sick. They shall afterwards be sent back as soon as the Commander-in-Chief, under whose authority they are, considers it practicable. They may take with them, on leaving the ship, their personal property.

If, however, it proved necessary to retain some of this personnel owing to the medical or spiritual needs of prisoners of war, everything possible shall be done for their earliest possible landing.

Retained personnel shall be subject, on landing, to the provisions of the 1949 Geneva Convention for the Relief of the Wounded and Sick in Armed Forces in the Field.”

General LEFEBVRE (Belgium), Rapporteur, explained that the Drafting Committee had been desirous of providing a clearer definition of the personnel mentioned in the first paragraph of the Stockholm text and had therefore specified that the personnel in question was that assigned to the medical or spiritual care of the persons designated in Articles 11 and 11A. Personnel not covered by this provision would come under the protection of the Civilians Convention.

Further, the words “sent back” in the second sentence of the first paragraph had been substituted for the word “leave” which appeared in the 1929 Convention; this change implied that it devolved on the captor State to provide for the return of personnel sent back.

The second paragraph laid down that some of the personnel could be retained on board, but for as short a time as possible.

The third paragraph laid down that such personnel would be subject, as soon as they landed, to the provisions of the Wounded and Sick Convention. If that last paragraph were adopted the two following Articles (32 and 33) could be omitted.

Captain MELLEMA (Netherlands) suggested that the Article should say to whom the personnel in question were to be returned, and that the words "to the belligerent on whom they depend" should therefore be inserted in the second sentence of the first paragraph.

The proposal was rejected by 12 votes to 3.

Article 31, as proposed by the Drafting Committee, was adopted.

### Article 32

General LEFEBVRE (Belgium), Rapporteur, explained that the Drafting Committee had considered it useless to repeat at this point the corresponding Articles of the Wounded and Sick Convention. The reference to that Convention in the last paragraph of Article 31 was all that was required. He proposed, therefore, that Articles 32 and 33 be simply omitted.

The omission of Article 32 was approved.

### Article 33

The CHAIRMAN reminded the meeting that Article 33 had already been adopted by the Committee on May the 12th. Its omission could only, therefore, be decided upon by a majority of two-thirds of the Delegations present.

The omission of Article 33 was decided upon by 19 votes to nil, with 2 abstentions, 26 Delegations being present.

### Consideration of the Amendment submitted by the Delegation of the Union of Soviet Socialist Republics to Article 22 of the Maritime Warfare Convention

The Soviet Delegation had tabled an amendment reintroducing Article 22 of the Maritime Warfare Convention which the Committee had decided on May the 9th to omit.

Mr. SENDIK (Union of Soviet Socialist Republics) reminded the meeting that when Article 28 of the Maritime Warfare Convention was discussed, the Committee, considering that the rights already enjoyed by hospital ships should not be abused, had rejected an amendment submitted by the United Kingdom proposing the omission of the Article in question. Unfortunately the Committee had not followed the same principle when it adopted—it is true by a very small majority—the United Kingdom amendment proposing the

omission of Article 22. That decision opened the door to abuses. A Power might withdraw all its vessels from a besieged port by notifying them as hospital ships. It might even endanger the safety of the wounded and sick. His Delegation therefore requested that the previous decision should be reversed and Article 22 reinstated in the Convention.

Mr. SWINNERTON (United Kingdom) reminded the Committee of the views submitted by his Delegation. The abuses feared by the Delegation of the Union of Soviet Socialist Republics were hardly likely to arise. It was not easy to transform any kind of vessel into a hospital ship and the besieging Power could always exercise its right of inspection. On the other hand, if Article 22 were retained, a genuine hospital ship might be held up and prevented from pursuing its errand of mercy. The immunity of hospital ships depended solely on the fact that they were hospital ships. He therefore urged that the decision regarding the deletion of the Article be maintained.

Captain MELLEMA (Netherlands) was of the opinion that the Article might be retained if it began with the words "Unless by local agreement between the belligerents".

A vote being taken, there were 11 votes in favour of the Soviet Amendment, 8 against it, with 7 abstentions.

The necessary majority of two-thirds not being obtained the amendment was rejected.

### Consideration of the Amendment submitted by the Delegation of Belgium proposing the inclusion of a new Article in the Wounded and Sick Convention

The Delegation of Belgium had tabled an amendment proposing the inclusion of a new Article in the Convention, similar to that contained in Article 4 of the Prisoners of War and Civilians Conventions. It read as follows:

"The present Convention shall apply to the persons protected from the time they fall into the hands of the adverse Party, and until their final repatriation."

General LEFEBVRE (Belgium) pointed out that at their last meeting the Committee had adopted the provisions regarding the status and treatment of medical personnel, which implied that they agreed that those provisions should be included in the Wounded and Sick Convention. The other Conventions specified in a special Article the period of time during which protected persons

were entitled to the status provided for and it seemed to him that a similar Article should be included in the Wounded and Sick Convention. The wording proposed was that suggested by the International Committee of the Red Cross in its pamphlet "Remarks and Proposals". He thought that the new Article should for preference be placed not after but immediately before Article 3.

Mr. PICTET (International Committee of the Red Cross) supported the proposal. He pointed out that both the second paragraph of Article 83 and the third paragraph of Article 96 of the 1929 Convention relative to the treatment of prisoners of war, provided that the latter should enjoy protection until they had been released and repatriated.

A provision similar to Article 4 of the Draft Prisoners of War Convention, which laid down the above principle, had not been included in the Draft Wounded and Sick Convention submitted at Stockholm, because it had been presumed at the time that the wounded and sick, being prisoners of war, would be covered by the Prisoners of War Convention and that the same thing would apply to medical personnel. It had been thought that such personnel would be given prisoner of war status.

The Stockholm Conference had, however, decided that members of the medical personnel should not be considered as prisoners of war, and the Committee had agreed with that view. It therefore appeared logical that the Wounded and Sick Convention should also contain an Article laying down that the Convention would be applicable to persons protected by it until their final repatriation.

Mr. BURDEKIN (New Zealand) failed to see any point in the proposal. It was clear that medical personnel retained their special status throughout, but the Convention only protected the wounded and sick until their recovery. He did not see why it should be necessary to lay down that the Wounded and Sick Convention applied to them until they were repatriated.

Mr. STARR (United States of America) approved the principle of the amendment but considered that the case was covered by Article 22 which gave retained personnel all the rights provided for in the Prisoners of War Convention.

Mr. SWINNERTON (United Kingdom) did not think that the amendment was acceptable unless it referred to retained medical personnel who were not prisoners of war. But even then there were other provisions in the Convention which could be applied to such personnel.

Mr. PICTET (International Committee of the Red Cross) stressed the importance of the provision in the Prisoners of War Convention which laid down that captured persons would continue to enjoy protection under that Convention as long as they were deprived of their liberty; the fact that that provision did not appear in the 1929 text had been keenly felt at the end of the last war. In order to be methodical and in order that the general Articles should be identical in all the Conventions, it had seemed desirable that the provision referred to should also be included in the Wounded and Sick Convention. It should not be forgotten that some Powers might not sign the Prisoners of War Convention. The proposed text could no doubt be improved, and if the Committee agreed to it in principle the Drafting Committee might be asked to decide how the provision should be worded and where it should be placed in the Convention, unless it was considered to be covered by implication by Article 22.

Mr. STARR (United States of America) supported the above proposal. He observed, however, that if one of the privileges of prisoners of war to which medical personnel were also entitled, was specifically mentioned in the Wounded and Sick Convention, that must not be allowed to convey the impression that they were entitled only to the privileges enumerated in that Convention. If such an impression were given, Article 22 would be weakened.

Mr. BURDEKIN (New Zealand) said that after having heard the explanation given by the Representative of the International Committee of the Red Cross, he saw no objection in principle to the Belgian Delegate's proposal. He thought, however, that the terms in which the amendment was worded were too general.

The CHAIRMAN called for a vote on the principle of the Belgian amendment.

The amendment was adopted in principle by 18 votes to 1, with 6 abstentions, the Drafting Committee being asked to improve its wording.

### **Report of the Drafting Committee on Articles 16, 17 and 18 of the Wounded and Sick Convention**

#### **Article 16**

The text proposed by the Drafting Committee read as follows:

"The protection to which fixed establishments and mobile hospital units of the Medical Service are entitled shall not cease unless they are used to commit, outside their humanitarian

duties, acts harmful to the enemy. Protection may, however, cease only after due warning naming a reasonable time limit, which warning has remained unheeded."

General LEFEBVRE (Belgium), Rapporteur, reminded the meeting (*see Summary Record of the Seventh Meeting*) that as the result of an Australian amendment, the Drafting Committee had been instructed to insert the wording adopted for Article 15 at the beginning of Article 16. Article 15 had been referred to a Working Party whose report had only quite recently been discussed by Committee I. The final conclusions of the Committee were now known and called for the following modifications of the text of Article 16, as proposed by the Drafting Committee. The words "formations médicales" were to be replaced by the words "formations sanitaires" in the French text, and in the English text the words "medical units" would be substituted for the words "hospital units".

The Drafting Committee had also had to consider the Indian Delegation's suggestion that the words "unless they" should be replaced by the words "unless it is established that they". The Drafting Committee had not considered that the latter alteration was desirable.

The Drafting Committee had also been requested to see whether the United Kingdom amendment proposing the replacement of the words "not compatible with their humanitarian duties" by the words "harmful to the enemy", was acceptable. The Drafting Committee had adopted a compromise solution and suggested that the proposed amendment, instead of replacing the Stockholm text, should be added to it. In conclusion, he reminded the Committee that they had reserved the right to reconsider the phrase "naming a reasonable time limit".

Mr. SWINNERTON (United Kingdom) agreed with the Drafting Committee's proposal concerning his Delegation's amendment. As regards the term "a reasonable time limit", his Delegation had prepared an amendment which would be distributed. His Delegation suggested that the words "in all appropriate cases" should be inserted after the word "naming", in order that it should be left to the discretion of commanders to decide whether a time limit should be named and how long it should be.

Colonel CRAWFORD (Canada) observed that if the reference to a "reasonable time limit" were to be omitted, as proposed in the first United Kingdom amendment, the provision would not in fact be weakened.

The CHAIRMAN called for a vote on the proposal to omit the reference to a reasonable time limit.

The proposal was rejected by 13 votes to 8 with 4 abstentions.

The CHAIRMAN put to the vote the proposal to insert the words "in all appropriate cases".

The proposal was adopted by 19 votes to 1, with 5 abstentions.

Article 16, as proposed by the Drafting Committee and thus amended, was adopted.

#### Article 17

General LEFEBVRE (Belgium), Rapporteur, said that at the request of the Belgian Delegation, the Drafting Committee had been instructed to insert the words "or by an escort" in that Article. He proposed that the words in question should be added at the end of sub-paragraph (2), after the words "by sentries".

Article 17, thus amended, was adopted.

#### Article 18

The Drafting Committee proposed the following wording for that Article:

"In time of peace, the Contracting Parties and, after the outbreak of hostilities, the Parties thereto, may establish in their own territory and, if the need arises, in occupied areas, zones and localities so organized as to protect the wounded and sick from the effects of war.

"Upon the outbreak and during the course of hostilities, the Parties concerned may conclude agreement on mutual recognition of the zones and localities they have created. They may for this purpose implement the provisions of the Draft Agreement annexed to the present Convention, with such amendments as they may consider necessary.

"The Protecting Powers and the International Committee of the Red Cross are invited to lend their good offices in order to facilitate the institution and recognition of these hospital zones and localities."

General LEFEBVRE (Belgium), Rapporteur, said that the Drafting Committee had been instructed to eliminate the notion of compulsion from this Article. The second paragraph had, in consequence, been modified.

Article 18 was adopted as proposed by the Drafting Committee.

*The meeting rose at 1 p.m.*

TWENTY-NINTH MEETING

Monday 20 June 1949, 10 a.m.

Chairman: Mr. Ali Rana TARHAN (Turkey)

**Report of the Drafting Committee on Articles 26, 32, 33, 33A, 36, 37 and 37A of the Wounded and Sick Convention.**

**Article 26**

The Drafting Committee proposed the following text:

"The material of mobile medical establishments of the armed forces which falls into the hands of the enemy, shall be retained for the care of wounded and sick.

"The buildings, material and stores of fixed medical establishments of the armed forces shall remain subject to the laws of war, but may not be diverted from their purpose as long as they are required for the care of wounded and sick. Nevertheless, the commanders of forces in the field may make use of them in case of urgent military necessity, provided that they make previous arrangements for the welfare of the wounded and sick who are nursed in them.

"The material and stores defined in the present Article shall not be intentionally destroyed."

General LEFEBVRE (Belgium), Rapporteur, reminded the meeting that the Working Party entrusted with the consideration of Article 26, had proposed that the words "of the armed forces" should be introduced in the first and second paragraphs. The proposal had been accepted by the Drafting Committee. The latter had further replaced the words "lorsque celles-ci" in the first paragraph of the French text by the words "lorsque ces formations" in order to make the text clearer.

Article 26 was adopted as proposed.

Mr. SWINNERTON (United Kingdom) made certain formal reservations on the subject of mobile medical units.

**Article 32**

The text submitted by the Drafting Committee read as follows:

"In the absence of orders to the contrary from the competent military authority, the emblem shall be displayed on the flags, armlets and on all equipment employed in the Medical Service."

General LEFEBVRE (Belgium), Rapporteur, said that the Australian Delegation had submitted an amendment in order to eliminate the apparent contradiction in the Stockholm text between the imperative form of the words "shall be displayed" and the words "with the permission of". After consideration, the Drafting Committee had adopted the Australian amendment.

Article 32 was adopted in the form proposed.

**Article 33**

The text proposed by the Drafting Committee read as follows:

"In addition to the identity disc mentioned in Article 13, the personnel designated in Article 19 and in Articles 20 and 21 shall wear, affixed to the left arm, a water-resistant armlet bearing the distinctive emblem, issued and stamped by the military authority.

"Such personnel shall also carry a special identity card bearing the distinctive emblem. This card shall be water-resistant and of such size that it can be carried in the pocket. It shall be worded in the national language, shall mention at least the full name, the date of birth, the rank and the service number of the bearer, and shall attest in what capacity he is entitled to the protection of the present Convention. The card

shall bear the photograph of the owner and also either his signature or his finger-prints or both. It shall be embossed with the stamp of the military authority.

"The identity card shall be uniform throughout the same armed forces and, as far as possible, of a similar type in the armed forces of the Contracting Parties. The belligerents may be guided by the model which is annexed, by way of example, to the present Convention. They shall inform each other, at the outbreak of hostilities, of the model they are using. Identity cards should be established, if possible, at least in duplicate, one copy being kept by the home country.

"In no circumstances may the said personnel be deprived of their insignia or identity cards nor of the right to wear the armlet. In case of loss, they shall be entitled to have duplicates of the cards and to have the insignia replaced."

General LEFEBVRE (Belgium), Rapporteur, said that the reference to the identity disc in the first paragraph had been inserted by the Drafting Committee, the latter having considered that the identity disc should be mentioned in Article 33, and not in Articles 20 and 21, which dealt with Red Cross Societies. The Drafting Committee had brought the French and English texts into line as regards the size of the identity card, and had specified the particulars which should appear on it. Further, it had added the words "at least" before the words "in duplicate" in the third paragraph.

Mr. SWINNERTON (United Kingdom) proposed that chaplains should also be mentioned in the title of Article 33.

Mr. PICTET (International Committee of the Red Cross) felt that identity discs should be mentioned, not in the first paragraph, but in the second after the words "Such personnel". It would be more natural for the Article to begin by mentioning armlets.

General LEFEBVRE (Belgium) thought that the Drafting Committee would agree to that proposal.

The CHAIRMAN proposed, therefore, that the words "in addition to the identity disc mentioned in Article 13" should be moved from the first paragraph and placed after the words "Such personnel" at the beginning of the second paragraph.

Article 33, as proposed by the Drafting Committee and thus amended, was adopted.

### Article 33A

The wording proposed by the Drafting Committee was as follows:

"The personnel designated in Article 19A shall wear, only while carrying out medical duties, a white armlet bearing in its centre the distinctive sign but of small dimensions; the armlet shall be issued and stamped by the military authority.

"The military identity document borne by this type of personnel shall specify what special training they have received, the temporary character of the duties they are engaged upon, and that they have the right to bear the armlet."

General LEFEBVRE (Belgium), Rapporteur, pointed out that the above provisions, which related to temporary medical personnel, had been removed from Article 33 and formed into a new Article. The procedure adopted was similar to that followed in the case of Articles 19 and 19A, 22 and 22A. As the personnel referred to had to be given a special sign for their protection, the Drafting Committee had decided not to adopt a new sign but to retain the Red Cross (Red Crescent, Red Lion and Sun), stipulating however, that the badge must be small.

Again, the Committee had not contemplated introducing a special identity card for such personnel, but proposed instead that a special entry should be made in the identity papers carried by temporary personnel.

Colonel CRAWFORD (Canada) proposed that the word "document" in the second paragraph of the English text should be in the plural.

The proposal was approved.

Article 33A was adopted, the English text being amended as above.

### Article 36

The text proposed by the Drafting Committee was as follows:

"With the exception of the cases mentioned in the last three paragraphs of the present Article, the emblem of the Red Cross on a white ground and the words "Red Cross" or "Geneva Cross" may not be employed, either in time of peace or in time of war, except to protect or to indicate the medical units and establishments, the personnel and material protected by the present Convention and other Conventions dealing with similar matters. The same shall apply to the emblems mentioned in the second paragraph of Article 31, in respect of the countries

which use them. The National Red Cross Societies and other societies designated in Article 20 shall have the right to use the distinctive emblem of the Red Cross conferring the protection of the Convention only within the framework of the present paragraph.

“On the other hand, National Red Cross (Red Crescent, Red Lion and Sun) Societies may, in time of peace, in accordance with their national legislation, make use of the name and emblem of the Red Cross for their other activities which are in conformity with the principles laid down by the International Red Cross Conferences. When those activities are carried out in time of war, the conditions for the use of the emblem shall be such that it cannot be considered as conferring the protection of the Convention; the emblem shall be comparatively small in size and may not be placed on armlets or on the roofs of buildings.”

(The third paragraph was referred back to Committee I for further consideration.)

“As an exceptional measure, in conformity with national legislation and with the express permission of one of the National Red Cross (Red Crescent, Red Lion and Sun) Societies, the emblem of the Convention may be employed in time of peace to identify vehicles used as ambulances and to mark the position of first aid stations exclusively assigned to the purpose of giving free treatment to the wounded or sick.”

General LEFEBVRE (Belgium), Rapporteur, pointed out that a correction was required in the text; the words “distinctive emblem of the Red Cross” in the last sentence of the first paragraph should merely read “distinctive emblem”.

The first paragraph governed the use of the protective sign; the second paragraph dealt with the use of the emblem by National Red Cross Societies for their other activities in time of peace and in time of war. The Drafting Committee had decided not to specify the dimensions of the emblem when used in time of war.

In the last paragraph it had been thought necessary to replace the word “ambulance” by the words “vehicles used as ambulances”.

The third paragraph, which corresponded to the fourth paragraph of the Stockholm text, read as follows:

“The international Red Cross organizations and their duly authorized personnel shall be similarly permitted to make use, at all times, of the emblem of the Red Cross on a white ground”.

It had been referred back to Committee I for the following reasons: (1) The English term “similar-

ly” and the French word “également” were not identical in meaning; (2) The Delegation of the United States of America was unable to accept the United Kingdom amendment to the paragraph (*see Annex No. 45*); (3) The paragraph contained no specific reference to the International Committee of the Red Cross.

There appeared to be three possible solutions; the international Red Cross organizations might be given the right to make use of the emblem in all circumstances; they might be authorized to make use of it only in connection with those of their activities which came within the scope of the Convention; or, alternatively, only one or other of those organizations might be given the right to make use of the emblem in connection with all its activities in time of war.

Major STEINBERG (Israel) reminded the meeting of the amendment tabled by the Delegation, which proposed the introduction of a new paragraph worded as follows:

“The principles set forth in the previous paragraphs 3, 4 and 5 shall also apply to voluntary welfare societies which bear one of the emblems provided for in Article 31, second paragraph, of the present Convention.”

The purpose of the proposal was to make co-ordination with Article 31 easier, in case the Plenary Assembly should accept Israel's request that mention of the Red Shield of David be added to the latter Article.

Mr. DE ROUGÉ (League of Red Cross Societies), said that the point under discussion was of the greatest interest to the League of Red Cross Societies.

Indeed, it touched upon one very important aspect of the League's work, namely, its role in time of war, as laid down by its own Statutes and by those of the International Red Cross.

The International Red Cross Conferences, more especially that of Stockholm, had made the League responsible for maintaining contact between Red Cross Societies in time of war; it was therefore essential to be able to protect League Delegates.

Moreover, the League might be called upon to give relief to civilian populations in time of war; that involved crossing fighting zones and carrying out relief work in regions where hostilities might suddenly break out, as might have been the case in connection with the work which the League was carrying out in the Near East at the request of the United Nations.

If the League were not allowed to enjoy the protection of the Red Cross emblem, its whole

activity would be paralyzed. That would be extremely serious for the great masses of the populations who were victims of war and whose protection was the very object of the Convention.

The League therefore recommended that the Committee should adopt for the third paragraph of Article 36, the wording of the fourth paragraph of the text approved at Stockholm.

Mr. SWINNERTON (United Kingdom) drew attention to the amendment tabled by his Delegation which proposed that the following words should be substituted for the fourth paragraph of the Stockholm text:

“The International Committee of the Red Cross and its duly authorized personnel shall be similarly permitted to make use, at all times, of the emblem of the Red Cross on a white ground. In war time, other organizations of the International Red Cross shall conform to the restrictions imposed in the (new) third paragraph of this Article.”

The sole object of the United Kingdom amendment was to enable the International Committee of the Red Cross to use the emblem at all times. On the other hand, the United Kingdom Delegation was not in favour of allowing all international Red Cross organizations to make the same use of the emblem. If that were permitted his Delegation would propose that its use be strictly limited to activities coming within the scope of the Convention, in the case of the International Committee of the Red Cross as well as in that of the other organizations. The Stockholm text could then be accepted, subject to the omission of the words “at all times”.

As to the word “similarly” to which the Rapporteur of the Working Party had drawn attention, he (Mr. Swinnerton) was perfectly satisfied with it.

Mr. STARR (United States of America) agreed with the United Kingdom Delegate on the last point.

Mr. PICTET (International Committee of the Red Cross) explained that the Stockholm text, which the I.C.R.C. supported, accorded international Red Cross organizations the right to use the emblem without any restrictions. Since then, the United Kingdom Delegation had submitted an amendment which placed the I.C.R.C. in a still more favourable position. Now, however, they were confronted with yet another text restricting the use of the emblem by the I.C.R.C.

The Stockholm Conference had recognized that the I.C.R.C. needed the Red Cross emblem, quite apart from its duties in connection with the Wounded and Sick Convention, which repre-

sented a comparatively small part of the activities of the Red Cross. For example, the Central Prisoners of War Agency, which possessed millions of files — documents which were frequently unique and irreplaceable — had been protected by having the emblem painted on the roof of its premises after Geneva had by an error been bombed from the air. Moreover, the I.C.R.C. Delegates were frequently required to cross the front lines and therefore required the protection of the Red Cross emblem. The same applied to the vehicles — lorries, wagons and boats — which had transported immense quantities of relief supplies for prisoners of war during the last war.

In conclusion, the Representative of the International Committee of the Red Cross proposed that the French wording of the Stockholm text should be adopted, i.e. including the word “égale-ment”.

Mr. DE ROUGÉ (League of Red Cross Societies) agreed with the Representative of the International Committee of the Red Cross. He once again emphasized the fact that the activities of the League in the Near East would have been paralyzed if it had been unable to use the emblem.

Mr. BOUTROV (Union of Soviet Socialist Republics) said that his Delegation was in favour of the French version of the fourth paragraph of the Stockholm text.

Mr. SWINNERTON (United Kingdom) said that he could agree to full use being made of the emblem by international Red Cross organizations provided such use was in conformity with the provisions of the Wounded and Sick Convention. It seemed reasonable that the same provisions should apply to International bodies as were applied in the first two paragraphs to National Red Cross Societies. The United Kingdom Delegation had confidence in the International Committee of the Red Cross, and relied on that body only to make legitimate use of the emblem.

In conclusion, he proposed that the words “at all times” should be omitted from the Stockholm text, and the word “similarly” replaced by the words “in conformity with the preceding paragraphs”.

Mr. DE RUEDA (Mexico) favoured the French wording of the fourth paragraph of the Stockholm text. He feared that the insertion of a reference to the preceding paragraphs might restrict the use of the emblem.

Colonel FALCON BRICENO (Venezuela) was also in favour of the French wording of the Stockholm text and against the omission of the words “at all times”.

Colonel RAO (India) agreed with the United Kingdom Delegation. It was essential to state clearly that it was only the activities covered by the Convention which could be protected by the emblem. The Indian Delegation intended to submit a Draft Resolution drawing a clear distinction between the protective emblem and the distinctive emblem.

The CHAIRMAN proposed to begin by taking a vote on the proposal to introduce a restriction on the Stockholm text.

Mr. SWINNERTON (United Kingdom) would have preferred that a vote should first be taken on the principle of the United Kingdom amendment.

After some discussion it was decided to vote first on the United Kingdom amendment which proposed on the one hand, to mention only the International Committee of the Red Cross, and on the other, to limit the use which that organization could make of the emblem.

The United Kingdom amendment was rejected by 20 votes to 4, with 2 abstentions.

The CHAIRMAN then proposed to take a vote on the fourth paragraph of the Stockholm text.

General LEFEBVRE (Belgium) proposed that the words "également" in the French text and "similarly" in the English version should be omitted.

Dr. PUYO (France) and Colonel CRAWFORD (Canada) seconded the above proposal.

Mr. SWINNERTON (United Kingdom) reminded the Committee that he had proposed that the words "at all times" be deleted from the Stockholm text as well as the word "similarly".

The CHAIRMAN pointed out that, by its vote, the Committee had rejected any proposal the effect of which would be to restrict the scope of the provision.

Mr. SWINNERTON (United Kingdom) thought there was some misunderstanding. The purpose of the United Kingdom amendment was, first, to grant to the International Committee of the Red Cross the full use of the emblem and, secondly, to restrict its use by other International Red Cross organizations. The vote just taken had resulted in the rejection of the idea of imposing any restriction on the use of the emblem by the

International Committee of the Red Cross. Therefore the second part of the United Kingdom proposal remained to be considered, i.e. the proposal to omit the words "at all times" from the Stockholm text.

The above proposal was rejected by 19 votes to 3, with 5 abstentions.

The CHAIRMAN then took a vote on the paragraph as worded in the Stockholm text, with the omission of the words "également" in the French text and "similarly" in the English version.

The Stockholm text, as above amended, was adopted by 23 votes to 1, with 3 abstentions.

Mr. SWINNERTON (United Kingdom) made certain reservations on behalf of his Delegation. He formally proposed that the words "in conformity with the preceding paragraphs" should be added to the third paragraph (i.e. to the fourth paragraph of the Stockholm text).

A vote was taken on the United Kingdom proposal which was rejected by 17 votes to 3, with 3 abstentions.

The CHAIRMAN then put the amendment tabled by the Delegation of Israel to the meeting.

After a discussion in which the CHAIRMAN, General LEFEBVRE (Belgium), and Major STEINBERG (Israel) took part, Mr. PICTET (International Committee of the Red Cross) pointed out that if the Plenary Assembly adopted the proposal to include the Red Shield of David in the Wounded and Sick Convention as an emblem conferring protection, all the necessary changes in the Convention would be made automatically.

Major STEINBERG (Israel) declared that if the Delegations all agreed with what the Chairman and the Expert of the International Committee of the Red Cross had just said, his Delegation would be prepared to withdraw its amendment.

Article 36, as proposed by the Drafting Committee and subsequently amended, was adopted.

### Article 37

The text proposed by the Drafting Committee is reproduced in Annex No. 47:

General LEFEBVRE (Belgium), Rapporteur, said that the Drafting Committee had divided the old

Article 37 into two separate Articles. The first paragraph of the original text formed Article 37; the second paragraph, which dealt with an entirely different question, became Article 37A.

Article 37, as proposed by the Drafting Committee, was adopted.

### Article 37A

The text proposed by the Drafting Committee read as follows:

“In no case shall reprisals be taken against the wounded, sick, buildings, personnel or equipment protected by the Convention.”

General LEFEBVRE (Belgium), Rapporteur, pointed out that the Drafting Committee had failed to make a drafting change suggested by the Australian Delegation, which consisted in placing the word “personnel” between the words “sick” and “buildings”. (*See Summary Record of the Twentieth Meeting*).

Article 37A, as proposed by the Drafting Committee and thus amended, was adopted.

### Report of the Drafting Committee on Article 3, 41 and 41A of the Maritime Warfare Convention.

#### Article 3

The text proposed by the Drafting Committee read as follows:

“In case of hostilities between land and naval forces of belligerents, the provisions of the present Convention shall apply only to forces on board ship.

“Forces put ashore shall immediately become subject to the provisions of the Geneva Convention (date .....) for the Relief of Sick and Wounded in Armed Forces in the Field.”

General LEFEBVRE (Belgium), Rapporteur, said that the Drafting Committee had been instructed to ascertain whether the words “forces on board ship” applied to all the categories of persons covered by Article 3 of the Prisoners of War Convention. Although it was not yet known what decision Committee II had taken on Article 3, it was nevertheless known that merchant seamen, the persons principally affected, would be included among those specifically mentioned in it. The words “forces on board ship” appeared, therefore, to be adequate.

On the other hand, if the Articles were to retain their headings, that of Article 3 should be “Field of application” rather than “Obligatory character”.

Mr. SWINNERTON (United Kingdom) pointed out that in the United Kingdom merchant seamen would not be covered by the expression “forces on board ship”, and consequently the words “personnel on board ship” would be preferable. Besides, shipwrecked persons of all kinds picked up at sea were also entitled to protection.

He proposed that the categories of persons whom it was desired to protect namely those which were to be mentioned in Article 11A—should be enumerated in Article 3.

Captain IPSEN (Denmark) supported the United Kingdom proposal.

Colonel CRAWFORD (Canada) observed that Article 11A, which corresponded to Article 3 of the Prisoners of War Convention, would enumerate the categories of persons to whom the Convention applied, whereas Article 3 restricted the application of the Convention to persons on board ship. He suggested that the Drafting Committee should be instructed to amalgamate the two provisions into a single new Article.

Dr. PUYO (France) did not think that the proposed enumeration would serve any useful purpose since the same enumeration would in any case appear in Article 11A. On the other hand, if in some countries merchant seamen were not covered by the phrase “forces on board ship”, they nevertheless remained under the protection of the XIth Hague Convention. He thought the Article as proposed was satisfactory and could be accepted.

Mr. SENDIK (Union of Soviet Socialist Republics) said that Article 3, the Stockholm wording of which had already been adopted by the Committee on April 27th, had been referred to the Drafting Committee for drafting modifications only, and those only in the event of the United Kingdom amendment to Article 11 being accepted. That amendment had been rejected; there was therefore no point in altering Article 3.

The CHAIRMAN then took a vote on the Canadian proposal to instruct the Drafting Committee to amalgamate Articles 3 and 11A in a new Article.

The proposal was rejected by 14 votes to 5, with 6 abstentions.

The CHAIRMAN then took a vote on the United Kingdom proposal to replace the words “to forces on board ship” by the words “to personnel on board enumerated in Article 11A”.

The proposal was rejected by 14 votes to 4, with 7 abstentions.

Article 3, as proposed by the Drafting Committee, was adopted.

#### Article 41

The text proposed by the Drafting Committee was as follows:

“Each belligerent, acting through its commanders-in-chief, shall ensure the detailed execution of the preceding Articles, and provide for unforeseen cases, in conformity with the general principles of the present Convention.”

General LEFEBVRE (Belgium), Rapporteur, pointed out that Article 41 was similar to Article 37 of the Wounded and Sick Convention which had just been adopted by the Committee.

Article 41, as proposed by the Drafting Committee, was adopted.

#### Article 41A

The text proposed by the Drafting Committee was as follows:

“In no case shall reprisals be taken against the wounded, sick and shipwrecked persons, the vessels, personnel or equipment protected by the Convention.”

General LEFEBVRE (Belgium), Rapporteur, said that the same correction which had been agreed to for Article 37A of the Wounded and Sick Convention would have to be made to Article 41A, which was similar.

Consequently, the word “personnel” would have to be moved from its present position and placed between the words “shipwrecked persons” and “vessels”.

Article 41A, as proposed by the Drafting Committee and thus amended, was adopted.

*The meeting rose at 1.15 p.m.*

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### THIRTIETH MEETING

*Tuesday 21 June 1949, 10 a.m.*

*Chairman: Mr. Ali Rana TARHAN (Turkey)*

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#### Announcement by the Chairman

The CHAIRMAN announced that the Chairman of Committee II had requested that a representative of Committee I should attend the meetings of the Special Committee of Committee II at which the United Kingdom amendment relating to Articles 19, 22, 23 and 24 of the Wounded and Sick Convention, and 19A, 24, 28A, 30, 30A, 99A and 115 of the Prisoners of War Convention, was to be considered; this representative would inform the Special Committee of the decisions taken by Committee I. The Chairman added that he had asked General Lefèbvre (Belgium), Rapporteur, to undertake the duty.

He also stated that the International Confederation of Christian Trade Unions, in a letter to the President of the Conference, had asked that the divine origin of man should be referred to in the Conventions. This letter was available to Delegates.

#### WOUNDED AND SICK CONVENTION

#### Article 29

The text proposed by the Drafting Committee read as follows:

“Hospital aircraft, that is to say, aircraft exclusively employed for the removal of wounded and sick and for the transport of medical personnel and equipment, shall not be attacked, but shall be respected by the belligerents, while flying at heights, times and on routes specifically agreed upon between the belligerents concerned.

“They shall bear, clearly marked, the distinctive emblem prescribed in Article 31, together with their national colours, on their lower, upper and lateral surfaces. They shall be provided with any other markings or means of identification that may be agreed upon between

the belligerents upon the outbreak or during the course of hostilities.

“Unless agreed otherwise, flights over enemy or enemy-occupied territory are prohibited.

“Hospital aircraft shall obey every summons to land. In the event of a landing thus imposed, the aircraft with its occupants may continue its flight after examination, if any.

“In the event of an involuntary landing in enemy or enemy-occupied territory, the wounded and sick, as well as the crew of the aircraft shall be prisoners of war. The medical personnel shall be treated according to Article 19 and following.”

General LEFEBVRE (Belgium), Rapporteur, reminded the meeting that on May 13th the Committee had adopted amendments submitted by the United States and United Kingdom Delegations and had instructed the Drafting Committee to incorporate them in a new text; that had been done.

Article 29, as proposed by the Drafting Committee, was adopted.

### Article 30

The CHAIRMAN stated that the Committee had already considered Article 30 on May 13th, and had then adopted the first point of the United Kingdom amendment, which proposed that the following sentence should be added at the end of the first paragraph: “They will be immune from attack only when flying on routes, at heights and times specifically agreed between all belligerents and the neutral Power concerned.”

Mr. BURDEKIN (New Zealand) suggested that the words “all belligerents” should be replaced by the words, “the belligerent”, since it was not always necessary to obtain the consent of all the belligerents who were parties to a conflict.

Mr. STARR (United States of America) seconded the above proposal.

Mr. SWINNERTON (United Kingdom) suggested that it would be better merely to replace the word “all” by the word “the”, and to retain the plural form “belligerents”.

This last proposal was adopted.

Mr. SWINNERTON (United Kingdom) then reminded the meeting that consideration of the second point of the amendment tabled by his Delegation had been deferred by the Committee until after the adoption of Article 3 of the Prisoners of War Convention by Committee II. The second

point proposed that the words “other than merchant seamen and civilian air crew” should be inserted in the third paragraph, immediately after the words “wounded and sick”.

Although Committee II had not yet come to a decision regarding Article 3 of the Prisoners of War Convention, it was already known that the crews of merchant vessels and civilian aircraft would be included among the categories enumerated in that Article. It would appear, therefore, that Committee I was now in a position to open a discussion on the point in question. He added, in support of the amendment submitted by his Delegation, that since the crews in question did not belong to the armed forces and were therefore civilians, they should not be interned and ought to be returned to their own country as soon as possible.

Mr. SENDIK (Union of Soviet Socialist Republics) reminded the meeting that this question had already been discussed by the Committee on May 27th in connection with Article 15 of the Maritime Warfare Convention, and that a United Kingdom amendment, similar to the one under discussion, had been rejected by a substantial majority. The problem had therefore already been settled in principle.

Furthermore, the proposal to refer specifically to the crews in question in Article 3 of the Prisoners of War Convention had already been considered by Committee II.

Mr. SWINNERTON (United Kingdom) was unaware of the decision taken when Article 15 of the Maritime Warfare Convention was being considered. He therefore withdrew the second point of the amendment tabled by his Delegation.

Article 30 (the Stockholm text with the above mentioned addition to the first paragraph) was adopted.

## MARITIME WARFARE CONVENTION

### Article 35

The text proposed by the Drafting Committee read as follows:

“Ships chartered for that purpose shall be authorized to transport equipment exclusively intended for the treatment of wounded and sick members of armed forces or for the prevention of disease, provided that the conditions of their voyage have been notified to the adverse Power and approved by the latter. The adverse Power shall preserve the right to board the

carrier ships but not capture them and to seize the equipment carried.

"By agreement amongst the belligerents, neutral observers may be placed on board such ships to verify the medical equipment carried. To that end, free access to the equipment shall be given."

General LEFEBVRE (Belgium), Rapporteur, reminded the meeting that on May 16th, the Committee had instructed the Drafting Committee to improve the wording of the two first paragraphs of the Stockholm text.

In the first paragraph, the term "medical equipment" had been replaced by the words "equipment exclusively intended for the treatment of wounded and sick members of armed forces or for the prevention of disease". Also, the words "their routes and duties" had been amended to read: "the conditions of their voyage".

The last sentence of the second paragraph had been added in order to facilitate the work of observers.

The Drafting Committee had also been instructed to find a more suitable place for the third paragraph of the Stockholm text; it proposed to insert it in Article 29A, among the factors mentioned as not involving the denial of protection. This proposal could be discussed when the Committee considered Article 29A.

Captain MELLEMA (Netherlands) suggested that the English text of the concluding part of the first paragraph should be brought into conformity with the French text, which he considered better. In the English text, the word "or" should be inserted between the words "to capture them" and "seize" in place of the word "and".

He also proposed that the word "medical" in the second paragraph should be omitted in order to enable observers to inspect all the equipment carried and so prevent smuggling. Indeed, the whole paragraph might be deleted.

Commander SMITH (Australia) seconded the first proposal of the Netherlands Delegate.

That proposal was adopted.

General LEFEBVRE (Belgium), Rapporteur, agreed that the proposal to omit the word "medical" was sound.

Dr. PUVO (France) maintained, on the contrary, that its omission might lead to confusion and that it would be wiser to retain it.

Put to the vote, the proposal to omit the word "medical" was approved by 9 votes to 5, with 7 abstentions.

Article 35, as amended, was adopted.

### Article 36

The text proposed by the Drafting Committee read as follows:

"Hospital aircraft, that is to say, aircraft exclusively employed for the removal of the wounded, sick and shipwrecked, and for the transport of medical personnel and equipment, may not be the object of attack, but shall be respected by the belligerents, while flying at heights, at times and on routes specifically agreed upon between the countries concerned.

"They shall be clearly marked with the distinctive emblem prescribed in Article 38, together with their national colours, on their lower, upper and lateral surfaces. They shall be provided with any other markings or means of identification which may be agreed upon between the belligerents upon the outbreak or during the course of hostilities.

"Unless agreed otherwise, flights over enemy or enemy-occupied territory are prohibited.

"Hospital aircraft shall obey every summons to alight on land or water.

"In the event of having thus to alight, the aircraft with its occupants may continue its flight after examination, if any.

"In the event of alighting involuntarily on land or water in enemy-occupied territory, the wounded, sick and shipwrecked, as well as the crew of the aircraft shall be prisoners of war. The medical personnel shall be treated according to Articles 30 and following."

General LEFEBVRE (Belgium), Rapporteur, reminded the meeting that the Drafting Committee's instructions had been to bring Article 36 into line with the corresponding Article 29 of the Wounded and Sick Convention. This had been done, the words "shipwrecked" and "or water" being introduced wherever necessary. The Drafting Committee had not, however, mentioned territorial waters as they had not wished to venture onto such uncertain ground. The Article mentioned "territory" only.

Mr. STARR (United States of America) proposed that the words "Hospital aircraft" in the first and fourth paragraphs of the English version, should be replaced by the words "Medical aircraft". A similar alteration should also have been made in Article 29 of the Wounded and Sick Convention, which the Committee had just adopted.

Colonel CRAWFORD (Canada) agreed.

Article 36, as proposed by the Drafting Committee and amended as above in the English version, was adopted.

**Article 37**

General LEFEBVRE (Belgium), Rapporteur, reminded the meeting that the Drafting Committee had been instructed to bring Article 37 into line with Article 30 of the Wounded and Sick Convention, which corresponded to it. The Committee having just adopted Article 30, he proposed that the text agreed on should be simply repeated in Article 37 of the Maritime Warfare Convention, with the following modification: the words "the wounded and sick" in the third paragraph, should be replaced by the words "the wounded, sick or shipwrecked".

The proposal was approved and Article 37, thus modified, was adopted.

**Article 39**

The wording proposed by the Drafting Committee was as follows:

"In addition to the identity disc mentioned in Article 17, the personnel designated in the first paragraph of Articles 30 and 31 shall wear, affixed to the left arm, a water-resistant armlet bearing the distinctive emblem, issued and stamped by the military authority.

"Such personnel shall also carry a special identity card bearing the distinctive emblem. This card shall be water-resistant and of such size that it can be carried in the pocket. It shall be worded in the national language, shall mention at least the full name, the date of birth, the rank and the service number of the bearer, and

shall attest in what capacity he is entitled to the protection of the present Convention. The card shall bear the photograph of the owner and also either his signature or his finger-prints or both. It shall be embossed with the stamp of the military authority.

"The identity card shall be uniform throughout the same armed forces and, as far as possible, of a similar type in the armed forces of the Contracting Parties. The belligerents may be guided by the model which is annexed, by way of example, to the present Convention. They shall inform each other, at the outbreak of hostilities, of the model they are using. Identity cards should be established, if possible, at least in duplicate, one copy being kept by the home country.

"In no circumstances may the said personnel be deprived of their insignia or identity cards nor of the right to wear the armlet. In case of loss they shall be entitled to have duplicates of the cards and to have the insignia replaced."

General LEFEBVRE (Belgium), Rapporteur, pointed out that, as in the case of the corresponding Article 33 of the Wounded and Sick Convention, the following alteration should be made in the wording proposed by the Drafting Committee: the words "In addition to the identity disc mentioned in Article 17" should be removed from the first paragraph and inserted in the second paragraph, between the words "Such personnel" and "shall also".

Article 39, as proposed by the Drafting Committee and thus modified, was adopted.

*The meeting rose at 11.30 a.m.*

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**THIRTY-FIRST MEETING**

*Wednesday 22 June 1949, 10 a.m.*

*Chairman: Mr. Ali Rana TARHAN (Turkey)*

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**WOUNDED AND SICK CONVENTION****Articles 29 and 30**

Colonel CRAWFORD (Canada) proposed that in the English text of Articles 29 and 30, the words

"Medical aircraft" should be substituted for the words "Hospital aircraft", as had already been done in the case of the corresponding Articles of the Maritime Warfare Convention.

The proposal was adopted.

**Report of the Drafting Committee on Articles 3A, 12 and 14 of the Wounded and Sick Convention**

**Article 3A**

The text proposed by the Drafting Committee read as follows:

“The present Convention shall apply to the persons whom it protects and who have fallen into the hands of the enemy, until their final repatriation.”

General LEFEBVRE (Belgium), Rapporteur, said that the Drafting Committee had been asked to consider the question of whether the words “persons whom it protects”, which included sick and wounded on the one hand, and medical personnel on the other, could be retained in their present form.

The Drafting Committee had considered that the Wounded and Sick Convention was the proper place for the provisions fixing the period during which the rules governing the status of medical personnel would be applicable.

With regard to the wounded and sick themselves, they remained under the protection of the Wounded and Sick Convention until they were restored to health; once they had recovered they came within the scope of the Prisoners of War Convention.

Article 3A, as proposed by the Drafting Committee, was adopted.

**Article 12**

The text proposed by the Drafting Committee read follows:

“At all times, and particularly after an engagement, belligerents shall without delay take all possible measures to search for and collect the sick and wounded, protect them against pillage and ill-treatment, and ensure their adequate care, and to search for the dead and prevent their being despoiled.

“Whenever circumstances permit, an armistice, a suspension of fire or local arrangements shall be agreed to permit the removal, exchange and transport of the wounded left on the battlefield.

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

General LEFEBVRE (Belgium), Rapporteur, reminded the meeting that Committee I had decided to provide, in the second paragraph, for the possibility of local arrangements being made for the exchange of wounded and sick on the battlefield. The Drafting Committee had taken that decision into account, and had also inserted a similar provision in the third paragraph.

Article 12, as proposed by the Drafting Committee, was adopted.

**Article 14**

The text proposed by the Drafting Committee read as follows:

“The military authorities may appeal to the charity of the inhabitants voluntarily to collect and care for, under their direction, the wounded or sick, and may grant persons who have responded to this appeal the necessary protection and facilities. Should the enemy belligerent take or retake control of the area, he shall likewise grant these persons the same protection and the same facilities.

“The military authorities shall permit the inhabitants and relief societies, even in invaded or occupied areas, spontaneously to collect and care for wounded or sick of whatever nationality. The civilian population shall respect these wounded and sick, and, in particular, abstain from offering them violence.

“No one may ever be molested or convicted for having nursed the wounded or sick.

“The provisions of the present Article do not relieve the Occupying Power of its obligation to give both physical and moral care to the sick and wounded.”

General LEFEBVRE (Belgium), Rapporteur, said that the Drafting Committee had been instructed to substitute the idea of “relief” for “first aid”. In the circumstances, the Committee thought it preferable simply to reproduce the wording adopted by the Conference of Experts in 1947, namely “to collect and care for”.

Further, the word “voluntarily” had been inserted in the first sentence of the first paragraph with a view to preventing any abuse on the part of the Occupying Power. The words “under their direction” had been retained in the first paragraph, but had been omitted from the second paragraph, since it was considered that it was for the occupying authorities, and not for the present Convention, to stipulate such a measure.

Mr. AGATHOCLES (Greece) enquired whether the Drafting Committee had taken account of the amendment submitted by the Greek Delegation (*see Annex No. 31*). The first paragraph of Article 14 only provided for first aid, and could not be held to relate to medical attention given either professionally, or as the result of enrolment in the medical services of the adverse Power. His Delegation therefore proposed that the words "given such attention to" should be substituted for the word "nursed" in the third paragraph in order to make it clear that only first aid was implied.

General LEFEBVRE (Belgium), Rapporteur, explained that, as the Convention placed the sick and the wounded outside the conflict, it would seem difficult to prohibit anyone from rendering aid to or nursing an enemy. The question of enrolment in the medical services of the adverse Power was a matter for national legislation.

Mr. AGATHOCLES (Greece) acknowledged the justice of the above arguments and withdrew his Delegation's amendment.

Captain MELLEMA (Netherlands) proposed that the English text of the third paragraph should be made to agree with the French text, by substituting the words "for the fact of having nursed" for the words "for having nursed".

Mr. STARR (United States of America) and Mr. SWINNERTON (United Kingdom) did not think the proposed change would improve the English text.

Article 14, as proposed by the Drafting Committee, was adopted.

### **Report of the Drafting Committee on Articles 18, 19, 20, 21, 21A, 24A, 26, 29 and 29A of the Maritime Warfare Convention**

#### **Article 18**

The text proposed by the Drafting Committee read as follows:

"The belligerents may appeal to the charity of commanders of neutral merchant vessels, yachts or other craft, in order to take on board and care for wounded, sick or shipwrecked persons, and to collect the dead.

"Vessels of any kind responding to this appeal, and those having of their own accord collected wounded, sick or shipwrecked persons, shall enjoy special protection and facilities to carry out such assistance.

"They may, in no case, be captured on account of any such transport; but, in the absence of any promise to the contrary, they shall remain liable to capture for any violations of neutrality they may have committed."

General LEFEBVRE (Belgium), Rapporteur, said that the Drafting Committee had considered the United Kingdom amendment, which proposed replacing the last clause of the third paragraph of the Stockholm text (beginning with the words "should facts occur...") by the words "for any violations of neutrality they may have committed" which had been accepted by the Conference of Experts in 1947. The Swedish Delegate, on being consulted by the Drafting Committee, had considered that the reference should be to violations of the rules of maritime warfare. The Drafting Committee, however, had considered it wiser to adhere to the phrase "violations of neutrality", which defined the position of neutrals more clearly. Moreover, captains of neutral vessels were more familiar with the laws of neutrality.

In order to take account of the amendment proposed by the Australian Delegation, the Drafting Committee had omitted the words "as far as possible", which had been inserted in the second paragraph at Stockholm.

Commodore LANDQUIST (Sweden) preferred the third paragraph of the Stockholm text to that adopted by the Drafting Committee. He thought a reference to the rules of maritime warfare would make the text clearer and would be less likely to cause misunderstanding than a reference to violations of neutrality. He would not, however, press the point.

Mr. BURDEKIN (New Zealand) proposed to omitting the words "in order" from the first paragraph of the English text, as they were redundant.

The above proposal was adopted.

Article 18, as proposed by the Drafting Committee, but amended as above in the English version, was adopted.

#### **Article 19**

The text proposed by the Drafting Committee read as follows:

"Military hospital ships, that is to say, ships built or equipped by the Powers specially and solely with a view to assisting the wounded, sick and shipwrecked, to treating them and to transporting them, may in no circumstances be

attacked or captured, but shall at all times be respected and protected by the belligerents, on condition that their names and descriptions have been notified to the belligerent Powers ten days before those ships are employed.

"The characteristics which must appear in the notification shall include registered gross tonnage, the length from stem to stern and the number of masts and funnels."

General LEFEBVRE (Belgium), Rapporteur, said that the Drafting Committee had been instructed to express in Article 19, and in Articles 20, 21 and 21A, the conception of protection and exemption from capture. That conception was embodied in Article 19 by the words "may in no circumstances be attacked or captured, but shall at all times be respected and protected", in Articles 20 and 21 by the words "shall have the same protection... and shall be exempt from capture", and in Article 21A by a reference to the protection accorded in Articles 19, 20 and 21.

Mr. BURDEKIN (New Zealand) proposed replacing the words "to treating them" in the first paragraph of the text by the words "to treating them adequately" in order to differentiate more clearly between hospital ships and lifeboats.

Mr. SWINNERTON (United Kingdom) seconded the New Zealand proposal, but would have preferred to have said "to affording them adequate treatment".

Colonel CRAWFORD (Canada) considered that such a modification would in no way ensure better treatment for the wounded and sick transported on vessels which were not worthy of protection. "Adequate treatment" varied according to the nature of the wounds or illness. Although there were potential dangers in the text proposed by the Drafting Committee, it could not be improved.

Mr. SENDIK (Union of Soviet Socialist Republics) agreed.

Mr. SÖDERBLOM (Sweden) also supported the text submitted by the Drafting Committee.

Mr. BURDEKIN (New Zealand) supported the wording proposed by the United Kingdom Delegation and asked that it should be put to the vote.

The United Kingdom proposal was rejected by 18 votes to 2, with 4 abstentions.

Article 19, as proposed by the Drafting Committee, was adopted.

## Article 20

The text proposed by the Drafting Committee read as follows:

"Hospital ships utilized by National Red Cross Societies, by officially recognized relief societies or by private persons shall have the same protection as military hospital ships and shall be exempt from capture, if the belligerent Power on which they depend has given them an official commission and in so far as the provisions of Article 19 concerning notification have been complied with.

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

Article 20, as proposed by the Drafting Committee, was adopted.

## Article 21

The text proposed by the Drafting Committee read as follows:

"Hospital ships utilized by National Red Cross Societies, officially recognized relief societies, or private persons of neutral countries shall have the same protection as military hospital ships and shall be exempt from capture, on condition that they have placed themselves under the control of one of the belligerents, with the previous consent of their own governments and with the authorization of the belligerent concerned, in so far as the provisions of Article 19 concerning notification have been complied with."

Article 21, as proposed by the Drafting Committee, was adopted.

## Article 21A

The text proposed by the Drafting Committee read as follows:

"The protection mentioned in Articles 19, 20 and 21 shall apply to hospital ships of any tonnage and to their lifeboats, wherever they are operating. Nevertheless, to ensure the maximum comfort and security, the belligerents shall endeavour to utilize, for the transport of sick, wounded and shipwrecked over long distances and on the high seas, only hospital ships of over 2,000 tons gross."

Mr. SENDIK (Union of Soviet Socialist Republics) said that by providing in Article 21A for the use of hospital ships of over 2,000 tons gross, the Committee was endeavouring to ensure that the sick and wounded should be provided with the greatest possible comfort. But it did not seem that such a purpose would be achieved by the provision in question, since there were large ships which were not so well found as smaller vessels with better seagoing qualities. He therefore proposed that the idea of seaworthiness should be substituted for that of a minimum tonnage; the Article should speak of seaworthy hospital ships.

Colonel CRAWFORD (Canada) pointed out that the provision of Article 21A in question was expressed in the form of a recommendation. The Soviet proposal could, if necessary, be adopted, the reference to tonnage also being retained.

Commander OROZCO SILVA (Mexico) seconded the Soviet Delegation's proposal.

Mr. BURDEKIN (New Zealand) reminded the Committee that the Delegations of the United States of America, France, the Netherlands and the United Kingdom had only agreed to accept Articles 19, 20 and 21 on condition that Article 21A was likewise adopted by the Committee. The principle of Article 21A had already been accepted by Committee I. Was the Soviet Delegation entitled to propose a further modification of that Article?

Mr. SENDIK (Union of Soviet Socialist Republics) considered that delegations were all entitled to submit proposals and amendments at the second reading.

Mr. STARR (United States of America) was of the opinion that a modification affecting the substance of the Article could only be adopted by a two-thirds majority.

Commander SMITH (Australia) pointed out that the Soviet proposal would, by implication, authorize the use of lifeboats or coastal boats which were not seaworthy. He urged the adoption of the text submitted by the Drafting Committee.

The CHAIRMAN agreed that the Soviet Delegation's proposal would modify the decision already adopted by the Committee and could, therefore, only be accepted by a two-thirds majority. Besides, such an alteration would lead to difficulties on account of the attitude adopted in regard to Articles 19, 20 and 21 by the Delegations referred to.

Mr. SENDIK (Union of Soviet Socialist Republics) said that his proposal did not affect the substance of the Article; it only proposed a different wording to express a principle which had already been adopted.

Mr. PENTCHEV (Bulgaria) remarked that at the last meeting of the Committee the United Kingdom Delegation had submitted various proposals for the modification of principles which had already been adopted, and that there had been no mention of a two-thirds majority being required for their adoption.

Mr. SWINNERTON (United Kingdom) replied that he had proposed no modifications affecting principles which had already been adopted. On the other hand, the Soviet proposal to the effect that the wounded and sick could only be transported in vessels which were seaworthy (i.e. in vessels which were unlikely to sink) did in fact affect a principle already adopted by the Committee.

The CHAIRMAN pointed out that the Committee had not adopted the procedure of second reading. In his opinion, the Soviet proposal did in fact affect the substance of the Article, which recommended that hospital ships should have a minimum tonnage of 2,000 tons gross.

The proposal of the Union of Soviet Socialist Republics was rejected by 15 votes to 8, with 5 abstentions, 28 Delegations being present.

Article 21A, as proposed by the Drafting Committee was adopted.

#### Article 24A (Article 19A)

The Drafting Committee proposed that the substance of the United Kingdom amendment to Article 24A, reworded as follows, should be inserted in Article 19:

"Hospital ships are protected from bombardment or attack from the land; likewise establishments ashore entitled to the protection of the Geneva Convention for the Relief of the Wounded and Sick in Armed Forces in the Field are also protected from bombardment or attack from the sea."

General LEFEBVRE (Belgium), Rapporteur, said that the Drafting Committee, which had been instructed to examine the United Kingdom amendment and to find a place for it, if necessary, in the Convention, did not consider that it was of any particular value, as Article 19 already protected hospital ships from attack from any quarter. The Committee nevertheless proposed that the

provision in question should be included in the Convention, as the legal experts considered that the latter did not provide for the contingency of hospital ships being bombarded from land. The amendment could be inserted as the third paragraph of Article 19.

Dr. PUYO (France) thought that the addition of the proposed amendment to Article 19 would make that Article appear unbalanced and unsatisfactory.

General LEFEBVRE (Belgium), Rapporteur, agreed with the French Delegate and repeated that in his opinion the amendment was unnecessary. The fact that the Drafting Committee had taken a different view was mainly due to the opinions expressed by Mr. Abercrombie, Delegate of the United Kingdom (*see Summary Record of the Twelfth Meeting*).

Mr. SWINNERTON (United Kingdom) felt that if the Drafting Committee had fallen in with Mr. Abercrombie's views, the reasons given, of which he himself was ignorant, must have been convincing; he therefore urged that the amendment be retained.

General LEFEBVRE (Belgium), Rapporteur, proposed that it should be made into a separate Article.

Dr. PUYO (France) seconded the above proposal.

Captain MOUTON (Netherlands) pointed out that hospital ships were protected, whatever the direction from which an attack came. Besides, commanders of land forces would not be familiar with the Maritime Warfare Convention. It also seemed to him that the bombardment of hospitals from the sea was covered by Article 27 of the Hague Regulations, and Article 5 of the IXth Hague Convention of 1907. Although he had no objection to the adoption of the amendment in question, he regarded it as unnecessary.

M. PICTET (International Committee of the Red Cross) considered that the adoption of the amendment would be logical and would make for greater precision. Neither the Wounded and Sick nor the Maritime Warfare Conventions provided for such cases. He himself had proposed the insertion of a clause in Article 3 of the Maritime Warfare Convention, which dealt precisely with operations between forces ashore and at sea; but his proposal had not been adopted. Article 19, in the form now proposed, certainly looked peculiar. The first sentence of the United Kingdom amend-

ment was redundant, it should be incorporated in the Wounded and Sick Convention, while the second sentence might be inserted somewhere else in the Maritime Warfare Convention. If that could not be done, it would be best to omit the whole amendment.

Mr. SWINNERTON (United Kingdom) did not think that the difficulty of finding an appropriate place to insert the provision in question was a sufficient reason for rejecting the amendment. The Articles of the Hague Regulations and the IXth Hague Convention quoted by the Netherlands Delegate referred to the bombardment of hospitals bearing the protective emblem prescribed in the Regulations (a rectangle divided into two triangles, one black and one white). The purpose of the United Kingdom Amendment was essentially to ensure the supremacy of the Red Cross emblem.

Captain MOUTON (Netherlands) said that it was not for the present Conference to pass judgment on the protective emblem provided for in the IXth Hague Convention.

Colonel CRAWFORD (Canada) observed that no one really seemed to understand the amendment but that everybody appeared to be in favour of accepting it: he proposed that the discussion, which was pointless, be closed.

Mr. STARR (United States of America) pointed out that it was the Committee that had accepted the amendment, and that the task of the Drafting Committee had simply been to find an appropriate place for it.

The CHAIRMAN then read out the decision taken by the Committee on that subject; the amendment had in fact been adopted. It would therefore require a two-third majority to delete it.

Captain MOUTON (Netherlands) then formally moved the deletion of the amendment.

The motion was put to the vote; there were 10 votes for and 6 against it, with 7 abstentions, 24 delegations being present. Since the required two-thirds majority had not been reached, the proposal was rejected.

Dr. PUYO (France) then reverted to the Rapporteur's proposal that the amendment should constitute a separate Article, following after Article 19.

The proposal was adopted, and the United Kingdom amendment became Article 19A.

**Article 26**

The text submitted by the Drafting Committee read as follows:

"The belligerents shall have the right to control and search the vessels mentioned in Articles 19, 20 and 21. They can refuse assistance from these ships, order them off, make them take a certain course, control the use of their wireless and other means of communication, and even detain them for a period not exceeding seven days from the time of interception, if the gravity of the circumstances so requires.

"They may put a commissioner temporarily on board whose sole task shall be to see that orders given in virtue of the provisions of the preceding paragraph are carried out.

"As far as possible, the belligerents shall enter in the log of the hospital ship, in a language he can understand, the orders they give the captain of the vessel.

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

General LEFEBVRE (Belgium), Rapporteur, said that the Drafting Committee had been instructed to incorporate two amendments proposed by the Delegation of the Netherlands in Article 26 (*see Summary Record of the Thirteenth Meeting*). The first proposal had been to insert the words "control the use of their wireless" in the first paragraph, and the second to define the duties of the commissioner.

The Drafting Committee had introduced the first of these amendments in the first paragraph, inserting, in addition, the words "and other means of communication" after the word "wireless".

The second amendment had been included in its original form in the second paragraph of Article 26 after the word "commissioner".

The Committee had also replaced the words "leur concours" (their assistance) in the French version of the first paragraph by the words "le concours de ces navires" (assistance from these ships), in order to bring it into line with the English text, which was considered better.

Mr. SENDIK (Union of Soviet Socialist Republics) proposed that Article 21B should be added to the list of Articles in the first paragraph, even though that Article had not yet been adopted. That would avoid the necessity of reconsidering the present Article.

The above proposal was adopted.

Article 26, as proposed by the Drafting Committee and as amended above, was adopted.

General LEFEBVRE (Belgium), Rapporteur, proposed that Article 21B should also be added to the list of Articles in Article 25.

The above proposal was adopted.

**Article 29**

The text proposed by the Drafting Committee read as follows:

"The protection to which hospital ships and sick-bays are entitled shall not cease unless they are used to commit, outside their humanitarian duties, acts harmful to the enemy. Protection may, however, cease only after due warning, naming a reasonable time limit in which warning remains unheeded."

"In particular, hospital ships may not possess or use a secret code for their wireless or other means of communication."

General LEFEBVRE (Belgium), Rapporteur, explained that the Drafting Committee had split Article 29 of the Stockholm Draft into two Articles, 29 and 29A, as had been done in the case of the corresponding Article 16 of the Wounded and Sick Convention. The phrase "naming a reasonable time limit" had been left to Committee I to consider, but he reminded them that in the case of Article 16 of the Wounded and Sick Convention they had already adopted the formula "naming, in all appropriate cases, a reasonable time limit".

Mr. SWINNERTON (United Kingdom) proposed that the same wording be used in Article 29.

The proposal was adopted.

Article 29, as submitted by the Drafting Committee and as amended above, was adopted.

**Article 29A**

The text proposed by the Drafting Committee read as follows:

"The following conditions shall not be considered as depriving a hospital ship or a sick-bay of the protection guaranteed by Article 29:

- (1) The fact that the crew of the ship or the sick-bay is armed for the maintenance of order, for its own defence or that of the sick and wounded.
- (2) The presence on board of apparatus exclusively intended to facilitate navigation or communication.

- (3) The discovery on board hospital ships or in sick-bays of portable arms and ammunition taken from the wounded, sick and shipwrecked, and not yet handed to the proper service.
- (4) The fact that the humanitarian activities of hospital ships and sick-bays of vessels or of the crews, extend to the care of wounded, sick or shipwrecked civilians.
- (5) The transport of equipment and of personnel intended exclusively for medical duties, over and above the equipment usually required."

General LEFEBVRE (Belgium), Rapporteur, said that the Drafting Committee had considered that apparatus such as radar etc. was sufficiently covered by the Stockholm wording.

The Drafting Committee had further proposed that the United Kingdom amendment requiring hospital ships to broadcast their position and speed should be referred to the Working Party entrusted with the consideration of Article 40 (*see Summary Record of the Thirteenth Meeting*). The Working Party had already taken that amendment into account.

Lastly the Drafting Committee had followed the suggestion made by Committee I (*see Summary Record of the Seventeenth Meeting*) and added the third paragraph of Article 35 to Article 29A; it had now become sub-paragraph 5).

Captain MOUTON (Netherlands) asked the Committee to decide the question of whether surplus equipment and supernumerary medical personnel on hospital ships were liable to capture by belligerents. He personally considered that they could not be captured, provided their presence on board had been notified.

Dr. PUYO (France) thought that there should be certain restrictions on the transport of surplus equipment and supernumerary medical personnel, both in the interests of the personnel themselves and of the sick and wounded for whose benefit the equipment was carried. He therefore proposed, in order to prevent any argument, that the words "provided a list of such equipment and personnel has been communicated to the adverse Power" should be added at the end of sub-paragraph (5).

Colonel CRAWFORD (Canada) was opposed to this addition, and particularly to the proposal that lists of medical personnel should be communicated to the enemy. A hospital ship should be entitled to accommodate a larger number of

medical personnel than was strictly necessary, if only in order to allow them to complete their training. Such personnel should only be required to be in possession of the recognized means of proving his identity.

Dr. PUYO (France) then proposed to speak of "the number of supernumerary medical personnel" and to retain the word "list" in regard to equipment only.

Mr. SWINNERTON (United Kingdom) emphasized the risk of authorizing the carriage of additional equipment, and proposed that the words "of supplies and" should be omitted.

Mr. STARR (United States of America) reminded the Committee that Article 35 had already been adopted by the Committee and that its final paragraph had only been referred to the Drafting Committee in order that it might be inserted in some other part of the Convention.

Mr. SWINNERTON (United Kingdom) withdrew his proposal.

The CHAIRMAN put the proposal of the French Delegation to the vote.

The Committee decided, by 15 votes to 2, with 5 abstentions, that the proposal in question raised a question of principle and could only be adopted by a two-thirds majority.

The proposal was rejected by 16 votes to 4, with 3 abstentions.

Mr. BURDEKIN (New Zealand) and Mr. STARR (United States of America) proposed that the words "and personnel" be inserted at the end of sub-paragraph (5) of the English version, between the words "equipment" and "usually".

The above proposal was adopted.

M. PICTET (International Committee of the Red Cross) observed that the reference to Article 29 in the first paragraph was incorrect, and that the words "the protection guaranteed by Article 29" should be replaced by the words "the protection to which they are entitled".

The proposal was approved.

Article 29A, as proposed by the Drafting Committee and amended as above, was adopted.

*The meeting rose at 1.40 p.m.*

## THIRTY-SECOND MEETING

Thursday 23 June 1949, 3 p.m.

Chairman: Mr. Ali Rana TARHAN (Turkey)

**Consideration of a Draft Resolution submitted by the Delegation of India**

Colonel RAO (India) said that his Delegation had submitted a Draft Resolution intended to reconcile the various points of view expressed regarding the question of the distinctive emblem. A new sign, devoid of all religious significance, could alone serve as a universal protective emblem, acceptable to everybody. The emblems actually in use would serve thereafter merely as descriptive signs. The Red Cross was certainly entitled to the greatest respect; but a new symbol would have to be found to serve as a universally accepted protective sign. Whatever might be said to the contrary, the cross would always evoke the idea of the Christian faith. The Delegation of India, therefore, requested Committee I to adopt the following Resolution:

“Committee I urges the Conference to set up suitable machinery for devising an emblem, as the protective sign of the Medical Service of the armed forces, which shall fulfil the following conditions:

- (1) it shall have no religious significance in any part of the world, nor be popularly associated with any religious, cultural or other organization;
- (2) it shall be of red colour on a white background;
- (3) it shall possess maximum visibility;
- (4) it shall be a simple geometrical pattern which can be easily executed with minimum materials and labour;

it being intended that, with effect from the date of adoption of the new protective emblem as mentioned above, such a new emblem shall alone be entitled to protection under the terms of the present Conventions, and that the protective emblems now in force shall be used as distinctive emblems only.”

Mr. BOHNY (Switzerland) said that his Delegation was opposed to that Resolution. The Committee had discussed the question on many occasions, and had decided by a large majority to retain the present system. The symbol of the red cross, which had been in existence for more than 85 years, had now attained such moral value that it was impossible to dispense with it without greatly prejudicing the Conventions themselves. The Wounded and Sick Convention, also known as the Geneva Convention, was the Red Cross Convention and as such should conserve the emblem of the Red Cross.

Mr. STARR (United States of America) agreed. It was not clear to him why such a proposal had been submitted to the Committee, as it did not appear to be an amendment to the text of the Convention.

Mr. DE RUEDA (Mexico) supported the Swiss Delegation.

MSGT. BERNARDINI (Holy See) reminded the Committee that the red cross had been selected as a tribute to Switzerland and it had always been made clear, particularly in 1906, that the red cross symbol in question was devoid of all religious significance. For Christians, it recalled the mystery of suffering and its healing value. For non-Christians, the cross remained the symbol of pain, which was respected as sacred. He therefore associated himself with the wish expressed by Mr. Pictet in his pamphlet “The Sign of the Red Cross”, to the effect that “...the Red Cross must now more than before be vigilant in the defence of this symbol...”.

General OUNG (Burma) said that the Indian proposal was not intended to conflict with any religious beliefs. Oriental countries were taking an increasingly active part in international life; they wanted an emblem which did not offend

either their own religious convictions or those of other nations. If, on the other hand, the principle of a multiplicity of symbols was accepted, Oriental countries must be expected to adopt an emblem of their own. The Committee should accept the Indian proposal, which had not been put forward for religious reasons, but from a sincere desire to solve a problem for which a solution must be found.

General PERUZZI (Italy) thought that the signs at present in use, to which the populations of the various nations were much attached, could not be dispensed with except for very good reasons. The creation of a new emblem would cause far greater inconvenience than increasing the number of existing emblems. For psychological reasons, an emblem which was so well known could not be replaced in the minds and hearts of the peoples, and especially in those of the combatants, by a new sign which would have no meaning for them.

Colonel FALCON BRICENO (Venezuela) agreed with the Italian Delegate. No one could dispense with the red cross; it was an emblem which belonged to the peoples of the world.

Colonel CRAWFORD (Canada) realized that the Indian Delegation wished to serve the interests of humanity as a whole and solve a problem which certainly existed. But the delegations had formed an opinion and could not alter it. He therefore moved the closure of the discussion on the question.

Colonel WATCHORN (Australia) agreed.

Mr. MEYKADEH (Iran) supported the Resolution submitted by the Indian Delegation; it was a rational proposal and the only acceptable one. The fact that the red cross could not be employed by non-Christian peoples compromised its use as a universal emblem.

The Draft Resolution submitted by the Delegation of India was put to the vote, and rejected by 16 votes to 6, with 13 abstentions.

#### **Consideration of the amendment submitted by the Delegation of Syria to Article 38 of the Maritime Warfare Convention**

The amendment submitted by the Delegation of Syria proposed that the existing text of Article 38 should be replaced by the following:

“The emblem of the Red Cross or the Red Crescent or the Red Lion and Sun, in countries already using these emblems, shall be displayed

on the flags, armlets and all equipment employed in the Medical Service, with the permission of the competent military authority.”

Mr. GENNAOUI (Syria) said that in several Articles of the Convention references to the Red Crescent, and the Red Lion and Sun only appeared in brackets. It was important for the populations of the many countries which did not use the emblem of the Red Cross that their symbols should be mentioned equally with the latter.

The CHAIRMAN reminded the Committee that Article 38 had already been adopted by the Committee. Consequently, the present amendment could only be accepted by a two-thirds majority, viz. 22 votes, as 33 Delegations were present.

The Syrian amendment received 6 votes to 5, with 19 abstentions. It was therefore rejected.

#### WOUNDED AND SICK CONVENTION

##### **Article 42**

The CHAIRMAN reminded the meeting that the Committee had decided to defer consideration of Article 42 until Article 36 had been considered by the Drafting Committee and Article 39 by the Joint Committee.

Mr. STARR (United States of America) said that the amendment tabled by his Delegation proposed that Article 42 should be omitted, that a clause prohibiting the use of the emblem for commercial purposes should be incorporated in Article 36, and that Article 39 should give details of the measures which each State must take for the repression of abuses and infringements. He proposed that a working party be instructed to examine Article 42.

Mr. PICTET (International Committee of the Red Cross) drew attention to the technical character of Article 42 and supported the proposal that it should be examined by a working party, which would consider its contents and decide on the place it should occupy in the Convention.

The CHAIRMAN suggested that the Working Party should be composed of the Delegations of the United States of America, Sweden and the Union of Soviet Socialist Republics.

Mr. Starr (United States of America) proposed that Representatives of the International Com-

mittee of the Red Cross and of the League of Red Cross Societies should also take part in the discussions of the Working Party.

The above proposals were approved.

**Report of the Working Party entrusted with the consideration of the Annex to the Wounded and Sick Convention**

Colonel CRAWFORD (Canada), Chairman and Rapporteur of the Working Party, said that the latter had decided to limit the Draft Agreement relating to Hospital Zones and Localities to zones and localities which were reserved for the care of the wounded and sick of the armed forces. The problem of safety zones for civilians had not been studied and in consequence the words "and safety" had been omitted from the title and text of the Annex. On the other hand, provision had been made for measures of control as well as for inspectors residing permanently in the zones.

Mr. PICTET (International Committee of the Red Cross) said that Article 18 as it was when the Draft Agreement was drawn up, enumerated those persons who would benefit by the protection of the zones. That enumeration had, however, been deleted by the Stockholm Conference. The last part of the first paragraph of Article 18 as submitted at Stockholm, viz. "and the personnel entrusted with the organization and administration of these zones and localities, and with the care of the persons therein assembled", should therefore be added at the end of the first paragraph of Article 1 of the Annex.

Colonel CRAWFORD (Canada) could not remember if the Working Party had come to a decision on the point; he nevertheless approved the above proposal.

Captain MELLEMA (Netherlands) distinctly remembered that the Working Party had adopted the addition referred to; the fact that it did not appear in the proposed text was no doubt due to an oversight.

The proposal was approved.

The Draft Agreement, as submitted by the Working Party (*see Annex No. 59*) and thus amended, was adopted.

**Report of the Working Party on Article 21B of the Maritime Warfare Convention**

Captain MELLEMA (Netherlands), Rapporteur, said that the Working Party entrusted with the consideration of Article 21B had discussed three

main points: (a) the restriction of the use of coastal lifeboats; (b) a speed limit for these boats; (c) the protection of shore installations serving as bases for coastal lifeboats.

The whole of the Working Party, with the exception of the Soviet Delegate, approved the first and last points. The proposal for a speed limit, put forward by the Soviet Delegate, had originally been supported by the Delegates of the United States of America, France, the Netherlands and the United Kingdom, but those Delegates had afterwards accepted the point of view expressed by the Delegates of Italy and Sweden, who were opposed to any speed limit.

The text which was finally adopted for submission to the Committee, read as follows:

"Under the same conditions (Articles 19 and 20), small craft employed by the State or by officially recognized lifeboat institutions for coastal rescue operations, shall be equally respected and protected, so far as operational requirements permit.

"The same shall apply so far as possible to fixed coastal installations used exclusively by these craft for their humanitarian mission."

Mr. SENDIK (Union of Soviet Socialist Republics) pointed out that five out of seven members of the Working Party had thought that the speed of lifeboats should be limited; the fact that this principle had not been embodied in the proposed Article was not therefore according to the usual practice.

The arguments advanced by the minority were not convincing. It had been said that they must assume that technical progress would enable lifeboats easily to exceed a speed of 12 knots; but a Convention could not be based on assumptions. It had been said that lifeboats should be able to reach their objective rapidly; but in case of shipwreck any vessels in the neighbourhood were immediately diverted to the scene of the disaster. Besides, speed made these lifeboats difficult to use and reduced their visibility.

The protection of coastal installations should not be provided for in Article 21B, since the new Article 19A, which had recently been adopted, made sufficient provision.

He proposed, therefore, that a provision limiting the speed of lifeboats be inserted in Article 21B and that the second paragraph be omitted.

Captain IPSEN (Denmark) said that small nations could not equip large hospital ships and would therefore have to make use of small craft. War necessarily brought certain restrictions, but how was a sailor to be made understand that the boat which could rescue him was forbidden to travel at a speed greater than that of many fishing boats?

General PERUZZI (Italy) pointed out that, without fixed bases, lifeboats could not undertake their duties. Besides technical equipment, such bases had to have hospital accommodation and medical and surgical stores; they were in fact equivalent to first aid hospitals, and must therefore be protected.

The speed of lifeboats was one of the essential requirements for saving shipwrecked persons, who could not always be rescued by the vessels called to their assistance.

Furthermore, it was impossible for the crew of an aircraft to assess the speed of a lifeboat. It was surely wiser not to make the limitation of its speed one of the conditions of protection.

Mr. GIHL (Sweden) said that the texts adopted for Articles 19, 20 and 21 must be considered as a whole, as certain delegations had renounced their views in order to arrive at a compromise solution.

So far as Article 21B was concerned, he shared the view of the Delegates of Denmark and Italy regarding the speed of lifeboats. The existence of lifeboats capable of high speeds might cause a belligerent legitimate concern; that was the reason why the words "so far as operational requirements permit" had been included in the Article. In his opinion, the text submitted by the Working Party could be accepted.

Captain MELLEMA (Netherlands), Rapporteur, did not think Article 19A adequately covered the case of coastal installations. The text of Article 21B was the result of a compromise which was entirely satisfactory.

Mr. SWINNERTON (United Kingdom) said that, although his Delegation approved of the principle of a speed limit, it had in the end fallen in with the opinion of certain other countries by way of a compromise.

With regard to the protection of coastal installations, he thought that the principle might be approved and the Coordination Committee asked to consider the question of whether a similar provision should not also be inserted in the Wounded and Sick Convention.

Mr. SENDIK (Union of Soviet Socialist Republics) failed to see in what way the text of Article 21B was a compromise.

He said that the speed of a lifeboat could easily be assessed either from a ship or from an aircraft by observing the wake. He did not agree with the Swedish Delegate's view which was equivalent to saying that it was better to prohibit the use of lifeboats rather than limit their speed. That might open the door to considerable abuse.

As far as coastal base installations were con-

cerned, the remarks of the Italian Delegate showed clearly that they only required to be protected under the Wounded and Sick Convention. Furthermore, since they also contained technical material and installations, which might be used for military purposes, it would be necessary to determine within what precise limits they could be afforded protection. It would therefore be best to omit the second paragraph.

Dr. PUYO (France), while admitting the validity of the arguments put forward by the Soviet Delegate, yet urged that Article 21B should be considered as a whole, pointing out that it was the result of many discussions and concessions. He thought it should be adopted as it stood.

General PERUZZI (Italy) did not think it possible to estimate the exact speed of a lifeboat from high altitudes.

As regards coastal bases, they contained medical installations and had, therefore, a right to protection.

The CHAIRMAN put to the vote the two proposals submitted by the Delegation of the Union of Soviet Socialist Republics.

The proposal to introduce a speed limit of 12 knots was rejected by 12 votes to 10, with 8 abstentions.

The proposal to delete the second paragraph was rejected by 14 votes to 9, with 7 abstentions.

Article 21B, as proposed by the Working Party, was adopted.

### **Report of the Working Party on Articles 13 of the Wounded and Sick Convention and 17 of the Maritime Warfare Convention**

Captain MELLEMA (Netherlands), Chairman and Rapporteur of the Working Party entrusted with the consideration of the above two Articles, explained that the Stockholm text had served as a basis for discussion; certain proposals contained in the Australian, New Zealand and United Kingdom amendments had been incorporated in the two Articles.

### **Article 13 of the Wounded and Sick Convention**

The text proposed by the Working Party read as follows:

"Belligerents shall record as soon as possible in respect of each wounded, sick or dead person of the adverse Party falling into their hands, any

indication which may assist in their identification. These records should if possible include:

- (a) designation and nationality of service;
- (b) service or personal number;
- (c) surname;
- (d) first name or names;
- (e) date of birth;
- (f) any other particulars shown on his identity card or disc;
- (g) date and place of capture or death;
- (h) particulars concerning wounds or illness, or cause of death.

As soon as possible the above mentioned information shall be forwarded to the Power on whom these persons depended, through the Information Bureau described in Article 112 of the Convention of . . . relative to the Treatment of Prisoners of War.

"Belligerents shall prepare and forward to each other through the same Bureau, certificates of death or duly authenticated lists of the dead. They shall likewise collect and forward through the same Bureau the identity disc, or, in case of a double identity disc, one half of it, the other half to remain attached to the body, last wills or other documents of importance to the next of kin, money and in general all articles of an intrinsic or sentimental value, which are found on the dead. These articles, together with unidentified articles, shall be sent in sealed packets, accompanied by statements showing all necessary particulars to identify the deceased owners.

"Belligerents shall ensure that burial or cremation of the dead, carried out individually as far as circumstances permit, is preceded by a careful and if possible medical examination of the bodies, with a view to confirming death, establishing identity and enabling a report to be made.

"Bodies shall not be cremated except for imperative reasons of hygiene or for motives based on the religion of the deceased. In case of cremation the circumstances and motives shall be stated in detail in the death certificate (or on the authenticated list of the dead).

"They shall further ensure that the dead are honourably interred, if possible according to the rites of the religion to which they belonged, that their graves are respected, assembled if possible according to the nationality of the deceased and marked so that they may always be found. To this effect, they shall organize at the commencement of hostilities an Official Graves Registration Service, to allow subsequent exhumations and to ensure the identification of bodies, whatever the site of the graves, and the possible transportation to the home country. These provisions likewise

apply to the ashes, which shall be kept by the Graves Registration Service until proper disposition thereof in accordance with the wishes of the home country.

"As soon as circumstances permit, and at latest at the end of hospitalities, these Services shall exchange lists showing exact location and markings of the graves together with particulars of the dead interred therein through the Information Bureau mentioned in the first paragraph."

Captain MELLEMA (Netherlands), Rapporteur, said that the words "on whom these persons depended" in the first paragraph had been the subject of prolonged discussion. It had been decided by the majority that they should be similar to the wording used elsewhere in this and in the other Conventions under consideration. However, for various reasons, the Delegates of the United Kingdom and of Australia preferred the words "in whose service these persons were" subject to a final decision by Committee I.

In the fifth paragraph, the Delegates of the United Kingdom and of Australia thought the words "and the possible transportation to the home country" should be omitted so as to avoid any reference to subsequent repatriation of the dead. The majority of the Working Party did not share that opinion.

In the sixth paragraph, the Delegate of the Netherlands had wished to replace the words "shall exchange" by "shall communicate to each other" in order to make it obligatory for the belligerents to dispatch the said lists without waiting for the corresponding communication from the adverse Party. This opinion was shared by the Representative of the International Committee of the Red Cross.

Mr. SWINNERTON (United Kingdom) requested on behalf of his Delegation, that certain changes should be made in the proposed wording of Article 13 of the Wounded and Sick Convention. He proposed:

- (a) That the following sentence should be added to the second paragraph: "In cases where unidentified articles are recovered, for example from a battlefield, the statement should show when and where the articles were found, and any other information which might assist the adverse belligerent to identify their owners".
- (b) That the following sentence should be added to the third paragraph: "One identity disc or one half of a double identity disc should remain on the body."
- (c) That the words "and the possible transportation to the home country" should be

omitted from the fifth paragraph. The United Kingdom desired that the bodies of its soldiers should remain where they fell and were buried; besides, the return of bodies to the home country should form the subject of agreements between the belligerents, and should not be provided for in the Convention.

- (d) That further details should be given regarding the duties of the Graves Registration Service. This could be done by inserting, in the second sentence of the fifth paragraph after the words "Graves Registration Service", the phrase: "which will record particulars of all cremations and burials including the location of graves."

Captain MELLEMA (Netherlands), Rapporteur, was in favour of the United Kingdom suggestion regarding identity discs.

He did not, however, agree with the other proposals. Unidentified articles had already been dealt with at the end of the second paragraph. The words in the fifth paragraph concerning repatriation of deceased soldiers' bodies in no way imposed an obligation; besides, many countries wished to have the remains of their soldiers brought back to their native land. It appeared unnecessary to specify the duties of the Graves Registration Service, since they were already clearly implied by the very name of the Service.

Colonel CRAWFORD (Canada) considered that the proposals put forward by the United Kingdom Delegation were reasonable and he supported them.

The CHAIRMAN put the proposals to the vote.

The first proposal relating to unidentified articles, was rejected by 12 votes to 10, with 2 abstentions.

The second proposal relating to identity discs, was adopted by 13 votes to 8, with 3 abstentions.

The third proposal (that the words "and the possible transportation to the home country" in the fifth paragraph should be omitted), was rejected by 16 votes to 7.

The fourth proposal relating to the Graves Registration Service, was rejected by 11 votes to 7, with 5 abstentions.

Mr. SWINNERTON (United Kingdom) submitted a final proposal, which would, in his Delegation's opinion, make good a deficiency in the Stockholm text. He proposed that the following paragraph should be added to Article 13 of the Wounded and Sick Convention:

"Belligerents shall be responsible for graves and the records relating to them only as long as they remain in control of the territory in which those graves are. If, for any reason, a belligerent ceased to control the territory in which the graves are, the Power under whose control such territory passes, shall carry out the obligations of the Conventions regarding graves in that territory from the date on which it came into control of the territory."

Captain MELLEMA (Netherlands), Rapporteur, thought that this addition was superfluous, since the matter was already covered by Article 1 of the Convention.

The United Kingdom proposal was put to the vote and rejected by 15 votes to 8.

Article 13 of the Wounded and Sick Convention, as proposed by the Working Party but with the third paragraph modified by the addition concerning identity discs, was adopted.

#### Article 17 « Maritime Warfare »

Captain MELLEMA (Netherlands), Rapporteur, indicated that the Working Party had not considered it necessary to reproduce in Article 17 all the paragraphs of Article 13 of the Wounded and Sick Convention. The three first paragraphs of the new draft rendered the Maritime Warfare Convention sufficiently explicit. Immediately the sick, wounded and dead were landed they would automatically be entitled to protection under the provisions of the Wounded and Sick Convention.

The Working Party therefore proposed that the first and second paragraphs of Article 17 should be the same as the first and second paragraphs in the Wounded and Sick Convention, and that the third paragraph should be similar to the third paragraph in the Wounded and Sick Convention, the words "burial or cremation" being replaced, however, by the words "burial at sea"; the fourth and last paragraph which would read as follows:

"As soon as wounded, sick, shipwrecked or dead persons are landed, the provisions of the Geneva Convention of . . . for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field shall be applicable to them."

Article 17 of the Maritime Warfare Convention, as proposed by the Working Party, was adopted.

*The meeting rose at 7 p.m.*

## THIRTY-THIRD MEETING

*Thursday 30 June 1949, 10 a.m.*

*Chairman:* Mr. Ali Rana TARHAN (Turkey)

**Consideration of two recommendations made by the XVIIth International Red Cross Conference**

The XVIIth International Red Cross Conference was of the opinion that the two following recommendations, which were approved by the Conference of Government Experts in 1947, might be embodied in the Final Act of the Diplomatic Conference called upon to give the Geneva Convention its final form:

"I. Whereas Article 33, concerning the identity documents to be carried by medical personnel, was only partially observed during the course of the recent war, thus creating serious difficulties for many members of this personnel, the Conference recommends that States and National Red Cross Societies take all necessary steps in time of peace to have medical personnel duly provided with the badges and identity cards prescribed by Article 33 of the new Convention.

"II. Whereas misuse has frequently been made of the Red Cross emblem, the Conference recommends that States take strict measures to ensure that the said emblem is used only within the limits prescribed by the Geneva Conventions, in order to safeguard its authority and protect its high significance."

The CHAIRMAN proposed that the above recommendations should be approved.

The recommendations were approved with no dissentient votes, but with 3 abstentions.

**Report of the Drafting Committee on Articles 10 and 10A of the Wounded and Sick Convention**

**Article 10**

The text drawn up by the Drafting Committee read as follows:

"Members of the armed forces and other persons mentioned in the following Article who are wounded or sick shall be respected and protected in all circumstances.

"They shall be treated humanely and cared for by the belligerent in whose power they may be, without any adverse distinction founded on sex, race, nationality, religion, political opinions or any other similar criteria. Only urgent medical reasons will authorize priority in the order of treatment to be administered. Women shall be treated with all consideration due to their sex.

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

Dr. PUYO (France), acting as Rapporteur in the absence of General Lefebvre (Belgium), said that the Drafting Committee had considered that an enumeration of the persons protected would make the first paragraph of Article 10 too cumbersome. The Committee therefore proposed that the enumeration which appeared in Article 3 of the Prisoners of War Convention, should be reproduced in a new Article 10A, and that a new paragraph referring to the law of nations should be added to the latter Article.

As regards the second paragraph of Article 10, Committee I had rejected a United Kingdom amendment the purpose of which was to provide that only adverse distinctions were prohibited. The Committee's decision was certainly due to a misapprehension, as the same amendment had been adopted for Article 11 of the Maritime Warfare Convention, which was similar. Consequently, the Drafting Committee had added to the list of prohibited discriminations the word "adverse" and the word "sex", and also a sentence of the treatment of women.

With regard to the Soviet Delegation's amendment to Article 10, the Committee had decided

on May 3rd and 24th to refer the question of the definition of serious offences and their penalties to the Joint Committee, and to instruct the Drafting Committee to enumerate those offences.

The Drafting Committee proposed, in accordance with the decision it had taken on June 20th, that the enumeration, which might form the third paragraph of Article 10, should run as follows:

“Any attempts upon their lives, or serious violence to their persons, shall be strictly prohibited; in particular, they shall not be murdered or exterminated, subjected to torture or to biological experiments; they shall not wilfully be left without medical assistance and care, nor shall conditions exposing them to contagion or infection be created.”

The Contracting States would be bound by that provision, even if their relevant national legislation was inadequate. On the other hand the words “serious violence” would allow the use of therapeutic methods not entailing serious risks.

The Drafting Committee did not, however, endorse the Soviet Delegation’s view, which was that acts detrimental to the wounded and sick should be described as “serious crimes”. That question must be settled by the Joint Committee.

Colonel WATCHORN (Australia), reminded the meeting of the amendment to Article 10 which had been tabled by his Delegation (*see Annex No. 28*); he proposed that the second paragraph should specify that captured wounded and sick should be afforded at least the same care and treatment as was available to the wounded and sick of the armed forces of the detaining Power.

Dr. DIMITRIU (Rumania) said that the present Article formed a whole. He deplored the fact that it had been decided to split up its various clauses. The words “serious crime” should be included in it.

Captain MELLEMA (Netherlands) emphasized the fact that any violence whatsoever done to a protected person was a breach of the Convention; he wished the word “serious” to be omitted from the proposed third paragraph.

Colonel CRAWFORD (Canada) disagreed with the Netherlands proposal. It might lead to certain justifiable medical treatments being regarded as crimes.

He suggested that, for the sake of consistency and clarity, the form of Article 10 should be altered by inserting the clause proposed by the Soviet Delegation immediately after the first sentence of the second paragraph, the second and third sentences of the paragraph being made into separate paragraphs.

Dr. PUYO (France), Rapporteur, said that the Drafting Committee had not adopted the Australian amendment, as it considered that the word “humanely”, in the first sentence of the second paragraph, defined sufficiently clearly the manner in which the wounded and sick should be treated.

In reply to the Rumanian Delegate, he reminded the meeting that it was Committee I which had decided to refer to the Joint Committee the study of the provisions for the punishment of forbidden acts.

As regards the Netherlands proposal, the Drafting Committee had retained the word “serious” for the reason given by the Canadian Delegate.

The drafting modifications suggested by the Delegate of Canada appeared to be very judicious. If they were adopted, however, the word “nevertheless”, in the last paragraph, would have to be omitted.

Mrs. KOVRIGINA (Union of Soviet Socialist Republics) said that her Delegation could only accept Article 10 as proposed and the corresponding Article 11 of the Maritime Warfare Convention on one condition, namely, that Article 39 of the Wounded and Sick Convention and Article 43 of the Maritime Warfare Convention should stipulate that the acts listed in Articles 10 and 11 respectively should be treated as “serious crimes” under national legislation.

The CHAIRMAN took note of that reservation. He pointed out that the Soviet amendment concerning “serious crimes” had already been referred to the Joint Committee, and could not, therefore, be put to the vote there and then.

Captain MELLEMA (Netherlands) withdrew his proposal to omit the word “serious”.

Mr. PICTET (International Committee of the Red Cross) drew attention to the dangers which might arise if the word “serious” was retained. The natural implication would be that violence which was not serious was legitimate. Obviously medical treatment, even if involving some violence, would always be legitimate, provided it was for the welfare of the wounded and sick. It should not be confused with the punishable violence referred to in Article 10. Article 10 should prohibit all, and not only serious, violence.

Mr. GARDNER (United Kingdom) did not agree. If the word “serious” were omitted, it would no longer be possible for doctors to carry out their duties in certain circumstances. The word should be retained.

Mr. GIHL (Sweden) agreed with the views expressed by the Representative of the International Committee of the Red Cross and, on behalf of his Delegation and that of Norway, resubmitted the Netherlands Delegate's proposal to omit the word "serious".

Colonel WATCHORN (Australia) said that the purpose of the amendment submitted by his Delegation was to provide that wounded and sick who were captured should receive at least the same care and treatment as the wounded and sick of the detaining belligerent. He wished his Delegation's amendment to be put to the vote.

The Australian amendment was rejected by 9 votes to 5, with 12 abstentions.

The CHAIRMAN put to the vote the proposal to omit the word "serious" from the Soviet amendment.

The proposal was adopted by 15 votes to 13.

The CHAIRMAN moved the adoption of Article 10, as proposed by the Drafting Committee and subsequently amended, with the drafting modifications suggested by the Delegate of Canada, the word "nevertheless" being omitted from the third paragraph of the text of May 10th, which would now become the fifth paragraph.

Article 10 thus modified, was adopted.

#### Article 10A

The Drafting Committee suggested that Article 10A should be worded as follows:

"The present Convention shall apply to the wounded and sick belonging to the following categories:" (The enumeration appearing in

Article 3 of the Prisoners of War Convention to be inserted here).

Dr. PUYO (France), Rapporteur, said that the consideration of Article 3 of the Prisoners of War Convention had not yet been concluded. Therefore, only the principle of the inclusion of part of that Article in Article 10A could now be adopted.

The Drafting Committee further proposed an additional paragraph specifying that the provisions of Article 10A should not deprive the wounded and sick, whatever their category, of the protection to which they were entitled according to the general principles of the law of nations. The paragraph could only be drafted in its final form when the provisions of Article 3 of the Prisoners of War Convention became known.

Captain MELLEMA (Netherlands) reminded the Committee that it had already adopted the principle of including in Article 10A the enumeration which appeared in Article 3 of the Prisoners of War Convention.

The CHAIRMAN put to the vote the proposal of the Drafting Committee to add a paragraph referring to the general principles of the law of nations.

The proposal was rejected by 20 votes to 6, with 13 abstentions.

Article 10A, as proposed by the Drafting Committee, without the reference to the general principles of the law of nations, was adopted.

It was decided that the Drafting Committee should draft Article 10A in its final form as soon as Article 3 of the Prisoners of War Convention had been adopted.

*The meeting rose at 12.00 noon.*

## THIRTY-FOURTH MEETING

Thursday 30 June 1949, 3 p.m.

Chairman: Mr. Ali Rana TARHAN (Turkey)

### Communications by the Chairman

The CHAIRMAN read a letter from the Chairman of the Coordination Committee inviting Committee I to appoint a representative to form part of the Committee of Experts set up by the Coordination Committee.

On the proposal of Colonel MEULI (Switzerland), the Committee nominated Captain Mellema (Netherlands) as Representative of Committee I on the above Committee of Experts.

The CHAIRMAN explained that the Coordination Committee had written to him, pointing out a lack of coordination between certain Articles of the Wounded and Sick Convention and the corresponding Articles of the Civilians Convention. The latter would, however, only be circulated after the Committee of Experts appointed by the Coordination Committee had taken a decision on the Articles in question.

### Report of the Drafting Committee on Articles 11 and 11A of the Maritime Warfare Convention

#### Article 11

The text drawn up by the Drafting Committee on May 10th read as follows:

"The members of the armed forces and other persons mentioned in the following Article who may be at sea and who are wounded, sick or shipwrecked shall be respected and protected in all circumstances, it being understood that the term "shipwrecked" means shipwreck from any cause and includes forced landings at sea by or from aircraft.

"They shall be treated humanely and cared for by the belligerent in whose power they may be, without any adverse distinction founded on sex, race, nationality, religion, political

opinions, or any other similar criteria. Only urgent medical reasons will authorize priority in the order of treatment to be administered. Women shall be treated with all consideration due to their sex."

Dr. PUYO (France), Rapporteur in the absence of General Lefèbvre (Belgium), said that the observations made regarding Article 10 of the Wounded and Sick Convention also applied to the Article under discussion.

The Drafting Committee had, however, added a fuller definition of the term "shipwreck" to Article 11 and had inserted the words "who may be at sea" in the first paragraph, immediately after the words "following Article".

If Article 11 were to be modified in the same way as Article 10 of the Wounded and Sick Convention, the second paragraph of Article 11 would include the enumeration contained in the Soviet amendment, the word "serious" being, however, omitted; the second and third sentences of the second paragraph would each become a separate paragraph. The fifth paragraph of Article 10 of the Wounded and Sick Convention dealt with matters which concerned only that Convention, and would not be included in the Maritime Warfare Convention.

Article 11, as proposed and thus amended, was adopted.

#### Article 11A

The Drafting Committee proposed that Article 11A, which corresponded to Article 10A of the Wounded and Sick Convention, should also begin as follows:

"The present Convention shall apply to the wounded, sick and shipwrecked belonging to the following categories:" (Followed by the enumeration appearing in Article 3 of the Prisoners of War Convention).

Dr. PUYO (France), Rapporteur, said that the observations and proposals which had been made in regard to Article 10A of the Wounded and Sick Convention, were also applicable to Article 11A.

Article 11A, as proposed by the Drafting Committee, was adopted.

It was agreed that the Drafting Committee would draft Article 11A in its final form as soon as Article 3 of the Prisoners of War Convention was adopted.

### **Report of the Working Party on Articles 40 and 40A of the Maritime Warfare Convention**

#### **Article 40**

Captain MELLEMA (Netherlands), Rapporteur of the Working Party, proposed to consider Article 40 paragraph by paragraph.

#### *First Paragraph*

The Working Party proposed the following text:

“The ships designated in Articles 19, 20 and 21 shall be distinguished as follows:

- (a) All exterior surfaces shall be white.
- (b) One or more dark red crosses as large as possible shall be painted and displayed on each side of the hull and on the horizontal surfaces, so placed as to afford the greatest possible visibility from the sea and from the air.”

Captain MELLEMA (Netherlands), Rapporteur, said that in order to simplify the question of colours, the passage concerning a green or red horizontal band in Article 5 of the Xth Hague Convention had not been included.

The majority of the Working Party had considered that the possibility of recognition from a long way off was of primary importance. The United Kingdom Delegation had argued that optical considerations alone should determine the colour to be adopted for the hulls of hospital ships, and for that reason would have preferred the use of white paint to be discontinued. The Delegations of Canada and Australia, which had been present at the discussion on the point, had supported the view of the United Kingdom. The word “painted” was not used so as to leave the belligerents free to use other means of applying the colour.

The number of red crosses was not specified in view of the fact that the tonnage limit originally provided for in Article 19 had been omitted.

Mr. SWINNERTON (United Kingdom) made formal reservations in regard to the first paragraph.

Mr. SENDIK (Union of Soviet Socialist Republics) thought that Article 21B should be added to the list of Articles in the first sentence.

The proposal was approved.

The first paragraph, thus amended, was adopted.

#### *Second paragraph*

The Working Party proposed the following text:

“All hospital ships shall make themselves known by hoisting their national flag and further, if they belong to a neutral State, the national flag of the belligerent whose direction they have accepted. A white flag with a red cross shall be flown at the mainmast as high as possible.”

Captain MELLEMA (Netherlands), Rapporteur, said that the majority of the Working Party considered that the Red Cross flag, being an important means of identification, should be flown as high as possible. The minority thought that the Red Cross flag was of secondary importance, and preferred the wording of the paragraph, as it appeared in the Hague Convention.

The second paragraph, as proposed by the Working Party, was adopted.

#### *Third paragraph*

The Working Party proposed the following text:

“Lifeboats of hospital ships, coastal lifeboats and all small craft used by the medical service shall be painted white with dark red crosses prominently displayed and shall, in general, comply with the identification system above prescribed for hospital ships.”

Colonel CRAWFORD (Canada) asked why the word “painted” had been retained in the third paragraph when it had been omitted in the first paragraph; they should have said in the case of lifeboats, as they had in the case of hospital ships, “all exterior surfaces shall be white”.

Captain MELLEMA (Netherlands), Rapporteur, explained that lifeboats required a more resistant colouring matter than large ships. That was why it had been stipulated that the former should be painted white.

The third paragraph, as proposed by the Working Party, was adopted.

#### *Fourth paragraph*

The Working Party proposed the following text:

“The above-mentioned ships and craft which may wish to ensure by night and in times of reduced visibility the protection to which they are

entitled must, subject to the assent of the belligerent under whose power they are, take the necessary measures to render their painting and distinctive emblems sufficiently apparent."

Captain MELLEMA (Netherlands), Rapporteur, said that the majority of the Working Party had preferred that text (which was a replica of the last paragraph of Article 5 of the Xth Hague Convention, with a slight alteration) to the complicated prescriptions of the Stockholm text, which were too rigid and would be difficult to apply in certain circumstances. Belligerents would have greater freedom in the matter of illuminating the crosses on hospital ships.

The fourth paragraph, as proposed by the Working Party, was adopted.

#### *Fifth paragraph*

The Working Party proposed the following text:

"Hospital ships which, in accordance with Article 26 are provisionally detained by the enemy, must haul down the national flag of the belligerent in whose service they are or whose direction they have accepted."

Captain MELLEMA (Netherlands), Rapporteur, said that the fifth paragraph had been adopted unanimously. It was similar to the fifth paragraph of Article 5 of the Xth Hague Convention, with one modification: the words "to whom they belong" had been replaced by the words "in whose service they are or whose direction they have accepted" which were considered more suitable.

The fifth paragraph, as proposed by the Working Party, was adopted.

#### *Sixth paragraph*

The Working Party proposed the following text:

"Coastal lifeboats, if they continue to operate with the consent of the Occupying Power from a base which is occupied, may continue to fly their own national colours, along with the Red Cross flag, when away from their base."

Captain MELLEMA (Netherlands), Rapporteur, said that the sixth paragraph, which was discussed at considerable length, met the wishes of a great number of national lifeboat institutions belonging to formerly occupied countries, which had experienced difficulties during the last war. Crews of lifeboats had refused to put to sea under the flag of the Occupying Power. He would have preferred such lifeboats to have been able to operate under the Red Cross flag only. The suggestion, however, had been considered dangerous by

other delegates, who thought it necessary to be able to recognize the country of origin of the lifeboats.

The paragraph had been adopted provisionally, and it had been decided to submit it to Committee I for further consideration.

Mr. SWINNERTON (United Kingdom) said that his Government, was of the opinion that an Occupying Power, which authorized the lifeboats of the Occupied Power to continue to fly their national flag, as well as the red cross, should notify all the belligerent Powers concerned accordingly. He therefore proposed, first, that the words "be allowed to" be inserted after the word "may", and secondly, that the words "subject to prior notification to all the belligerents concerned" be added at the end of the paragraph.

The first part of the United Kingdom proposal was adopted by 18 votes to 1, with 7 abstentions.

The second part of the United Kingdom proposal was adopted by 10 votes to nil, with 10 abstentions.

The sixth paragraph, as proposed by the Working Party and as amended above, was adopted.

#### *Seventh paragraph*

The Working Party proposed the following text:

"All the stipulations relative to the red cross in this Article shall apply equally to the other emblems mentioned in Article 38."

Captain MELLEMA (Netherlands), Rapporteur, said that some delegates had considered that Article 38 was sufficient for the purpose intended. Other delegates, however, were of a different opinion, and considered that the above paragraph should be adopted.

The seventh paragraph, as proposed by the Working Party, was adopted.

#### *New paragraph*

Captain MELLEMA (Netherlands), Rapporteur, said that the paragraph adopted by the Drafting Committee concerning the obligation on hospital ships to make known their position, course and speed, had been discussed by the Working Party. The text was a re-draft of part of the United Kingdom amendment to Article 29 and read as follows:

"Whenever conveniently possible, hospital ships shall try to make known, periodically and adequately, their position, course and speed."

The majority of the Working Party had thought that the above paragraph was unnecessary, since

nothing prevented belligerents from taking the above-mentioned measures if they considered them necessary. Some delegates had even thought the paragraph dangerous, as it might allow the adverse Party to take prisoner the wounded, sick and shipwrecked persons on board those ships.

Mr. SWINNERTON (United Kingdom) said that his Government considered that question as of the highest importance. At the present time, aerial and naval bombardments were carried out from a great distance, and the markings on hospital ships were insufficient for their protection. Their immunity could only be safeguarded if they broadcast their position and speed at regular intervals. He therefore proposed that the provision should be included in the Convention, preferably after Article 40.

Captain MELLEMA (Netherlands), Rapporteur, said that the new paragraph proposed by the Drafting Committee made the provision in question compulsory; that was something which the Working Party had been unable to agree to.

Mr. SWINNERTON (United Kingdom) agreed that such a clause could not be made compulsory. The text proposed by the Drafting Committee appeared acceptable to him, and he proposed that the Committee should adopt it in principle, allowing the Drafting Committee to give it its final form.

Mr. SENDIK (Union of Soviet Socialist Republics) reminded the meeting that the Working Party had considered not only that Article 40 was not the proper place for this provision, but furthermore that such a provision might be dangerous, as it might encourage personnel of warships to board hospital ships and capture the wounded they were carrying. The captains of hospital ships could always make known their position and speed if they considered it necessary. There was, therefore, no reason to include the clause in the Convention, and he requested the Committee to accept the opinion of the Working Party, namely, that the paragraph was unnecessary.

The CHAIRMAN put to the vote the proposal of the Drafting Committee to insert the clause in the Convention.

The proposal was rejected by 12 votes to 5, with 8 abstentions.

The Working Party's opinion was thus confirmed.

Mr. SWINNERTON (United Kingdom) made reservations on behalf of his Delegation.

#### *Eighth paragraph*

Captain MELLEMA (Netherlands), Rapporteur, said that the last paragraph of the Stockholm text had been omitted by the Working Party, as it had been strongly opposed by several delegations.

The French Delegate, who had been responsible for the Stockholm text, had, however, submitted a new draft which gave the paragraph a more general character.

The majority of the Working Party still considered that the paragraph should be omitted; the new text had, however, been submitted to Committee I for a final decision. It read:

“Belligerents shall at all times endeavour to reach mutual agreement in order to use the most modern methods available to facilitate other means of communication and identification.”

Dr. PUYO (France) said that the present discussion clearly showed that Article 40 was incomplete. With existing methods of warfare the means of identification indicated in the first paragraph were insufficient. That was why the Stockholm Conference had adopted the French proposal to provide hospital ships with modern means of signalling. The text submitted to the Working Party by the French Delegation was to a certain extent a withdrawal, but even so it was important and should be adopted.

The text was adopted by 12 votes to 2, with 14 abstentions. It accordingly became the last paragraph of Article 40.

#### **Article 40A**

The text proposed by the Working Party was as follows:

“The distinguishing signs referred to in Article 40 can only be used, whether in time of peace or war, for protecting or indicating the ships therein mentioned, except as may be provided in any other general convention or by agreement between all the belligerents concerned.”

Captain MELLEMA (Netherlands), Rapporteur, said that the text reproduced Article 6 of the Xth Hague Convention of 1907, which had been omitted by the Conference of Experts of 1947 and by the Stockholm Conference.

The text had been adopted unanimously by the Working Party.

Mr. PICTET (International Committee of the Red Cross) thought that the French version of Article 40A was badly drafted. He proposed a revised wording.

The proposal was approved, and Article 40A, with the revised French text, was adopted.

#### Article 40B

The Italian Delegation proposed the adoption of a new Article 40B, worded as follows:

##### Article 40B

(Signals and communication between Hospital Ships and Belligerent Naval or Air Forces.)

"Ships and boats mentioned in Articles 19, 20 and 21 which, being in the situations mentioned in Articles 26 and 40, have to communicate with belligerent armed forces by sea, shall conform to the following principles:

By day: Flag signals (flags of the alphabetical code, numerical pendants, etc., of the International Signal Code).

By night: Masthead lights, searchlights and other luminous signalling apparatus.

"Further, signals of distress shall be employed to notify any attack with which the said ships or boats may believe themselves to be threatened (star shells, rockets).

"Radio transmissions (in clear on 600 m. wavelength) shall be employed for long-distance communications regarding hospital service and information concerning course, speed and position.

"Signals by other means (Radar and submarine sound signals) shall be employed for communications requested by belligerents by means of similar signals.

"The provisions and rules laid down in the present Article shall be brought up to date and duly set forth in agreements between the Powers interested in the problems of telecommunication for ships and aircraft, and shall appear in regulations to be annexed to the Maritime Warfare Convention."

General PERUZZI (Italy) explaining the amendment, noted in the first place that the Maritime Warfare Convention contained no provision for the transmission of orders, information, or signals of distress between naval or air forces and hospital ships. Specific rules should, therefore, be laid down, so as to prevent abuses.

Wireless sets capable of transmission and reception on a wavelength of 600 metres were not used in all military aircraft; besides, in case of attack,

it would not always be possible to make use of them in time. It had often happened that visual signals from aircraft to hospital ships, which should have signified the boarding of a ship, an alteration of course, prohibition of entry into an occupied port, the position of shipwrecked persons, or dangerous areas, had not been understood owing to lack of instructions; attacks on hospital ships by submarines and torpedo-carrying aircraft could have been avoided by the use of rapid and unmistakable signals, such as distress signals.

Again the use of modern long range means of communication might give rise to involuntary breaches or to abuse by hospital ships who found themselves close to naval forces belonging to an adverse belligerent.

The essential thing was to include a general principle in the Convention, and then to entrust a committee of experts with the task of drafting detailed regulations which might form an Annex to the Convention.

Mr. DE GEOUFFRE DE LA PRADELLE (Monaco) observed that the word "ajournées" in the last paragraph of the French text of the proposed Article 40B, should be replaced by the words "mises à jour".

He thought that the drawing up of the regulations could be postponed to a later date, perhaps even until after the signature of the Convention.

Dr. PUYO (France) acknowledged the humanitarian spirit which had prompted the Italian proposal, but thought that they should not take too hasty a decision with regard to it. He proposed that the amendment be referred to a working party.

Colonel CRAWFORD (Canada) considered that it was unnecessary to lay down in the Convention that hospital ships must signal by means of flags, rockets, or other devices. It was evident that in practice they would do this on their own initiative. On the other hand, the proposal relating to the use of rapid means of recognition (wireless, Radar, etc.) was interesting; the drafting of such a provision, which should be brief, could be entrusted to a working party.

Captain MELLEMA (Netherlands) feared that acceptance of the Article might conflict with relevant international Conventions already in existence. He thought that the last paragraph of Article 40 was all that was required, and he was therefore in favour of rejecting the Italian proposal.

General PERUZZI (Italy) approved the drafting change proposed by the Delegate of Monaco.

The enumeration in the Italian amendment was only intended to draw attention to the signals in use.

There were no other international Conventions dealing with the question in existence; that was why the Italian Delegation had submitted the present proposal.

Mr. SENDIK (Union of Soviet Socialist Republics) agreed with the Canadian Delegate. He understood that the main purpose of the Italian proposal was to make it possible for fighting units and aircraft to understand the signals made by hospital ships; it was therefore out of place in the Maritime Warfare Convention. He reminded the meeting that the question had already been discussed by Committee I in connection with Article 26, the proposal being rejected.

The amendment was put to the vote and rejected by 13 votes to 8, with 8 abstentions.

General PERUZZI (Italy) stated that his Delegation reserved the right to raise the question again in a Plenary Meeting.

**Report of the Working Party entrusted with the task of studying the Preamble to the Wounded and Sick and Maritime Warfare Conventions**

The Draft Preamble proposed by the Working Party read as follows:

“Respect for the personality and dignity of the human being is a universal principle which is binding even without contractual undertakings. Religions proclaim its divine origin and all people consider it a fundamental of civilization.

“This principle commands the alleviation of sufferings occasioned by war and requires that all those who are not directly engaged in the hostilities as combatants and all those who, because of sickness, wounds, capture or any other circumstances, have been withdrawn from hostilities, shall be duly respected and protected and that those among them who are suffering shall be aided and cared for regardless of race, nationality, religion, political opinion or other circumstance.

“Solemnly affirming their intention to adhere to this principle, the High Contracting Parties have agreed as follows:”

Mr. BAMBATE (Afghanistan), Rapporteur of the Working Party, reminded the Committee that it had decided that the Conventions which it was considering should begin with a declaration of

general principles. It had entrusted the drafting of the declaration to a Working Party, which was also to decide whether the declaration should appear in the form of a Preamble, or as a first Article.

The Working Party had quickly decided in favour of a Preamble. It was realized that only in a preamble in the traditional sense of the word would it be possible to set forth in general terms the principles and the aims and objects of the Convention. The Articles, on the other hand, should only contain rules, expressed in the form of imperatives, and provisions which were immediately applicable. Nevertheless, in order that the Preamble should be widely known and discussed, the Working Party had decided to place it before the Articles, but after the title, thus enabling it to be considered as part of the Convention.

As regards the actual text of the Preamble, the Working Party had considered two drafts, the first being that suggested by the International Committee of the Red Cross in its document “Remarks and Proposals”, and the second, a text submitted to Committee III by the Delegation of the United States of America (*see Annex No 187*). The two texts were almost identical. It had therefore been decided to amalgamate them into a single text, which the Working Party could take as a basis for discussion. The Delegate of the United States of America, the Representative of the International Committee of the Red Cross and the Rapporteur had been entrusted with that duty.

It had been necessary to take into account both the wishes of those who desired the Convention to allude to a divine principle, and of those who did not consider that it should include a profession of faith. As a compromise, it had been agreed to adopt a text which began by affirming respect for the human being in the abstract in a completely general way, and then went on to illustrate that principle in more concrete fashion by two supplementary observations, one being a statement of fact pure and simple without any dogmatic bias, namely that religions proclaimed the divine origin of the principle, and the other, the recognition of the fact that all nations regarded that principle as a fundamental of civilization.

It had therefore been possible to submit a single text to the Working Party. No objections had been raised as to its substance. Several delegates had submitted amendments which only concerned the form of the Preamble. They had all been adopted unanimously.

The Delegate of the Ukrainian Soviet Socialist Republic had, however, asked for a further meeting, at which he had submitted three amendments which were not acceptable to the other members of the Working Party. He had then stated that he could not accept the Preamble as it stood,

and reserved the right to submit a new wording in Committee I; this new text read as follows:

“Respect for the personality and dignity of the human being is a universal principle which is binding irrespective of any contractual undertaking.

“This principle is calculated to alleviate the evils occasioned by war, and requires that all persons not directly engaged in hostilities as combatants, and all those who have been rendered *hors de combat* as a result of sickness, wounds, capture, or any other cause shall be guaranteed against any attempt on their lives, and shall be respected and protected, and that those who are suffering shall be aided and cared for, irrespective of any consideration of race, nationality, religion, political opinion or any other circumstance.

“Solemnly affirming their will to adhere to the principle that breaches of this principle shall be prohibited and severely punished, the High Contracting Parties have agreed as follows: . . .”.

Mr. BARAN (Ukrainian Soviet Socialist Republic) said that a preamble should contain a short statement of the essential principles of a Convention. In this case it should lay particular emphasis on the fact that the wounded and sick must be protected in all circumstances against any attempt on their life and that the High Contracting Parties must prohibit and punish all infringements of the Convention. Those principles were, he said, included in the text submitted by the Delegation of the Ukraine; on the other hand, the words “Religions proclaim its divine origin” had been omitted.

Mr. MIKAOUÏ (Lebanon) proposed that the discussion should be adjourned so as to give delegates an opportunity of studying the amendment submitted by the Delegation of the Ukrainian Soviet Socialist Republic.

*The meeting rose at 6.30 p.m.*

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### THIRTY-FIFTH MEETING

*Friday 1 July 1949, 10 a.m.*

*Chairman:* Mr. Ali Rana TARHAN (Turkey)

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#### **Report of the Working Party entrusted with the task of studying the Preamble for the Wounded and Sick and Maritime Warfare Conventions (continued)**

Msgr. COMTE (Holy See) said that his Delegation supported the text submitted by the Working Party.

The Conventions must, above all, be respected. Such respect being a moral issue, could best be ensured by referring in the Preamble to the divine principle on which the rights and duties of man were based.

The present discussions had aroused public interest throughout the world, and hundreds of millions of believers of all races were awaiting a decision which would confirm the trust they had put in the Conventions. The reference to divinity, in the form proposed, was not a statement of dogma, but a mere statement of fact, and its omission

would undermine the very foundations of the Convention.

The Delegation of the Holy See advocated the adoption of the Preamble in the form proposed by the Working Party.

Mr. DE RUEDA (Mexico) informed the meeting that his Delegation was not present when the Working Party adopted the text of the Preamble unanimously except for the Ukrainian Delegation. In view of the polemics aroused by the Preamble in Committee III, he proposed that it should be omitted altogether.

Mr. DE GEOUFFRE DE LA PRADELLE (Monaco) said there had been no controversy in the Working Party (of which he was Rapporteur) entrusted by Committee III with the task of studying the Preamble. Incidentally, the Report of that Working Party had not yet been distributed.

Mr. PICTET (International Committee of the Red Cross) said that the I.C.R.C. had observed that serious differences of opinion existed both in Committee I and in other groups of the Conference, and was deeply concerned about the prejudicial consequence which such differences might have. It had therefore directed him to remind Committee I briefly of the reasons which had led it to propose the Preamble as it appeared in the pamphlet "Remarks and Proposals".

The object of the I.C.R.C. had been to place at the beginning of the Conventions, so that it would be easily and clearly grasped by general public, the guiding principle underlying the Conventions and inspiring all their provisions, namely that of respect for the human person. It was a corollary of that respect that those who were not taking part in hostilities and those who had been placed *hors de combat*, should be protected, whether friends or foes, without any distinction based on nationality, race, religion or political opinion.

That principle was the corner stone of the whole institution of the Red Cross and the Geneva Conventions. It was thanks to it that the Red Cross had become universal and had been able to accomplish its work.

The Red Cross and the Geneva Conventions constituted one of the rare domains—perhaps the only domain—in which all men, whatever their country, whatever their political, religious or social convictions, could meet and speak the same language. The strength of the Red Cross was that it represented an element of union and not of division. It was in that spirit that the International Committee of the Red Cross had drafted the Preamble, uninfluenced by any considerations other than humanitarian ones.

The International Committee of the Red Cross, therefore, ventured to recommend that the Preamble to be adopted should be an element of union, embodying at least the one principle upon which all could agree—that of respect for suffering humanity. The purpose of the Conference was to agree upon the provisions in the humanitarian conventions, and not upon the philosophical or metaphysical motives which inspired them and which might be different for different nations.

He hoped that if the proposal to omit the Preamble was adopted, it would at least be possible to retain the basic principles set out in the second paragraph.

Dr. DIMITRIU (Rumania) failed to see why the International Committee of the Red Cross had proposed the inclusion of a Preamble in the Geneva Convention, which had never had one before. The text proposed was doubtless a fine page of literature; but if it was intended to embody the guiding principles of the Convention, it should include

not only the principle of respect for the wounded and sick, but also the idea of severe penalties for any serious breach of the Convention. The Preamble submitted by the Working Party was a mixture of philosophy, religion and law, which was out of place in the Convention, and irrelevant to the discussions of the present Conference.

Mr. SPERONI (Argentina) supported the text proposed by the Working Party, and the comments made by the Delegation of the Holy See. The Argentine Delegation would, however, have preferred the reference to divinity to have taken the form of an invocation, as in the Argentine Constitution of 1853.

Colonel CRAWFORD (Canada) reminded the meeting that his Delegation had voted against the inclusion of a preamble in the Conventions; they had seen no point in having one, and the Conventions had done very well without one up to now.

However, since it had been decided that a preamble was necessary, he proposed that they should adopt the text submitted by the Working Party, which had the advantage of being inoffensive. He preferred it to the text submitted by the Ukrainian Delegation, which condensed in a few words all the amendments which the Soviet Delegation desired to see included in the Conventions.

He suggested that the words "requires that all those" in the second paragraph should be replaced by the words "requires that members of the armed forces".

General PERUZZI (Italy) wished to point out, in reply to the Delegate of Rumania, that protestations of faith and convictions by believers were not mere literature.

Mr. MOROSOV (Union of Soviet Socialist Republics) said that his Delegation supported the draft Preamble submitted by the Ukrainian Delegation. It was obvious that expression must be given to the various principles contained in it, which were the very structure of the Convention,—viz. protection of the wounded and sick against any attempt of their persons or their lives, and severe punishment of breaches of the Convention. The text proposed by the Ukrainian Delegation had the additional advantage of ruling out all abstract notions which were irrelevant to the Conventions, in particular, the provisions which certain delegations wished to include, and which did not appear to have been included in any international agreement since the beginning of the century. The only result of adopting such provisions would be to compromise the practical application of the Convention.

The Conference was not the place to embark upon a discussion of a philosophical order or to oppose divergent theses; what was important was the practical value of the Conventions. No delegation had objected to the provisions guaranteeing freedom of religion and freedom of conscience. But it was not true to say that the nations of the world would approve of the wording proposed by the Working Party.

Rather than begin the Conventions by abstract formulae which were unacceptable in many countries, it would be better and more in the interests of the persons to be protected by the Conventions to omit all such formulae, particularly as the discussion showed that an agreement on the subject was far from being reached. The Soviet Delegation, therefore, supported the Mexican Delegation's proposal that there should not be a preamble of any kind. In the event of that proposal not being agreed to, his Delegation would ask for the adoption of the text proposed by the Ukrainian Delegation.

Mr. KRUSE-JENSEN (Norway) said that his Delegation approved the first paragraph of the text submitted by the Working Party. The first sentence expressed a universally acknowledged principle. The second and third sentences were merely statements of fact, the truth of which could not be contested by anyone.

Colonel RAO (India) moved the closure of the discussion and proposed that a vote be taken on each of the two texts which had been submitted, and on the Mexican proposal to omit the Preamble altogether.

Mr. MIKAOUI (Lebanon) agreed that the discussion should be closed.

Mrs. KARDOS (Hungary) opposed the motion for the closure.

The proposal to close the discussion was put to the vote and rejected by 16 votes to 16.

Mrs. KARDOS (Hungary) was surprised that after the experience of the second world war there should still be delegations which objected to a proposal designed to prevent a repetition of atrocities. The protection to be given to war victims had been discussed for the past two months: yet a safeguard, in a preamble, against any attempt on their lives was being denied to them. And yet, the principles so clearly expressed in the text submitted by the Ukrainian Delegation seemed to be in their right place in a preamble.

Mr. BAMBATE (Afghanistan), having, as Rapporteur, informed the meeting of the result of the

discussions in the Working Party, now wished to indicate the point of view of his own Delegation. It had been said with regard to the allusion to the divine principle, that such abstract considerations were out of place in the Conventions, that they could only lead to differences of opinion and that it would be wiser to abandon the wording envisaged.

But the text submitted by the Working Party seemed to smooth out all such difficulties, since it renounced any profession of faith and confined itself to stating a fact. It was neutral for the agnostic, but loaded with meaning for the believer. Moreover, it would arrest the attention of the public at large, arouse enthusiasm, and although impartial, would not antagonize those who had a more spiritual conception of charity. It was realistic in that it appealed to all creeds without distinction. To drop the Preamble would perhaps be better than to adopt a text which was devoid of all real meaning and human feeling, but to do so would be a deep disappointment to many and would certainly not add to the prestige of the Conventions.

Mr. SWINNERTON (United Kingdom) said that his Delegation agreed with the point of view expressed by the Canadian Delegate. To be acceptable, a preamble should be a statement of high principles, and not of guarantees which had no legal weight behind them. It would be better to eliminate the Preamble, rather than have the text proposed by the Ukrainian Delegation.

Mr. KORBAR (Czechoslovakia) said that the Preamble was part of a Convention which should be known to the largest possible number of nations. It should therefore be worded in terms which were simple and easily understood, offended no one and avoided any profession of faith. That could not be said of the text proposed by the Working Party. The text submitted by the Ukrainian Delegation, on the other hand, satisfied the above conditions perfectly. A preamble should, however, be adopted unanimously; and, if unanimity could not be obtained, it would be best to have no Preamble at all.

Colonel CRAWFORD (Canada) and Mr. BURDEKIN (New Zealand) proposed that the question should be put to the vote.

The CHAIRMAN suggested that a vote should first be taken on the proposal by the Delegation of Mexico that there should be no Preamble. However, as that proposal meant reversing the decision taken by the Committee on May 31st, a two-thirds majority would be required for its adoption.

The proposal to omit the Preamble, put to the vote, received 22 votes against 13, with 3 abstentions. A two-thirds majority not being obtained (38 delegations were present), the proposal was rejected.

Mr. MOROSOV (Union of Soviet Socialist Republics) considered that the proposal to omit the Preamble was a new idea, which did not require a two-thirds majority. Indeed, since there was no agreement upon either of the two texts proposed, there could be no Preamble. He asked the Committee to vote on the question of whether the proposal was a new one. If it was admitted to be a new one, the vote already taken would remain valid.

Mr. MIKAOUI (Lebanon) pointed out that no objection had been raised when the Chairman, in putting the proposal to the vote, observed that it meant reversing the decision already taken. There was therefore no reason to re-open the discussion.

The CHAIRMAN said that he had no doubt that the effect of the proposal by the Delegation of Mexico would be to modify the decision already taken by the Committee.

Mr. MOROSOV (Union of Soviet Socialist Republics) pressed for a decision by the Committee on the Chairman's interpretation.

The CHAIRMAN ruled that, as the Soviet Delegation had made no comment before the vote was taken upon the proposal by the Delegation of Mexico, there could be no further discussion on the point.

Mr. BARAN (Ukrainian Soviet Socialist Republic) proposed that the text of the Preamble as tabled by his Delegation, be put to the vote paragraph by paragraph.

The CHAIRMAN put the Preamble proposed by the Ukrainian Delegation to the vote, paragraph by paragraph.

The first paragraph was rejected by 25 votes to 10, with 6 abstentions.

The second paragraph was rejected by 23 votes to 9, with 6 abstentions.

The third paragraph was rejected by 26 votes to 9, with 5 abstentions.

The Ukrainian amendment was thus rejected.

Mr. MOROSOV (Union of Soviet Socialist Republics) presumed that those who voted against the text submitted by the Working Party would by so doing express their wish that the Conventions should have no Preamble.

The CHAIRMAN stated that he would take a vote on the text of the Preamble submitted by the Working Party. If the Committee did not adopt that text, they could request that a new wording of the Preamble should be submitted to them. If they decided not to do so, it would be legitimate to assume that the Committee had abandoned the idea of having a Preamble.

He would first put the vote the Canadian amendment proposing that in the second paragraph the words "requires that members of the armed forces" should be substituted for the words "requires that all those".

The Canadian amendment was adopted by 18 votes to 2, with 8 abstentions.

The Preamble, as submitted by the Working Party and as above amended, was adopted by 25 votes to 7, with 3 abstentions.

*The meeting rose at 1 p.m.*

## THIRTY-SIXTH MEETING

Friday 1 July 1949, 4 p.m.

Chairman: Mr. Ali Rana TARHAN (Turkey)

**Amendments submitted by the French Delegation to Chapter IV of the Wounded and Sick Convention**

**Article 22**

The French Delegation proposed adding a new paragraph worded as follows, to Article 22:

“(d) The Detaining Power shall allow such personnel the same maintenance, the same accommodation and the same rationing as that of corresponding personnel in its own army. In any case, food shall be sufficient in quantity, quality and variety to maintain the personnel in question in a normal state of health.”

Dr. PUYO (France) reminded the Committee that in the course of the discussion on Article 22 on June 15th, the Chairman had authorized the French Delegation to submit, at a later date, an amendment which would be regarded simply as an addition. The amendment in question merely reintroduced a paragraph which already existed in the Stockholm text and in the Swiss amendment which had been taken as the basis for discussion.

The paragraph, which repeated the provisions of the first paragraph of Article 13 of the 1929 Convention, had been rejected by the Drafting Committee, which considered that retained personnel would have the benefit of the improvements made in the Prisoners of War Convention.

But the new Prisoners of War Convention had not yet been signed, and the improvements provided for in that Convention might not always be realized in practice. Besides, the moral authority of retained medical personnel and chaplains should be upheld in the eyes of the prisoner of war camp authorities by granting them the same treatment as that reserved for the corresponding personnel of the Detaining Power. That had, incidentally, been provided for in the case of retained personnel belonging to neutral societies (Article 25). Finally, it should not be forgotten that some of the said personnel were retained voluntarily—namely, those

which a belligerent left, in accordance with the provisions of Article 10, with wounded and sick who were abandoned to the enemy. Why should such personnel receive less favourable treatment than neutral personnel?

The proposal in no way affected the substance of Article 22, but was only designed to improve and supplement it, and could therefore be accepted by everyone.

Mr. STARR (United States of America) repeated what he had already said during the discussion on Article 22 (*see Summary Record of the Twenty-seventh meeting*). The proposal altered a decision already taken, and a majority of two-thirds of the delegations present was necessary for its adoption.

Colonel CRAWFORD (Canada) reminded the meeting that the Working Party entrusted with the consideration of Chapter IV and the Drafting Committee had already rejected the suggestion, which had been considered dangerous, as there could be no proof that a Detaining Power treated its own personnel better than prisoners of war. The Prisoners of War Convention seemed to be sufficient to ensure satisfactory treatment for retained personnel. On the other hand, it would not be right for a prisoner of war to see medical officers who were their own countrymen receiving better treatment than themselves.

Dr. PUYO (France) agreed to the adoption of his amendment being made subject to a two-thirds majority.

He reminded the Committee that the proposed measure had already been taken in the case of neutral personnel. The dangers pointed out by the Canadian Delegate should not therefore be so very great, for nobody would have wished to place neutral medical personnel in a precarious position.

Put to the vote, the amendment was rejected by 17 votes to 5, with 4 abstentions.

**Article 24**

The French Delegation proposed that the following sentence be added to the first paragraph:

“Specialists for whose services there is no special call in the camps shall have priority in repatriation.”

Dr. PUYO (France) said that the addition of that provision appeared necessary and in no way altered the substance of the Article or the spirit of Chapter IV. Article 24 dealt with the rules governing the selection of repatriates on a quantitative basis only; but qualitative considerations should also be borne in mind. He reminded the meeting of the remarks he had made June 15th during the discussion on Article 22. He added that the amendment should apply in particular to neurologists, whose services in the front line were of the greatest value.

He said that it was most important that this humane proposal should be adopted; he agreed that a two-thirds majority would be necessary for its adoption.

The amendment was put to the vote and rejected by 10 votes to 7, with 5 abstentions.

**Model agreement on the selection of personnel to be retained, and their relief**

The proposal put forward by the French Delegation read as follows:

“Article 22, approved by Committee I, provides that: ‘during hostilities, the belligerents shall make arrangements for relieving where possible retained personnel, and shall settle the procedure of such relief.’

“Article 24 provides that: ‘as from the outbreak of hostilities, belligerents may determine by special arrangement the percentage of personnel to be retained captive, in proportion to the number of prisoners and the distribution of the said personnel in the camps.’

“In view of the difficulties which, as has been pointed out, the conclusion of such agreements would occasion during hostilities, might it not be useful to request the International Committee of the Red Cross to prepare a model agreement on these two questions, similar in character to that already made for the hospital zones and localities? This model agreement might be included in the present Convention as Annex II.”

Dr. PUYO (France) pointed out how difficult it was in time of war to conclude special agreements between belligerents. A model agreement for hospital zones had been proposed by the International Committee of the Red Cross. A similar agreement concerning the selection of personnel to be retained and their relief, should that be necessary, would not bind the States in any way.

As regards the relief of retained personnel, the model agreement might, on the one hand, fix the maximum duration of their stay in the camps and, on the other hand, lay down that personnel who had fallen ill were to be sent home earlier. Finally, it might lay down the principle that decisions regarding repatriation should take into account the qualifications of the person concerned and the necessity of his presence in his home country.

The agreement might also fix the proportion of personnel to be retained in relation to the number of prisoners. The proportion of one doctor to every 2,000 prisoners, which was suggested at the 1947 Conference of Experts and at Stockholm, appeared reasonable.

He proposed that the Committee should ask the Representative of the International Committee of the Red Cross to draw up a draft model agreement, for subsequent submission to a working party.

Colonel CRAWFORD (Canada) did not think the Committee could then and there draw up a draft agreement of the type indicated, although the principle of having one appeared to be sound. The question should, he thought, be considered at a later date.

Dr. PUYO (France) said that it was for the International Committee of the Red Cross to say if they could submit a draft straightaway. If not, Committee I might request them to begin studying the matter and to submit a text later to the various Governments.

Mr. PICTET (International Committee of the Red Cross) said that no draft of the type indicated was in existence at the moment, but they were prepared to undertake the preparation of a draft, if Committee I so desired. However, the cooperation of experts from among the delegates also seemed necessary.

He proposed that Committee I should recommend that a draft model agreement be prepared and subsequently submitted to the Governments for consideration.

Mr. BURDEKIN (New Zealand) seconded that proposal; he moved that the Committee should

recommend that the International Committee of the Red Cross should prepare a model draft agreement and forward it to the various Governments.

Dr. PUYO (France) supported the above proposal. He suggested that the Committee's recommendation should be submitted to the Plenary Assembly

for approval, so as to ensure that it appeared in the Final Act of the Conference.

The proposal was put to the vote and adopted unanimously.

*The meeting rose at 5.25 p.m.*

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### THIRTY-SEVENTH MEETING

*Wednesday 6 July 1949, 10 a.m.*

*Chairman:* Sir Dhiren MITRA (India)

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#### **Report of the Working Party on Article 42 of the Wounded and Sick Convention**

Mr. GIHL (Sweden), Rapporteur, said that the Working Party had not been able to reach complete agreement; the three Delegations who were members of it had recognized, however, that the emblem must be protected at all costs against abuses.

The United States Delegation had said that their object in proposing that Article 42 should be deleted, was not to diminish the protection to which the distinctive emblem of the Convention was entitled, but, on the contrary, to increase it and to ensure that any improper use of the emblem was discontinued, irrespective of the date on which such improper use began. The United States Delegation was therefore willing to insert in Article 36A, in the Chapter dealing with the distinctive emblem, the prohibitions specified in Article 42, in such a way that they would become absolute. Furthermore, a provision stipulating that States should take the legislative measures necessary to implement such prohibitions should be introduced in the Chapter concerning the repression of abuses and infractions. On the other hand, the United States Delegate was not in favour of the clause which provided that the use of the arms of the

Swiss Confederation as a trademark, must be discontinued "whatever the date of its adoption". That provision would raise grave constitutional questions in the United States, because it would require the withdrawal of acquired rights in a field which did not fall within the scope of the Convention.

The Representative of Venezuela, who had attended the meeting as an observer, had stated that acquired rights were also protected under the Constitution of his country.

The Delegation of the Union of Soviet Socialist Republics had preferred the Stockholm text, subject to drafting improvements; they desired the Swiss arms to be protected against abuses as effectively as the distinctive emblem of the Convention, in view of the confusion which might arise owing to the similarity between the two emblems.

The Delegation of the United States of America had drawn up a draft text which had not been agreed to by the other two Delegations represented.

The Rapporteur and the Representative of the International Committee of the Red Cross had then drafted the following new Article, based on the proposal of the United States of America and on the Stockholm text:

**Article 36A**

"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 "Geneva Cross", as well as 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.

"By reason of the tribute paid to Switzerland by the adoption of the reversed Federal colours, and of the confusion which may arise between the arms of Switzerland and the distinctive emblem of the Convention, the use by private individuals, societies or firms, of the arms of the Swiss Confederation, or of marks constituting an imitation, whether as trade-marks or commercial marks, or as parts of such marks, or for a purpose contrary to commercial honesty, or in circumstances capable of wounding Swiss national sentiment, shall be prohibited at all times, whatever the previous date of its adoption.

"Nevertheless, such High Contracting Parties as were not party to the Geneva Convention of July 27, 1929, may grant to prior users of such emblem, designations, signs or marks a time limit not to exceed two years from the coming into force of the present Convention to discontinue such use, provided that the said use shall not be such as would appear, in time of war, to confer the protection of the Convention.

"The principles laid down in the preceding paragraphs shall also apply to the marks mentioned in the second paragraph of Article 31 in respect of countries using them."

The Working Party recommended that Committee I should request the Joint Committee to amend Article 39 to the effect that the High Contracting Parties should provide, in their legislation, for the implementation in time of peace as in time of war, of the measures mentioned in Article 36A. Should the Joint Committee see no possibility of amending Article 39 in that sense, Committee I would make additions to the above draft of Article 36A and would include its provisions in Article 42.

The Delegation of the United States of America had stated that it was prepared to accept the above solution, with the exception of the words "whatever the previous date of its adoption" in the second paragraph of Article 26A; it had proposed that that phrase should be omitted. If that proposal were agreed to, a corresponding change would have to be made in the following paragraph.

The Delegation of the Union of Soviet Socialist Republics had observed that the proposed draft had the undeniable advantage of being simple and precise, but were opposed to the division of the subject matter into two articles (Articles 36A and 39). They had proposed that the lay-out in Article 42 of the Stockholm Draft should be restored.

The following draft had therefore been prepared by the Rapporteur and the Representative of the International Committee of the Red Cross:

**Article 42**

"The High Contracting Parties whose legislation is not at present adequate for the purpose, shall, within a maximum delay of two years after the ratification of the present Convention, take the measures necessary to prevent at any time:

(a) The use by private individuals, societies, firms or companies other than those entitled thereto under the present Convention, of the emblem or the designation "Red Cross" or "Geneva Cross" as well as any sign or designation constituting an imitation thereof, whatever the object of such use and whatever the previous date of its adoption;

(b) By reason of the tribute paid to Switzerland by the adoption of the reversed Federal colours, and of the confusion which may arise between the arms of Switzerland and the distinctive emblem of the Convention, the use by private individuals, societies or firms, of the arms of the Swiss Confederation, or marks constituting an imitation, whether as trade-marks or commercial marks, or as parts of such marks, or for a purpose contrary to commercial honesty, or in circumstances capable of wounding Swiss national sentiment shall be prohibited at all times, whatever the previous date of its adoption.

"Nevertheless, the High Contracting Parties which were not party to the Geneva Convention of 27 July 1929, may grant to prior users of such emblems, designations, signs, or marks a time limit not to exceed three years from the coming into force of the present Convention to discontinue such use; provided that the said use shall not be such as would appear, in time of war, as intended to confer the protection of the Convention.

"The principles laid down in the preceding paragraphs shall also apply to the marks mentioned in the second paragraph of Article 31 in countries where they are used."

This text had been approved by the Delegations of Sweden and of the Union of Soviet Socialist Republics. The Delegation of the United States of America had declared that it was unable to accept the words "whatever the previous date of its adoption" in sub-paragraph (b).

The Rapporteur concluded by saying that this last text took account of the amendments submitted by the Delegations of Greece, Israel and Turkey.

Mr. STARR (United States of America) said that his Delegation no longer insisted on the deletion of Article 42. They would be satisfied if the Article strictly prohibited any misuse of the emblem, and if the Joint Committee was instructed to draw up the clauses necessary to prevent such misuse. He proposed that the Committee should vote on one or the other of the proposed texts.

Dr. DIMITRIU (Rumania) pointed out that the object of the Convention was to protect war victims and not commercial enterprises. The use of the emblem by the latter should be prohibited, as the text submitted by the Working Party proposed that it should be.

Mr. PICTET (International Committee of the Red Cross) said that the proposals which appeared in the Report of the Working Party were in his opinion both acceptable.

Mrs. KOVRIGINA (Union of Soviet Socialist Republics) thought that the Committee should take, as a basis for discussion, the text adopted by the majority of the Working Party, and not that based on the draft of the Delegation of the United States of America. The Soviet Delegation was opposed to this Article being divided into two separate parts. Experience had shown that texts referred to the Joint Committee were buried among other provisions. The wording proposed by the majority of the Working Party was acceptable, and would help to prevent the improper use of the emblem and of the arms of Switzerland.

Should the Committee authorize the use of the arms of Switzerland for commercial purposes, the Soviet Delegation would be compelled, at the Plenary Meeting, to reintroduce and support the Indian amendment which called for the establishment of a new emblem.

In conclusion, the Delegation of the Union of Soviet Socialist Republics proposed that Article 42, as submitted by the Working Party, be adopted.

Mr. GIHL (Sweden), Rapporteur, supported the above proposal.

Mr. STARR (United States of America) said that the difference between the two texts in question was simply a matter of procedure. He formally proposed that the introductory sentence and sub-paragraph (a) of Article 42, as just submitted, be replaced by the first paragraph of Article 36A as it appeared in the report of the Working Party.

Mrs. KOVRIGINA (Union of Soviet Socialist Republics) said that this proposal would cancel the prohibition of the use not only of the Swiss arms but also of the emblem of the Red Cross. She was, moreover, opposed to the discussion of such substitutions by the Committee before it had even considered the text proposed by the Working Party.

Mr. GIHL (Sweden), Rapporteur, said that if the new text of Article 36A was accepted, it would be necessary, first, to insert in Article 39 a provision regarding the legislative measures which had to be adopted by the various States, and, secondly, to extend to three years the time limit of two years mentioned in the third paragraph of Article 36A.

The CHAIRMAN said that the proposal by the United States of America was a formal motion and that he would have to put it to the vote.

The United States proposal was adopted by 10 votes to 8, with 4 abstentions.

Mr. STARR (United States of America) proposed that the provision under sub-paragraph (b) of Article 42 be replaced by the second paragraph of Article 36A, the words "whatever the previous date of its adoption" being deleted.

Mr. ABERCROMBIE (United Kingdom) observed that the Delegation of the United States of America had said that a provision abolishing the use of the arms of the Swiss Confederation, whatever the previous date of their adoption, would, in the United States of America, imply the withdrawal of acquired rights in a field which was not the concern of the Convention. He requested the United States Delegate to explain that point. The principal object of protecting the arms of the Swiss Confederation was to avoid any confusion between them and the emblem of the Red Cross.

Colonel FALCON BRICENO (Venezuela), reminding the Committee that the Venezuelan Constitution protected acquired rights, supported the United States proposal.

Mr. STARR (United States of America) said that a law had been promulgated in the United States in 1905 prohibiting the use of national arms. In 1926, a further law had prohibited any new use

of the arms of the Swiss Confederation. If the latter could be considered an imitation of the Red Cross—which he doubted—their use was already prohibited by the paragraph which had just been adopted. If they could not be so considered, there was no need to introduce provisions on the subject in the present Convention.

Mr. PICTET (International Committee of the Red Cross) reminded the meeting that the Geneva Convention of 1906 only prohibited the use of the emblem or of the designation "Red Cross" or "Geneva Cross"; many national laws had been promulgated to that effect. Various goods, principally of a medical nature, then appeared marked with the Federal colours; such marking, while giving the impression of being a red cross and thereby providing increased opportunities for sales, could hardly be considered to be an imitation of it. Although the use of such trade-marks could not be condemned, it was sufficient to create confusion. For that reason the protection of the Swiss flag indirectly prevented a decrease in the prestige of the Red Cross.

Colonel MEULI (Switzerland) considered that the provisions contained in the 1929 Convention and in the text drawn up by the Working Party, should be retained. The Red Cross emblem was originally devised by reversing the Swiss colours; the idea of protecting those colours was an innovation introduced by the 1929 Conference, which recognized the possible danger of misuse. Many private individuals had thought of using a white cross on a red ground in order to create the impression of a red cross, thus turning the tribute paid to Switzerland into a humiliating mockery. All the legislative provisions condemning the use by private persons of both the red and the white cross should, therefore, be confirmed and extended. He thanked, in his Government's name, all the States which had protected the emblem of the Convention and the arms of the Swiss Confederation.

Mr. STARR (United States of America) remarked that if the white cross was considered to be an imitation of the Red Cross emblem, the Swiss colours would have to be abandoned and no longer used except in medical matters! The United States of America could not, under their Constitution, take measures against practices in existence prior to the 1905 law. He was therefore unable to agree to the clause which gave retrospective effect to the provision prohibiting the improper use of the Swiss colours.

The CHAIRMAN put to the vote the United States proposal to omit the words "whatever the pre-

vious date of its adoption" in the second paragraph of Article 36A (second paragraph of the new Article 42).

That proposal was adopted by 9 votes to 6, with 5 abstentions.

Mr. STARR (United States of America) formally proposed that the third paragraph of Article 36A should be substituted for the second paragraph of Article 42; the words "of such emblem, designations, signor marks,, in Article 36A being amended to read "the emblems, designations, signs or marks designated in the first paragraph".

That proposal was adopted by 9 votes to 8 with 7 abstentions.

Mr. STARR (United States of America) proposed that the words "the preceding paragraphs" in the third paragraph of Article 42 (fourth paragraph of Article 36A) be replaced by the words "the first paragraph".

Mr. TARHAN (Turkey) proposed the omission in the same paragraph, of everything coming after the words "of Article 31".

Captain MELLEMA (Netherlands) supposed that the object of this proposal was to prevent countries which used the Red Cross emblem from allowing the Red Crescent or the Red Lion and Sun to be used for commercial purposes.

Mr. GIHL (Sweden), Rapporteur, said that the Working Party had considered the question and had come to the conclusion that it would not be possible to prohibit, in countries utilizing the Red Cross emblem, trade-marks which made use of a red crescent or a red lion and sun.

Mr. TARHAN (Turkey) recalled that in Article 31, the Red Crescent and the Red Lion and Sun had been adopted as protective emblems on the same footing as the Red Cross. There was therefore no reason why the principle laid down in Article 42 should not apply equally to those emblems.

SAFWAT Bey (Egypt) supported the above proposal.

Put to the vote, the Turkish proposal was rejected by 11 votes to 7, with 1 abstention.

Mr. TARHAN (Turkey) said that he feared his country could not undertake to carry out the obligations laid down in Article 42 unless his proposal was eventually adopted.

The CHAIRMAN proposed that the change suggested by the Delegation of the United States of America in the wording of the third paragraph, should be referred to the Drafting Committee.

The proposal was approved.

Mr. GIHL (Sweden), Rapporteur, pointed out that as Article 36A had in fact been substituted for Article 42, it was essential that the Committee should adopt the recommendation contained in his report.

The CHAIRMAN considered that the Committee must first decide whether the Article just adopted was to be Article 36A or Article 42. He proposed that it should become Article 42.

The above proposal was approved.

Mr. STARR (United States of America) urged that it was essential that the Joint Committee should be informed that legislative measures had not been taken into consideration in Article 42, and that they should, therefore, be taken into account in Article 39.

The CHAIRMAN put to the vote the recommendation, which read as follows:

“Committee I requested the Joint Committee to amend Article 39 to the effect that the High Contracting Parties should provide, in their legislation, for the implementation, in time of peace as in time of war, of the measures men-

tioned in Article 42, and for the repression of any infringement of such legislation.”

The recommendation was adopted by 20 votes to NIL, with 2 absentions.

#### **Consideration of the model identity card provided for in Article 33 of the Wounded and Sick Convention**

Mr. PICTET (International Committee of the Red Cross) said that the Drafting Committee had asked him to prepare a model identity card which was to be annexed to the Convention as a specimen. The model (*see Annex No. 60*) had been prepared and, after approval by the Drafting Committee, had been circulated to all the delegates. Being of small size, it could only include those particulars which were essential, namely, those provided for in Article 33, and those which figure on all identity cards (i. e. date of issue and number of the card; height, colour of eyes and of hair of the holder; etc.).

Article 33 also provided that the card should bear either the owner's fingerprints or his signature or both. It had been difficult to indicate these various possibilities on the model submitted; the signature and the fingerprints had therefore been mentioned with a note saying that the latter were optional.

The model identity card, as submitted, was adopted.

*The meeting rose at 12.30 p.m.*

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### THIRTY-EIGHTH MEETING

*Monday 18 July 1949, 10 a.m.*

*Chairman: Sir Dhiren MITRA (India)*

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#### **Consideration of the Recommendations of the Coordination Committee**

##### **Articles 15 (Wounded and Sick Convention), and 19A (Maritime Warfare Convention)**

Committee I, agreeing with the suggestion made by the Coordination Committee, decided to transfer the first sentence of Article 19A of the Maritime

Warfare Convention from that Convention to the Wounded and Sick Convention. That sentence would be made into a separate Article (Article 15A of the Wounded and Sick Convention), reading as follows:

“Hospital ships entitled to the protection of the Convention for the Relief of the Wounded, Sick and Shipwrecked Members of Armed Forces on Sea shall not be attacked from the land.”

The Committee also agreed to omit the words "as well" from the second sentence of Article 19A of the Maritime Warfare Convention that sentence as a result of the modification referred to above becoming the only sentence in the Article.

#### **Article 16 (Wounded and Sick Convention)**

The Coordination Committee had drawn the attention of Committees I and III to the fact that Article 16 of the Wounded and Sick Convention and Article 16 of the Civilians Convention differed not only as regards their wording but also in their meaning.

Mr. GARDNER (United Kingdom) pointed out that the text of Article 16 of the Wounded and Sick Convention took account of facts and actual military conditions, which was not the case with Article 16 of the Civilians Convention.

He accordingly proposed that Committee I should keep to the wording they had adopted and merely recommended that Committee III should consider the desirability of reverting, for Article 16 of the Civilians Convention, to the text which had beenrafted for Article 16 of the Wounded and Sick Convention.

Mr. McCAHON (United States of America) and Dr. PUYO (France) supported the proposal of the United Kingdom Delegate.

No objections having been raised, the proposal was adopted. The text of Article 16 of the Wounded and Sick Convention was accordingly maintained.

#### **Articles 12 (Wounded and Sick Convention), and 16 and 23 (Maritime Warfare Convention)**

In order to give the text of the Convention a better presentation, the Committee, falling in with the suggestion made by the Coordination Committee, agreed to move Article 23 of the Maritime Warfare Convention from the place it occupied and insert it as the second paragraph of Article 16 of the same Convention, the beginning of the paragraph being amended to read as follows:

"Whenever circumstances permit, the belligerents..."

The Article was out of place in Chapter III, which dealt with hospital ships.

It was also agreed to insert the words "and religious" between the word "medical" and the word "personnel" in the third paragraph of Article 12 of the Wounded and Sick Convention and in the second paragraph (new) of Article 16 of the Maritime Warfare Convention.

#### **Annex I**

The Coordination Committee recommended Committee I to accept the text of Annex I of the Civilians Convention for Annex I of the Wounded and Sick Convention.

Mr. PICTET (International Committee of the Red Cross) said that the drafts submitted and approved at Stockholm only provided for a single annex which related both to the setting up of hospital zones and localities for the protection of wounded and sick members of the armed forces, and to the creation of safety zones and localities for the protection of wounded and sick civilians. This one annex would have allowed two kinds of zones, or even mixed zones, to be set up.

As it appeared very probable that cases would arise where it would be necessary to establish zones including both wounded and sick members of the armed forces and wounded and sick civilians, he thought that it would be an advantage to have a single annex common to the two Conventions.

Mr. GARDNER (United Kingdom) shared the view of Dr. PUYO (France) and did not consider it possible to have one single annex. Annex I of the Civilians Convention had a wider field of application and provided for safety zones in addition to hospital zones and localities.

It was true that the wording of both texts was almost identical with the exception, in particular, of Article 6 which in Annex I of the Civilians Convention provided that safety zones should be marked by means of oblique red bands on a white ground. However, between those two annexes appreciable differences did exist, which were due essentially to the very substance of the Conventions to which they were related.

The CHAIRMAN closed the discussion by stating that Committee I preferred to maintain a distinct annex for each Convention.

In the absence of objections, this view was adopted.

#### **Consideration of the Report of Committee I to the Plenary Assembly**

General LEFEBVRE (Belgium), Rapporteur, submitted his Report to Committee I and pointed out that the text consisted of two main parts, the first dealing with general considerations, and the second containing comments on each individual Article of the Wounded and Sick and Maritime Warfare Conventions.

He drew the special attention of the Committee to the part of the Report relating to the attitude

of neutral countries towards wounded, sick and shipwrecked persons arriving in their territory. This part of the Report might have to be completely revised after a proposal which the United Kingdom Delegation had just submitted, had been discussed.

Dr. PUYO (France) pointed out that the Report failed to mention the express recommendation by Committee I that the International Committee of the Red Cross be entrusted with the task of drafting a model agreement concerning the procedure for the selection and relief of the medical personnel to be repatriated.

General LEFEBVRE (Belgium), Rapporteur, admitted the justice of the above observation. He would make good the omission.

Mrs. KOVRIGINA (Union of Soviet Socialist Republics) paid tribute to the work accomplished by the Rapporteur, and thanked him. Parts of the Report, however, did not appear to reflect with sufficient objectivity the nature of the discussions and the position taken up by the Delegations on certain important points:

For instance, when the Preamble was being discussed several Delegates were of the opinion that if an agreement could not be reached it would be best to give up all idea of having a preamble for the Wounded and Sick and Maritime Warfare Conventions. Committee I had then intended to draw the attention of the Plenary Assembly to that point. Their attitude should be brought out clearly in the report.

The Delegation of the Union of Soviet Socialist Republics also regretted that the Report made no mention of the proposal to state in Article 10 of the Wounded and Sick Convention and in Article 11 of the Maritime Warfare Convention that certain reprehensible actions would be regarded as "serious crimes".

On the other hand, the Soviet Delegation requested that the proposal to amend or delete Article 6 of the XIth Hague Convention should be omitted from the Report. That question had not been discussed by Committee I and no decision to amend the XIth Hague Convention had been taken. That was only a personal opinion expressed by the Rapporteur.

Lastly, with regard to the comments on Article 30 of the Maritime Warfare Convention, the Soviet Delegation observed that the Report should only contain comments on the text of the Articles

and not an extensive interpretation of their provisions.

General LEFEBVRE (Belgium), Rapporteur, replying to the observations of the Soviet Delegation, explained that he saw no point in making comments on the Preamble until a final decision had been arrived at, as the question would be discussed once again by the Coordination Committee.

The same thing applied to the question of qualifying certain offences as "serious crimes". It would be necessary to await the decision of the Joint Committee, the latter having still to consider Article 39 in which the qualification of "serious crimes" would probably be mentioned.

The Rapporteur admitted that he had expressed a personal opinion on the subject of Article 6 of the XIth Hague Convention. He insisted, however, that the texts adopted by Committee I modified existing international law very considerably. In the Wounded and Sick Convention merchant seamen were considered to be prisoners of war, unless they benefited by more favourable treatment, etc. Under the XIth Hague Convention, on the other hand, they could not be prisoners of war. There was therefore a contradiction between the above provisions. He was prepared to omit the whole of that portion of his Report, but he considered it essential that the attention of Committee I should be drawn to the seriousness of the problem involved.

With regard to Article 30 of the Maritime Warfare Convention, the Rapporteur believed that the interpretation which he had given was the correct one. Nevertheless, he was ready to modify it if the Committee considered that he had misunderstood it.

The CHAIRMAN, noting that differences of opinion had arisen in Committee I, proposed that a working party should be set up and should meet immediately for the purpose of considering what the object and the scope of such a report should be. It would then be much easier for Committee I to decide on the text to be submitted to the Plenary Assembly of the Conference.

The Working Party, consisting of Delegates of the United States of America, France, the United Kingdom and the Union of Soviet Socialist Republics together with the Rapporteur, met immediately. The meeting of the Committee was suspended pending the result of the Working Party's discussions.

*The meeting rose at 12.30 p.m.*

## THIRTY-NINTH MEETING

Monday 18 July 1949, 3 p.m.

Chairman: Sir Dhiren MITRA (India)

**Consideration of the Report of Committee I to the Plenary Assembly (continued)**

The CHAIRMAN said that, in accordance with the decision taken by the Working Party appointed at the last meeting, the Report of Committee I would be accepted subject to alterations which certain delegations wished to make in the text of the Report.

*Part I—Introduction*

Dr. PUYO (France) proposed the omission of the opening words of the ninth paragraph, i. e.: "The fundamental structure of the Conventions of 1929 and 1907 has nevertheless remained substantially unaltered". As the Committee had completely recast certain provisions in the Convention, the passage in question was not strictly correct.

The Committee decided to omit the phrase in question; the ninth paragraph would begin as follows: "If I have refrained..."

*The Wounded, the Sick and the Shipwrecked*

Colonel RAO (India) proposed that in the second paragraph of the Section, the word "discrimination" forming part of the expression "adverse discrimination", should be replaced, as the word "discrimination" already had a depreciatory sense.

General LEFEBVRE (Belgium), Rapporteur, replied that he would try to find another expression.

The CHAIRMAN proposed inserting a sentence at the end of the second paragraph in order to take account of the proposal of the Delegation of the Union of Soviet Socialist Republics with regard to the description of the acts enumerated in Article 10 of the Wounded and Sick Convention.

It was decided to insert the following sentence:

"The Committee also considered the proposal to regard the acts enumerated in Article 10 as

'serious crimes', and decided to refer this part of the proposal to the Joint Committee for consideration in connection with Article 39."

*Medical and Religious Personnel*

Dr. PUYO (France) proposed the omission of the second part of the second sentence of the ninth paragraph ("and it must be admitted that under this Convention the medical personnel was less well protected than the prisoners of war in whose service it was retained").

The above proposal was agreed to; the paragraph would end with the words "on this point", and would thus avoid contradicting what was said in the seventh paragraph of the comments on Article 22.

Dr. PUYO (France) proposed ending the tenth paragraph at the word "mission" (in the last sentence); the following words should be deleted: "the same reason will prevent them, also on account of their professional ethics from attempting to escape, which is the converse of what is legitimate and honourable in the case of a prisoner of war". The Committee, he said, had never decided to forbid medical personnel to attempt to escape.

General LEFEBVRE (Belgium), Rapporteur, said that the omission of the clause would alter the entire meaning of the Article, inasmuch as it would justify the assumption that members of the Medical Service detained in a prisoners of war camp might be entitled to escape.

The proposal to omit the words quoted above was put to the vote and rejected.

Mr. GARDNER (United Kingdom) proposed the insertion of the following phrase after the second sentence of the eleventh paragraph: "The wording to be adopted was discussed at length. A proposal that the second paragraph of Article 22 should

provide that retained personnel should be treated in accordance with the Prisoners of War Convention was rejected by 14 votes to 12".

General LEFEBVRE (Belgium), Rapporteur, said that he agreed to that proposal.

### Markings

Miss ROBERT (Switzerland) thought that it would be better to word the second paragraph as follows: "In view of the reluctance of certain countries to use the red cross..." (instead of using the proposed wording: "In view of the reluctance of countries using the red cross to abandon it..."). It was not a question of abandoning the red cross, but rather of dropping the red crescent and the red lion and sun and replacing them by the red cross.

She also proposed that the words "as a protective emblem", which were used in the third paragraph in connection with the shield of David, should be deleted. (The proposed wording was as follows: „while recognizing that this emblem, which is several thousand years old, has been used as a protective emblem for twenty years..."). The phrase in question was inappropriate in view of the fact that the protective emblem could only be used in time of war.

Mr. LOKER (Israel) pointed out that in recent years his country had, indeed, used the Shield of David as a protective emblem. A further important consideration was the fact that National Red Cross Societies were not accepted as members of the League of Red Cross Societies unless their emblem was recognized by the Convention.

As Mr. LOKER objected to the omission of the words "as a protective emblem," the Rapporteur suggested that the words "for the purpose of protection" might be used instead.

The CHAIRMAN put to the vote the proposal to substitute the words "used for the purpose of protection" for "used as a protective emblem".

The proposal was adopted by 10 votes to 2.

### Application of the Conventions by Neutral Powers

General LEFEBVRE (Belgium), Rapporteur, reminded the Committee of the suggestion by the Delegation of the Union of Soviet Socialist Republics that all reference to the Hague Convention should be omitted from the Report. The last sentence of the second paragraph, as well as the two paragraphs which followed, would therefore have to be deleted from page 17 of the Draft Report (see *Annex No. 78*).

Mr. SÖDERBLOM (Sweden) said that the subject had been discussed at length by the Working Party. In order to settle the difficulties which had arisen, it had been decided to leave the Contracting Parties free to give their own interpretation to the provisions in question and to comply with the practice hitherto followed.

He accordingly suggested that the passages referred to should be omitted and the following passage inserted in their place: "Regarding the obligations incumbent upon neutral Powers the present Convention reproduces the essential stipulations of the Hague Convention, leaving the Contracting Parties free to interpret them at their discretion and to follow the practice hitherto adopted".

General LEFEBVRE (Belgium), Rapporteur, said that personally he agreed with the Swedish Delegate; he noted, however, that, in the Maritime Warfare Convention, Committee I had stipulated that wounded, sick and shipwrecked persons landing on neutral territory should be so guarded that they could not again take part in operations of war. There was perhaps a discrepancy between what had been decided by Committee I, on the one hand, and the provisions of Article 3 of the Prisoners of War Convention, on the other.

Mr. SENDIK (Union of Soviet Socialist Republics) pointed out that the coordination of the Conventions under discussion with other Conventions, in particular the XIth Hague Convention, was not within the terms of reference of Committee I.

Mr. GARDNER (United Kingdom) thought that the consideration of that part of the Draft Report might be facilitated if the Committee now discussed the amendments submitted by the United Kingdom Delegation in connection with Article 30 of the Wounded and Sick Convention, and Articles 14, 15 and 37 of the Maritime Warfare Convention. Once that question had been settled it might be easier to decide which provisions should be retained in the chapter under discussion.

The CHAIRMAN put the above proposal to the vote. It was rejected by 10 votes to 6.

He then called for a vote on the proposal of the Delegation of the Union of Soviet Socialist Republics to delete (on page 17 of the Draft Report) the text from: "This ruling is in contradiction..." to: "and Prisoners of War Conventions" (see *Annex No. 78*).

The proposal was adopted by 14 votes to 2.

Mr. SÖDERBLOM (Sweden) suggested that the sentence preceding the passage they had just

decided to delete should also be omitted. He doubted whether it was really for the Wounded and Sick Convention to define the field of application of the Prisoners of War Convention.

General LEFEBVRE (Belgium), Rapporteur, pointed out that the deletion of that sentence in the Report would not prevent Article 11 of the Wounded and Sick Convention from providing that "...the wounded and sick of a belligerent who fall into enemy hands shall be prisoners of war, and the provisions of international law concerning prisoners of war shall apply to them".

It was agreed to omit the sentence in question.

Mr. GARDNER (United Kingdom) pointed out that the third sentence of the last paragraph on page 16 (*see Annex No. 78*) read: "A neutral Power should, therefore, by analogy, detain them". But there was no analogy in that case.

General LEFEBVRE (Belgium), Rapporteur, remarked that some distinction should be made between prisoners of war who were interned and those who were not interned. Whereas, the XIth Hague Convention stipulated that members of the merchant navy should not be prisoners of war, provided they undertook, formally and in writing, not to take any further part in operations of war, Article 3 of the Wounded and Sick Convention provided on the other hand that "Neutral Powers shall apply by analogy the provisions of the present Convention to the wounded and sick, and to members of the medical personnel and to chaplains of belligerent armed forces interned in their territory". In other words, if both the XIth Hague Convention and the new Conventions were to be maintained in their existing form, there would be two categories of merchant seamen. For instance, members of the merchant navy who arrived on the territory of a neutral State and undertook in writing not to take any further part in operations of war, would remain in the neutral country, but would not be interned; others, who did not sign such an undertaking in writing, would, according to the Geneva Conventions, be treated as prisoners of war.

That point should certainly be reconsidered.

The CHAIRMAN called for a vote on the proposal to delete the last paragraph on page 16; the proposal was adopted by 9 votes to 7. The first paragraph on page 17 and the first sentence of the second paragraph on the same page were also deleted. A new text would be introduced in the final report.

*Part II—(Articles of the Wounded and Sick Convention)*

The comments on Chapters I, II and III were adopted without observations.

Chapter IV: Article 20 (formerly Article 10 of the Geneva Convention of July 27th, 1929)

The Committee decided to amend the comments on the above Article.

The first sentence ("This Article reproduces the text of the Convention of 1929 without modification") would be deleted, since the Article had in fact been altered in several respects.

Article 22 (formerly Articles 12 and 13)

Dr. PUYO (France) proposed that the first sentence of the comments on Article 22 should be worded as follows:

"This Article deals with the position of permanent members of the Medical and Religious Services who have been captured by the enemy, and with the personnel of relief societies of belligerents."

The above proposal was approved.

Dr. PUYO (France) proposed the following additional modifications:

- (1) To omit the words "and one is compelled to recognize that the medical personnel thus detained were less adequately protected than the prisoners of war whom they were attending, and could therefore be less well treated within the provisions of the Convention", from the last sentence of the fifth paragraph of the comments on Article 22. The same text had been deleted from the ninth paragraph of the Section "Medical and Religious Personnel".

The proposal was adopted.

- (2) To omit the last part of the last sentence of the sixth paragraph of the comments on Article 22. The passage in question was the same as the one he had proposed to omit from the tenth paragraph of the Section entitled "Medical and Religious Personnel".

Put to the vote, the above proposal was rejected by 5 votes to 1.

- (3) To add a clause to the seventh paragraph of the comments on Article 22, recording wishes expressed in the Committee, which it had not been possible to satisfy. The following sentence might, for example, be added:

"It proved impossible to retain in favour of such personnel the privileges as regards pay, maintenance and quarters provided for in Article 13 of the 1929 Convention."

The above amendment was adopted.

#### Article 23 (formerly Article 12)

Dr. PUYO (France) proposed that a sentence should be inserted in the comments on Article 23 as had just been done in the case of Article 22, to the effect that the Committee had considered that it could not retain in favour of such personnel the privileges as regards pay, maintenance and quarters formerly provided for in Article 13 of the 1929 Convention.

The above proposal was adopted by 11 votes to 3.

#### Article 25 (new)

Dr. PUYO (France) said that the last amendment proposed by his Delegation was that, immediately after the comments on Article 25, mention should be made of the Committee's recommendation that the International Committee of the Red Cross should prepare a draft model agreement regarding the selection of medical personnel to be retained and their relief.

The above proposal was adopted.

The comments on Chapters V, VI, VII and VIII were approved without observations.

#### Chapter IX: Article 42

Miss ROBERT (Switzerland) pointed out that the second paragraph was incomplete. The prohibition of the use of the emblem of the Red Cross (Red Crescent, Red Lion and Sun) did not only apply to private individuals; the field of application of Article 42 was wider covering commercial firms also, as well as public and private associations.

It was decided that the exact wording of Article 42 would be reproduced in the comments on the Article in the Report.

#### *Part III—(Articles of the Maritime Warfare Convention)*

There were no observations on Chapters I, II or III.

#### Chapter IV: Article 30, third paragraph

At the request of the Soviet Delegation, it was decided to omit the final words ("whether on board or on shore—on leave, for instance") of the sentence beginning: "The protection of religious, medical and hospital personnel is total as

long as such personnel is in the service of the hospital ship...".

Chapters V, VI, VII and VIII did not give rise to any observations.

#### **Amendments submitted by the Delegation of the United Kingdom to Articles 30 of the Wounded and Sick Convention and 14, 15 and 37 of the Maritime Warfare Convention**

Mr. GARDNER (United Kingdom) said that his Delegation's proposal had been made solely with a view to improving the wording of the Articles in question. He proposed that the words "where so required by international law" be added at the end of the first sentence of the third paragraph of Article 30 of the Wounded and Sick Convention, at the end of the text of Article 14 of the Maritime Warfare Convention, at the end of the first paragraph of Article 15 of the Maritime Warfare Convention and at the end of the first sentence of the third paragraph of Article 37 of the Maritime Warfare Convention.

After a long discussion in which Captain MELLEMA (Netherlands), Mr. SÖDERBLOM (Sweden), and Mr. SENDIK (Union of Soviet Socialist Republics) took part, the Committee remained in doubt as to whether the above proposal would not alter the actual substance of the Articles. A two-thirds majority vote would in that case be necessary before the subject could be discussed.

The CHAIRMAN put to the vote the question of whether the amendment submitted by the United Kingdom Delegation affected the substance of the Articles concerned.

The Committee decided by 8 votes to 6 that the amendment did in fact affect the substance of the Articles.

General LEFEBVRE (Belgium), Rapporteur, maintained that the drafting of these Articles was ambiguous and should be revised in order to make them clearer and more precise.

Mr. GARDNER (United Kingdom) said that he would again submit his Delegation's amendments in plenary session.

#### **Consideration of the proposal of the Coordination Committee with regard to the Preamble**

The CHAIRMAN said that he had just received a note from the Coordination Committee asking Committee I to reconsider the question of the Preamble to the Wounded and Sick Convention.

Committees II and III had decided not to have preambles to the Prisoners of War and Civilians Conventions. He reminded the meeting that Committee I had decided in favour of having a preamble. A two-thirds majority vote was not necessary in order to reopen the discussion on the subject as they were faced with a recommendation from the Coordination Committee.

Mr. McCahon (United States of America) pointed out that the subject was not on the agenda.

The CHAIRMAN asked the Committee if they were prepared to consider the question immediately.

The Committee decided, by 11 votes to NIL, to consider the matter forthwith.

General LEFEBVRE (Belgium), Rapporteur, said that he personally considered that there should be a preamble to the Wounded and Sick Convention, but if the Preamble did not reflect the unanimous opinion of the Committee it would be better to omit it altogether.

Miss ROBERT (Switzerland) and Mr. SÖDERBLOM (Sweden) agreed with the Rapporteur.

The CHAIRMAN put to the vote the proposal to omit the Preamble.

The proposal to omit the Preamble was adopted by 13 votes to 1, with 5 abstentions.

*The meeting rose at 8 p.m.*

## Report of Committee I to the Plenary Assembly of the Diplomatic Conference of Geneva

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### PART I

#### 1) INTRODUCTION AND GENERAL SURVEY

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##### **General Lefebvre, Rapporteur:**

Mr. Chairman, Ladies and Gentlemen,

In a very few days, to be precise on the 22nd August, it will be just 85 years ago that the first Convention for the relief of the wounded and the sick of armies in the field was signed in the Town Hall of Geneva, not very far from the building in which we are meeting today. Since that day the Convention has become almost universal, and though there were only twelve original signatory States, the task of revising it today has assembled the most highly qualified representatives of sixty nations, not counting those only represented by observers, or the numerous international bodies who have taken an active share in our proceedings. This surely constitutes the highest tribute which can be paid to the work of our distinguished predecessors. It is characteristic, moreover, that all over the world the words "Geneva Convention" immediately evoke the Convention to which you have contributed, and no other.

Since 1864, it has unfortunately had to stand the test only too often, and the great value of the work done by those responsible for its origin has been conclusively demonstrated by the fact that none of its fundamental principles have been seriously called in question, either by the ordeals of frequent wars, or by the two revisions it underwent in 1906 and in 1929.

This applies equally to the Hague Convention of 1907, which was simply an adaptation of the Geneva Convention to Maritime Warfare.

Once more, Ladies and Gentlemen, you have endeavoured to proceed with the greatest circumspection, and have refrained from interfering with

the fundamental principles of the Charter which it was your duty to examine. Your work has been restricted to defining more clearly certain passages which you considered too vague, without entering too much into detail or explanation, a procedure which could only have resulted in weakening the value and force of the Convention. Your object was to ensure that the text under consideration should not, as the result of conflicting interpretations, be the cause of abuses or regrettable errors, which would endanger those principles, the respect of which it is the purpose of the Convention to ensure. Lastly, the alterations which have been made in the 1929 Convention have taken into account the bitter experience acquired on many fields of battle.

Committee I has been good enough, Ladies and Gentlemen, to entrust me with the onerous duty of presenting its report to the Plenary Meeting.

I was fully conscious, in accepting this mission, that I should be severely handicapped by the memory of my illustrious predecessors, Professor Renault, in 1906, and Surgeon General Demolder in 1929. But I have been greatly encouraged by the unflinching zeal you have all displayed during our labours, and by the devotion you have shown to the noble cause we are all here to defend.

The extremely thorough work of the International Committee of the Red Cross, and of the two Preparatory Conferences held at Geneva in 1947 and at Stockholm in 1948, have greatly facilitated the work of the Diplomatic Conference. But the subject matter of the Conventions was far from having been exhausted at these two Conferences; and the very large number of proposals and amendments of every description submitted

for your consideration are in themselves conclusive evidence of the expediency of the revision we have been engaged on.

The Committee was consequently obliged to divide the consideration of the most controversial Articles among a number of Working Parties and one Drafting Committee, and the new texts submitted for your consideration today were only drafted after a most exhaustive and conscientious scrutiny.

If I have refrained from referring to some Chapters or Articles in these preliminary remarks, it is because they are specifically legal in character, and are common to all four Conventions. It was for this reason that a special Joint Committee was set up to consider them.

You will find in the documents distributed to you the explanation, article by article, of the various alterations adopted in each of the two Conventions.

These observations constitute the essential part of my Report, in which I have attempted to render faithfully the opinion of the Committee. I am naturally prepared, if the Meeting so desires, to read the whole Report; but as I fear that this would prove an unduly long and wearisome procedure, I venture to suggest that I should confine myself to summarizing its points, and giving you a brief account of the principle features of the Chapters which I consider to be the most important.

### **The wounded, the sick, and the shipwrecked**

Intended exclusively to protect the wounded, the sick, and the shipwrecked, the former Conventions aimed from the outset at granting them the most complete protection possible. Committee I could not but recognize that the extremely categorical provisions of these Conventions had unfortunately not always been strictly observed during the last war.

It therefore felt compelled to give a better definition of the words "they shall be treated humanely and cared for", which had appeared so clear and so explicit. The Committee was thus led to prohibit any adverse distinction on any grounds whatsoever, whether of sex, race, nationality, political opinion, or other cause. This is not, however, intended to prohibit concessions such, for instance, as providing nationals of a Far Eastern country with different kinds of rations than those assigned to Europeans, or African natives, treated in hospitals in a Northern country, with more blankets than those assigned to inhabitants of these countries and so on. The new provisions also strictly forbid certain acts of barbarism: the belligerent into whose hands wounded have fallen is prohibited

from any attempts upon their lives, or violence to their persons, "persons" being interpreted in the widest sense, both physical and mental. Other prohibited acts include: murder or extermination, subjection to torture or to biological experiments; deliberate abandonment without medical care; exposure to risk of contagion or infection created for that purpose. The Committee also considered the proposal to regard the acts enumerated in Article 10 as serious crimes and decided to refer this part of the proposal to the Joint Committee for consideration in connection with Article 39.

Future generations will certainly be astounded that, in the midst of the 20th century, it was considered necessary to embody such elementary moral rules in our Conventions. The vivid recollection of recent indescribable atrocities is, however, sufficient evidence that this was necessary.

Committee I also decided to prohibit all reprisals against the sick, the shipwrecked and the wounded, and against personnel, buildings, and materials and supplies. This provision already figured in the 1929 Convention relating to the treatment of prisoners of war; and the Committee has remedied a serious defect by inserting it in those Conventions it was called upon to revise.

Bearing in mind certain situations which arose during the recent World War, the Committee also adopted provisions rendering possible the exchange of wounded, either on the field of battle, or from besieged or encircled places or areas, and also the evacuation of the sick and wounded by sea from such places.

Methods for identifying war victims have been improved and more clearly defined. In the event of death, bodies should as far as possible be buried or cremated individually, while cremation shall only be authorized for imperative reasons of health, or for motives based on the religious tenets of the deceased.

To ensure that the wounded, the sick, and the shipwrecked shall receive all proper aid and care, the Convention provides special protection for medical personnel, and, in some cases also, for the inhabitants who, either as volunteers, or under instructions from the authorities, have assisted in rendering such aid.

The new wording gives a better definition of the protection to which these inhabitants are entitled. For instance, in occupied or invaded countries, they shall be authorized by the military authorities to volunteer to collect and care for the wounded and the sick. This is a provision of exceptional importance, since it aims at ensuring that paratroops of the armed forces, for instance, or even resistants complying with certain specified conditions, shall not be deprived of all care. It frequently occurred during the last war that it was forbidden to render them any aid subject to

extremely severe penalties. The new provisions ensure that no one, whether a doctor or anyone else, can ever be prosecuted or convicted simply for having rendered aid to the sick or wounded.

I have constantly referred, in these remarks to the wounded, the sick, and the shipwrecked. To whom do these words apply, in the Wounded and Sick, and in the Maritime Conventions, respectively? It is obvious that every wounded, sick or shipwrecked person, whether a civilian or a member of the Armed Forces, whether a neutral, or a national of a belligerent country, is entitled to protection under International Law and in virtue of certain humanitarian agreements.

But these terms, in the Conventions we are dealing with, have a more definite meaning, a fact of great importance since, according to certain provisions, this means that the persons to whom they apply will be treated as prisoners of war, quite irrespective of the decisions of governments to ratify the Prisoners of War Convention or not.

Hitherto the Conventions applied to the wounded, the sick, and the shipwrecked, whether they were regular soldiers, marines or persons officially attached to the armed forces. The field of application of the Convention has been extended, in consequence of the new provisions adopted, to other categories of persons, for instance to members of resistance movements fulfilling certain conditions, and to merchant seamen.

### **Medical and religious personnel**

Since the first Geneva Convention of 1864, medical and religious personnel have been entitled to special protection, particularly when they fall into the hands of the enemy. They shall not be kept in captivity. The question arises whether this ruling is still justified.

The Medical Service, as it was understood in the past, was in fact intended solely to care for the wounded and sick, and it was on the strength of these duties that it was protected. At present the Medical Service is an integral part of the armed forces, and is closely bound up with every aspect of their activity. The part it plays in the recruiting and selection of the troops, the supervision which it exercises over training, the numerous preventive measures which it takes in the field of hygiene and epidemiology, all these functions result in the fact that it makes an important contribution to the creation and maintenance of the fighting value of the troops. The efficacy of its power of restoring to physical fitness has even become so great in the case of a sufficiently prolonged conflict that it is thanks to the Medical Service that the numerical strength of the troops is maintained; it may even be said that the concluding battles are

won by former wounded who have been cured and sent back to the front.

It is tempting to conclude from these facts that the enemy would have every reason to diminish the efficiency of the Medical Service, either by reducing its numerical size, by making prisoners of war of those of its members who fall into his hands, or by limiting its activity by ceasing to protect it on the field of battle. It is only a step from such a realization to the planning of systematic bombing of medical units, or the organization of raids on these units with the deliberate intention of capturing the greatest possible number of the members of the Medical Service.

There is no need of long arguments to prove that, if such a point of view were adopted, it would be the negation of all the work done by the Conventions to protect the wounded and sick. In the last resort, it is they, and they alone, who would suffer. If the Medical Service were prevented from carrying out its mission, we would not have to wait long before seeing the repetition of the horrors of Solferino. To take only one example, is it likely that Army commanders would not hesitate to have surgical stations posted in the front lines, such as those which performed veritable miracles in 1939-1945, if they knew that the excellent surgeons whom they are sending there, and who are so difficult to replace, would be the avowed objective of enemy raids, and the chosen target of the enemy air force and artillery?

Committee I has therefore wisely decided that the Medical Service shall continue to enjoy, in all its aspects, the protection it has enjoyed hitherto. Moreover, if its members fall into enemy hands, they shall, as a general rule, be returned to the belligerent army in which they were serving. In this connection, nothing has been changed since the 1929 Convention.

This Convention, however, had ruled that, in certain cases, an agreement could be concluded between the belligerents, to the effect that part of the Medical personnel might be temporarily retained. But this possibility was regarded as being quite exceptional.

The last war has given rise to new situations, which have forced Committee I to review this question. As a result of the huge numbers of men involved and the characteristics of a war of movement shown once more by the battles, the number of prisoners of war has become enormous. They have spent many long years in captivity. Whether sick or wounded, they would ordinarily have been entrusted to the care of an enemy who understood neither their language nor their mentality. The Commission could not remain indifferent to their fate, and decided that part of the medical personnel who had fallen into enemy hands might be automatically retained, without the previous

agreement provided for by the 1929 Convention. There is only one exception to this new rule in the interests of the medical and religious personnel of hospital ships.

What standards shall we adopt to decide the number of persons to be retained by virtue of the foregoing facts? The belligerents may conclude agreements fixing this number according to the number of prisoners. In the absence of any agreement, it is the extent of the medical and spiritual needs of the prisoners which shall provide the basic criterion.

What is the status of this retained personnel to be? The 1929 Convention was not very explicit on this point.

Regulations and adequate guarantees must be provided for this personnel. They must be assured of every facility to enable them to carry out their duties. Certain delegations, being of the opinion that the Convention relative to the Treatment of Prisoners of War has proved efficacious, and that it offers the greatest possible number of guarantees, proposed simply to consider retained medical and religious personnel as prisoners of war. While recognizing the excellent intention of the delegations who made this proposal, a very large majority refused to support their suggestions. They stressed the fact that the Medical Service is after all detached from the conflict, by the very nature of its professional ethics. Some members of the Medical Service will thus remain, for moral and not merely military considerations, which the wounded who are about to fall into the hands of the enemy; as they will be retained with the prisoners of war, they will indirectly relieve the enemy of part of the duty which is incumbent on him and will thus give proof of the universal, non-national nature of their mission; the same reason will prevent them, also on account of their professional ethics, from attempting to escape, which is the converse of what is legitimate and honourable in the case of a prisoner of war.

For all these reasons, Committee I has decided that retained medical personnel shall not be prisoners of war. But it recognizes the great value of all the provisions laid down by the Prisoners of War Convention, and stipulates that medical and religious personnel shall benefit by all these provisions. The wording to be adopted was discussed at length: a proposal that paragraph 2 of Article 22 should provide that retained personnel should be treated in accordance with the provisions of the Prisoners of War Convention was rejected by 14 votes to 12. In addition, it grants them certain facilities, more especially with regard to correspondence, travel, etc., with a view to enabling them to carry out their duties.

It may finally be said that medical personnel, while remaining in the power of the enemy, never-

theless continue to serve their country at the same time. And there is now a ruling which actually allows their country to relieve them.

In certain armies, the Medical Service when necessary calls upon soldiers who are not permanently attached to their units, but have undergone special training as stretcher-bearers or medical orderlies. Thus they are sometimes combatants and sometime medical personnel. This is the case, for example, in certain countries, of members of the regimental bands, and in other countries of certain members of the armed forces specially designated in any particular unit. The Committee decided that the men concerned should enjoy protection in all its aspects when exercising their special functions. But it did not consider it advisable to give them the advantage of non-captivity. They will thus be prisoners of war, but, whenever possible, they will be allocated for medical duties in the camps.

There can be no question of guaranteeing the same measure of protection to any member of the armed forces who may give treatment to a wounded comrade when occasion arises. The great majority of soldiers in all armies at present receive adequate training in first aid: it would give rise to innumerable abuses to provide that all soldiers are entitled to immunity and protection on the field of battle whenever they perform the slightest act falling within the category of medical care.

If medical and religious personnel are to be respected and protected, the enemy must be able to recognize them. What are to be the means of recognition? Personnel exclusively engaged in protected activities, whether they are members of the armed forces, or members of a National Red Cross Society or other relief society, or members of a neutral society which has offered its assistance to a belligerent, shall all wear on their left arm an armlet bearing a red cross, which has been issued and stamped by the military authority. They shall carry a special identity card.

Temporary military personnel shall also wear an armlet while exercising their functions. The armlet shall therefore not be permanently affixed, but shall be detachable. Moreover, they shall not bear a special identity card, but the military certificates of identity which they carry shall specify the training received, the temporary nature of their functions and their right to wear the armlet.

In conclusion, what is the fate of medical personnel who have fallen into enemy hands?

- (a) medical personnel of hospital ships, of whatever category, are neither made prisoner, nor retained;
- (b) the same applies to the personnel of neutral relief societies who have offered their assistance to one of the belligerents;

- (c) the other permanent members of the Medical Service of the land, sea and air forces, and of the National Relief Societies, are not prisoners of war and should be returned as soon as possible. Nevertheless, a certain percentage may be retained to give medical attention to the prisoners of war. They may be relieved by their country of origin;
- (d) members of the armed forces who are only temporarily attached to the Medical Service, and do not permanently belong to it, shall be prisoners of war, but shall preferably be attached to the medical services of the camps.

### Medical establishments and units

Apart from the rulings on the transport and material of mobile medical units—and I shall return to this point later—Committee I has not made very far-reaching alterations to the 1929 Convention.

One innovation should, however, be mentioned: that is, any country may set up hospital zones or localities reserved for the wounded and sick and the personnel necessary to give them medical attention. These zones, closed to all specifically military traffic or activity, shall be notified in the same way as all military establishments, and shall be entitled to the same protection.

It is not compulsory to set up these zones: it is merely possible to do so. Their existence must be notified to the adverse party, who will be invited to grant them recognition. The Committee has also drawn up a model draft agreement, which the Parties concerned may implement, altering it if necessary in any way which they may consider advisable.

The idea of these zones is not a new one, and as far back as 1870 Henry Dunant made vain attempts to persuade the Empress Eugénie to have a certain number of places neutralized and declared "centres for the wounded". Since that date, the idea has gradually spread, particularly in the international circles of the military medical services. It has in the fact always been possible to realize this aim simply by grouping together a greater or smaller number of medical establishments. But it is the first time that the notion of hospital zones and localities has been given concrete form in a Convention. This ruling is a sign of considerable progress and gives grounds for hope.

### Markings

To ensure that the protection accorded by the Conventions shall be thoroughly effective, personnel, vessels, material and supplies must all bear a

distinctive emblem, easily recognizable by the enemy. It was therefore highly desirable that there should only be one distinctive emblem for all nations, and Committee I expressed the hope that this solution would be adopted as soon as possible. Unfortunately, however, whether rightly or wrongly, the red cross which has been used for this purpose for the last 80 years no longer seems to give all countries a guarantee of absolute neutrality. Some regard it as an allusion to the symbol of Christian religion, and are unable for that reason to induce their people to adopt it. The Diplomatic Conference of 1929 did, in fact, agree to other emblems being used, such as the red crescent and the red lion and sun.

In view of the reluctance of certain countries to use the red cross, Committee I decided to confirm established custom, while voicing the hope that a solution would ultimately be adopted establishing a unified system.

It was for this reason, and solely to avoid creating fresh obstacles to the adoption of a single emblem, that the Committee refused to recognize new symbols, such for instance as the Shield of David proposed by the State of Israel, while recognizing that this emblem, which is several thousand years old, has been used in a purpose of protection for twenty years and is well known and respected in those parts of the world where it is used. But the Committee felt unable to accept this *de facto* situation, owing to the risk of establishing a new precedent and rendering the desired unification still more difficult.

As regards markings, the Committee dealt mainly with those on military aircraft and hospital ships.

There was general agreement that in the present conditions of aerial warfare, the red cross on a white ground no longer constituted an easily recognizable emblem, and therefore no longer afforded effective protection. Aircraft at present speeds can only recognize each other by their shape; moreover, the most distinctive signs are quite unrecognizable at night, and *a fortiori* by wirelessly controlled projectiles.

A new conception was therefore embodied in the Conventions; belligerents are required to agree between themselves on the routes to be followed by military aircraft, and also the altitude and times of flight. Aircraft will only be entitled to respect in so far as there has been previous agreement on these points.

The Committee was unable to agree to a condition of a similar kind applicable to hospital ships, as it feared that in notifying the enemy of the course they were to follow, this would give valuable information regarding the safety of navigation in certain maritime zones. Be this as it may, there was unanimous agreement that the best means of ensuring protection is to inform the enemy

of the exact position of the formation requiring protection. There is no question, therefore, of camouflage; on the contrary everything will be done to facilitate recognition. Further, the recommendation, in the Maritime Convention, that belligerents shall only employ vessels of over 2 000 tons gross as hospital ships on the high seas is to be interpreted in this sense, since the greater visibility of vessels of that size tends to increase security.

Moreover, the Committee concluded in a general way that the system of marking hospital ships, as established by the Hague Convention of 1907, was very far from perfect; and every effort was made to improve it. The Committee also decided to unify the markings of military hospital ships, and of hospital ships privately owned or belonging to relief societies or to neutrals assisting a belligerent.

### **Material and means of transport**

A number of rather important alterations have been made to the Conventions. These alterations chiefly concern the material and vehicles of mobile medical units and the personnel in charge of ambulance cars. If this material fell into enemy hands it was hitherto restored when the personnel were sent back. It seemed impossible to maintain this ruling because of the nature of modern warfare, and also because the whole of the personnel is not necessarily sent back.

An exception is made to this rule which regard to sea transport of medical material. These transports, however, must be notified to the adverse belligerent, who must have signified his agreement to the conditions under which the voyage is made. It is therefore consistent to agree that in this case there can be no question either of the capture of the transport vessel or of the seizure of the medical material transported.

### **Application of the Conventions by Neutral Powers**

The rights and duties of Neutral Powers, as regards the two Conventions which your Committee has undertaken to revise, are defined in a general way in Article 3 Wounded and Sick and 4 Maritime.

“Neutral Powers shall apply by analogy, the provisions of the present Convention to the wounded and sick (and shipwrecked), and to members of medical personnel and to chaplains of belligerent armed forces, who are received or interned in their territory.”

Further, in various places the Conventions give a detailed definition of these rights and duties in certain specified situations.

Thus a neutral Government can, without being deemed to have interfered improperly in the conflict, authorize a recognized relief society of its country to bring assistance to one of the belligerents. It may also authorize such a society or even an individual to place a hospital ship at the disposal of the belligerent. This assistance carries with it certain obligations, such as the notification to both parties, the consent of the assisted party, the acceptance of the latter's authority, the strict observance of all specifications concerning the identification and notification of the personnel, material and medical vessels and units, as provided for in the Conventions, etc.

Certain new provisions have been inserted into the Conventions. The certificates of identity which the belligerent should issue to the neutral personnel whose assistance he accepts, should thus be issued to the personnel before they leave their country of origin. They may indeed fall into the hands of the adverse Power before reaching the country to which they are bringing assistance: in this case, their position would be very uncertain if no official document attesting their status were in their possession.

I do not wish to stress the details connected with the notification of the organizations which, in various forms, a neutral Power may place at the disposal of a belligerent.

All the points which we have studied until now are essentially concerned with the activity which neutral Powers may engage in beyond the limits of their territory. Once the units which they have placed at the disposal of a belligerent have reached their destination, such units must scrupulously observe the Conventions in the same way as the belligerents themselves, and in other respects comply with orders given by the belligerents.

What procedure should they follow on their own territory? Within the framework of the Conventions which we are considering, they will have to deal with two categories: the medical personnel and chaplains on one hand, the sick, wounded and shipwrecked on the other.

As regards the medical and religious personnel, the neutral Power will be guided by the regulations which decide their treatment if they fall into enemy hands. These regulations stipulate that the permanent military medical personnel, the personnel of the national relief societies and of the neutral societies, shall not be prisoners of war. The neutral Power will therefore not retain them, but will send them back to the belligerent in whose service they are. As regards the equipment and the various articles which may be in their possession, they may all take with them their clothing, personal articles, valuables and instruments. Moreover, as all the personal estate of relief societies which are admitted to the privileges of the Con-

ventions are regarded as private property, the members of these societies who are in the service of a belligerent and enter a neutral territory can take with them, on their return to their country of origin, all the rolling stock and other material which they had with them on their arrival.

As regards military personnel temporarily used by the medical service, i.e. personnel who have received special training as stretcher-bearers or medical orderlies, but who only exercise these functions in case of need while the rest of the time they are part of the combatant troops, this personnel become prisoners of war if they fall into enemy hands. By analogy, if they enter neutral territory, they should be retained there.

Consideration should now be given to the procedure to be followed by a neutral Power with regard to the wounded, sick and shipwrecked who may reach its territory. The matter did not give rise to any discussion as regards persons entering neutral territory by a land frontier; the provisions of International Law appear to meet all requirements and there seemed to be no difficulties of interpretation.

The situation arising from the conditions of modern warfare gave rise, however, to lengthy debates in a Working Party consisting of Representatives of the United Kingdom, the United States of America, Sweden, France, Australia and China. A Representative of the Union of Soviet Socialist Republics attended all the debates and concurred with the conclusions reached by the Working Party. The Working Party agreed to adopt the principle that the wounded, sick and

shipwrecked collected by a neutral war vessel or by a neutral military aircraft should no longer take part in operations of war. The restriction of this principle to persons collected on the high seas was not retained, in view of the difficulty of laying down a definition of territorial waters valid for all States.

Furthermore, the Working Party refrained from any interpretation of International Law as regards survivors disembarked in neutral territory.

Committee I adopted the conclusions of the Subcommittee.

The revised wording of the Wounded and Sick and the Maritime Warfare Conventions has extended protection to other categories, in particular to the sailors of the Merchant Navy.

It remains for me to say something on the flight of medical aircraft over neutral countries. Subject to the conditions and restrictions which the neutral Powers may impose on all belligerents without distinction, the medical aircraft of belligerents have free passage over their territory. Belligerents should give previous notification of their passage, and obtain agreement on the conditions of the flight (altitude, time, route). They should obey every summons to alight on land or water.

After a forced or involuntary landing, the aircraft with its occupants and its crew, may continue its flight. In the event, however, of the wounded or sick in the aircraft being voluntarily disembarked in the neutral country with the consent of the Neutral Power, they shall be detained by the Neutral Power in such manner that they cannot again take part in operations of war.

## 2) COMMENTARIES CONCERNING THE WOUNDED AND SICK CONVENTION

## CHAPTER I

**General Provisions***Article 1*(Former Article 25, paragraph 1)<sup>1</sup>

Entrusted to the Joint Committee for consideration.

*Article 2*

(Former Article 25, paragraph 2)

Same remark.

*Article 3*

(New)

This is a general declaration of the duties of neutral Powers, within the scope of the present Convention. Those Powers shall apply by analogy all the provisions laid down. "Wounded and sick" shall be taken to mean all the persons enumerated in Article 10A. The medical personnel referred to shall include all the personnel mentioned in Articles 19, 20 and 21. The words "received" or "interned" shall apply, as regards the first, to the medical personnel and chaplains who are not

necessarily to be interned, and as regards the second, to wounded and sick persons.

In several Articles of the Convention, the duties of neutral Powers in certain well defined cases are clearly laid down. This Article makes general provision for situations not specifically provided for.

*Article 3A*

(New)

This Article determines the field in which the present Convention shall operate. Medical personnel and chaplains continue to benefit by the Convention until their final repatriation. Wounded and sick persons are protected by this Convention, and also by the Convention relative to the treatment of Prisoners of War. If cured before being finally repatriated, only the provisions of the latter continue to apply to them.

Articles 4-9 inclusive, which are all new, were referred to the Joint Committee for consideration.

## CHAPTER II

**Wounded and Sick**

This Chapter is the most important one in the Convention; indeed it is the foundation on which the whole Convention rests. The principles which it embodies were the work of Henry Dunant. For that reason, the greatest caution has been exercised in dealing with it at all the Conferences held since 1864; and this Committee has, once again, limited itself to defining certain expressions

more accurately, in the hope of facilitating their application to existing conditions and preventing any possibility of improper or incorrect interpretation.

*Article 10*

(Former Article 1)

This Article deals with the protection and care to which the wounded and sick are entitled, and the words "without any distinction of nationality"

<sup>1</sup> Articles in brackets are those of the Geneva Convention of 27 July 1949.

appeared inadequate to prevent all the forms of adverse distinction which an ill-intentioned enemy might be tempted to make with regard to the manner and the order in which persons in its power should be cared for and treated. The text submitted for your consideration explicitly prohibits "unfavourable differential treatment founded on sex, race, nationality, religion, political opinions or any other similar criteria". "Only urgent medical reasons will authorize priority in the order of treatment to be administered". This text is clear; it prohibits any form of adverse discrimination, and ensures that all wounded and sick, whether friend or foe, shall be treated on a footing of perfect equality as regards the protection, respect and care to which they are entitled.

The increasing part played by women in military operations led the Committee to provide that they should be treated with all the consideration due to their sex, as already provided by the Prisoners of War Convention.

Even these provisions, however, did not appear sufficient to ensure complete protection to the wounded and sick. To all right thinking persons, the words "Shall be treated and respected in all circumstances" and "shall be treated humanely", may seem perfectly clear and explicit, but the occurrence of appalling atrocities is, unfortunately, sufficient evidence to show that this is not always the case. The Committee therefore considered it necessary to enumerate and expressly prohibit, in this Article, *inter alia*, some of the most serious offences which a belligerent might be guilty of towards the wounded and sick in its power.

This enumeration commences by an unqualified affirmation, in imperative terms: certain acts shall be strictly prohibited, etc.

These words are followed by a general prohibition: "Any attempts upon their lives, or violence to their persons, shall be strictly prohibited; in particular...". The general character of this affirmation implies that the subsequent enumeration is not limitative. The use of the word "persons" implies that both physical and moral integrity are included.

The subsequent words: "murdered, exterminated, subjected to torture", are self-explanatory.

Biological experiments. The Committee discussed at great length whether these words required definition, and more particularly whether their scope ought not to be restricted by adding, for example: "not necessary for their medical treatment". In reality, however, the word biological, in its generally accepted sense, does not apply to therapeutic treatment, whether medical or surgical.

We now come to the words: "wilfully be left without medical assistance and care". The word "wilfully" implies that the guilty party is not only acting intentionally, but with full knowledge

of the wrong about to be committed and that he intends to commit it; it also implies that he has time for reflection before it is committed. The guilty party, therefore, fully conscious of his actions, has considered the import and consequences of that act, and has not been deterred by such reflection from committing it.

The English translation of the word "prémédité" gave rise to some discussion. There was general agreement among the Delegations to accept the word "wilfully", which implies both considered knowledge and settled will.

The latter part of the enumeration: "nor shall conditions exposing them to contagion or infection be created" are also self-explanatory. The risks in question must have been created deliberately. The word contagion applies to diseases communicated from one human being to another, while the word infection, in our opinion, applies more particularly to an infection caused artificially, for example by injections.

#### Article 10A

(New Article)

The Committee considered it necessary to define the different categories of persons who, if sick or wounded, shall be entitled to the benefit of the present Convention. It is of course clearly understood that those not included in this enumeration still remain protected, either by other Conventions, or simply by the general principles of International Law.

The Convention of 1929 only applied to members of the Armed Forces and to other persons officially attached to them. The present provisions extend the protection of the Convention to all persons who, in the event of their falling into the enemy's hands, would be treated as prisoners of war. This implies that the Convention applies to the crews of merchant vessels owned by Parties to the conflict, and to members of Resistance movements, on condition that the latter comply with certain clearly defined conditions.

#### Article 11

(Former Article 2, first paragraph)

No change.

#### Article 12

(Former Article 3)

This Article more or less reproduces the provisions of Article 3 of the 1929 Convention, but defines them more clearly and extends their scope. After an engagement, the military forces in occupation of the field of battle must not confine themselves to taking measures to search for and collect

the wounded and dead, etc., but must also do so "without delay" and take "all possible measures" for this purpose. Their imperative duty is no longer confined to searching for the wounded, but the latter must also be "collected" and "given adequate care".

The 1929 Convention made it possible for local military commander to conclude an armistice, or arrange for a temporary cessation of hostilities for the purpose of collecting and removing the wounded between the lines. The scope of this provisions was extended by the Preparatory Conferences at Geneva and Stockholm so as to include besieged or encircled places or zones; in this way it will be possible to replenish the medical supplies and personnel of such localities or areas.

The Committee fully agreed with this point of view, and even decided to extend its meaning by providing for the possibility of an exchange of wounded and sick both on the battlefield itself and outside besieged places.

#### *Article 13*

(Former Article 4)

The stipulations relative to the identification of wounded, sick and dead have been made clearer and more specific and the information the belligerents are required to furnish each other with has been defined more clearly. Similarly, in order to ensure more effective coordination, it has been provided that such information shall be forwarded through the official National Bureaux of each of the Parties, and thence through the channel of the Protecting Powers and the Central Prisoners of War Agency established in a neutral country. It is intended that these various bodies shall be set up, at the outset of hostilities and in all cases of occupation, in virtue of the provisions of the Convention relative to the Treatment of Prisoners of War.

A certain number of new conceptions have been embodied in this Article.

- (1) Whereas the Convention of 1929 only referred to death certificates, the existing provisions authorize the use of duly authenticated lists of deaths. This constitutes a considerable simplification, since death certificates, in order to be regarded as valid, must comply with a number of conditions clearly laid down by civil law.
- (2) Burial or cremation shall, as far as is possible, be carried out individually and not collectively.
- (3) Bodies shall not be cremated, except for imperative reasons of hygiene or for motives based on the religious tenets of the deceased.

#### *Article 14*

(Former Article 5)

Article 5 of the 1929 Convention provided that the military authorities could appeal to the charitable aid of the inhabitants in collecting and caring for wounded persons in their power, and that, in such cases, the inhabitants in question would be entitled to assistance and protection.

The lamentable experiences of the war of 1939-1945 provide conclusive evidence that this provision was totally inadequate. The Preparatory Conferences therefore sought to complete and define these provisions.

Though the existing text retains the relevant provision of the 1929 Convention, the insertion of the words "of their own free will", makes it clear that a voluntary act is meant, which includes the acceptance of "supervision" by the military authorities. The Committee wished to make special provision for the case of occupied countries and to prevent, under the guise of an appeal to charitable zeal, the Occupying Authority from bringing pressure to bear on the population in order to induce them, even against their own will, to give prolonged treatment to wounded, and thus relieve the Occupying Power of one of its principal responsibilities. Moreover, these duties are recalled in the last paragraph of the Article.

The second paragraph, on the contrary, formally authorizes the inhabitants spontaneously to collect and care for wounded of all nationalities. This provision was intended to apply more particularly to wounded parachutists or resisters, whom it was frequently prohibited to assist or care for in the last war, subject to extremely severe penalties. The Committee refused to make this authorization dependent on the acceptance of military supervision, or on any compulsory statement which might be tantamount to informing against such persons and would frequently entail a violation of the Hippocratic oath. It is, of course, obvious that the military authorities would always be at liberty to require such a declaration, but it would be extremely undesirable that this should be mentioned in a humanitarian Convention.

Lastly, the Article expressly stipulates that the mere fact of having rendered aid to wounded or sick persons shall never constitute a ground for prosecution or punishment.

It might have seemed quite superfluous, in the 20th century, to have to specify in such detail that it is everyone's duty to succour all wounded persons without distinction, but the tragic experiences of the last war have unfortunately shown conclusively that this is by no means the case.

## CHAPTER III

**Medical Units and Establishments**

There were no alterations in substance to this Chapter. The role of the Preparatory Conferences and of Committee I was confined to the improvement and clarification of the original text.

*Article 15*  
(Former Article 6)

The outcome of the deliberations of the Working Party was that the term "medical units" could only be applied to actual Army Medical Services formations which, directly or indirectly, ensure the necessary care of the wounded and sick. They therefore excluded those units or bodies which were only occasionally placed at the disposal of the Medical Service, such as Engineer Units employed in filling ponds, the removal of bushes and undergrowth, etc., in combating malaria.

This Article, implicitly recalling the obligations of the Detaining Power with respect to the wounded and sick in its hands, stipulates that until such time as the Detaining Power is in a position to assume these obligations, Medical Units and Establishments will continue to operate.

Lastly, in order to afford the maximum of protection to the wounded and sick, the last paragraph urges belligerents to locate their Medical Establishments as far as possible from any military objective.

*Article 15A*

The Committee considered it advisable to mention in the Wounded and Sick Convention that hospital ships shall not be attacked from land.

*Article 16*  
(Former Article 7)

In this Article, which deals with the end of protection, Committee I sought to clarify the words "harmful to the enemy". The Committee realized that the effects of a purely medical action might be interpreted as "harmful" by an unscrupulous enemy, for example if the rays emitted by a radiology apparatus interfered with radio transmission, reception, or radar operation. The words "outside their humanitarian duties" were therefore inserted.

Committee I, however, also agreed that protection may cease only after due warning naming a reasonable time limit, so as if necessary to permit the evacuation of the wounded from a hospital before an attack on the latter. It was realized that it would not always be possible to grant a time limit, as a belligerent could not be expected to expose his own troops to serious risks owing to the failure of a hospital to fulfil one of its main obligations. The time limit must therefore depend on circumstances.

*Article 17*  
(Former Article 8)

A new paragraph has been added to this Article authorizing protected establishments to care for civilian wounded or sick. At present, when total warfare is unfortunately the order of the day, the usefulness of this provision will be obvious to all.

*Article 18*  
(New)

Although this Article does not make the provision compulsory, it gives each Power the right to create or demand the recognition of hospital zones and localities. The idea is not a new one; as far back as 1870, during the Franco-Prussian War, Henry Dunant tried in vain to obtain from the Empress Eugénie an assurance that a certain number of places should be declared "villes de blessés" (towns for the wounded), and neutralized. But although, in theory at any rate, it has always been possible to put this idea into practice by the juxtaposition of larger or smaller numbers of medical units and establishments, this is the first time that it has been given concrete expression in the Convention. This provision is a step forward which justifies great hopes for the future.

## CHAPTER IV

## Personnel

*Article 19*

(former Article 9, first paragraph)

Article 9 of the Convention of 1929 dealt with the position of two distinct categories of personnel: first, the personnel exclusively employed on various missions undertaken by the Medical Service, and, secondly certain members of the Armed Forces not belonging to the regular Armed Medical Services, but who might be called upon to assist these temporarily in virtue of having undergone special medical training.

With a view to distinguishing clearly between these two categories of personnel, Committee I decided that there should be a separate Article dealing with each of them.

Article 19, consequently, only deals with the permanent regular personnel of the Medical Services. This Article, moreover, is concerned primarily with the position on the field of battle, the aim being to ensure that such personnel shall be protected and respected, and it is forbidden on the one hand to illtreat, harm, attack or kill its members, while, on the other, nothing shall be done to prevent or hamper it while carrying out its normal duties. As to how such personnel shall be treated after falling into the hands of the enemy, the Committee decided that it would be preferable not to deal with this question at this juncture, but to deal with the problem as a whole in a special Article exclusively reserved for this purpose.

*Article 19A*

(Former Article 9, second paragraph)

This Article deals with members of the Armed Forces who are not actually or exclusively members of the Medical Services, but who have received special training to enable them to carry out medical duties and act alternatively as combatants and as medical personnel. In certain armies, for instance, regimental bandsmen come under this heading; while in others certain members of any unit undertake these functions. They only act quite temporarily as stretcher-bearers or hospital orderlies.

The Committee, as in 1929, aimed at not making all the provisions of this Article applicable to every combatant who might occasionally be employed in assisting or carrying a wounded man.

In practice, the great majority of soldiers in all armies now receive sufficient first-aid training to enable them to render first-aid to their wounded comrades. If it were, therefore, proposed that all soldiers engaged in rendering such assistance on the field of battle should be entitled to respect and protection while so doing, this would certainly entail many possibilities of abuse.

The Article therefore stipulates that temporary—as opposed to occasional—medical personnel shall be entitled to respect and protection while engaged in carrying out their duties. As in the case of permanent regular personnel, this only applies to protection on the field of battle.

*Article 20*

(Former Article 10)

The Committee, without in any way wishing to minimize the valuable services rendered by other national relief organizations, wished, in referring to them by name in this Article, to pay a special tribute to the Red Cross Societies, thus recognizing the great services they had rendered on all the battle-fields of the world.

*Article 21*

(Former Article 11)

The substance of this Article is the same as in the corresponding Article of the Convention of 1929. The Committee wished, however, to provide explicitly that the assistance rendered to one of the belligerents by a neutral body should never be regarded as interference in the conflict.

This Article also enumerates the conditions which must be complied with before the help of such a body can be accepted; the authorization of the Government of origin, acceptance by the belligerent concerned, agreement to recognize the latter's authority, notification to both belligerents.

Lastly, the Article provides that the documents of identity, with which the personnel of such an organization must be furnished by the accepting belligerent, shall be delivered to them before leaving their own country. This is to ensure that their position shall be clearly defined in the event of their falling into the hands of the enemy before reaching the territory of the belligerent to whom their assistance is being rendered.

*Article 22*

(Former Articles 12 and 13)

This Article, deals with the position of permanent members of the Medical and Religious Services who have been captured by the enemy, and with the personnel of relief societies of belligerents.

The Convention of 1929 was explicit: the detention of such personnel was prohibited. The Convention, it is true, provided that an agreement could be concluded with a view to postponing the return of such personnel to the belligerent of origin, but this procedure was only to be regarded as quite exceptional.

But a variety of new factors, such as the enormous number of prisoners of war resulting from the great increase in the size of the forces engaged, and the fact that modern warfare has again become a war of movement; the length of the period of captivity entailed by the length of the war; the wretched condition of prisoners in the hands of an enemy unfamiliar with their language and their habits; all these have induced your Committee to accept the proposal of the Preparatory Conferences held in Geneva in 1947 and at Stockholm in 1948, and to stipulate that part of the medical personnel captured by the enemy may be detained.

The text adopted, however, specifies the conditions, namely, that such personnel can only be detained in as far as the needs of the prisoners of war themselves require.

What is to be the status of medical personnel detained under such conditions, possibly for very long periods? The Convention of 1929 was far from being explicit on this point, and simply indicated that they should be entitled to the same food rations the same quarters, the same allowances and the same pay as the corresponding personnel of the Detaining Power. But, on all other points, the Convention is silent.

All Delegations agreed that they should receive the maximum degree of protection; with this object in view, and considering that the Prisoners of War Convention not only offers the best guarantee but has also stood the test of war, some proposed that members of the medical services should be treated purely and simply as prisoners of war. Although the laudible intentions of the authors of this proposal were fully recognized, a substantial majority of the Delegates refused to accept their views. While fully recognizing that it is now no longer possible to regard the Army Medical Service as a special or neutralized body, independent of the armies to which it is attached, the Delegations in question reminded the Committee that the medical service does in fact remain "au-dessus de la mêlée" from the very nature of the duties incumbent on their profession. For some of the medical personnel, not only from a military

but also from a medical point of view, must remain with the wounded who have fallen into the hands of the enemy (Article 10, last paragraph); in remaining with the prisoners of war they relieve the enemy by performing part of the duties for which the latter is responsible, and thus contribute indirectly to its war effort; they would also be prohibited, again as a matter of medical ethics, from seeking to escape, when, on the contrary, it is perfectly legitimate and honourable for a prisoner of war to make such an attempt.

For all these reasons, Committee I came to the decision that detained medical personnel should not be treated as prisoners of war; but that they should be accorded a special Article which should, on the one hand, include all the provisions stipulated in favour of prisoners of war and, on the other, various special facilities essential for the proper performance of their duties. The Committee has thus framed special regulations applicable to such personnel. This cannot be regarded as an innovation, since similar regulations were contained in the 1929 text, and the latter is still in force for the personnel of neutral relief societies. It was, however, necessary to clarify the regulations relating to personnel which may be retained.

Although the Committee wished to grant such personnel a privileged situation, it proved impossible to retain in their favour the special pay, maintenance and quarters provided for in the 1929 Convention (Article 13).

In conclusion, it may be said that, while the medical personnel are in the enemy's power, they continue at the same time to remain in the service of the country of origin, and this is conclusively shown by the fact that the possibility of their being relieved, in agreement with the adverse Party, is provided for.

*Article 22A*

(Former Article 9, second paragraph)

The preceding Article dealt with the position of permanent medical personnel; this one deals with temporary personnel. Whereas the Convention of 1929 provided for their return on the same conditions as those applicable to permanent personnel, Committee I concluded that there was no justification for granting this special favour, and declared that they should also be treated as prisoners of war. It is merely stipulated that they shall be employed, in prisoner of war camps, on medical duties in preference to all others, whenever this is necessary.

*Article 23*

(Former Article 12)

This Article, which deals with the return of personnel not retained, has not undergone any sub-

stantial alteration. The special pay, maintenance and quarters granted to retained personnel by Article 13 of the 1929 Convention has had, however, to be withdrawn from this personnel also.

*Article 24*

(New)

As in the case of Article 10, which, in view of the deplorable experiences of the war of 1939-1945, now absolutely prohibits any discrimination of an unfavourable character as regards the treatment and nursing of the wounded, it has been necessary in Article 24 also to prohibit any discrimination as regards the selection of prisoners to be repatriated.

An important provision, intended to facilitate the application of Article 22, provides that the percentage of the personnel to be detained in regard to the number of prisoners can be determined by special agreements, and even regulates the allocation of medical personnel throughout the camps. This again demonstrates the intention of Committee I that the personnel detained shall nevertheless remain in the service of its Power of origin.

*Article 25*

(New)

It was perfectly obvious, in view of the general principles of International Law, that it was quite impossible to contemplate altering the status of medical personnel of neutral countries. The provisions of Article 25 therefore remain practically identical with those of 1929. It was, however, thought advisable to add that the rations of such persons awaiting return shall be adequate to maintain them in good health.

*Wish*

Concluding this Chapter, I wish to point out that, in order to facilitate the conclusion of the agreements provided for in Articles 22 and 24 relative to the relief and repatriation of Medical and Religious Personnel, Committee I recommended that the Conference should request the International Committee of the Red Cross to consider a draft model agreement, to be submitted later to the Governments signatory to the present Convention, and possibly added to the present Convention in the form of an Annex.

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## CHAPTER V

### **Buildings and Material**

*Article 26*

(Former Articles 14 and 15)

The new text makes no change in the disposal of fixed medical establishments. It does, however, specify that buildings, material and stores shall not be intentionally destroyed, as the wounded and sick may not be deliberately deprived of the material necessary to their welfare.

On the other hand, the provisions relating to the material of mobile medical units have been radically altered. According to the Convention of 1929, if such a unit fell into the hands of the enemy, it would continue to care for the wounded

and sick already in its charge until such time as the adverse Party was able to undertake that duty. Medical personnel were then to be returned to the belligerent in whose service they were, together with their material and stores. The new provisions, on the contrary, stipulate that this material is to remain in the hands of the adverse Party, and is not to be returned. But it is not subject to the laws of war, since it is to be reserved for the care and treatment of the wounded and sick.

*Article 27*

No alteration of substance.

## CHAPTER VI

**Medical Transports***Article 28*

(Former Article 17)

The adoption of the principle that medical material is not to be restored constitutes an important innovation. Whereas the 1929 Convention, as in the case of mobile units of the Medical Services, provided for the immediate return of transport material to the belligerent of origin as soon as such material had ceased to be used for medical purposes, the Committee was obliged to recognize that this provision could not be retained under the conditions of modern warfare.

*Article 29*

(Former Article 18)

The principal alteration to this Article is an attempt to improve the distinctive markings on medical aircraft. It was obvious that in view of existing flying speeds, no emblems generally in use, even a red cross on a white ground, could easily be recognized, and that the protection of such signs are supported to confer is therefore purely illusory. Among a number of proposed solutions, the Committee adopted one, which, in the present state of affairs, is probably the best calculated to make up for the inadequacy of markings recognizable at sight. It was decided that medical aircraft should be required to inform the adverse belligerent of their route, altitude and time of flight. If these are agreed to such aircraft only continue to be protected so far as these conditions are complied with; this moreover does

not exclude the possibility of making use of other methods for ensuring recognition.

The Committee also endeavoured to specify the treatment of aircraft, and persons on board, in the event of landings on enemy territory. The new provisions proposed by the Committee stipulate that, in case of a forced landing, the aircraft, with its occupants, shall be allowed to resume its flight after inspection.

This is because the enemy by exercising his right of supervision, must not cause additional suffering to the sick and wounded. But in the case of an involuntary landing the crew, with any sick or wounded on board, become prisoners of war, and the medical personnel may be detained.

*Article 30*

(New Article)

The 1929 Convention did not cover the case of flying over a neutral country; this deficiency is remedied by the existing text. Flying over neutral countries is permitted, subject, however, to previous agreement between the belligerents and the neutral country concerned.

The neutral country can make such agreement dependent on any conditions it wishes to impose, provided these are identical for all belligerents. In every case, the route, altitude, and time of flight shall be explicitly agreed.

If an aircraft alights on neutral territory, and lands wounded and sick persons, the latter must, except if otherwise agreed, be placed under guard, to ensure that they can take no further part in operations.

## CHAPTER VII

**The distinctive emblem***Article 31*

(Former Article 19)

No alterations were made. Committee I, while hoping that the time will come when all the countries of the world will decide to adopt the

red cross on a white ground as the only distinctive emblem, was nevertheless compelled to recognize that it was impossible, for the moment, to revert to the use of a single emblem; but countries which already make use of the red crescent, or the red lion and sun for this purpose, will be allowed

to continue doing so. The Committee considered, however, that the undue multiplication of emblems could only tend to diminish their protective value; and was therefore unable to agree to the proposal to authorize the use of a new emblem by a certain country.

*Article 32*  
(Former Article 20)

Drafting alterations only.

*Article 33*  
(Former Article 21)

The provisions relating to the identification of medical personnel were clarified. Provision is made for a special identity card for such personnel, authorizing it, on the one hand, to wear a protective armlet on the field of battle, and authorizing the enemy, on the other, to apply the provisions of Chapter IV to such personnel. The card will be drawn up in duplicate at least, one copy to be retained by the Power of origin; this is the only method by which a duplicate of the card can be issued in case of need.

The Committee aimed, on the one hand, at providing the personnel with a really useful identity card, and also standardizing it for all permanent medical personnel belonging to the same forces. It was also recommended that identity cards in all armies should, if possible, be of the same type.

The Article also stipulates that medical personnel, even when in the hands of the enemy, shall be authorized to continue wearing their armlets, in order to indicate clearly the special status they are entitled to.

*Article 33A*  
(New Article)

Temporary medical staff, as defined in Article 19A, were formerly only entitled to special protection on the field of battle; but this is no longer the case. It is therefore necessary to provide some permanent sign to make it possible to recognize and protect them. The idea of creating a new emblem was rejected, on the ground that the multiplication of symbols would be likely to lead to misunderstanding, and also because all the designs proposed were liable to be confused with signs already in use in the various armies to indicate rank and service. It was therefore decided that temporary medical personnel should wear a white armlet, with a red cross emblem of a smaller size.

As personnel of this kind will be treated as prisoners of war if they fall into the hands of the

enemy, a special identity card for them would not serve any useful purpose. It was therefore proposed simply to make a special entry in their ordinary military identity cards, indicating the nature of the medical training they have undergone, the temporary nature of their duties, and their right to wear an armlet. The effect of this will be to authorize the enemy to make use of their services in prisoner of war camps, preferably on duties of a medical nature.

*Article 34*  
(Former Article 22)

Only slight drafting alterations.

*Article 35*  
(Former Article 23)

Only slight drafting alterations.

*Article 36*  
(Former Article 24)

This Article regulates the conditions under which the red cross emblem may be used. It also makes a clear distinction between the emblem which has a protective value, in virtue of the Geneva Convention, during military operations; and an emblem which simply serves to indicate that there is a relationship between a person or a thing and the Red Cross institution. The Committee has aimed on the one hand to ensure that the protective sign shall be safeguarded by the most rigid guarantees, and on the other to enable the national Red Cross Societies to use for the purposes of identification a popular emblem to the use of which they have acquired a legitimate right. Lastly, in order that the protective emblem shall retain its full value, it is provided that it can only be used in connection with activities covered by the Conventions. With regard to the other humanitarian activities of those Societies, they must be so identified that any mistake on the part of the enemy is impossible. The emblem used for this purpose must be of small size, not affixed to an armlet or painted on a roof.

In view of the fact that international Red Cross bodies are required to perform their duties everywhere and in all circumstances, the Committee decided to give them the right, without restriction, to make use of the red cross emblem. The part they play in the execution of all the Conventions is far too important to contemplate the possibility of their being deliberately exposed to the hazards of war. The Committee, therefore, considered it necessary to insert a new provision for this purpose, thus remedying a serious defect in the 1929 Convention.

## CHAPTER VIII

**Execution of the Convention***Article 37*  
(Former Article 26)

The drafting only was altered.

*Article 37A*

This Article prohibits reprisals of any kind. All the previous provisions of the Convention might have led to the belief that adequate pro-

tection was ensured to the wounded and sick, to those who cared for them and to the buildings and material necessary for their wellbeing.

Unfortunately, the terrible events of the years 1940-45 have compelled Committee I to take account of hard, of deplorable facts. This was considered sufficient justification for this Article, which already appeared in the 1929 Convention relative to the treatment of Prisoners of War.

## CHAPTER IX

**Repression of Abuses and Infractions***Articles 39, 40 and 41*

Referred to the Joint Committee.

*Article 42*  
(Former Article 28)

This Article, which deals with misuse of the emblem, underwent certain alterations, mainly of a drafting character.

The prohibition on individuals, societies or firms to use one of the emblems or designations conferring protection (Red Cross, Red Crescent, Red Lion and Sun, Geneva Cross) unless they are entitled to do so in virtue of the Convention, was rendered absolute; this applies also to the improper use of the arms of the Swiss Confederation.

This prohibition is to take effect immediately for countries who were parties to the Geneva Convention, 1929, and which have consequently had ample time to enact the necessary legislation. Other countries will be allowed two years from the date of the coming into force of the present Convention to take similar measures, provided, however, that during this period the emblem or designation shall not, in time of war, be used for the purpose of obtaining the protection of the Convention.

*Article 43 and following*

Articles 43 and following were considered by the Joint Committee.

3) REVISION OF THE TENTH HAGUE CONVENTION, OF 18 OCTOBER 1907,  
FOR THE ADAPTATION TO MARITIME WARFARE  
OF THE PRINCIPLES OF THE GENEVA CONVENTION

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CHAPTER I

General Provisions

*Article 1*  
(New)

Referred to the Joint Committee for consideration.

*Article 2*  
(Former Article 18)

Same remark.

*Article 3*  
(Former Article 22)

The provisions of this Article determine the categories of persons to whom the Convention shall apply. It shall apply only to forces on board ship. The word "forces" must be taken in the

broadest possible sense. It includes all the persons enumerated in Article 11 A, as well as the medical personnel and chaplains referred to in Articles 30 and 31.

As soon as the various persons are put ashore, the Conventions for the Relief of the Wounded and Sick in Armies in the Field become applicable to them.

*Article 4*  
(New)

Identical in every way to Article 3 of the Wounded and Sick Convention, to which reference should be made for comments.

*Articles 5-10* inclusive, which are all new, were referred to the Joint Committee for consideration.

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CHAPTER II

Wounded, Sick and Shipwrecked

*Article 11*  
(Former Article 11)

The provisions of this Article are identical with those of Article 10 of the Convention for the Relief of Wounded and Sick of Armed Forces in the Field. The protection obviously extends to shipwrecked persons, on the understanding that the term "shipwrecked persons" is taken to mean the victims of any shipwreck, whatever may be the circumstances under which it occurs, including forced alighting on water, or falling from aircraft into the sea.

*Article 11A*  
(New)

This Article also is the textual reproduction of an Article of the Wounded and Sick Convention (Article 10A). It must be emphasized, however, that the members of mercantile marine crews belonging to the Parties to the conflict are included among protected persons, provided that they are not receiving more favourable treatment in virtue of other provisions of international law. The extension of protection to cover this category of persons is the logical result of the decision taken

by the Committee instructed to consider the Convention relative to the Treatment of Prisoners of War. That Committee decided to extend the benefit of the Convention to the crews of enemy merchant ships. It is a cause of great satisfaction to us that these crews, who will be increasingly drawn into future operations of war, are to receive the same protection as wounded, sick and shipwrecked persons belonging to the Armed Forces.

*Article 13*

(Former Article 12)

The Xth Hague Convention of 1907 provided that any warship could require any military or privately owned hospital ship, or any non-military vessel of whatever nationality to hand over any sick or wounded men they might have on board.

Committee I, wishing to ensure that such wounded and sick would only be handed over subject to the most effective guarantees, stipulated that it should only be lawful to do so in so far as the warship by which the hospital ship was boarded should be fitted with the necessary equipment for ensuring proper treatment to the wounded and sick. It appears that warships are only exceptionally provided with sick-bays of adequate size and containing the necessary comforts for this purpose.

*Article 14*

(Former Article 13)

Wounded, sick and shipwrecked persons may be taken on board neutral war ships. Committee I decided, in view of existing possibilities, to treat rescue by neutral military aircraft on the same footing. Furthermore, whereas the obligation incumbent on neutrals to prevent rescued persons from taking any further part in the operation was qualified by the words: "as far as possible", this obligation is now absolute, without any restriction whatever.

*Article 14A*

(Former Article 14)

Only drafting alterations were made.

*Article 15*

(Former Article 15)

Only drafting alterations were made.

Several of the preceding Articles contained references to the rights and duties of neutral States. While recognizing that many questions affecting the position of such States had not been solved by the Xth Hague Conference, Committee I did not consider itself competent to interpret international law concerning survivors who had been landed. A number of problems will arise in connection with the latter; but the Committee is not competent to solve them.

*Article 16*

(Former Article 16, first paragraph)

With a view to completing this Article, which imposes on the belligerents the obligation to search for the shipwrecked and the dead, new provisions have been adopted stipulating that this duty is not restricted to making such a search, but also includes the duty of taking them on board and providing them with all necessary care.

The experience gained during the last war has demonstrated the usefulness of the possibility of evacuating the wounded and sick from a besieged or encircled zone by sea, as well as carrying reinforcements of personnel and medical stores by sea to that zone. New provisions make this possible by local agreement.

*Article 17*

(Former Article 17 and Article 16, second paragraph)

This Article, which deals with the information to be communicated with regard to wounded, sick and shipwrecked and deceased persons, including rules applying to burials on land and at sea, reproduces, with the necessary adaptations to maritime warfare, the provisions of the corresponding Article 13 of the Wounded and Sick Convention.

*Article 18*

(Former Article 9)

Only slight drafting alterations were made.

## CHAPTER III

## Hospital Ships

*Article 19*

(Former Article 1, first paragraph)

The substance of this Article, the purpose of which is to ensure protection to hospital ships, remains identical with that of the corresponding Article of 1929. The term "hospital ship" has been better defined. The designation "hospital ship" cannot be applied to any type of craft. It is necessary that it should be a ship. It is not sufficient for the vessel in question to be merely capable of rescue operations. It must be so equipped that it is in a position to care for and transport the wounded, sick and shipwrecked. A very clear distinction is therefore drawn between hospital ships and lifeboats.

Furthermore, to ensure that they shall benefit from the protection provided for, it is not sufficient that their names only should be communicated to the belligerents. Their principal characteristics, that is to say, their tonnage, length, number of masts and funnels, must also be notified.

This notification must be made ten days before they are put into commission, but confirmation of that notification was not considered necessary. The Committee was of the opinion that a hospital ship was entitled to the fullest protection in all circumstances.

*Article 19A*

(New)

While the Xth Hague Convention protected hospital ships, and the Geneva Convention medical units and establishments, no provision in the Conventions protects both. The Committee considered it expedient to mention in the Maritime Warfare Convention that protected establishments on land shall not be bombarded from the sea.

*Article 20*

(Former Article 2)

The only alterations introduced into this Article consist of its adaptation to the preceding Article.

*Article 21*

(Former Article 3)

As in the preceding Article, the only alterations introduced consisted in coordinating this text with that of Article 19.

*Article 21A*

(New)

The Committee, bearing in mind the wishes expressed by several Delegations, emphasized that it did not intend to limit the protection of hospital ships to those of any particular tonnage. It fully recognized that the visibility of ships of 2,000 tons gross and over was an important factor of security. It also agreed that vessels of this tonnage were the only ones capable of ensuring sufficient comfort for the wounded, sick or shipwrecked. The Committee therefore recommended the use of such vessels. But after taking into consideration the evidence that several nations would find it impossible to acquire ships of this size, it declined to specify a minimum tonnage.

*Article 21B*

(New)

Craft utilized by the State or by officially recognized Relief Societies for coastal rescue operations shall receive the same protection as hospital ships. Several nations desirous of avoiding any possibility of abuse, such as the utilization of such craft for reconnaissance or other operations of a military character, would have preferred to place restrictions on speed. The Committee was of the opinion that it was in the interest of the wounded and shipwrecked that they should be landed as rapidly as possible.

Fixed coastal installations exclusively utilized by these craft shall receive similar protection.

It was, however, understood that the protection promised to these low tonnage craft as well as to coastal installations could not be absolute. Such protection can only be afforded within the measure of operational necessities. A belligerent face to face with an opponent in a restricted maritime area would find it difficult to tolerate the traffic of a large number of very fast, small craft belonging to the adverse party.

*Article 24*

(New)

Hospital ships cannot be captured. Article 24 therefore stipulates that if such a ship is in a port which has fallen into the hands of the enemy, it shall be permitted to leave.

*Article 25*

(Former Article 4, first to fourth paragraphs)

No alterations.

*Article 26*

(Former Article 4, fifth and sixth paragraphs)

The protection afforded to hospital ships and to lifeboats does not exclude the exercise of certain rights by the adverse Party. For this reason, Committee I stipulated that over and above the measures that Party is entitled to take in virtue of the Hague Convention of 1907, it may control the use of the wireless installations on such vessels, as well as that of other means of communication, i.e., visual signals, sound signals or any other which might serve for communicating with other ships or the land.

It was also stipulated that neutral observers could be taken on board whose duty it would be to note the strict observance of the present Convention.

On the other hand, the scope of certain provisions was limited. Thus the Commissioner whom the adverse Party may place on board a hospital ship shall have the exclusive duty of ensuring the execution of the orders given in virtue of this Article.

*Article 27*

(Former Article 1, second paragraph)

No alterations.

*Article 28*

(New)

It was stated in this Article that a merchant vessel once refitted as a hospital ship cannot be put to any other use for the duration of hostilities.

Notwithstanding the provisions of Article 19, which state that "ships built or equipped specially and solely with a view to assisting...", which are in themselves capable of preventing many abuses, the Committee's intention was to prevent a government from refitting a large merchant vessel as a hospital ship, sending it overseas through the danger zones, and re-converting it later to a merchant vessel.

*Article 29*

(Former Article 8)

The protection of hospital ships may cease in certain conditions, which are mainly those laid down in the Wounded and Sick Convention, Article 16.

Taking into account, however, the special conditions of war at sea, the Committee emphasized that hospital ships could not employ or even be in possession of a secret code for their transmissions.

*Article 29A*

(Former Article 8)

This Article is, *mutatis mutandis*, similar to Article 17 of the Wounded and Sick Convention.

One paragraph further provides that protection may not be withdrawn owing to the fact that medical personnel or equipment are on board in addition to that which is normally required for the running of the ship. The intention of this provision is to prevent hospital ships being used as a means of transport for large quantities of material, in particular rolling-stock, or large units of medical personnel. Had this paragraph not been inserted, difficulties might have arisen from the presence on board a hospital ship of personnel on their way to undertake the care of wounded and sick, on the pretext that they were not members of its usual personnel.

## CHAPTER IV

## Personnel

*Article 30*

(Former Article 10, first paragraph)

This Article, which deals with the protection to be given to personnel of hospital ships, is entirely new.

Further, in view of the peculiar conditions at sea, the exemption from capture of such personnel

has remained the sole rule in force, which is not the case with the religious, medical and hospital personnel of the armed forces on land. This is logical. Without its crew, a hospital ship is useless, and the entire protection granted to its medical personnel becomes inoperative if the crew can be captured. Article 19 of the present Convention stipulates that a hospital ship may not

be captured in any circumstances; it is obvious that this stipulation would be void if the adverse belligerent were allowed to take the crew prisoner.

The protection of religious, medical and hospital personnel is total as long as such personnel is in the service of the hospital ship. Since the hospital ship may never be captured, it should be able to put to sea at any time; therefore it must have its crew at full strength all the time. In the same way, the temporary absence of wounded or sick on board is not a reason for the cancellation of protection.

It was laid down in Article 29A that a hospital ship should be allowed to transport supernumerary personnel. The latter, not being employed in the service of the hospital ship, does not enjoy the same protection as the personnel of the hospital ship. It is dealt with in the following Article.

*Article 31*

(Former Article 10, second paragraph)

This Article concerns personnel of vessels other than hospital ships. Here, of course, there is no question of the crew, since the grounds for its protection no longer exist.

Religious, medical and hospital personnel of

these vessels is entitled to the same respect and the same protection as that of hospital ships. In the same way as with personnel of land forces, and in contradistinction to the provisions for personnel of hospital ships, some of the members of that personnel may be retained if necessary for the requirements of prisoners of war. The belligerent which captures them must in that case put them ashore as soon as possible. Once on shore, the retained personnel comes within the application of the Geneva Convention.

The case just mentioned must remain exceptional. The rule is that as soon as such personnel have finished their treatment of the wounded and sick entrusted to them at the time of their capture, they must be sent back, that is, must be given the means of returning.

It must be remarked that the Hague Convention spoke of the religious and medical personnel of any captured vessel, thus putting on the same footing warships, merchant ships and other vessels. The Committee wished to restrict protection exclusively to personnel engaged for the medical and spiritual assistance of the persons protected by the present Convention. It considered that the case of purely civilian personnel came within the scope of other Conventions which were outside its terms of reference.

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## CHAPTER V

### Material

*Article 34*

(Former Article 7)

No change.

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## CHAPTER VI

### Medical Transports

*Article 35*

(New)

The Geneva Convention ensures the protection of transports of medical equipment. The present Article introduces similar provisions into the Maritime Convention. Transport ships must be

employed for this purpose, and may only transport material intended for the treatment of the wounded and sick or for the prevention of disease. It proved impossible to give protection, in the same circumstances, to transports of vehicles, even those intended for the Medical Service, owing to the risk of countless abuses.

The routes and duties of such transports must be notified to the adverse Power and approved by it. That Power may in no case regard the medical character of the equipment transported as a reason for refusing its approval. Only the conditions of the voyage, e.g. route, destination, etc., may be contested.

The agreement concluded between belligerents, however, may always provide for the putting on board of neutral observers, whose duty it is to supervise the equipment transported.

*Article 36*  
(New)

This Article, which deals with hospital aircraft, reproduces the provisions of Article 29 of the

Wounded and Sick Convention. The words "alight on water" and "shipwrecked" have been introduced wherever necessary.

The Committee was not prepared to give a precise definition of the notion of "enemy territory, or enemy-occupied territory". It did not regard as part of its business the definition of the rules applying to territorial waters or so-called battle-zones.

*Article 37*  
(New)

This Article reproduces the provisions of Article 30 of the Wounded and Sick Convention. The word "territory" must be understood in the same broad sense as in the preceding Article.

## CHAPTER VII

### The Distinctive Emblem

*Article 38*  
(New)

The provisions of this Article reproduce those of Articles 31 and 32 of the Wounded and Sick Convention. The comments on the latter should be consulted.

*Article 39*  
(New)

Same remark.

*Article 40*  
(Former Article 5)

It was realized that the marking of hospital ships and other craft covered by the same system of protection was very inadequately defined by the Xth Hague Convention. The experience of the war of 1939-1945 showed that most of the attacks on hospital ships were attributable to insufficient marking. The Committee, realizing the extreme importance of the identification of hospital ships at long range, therefore made far-reaching changes to the text of the Hague Convention.

Firstly, apart from the flags, it was decided that the hospital ships both of belligerents and of aid societies should have the same marking.

Both on psychological and visual grounds, white was retained as their colour, although not all Delegations agreed on this point, since they considered that other colours were more easily

distinguishable in the conditions of maritime warfare.

The horizontal band of green or red was abandoned. One or more red crosses, according to the tonnage of the ships, are to appear on both sides of the hull and on the horizontal surfaces. The colour of these crosses is to be dark red, which provides the most striking contrast to the white of the ship.

The place of the white flag with red cross was defined. It is to be hoisted on the mainmast, as high as possible. The mainmast of a ship is the first part of it to appear on the horizon; it was desired to have a mark of identification recognizable from that moment.

At night and at times of reduced visibility, hospital ships are to display their various markings, unless the belligerent in whose hands they are prohibits them from doing so. The Committee was not prepared to dictate any system of lighting, floodlighting, crosses illuminated from within, etc. The solution chosen will, for that matter, vary with the size and special construction of the ship, and with geographical and meteorological conditions, etc.

Lifeboats and small craft employed by the medical service are to be painted white and shall bear, as far as possible, the same marks of identification as the hospital ships.

A special provision lays down that coastal lifeboats, if they continue to operate from an occupied base with the consent of the Occupying

Power, may continue to hoist their own national colours each time they leave their base. This paragraph responds to the wishes of a large number of national lifeboat societies belonging to occupied countries during the last war who met with great difficulties, since the crews refused to put to sea under the colours of the Occupying Power. Certain Delegations would have been satisfied if these craft had been enabled to carry out their duties

solely under the Red Cross flag. The Committee, however, regarded this proceeding as dangerous and considered that the country of origin of such craft should be recognizable.

*Article 40A*  
(Former Article 6)

No change of substance.

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## CHAPTER VIII

### Execution of the Convention

*Article 41*  
(Former Article 19)

This Article being identical with Article 37 of the Wounded and Sick Convention, no comment is necessary.

*Article 41A*  
(New)

Same remark.

N. B. All the following Articles were referred for consideration to the Joint Committee.

## PART II

TEXT FOR THE WOUNDED AND SICK CONVENTION DRAWN UP BY COMMITTEE I  
AND REVISED BY THE DRAFTING COMMITTEE AFTER CONSIDERATION  
OF THE RECOMMENDATIONS OF THE COORDINATION COMMITTEE

(In order to avoid any confusion, the provisional numbering of the Articles as originally adopted by the Committees was retained in this document. The final numbering has only been decided upon at the conclusion of the Plenary Meetings.)

The Chapter headings form an integral part of the Convention. The marginal headings of the individual Articles, on the contrary, do not form part of the Convention and do not, therefore, appear in the texts submitted to the Plenary Meetings of the Conference.)

## CHAPTER I

## General Provisions

*Article 1*

The High Contracting Parties undertake to respect and to ensure respect for the present Convention in all circumstances.

*Article 2*

In addition to the stipulations which shall be implemented in peace time, the present Convention shall apply to all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them.

The Convention shall also apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance.

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

*Article 2A*

In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each party

to the conflict shall be bound to apply, as a minimum, the following provisions:

- (1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely without any discrimination on a basis of race, colour, religion or faith, sex, birth or wealth. To this end the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons :
  - (a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture ;
  - (b) taking of hostages ;
  - (c) outrages upon personal dignity, in particular humiliating and degrading treatment ;
  - (d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.
- (2) The wounded and sick shall be collected and cared for.

An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the parties to the conflict.

The Parties to the conflict should further endeavour to bring into force, by means of special agreement, all or part of the other provisions of the present Convention.

The application of the preceding provisions shall not affect the legal status of the parties to the conflict.

#### *Article 3*

Neutral Powers shall apply by analogy the provisions of the present Convention to the wounded and sick, and to members of the medical personnel and to chaplains of belligerent armed forces received or interned in their territory, as well as to dead persons found.

#### *Article 3A*

For the protected persons who have fallen into the hands of the enemy, the present Convention shall apply until their final repatriation.

#### *Article 4*

In addition to the agreements expressly provided for in Articles 12, 18, 22 and 24, the Contracting Parties may conclude other special arrangements for all matters concerning which they may deem it suitable to make separate provision. No special agreement shall adversely affect the situation of the wounded and sick, or of the members of medical personnel or of chaplains, as defined by the present Convention, nor restrict the rights which it confers upon them.

Wounded and sick, as well as medical personnel and chaplains shall continue to have the benefit of such agreements as long as the Convention is applicable to them, subject to express provisions to the contrary in the said or subsequent agreements, or again subject to more favourable measures taken with regard to them by one or other of the Parties to the conflict.

#### *Article 5*

Wounded and sick, as also members of the medical personnel and chaplains may in no circumstances renounce in part or in entirety the rights secured to them by the present Convention, and by the special agreement referred to in the foregoing Article, if such there be.

#### *Article 6*

The present Convention shall be applied with the co-operation and under the scrutiny of the Protecting Powers whose duty it is to safeguard

the interests of the Parties to the conflict. To this effect, the Protecting Powers may appoint, apart from their diplomatic or consular staff, delegates from amongst their own nationals or the nationals of other neutral Powers. The said delegates shall be subject to the approval of the Power with which they are to carry out their duties.

The Parties to the conflict shall facilitate to the greatest extent possible the task of the representatives or delegates of the Protecting Powers.

The representatives or delegates of the Protecting Power shall not in any case exceed their mission under the present Convention. They shall, in particular, take account of the imperative necessities of security of the State wherein they carry out their duties. Their activities shall only be restricted as an exceptional and temporary measure when this is rendered necessary by imperative military necessities.

#### *Article 7*

The provisions of the present Convention constitute no obstacle to the humanitarian activities which the International Committee of the Red Cross or any other impartial humanitarian body may, subject to the consent of the Parties to the conflict concerned, undertake for the protection of wounded and sick, medical personnel and chaplains, and for their relief.

#### *Article 8*

The Contracting Parties may at any time agree to entrust to an organization which offers all guarantees of impartiality and efficacy the duties incumbent on the Protecting Powers by virtue of the present Convention.

When wounded and sick or medical personnel and chaplains do not benefit, or cease to benefit, no matter for what reason, by the activities of a Protecting Power or of an organization provided for in the first paragraph above, the Detaining Power shall request a neutral State, or such an organization, to undertake the functions performed under the present Convention by a Protecting Power designated by the parties to a conflict.

If protection cannot be arranged accordingly the Detaining Power shall request or shall accept, subject to the provisions of this Article, 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 under the present Convention.

Any neutral Power or any organization invited by the Power concerned or offering itself for these purposes shall be required to act with a sense of responsibility towards the belligerent on which persons protected by the present Convention

depend and shall be required to furnish sufficient assurances that it is in a position to undertake the appropriate functions and to discharge them impartially.

No derogation from the preceding provisions shall be made by special agreements between Powers one of which is restricted, even temporarily, in its freedom to negotiate with the other Power or its allies by reason of military events, more particularly where the whole, or a substantial part, of the territory of the said Power is occupied.

Whenever in the present Convention mention is made of a Protecting Power, such mention applies to substitute bodies in the sense of the present Article.

#### *Article 9*

In cases where they deem it advisable in the interest of protected persons, particularly in cases

of disagreement between the Parties to the conflict as to the application or interpretation of the provisions of the present Convention, the Protecting Powers shall lend their good offices with a view to settling the disagreement.

To this effect, each of the Protecting Powers may, either at the invitation of one Party, or on its own initiative, propose to the Parties to the conflict a meeting of their representatives, in particular of the authorities responsible for the wounded and sick, members of medical personnel and chaplains, possibly on neutral territory suitably chosen. The Parties to the conflict shall be required to give effect to the proposals made to them for this purpose. The Protecting Powers may, if necessary, submit to the approval of the Parties to the conflict the name of a person belonging to a neutral Power, or delegated by the International Committee of the Red Cross, who shall be invited to take part in this meeting.

## CHAPTER II

### Wounded and Sick

#### *Article 10*

Members of the armed forces and other persons mentioned in the following Article who are wounded or sick shall be respected and protected in all circumstances.

They shall be treated humanely and cared for by the Party to the conflict in whose power they may be, without any adverse distinction founded on sex, race, nationality, religion, political opinions, or any other similar criteria. Any attempts upon their lives, or violence to their persons, shall be strictly prohibited; in particular, they shall not be murdered or exterminated, subjected to torture or to biological experiments; they shall not wilfully be left without medical assistance and care, nor shall conditions exposing them to contagion or infection be created.

Only urgent medical reasons will authorize priority in the order of treatment to be administered.

Women shall be treated with all consideration due to their sex.

The Party to the conflict which is compelled to abandon wounded or sick to the enemy shall, as far as military considerations permit, leave with them a portion of its medical personnel and material to assist in their care.

#### *Article 10A*

The present Convention shall apply to the wounded and sick belonging to the following categories:

(1) Members of the armed forces of a Party to the conflict as well as members of militias or volunteer corps forming part of these armed forces;

(2) Members of other militias and members of other volunteer corps, including those of organized resistance movements, belonging to a Party to the conflict and operating in or outside their own territory, even if this territory is occupied, provided that these militias or volunteer corps including these organized resistance movements fulfil the following conditions:

- (a) that of being commanded by a person responsible for his subordinates
- (b) that of having a fixed distinctive sign recognizable at a distance
- (c) that of carrying arms openly
- (d) that of conducting their operations in accordance with the laws and customs of war;

(3) Members of regular armed forces who profess allegiance to a Government or an authority not recognized by the Detaining Power;

(4) Persons who accompany the armed forces without actually being members thereof, such as civil members of military aircraft crews, war correspondents, supply contractors, members of labour units or of services responsible for the welfare of the military, provided that they have received authorization from the armed forces which they accompany;

(5) Members of crews including masters, pilots and apprentices of the merchant marine and the crews of civil aircraft of the Parties to the conflict, who do not benefit by more favourable treatment under any other provisions in international law;

(6) Inhabitants of a non-occupied territory who on the approach of the enemy spontaneously take up arms to resist the invading forces, without having had time to form themselves into regular armed units, provided they carry arms openly and respect the laws and customs of war.

#### *Article 11*

Subject to the provisions of the foregoing Article, the wounded and sick of a belligerent who fall into enemy hands shall be prisoners of war, and the provisions of international law concerning prisoners of war shall apply to them.

#### *Article 12*

At all times, and particularly after an engagement, Parties to the conflict shall without delay take all possible measures to search for and collect the sick and wounded, to protect them against pillage and ill-treatment, to ensure their adequate care, and to search for the dead and prevent their being despoiled.

Whenever circumstances permit, an armistice, or a suspension of fire shall be arranged, or local arrangements made to permit the removal, exchange and transport of the wounded left on the battlefield.

Likewise, local arrangements may be concluded between Parties to the conflict for the removal or exchange of wounded and sick from a besieged or encircled area, and for the passage of medical and religious personnel and equipment on their way to that area.

#### *Article 13*

Parties to the conflict shall record as soon as possible in respect of each wounded, sick or dead person of the adverse party falling into their hands, any particulars which may assist in their identification.

These records should if possible include:

- (a) designation of the Power on which he depends;
- (b) army, regimental, personal or serial number;
- (c) surname;
- (d) first name or names;
- (e) date of birth;
- (f) any other particulars shown on his identity card or disc;
- (g) date and place of capture or death;
- (h) particulars concerning wounds or illness, or cause of death.

As soon as possible the above mentioned information shall be forwarded to the Information Bureau described in Article 112 of the Convention of ..... relative to the treatment of prisoners of war which shall transmit this information to the Power on which these prisoners depend through the intermediary of the Protecting Power and of the Central Prisoners of War Agency.

Belligerents shall prepare and forward to each other through the same bureau, certificates of death or duly authenticated lists of the dead. They shall likewise collect and forward through the same bureau one half of the identity disc, last wills or other documents of importance to the next of kin, money and in general all articles of an intrinsic or sentimental value, which are found on the dead. These articles, together with unidentified articles, shall be sent in sealed packets, accompanied by statements giving all particulars necessary for the identification of the deceased owners, and by a complete list of the contents of the parcel.

#### *Article 13A*

Parties to the conflict shall ensure that burial or cremation of the dead, carried out individually as far as circumstances permit, is preceded by a careful examination and if possible by a medical examination, of the bodies, with a view to confirming death, establishing identity and enabling a report to be made. One half of the double identity disc, or the identity disc itself if it is a single disc, should remain on the body.

Bodies shall not be cremated except for imperative reasons of hygiene or for motives based on the religion of the deceased. In case of cremation the circumstances and reasons for cremation shall be stated in detail in the death certificate (or on the authenticated list of the dead).

They shall further ensure that the dead are honourably interred, if possible according to the rites of the religion to which they belonged, that their graves are respected, grouped if possible according to the nationality of the deceased, properly maintained and marked so that they may always be found. To this effect, they shall organize at the commencement of hostilities an Official

Graves Registration Service, to allow subsequent exhumations and to ensure the identification of bodies, whatever the site of the graves, and the possible transportation to the home country. These provisions shall likewise apply to the ashes, which shall be kept by the Graves Registration Service until proper disposal thereof in accordance with the wishes of the home country.

As soon as circumstances permit, and at latest at the end of hostilities, these Services shall exchange, through the Information Bureau mentioned in the first paragraph, lists showing the exact location and markings of the graves together with particulars of the dead interred therein.

*Article 14*

The military authorities may appeal to the charity of the inhabitants voluntarily to collect

and care for, under their direction, the wounded or sick, granting persons who have responded to this appeal the necessary protection and facilities. Should the adverse Party take or retake control of the area, he shall likewise grant these persons the same protection and the same facilities.

The military authorities shall permit the inhabitants and relief societies, even in invaded or occupied areas, spontaneously to collect and care for wounded or sick of whatever nationality. The civilian population shall respect these wounded and sick, and in particular abstain from offering them violence.

No one may ever be molested or convicted for having nursed the wounded or sick.

The provisions of the present Article do not relieve the occupying Power of its obligations to give both physical and moral care to sick and wounded.

## CHAPTER III

### Medical Units and Establishments

*Article 15*

Fixed establishments and mobile medical units of the Medical Service may in no circumstances be attacked, but shall at all times be respected and protected by the Parties to the conflict. Should they fall into the hands of the adverse party, their personnel shall be free to pursue their duties, as long as the capturing Power has not itself ensured the necessary care of the wounded and sick found in such establishments and units.

The responsible authorities shall ensure that the said medical establishments and units are, as far as possible, situated in such a manner that attacks against military objectives cannot imperil their safety.

*Article 15A*

Hospital ships entitled to the protection of the Convention for the Relief of Wounded, Sick and Shipwrecked Members of Armed Forces on Sea, shall not be attacked from the land.

*Article 16*

The protection to which fixed establishments and mobile medical units of the Medical Service are entitled shall not cease unless they are used to commit, outside their humanitarian duties,

acts harmful to the enemy. Protection may, however, cease only after a due warning has been given, naming, in all appropriate cases, a reasonable time limit and after such warning has remained unheeded.

*Article 17*

The following conditions shall not be considered as depriving a medical unit or establishment of the protection guaranteed by Article 15:

- (1) That the personnel of the unit or establishment are armed, and that they use the arms in their own defence, or in that of the wounded and sick in their charge.
- (2) That in the absence of armed orderlies, the unit or establishment is protected by a picket or by sentries or by an escort.
- (3) That small arms and ammunition taken from the wounded and sick, and which have not yet been handed to the proper service, are found in the unit or establishment.
- (4) That personnel and material of the veterinary service are found in the unit or establishment, without forming an integral part thereof.
- (5) That the humanitarian activities of medical units and establishments or of their personnel extend to the care of civilian wounded or sick.

*Article 18*

In time of peace, the Contracting Parties and, after the outbreak of hostilities, the Parties thereto, may establish in their own territory and, if the need arises, in occupied areas, hospital zones and localities so organized as to protect the wounded and sick from the effects of war.

Upon the outbreak and during the course of hostilities, the Parties concerned may conclude

agreements on mutual recognition of the hospital zones and localities they have created. They may for this purpose implement the provisions of the Draft Agreement annexed to the present Convention, with such amendments as they may consider necessary.

The Protecting Powers and the International Committee of the Red Cross are invited to lend their good offices in order to facilitate the institution and recognition of these hospital zones and localities.

## CHAPTER IV

**Personnel***Article 19*

Medical personnel exclusively engaged in the search for, or the collection, transport or treatment of the wounded or sick, or in the prevention of disease, staff exclusively engaged in the administration of medical units and establishments as well as chaplains attached to the armed forces, shall be respected and protected in all circumstances.

*Article 19A*

Members of the armed forces specially trained for employment, should the need arise, as hospital orderlies, nurses or auxiliary stretcher-bearers, in the search for and the collection, transport or treatment of the wounded and sick shall likewise be respected and protected if they are carrying out these duties at the time when they come into contact with the enemy or fall into his hands.

*Article 20*

The staff of National Red Cross Societies and that of other Voluntary Aid Societies, duly recognized and authorized by their Governments, who may be employed on the same duties as the personnel named in Article 19, are placed on the same footing as the personnel named in the said Article, provided that the staff of such societies are subject to military laws and regulations.

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

*Article 21*

A recognized Society of a neutral country can only lend the assistance of its medical personnel and units to a belligerent with the previous consent of its own Government and the authorization of the belligerent concerned. That personnel and those units shall be placed under the control of that belligerent.

The neutral Government shall notify this consent to the adversary of the State which accepts such assistance. The belligerent who accepts such assistance is bound to notify the adverse Party thereof before making any use of it.

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

The members of the personnel named in paragraph 1 shall be duly furnished with the identity cards provided for in Article 33 before leaving the neutral country to which they belong.

*Article 22*

Personnel designated in Articles 19 and 20 who fall into the hands of the adverse Party, shall be retained only in so far as the state of health, the spiritual needs and the number of prisoners of war require.

Personnel thus retained shall not be deemed prisoners of war. They shall nevertheless benefit by all the provisions of the Convention of ..... relative to the treatment of prisoners of war. Within the framework of the military laws and regulations of the Detaining Power, and under the authority of its competent service, they shall continue to carry out, in accordance with their professional ethics, their medical and spiritual duties on behalf of prisoners of war, preferably those of the armed forces to which they themselves

belong. They shall further enjoy the following facilities for carrying out their medical or spiritual duties:

- (a) They shall be authorized to visit periodically the prisoners of war in labour units or hospitals outside the camp. The Detaining Power shall put at their disposal the means of transport required.
- (b) In each camp the senior medical officer of the highest rank shall be responsible to the military authorities of the camp for the professional activity of the retained medical personnel. To that end, from the outbreak of hostilities, the Parties to the conflict shall agree regarding the corresponding seniority of the ranks of their medical personnel, including those of the societies designated in Article 20. In all questions arising out of their duties, this medical officer, and the chaplains, shall have direct access to the military and medical authorities of the camp who shall grant them the facilities they may require for correspondence relating to these questions.
- (c) Although retained personnel in a camp shall be subject to its internal discipline, they shall not, however, be required to perform any work outside their medical or religious duties.

During hostilities the Parties to the conflict shall make arrangements for relieving where possible retained personnel, and shall settle the procedure of such relief.

None of the preceding provisions shall relieve the Detaining Power of the obligations imposed upon it with regard to the medical and spiritual welfare of the prisoners of war.

#### *Article 22A*

Members of the personnel designated in Article 19A who have fallen into the hands of the enemy, shall be prisoners of war, but shall be employed on their medical duties in so far as the need arises.

#### *Article 23*

Personnel whose retention is not indispensable by virtue of the provisions of Article 22 shall be returned to the belligerent to whom they belong, as soon as a road is open for their return and military requirements permit.

Pending their return, they shall not be deemed prisoners of war but shall enjoy all the provisions of the Convention of ..... concerning the treatment of prisoners of war. They shall continue to fulfil their duties under the orders of the adverse Party and shall preferably be engaged in the care of the wounded and sick of the belligerent to which they themselves belong.

On their departure, they shall take with them the effects, personal belongings, valuables and instruments belonging to them.

#### *Article 24*

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

As from the outbreak of hostilities, belligerents may determine by special arrangement the percentage of personnel to be retained captive, in proportion to the number of prisoners and the distribution of the said personnel in the camps.

#### *Article 25*

Persons designated in Article 21 who have fallen into the hands of the adverse party may not be detained.

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

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

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

The belligerents shall secure to this personnel, while in their power, the same food, lodging, allowances and pay as are granted to the corresponding personnel of their armed forces. The food shall in any case be sufficient as regards quantity, quality and variety to keep the said personnel in a normal state of health.

## CHAPTER V

**Buildings and Material***Article 26*

The material of mobile medical units of the armed forces which fall into the hands of the enemy, shall be reserved for the care of wounded and sick.

The buildings, material and stores of fixed medical establishments of the armed forces shall remain subject to the laws of war, but may not be diverted from that purpose as long as they are required for the care of wounded and sick. Nevertheless, the Commanders of forces in the field may make use of them, in case of urgent military necessity, provided that they make previous arrangements for the welfare of the

wounded and sick who are nursed in them.

The material and stores defined in the present Article shall not be intentionally destroyed.

*Article 27*

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

The right of requisition recognized for belligerents by the laws and customs of war shall not be exercised except in case of urgent necessity, and only after the welfare of the wounded and sick has been ensured.

## CHAPTER VI

**Medical Transports***Article 28*

Transports of wounded and sick or of medical equipment shall be respected and protected in the same way as mobile medical units.

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

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

*Article 29*

Medical aircraft, that is to say, aircraft exclusively employed for the removal of wounded and sick and for the transport of medical personnel and equipment, shall not be attacked, but shall be respected by the belligerents, while flying at heights, times and on routes specifically agreed upon between the belligerents concerned.

They shall bear, clearly marked, the distinctive emblem prescribed in Article 31, together with their national colours, on their lower, upper and lateral surfaces. They shall be provided with any

other markings or means of identification that may be agreed upon between the belligerents upon the outbreak or during the course of hostilities.

Unless agreed otherwise, flights over enemy or enemy-occupied territory are prohibited.

Medical aircraft shall obey every summons to land. In the event of a landing thus imposed, the aircraft with its occupants may continue its flight after examination, if any.

In the event of an involuntary landing in enemy or enemy-occupied territory, the wounded and sick, as well as the crew of the aircraft shall be prisoners of war. The medical personnel shall be treated according to Article 19 and following.

*Article 30*

Subject to the provisions of the second paragraph, medical aircraft of Parties to the conflict may fly over the territory of neutral Powers, land on it in case of necessity, or use it as a port of call. They shall give the neutral Powers previous notice of their passage over the said territory and obey all summons to alight, on land or water. They will be immune from attack only when flying on routes, at heights and at times specifically agreed upon between the Parties to the conflict and the neutral Power concerned.

The neutral Powers may, however, place conditions or restrictions on the passage or landing of medical aircraft on their territory. Such possible conditions or restrictions shall be applied equally to all belligerents.

Unless agreed otherwise between the neutral Power and the Parties to the conflict, the wounded

and sick who are disembarked, with the consent of the local authorities, on neutral territory by medical aircraft, shall be detained by the neutral Power in such a manner that they cannot again take part in operations of war. The cost of their accommodation and internment shall be borne by the Power on which they depend.

## CHAPTER VII

### The Distinctive Emblem

#### *Article 31*

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

Nevertheless, in the case of countries which already use as emblem, in place of the red cross, the red crescent or the red lion and sun on a white ground, those emblems are also recognized by the terms of the present Convention.

#### *Article 32*

In the absence of orders to the contrary from the competent military authority, the emblem shall be displayed on the flags, armbands and on all equipment belonging to the Medical Service.

#### *Article 33*

The personnel designated in Article 19 and in Articles 20 and 21 shall wear, affixed to the left arm, a water-resistant armband bearing the distinctive emblem, issued and stamped by the military authority.

Such personnel, in addition to the identity disc mentioned in Article 13, shall also carry a special identity card bearing the distinctive emblem. This card shall be water-resistant and of such size that it can be carried in the pocket. It shall be worded in the national language, shall mention at least the full name, the date of birth, the rank and the service number of the bearer, and shall state in what capacity he is entitled to the protection of the present Convention. The card shall bear the photograph of the owner and also either his signature or his finger-prints or both. It shall be embossed with the stamp of the military authority.

The identity card shall be uniform throughout the same armed forces and, as far as possible, of a similar type in the armed forces of the Contracting

Parties. The Parties to the conflict may be guided by the model which is annexed, by way of example, to the present Convention. They shall inform each other, at the outbreak of hostilities, of the model they are using. Identity cards should be made out, if possible, at least in duplicate, one copy being kept by the home country.

In no circumstances may the said personnel be deprived of their insignia or identity cards nor of the right to wear the armband. In case of loss, they shall be entitled to receive duplicates of the cards and to have the insignia replaced.

#### *Article 33A*

The personnel designated in Article 19A shall wear, but only while carrying out medical duties, a white armband bearing in its centre the distinctive sign in miniature; the armband shall be issued and stamped by the military authority.

Military identity documents to be carried by this type of personnel shall specify what special training they have received, the temporary character of the duties they are engaged upon, and their authority for wearing the armband.

#### *Article 34*

The distinctive flag of the Convention shall be hoisted only over such medical units and establishments as are entitled to be respected under the Convention, and with the consent of the military authorities.

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

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

Parties to the conflict shall take the necessary steps, in so far as military considerations permit, to make the distinctive emblems indicating medical

units and establishments clearly visible to the enemy land, air or naval forces, in order to obviate the possibility of any hostile action.

*Article 35*

The medical units belonging to neutral countries, which may have been authorized to lend their services to a belligerent under the conditions laid down in Article 21, shall fly along with the flag of the Convention, the national flag of that belligerent, wherever the latter makes use of the faculty conferred on him by Article 34.

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

*Article 36*

With the exception of the cases mentioned in the following paragraphs of the present Article, the emblem of the Red Cross on a white ground and the words "Red Cross", or "Geneva Cross" may not be employed, either in time of peace or in time of war, except to indicate or to protect the medical units and establishments, the personnel and material protected by the present Convention and other Conventions dealing with similar matters. The same shall apply to the emblems mentioned in Article 31, second paragraph, in respect of the countries which use them. The National Red

Cross Societies and other Societies designated in Article 20 shall have the right to use the distinctive emblem conferring the protection of the Convention only within the framework of the present paragraph.

Furthermore, National Red Cross (Red Crescent, Red Lion and Sun) Societies may, in time of peace, in accordance with their national legislation, make use of the name and emblem of the Red Cross for their other activities which are in conformity with the principles laid down by the International Red Cross Conferences. When those activities are carried out in time of war, the conditions for the use of the emblem shall be such that it cannot be considered as conferring the protection of the Convention; the emblem shall be comparatively small in size and may not be placed on armlets or on the roofs of buildings.

The international Red Cross organizations and their duly authorized personnel shall be permitted to make use, at all times, of the emblem of the Red Cross on a white ground.

As an exceptional measure, in conformity with national legislation and with the express permission of one of the National Red Cross (Red Crescent, Red Lion and Sun) Societies, the emblem of the Convention may be employed in time of peace to identify vehicles used as ambulances and to mark the position of aid stations exclusively assigned to the purpose of giving free treatment to the wounded or sick.

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## CHAPTER VIII

### Execution of the Convention

*Article 37*

Each Party to the conflict, acting through its commanders-in-chief, shall ensure the detailed execution of the preceding Articles, and provide for unforeseen cases, in conformity with the general principles of the present Convention.

*Article 37A*

Reprisals against the wounded, sick, personnel, buildings or equipment protected by the Convention are prohibited.

*Article 38*

The High Contracting Parties undertake, in time of peace as in time of war, to disseminate the text of the present Convention as widely as

possible in their respective countries, and, in particular, to include the study thereof in their programmes of military and, if possible, civil instruction, so that the principles thereof may become known to the entire population, in particular to the armed fighting forces, the medical personnel and the chaplains.

*Article 38A*

The High Contracting Parties shall communicate to one another through the Swiss Federal Council and, during hostilities through the Protecting Powers, the official translations of the present Convention, as well as the laws and regulations which they may adopt to ensure the application thereof.

## CHAPTER IX

## Repression of Abuses and Infractions

*Article 39*

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

Each High Contracting Party shall be under the obligation to search for persons alleged to have committed, or to have ordered to be committed, such grave breaches, and shall bring such persons, regardless of their nationality, before its own courts. It may also, if it prefers, and in accordance with the provisions of its own legislation, hand such persons over for trial to another High Contracting Party concerned, provided such High Contracting Party has made out a *prima facie* case.

Each High Contracting Party shall take measures necessary for the suppression of all acts contrary to the provisions of the present Convention other than the grave breaches defined in the following Articles.

In all circumstances, the accused persons shall benefit by safeguards of proper trial and defence, which shall not be less favourable than those provided by Article 95 and those following of the Convention of ..... relative to the Treatment of Prisoners of War.

*Article 40*

Grave breaches to which the preceding Article relates shall be those involving any of the following acts, if committed against persons or property protected by the Convention: wilful killing, torture or inhuman treatment, including biological experiments, wilful causing of great suffering or serious injury to body or health, and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly.

*Article 40A*

No High Contracting Party shall be allowed to absolve itself or any other High Contracting Party of any liability incurred by itself or by another High Contracting Party in respect of breaches referred to in the preceding Article.

*Article 41*

At the request of a Party to the conflict, an enquiry shall be instituted, in a manner to be decided between the interested parties, concerning any alleged violation of the Convention.

If agreement has not been reached concerning the procedure for the enquiry, the parties should agree on the choice of an umpire, who will decide upon the procedure to be followed.

Once the violation has been established, the Parties to the conflict shall put an end to it and shall repress it within the briefest possible delay.

*Article 41A*

The High Contracting Parties who have not recognized as compulsory *ipso facto* and without special agreement, in relation to any State accepting the same obligation, the jurisdiction of the International Court of Justice in the circumstances mentioned in Article 36 of the Statute of the Court, undertake to recognize the competency of the Court in all matters concerning the interpretation or application of the present Convention.

*Article 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 "Geneva 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.

By reason of the tribute paid to Switzerland by the adoption of the reversed Federal colours, and of the confusion which may arise between the arms of Switzerland and the distinctive emblem of the Convention, the use by private individuals, societies or firms, of the arms of the Swiss Confederation, or of marks constituting an imitation, whether as trade-marks or commercial marks, or as parts of such marks, or for a purpose contrary to commercial honesty, or in circumstances capable of wounding Swiss national sentiment, shall be prohibited at all times.

Nevertheless, such High Contracting Parties as were not party to the Geneva Convention of July

27, 1929, may grant to prior users of the emblems designations, signs or marks designated in the first paragraph, a time limit not to exceed three years from the coming into force of the present Convention to discontinue such use, provided that the said use shall not be such as would appear, in time of war, to confer the protection of the Convention.

The principles laid down in the preceding paragraphs shall also apply to the marks mentioned in the second paragraph of Article 31 in respect of countries using them.

After having adopted the above mentioned article, Committee I has expressed the wish that the Joint Committee should amend Article 39 to the effect that the High Contracting Parties should provide, in their legislation, for the implementation of the measures mentioned in Article 42, and for the repression of any infringement of such legislation.

#### *Article 43*

The present Convention is established in French and in English. Both texts are equally authentic.

#### *Article 44*

The present Convention, which bears the date of this day, is open to signature for a period of six months, that is to say, until ....., in the name of all the Powers represented at the Conference which opened at Geneva on 21 April 1949; furthermore, by Powers not represented at that Conference but which are parties to the Geneva Conventions of 1864, 1906 or 1929 for the Relief of the Wounded and Sick of Armies in the Field.

#### *Article 45*

The present Convention shall be ratified as soon as possible and the ratifications shall be deposited at Berne.

A record shall be drawn up of the deposit of each instrument of ratification and certified copies of this record shall be transmitted by the Swiss Federal Council to the Governments of all Powers in whose name the Convention has been signed, or whose accession has been notified.

#### *Article 46*

The present Convention shall come into force six months after not less than two instruments of ratification have been deposited.

Thereafter, it shall come into force for each High Contracting Party six months after the deposit of the instrument of ratification.

#### *Article 47*

The present Convention shall replace the Conventions of August 22, 1864, July 6, 1906, and July 27, 1929, in relations between the High Contracting Parties.

#### *Article 48*

From the date of its coming into force, it shall be open to any Power, in whose name the present Convention has not been signed, to accede to this Convention.

#### *Article 49*

Accessions shall be notified in writing to the Swiss Federal Council and shall take effect six months after the date on which they are received.

The Swiss Federal Council shall communicate the accessions to the Governments of all the Powers in whose name the Convention has been signed or whose accession has been notified.

#### *Article 50*

The situations provided for in Article 2 shall give immediate effect to ratifications deposited and accessions notified by the Parties to the conflict before or after the beginning of hostilities or occupation. The Swiss Federal Council shall communicate by the quickest method any ratifications or accessions received from Parties to the conflict.

#### *Article 51*

Each of the High Contracting Parties shall be at liberty to denounce the present Convention.

The denunciation shall be notified in writing to the Swiss Federal Council, which shall transmit it to the Government of all the High Contracting Parties.

The denunciation shall take effect one year after the notification thereof has been made to the Swiss Federal Council. However, a denunciation of which notification has been made at a time when the denouncing Power is involved in a conflict shall not take effect until peace has been concluded and until after operations connected with release and repatriation of the persons protected by the present Convention have been terminated.

The denunciation shall have effect only in respect of the denouncing Power. It shall in no way impair the obligations which the parties to the conflict shall remain bound to fulfil by virtue of the principles of the law of nations as they

result from the usages established among civilized peoples, from the laws of humanity and the dictates of the public conscience.

*Article 52*

The Swiss Federal Council shall register the present Convention with the Secretariat of the United Nations. The Swiss Federal Council shall also inform the Secretariat of the United Nations of all ratifications, accessions and denunciations received by that Government with respect to the present Convention.

*Signature clauses*

In witness whereof the undersigned, having deposited their respective full powers, have signed the present Convention.

Done at ..... this ..... day of ....., 1949, in the English and French languages, and the original of which shall be deposited in the archives of the Swiss Confederation. The Swiss Federal Council shall transmit certified copies thereof to each of the signatory and acceding States.

ANNEX I

**Draft Agreement Relating to Hospital Zones and Localities**

*Article 1*

Hospital zones shall be strictly reserved for the persons named in Article 18 of the Geneva Convention for the Relief of the Wounded and Sick in the Armed Forces in the Field and for the personnel entrusted with the organization and administration of these zones and localities, and with the care of the persons therein assembled.

Nevertheless, persons whose permanent residence is within such zones shall have the right to stay there.

*Article 2*

No persons residing, in whatever capacity, in a hospital zone shall perform any work, either within or without the zone, directly connected with military operations or the production of war material.

*Article 3*

The Power establishing a hospital zone shall take all necessary measures to prohibit access to all persons who have no right of residence or entry therein.

*Article 4*

Hospital zones shall fulfil the following conditions:

- (a) They shall comprise only a small part of the territory governed by the Power which has established them.
- (b) They shall be thinly populated in relation to the possibilities of accommodation.
- (c) They shall be far removed and free from all military objectives, or large industrial or administrative establishments.

- (d) They shall not be situated in areas which, according to every probability, may become important for the conduct of the war.

*Article 5*

They shall be subjected to the following obligations:

- (a) The lines of communication and means of transport which hospital zones possess shall not be used for the transport of military personnel or material, even in transit.
- (b) They shall in no case be defended by military means.

*Article 6*

Hospital zones shall be marked by means of red crosses on a white background placed on the outer precincts and on the buildings. They may be similarly marked at night by means of appropriate illumination.

*Article 7*

The Powers shall communicate to all the Contracting Parties in peacetime or on the outbreak of hostilities, a list of the hospital zones in the territories governed by them. They shall also give notice of any new zones set up during hostilities.

As soon as the adverse Party has received the above mentioned notification, the zone shall be regularly constituted.

If however, the adverse Party considers that the conditions of the present agreement have not been fulfilled, it may refuse to recognize the zone by giving immediate notice thereof to the Party responsible for the said zone; or may make its recognition of such zone dependent upon the institution of the control provided for in Article 8.

*Article 8*

Any Power having recognized one or several hospitals or safety zones instituted by the adversary shall be entitled to demand control by the Power protecting its interests, for the purpose of ascertaining if the zones fulfil the condition and obligations stipulated in the present agreement.

To this effect the representatives of the Protecting Power shall at all times have free access to the various zones and may even reside there permanently. They shall be given all facilities for their duties of inspection.

*Article 9*

Should the Protecting Powers note any facts which they consider contrary to the stipulations of the present agreement, they shall at once draw the attention of the Power governing the said zone to these facts, and shall fix a time limit of five days within which the matter can be rectified. They shall duly notify the Power whose interests they protect.

If, when the time limit has expired, the Power

governing the zone has not complied with the warning, the adverse party may declare that it is no longer bound by the present agreement in respect of the said zone.

*Article 10*

In no circumstances may hospital zones be the object of attack. They shall be protected and respected at all times by the Parties to the conflict.

*Article 11*

In the case of occupation of a territory, the hospital zones therein shall continue to be respected and utilized as such.

Their purpose may, however, be modified by the Occupying Power, on condition that all measures are taken to ensure the safety of the persons accommodated.

*Article 12*

The present agreement shall also apply to localities which the Powers may utilize for the same purposes as hospital zones.

ANNEX II

FRONT

REVERSE SIDE

<span style="font-size: small; display: inline-block; vertical-align: middle;">(place reserved for the name of the country and military authority issuing this card)</span>				
<h2 style="margin: 0;">IDENTITY CARD</h2> <p style="margin: 0; font-size: small;">for members of medical and religious personnel attached to the armed forces</p>				
Name ..... First names ..... Date of Birth ..... Rank ..... Army Number .....				
<p style="font-size: small;">The bearer of this card is protected by the Geneva Convention of ..... for the Relief of the Wounded and Sick in Armed Forces in the Field, in his capacity as .....</p>				
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Other distinguishing marks ..... ..... ..... ..... .....							

## PART III

TEXT DRAFTED FOR THE MARITIME CONVENTION BY COMMITTEE I  
AND REVISED BY THE DRAFTING COMMITTEE AFTER CONSIDERATION  
OF THE RECOMMENDATIONS OF THE COORDINATION COMMITTEE

(The chapter headings are an integral part of the Convention. The headings of the Articles, on the other hand, do not form part of the Convention and therefore do not appear in the texts presented to the Plenary Meeting.

In order to avoid any misunderstanding, the provisional numbering of the Articles established by the Committees has been retained in this Document. The final numbering has only been settled at the end of the Plenary Meetings.)

## CHAPTER I

## General Provisions

*Article 1*

The High Contracting Parties undertake to respect and to ensure respect for the present Convention in all circumstances.

*Article 2*

In addition to the stipulations which shall be implemented in peace time, the present Convention shall apply to all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them.

The Convention shall also apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance.

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

*Article 2A*

In the case of armed conflict not of an international character occurring in the territory of

one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:

- (1) Persons taking no active part in the hostilities, including members of armed forces, who have laid down their arms, and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely without any discrimination on a basis of race, colour, religion or faith, sex, birth or wealth. To this end the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:
  - (a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
  - (b) taking of hostages;
  - (c) outrages upon personal dignity, in particular, humiliating and degrading treatment;
  - (d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

*Article 3*

In case of hostilities between land and naval forces of Parties to the conflict, the provisions of the present Convention shall apply only to forces on board ship.

Forces put ashore shall immediately become subject to the provisions of the Geneva Convention (date ..... ) for the Relief of the Wounded and Sick in Armed Forces in the Field.

*Article 4*

Neutral Powers shall apply by analogy the provisions of the present Convention to the wounded, sick and shipwrecked, and to members of the medical personnel and to chaplains of belligerent armed forces received or interned in their territory, as well as to dead persons found.

*Article 5*

In addition to the agreements expressly provided for in Articles 23, 26 and 35 the Contracting Parties may conclude other special agreements for all matters concerning which they may consider it useful to make separate provision. No special agreement shall adversely affect the situation of the wounded and sick, or of the members of medical personnel or of chaplains, as defined by the present Convention, nor restrict the rights which it confers upon them.

Wounded, sick, and shipwrecked as well as medical personnel and chaplains shall continue to have the benefit of such agreements as long as the Convention is applicable to them, subject to express provisions to the contrary in the said or subsequent agreements, or again subject to more favourable measures taken with regard to them by one or other of the Parties to the conflict.

*Article 6*

Wounded and sick, as also members of the medical personnel and chaplains, may in no circumstances renounce in part or in entirety the rights secured to them by the present Convention, and by the special agreements referred to in the foregoing Article, if such there be.

*Article 7*

The present Convention shall be applied with the co-operation and under the scrutiny of the Protecting Powers whose duty it is to safeguard the interests of the Parties to the conflict. To this effect, the Protecting Powers may appoint, apart from their diplomatic or consular staff, delegates from amongst their own nationals or from amongst the nationals of other neutral Powers. The said delegates shall be subject to

the approval of the Power with which they will carry out their duties.

The Parties to the conflict shall facilitate to the greatest extent possible the task of the representatives or delegates of the Protecting Powers.

The representatives or delegates of the Protecting Power shall not in any case exceed their mission under the present Convention. They shall, in particular, take account of the imperative necessities of security of the State wherein they carry out their duties. Their activities shall only be restricted as an exceptional and temporary measure when this is rendered necessary by imperative military necessities.

*Article 8*

The provisions of the present Convention constitute no obstacle to the humanitarian activities which the International Committee of the Red Cross or any other impartial humanitarian body may, subject to the consent of the Parties to the conflict concerned, undertake for the protection of wounded, sick and shipwrecked, medical personnel and chaplains, and for their relief.

*Article 9*

The Contracting Parties may at any time agree to entrust to an organization which offers all guarantees of impartiality and efficacy the duties incumbent on the Protecting Powers by virtue of the present Convention.

When wounded, sick and shipwrecked, medical personnel and chaplains do not benefit or cease to benefit, no matter for what reason, by the activity of a Protecting Power or of an organization provided for in the first paragraph above, the Detaining Power shall request a neutral State, or such an organization to undertake the functions performed under the present Convention by a Protecting Power designated by the Parties to a conflict.

If protection cannot be arranged accordingly, the Detaining Power shall request or shall accept, subject to the provisions of this Article, 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 under the present Convention.

Any neutral Power or any organization invited by the Power concerned or offering itself for these purposes shall be required to act with a sense of responsibility towards the belligerent on which persons protected by the present Convention depend and shall be required to furnish sufficient assurances that it is in a position to undertake the appropriate functions and to discharge them impartially.

No derogation from the preceding provisions shall be made by special agreements between Powers one of which is restricted, even temporarily, in its freedom to negotiate with the other Power or its allies by reason of military events, more particularly where the whole, or a substantial part, of the territory of the said Power is occupied.

Whenever in the present Convention mention is made of a Protecting Power, such mention applies to substitute bodies in the sense of the present Article.

#### *Article 10*

In cases where they deem it advisable in the interest of protected persons, particularly in cases of disagreement between the Parties to the conflict as to the application or interpretation of

the provisions of the present Convention, the Protecting Powers shall lend their good offices with a view to settling the disagreement.

To this effect, each of the Protecting Powers may, either at the invitation of one Party, or on its own initiatives propose to the Parties to the conflict a meeting of their representatives, in particular of the authorities responsible for the wounded, sick and shipwrecked, medical personnel and chaplains, possibly on neutral territory, suitably chosen. The Parties to the conflict shall be required to give effect to the proposals made to them for this purpose. The Protecting Powers may, if necessary, submit to the approval of the Parties to the conflict the name of a person belonging to a neutral Power, or delegated by the International Committee of the Red Cross, who shall be invited to take part in this meeting.

## CHAPTER II

### Wounded, Sick and Shipwrecked

#### *Article 11*

The members of the armed forces and other persons mentioned in the following Article who are at sea and who are wounded, sick or shipwrecked shall be respected and protected in all circumstances, it being understood that the term "shipwreck" means shipwreck from any cause and includes forced landings at sea by or from aircraft.

Such persons shall be treated humanely and cared for by the Parties to the conflict in whose power they may be, without any adverse distinction founded on sex, race, nationality, religion, political opinions, or any other similar criteria. Any attempts upon their lives, or violence to their persons, shall be strictly prohibited; in particular, they shall not be murdered or exterminated, subjected to torture or to biological experiments; they shall not wilfully be left without medical assistance and care, nor shall conditions exposing them to contagion or infection be created.

Only urgent medical reasons will authorize priority in the order of treatment to be administered.

Women shall be treated with all consideration due to their sex.

#### *Article 11A*

The present Convention shall apply to the wounded, sick and shipwrecked at sea belonging to the following categories:

(1) Members of the armed forces of a Party to the conflict as well as members of militias or volunteer corps forming part of these armed forces;

(2) Members of other militias and members of other volunteer corps, including those of organized resistance movements, belonging to a Party to the conflict and operating in or outside their own territory, even if this territory is occupied, provided that these militias or volunteer corps including these organized resistance movement fulfil the following conditions:

- (a) that of being commanded by a person responsible for his subordinates
- (b) that of having a fixed distinctive sign recognizable at a distance
- (c) that of carrying arms openly
- (d) that of conducting their operations in accordance with the laws and customs of war;

(3) Members of regular armed forces who profess allegiance to a Government or an authority not recognized by the Detaining Power;

(4) Persons who accompany the armed forces without actually being members thereof, such as civil members of military aircraft crews, war correspondents, supply contractors, members of labour units or of services responsible for the welfare of the military, provided that they have

received authorization from the armed forces which they accompany;

(5) Members of crews including masters, pilots and apprentices of the merchant marine and the crews of civil aircraft of the Parties to the conflict who do not benefit by more favourable treatment, under any other provisions in international law;

(6) Inhabitants of a non-occupied territory who on the approach of the enemy spontaneously take up arms to resist the invading forces, without having had time to form themselves into regular armed units, provided they carry arms openly and respect the laws and customs of war.

*Article 12*

(has become Article 14A)

*Article 13*

All warships of a belligerent Party shall have the right to demand that the wounded, sick or shipwrecked on board military hospital ships, and hospital ships belonging to relief societies or to private individuals, as well as merchant vessels, yachts and other craft shall be surrendered, whatever their nationality, provided that the wounded and sick are in a fit state to be moved and that the warship can provide adequate facilities for necessary medical treatment.

*Article 14*

If wounded, sick or shipwrecked persons are taken on board a neutral warship or a neutral military aircraft, it shall be ensured that they can take no further part in operations of war.

*Article 14A*

Subject to the provisions of Article 11, the wounded, sick and shipwrecked of a belligerent who fall into enemy hands shall be prisoners of war, and the provisions of international law concerning prisoners of war shall apply to them. The captor may decide, according to circumstances, whether it is expedient to hold them, or to convey them to a port in the captor's own country, to a neutral port or even to a port in enemy territory. In the last case, prisoners of war thus returned to their home country may not serve for the duration of the war.

*Article 15*

Wounded, sick or shipwrecked persons who are landed in neutral ports with the consent of the local authorities, shall, failing arrangements to the

contrary between the neutral and the belligerent powers, be so guarded by the neutral power that the said persons cannot again take part in operations of war.

The costs of hospital accommodation and internment shall be borne by the power on whom the wounded, sick or shipwrecked persons depend.

*Article 16*

After each engagement, Parties to the conflict shall without delay take all possible measures to search for and collect the shipwrecked, wounded and sick, to protect them against pillage and ill-treatment, to ensure their adequate care, and to search for the dead and prevent their being despoiled.

Whenever circumstances permit, the Parties to the conflict shall conclude local arrangements for the removal of the wounded and sick by sea from a besieged or encircled area and for the passage of medical and religious personnel and equipment on their way to that area.

*Article 17*

Parties to the conflict shall record as soon as possible in respect of each shipwrecked, wounded, sick or dead person of the adverse party falling into their hands, any particulars which may assist in their identification.

These records should if possible include:

- (a) designation of the Power on which they depend;
- (b) army, regimental, personal or serial number;
- (c) surname;
- (d) first name or names;
- (e) date of birth;
- (f) any other particulars shown on his identity card or disc;
- (g) date and place of capture or death;
- (h) particulars concerning wounds or illness, or cause of death.

As soon as possible the above mentioned information shall be forwarded to the information bureau described in Article 112 of the Convention of ..... relative to the treatment of prisoners of war, which shall transmit this information to the Power on which these prisoners depend through the intermediary of the Protecting Power and of the Central Prisoners of War Agency.

Parties to the conflict shall prepare and forward to each other through the same bureau, certificates of death or duly authenticated lists of the dead. They shall likewise collect and forward through the same bureau one half of the identity disc, last wills or other documents of importance to

the next of kin, money and in general all articles of an intrinsic or sentimental value, which are found on the dead. These articles, together with unidentified articles, shall be sent in sealed packets, accompanied by statements giving all particulars necessary for the identification of the deceased owners, as well as by a complete list of the contents of the parcel.

*Article 17A*

Parties to the conflict shall ensure that burial at sea of the dead, carried out individually as far as circumstances permit, is preceded by a careful examination, if possible by a medical examination, of the bodies, with a view to confirming death, establishing identity and enabling a report to be made. One half of the double identity disc, or the identity disc itself if it is a simple disc, should remain on the body.

If dead persons are landed, the provisions of the

Convention of Geneva of ..... relative to the Relief of the Wounded and Sick in Armed Forces in the Field shall be applicable.

*Article 18*

The Parties to the conflict may appeal to the charity of commanders of neutral merchant vessels, yachts or other craft, to take on board and care for wounded, sick or shipwrecked persons, and to collect the dead.

Vessels of any kind responding to this appeal, and those having of their own accord collected wounded, sick or shipwrecked persons, shall enjoy special protection and facilities to carry out such assistance.

They may, in no case, be captured on account of any such transport; but, in the absence of any promise to the contrary, they shall remain liable to capture for any violations of neutrality they may have committed.

## CHAPTER III

### Hospital Ships

*Article 19*

Military hospital ships, that is to say, ships built or equipped by the Powers specially and solely with a view to assisting the wounded, sick and shipwrecked, to treating them and to transporting them, may in no circumstances be attacked or captured, but shall at all times be respected and protected, on condition that their names and descriptions have been notified to the Parties to the conflict ten days before those ships are employed.

The characteristics which must appear in the notification shall include registered gross tonnage, the length from stem to stern and the number of masts and funnels.

*Article 19A*

Establishments ashore entitled to the protection of the Geneva Convention for the Relief of the Wounded and Sick in Armed Forces in the Field shall be protected from bombardment or attack from the sea.

*Article 20*

Hospital ships utilized by National Red Cross Societies, by officially recognized relief societies or by private persons shall have the same protection

as military hospital ships and shall be exempt from capture, if the Power party to the conflict on which they depend has given them an official commission and in so far as the provisions of Article 19 concerning notification have been complied with.

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

*Article 21*

Hospital ships utilized by National Red Cross Societies, officially recognized relief societies, or private persons of neutral countries shall have the same protection as military hospital ships and shall be exempt from capture, on condition that they have placed themselves under the control of one of the Parties to the conflict, with the previous consent of their own governments and with the authorization of the Party to the conflict concerned, in so far as the provisions of Article 19 concerning notification have been complied with.

*Article 21A*

The protection mentioned in Articles 19, 20 and 21 shall apply to hospital ships of any tonnage

and to their life-boats, wherever they are operating. Nevertheless, to ensure the maximum comfort and security, the Parties to the conflict shall endeavour to utilize, for the transport of wounded, sick and shipwrecked over long distances and on the high seas only hospital ships of over 2000 tons gross.

*Article 21B*

Under the same conditions as provided for in Articles 19 and 20 small craft employed by the State or by the officially recognized lifeboat institutions for coastal rescue operations shall be equally respected and protected, so far as operational requirements permit.

The same shall apply so far as possible to fixed coastal installations used exclusively by these craft for their humanitarian missions.

*Article 21C*

Should fighting occur on board a warship, the sickbays shall be respected and spared as far as possible. Sickbays and their equipment shall remain subject to the laws of warfare, but may not be diverted from their purpose, so long as they are required for the wounded and sick. Nevertheless, the commander into whose power they have fallen may, after ensuring the proper care of the wounded and sick who are accommodated therein, apply them to other purposes in case of urgent military necessity.

*Article 22*

Deleted.

*Article 23*

(has become the second paragraph of Article 16).

*Article 24*

Any hospital ship in a port which falls into the hands of the enemy shall be authorized to leave the said port.

*Article 25*

The vessels described in Articles 19, 20, 21 and 21B shall afford relief and assistance to the wounded, sick and shipwrecked without distinction of nationality.

The High Contracting Parties undertake not to use these vessels for any military purpose.

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

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

*Article 26*

The Parties to the conflict shall have the right to control and search the vessels mentioned in Articles 19, 20, 21 and 21B. They can refuse assistance from these vessels, order them off, make them take a certain course, control the use of their wireless and other means of communication, and even detain them for a period not exceeding seven days from the time of interception, if the gravity of the circumstances so requires.

They may put a commissioner temporarily on board whose sole task shall be to see that orders given in virtue of the provisions of the preceding paragraph shall be carried out.

As far as possible, the Parties to the conflict shall enter in the log of the hospital ship, in a language he can understand, the orders they give the captain of the vessel.

Parties to the conflict may, either unilaterally or by particular agreements, put on board their ships neutral observers who shall verify the strict observation of the provisions contained in the present Convention.

*Article 27*

Vessels described in Articles 19, 20, 21 and 21B are not assimilated to warships as regards their stay in a neutral port.

*Article 28*

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

*Article 29*

The protection to which hospital ships and sick-bays are entitled shall not cease unless they are used to commit, outside their humanitarian duties acts harmful to the enemy. Protection may, however, cease only after due warning has been given, naming in all appropriate cases a reasonable time limit and after such warning has remained unheeded.

In particular, hospital ships may not possess or use a secret code for their wireless or other means of communication.

*Article 29A*

The following conditions shall not be considered as depriving hospital ships or sick-bays of vessels of the protection due to them:

- (1) The fact that the crews of ships or sick-bays are armed for the maintenance of order, for their own defence or that of the sick and wounded.

- (2) The presence on board of apparatus exclusively intended to facilitate navigation or communication.
- (3) The discovery on board hospital ships or in sick-bays of portable arms and ammunition taken from the wounded, sick and shipwrecked, and which have not yet been handed to the proper service.
- (4) The fact that the humanitarian activities of hospital ships and sick-bays of vessels or of the crews extend to the care of wounded, sick or shipwrecked civilians.
- (5) The transport of equipment and of personnel intended exclusively for medical duties, over and above the normal requirements.

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## CHAPTER IV

### Personnel

#### *Article 30*

The religious, medical and hospital personnel of hospital ships and their crews shall be respected and protected; they may not be captured during the time they are in the service of the hospital ship, whether or not there are wounded and sick on board.

#### *Article 31*

The religious, medical and hospital personnel assigned to the medical or spiritual care of the persons designated in Articles 11 and 11A shall, if they fall into the hands of the enemy, be respected and protected; they may continue to carry out their duties as long as this is necessary for the care of the wounded and sick. They shall afterwards be sent back as soon as the Commander-in-Chief, under whose authority they are, considers it practicable. They may take with them, on leaving the ship, their personal property.

If however it proves necessary to retain some of this personnel owing to the medical or spiritual needs of prisoners of war, everything possible shall be done for their earliest possible landing.

Retained personnel shall be subject, on landing, to the provisions of the 1949 Geneva Convention for the Relief of the Wounded and Sick in Armed Forces in the Field.

#### *Article 32*

Deleted.

#### *Article 33*

Deleted.

#### *Article 34*

(Has become Article 21C).

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## CHAPTER V

### Medical Transports

#### *Article 35*

Ships chartered for that purpose shall be authorized to transport equipment exclusively intended for the treatment of wounded and sick members of armed forces or for the prevention of disease, provided that the particulars regarding their voyage have been notified to the adverse Power and approved by the latter. The adverse Power shall preserve the right to board the carrier ships but not to capture them nor to seize the equipment carried.

By agreement amongst the Parties to the conflict, neutral observers may be placed on board such ships to verify the equipment carried. For this purpose, free access to the equipment shall be given.

#### *Article 36*

Medical aircraft, that is to say, aircraft exclusively employed for the removal of wounded, sick and shipwrecked, and for the transport of medical personnel and equipment, may not be

the object of attack, but shall be respected by the Parties to the conflict, while flying at heights, at times and on routes specifically agreed upon between the Parties to the conflict concerned.

They shall be clearly marked with the distinctive emblem prescribed in Article 38, together with their national colours, on their lower, upper and lateral surfaces. They shall be provided with any other markings or means of identification which may be agreed upon between the Parties to the conflict upon the outbreak or during the course of hostilities.

Unless agreed otherwise, flights over enemy or enemy-occupied territory are prohibited.

Medical aircraft shall obey every summons to alight on land or water. In the event of having thus to alight, the aircraft with its occupants may continue its flight after examination, if any.

In the event of alighting involuntarily on land or water in enemy or enemy-occupied territory, the wounded, sick and shipwrecked, as well as the crew of the aircraft shall be prisoners of war. The medical personnel shall be treated according to Articles 30 and following.

#### *Article 37*

Subject to the provisions of the second paragraph, medical aircraft of Parties to the conflict may fly over the territory of neutral Powers, land thereon in case of necessity, or use it as a port of call. They shall give neutral Powers prior notice of their passage over the said territory, and obey all summons to alight, on land or water. They will be immune from attack only when flying on routes, at heights and at times specifically agreed upon between the Parties to the conflict and the neutral Power concerned.

The neutral Powers may, however, place conditions or restrictions on the passage or landing of medical aircraft on their territory. Such possible conditions or restrictions shall be applied equally to all Parties to the conflict.

Unless otherwise agreed between the neutral Powers and the Parties to the conflict, the wounded, sick or shipwrecked who are disembarked with the consent of the local authorities on neutral territory by medical aircraft shall be detained by the neutral Power, so that they cannot again take part in operations of war. The cost of their accommodation and internment shall be borne by the Power on which they depend.

## CHAPTER VI

### **The Distinctive Emblem**

#### *Article 38*

In the absence of orders to the contrary from the competent military authority, the emblem of the red cross on a white ground shall be displayed on the flags, armlets and on all equipment belonging to the Medical Service.

Nevertheless, in the case of countries which already use as emblem, in place of the red cross, the red crescent or the red lion and sun on a white ground, these emblems are also recognized by the terms of the present Convention.

#### *Article 39*

The personnel designated in the first paragraph of Articles 30 and 31 shall wear, affixed to the left arm, a water-resistant armlet bearing the distinctive emblem, issued and stamped by the military authority.

Such personnel, in addition to the identity disc mentioned in Article 17, shall also carry a special identity card bearing the distinctive emblem. This

card shall be water-resistant and of such size that it can be carried in the pocket. It shall be worded in the national language, shall mention at least the full name, the date of birth, the rank and the service number of the bearer, and shall state in what capacity he is entitled to the protection of the present Convention. The card shall bear the photograph of the owner and also either his signature or his finger-prints or both. It shall be embossed with the stamp of the military authority.

The identity card shall be uniform throughout the same armed forces and, as far as possible, of a similar type in the armed forces of the Contracting Parties. The Parties to the conflict may be guided by the model which is annexed, by way of example, to the present Convention. They shall inform each other, at the outbreak of hostilities, of the model they are using. Identity cards should be made out, if possible, at least in duplicate, one copy being kept by the home country.

In no circumstances may the said personnel be deprived of their insignia or identity cards nor

of the right to wear the armlet. In case of loss they shall be entitled to have duplicates of the cards and shall have the insignia replaced.

*Article 40*

The ships designated in Articles 19, 20 and 21 shall be distinctively marked as follows:

- (a) All exterior surfaces shall be white.
- (b) One or more dark red crosses as large as possible shall be painted and displayed on each side of the hull and on the horizontal surfaces, so placed as to afford the greatest possible visibility from the sea and from the air.

All hospital ships shall make themselves known by hoisting their national flag and further, if they belong to a neutral state, the flag of the Party to the conflict whose direction they have accepted. A white flag with a red cross shall be flown at the mainmast as high as possible.

Lifeboats of hospital ships, coastal lifeboats and all small craft used by the Medical Service shall be painted white with dark red crosses prominently displayed and shall, in general, comply with the identification system prescribed above for hospital ships.

The above-mentioned ships and craft which may wish to ensure by night and in times of reduced visibility the protection to which they are entitled

must, subject to the assent of the Party to the conflict under whose power they are, take the necessary measures to render their painting and distinctive emblems sufficiently apparent.

Hospital ships which, in accordance with Article 26 are provisionally detained by the enemy, must haul down the flag of the Party to the conflict in whose service they are or whose direction they have accepted.

Coastal lifeboats, if they continue to operate with the consent of the Occupying Power from a base which is occupied, may be allowed to continue to fly their own national colours along with a flag carrying a red cross on a white ground, when away from their base, subject to prior notification to all the Parties to the conflict concerned.

All the provisions in this Article relating to the red cross shall apply equally to the other emblems mentioned in Article 38.

Parties to the conflict shall at all times endeavour to conclude mutual agreements in order to use the most modern methods available to facilitate the identification of hospital ships.

*Article 40A*

The distinguishing signs referred to in Article 40 can only be used, whether in time of peace or war, for indicating or protecting the ships therein mentioned, except as may be provided in any other international Convention or by agreement between all the Parties to the conflict concerned.

## CHAPTER VII

### Execution of the Convention

*Article 41*

Each Party to the conflict, acting through its Commanders-in-Chief, shall ensure the detailed execution of the preceding Articles, and provide for unforeseen cases, in conformity with the general principles of the present Convention.

*Article 41A*

Reprisals against the wounded, sick and shipwrecked persons, personnel, the vessels or equipment protected by the Conventions are prohibited.

*Article 42*

The High Contracting Parties undertake, in time of peace as in time of war, to disseminate

the text of the present Convention as widely as possible in their respective countries, and, in particular, to include the study thereof in their programmes of military and, if possible, civil instruction, so that the principles thereof may become known to the entire population, in particular to the armed fighting forces, the medical personnel and the chaplains.

*Article 42A*

The High Contracting Parties shall communicate to one another through the Swiss Federal Council and, during hostilities through the Protecting Powers, the official translations of the present Convention, as well as the laws and regulations which they may adopt to ensure the application thereof.

*Article 43*

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

Each High Contracting Party shall be under the obligation to search for persons alleged to have committed, or to have ordered to be committed, such grave breaches, and shall bring such persons regardless of their nationality, before its own courts. It may also, if it prefers and in accordance with the provisions of its own legislation, hand such persons over for trial to another High Contracting Party concerned, provided such High Contracting Party has made out a *prima facie* case.

Each High Contracting Party shall take measures necessary for the suppression of all acts contrary to the provisions of the present Convention other than the breaches defined in the following Articles.

In all circumstances the accused persons shall benefit by safeguards of proper trial and defence, which shall not be less favourable than those provided by Article 95 and those following of the Convention of ..... relative to the Treatment of Prisoners of War.

*Article 44*

Grave breaches to which the preceding Article relates shall be those involving any of the following acts, if committed against persons or property protected by the Convention: wilful killing, torture or inhuman treatment, including biological experiments, wilful causing of great suffering or serious injury to body or health, and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly.

*Article 44A*

No High Contracting Party shall be allowed to absolve itself or any other High Contracting Party of any liability incurred by itself or by another High Contracting Party in respect of breaches referred to in the preceding Article.

*Article 45*

At the request of a Party to the conflict, an enquiry shall be instituted, in a manner to be decided between the interested Parties concerning any alleged violation of the Convention.

If agreement has not been reached concerning the procedure for the enquiry, the Parties should agree on the choice of an umpire, who will decide upon the procedure to be followed.

Once the violation has been established, the Parties to the conflict shall put an end to it and shall repress it within the briefest possible delay.

*Article 45A*

The High Contracting Parties who have not recognized as compulsory *ipso facto* and without special agreement, in relation to any State accepting the same obligation, the jurisdiction of the International Court of Justice in the circumstances mentioned in Article 36 of the Statute of the Court, undertake to recognize the competency of the Court in all matters concerning the interpretation or application of the present Convention.

*Article 46*

The present Convention is established in French and in English. Both texts are equally authentic.

*Article 47*

The present Convention which bears the date of this day, is open to signature for a period of six months, that is to say, until the ....., in the name of all the Powers represented at the Conference which opened at Geneva on 21 April 1949; furthermore, by Powers not represented at that Conference, but which are parties to the X Hague Convention of 18 October, 1907 for the adaptation to Maritime Warfare of the principles of the Geneva Convention of 1906, or to the Geneva Conventions of 1864, 1906 or 1929 for the Relief of the Wounded and Sick of Armies in the Field.

*Article 48*

The present Convention shall be ratified as soon as possible and the ratifications shall be deposited at Berne.

A procès-verbal of the deposit of each instrument of ratification shall be drawn up, one copy of which, certified to be correct, shall be transmitted by the Swiss Federal Council to the Governments of all the Powers in whose name the Convention has been signed, or whose accession has been notified.

*Article 49*

The present Convention shall come into force six months after not less than two instruments of ratification have been deposited.

Thereafter, it shall come into force for each High Contracting Party six months after the deposit of the instrument of ratification.

*Article 50*

The present Convention replaces the X Hague Convention of 28 October 1907 for the adaptation to Maritime Warfare of the principles of the Geneva Convention of 1906, in relations between the High Contracting Parties.

*Article 51*

From the date of its coming into force, it shall be open to any Power in whose name the present Convention has not been signed, to accede to this Convention.

*Article 52*

Accessions shall be notified in writing to the Swiss Federal Council, and shall take effect six months after the date on which they are received.

The Swiss Federal Council shall communicate the accessions to the Governments of all the Powers in whose name the Convention has been signed or whose accession has been notified.

*Article 53*

The situations provided for in Article 2 shall give immediate effect to ratifications deposited and accessions notified by the Parties to the conflict before or after the beginning of hostilities or occupation. The Swiss Federal Council shall communicate by the quickest means any ratifications or accessions received from Parties to the conflict.

*Article 54*

Each of the High Contracting Parties shall be at liberty to denounce the present Convention.

The denunciation shall be notified in writing to the Swiss Federal Council, which shall transmit it

to the Governments of all the High Contracting Parties.

The denunciation shall take effect one year after the notification thereof has been made to the Swiss Federal Council. However, a denunciation of which notification has been made at a time when the denouncing Power is involved in a conflict shall not take effect until peace has been concluded, and until after operations connected with release and repatriation of the persons protected by the present Convention have been terminated.

The denunciation shall have effect only in respect of the denouncing Power. It shall in no way impair the obligations which the Parties to the conflict shall remain bound to fulfil by virtue of the principles of the law of nations as they result from the usages established among civilized peoples, from the laws of humanity and the dictates of the public conscience.

*Article 55*

The Swiss Federal Council shall register the present Convention with the Secretariat of the United Nations. The Swiss Federal Council shall also inform the Secretariat of the United Nations of all ratifications, accessions and denunciations received by the Government with respect to the present Convention.

*Signature clauses*

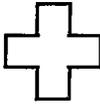
In witness whereof the undersigned, having deposited their respective full powers, have signed the present Convention.

Done at ..... this ..... day of ....., 1949, in the English and French languages, the original of which shall be deposited in the archives of the Swiss Confederation. The Swiss Federal Council shall transmit certified copies thereof to each of the signatory and acceding States.

ANNEX

FRONT

REVERSE SIDE


(space reserved for indicating the country and the military authority issuing this card)


## IDENTITY CARD

for members of medical and religious personnel attached to the armed forces on sea

\_\_\_\_\_

Surname .....

First names .....

Date of Birth .....

Rank .....

Army Number .....

The bearer of this card is protected by the Geneva Convention of ..... for the Relief of the Wounded, sick and shipwrecked Members of Armed Forces on Sea, in his capacity as .....

Date of Issue
Number of Card

.....

Photo of bearer

Signature or fingerprints or both



Height	Eyes	Hair
.....	.....	.....

Other distinguishing marks .....

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# COMMITTEE II

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REVISION OF :

THE CONVENTION CONCLUDED AT GENEVA  
ON JULY 27<sup>TH</sup>, 1929  
AND RELATIVE TO THE TREATMENT  
OF PRISONERS OF WAR



## COMMITTEE II (PRISONERS OF WAR)

### FIRST MEETING

*Monday 25 April 1949, 10.45 a.m.*

*Chairmen:* Sir Robert CRAIGIE (United Kingdom), Vice-President of the Conference; subsequently Mr. Maurice BOURQUIN (Belgium)

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#### **Election of the Chairman, two Vice-Chairmen and a Rapporteur**

Sir Robert CRAIGIE (United Kingdom), opened the meeting at 10.55 a.m. He proposed the appointment of Mr. Maurice BOURQUIN (Belgium) as Chairman.

The proposal was supported by Mr. GARDNER (United Kingdom), General DILLON (United States of America) and Mr. BOURLA (Costa Rica).

Sir Robert CRAIGIE (United Kingdom), noting that no other proposal had been made, declared Mr. BOURQUIN unanimously elected Chairman of Committee II.

Mr. BOURQUIN (Belgium) thanked the Committee for the mark of their confidence. He suggested that they should proceed immediately with the election of two Vice-Chairmen and asked if there were any proposals.

Mr. PESMAZOGLOU (Greece) reminded the meeting that the Plenary Assembly had already selected Vice-Chairmen for Committees II and III. Slightly modifying the suggestions made at that time, he moved that the Heads of the Delegations of Austria and Bulgaria be appointed Vice-Chairmen of Committee II.

The CHAIRMAN said that the two Vice-Chairmen should be nominated separately.

Mr. BLUEHDORN (Austria) stated that, being for the moment the only member of the Austrian Delegation, he could not, for obvious reasons, accept the Vice-Chairmanship of Committee II. He proposed that Mr. SÖDERBLOM (Sweden) be appointed First Vice-Chairman.

The above proposal was supported by Mr. COHN (Denmark), Mr. GARDNER (United Kingdom) and SAFWAT Bey (Egypt).

The CHAIRMAN, noting that there was no opposition to the appointment of Mr. Söderblom as First Vice-Chairman, declared him unanimously elected.

Mr. TOBIESEN (Norway) proposed the nomination of Mr. MEYKADEH (Iran) as Second Vice-Chairman.

There being no other proposal, Mr. Meykadeh was unanimously elected Second Vice-Chairman.

The CHAIRMAN suggested that they should proceed immediately with the nomination of a Rapporteur and asked if there were any proposals.

Mr. GARDNER (United Kingdom), seconded by Mr. MAYATEPEK (Turkey), proposed the appointment of Mr. PESMAZOGLOU (Greece).

There was no other proposal and Mr. Pesmazoglou was unanimously elected Rapporteur<sup>(1)</sup>.

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(1) On May 5th, 1949, Mr. Pesmazoglou, being obliged to proceed to Greece, asked the Committee to relieve him of his duties as Rapporteur. This was done, and Mr. Söderblom, first Vice-Chairman of Committee II, was appointed in his place.

On the proposal of the CHAIRMAN, it was decided that the next meeting of the Committee should take place on Tuesday April 26th, 1949, at 10 a.m.

### Working basis

The CHAIRMAN explained that the basis for the work of Committee II would be the Draft Convention relative to the Treatment of Prisoners of War, as adopted by the Stockholm Conference (*Document No. 3*, distributed by the Swiss Federal Political Department.) He stated further that the Plenary Assembly had decided to establish a special procedure for the simultaneous study of Articles common to the four revised or new Draft Conventions, namely the first ten Articles in those Conventions with the exception of Article 3 of the Prisoners of War Convention. He thought that in view of the spirit of good will which existed in the Committee, the study of that highly important Article might be begun at the next meeting.

Mr. GARDNER (United Kingdom) seconded the Chairman's proposal. He drew attention, however, to the fact that his Government had already submitted in writing the modifications which it desired to have made to Article 3 of the Prisoners of War Convention (*Document No. 6*, Memorandum by the Government of the United Kingdom). He added that the United Kingdom Delegation had not yet tabled any formal amendments on the subject, because they first wished to ascertain whether, and to what extent, their proposals would be supported by the other States represented on the Committee. He had not, however, lost sight of the fact that all proposed amendments had to be distributed twenty-four hours before the article to be amended came up for discussion, and he asked, therefore, that his Delegation's right to table an amendment should be guaranteed in all circumstances.

The CHAIRMAN replied that before coming to any decision on Article 3 of the Prisoners of War Convention, the various problems raised by that Article would have to be discussed. Divergencies of opinion were to be expected. There would later be a second reading during which the text would be given its final wording. The Delegation of the United Kingdom or any other delegation, would, therefore, in any case be able to table an amendment between the first and the second readings.

Mr. LAMARLE (France) supported the observations of the Chairman.

No further observations were made on the subject.

### Appointment of a Sub-Committee

Mr. GARDNER (United Kingdom) proposed that a sub-committee should be set up immediately for the purpose of studying Articles 72 to 99 of the Draft Prisoners of War Convention, which dealt with penal and disciplinary sanctions. Colonel Phillimore of the United Kingdom Delegation was particularly well versed in such matters. During the war he had been responsible for protecting the interests of British prisoners of war who were in the hands of other Powers and charged with offences, and also for watching proceedings taken by the British authorities against prisoners of war in Great Britain. He had also what might be called unique experience in the matter, in that he had taken part in the proceedings of the International Court of Justice at Nuremberg. Since he was obliged to leave Geneva the following Thursday, April 28th, it was particularly desirable that the Committee should have the benefit of his experience and advice before his departure.

Articles 72 to 99 had already been thoroughly discussed at Stockholm. There were, however, certain legal and technical points which could be cleared up by a small sub-committee, prolonged discussions in the main Committee being thus avoided.

He proposed that the Sub-Committee should include General Dillon (United States of America), Mr. Bellan (France) and a member of the Delegation of the Union of Soviet Socialist Republics, as well as Colonel Phillimore.

The CHAIRMAN agreed that Articles 72 to 99 of the Draft Prisoners of War Convention raised certain difficult questions of law. He therefore fully supported the proposal of the United Kingdom Delegation. He said, however, that the Sub-Committee would only be a consultative body, and that it would in any case be for the main Committee to adopt or reject its findings.

He proposed that Mr. Pasmazoglou (Greece), Rapporteur of the Committee, who was a specialist on such questions, should be appointed as the fifth member of the Sub-Committee.

Colonel HODGSON (Australia) was not in favour of setting up a sub-committee at that early stage. A sub-committee could normally only be set up after a general discussion in the Committee which would then be able to decide upon its exact terms of reference. He did not agree that Articles 72 to 99 dealt solely with technical and legal matters. In his opinion they also raised other questions such as exemption from telegraphic charges, radio frequencies, policy as regards attempted escapes by prisoners of war, and so forth.

Mr. GARDNER (United Kingdom) could not agree with the arguments advanced by the Delegate of Australia. He did not see that Articles 72 to 99 contained any reference to exemption from telegraphic charges or radio frequencies. Article 81 did deal with one aspect of the question of escapes; but in his opinion it was a technical point only. However, if the Delegate of Australia maintained his opposition, he (Mr. Gardner) would agree to Article 81 being excluded from the terms of reference of the Sub-Committee.

Mr. LAMARLE (France), General OUNG (Burma) and General DEVIJVER (Belgium), supported the proposal of the United Kingdom Delegation. The Belgian Delegation presumed, however, that the Sub-Committee's findings would be directed solely to facilitating the main Committee's work.

At the request of the CHAIRMAN, Colonel HODGSON (Australia) withdrew his opposition. The Chairman was therefore able to announce that the appointment of the small Sub-Committee had been decided upon. Its terms of reference would cover Articles 72 to 99 with the exception of Article 81.

Mr. HARRISON (United States of America) hoped the Sub-Committee would meet at times when the main Committee was not in session. He proposed that a representative of the International Committee of the Red Cross should be present at the meetings of the Sub-Committee.

The two proposals were unanimously adopted.

*The meeting rose at 12 noon.*

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## SECOND MEETING

*Tuesday 26 April 1949, 5 p.m.*

*Chairman: Mr. Maurice BOURQUIN (Belgium)*

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### Article 3

On the proposal of the CHAIRMAN it was decided to discuss the first paragraph of Article 3 of the Draft Convention sub-paragraph by sub-paragraph.

#### *First paragraph (Sub-paragraph 1)*

At the invitation of the CHAIRMAN, Mr. WILHELM (International Committee of the Red Cross) explained that at the Conference of Government Experts held at Geneva in 1947, it had been suggested that the words "fallen into enemy hands" had a wider significance than the word "captured" which appeared in the 1929 Convention, the first expression also covering the case of soldiers who had surrendered without resistance or who had been in enemy territory at the outbreak of hostilities. This suggestion had been accepted. The expression "armed forces" was intended to cover land, sea and air forces. The expression "voluntary corps which are regular constituted" had also been retained by the Government Experts. It applied to corps which fulfilled

the following four conditions: that their members were under the command of a responsible leader; that they wore a fixed distinctive sign at all times; that they carried arms openly; and that they conformed to the laws and customs of war. The Committee would have to decide whether the derogations provided for in the 1929 text should be included in Article 4, or elsewhere in the Convention.

Mr. GARDNER (United Kingdom) reminded the Committee that the rules under which certain categories of persons could be afforded protection under the Convention had been laid down in 1907 in the Regulations annexed to the IVth Hague Convention. It was necessary, after such a long interval, to reaffirm those rules explicitly, so as to leave no doubt as to their validity. He also proposed that the reference to militias should be reintroduced in Article 3, because in the United Kingdom the militia were neither part of the regular armed forces nor were they a voluntary corps. He gave notice at the same time of an amendment which would be submitted by his

Delegation (*see Annex No. 90*) providing for derogations from the Convention ; it would propose that the derogations provided for in Article 1 of the 1929 Convention be reintroduced further on in the Draft Convention.

The CHAIRMAN proposed to defer consideration of the question of derogations until later. In his opinion the United Kingdom Delegation's other proposals mainly concerned drafting changes; he suggested that the Committee should immediately consider forming a Drafting Committee.

General DILLON (United States of America) stated that his Delegation was opposed to any change in sub-paragraph (1) and particularly to the reintroduction of the word "militias". He considered that the words "armed forces" covered all the categories of persons which the authors of the Draft Convention intended should enjoy the protection of the Convention.

The CHAIRMAN considered that difficulties of that kind would be more easily solved in a drafting committee. He asked the United Kingdom Delegation to submit a text to the Committee in writing.

Mr. GARDNER (United Kingdom) agreed to do so.

*First paragraph (Sub-paragraph 2)*

Mr. WILHELM (International Committee of the Red Cross) explained that during the last war situations had arisen which had not been provided for in former Conventions, such as the case of armed forces not recognized by the enemy (for instance, the forces of General de Gaulle and of Marshal Badoglio). The Conference of Government Experts had recommended that protection should in future be provided for this category of combatant. The XVIIth International Red Cross Conference held at Stockholm had decided, nevertheless, to delete the phrase "particularly if they act in liaison with the armed forces of one of the Parties to the conflict", a phrase which the International Committee of the Red Cross had proposed to add to the provisions in sub-paragraph (2).

*First paragraph (Sub-paragraph 3)*

Mr. WILHELM (International Committee of the Red Cross) explained that sub-paragraph (3) was designed to extend the protection of the Convention to the new units to which modern warfare had given rise, such as welfare units. The Stockholm Conference had added the category of "civil members of military aircraft crews" to the proposed text.

Major HIGGET (New Zealand) said that his Delegation would prefer to see the wording of sub-paragraph (3) altered in such a way that persons who had temporarily lost their identity cards would not be deprived of protection. Proof of the fact that such persons possessed identity cards could always be furnished subsequently.

At the request of the CHAIRMAN, Major HIGGET (New Zealand) agreed to submit an amendment in writing.

*First paragraph (Sub-paragraph 4)*

Mr. WILHELM (International Committee of the Red Cross) observed that the provisions of the XIth Hague Convention to the effect that merchant seamen falling into the hands of the enemy should not be considered to be prisoners of war provided they undertook not to resume military activity, were obsolete. The Conference of Government Experts had considered that members of the merchant marine who were taken prisoner should be classified as prisoners of war, and the draft submitted to the Stockholm Conference had accordingly established a distinction between merchant seamen captured at sea and those captured on board vessels anchored in port at the outbreak of hostilities. The former category alone would be considered prisoners of war. The Stockholm Conference had, however, expressed the opinion that such a distinction would exclude certain members of the merchant marine from the protection afforded by the Convention; and the words "who have been captured at sea" had been struck out in favour of a new wording.

Captain MOUTON (Netherlands) remarked that the proceedings of international conferences were often consulted with regard to the interpretation of certain clauses in international conventions. For that reason he proposed that the following point should be included in the minutes of the meeting. He was of opinion that the "more favourable treatment", mentioned in sub-paragraph 4, referred to the treatment provided for in Articles 5 and 6 of the XIth Hague Convention. He suggested that the words "Members of crews of the merchant marine" only referred to sailors actually mustered on board ship and not, for instance, to sailors who were at their homes after returning from a voyage. He further drew the Committee's attention to the bearing of such a phrase as "Members of crews of the merchant marine" would have on Articles 32, 51 and 72 to 100. Although he was not, at the moment, able to propose a new wording, he asked the members of the Committee to consider the point. Finally, he asked what the position of a national of a

neutral country who was serving on board a merchant ship belonging to a belligerent Power would be if the ship was sunk without warning. The destruction of ships without warning was contrary to the London Protocol of 1936. The XIth Hague Convention only mentioned captured ships; in a case where a ship was destroyed without warning, and a national of a neutral country was picked up by a belligerent warship, how would he stand in international law?

At the request of the CHAIRMAN, Captain MOUTON (Netherlands) agreed to submit an amendment in writing.

Mr. GARDNER (United Kingdom) thought it essential that the inclusion in the Draft Convention of provisions applicable to merchant seamen should not prejudice their non-combatant status. He thought that the Draft Convention should also cover the masters and crews of fishing and other similar vessels, and also members of the crews of civilian aircraft. He proposed the insertion in Article 3 of a separate paragraph relating to the two categories in question. Another category to be protected was that of merchant seamen who had received their discharge abroad and were returning to their own country as passengers on board another ship. Such seamen should be in possession of identity cards, in order to be able to prove that, as merchant seamen, they were protected by the Convention. The present Draft Convention included provisions, relating to the release of seamen prisoners on parole, which were similar, in certain respects, to Articles 5 and 6 of the XIth Hague Convention.

In reply to a request by the CHAIRMAN, Mr. GARDNER (United Kingdom) agreed to submit an amendment in writing on the points he had raised.

The CHAIRMAN asked the Netherlands Delegation whether the statement which they wished to include in the minutes was to be considered as representing their individual point of view or that of the Committee as a whole. He did not feel that the absence of comment on the part of the Committee implied unconditional approval, and he accordingly invited the Netherlands Delegation to submit an exact text for the Committee's consideration.

Captain MOUTON (Netherlands) agreed to do so.

*First paragraph (Sub-paragraph 5)*

Mr. WILHELM (International Committee of the Red Cross) said that sub-paragraph (5) was a more or less exact reproduction of the correspond-

ing provision in the Hague Regulations of 1907. The case of a "levée en masse" of the population had practically never arisen; but the Conference of Government Experts had nevertheless considered it desirable to include the provision in question in the new Draft Convention. He added that he thought that there had been an isolated case of a "levée en masse" in France which had been brought before a tribunal.

Mr. PESMAZOGLOU (Greece) said that a similar case had occurred when the German troops invaded Crete.

Major STEINBERG (Israel) considered that there was a gap to be filled between sub-paragraphs (5) and (6) of Article 3. Where communications were interrupted and the population continued to fight, the latter lost the protection afforded by sub-paragraph (5) without benefiting by that provided for under sub-paragraph (6). He proposed that the provisions of sub-paragraph (5) should be extended.

The CHAIRMAN asked Major Steinberg to submit an amendment on the subject, proposing a definite wording.

Mr. MARESCA (Italy) observed that sub-paragraph (5) reproduced the traditional point of view; but new and unforeseen situations arose in modern warfare. It might happen, for instance, that while actually under enemy occupation, a population would rise against the Occupying Power without being organized as a resistance movement. He therefore suggested that the words "on the approach of the enemy" should be replaced by some such wording as "in the presence of the enemy".

The CHAIRMAN said that proposal involved the discussion of sub-paragraph (6). But it was better to keep the two contingencies separate as sub-paragraph (5) related to the population in non-occupied territories, whereas sub-paragraph (6) related to the population in occupied territories.

Mr. MARESCA (Italy) replied that what he had in view was precisely the case of a population which, spontaneously and without being organized as a resistance movement, rose up to drive out the occupying army. That was what had happened in Naples. The case did not seem to him to be covered by sub-paragraph (6).

The CHAIRMAN repeated what he had said regarding the desirability of keeping separate the two contingencies that had been mentioned. In his opinion the question raised by the Delegation of Italy should be discussed under sub-paragraph (6)

*First paragraph (Sub-paragraph 6)*

Mr. WILHELM (International Committee of the Red Cross), at the invitation of the CHAIRMAN, gave the required explanations regarding sub-paragraph (6). It was the trickiest part of Article 3. He admitted that it might be difficult to determine whether certain cases came under sub-paragraph (5) or sub-paragraph (6). The question of the protection of civilians had already been considered by previous international conferences, e.g. that held in Brussels in 1874 and those held at the Hague in 1899 and 1907.

The Conference of Government Experts had also discussed the question at length, and had come to the conclusion that strict rules should be laid down governing the conditions which civilian combatants captured by the enemy should fulfil in order to be treated as prisoners of war. Certain of those conditions had been accepted by all the Government experts without difficulty; they were the traditional conditions contained in the 1907 Hague Convention. On the other hand, a new criterion, that of the effective control by the partisans of a portion of the territory occupied by the enemy, had given rise to long discussions, some of the experts very reasonably pointing out that the Occupying Power would always claim to exercise effective control over the whole of the territory it occupied. Another new condition, which was also discussed at some length, was that which provided that all resistance movements must notify the Occupying Power of their participation in the conflict.

The Stockholm Conference had finally decided to abandon the idea of maintaining in the Draft Convention the proviso with regard to the control by partisans of a portion of the occupied territory; but it had added a phrase to sub-paragraph (6), so as to make that sub-paragraph cover organized resistance movements.

Mr. COHN (Denmark) was glad to see that it was intended to extend the protection offered so as to include organized resistance movements. The situation was not, however, completely covered by the present wording of sub-paragraph (6). His Delegation had already made a reservation regarding the matter at the Stockholm Conference. He himself considered that the principles adopted in Article 3 were in accordance with the rules generally recognized up to the present. Those principles, however, were no longer adequate in the case of modern warfare. Today, an aggressive war was considered illegal. It followed that warlike acts committed by civilians against the aggressor could no longer be considered illegal. Civilians who took up arms in good faith for the defence of their country against an invader should therefore, in his opinion, have the benefit of the protection accorded to prisoners of war. At the same time the question of whether, in any given case, the war was or was not a war of aggression should not be left to the judgment of the aggressor. The Danish Delegation reserved the right to submit an amendment in writing on the subject.

Mr. GARDNER (United Kingdom) proposed that the discussion should be adjourned. The subject was an extremely delicate and important one, and the discussion could not be terminated at the present sitting. Furthermore, as it had been decided to appoint a Drafting Committee, he thought it would be better to take the question up again when that committee had been formed.

The CHAIRMAN agreed with Mr. Gardner. The Drafting Committee would be formed at the next meeting.

*The meeting rose at 6.50 p.m.*

## THIRD MEETING

Wednesday 27 April 1949, 3.15 p.m.

*Chairmen:* Mr. Maurice BOURQUIN (Belgium); subsequently  
Mr. Staffan SÖDERBLOM (Sweden)

**Drafting Committee**

In opening the meeting, the CHAIRMAN reminded the Committee that it had been decided at the previous meeting to form a small Drafting Committee for the purpose of producing a final draft of the Convention. He proposed that it should be composed of members of the Delegations of Albania, the United States of America, France, India, Norway, the United Kingdom and the Union of Soviet Socialist Republics.

The Chairman's proposal was adopted unanimously.

**Article 3**

*First paragraph, (sub-paragraph 6) (continued)*

At the request of Mr. LAMARLE (France), Mr. GARDNER (United Kingdom) explained the changes in the text of sub-paragraph (6) of Article 3 which were proposed in the Memorandum by the United Kingdom Government. The memorandum had been prepared as a basis for general discussion. When the view of the Committee had been ascertained, formal amendments would be submitted. Paragraph 1 of Appendix I was intended to specify the circumstances under which partisans came within the scope of the Convention. Paragraphs 2 and 3 described the conditions which had to be fulfilled by the partisans. It had been argued at the Conference of Government Experts that the criterion of effective, if only temporary, control of a given area, which had been proposed by certain experts would be impossible of fulfilment. Partisans could operate effectively in a territory without having control of the roads and railways, but unless they had control of those means of communication they could not satisfy the condition of being in control of the territory. Sub-paragraph 2 (d) was intended to establish other criteria based on practical experience in the last

war. It was not intended to mean that partisans would have to disclose the location of their headquarters. During the last war, the French and other resistance movements were in communication with London, and the adverse belligerents could be contacted through the Protecting Powers. Thus it could truly be said that they were capable of being communicated with effectively and of replying to communications.

Mr. LAMARLE (France), recalled the discussions on the subject of the importance of resistance movements which had taken place at the Conference of Government Experts; he thought that the gap then existing between the different points of view seemed to have been narrowed to some extent. He expressed gratitude to the Delegation of the United Kingdom for the efforts they had made to that end, but he thought the words "be satisfied" at the beginning of sub-paragraphs 2 (c), 2 (d) and 2 (e) were unsound. Further, in sub-paragraph 2 (c) the words "effective control" were too elastic. Sub-paragraph 2 (d) was an improvement on the notion of being in effective control of a portion of the territory, but was nevertheless unacceptable. For instance, if an Occupying Power succeeded in interrupting communications temporarily, it might, on the strength of that situation, declare that the partisans were outside the scope of the Convention. The provisions in question were capable of different interpretations and depended on the good faith of the enemy, which could never be counted on when countries were at war.

General DEVIJVER (Belgium) associated himself with the observations of the Delegate of France with regard to the spirit of conciliation shown in the memorandum prepared by the Government of the United Kingdom. Although the criterion of being "capable of being communicated with effectively and of replying to communications" was less restrictive than that of

being in control of territory, it was still not acceptable. He agreed, however, with the United Kingdom Delegate's proposal to omit the new paragraph which had been added at the end of Article 3 by the Stockholm Conference. He thought that more harm than good would be done by endeavouring to include this new category of persons, which was, moreover, badly defined. He emphasized the importance of affording effective protection to members of resistance movements.

Mr. BAISTROCCHI (Italy) supported the United Kingdom and Belgian Delegations' proposal to omit the last paragraph.

Mr. COHN (Denmark) agreed with the points of view expressed by the French and Belgian Delegates and urged the importance of extending protection to partisans. More severe conditions should not be imposed upon them than upon regular troops.

Mr. GARDNER (United Kingdom) thanked the "resistance countries" for their acknowledgment of the efforts made by his Delegation to solve the problem with regard to partisans. He did not regard the words "be satisfied" in sub-paragraph 2 (c), 2 (d) and 2 (e) as essential, and was prepared to drop them if that would facilitate agreement. It should be borne in mind that regular forces operating against partisans were entitled at least to the measure of protection in combat which the laws of warfare afforded, and also, when captured, to the measure of protection that the Geneva Convention was designed to give. The effectiveness of the Convention depended upon the Protecting Power being able to visit prisoners and inspect the conditions under which they were being held. In order to do so, it would be necessary to communicate with the headquarters of the partisan movement. If a better wording could be found to express that conception, he would be happy to agree to it. The decision to recognize the existence of irregular forces and to apply the same rules to both the combatant and the fighting partisan, represented a very great advance. There was a large measure of agreement: but some details remained to be worked out, and he would be glad to assist any working party which studied the question.

Mr. SZABÓ (Hungary) said that the essential purpose of the Draft Convention was to extend its protection to the greatest possible number of persons. It was not the task of the Committee to arrive at a definition of partisans in international law. The definition of partisans in the Draft Convention only applied to persons who were protected by that Convention. By comparison with the wording of the Stockholm Draft,

that submitted by the Government of the United Kingdom would have the effect of limiting the number of persons who were protected. He also considered that the new criteria proposed by the United Kingdom Delegation were not sufficiently clearly defined. He was opposed to the United Kingdom's suggestion and supported the Stockholm text.

Mr. PESMAZOGLOU (Greece) pointed out that according to the definition given in French and English dictionaries, the word "partisan" meant a person belonging to a political party. He proposed that the term "member of a resistance movement" should be used instead, since it was a question of national, and not political, movements.

Mr. LAMARLE (France) agreed to the proposed composition of the Drafting Committee, but suggested that it should also include the Delegates of Italy and Israel, who had put forward interesting suggestions at the previous day's debate.

General SKLYAROV (Union of Soviet Socialist Republics) was of the opinion that the United Kingdom proposal was restrictive and diminished the scope of the protection which the Convention afforded to irregular military organizations. He reminded the meeting of the conditions laid down by the IVth Hague Convention. According to the latter, members of irregular military units, who did not belong to the regular armed forces but observed the said conditions, must be treated in the same way as the regular armed forces. The United Kingdom Delegation's proposal would constitute a retrograde step by comparison with the provisions of the Hague Convention. That proposal left it to the Occupying Power to decide quite arbitrarily whether the laws and customs of war were, or were not, to apply to irregular troops. The wording proposed for Article 3 by the United Kingdom Delegation could not but weaken the legal protection given to organizations which had out of patriotism taken up arms to defend the honour and the independence of their country. The Soviet Delegation considered that the text proposed for Article 3 by the United Kingdom Delegation was no improvement on the original wording; it supported the text of that Article as it appeared in the Stockholm Draft.

The CHAIRMAN having been called away to a meeting of the Bureau of the Conference, Mr. SÖDERBLOM (Sweden), First Vice-Chairman, took the chair.

Mr. GARDNER (United Kingdom) explained that the reason why the Hague Convention did not require the armed forces to be capable of being

communicated with, was because it was assumed that a belligerent Power could always be communicated with. That assumption was not applicable in the case of irregulars who were not responsible to any government recognized by the adverse belligerent. If they were responsible to a recognized government, they could be included in the armed forces, and would fall within the scope of the provisions of the Hague Convention.

Captain MOUTON (Netherlands) agreed with the Soviet Delegate that the criteria should be objective; but at the same time he appreciated the arguments put forward by the United Kingdom Delegate. His own Delegation felt that the scope of the Geneva Convention should be extended to partisans. In the case of regular troops, the Protecting Power could send a delegate to visit the camps, and the same facility should also exist where troops were taken prisoner by partisans. He proposed that a small sub-committee should be formed for the purpose of considering the observations made by the Delegates of the Union of Soviet Socialist Republics and of the United Kingdom.

Wing Commander DAVIS (Australia) supported the Netherlands proposal to set up a sub-committee for that purpose.

Mr. BELLAN (France) reminded the Committee of the French Delegation's proposal to include representatives of Italy and of Israel in the Drafting Committee.

General PARKER (United States of America) proposed the omission of sub-paragraph (1) of the second paragraph of Article 3 (i.e. of the passage which began with the words: "Persons who are or who have been members of the armed forces of an occupied country" and ended with the word "security"), and also of the final paragraph of Article 3 (viz. from the words "The present Convention" up to the words "other Convention").

Mr. BELLAN (France) drew attention to an amendment to sub-paragraph (1) of the second paragraph, which had been tabled on the previous day by the French Delegation, and which he would like to hear discussed before a decision was taken simply to omit the whole sub-paragraph. His Delegation supported the proposal to omit the final paragraph of Article 3.

Captain MOUTON (Netherlands) reminded the meeting that it was sub-paragraph (6) that was under discussion. He proposed that consideration of sub-paragraph (6) be completed, and that a sub-committee be set up, as proposed.

General DILLON (United States of America) proposed a renumbering of the various clauses. If sub-paragraph (1) of the second paragraph was deleted, sub-paragraph (2) would become sub-paragraph (7).

Mr. GARDNER (United Kingdom) agreed with the United States Delegation that the final paragraph of Article 3 should be omitted. It was the opinion of his Delegation that the category dealt with in the last paragraph of Article 82 would be much better included in sub-paragraph (2) of the second paragraph of Article 3. It was, perhaps, not realized that that particular class needed protection, not only when captured after trying to escape, but also during the time of captivity which followed such recapture.

The CHAIRMAN proposed that the discussion should be limited to sub-paragraph (6) of Article 3. It had been suggested that a small sub-committee should be formed. Did the Committee agree?

Mr. MEYKADEH (Iran) asked whether the problem which had to be considered could not be submitted to the existing Sub-Committee.

General DILLON (United States of America) said that the Sub-Committee to which the Delegate of Iran referred had a limited mandate, namely, to consider disciplinary and penal provisions. It would be better to set up another sub-committee to discuss sub-paragraph (6) of Article 3.

Mr. GARDNER (United Kingdom) said that the Sub-Committee on Penal Sanctions had been formed for a particular purpose. It was not at all certain, therefore, that those who had been selected to be its members were the best qualified to deal with another problem which had considerable political implications. When it had finished its present work, certain new members might, possibly, be added to it. The "partisan countries" were not sufficiently represented on it as at present constituted.

Mr. WILHELM (International Committee of the Red Cross) drew attention to the fact that the last two paragraphs of Article 3 had only been discussed in part. He thought it would be better to consider those provisions before setting up a sub-committee to redraft Article 3. Several other Committees were about to meet, whose work was of interest to members of Committee II; he therefore proposed that the meeting be adjourned.

*The meeting rose at 5.15 p.m.*

## FOURTH MEETING

*Thursday 28 April 1949, 3.15 p.m.*

*Chairman: Mr. Maurice BOURQUIN (Belgium)*

**Article 3***Second paragraph*

Mr. WILHELM (International Committee of the Red Cross) explained that the first half of Article 3, which included sub-paragraphs 1 to 6, dealt with the traditional categories of persons who could be considered as prisoners of war. In the second half, now under discussion, the intention had been to include new categories of persons whom the experience of the last war had shown to be in need of protection.

Mr. GARDNER (United Kingdom) said that sub-paragraph (2) of the second half of the Article went far beyond defining persons who were to be regarded as prisoners of war, and included provisions regarding their treatment. Again, he considered that the application of the Convention to persons accommodated by neutral Powers ought to be dealt with in a separate article. Prisoners of war interned in neutral territory should not be deprived of the protection of Articles 72 to 107.

The CHAIRMAN thought that it was merely a question of drafting and re-arrangement.

Mr. BELLAN (France) reminded the meeting that his Delegation had submitted an amendment to Article 3 (*see Annex No. 86*) which had not yet been distributed.

The CHAIRMAN ruled that the amendment could not be discussed until it was in the hands of members of the Committee.

Mr. WILHELM (International Committee of the Red Cross) supported the views of the United Kingdom Delegation with regard to military internees in neutral countries; but he thought the point could be met by including a brief reference

to the internees in question even if that meant adding a special provision regarding their treatment. Incidentally, in several neutral countries the supervision which was normally the function of the Protecting Power could be exercised by the diplomatic representatives of the country of origin. Moreover, certain neutral countries claimed that military internees should have more obligations towards them than had prisoners of war towards the Detaining Power. As far as punishments were concerned, such countries had sometimes held that it was not possible to punish escapes adequately by disciplinary action alone. Again, whereas prisoners of war had to be maintained by the Detaining Power, neutral countries were entitled to have the cost of maintaining internees refunded to them by the country of origin.

Mr. BAISTROCCHI (Italy) explained that he would like to see general principles included in a preamble to the Convention. If that were done, the second half of Article 3 would be unnecessary. He did not wish in any way to limit the protection given.

General DEVIJVER (Belgium) supported the proposal made by the Delegation of Italy, and drew attention to the amendment submitted by the United Kingdom Delegation. He again suggested that the last paragraph of Article 3 should be omitted.

General LELLO (Portugal) supported the observations of the Belgian Delegate.

In reply to the observations submitted by the Italian Delegate, the CHAIRMAN stated that the question of having a preamble would be considered by the Joint Committee or by some other Committee.

**Article 4**

Mr. WILHELM (International Committee of the Red Cross) explained that where, for instance large numbers of prisoners had been taken, doubts had sometimes arisen as to whether it was practicable to apply the Convention without delay. Certain delegates at the Conference of Government Experts had considered that the exact time of the beginning and ending of the application of the Convention should not be explicitly stated. Some Powers had wished to make it possible to change the status of prisoners of war at some time during their captivity, for instance at the end of hostilities; but the majority at Stockholm had decided against making any such change possible. Article 4 had been introduced in order to make the situation clear beyond all manner of doubt.

As there was general agreement regarding Article 4, the CHAIRMAN suggested that it should be considered as having been adopted unanimously. Where such unanimity existed, the fact should be noted; it would not then be necessary for such Articles to be considered again at the second reading.

**Article 11**

Mr. WILHELM (International Committee of the Red Cross) said that it had not been possible to reach agreement at preceding Conferences on the question of whether, when prisoners of war were transferred from one country which was party to the Convention to another country which was also party to the Convention, the responsibility for the application of the Convention should rest with one of those countries only, or with both.

Captain MOUTON (Netherlands) drew the Committee's attention to the following amendment to Article 11 submitted in the memorandum by the Netherlands Government:

"Prisoners of war may only be transferred by the Detaining Power to a Power which is party to the Convention, in cases of urgent necessity. Once the transfer has taken place, the responsibility for the application of the Convention rests with the Power which receives such prisoners of war."

Joint responsibility was not practicable. Supervision would be difficult, and it would be almost impossible to decide which of the two Powers was responsible for any failure to carry out the provisions of the Convention.

Major ARMSTRONG (Canada) said that the amendment submitted by the Canadian Delegation

was practically the same as that tabled by the Delegation of the Netherlands. It read as follows:

"If prisoners of war, in cases of necessity, are transferred to a Power which is party to the Convention, responsibility for the application of the Convention shall rest with the Power to whom the prisoners of war are transferred."

Miss BECKETT (United Kingdom) supported the views expressed by the Netherlands and Canadian Delegates. Joint responsibility was impracticable. She could not, however, agree to the phrase "in cases of urgent necessity" in the Netherlands text, as there might be good reasons for transferring prisoners in cases which were not "cases of urgent necessity".

General DILLON (United States of America) was in favour of maintaining the Stockholm text. He thought that the principle of joint responsibility would give the better results as far as the treatment of prisoners of war was concerned. In a case where the transferring Power was better able to care for the welfare of prisoners, but the Power to whom the prisoners were transferred needed their labour, joint responsibility would be in the prisoners' interest, notwithstanding the very weighty arguments advanced by the advocates of single responsibility. In Anglo-Saxon law, joint responsibility meant full responsibility by both parties, as, for example, in cases where property was jointly held; and, in his opinion, the joint responsibility of both Powers offered the best guarantee that the provisions of the Draft Convention would be applied.

General DEVIJVER (Belgium) said that the principle of joint responsibility had always been supported by his Delegation. It was inadmissible that a country which had captured prisoners of war should transfer them to another country without giving any further thought to their welfare. The wordings proposed in the amendments submitted by the Delegations of the United Kingdom (*see Annex No. 97*), the Netherlands and Canada were inadequate. He proposed the addition of a clause obliging the transferring Power to take all necessary steps at the time of transfer to ensure that the Power accepting the prisoners was in a position to fulfil all the stipulations of the Convention. The addition of such a clause would constitute the minimum which his Delegation would be prepared to accept by way of a compromise.

Mr. COHN (Denmark) supported the opinions expressed by the Delegate of Belgium. The amendments submitted by the Delegations of the

Netherlands, the United Kingdom and Canada could be accepted only on condition that the transfer did not lead to responsibility falling on the transferring Power, in cases, for example, where prisoners were transferred to a country which had a lower standard of living or was less civilized, or was not able to apply the provisions of the Convention for some other reason.

Colonel HODGSON (Australia) advocated a combination of the Canadian and United Kingdom amendments. The United Kingdom text provided that the Detaining Power should be relieved of responsibility, but did not specify on whom responsibility should rest. The Canadian and the Netherlands texts provided that the responsibility should rest on the Power which received the prisoners. A wording was needed which would state clearly that the Detaining Power was relieved of responsibility and that the Power accepting the transfer, at the same time accepted the responsibility. During the last war many prisoners were transferred to Australia — by the United States of America for instance — from the Pacific region. The Protecting Power rightly looked to the Australian Government for the implementation of the Convention. There were matters which should be settled on the spot but which might have to wait six months or a year for adjustment in cases where the receiving Power was on the other side of the world. With regard to the observations of the United States Delegate concerning joint responsibility in Anglo-Saxon law, perhaps it would be better to say more explicitly "joint and several responsibility".

General DILLON (United States of America) asked the Delegate of Australia the following question. Supposing Australia had been unable to afford the transferred prisoners all the protection stipulated in the Convention, would those prisoners not have been in a better position if the provisions of the Stockholm Draft Convention had been applied? In that case the Protecting Power could have addressed itself to the United States of America as the transferring Power and insisted that it should assume its responsibilities.

Colonel HODGSON (Australia) said, in reply to the United States Delegate, that if Australia had been unable to carry out in full the provisions of the Convention, she would not have accepted prisoners. He thought that most receiving Powers were conscious of their responsibilities and prepared to implement the Convention.

Mr. GARDNER (United Kingdom) thought that the question was essentially a practical one. His Delegation could not believe that there were

signatories to the Convention who would intentionally fail to implement its provisions. The proposal of joint responsibility undermined the whole basis of good faith between nations. There had been cases where prisoners had been transferred as many as five times. In such cases the reply, when complaints were lodged with the Detaining Power, would be that consultation would have to take place with the other four Powers who had joint responsibility with them. During the last war an attempt had been made at the outset to apply the principle of joint responsibility; but it had to be abandoned because it did not work. What was everybody's business was nobody's business. The Delegate of the United States had given them to understand that, if his country transferred prisoners to a country where they were not being properly looked after, his Government would intervene with the Government of the receiving country. But how far would that interference go? Would the first country be prepared to go to war with its ally in order to enforce implementation of the Convention, or to invade the territory of its ally in order to recover the prisoners? There might well be legitimate divergencies of opinion between the countries with regard to the treatment of prisoners under the Convention, and it could only make for trouble between allies if they were to be made jointly responsible. It was not only the transferred prisoner who would suffer under such conditions, but also the prisoner of the transferring Power in the hands of the enemy. Failure in any one direction would sooner or later have repercussions on the prisoners of other Governments. With regard to the amendment submitted by his own Delegation, he would be prepared to accept a modification such as that proposed by the Belgian Delegate, and would be glad to assist in working out a compromise text.

General DILLON (United States of America) wished to rectify the impression he seemed to have unwittingly given that he had implied that any signatory to the Convention would deliberately violate it.

Mr. GARDNER (United Kingdom) said that he had had no intention of accusing the United States Delegate of suggesting that the signatories to the Convention would fail to fulfil their obligations.

Captain MOUTON (Netherlands) considered, in the first place, that it was difficult to admit in law that there was any analogy between joint property and joint responsibility. He then quoted, as an example, the case of a few thousand German prisoners who had been parachuted behind the

Dutch lines in May 1940 and had been captured and transferred to England. If the Netherlands Government had not taken refuge in England, it would have been very difficult for joint responsibility to have been established between the occupied Netherlands and the United Kingdom.

Mr. BAISTROCCHI (Italy) said that his Delegation shared the point of view of the United States Delegate with regard to the desirability of maintaining the text of Article 11 as adopted at Stockholm. He thought, in the first place, that it would be very difficult to establish whether a transfer of prisoners had or had not been occasioned by urgent necessity, and also considered that the interest of prisoners of war were better protected under a system of joint responsibility.

Major STEINBERG (Israel) supported the proposal of the Delegation of Belgium. There were two aspects to be considered in connection with the application of the Convention. The first was a question of principle, and concerned the personal security of the prisoner. The second was of a more material order, and concerned housing, clothing and food. So far as the application of the principles of the Convention was concerned, that responsibility ought to be assumed by the Power to whom the prisoners were handed over. Material conditions depended upon the economic situation of the Detaining Power, and that was where the safeguards provided by joint responsibility proved their usefulness.

He would also like to draw the attention of the Committee to a question which it should perhaps discuss under Article 100 dealing with repatriation. When a Detaining Power at war with several adversaries concluded an armistice with one of them, what ought to become of the prisoners within its territory? Might it repatriate prisoners of war who had been placed in its charge into the country with which it had concluded the armistice, without the consent of the other belligerents? If it might do so, it would be difficult to apply the principle of joint responsibility and the Power receiving the prisoners ought alone to assume the full responsibility for them.

Major HIGGET (New Zealand), speaking as the Representative of a small country which could not look after large numbers of prisoners of war, asked the Delegates who were in favour of the system of joint responsibility whether a country of one and three quarter million inhabitants, such as New Zealand, could accept joint responsibility with a country of one hundred and fifty millions, such as the United States of America. What could the smaller country do to see that the larger country applied the Convention? Should the

Committee decide in favour of the principle of joint responsibility, his Delegation would have to reserve its attitude until further instructions could be received from its Government. He also proposed the omission of the words "that may exist" in the second sentence of the first paragraph.

The CHAIRMAN had the impression that the Committee was prepared to accept the first paragraph of Article 11, with the exception of the omission proposed by the Delegate of New Zealand. The latter amendment could be referred to the Drafting Committee. As regards the second paragraph, there were divergencies of opinion regarding the principle of joint or single responsibility. He proposed that a special sub-committee should be given the task of trying to arrive at a compromise solution. At the next meeting, the Committee could set up two sub-committees, one to deal with Article 3, sub-paragraph 6, and the other to deal with Article 11, second paragraph.

#### Article 12

Mr. WILHELM (International Committee of the Red Cross) explained that Article 12 contained two fundamental principles, and reproduced practically word for word the text of the 1929 Convention. The first paragraph had been slightly modified in order to strengthen it, and the second had been left exactly as it was. A third paragraph had been added at the Stockholm Conference in order to add to the force of the other two.

Mr. GARDNER (United Kingdom) said that the third paragraph of Article 12 was intended to embody a principle on which there was unanimous agreement, but in actual fact, it succeeded in doing the exact opposite. Any surgical operation involved physical mutilation, and the treatment of all difficult diseases was to some extent in the nature of an experiment. He thought the last paragraph unnecessary, because the first paragraph already prohibited any physical mutilation or experiments which were inhumane.

Mr. COHN (Denmark) reminded the Committee that the clause was designed to prohibit certain forms of treatment inflicted on prisoners, particularly in concentration camps, during the last war. He would prefer to see the third paragraph maintained. In order to meet the point of view expressed by the Delegation of the United Kingdom, he proposed adding the following words at the end of the paragraph in question: "unless they are made in the interest of the prisoner himself during the course of his medical treatment".

Mr. MARESCA (Italy) thought that it gave greater force to a rule if one merely stated its fundamental principle without adding any comments; to enter into too many details could only limit its scope. That applied to all the Articles of the Convention. Articles 12 and 13 laid down that prisoners must be humanely treated and that they were entitled in all circumstances to respect for their persons and their honour. However, since the third paragraph of Article 12 had been drafted with a view to preventing a recurrence of the cruel experiments which had been made in concentration camps during the last war, it could not really be said to limit the scope of Articles 12 and 13.

Major ARMSTRONG (Canada) stated that, having read the memoranda submitted to the Committee and listened to the discussion which had just taken place, he withdrew the amendment tabled by his Delegation. The amendment in question had proposed inserting a provision to the effect that "no physical or moral torture, nor any form of coercion, may be inflicted on prisoners of war".

The CHAIRMAN noted that there appeared to be unanimous agreement regarding the first and second paragraphs of Article 12. As regards the third paragraph, several speakers had proposed omitting it, and only one had spoken in favour of its retention. He thought, therefore, that a vote might be taken on the third paragraph at the second reading.

General SKLYAROV (Union of Soviet Socialist Republics) considered that the wording of Article 12 was not sufficiently imperative. He reserved the right to submit an amendment on the subject.

### New Article

Captain MOUTON (Netherlands) drew attention to a new Article which had been proposed in the memorandum submitted by the Netherlands Government. It read as follows:

"Prisoners of war shall not be compelled to serve with the armed or auxiliary forces of the Detaining Power. Any propaganda encouraging voluntary engagement in such forces is prohibited."

The proposed wording was based on that of Article 47 of the Civilians Convention. It might perhaps be wisest for the Committee to wait until the decision of Committee III on the latter Article was known.

The Committee decided to await the result of the discussions in Committee III.

### Article 13

Mr. WILHELM (International Committee of the Red Cross) explained that Article 13 reaffirmed principles which were already laid down in the 1929 Convention. The second paragraph, dealing with women prisoners, had been slightly strengthened by the addition of the words "and shall in all cases benefit by treatment as favourable as that granted to men". With regard to the third paragraph, the somewhat summary wording of the 1929 Convention had on occasions given rise to a certain amount of confusion and it had, therefore, been thought wiser to make the position in regard to the civil rights of prisoners clearer by the addition of the paragraph in question.

Mr. GARDNER (United Kingdom) said that the amendment to the third paragraph proposed in the memorandum submitted by the Government of Finland (*see Annex No. 100*) was very much in line with the views of his Delegation. He quite understood that the paragraph was intended to amplify the somewhat cryptic statement on the subject in the 1929 Convention; but he thought that the new text only served to make the situation even more confused. He failed to see that the status of a prisoner of war in his own country was a matter for an international Convention. If, on the other hand, the words "retain their full civil capacity" referred to any civil capacity which prisoners might be able to exercise in the country of the Detaining Power, then they had a very limited application. He proposed the omission of the words "in conformity with the legislation of their home country".

Mr. WILHELM (International Committee of the Red Cross) thought that it was a matter of drafting. The object of the new paragraph was to avoid giving prisoners the impression, which had been given by the 1929 Convention, that it was possible for them to exercise their full civil rights—by contracting marriages, for instance—in the territory of the Detaining Power. It was true that that right had been granted in individual cases in the United Kingdom at the end of the war; but it had never been a general principle. With regard to the second paragraph, the Convention appeared to authorize better treatment for women, in certain cases, than for men. For that reason he proposed that the words "at least" should be inserted after the word "treatment". The phrase would then read: "treatment at least as favourable".

Mr. COHN (Denmark) thought it would be sufficient for the paragraph to specify that women

should "be treated with all the regard due to their sex"; the rest of the paragraph could be omitted.

Mr. GARDNER (United Kingdom) reminded the meeting that the position of women was not the same in all countries. Experience in the last war had shown that it was urgently necessary to safeguard the position of women in the hands of Powers where their status was lower than that of men.

General DILLON (United States of America) fully agreed with the United Kingdom Delegate's observations regarding the second paragraph. As regards the third paragraph, he felt that a prisoner of war should be accorded all the civil rights that he would have in his own country, under his own country's legislation. He could not exercise them in the country of the Detaining Power, but could, on the other hand, exercise them in a prisoner of war camp. If he was a notary public, for instance, he could draw up authentic documents for his fellow prisoners and transmit them through the Protecting Power.

General DEVIJVER (Belgium) interpreted the text of the Convention in the same way as the United States Delegate had done. It was essential that prisoners should be able to exercise certain rights, such as the right to dispose of their property or to attend to any other business in their country of origin. He wanted to make sure that the civil capacity mentioned in the Article applied to the country of origin and not to the territory of the Detaining Power.

Mr. GARDNER (United Kingdom) asked whether Article 67 did not in fact safeguard all necessary rights in relation to the country of origin.

Mr. COHN (Denmark) said that, after hearing the views of the United Kingdom Delegate, he would not maintain his proposal to delete the second part of the second paragraph, (viz. the words "and shall in all cases benefit by treatment as favourable as that granted to men".)

The CHAIRMAN noted that agreement had been reached on the first two paragraphs. The third paragraph would be discussed again at the second reading.

#### Article 14

Mr. WILHELM (International Committee of the Red Cross) said that the first paragraph reaffirmed the traditional principle that the Detaining Power had to provide for the maintenance of prisoners of war. The 1929 text had been strengthened by the addition of the word "free".

The second paragraph reaffirmed the principle of equal treatment for prisoners, which had been laid down in the 1929 Convention; the wording had, however, been slightly modified, in order to make use of the most recent terminology in regard to discriminatory measures.

Further, at the suggestion of the Conference of Government Experts, age had been added to the list of criteria entitling the prisoner to privileged treatment.

Mr. GARDNER (United Kingdom) said that he would like to submit an amendment of substance to the second paragraph. Circumstances did not always make it possible to eliminate every form of differentiation in the treatment of prisoners as their race, nationality, and religion as well as the climate, had to be considered. For instance, certain articles of diet were forbidden by some religions. He did not wish to weaken the provisions in this paragraph but to make them more effective and he therefore proposed the following wording:

"Account being taken of the provisions of the present Convention regarding rank and sex, and subject to any privileged treatment which may be granted to prisoners of war by reason of their health, age or professional capacity, all prisoners of war shall be treated with the same consideration by the Detaining Power. No discrimination shall be exercised against any prisoner of war on account of his race, nationality, religious belief, or political opinions."

The CHAIRMAN said that the United Kingdom amendment would be discussed at the second reading.

*The meeting rose at 6 p.m.*

## FIFTH MEETING

*Friday 29 April 1949, 3.15 p.m.*

*Chairman: Mr. Maurice BOURQUIN (Belgium)*

**Article 15**

Mr. WILHELM (International Committee of the Red Cross) explained that Articles 15 to 18 of the Convention applied to situations which arose in the initial stages of captivity. Their provisions, therefore, appeared more or less in chronological order, but were nevertheless general in character.

Article 15 dealt with the questioning of prisoners of war for purposes of identification. Under the provisions of the Convention of 1929, prisoners of war might limit themselves to indicating their regimental number. Under the new Convention they were bound to give their name and rank, date of birth, and regimental or serial number. Identification was thus facilitated; but it would be still easier if prisoners of war were in possession of an identity card, and for that reason a new third paragraph had been added to Article 15 at Stockholm.

But it was also necessary to give fuller protection to prisoners of war against pressure on the part of a capturing state which wished to obtain information of a military character. That was the purpose of the fourth paragraph.

Major ARMSTRONG (Canada) commented on the first, second and fourth paragraphs. The first two paragraphs dealt respectively with the questions which the prisoner of war was required to answer, and the penalties to which he was liable if he refused to reply. It should be noted that a prisoner always had the right to state his rank, name and number. That was the recognized practice in all armies.

The first part of the fourth paragraph merely repeated what was already stated in Articles 12 and 13, and was unnecessary. Instead of prohibiting interrogation with regard to military matters, it would be better to specify that prisoners could not be required to supply any information other than that mentioned in the first paragraph of Article 15.

For that reason the Canadian Delegation proposed that the existing fourth paragraph should be replaced by a new paragraph worded as follows:

“Prisoners of war who refuse to answer any questions other than those required for identification, listed in paragraph one of this Article, may not be threatened, insulted, or exposed to any unpleasant or disadvantageous treatment of any kind.”

Mr. WILHELM (International Committee of the Red Cross) pointed out that the Stockholm text made identity cards compulsory, whereas they should only be optional, since it was not always possible to issue such cards.

In order to give prisoners of war more complete protection, the I.C.R.C. had considered it advisable to specify the questions which they were bound to answer. That had been done in the first paragraph. The identity card should fulfil the same purpose. He added that the third paragraph of Article 15 should be linked up with Article 112 in order that prisoners of war might know what they could and should say. That was why the I.C.R.C., in its “Remarks and Proposals”, had proposed the text of a new Article 15, intended as a possible alternative to the text adopted at Stockholm. It was obviously desirable that prisoners of war should give as much information as possible in order to facilitate the work of the Information Bureaux; but it must not be overlooked that such information might be used against themselves, and might even reveal information of military interest to the enemy. It was for that reason that the I.C.R.C. had decided to restrict the list to the four identity factors referred to in the first paragraph.

Mr. GARDNER (United Kingdom) thought there were three points to be considered:

- (1) Was it necessary for all persons who might be made prisoners of war to be in possession of identity cards?

- (2) What were the questions which they could be required to answer concerning their identity?
- (3) What restrictions should be imposed with regard to the military character of the interrogation?

It was idle to harbour illusions. A state which had captured prisoners of war would always try to obtain military information from them. The latter should therefore be informed of what they should and could say, and what the consequences of a refusal to answer would be. The provisions of Article 34 must be observed, and prisoners of war questioned in a language which they could understand. It was a mistake to have used the word "privileges" in the second paragraph, since it was really a question of "rights". Incidentally, a provision should be inserted in Article 15 to the effect that prisoners of war should never be required to hand over their identity cards. During the last war the practice of making prisoners hand over their identity papers had led to endless difficulties.

Colonel NORDLUNG (Finland) reminded the Committee that his Delegation had tabled an amendment proposing, first, that the words "and rank, date of birth" in the first paragraph should be omitted, as such details might reveal important military information, and secondly, that the second paragraph, which merely constituted an obvious statement of fact, should also be omitted.

General DEVIJVER (Belgium) said that the Convention provided for special treatment of prisoners of war according to age and rank. How could such treatment be granted, if the prisoner of war refused to reveal either his age or his rank?

Wing-Commander DAVIS (Australia) said that his Delegation had submitted an amendment to the second paragraph, which had not yet been distributed. It was purely a matter of wording. He proposed to replace the existing text of the paragraph by the words: "Should he deliberately infringe this rule, he may be rendered liable to a restriction of the privileges which may be granted to prisoners of war of his rank or status beyond the rights ensured by this Convention."

General PARKER (United States of America) proposed that the word "need" be substituted for the word "will" in the last sentence of the third paragraph. He would also like a sentence to be inserted at the end of the third paragraph, specifying the size of the identity card, and stipulating that it should be issued in duplicate. The card might measure 6.5 × 10 cm.

## Article 16

Mr. WILHELM (International Committee of the Red Cross) explained that the private property of prisoners of war was not liable to capture, but disputes were frequent as to what should be regarded as personal property and what was part of the soldier's military equipment. Private property such as cash and object of value, could, however, be taken from prisoners. It had therefore appeared necessary to specify in the third paragraph that articles having only a personal or sentimental value should not be taken from prisoners of war. The final disposal of personal articles taken from prisoners was governed by the concluding sentence of the fourth paragraph.

There was some controversy as to the position in regard to military identity documents and paybooks. Some experts maintained that they ought never to be taken away from prisoners of war, while others were of the contrary opinion on account of the military information that these documents contained. The opinion which appeared to prevail at present, and had inspired the draft, was that prisoners of war should never be without identity papers.

Mr. BELLAN (France) thought it would be very difficult for the Detaining Powers to apply honestly some of the provisions of Article 16. Under the second paragraph, for instance, the Detaining Power was bound to supply identity cards to prisoners of war who did not possess them. That would be extremely difficult to do in the initial stages of captivity.

It would also be very difficult to give prisoners of war receipts on the spot for money or valuables taken from them on the field of battle (fourth paragraph). He accordingly proposed to substitute for the fourth paragraph a new provision prohibiting the taking away of money or valuables carried by prisoners of war who were captured, other than currency of the Power which had captured them. The last part of the paragraph might be inserted elsewhere.

The CHAIRMAN requested the French Delegate to submit an amendment in writing.

Major ARMSTRONG (Canada) pointed out that since the last war metal helmets and gas masks were no longer the soldier's only means of individual protection. He therefore proposed that the words "and like articles issued for personal protection" should be inserted in the first paragraph, after the words "gas masks".

General PARKER (United States of America) proposed that the words "when they are taken"

at the end of the second paragraph, should be omitted.

The CHAIRMAN considered that all the above amendments, which were mainly drafting points, should be referred to the Drafting Committee.

#### Article 17

Mr. WILHELM (International Committee of the Red Cross) explained that Article 17 of the Draft Convention merely reproduced the substance of Article 7 of the Convention of 1929.

No objection having been raised to Article 17, it was adopted unanimously.

#### Article 18

Mr. WILHELM (International Committee of the Red Cross) explained that, in view of the distressing experiences of the last war, it had appeared necessary to provide more effective safeguards for the protection of prisoners of war during evacuation. The new wording of the first paragraph placed prisoners of war, therefore, on the same footing while they were being evacuated as the forces of the Detaining Power. The second paragraph provided evacuated prisoners of war with a minimum standard of nourishment, clothing and medical attention. Finally, the third paragraph provided that prisoners of war in process of evacuation should not be kept in transit camps longer than was absolutely necessary.

He added with regard to the last point, that there were two types of transit camps:

- (1) The temporary camps referred to in the Article under discussion, where the conditions would necessarily be somewhat primitive; and
- (2) The permanent camps provided for in Article 22, which should be organized like other prisoner of war camps.

Major ARMSTRONG (Canada) believed that prisoners of war in process of evacuation should be afforded the greatest possible protection. But the text of the Convention left the question of the treatment of these prisoners of war to the free interpretation of the Detaining Power. He reminded the Committee that a diet considered sufficient by the Detaining Power had frequently led to the death of prisoners. He therefore proposed that the first sentence of the second paragraph should be omitted and substituted by the following sentence:

“The Detaining Power shall supply prisoners of war who are being evacuated with food and water sufficient in quantity, quality and variety to keep the prisoners of war in good health, and with the necessary clothing and medical attention.”

The CHAIRMAN proposed that the first and third paragraphs, on which no observations had been submitted, should be adopted, and that the second paragraph should be referred to the Drafting Committee.

Mr. GARDNER (United Kingdom) wished the first paragraph as well as the second, to be referred to the Drafting Committee.

The CHAIRMAN said that in that case it would be best to refer the entire Article to the Drafting Committee. That would not add greatly to the Drafting Committee's work.

Mr. BOURLA (Costa Rica) thought that it should be specifically stated that the water supplied to prisoners of war must be drinking water.

The CHAIRMAN decided to refer the whole of Article 18 to the Drafting Committee, together with the various observations submitted.

#### Article 19

Mr. WILHELM (International Committee of the Red Cross) explained that Article 9 of the Convention of 1929 dealt with three different questions. The authors of the Stockholm draft had preferred to separate the three questions, and only to deal in Article 19 with restrictions on the liberty of movement of prisoners of war. The Article in question was a somewhat hybrid one. It reproduced the substance of the first paragraph of Article 9 of the 1929 Convention, which dealt with the places in which prisoners of war might be interned and provided that they might even be confined or imprisoned when reasons of health made it necessary. The Article also included three paragraphs dealing with the question of release on parole and the conditions and obligations involved, the last two of those paragraphs having been added by the Stockholm Conference in 1948.

He added that a sentence which reproduced the provisions of Article 12 of the Hague Regulations had been omitted at the end of the third paragraph of Article 19. It read as follows:

“Prisoners of war liberated on parole and recaptured bearing arms against the Government

to whom they had pledged their honour, or against the allies of that Government, forfeit their right to be treated as prisoners of war."

In his opinion the above sentence should be reinserted in the Convention.

Mr. GARDNER (United Kingdom) suggested that the question of release on parole should be dealt with in a special Article, as the subject was different from the others covered by Article 19. He further proposed the omission of the last paragraph of the Article, since a prisoner who was released on parole and escaped, automatically forfeited his right to be treated as a prisoner of war.

General PARKER (United States of America), Mr. MARESCA (Italy) and General LELLO (Portugal) supported the proposal to omit the last paragraph.

Major HIGHER (New Zealand) pointed out that it would sometimes be difficult for certain belligerents to carry out the stipulation contained in the first sentence of the third paragraph of Article 19. As regards release on parole, each country should in his opinion, be asked whether it agreed to such release for its nationals; he considered that the whole subject should be regulated by special agreements between the belligerents.

He also supported the proposal to omit the last paragraph of Article 19.

Mr. WILHELM (International Committee of the Red Cross) observed that in point of fact nobody had ever wanted to have the last paragraph included in the Convention. It was a serious offence for a prisoner of war to break his word, but not more serious, he thought, than other breaches of the laws and customs of war. The Sub-Committee on Penal Sanctions had left the matter of infringements of the laws of war committed before capture, to the Committee to deal with. Under the Draft Convention as adopted at Stockholm (Article 74), prisoners of war guilty of such infringements continued to enjoy protection under the Convention. It would be only logical for this provision to be applicable to a prisoner of war who had broken his parole. The two problems were interconnected. In any case a prisoner of war released on parole, who escaped and was recaptured, should enjoy prisoner of war status until sentenced.

The CHAIRMAN noted that everyone agreed that the last paragraph should be omitted. The Representative of the International Committee of the Red Cross had, however, opportunely drawn the Committee's attention to the fact that certain aspects of the matter might be linked up with a

general question which would have to be considered later, namely, the question of the application of penal sanctions to prisoners of war guilty of war crimes. He therefore proposed to omit the paragraph in question for the time being, but to make no final decision regarding it until the Committee came to a decision on the general question of penal sanctions.

A discussion, in which Captain MOUTON (Netherlands), General DEVIJVER (Belgium) and Mr. GARDNER (United Kingdom) took part, then followed on various questions raised by the problem of release on parole considered in the light of certain documents submitted to the Stockholm Conference.

The CHAIRMAN reminded the Committee that the work of Committee II was based on *Document No. 3*, and that any suggestion modifying the text of that Document must be submitted in the form of an amendment.

Mr. GARDNER (United Kingdom) agreed with the Chairman. He proposed that the last paragraph of Article 19 be omitted, and the question re-examined when the Committee came to deal with Articles 72 to 99, which were at present being considered by the Sub-Committee on Penal Sanctions.

The CHAIRMAN said that that was what he himself had already proposed.

No objection having been raised, the above proposal was adopted unanimously.

## Article 20

Mr. WILHELM (International Committee of the Red Cross) explained that it had appeared necessary, as the result of certain distressing experiences during the last war, to strengthen the safeguards regarding places where prisoners of war were interned. That was the object of the first paragraph which provided, further, that as a general rule prisoners of war should not be interned in penitentiaries, war imprisonment having no connection with crime. The Government Experts who met in 1947 had, moreover, considered that, in view of the abuses to which it had given rise, the idea of "race" which appeared in the third paragraph of Article 9 of the 1929 Convention should be omitted in the new Convention.

Miss GUTTERIDGE (United Kingdom) did not feel that the wording of Article 20 was entirely satisfactory, as it might lead the Detaining Power to separate prisoners who should normally be interned

together. Certain new laws promulgated in the British Commonwealth might, for instance, justify a Detaining Power in separating citizens of the United Kingdom and Colonies from citizens of Canada or of New Zealand, which would be extremely undesirable. She also mentioned the case of aliens serving in the armed forces of a given country (for instance Czechs and Poles in the Royal Air Force). They should not be separated from their comrades in arms.

She thought that the third paragraph should be so amended as to provide that prisoners of war should be quartered with those of the same national forces who spoke a similar language and whose customs were analogous to their own.

The CHAIRMAN considered that it was mainly a matter of wording, and asked for an amendment in writing.

General PARKER (United States of America) objected to the fact that the first paragraph made it possible for prisoners of war to be interned in penitentiaries, without a time-limit being fixed for the internment. He therefore urged the omission of the word "durably".

Mr. MARESCA (Italy) was strongly of the opinion that internment in a penitentiary was not only contrary to the interests of the prisoner, but also contrary to the very nature of the captivity in such circumstances. He therefore supported the proposal made by the Delegation of the United States of America.

The CHAIRMAN decided to refer the United States proposal to the Drafting Committee.

#### Article 21

Mr. WILHELM (International Committee of the Red Cross) explained that the Government Experts had been of the opinion that Article 9 of the 1929 Convention did not offer adequate protection against the dangers of modern warfare. The whole question of the security of prisoners of war had therefore been taken up again in Article 21 of the Stockholm draft. The latter provided that prisoners of war should have the same protection against air bombardment and other hazards of war as the civilian population. It further stipulated that belligerent States should

communicate to one another all useful information regarding the geographical location of prisoner of war camps, and that such camps should be marked so as to be clearly visible from the air.

Miss BECKETT (United Kingdom) said that her Delegation was opposed to any mandatory provision regarding the marking of prisoner of war camps, owing to the small area of the United Kingdom. Camps so marked would provide excellent landmarks in the event of aerial bombardment. Large countries might conclude special agreements on the matter.

Colonel HODNETT (Ireland) considered that it was the duty of the camp administration, in so far as its resources allowed, to take precautionary measures for the protection of prisoners of war against the dangers of air bombardment. His Delegation intended to table an amendment to the effect that measures for the protection of prisoners of war should have priority over other work by the camp administration. Any protective measure taken on behalf of the civilian population should be extended to prisoners of war in cases where the camp administration was not in a position to provide adequate protection for them. In the case of air raid warnings, prisoners of war other than those engaged in taking measures for the protection of their quarters, should be permitted to enter the shelters.

The CHAIRMAN proposed that the Committee should proceed with the consideration of Article 22 pending the submission of the amendment announced by the Irish Delegation.

#### Article 22

Mr. WILHELM (International Committee of the Red Cross) reminded the meeting of the distinction he had made, when commenting on Article 18, between temporary and permanent transit camps. It was obvious that the latter should provide the same safeguards as ordinary prisoner of war camps.

The CHAIRMAN, noting that no observations had been made on Article 22, declared it to be adopted unanimously.

*The meeting rose at 6 p.m.*

## SIXTH MEETING

*Monday 2 May 1949, 3.15 p.m.*

*Chairman:* Mr. Maurice BOURQUIN (Belgium); subsequently  
Mr. Staffan SÖDERBLOM (Sweden).

### Communication by the Chairman

The CHAIRMAN informed the Committee of a communication received from the Secretary-General of the Conference who said that he would appreciate it if Articles of the Draft Convention could be transmitted without delay to the Drafting Committee of the Conference as soon as they were adopted. Otherwise the latter Committee would be overloaded with work towards the end of the Conference. In accordance with Article 19 of the Rules of Procedure, the Drafting Committee appointed by Committee II would be attached to the Drafting Committee of the Conference when the latter was considering the Convention relative to the Treatment of Prisoners of War.

The Secretary-General's proposal was approved unanimously.

### Appointment of a Special Committee

The CHAIRMAN proposed the appointment of a Special Committee to decide the wording of Article 3, sub-paragraph 6, and Article 11, second paragraph, and also to consider any other points of substance which might be submitted to it. The Special Committee would consist of the Delegations of the following countries: Australia, Belgium, Canada, Denmark, United States of America, Finland, France, Greece, Hungary, Israel, Italy, Netherlands, United Kingdom, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics. In addition, when a delegation not represented on it had submitted an amendment, a member of that delegation would also be entitled to be present at the relevant discussions in the Special Committee.

On the proposal of Mr. MEYKADEH (Iran), it was decided that the Special Committee should also include a delegate from one of the Eastern countries — Afghanistan, Egypt, India or Turkey.

The CHAIRMAN, in reply to a question by Mr. BAISTROCCHI (Italy), said that the Delegate of Mexico, who had originally been chosen to represent the Latin-American countries on the Special Committee, had asked to be excused as he had too much other work.

Mr. BOURLA (Costa Rica) proposed that the Spanish-speaking countries should be represented by Spain.

The CHAIRMAN said that it was understood that the Representative of the International Committee of the Red Cross would attend the meetings of the Special Committee in a consultative capacity.

The Committee decided to set up the proposed Special Committee.

### Statement by the Observer from the International Labour Organization

At the invitation of the CHAIRMAN, Mr. LITTLE (International Labour Organization) said that in reply to a request from the International Committee of the Red Cross, a draft memorandum on the texts approved at Stockholm, had been prepared by the International Labour Office and had been submitted to the Governments of the sixteen countries represented on the Governing Body of the International Labour Office. Replies had been received from the Governments of Canada, Denmark, the United States of America, France, India, Italy, the United Kingdom and Turkey. The views expressed differed on a number of points and the Governing Body, considering that the differences in question could only be reconciled by negotiations which it had no mandate to undertake, had decided to communicate the draft memorandum and the replies of the Governments to the Diplomatic Conference for information. Those texts were contained in Working Document No. 7 as issued by the Swiss Federal

Political Department. The Governing Body wished to emphasize the importance attached by the International Labour Organization to the humane treatment of prisoners of war in accordance with modern civilized usage, and also to express its urgent desire to see appropriate regulations adopted governing the work of prisoners of war with due regard to the standards laid down in the Conventions and Recommendations adopted by the International Labour Conference.

### Article 23

Mr. WILHELM (International Committee of the Red Cross) said that considerable discussion had taken place at previous Conferences on the question of whether minimum cubic space and other details concerning the conditions under which prisoners of war were to be accommodated should be specified in an Annex to the Convention; the idea had, however, been abandoned as being too complicated, and the more general notion of stipulating that the above conditions should be as favourable as those obtaining for the forces of the Detaining Power, had been adopted.

Mr. GARDNER (United Kingdom) drew attention to an amendment submitted by his Delegation, which proposed replacing the first and second paragraphs by the following text:

"Prisoners shall be provided with quarters which shall include dormitories of a total surface and minimum cubic space, bedding, blankets and general installations under conditions not less favourable than those for forces of the Detaining Power who are quartered in the same area. These conditions shall, however, be better than for those forces where the habits and customs of the prisoners concerned so require, and in no case shall they be prejudicial to their health. In any camps in which women prisoners of war, as well as men, are accommodated, separate dormitories shall be provided for them."

Major HIGHER (New Zealand) submitted an amendment worded as follows:

"Prisoners of war shall at all times be accommodated under conditions which shall in no case be harmful to their health and which shall take account of their national habits and customs.

"The above provisions shall apply in particular to the dormitories of prisoners of war, both as regards total surface and minimum cubic space and the general installations, bedding and blankets. In any camp in which women pris-

oners of war as well as men are accommodated, separate sleeping quarters shall be provided for them."

Mr. NARAYANAN (India) thought that in addition to the reference to adequate heating and lighting in the first sentence of the third paragraph, a provision with regard to the cooling of the premises should be inserted, to meet the case of prisoners of war who were accommodated in tropical countries.

On the proposal of the CHAIRMAN, the Committee decided to refer Article 23, together with the three amendments relating to it, to the Drafting Committee.

### Article 24

Mr. WILHELM (International Committee of the Red Cross) explained that there had been considerable difficulty in applying the 1929 text which laid down that the diet of prisoners of war should be equivalent to that of the depot troops of the Detaining Power. The Conference of Government Experts had attempted to adopt new criteria, based on the number of calories; but the medical authorities themselves could not agree on the subject. A more general wording had therefore been adopted. The second paragraph had been added in order to take account of the supplementary rations which had been authorized in some cases during the last war.

Mr. BAISTROCCHI (Italy) drew attention to an amendment contained in the memorandum by the Italian Government; it read as follows:

"If the food rationing authorities of certain countries grant the local workers of the Detaining Power who are engaged on heavy labour a more favourable treatment than that granted to non-combatant troops, the same treatment shall also be granted to prisoners of war engaged on heavy labour."

He proposed that the above text should be inserted in Article 24 as a new paragraph.

Mr. BELLAN (France) stated that his Delegation was about to submit an amendment differing only slightly from that proposed by the Italian Delegation. He suggested that it should be referred to the Drafting Committee for consideration in conjunction with the Italian amendment.

Major ARMSTRONG (Canada) referred to unfortunate experiences of the Canadian troops in the Far East as a result of the application of the

principle of giving them food equivalent in quantity and quality to that given to local troops. It should be borne in mind that troops in confinement had no means of supplementing their rations, whereas the troops of the Detaining Power were in a very different position. He wished to propose one minor amendment to the second paragraph, namely, the omission of the words "are obliged to". The phrase would then read "Prisoners of war who work..." and not "Prisoners of war who are obliged to work..."

Major HIGHET (New Zealand) agreed with the Canadian Delegate's observations with regard to prisoners of war from a country with a high standard of living who fell into the hands of a country with a low standard of living. However, the opposite situation could also arise; and whereas the text proposed by the International Committee of the Red Cross at Stockholm provided that rations might be reduced where they were manifestly superior to those issued by the army to which the prisoners belonged, that reservation had not been maintained in the text adopted at Stockholm. Incidentally how was the Detaining Power to know what rations were issued in the army to which the prisoners belonged?

Mr. GARDNER (United Kingdom) suggested, first, that the word "gratuitously" in the first sentence of the first paragraph should be omitted. Article 14 laid down that the Detaining Power was bound to provide for the free maintenance of prisoners of war and, if the word "gratuitously" was repeated in one Article, it would have to be repeated throughout the Convention—otherwise misunderstandings were certain to arise.

In the second place, he could not agree to the wording of the second part of the second paragraph ("additional rations proportionate to the labour they perform"). That provision would enable the Detaining Power to use food as a means of pressure to ensure output. The character and not the amount of the work should be the factor which determined the ration. He intended to submit an amendment on that point.

Lastly, he pointed out, with reference to the Italian amendment, the difference which existed between the methods by which troops and prisoners of war were fed and those by which the civilian population was fed, and the consequent danger of any relation between the rations issued to prisoners of war and those allowed to the civilian population. It should be remembered that the rationing system applied to troops and to prisoners was intended to provide the whole of their food, whereas civilians were only rationed with regard to certain foods, and had, moreover, many means

of supplementing their rations — for instance, by growing vegetables, keeping pigs, etc.

Mr. BIJLEVELD (Netherlands) reminded the meeting that, at the Stockholm Conference, the Netherlands Delegation had proposed that the question of food ration standards should be referred to the World Health Organization; and, although that proposal had not met with the approval of Committee II at Stockholm, it had been adopted by Committee III and incorporated in Article 78 of the Draft Civilians Convention. He drew attention to the following amendment which was contained in the memorandum by the Netherlands Government:

"In conformance with Article 78 of the Civilians Convention, the following clause should be inserted at the beginning of the second sentence of the first paragraph: 'Even if the international nutritional standards are adopted and supplied, the basis daily food rations shall be....'"

General PARKER (United States of America) supported the Canadian Delegate's proposal that the words "are obliged to" in the second paragraph should be omitted. As far as the rest of the Article was concerned he was in favour of the Stockholm text.

General DEVIJVER (Belgium) supported the Stockholm text, the Canadian Delegate's proposal to omit the words "are obliged to", and the observations of the Delegate of the United Kingdom with regard to the character of the work being the deciding factor. The adoption of the above three proposals would go far towards meeting the contentions of the Italian amendment.

Mr. WILHELM (International Committee of the Red Cross) fully agreed with what had been said by the Delegate of Canada regarding treatment of prisoners in the Far East. But the Far East was a special case. Experience in Europe during the last war had shown that the principle of granting conditions to prisoners as favourable as those for the troops of the Detaining Power could be a useful one. The I.C.R.C. hoped that it would be possible to revert, for the first paragraph, to the wording submitted at Stockholm. (*see Annex No. 106*) He agreed with the Delegate of the United Kingdom that it would be dangerous to lay down that prisoners of war should be regarded as members of the civilian population for purposes of food rationing. He also agreed with the other observations of the United Kingdom Delegate regarding the second paragraph. He said, in reply to the Delegate of New Zealand, that a Detaining Power could

always ascertain the size of the ration issued to troops in the country of origin of the prisoners of war by applying to the Protecting Power.

Major ARMSTRONG (Canada) said that what had happened in the Far East had also happened in Germany, and that without the parcels so efficiently handled by the International Committee of the Red Cross Canadian prisoners in Germany would not have had sufficient food. He was against reintroducing the criterion of equivalence between the ration accorded to prisoners of war and that of the "Detaining Powers own forces which are not engaged in military operations"; the above criterion had appeared in the text submitted to the Stockholm Conference by the International Committee of the Red Cross, but had not been adopted by that Conference.

Mr. BAISTROCCHI (Italy), admitted the justice of the remarks made by the Delegate of the United Kingdom, but nevertheless maintained his amendment.

The CHAIRMAN considered that Article 24 should be referred to the Drafting Committee.

The Committee agreed.

The Chairman having been called away to take part in other discussions, the First Vice-Chairman, Mr. Söderblom (Sweden), took the Chair.

#### Article 25

Mr. WILHELM (International Committee of the Red Cross) drew particular attention to the third paragraph which was, he said, a compromise text. Previous Conferences had abandoned the idea of inserting a clause requiring the Detaining Power to manufacture uniforms of the country of origin of the prisoners in order to clothe the latter; on the other hand, the prisoners could not be expected to agree to wear the uniform of the Detaining Power.

Mr. BROADLEY (United Kingdom) said that his Delegation had a slight drafting amendment to propose. At the suggestion of the CHAIRMAN, he agreed to refer it to the Drafting Committee.

#### Article 26

Mr. WILHELM (International Committee of the Red Cross) said that it had been noticed during the last war that profits from camp canteens were very high. It was therefore important to include a clause giving prisoners' representatives

the right to inspect canteen accounts and laying down that the profits were to be used for the benefit of the prisoners.

Major ARMSTRONG (Canada) thought that a provision should be inserted to the effect that mutual agreements might be concluded whereby the Government of the country of origin might supply goods, such as soap and foodstuffs, to canteens. He proposed that the words "Profits shall be kept at a minimum" be added to the second paragraph.

General DEVIJVER (Belgium) supported the first of the Canadian Delegate's proposals.

Mr. GARDNER (United Kingdom) considered that it was difficult for a country which could barely live on its own food resources and whose import were destroyed by enemy action before reaching their destination, to supply commodities for sale in canteens in addition to supplying those necessary for the maintenance of prisoners of war. He proposed that the words "if possible" should be inserted in the first paragraph, which would then read as follows:

"Canteens shall be installed in all camps, where prisoners of war may procure, if possible, foodstuffs, ordinary articles of daily use, and soap..."

Further, he thought that those parts of the Article dealing with profits should be transferred to the financial section of the Convention. He did not agree with the proposal of the Delegates of Canada and Belgium to include a clause authorizing the conclusion of special agreements for the stocking of canteens by the country of origin. That might furnish certain Governments with a pretext for not themselves providing any thing at all for the canteens. Besides, if the prices of the goods provided under such special agreements were lower than local prices, the goods sent by the country of origin would run the risk of never reaching the canteens at all. The best way of providing relief for prisoners of war was through the relief services which had been organized with such ability and efficiency by the International Committee of the Red Cross. It was true, of course, that the above system had not worked in the Far East.

General DILLON (United States of America) agreed with the United Kingdom Delegate that, as special agreements were already provided for in Article 5, there was no need to refer to them again in Article 26. He could not, however, agree to the words "if possible" being added, as they would provide an excellent excuse for not

supplying the canteens at all. Nor could he agree with the proposal to transfer the provisions relating to profits to the Articles dealing with financial questions. He was, finally, in favour of adopting the Stockholm text which conformed more closely than any other to the experience of the United States of America in the last war.

Mr. MARESCA (Italy) agreed with the United States Delegate that as special agreements were provided for in Article 5, there was no need to mention them again in Article 26. The principle of giving prisoners treatment equivalent to that accorded to troops of the Detaining Power might also, he thought, be applied to the question of canteens.

On the proposal of the CHAIRMAN, the Committee decided to refer Article 26 to the Special Committee, there being some disagreement with regard to its substance.

#### Article 27

Mr. WILHELM (International Committee of the Red Cross) pointed out that Article 27 as adopted at Stockholm was very little different from the wording of Article 13 of the 1929 Convention.

Colonel SAYERS (United Kingdom) proposed the addition of the following paragraph:

“In any camp in which women prisoners of war are accommodated, separate conveniences shall be provided for them.”

The CHAIRMAN noted that Article 27, together with the United Kingdom amendment had been adopted unanimously; the Article would therefore be transmitted to the Drafting Committee of the Conference.

#### Article 28

Mr. WILHELM (International Committee of the Red Cross) said that the new text of Article 28 consisted of the main provisions of the 1929 Convention, which had been revised and regrouped.

Mr. GARDNER (United Kingdom) made an appeal on behalf of the blind. He considered that the special protection afforded to the blind by the Stockholm text should not have been weakened as it had been by dealing with the care of both the blind and the disabled in the same sentence. The provisions with regard to the blind in the second paragraph had been added as the result

of a proposal made by the United Kingdom in 1947. That proposal was based on the tragic experiences of British prisoners of war in Germany during the last war. Thanks to the efforts of their fellow-prisoners, they had finally been gathered into one centre, and the equipment necessary for treating them had been sent from the United Kingdom. It was comparatively easy for doctors to begin to reeducate the blind without delay, helping them to cultivate their sense of touch and to make the necessary psychological adjustments; all that could be done with very little equipment. He did not wish to prevent similar action being taken on behalf of the disabled; but if the blind and the disabled were grouped together, it might be a long time before anything was done for either category. With regard to medical personnel, he hoped that, with the consent of the Chairmen of Committees I and II, he might be allowed to propose special provisions which would be circulated shortly.

Mr. MARESCA (Italy) warmly supported the United Kingdom Delegate's observations with regard to blind prisoners of war.

Major STEINBERG (Israel) also supported the observations of the Delegate of the United Kingdom with regard to the blind. He proposed that Article 28 should be referred to the Special Committee for consideration of the questions relating to medical personnel.

Mr. WILHELM (International Committee of the Red Cross) said that the reason why the Stockholm Conference had decided to lay down that special care must be given to the disabled was that the I.C.R.C. had felt, as a result of their experience in the matter, that the reeducation of cripples could be best begun at the very beginning of their captivity. He fully shared the opinion of the Delegate of the United Kingdom, and added that the International Committee of the Red Cross would be ready to study a formula which would give priority to the care of the blind.

General PARKER (United States of America) proposed that the words “or mental” be inserted after the word “contagious” at the end of the second sentence of the first paragraph. The sentence would then read “Isolation wards shall, if necessary, be set aside for cases of contagious or mental disease”.

The CHAIRMAN said that Article 28 would be referred to the Drafting Committee together with the amendments relating thereto.

**Article 29**

Mr. WILHELM (International Committee of the Red Cross) explained that the new text consisted of the 1929 wording with the addition of a clause providing for periodical radioscopic examination and the checking of the weight of each prisoner.

Captain MOUTON (Netherlands) did not think it necessary that radioscopic examination of prisoners should take place as often as the checking of their weight. He proposed that the last sentence should be amended to read:

“Such examinations shall include the checking of weight of each prisoner, and at least once a year, radioscopic examination.”

Major STEINBERG (Israel) pointed out that there were two possible types of medical examination. One of them was very thorough and need only take place once or twice a year. Prisoners should, on the other hand, be examined for infectious diseases once a month.

Colonel SAYERS (United Kingdom) was in general agreement with the Delegates of Israel and the Netherlands. Radioscopic examination involved skilled personnel and the use of complicated apparatus, both of which were in short supply in wartime. He proposed amending the last sentence to read:

“For this purpose the most efficient methods available shall be employed, for example, mass miniature radiography for the early detection of tuberculosis.”

That would fulfil the purpose of those who had drafted the Article and would at the same time leave the door open for the employment of better methods as soon as they became available.

The Committee approved the CHAIRMAN'S suggestion that the two amendments should be referred to the Drafting Committee.

*The meeting rose at 6.25 p.m.*

**SEVENTH MEETING**

*Tuesday 3 May 1949, 3.15 p.m.*

*Chairmen:* Mr. Maurice BOURQUIN (Belgium); subsequently  
Mr. Staffan SÖDERBLOM (Sweden)

**Article 30**

Mr. WILHELM (International Committee of the Red Cross) observed that captivity often resulted in a more intense religious life, which enabled prisoners to endure their lack of freedom more easily. The 1929 provisions had been supplemented by clauses relating to premises where religious services might be held and to arrangements for placing ministers of the various religions at the disposal of prisoners. The Detaining Power was required to ensure their equitable allocation among the various camps, and their exemption from the obligation to work.

It had also been laid down that religious organizations should be allowed to visit prisoners, and that ministers of religion of the Detaining Power should be allowed to minister to the religious needs of prisoners of war.

He would like to draw attention to the expression: “Ministers of religion, who are prisoners of war” which was used in the 1929 Convention. That expression had given rise to difficulties. It did not apply to the protected personnel referred to in the Wounded and Sick Convention, but to persons who were ministers of religion in civilian life, but had not been enrolled in medical units or other units of protected personnel. The International Committee of the Red Cross, in its pamphlet “Remarks and Proposals”, had drawn up a form of words which would, it was hoped, prevent any confusion. It would be submitted to the Committee in due course.

Msgr. COMTE (Holy See) reminded the meeting that in March 1947 the International Committee of the Red Cross had called together various religious organizations in order to discuss the

points in the Prisoners of War Convention relating to religious questions; a preliminary draft had then been prepared. Later, at Stockholm, further discussions had taken place between the representatives of various organizations, including the International Committee of the Red Cross, the Holy See, the World Council of Churches and the Young Men's Christian Association, and the text had been drawn up which was now before the Committee.

With regard to the second and third sentences of the second paragraph, he thought it would be wiser to revert to the wording proposed by the International Committee of the Red Cross in "Remarks and Proposals" (*see Annex No. III*), with the addition, however, of the words "for the exercise of their ministry"; for it should not be possible for ministers of religion who were prisoners of war, to move freely from one camp to another for any other reason.

With regard to exemption from work, the religious organizations had never claimed that ministers of religion should do no work at all, but only that they should be exempted from manual labour in order to allow them to discharge their spiritual duties.

He considered that the last sentence of the second paragraph was too long, and that its meaning would be clearer if it were divided into two sentences.

He was strongly in favour of retaining the words "on matters concerning their ministry" in the third paragraph. No special privileges were asked for; but liberty to correspond with the ecclesiastical authorities was absolutely essential, as the exercise of a religious ministry sometimes required urgent authorizations of the first importance which had to be given by the local religious authorities.

With regard to the fifth paragraph, he considered that the reports mentioned were those of the Detaining Power and of the Protecting Power. Certain apprehensions on the subject had been expressed by the International Committee of the Red Cross in their "Remarks and Proposals"; but as the Protecting Power had to supervise the application of the Conventions, it seemed wiser to retain this paragraph as it stood in order that religious assistance should be mentioned in the general reports rather than in special reports on particular cases.

He paid a warm tribute to the work of the International Committee of the Red Cross which had always, when carrying out its humanitarian tasks, endeavoured to facilitate the work of chaplains and of ministers of religion who were prisoners of war. He proposed the adoption of the Article with the amendments he had suggested.

Mr. MOLL (Venezuela) agreed with the observations of the Delegate of the Holy See. He had been instructed by his Government to support the terms of Article 30 as they stood. He therefore proposed the adoption of the Article, and of any amendment providing increased religious facilities for prisoners of war, which might subsequently be submitted. During the last war there had been no prisoner of war camps in Venezuela—only camps for civilian internees. His Government was anxious to encourage the cooperation which had been spontaneously established at that time between the Delegate of the International Committee of the Red Cross, on the one hand, and the Apostolic Nunciature and the Presbyterian Church, on the other, which had appointed Venezuelan ministers of religion, Catholic and Protestant respectively, to meet the religious needs of the internees.

Mr. GARDNER (United Kingdom) could not approve the new text of Article 30. He did not think the question of the provision of religious assistance to prisoners by qualified ministers could be dealt with effectively in an Article which purported to deal only with the question of ministers of religion who were prisoners of war and whose number was, in any case, small.

He drew attention to the amendments to Article 30 submitted by the Delegation of the United Kingdom (*see Annex No. 32*). Those amendments were intended to make clear and improve the position of doctors and other medical personnel and chaplains who fell into enemy hands. They were to be discussed by Committee I at one of their next meetings, and he hoped that Committee II would avoid meeting at the same time, so that its members would have an opportunity of listening to the discussion in Committee I.

He thought the fourth paragraph should be discussed in connection with Article 115.

With regard to the last paragraph, he was unaware that Detaining Powers made official reports to Protecting Powers. He had assumed that the reports were prepared by the Protecting Power for the government in whose service the prisoners had been up to the time they were captured. Such reports would be fuller and more useful if no particular instructions were laid down, and if the Protecting Power was left completely free to report on anything that came to its notice.

He proposed that the first sentence of Article 30 be adopted, and the discussion on the rest of the Article deferred until some conclusion had been reached by Committee I with regard to medical personnel and chaplains who fell into the hands of the enemy.

A discussion took place regarding the proposal of the Delegate of the United Kingdom to defer

further consideration of Article 30 until the decisions reached in Committees I and III on similar points were known.

The proposal to adjourn the discussion was supported by Major ARMSTRONG (Canada) and Msgr. COMTE (Holy See), but was opposed by General PARKER (United States of America) and Mr. MOLL (Venezuela).

Mr. BAISTROCCHI (Italy) and Mr. BELLAN (France) proposed that Article 30 be referred to the Joint Committee.

The Chairman being called away to another Committee, Mr. Söderblom (Sweden), First Vice-Chairman, took the Chair.

Mr. ZUTTER (Switzerland), General DEVIJVER (Belgium) and the Expert of the International Committee of the Red Cross proposed that the discussion on Article 30 should be continued.

Mr. GARDNER (United Kingdom) considered that Articles 30 and 41 both dealt with the same category of persons, namely, with ministers of religion who were prisoners of war, and not with chaplains. The two Articles should therefore be combined.

He thought it unlikely that a Detaining Power would agree to grant all facilities to prisoners of war who were ministers of religion to move about freely from one camp to another, as provided in the third sentence of the second paragraph. His own Government would certainly not accept that provision. There was a contradiction between the provision in the second paragraph of Article 30 to the effect that ministers of religion who were prisoners of war should be allowed to minister freely, and the provision in the fourth paragraph of Article 41 to the effect that they should be allowed to minister under the authority of the Detaining Power. Such provisions were satisfactory neither from the point of view of the ministers of religion, nor from that of the Detaining Power. The whole matter should be dealt with in the part of the Convention which provided that the Detaining Power could restrict the movements of prisoners; ministers of religion would then be listed among the exceptions. The provisions of the Convention on the point were conflicting and overlapped; that would lead to confusion and prevent them from being correctly applied. Further, to require a Detaining Power to ensure that religious assistance was given by a minister of the same denomination, without making it quite clear that the minister might be refused the necessary authority for security reasons if the security censor thought fit, was to draft

a Convention without regard to the realities which existed in every country.

Again, the next paragraph could be interpreted as giving absolute freedom of correspondence to ministers of religion.

Article 30 as a whole represented an attempt to deal with a whole series of subjects which did not properly fall within the scope of the activities of a minister of religion. He was in sympathy with the underlying principles of the Article; but, in order to make its provisions effective, they would have to be coordinated with a number of other provisions, not only in the Prisoners of War Convention but also in the Wounded and Sick Convention.

Mr. BELLAN (France) drew attention to the fact that the translation into English of the French expression "Toute latitude" was different each time—in the 1929 Convention, in the text submitted to the Stockholm Conference and in the text approved by the latter. It would perhaps be as well to ask the Representative of the International Committee of the Red Cross whether any difficulties had been experienced during the last war in connection with the interpretation of the expression "Toute latitude" in the French text. He thought that the difficulty with regard to the free movement of ministers of religion from one camp to another, to which objections had been made on grounds of security, might be met by adopting the text proposed by the International Committee of the Red Cross in "Remarks and Proposals" (see *Annex No. III*) with the addition of the phrase ("for the exercise of their ministry") which had been suggested by the Delegate of the Holy See.

With regard to the objection raised to the exemption from censorship regulations, he pointed out that that exemption only applied to correspondence with the ecclesiastical authorities in the countries where the prisoners were interned. He considered that Article 30 as adopted at Stockholm provided a basis for discussion, and that agreement on the substance of the Article might be reached fairly rapidly, even if certain drafting points had to be cleared up later.

Mr. WILHELM (International Committee of the Red Cross) said that experience gained in the last war had shown that in the Far East considerable freedom had been accorded for the performance of religious duties. In Europe, on the other hand, difficulties had been met with for the following reasons. The text of the 1929 Convention stipulated that the routine and police regulations prescribed by the military authorities must be complied with, and that provision had been given various interpretations. Again, difficulties

had arisen because of the absence of ministers of religion in certain camps. The I.C.R.C. had often been obliged to intervene to obtain a better distribution of ministers throughout the camps. Furthermore, prisoners of war had sometimes been required to work on Sundays; that was why it was laid down in the provisions dealing with working conditions that one day of rest must be allowed each week. Another difficulty was due to the fact that some religions, particularly in Asia and the Middle East, required the use of certain religious objects for their services. He thought that the existing wording of Article 30 which provided among other things that measures of order prescribed by the military authorities were to be complied with, could be considered to furnish all the guarantees of security which could be legitimately demanded by a Power at war.

Msgr. COMTE (Holy See) said that he was in agreement with the proposal of the United Kingdom Delegate to revise the wording of Article 30 with a view to making it clearer; but his Delegation was anxious that certain points of principle should be maintained, more particularly those concerning the provision of premises for religious services, freedom of correspondence (under censorship supervision) on religious matters and, further, the question of allowing international religious organizations to send duly accredited representatives to the Detaining Power.

The CHAIRMAN declared the first reading of Article 30 closed.

The Committee decided to refer Article 30 to the Special Committee set up for the purpose.

*The meeting rose at 6.10 p.m.*

## EIGHTH MEETING

*Wednesday 4 May 1949, 3.15 p.m.*

*Chairman:* Mr. Maurice BOURQUIN (Belgium)

### Article 31

Mr. WILHELM (International Committee of the Red Cross) said that Article 31 elaborated the provisions of Article 17 of the 1929 Convention. It had been considered necessary to prevent the Detaining Power from interfering with the freedom of action of prisoners of war by forcing them to take part in recreational or intellectual activities which would, in reality, only be forms of propaganda. Article 31 obliged the Detaining Power to take concrete action and, in particular, to provide adequate premises.

Mr. BELLAN (France) proposed that when allocating open spaces for physical exercise, the number of the prisoners of war should be taken into account. This could be done by inserting the word "Sufficient" before the words "Open spaces" in the last sentence of the Article.

Mr. GARDNER (United Kingdom) agreed in principle with the proposal made by the French Delegation. He also proposed that the first

paragraph should be amended by omitting everything after the words "sports and games amongst prisoners", as he thought that the words "and shall take the measures necessary to ensure the exercise thereof" gave the Detaining Power the right to compel prisoners of war to participate in any form of recreational or intellectual activity. He considered that the proper place for the provision regarding "adequate premises" was in Article 23.

The Committee decided to refer Article 31 to the Drafting Committee for consideration of the few modifications suggested.

### Article 32

Mr. WILHELM (International Committee of the Red Cross) said that experience had shown that it was advisable to define more clearly, and to lay stress on, the responsibility of the officer in charge of the camp. The officer in question should be a member of the regular armed forces of the Detaining Power.

The second and third paragraphs of Article 32 amplified the provisions of the 1929 Convention with regard to the saluting of officers of the Detaining Power by prisoners of war, a matter which had given rise to some difficulties.

Major HIGHER (New Zealand) proposed the following three amendments:

(1) In the first paragraph, insert the word "immediate" between the words "put under the" and the word "authority".

(2) In the first paragraph, delete the words "under the direction of his government". On that point the New Zealand Delegation was in agreement with the views expressed in the "Remarks and Proposals" submitted by the International Committee of the Red Cross and in an amendment submitted by the United Kingdom Delegation.

(3) In order to avoid any misunderstanding with regard to the salute to be given by prisoners of war to officers of the Detaining Power, delete the second paragraph and substitute the following text:

"Prisoners of war, other than officers, shall, in the manner prescribed for their own forces, salute all officers of the Detaining Power".

Mr. BELLAN (France) remarked that the provisions of the Convention should not only be known to the camp guard, as stated in the first paragraph, but also to all personnel under the orders of the officer commanding the camp.

Major STEINBERG (Israel) considered that the words "and also of the Geneva Convention for the Relief of the Wounded and Sick in Armed Forces in the Field" should be inserted after the words "a copy of the present Convention".

Wing Commander DAVIS (Australia) suggested the addition of the word "commissioned" after the word "responsible" in the first sentence of the first paragraph of the English text. He considered that addition necessary, as during the last war non-commissioned officers had been put in charge of prisoner of war camps by the Japanese authorities.

Miss BECKETT (United Kingdom) said that the United Kingdom Delegation had tabled an amendment proposing the omission of the words "under the direction of his government" which might tend to reduce the force of the provision and diminish the responsibility of the commander of the camp.

Mr. BAISTROCCHI (Italy) agreed with the proposal put forward by the Israeli Delegation, but not

with that of the United Kingdom Delegation. He thought the words "under the direction of his government" enhanced the idea of responsibility.

General DILLON (United States of America) entirely agreed with the Italian Delegate. He considered that the words "under the direction of his government" were essential. They had been introduced for the express purpose of placing responsibility upon the Governments which had signed the Convention. He proposed, therefore, that the Stockholm text be retained. He could not agree with the Australian proposal to insert the word "commissioned" in the first paragraph. If that proposal were accepted, the word "commissioned" would have to be introduced wherever the word "officer" occurred in the Convention.

Mr. MOLL (Venezuela) was in favour of retaining the words "under the direction of his government". It was essential to insist on the responsibility of the Governments; for it had frequently happened in the last war that when complaints were addressed to Governments, the latter merely threw the responsibility on the official in charge of the camp.

Mr. GARDNER (United Kingdom) observed that all delegations appeared to agree on the essential substance of the Article. The only differences of opinion remaining concerned drafting points, which should be referred to the Drafting Committee for consideration.

In regard to the words "under the direction of his government", his Delegation would like to remind the meeting that the second sentence of the first paragraph of Article 11 prevented any Government from evading its responsibility.

His Delegation further thought that the word "officer" by itself would be sufficient in countries other than those of the Far East. His Delegation would be glad to have an opportunity of discussing the point with Delegates who had experience of the Far East, and could say whether the word needed to be further defined.

Major ARMSTRONG (Canada) noted that all delegations agreed in principle that there should be someone responsible for everything happening in a camp.

The Committee referred Article 32, with the comments thereon, to the Drafting Committee.

### Article 33

Mr. WILHELM (International Committee of the Red Cross) pointed out that the text of Article 33 was the same as that of Article 19 of the 1929

Convention, except for the addition of a provision permitting prisoners of war to wear badges of nationality.

Article 33 was adopted unanimously.

#### Article 34

Mr. WILHELM (International Committee of the Red Cross) said that Article 34 brought together two provisions which figured in different places in the 1929 Convention.

Mr. MAYATEPEK (Turkey) observed that it would not always be possible for all the Powers who were parties to the Convention to provide translations of its text into all languages, particularly into those which were little used.

The Turkish Delegation intended to submit an amendment proposing the inclusion of the following provision:

“At the outset of hostilities, the Parties to the conflict shall be entitled to request the adverse Party to supply, for the use of prisoners of war camps, a sufficient number of translations into their own language of the text of this Convention and its annexes.”

Mr. GARDNER (United Kingdom) suggested two amendments to Article 34, namely:

(1) That the last paragraph of Article 34 should be added to Article 15.

(2) That it should be sufficient for the contents of special agreements, and not the agreements themselves, to be posted up in the camps. If the Committee so desired, a provision might be included to the effect that the terms of the notice to be posted up must be approved by the Protecting Power.

Mr. BIJLEVELD (Netherlands) proposed that the words “preferably in their mother tongue” should be added to the first sentence of the second paragraph.

The CHAIRMAN proposed to refer Article 34 and the amendments to it, to the Drafting Committee.

#### Article 35

Mr. WILHELM (International Committee of the Red Cross) noted that Article 35 could well be linked with Article III which provided for an official inquiry in cases where a prisoner of war had been killed or injured by a sentry.

Miss GUTTERIDGE (United Kingdom) thought that Article III, dealing with prisoners of war who were killed or injured in special circumstances, should immediately follow Article 35. It was out of place in Section III the heading of which was “Death of Prisoners of War”.

The CHAIRMAN thought that Miss Gutteridge's suggestion might be adopted. Incidentally, Committee I had announced the despatch of a letter proposing the appointment of a Committee of Experts to study the whole question of the death of prisoners of war. It would perhaps be better to await the receipt of the letter before coming to a decision on the point raised by the Delegation of the United Kingdom.

The CHAIRMAN's proposal was adopted unanimously.

#### Articles 110 and 112

Mr. GARDNER (United Kingdom) informed the meeting that Committee I had deferred consideration of Article 13 of the Wounded and Sick Convention, relating to deaths and burials, with the idea that the Article might be considered by a small committee of experts in conjunction with the corresponding Articles of the Maritime Warfare Convention and Articles 110 and 112 of the Prisoners of War Convention.

General DILLON (United States of America) thought that it would be as well to wait for a formal official invitation from Committee I. Should such an invitation be forthcoming, their Committee would have to consider whether it was really necessary to set up such a large number of sub-committees. Although these small committees were effective in many cases, it must not be forgotten that they did not actually express the views of all the delegations represented on Committee II, but only those of some of the delegates who were members of the sub-committees in question. Besides, the Articles in question had not yet been discussed by the Committee; it was not known, therefore, whether they would have to be referred to a subcommittee or to the Coordination Committee which had, in fact, been set up to carry out just the work which the Delegation of the United Kingdom wished to entrust to a joint committee of experts of Committees I and II.

The CHAIRMAN proposed that they should await the receipt of the letter from the Chairman of Committee I. The Delegation of the United Kingdom agreed to the above proposal.

**Annex I**

Mr. GARDNER (United Kingdom) suggested that Annex I of the Convention, which was a technical document, should be referred to a committee of doctors.

General PARKER (United States of America) welcomed the suggestion. It would speed up the work.

The CHAIRMAN noted that all the delegations were in favour of forming the proposed committee, which could be set up at the next meeting.

**Medical Personnel and Chaplains**

Mr. GARDNER (United Kingdom) made a proposal on a question of procedure relating to medical personnel and chaplains who fell into the hands of the enemy. His Delegation had submitted amendments in that connection which concerned both the Convention, while the Swiss Delegation had put forward yet another proposal, namely to transfer the whole of Chapter IV of the Wounded and Sick Convention to the Prisoners of War Convention. The United Kingdom Delegation suggested that the above amendments should be discussed by Committee I at a time when Committee II was not sitting, in order that the members of the latter Committee should be able to be present at the discussions.

Major STEINBERG (Israel) proposed that in view of the importance of the above amendments a joint meeting of Committees I and II should be held. Members of both Committees could then take part in the discussion.

Mr. GARDNER (United Kingdom) pointed out that all delegations were entitled to be represented on Committee I, and that there was nothing to prevent changes in the representation of delegations. That being so, there seemed to be little point in having a joint meeting, and he hoped the Delegation of Israel would withdraw its proposal.

Major STEINBERG (Israel) withdrew his proposal.

The CHAIRMAN suggested that there should be no meeting of Committee II on the day the question was being discussed by Committee I.

The above proposal was agreed to unanimously.

**Article 36**

Mr. WILHELM (International Committee of the Red Cross) said that the only change made in the text of the 1929 Convention related to the obligation imposed on the Detaining Power to recognize any promotions in rank accorded to prisoners of war while in captivity. He drew the attention of the Committee to the expression "Power on which these prisoners depend" which was used here for the first time in the Convention, and which seemed to cover the largest possible number of cases. The expression "Power of origin" did not cover the case of prisoners of war who were not nationals of the state in whose armed forces they had been serving.

Miss GUTTERIDGE (United Kingdom) had two observations to submit with regard to Article 36:

(1) The second paragraph of the text proposed by the Government Experts, which had been omitted at Stockholm, should be reinserted. This would involve asking the International Committee of the Red Cross to compile, in peacetime, a list of the titles and ranks in use in the armed forces, and to circulate the list on the outbreak of hostilities. Any new titles and ranks introduced subsequently would also be notified to all concerned by the ICRC.

(2) The words "the Power in whose service the prisoner of war was at the time of his capture" should be substituted for the words "the Power on which these prisoners depend" not only in Article 36 but throughout the Convention.

Mr. BAISTROCCHI (Italy) was in entire agreement with the proposals put forward by the Delegation of the United Kingdom.

Mr. SÖDERBLOM (Sweden) also supported the first proposal of the United Kingdom Delegation, but wondered whether the task in question should not rather be entrusted to the Swiss Government, with which the Conventions and their ratifications were to be deposited.

General DILLON (United States of America) considered that if the United Kingdom Delegation's first proposal were adopted, the Drafting Committee should make the wording more imperative.

The CHAIRMAN proposed to refer Article 36 to the Drafting Committee.

*The meeting rose at 5 p.m.*

## NINTH MEETING

Thursday 5 May 1949, 3 p.m.

Chairman: Mr. Maurice BOURQUIN (Belgium)

### Appointment of a Committee of Medical Experts to deal with Annex I of the Draft Convention

On the proposal of the CHAIRMAN, it was decided that the Committee of Medical Experts should be composed of medical experts from all delegations. Colonel Crawford (Canada), General Jame (France) and Colonel Sayers (United Kingdom) were named as members of the Committee.

### Election of a Rapporteur

On the proposal of General LELLO (Portugal), seconded by Mr. COHN (Denmark), Mr. Söderblom (Sweden), Vice-Chairman of the Committee, was elected Rapporteur, in place of Mr. Pesmazoglou who had been recalled to Athens.

### Article 37

Mr. WILHELM (International Committee of the Red Cross) said that the rule laid down in the 1929 Convention that officer prisoners of war should buy their own food and clothing, had proved impracticable, and had been omitted.

Miss BECKETT (United Kingdom) drew the attention of the Committee to the amendment submitted by her Delegation proposing the omission, with a view to its inclusion in Article 41, of the last sentence of the second paragraph, which provided that orderlies should not be required to perform any other work.

No observations having been submitted with regard to the amendment, the CHAIRMAN remarked that the Committee's silence with regard to an amendment did not necessarily indicate approval.

The Committee agreed to adhere in general to the procedure followed hitherto, that is to say, to discuss the Draft Convention Article by Article at the first reading, and to refer :

- (1) Articles adopted unanimously to the Drafting Committee of the Conference ;
- (2) Articles on which there were minor differences of opinion, or differences as to the wording, to the Drafting Committee of Committee II; and
- (3) Articles on which there were differences with regard to the substance, or any major differences of opinion, to the Special Committee of Committee II.

The two latter Committees would prepare new texts and submit them to Committee II for a final decision on the second reading.

It was decided to refer Article 37, together with the United Kingdom amendment, to the Drafting Committee of Committee II.

### Article 37A (new)

Miss BECKETT (United Kingdom) read a United Kingdom amendment proposing the adoption of a new Article 37A, worded as follows:

"Other ranks and prisoners of equivalent status shall be treated with the regard due to their rank and age.

"Supervision of the mess by the prisoners themselves shall be facilitated in every way."

In reply to a question by Captain MOUTON (Netherlands), Miss BECKETT (United Kingdom) said that it was intended that personnel of the Merchant Marine should be covered by the new Article.

General DILLON (United States of America) thought the matter contained in the new Article was adequately covered in Article 14.

Mr. GARDNER (United Kingdom) said that it had been necessary to legislate for differences due to rank in connection with the treatment of officers. Why should it not be equally necessary to legislate for such differences in the case of those who were not officers?

In reply to a question by General DEVIJVER (Belgium), Mr. GARDNER (United Kingdom) explained that Article 37 dealt with officers and prisoners of war of equivalent status, such as war correspondents. On the other hand, Article 37 did not deal with anyone who did not rank as an officer, with the exception of orderlies. The purpose of Article 37A was to deal with the case of non-commissioned officers and those of equivalent status.

The Committee decided to refer the proposed text of Article 37A to the Drafting Committee of Committee II.

### Article 38

Mr. WILHELM (International Committee of the Red Cross) explained that the title of Chapter VII ("Transfer of Prisoners of War after their arrival in Camp") had been chosen by the Conference of Government Experts so as to avoid any confusion with the Articles on evacuation. Two principles were embodied in Article 38: according to the first, transfers were to be effected in conditions similar to those obtaining for the forces of the Detaining Power. The second principle was that the Detaining Power must deal humanely with prisoners of war and supply them during transfer with the necessary food, clothing and medical attention.

Major ARMSTRONG (Canada) drew attention to the amendment submitted by his Delegation, which proposed that the first sentence of the second paragraph should be deleted and the following sentence substituted:

"The Detaining Power shall supply prisoners of war during transfer with food and water sufficient in quantity, quality and variety to keep the prisoner of war in good health, and with the necessary clothing and medical attention."

Further, he considered that Article 38 should contain some reference to Article 24. The words "in accordance with Article 24" could, for instance, be inserted immediately after the word "variety" in the Canadian amendment.

Mr. BAISTROCCHI (Italy), recalled the experience of the last war in connection with the transfer of prisoners from Britain and North Africa to the United States of America, and welcomed the application to Article 38 of the principle of according prisoners similar conditions to those obtaining for the forces of the Detaining Power. He also recalled the tragic hunger march of the American troops at Bataan. He paid a tribute to the United States of America, which had gone far beyond the provisions

of international Conventions in respecting the human dignity of their prisoners of war. That respect had been conspicuously lacking in Nazi Germany.

He considered that the transfer of prisoners of war should be avoided where it was not absolutely necessary, and reserved the right to speak again later when the question of the difficulties and cost of repatriation came up for consideration. He drew the attention of the Committee to the amendment contained in the Memorandum by the Italian Government, which read as follows: "The Italian Delegation, in reference to the second reserve which it expressed at the XVIIth International Conference of the Red Cross relative to Article 38, suggests that a paragraph to be worded as follows, might be inserted at the beginning of the Article:

"The Detaining Power, when deciding to transfer prisoners, shall, as far as possible, take into account the interests of the prisoners themselves, more especially with a view to avoiding any increase in the difficulties of their repatriation."

Mr. BELAN (France) supported the Italian amendment, but proposed that the words "as far as possible" should be omitted. Further, he considered that the word "transfer" might give rise to misinterpretation, and should be amplified by the addition of the words "from one camp to another". Many of the members present knew what removals from one camp to another meant, and remembered forced marches in terrible circumstances, during which stragglers had been shot down in ditches. The door should not be left open to an unscrupulous government to be able to say that its prisoners were not being "transferred" under the terms of the Convention, but simply being "removed from one camp to another".

General DEVIJVER (Belgium) supported the French Delegate's observations.

Major HIGHET (New Zealand) said that his Delegation had tabled an amendment proposing that the first paragraph should be deleted and the following text substituted:

"The transfer of prisoners of war shall always be effected humanely and in conditions not less favourable than for the forces of the Detaining Power when they are transferred. Particular regard shall be given to the welfare and comfort of prisoners of war unaccustomed to prevailing climatic conditions and no prisoner of war shall be subjected to any undue physical strain having regard to his state of health".

He thought that the case of transfers from camp to camp over great distances (for instance, from a camp in Egypt to a camp in New Zealand), should also be covered.

Mr. GARDNER (United Kingdom) submitted the three following amendments:

- (1) First and second paragraphs: Delete the full stop at the end of the first paragraph and the whole of the second paragraph up to but not including the word "sufficient", and substitute the word "including".
- (2) Second paragraph: Insert the word "shelter" immediately after the words "necessary clothing".
- (3) Second paragraph: Delete the words "especially in case of transport by sea or by air".

The first was a drafting amendment. The second was designed to cover cases which had occurred in Europe and the Far East during the war, where no shelter was provided during overnight halts. The third amendment was designed to strengthen the Article. It had been proved that during the Second World War over ten thousand prisoners lost their lives while being transferred by sea; but a very much larger number lost their lives while being transferred by land. He referred not only to the Bataan march, but also to a march in Borneo where some four thousand prisoners had started out, and only six or seven survived. There were also the forced marches carried out by prisoners in Central Europe towards the end of the war; it was certainly not due to any efforts by the Detaining Power that the number of deaths during those marches was comparatively small. The magnificent and courageous action taken by the International Committee of the Red Cross in its attempts to mitigate the hardships of those marches must be mentioned here. The words "especially in case of transport by sea or by air", which the United Kingdom Delegation proposed to omit, threw a wrong emphasis on methods of transport which were not the only ones giving rise to danger.

Mr. BAISTROCCHI (Italy) was impressed by the observations submitted by the Delegates of France and Belgium, and agreed to the omission of the words "as far as possible" from the Italian amendment. He was also in agreement with the amendments submitted by the Delegation of the United Kingdom.

General DILLON (United States of America) said that it was important to indicate, not only in the Article itself, but also in the Chapter heading, the fact that it dealt with transfers from camp to camp. He supported the Canadian and Italian amendments. The proposal of the Delegate of the United Kingdom to omit the words "especially in case of transport by sea or by air" would not make for any better transfer by land, whereas

lack of safety measures in transfers by sea or by air might result in accidents.

Mr. GARDNER (United Kingdom) replied that safety measures by land were just as necessary as safety measures at sea or in the air. Prisoners transferred by land might be subject, for example, to low-flying air attack, if the Detaining Power did not take the necessary protective measures. He thought that the point ought to be argued out in the Special Committee of Committee II.

Mr. WILHELM (International Committee of the Red Cross) could not agree with the United Kingdom Delegate's observations on that point, which was one to which the I.C.R.C. attached great importance. When prisoners of war were concentrated in considerable numbers on board ship, the danger was much greater than when they were marching along roads where they could be spaced out at intervals over great distances. At the end of the war, in Germany, when air attacks were violent and intense, they actually caused only very few casualties among prisoners of war who were being transferred. The I.C.R.C. had proposed during the last war that ships transporting prisoners of war should have special markings, but it had been objected that such provisions were liable to abuse. The I.C.R.C. had then proposed in "Remarks and Proposals" that the following safety measures should be adopted when transferring prisoners by sea:

"...the transport vessels shall in addition to the measures prescribed in Article 38, second paragraph, be equipped with all the safety devices in general use, in particular with an adequate number of lifeboats and lifebelts, and shall, whenever possible, be escorted by craft to assist the prisoners in case of shipwreck."

The I.C.R.C. did not, however, consider those measures to be sufficient, and also proposed that ships engaged solely in the transport of prisoners of war should be respected in every way possible by the belligerents. It was certainly difficult for Detaining Powers to allocate shipping for the sole purpose of transporting prisoners. In order to solve that difficulty, the I.C.R.C. suggested that neutral ships should be placed at the disposal of the belligerents for the above purpose. That would allow the Protecting Powers, the I.C.R.C. or any other neutral organization to do everything possible to ensure that transfers of prisoners took place in conditions which would preclude a repetition of the tragic events of the last war.

Mr. GARDNER (United Kingdom) considered that the proposal of the I.C.R.C., if accepted, would mean that transferred prisoners of war

would have the benefit of greater safety precautions than the belligerent's own troops. He hoped that principles, which had been examined in the past and, as far as his country was concerned, found completely impracticable, would not now be brought up again before the Committee.

On the invitation of the CHAIRMAN, Mr. WILHELM (International Committee of the Red Cross) explained that he had not intended to submit his proposal in the form of an amendment, but only to draw the attention of delegates to the serious character of the problem. The issues involved were indeed important, and it might perhaps be necessary to reflect upon them before the second reading.

On the proposal of the CHAIRMAN, the Committee decided to refer Article 38 to the Drafting Committee of Committee II.

### Article 39

Mr. WILHELM (International Committee of the Red Cross) explained that Article 39 reproduced a provision of the 1929 Convention, which had, however, to be modified and expanded in order to take into account certain experiences in Germany towards the end of the war.

The provisions of Article 39 were adopted unanimously.

### Article 40

Mr. WILHELM (International Committee of the Red Cross) said that Article 40 repeated the provisions of the 1929 Convention, supplementing them by the addition of stipulations regarding notice of transfer. Prisoners of war had all too often been informed of their transfer at the last moment, and had not had time to pack their belongings or advise their relatives and friends of their transfer.

Major HIGHET (New Zealand) drew attention to an amendment circulated by his Delegations. It proposed :

- (1) That in the second paragraph all the words after "the conditions of removal so require" should be deleted and the following text substituted: "but shall in no case be reduced to less than twenty-five kilograms per head. The Detaining Power shall provide all necessary facilities to ensure the immediate

transfer of this minimum. The Detaining Power shall, however, permit each prisoner of war to retain in his possession such personal effects as he desires and which he can reasonably carry."

- (2) That the words "if necessary" in the third paragraph be omitted.
- (3) That all the words in the third paragraph after "ensure the transport" should be deleted and the following substituted: "in safety of the prisoners' community kit and of all personal effects not retained in the prisoners' immediate possession."

The present wording of the second paragraph of Article 40 might be interpreted as meaning that the Detaining Power could force a prisoner to carry a weight of twenty-five kilograms; if such a weight were properly distributed, in the form of a bayonet, a rifle, a pack, etc., that would be possible, but the prisoner could not, for instance, carry a suitcase of that weight over a distance of some thirty or forty miles.

The New Zealand Delegation's amendment to the third paragraph was designed to place an obligation of the Detaining Power to see that the minimum weight which the prisoner was allowed to take with him was in fact transferred.

Miss BECKETT (United Kingdom) submitted two amendments ;

- (1) In the first paragraph: insert the words "if possible" before "inform their next of kin".
- (2) In the second paragraph: delete the words "to what each prisoner can reasonably carry".

With regard to the first amendment, it had sometimes happened that prisoners had to be transferred suddenly because of an emergency, such as floods or fire. There would be little hardship if they were unable to notify their next of kin, because the third paragraph of the Article provided that mail and parcels were to be forwarded to the new camp, and Article 59 provided that a prisoner was to be given a card to send to his family indicating his new address.

The second amendment proposed the omission of a phrase that might be somewhat dangerous, as prisoners, always anxious to take their few possessions with them, might overrate their own strength.

On the proposal of the CHAIRMAN, the Committee agreed to refer Article 40 to the Drafting Committee.

**Article 41**

Mr. WILHELM (International Committee of the Red Cross) said that the provisions of the Hague Conventions with regard to the work of prisoners of war had been designed to occupy and distract the prisoner; but to-day, the work of prisoners had taken on a very different aspect. The importance of the question was shown by the fact that it had, for the first time, been considered necessary for a representative of the International Labour Organization to be present at a Conference dealing with the treatment of prisoners of war. Article 14 provided that the Detaining Power was obliged to maintain prisoners free of charge. Article 41 gave that Power the right to employ prisoners of war and to pay them very little. Experience had shown the necessity of providing under what conditions the Detaining Power might employ prisoners.

The last paragraph was designed to deal, not with protected personnel, but with prisoners of war who were physicians, medical orderlies, or ministers of religion, but were not members of a medical or chaplains' corps. That paragraph had been held to conflict with Article 30; but Article 30 provided for the facilities to be accorded to prisoners of war who were ministers of religion, whereas the provisions of Article 41 gave the Detaining Power the right to compel prisoners who were ministers of religion or doctors to exercise their spiritual or medical functions for the benefit of their comrades.

Mr. MARESCA (Italy) drew attention to the amendment proposed in the Memorandum by the Italian Government. It read as follows: "With a view to increasing the safeguards relative to the physical aptitude of prisoners of war whose labour is to be utilized, it would seem desirable to word the first paragraph of Article 41 as follows:

The Detaining Power may utilize the labour of able-bodied prisoners of war, with the exception of officers and persons of equivalent status, taking into account their age, their sex, their rank and their physical aptitude, which must be previously determined by medical examination, with a view particularly to maintaining them in a good state of physical and mental health."

Article 46 did not preclude the addition of this amendment, which would be most useful.

Mr. GARDNER (United Kingdom) submitted the following amendment:

(1) Delete the first paragraph and substitute:

"The Detaining Power may employ prisoners of war only on work for which they are physically fit, account being taken

of their age, sex and physical capacity, and with a view particularly to maintaining them in a good state of physical and mental health."

(2) Delete the third paragraph and substitute:

"Except as provided in the next paragraph, officers and persons of equivalent status may not be compelled to work. If they request suitable work, it shall be found for them, so far as possible."

(3) In the fourth paragraph, delete the words:

"physicians, medical orderlies or chaplains" and substitute "qualified as physicians, surgeons, dentists, nurses, medical orderlies or chaplains".

(4) Add the following new paragraph:

"Those prisoners of war referred to in the preceding paragraph, and also officers, orderlies, camp leaders and their recognized assistants shall be exempted from being required to work under the provisions of this Article."

This addition involves consequential amendments to Articles 30 (2), 37(2) and 71(I).

Mr. BELLAN (France) supported the Italian amendment with regard to prior medical examination. As far as the second paragraph of the Article was concerned, he proposed that the word "employed" be substituted for the word "required". In many camps non-commissioned officers had been required to work, and had refused because the Convention provided that they could only be required to do supervisory work. All kinds of difficulties had arisen as a result, and, although they were prohibited, reprisal camps had been set up. With regard to the fourth paragraph, he considered that point (4) of the United Kingdom amendment, as well as the other amendments which had been submitted, should be accepted, because they clarified the text of the Article.

General DILLON (United States of America) mentioned, in connection with the last paragraph of Article 41, that he had been a member of the Drafting Committee at the Stockholm Conference, and that the last meeting of that Committee had preceded the last plenary meeting. The Drafting Committee was thus unaware of what decision would be taken regarding the category of persons who had been considered as protected personnel under the 1929 Convention. He had understood that the Drafting Committee would adapt that paragraph in accordance with the final decision of the Plenary Assembly. That having not been

the case, the Delegation of the United States of America had immediately tabled an amendment substituting the word "detained" for the words "prisoners who are". (No change involved in the French text). He thought that this amendment would eliminate any confusion between Article 41 and 30.

After further observations by Mr. GARDNER (United Kingdom), Major ARMSTRONG (Canada), Mr. BELLAN (France) and Msgr. COMTE (Holy See), it was decided to refer the Article to the Drafting Committee.

*The meeting rose at 6. p.m.*

## TENTH MEETING

*Monday 9 May 1949, 3.15 p.m.*

*Chairman : Mr. Maurice BOURQUIN (Belgium)*

### Article 42

Mr. WILHELM (International Committee of the Red Cross) said that the generally accepted principle that prisoners of war should not be employed on work directly connected with military operations, no longer corresponded to conditions of modern warfare. In the text submitted at Stockholm, an attempt had been made to enumerate the categories of work on which prisoners might be employed. That text had the disadvantages of every enumeration, and had for that reason been replaced at Stockholm by another text which contained the idea of work connected only with peacetime economy. The latter text did not mention the removal of mines.

Mr. GARDNER (United Kingdom) said that the text of the 1929 Convention left the door open to practically any interpretation, and the same might be said of the new text. His delegation agreed with the criticisms formulated by the International Committee of the Red Cross in their pamphlet "Remarks and Proposals".

The Stockholm text contained, in the first place, two words to which no precise meaning could be attached, namely the words "normally" and "otherwise" in the first paragraph. Again, the words "feeding, sheltering, clothing, transportation and health of human beings", applied to nearly all the activities of an army. He considered that the most satisfactory text was the one which had been prepared by the International Committee of the Red Cross for submission to the Stockholm Conference. The amendment of the United Kingdom Delegation reproduced it, therefore, in its entirety (see Annex No. 116).

The chief point of controversy was still, how-

ever, the question of the employment of prisoners on work connected with the removal of mines. It was the opinion of the United Kingdom Delegation that if prisoners were properly trained, equipped and supervised, casualties would certainly not be higher among them than they would be among the civilian population, if the mines were not removed.

Major HIGHET (New Zealand) thought that this article should be linked with Article 12, which provided for the humane treatment of prisoners of war at all times; the text submitted to the Stockholm Conference failed to give any guarantee on that point. He could not agree with the remarks of the Delegate of the United Kingdom concerning the employment of prisoners of war on mine-lifting. It was for the army to remove mines and bombs; if they wished to train, equip and supervise civilians for this work, they might do so, but prisoners of war should not be employed on such work. He therefore proposed the following wording for Article 42:

"In addition to labour performed in connection with camp administration, installation or maintenance, prisoners of war may only be employed on work which is normally required for the feeding, sheltering, clothing, transportation and health of human beings.

"Prisoners of war may not be employed on work which is of value in assisting the conduct of active military operations and in particular on the manufacture, transport or handling of weapons or munitions of any kind, or on the transport of material destined for combatant units, whether such work be carried out in a zone of active military operations or not".

Mr. MOLL (Venezuela) supported the amendment submitted by the Delegation of the United Kingdom and also the reservation made by the Delegation of New Zealand. He recalled the amendment submitted by Venezuela at Stockholm, which had consisted in adding the following sentence to the text proposed by the International Committee of the Red Cross: "Only those prisoners of war may be employed on work connected with the removal of mines who have already undergone training in this class of work".

General DILLON and General PARKER (United States of America) supported the observations of the Delegates of New Zealand and Venezuela with regard to the employment of prisoners of war on the removal of mines.

Mr. GARDNER (United Kingdom) said that his Government claimed to have scrupulously observed the 1929 Convention, and made no secret of the fact that in the last war they had used prisoners to remove mines. He did not agree that the amendment of his Delegation could be considered a retrograde step compared with the 1929 Convention. The text he proposed was even more restrictive than that of 1929 which it strengthened.

On the proposal of the CHAIRMAN, it was decided to refer Article 42 to the Special Committee.

### Article 43

Mr. WILHELM (International Committee of the Red Cross) pointed out that the provisions of the 1929 Convention prohibited the use of prisoners on dangerous or unhealthy work, such as work in mines. Those principles had not been respected by the Detaining Powers. It had therefore been thought wiser, in the draft submitted at Stockholm, to permit the employment of prisoners of war on dangerous work in certain cases, provided guarantees were given to them that all safety measures would be taken. However, the Stockholm Conference, in view of their decision with regard to Article 42 (which was closely connected with Article 43), had also reverted in the case of the latter Article to the principle adopted in 1929.

Major ARMSTRONG (Canada) proposed the following amendment:

(1) Delete the phrase "in view of climatic conditions" in the first paragraph and substitute the words "Account shall also be taken of climatic conditions".

(2) Add the following sentence at the end of the first paragraph: "Further, he must be granted suitable working conditions, especially as regards accommodation, food, clothing and equipment; such conditions shall not be inferior to those enjoyed by nationals of the Detaining Power employed on similar work".

The above amendment was supported by General PARKER (United States of America) and Mr. MOLL (Venezuela).

Mr. GARDNER (United Kingdom) also supported the Canadian amendment. He considered, however, that it was not logical to give the adjectives "unhealthy" and "dangerous" a limited meaning, regarding them only antonyms of the words "healthy" and "safe". Driving a car or a tractor or using certain machinery or tools was, for instance, dangerous for an untrained person. For a trained person such work was normal and safe. Safety depended upon training and equipment. He therefore proposed the following amendment:

"No prisoner of war shall be employed on work of an unhealthy or dangerous nature unless he has first received adequate training, is provided with all necessary safeguards and given conditions of treatment in respect of accommodation, food and equipment similar to those accorded to the national of the Detaining Power employed on the same kind of work, provided that such conditions are not less favourable than those accorded to prisoners of war under the present Convention. In all cases, before employing any prisoner of war on any particular kind of work covered by this Article, the Detaining Power shall be bound to give the Protecting Power full information regarding the steps they have taken to carry out its provisions".

Even if the United Kingdom amendment to Article 42, regarding the employment of prisoners of war on mine lifting were not accepted, the United Kingdom Delegation would like its amendment to Article 43 to stand, in order to prevent prisoners without any preliminary training from being put on to such work as quarrying, mining or forestry.

General SKLYAROV (Union of Soviet Socialist Republics) proposed that a new paragraph worded as follows, be inserted between the second and third paragraphs:

"In utilizing the labour of prisoners of war, the Detaining Power shall ensure that in areas in which such prisoners are employed, the national legislation concerning the protection of labour, and, more particularly, the regulations for the security of industrial workers, are duly applied."

General DEVIJVER (Belgium) supported the Canadian amendment. With regard to the United Kingdom amendment, it had to be read in conjunction with the amendment of the same Delegation to Article 42. It was designed to permit the employment of prisoners on certain unhealthy or dangerous work provided that certain safeguards were taken. As this meant altering the substance of the Article, he proposed that Article 43 be referred to the Special Committee, together with the amendments that had been submitted.

Mr. BAISTROCCHI (Italy) supported the observations of the Delegate of the United Kingdom, it would, however be desirable to have the opinion of the observer of the International Labour Organization. Incidentally, he thought the term "humiliating" labour required clarification,—and proposed that the second paragraph should be amended to read as follows:

"No prisoner of war shall be employed on work of a deliberately humiliating character."

Major HIGHER (New Zealand) put forward an amendment which might be considered as a compromise between the proposal of the Delegate of the United Kingdom, on the one hand, and those of the Delegations of Canada, the United States of America and Venezuela, on the other. The amendment proposed that the first paragraph should be deleted and the following text substituted:

"No prisoner of war may be employed on labour which is of an unhealthy or dangerous nature. He may, however, be subjected to the normal risks of civilian employment provided that he has first received adequate training, is provided with the necessary safeguards and is given conditions of treatment in respect of accommodation, food and equipment similar to those accorded to the nationals of the Detaining Power employed on the same kind of work, provided that such conditions are not less favourable than those accorded to prisoners of war under the present Convention".

He proposed that the Article be referred, with the amendment, to the Drafting Committee.

General PARKER (United States of America) supported the observations made by the Delegates of Belgium and of the Union of Soviet Socialist Republics. He proposed that the Article be referred to the Special Committee.

Captain MOUTON (Netherlands) supported the Belgian proposal to refer the article to the Special Committee. He also agreed with the amendment proposed by the Soviet Delegate.

Mr. ZUTTER (Switzerland) supported the amendments submitted by the Delegations of New Zealand and the Union of Soviet Socialist Republics. With regard to the last sentence of the United Kingdom amendment he wondered whether the responsibility laid upon the Protecting Power was not beyond its competence. It might happen that the Protecting Power had no qualified personnel available for taking decisions on the matter. If the Protecting Power took an ill-considered decision, a Detaining Power might insist on adhering to it, contrary to the interests of the prisoners.

Mr. MOLL (Venezuela) considered that the New Zealand amendment was as a whole satisfactory. Nevertheless, he regarded the term "normal risks of civilian employment" as too vague. Conditions of civil labour varied widely in different countries, hence it was not always possible to speak of "normal risks". In Japan, for instance, prisoners of war had been employed under conditions which were perfectly normal for Japanese workers but intolerable for prisoners from Western countries.

Further, working conditions in tropical countries could be very hard for prisoners coming from temperate zones. If the New Zealand amendment were adopted, it should at all events be supplemented by a clause regarding climatic conditions, as proposed in the Canadian amendment.

Mr. GARDNER (United Kingdom) wished to make it quite clear that his Delegation's amendment was in no way intended to the question of mine-lifting into Article 43. He welcomed the proposal made by the Delegate of the Union of Soviet Socialist Republics, subject only to being able to study its exact wording.

With regard to the point raised by the Delegate of Switzerland, his personal experience was that the Protecting Powers knew extraordinarily well most things that affected the welfare of prisoners. If for any reason the staff on the spot found themselves unable to judge the technical conditions connected with any type of work, they could always ask the advice of the Government of the country of origin. He thought it was important that prisoners should not be put on work which required special training and equipment, unless previous warning had been given to the Protecting Power.

Mr. BAUDOY (France) asked for clarification with regard to the amendment submitted by the Soviet Delegation. Did the word "national" apply to the legislation of the Detaining Power or to that of the country of origin? In some cases it might be an advantage to the prisoner if the legislation of the Detaining Power were applied to him; but in other cases it might do him harm.

Following up the suggestion made by Mr. BAISTROCCHI (Italy), the CHAIRMAN invited the observer of the International Labour Organization to make a statement.

Mr. LITTLE (International Labour Organization) regretted that the memorandum submitted by the International Labour Organization was of no particular assistance in regard to Article 43, as it dealt only with the protection of young persons engaged in unhealthy and dangerous work. One Government had proposed adding, at the end of the first paragraph, after the words "climatic conditions", a provision with regard to the prisoner's "age, sex and physical capacity". The Governing Body of the International Labour Office had expressed the urgent desire that in considering the conditions of work of prisoners of war, account should be taken of the various International Labour Conventions. No one of these Conventions dealt with unhealthy and dangerous work as a whole, but a number of them dealt with the safety measures to be observed in particular occupations and industries such as the building industry, the loading and unloading of ships, and the use of white lead in painting. In such cases the International Labour Conventions provided internationally accepted standards which could guide the Committee in laying down standards of safety where dangerous or unhealthy work was concerned.

On the proposal of Mr. BAISTROCCHI (Italy) and General PARKER (United States of America), Article 43 was referred to the Special Committee.

#### Article 44

Mr. WILHELM (International Committee of the Red Cross) said that the provisions of the 1929 Convention which placed prisoners of war on the same footing as the civilian population as regards hours of work had often proved to be disadvantageous to the prisoners. The idea of fixing a maximum working day had been discussed at length, but had been abandoned because it would be difficult to have it accepted by the civilian population. The new text restated the old principle, but in greater detail. It provided for a rest in the middle of the day and also for one day of rest each week, preferably on a Sunday. The conception of Sunday as a day of rest was perhaps too essentially Western and Christian, as cases had arisen where neither the country of origin nor the Detaining Power recognizes Sunday as a day of rest.

Major STEINBERG (Israel) proposed the following amendment:

- (1) Add at the end of the first paragraph the words "or that which is customary in their country of origin for work of the same nature".
- (2) After the word "Sunday" add the phrase "or the day of rest observed in their country of origin".

He considered that the working week should not exceed five days and that the question of the day of rest should be settled in accordance with Article 30, which dealt with the freedom of the prisoners to exercise their religion.

Msgr. COMTE (Holy See) supported the amendment submitted by the Delegate of Israel.

Mr. BAUDOY (France) reminded the meeting that his Delegation had submitted an amendment proposing that it should be compulsory for prisoners of war to be allowed, in the middle of day's work the same rest as that provided for workmen of the Detaining Power employed on similar work.

On the proposal of the CHAIRMAN, Article 44 was referred to the Drafting Committee.

#### Article 45

Mr. WILHELM (International Committee of the Red Cross) said that the principle contained in the 1929 Convention had been very hard to apply in practice, especially in the case of those whose incapacity to work lasted beyond captivity. It had not been possible to reach agreement on the matter, and the present draft implied that the obligation to indemnify victims of working accidents rested on the Power on which the prisoners depended. With regard to wages, they were no more than mentioned in Article 45, as the subject was more fully dealt with in the new financial Articles.

Major ARMSTRONG (Canada) said that his Delegation had submitted an amendment proposing the omission of the first paragraph relating to wages.

Miss BECKETT (United Kingdom) supported that amendment. She proposed that the second paragraph should also be omitted, as the matters dealt with in it were covered by Articles 14 and 28.

Mr. BAUDOY (France) thought that the new Article represented a retrograde step, as provision was only made for medical attention in case of

accidents or illness, and not for a cash indemnity. As prisoners received wages, it appeared necessary to maintain the principle of the payment of a daily rate of compensation calculated in accordance with the legislation of the Detaining Power and payable to the prisoner for the whole of the time during which he was temporarily or permanently incapacitated as long as he remained in the territory of the Detaining Power. In view of the fact that civilian workers received compensation in cases of accidents or illness connected with their work, it seemed only reasonable that prisoners should also receive such compensation. As far as the reference to the country of origin was concerned, the Delegation of France had no objection to the Article being maintained in the form proposed.

Mr. MAYATEPEK (Turkey) considered that it would be fairer if claims for compensation were put in to the Detaining Power, which profited by the work of prisoners of war, and not to the Power on which the prisoners depended.

On the proposal of the CHAIRMAN, Article 45 was referred to the Drafting Committee.

#### Article 46

Mr. WILHELM (International Committee of the Red Cross) explained that it had been considered necessary to provide prisoners of war with better safeguards in regard to the verification of their fitness for work, by specifying the conditions and frequency of the medical examinations held for that purpose.

Miss BECKETT (United Kingdom) proposed the following amendment:

Delete the words "at least once a month" at the end of the first paragraph and substitute:

"The examinations and the intervals at which they are held should have particular regard to the nature of the work which prisoners of war are required to do".

General DEVIJVER (Belgium) supported the United Kingdom amendment. He thought, however, that it would, perhaps, be enough simply to add the proposed sentence regarding the nature of the work, without deleting the words "at least once a month".

Mr. BAISTROCCHI (Italy) drew attention to the amendment contained in the Memorandum by the Italian Government, which provided that the medical examination should take place prior to employ-

ment, and which also proposed that the words "Physicians retained by the Detaining Power" be substituted for the words "Prisoners of war physicians".

On the proposal of the CHAIRMAN, Article 46 was referred to the Drafting Committee.

#### Article 47

Mr. WILHELM (International Committee of the Red Cross) said that experience had shown that the majority of the prisoners of war attached to a camp for administrative purposes were not actually present at the base camp, but were to be found in labour detachments. It had therefore been considered necessary to lay down provisions regarding these detachments; a paragraph had accordingly been added to the provisions of the 1929 Convention in order to facilitate visits to labour detachments by delegates of the Protecting Power and of the other agencies giving relief to prisoners of war.

Major ARMSTRONG (Canada) proposed that the first sentence of the second paragraph should be deleted and the following sentence substituted: "Every labour detachment shall remain part of and be dependent upon a prisoner of war camp".

In his opinion, the word "relèvera" (be dependent upon) in the French text, strengthened the amendment; he proposed that the Drafting Committee should find a corresponding word for the English text.

Mr. GARDNER (United Kingdom) proposed the following amendment:

- (1) Delete the comma after "camps" in the first paragraph and substitute a full stop. Delete the remainder of the paragraph.
- (2) Delete the second paragraph and substitute: "Every labour detachment shall be subordinate to a prisoners of war camp. Subject to any more favourable treatment required by Article 43 of this Convention, conditions in labour detachments, however small, shall be at least equal to those of prisoners of war camps. The military authorities and the commander of the prisoners of war camp to which a labour detachment is subordinate, shall be responsible for the observance of the provisions of the present Convention in labour detachments".

With regard to the omission, in the United Kingdom amendment, of the words "under the direction of their government" in the second para-

graph, he referred to the comments of the International Committee of the Red Cross in "Remarks and Proposals" in connection with Article 32; in those comments it was stated that the words in question were "imprecise, and also superfluous". The phrase might in fact be interpreted as revoking, in certain cases, all individual responsibility for the treatment of prisoners, whereas Article II, first paragraph, second sentence, expressly stated that the Detaining Power's responsibility in no way released individuals from the responsibility for their actions in respect of prisoners.

Major HIGGET (New Zealand) withdrew the amendment tabled by his Delegation in favour of that proposed by the Delegation of the United Kingdom.

Mr. BAISTROCCHI (Italy) and General PARKER (United States of America) pressed for the retention of the words "under the direction of their government" for the same reasons as those given during the discussion on Article 32.

Mr. MOLL (Venezuela) supported the United Kingdom amendment. He was, however, in favour of retaining the words: "under the direction of their government".

On the proposal of the CHAIRMAN, Article 47 was referred to the Drafting Committee.

#### Article 48

Mr. WILHELM (International Committee of the Red Cross) said that experience had shown the

importance of ensuring that prisoners of war remain attached to their base camps and were not handed over to the care of private individuals.

Mr. GARDNER (United Kingdom) submitted an amendment proposing that the words "and placed under their direct control" should be replaced by the words "even if the latter are responsible for their safe-keeping". The latter wording was designed to prevent the words used in Article 48 from being interpreted as meaning that responsibility passed from the Camp Commandant to the private employer.

Major HIGGET (New Zealand) supported the United Kingdom amendment and himself proposed a further amendment, namely that, in the first paragraph, everything coming after the words "The Detaining Power..." should be deleted and the following words substituted "and the military authorities responsible for the camp to which such prisoners of war are subordinate shall ensure their supervision and assume entire responsibility for them".

It was necessary to emphasize the principle that the welfare of prisoners should in all cases remain the direct responsibility of the military authorities.

Mr. BAUDOY (France) supported the amendments submitted by the Delegations of New Zealand and the United Kingdom.

On the proposal of the CHAIRMAN, Article 48 was referred to the Drafting Committee.

*The meeting rose at 6 p.m.*

### ELEVENTH MEETING

*Wednesday 11 May 1949, 3.15 p.m.*

*Chairman: Mr. Maurice BOURQUIN (Belgium)*

#### Communication by the Chairman

The CHAIRMAN stated that the Medical Experts Committee which had been formed for the purpose of considering Annex I of the Draft Convention relative to the Treatment of Prisoners of War would meet on Friday morning; medical experts were invited to attend the meeting.

#### Article 49

Mr. WILHELM (International Committee of the Red Cross) said that with the disappearance of the financial liberalism which had still existed in 1929, it had been necessary to replace the term "cash" which had been adopted in 1929 by the expression "money, in cash or in any similar

form". On the other hand, the new text laid down that it was in agreement with the Protecting Power rather than with the country of origin that the Detaining Power would determine the amount of money prisoners could retain. Lastly, the principle that prisoners of war could not keep cash in their possession had been reinforced by the addition of a new second paragraph.

Mr. GARDNER (United Kingdom) proposed that Articles 49 to 57 be deleted and the texts contained in the various United Kingdom amendments substituted for them (*see Annexes Nos. 119 and foll.*). He thought steps should be taken to sift the various amendments and rearrange the Articles in question. If necessary a special sub-committee could be set up for the purpose.

As far as Article 49 was concerned, the following points should be thoroughly examined.

- (1) If it was for the Protecting Power to make agreements with the Detaining Power concerning the amount of money to be retained by prisoners, the Protecting Power, which would thus share responsibility for any decisions with the Detaining Power, might be accused of non-neutrality.
- (2) The words „or in any similar form" were not clear; it would be better to say that what was meant was token money which could not be used outside the camp.
- (3) As Article 54 dealt with the question of accounts, it was unnecessary to introduce provisions on that subject in Article 49.
- (4) The United Kingdom method of dealing with the various currencies which might be in the possession of a prisoner, say a merchant seaman, was to treat them like other valuables and put them in an envelope marked with the name of the prisoner; that would save a good deal of accounting and minimize possibilities of error.
- (5) The second paragraph seemed to him unduly restrictive. It would preclude the practice followed in the United Kingdom towards the end of the war, by which prisoners were given sterling cash and allowed to make purchases outside the camps.

Mr. MOLL (Venezuela) said that it was his Government that had urged the insertion of the second paragraph, because the practice followed during the last war had been the contrary, in most cases, to that described by the Delegate of the United Kingdom; prisoners had not been allowed to leave the camps and the money they used in the camps had not been legal tender outside.

With regard to the first paragraph, it was the

country of origin which should decide the amount of money to be allowed to prisoners, who would receive it through the Protecting Power, the latter being enabled to see that payments were actually made and that they were placed to the credit of the prisoners' accounts.

On the proposal of the CHAIRMAN, it was decided not to set up special machinery for considering Articles 49 to 57, but to continue the discussion in the Committee, Article by Article.

#### Article 50

Mr. WILHELM (International Committee of the Red Cross) explained that Article 50 was connected with Article 16, which stipulated that sums in currencies other than that of the Detaining Power would be taken from the prisoner and returned to him in their initial form when he was repatriated. Amounts in the currency of the Detaining Power could on the contrary be taken away, and a receipt given; it had seemed advisable to say exactly what would happen to such sums of money.

Mr. GARDNER (United Kingdom) said that the provisions of the Article under discussion were already covered by Articles 49 and 54. He recommended the deletion of Article 50 of the Stockholm Draft.

#### Article 51

Mr. WILHELM (International Committee of the Red Cross) explained that it had been found necessary to provide a new basis for the payment of officers; there were several reasons for doing so, in particular depreciations in the value of currency and the difficulty of establishing rank equivalents between the armed forces of the Detaining Power and those of the prisoners' country of origin. It had also appeared necessary to make provision for the payment of prisoners of other ranks to whom the 1929 Convention did not allocate any pay at all. The new basis which had been chosen was the gold franc.

General PARKER (United States of America) recommended that the word "allowance" be substituted for the word "pay" wherever it occurred in the Article, so as to avoid confusing wages with other amounts paid to prisoners.

Major ARMSTRONG (Canada) drew attention to the Canadian amendment, which was substantially the same as the Stockholm text, except that it provided for three categories of prisoners instead

of five (*see Annex No. 131*). This modification would simplify accounting between the various countries.

He agreed in principle with the proposal put forward by the Delegate of the United States of America, but preferred the word "credits" to the word "allowances", as what the prisoners received from the Detaining Power was really an advance of pay.

Mr. MAYATEPEK (Turkey) said that the amount of pay issued to prisoners of war by the Detaining Power depended on the financial resources and budgetary provisions of that Power. He believed he was justified in pointing out that a large number of countries would not be in a position to pay, for instance, 8 gold francs per month to the members of their own armed forces below the rank of sergeant. The States, therefore, might assume responsibilities which they would, in all likelihood, be unable to fulfil; moreover, privileged treatment in favour of prisoners of war might provoke dissatisfaction among the armed forces of the Detaining Power, and so have a bad influence on their morale.

He drew attention to the amendment submitted by his Delegation which proposed that the following passage should be inserted in the first paragraph, after the word "amounts":

"on the understanding that such pay shall not exceed the rates granted by the Detaining Power to members of its own armed forces. In cases, however, where such rate of pay would be less than that provided above, it may be made up to the required amount by the Power on which the prisoners of war depend".

The purpose of the amendment was to limit the pay of prisoners of war to the rates which the Detaining Power paid to its own men. If those rates of pay were lower than those provided for in the Convention, the difference might be made up to the required amount by the Power on which the prisoners depended if the latter so desired.

He drew attention to the fact that one of the amendments submitted by the Delegation of the United Kingdom provided for the possibility of varying the amounts laid down for the different categories of prisoner in Article 51.

Mr. GARDNER (United Kingdom) agreed with the Delegates of Canada and the United States of America with regard to the word "pay"; to replace it by the word "allowance" would, however, cause difficulties in the United Kingdom; he was prepared to refer the question to the Drafting Committee. He drew attention of the Committee to the United Kingdom amendments already mentioned in connection with Article 49. There were two points

to which he wished to call particular attention. The first was the substitution of the paper franc for the gold franc; the second was that the last paragraph of the Article under discussion, which corresponded to the new Article 50 proposed by his Delegation, was not sufficiently firm. It had to be made quite clear that the money had to be made available to the prisoner at once and that it could not be used to meet any charge which the Detaining Power might conceive it proper to make against the prisoner. He further proposed the substitution of the term "supplementary pay" for "remittances of money" in the last paragraph, in order to avoid any possible confusion.

The Count of ALMINA (Spain) proposed the following amendment:

"The Detaining Power shall issue to all prisoners of war, in the currency in circulation in its territory, the same pay as that granted to men and others of corresponding ranks in its own forces, provided that this pay does not exceed that to which they are entitled in the forces of the countries which they have served. This pay shall be issued in full within the time limit which the Detaining Power may consider expedient, but which may not exceed one month; no deduction may be made from such pay for expenses to be borne by the Detaining Power, even if such expenses were incurred on behalf of the prisoners of war.

"The promotions in their own armed forces to which the prisoners may be entitled during captivity shall cause no change in the rates of pay issued by the Detaining Power.

"A prisoner shall no longer be entitled to receive pay if he receives a higher rate of wages for the work on which he is employed".

Major HIGHER (New Zealand) thought that neither the Stockholm draft nor the proposed new Article 50 submitted by the Delegation of the United Kingdom contained anything to prevent the Detaining Power from making the payments to one category of prisoners only, if they so desired. The amendment submitted by the New Zealand Delegation was designed to correct that omission; it proposing the deletion of the last paragraph and the insertion of a new Article 51A worded as follows:

"The Power in whose forces prisoners of war were serving when captured may forward through the Protecting Power remittances of money for the benefit of such prisoners. The Detaining Power shall accept any such remittances and shall place them at the disposal of the prisoners concerned by credit to the individual accounts maintained on their behalf.

"All prisoners belonging to the same category shall receive the same amount and, unless the Protecting Power otherwise directs, the sums credited to individual prisoners of different categories shall be in proportion to the scale of pay set out in Article 51.

"In no circumstances may any such payment be withheld in whole or in part from any prisoner entitled to be benefited; nor by making such payments shall the Detaining Power be relieved of any other obligation imposed upon it by the provisions of this Convention".

He agreed to the substitution of another word for "remittances". With regard to the word "allowance" this might be taken by prisoners to mean something in addition to their pay; he would prefer therefore to see the word "pay" retained.

General DEVIJVER (Belgium) recalled that at the discussions of the Conference of Government Experts in 1947, it had been decided that the Convention should deal in this point with advances of pay, which were not comparable to the sums received by soldiers on active service. The advances were very small, and were only intended to permit prisoners to purchase small articles at their canteen. A second principle which had been established in 1947, was to place advances on a stable basis, so as to eliminate any possible misunderstanding and, in particular, to avoid any comparison with the pay of the army of the Detaining Power. He recalled that the Delegate of the United Kingdom had then spoken in favour of the gold franc, and while he understood very well the reasons which had caused him to change his opinion, he hoped that the principle of finding a stable basis for the pay of prisoners would not be abandoned. The Delegation of Belgium was in favour of retaining the gold franc as a basis, and of maintaining the five categories enumerated in 1947 and at Stockholm.

#### Article 52

Mr. WILHELM (International Committee of the Red Cross) said that the authors of the Stockholm text had wished to give up the system laid down in 1929 and to fix rates of pay for prisoners of war which were not unduly high, but which would enable them to make purchases at the canteen. The rate had been fixed at a quarter of a Swiss gold franc per working day. The 1929 Convention left open the question of whether the Detaining Power could or could not deduct part of the wages of prisoners to meet the cost of their maintenance; such deductions had been very generally made during the last war. The question was not specifi-

cally mentioned in the new Article, but the adoption of a minimum wage implied that such deductions might be made.

Mr. BAUDOY (France) said that the question of the payment to prisoners of both pay and wages raised certain difficulties owing to the fact that wages were paid by the Detaining Power and army pay by the country of origin. Moreover, it might lead to undesirable consequences if prisoners were placed in a privileged position as compared with combatants. The French Delegation proposed, therefore, that as soon as a prisoner became employed and received wages, his army pay should be paid directly to his assignees in the country of origin. They had accordingly submitted an amendment proposing that the following paragraph should be added to Article 52:

"When a prisoner of war who is employed as a worker, or is engaged on any gainful occupation draws the pay due for his work, he shall cease automatically to draw his military pay. The latter shall either be paid out to persons in his country of origin designated by himself, or shall be handed over to him when his captivity comes to an end".

Miss GUTTERIDGE (United Kingdom) drew attention to the amendments submitted by her Delegation (*see Annexes Nos 119 and foll.*); she proposed that the last paragraph of Article 52 of the Stockholm draft be omitted, because if the word "change" signified "reduce", her delegation was opposed to it, and if it meant "increase" she considered that it had no meaning at all. She would like to see the word "wages" replaced by the term "working pay", and the expression "gold francs" amended to read "paper francs".

Major HIGHER (New Zealand) observed that there was no mention in the Stockholm Draft of how often pay was to be given to prisoners. In the opinion of his Delegation, payments should be made at least once a month. Again, he would like to know what other members of the Committee thought of the second paragraph, which should, he felt, be rather more explicit. Finally, he considered that work done on behalf of the Information Bureau should be paid.

Major ARMSTRONG (Canada) said that with regard to the first paragraph, it had been intended to fix a minimum of one Swiss franc. He therefore pressed for the adoption of his Delegation's amendment which proposed that the word "increase" be substituted for the word "change" in the last paragraph.

Wing Commander DAVIS (Australia) considered that the first paragraph should contain an express statement to the effect that the Detaining Power was responsible for the pay of prisoners. He supported several of the proposals made by the United Kingdom Delegation. In the first place, where a prisoner carried out work primarily for the benefit of the Detaining Power, he should be paid by that Power. But where such work was not primarily for the benefit of the Detaining Power, as, for example, administrative, managerial or maintenance work, executed for the benefit of his fellow prisoners, or casual camp duties, prisoners should be paid out of some camp fund. Where such a fund did not exist, then the Detaining Power would be responsible for paying the wages in question. The spokesman should also be paid by the Detaining Power. His Delegation intended to submit an amendment proposing a new Article 52.

#### Article 53

Mr. WILHELM (International Committee of the Red Cross) said that as the transfer of funds was very difficult in time of war, an attempt had been made in the third paragraph of Article 53 to establish a procedure (delegation of pay) by which the country of origin would pay beneficiaries nominated by the prisoner who were in its territory. The prisoner's account with the Detaining Power would be debited by a corresponding amount.

Miss GUTTERIDGE (United Kingdom) said that, in the first place, the provision that a prisoner of war should be permitted to receive remittances of money was already covered by Articles 51 (fourth paragraph) and 64; there was therefore no reason for saying the same thing again in the first paragraph of Article 53. Further, she felt that it was neither desirable nor necessary to provide in the same paragraph that the Protecting Power might impose restrictions on the remittances sent to a prisoner of war. In the second place, the possibility of making payments outside the country of the Detaining Power on behalf of prisoners of war would involve the Detaining Power in finding foreign exchange for the benefit of enemy subjects; such a possibility would also place prisoners of war in a more advantageous position than their fellow nationals at home. For the above reasons, she proposed that both the provision in question and the first paragraph of Article 53 should be omitted.

Colonel NORDLUND (Finland) proposed that the last part of the first paragraph be deleted. He

failed to see why restrictions should be imposed on any remittances of money which the prisoner might receive.

#### Articles 54 and 55

Mr. WILHELM (International Committee of the Red Cross) explained that Articles 54 and 55 contained provisions concerning the keeping of accounts. It had been suggested that Article 54 repeated what was already said in Article 50; but whereas Article 54 laid down that an account must be kept for each prisoner, Article 50 merely stipulated that sums of money taken away from prisoners must be credited to their accounts. Article 55, like Article 54, dealt with the management of prisoners' accounts, particularly in the case of transfer, and also gave prisoners, and delegates of the Protecting Power, the right to consult those accounts.

General DEVIJVER (Belgium) supported what had been said by the Representative of the International Committee of the Red Cross. He considered that Article 49 to 53 enumerated the different ways in which it was possible for prisoners to get money, whereas Article 54 and the following Articles laid down the administrative regulations with regard to accounting.

Miss GUTTERIDGE (United Kingdom) considered that the fact that accounts had to be kept of working pay and remittances (or supplementary pay) was not made sufficiently clear. Nor had any provision been made for the transfer of the credit balance of a prisoner who was transferred from one Detaining Power to another.

The provision relating to sums in the currency of the Detaining Power taken from the prisoner, should be inserted elsewhere, because it referred to the property of prisoners rather than to financial management. Finally, she proposed that this Article and the following one should be amalgamated, or, at the very least, that the first paragraph of Article 55 should be transferred to Article 54.

Major ARMSTRONG (Canada) drew attention to the difficulties with regard to prisoners' accounts which arose after the termination of hostilities. The prisoner of war had nothing to prove what was owed to him or what had been paid to him by the Detaining Power. Experience during the last war had led the Canadian Government to draw up a new Article 54, which provided, among other things, that prisoners of war might also keep their own accounts. It read as follows:

"The Detaining Power shall hold an account for each prisoner of war, the accounts shall

also be maintained by the prisoners of war, showing in substance the following:

- (1) The amounts received by the prisoner in the shape of credits and wages, or derived from any other source; the sums in the currency of the Detaining Power which were taken from him; the sums taken from him and converted at his request into the currency of the said Power.
- (2) The payments made to the prisoner in cash or in any similar form; the payments made on his behalf and at his request; the sums transferred under Article 53, paragraph 3.

"The Power on which the prisoners depend shall be notified at regular intervals agreed upon by the belligerents concerned, through the Protecting Powers, of the amount of account of the prisoners of war."

#### Article 56

Mr. WILHELM (International Committee of the Red Cross) reminded the meeting that the 1929 Convention provided that the credit balances of prisoners' accounts were to be paid to the prisoners by the Detaining Power. Discussions had taken place on the subject, and it had been held that the experience of the last war showed that it would be preferable that the country of origin should settle the credit balance with the prisoner. Agreement had not, however, been reached on the matter, and the new text reproduced the principle laid down in the 1929 Convention, namely, that the credit balance should be paid in cash by the Detaining Power.

General PARKER (United States of America) drew attention to the amendment tabled by his Delegation, with regard to the closing of credit accounts of prisoners who had escaped and had not been recaptured by the time their fellow prisoners were repatriated. The amendment proposed that the following paragraph should be added after the third paragraph:

"If a prisoner of war is listed on official records of the Detaining Power as having escaped and not having been apprehended at the time of repatriation of his unit, all sums earned by him and due to him shall be sent to the Power on which the prisoner of war depends."

General DEVIJVER (Belgium) supported the amendment proposed by the Delegation of the United States of America.

Miss GUTTERIDGE (United Kingdom) said that her Delegation was in general agreement with the first two paragraphs of Article 56, which were redrafted in greater detail in the amendment proposed by the United Kingdom (*see Annex No. 126*). It was felt, however, that the third paragraph might lead to the Detaining Power being obliged, at the end of the war, to pay not only its own troops but also all the prisoners of war it had detained. To cover this point the United Kingdom Delegation had submitted an amendment which took the form of a new Article 57B dealing with "Adjustments between belligerents" (*see Annex No. 129*).

Major ARMSTRONG (Canada) drew attention to the Canadian amendment, which had the same purpose with regard to the third paragraph as the United Kingdom amendment. It proposed that the Detaining Power, failing any special agreement, should give each prisoner who was repatriated a document attesting the credit balance of his account. It would be preferable for a prisoner of war to have a document establishing the state of his account rather than to receive a sum of money in the currency of the Detaining Power; the latter would be valueless in the case of a defeated Power.

Major HIGHET (New Zealand) supported the amendment proposed by the Delegation of the United States of America in so far as it was intended to mean that the amount due to the prisoner would be sent in the form of a certificate of credit, but not in cash. He proposed that the wording of the United States amendment be altered to make that clear.

Wing Commander DAVIS (Australia) supported the views expressed by the Delegates of Canada and the United Kingdom. He would like to see provisions added to the first paragraph with regard to the information which the document attesting the credit balance of the account should carry, such as the monthly payments received under Article 54, the period during which such payments were made, the total amounts received, the total amounts transferred to the home country at the request of the prisoner, and the balance remaining to his credit.

*The meeting rose at 6.05 p.m.*

## TWELFTH MEETING

Friday 13 Mai 1949, 3.15 p.m.

Chairman: Mr. Maurice BOURQUIN (Belgium)

**Article 57**

Mr. WILHELM (International Committee of the Red Cross) explained that Articles 51, 52 and 53 dealt with payments made sometimes by the Detaining Power and sometimes by the country of origin. It was therefore necessary to include in the Convention an Article relating to the adjustment of accounts between the belligerents at the close of hostilities.

Major ARMSTRONG (Canada) proposed that the drafting amendment submitted by his Delegation should be referred to the Drafting Committee.

Miss BECKETT (United Kingdom) drew attention to the United Kingdom amendment already mentioned at the previous meeting, which proposed a new Article 57C amplifying the Stockholm text.

Mr. GARDNER (United Kingdom) said that he wished to add two Articles to Section IV: the first one dealing with Camp Welfare Funds (Article 57 according to numbering adopted by the United Kingdom), and the other with the question of compensation (Article 57A of the United Kingdom proposal). (*See Annexes Nos. 127 and 128*).

On the proposal of the CHAIRMAN, it was decided to refer Section IV (Articles 49 to 57) to the Special Committee with a recommendation that a small working party be set up to deal with technical details before submitting the Articles to the main Committee for a second reading.

**Article 58**

Mr. WILHELM (International Committee of the Red Cross) explained that the corresponding Article of the 1929 Convention was extremely vague and had given rise to innumerable queries. The new text had been made more precise by changing the wording.

Miss GUTTERIDGE (United Kingdom) said that the following minor drafting changes were proposed by her Delegation:

- (1) Delete the words "into their hands" and substitute "in their power".
- (2) Delete the phrase "the Powers on which they depend" and substitute "the Powers in whose service they are".
- (3) Delete the words "taken for implementing" and substitute "to be taken to carry out".

Colonel WANG (China) read an amendment proposing the inclusion of a new Article 58A worded as follows:

"Subject to the provisions of the present Convention the Detaining Power may exercise such measures of control of the prisoners of war in regard to their activities, correspondence and other liberties as it may consider necessary for its own security."

On the proposal of the CHAIRMAN, it was decided to refer Article 58, together with the amendments thereto, to the Drafting Committee.

**Article 59**

Mr. WILHELM (International Committee of the Red Cross) explained that experience in the last war had shown that it was very difficult to register prisoners when a great number were taken at the same time. That was why Article 59 included a provision to the effect that a capture card was to be forwarded to the Central Prisoners of War Agency by the prisoner, in addition to the card sent to his family. The card would remain in the files of the Central Agency, where all the information would be available when enquiries were made.

Miss GUTTERIDGE (United Kingdom) explained that an amendment tabled by her Delegation

proposed that the word "Nationality" on the capture card should be replaced by the words "Power in whose service at the time of capture". The amendment was intended to permit certain prisoners, such as Poles and Czechs in the last war, for example, to conceal their nationality.

On the proposal of the CHAIRMAN, Article 59 was referred to the Drafting Committee.

### Article 60

Mr. WILHELM (International Committee of the Red Cross) explained that a clause limiting the amount of correspondence permitted to prisoners had had to be included owing to the fact that the censorship offices were sometimes completely overwhelmed by too great a volume of mail. It had also been thought necessary to lay down that the amount of correspondence addressed to prisoners might be limited by the Power on which they depended. Finally, the paragraph dealing with the sending of telegrams had been expanded and made more specific.

Mr. GARDNER (United Kingdom) drew attention to the amendments submitted by his Delegation (see *Annexes Nos. 133 and 134*), which applied the criterion of the interests of the prisoners of war to the matter of restrictions on correspondence. Article 60 was of vital importance to the prisoner. It was better for him to be able to send one letter which would be delivered than to write several which would pile up at the censorship centre and perhaps never be delivered at all. With regard to the matter of delivering letters by the most rapid means, it was not always possible in time of war to allocate aircraft for the purpose of carrying mail.

The second paragraph should be deleted and the provisions contained in it embodied in a new Article 60A.

The third paragraph was difficult to apply in cases where prisoners spoke a language very different from that of the Detaining Power, as had happened in the last war with British prisoners in the Far East, where translators had not always been available.

The fourth paragraph dealt with technical matters to do with the carriage of mail; its provisions would in some cases delay the delivery of prisoners of war mail, and for that reason the United Kingdom Delegation proposed that the paragraph should be omitted.

General PARKER (United States of America) could not agree to the United Kingdom amendments. He saw no reason for removing the paragraph concerning telegrams from Article 60; that Article

only dealt with the subject of correspondence; but telegrams were a form of correspondence. He had no objection to the fourth paragraph of the Stockholm text which had been inserted after consultation with the postal experts.

Mr. NARAYANAN (India) supported the amendments submitted by the United Kingdom Delegate. In the case of Indian troops, difficulties of censorship and translation had caused great numbers of letters to be delayed and lost, both in Germany and in the Far East.

Wing Commander DAVIS (Australia) agreed with the Delegate of the United Kingdom with regard to the use of aircraft for carrying mail. He did not think its use should be made obligatory, but at the same time it should not be ruled out.

General DEVIJVER (Belgium) thought that the amendments submitted by the Delegate of the United Kingdom were very far-reaching. At the Conferences held at Geneva in 1947 and in Stockholm in 1948, everyone had agreed that the only effective way of safeguarding the interests of the prisoners of war was to fix a definite minimum for their correspondence. If that were not done, Detaining Powers could, on one pretext or another (difficulties of forwarding, censorship etc.) reduce to an excessive extent the volume of prisoners' correspondence. He considered, therefore, that Article 60 was of vital importance and proposed that it should be referred to the Special Committee.

On the proposal of Captain MOUTON (Netherlands), seconded by General DEVIJVER (Belgium), the CHAIRMAN asked the Representative of the Universal Postal Union to state his opinion regarding the last paragraph of the Article under discussion.

Mr. ROULET (Universal Postal Union) said that in his opinion the restrictions to be placed on the correspondence of prisoners depended entirely upon the means of transport at the disposal of the various States and could, therefore, only be decided by the States themselves. With regard to labelling, not only sacks, but whole wagon-loads of prisoner of war mail had passed through Switzerland in transit during the last war, without it having been necessary to label and seal each sack. The question was one which would have to be settled by the postal authorities in each country.

Major HIGHET (New Zealand) agreed with the United Kingdom Delegate that there should be a reduction in the amount of correspondence provided for in the first paragraph of the Stockholm

text. He considered it essential, however, that some minimum number of letters and cards be stipulated.

He also supported the proposal to omit the last paragraph, which, as it merely concerned an administrative matter, could be perfectly well dealt with in the Universal Postal Convention.

On the proposal of the CHAIRMAN, the Committee decided to refer Article 60 to the Special Committee.

The CHAIRMAN proposed that advantage should be taken of the fact that representatives from the Universal Postal Union and the International Telecommunications Union were present, to discuss Articles 64 and 114 which dealt with the question of exemption from postal and telegraphic charges.

#### Article 64

Mr. VON ERNST (International Telecommunications Union) said that the International Telegraph and Telephone Conference would meet in Paris in the following week, and would be concerned with the revision of the rules governing international telegraphic correspondence. Any proposal made by the Committee with regard to reducing charges on telegrams could be considered at that Conference. He approved of the non-obligatory character of Article 64.

Mr. ROULET (Universal Postal Union) supported the principle of the amendment submitted by the Canadian Delegation (*see Annex No. 139*), which corresponded with the views of his Union. He thought, however, that the matter could be better dealt with by replacing the last phrase in the second paragraph of the Stockholm text by the following words: "in accordance with the provisions of the Convention and the arrangements of the Universal Postal Union"; that wording was clearer and should satisfy both the Committee and the Postal Union. A similar formula could be used for Article 114 which was closely related to Article 64.

He reminded the meeting that Article 52 of the Postal Convention laid down that mail sent or received by prisoners of war would be exempt from postal charges.

General DEVIJVER (Belgium) supported the observations made by the Representative of the Universal Postal Union. His Delegation reserved the right to submit those suggestions to the Committee in the form of an amendment (*see Annex No. 138*). He proposed that the Article should be referred to the Drafting Committee.

In reply to a question by Mr. GARDNER (United Kingdom), Mr. ROULET (Universal Postal Union)

said that all the countries represented at the Diplomatic Conference were members of the Universal Postal Union and parties to the Universal Postal Convention. As regards other arrangements, special agreements dealing with parcels and money orders had been concluded between certain countries; they contained provisions granting prisoners of war exemption from postal charges.

Mr. SÖDERBLOM (Sweden) said that the postal authorities in his country shared the view of the Universal Postal Union on the point under discussion. He accordingly supported the proposal made by the Belgian Delegate.

Mr. STROEHLIN (Switzerland) supported the observations made by the Representative of the Universal Postal Union and by the Delegates of Belgium and Sweden.

General PARKER (United States of America) drew attention to a drafting amendment submitted by his Delegation. It chiefly concerned the question of free carriage by rail. The railways in the United States of America were not State-owned, and it was therefore necessary to stipulate that it was the State which was responsible for the free carriage of relief shipments, and not the railways.

Mr. GARDNER (United Kingdom) said that the final wording of the second paragraph was a matter which required careful drafting. He proposed that it should be referred to the Drafting Committee and that the latter should consider it in consultation with the Representative of the Universal Postal Union. He drew attention to the two amendments submitted by his delegation:

- (1) In the fourth paragraph, last sentence, delete the words "shall be charged to the senders", and substitute "shall be governed by arrangements between the sending countries and the Power concerned or, where necessary, transport companies in such countries".
- (2) Delete the fifth paragraph.

However, in view of the statement by the Representative of the International Telecommunications Union, he withdrew the second of those amendments.

Mr. ROULET (Universal Postal Union) considered that it would be unwise to quote Article 52 of the Universal Postal Convention as a footnote as proposed in the Canadian amendment, as Article 52 might be subsequently altered.

Major ARMSTRONG (Canada) said that the reason why the Canadian amendment only referred to correspondence was in order to keep in line with Article 52 of the Universal Postal Convention. His Delegation would like, however, to see the exemption from charges extended to cover remittances and parcels also.

On the proposal of the CHAIRMAN, it was decided to refer the question to the Drafting Committee, with a recommendation to the latter to consult the Representative of the Universal Postal Union.

*The meeting rose at 6 p.m.*

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### THIRTEENTH MEETING

*Monday 16 May 1949, 3.15 p.m.*

*Chairman:* Mr. Maurice BOURQUIN (Belgium)

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#### **Article 60** (*continued*)

Reverting to Article 60, Mr. FENEŞAN (Rumania) said that he thought that the principle of fixing a minimum of correspondence, which was contained in the second sentence of the first paragraph of Article 60 of the Stockholm Draft, should be maintained. The above principle reflected the tendency to improve on the provisions of the former Conventions, provisions to which the United Kingdom amendment, on the other hand, tended to revert.

#### **Articles 61, 62, 63 and Annex III**

Mr. WILHELM (International Committee of the Red Cross) said that the question of collective relief shipments, which was dealt with in both Articles 61 and 62, had proved to be of primary importance. That was the reason why it had appeared necessary to expand and add to the 1929 provisions which provided mainly for individual postal parcels. Article 61 which determined the general principles relating to both individual and collective consignments, stipulated that such shipments should in no way relieve the Detaining Power of its obligations with regard to the maintenance of prisoners of war. In order to prevent any arbitrary action by the Detaining Power, it had been provided that if it became necessary to limit relief shipments, measures concerning such limitation might only be taken at the request of the Protecting Power, the I.C.R.C. or the organization responsible for the forwarding of those shipments. The conditions for sending and distri-

buting relief shipments might be the subject of special agreements between the belligerents. He drew the Committee's attention to Annex III which contained a number of provisions governing the distribution of collective relief; those provisions would be automatically applied where no special agreements existed between the Powers concerned.

Mr. GARDNER (United Kingdom) reminded the meeting of the amendments to Articles 61 and 63 and to Annex III submitted by his Delegation (*see Annexes Nos. 135, 136 and 183*), the effect of which would be to give those provisions a more concise wording. He felt that Article 62 was dangerous since, by restating a principle which was explicitly contained in Articles 7 and 8, it might possibly diminish the force of other Articles in which those principles were not restated; he therefore proposed that Article 62 should be omitted.

Mr. BEELAERTS VAN BLOKLAND (Netherlands) suggested that the following sentence should be added to Article 5 of Annex III: "Completed forms and questionnaires shall be forwarded without delay."

General SLAVIN (Union of Soviet Socialist Republics) was not in favour of omitting Article 62.

Mr. BAISTROCCHI (Italy) proposed that Article 62 should be retained, since it contained a reference to Annex III. He thought that Article 63 should contain a restrictive clause, as was proposed in the United Kingdom Delegation's amendment. Since the question of books was very important, it should appear in both Articles 61 and 63.

Msgr. COMTE (Holy See) agreed with the United Kingdom amendments to Articles 61 and 63, which aimed at giving them a more concise form. On the other hand, he saw no necessity for omitting Article 62.

As regards Article 63, he considered it necessary to retain the reference to "bodies giving assistance to prisoners of war" at the beginning of the second paragraph of the Stockholm draft, which the United Kingdom amendment omitted.

General PARKER (United States of America) said that his Delegation proposed the deletion of Article 63, because it considered that the subject was fully covered by Article 61. The question of church vestments, which was not specified in any Article, should be mentioned.

On the proposal of the CHAIRMAN, it was decided to refer Articles 61, 62, 63 and Annex III to the Drafting Committee.

#### Article 65

Mr. WILHELM (International Committee of the Red Cross) explained that during the last war, the I.C.R.C. had been obliged, owing to the lack of normal means of transport, to organize special transportation, either by sea, or during the last months of the war, by road. The wording of Article 65 had been modified in order to make clear that it merely provided for supplementary action which would only be undertaken in cases where the Powers concerned were not in a position to fulfil their obligation to forward relief shipments.

Mr. GARDNER (United Kingdom) drew attention to the amendments to Article 65 submitted by his Delegation (*see Annex No. 140*).

The first point of the amendment provided for the insertion of the following clause at the end of the first paragraph of the Article: "where they can do so without serious prejudice to the operation of the war." He did not think it was possible to lay down an absolute obligation to grant safe-conducts.

The reasons for the proposal to omit the last paragraph of the Article were, first, that the said paragraph conflicted with the fourth paragraph of Article 64 and, secondly, that the United Kingdom Delegation considered that the Convention should not bind the Parties concerned in the matter of the costs of transport of relief shipments, but leave them free to conclude whatever agreements they considered best.

Mr. WILHELM (International Committee of the Red Cross) thought that the addition proposed under

the first point of the amendment might possibly provide certain Powers with a pretext for refusing to allow certain means of transport to be used even though their use might have proved necessary. He considered that the words "the Protecting Powers concerned, the International Committee of the Red Cross or any other body duly approved by the belligerents", which appeared in the first paragraph of the Article, provided a sufficient safeguard against abuse.

Although the question of the costs of transport might be the subject of special agreements, it would be wise to have a clause to provide for cases where no special agreement had been concluded.

General DILLON (United States of America) supported the observations of the Representative of the International Committee of the Red Cross. He could neither agree to the deletion of the words "or any other body assisting the prisoners" nor to that of the last paragraph. Article 64 dealt with ordinary means of transport and Article 65 with special means of transport for relief shipments. He therefore opposed the amendments proposed by the United Kingdom Delegation, and supported the Stockholm text.

Replying to a question by Msgr. COMTE (Holy See), Mr. GARDNER (United Kingdom) said that the words "any other body" occurred twice in Article 65. He agreed that they should be retained in the passage of the first paragraph which read "any other body duly approved by the belligerents"; but he could not accept the phrase "or any other body assisting the prisoners", in the second paragraph, sub-paragraph (b), the wording being too vague.

Mr. WILHELM (International Committee of the Red Cross) explained that the term "or any other body assisting the prisoners" was that used in the first paragraph of Article 115, and was in fact merely an amplification of the term "relief societies" which appeared in the 1929 Conventions. It had not been used in the first paragraph because it had been felt that the transport of relief shipments might be entrusted to technical, and not merely to humanitarian, organizations.

Mr. BAISTROCCHI (Italy) suggested that the term "impartial humanitarian body", which appeared in Article 9, might be used in the present context.

Msgr. COMTE (Holy See) drew attention to the fact that under Article 115 belligerent Powers might limit the number of relief societies.

Major STEINBERG (Israel) proposed the following wording: "the International Committee of the

Red Cross or any other body assisting the prisoners, approved by the belligerents."

Mr. GARDNER (United Kingdom) proposed that the Article should be referred to the Drafting Committee, and that the Delegate of the Holy See should be invited to attend its discussions.

The latter proposal was agreed to, on condition that any points of substance which arose should be referred back to the Special Committee.

#### Article 66

Mr. WILHELM (International Committee of the Red Cross) said that the main purpose of Article 66 was to prevent the correspondence of prisoners of war being censored more than once by the shipping and once by the receiving State.

Miss GUTTERIDGE (United Kingdom) drew attention to the amendment submitted by the United Kingdom Delegation, which proposed that the words "light reading matter or educational work" in the second paragraph should be replaced by the words "individual or collective consignments".

Mr. MOLL (Venezuela) said that during the last war messages addressed by the International Committee of the Red Cross to its delegates had in some cases been retained at the censorship centres. He thought that it would be wise to include a provision to the effect that facilities should be given for Red Cross correspondence, and in particular for messages that the Red Cross wished to transmit from prisoners of war to their families and vice-versa.

Mr. NARAYANAN (India) drew attention to an amendment, submitted by his delegation, proposing the inclusion of a new paragraph which provided facilities for the censorship of correspondence written in little known languages, and would make it possible for the belligerent Powers to obtain additional qualified censors either from the International Committee of the Red Cross or from neutral countries.

Mr. WILHELM (International Committee of the Red Cross) said, with reference to the Venezuelan Delegate's observation, that correspondence between prisoners and the International Committee of the Red Cross was in fact subject to censorship. In a few rare cases certain messages had been held up; but as a general rule all the necessary facilities had been granted. The International Committee of the Red Cross did not consider it necessary to introduce a special provision on the subject.

With regard to the amendment submitted by the Delegation of India, it was difficult for a neutral body or person to exercise censorship on behalf of a belligerent Power. He thought, however, that the request for additional censors should be made in the first place to the Protecting Power.

Article 66 was referred to the Drafting Committee.

#### Article 67

Mr. WILHELM (International Committee of the Red Cross) said that Article 67 reproduced the provisions of the 1929 Convention, but went into greater detail. A new provision laid down that legal documents were to be transmitted through the Protecting Power or through the Central Prisoners of War Agency. It had also been provided that prisoners of war might consult a lawyer in their camp.

Mr. BAISTROCCHI (Italy) proposed that the term "qualified persons" should be substituted for the word "lawyer".

Mr. NARAYANAN (India) referred to the amendment submitted by his Delegation. He had agreed with the Delegate of Israel to modify its wording. It now proposed the insertion of the phrase "and likewise outside the camp, subject to the approval of the Detaining Power", after the words "in their camp".

Mr. MAYATEPEK (Turkey) said that he was submitting an amendment proposing the addition of a paragraph to ensure that: "The form and substance of these instruments shall be governed by the principles of private international law".

Article 67, together with the amendments thereto, was referred to the Drafting Committee.

#### Article 68

Mr. WILHELM (International Committee of the Red Cross) said that the right of prisoners of war to complain was a fundamental right. Article 68 restated the principle of the 1929 provisions, going, however, into greater detail on one or two points. It had been considered necessary to stipulate that prisoners should be able to communicate their complaints direct to the Protecting Power. Furthermore, in view of the fact that visits by the delegates of the Protecting Power sometimes took place at considerable intervals, a provision had been introduced authorizing spokesmen to send periodic reports to the Protecting Power.

Major ARMSTRONG (Canada) agreed that complaints should be forwarded without delay, as laid down in the third paragraph; but the question of censorship should not be overlooked. His Delegation's proposal to add, at the end of the first sentence of the third paragraph, the words "subject, however, to the right of censorship by the Detaining Power" was not intended to permit the censors to alter anything in the complaint, but only to ensure that the message did in fact contain a complaint and did not deal with any other subject.

Mr. BAISTROCCHI (Italy) thought that a sentence should be included in the Article, permitting prisoners of war to use their own language in correspondence with their families and also in any complaints which they addressed to the Protecting Power.

It was agreed to refer Article 68, together with the proposed amendments, to the Drafting Committee.

#### Article 69

Mr. WILHELM (International Committee of the Red Cross) said that the institution of spokesmen had assumed such importance during the last world conflict that it had been necessary to make the 1929 provisions more explicit. The Stockholm draft, therefore, included a provision authorizing the re-election of spokesmen. It also settled the question of the election of spokesmen in mixed camps containing both officers and other ranks. The text also laid down that the Detaining Power must furnish reasons for refusing to recognize a spokesman who had been duly elected.

General PARKER (United States of America) said that the amendment tabled by his Delegation (see *Annex No. 141*) was substantially the same as that of the United Kingdom. The two were really amendments to the wording of the Stockholm text. The United States amendment provided that a small number of officers should be placed in labour camps for enlisted men for the purpose of acting as spokesmen and performing other administrative duties.

General SLAVIN (Union of Soviet Socialist Republics) had no objection to the amendment proposed by the United States Delegation. There was no reason why officers should not be stationed in labour camps to perform administrative duties, but they should be duly elected before becoming spokesmen. Where an officer was elected spokesman, his assistant should be from the ranks.

Mr. WILHELM (International Committee of the Red Cross) pointed out that in "Remarks and Proposals" the I.C.R.C. had proposed that in the case of mixed camps (which were an innovation), two assistants to the spokesman should be chosen, one of them being an enlisted man.

Mr. BEELAERTS VAN BLOKLAND (Netherlands) proposed that the words "by secret ballot" should be inserted in the first sentence of the first paragraph, immediately after the word "spokesmen", and also that the words "or removal from office" should be inserted after the word "refusal" in the last paragraph.

Major HIGHET (New Zealand) agreed in principle with the United States amendment, but felt that the provision should not be made mandatory. He suggested that the United States Delegation should insert the following words at the beginning of their amendment: "At the request of the Power in whose service the prisoners of war were at the time of capture, the Detaining Power..."

Article 69, together with the proposed amendments, was referred to the Drafting Committee.

#### Article 70

Mr. WILHELM (International Committee of the Red Cross) drew attention to the provision under which a system of mutual assistance might be organized by prisoners of war under the direction of the spokesman.

Miss GUTTERIDGE (United Kingdom) proposed the omission of the part of the second paragraph which followed the word "spokesman". An enumeration of Articles was always dangerous, because it might be given a restrictive interpretation.

Mr. BAISTROCCHI (Italy) felt that spokesmen should be protected against disciplinary measures taken on account of infringements of regulations committed by other prisoners of war. Otherwise the office of spokesmen might become unpopular. At the suggestion by the CHAIRMAN, he agreed to submit an amendment in writing on the matter (see *Annex No. 142*).

Article 70 was referred to the Drafting Committee.

#### Article 71

Mr. WILHELM (International Committee of the Red Cross) explained that in view of the extent of the duties for which the spokesman was responsible,

the Stockholm text provided that he might appoint assistants, and also that he should have facilities for visiting labour detachments and for correspondence with the Protecting Power and the various relief organizations.

Miss GUTTERIDGE (United Kingdom) said that the Delegation of the United Kingdom had tabled an amendment proposing certain drafting changes, in particular, the omission of the third paragraph which was covered by the provisions of Articles 69, 89 and 99.

General SLAVIN (Union of Soviet Socialist Republics) and General PARKER (United States of America) supported the Stockholm text and opposed the United Kingdom amendment.

Major HIGGET (New Zealand) supported the drafting suggestions submitted by the United Kingdom Delegation, but felt that the third paragraph of the Article should be retained.

Article 71, together with the amendments thereto, was referred to the Drafting Committee.

*The meeting rose at 6.10 p.m.*

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#### FOURTEENTH MEETING

*Tuesday 17 May 1949, 3.15 p.m.*

*Chairman: Mr. Maurice BOURQUIN (Belgium)*

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#### **Preliminary Report by the Chairman of the Sub-Committee on Penal Sanctions (Articles 72 to 99)**

General DILLON (United States of America), Chairman of the Sub-Committee entrusted with the study of penal sanctions, submitted a preliminary report compiled by himself without consulting his colleagues. He said that the Sub-Committee would submit a formal report to the Committee before the second reading.

Although the Sub-Committee had made a certain number of changes in the wording of the Articles which it had had to examine (Articles 72 to 99) in order to clarify their meaning and scope, alterations of substance had actually been few and had only been made to the following Articles:

In Article 82, the last paragraph, which had been added at Stockholm and provided for the extension of the protection of the Convention to persons not enumerated in Article 3, had been deleted;

In Article 86, a new provision had been introduced requiring commandants of prisoner of war camps to keep a record of disciplinary punishments;

In Article 92 (Article 93 of the Stockholm Draft) the principle of limiting the length of

time spent in confinement while awaiting trial to a definite period, which had been proposed at the Stockholm Conference but not adopted, had been reintroduced;

In Article 96 (Article 97 of the Stockholm Draft), a new rule had been introduced providing that the sentence passed on a prisoner of war in a court of first instance could in no case be made more severe on appeal or petition by the prosecution.

The CHAIRMAN said that it was not possible there and then to consider the new Articles drafted by the Sub-Committee on Penal Sanctions. They would be considered at the time of the second reading when the final report of the Sub-Committee had been received.

General SLAVIN (Union of Soviet Socialist Republics) enquired whether the Articles which had not been considered by the Sub-Committee, viz. Articles 74 and 81, were not to be discussed on the first reading by Committee II.

A discussion then took place regarding the procedure to be followed for the consideration of the Articles on penal sanctions. After an exchange of views in which General SLAVIN (Union of Soviet Socialist Republics), General DILLON (United States of America), Miss GUTTERIDGE (United Kingdom)

and Captain MOUTON (Netherlands) took part, the CHAIRMAN stated that all the Articles without exception would be given a first reading which would be greatly facilitated by the work of the Sub-Committee on Penal Sanctions. He hoped that a great many Articles would be adopted unanimously on the first reading. The second reading would be reserved for Articles concerning which there was not general agreement. If it was not possible to reach unanimity at the second reading, a vote would have to be taken.

Mr. WILHELM (International Committee of the Red Cross) enquired whether the first reading would be based on the Stockholm text or on the new Articles drawn up by the Sub-Committee on Penal Sanctions. He suggested that the first reading should be based on the latter texts.

The CHAIRMAN agreed, but considered, that the question should be settled by the Committee after it had seen the Articles drafted by the Sub-Committee.

#### Article 100

Mr. WILHELM (International Committee of the Red Cross) pointed out that the provision obliging the Detaining Power to repatriate prisoners of war who were seriously sick or seriously wounded already existed in the 1929 Convention, as did the obligation on such persons not to resume active service (Article 107).

Accommodation of sick and wounded prisoners of war in neutral countries had played an important part in the First World War, but not in the last war. It had, however, seemed best to reintroduce the same principle in less explicit form in the present Article. The Stockholm text had also restated the principle according to which agreements could be concluded with regard to the internment in neutral countries of able-bodied prisoners of war who had undergone long periods of captivity.

One innovation had been introduced in Article 100, namely that wounded or sick prisoners of war might not be repatriated against their will (third paragraph).

Major ARMSTRONG (Canada) reminded the meeting that he had submitted an amendment proposing the omission of the third paragraph. The Detaining Power, not the prisoner of war, should be master of the situation, since prisoners of war might have many reasons for preferring to remain in the territory of the Detaining Power rather than to return home.

Miss GUTTERIDGE (United Kingdom) agreed with the view expressed by the Delegate of Canada; she pointed out that her Delegation had also introduced an amendment to the same effect.

General DEVIJVER (Belgium) said that although he understood the objections raised by the Delegations of Canada and of the United Kingdom, he would prefer the paragraph to be retained. To explain his point of view more clearly, he gave the following example: during the last war, the Germans had brought pressure to bear on certain prisoners of war who might, they thought, be useful to them in the future, and had included them automatically in the lists of sick persons to be repatriated to their respective occupied countries. Once they had returned home, such prisoners were forced to collaborate in economic and in some cases in political or even military connections. For the above reasons he was not in favour of omitting the last paragraph of Article 100.

Major HIGGET (New Zealand), Mr. BAISTROCCHI (Italy), and Mr. BAUDOY (France) supported the Delegation of Belgium, each quoting similar cases affecting their own countries.

Major ARMSTRONG (Canada) recalled the discussions which had taken place on the subject at the Stockholm Conference. He urged that no Detaining Power should be compelled to keep in its territory prisoners of war who did not wish to return home. It might even be dangerous particularly for small States, to retain too large a number of prisoners in their territory. He was certain that if a prisoner produced valid reasons for refusing repatriation (for instance, danger of death in the event of returning to his own country), no camp commandant would repatriate him against his will, at least in Canada.

Major HIGGET (New Zealand) pointed out that, as Article 100 only related to wounded or sick prisoners of war, the number of those who were unwilling to be repatriated would never be very great. The Article should be referred to the Drafting Committee with the proposed amendments.

The above proposal was agreed to unanimously.

#### Article 101

Mr. WILHELM (International Committee of the Red Cross) explained that the 1929 Convention laid down that repatriation and accommodation in a neutral country were to be governed by special agreements between the belligerents, based, if necessary, on the Model Draft Agreement an-

nexed to the Convention. The present provisions went further and embodied in the Convention itself the basic principles of the Model Draft Agreement attached to the 1929 Convention. The principles in question were to be found in the first paragraph, sub-paragraphs 1, 2 and 3, and in the second paragraph, sub-paragraphs 1 and 2 of the Stockholm text. The Convention further made provision for special agreements in particular cases.

Miss GUTTERIDGE (United Kingdom) drew attention to the amendment submitted by her Delegation, which proposed that the second paragraph of Article 101 should include a new category of persons entitled to accommodation in neutral countries, namely "Sick and wounded covered by the first paragraph, but who have not been repatriated".

General DILLON (United States of America) thought that the Drafting Committee's special attention should be drawn to the United Kingdom amendment which in his opinion, weakened the first paragraph.

Article 101 was referred, with the United Kingdom amendment, to the Drafting Committee.

### New Article

Major ARMSTRONG (Canada) reminded the meeting of the amendment submitted by his Delegation, proposing that a new Article, worded as follows, should be included in Section I of Part IV of the Convention.

"If the Detaining Power is not in a position, for any reasons, to conform to certain minimum standards as regards the treatment of prisoners of war as envisaged in the present Convention, special agreements shall be concluded among the Detaining Power, the Power on which the prisoners of war depend and a Neutral Power which may be acceptable to the two Powers, which will enable prisoners of war to be detained in future in a neutral territory until the close of hostilities, the whole expense to be borne by the Power on which the prisoners of war depend".

The amendment had been adopted at Stockholm, but for some reason of which he was unaware, did not appear in the present text. The new element in the amendment was the provision that the cost of maintaining prisoners detained in neutral territories was to be borne by their home Power. The latter would presumably prefer that solution rather than see its nationals die in the camps of the Detaining Power.

General DEVIJVER (Belgium) supported the above amendment.

The amendment submitted by the Canadian Delegation was referred to the Drafting Committee.

### Article 102 and Annex II

Mr. WILHELM (International Committee of the Red Cross) explained that the 1929 Convention had already made provision for Mixed Medical Commissions but without specifying the procedure for setting them up, the way in which they would operate, nor, most important of all, the organ to which they would be responsible.

The new text remedied the above omissions by referring to the Regulations concerning Mixed Medical Commissions (Annex II of the Stockholm Draft).

The second paragraph laid down that prisoners of war who were manifestly seriously injured or seriously sick were to be repatriated without having to be examined by a Mixed Medical Commission.

Miss GUTTERIDGE (United Kingdom) considered that the Stockholm text and the Annex were perfectly satisfactory. She proposed, however, that the text of Article 10 of Annex II should be inserted immediately after the first sentence of the first paragraph of Article 102. The passage in question read as follows:

"The Mixed Medical Commission shall examine all the prisoners designated in Article 103 of the Convention. They shall propose repatriation, rejection, or reference to a later examination. Their decisions shall be made by a majority vote".

Major ARMSTRONG (Canada) reminded the meeting of the amendment tabled by his Delegation proposing the insertion of the words "In default of special agreements concluded between the belligerents concerned..." at the beginning of the second sentence of the first paragraph.

General SLAVIN (Union of Soviet Socialist Republics) did not agree with the amendment submitted by the Delegation of the United Kingdom. In his opinion everything to do with the duties of the Mixed Medical Commissions should remain in Annex II.

Miss GUTTERIDGE (United Kingdom) considered that Articles 10 and 14 of Annex II were of sufficient importance for their substance to be included in the main body of the Convention.

Mr. WILHELM (International Committee of the Red Cross) thought that the amendment submitted

by the Canadian Delegation, was more than a mere matter of wording.

On the other hand, the provisions laid down in Annexes I and III ("Draft Model Agreement concerning Direct Repatriation and Accommodation in Neutral Countries of Wounded and Sick Prisoners of War" and "Draft Regulations concerning Collective Relief") would be applied in any case as the Convention already contained safeguards in connection with the matters covered by these model agreements. That was not so in the case of Mixed Medical Commissions; for there were no safeguards in the main body of the Convention with regard to their operation, formation, duties and responsibilities. Annex II ("Draft Regulations concerned Mixed Medical Commissions"), to which Article 102 referred, was thus a matter of imperative, and not of suppletory law, as was the case with Annexes I and III. The difference in law was an important one.

General SLAVIN (Union of Soviet Socialist Republics) felt that as Annex II was the working document for the Mixed Medical Commissions, it should be as complete as possible. All the Articles at present contained in it should therefore be retained.

The CHAIRMAN decided to refer Article 102, together with the amendments and observations relating to it, to the Drafting Committee.

### Article 103

Mr. WILHELM (International Committee of the Red Cross) explained that experience had shown that it was necessary to limit the number of prisoners of war who were examined by the Mixed Medical Commissions, without, however interfering with the individual right of each prisoner to present himself for examination if he so desired. The latter category should, however, only be examined after those designated in accordance with the beginning of the first sentence of Article 103.

The CHAIRMAN drew attention to the United Kingdom amendment which proposed including a modified version of Annex II, Article 14, in Article 103, as a final paragraph. The new text proposed read as follows:

"Mixed Medical Commissions shall normally visit each camp containing prisoners of war awaiting examination at intervals not exceeding six months".

The Committee decided to refer Article 103 together with the above amendment, to the Drafting Committee.

### New Article

The CHAIRMAN referred to yet another amendment submitted by the United Kingdom Delegation which proposed that a modified version of Annex II, Article 11, should be inserted as a new Article immediately after Article 103; the proposed new Article read as follows:

"The decisions made by Mixed Medical Commissions in each specific case shall be communicated as soon as possible and, in any case, not more than one month after completing the tour, to the Detaining Power, the Protecting Power and the International Committee of the Red Cross. The Mixed Medical Commission shall also inform each prisoner of war examined of the decision made, and shall issue certificates to those whose repatriation has been proposed".

Mr. GARDNER (United Kingdom) considered that the modifications introduced were merely a matter of drafting. The paragraph should, he felt, be included in the body of the Convention rather than in Annex II.

General SLAVIN (Union of Soviet Socialist Republics) repeated the same objections which he had raised previously, regarding the transfer of provisions from Annex II to the body of the Convention.

The Committee decided to refer the question to the Drafting Committee.

### Article 104

Mr. WILHELM (International Committee of the Red Cross) said that Article 104 was an exact reproduction of the text of Article 71 of the 1929 Convention.

General DILLON (United States) proposed the omission of the words "at work" after the word "accidents".

The Committee decided to refer Article 104 and the amendment thereto to the Drafting Committee.

### Article 105

Mr. WILHELM (International Committee of the Red Cross) explained that Article 105 was a more liberal interpretation of the principle of Article 53 of the 1929 Convention. According to the new text, a prisoner of war undergoing judicial prosecution or conviction might be repatriated if the Detaining Power consented.

Mr. GARDNER (United Kingdom) reminded the meeting of the two amendments submitted by his Delegation, the first recommending the deletion of Article 105, and the second the insertion of a new Article 109A worded as follows:

“Prisoners of war who are subject to criminal proceedings or who have been convicted for a crime or offence at common law which would be extraditable between the Powers concerned, may be retained until the end of the proceedings, and, if need be, until the expiration of sentence. The Powers concerned shall communicate to each other the names of those so detained, together with particulars of the offences with which they are charged or have been convicted. In no other case shall a prisoner of war, who would otherwise be repatriated, be withheld from repatriation to meet a disciplinary or judicial charge or to serve a sentence”.

He considered that the above provision would be best placed at the end of the Chapter. The two amendments were closely connected, however and should be examined together.

As regards the second paragraph of Article 105, he pointed out that the clause it contained would not necessarily operate in favour of prisoners of war, since it gave the Detaining Power the right to keep back a prisoner of war who was punished for a non-extraditable offence.

General DILLON (United States of America) was in favour of the Stockholm text. He proposed, however, that the words “or accomodation in a neutral country” should be inserted in the first paragraph, immediately after the word “repatriation”.

Colonel NORDLUND (Finland) drew attention to the amendment proposed in the memorandum by his Government. The latter considered that the provision contained in the second paragraph of Article 105 was unnecessary, as the Detaining Power could always waive its rights if it so desired.

The CHAIRMAN said that many comments had been made on the wording of Article 105. The two United Kingdom amendments linked the question of the deletion of the existing Article 105 with that of the introduction of a new Article 109A. That, he considered, was a question of substance which should be referred to the Special Committee.

The Committee endorsed the above suggestion. Article 105 and the two amendments were referred to the Special Committee.

#### Article 106

Mr. WILHELM (International Committee of the Red Cross) explained that Article 106, worded as it was at present, was a slightly modified version of Article 73 of the 1929 Convention.

Article 106 was approved unanimously without modification.

#### Article 107

Mr. WILHELM (International Committee of the Red Cross) said that Article 107 reproduced, without modification, the provision contained in Article 74 of the 1929 Convention. Article 107 was the necessary counterpart of the obligation imposed upon the Detaining Power to repatriate seriously injured or seriously sick prisoners.

Miss GUTTERIDGE (United Kingdom) reminded the meeting that her Delegation had tabled an amendment proposing that the words “No repatriated person” should be replaced by the words “No persons referred to in Article 100”. That wording would define the scope of the Article more clearly.

General DILLON (United States of America) pointed out that a provision identical with that contained in Article 107 already figured in the 1929 Convention, which had stood the test of practical application. He wondered whether there was really any point in altering the wording now.

Major HIGHET (New Zealand) said that his country had always interpreted the Article as concerning all the repatriated persons without exception (ministers of religion, medical personnel, etc.), but it appeared that not every Power was giving it the same interpretation. Hence he supported the United Kingdom amendment, which made the matter clearer.

The Committee decided to refer Article 107, together with the amendment, to the Drafting Committee.

*The meeting rose at 6 p.m.*

## FIFTEENTH MEETING

Wednesday 18 May 1949, 3.15 p.m.

Chairman: Mr. Maurice BOURQUIN (Belgium)

**Article 107** (*continued*)

At the request of Colonel NORDLUND (Finland), the Committee agreed to resume the discussion on Article 107, in spite of the fact that it had already been considered at the previous meeting.

Colonel NORDLUND (Finland) reminded the meeting that the memorandum submitted by his Government, proposed among other things that a more precise wording should be substituted for the expression "active military service" which had been taken from the 1929 text.

**Article 108**

Mr. WILHELM (International Committee of the Red Cross) explained that in the Stockholm text the question of repatriation was related to that of the cessation of hostilities and no longer to that of the conclusion of peace. The text emphasized, therefore, that prisoners of war were to be repatriated immediately after the cessation of active hostilities.

With regard to the costs of repatriation, the Stockholm Conference had recommended that the International Committee of the Red Cross should draw up the model agreement mentioned in the fourth paragraph of the Article. However since the I.C.R.C. had not had sufficient experience in the subject nor enough time to consult the government experts, they had thought it wisest to leave it to the present Conference to decide whether such an agreement was necessary, and, if so, what form it should take. The I.C.R.C. considered that the inclusion of certain principles in the main body of the Convention would be preferable to the addition of a new Annex. They had therefore suggested a new wording for Article 108, which had been circulated and which would, they hoped, serve as a basis for discussion (*see Annex No. 174*).

Mr. GARDNER (United Kingdom) said that before submitting an amendment, his Delegation would like

to hear the delegates' views on Article 108. While he agreed in principle that prisoners of war should be repatriated as soon as possible, experience had shown that it was not always wise, even in the interests of the prisoners themselves, to return them at once to a defeated country which was not able to maintain them; often they could not be absorbed into civil life without prejudice to law and order in the country concerned and to the military security of the occupying forces. He agreed that the prisoners themselves, the Protecting Power and the International Committee of the Red Cross should be informed of the Detaining Power's reasons for considering that repatriation should be delayed.

Mr. BAISTROCCHI (Italy) proposed that Articles 108 and 109 be referred to the Sub-Committee of jurists which had been entrusted with the consideration of penal sanctions.

Mr. MARESCA (Italy) proposed that where prisoners of war had been transferred to countries which were very far removed from the battle areas, the Detaining Power should be held responsible for defraying the costs of their repatriation as far as the place where they were captured; the country of origin would only be responsible for the costs of repatriation from the place of capture to the country of origin. He pressed for the retention of the first paragraph of Article 108.

Dr. FALUS (Hungary) did not agree with the Delegate of the United Kingdom. The prompt repatriation of prisoners to their countries which were often devastated was the only means of assisting those countries in their industrial and agricultural rehabilitation. He therefore supported the Stockholm text.

General DEVIJVER (Belgium) supported the observations of the Delegate of Italy. He also was in favour of the retention of the first paragraph. It was not for the Detaining Power to judge the

expediency of the immediate repatriation of prisoners of war whose only desire was to be returned as quickly as possible to the sphere of their national activities.

### Article 109 (and New Articles)

Mr. WILHELM (International Committee of the Red Cross) pointed out that the conditions under which repatriation was to take place were similar to the conditions and procedure for transfer as laid down in Articles 38 and 40. It had also been considered necessary to reaffirm in Article 109 the principle of non-discrimination between prisoners which had been established in Article 14, but at the same time to lay down that there should be priorities based on considerations of age, health, sex, family situation and duration of internment.

General DILLON (United States of America) proposed three small drafting changes. The first was the omission, for obvious reasons, of the word "married" in the second paragraph. The other two were the omission of the words "for a crime or an offence under common law" in the first sentence of the third paragraph, and of the words "for a crime or offence at common law" in the second sentence of the same paragraph, the expression "common law" having lost all meaning.

Mr. BIJLEVELD (Netherlands) drew attention to an amendment submitted in the memorandum of his Government proposing that the words "or under international law" should be inserted after the words "common law" in the first and second sentences of the third paragraph. Another amendment tabled by his Delegation proposed the insertion of the following provision between the third and fourth paragraphs:

"Belligerents shall communicate to each other the names of those to be detained until the end of proceedings or until the completion of the punishment."

Mr. WILHELM (International Committee of the Red Cross) explained that the expression "common law" was intended to differentiate between crimes or offences against the laws of the country and breaches of military discipline.

Mr. MARESCA (Italy) proposed the deletion of the last sentence of the second paragraph. He supported the views expressed by the Representative of the International Committee of the Red Cross with regard to the expression "common law" in the third paragraph, but wondered whether it was wise to introduce the idea of offences under

international law into the text of the Convention as was suggested by the Netherlands Delegation.

Colonel WATCHORN (Australia) proposed replacing the words "common law" by the words "under the laws of the Detaining Power". He submitted, in this connection, an amendment proposed by his Delegation, which consisted in adding the following phrase to the end of the third paragraph: "also prisoners accused of or convicted for a crime or offence under the law of the Detaining Power; and or accused of or convicted for a war crime".

Mr. GARDNER (United Kingdom) drew attention to the fact that while the second paragraph of Article 105 referred to prisoners detained in connection with "a judicial prosecution or conviction" the term employed in the third paragraph of Article 109 was "penal prosecution". He thought the terms used in both Articles should be the same, and the United Kingdom Delegation had therefore proposed a new Article 109A which was intended to replace Article 105 and the third paragraph of Article 109 (*see Summary Record of the Fourteenth Meeting*). He suggested that the above texts, together with the Australian and Netherlands proposals, should be referred to the Sub-Committee of jurists presided over by General Dillon.

With regard to Article 109 of the Stockholm text, he observed that the first paragraph referred to the procedure laid down in Article 40, which provided that prisoners were to be advised of their departure in time for them to inform their next of kin. He feared that that might delay the repatriation of prisoners. In the disorganization following the defeat of a country, such as had occurred in Germany, next of kin were sometimes impossible to trace or notify. Thus the conditions of transfer were not always applicable to repatriation.

Again, there was no provision dealing with the return, to prisoners who were repatriated, of valuables and other personal effects taken on capture. The United Kingdom Delegation proposed, in this connection, the introduction of a new Article 109B, worded as follows:

„On repatriation, any articles of value impounded from prisoners of war under Article 16, and any foreign currency which has not been changed into the Detaining Power's currency, shall be restored to them. Prisoners of war shall be allowed to take with them on repatriation personal effects up to a total weight of 25 kilogrammes.

"Any articles of value impounded under Article 16 or monies in currencies, other than that of the Detaining Power, belonging to a prisoner

of war which, for any reason whatever, do not accompany a prisoner of war on repatriation, will be despatched to the Information Bureau set up under Article 112.

"Other personal effects left behind by a prisoner of war on repatriation will be sent after him only if he makes the necessary arrangements for transport, export licenses, payment of customs, duties, etc."

With regard to the second paragraph, he was opposed to setting up priorities, which would delay repatriation. The simplest and most effective manner of repatriating prisoners would be to move out prisoners from the camps nearest the ports of embarkation first, and then to carry out a systematic evacuation camp by camp.

To sum up, the last paragraph of Article 109 was, in his view, most important and should have prominence. He further proposed that the third paragraph should be referred to the Sub-Committee of jurists; that the first and second paragraphs should be omitted; and that a new Article 109B on the lines of the United Kingdom Delegation's amendment should be included in the Convention.

Mr. FENEŞAN (Rumania) was opposed to the deletion of the second paragraph of the Article, which reaffirmed the principle of non-discrimination.

It was decided that Articles 108 and 109, together with the amendments thereto, would be referred to the Sub-Committee of jurists presided over by General Dillon, which had been set up for the purpose of studying penal sanctions.

### Article 110

The CHAIRMAN said that the Committee had not yet received any letter from the Chairman of Committee I proposing that consideration of Articles 110 to 112 should be entrusted to a small sub-committee of experts from Committees I and II (see *Summary Record of the Eighth Meeting*). He proposed that they should proceed with the first reading of the Articles in question without further delay.

The above proposal met with the Committee's approval.

Mr. WILHELM (International Committee of the Red Cross) said that Article 110 included the main provisions of Article 76 of the 1929 text. He drew attention to the second paragraph of the Article, which did not make the issuing of individual death certificates obligatory but recommended it.

This paragraph provided that certain minimum data were to be set forth on a form, a model of which was annexed.

The third and fourth paragraphs provided additional safeguards regarding the burial of prisoners of war, which the experience of the last war had proved to be necessary; they corresponded to those embodied in Article 13 of the Wounded and Sick Convention.

Mr. GARDNER (United Kingdom) drew attention to the amendment submitted by his Delegation (see *Annex No. 177*), which was based almost entirely on the provisions of Article 13 of the Wounded and Sick Convention. Article 110, as adopted at Stockholm, contained no provision for careful medical examination before burial, for the registration of graves for purposes of identification, for the exchange of information regarding graves, for the maintenance of a record of cremations or for the custody of ashes. Those points were as important in the case of prisoners of war as in that of the dead found on the battlefield.

The first paragraph of Article 110 (Stockholm text) dealing with wills was adequately covered by the provisions of Article 67, which dealt with the establishment and transmission of legal documents, and for that reason had not been incorporated in the United Kingdom amendment.

Mr. BIJLEVELD (Netherlands) reminded the meeting that his Delegation had tabled an amendment. He thought, however, that the United Kingdom wording put it in a better way.

Mr. MAYATEPEK (Turkey) agreed with the remarks of the United Kingdom Delegate with regard to the deletion of the first paragraph, which was covered by the provisions of Article 67. He drew attention, in this connection, to the amendment to Article 67 submitted by his Delegation (see *Summary Record of the Thirteenth Meeting*).

Mr. NARAYANAN (India) supported the United Kingdom amendment and proposed the insertion of provisions dealing with the cost of burial and of the maintenance of graves.

Msgr. COMTE (Holy See) said that, with regard to the question of cremation, the texts of the Draft Wounded and Sick, Prisoners of War and Civilians Conventions were not in harmony. It should be clearly stated, moreover, that where cremation took place for religious motives, it was the religion of the prisoner of war, and not that practised in the territory of the Detaining Power, which was the determining factor.

**Article 111**

Mr. WILHELM (International Committee of the Red Cross) explained that it had been considered necessary, in view of incidents which had occurred during the last war, to lay down clearly that in cases where doubt existed as to the cause of death — where, for instance, it had been stated that a prisoner had been shot whilst attempting to escape — an enquiry should be held and the guilty persons punished by the Detaining Power.

Mr. GARDNER (United Kingdom) said that his Delegation had tabled an amendment proposing drafting changes intended to strengthen the Article. He thought that Article 111 would be more appropriately placed after Article 35 which dealt with the use of weapons against prisoners of war. There was no need to refer Article 111 to a sub-committee dealing with burials, death certificates and other documentation.

General PARKER (United States of America) agreed with the idea contained in the United Kingdom amendment which proposed that the word "injury" should be qualified by the phrase: "as a result of which the prisoner requires in-patient treatment in a hospital or infirmary". If that proposal was not adopted, it would be necessary, in the English text, to insert the word "serious" before the word "injury".

Mr. FENEŞAN (Rumania) was opposed to the United Kingdom Delegation's proposal to place Article 111 after Article 35. The latter Article was included in the Chapter entitled "Discipline", and to transfer Article 111 to that Chapter might bring in the question of the guilt of the prisoner.

**Article 112**

Mr. WILHELM (International Committee of the Red Cross) said that the question of standardizing the cards on which the personal particulars of each individual prisoner were entered, had given rise to considerable discussion. It had not been possible to arrange for a standard card to be used in the different countries. Uniformity with regard to the minimum data to be forwarded to the country of origin was, however, provided for in the fourth paragraph. The third paragraph laid down that the data was to be forwarded immediately and by the most rapid means available. The sixth paragraph provided that information regarding the state of health of prisoners who were seriously ill or wounded must be supplied regularly, every week if possible.

Mr. GARDNER (United Kingdom) said that his Delegation had tabled an amendment proposing that Article 112 of the Stockholm text should be deleted and three new Articles 112, 112A and 112B (see *Annex No.178*) substituted. By submitting that amendment his Delegation aimed at three things. In the first place, they wished to place upon the Detaining Power an obligation to collect the information required by the Information Bureau. They wished, secondly, to oblige the Detaining Power to provide accommodation, equipment and staff for Information Bureaux. Lastly, the amendment proposed certain drafting changes.

On the proposal of the CHAIRMAN, the Committee decided to await the receipt of the letter from the Chairman of Committee I on the subject of the joint consideration of Articles 110 to 112, before taking any decision on those Articles.

**Article 113**

Mr. WILHELM (International Committee of the Red Cross) said that Article 113, which dealt with the Central Prisoners of War Information Agency, had been placed after the Article relating to Information Bureaux, as it was logical for the two Articles to follow in that order. He drew attention to the provision in the third paragraph regarding the costs of operating the Central Information Agency, and also to the provisions contained in the fourth paragraph with regard to the activities of the relief societies mentioned in Article 115.

Miss BECKETT (United Kingdom) said that her Delegation had submitted an amendment proposing the insertion of the word "reasonable" before the word "facilities" in the second paragraph, because in time of war telegraph and postal services were often overburdened.

With regard to the third paragraph, the obligation laid upon the belligerents to divide the costs of operating the Central Information Agency might be interpreted as giving them the right to interfere in the working of the Agency; that was undesirable. The United Kingdom Delegation therefore proposed that the paragraph should be omitted.

She also suggested that the words "... or of the relief societies provided for in Article 115" in the last paragraph should be omitted, as her Delegation considered that the magnificent work of the International Committee of the Red Cross should not be confused with that of other relief societies which had been already covered in Article 115.

Mr. MARESCA (Italy) considered that the word "propose" in the second sentence of the first paragraph was too vague and did not bring out

the real meaning of the paragraph. Again, the third paragraph was too loosely worded; did the word "proportionately" relate to the population of the country, or to the number of its nationals who benefited by the services of the Central Information Agency? He agreed with the United Kingdom Delegate that other relief societies should not be placed on an equal footing with the International Committee of the Red Cross; but, at the same time, they should not be forgotten.

Msgr. COMTE (Holy See) was not in favour of the United Kingdom Delegation's proposal to omit the last phrase of the fourth paragraph. Without wishing to weaken in any way the position of the International Committee of the Red Cross which was fully safeguarded in other Articles, he considered that the reference to the other relief societies should be retained in that place.

Mr. MOLL (Venezuela) was against omitting the phrase referring to the relief societies; they had done useful work during the last war, particularly the Roman Catholic relief societies and the Young Men's Christian Association (Y.M.C.A.).

General PARKER (United States of America) supported the observations of the Delegations of the Holy See, Italy and Venezuela.

Mr. SÖDERBLOM (Sweden) supported the observations of those who had just spoken in favour of retaining the reference to relief societies.

Mr. WILHELM (International Committee of the Red Cross) explained that it had been considered necessary to insert a paragraph relating to the costs of operating the Central Information Agency in order that it could start organizing its work immediately hostilities broke out. He agreed, however, that the third paragraph was not well drafted; the word "proportionately" would entail considerable accounting difficulties, as the Agency dealt not only with prisoners, but also with other categories of war victims. He drew the attention of

the Committee to the new draft of the paragraph which was suggested in "Remarks and Proposals" it read as follows:

"The High Contracting Parties and in particular those whose nationals benefit by the services of the Central Agency, are requested to give to the said Agency the financial aid it may require."

With regard to the observations of the Delegate of Italy, the second sentence of the first paragraph had been drafted in such a way as not to impose any obligation upon the neutral organizations which were expected to collaborate in the regular application of the Convention.

The I.C.R.C. saw no reason against the proposal to insert the word "reasonable" before "facilities" at the end of the second paragraph, although they did not think it was necessary. The Agency had always tried to keep within reasonable limits in its activities.

With regard to the phrase relating to relief societies, while fully recognizing the services rendered by information bureaux other than the Central Information Agency, he thought that their inclusion gave Article 113 a slightly hybrid character. Perhaps the Drafting Committee could find a better place in the Convention to insert this reference to other relief societies.

Mr. SÖDERBLOM (Sweden) supported the observations of the Representative of the I.C.R.C. concerning the word "reasonable". He thought there was some danger in introducing vague terms such as "if possible", "reasonable" and the like. The use of vague expressions served no useful purpose but might in certain circumstances give rise to abuse.

Major HIGGET (New Zealand) strongly supported the remarks of the Representative of the International Committee of the Red Cross concerning the third paragraph; he approved of the draft suggested in "Remarks and Proposals" (*see above*).

*The meeting rose at 6.15 p.m.*

## SIXTEENTH MEETING

Thursday 19 May 1949, 3.15 p.m.

Chairman: Mr. Maurice BOURQUIN (Belgium)

**Article 114**

Mr. WILHELM (International Committee of the Red Cross) explained that Article 114 reproduced the substance of Article 80 of the text of 1929. One new question had, however, been included, namely, that of exemption from telegraphic charges, which it certainly did appear desirable to grant (partially, if not wholly) both to the national Bureaux and to the Central Information Agency. During the last war the telegraph had frequently been the only possible means of communication between certain national Bureaux and the Central Prisoners of War Information Agency.

Major ARMSTRONG (Canada) said that at the time of the discussion of Article 64 (Exemption from postal and transport charges) his Delegation had submitted an amendment to Article 114. When drawing up the final text of Article 114, the Drafting Committee would, he hoped, take account of the amendment which read as follows:

"The national Information Bureaux and the Central Information Agency shall (as provided in Article 52 of the Universal Postal Convention signed at Paris on July 5, 1947) enjoy exemption from postal charges on mail, and the exemptions provided for in Article 64 of this Convention, and further, so far as possible, exemption from telegraphic charges or at least, greatly reduced rates."

General DEVIJVER (Belgium) said that he would submit an amendment (*see Annex No. 179*) in order to bring the text of Articles 114 and 64 into line with one another. The Committee would remember that his Delegation had tabled an amendment to Article 64 in order to take account of the views of the Representative of the Universal Postal Union (*see Summary Record of the Twelfth Meeting and Annex No. 138*).

Miss BECKETT (United Kingdom) drew attention to her Delegation's amendment which proposed

the omission of everything after the words "in Article 64". She was opposed to the inclusion of exemption from telegraphic charges among the exemptions granted, on the ground that such a precedent might encourage other organizations to claim the same privilege. That might result in overburdening international telegraphic routes.

Mr. MOLL (Venezuela) did not share the above opinion. In time of war, the number of telegrams sent was very small owing to censorship. There was no fear of overburdening international telegraphic routes. In his opinion, Article 114 should remain unaltered.

Mr. DE LA LUZ LEON (Cuba) shared the view of the Delegate of Venezuela.

The CHAIRMAN reminded the meeting that Article 64 had been referred to the Drafting Committee which had been asked to get into touch with the Representative of the Universal Postal Union.

Article 114 would also be referred to the Drafting Committee with instructions to establish contact with the International Telecommunications Union.

**Article 115**

Mr. WILHELM (International Committee of the Red Cross) said that the existing text brought Article 78 of the 1929 Convention up to date. The conception of recognized relief societies had been widened by the addition of the words "or any other body assisting prisoners of war". The last paragraph defined the procedure for acknowledging relief parcels sent to prisoners of war.

Msrgr. COMTE (Holy See) mentioned first of all that, as far as the representatives of religious organizations were concerned, Article 115 was closely connected with Article 30, which had been referred to the Special Committee.

He then reminded the meeting that, after the Delegation of the United Kingdom had submitted an amendment (*see Annex No. 180*) proposing a new wording for Article 115, his own Delegation had put forward another amendment which altered the wording of the first sentence of the first paragraph to read as follows:

"Subject to the measures which the Detaining Powers may consider essential to ensure their security or to meet any other reasonable need, the representatives of religious organizations, relief societies or any other body assisting prisoners of war shall receive from the said Powers, for themselves and their duly accredited agents, all facilities for visiting the prisoners, and distributing relief supplies and material, from any source, intended for religious, educational or recreative purposes."

Religious organizations should, he felt, be classed with the relief societies assisting prisoners of war. The task of the representatives of such organizations should be first and foremost to render moral relief to the prisoners. They should, therefore, be able to visit the camps. In the 1914-1918 war, religious organizations visited prisoners' camps in France and Germany. Such visits had not been possible during the last World War because a belligerent Power had objected that they were not provided for in the Convention.

He preferred the Stockholm text to that proposed by the United Kingdom Delegation, though the latter retained the essential principles of the former. The words "as a matter of principle" in the first sentence of the Article in the United Kingdom amendment should in any case be omitted, because — at least in the French — they unwittingly drew attention to the difference which always existed between what should be done "on principle" and what was done "in reality".

With regard to the second paragraph, he wondered if it was wise to permit the Detaining Power to limit the number of societies or organizations authorized to assist prisoners of war. Such limitations could be imposed by the Detaining Power on ideological grounds to the disadvantage of the prisoners. In case of another war, distress would be so great that there could never, in his opinion, be too much assistance.

He also wondered if the third paragraph was necessary. The International Committee of the Red Cross was already mentioned in Article 113. Another reference in Article 115 would involuntarily give rise to the idea of some forms of rivalry between the I.C.R.C. and the other relief societies. He thought, incidentally, that the fourth paragraph of Article 30 should be inserted at the end of Article 115. He concluded by saying that he

favoured the Stockholm text, but it should be amplified in the sense suggested by his Delegation. Article 115, together with the amendments thereto, should be dealt with in the same way as Article 30 and referred to the Special Committee.

Miss BECKETT (United Kingdom) referred to her Delegation's amendment for the omission of the existing Article 115 and its replacement by a new text. The main reasons for the amendment were as follows:

(1) It was too sweeping to say that "all facilities" should be given to the delegates of the various relief societies (first paragraph). Such latitude might lead to abuse.

(2) She agreed with the Delegate of the Holy See that the reference to the International Committee of the Red Cross in the Article was out of place. The special position of the International Committee of the Red Cross was already recognized in Article 8. A repetition in Article 115 would if anything tend to weaken the above provision.

(3) She thought lastly, that the fourth paragraph of Article 30 and the substance of the last paragraph of Article 116 should be included in Article 115.

Mr. MOLL (Venezuela) felt that the United Kingdom amendment was inferior to the Stockholm text, the terms in which it was drafted being too general. In less liberal countries than the United Kingdom, a clearer set of rules, such as those provided by the Stockholm text, would be preferred. He agreed with the Delegate of the Holy See that the Article should include a reference to religious organizations and to the right of their delegates to visit prisoners. On the other hand, the special reference to the International Committee of the Red Cross in the third paragraph was justified in view of the activity and efficiency of that organization, and should therefore be retained.

Msgr. COMTE (Holy See) said that he had not proposed that the reference to the International Committee of the Red Cross should be omitted. He had merely wished to draw attention to the mental reservations to which it involuntarily gave rise.

Mr. WILHELM (International Committee of the Red Cross) agreed with the suggestion of the Delegate of the Holy See that the words "as a matter of principle" in the first sentence of the United Kingdom amendment should be omitted. The words "all facilities", on the other hand, already figured in the 1929 text.

As regards the right of the Detaining Power to limit the number of relief societies authorized to assist prisoners of war, an adequate safeguard against excessive limitation appeared to be provided by the words: "on condition, however, that such limitation shall not hinder the supply of effective and sufficient relief to all prisoners of war".

The United Kingdom amendment reversed the order of the fourth paragraph of the Stockholm text in the matter of the receipts for relief shipments to prisoners of war. The Stockholm text was based on the belief that, from the standpoint of the donors, the receipts given by the spokesmen of the prisoners were by far the most important, and those given by the camp authorities took second place.

He added that the reference to the International Committee of the Red Cross in the third paragraph had not been made at the request of the I.C.R.C., but had been introduced in 1947, at the Conference of Government Experts, at the suggestion of the delegation which had proposed the new wording of Article 115. The I.C.R.C. thought the reference was valuable and helpful as far as its own activities were concerned. The provision in question had been generally accepted by all the delegations at the Conference of Government Experts for the reasons indicated by the Delegate of Venezuela.

General DEVIJVER (Belgium) supported the views expressed by the Delegate of Venezuela. He was in favour of adopting the Stockholm wording, amended in accordance with the proposal of the Holy See, but including the special reference to the International Committee of the Red Cross.

On the proposal of the CHAIRMAN, the Committee decided to refer Article 115 to the Special Committee in view of its close connection with Article 30.

### Article 116

Mr. WILHELM (International Committee of the Red Cross) said that the application of the Convention was facilitated by the cooperation of the Protecting Powers, which took the form mainly of visits by their delegates to prisoner of war camps. The essential principle involved, which was contained in Article 86 of the 1929 Convention, had been embodied in Article 7 of the present Draft Convention, while the question of visits to camps was dealt with in Article 116. The latter contained two innovations:

(1) Delegates of the Protecting Powers were to have "full liberty" to select the places they wished to visit (second paragraph);

(2) Delegates of the International Committee of the Red Cross and other relief organizations were also to be authorized to visit prisoner of war camps (fourth and fifth paragraphs).

Miss BECKETT (United Kingdom) reminded the Committee that the United Kingdom had submitted an amendment the text of which was in itself fairly clear; the amendment, which mainly concerned drafting points, read as follows:

First paragraph: delete the words "have permission to go to all places where prisoners of war may be, particularly to places of internment, imprisonment and labour" in the first sentence and substitute "be authorized to visit places of internment, detention or work, and all other places where prisoners of war are to be found";

Fourth paragraph: omit the first sentence, which should be made into a separate Article; delete the second sentence, which should be included in Article 8;

Fifth paragraph: delete the whole paragraph, which should be included in Article 115.

Mr. MOLL (Venezuela) said that if the Articles were dislocated by transferring parts of one Article to others, it would destroy the unity and harmony of the text, which had been conceived as a whole on sound and coherent lines and was the result of several years of work. He was opposed, more particularly, to the idea of transferring a sentence from Article 116 to Article 8, in view of the question of control which was involved. Any such transfers could only lead to confusion, and for that reason he opposed the United Kingdom amendment.

General DEVIJVER (Belgium) warmly supported the Delegate of Venezuela. He was also for the retention of the specific reference to the International Committee of the Red Cross in the fourth paragraph.

General DILLON (United States of America) agreed with the Delegates of Venezuela and Belgium.

Miss BECKETT (United Kingdom) had imagined that the Conference had been convened in order to draft Conventions which were as complete as possible. Without wishing to maintain that the amendments submitted by her Delegation were perfect, she nevertheless thought that they ought to be considered by the Drafting Committee.

Major HIGHT (New Zealand) considered that the first point in the United Kingdom amendment

was merely a question of wording. Otherwise, he shared Miss Beckett's views.

Wing Commander DAVIS (Australia) considered that, if the Committee accepted the Stockholm text, it would be going too far in permitting delegates to talk to prisoners of war without witnesses. Practical experience had shown the drawbacks which that entailed. He accordingly proposed that the words "without witnesses" in the first paragraph should be omitted.

Mr. MOLL (Venezuela) was resolutely opposed to any such omission. He considered that the disadvantages of interviews between delegates on the one hand and prisoners of war (and more particularly their spokesmen) on the other, without witnesses being present, were far less than the advantages. He pressed for the retention of the words "without witnesses".

On the proposal of the CHAIRMAN, the Committee decided to refer the question to the Drafting Committee.

### Progress of Work

The CHAIRMAN proceeded to point out that Articles 117 to 130 were common to all four Conventions; Committee II was not, therefore, concerned with them.

There still remained the Preamble; but there was no time for its consideration at the moment. He proposed accordingly that it should be considered later. He added that the next meeting of Committee II would take place as soon as General Dillon, Chairman of the Sub-Committee on Penal Sanctions, had submitted the Sub-Committee's final report.

*The meeting rose at 5 p.m.*

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## SEVENTEENTH MEETING

*Wednesday 8 June 1949, 10 a.m.*

*Chairman: Mr. Maurice BOURQUIN (Belgium)*

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### Report of the Sub-Committee on Penal Sanctions (Articles 72 to 99)

The CHAIRMAN reminded delegates that Articles 72 to 99, dealing with penal and disciplinary sanctions, had been referred to the Sub-Committee entrusted with their consideration. The Report of that Sub-Committee, of which General Dillon (United States of America) had been Chairman, was now submitted for discussion (*For Summary Records of the Meetings of the Sub-Committee, see further on*).

He drew attention to the changes that had been made in the order of the Articles. The Sub-Committee had retained many of the provisions which figured in the Draft Convention, but had disposed them otherwise. Articles would be discussed on the basis of the texts proposed in the Report, which read as follows:

The Sub-Committee set up by Committee II to study the portion of the Draft Convention dealing with the penal and disciplinary sanctions applicable to prisoners of war, has concluded

its consideration of Articles 72 to 99. Delegates of the United States of America, France, the United Kingdom and the Union of Soviet Socialist Republics and the Representative of the International Committee of the Red Cross took part in the discussions on the above Articles. The Sub-Committee, after a thorough scrutiny of the drafts established at Stockholm and of the amendments tabled by various delegations, submits below the texts of the proposed Articles, together with the Sub-Committee's comments:

#### *Article 72 (new)—Applicable Legislation*

"A prisoner of war shall be subject to the laws, regulations and orders in force in the armed forces of the Detaining Power, and the Detaining Power shall be justified in taking judicial or disciplinary measures in respect of any offence committed by a prisoner of war against such laws, regulations or orders. However, no proceedings or punishments contrary to the provisions of this chapter shall be allowed.

"If any law, regulation or order of the Detaining Power shall declare to be punishable an act committed by a prisoner of war, which act would not be punishable if committed by a member of the forces of the Detaining Power, such act shall be dealt with by disciplinary measures and entail disciplinary punishment only."

The new Article 72 covers the first, second and third paragraphs of Article 72 of the Stockholm Draft and Article 73 of the same Draft.

*Article 73 (new)—Choice of disciplinary or judicial proceedings*

"In deciding whether proceedings in respect of an offence alleged to have been committed by a prisoner of war shall be judicial or disciplinary, the Detaining Power shall ensure that the competent authorities exercise the greatest leniency and adopt wherever possible disciplinary rather than judicial measures."

The new Article 73 corresponded to the second paragraph of Article 83 of the Stockholm Draft. The Sub-Committee considered it desirable that the recommendations for leniency contained therein should apply to the whole Chapter, whereas in the original Draft they apply to escapes only.

*Article 74 (new)—Courts*

"A prisoner of war shall be tried only by a military court, unless the existing laws of the Detaining Power expressly permit the civil courts to try a member of the armed forces of the Detaining Power in respect of the particular offence alleged to have been committed by the prisoner of war.

"In no circumstances whatever shall a prisoner of war be tried by a court of any kind which does not offer the essential guarantees of independence and impartiality generally recognized, and in particular the procedure of which does not afford the accused the rights and means of defence provided in Article 94."

The new Article 74 is identical with Article 75 of the Stockholm Draft. The addition, at the close of the second paragraph, of the words "in particular" has, however, reinforced the Article as a whole.

*Article 75 (new) Offences committed before capture*

"Prisoners of war prosecuted under the laws of the Detaining Power for acts committed prior to capture shall enjoy, even if convicted, the benefits of the present Convention."

The new Article 75 submitted to the Sub-Committee for consideration consisted of the text of Article 74 of the Stockholm Draft. On account of the close relation of the subject of this Article with the question of war crimes, it was considered impossible to deal with it until the Committee had itself examined the question as a whole.

The proposals submitted by the Netherlands Government in their Memorandum, and by the Delegation of the Union of Soviet Socialist Republics in an amendment relating to war crimes against humanity did not appear to be within the Sub-Committee's terms of reference.

*Article 76 (new)—"Non bis idem"*

"No prisoner of war may be punished more than once for the same act or on the same charge."

The new Article 76 has the same wording as Article 76 of the Stockholm Draft.

*Article 77 (new)—Penalties*

"Prisoners of war may not be sentenced by the military authorities and courts of the Detaining Power to any penalties except those provided for in respect of members of the armed forces of the said Power who have committed the same acts.

"When fixing the penalty, the courts or authorities of the Detaining Power shall take into consideration, to the widest extent possible, the fact that the accused, not being a national of the Detaining Power, is not bound to it by any duty of allegiance, and that he is in its power as the result of circumstances independent of his own will. The said courts or authorities shall be at liberty to reduce the penalty provided for the violation of which the prisoner of war is accused, and shall therefore not be bound to apply the minimum penalty prescribed.

"Collective punishment for individual acts, corporal punishments, imprisonment in premises without daylight and in general any form of torture or cruelty, are forbidden.

"No prisoner of war may be deprived of his rank by the Detaining Power, or prevented from wearing his badges."

Except for a few slight alterations in its wording, the new Article 77 is identical with Article 77 of the Stockholm Draft.

The Delegation of the United Kingdom pointed out that certain difficulties might arise in United Kingdom courts, which would be unable to apply penalties less severe than the minimum

penalty prescribed for a given offence, as suggested the second sentence of the second paragraph.

The words "the kind of penalty or" were omitted from this sentence, as in the opinion of the Sub-Committee, they constituted a danger for prisoners.

*Article 78 (new) Execution of Punishment*

"Officers, non-commissioned officers and men who are prisoners of war undergoing a disciplinary or judicial punishment, shall not be subjected to less favourable treatment than that applied in respect of the same punishment to prisoners of equivalent ranks in the armed forces of the Detaining Power.

"A woman prisoner of war shall not be awarded or sentenced to a punishment more severe, or treated whilst undergoing punishment more severely, than a woman member of the armed forces of the Detaining Power dealt with in respect of a similar offence.

"In no case may a woman prisoner of war be awarded or sentenced to a punishment more severe, or treated whilst undergoing punishment more severely, than a male member of the armed forces of the Detaining Power.

"Prisoners of war who have served disciplinary or judicial sentences may not be treated differently from other prisoners of war."

The new Article 78 thus consists of four paragraphs. The first and fourth are those of Article 78 of the Stockholm Draft. The second and third, which are entirely new, apply to women belonging to the armed forces, who are taken prisoner.

*Article 79 (new) General observations: I. Nature of Punishment*

"The disciplinary punishments applicable to prisoners of war are the following:

(1) A fine which shall not exceed 50 % of the pay and wages which the prisoner of war would otherwise receive under the provisions of Articles 51 and 52 during a period of not more than 30 days;

(2) Discontinuance of privileges granted over and above the treatment provided for by the present Convention;

(3) Fatigues not to exceed two hours daily;

(4) Confinement.

"The punishment referred to under (3) shall not be applied to officers.

"In no case shall disciplinary punishments be inhuman, brutal or dangerous to the health of prisoners of war."

The new Article 79 is the same as Article 79 of the Stockholm Draft except for a slight alteration intended to specify the maximum amount in the way of fines which can be imposed on prisoners of war.

*Article 80 (new) II. Limitation of Punishments*

"The duration of any single punishment awarded shall in no case exceed thirty days. Any period of confinement awaiting the hearing of a disciplinary offence or the award of disciplinary punishment shall be deducted from an award pronounced against a prisoner of war.

"The maximum of thirty days provided above may not be exceeded, even if the prisoner of war is answerable for several acts at the same time when he is awarded punishment, whether such acts are related or not.

"The period between the pronouncing of an award of disciplinary punishment and its execution shall not exceed one month.

"If a prisoner of war is awarded a further disciplinary punishment, a period of at least three days shall elapse between the execution of any two of the punishments, if the duration of one of these is ten days or more."

The new Article 80 now contains four paragraphs. The first is taken from the first paragraph of Article 80 and from the second paragraph of Article 85 of the Stockholm Draft. The second paragraph is the same as the second paragraph of Article 80 of the Stockholm Draft. The third and fourth paragraphs consist of the text of Article 87 of the Stockholm Draft.

*Article 81—Escapes. I. Successful Escape*

"The escape of a prisoner of war shall be deemed to have succeeded when:

(1) He has joined the armed forces of the Power on which he depends, or those of an allied Power.

(2) He has left the territory under the control of the Detaining Power, or of an ally of the said Power.

(3) He has joined a ship flying the flag of the Power on which he depends, or of an allied Power, in the territorial waters of the Detaining Power, the said ship not being under the control of the last named Power.

"Prisoners of war who have made good their escape in the sense of this Article and who are recaptured, shall not be liable to any punishment in respect of their previous flight."

Article 81 was withdrawn by Committee II from the terms of reference of the Sub-Committee. Neither its substance nor its wording were therefore considered. The text quoted above is that of Stockholm.

*Article 82 (new)—II. Unsuccessful Escape*

"A prisoner of war who attempts to escape but is recaptured before having made good his escape in the sense of Article 81 shall be liable only to a disciplinary punishment in respect of this act, even if it is a repeated offence.

"A prisoner of war who is recaptured shall be handed over without delay to the competent military authority.

"Article 78, fourth paragraph, notwithstanding, prisoners of war punished as a result of an unsuccessful escape, may be subjected to special surveillance, on condition however that such surveillance does not affect the state of their health, that it is undergone in a prisoner of war camp, and that it does not entail the suppression of any of the safeguards granted them by the present Convention."

The new Article 82 now consists of three paragraphs. The first corresponds to the first paragraph of Article 82 of the Stockholm Draft, and the second to the last sentence of the first paragraph of Article 85 of the same Draft.

The third paragraph of the Stockholm text gave rise to lengthy discussion and was finally omitted in view of the following circumstances.

The Delegate of the Union of Soviet Socialist Republics, Mr. Drougov, considered that an important question of principle was involved. The Chairman, General Dillon, Delegate of the United States of America, considered that the case of released prisoners should be dealt with in Article 3.

The Soviet Delegate objected that as the category in question had not yet been included in Article 3, its exclusion from Article 82 might leave the persons concerned entirely without protection. General Dillon considered that the protection given could not in any case be complete, and that the paragraph would weaken the rest of the Convention by adding considerably to the difficulty of applying it where a large number of prisoners of war were concerned.

The Soviet Delegate proposed that the Sub-Committee's Report should mention that the third paragraph of Article 82 of the Stockholm text had only been omitted provisionally and on condition that the persons concerned should be included under Article 3; all the members of the Sub-Committee agreed to this solution.

*Article 83 (new)—III. Connected Offences*

"Escape or attempt to escape, even if it is a repeated offence, shall not be deemed an aggravating circumstance if the prisoner of war is subjected to trial by judicial proceedings in respect of an offence committed during his escape or attempt to escape.

"In conformity with the principle stated in Article 73, offences committed by prisoners of war with the sole intention of facilitating their escape and which do not entail any violence against life or limb, such as offences against public property, theft without intention of self-enrichment, the drawing up or use of false papers, the wearing of civilian clothing, shall occasion disciplinary punishment only.

"After an escape, or attempt to escape, the fellow prisoners who aided and abetted the offender shall be liable on this count to disciplinary punishment only."

The new Article 83, in spite of a great many drafting changes, remains substantially the same as Article 83 of the Stockholm Draft.

*Article 84 (new)—IV. Notification of recapture*

"If an escaped prisoner of war is recaptured, the Power on which he depends shall be notified thereof in the manner defined in Article 112, provided notification of his escape has been made."

The new Article 84 is the same as Article 84 of the Stockholm Draft.

*Article 85 (new)—I. Limitations on Confinement awaiting Hearing*

"A prisoner of war accused of an offence against discipline shall not be kept in confinement pending the hearing unless a member of the armed forces of the Detaining Power would be so kept if he was accused of a similar offence or if it is essential in the interests of camp order and discipline.

"Any period spent by a prisoner of war in confinement awaiting the disposal of an offence against discipline shall be reduced to an absolute minimum and shall not exceed fourteen days.

"The provisions of Articles 87 and 88 of this Chapter shall apply to prisoners of war who are in confinement awaiting the disposal of offences against discipline."

The new Article 85 contains a new first paragraph establishing the principle of giving prisoners treatment equivalent to that received by members of the armed forces of the Detaining Power. The first sentence of the first paragraph of the Stockholm text has been included in Article 86.

*Article 86 (new)—II. Competent Authorities and Procedure*

"Acts which constitute offences against discipline shall be investigated immediately.

"Without prejudice to the competence of courts and higher military authorities, disciplinary punishment may be ordered only by an officer having disciplinary powers in his capacity as Camp Commandant, or by a responsible officer who replaces him or to whom he has delegated his disciplinary powers.

"In no case may such powers be delegated to a prisoner of war or be exercised by a prisoner of war.

"Prior to any disciplinary sentence being pronounced the accused shall be informed precisely of the offences of which he is accused, and given an opportunity of explaining his conduct and of defending himself. He shall be permitted, in particular, to call witnesses and to have recourse, if necessary, to the services of a qualified interpreter. The decision shall be announced to the accused prisoner of war and to the spokesmen.

"A record of disciplinary punishments shall be maintained by the camp commandant and shall be open to inspection by representatives of the Protecting Power."

The new Article 86 contains a first paragraph taken from the former Article 85, a second paragraph consisting of the first paragraph of the former Article 86 and, finally, three new paragraphs. The latter are concerned with:

(a) the fact that it is forbidden to delegate disciplinary powers to a prisoner;

(b) the right of the accused to defend himself;

(c) the compulsory keeping of a record of disciplinary punishments, which should be open to inspection by the representatives of the Protecting Power.

*Article 87 (new)—I. Place of disciplinary Punishment*

"A prisoner of war shall not in any case be transferred to a penitentiary establishment (e.g. a prison, penitentiary, convict prison, etc.) to undergo a disciplinary punishment therein.

"All premises in which disciplinary punishments are undergone shall conform to sanitary requirements set forth in Article 23. A prisoner of war undergoing punishment shall be enabled to keep himself in a state of cleanliness, in conformity with Article 27.

"Officers and persons of equivalent status shall not be lodged in the same quarters as non-commissioned officers or men.

"Female prisoners of war undergoing disciplinary punishment shall be confined in separate quarters from male prisoners of war and shall be under the immediate supervision of a woman."

The new Article 87 contains the first paragraph of Article 88 of the Stockholm text, a new second paragraph drafted in the spirit of the Stockholm text, the second sentence of the third paragraph of Article 88 of the Stockholm text and also a new fourth paragraph concerning disciplinary premises for women prisoners.

*Article 88 (new)—II. Treatment*

"A prisoner of war undergoing confinement as a disciplinary punishment, shall continue to enjoy the benefits of the provisions of this Convention except in so far as these are necessarily rendered inapplicable by the mere fact that he is confined. In no case may he be deprived of the benefits of the provisions of Articles 68 and 116.

"A prisoner of war awarded disciplinary punishment may not be deprived of the prerogatives attached to his rank.

"Prisoners of war given disciplinary punishment shall be allowed to exercise and to stay in the open air at least two hours daily.

"They shall be allowed, on their request, to be present at the daily medical inspections. They shall receive the attention which their state of health requires and, if necessary, shall be removed to the camp infirmary or to a hospital.

"They shall have permission to read and write, likewise to send and receive letters. Parcels and remittances of money, however, may not be handed to them until the expiration of the sentence; they shall meanwhile be handed to the spokesman, who will hand over to the infirmary the perishable goods contained in such parcels."

The new Article 88 contains a new first paragraph laying down that prisoners serving disciplinary sentences shall continue to benefit by the provisions of the Convention. The second paragraph was contained in the third paragraph of Article 88 of the Stockholm Draft. The new third, fourth and fifth paragraphs were the first, second and third paragraphs of Article 89 of the Stockholm Draft.

*Article 89 (new)—I. General Principles*

"No prisoner of war may be tried or sentenced for an act which is not forbidden by the law of the Detaining Power in force at the time the said act was committed.

"No normal or physical coercion may be exerted on a prisoner of war in order to induce him to admit himself guilty of the act of which he is accused.

"No prisoner of war may be convicted without having had an opportunity to present his defence and the assistance of qualified counsel."

The new Article 89 is substantially the same as Article 90 of the Stockholm Draft, but the first paragraph has been modified so as to make it clear that the law to be applied is that of the Detaining Power. In the Sub-Committee's opinion, this modification makes the text more precise.

*Article 90 (new)—II. Death Penalty*

"The prisoners of war and the Protecting Powers shall be informed, as soon as possible, of the offences which are punishable by the death sentence under the laws of the Detaining Power.

"Other offences shall not thereafter be made punishable by the death penalty without the concurrence of the Power upon which the prisoners of war depend.

"The death sentence cannot be pronounced against a prisoner of war unless the attention of the court has, in accordance with Article 77, paragraph 2, been particularly called to the fact that the accused, not being a national of the Detaining Power, is not bound to it by any duty of allegiance, and that he is in its power as the result of circumstances independent of his own will."

The new Article 90 reproduced Article 91 of the Stockholm Draft.

*Article 91 (new)—III. Period of time allowed in case of Death Penalty*

"If the death penalty is pronounced against a prisoner of war, the sentence shall not be executed before the expiration of a period of six months at least from the date of receipt by the Protecting Power, at the address fixed, of the detailed communication provided for in Article 97."

The new Article 91 is Article 98 of the Stockholm Draft, which the Sub-Committee considered it more logical to transfer to this part of the Chapter.

*Article 92 (new)—Procedure. I. Conditions for validity of sentence*

"A prisoner of war can be validly sentenced only if the sentence has been pronounced by the same courts according to the same procedure as in the case of members of the armed forces

of the Detaining Power, and if furthermore the provisions of the present Chapter have been observed."

The new Article 92 is now drafted more clearly without any alteration of substance.

*Article 93 (new)—II. Confinement awaiting Trial (Deduction, Regime)*

"Judicial investigations relating to a prisoner of war shall be conducted as rapidly as circumstances permit and so that his trial shall take place as soon as possible. A prisoner of war shall not be confined while awaiting trial unless a member of the armed forces of the Detaining Power would be so confined if he was accused of a similar offence, or if it is essential to do so in the interests of national security. In no circumstances shall this confinement exceed three months.

"Any period spent by a prisoner of war in confinement awaiting trial shall be deducted from any sentence of imprisonment passed upon him and taken into account infixing any penalty.

"The provisions of Articles 87 and 88 of this Chapter shall apply to a prisoner of war whilst in confinement awaiting trial."

The new Article 93 is Article 93 of the Stockholm Draft, with certain drafting changes. It also lays down a maximum time limit of three months for confinement awaiting trial, in order that prisoners may not be detained indefinitely owing to the real or pretended impossibility of the Detaining Power obtaining the necessary evidence to bring an accused to trial. The release of prisoners from confinement awaiting trial, as provided for in the Article, will not prevent a resumption of the proceedings at a later date. The principle of placing prisoners of war on an equal footing with members of the armed forces of the Detaining Power has also been introduced in the first paragraph.

*Article 94 (new)—III. Notification of Proceedings*

"In any case in which the Detaining Power has decided to institute judicial proceedings against a prisoner of war, it shall notify the Protecting Power as soon as possible and at least three weeks before the date of trial. This period of three weeks shall run as from the day on which this notification reaches the Protecting Power at the address previously indicated by the latter to the Detaining Power.

"The said notification shall contain the following information:

(1) Surname and the first names of the prisoner of war, rank, army, personal or serial number, date of birth, and profession or trade, if any.

(2) Place of internment or confinement.

(3) Specification of the charge or charges of the indictment, giving the legal provisions applicable.

(4) Designation of the court which will try the case, likewise the date and place fixed for the opening of the trial.

"The same communication shall be made by the Detaining Power to the prisoner's spokesman.

"No judicial proceedings against a prisoner of war may be pursued unless at the opening of the trial evidence is submitted to the court that the notification specified in the present Article was received by the Protecting Power, by the prisoner of war and by his spokesman at least three weeks prior to the opening of the trial."

The new Article 94 is Article 94 of the Stockholm Draft.

*Article 95 (new)—IV. Rights and means of defence*

"The prisoner of war shall be entitled to assistance by one of his prisoner comrades, to defence by qualified counsel of his choice, to the calling of witnesses and, if he deems necessary, to the services of a competent interpreter. He shall be advised of this right by the Detaining Power in due time before the trial.

"Failing a choice by the prisoner of war, the Protecting Power shall find him an advocate, and shall have at least one week at its disposal for the purpose. The Detaining Power shall deliver to the said Power, on request, a list of persons qualified to present the defence. Failing a choice of counsel by the prisoner of war and the Protecting Power, the Detaining Power shall appoint competent counsel to conduct the defence.

"The defence counsel of the prisoner of war shall have at his disposal a period of two weeks at least before the opening of the trial, as well as the necessary facilities to prepare the defence of the accused. He may, in particular, freely visit the accused and interview him in private. He may also confer with any witnesses for the defence, including prisoners of war. He shall have the benefit of these facilities until the term of appeal or petition has expired.

"The indictment, as well as the documents which are generally communicated to the accused by virtue of the laws in force in the armed forces of the Detaining Power, shall be communicated to the accused prisoner of war in a language which he understands, and in good time before the opening of the trial. The same communication in the same circumstances shall be made to the defence counsel of the prisoner of war.

"The representatives of the Protecting Power shall be entitled to attend the trial of the case, unless this is exceptionally held *in camera*, in the interest of State security. In such a case the Detaining Power shall advise the Protecting Power accordingly."

The new Article 95 contains a number of alterations due, on the one hand, to the adoption of a Netherlands amendment (*see Annex No. 172*) and, on the other hand, to the necessity for taking into account the fact that the law in certain countries prohibits conversations between the witnesses and the defendants, unless they take place in the presence of the examining magistrate.

*Article 96 (new)—V. Appeals*

"Every prisoner of war shall have, in the same manner as the members of the armed forces of the Detaining Power, the right of appeal or petition from any sentence rendered with regard to him, with a view to the quashing or revising of the sentence or the reopening of the trial. He shall be fully informed of his right to appeal or petition and to the time limit in which he may do so."

The new Article 96 is Article 97 of the Stockholm Draft with certain additions. The Delegate of the United Kingdom considers that the text is still incomplete, in that it makes no provision for the notification of appeals to the Protecting Power.

*Article 97 (new)—VI. Notification of judgments*

"Any judgment and sentence pronounced upon a prisoner of war shall be immediately reported to the Protecting Power in the form of a summary communication. This communication shall likewise be sent to the spokesman concerned and to the accused prisoner of war if the sentence was not announced in his presence.

"Furthermore, if a prisoner of war is finally convicted or if a sentence pronounced against a prisoner of war in the first instance is a death sentence, the Detaining Power shall as soon as possible address to the Protecting Power a detailed communication containing:

(1) The precise wording of the judgment and sentence.

(2) A summarized report of any pre-trial enquiry and of the trial, emphasizing in particular the points of the defence and the prosecution.

(3) Indication, if necessary, of the establishment where the sentence will be served.

"The communications provided for in the foregoing sub-paragraphs shall be sent to the Protecting Power at the address previously made known to the Detaining Power."

The new Article 97 is Article 96 of the Stockholm Draft. In order to coordinate the provisions of sub-paragraph (1) of the second paragraph with certain Anglo-Saxon laws, the English word "precise" has been substituted for the words "motives and", and the words "and the prosecution" have been added to sub-paragraph (2) of the same paragraph. A provision has also been added to the effect that a detailed communication is to be sent whenever a death sentence is pronounced, even if an appeal or a petition may be lodged.

*Article 98 (new) Execution of punishments:  
Penal regulations*

"Sentences pronounced against prisoners of war after convictions regularly put into force, shall be served in the same establishments and under the same conditions as for members of the armed forces of the Detaining Power. These conditions shall in all cases conform to the requirements of health and humanity.

"A woman prisoner of war against whom such a sentence has been pronounced shall be confined in separate quarters and shall be under the supervision of female personnel.

"In any case, prisoners of war sentenced to a penalty depriving them of their liberty shall retain the benefit of the provisions of Articles 68 and 116 of the present Convention. Furthermore, they shall be entitled to receive and dispatch correspondence, to receive at least one relief parcel monthly, to take regular exercise in the open air, to have the medical care their state of health may require, and the spiritual assistance they may desire. Penalties to which they may be subjected shall be in conformity with the provisions of Article 77, third paragraph."

The new Article 98 corresponds to Article 99 of the Stockholm Draft.

The CHAIRMAN said that Articles upon which there was unanimous agreement would be referred to the Drafting Committee of the Conference. Those in regard to which there were reservations would later be given a second reading in the plenary meeting of Committee II.

The Committee proceeded to consider the new Articles proposed by the Sub-Committee. The numbering of the Articles was that adopted by the Sub-Committee.

**Articles 72, 73 and 74**

The above Articles were adopted unanimously.

**New Article**

The CHAIRMAN drew attention to an amendment submitted by the Delegation of Norway which proposed the insertion of a new Article between Articles 74 and 75. The Norwegian amendment would be discussed later.

**Article 75**

Consideration of Article 75 by the Sub-Committee had been deferred in view of the close relation existing between that question and the question of war crimes. The Sub-Committee had not felt that it could deal with it until Committee II had considered the problem as a whole.

**Article 76**

Captain MOUTON (Netherlands) wished to make a reservation with regard to Article 76.

Decision on the Article was deferred until the second reading had been completed.

**Article 77**

Miss GUTTERIDGE (United Kingdom), while she did not wish to raise a formal objection, said that her Delegation was obliged to make a reservation with regard to the clause at the end of the second paragraph which provided that courts would not be bound to apply the minimum penalty prescribed. That provision conflicted with United Kingdom law.

Major HIGHET (New Zealand) and General LELLO (Portugal) made similar reservations.

A discussion took place with regard to the expression "at liberty" in the same sentence of the English text. It was agreed that the correct expression in French would be "Ils auront la faculté d'atténuer".

The problem of finding a suitable equivalent in English was referred to the Drafting Committee of the Conference.

Article 77 was adopted subject to the above drafting amendment and to the observations submitted by the Delegations of the United Kingdom, New Zealand and Portugal.

**Article 78**

Mr. MARESCA (Italy) said that in the second paragraph there was a provision laying down that the treatment of women prisoners of war should be equivalent to that accorded to women in the armed forces of the Detaining Power. That provision would be meaningless in cases where there were no women in the armed forces of the Detaining Power.

The CHAIRMAN drew attention to the general provision in the second paragraph of Article 13, relating to the treatment of women prisoners of war. The third paragraph of Article 78 also met the point raised by the Italian Delegate.

Article 78 was adopted subject to a drafting amendment proposed by Major ARMSTRONG (Canada) who drew attention to the fact that the term "prisoners" had been used in two different senses in the first paragraph of the English version.

**Article 79**

Colonel NORDLUND (Finland) drew attention to an amendment submitted by his Delegation. It proposed that sub-paragraph (4) should be omitted and that extra fatigues should be added to the list of punishments, provided such fatigues were neither inhuman nor dangerous.

Mr. BAUDOY (France) supported the Finnish Delegate's observations. Prisoners sometimes tried to have themselves confined to barracks in order to avoid more strenuous work. With regard to extra fatigues, the physical condition of the prisoner was an important factor. Certain safeguards would have to be provided in that connection.

It was decided to defer the decision with regard to the Article until the second reading.

**Article 80**

Article 80 was adopted unanimously.

**Article 81**

The Sub-Committee on Penal Sanctions had not considered Article 81, in view of Committee II's decision that that Article was outside the Sub-Committee's terms of reference.

**Article 82**

A discussion took place with regard to the omission of the third paragraph of Article 82. It was decided to await further details regarding the contents of Article 3, in order to see whether the latter Article also covered the category of persons dealt with in the third paragraph of Article 82. If the category of prisoners referred to in this third paragraph was omitted from Article 3, Article 82 would be referred to the Sub-Committee on Penal Sanctions before being given a second reading.

**Article 83**

Article 83 was unanimously approved, with the addition of a comma in the second paragraph of the French text, after the word "personnes".

**Articles 84, 85, 86, 87 and 88**

The above Articles were adopted unanimously.

**Article 89**

Captain MOUTON (Netherlands) wished to make a reservation with regard to Article 89.

It was therefore decided to defer any decision until the second reading.

**Article 90**

Mr. MOLL (Venezuela) said that he had been instructed by his Government to reserve its position with regard to all Articles referring to the death penalty which was forbidden under the Venezuelan Constitution.

A discussion took place as to whether the Article provided that the consent of the Power upon which the prisoners depended was necessary before the death penalty was inflicted; the question was of considerable importance in cases where the death penalty had been abolished in the country of origin, as was the case in Venezuela and in Portugal.

Mr. COHN (Denmark) considered that the third paragraph was not clear on the above point. He proposed stating in the Article that "The death sentence cannot be pronounced against a

prisoner of war unless he has been guilty of an offence which is punishable by the death sentence against a civilian belonging to the Detaining Power." At the Chairman's suggestion, he agreed to submit his amendment in writing.

It was decided to wait for the Danish amendment to be circulated, and to defer consideration of the Article until the second reading.

### Articles 91 and 92

Articles 91 and 92 were adopted unanimously.

### Article 93

Captain MOUTON (Netherlands) drew attention to the last sentence of the first paragraph. Take the case, for instance, of a war criminal captured at the beginning of the war, whose trial had to be postponed owing to witnesses not being available; it would obviously be undesirable to leave him in a camp where he came into contact with prisoners of his own unit, because he might persuade them to stand as witnesses for his defence. Article 93 should provide for the transfer of such a prisoner to another camp, where he would not be in contact with members of the unit to which he had belonged.

General DILLON (United States of America) considered that the Delegate of the Netherlands had raised an important and difficult question. After a lengthy discussion in the Sub-Committee on Penal Sanctions it had been decided to include in the Article two principles of fundamental justice. One was the right of a prisoner to a speedy trial, and the other was his right to be considered innocent until he was proven guilty. If a prisoner could not be brought to trial within three months, he should be released; but there was nothing to prevent his being re-tried at a later date, when further evidence was available.

Captain MOUTON (Netherlands) agreed; he would like, however, to have the point he had raised mentioned in the final record of the Conference.

On the proposal of the CHAIRMAN, the Committee agreed to interrupt the discussion on Article 93, in order to hear Colonel Crawford, who had come to the meeting to present the Report of the Medical Experts Committee of which he had been Chairman.

### Report submitted by the Medical Experts Committee on Articles 101 and 107 and Annexes I and II of the Prisoners of War Convention

Colonel CRAWFORD (Canada), Rapporteur, submitted the following Report:

The Medical Experts Committee met in accordance with a decision taken by Committee II at its ninth meeting on Thursday, 5 May 1949. The Committee considered that it could take the initiative in extending its terms of reference to the study of Article 101, as this Article and Annex I are related to each other.

Members of the Delegations of the following countries assisted in the work of the Medical Experts Committee: Afghanistan, Belgium, Bolivia, Canada, France, Hungary, India, Ireland, Israel, Pakistan, Netherlands, Portugal, Rumania, Sweden, Switzerland, Turkey, Venezuela.

Representatives of the International Committee of the Red Cross and of the League of Red Cross Societies were present at the meetings.

Proposals submitted in writing by the Delegations of the United Kingdom and the United States of America were considered by the Committee.

The Committee also heard the opinion of two ex-members of Mixed Medical Commissions, Professor K. M. Walthard and Dr. A. d'Erlach.

The following text was proposed for Article 101.

#### *Article 101—Cases of repatriation or accommodation*

"The following shall be repatriated direct:

(1) Incurably wounded and sick whose mental or physical fitness seems to have been gravely diminished.

(2) Wounded and sick who, according to medical opinion, are not likely to recover within one year, whose condition requires treatment and whose mental or physical fitness seems to have been gravely diminished.

(3) Wounded and sick who have recovered, but whose mental or physical fitness seems to have been gravely and permanently diminished.

"The following may be accommodated in a neutral country:

(1) Wounded and sick whose recovery may be expected within one year of the date of wound or the inception of illness, if treatment in a neutral country might increase the prospects of a more certain and speedy recovery.

(2) Prisoners of war whose mental or physical health, according to medical opinion, is seriously threatened by continued captivity, but whose accommodation in a neutral country might remove from such a threat.

"The conditions which prisoners of war accommodated in a neutral country must fulfil in order to permit their repatriation shall be fixed, as shall likewise their status, by agreement between the Powers concerned. In general, prisoners of war who have been accommodated in a neutral country, and who belong to the following categories, should be repatriated:

(1) Prisoners of War whose state of health has deteriorated so as to fulfil the conditions laid down for direct repatriation.

(2) Prisoners of War whose mental or physical powers remain, even after treatment, considerably impaired.

"In default of special agreements concluded between the belligerents concerned to determine the cases of disablement or sickness entailing direct repatriation or accommodation in a neutral country, such cases shall be settled in accordance with the principles laid down in the model agreement concerning direct repatriation and accommodation in neutral countries of wounded and sick prisoners of war and in the regulations concerning Mixed Medical Commissions annexed to the present Convention."

Except for a few slight alterations in the drafting, the Medical Experts Committee have made only three changes in Article 101, namely:

(1) In the first paragraph, sub-paragraph (2) has been placed first, so that the former sub-paragraphs of this paragraph are now placed in the following order — (2), (1), (3). The Committee thought it was logical to mention first prisoners of war whose condition was such that there could be no question as to their right to repatriation.

(2) The Committee considered that it was necessary to insert in the third paragraph the conditions which prisoners of war accommodated in a neutral country must fulfil in order to permit their repatriation. In this way the scope of the third paragraph is defined, as was already the case in the two preceding paragraphs.

(3) The Committee suggested that mention should be made at the end of the fourth paragraph of the regulations concerning Mixed Medical Commissions (Annex II of the Prisoners of War Convention), in view of the fact that

belligerents will also have to observe those regulations when, in the absence of special agreements, they have to decide whether cases of disablement or illness involve direct repatriation or accommodation in a neutral country.

The Committee proposed the following text for Annex I:

#### *Annex I*

#### *Model Agreement concerning direct Repatriation and Accommodation in Neutral Countries of Wounded and Sick Prisoners of War*

#### "I. — Principles for direct Repatriation and Accommodation in Neutral Countries

##### A. Direct Repatriation

The following shall be repatriated direct:

1. All prisoners of war suffering from the following disabilities as the result of trauma: loss of a limb, paralysis, articular or other disabilities, when the defect is at least the loss of a hand or a foot, or the equivalent of the loss of a hand or a foot.

Without prejudice to a more generous interpretation the following shall be considered as equivalent to the loss of a hand or a foot:

- (a) Loss of a hand or of all the fingers, or of the thumb and forefinger of one hand; loss of a foot, or of all the toes and metatarsals of one foot.
- (b) Ankylosis, loss of osseous tissue, cicatricial contracture preventing the functioning of one of the large articulations or of all the digital joints of one hand.
- (c) Pseudarthrosis of the long bones.
- (d) Deformities due to fracture or other injury which seriously interfere with function and weight-bearing power.

2. All wounded prisoners of war whose condition has become chronic, to the extent that prognosis appears to exclude recovery—in spite of treatment—within one year from the date of the injury, as for example in case of:

- (a) Projectile in the heart, even if the Mixed Medical Commission should fail, at the time of their examination, to detect any serious disorders.
- (b) Metallic splinter in the brain or the lungs, even if the Mixed Medical Commission cannot, at the time of examination, detect any local or general reaction.

- (c) Osteomyelitis, when recovery cannot be foreseen in the course of the year following the injury, and which seems likely to result in ankylosis of a joint, or other impairments equivalent to the loss of a hand or a foot.
- (d) Perforating and suppurating injury to the large joints.
- (e) Injury to the skull, with loss or shifting of bony tissue.
- (f) Injury or burning of the face with loss of tissue and functional lesions.
- (g) Injury to the spinal cord.
- (h) Lesion of the peripheral nerves, the sequelae of which are equivalent to the loss of a hand or foot, and the cure of which requires more than a year from the date of injury, for example: injury to the brachial or lumbosacral plexus, median or sciatic nerves, likewise combined injury to the radial and cubital nerves or to the lateral popliteal nerve (N. peroneus communis) and medial popliteal nerve (N. tibialis); etc. The separate injury of the radial (musculo-spiral), cubital, lateral or medial popliteal nerves shall not, however, warrant repatriation except in case of contractures or of serious neurotrophic disturbance.
- (i) Injury to the urinary system, with incapacitating results.

3. All sick prisoners of war whose condition has become chronic to the extent that prognosis seems to exclude recovery — in spite of treatment—within one year from the inception of the disease, as for example in case of:

- (a) Progressive tuberculosis of any organ which, according to medical prognosis, cannot be cured or at least considerably improved by treatment in a neutral country.
- (b) Exudative pleurisy.
- (c) Serious diseases of the respiratory organs of non-tubercular etiology, presumed incurable, for example: serious pulmonary emphysema, with or without bronchitis; chronic asthma\*; chronic bronchitis\* lasting more than one year in captivity; bronchiectasis\*; etc.
- (d) Serious chronic affections of the circulatory system, for example: valvular lesions and myocarditis\*, which have shown signs of circulatory failure during captivity, even though the Mixed Medical Commission cannot detect any such signs at the time of examination; affections of the pericardium and the vessels (Buerger's disease, aneurisms of the large vessels); etc.
- (e) Serious chronic affections of the digestive organs, for example: gastric or duodenal ulcer; sequelae of gastric operations performed in captivity; chronic gastritis, enteritis or colitis, having lasted more than one year and seriously affecting the general condition; cirrhosis of the liver; chronic cholecystopathy\*; etc.
- (f) Serious chronic affections of the genito-urinary organs, for example: chronic diseases of the kidney with consequent disorders; nephrectomy because of a tubercular kidney; chronic pyelitis or chronic cystitis; hydronephrosis or pyonephrosis; chronic grave gynaecological conditions; normal pregnancy and obstetrical disorder, where it is impossible to accommodate in a neutral country; etc.
- (g) Serious chronic diseases of the central and peripheral nervous system, for example: all obvious psychoses and psychoneuroses, such as serious hysteria, serious captivity psychoneurosis, etc., duly verified by a specialist\*; any epilepsy duly verified by the camp physician\*; cerebral arteriosclerosis; chronic neuritis lasting more than one year; etc.
- (h) Serious chronic diseases of the neuro-vegetative system, with considerable diminution of mental or physical fitness, noticeable loss of weight and general asthenia.
- (i) Blindness of both eyes, or of one eye when the vision of the other is less than 1 in spite of the use of corrective glasses; diminution of visual acuity in cases where it is impossible to restore it by correction to an acuity of  $\frac{1}{2}$  in at least one eye\*; other grave ocular affections, for example: glaucoma; iritis, choroiditis; trachoma, etc.
- (k) Auditive disorders, such as total unilateral deafness, if the other ear does not discern the ordinary spoken word at a distance of one metre\*; etc.

\* The decision of the Mixed Medical Commission shall be based to a great extent on the records kept by camp

physicians and prisoner doctors of the same nationality, or on an examination by medical specialists of the Detaining Power.

- (l) Serious affections of metabolism, for example: diabetes mellitus requiring insulin treatment; etc.
- (m) Serious disorders of the endocrine glands, for example: thyrotoxicosis; hypothyrosis; Addison's disease; Simmonds' cachexia; tetany; etc.
- (n) Grave and chronic disorders of the blood-forming organs.
- (o) Serious cases of chronic intoxication, for example: lead poisoning, mercury poisoning, morphinism, cocainism, alcoholism; gas or radiation poisoning; etc.
- (p) Chronic affections of locomotion, with obvious functional disorders, for example: arthritis deformans; primary and secondary progressive chronic polyarthritis; rheumatism with serious clinical symptoms; etc.
- (q) Serious chronic skin diseases, not amenable to treatment.
- (r) Any malignant growth.
- (s) Serious chronic infectious diseases, persisting for one year after their inception, for example: malaria with decided organic impairment, amebic or bacillary dysentery with grave disorders; tertiary visceral syphilis resistant to treatment; leprosy; etc.
- (t) Serious avitaminosis or serious inanition.

#### B. Accommodation in Neutral Countries.

The following shall be eligible for accommodation in a neutral country:

- (1) All wounded prisoners of war who are not likely to recover in captivity, but who might be cured or whose condition might be considerably improved by accommodation in a neutral country.
- (2) Prisoners of war suffering from any form of tuberculosis, of whatever organ, and whose treatment in a neutral country would be likely to lead to recovery or at least to considerable improvement, with the exception of primary tuberculosis cured before captivity.
- (3) Prisoners of war suffering from affections requiring treatment of the respiratory, circulatory, digestive, nervous, sensory, genito-urinary, cutaneous, locomotive organs, etc. if such treatment would clearly have better results in a neutral country than in captivity.
- (4) Prisoners of war who have undergone a nephrectomy in captivity for a non-tuber-

cular renal affection; cases of osteomyelitis, on the way to recovery or latent; diabetes mellitus not requiring insulin treatment; etc.

(5) Prisoners of war suffering from war or captivity neuroses.

Cases of captivity neurosis which are not cured after three months of accommodation in a neutral country, or which after that length of time are not clearly on the way to complete cure, shall be repatriated.

(6) All prisoners of war suffering from chronic intoxication (gases, metals; alkaloids, etc.), for whom the prospects of cure in a neutral country are especially favourable.

(7) All pregnant women and mothers with infants and small children.

The following cases shall be excluded from accommodation in a neutral country:

- (1) All duly verified chronic psychoses.
- (2) All organic or functional nervous affections considered to be incurable.
- (3) All contagious diseases during the period in which they are transmissible, with the exception of tuberculosis.

#### II.—General Observations

(1) The conditions given above should, in a general way, be interpreted and applied in as broad a spirit as possible.

Neuropathic and psychopathic conditions caused by war or captivity, as well as cases of tuberculosis in all stages, should especially benefit by such liberal interpretation. Prisoners of war who have sustained several wounds, none of which, considered by itself, warrants repatriation, shall be examined in the same spirit, with due regard for the psychic traumatism due to the number of their wounds.

(2) All unquestionable cases giving the right to direct repatriation (amputation, total blindness or deafness, open pulmonary tuberculosis, mental disorder, malignant growth, etc.) shall be examined and repatriated as soon as possible by the camp physicians or by military medical commissions appointed by the Detaining Power.

(3) Injuries and diseases which existed before the war and which have not become worse, likewise war injuries which have not prevented subsequent military service, shall not entitle to direct repatriation.

(4) The present stipulations shall be interpreted and applied in a similar manner in all belligerent countries. The Powers and

Authorities concerned shall grant to Mixed Medical Commissions all the facilities necessary to the accomplishment of their task.

(5) The examples quoted above in Chapter I represent only typical cases. Cases which do not correspond exactly to these stipulations shall be judged in the spirit of the provisions of Article 101 of the present Convention, and of the principles embodied in the present Agreement."

The Medical Experts Committee made several alterations in this Annex as regards technical terms, examples of wounds or sickness which give a right to repatriation or to accommodation in a neutral country and certain drafting points. These alterations did not affect the general principles or examples contained in the Annex.

After lengthy discussion, the Medical Experts Committee thought it necessary to add to Chapter I, Letter B of the Annex, under the new Figure 7, a provision relative to the accommodation in a neutral country of pregnant women and mothers with infants and small children. While of the opinion that these women and children should not be kept in captivity, the Committee considered that the status of a pregnant woman or a mother did not give right to repatriation, except in cases of serious complications, which had been provided for in Chapter I, Letter A, Figure 3, Letter (f).

#### *Recommendations*

The Medical Experts Committee draws the attention of Committee II to the recommendation which it has considered it necessary to submit for its consideration concerning Article 107 of the Prisoners of War Convention (*see Annex No. 173*).

The Committee also places before Committee II a recommendation concerning Annex II of the Prisoners of War Convention. The Committee's terms of reference are in reality limited to the consideration of Annex I; it nevertheless felt that it would be useful to study Annex II as well, with the sole intention of drawing up recommendations (*see Annex No. 181*).

Colonel CRAWFORD (Canada), Rapporteur, explained that most of the members of the Medical Experts Committee had been members of Committee I. The Delegate of the Union of Soviet Socialist Republics on Committee I, who had been invited to take part, had not considered that he was competent to help with a problem concerning the Prisoners of War Convention.

The Rapporteur drew attention to the proposal of the Medical Experts' Committee that the word "active" in Article 107 should be omitted, and also to its recommendations with regard to:

(1) The adoption of Annex II as drafted in the Stockholm text;

(2) The issue of an official certificate stating that the prisoner of war had been examined by a Mixed Medical Commission and passed for repatriation. On several occasions during the last war prisoners had been passed for repatriation but, having no document in their possession to prove it, had been retained in their camps.

On the proposal of the CHAIRMAN, the Committee decided to adopt the recommendations of the Medical Experts Committee with regard to Article 101 and Annex I.

The Committee further decided to refer to the Drafting Committee the recommendations made by the Medical Experts Committee in connection with Article 107 and Annex II and also the proposed addition to Article 101.

*The meeting rose at 1 p.m.*

## EIGHTEENTH MEETING

Wednesday 8 June 1949, 3.15 p. m.

Chairman: Mr. Maurice BOURQUIN (Belgium)

**Report of the Sub-Committee on Penal Sanctions**  
(continued)

**Article 93** (continued)

General DEVIJVER (Belgium) said, in reply to a remark made by the Delegate of the Netherlands at the last meeting, that there was nothing in the present Convention to prevent prisoners of war whose cases were undergoing judicial investigation from being transferred; there was therefore no reason to make any addition to Article 93 in that connection.

Mr. GARDNER (United Kingdom) shared the view of the Belgian Delegate.

Mr. BAISTROCCHI (Italy) was afraid that the second exception contemplated in the first paragraph would tend to limit unduly the application of the main principle expressed in the paragraph. He therefore proposed that the phrase "or if it is essential to do so in the interests of national security" be omitted, and the words "or a civilian national" inserted between the words "armed forces" and "of the Detaining Power".

General DILLON (United States of America) stated on behalf of his Delegation that he did not oppose the omission suggested by the Italian Delegate; but he was unable to make the same statement on behalf of the Sub-Committee on Penal Sanctions, which had been in favour of retaining the words in question.

Miss GUTTERIDGE (United Kingdom) said that her Delegation wished to retain the words referred to.

Mr. BAUDOY (France) and Mr. MOLL (Venezuela) stated that in view of the minor importance of the words in question, they were prepared to agree to their omission.

Mr. NARAYANAN (India) wished the words to be retained.

General SLAVIN (Union of Soviet Socialist Republics) was unreservedly in favour of the text submitted by the Sub-Committee on Penal Sanctions.

Mr. STROEHLIN (Switzerland), after apologizing for raising a drafting point, proposed the omission of the words: "and taken into account in fixing any penalty" at the end of the second paragraph.

The CHAIRMAN felt that, in view of the various observations raised by delegations with regard to Article 93, it would be best to give it a second reading.

The Committee agreed.

**Articles 94 and 95**

Articles 94 and 95 were adopted unanimously.

**Article 96**

Miss GUTTERIDGE (United Kingdom) reminded the Committee that in the opinion of her Delegation Article 96 was not quite complete in that no provision was made for informing the Protecting Power of the appeals which had been lodged. As her reservation had been mentioned in the Report, she would not press the matter any further.

The Committee approved the wording proposed for Article 96 by the Sub-Committee on Penal Sanctions.

**Article 97**

Colonel NORDLUND (Finland) proposed that the word "prosecution" in the second paragraph, sub-paragraph 2, be placed before the word "defence".

The Committee agreed to the above change in the wording.

Captain MOUTON (Netherlands) reminded the meeting that an amendment had been submitted by his Delegation to Article 96 of the Stockholm text, which had become the new Article 97; it consisted in adding the following fourth subparagraph to the second paragraph:

“4. Notification of the prisoner’s right to appeal, for the quashing or revision of the sentence rendered against him, and of his intention to make use of this right or not.”

The amendment appeared to have been overlooked.

General DILLON (United States of America) read passage from the Summary Record of the Fourteenth Meeting of the Sub-Committee on Penal Sanctions at which the amendment had been discussed and rejected.

Captain MOUTON (Netherlands) feared that the rejection of the amendment had been due to the fact that the French version had been incorrectly translated into English. The word “decision” should have been used in the English text instead of “intention”.

Mr. WILHELM (International Committee of the Red Cross) said that the English text adopted at Stockholm provided that a detailed notification should not be sent to the Protecting Power until the prisoner’s conviction was final, i.e. until all means of appeal had been exhausted. It was therefore difficult to include the Netherlands amendment concerning the right of appeal as a subparagraph 4 of the second paragraph, since the notification could only be made after the time-limit for lodging such appeals had expired. Nevertheless, the new Article 96 had been slightly altered to take some account of the amendment in question. The members of the Sub-Committee were furthermore of the opinion that the prisoner’s defending counsel, in lodging an appeal, would notify the Protecting Power, since he would have to make a report to that Power on his conduct of the defence.

Captain MOUTON (Netherlands) said that his Delegation also wished to omit the word “finally” at the beginning of the second paragraph. His Delegation wanted to have two notifications—viz. one on conviction by a court of first instance, and the other when judgment had been pronounced on appeal.

General DILLON (United States of America) pointed out that the new Article 97 provided for two notifications. He added that the members of the Sub-Committee had decided that the

insertion of the Netherlands amendment was unnecessary, since prisoners were provided with a competent defending counsel, whose duty it was to inform them in good time what course they ought to adopt.

Miss GUTTERIDGE (United Kingdom) was in agreement with the Netherlands Delegate, and was prepared to support him whole-heartedly.

The CHAIRMAN decided, in view of the fact that there were objections to the proposed wording of the new Article 97, that it should be given a second reading.

### Article 98

The Committee unanimously approved the text of Article 98 as proposed by the Sub-Committee on Penal Sanctions.

The CHAIRMAN, summing-up the discussion on the Report submitted by the Sub-Committee on Penal Sanctions, reminded the meeting that the new Articles 76, 79, 82, 89, 90, 93 and 97 would be given a second reading.

### Article 75

The CHAIRMAN put Article 74 of the Stockholm Draft (new Article 75), which had not been dealt with by the Sub-Committee on Penal Sanctions (*see Summary Record of the Seventeenth Meeting*), for discussion. He said that amendments to Article 74 had been submitted by the Delegations of the Union of Soviet Socialist Republics (*see below*) and Norway (*see Summary Record of the Nineteenth Meeting*). Comments on the Article were also to be found in the memorandum by the Netherlands Government.

Mr. WILHELM (International Committee of the Red Cross) reminded the Committee that the 1929 Convention contained no provisions concerning offences committed by prisoners of war prior to capture. Such offences might be offences under common law or, which would be far more serious, offences against the laws and customs of war. The question assumed great importance at the close of the recent war; and it had therefore appeared advisable to provide, in the Draft submitted at Stockholm on the basis of indications supplied by the Government Experts, that prisoners of war convicted or prosecuted for acts com-

mitted prior to capture should enjoy the benefits of the Convention at least until such time as their offence had been established by regular trial and sentence. In Stockholm, however, a step further was taken, as it was decided that prisoners of war should continue to enjoy the benefits of the Convention even after conviction.

Captain MOUTON (Netherlands) pointed out that the 1929 Convention only dealt with crimes committed during captivity. That view had been adopted by the Supreme Court of the United States of America and by certain other courts as for instance the "Cours de Cassation" of France and the Court of Cassation in the Netherlands. The latter court had come to the same conclusion on different grounds, namely, by searching the records of the Diplomatic Conference of Brussels of 1874 for the origin of the provision in question. The conclusion that emerged was that prisoners of war who had been guilty of breaches of the laws and customs of war before capture would not come under the provisions of the Convention relating to judicial procedure.

The Conference of Government Experts of 1947 considered it reasonable, however, not to deprive a prisoner of war of the protection of the Convention on the mere allegation that he had violated the laws and customs of war, but to leave him under the protection of the Convention until such violation had been proved in a court of law, in other words until he had been sentenced by a court of such a crime or offence.

The Stockholm text however went further and kept the war criminal under the protection of the Convention even after he had been convicted.

The Netherlands Delegation desired to draw attention to the fact that the Stockholm text departed from a very old rule of customary international law, namely the rule that he who violated the laws and customs of war could not rely on the selfsame law for his protection.

The Netherlands Delegation did not object to any change in that customary rule, but wanted the Committee to be aware of the results to which the adoption of the Stockholm draft might lead.

He further pointed out that, if the amendment to Article 3 submitted by the Delegation of the United Kingdom was accepted, the text of that Article, which would contain amongst others the condition of compliance with the laws and customs of war, would be in contradiction with Article 74 of the Stockholm text.

Finally he drew attention to the Netherlands amendment contained in his Government's memorandum, which proposed that the words "which are not violations of the laws and usages of war" should be inserted immediately after the words "for acts".

General SLAVIN (Union of Soviet Socialist Republics) referred to the amendment submitted by his Delegation which proposed that a new paragraph worded as follows should be added to Article 74 (Stockholm text):

"Prisoners of war convicted of war crimes and crimes against humanity under the legislation of the Detaining Power, and in conformity with the principles of the Nuremberg Trial, shall be treated in the same way as persons serving a sentence for a criminal offence in the territory of the Detaining Power".

It would be an ill-advised step to extend the safeguards of the present Convention to war criminals. War criminals, by their own acts, lost all human dignity and debarred themselves from the advantages of the Convention. He agreed with the Delegate of the Netherlands; the above rule of international law was recognized by all the nations which had accepted the United Nations Charter and must not be ignored.

Mr. GARDNER (United Kingdom) did not agree with the Netherlands Delegate; he failed to see in what way the amendment submitted by his Delegation was at variance with Article 74 of the Stockholm draft.

Mr. COHN (Denmark) did not think that there was any general principle debarring persons who violated a code of law from themselves claiming protection under the same code. He did not therefore consider that Article 74, as it stood, was at variance with any rule of international law.

Dr. FALUS (Hungary) supported the amendment submitted by the Delegation of the Union of Soviet Socialist Republics.

General DILLON (United States of America) agreed with Mr. Cohn's point of view. If he had rightly understood the Soviet amendment, it merely amounted to depriving a prisoner convicted of offences against the laws and customs of war committed prior to capture of the rights granted to prisoners of war: i.e. the right to be visited by delegates of the Protecting Power, the right to make complaints and the right to minimum standards of accommodation. The difference was so slight that it hardly justified the drafting of a new paragraph.

General SLAVIN (Union of Soviet Socialist Republics) was unable to share General Dillon's point of view.

Mr. GARDNER (United Kingdom) said that the present Convention was intended to protect

prisoners of war and not war criminals. For that very reason the Stockholm text should be maintained, so that soldiers falling into enemy hands in the course of battle should not be exposed to the passions and the hatreds which prevailed in countries at war. For that very reason the United Kingdom Delegation, far from opposing the punishment of war criminals, urged that their trial should be put off until the close of hostilities so as to ensure that it would take place impartially and with all the requisite safeguards. His Delegation was therefore in favour of the Stockholm text.

General SLAVIN (Union of Soviet Socialist Republics) was against deferring the trial of war criminals.

Mr. LAMARLE (France) had so far been unable to make up his mind; but he wished to say, that in his opinion the essential thing was that justice should be administered fairly and impartially; he would not, however, for that reason, go so far as to propose that such trials should be postponed until after the close of hostilities. Article 74 as adopted at Stockholm did not seem to authorize such an interpretation. If it was desired to prevent the repetition of certain particularly odious crimes, measures taken for their repression should not only be fair and impartial, but should be carried out without delay. He failed to see why war criminals should benefit by advantages reserved for prisoners of war, or should be better treated than the nationals of the Detaining Power.

*The meeting rose at 6.15 p.m.*

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## NINETEENTH MEETING

*Tuesday 14 June 1949, 3.15 p.m.*

*Chairman: Mr. Maurice BOURQUIN (Belgium)*

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### **Constitution of a second Drafting Committee**

The CHAIRMAN proposed that a second Drafting Committee should be formed in order to speed up the work of Committee II. It would meet at the same time as the first Drafting Committee, and would be composed of members of the following Delegations:

United States of America, Italy, Portugal, Rumania, United Kingdom, Holy See, Switzerland, Turkey, Union of Soviet Socialist Republics, Venezuela.

The two Drafting Committees would decide between themselves as to how the work should be divided.

The above proposal was adopted.

### **Article 75 (continued)**

Mr. KORBAR (Czechoslovakia) supported the Soviet amendment (*see Summary Record of the Eighteenth Meeting*) which proposed that war criminals should be excluded from the protection of the Convention.

Captain MOUTON (Netherlands) again drew attention to the amendment suggested by his Government (*see Summary Record of the Eighteenth Meeting*). He asked, in the first place, what was intended by the stipulation in the Stockholm text of Article 74 that a prisoner of war should "enjoy, even if convicted, the benefits of the present Convention". What did that actually mean, for instance, in the case of a prisoner sentenced to twenty years imprisonment? In his opinion, the effect of the Convention came to an end with the end of hostilities.

In the second place, Article 19, which dealt with prisoners of war released on parole, was closely connected with Article 74 of the Stockholm Draft. The sanctity of the given word in such cases was a fundamental principle of international law. Article 12 of the Hague Regulations provided that a prisoner who broke parole, by so doing forfeited his right to be considered as a prisoner of war. The Netherlands Delegation would like this rule to be maintained in the present Convention.

Finally, if Chapter III were to be applied to war criminals, certain of its provisions would have to be deleted or modified. Article 75 of the Stock-

holm text (new Article 74), for instance, which dealt with tribunals, would have to be amended to include provisions with regard to the trial of war criminals.

Major ARMSTRONG (Canada) said that while he entirely agreed with the principle that war criminals should be punished, the question was, he considered out of place in a Convention dealing with the protection of prisoners of war. The Nuremberg trials which were referred to in the Soviet amendment had been conducted by mixed tribunals made up of representatives of various countries. But in the case of a prisoner of war who was accused of a crime, the Detaining Power was the only judge of whether it was a war crime or not. It must be borne in mind that the present Convention aimed at protecting prisoners of war; it would therefore be necessary to establish proper safeguards if the Soviet amendment were adopted.

General SLAVIN (Union of Soviet Socialist Republics) considered that those who violated the common laws of humanity automatically forfeited their rights under the Convention. Was it desired to protect the perpetrators of the three categories of war crimes which had been established at Nuremberg: (1) crimes against peace; (2) violations of the laws and customs of the war: murder, torture of prisoners of war, looting, wanton destruction of towns and villages, etc.; (3) crimes against humanity: murder, extermination, enslavement of populations, genocide etc.?

General DILLON (United States of America) said that he was equally determined that war criminals should be punished; Article 74 of Stockholm gave every safeguard in the matter. It was necessary, however, to ensure that prisoners of war enjoyed the essential guarantees provided by the judicial procedure of civilized countries, such as the presumption of innocence until guilt was proved. He supported the observations made by the Delegates of Canada, the United Kingdom and other countries who desired that the common principles of humanity should be safeguarded. He could not subscribe to the theory that those who violated the law of nations forfeited the right to protection under that law.

Msgr. COMTE (Holy See) agreed with the observations made by the Delegates of Canada, the United Kingdom and the United States of America. To withhold protection from war criminals would be tantamount to the institution of lynch law.

Mr. MOLL (Venezuela) supported the text proposed by the Sub-Committee on Penal Sanctions, and the observations made by the Delegates of

Canada, the United States of America, the United Kingdom and the Holy See.

General SLAVIN (Union of Soviet Socialist Republics) pointed out that the amendment proposed by his Delegation spoke only of prisoners who had been convicted.

Mr. GARDNER (United Kingdom) considered that there was little divergence between the aims of the Soviet Delegation and those of other Delegations. All were agreed that a convicted war criminal should duly serve the sentence inflicted upon him by the appropriate tribunal. At the same time, if a man was being punished in the name of humanity his judges were also bound by that same law of humanity. The Soviet Delegation considered that, when a man was convicted of a war crime, he should be treated in the same way as a prisoner serving a sentence for a criminal offence in the territory of the Detaining Power. He would like to know whether that meant better or worse treatment than that laid down in the new Article 98 (Article 99 of the Stockholm text).

General SLAVIN (Union of Soviet Socialist Republics) said that in his opinion none of the provisions of the Convention should be applied to war criminals. It was not intended, however, to deprive them of the privileges, based on principles of humanity and civilization, which were accorded in most countries to those serving sentences for a criminal offence.

Msgr. COMTE (Holy See) thought that it was generally agreed that war criminals brought to trial, should be accorded the same rights as ordinary citizens accused of serious crimes. In that respect, he considered that the text submitted at Stockholm was better than the one which had been adopted there. The text submitted at Stockholm read as follows:

“Prisoners of war prosecuted by virtue of the laws of the Detaining Power for acts committed before being taken shall enjoy, even if convicted, the benefits of the present Convention, unless the acts of which they are indicted constitute serious breaches of the laws and customs of war. In that case, they cannot be deprived of the benefit of the Convention unless they have been convicted and sentenced by a judgment passed in conformity with the stipulations of the present Chapter.”

On the proposal of the CHAIRMAN, the Committee decided to refer Article 75 (Article 74 of the Stockholm text) to the Special Committee.

Mr. CASTBERG (Norway) presented the amendment submitted by his Delegation for the insertion in Article 74 of Stockholm of a new paragraph as follows:

“In the event of an armed conflict not of an international nature, as defined in Article 2A, first paragraph, no person shall be punished merely for having taken part in the war on the one side or on the other”.

He explained that the amendment was intended to protect those who took up arms in good faith on one side or another in a civil war, but not the instigators of such conflicts, nor criminals in common law, war criminals or traitors.

Mr. MOLL (Venezuela) supported the Norwegian amendment since in view of the explanation given, it did not cover the instigators of civil war.

Mr. GARDNER (United Kingdom) had been instructed to oppose the amendment submitted by the Delegate of Norway which implied that a country must suspend its law of allegiance in the event of a rebellion. His Government would have great difficulty in assenting to such an abnegation of sovereignty by a government responsible for maintaining order.

Mr. MOLL (Venezuela) supposed that the Norwegian amendment was unacceptable to the United Kingdom Delegation because of the repercussions it might have in the United Kingdom's dependent territories. He proposed the addition of the words “in a sovereign territory” after the words “armed conflict”.

The CHAIRMAN proposed that the Delegations of Norway, the United Kingdom and Venezuela, should co-operate in an attempt to arrive at a compromise text.

At the request of Mr. CASTBERG (Norway), the CHAIRMAN agreed to act as arbitrator in the conversations on the above subject.

The proposal of the CHAIRMAN was approved on the understanding that the resulting compromise text would be referred to the Special Committee.

#### Article 81

Mr. WILHELM (International Committee of the Red Cross) explained that according to the 1929 Convention prisoners of war who succeeded in

escaping would not be liable to any punishment if recaptured. Experience had shown that it was necessary to define successful escape as clearly as possible. The proposed definition had been drawn up by the 1947 Conference of Government Experts.

Mr. GARDNER (United Kingdom) submitted an amendment recommending that sub-paragraph (3) in the first paragraph of Article 81 be replaced by the two following provisions:

“(3) He has reached the high seas, otherwise than in a vessel under the authority of the Detaining Power or any of its Allies;

(4) He has boarded, even in territorial waters of the Detaining Power, a vessel not placed under the authority of the Detaining Power or any of its co-belligerents”.

The Committee decided to refer Article 81 and the United Kingdom amendment to Drafting Committee No. 2.

#### Preamble

The CHAIRMAN reminded the Committee that the Draft Prisoners of War Convention as adopted at Stockholm did not include a preamble. It was only the Draft Civilians Convention that had a preamble. The Conference had decided, during the sixth plenary meeting, that each of the three Committees should consider the question of the Preamble to its own Convention.

He had received four letters transmitted to him by the President of the Conference; they were at the disposal of any members of the Committee who would like to see them. The object of the letters was in each case to request that the name of God should be mentioned in the Conventions. The letters had been written by the following associations:

The International Union of Catholic Women, The Hague (letter dated June 1st, 1949); Pax Romana, International Movement of Catholic Intellectuals, Fribourg (letter dated June 4th, 1949); Pax Romana, International Movement of Catholic Students, Fribourg (letter dated June 7th, 1949); The International Catholic Union for Social Service, Brussels, (letter dated June 10th, 1949).

Mr. WILHELM (International Committee of the Red Cross) explained that the fact that the Stockholm Conference had drafted a fairly full preamble for the Civilians Convention had given the I.C.R.C. the idea that similar preambles might well be provided for the other Conventions also. The object

of having a preamble was to let everybody know the main principles upon which the provisions of the Conventions were based. He read out the draft Preamble proposed by the I.C.R.C. in "Remarks and Proposals"; it could be used for all three Conventions, with slight modifications in

each case. The I.C.R.C. suggested that the Preamble should figure as Article I, because experience had shown that Conventions were very often reproduced without their preambles.

*The meeting rose at 6.25 p.m.*

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## TWENTIETH MEETING

*Thursday 16 June 1949, 10 a.m.*

*Chairman:* Mr. Maurice BOURQUIN (Belgium)

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### **Preamble** (*continued*)

Msgr. COMTE (Holy See) said that the purpose of a preamble was not merely decorative. The Preamble should be a solemn statement of principle, an affirmation of respect for the human person and for human dignity. The great majority of nations believed in a Supreme Being, and it should be possible to find a formula to express that belief in the Preamble. He felt that to do so would increase the faith of the nations in the Convention, and that would increase the sense of responsibility of those who had the arduous task of applying it.

Mr. STROEHLIN (Switzerland) suggested that the conclusions to which Committees I and III had come with regard to the Preambles to their respective Conventions, should be taken into account.

The CHAIRMAN said that everyone agreed that the Prisoners of War Convention should have a Preamble. He proposed to refer the question of its wording to Drafting Committee No. 2.

The Committee agreed to the Chairman's proposal.

### **Considerations of amendments proposing the insertion of new Articles**

#### **Article 14A**

Mr. GARDNER (United Kingdom) said his Delegation was anxious that the provisions of the Convention should be observed. In certain cases, however, it would be impossible to apply them in

full. He thought that it would be best if provisions could be included in the Convention itself to cover cases of derogation, as had been done in the 1929 Convention. The extent and duration of involuntary infractions would then be strictly circumscribed. That was the purpose of the new Article 14A proposed by the United Kingdom (*see Annex No. 101*).

Captain MOUTON (Netherlands) fully appreciated the point of view of the United Kingdom Delegate, but thought the proposition if accepted, might open the door to abuses. "Force majeure" was accepted as a principle in all legal systems, and it did not seem necessary to make express provision for it in the Conventions.

General PARKER (United States of America) and Mr. FENEŞAN (Rumania) agreed with the Delegate of the Netherlands.

Mr. QUENTIN-BAXTER (New Zealand) thought there would be a certain danger in not adopting the United Kingdom amendment. The argument of "force majeure" did not cover all the possible infractions. He would like to see a Convention drawn up which could be applied in all circumstances.

Following a discussion on the procedure to be followed in dealing with the amendment, the Committee decided to refer it to the Drafting Committee, together with a proposal by Mr. BAISTROCCHI (Italy) that the Detaining Power should have to inform the Protecting Power immediately of any case where circumstances prevented or delayed the Detaining Power from applying the provisions of the Conventions in full.

**New Article (108A)**

Mr. BLUEHDORN (Austria) said that Article 108 laid down that the prisoners of war were to be repatriated, but did not specify where to. The Delegation of Austria had therefore submitted an amendment proposing that a new Article reading as follows be inserted between Articles 108 and 109:

"Subject to the provisions of the following paragraph prisoners of war shall be repatriated to the country whose nationals they are at the time of their repatriation.

"Prisoners of war, however, shall be entitled to apply for their transfer to any other country which is ready to accept them."

There would be two exceptions to the general rule that prisoners should be repatriated to their own country, namely, where the territories of the country of origin had come under the jurisdiction of a foreign government, and where the conditions of life had so changed that the prisoner no longer wished to return to his home country and was able to settle in the territory of another State.

Mr. GARDNER (United Kingdom) sympathized with the amendment. He thought it would be unreasonable, however, to impose an obligation on a Detaining Power who had captured a soldier of a contiguous country, to send him to the other side of the world. Such an obligation was implied in the amendment suggested by Austria. The obligation of the Detaining Power should be limited to sending prisoners of war back to the country in whose service they were at the time of capture.

Major STEINBERG (Israel) supported the Austrian amendment. In order to take into account the remarks of the United Kingdom Delegate, he suggested replacing the words "whose nationals they are" by "in whose service they were", and adding the words "without imposing on the Detaining Power any material obligation" to the last sentence of the amendment.

General SKLYAROV (Union of Soviet Socialist Republics) did not agree with the second paragraph of the amendment. He considered that it could be used to the detriment of the prisoners themselves and of their country.

General PARKER (United States of America) agreed with General Sklyarov; he also considered that the first paragraph was superfluous.

The CHAIRMAN suggested that the amendment be referred to the Special Committee.

The Committee accepted that proposal.

**Amendments of the United Kingdom Delegation to Articles 19A, 24, 28A, 30, 30A, 99A, 115**

The CHAIRMAN noted that the amendment to Article 115 had been considered during the sixteenth meeting.

Mr. GARDNER (United Kingdom) said that when the above amendments (*see Annex No. 32*) were originally tabled, his Delegation had proposed that they be considered by a joint committee of Committees I and II. Committee I had decided that they should be examined independently by those Committees, and their conclusions coordinated later.

The Special Committee had examined the amendments to Articles 30 and 30A, so that it was not necessary to discuss them further. The substance of the amendments, in so far as they concerned ministers of religion, had been embodied by the Special Committee in Article 30. The questions affecting medical personnel had not been dealt with. As the Prisoners of War Convention would be the main working document for camp commandants, it should clearly indicate the privileges that were to be allowed to working medical personnel.

He pointed out that the amendment proposing the insertion of a new Article 99A limiting the right of repatriation of medical personnel to medical and dental officers and nurses, was controversial, and would probably be in conflict with the conclusion reached in another Committee. He would like to see it referred to the Special Committee. He would then be ready to modify it according to the suggestions of the Special Committee.

Major STEINBERG (Israel) supported the adoption of the principles contained in the amendments; he thought that the Rapporteur of Committee I should inform Committee II of the conclusions to which his Committee had come.

General SLAVIN (Union of Soviet Socialist Republics) agreed with the Delegate of Israel.

Mr. WILHELM (International Committee of the Red Cross) said that the Special Committee had already reached a decision on a number of the United Kingdom amendments. If the Committee decided, however, to include provisions relating to medical personnel in the Prisoners of War Convention, this should be done cautiously, in such a way as to avoid giving the impression that retained personnel were prisoners of war. It would be advisable to deal with questions affecting such personnel in a single Article.

Mr. GARDNER (United Kingdom) said there were two distinct problems. The first was the question of status, and his Delegation had taken the view that that was a matter for Committee I to decide. Secondly, there was the practical question of chaplains and medical personnel operating in prisoner of war camps; that was clearly a question for Committee II. He suggested that the Special Committee, which had already dealt with the treatment of chaplains, should now deal with the rest of the problem.

Mr. STROEHLIN (Switzerland) considered that the United Kingdom Delegation's amendments should be discussed by the Special Committee. He requested that the latter Committee should also consider the amendment on the same subject submitted by Switzerland (*see Annex N. 33*).

Mr. GARDNER (United Kingdom), in reply to a question of Mr. MAYATEPEK (Turkey), said that the United Kingdom amendments proposed to treat only working medical personnel as "retained personnel".

The CHAIRMAN proposed to refer the United Kingdom amendments to the Special Committee for consideration, and to ask the Chairman of Committee I to send a representative to attend the discussion on those questions in the Special Committee.

The Committee agreed to the Chairman's proposals.

### Article 122

The CHAIRMAN said Article 122 had been referred to the Joint Committee. The Chairman of the Joint Committee had pointed out, however, that Article 122 was common only to the Prisoners of War and Civilians Conventions and was therefore not really a common Article; he had accordingly referred it back to Committee II.

Colonel NORDLUND (Finland) thought Article 122 should be deleted. The present Convention was not only complementary to the stipulations of the Hague Regulations, but also modified them to some extent.

Captain MOUTON (Netherlands) thought the Article should be retained as the countries which had signed the IVth Hague Convention would have to know the relation between the Hague Regulations and the present Convention. He would, however, suggest a change in the wording of the Article, namely the substitution of the words "will be replaced by" for "will complete".

General DEVIJVER (Belgium) suggested that the Committee should replace the text of Article 122 by the wording proposed in his Delegation's amendment which read as follows:

"In respect of the relations between the Powers which are bound by the Hague Convention relative to the Laws and Customs of War on Land, whether that of July 29, 1899, or that of October 18, 1907, the said Hague Convention shall remain applicable in all cases where it is not explicitly superseded by the present Convention."

Mr. WILHELM (International Committee of the Red Cross) suggested the wording already used in Article 135 of the Draft Civilians Convention, beginning with the words "The present Convention shall replace, in respect of the matters treated therein, the Convention of the Hague...". He also wondered whether reference should not be made to the XIth Hague Convention.

Captain MOUTON (Netherlands) said that the XIth Hague Convention dealt with quite a different matter.

General DILLON (United States of America) was prepared to support the Belgian Delegate's proposal, provided the word "explicitly" was omitted.

Mr. BAISTROCCHI (Italy) supported the proposal made by the United States Delegate.

The CHAIRMAN said that there was general agreement in principle. He proposed to refer Article 122 to Drafting Committee No. 2 for consideration. The Committee agreed.

The CHAIRMAN declared the first reading closed.

*The meeting rose at 12.45 p.m.*

## TWENTY-FIRST MEETING

*Tuesday 28 June 1949, 3.15 p.m.*

*Chairman:* Mr. Maurice BOURQUIN (Belgium)

### Progress of Work

The CHAIRMAN stated that the Articles which had been considered on first reading by the Committee and later studied by the various sub-committees would be discussed by the main Committee on second reading, and then voted upon. The Chairman reminded the meeting that the work would have to be speeded up in order to meet the wishes expressed by the Bureau of the Conference.

The text of the Stockholm Draft would serve as a basis for discussion. However, in the case of the Articles on penal sanctions which had not yet been decided upon by Committee II on the first reading, the new texts drafted by the Sub-Committee on Penal Sanctions would be taken as basis for discussion.

### Consideration of Articles adopted by the Sub-Committee on Penal Sanctions

*(see Summary Record of the Seventeenth Meeting)*

#### Article 76

The new Article 76 was adopted unanimously without comment.

#### Article 79

The CHAIRMAN proposed a change in the wording of the new Article 79 in order to bring it into line with the terminology used by the Committee of Experts entrusted with the consideration of the provisions relating to the financial resources of the prisoners.

The words "of the advances of pay and working pay" should be substituted for "of the pay and wages" in sub-paragraph (1).

This modification was accepted by General Dillon in his capacity as Chairman of the Sub-Committee on Penal Sanctions.

Colonel SHAIKH (Pakistan) declared that some of the provisions of Article 79 were too severe. In the hands of an unsympathetic camp commander they could be turned into a powerful instrument of punishment and make the life of a prisoner of war unbearable. He drew attention to the amendment submitted by his Delegation (*see Annex No. 171*). Put to the vote sub-paragraph by sub-paragraph, this amendment was rejected.

The new Article 79 proposed by the Sub-Committee on Penal Sanctions was adopted by 25 votes to 1, with the wording changes in sub-paragraph (1) approved by the Committee.

#### Article 82

The new Article 82 was adopted without comment

#### Article 89

An amendment had been submitted by the Delegation of the Netherlands, namely that the words "or by international law" should be inserted after the words "Detaining Power" in the first paragraph.

This amendment having been translated into French by "ou par la législation internationale", the CHAIRMAN remarked that it would be better to say "ou par le droit international".

The Netherlands amendment, with the above modification, was adopted by 12 votes to NIL.

The new Article 89, as amended above, was then adopted by 27 votes to NIL.

#### Article 90

Mr. AGATHOCLES (Greece) drew the attention of the Committee to the observations submitted in the memorandum of his Government with regard to the second paragraph of Article 91 of the Stockholm text. Since that paragraph had been retained

in the new text, he wondered whether the latter took sufficient account of the danger that the Power on which prisoners depended might, after signing an armistice with the Detaining Power, be compelled to agree that acts not previously provided for should be considered as offences punishable by the death penalty. He thought that it would, therefore, be advisable to omit the second paragraph of Article 90.

General DILLON (United States of America) speaking in his capacity as Chairman of the Sub-Committee on Penal Sanctions, said that the Greek amendment had been considered by the Sub-Committee, but had been rejected because, in the opinion of the Sub-Committee, the danger to which the amendment referred did not exist.

Major STEINBERG (Israel) asked whether the third paragraph made it possible for the Detaining Power to sentence to death prisoners of war who were fighting in the army of a Power of which they were not nationals.

General DILLON (United States of America) replied that the third paragraph of the Article was intended to enlist the clemency, sympathy and understanding of the court for the situation of a prisoner of war on trial for his life. It was not intended to restrict the action of the court.

Mr. MOLL (Venezuela) reminded the meeting of the statement he had made on first reading (*see Summary Record of the Seventeenth Meeting*). He had received instructions from his Government to make a reservation with regard to Article 90, as the death penalty was contrary to the legislation of his country.

The CHAIRMAN put Article 90 to the vote.

The first paragraph of new Article 90 was adopted by 21 votes to NIL.

The second paragraph was adopted by 27 votes to 1.

The third paragraph was adopted by 25 votes to NIL.

Article 90 was adopted as a whole by 27 votes to NIL.

### Article 93

Mr. GARDNER (United Kingdom) made a reservation with regard to the second paragraph of the Article, which was contrary to one of the basic principles of British law.

The new Article 93 was adopted without further comment.

### Article 97

Mr. BURDEKIN (New Zealand) drew attention to a proposal put forward by the United Kingdom which had not been taken into account when the new Article 97 was drafted. He proposed, therefore, that the words "in a language he understands" be inserted in the second sentence of the first paragraph, immediately after the words "prisoner of war".

The New Zealand Delegate's proposal was adopted by 30 votes to NIL.

Mr. BIJLEVELD (Netherlands) reminded the meeting of the amendment which had been submitted by his Delegation (*see Summary Record of the Eighteenth Meeting*).

The amendment in question was adopted by 15 votes to 3.

In the course of the discussion which followed, however, it became apparent that the amendment referred to Article 96 of the Stockholm text; but the Article had been redrafted, and the second paragraph modified. Further redrafting would therefore be required in order to include the Netherlands amendment.

It was decided to set aside the vote that had been taken and to defer consideration of the Article until the next meeting.

### Consideration of the Articles adopted by the Special Committee

#### Article 11, second paragraph

General DEVIJVER (Belgium), Rapporteur of the Special Committee, read out the part of his Interim Report dealing with the discussions that had taken place in the Special Committee on the subject of the joint responsibility of the Detaining Powers for the application of the Convention to prisoners of war who had been transferred:

"This paragraph of the Stockholm Draft lays down the principle of the joint responsibility of the transferring Power and of the receiving Power in the event of transfer of prisoners of war between the said Powers, provided both are parties to the Convention.

Several Delegations, supporting the United Kingdom view, consider that joint responsibility involves difficult problems of application, requiring delicate handling and liable to cause disagreements between allies. These Delegations

feel that joint responsibility does not constitute an effective guarantee for prisoners of war, since a divided responsibility may not only weaken, but even eliminate responsibility altogether.

The majority of the Delegations, including those of the United States of America and the Union of Soviet Socialist Republics, are strongly in favour of the retention of the principle of joint responsibility, which ensures maximum guarantees for prisoners of war and the application of which, as carried out in particular by the United States of America, proved perfectly feasible and entirely to the prisoners' advantage. This principle allows the Power which has captured the prisoners of war to continue, as is its duty, to look after their welfare and, should the need arise, to assist the Power who has received the transferred prisoners, if, as a result of unforeseen circumstances, it is no longer in a position to apply in their entirety certain provisions of the Convention.

The discussion in the Special Committee centred on a new amendment submitted by the Delegation of Canada (*see Annex No. 96*) cancelling the amendment submitted by this Delegation during the fourth meeting and supported by the United Kingdom Delegation, who withdrew their own amendment (*see Annex No. 97*). The aim of the new Canadian amendment was to reconcile the two divergent points of view by stipulating that while responsibility lies only with the Power to which prisoners have been transferred, the transferring Power shall nevertheless ensure that the Power to which the prisoners are to be transferred is capable of carrying out the provision of the Convention.

The debate closed with a vote which showed 9 delegations in favour of the retention of the Stockholm Draft of Article 11, second paragraph, with 4 delegations in favour of the Canadian amendment.

To sum up, the Special Committee submits to Committee II the Stockholm Draft which has been adopted by a large majority of its members."

Mr. GARDNER (United Kingdom) said that following the decision of the Special Committee he had prepared a compromise text which seemed to him to meet all points of view (*see Annex No. 98*). He hoped that the text in question would be acceptable to the Committee.

Major STEINBERG (Israel) withdrew the amendment submitted by his Delegation in favour of the new amendment of the Delegation of the United Kingdom.

General SLAVIN (Union of Soviet Socialist Republics) considered that the new United Kingdom amendment, far from securing joint responsibility, absolved Detaining Powers from all responsibility. He thought that it could hardly be described as a compromise proposal, since it contained no concessions. He hoped that the Committee would study the amendment carefully, because he felt that it deprived transferred prisoners of war of the protection of the Convention. He maintained his support of the Stockholm text.

Mr. AGATHOCLES (Greece) referring to the Memorandum by his Government, proposed that the words "for serious reasons" be inserted after the word "transferred" at the beginning of the second sentence of the second paragraph.

Major ARMSTRONG (Canada) withdrew the last amendment submitted by his Delegation in favour of the new United Kingdom amendment which provided in its second paragraph for joint responsibility, thus satisfying the point of view of the majority of the Special Committee.

The United Kingdom amendment was supported by Mr. BAUDOY (France) and Mr. JONES (Australia).

In view of the importance of the question, and of the desirability of arriving at unanimous agreement, it was decided to defer the vote on Article 11 until the following meeting.

## Article 26

General DEVIJVER (Belgium), Rapporteur of the Special Committee, read a passage from his Interim Report describing the discussions which had resulted in the drawing up of the new text of Article 26:

"Article 26, concerning canteens, was considered paragraph by paragraph.

The first paragraph of the Stockholm Draft was adopted. After a short discussion, the Committee agreed on the advisability of retaining in this paragraph the clause providing that prisoners of war might procure foodstuffs and soap in canteens, although, as the United Kingdom Delegation pointed out, Articles 24 and 27 of the Convention impose on the Detaining Power the obligation, on the one hand, to supply food rations free for all prisoners of war and, on the other, to furnish, them with sufficient soap.

Consideration of the second paragraph of the Stockholm Draft gave rise to a discussion which bore mainly on the following points:

(1) The United Kingdom proposal to substitute for the "special fund" to be maintained out of the profits made by canteens, a "camp wel-

fare fund" to which should be credited any profits accruing from the prisoners of war canteen, and any other sums contributed from whatever source for the welfare of the prisoners. This proposal was rejected by 5 votes to 5.

(2) The United Kingdom proposal to grant the spokesman, and his assistants, more than a mere right to check the management of the canteens, and to allow him to manage the canteens himself. Several Delegations, including those of France and of the United States of America, were of the opinion that if the spokesman were given the responsibility for managing the canteen, this would lay too heavy a burden upon him and be incompatible with the efficient carrying out of his other duties. The Delegation of the United States of America suggested a compromise text which took into account the comments made by various delegations and by the Representative of the International Committee of the Red Cross. This text was adopted without opposition. It consists in replacing the second sentence of the second paragraph of Article 26 of the Stockholm Draft by the following wording: "The spokesman shall have the right to cooperate in the management of the canteen and of this fund".

Examination of the third paragraph of the Stockholm Draft gave rise to the following remarks and decisions:

(1) In the first sentence of the third paragraph the Committee decided to replace the words "the profits of canteens" by the words "credit balance of the special fund" with the object of coordinating this paragraph with the second paragraph.

(2) The United Kingdom Delegation proposed that, in the event of a camp being closed, the Detaining Power shall be permitted to transfer the credit balance of the special fund to a Central Welfare Fund for prisoners of war from the same forces. This proposal was rejected by 7 votes to 1. The Stockholm Draft may therefore stand with the exception of the replacement in the first sentence of the third paragraph of the words

"the profits of canteens" by "any credit balance of the special fund", in order to bring this text into line with the second paragraph.

To sum up: the Special Committee submits to Committee II the new wording for Article 26, which has been adopted by a majority of its members:

"Canteens shall be installed in all camps, where prisoners of war may procure foodstuffs, ordinary articles of daily use and soap. The tariff shall never be in excess of local market prices.

"The profits made by canteens for the camp administration shall be used for the benefit of the prisoners; a special fund shall be created for that purpose. The spokesman shall have the right to collaborate in the management of the canteen and of this fund.

"When a camp is closed down, the credit balance of the special fund shall be handed to an international welfare organization, to be employed for the benefit of prisoners of war of the same nationality as those who have contributed to the constitution of the fund. In case of a general repatriation, such profits shall be kept by the Detaining Power, subjected to any agreement to the contrary between the Powers concerned."

Mr. GARDNER (United Kingdom) said that his Delegation had submitted an amendment proposing that the words "in the same country and subject to the provisions of Annex III" should be inserted in the third paragraph, immediately after the word "employed".

The provision to hand over the balance of welfare funds to an international welfare organization without some control of what that organization might do with the funds would be absolutely unacceptable to his Government. The amendment was designed to reconcile the view of the majority with his own Government's obligations.

*The meeting rose at 6.40 p.m.*

TWENTY-SECOND MEETING

*Thursday 30 June 1949, 3.15 p.m.*

*Chairman:* Mr. Maurice BOURQUIN (Belgium)

**Designation of a representative of Committee II to act on the Committee of Experts of the Coordination Committee**

The CHAIRMAN read a letter which he had received from the Chairman of the Coordination Committee. That Committee had set up, to assist it in its work, a Committee of Experts consisting of Mr. Mill Irving (United Kingdom), Rapporteur, Mr. Mevorah (Bulgaria) and Mr. Popper (Austria), with, in addition, one representative of each from Committees I, II and III. The latter were invited to nominate their respective representatives. Accordingly, he requested Committee II to choose one of its members to sit on the Committee of Experts.

Upon the proposal of the Chairman, Mr. Strœhlin (Switzerland) was appointed a member of the Committee of Experts of the Coordination Committee.

**Article 97 (continued)**

The CHAIRMAN, referring to the discussions which had taken place with regard to Article 97 (see *Summary Records of the Eighteenth and Twenty-first Meetings*), said that the Netherlands Delegation had tabled an amendment which read as follows:

- (1) Insert the following words at the end of the first sentence of the new Article 97:  
"also indicating whether prisoners of war have the right of appeal with a view to the quashing of the sentence or the reopening of the trial."
- (2) Add the following sentence at the end of the first paragraph:  
"The Detaining Power shall immediately communicate to the Protecting Power the decision of the prisoner of war to use or to waive this right."

Following a suggestion by Mr. BURDEKIN (New Zealand), Mr. BIJLEVELD (Netherlands) agreed to the replacement of the last two words "this right" by the expression "the right of appeal".

General DILLON (United States of America) opposed the amendment submitted by the Netherlands Delegation, as he considered that it could not be reconciled with the last part of Article 97.

General SLAVIN (Union of Soviet Socialist Republics) asked what prisoners of war stood to gain by the two proposed additions to Article 97.

Captain MOUTON (Netherlands) replied that it was very desirable that the Protecting Power and the next of kin of a convicted prisoner of war should know whether he had the right to appeal against his sentence, and whether he had, or had not, made use of that right.

General DILLON (United States of America) still considered the two additions in question to be quite useless in view of the rights and the protection already enjoyed by prisoners of war against whom legal proceedings were taken.

The CHAIRMAN put the Netherlands amendment to the vote.

The first part of the amendment was adopted by 16 votes to 1, with 8 abstentions.

The second part was adopted by 12 votes to 3, with 11 abstentions.

Article 97 with the two additions just accepted, was adopted by 21 votes, with no dissentient votes.

**Article 11, second paragraph (continued)**

The CHAIRMAN reminded the meeting of the United Kingdom amendment which had already been discussed during the Twenty-first Meeting.

Captain MOUTON (Netherlands) supported the amendment which he regarded as a satisfactory compromise between the principle of sole responsibility and the principle of joint responsibility.

General SLAVIN (Union of Soviet Socialist Republics) opposed the amendment. Its principal effect in his opinion would be to destroy the principle of joint responsibility recognized by the Stockholm text. In practice, the amendment would aggravate the position of prisoners of war, and for that reason he preferred the Stockholm text.

Mr. ZUTTER (Switzerland) was unable for the same reason to accept the United Kingdom amendment. He also considered that it would be extremely difficult for the Detaining Power to decide as to the "willingness" of the other Power to apply the Convention, as indicated in the first paragraph. Moreover the sanctions provided for in the second paragraph would involve the risk of creating tension between allies and raising difficulties for the Protecting Power, who would not necessarily be the same for both the States concerned.

Major ARMSTRONG (Canada) considered, on the contrary, that the responsibilities of the two Parties concerned in the transfer were very satisfactorily defined by the amendment.

Put to the vote, the amendment of the United Kingdom Delegation was adopted by 16 votes to 9 (the U.S.S.R. voting with the minority), with 2 abstentions.

The CHAIRMAN then put to the vote the amendment submitted by the Greek Delegation during the previous meeting.

The Greek amendment was rejected by 7 votes to 4, with 9 abstentions.

#### Article 26 (continued)

The CHAIRMAN drew attention to the United Kingdom amendment which had been submitted at the previous meeting.

Mr. GARDNER (United Kingdom) supported the amendment by referring to the experience of the United Kingdom during the last war.

General PARKER (United States of America), basing himself, on the contrary, on experience in the United States during the same war, considered that it would be impracticable to apply the amendment.

The Committee proceeded to vote, the United Kingdom amendment being rejected by 10 votes to 7, with 7 abstentions.

The CHAIRMAN took a vote on Article 26 as submitted by the Special Committee (*see Summary Record of the Twenty-first Meeting*).

The Article was adopted by 24 votes to NIL.

#### Articles 30, 30A, 30B, 30C

At the CHAIRMAN's request, General DEVIJVER (Belgium), Rapporteur of the Special Committee, introduced Articles 30, 30A, 30B, and 30C, and read the portion of the Interim Report relating to those Articles; it ran as follows:

"A representative of the World Council of Churches and the Delegate of the Holy See took part in the discussion on the above Articles in the Special Committee.

The Special Committee decided to base the discussion of the Articles on the amendment submitted by the Delegate of the Holy See (*see Annex No. 112*).

The Delegate of the Holy See, when submitting his amendment, pointed out that it represented the views of various religious organizations which had examined the Convention. He further remarked that his Delegation had considered it unnecessary to retain certain provisions of Article 30 as adopted at Stockholm; the second sentence of the first paragraph comes within the scope of Article 23, the fourth paragraph within that of Article 115, and the fifth paragraph appears to be redundant.

But the amendment submitted by the Holy See reproduces the provisions which it was essential that the Convention should contain, concerning the right of prisoners of war to practise their religion whatever their faith. Further, it regroups these provisions, and presents them in a clear, systematic and accurate form. Several Delegations at once stated that they approved the proposed text in principle, whereas others, while recognizing its advantages over the Stockholm Draft, wished to make certain additions or drafting alterations.

Article 30, as submitted by the Special Committee to Committee II, has been produced as a result of these additions to or changes in the text submitted by the Delegation of the Holy See.

Article 30 is now divided into Articles 30, 30A, 30B, and 30C, and this Report gives a brief analysis, for each of those Articles, of the alterations made in the original text submitted by the Delegation of the Holy See.

*Article 30*

This Article only contains one provision which lays down that prisoners of war shall enjoy complete freedom to practise their religion.

The Committee adopted a Canadian proposal, seconded by the French Delegation, to the effect that in the English version the word "latitude" should replace the word "liberty".

Such latitude is not, however, unconditional; prisoners of war are expected to comply with the disciplinary routine prescribed by the military authorities. This term was preferred, again as a result of a Canadian suggestion, to the term "measures of order".

*Article 30A*

This Article deals with the position of chaplains who remain or are retained in captivity for the purpose of giving religious assistance to prisoners of war. It was examined without prejudging the final decisions to be taken by Committee I regarding the status of chaplains who have fallen into enemy hands.

On the proposal of the United Kingdom, several additions were made to the text drawn up by the Delegation of the Holy See and certain slight alterations were also made.

Agreement was unanimous on the following points:

- (1) In the second sentence, the words "all facilities" should be replaced by "the necessary facilities";
- (2) In the fourth sentence, the words "subject to censorship" should be inserted immediately after the words "to correspond";
- (3) At the beginning of the fourth sentence, the term "Ministers of religion" should be replaced by the word "They";
- (4) At the end of the fourth sentence, the words "and with the international religious organizations" should be added after the word "detention".
- (5) As proposed by the United Kingdom, a sentence should be added stipulating that letters and cards allotted to ministers of religion to correspond on matters concerning their religious duties will be additional to the quota specified in Article 60.

The Special Committee also adopted, by 6 votes to 2, a United Kingdom proposal concerning additional opportunities to be granted to chaplains for exercise and recreation, and for a certain freedom of movement, in order to keep them mentally and physically fit for their particular duties.

*Article 30B*

Article 30B concerns ministers of religion who have become prisoners of war owing to the fact that they were members of fighting units at the time of capture.

It provides that such ministers of religion shall be entitled to carry out their duties among the prisoners, and that, in such cases, they shall enjoy the status of chaplains as stipulated in Article 30A.

It also appeared necessary to specify that ministers of religion who are prisoners of war and are performing their religious duties, cannot be compelled to perform any other kind of work. This implies that, although the Detaining Power is forbidden to compel them to undertake any work except their religious duties, they nevertheless remain free to take part if they wish in certain kinds of work performed by other prisoners, in order that they shall not be regarded as specially favoured. It was in this sense that the discussions in the Committee on this point were interpreted; as a result of that decision, the wording of the last sentence of Article 30B, as proposed by the Holy See, was amended by the Committee to read as follows: "They shall not be obliged to do any other work".

*Article 30C*

It was also necessary to consider the case of prisoners of war for whom no minister of their own religion is available; Article 30C is intended to provide for such cases. In order to meet a point raised by the Indian Delegate, it was decided that a qualified layman could be authorized to assist his coreligionists spiritually; but the procedure for making such appointments raised a serious problem. Since prisoners of war must be granted every facility for exercising their own form of religious service, it appeared logical, at first sight, to require the Detaining Power to make it possible for prisoners of war to practice their own form of religion by providing them, on request, with a minister of their own faith. Several Delegations considered, however, that this might give the Detaining Power an opportunity of providing the prisoners with a minister of religion, or a qualified layman, who might actually be propagande agents.

The Special Committee therefore thought it wiser to specify that the appointment of a minister of religion for prisoners of war who were without one should be made at the request of the prisoners of war community concerned, and that such an appointment would merely be subject to the approval of the Detaining Power and if this were necessary from an ecclesiastical point of view, of the local religious authorities.

The text proposed by the Holy See for Article 30C was redrafted so as to take the above considerations into account. The amended text was adopted by the Special Committee with no dissentient votes.

The Special Committee therefore submits to Committee II the new text of Articles 30, 30A, 30B, and 30C, worded so as to take account of the alterations and additions made to the original draft of these Articles:

*Article 30, Religious Duties*

"Prisoners of war shall enjoy complete latitude in the exercise of their religious duties, including attendance at the service of their faith, on condition that they comply with the disciplinary routine prescribed by the military authorities."

*Article 30A, Detained Chaplains*

"Chaplains who fall into the hands of the enemy Power and who remain or are retained to minister to prisoners of war, shall be allowed to exercise freely their ministry amongst prisoners of war practising the same religion in accordance with their religious conscience. They shall be allocated among the various camps and labour detachments containing prisoners of war belonging to the same forces, speaking the same language or practising the same religion. They shall enjoy the necessary facilities, including the means of transport for moving about from one camp or labour detachment to another. They shall in particular be authorized to visit prisoners of war under treatment in civilian hospitals. They shall be free to correspond, subject to censorship, on matters concerning their religious duties with the ecclesiastical authorities in the country of detention and with the international religious organizations. Letters and cards accorded to them to this effect shall be in addition to the quota provided for in Article 60. They shall be granted additional rations as for working prisoners of war in the second paragraph of Article 24, and they shall also be granted additional opportunities for exercise and recreation including some freedom of movement in order to maintain mental and physical fitness for their particular duties."

*Article 30B, Prisoners of War Ministers of Religion*

"Prisoners of war who are ministers of religion, without having officiated as chaplains to their own forces, shall be at liberty, whatever their denomination, to minister freely to the members of their community. To this effect, they shall receive the same treatment as the chaplains retained by the Detaining Power. They shall not be obliged to do any other work."

*Article 30C, Absence of a Minister of Religion*

"When prisoners of war have not the assistance of a retained chaplain or of a prisoner of war minister of their faith, a minister belonging to the prisoners' or a similar denomination, or in his absence a qualified layman, if such a course is feasible from a confessional point of view, shall be designated at the request of the prisoners of war concerned to fill this office. This designation, subject to the approval of the Detaining Power, shall take place with the agreement of the community of prisoners concerned and, wherever necessary, with the approval of the local religious authorities of the same faith. The person thus designated shall comply with all regulations established by the Detaining Power in the interests of discipline and military security."

Captain MOUTON (Netherlands) said that the amendment submitted by his Delegation did not appear to have been taken into account in drafting the new Article 30; the amendment in question read as follows:

Insert two new paragraphs between the first and second paragraphs of Article 30:

- (1) "Prisoners of war shall be permitted to care for their bodies according to the requirements of their religion in so far as such care is also allowed in the armed forces of the Power to which they belong."
- (2) "Prisoners of war shall not be hindered in their religious customs, such as wearing their head-dress under circumstances as prescribed by their religion."

General DEVIJVER (Belgium) objected that Captain Mouton had attended the meetings of the Special Committee, and had neither spoken of his amendments nor opposed the adoption of the Articles.

Captain MOUTON (Netherlands) urged that the second point at least of his amendment should be taken into account.

Mr. BAUDOY (France) supported Captain Mouton's contention.

General PARKER (United States of America) and Msgr. BERTOLI (Holy See) thought that the case referred to in the amendment was already covered by Article 30.

Put to the vote the second point of the Netherlands amendment was rejected by 10 votes to 5, with 4 abstentions.

Article 30 was adopted by 18 votes to NIL.  
 Article 30A was adopted by 18 votes to NIL.  
 Article 30B was adopted by 18 votes to NIL.  
 Article 30C was adopted by 16 votes to NIL.

The CHAIRMAN, considering that the said Articles were closely related to other provisions still under discussion, proposed to postpone their reference to the Drafting Committee, in order to make it possible to introduce any changes in their wording which might become necessary as a result of decisions taken by Drafting Committee No. 1 of Committee II, or by the Special Committee.

The Committee agreed to the above proposal.

### Article 60

At the request of the CHAIRMAN, General DEVIJVER (Belgium), Rapporteur of the Special Committee read the portion of the "Interim Report submitted to Committee II by the Special Committee" dealing with the above Article:

"The Special Committee was required to take a decision on the United Kingdom proposal to delete the second and third sentences in the first paragraph of the Stockholm text, and to substitute a fresh wording. The United Kingdom Delegation, in order to meet possible difficulties in dealing with the voluminous mail of prisoners of war, which the postal services of the Detaining Power might find it beyond its powers to cope with, thought it would be better not to fix arbitrarily the minimum amount of mail which prisoners of war would be authorized to send. The United Kingdom Delegation thought that the essential point was not that a prisoner of war should be able, in theory, to write so many letters or postcards every month, but that such letters or cards should actually reach their destination; if this view was accepted, the proposal to fix a minimum amount of correspondence would defeat its own object.

Several Delegations, after drawing the attention of the Committee to the fundamental importance for prisoners of war of having the right to correspond—the only thing which could prevent them from being completely deprived of any possibility of obtaining news of their families and of protecting their private interests—thought it was essential to specify, in the Convention, the minimum number of letters or cards which the Detaining Power should allow a prisoner of war to send each month. According to these Delegations, it was the duty of the Detaining Power to adapt its postal and censorship services to requirements, so as to ensure that the minimum number of letters specified

in the Convention would reach their destination by the quickest available means.

After some discussion, the United Kingdom proposal was rejected by 6 votes to 2.

A substantial majority of the Special Committee considered that the wording of the first paragraph of the Stockholm text should be retained, subject to the addition of the words "at the disposal of the Detaining Power", at the end of the first part of the fourth sentence in this paragraph. This addition was accepted, at the suggestion of the United Kingdom Delegate, since the Stockholm text seemed to impose an obligation to send prisoners' letters by air mail—the quickest means actually in existence—which it would obviously not always be possible to do.

The second paragraph of the text adopted by the Special Committee provides for two methods of paying telegraphic charges: either by debiting them to the prisoner of war's account, or by requiring him to pay them, as provided in the Stockholm text, in the currency at his disposal. The first of these alternatives was adopted at the suggestion of the United Kingdom Delegation, which regarded it as the more practical method of defraying the charges in question.

Lastly, the Special Committee agreed to the United Kingdom Delegation's proposal to omit the adjective "recognized" at the end of the second paragraph of the Stockholm text.

The third paragraph of the text adopted by the Special Committee reproduces the Stockholm wording without alteration. The same applies to the fourth paragraph. The latter, however, gave rise to a certain amount of discussion, the United Kingdom Delegation having proposed that it should be omitted, on the ground that the provision in question was calculated to complicate and delay the forwarding of prisoner of war mail.

The Swiss Delegate pointed out that the provision had two advantages, and was likely, not to delay, but, on the contrary, to speed up the forwarding of prisoners' mail: if the bags were sealed, they would not be subject to censorship in transit countries; again, if they were labelled, such countries would probably hasten their despatch, as they would then know that the bags contained prisoner of war mail. On a vote, the United Kingdom proposal was rejected by a substantial majority.

The text submitted by the Special Committee to Committee II and reproduced hereafter reflects the view of the great majority of the Committee.

The Rapporteur had also been requested to bring to the notice of Committee II a suggestion made by the Australian Delegate with regard

to Article 60, and the discussion to which it gave rise.

The Australian Delegate had suggested that it would be desirable to add an Annex to the Convention, giving specimens of standard types of telegraph forms for sending telegrams in a special code since this would tend to reduce the cost of sending telegrams, which was frequently excessive.

The above idea was approved of in principle by a number of delegations. The United States Delegation recalled, in this connection, that, thanks to the initiative of the Vatican, a system of sending telegraphic messages by a code containing simplified formulae in current use had been used between Italy and North Africa during the last war; it would consequently be desirable to ask the Delegation of the Holy See to state their views on this point.

The Representative of the International Committee of the Red Cross pointed out that a system of this kind, however desirable it might be, would certainly not work satisfactorily in serious cases where a prisoner of war had to telegraph special messages relating to private or family affairs. In such cases it would obviously be impossible to make use of stereotyped formulae; and it was for this reason that the Representative of the International Committee of the Red Cross had expressed the opinion that the adoption and use of standard telegraphic formulae should not be made compulsory, but should only be recommended to the States parties to the Convention.

The question raised by the Australian Delegate was outside the Special Committee's terms of reference; and for that reason the Committee confined itself to bringing it to the notice of Committee II.

The text adopted for Article 60 by the Special Committee read as follows:

"Prisoners of war shall be allowed to send and receive letters and cards. If the Detaining Power deems it necessary to limit the number of letters and cards sent by each prisoner of war, the said number shall not be less than two letters and four cards monthly, exclusive of the capture cards provided for in Article 59, and shall be drawn up, in so far as possible, according to the models annexed to the present Convention. If limitations must be placed on the correspondence addressed to prisoners of war, they may be ordered only by the Power on which the prisoners depend, at the possible request of the Detaining Power. Such letters and cards must be conveyed by the most rapid means at the disposal of the Detaining Power; they may not be delayed or retained for disciplinary reasons.

"Prisoners of war who have been without news for a long period, or who are unable to have news from their next of kin or to give them news by the ordinary postal route, furthermore, those who are separated from home by great distances, shall be permitted to send telegrams, the fee being charged against the prisoner of war's account with the Detaining Power or paid in the currency at the prisoners disposal. They shall likewise benefit by this measure in cases of urgency.

"As a general rule, the correspondence of prisoners of war shall be written in their native language. The belligerents may allow correspondence in other languages.

"Sacks containing prisoner of war mail must be securely sealed and labelled so as clearly to indicate their contents, and addressed to offices of destination."

Mr. GARDNER (United Kingdom) introduced a second United Kingdom amendment to Article 60, proposing the insertion of the following provision immediately after the second sentence of the first paragraph:

"Further limits may be imposed only if the Protecting Power is satisfied that it would be in the interests of the prisoners of war concerned to do so owing to difficulties of translation because the Detaining Power is unable to find sufficient qualified interpreters to carry out necessary censorship."

Put to the vote, the amendment was adopted by 10 votes to 6, with 4 abstentions.

Article 60 with the above addition was adopted by 24 votes to NIL.

### Article 105

General DEVIJVER (Belgium), Rapporteur of the Special Committee, introduced Article 105, reading out the relevant portion of the "Interim Report submitted to Committee II by the Special Committee":

"At the proposal of the United States Delegate, the Special Committee unanimously agreed to insert, in the first paragraph of the Stockholm text, after the words "for repatriation", the words "or accommodation in a neutral country". On examining the above proposal, the Committee wondered whether the word "accommodation", which occurred in the text submitted by the United States Delegation, did not have a wider meaning than the French word "hospitalisation". The Committee thought it preferable to retain the latter expression in the French text,

since it was quite unambiguous in the Convention, and acted as a sort of connecting link between Article 105 and 101; for the United States proposal was intended to apply to the class of prisoners of war mentioned in the second paragraph of Article 101.

The United Kingdom Delegate then proposed that Article 105 should be deleted and replaced by a new Article, placed immediately after Article 109; and although this was really a drafting alteration, it raised the question of the concurrent consideration of Articles 105 and 109.

The Representative of the International Committee of the Red Cross pointed out, in this connection, that Articles 105 and 109 dealt with entirely different matters. Articles 105 gave the Detaining Power the right to display leniency, but the provision in question could not be made compulsory.

The proposal to consider the two Articles 105 and 109 simultaneously was therefore accordingly rejected, on a vote, by a substantial majority.

In considering the second paragraph, the Special Committee agreed that it should not be left entirely to the discretion of the Detaining Power to decide whether prisoners of war who were detained in connection with a judicial prosecution or conviction should benefit by measures for repatriation or accommodation in a neutral country.

The Committee, after some discussion, unanimously adopted a United Kingdom proposal, as amended by the Swiss Delegate, which aimed at dividing prisoners of war detained in connection with a judicial prosecution or conviction, into two categories:

- (1) Those convicted of offences for which the maximum penalty does exceed ten years imprisonment, and those sentenced to less than ten years' imprisonment;
- (2) those guilty of more serious offences than those specified in point (1) above.

The Committee decided that prisoners of war belonging to the first category should be entitled to the benefit of measures for repatriation or accommodation in a neutral country, in the same way as prisoners only sentenced to disciplinary penalties, whereas prisoners of war belonging to the second category should only benefit by measures for repatriation or accommodation in a neutral country if the Detaining Power agreed.

In conclusion, the Special Committee submitted to Committee II the following new wording of Article 105, which expressed the unanimous opinion of its members:

"No prisoner of war on whom a disciplinary punishment has been imposed and who might be eligible for repatriation or for accommodation in a neutral country, may be kept back on the plea that he has not served his sentence. Prisoners of war prosecuted for an offence for which the maximum penalty is not more than ten years or sentenced to less than ten years shall similarly not be kept back."

"Other prisoners of war detained in connection with a judicial prosecution or conviction and who are designated for repatriation or accommodation in a neutral country, may benefit by such measures before the end of the proceedings or the completion of the punishment, if the Detaining Power consents."

"Belligerents shall communicate to each other the names of those who will be detained until the end of the proceedings or the completion of the punishment."

General SLAVIN (Union of Soviet Socialist Republics) objected to the second sentence in the first paragraph of the Article as submitted by the Special Committee. The words, which had been added to the Stockholm text, were unnecessary and could in his opinion be interpreted by the Detaining Power in a sense which would be prejudicial to the interests of the prisoners of war in its hands. He therefore proposed that they should be omitted and the original Stockholm text reinstated.

Mr. GARDNER (United Kingdom) was in favour of maintaining the words to which objection had been taken.

Mr. MAYATEPEK (Turkey) agreed with Mr. Gardner.

Mr. WILHELM (International Committee of the Red Cross) raised a drafting point in connection with Article 105. The first paragraph of the French text concluded with the words "condamnés à une peine inférieure à dix ans d'emprisonnement", whereas the English version said: "sentenced to less than ten years...". In order to bring the French version into line with the English, he proposed to delete the word "emprisonnement" and to replace the word "peine" by the term "peine privative de liberté".

The above proposal was adopted.

The Committee then considered the Soviet Delegate's proposal to omit the second sentence of the first paragraph. A vote being taken, it was decided to retain the sentence by 11 votes to 7, with 4 abstentions.

The Committee then adopted Article 105 in the form proposed by the Special Committee, by 16 votes to 5.

### Article 108

General DEVIJVER (Belgium), Rapporteur of the Special Committee, introduced Article 108 reading out the relevant portion of the "Interim Report submitted to Committee II by the Special Committee":

"With reference to the first paragraph of this Article, which in the Stockholm text provides for the repatriation without delay of prisoners of war after the cessation of active hostilities the United Kingdom Delegation had submitted a proposal to allow the Detaining Power to delay repatriation, if, in the abnormal conditions which might prevail immediately after the conclusion of war, such a measure was justified on grounds of national security or in the interests of the prisoners of war themselves.

Several Delegations urged that it would be preferable not to give the Detaining Power the right to prolong the captivity of prisoners of war, and that the latter should be returned to their countries and their homes as soon as possible after the cessation of active hostilities. At the conclusion of this discussion, the United Kingdom Delegation agreed to withdraw its proposal, and the Stockholm text of the first paragraph was adopted, together with the Stockholm text of the second and third paragraphs.

The fourth paragraph of the Stockholm text was altered so as to take account of the principle that the cost of repatriation should always be divided equitably between the Detaining Power and the Power on whom the prisoners of war depended. The cases examined by the Committee come under two headings: if the two Powers concerned are contiguous, the rule laid down in the Stockholm draft applies, if the two Powers concerned are not contiguous, the provisions adopted by the Special Committee combine a United Kingdom and an Italian proposal. The former aimed at apportioning the cost of repatriation, in all cases, by an agreement between the Power of origin and the Detaining Power; but certain Delegations, including Switzerland, feared that repatriation would, in fact, be delayed if it depended upon the conclusion of agreements concerning the cost of repatriation between the Powers concerned. A more effective guarantee would be provided if provision were made in the Convention for specific rules for apportioning the cost of repatriation equitably.

A model agreement on those lines had been envisaged by the Stockholm Conference, but a draft had not been prepared and the Special Committee was faced on the one hand, with a text drafted by the International Committee of the Red Cross, and, on the other, with one drawn up by the Italian Delegation, laying down rules for apportioning the costs in cases where the two Powers concerned were not contiguous.

A solution has been found by combining the United Kingdom and Italian proposals, and by adding to this compromise text a sentence proposed by the Swiss Delegate, laying down that the conclusion of agreements for the apportionment of costs shall in no circumstances justify any delay in the repatriation of prisoners of war.

In connection with this new wording, the Delegate of the Union of Soviet Socialist Republics stated that he did not consider it any improvement on the Stockholm text.

On a vote, the new text was adopted by a substantial majority.

To sum up, the Special Committee submitted to Committee II the following new wording of Article 108, which had been adopted by a large majority of its members:

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

"In the absence of stipulations to the above effect in any agreement concluded between the belligerents with a view to the cessation of hostilities, or failing any such agreement, each of the Detaining Powers shall itself establish and execute without delay a plan of repatriation in conformity with the principle laid down in the foregoing paragraph.

"In either case, the measures adopted shall be brought to the knowledge of the prisoners of war.

"The costs of repatriation of prisoners of war shall in all cases be equitably apportioned between the Detaining Power and the Power in whose service the prisoners were. This apportionment shall be carried out on the following basis:

(a) If the two Powers are contiguous, the Power in whose service the prisoners were shall bear the costs of repatriation from the frontiers of the Detaining Power.

(b) If the two Powers are not contiguous, the Detaining Power shall bear the costs of transport of prisoners of war over its own territory as far as the frontier or port of embarkation nearest to the country of origin. The Parties concerned shall agree as to the equitable apportionment

of the remaining costs between them. The conclusion of this agreement shall in no circumstances justify any delay in the repatriation of the prisoners of war."

The CHAIRMAN raised a drafting point in connection with Article 108. The point was one which had arisen before, and, would arise again. Which was the most appropriate expression: "Power on which the prisoners depend" or "Power in whose service the prisoners are"?

The Committee decided by 19 votes to 1, to retain the first of the two expressions.

Reverting to the substance of the Article, General SLAVIN (Union of Soviet Socialist Republics) said that he was prepared to agree to the provisions contained in sub-paragraph (a) of the fourth paragraph, but could not accept point (b). The

latter provided for a method of settling accounts which he regarded as unfair. He therefore proposed to delete point (b), and to replace it by a provision reserving the possibility of concluding special agreements for dealing with the question.

The CHAIRMAN noted that the Committee had tacitly adopted the first three paragraphs of Article 108, which merely reproduced the Stockholm text. He put to the vote the proposal to delete point (b) of the fourth paragraph.

The Committee decided, by 13 votes to 8, with one abstention, to retain point (b) of the fourth paragraph of Article 108.

Article 108 in its entirety was then adopted by 18 votes to NIL, with one abstention.

*The meeting rose at 6.30 p.m.*

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## TWENTY-THIRD MEETING

*Monday 4 July 1949, 10 a.m.*

*Chairman:* Mr. Maurice BOURQUIN (Belgium)

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### Article 109

The Rapporteur, General DEVIJVER (Belgium), read the portion of the Interim Report dealing with Article 109:

"The Delegate of the United Kingdom proposed omitting the reference to Articles 38 to 40 in the first paragraph of the Stockholm Draft, on the ground that the said provisions, which related to transfers, did not apply in all respects to the repatriation of prisoners of war and might possibly cause delay. The Committee did not share the above view and decided, by 8 votes to 4, to retain the said reference and to maintain the wording of the first paragraph of the Stockholm Draft, with the addition (adopted with no dissentient votes) of the following words: "bearing in mind Article 108 and the provisions contained in it". The object of this decision was to make it quite clear that the conditions laid down in Article 40 were only to be applied in so far as they were not contrary to the provisions of Article 108 and of Article 109 itself.

On the proposal of the Delegation of the United Kingdom, the Committee agreed, with no dissentient votes, to insert, between the first and second paragraphs of the Stockholm text, provisions reproducing the substance of Articles 16 and 112. This was done in order that all the provisions relating to the repatriation of prisoners of war should be contained in Article 109. The above provisions now form the second paragraph of the new Article 109.

With the same object of making Article 109 as comprehensive as possible, the Committee decided to reproduce the text of the second paragraph of Article 40, with two slight alterations in the wording, in the third paragraph of the new Article 109.

The Delegation of the United Kingdom proposed the insertion of a provision laying down that personal effects which prisoners of war could not take away with them on repatriation, should not be forwarded to them by the Detaining Power unless they had themselves made the necessary arrangements for transport and the payment of the costs involved.

A wording submitted by the Belgian Delegation met with the approval of the Delegation of the United Kingdom and was adopted by a large majority. The United Kingdom Delegate was mainly concerned with making sure that the costs of transport for articles left behind by prisoners of war would not all devolve on the Detaining Power; the Belgian proposal provided for this contingency and at the same time made it possible for prisoners to recover their personal effects without being obliged, at the time of their repatriation, to undertake steps and formalities with which they would doubtless be unable to cope. The wording adopted, which figures in the fourth paragraph of the new text, lays down that the personal effects of the repatriated prisoner shall be entrusted to the care of the Detaining Power which shall have them forwarded to him as soon as it has concluded an agreement with the Power of Origin of the prisoner with regard to the method of transport and the payment of the costs involved.

The second paragraph of the Stockholm Draft (fifth paragraph of the new text) was then the subject of a discussion, in the course of which several Delegations supported the point of view of the United Kingdom Delegation, pointing out that the obligation to grant priority in repatriation to certain categories of prisoners was liable to complicate and delay the general repatriation of the prisoners taken as a whole. The Committee considered, however, that the distinctions in question were justifiable and were not impracticable. The Committee therefore decided by a large majority to maintain the Stockholm wording, but to omit the word "married" in the reference to prisoners of war with children and to add a stipulation providing that priority could only be granted if it did not cause any delay in general repatriation.

The third paragraph of the Stockholm Draft (sixth paragraph of the new text) was slightly modified, so as to take into account a proposal put forward by the Delegate of the United States of America and supported by the Netherlands Delegation: the concept of a crime or offence under common law was not retained as the meaning of this term is not the same in all countries.

Finally, a seventh paragraph was added on the proposal of the Delegate of the Netherlands; it laid down that belligerents were to communicate to each other the names of the prisoners to be detained until the end of proceedings or until the completion of the punishment.

The fourth paragraph of the Stockholm Draft (eighth paragraph of the new text) was adopted, the words "in the shortest delay" being, however, added at the end of the para-

graph at the suggestion of the Netherlands Delegation.

To sum up: as a result of the above modifications which were agreed to by a large majority, the Special Committee submits to Committee II the following new wording for Article 109:

"Repatriation shall be effected in conditions similar to those laid down in Articles 38 to 40 inclusive of the present Convention for the transfer of prisoners of war, bearing in mind Article 108 and the provisions contained in it.

"On repatriation, any articles of value impounded from prisoners of war under Article 16, and any foreign currency which has not been converted into the currency of the Detaining Power, shall be restored to them. Articles of value and foreign currency which, for any reason whatever, are not restored to prisoners of war on repatriation, shall be despatched to the Information Bureau set up under Article 112.

"Prisoners of war shall be allowed to take with them their personal effects, and the correspondence and parcels which have arrived for them. The weight of such baggage may be limited, if the conditions of repatriation so require, to what each prisoner can reasonably carry, but in no case to less than twenty-five kilograms per head.

"The other personal effects of the repatriated prisoner shall be left in the charge of the Detaining Power which shall have them forwarded to him as soon as it has concluded an agreement to this effect, regulating the conditions of transport and the payment of the costs involved, with the Power of Origin of the prisoner.

"At the time of repatriation of prisoners of war, no distinction shall be made in the order of their departure, excepting where this is warranted by their sex, health, age, length of captivity and family circumstances of prisoners with children, and that only on the condition that it does not cause any delay in general repatriation.

"Prisoners of war against whom judiciary prosecution is pending may, however, be detained until the end of the proceedings, and, if necessary, until the completion of the punishment. The same shall hold true of prisoners of war already sentenced under the judiciary provisions of this Convention.

"Belligerents shall communicate to each other the names of those to be detained until the end of proceedings or until the completion of the punishment.

"By agreement between the belligerents, commissions shall be established for the purpose of searching for dispersed prisoners and assuring their repatriation in the shortest delay."

Mr. GARDNER (United Kingdom) suggested two modifications which should be made in the wording proposed by the Special Committee:

- (1) In the fourth paragraph, in accordance with a decision taken at the last meeting of Committee II, the sentence should read "the Power on which the prisoner depends", instead of "the Power of Origin of the prisoner".
- (2) In the sixth paragraph, the word "judicial" was preferable to "judiciary". (This modification concerned the English version only.)

Further, the fifth paragraph of the Article should be omitted. It made the Article impossible to apply. Experience at the end of the recent war had shown that the preparation of a plan based on a variety of priority factors took approximately two years. The provisions of the fifth paragraph would delay repatriation still further. It was true that the last clause in the paragraph stated that repatriation must not be delayed. But that provision was contradicted by the rest of the paragraph.

Mr. BURDEKIN (New Zealand) proposed a better wording for the end of the eighth paragraph, namely, the substitution of the words "with the least possible delay" for "in the shortest delay".

General SKLYAROV (Union of Soviet Socialist Republics) considered that the limit of weight mentioned in the third paragraph constituted a maximum, and that the word "less" should, therefore, be replaced by the word "more".

Major ARMSTRONG (Canada) stated, in his capacity as Rapporteur of Drafting Committee No. 1, that the latter had adopted in Article 40 a provision similar to that mentioned by the Delegate of the Union of Soviet Socialist Republics ("...in no case to more than twenty-five kilograms per head").

Mr. STROEHLIN (Switzerland) thought, on the contrary, that the word "less" made the text clearer than the word "more". The intention of the authors of the Stockholm text was to provide that the repatriated prisoner should be allowed to take with him at least twenty-five kilograms, if not more.

In regard to the United Kingdom Delegate's remarks on the fifth paragraph, he thought that it was perfectly clear that the Detaining Power would organize repatriation in the way it found most convenient. The Detaining Power might make distinctions if it thought fit, but it would not be under an obligation to do so.

Furthermore, he would prefer to see the words "penal provisions", the correct legal term, used in the sixth paragraph instead of the words "judiciary provisions".

Mr. WILHELM (International Committee of the Red Cross) feared that the substitution of the word "more" for the word "less" in the third paragraph would enable the Detaining Power to limit the weight to five or even to two kilograms, which would be contrary to the repatriated prisoners' interests.

He agreed that the term "judiciary provisions" should be altered and suggested that the term "penal sanctions" which figured in the title of Chapter III of Section VI might be used in its place. He further raised the question of whether the sixth paragraph in question, even as modified, was altogether happy, as it would appear to exclude from repatriation prisoners who had been sentenced to disciplinary penalties by a court, i.e. under the "judiciary" provisions.

General SKLYAROV (Union of Soviet Socialist Republics), without wishing to labour his point regarding the third paragraph, stated that the limit of weight laid down in Article 40 had been inserted in the Article, because it was feared that a Detaining Power might compel prisoners of war, in the event of their transfer from one camp to another, to take with them more than twenty-five kilograms of baggage. Since the wording of the third paragraph of Article 109 did not appear to be clear, he suggested that all reference to a weight limit in the paragraph should be deleted.

Mr. BURDEKIN (New Zealand) pointed out that it was his Delegation which had suggested modifying the reference to a weight limit in Article 40. He considered, however, that conditions regarding repatriation (Article 109) were very different from those applying to transfer (Article 40), and that there was no reason why the word "less", adopted by the Special Committee, should be altered.

The CHAIRMAN put the following proposals to the vote:

- (1) To delete the word "judiciary" in the English version and to replace it by "judicial", in two places in the sixth paragraph.

The proposal was adopted with no dissentient votes.

- (2) To replace, also in the English version, the words "in the shortest delay" by "with the least possible delay".

The proposal was adopted with no dissentient votes.

- (3) To substitute "penal provisions" for "judiciary provisions" in the sixth paragraph.

The proposal was rejected by 15 votes to 5, with 1 abstention.

- (4) To replace the word "less" by "more" in the third paragraph.

The proposal was rejected unanimously.

Mr. BIJLEVELD (Netherlands) proposed, in order to prevent prisoners of war from being compelled to take more baggage than they could reasonably carry, to alter the sentence as follows: "The weight of such baggage may be limited by the Detaining Power ...".

The CHAIRMAN observed that he failed to see in what way that addition would make the provision clearer.

Put to the vote, the proposal was rejected by 9 votes to 3, with 9 abstentions.

- (5) To delete the fifth paragraph.

The proposal was rejected by 21 votes to 4.

Article 109 was then adopted unanimously, with the drafting amendments mentioned above.

### Article 115

General DEVIJVER (Belgium), Rapporteur, read the portion of the „Interim Report submitted to Committee II by the Special Committee" dealing with Article 115.

"Article 115 as adopted by the Special Committee only differs very slightly from the Stockholm Draft.

As regards the first paragraph, the Committee decided to substitute for the text adopted at Stockholm a new wording proposed by the Delegation of the Holy See and supported by the Delegation of the United Kingdom. This wording amplifies certain points of the Stockholm Draft. It now covers not only relief societies or any other body assisting prisoners of war, but also religious organizations, which are now specifically mentioned. Further, the text adopted by the Special Committee provides that such religious organizations, relief societies, or other bodies assisting prisoners of war shall receive all "necessary" facilities for visiting the prisoners; the word "necessary" having been added at the request of the Delegate of the United States of America.

It was further laid down that relief supplies and material distributed to prisoners of war might be intended for religious, educational or

recreative purposes, the word "religious" being placed first. Finally, at the request of the Delegate of the Netherlands, the words "and for assisting them in organizing their leisure time within the camps", taken up from the Stockholm Draft, were added to the amendment submitted by the Holy See, after the words "religious, educational or recreative purposes".

It should also be noted that the English version was altered; the words "supply of effective and sufficient relief" were replaced by the words "effective operation of adequate relief".

Lastly, it must be pointed out that the Delegate of the United Kingdom, in response to the recommendation made by the International Committee of the Red Cross, withdrew his proposal to delete the third paragraph of the Stockholm Draft which had laid down that the special position of the International Committee of the Red Cross in this field was to be recognized and respected at all times.

To sum up, the Special Committee submitted to Committee II the following new wording of Article 115, which was adopted with no dissentient votes:

"Subject to the measures which the Detaining Powers may consider essential to ensure their security or to meet any other reasonable need, the representatives of religious organizations, relief societies or any other body assisting prisoners of war shall receive from the said Powers, for themselves and their duly accredited agents, all necessary facilities for visiting the prisoners, and distributing relief supplies and material, from any source, intended for religious, educational or recreative purposes, and for assisting them in organizing their leisure time within the camps. Such Societies or bodies may be constituted in the territory of the Detaining Power, or in any other country, where they may have an international character.

"The Detaining Power may limit the number of Societies and bodies whose delegates are allowed to function in its territory and under its supervision, on condition, however, that such limitation shall not hinder the effective operation of adequate relief to all prisoners of war.

"The special position of the International Committee of the Red Cross in this field shall be recognized and respected at all times.

"When relief supplies or material intended for the above mentioned purposes are handed over to prisoners of war, receipts for each consignment, signed by the spokesman of these prisoners shall be addressed forthwith, or at least soon thereafter, to the Relief Society or body making the shipment. At the same time, re-

ceipts relative to these consignments shall be supplied by the administrative authorities responsible for guarding the prisoners."

Article 115, as proposed by the Special Committee, was adopted unanimously, without comment.

#### Article 42

General DEVIJVER (Belgium), Rapporteur, reminded the meeting that the text drawn up at Stockholm by the International Committee of the Red Cross had not met with the approval of the majority of delegates, who had rejected an extremely detailed, but nevertheless incomplete, enumeration in favour of a much more general wording. The Delegation of the United Kingdom, considering that the latter was too vague and might lead to misunderstandings, had submitted an amendment (*see Annex No. 116*) reintroducing the text submitted to the Stockholm Conference. The United Kingdom amendment had been discussed together with an amendment submitted by the New Zealand Delegation (*see Summary Record of the Tenth Meeting*).

The United Kingdom proposal admitted the principle that prisoners could be employed on the removal of mines. Several Delegations agreed with the United States point of view and formally opposed such a procedure, since they considered that the removal of mines was a particularly dangerous form of work, which necessitated a very high degree of specialization. Other Delegations, which shared the United Kingdom point of view, thought that the employment of prisoners of war in removing mines which had been laid by themselves or by members of the armed forces to which they belonged could be authorized, provided that such work was carried out in areas far removed from the theatre of operations, and also that the prisoners assigned to the work received the required preliminary training.

Several slightly different points of view had been expressed by other Delegations, in particular by that of the Union of Soviet Socialist Republics, which had considered that the wording of Article 42, as adopted at Stockholm, did not explicitly prohibit the employment of prisoners on mine removal. The Soviet Delegation had further wondered whether it was in fact desirable to prohibit the employment on such work of experts who had received the necessary technical training in their own armed forces. The Danish Delegation had agreed with this point of view, and had urged, in particular, that the Convention should not exclude the principle of the employment on the removal of mines, of prisoners of war who had received the necessary specialized training.

The discussion on Article 42 in the Special Committee had ended in the adoption of the United Kingdom amendment by 6 votes to 5, with several abstentions. But the clause concerning the removal of mines (second sentence of sub-paragraph (e)) had been omitted from the amendment; on the other hand, at the request of the United States Delegation, agriculture had been included in the list of authorized work as sub-paragraph (a), the other sub-paragraphs becoming (b), (c), (d), (e) and (f). Further, the Special Committee had substituted the word "employed" for "obliged" in the first sentence of the first paragraph (*see Annex No. 117*).

Mr. BAGGE (Denmark) drew attention to the amendment submitted by his Delegation (*see Annex No. 115*) authorizing the Detaining Power, subject to certain very strict conditions, to employ prisoners of war on the removal of mines. Prisoners of war must unquestionably be protected as fully as possible, but the right of the civilian population to live in safety must also be considered.

General PERUZZI (Italy) pointed out that the removal of mines was always very dangerous work, even for those who had themselves laid them. The work might be assigned to volunteers, who would receive special safeguards; provision might also be made for the conclusion of special agreements on the subject between the governments concerned.

Mr. GARDNER (United Kingdom) considered that the question had already been examined very thoroughly by the Special Committee; it was unnecessary to re-open the discussion on the subject.

One change, however, had been made by the Special Committee at the last moment. It had been submitted as a drafting amendment. In fact, however, the amendment in question completely altered the meaning of the Article. The word "employed" had been substituted for "obliged" in the first paragraph of Article 42. The new wording thus prohibited the prisoner from volunteering to remove mines, or for any other form of work not specified in the Article. He therefore proposed reverting to the words "obliged to" which had been used in the text submitted at Stockholm.

General PARKER (United States of America) strongly opposed the proposal submitted by the Delegation of Denmark. Removing mines was extremely dangerous work. The Convention was intended to protect prisoners of war and not to destroy them.

General DILLON (United States of America) was also firmly opposed to the text adopted by the Special Committee. The wording of the 1929 Con-

vention already raised very serious problems of interpretation. The best legal experts of the New World had vainly sought to ascertain the exact meaning of the words "Work done by prisoners of war shall have no direct connection with the operations of the war". The wording adopted by the Special Committee was still more obscure. The words "military character or purpose", which occurred several times in the Article, were so restrictive that violation would be practically inevitable. Today war was a conflict between whole nations, and during hostilities everything assumed a military character. The Stockholm text, on the contrary, was much less restrictive and therefore more realistic. He hoped the Committee would adopt it.

Mr. STROEHLIN (Switzerland) shared the views on the removal of mines expressed by the United States Delegation. Practical experience had shown that, even under the best conditions, the losses among teams employed in removing mines were as high as 5 per cent. Incidentally, the Convention laid down quite definitely that prisoners were not to be employed on dangerous work (Article 43).

If it was desired to make a distinction between "obliged" and "employed", and to allow prisoners of war to perform work other than that specified in Article 42, account must be taken not only of the degree of individual liberty enjoyed by the prisoner and of how far he was free to choose, but also of the fact that, although a prisoner, he was still in the service of the Power in whose armed forces he had fought. The Detaining Power must not be given the possibility of bringing pressure to bear on prisoners of war to induce them to carry out work which they could not be compelled to do. It was therefore desirable that the kinds of work on which prisoners of war could be employed, should be very clearly defined. That was the reason why the Swiss Delegation preferred the text adopted by the Special Committee.

Captain MOUTON (Netherlands), on the contrary, supported the United Kingdom proposal to use the words "obliged to" instead of the words "employed on".

He, too, was opposed to the employment of prisoners of war on the removal of mines: such employment was contrary to the humanitarian principles underlying the Convention.

Mr. MOLL (Venezuela) agreed with the United States point of view as regards the removal of mines.

Mr. GARDNER (United Kingdom) thought, unlike the Swiss Delegate, that prisoners should

have complete liberty in the matter of choosing voluntary work.

He considered that the remarks made by the United States Delegate were unjustified. The Stockholm text, with its general wording, would be even more difficult to interpret than the list of authorized classes of work.

General SKLYAROV (Union of Soviet Socialist Republics) gave the Danish amendment his full support. The protection of the civilian population from the danger of mines was, in his opinion, quite as important as the protection of prisoners of war.

Mr. ZABIGAILO (Ukrainian Soviet Socialist Republic) agreed.

Mr. WILHELM (International Committee of the Red Cross) drew attention to what might be an important discrepancy between the French and the English texts of Article 42 as proposed by the Special Committee. The authors of the text submitted to the Stockholm Conference only intended the qualifying phrase "which have a military character or purpose" (reproduced in sub-paragraph (b) of the Special Committee's text) to refer to the latter part of the sentence, i.e. "and of public works and building which have a military character or purpose". That was quite clear in the French, but not in the English text; the two versions should be coordinated.

With regard to the interpretation given to the word "astreints" (obliged to) by the United Kingdom Delegate, he thought that the intention at Stockholm had been above all to draw up a list of work on which prisoners of war could be employed, and to exclude all other work. It was not always to the advantage of a prisoner of war to allow him freedom of choice in the matter; a case in point was that of French prisoners of war in Germany who had been "invited" to work in munition plants. Moreover, the question of freedom of choice was settled by Article 6.

Mr. BURDEKIN (New Zealand) supported the United Kingdom amendment, pointing out, however, that the words "employed on" in the first paragraph should be replaced, in the English text, by the words "obliged to do" and not "obliged to".

The CHAIRMAN put the first paragraph of the text adopted by the Special Committee to the vote, reserving the question of whether the words "obliged to do" or "employed on" should be used.

The paragraph was adopted by 24 votes to 2, with 1 abstention.

By 15 votes to 6, with 5 abstentions, the Committee decided to revert, in Article 42, to the words "obliged to do" which appeared in the text submitted at Stockholm.

The Danish amendment proposing the insertion of a new paragraph dealing with the removal of mines, was adopted by 12 votes to 9, with 6 abstentions.

*The meeting rose at 1.05 p.m.*

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## TWENTY-FOURTH MEETING

*Tuesday 5 July 1949, 10 a.m.*

*Chairman: Mr. Maurice BOURQUIN (Belgium)*

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### Article 42 (continued)

The CHAIRMAN referred to the vote which had been taken at the last meeting on the amendment to Article 42 submitted by the Delegation of Denmark. Certain Delegations were not sure that the votes had been correctly counted. If there was a formal motion for a new vote, it might be preferable to vote by roll-call so as to avoid all argument.

General SLAVIN (Union of Soviet Socialist Republics) was extremely surprised to see that matter on the Agenda. At the previous meeting, the Committee had already had to vote twice on the Danish amendment, certain Delegations having some doubt as to the result obtained. He thought the result was clear beyond any possibility of doubt.

Mr. BAGGE (Denmark) agreed with the Soviet Delegate. Rule 33 of the Rules of Procedure of the Conference laid down that a two-thirds majority of the delegations present was necessary in order to decide to consider again a resolution or a motion, which had already been adopted or rejected.

General DILLON (United States of America) said the count at the previous meeting had been announced as 12 votes for and 9 against; he could name at least 10 delegations which had voted against. He thought the vote should be verified.

Colonel HODGSON (Australia) did not agree with the interpretation given by the Delegate of Denmark with regard to the application of Rule 33 of the Rules of Procedure to the case in question;

the previous day's vote did not refer to a motion or a resolution in the sense indicated in Rule 33 of the Rules of Procedure.

General SLAVIN (Union of Soviet Socialist Republics) reiterated his opinion that the vote at the previous meeting had been legally and properly taken; it was a reflection on the Chair to question it.

Mr. FENEŞAN (Rumania) supported the remarks of the Soviet Delegate.

The CHAIRMAN said that the question of the vote had been put on the Agenda in the Daily Bulletin in order that delegates might not be taken by surprise if the matter was raised. If there was not a formal motion for a new vote, he would consider the previous vote as valid, and the matter disposed of.

There being no formal motion, the CHAIRMAN declared that the vote taken at the previous meeting, on the amendment submitted by the Delegation of Denmark to Article 42, was valid.

Colonel HODGSON (Australia) drew the Chairman's attention to the fact that the Committee had adopted the first paragraph of Article 42, and the amendment of Denmark, but had not adopted Article 42 as a whole.

The CHAIRMAN agreed. He asked if the Committee would adopt the second paragraph of the Stockholm text as the third paragraph of Article 42.

That proposal was adopted by 37 votes, with no dissentient votes.

The CHAIRMAN asked if there was a request for a roll-call vote on the adoption of Article 42 as a whole.

Colonel HODGSON (Australia) said that Rule 29 of the Rules of Procedure provided that a delegate might request that any proposal, amendment or clause might be voted on paragraph by paragraph. He proposed to exercise that right in respect of the new second paragraph.

Mr. BAGGE (Denmark) thought that the Article had already been considered paragraph by paragraph, and that the right claimed by the Delegate of Australia accordingly no longer existed.

The CHAIRMAN agreed with the Delegate of Denmark.

General SLAVIN (Union of Soviet Socialist Republics) said he supported the view of the Chairman and the Delegate of Denmark. If the Delegate of Australia insisted on the proposal he had just made, he (General Slavin) would propose a secret ballot, as provided in Rule 36 of the Rules of Procedure of the Conference.

Captain MOUTON (Netherlands) proposed that there should be no new vote on the second paragraph. His Delegation had voted against the amendment of Denmark the previous day; but he thought nevertheless that the previous day's decision should stand. He suggested that the vote on the whole Article 42 should be by show of hands.

Mr. BAGGE (Denmark) and Mr. SÖDERBLOM (Sweden) supported the Netherlands Delegate's view.

Colonel HODGSON (Australia) withdrew his proposal.

A vote was taken, and Article 42 was adopted by 22 votes to 8, with 7 abstentions.

### Articles 42A and 43

General DEVIJVER (Belgium), Rapporteur of the Special Committee, introduced Articles 42A and 43.

Article 43 in the Stockholm text had embodied two principles. The first was the prohibition of the employment of prisoners of war on labour which was of an unhealthy or dangerous nature in view of climatic conditions, and the second was the prohibition of labour which would be looked upon as humiliating for a member of the Detaining Power's own forces.

A majority of the Special Committee had adopted an amendment submitted by the Canadian Delegation providing that the condition of work for prisoners with regard to accommodation, food, clothing and equipment, were not to be inferior to those of nationals of the Detaining Power, and that account must be taken of climatic conditions.

An amendment submitted by the Union of Soviet Socialist Republics, proposing that prisoners should receive the benefit of national legislation concerning the protection of labour and particularly of regulations for the security of industrial workers, had been adopted un-animously.

By 9 votes to 3, the Special Committee had adopted a proposal put forward by the New Zealand Delegation and supported by that of the United Kingdom, to the effect that subject to the provisions of Article 43, prisoners might be submitted to the normal risks run by civilian workers.

As the additions made referred in particular to conditions of work, the Swiss Delegation had suggested that there should be two Articles; 42A and 43. They had prepared the following texts, which were adopted by a large majority of the Special Committee.

#### *Article 42A Conditions of Work*

"Prisoners of war must be granted suitable working conditions, especially as regards accommodation, food, clothing and equipment; such conditions shall not be inferior to those enjoyed by nationals of the Detaining Power employed in similar work; account shall be taken of climatic conditions.

"The Detaining Power, in utilizing the labour of prisoners of war, shall ensure that in areas in which such prisoners are employed, the national legislation concerning the protection of labour, and, more particularly, the regulations for the security of industrial workers, are duly applied.

"Prisoners of war shall receive training and be provided with the means of protection suitable to the work they will have to do and similar to those accorded to the nationals of the Detaining Power. Subject to Article 43, they can be submitted to the normal risks run by these civilian workers.

"Conditions of labour shall in no case be rendered more arduous by disciplinary measures."

#### *Article 43 Dangerous or humiliating labour*

"No prisoner of war may be employed on labour which is of an unhealthy or dangerous nature.

"No prisoner of war shall be assigned to labour which would be looked upon as humiliating for a member of the Detaining Power's own forces.

"The removal of mines or similar devices shall be considered as dangerous labour."

A proposal by the Delegation of Italy which wished to lay down that no prisoner should be employed on work of a deliberately humiliating character, was defeated by 9 votes to 4. It would be noted that Article 43 as proposed provided that no prisoner might be employed on the removal of mines.

Mr. BAGGE (Denmark) said that as his Delegation's amendment to Article 42 had been adopted at the previous meeting, he proposed that the third paragraph of Article 43 should be deleted.

Mr. AGATHOCLES (Greece) reminded the meeting of the proposal made in the Memorandum by his Government; he now proposed, therefore that the end of the first paragraph of Article 42A should be changed to read "il sera également tenu compte des conditions climatiques" in the French text; the corresponding clause in the English text being amended to read "account shall also be taken of climatic conditions".

The Committee unanimously agreed to the text of Article 42A with the modification suggested by the Delegate of Greece.

General PERUZZI (Italy) pointed out that the first and third paragraphs of Article 43 as adopted by the Special Committee prohibited the removal of mines by prisoners of war.

The CHAIRMAN proposed that the Committee should consider Article 43, paragraph by paragraph.

#### *First Paragraph*

Mr. BURDEKIN (New Zealand) considered that the first paragraph was a complete contradiction of the Danish amendment (*see Annex No. 115*) which had been adopted as the second paragraph of Article 42 (*see Summary Record of the Twenty-third Meeting*).

Mr. BAGGE (Denmark) agreed that some modification of the first paragraph of Article 43 would be necessary. He proposed that the following words should be introduced at the beginning of the Article: "Subject to the stipulations of Article 42 ..."

Mr. GARDNER (United Kingdom) said that, if an addition on those lines was made, it would be necessary to say: "Subject to the stipulations

of the second paragraph of Article 42..."; otherwise Article 43 could be taken as authorizing any type of dangerous work.

Mr. BAGGE (Denmark) agreed with the United Kingdom Delegate.

The CHAIRMAN proposed that the Committee should adopt the first paragraph, with the recommendation that the Drafting Committee of the Conference should make the necessary addition on the lines suggested by the Delegate of the United Kingdom.

The Committee agreed to the Chairman's proposal with regard to the first paragraph.

#### *Second Paragraph*

The Committee unanimously adopted the second paragraph.

#### *Third Paragraph*

The Committee agreed, by 16 votes to 14, with 5 abstentions, to the Danish Delegation's proposal to omit the third paragraph.

By 25 votes to 3, with 3 abstentions, the Committee adopted Article 43 (now consisting of its first two paragraphs only), with the recommendation to the Drafting Committee of the Conference that the latter should consider inserting some wording such as "Subject to the stipulations of the second paragraph of Article 42..." at the beginning of the first paragraph.

#### **Consideration of Articles adopted by Drafting Committee No. 1**

Major ARMSTRONG (Canada), Rapporteur of Drafting Committee No. 1, introduced the following Report:

"Drafting Committee No. 1 of Committee II has completed its study of the Articles enumerated hereafter. The Delegates of Albania, Canada, the United States of America, France, India, Norway, the United Kingdom and the Union of Soviet Socialist Republics took part in the discussions. After having carefully studied the Draft Convention adopted at Stockholm and the amendments submitted by the various delegations, Drafting Committee No. 1 has the honour to submit to Committee II the following comments upon the Articles listed in this report:

*Article 11.*

The first paragraph was adopted as it appears in the Stockholm text.

*Article 13.*

The first two paragraphs of the Stockholm text were adopted by Committee II. The third paragraph was modified and adopted by the Drafting Committee.

*Article 14.*

The first paragraph was slightly modified and the modified text adopted as Article 14.

*Article 14A.*

The second paragraph of Article 14 was also modified and it was agreed that it should become Article 14A with the title "Equality of treatment".

*Article 15.*

The Stockholm text was considerably modified, and a new sixth paragraph added. Mr. Gardner (United Kingdom) considered that in the case of general uprisings it would be impossible to put into force the obligation contained in the first sentence of the third paragraph; he did not think this eventuality was covered by an appeal to the principle of *force majeure*. The Delegate of the United Kingdom also considered that Article 15 was not in conformity with Article 112 on certain points; he reserved his objections until the discussion on the latter Article. The above reservations having been noted, Article 15 was adopted.

*Article 16.*

A modified text of six paragraphs was adopted to replace the original four paragraphs in the Stockholm draft.

*Article 18.*

The Committee agreed to accept the Stockholm text of the Article, with the addition of the word "potable" before the word "water" in the first sentence of the second paragraph. As there was some confusion, however, with regard to the precise sense in which the words "evacuation" and "transfer" should be used, it was recommended that Committee II should discuss the exact meaning of the words as used in the Convention.

*Article 19.*

The first paragraph of the Stockholm text was modified, and the new text adopted. The fourth paragraph was deleted.

The second and third paragraphs of the Stockholm draft were referred for discussion to the Special Committee together with the amendments submitted by the Netherlands and United Kingdom Delegations.

The Drafting Committee accepted the proposal of the New Zealand Delegation to replace the words "laws and regulations" by the word "conditions", in two places in the first paragraph of the Article as proposed by the United Kingdom Delegation (*see Annex No. 105*)

*Article 20.*

The first two paragraphs of the Stockholm text were adopted. The United Kingdom Delegate requested the adoption of its amendment to the third paragraph in order to ensure that soldiers serving in the armed forces of a country other than their own should not be separated from comrades captured with them. This amendment was discussed at several meetings and was adopted by a small majority.

*Article 21.*

The Stockholm text was adopted with two changes: the word "protection" replaces "defence" in the second sentence of the second paragraph, and a sentence has been added at the end of the fourth paragraph. The United Kingdom Delegate did not agree to the marking of prisoners of war camps, and reserved his rights to the second reading.

*Article 23.*

The Committee adopted a text consisting of the first and second paragraphs of the Stockholm text, its third paragraph amended, and a new fourth paragraph. The new fourth paragraph coincides with the last sentence of an amendment submitted by the New Zealand Delegation. The Committee sympathized with the remaining part of the amendment which aimed at the establishment of independent standards for prisoners of war's quarters, but did not consider the proposal practicable.

*Article 24.*

The Committee adopted a text consisting of the first paragraph of the Stockholm text with the first sentence deleted, a new second paragraph, the third and fourth paragraphs of the Stockholm text, a new fifth paragraph and, as sixth paragraph, the fifth paragraph of the Stockholm text.

*Article 25.*

The Committee adopted the first paragraph of the Stockholm text, a sentence being added to it to replace the third paragraph (which was

deleted); the Committee also adopted the second paragraph of the Stockholm text, making no change in it.

*Article 29.*

The Committee adopted the first two sentences of the Stockholm draft and substituted two new sentences for the former third sentence.

*Article 30D.*

During the discussion on Article 23, doubt were expressed by certain delegations as to whether the provisions in the last paragraph of Article 23 referred to all buildings in prisoner of war camps, or to dormitories only. In order to remove any possibility of doubt, certain changes have been made in Article 23, a new paragraph has been added to Article 24, and it is suggested, in the text prepared by the Rapporteur for the discussion, that an addition should also be made to Article 30. It would take the form of a new Article 30D, reading:

“Adequate premises shall be provided where religious services may be held.”

Article 30 was not referred to the Drafting Committee for consideration. In the Stockholm text, there was a special provision about premises; there is no such provision in the text which was later adopted.

*Article 31.*

The Stockholm text was adopted with minor changes in the wording.

*Article 32.*

The text is substantially the Stockholm draft, with minor modifications. The Committee rejected a proposal contained in two amendments submitted by the New Zealand and the United Kingdom Delegations respectively, to delete the words “under the direction of his government” in the first paragraph.

*Article 34.*

Except for the deletion of the third paragraph which duplicated a provision already contained in Article 15, the text is substantially the same as the Stockholm draft. It was decided to replace the word “spokesman” by the term “prisoners’ representative” (the change refers to the English text only). The United Kingdom Delegate suggested that this decision should be communicated to other Committees.

*Articles 36 and 37.*

The Stockholm text remains.

*Article 37A.*

The Committee agreed to accept, as Article 37A, the text of the amendment proposed by the United Kingdom Delegation during the ninth meeting, the words “prisoners of war other than officers” being, however, substituted for the words “other ranks”.

The title of the Article is “Treatment of other prisoners”.

*Article 38.*

The first paragraph of the Stockholm draft was considerably enlarged in order to take account of a New Zealand amendment submitted during the ninth meeting; there are minor changes in the second paragraph.

The Delegate of the United Kingdom pressed for the adoption of an amendment proposing the deletion of the words “especially in case of transport by sea or by air”. A vote was taken and the amendment rejected.

*Article 40.*

The Stockholm text has been maintained with the following modifications: The word “transfer” has been substituted for the word “removal” in the first sentence of the first paragraph, the word “more” for the word “less” in the second paragraph, and the words “prisoners’ representative” for the word “spokesman” in the third paragraph; the words “if necessary” in the third paragraph have been omitted.

*Article 41.*

An amendment submitted by the Soviet Delegation, proposing that the word “Re-enlisted” should be inserted before “Non-commissioned officers” in the second paragraph, was rejected by 4 votes to 2, with 1 abstention. The Soviet Delegation reserved its right to reopen the question on the second reading.

The Committee did not include in Article 41 a provision concerning the medical examination of prisoners before they are assigned for work; the Committee agreed with the idea of the proposal put forward in the Memorandum by the Italian Government, but considered the point adequately covered in other Articles.

The last paragraph of the Stockholm text has been omitted.

*Article 44.*

Except for one change at the beginning of the second paragraph, the Stockholm text remains without modification. The Committee considered that the proposals put forward by the Delegation of Israel (*see Summary Record of the Tenth Meeting*), were impracticable.

*Article 45.*

The Stockholm text has been retained with the exception of the substitution of "working pay" for "wages" and "Article 52" for "Article 51".

*Article 47.*

The Committee deleted all words in the first paragraph after the word "camps"; the first sentence of the second paragraph has been modified. The Committee rejected a United Kingdom proposal to add the words "subject to any more favourable treatment required by Article 43 of this Convention" at the end of the modified first paragraph.

*Article 48.*

Considerable drafting changes were made in the Stockholm text.

*Article 12.*

During the discussion on Article 12, the amendments proposed by the Delegations of Denmark (*see Summary Record of the Fourth Meeting*) and the Union of Soviet Socialist Republics (*see Annex No. 99*) were taken into account. After a long discussion in which all delegations took part, a working text was proposed which embodied the changes requested by the Delegations of Denmark and the Union of Soviet Socialist Republics. The text read as follows:

"Prisoners of war must at all times be humanely treated. Any act endangering the life or health of a prisoner of war is expressly prohibited and denounced as a serious crime. In particular no prisoner of war may be subjected to physical mutilation or to medical or scientific experiments of any kind which are not justified by the medical, dental or hospital treatment of the prisoners concerned and carried out in their interests.

"Likewise, prisoners of war must at all times be protected, particularly against acts of violence and intimidation, against insults and public curiosity.

"Measures of reprisal against prisoners of war are prohibited."

At its Fourteenth Meeting, on June 24th, 1949, the Drafting Committee decided to make the following Report on the above text:

1. The second sentence (of the first paragraph) was drafted to meet the main point of the amendment of the Union of Soviet Socialist Republics.

The United Kingdom Delegate, with whose remarks the Delegate of the United States of America wished to be expressly associated, supported by other Delegations, considered that the last part of the sentence added nothing to the efficacy of the Conventions. The United Kingdom and United States Delegations considered that the words "Any act" should be qualified to read "Any unlawful act or omission". In an attempt to meet the point of view of the Soviet Delegation these Delegations suggested that the second sentence read:

"Any unlawful act or omission bringing death or seriously endangering the health of a prisoner of war is prohibited and will be regarded as a serious breach of this Convention."

The Soviet Delegation did not accept the suggested amendment to the second sentence of the working text. They desired to maintain the working text, and, in particular, the phrase, "and denounced as a serious crime". The Delegation of Albania was of the same opinion. The Soviet Delegation would prefer to substitute the words "attempt upon" for the words "act endangering" in the working text as the former is a more exact translation of the corresponding Russian term.

(2) The Delegations of the United States of America, the United Kingdom and Canada expressed preference for the Stockholm text with inclusion of the Danish amendment, but in a spirit of compromise and in an endeavour to meet the point of view of the Delegation of the Union of Soviet Socialist Republics, the United Kingdom and United States Delegations would agree to accept the working text with the second sentence amended as suggested in (1) above.

The Canadian Delegation would also agree to accept, as a compromise, the wording suggested above for the second sentence of the first paragraph, provided the words "by the Detaining Power" were inserted after the word "omission", and the words "in their hands" after "war".

The Committee proceeded to consider the Articles proposed by Drafting Committee No. 1.

**Article 11***First Paragraph*

The Drafting Committee had adopted the first paragraph as it appeared in the Stockholm text.

The Committee adopted the first paragraph.

*Second Paragraph*

The CHAIRMAN said that during the Fourth Meeting the second paragraph had been referred to the Special Committee, which had adopted it as it appeared in the Stockholm text. However, at its Twenty-second Meeting, Committee II had adopted the United Kingdom amendment (*see Annex No. 98*) which replaced the Stockholm text.

He asked if Committee II was prepared to accept the Article as a whole.

General SLAVIN (Union of Soviet Socialist Republics) said that, as Committee II had adopted the second paragraph in a form which relieved the Detaining Power of responsibility for protecting prisoners of war, his Delegation would vote against the adoption of Article II as a whole.

A vote was taken, and Article II was adopted by 14 votes to 10, with 1 abstention.

**Article 13**

The CHAIRMAN said that the first two paragraphs of the Stockholm text had been adopted on the first reading (*see Summary Record of the Fourth Meeting*). The third paragraph had been referred to the Drafting Committee, which had modified it. It now read as follows:

"Prisoners of war shall retain the full civil capacity which they enjoyed at the time of their capture. The Detaining Power may not restrict the exercise, either within or without its own territory, of the rights such capacity confers except in so far as the captivity requires."

Mr. AGATHOCLES (Greece) said that he was satisfied with the new wording of the third paragraph; his Delegation wished to withdraw the amendment submitted by the Greek Government in its Memorandum.

The third paragraph of Article 13, and Article 13 as a whole, were in turn adopted unanimously.

**Article 14**

The Article adopted by Drafting Committee No. I read as follows:

"The Power detaining prisoners of war is bound to provide free of charge for the maintenance of prisoners of war and for all medical care which their state of health requires."

The CHAIRMAN pointed out that Article 14 reproduced the first paragraph of the Stockholm text without modification, except for certain draft-

ing changes in the English version. The remainder of the Article as adopted at Stockholm had become a separate Article 14A.

Mr. GARDNER (United Kingdom) suggested that the English text would be improved by replacing the words "the maintenance of prisoners of war" by "their maintenance".

The Committee unanimously adopted Article 14, the English text being modified as suggested by the United Kingdom Delegate.

**Article 14A—Equality of treatment**

Article 14A as adopted by Drafting Committee No. I read as follows:

"Taking into consideration the provisions of the present Convention relative to rank and sex, and subject to any privileged treatment which may be accorded to them by reason of their state of health, age or professional qualifications, all prisoners of war shall be treated alike by the Detaining Power, without any prejudicial discrimination of race, nationality, religious belief or political opinions, or any other distinction founded on similar criteria."

The CHAIRMAN said that the Article was a modified version of the second paragraph of Article 14 of the Stockholm text.

Mr. GARDNER (United Kingdom) thought that it would be better to say "discrimination on account of race" instead of "discrimination of race".

The CHAIRMAN thought that some other word should be used instead of "discriminatoire" in the French text. He suggested that that point, and also that raised by the United Kingdom Delegate, should be referred to the Drafting Committee of the Conference.

The Committee unanimously adopted Article 14A with the reservation suggested by the Chairman.

**Article 15**

The Article adopted by Drafting Committee No. I read as follows:

"Every prisoner of war, when questioned on the subject, is bound to give only his name and rank, date of birth, army, regimental, personal or serial number, or failing this, equivalent information."

"If he wilfully infringes this rule he may render himself liable to a restriction of the privileges accorded to his rank or status.

"Each belligerent is required to furnish the persons under his jurisdiction who are liable to become prisoners of war, with an identity card showing the owner's name, first name, rank, army, regimental, personal or serial number or equivalent information, and date of birth. The identity card may, furthermore, bear the signature or the fingerprints or both of the owner, and may bear as well, any other information the belligerent Power may wish to add concerning persons belonging to its armed forces. The identity card shall be shown by the prisoner of war upon requisition, but may in no case be taken away from him. As far as possible the card shall measure 6,5 × 10 cm. and shall be issued in duplicate.

"No physical or mental torture, nor any other form of coercion may be inflicted on prisoners of war to secure from them information of any kind whatever. Prisoners of war who refuse to answer may not be threatened, insulted, or exposed to any unpleasant or disadvantageous treatment of any kind.

"Prisoners of war who, owing to their physical or mental condition, are unable to state their identity shall be handed over to the Medical Service. The identity of such prisoners shall be established by all possible means.

"The questioning of prisoners of war shall be carried out in a language which they understand."

Mr. WILHELM (International Committee of the Red Cross) thought the first paragraph seemed to imply that the prisoner could in no case give more information than was specified in the paragraph; that was too restrictive. He also thought that in the third paragraph there should be some reference to the fact that the Detaining Power ought to take the prisoner's identity card into account in questioning him, as the card was established with precisely that object.

Major ARMSTRONG (Canada), Rapporteur, said that the first paragraph was so worded in order to limit the obligation on the prisoner to give information. If he was permitted by his Government to give more, there was nothing in the paragraph to prevent him from doing so.

Mr. GARDNER (United Kingdom) said the identity card was not prepared primarily for the convenience of a Detaining Power; its function was to help its owner to establish his identity.

Article 15 was adopted unanimously.

## Article 16

The Article adopted by Drafting Committee No. 1 read as follows:

"All effects and articles of personal use, except arms, horses, military equipment and military documents, shall remain in the possession of prisoners of war, likewise their metal helmets and gas masks and like articles issued for personal protection. Effects and articles serving for their clothing or feeding shall likewise remain in their possession, even if such effects and articles belong to their regulation military equipment.

"At no time should prisoners of war be without identity documents. The Detaining Power shall supply such documents to prisoners of war who possess none.

"Badges of rank and nationality, decorations and articles having above all a personal or sentimental value may not be taken from prisoners of war.

"Sums of money carried by prisoners of war may not be taken away from them except by order of an officer after the amount and particulars of the owner have been recorded in a special register, and an itemized receipt has been given legibly inscribed with the name, rank and unit of the person issuing the said receipt. Sums in the currency of the Detaining Power or which at the prisoner's request are changed into such currency shall be placed to the credit of the prisoner's account as provided in Article 54.

"Only for reasons of security may a Detaining Power withdraw articles of value from prisoners of war, and when so withdrawn, the procedure laid down for sums of money impounded shall apply.

"Such objects, likewise the sums taken away in any currency other than that of the Detaining Power, and the conversion of which has not been asked for by the owners, shall be kept in the custody of the Detaining Power and shall be returned to prisoners of war in their initial shape at the end of their captivity."

Mr. AGATHOCLES (Greece) said that the text adopted by the Drafting Committee seemed to have taken the proposal contained in the Memorandum by the Greek Government into account; he would prefer, however, to see the exact words proposed in that Memorandum used in the first paragraph; he suggested, therefore, that the phrase "and any other similar article tending to protect the prisoner." should be introduced immediately after the words "gas masks" in place of the words "and like articles used for personal protection".

Mr. WILHELM (International Committee of the Red Cross) felt that there might be some contradiction between the third and fifth paragraphs, unless some such words as "Subject to the provisions of the third paragraph..." were inserted at the beginning of the fifth paragraph.

Mr. GARDNER (United Kingdom) pointed out that the wording of the first sentence of Article 16

had been deliberately chosen in order to take account of the amendment submitted by the Greek Delegation.

Mr. AGATHOCLES (Greece) withdrew his proposal.

Article 16 as proposed by Drafting Committee No. 1 was adopted unanimously.

*The meeting rose at 1 p.m.*

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## TWENTY-FIFTH MEETING

*Wednesday 6 July 1949, 10 a.m.*

*Chairman: Mr. Staffan SÖDERBLOM (Sweden)*

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### Article 18

The Article adopted by Drafting Committee No. 1 read as follows:

"The evacuation of prisoners of war shall always be effected humanely and in conditions similar to those for the forces of the Detaining Power in their changes of station.

"The Detaining Power shall supply prisoners of war who are being evacuated with sufficient food and potable water, and with the necessary clothing and medical attention. The Detaining Power shall take all suitable precautions to ensure their safety during removal and shall establish as soon as possible a list of the prisoners of war who are evacuated.

"If prisoners of war must, during removal, pass through transit camps, their stay in such camps shall be as brief as possible."

The CHAIRMAN asked Major ARMSTRONG (Canada), Rapporteur of Drafting Committee No. 1, to elucidate an observation concerning Article 18 in the Drafting Committee's Report (*see Summary Record of the Twenty-fourth Meeting*).

Major ARMSTRONG (Canada), Rapporteur, said that there had been considerable discussion in the Drafting Committee regarding the precise meaning to be attached to the words "evacuation" and "transfer". When examining Article 18, some delegates considered that the word "evacuation" covered the movements of the prisoner of war

from the place of capture to the first permanent prisoner of war camp; other delegates thought the word meant removal from the place of capture to the first safe area. The matter had accordingly been referred to Committee II for a precise definition.

Mr. WILHELM (International Committee of the Red Cross) suggested adding a fourth paragraph worded as follows to Article 18 in order to obviate the difficulties to which the Rapporteur had just referred:

"If the evacuation must continue when prisoners of war are already out of the dangers resulting from the combat zone where they were taken prisoners, or if it takes place in regions where hostilities have ceased, it shall be effected in conformity with the provisions of Article 38 concerning transfer of prisoners."

Mr. GARDNER (United Kingdom) thought the paragraph proposed by the Representative of the International Committee of the Red Cross introduced a new distinction into a text which was already difficult to interpret. The term "evacuation" had different meanings for different Powers. He thought the point should either be settled by Committee II or referred to the Drafting Committee of the Conference. There was the further point that in some Articles "transfer" and "evacuation" were used as interchangeable terms.

General SKLYAROV (Union of Soviet Socialist Republics) thought it was perfectly clear that "evacuation" meant removal from a dangerous to a non-dangerous zone in abnormal circumstances, and that "transfer" merely implied removal from one place to another in normal circumstances.

The CHAIRMAN thought it advisable to give Delegates time for further reflection. He proposed to postpone further discussion on Article 18 until the next meeting.

The Chairman's proposal was adopted.

#### Article 19, first paragraph

The following text was proposed by Drafting Committee No. 1:

"The Detaining Power may subject prisoners of war to internment. It may impose on them the obligation of not leaving the camp where they are interned beyond certain limits, or, if the said camp is fenced in, of not going outside its perimeter. Subject to the provisions of the present Convention which are relative to penal and disciplinary sanctions, prisoners of war may not be held in close confinement except where necessary to safeguard their health and then only during the continuation of the circumstances which make such confinement necessary."

The Committee unanimously adopted the above text.

The CHAIRMAN noted the second and third paragraphs of the Stockholm text had been referred to the Special Committee, and that it was therefore not yet possible for Committee II to take a decision on Article 18 as a whole.

#### Article 20

The Article adopted by Drafting Committee No. 1 read as follows:

"Prisoners of war may be interned only in premises located on land and affording every guarantee of hygiene and healthfulness. Except in particular cases which are justified by the interest of the prisoners themselves, they shall not be interned in penitentiaries.

"Prisoners of war interned in unhealthy areas, or where the climate is injurious for them, shall be removed as soon as possible to a more favourable climate.

"The Detaining Power shall assemble prisoners of war in camps or camp compounds according to their nationality, language and customs, provided that those made prisoner while serving

with the armed forces of a country of which they are not nationals shall not be placed in camps or compounds apart from the camps or compounds for prisoners of those national armed forces, unless they so consent."

Colonel HODNETT (Ireland) proposed that the words "area or" be inserted before the word "climate" at the end of the second paragraph; that addition seemed necessary in view of the wording of the first part of the paragraph.

The proposal was referred to the Drafting Committee of the Conference.

General SKLYAROV (Union of Soviet Socialist Republics) said that his Delegation had tabled an amendment proposing that the third paragraph of Article 20 as submitted by the Drafting Committee should be replaced by the following text:

"The Detaining Power shall assemble prisoners of war in camps or camp compounds according to their nationality, language and customs, on condition that these prisoners of war shall not be separated from those of the Army in which they were serving at the time they were captured."

He had discussed the amendment with the United Kingdom Delegate. The latter would be prepared to agree to it, provided the words "unless they so consent" were added at the end of the paragraph. But the Soviet Delegation considered the addition of those words unnecessary and even objectionable, as they would nullify the stipulation contained in the amendment. The amendment, as it stood, safeguarded quite adequately the right of prisoners from countries inhabited by various nationalities to be detained in the same camps as their comrades in arms.

Mr. GARDNER (United Kingdom) objected to the Soviet amendment, unless the words proposed by the United Kingdom Delegation were added. It was necessary to provide for two distinct cases: on the one hand, prisoners of different nationalities serving one Power who wished to be segregated according to their countries of origin, and, on the other hand, prisoners in similar circumstances but who wished to be detained in camps with those with whom they served, irrespective of nationality. The text submitted by the Drafting Committee provided for both categories, whereas the Soviet amendment provided for only one. Nevertheless, the United Kingdom Delegation would be prepared to accept the Soviet amendment with the addition of the words "unless they so consent", as the substance of the third paragraph would then be the same as that submitted by the Drafting Committee.

General SKLYAROV (Union of Soviet Socialist Republics) argued that the Article, with the proposed addition, would be contrary to Article 6 of the Convention. Furthermore, it would enable the Detaining Power to put pressure on prisoners in order to make them act against their real wishes.

The CHAIRMAN put Article 20 to the vote, paragraph by paragraph.

The first paragraph was adopted unanimously.

The second paragraph was adopted unanimously with the *proviso* that the Irish Delegate's proposal to insert the words "or area" after the word "climate" at the end of the second paragraph would be referred to the Drafting Committee of the Conference.

The Soviet amendment to the third paragraph was rejected by 15 votes to 7, with 3 abstentions.

The text proposed for the third paragraph by the Drafting Committee was adopted by 17 votes to 7, with 4 abstentions.

Article 20, as proposed by the Drafting Committee, was adopted by 21 votes to 7.

General SKLYAROV (Union of Soviet Socialist Republics) reserved the right to raise the question again at a plenary meeting of the Conference.

## Article 21

The text adopted by Drafting Committee No. 1 reproduced the Stockholm text with the addition, at the end of the fourth paragraph, of the following sentence:

"No place other than a prisoner of war camp shall be marked as such."

Mr. GARDNER (United Kingdom) emphasized the importance of his Delegation's amendment which proposed that the words "Whenever military considerations permit" should be inserted at the beginning of the fourth paragraph of Article 21 as submitted by the Drafting Committee. He pointed out that Article 21 involved considerations of vital interest to the United Kingdom. In war-time the population of Great Britain was increased by large numbers of Allied troops, and usually by large numbers of prisoners of war. The territory of Great Britain covered so small an area that it was practically impossible to locate a prisoner of war camp in that country at an appreciable distance from a military objective. If camps were marked, they were inevitably a guide to low-flying aircraft. He was assured, on good authority, that the marking of camps afforded no protection against bombing by high-flying aircraft.

General DILLON (United States of America), while sympathizing with the situation described by the United Kingdom Delegate, could not agree with his conclusions. The argument against marking camps would also apply to the identification of hospitals by painting the Red Cross sign on their roofs. Furthermore, an unwarranted military advantage was given to a country which did not mark prisoner of war camps. The aircraft of an adverse Power would be restrained from attacking military objectives if the pilots thought there was a danger of hitting their own countrymen.

Mr. GARDNER (United Kingdom), referring to the observations of the United States Delegate, said that he would defy anybody to place a camp in Britain which would be ten miles from a military objective. Besides, the United States Delegation overlooked the fact that the Wounded and Sick Convention made the marking of hospitals optional; in the recent war, hospitals in Great Britain were not marked, for the very reason he had given.

Wing Commander DAVIS (Australia), speaking as an airman, said that the marking of camps was no protection at all. Article 21 did not specify the size of the marking. It would have to be extremely large to be noticed by high-flying modern bombers, while low-flying aircraft normally travelled at such speeds that it was very unlikely that their pilots would notice the marking at all. He thought the whole paragraph unnecessary.

Mr. AGATHOCLES (Greece) said the Drafting Committee did not seem to have taken account of the two proposals concerning Article 21 contained in the Memorandum by his Government. The first proposal was to alter the wording at the end of the first paragraph by inserting the words "or operations, or his security" immediately after the word "areas", the purpose of this amendment being to prohibit the inhuman practice of using human beings to ensure the success of certain military operations, or in the interests of the belligerent's security, in particular with regard to transport. The second proposal was to omit the second sentence of the fourth paragraph. ("The Detaining Powers may, however, agree upon any other system of marking"). It was easy to imagine the confusion which would arise if Greek, Arab, or Hebrew letters were used to mark camps.

Mr. STROEHLIN (Switzerland) considered that the sentence referred to by the Greek Delegate should be retained. He thought, however, that the words "Detaining Powers" should be used instead of "Powers concerned".

Furthermore, agreeing with Mr. MEYKADEH (Iran), Mr. STROEHLIN thought that the words "signalés" and "signalé" at the beginning and at the end of the fourth paragraph of the French text should be replaced respectively by "signalisés" and „signalisé”.

The above proposals by the Swiss and Iranian Delegates were approved.

The CHAIRMAN put Article 21 to the vote paragraph by paragraph.

The addition proposed to the first paragraph by the Greek Delegation was rejected by 4 votes to 2, with 15 abstentions.

The first paragraph was adopted unanimously.

The second paragraph was adopted unanimously.

The third paragraph was adopted unanimously.

The Australian Delegation's proposal to omit the fourth paragraph was rejected by 12 votes to 7, with 4 abstentions.

The proposal of the Greek Delegation to omit the sentence "The Detaining Powers may, however, agree upon any other system of marking" in the fourth paragraph was rejected by 11 votes to 3, with 4 abstentions.

The Committee unanimously decided to substitute the words "Powers concerned" for "Detaining Powers," in the fourth paragraph, and also, in the French text, to replace "signalé" by "signalisé”.

The United Kingdom Delegation's proposal to insert the words "Whenever military considerations permit" at the beginning of the fourth paragraph, was adopted by 13 votes to 2, with 8 abstentions.

Article 21, as proposed by the Drafting Committee and as amended above, was adopted by 26 votes to 1, with no abstentions.

### Article 23

The Article adopted by Drafting Committee No. 1 read as follows:

"Prisoners of war shall be quartered under conditions as favourable as those for the forces of the Detaining Power who are billeted in the same area. The said conditions shall make allowance for the habits and customs of the prisoners and shall in no case be prejudicial to their health.

"The foregoing provisions shall apply in particular to the dormitories of prisoners of war, as regards both total surface and minimum cubic space, and the general installations, bedding and blankets.

"The premises provided for the use of prisoners of war individually or collectively, shall be

entirely protected from dampness, adequately heated and lighted, in particular between dusk and lights out. All precautions must be taken against the danger of fire.

"In any camps in which women prisoners of war, as well as men, are accommodated, separate dormitories shall be provided for them."

Mr. BURDEKIN (New Zealand) said that he would like to thank the Drafting Committee for their careful consideration of his Delegation's amendment (see *Summary Record of the Sixth Meeting*). He did not intend to press the matter further.

Article 23, as proposed by the Drafting Committee, was adopted unanimously.

### Article 24

Drafting Committee No. 1 had adopted the following text:

"The basic daily food rations shall be sufficient in quantity, quality and variety to keep prisoners of war in good health and to prevent loss of weight or the development of nutritional deficiencies. Account shall also be taken of the habitual diet of the prisoners.

„The Detaining Power shall supply prisoners of war who work with such additional rations as are necessary for the labour on which they are employed.

„Sufficient drinking water shall be supplied to prisoners of war. The use of tobacco shall be permitted.

"Prisoners of war shall as far as possible be associated in the preparation of their meals; they may be employed for that purpose in the kitchens. Furthermore, they shall be given the means of preparing themselves the additional food in their possession.

"Adequate premises shall be provided of messing.

"Collective disciplinary measures affecting food are prohibited."

Mr. BURDEKIN (New Zealand) pointed out that the word "for" should be substituted for the word "of" in the fifth paragraph.

Captain MOUTON (Netherlands) asked if the Drafting Committee had considered the proposal in the Memorandum by the Netherlands Government, that the words: "Even if the international nutritional standards are adopted and supplied..." should be inserted at the beginning of the second sentence of the first paragraph of the Stockholm text.

Major ARMSTRONG (Canada), Rapporteur, said that the Netherlands proposal had been very fully discussed. The Committee had felt that "international nutritional standards" would not, and probably could not, be enforced in all countries; the proposal had, therefore, been rejected unanimously.

Captain MOUTON (Netherlands) said that there was a similar provision in Article 78 of the Draft Civilians Convention. He proposed that the matter be referred to the Coordination Committee.

Mr. GARDNER (United Kingdom) thought that the corresponding provision in Article 78 of the Draft Civilians Convention had been rejected for the same reasons as those which had prompted the rejection of the Netherlands proposal by the Drafting Committee.

The CHAIRMAN suggested that the Netherlands Delegation should submit the matter to the Coordination Committee.

Captain MOUTON (Netherlands) agreed to do so.

Article 24, as proposed by the Drafting Committee and as amended above, was adopted unanimously.

#### Article 25

The Article adopted by Drafting Committee No. 1 read as follows:

"Clothing, underwear and footwear shall be supplied to prisoners of war in sufficient quantities by the Detaining Power, which shall make allowance for the climate of the region where the prisoners are detained. Uniforms of enemy armed forces captured by the Detaining Power should if suitable for the climate be made available to clothe prisoners of war.

"The replacement and repair of the above articles shall be assured regularly by the Detaining Power. In addition, prisoners of war who work shall receive appropriate clothing, wherever the nature of the work demands."

Article 25, as proposed by the Drafting Committee was adopted unanimously.

#### Article 29

The Article adopted by Drafting Committee No. 1 read as follows:

"Medical inspections of prisoners of war shall be made at least once a month. Their purpose shall be, in particular, to supervise the general state of health, nutrition and cleanliness of prisoners and to detect contagious diseases,

especially tuberculosis, malaria and venereal complaints. For this purpose the most efficient methods available shall be employed, e.g. periodic mass miniature radiography for the early detection of tuberculosis. The weight of each prisoner shall be regularly recorded.

Captain MOUTON (Netherlands) asked whether the Drafting Committee had considered the Netherlands amendment which had proposed replacing the third sentence of the Stockholm text by:

"They shall include the checking of weight of each prisoner and at least once every year, radiosopic examination."

Major ARMSTRONG (Canada), Rapporteur, said that the Netherlands amendment had been discussed with other amendments on the same lines. The idea of a radiosopic examination at least once every year had been rejected on the ground that some countries had not an adequate supply of the necessary equipment so that it would be impossible to guarantee radiosopic examination at least once a year.

Captain MOUTON (Netherlands) wanted Committee II to vote on the amendment. The Netherlands proposal was based on expert medical advice, and he felt it was possible that its full significance could only be appreciated by doctors.

Mr. GARDNER (United Kingdom) said that the new wording adopted by the Drafting Committee took into account not only the Netherlands proposal, but also a factor which the latter proposal did not cover, namely that mass miniature radiography was only one of the methods available for the detection of tuberculosis. It was by no means certain that it was, or would continue to be, the most efficient. He thought the present wording was more flexible and provided for subsequent developments in medical science.

Captain MOUTON (Netherlands) agreed to accept the Drafting Committee's text in so far as it concerned radiosopic examination. He thought, however, that the provision in Article 29 relating to the checking of the weight of prisoners of war, was too vague; he proposed that it should be amended to read as follows: "They shall include the checking of weight of each prisoner."

Mr. GARDNER (United Kingdom) thought the essential word in the sentence was "recorded".

After some discussion, the Committee agreed that in order to take account of the Netherlands amendment, the following sentence should be inserted after the first sentence of Article 29:

"They shall include also the checking and the recording of the weight of each prisoner of war."

The last sentence, which thus became redundant, was omitted.

Article 29, as proposed by the Drafting Committee and as amended above, was adopted by 18 votes with no dissentient votes.

The Chairman asked Major Armstrong (Canada), Rapporteur of the Drafting Committee, if he had any comments to make on the following Articles.

#### Article 30D

Major ARMSTRONG (Canada) drew attention to the remarks on Article 30D in the Report of the Drafting Committee.

During the discussion of Article 23 it had been decided to make the provisions concerning premises for religious services more specific; it had been suggested at the same time that an addition should also be made to Article 30. The addition would take the form of a new Article 30D worded as follows:

"Adequate premises shall be provided, where religious services may be held."

#### Procedure

Mr. BURDEKIN (New Zealand) raised a point of procedure. He said that he had only received the text of the remaining Articles on the Agenda that morning. It would be impossible for delegates who wished to propose amendments to observe the 24-hour rule.

Mr. GARDNER (United Kingdom) agreed with the New Zealand Delegate as to the difficulty of considering Articles at such short notice. He proposed that the discussion should continue in the afternoon, on condition, however, that the discussion on an Article would be postponed, if any delegate wished to have further time to consider it, or wished to propose an amendment.

The CHAIRMAN supported the United Kingdom Delegate's proposals. He suggested that the afternoon session should begin at 3.30 p.m., in order to give delegates more time to study the texts.

The Chairman's proposal was approved.

*The meeting rose at 12.45 p.m.*

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## TWENTY-SIXTH MEETING

*Wednesday 6 July 1949, 3.30 p.m.*

*Chairman:* Mr. Staffan SÖDERBLOM (Sweden)

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#### Article 18 (continued)

The CHAIRMAN remarked that the ideas conveyed respectively by the words „transfer” and „evacuation” had been discussed at the previous meeting, following the recommendation made by Drafting Committee No. 1. Opinions still varied.

Mr. GARDNER (United Kingdom) proposed that, in order to avoid confusion and bring the French and English versions into line, the English word “evacuation” should be used in Articles 17 and 18 wherever the word “removal” occurred.

Articles 39 and 40 also required the use of a standard term, he suggested that in the case of those two Articles, the word “transfer” should invariably be used.

The CHAIRMAN noted that no objection was raised to the above proposal.

The Secretariat would make the necessary corrections.

No further remarks being forthcoming, Article 18, as submitted by the Drafting Committee, was adopted unanimously, the English text being amended as proposed by the United Kingdom Delegate. No change was made in the French text.

#### Article 30D (continued)

Drafting Committee No. 1 was of the opinion that Articles 30, 30A, 30B and 30C should be supplemented by the addition of the following sentence,

which had been omitted in the new draft of Article 30 (see *Summary Records of the Twenty-second and Twenty-fifth Meetings*).

“Adequate premises shall be provided where religious services may be held.”

At the suggestion of Mr. GARDNER (United Kingdom), the CHAIRMAN proposed to inform the Drafting Committee of the Conference that the text submitted by the Rapporteur of Drafting Committee No. 1 had been adopted unanimously, and that Committee II recommended that it should be inserted as the second paragraph of Article 30, instead of being made into a new Article.

The Chairman's proposal was agreed to unanimously.

### Article 31

The text adopted by Drafting Committee No. 1 read as follows:

“While respecting the individual preferences of every prisoner, the Detaining Power shall encourage the practice of intellectual, educational and recreational pursuits, sports and games amongst prisoners, and shall take the measures necessary to ensure the exercise thereof by providing them with adequate premises and necessary equipment.

“Prisoners shall have opportunities for taking physical exercise including sports and games and being out of doors. Sufficient open spaces shall be provided for the purpose in all camps.”

Article 31 was adopted unanimously.

### Article 32

The following text had been adopted by Drafting Committee No. 1:

“Every prisoner of war camp shall be put under the immediate authority of a responsible commissioned officer belonging to the regular armed forces of the Detaining Power. The said officer shall have in his possession a copy of the present Convention; he shall ensure that its provisions are known to the camp staff and the guard and shall be responsible, under the direction of his government, for its application.

“Prisoners of War, with the exception of officers, must salute and show to all officers of the Detaining Power the external marks of respect provided for by the regulations applying in their own forces.

“Officer prisoners of war are bound to salute only officers of a higher rank of the Detaining Power; they must, however, salute the Camp Commander regardless of his rank.”

Captain MOUTON (Netherlands) said that it had been decided to include in Article 3, which was still under consideration by the Special Committee, a new category of persons protected under the Convention, namely crews of the merchant marine. That decision would, he thought, entail certain additions to various Articles of the Convention, among them Article 32.

Mr. STROEHLIN (Switzerland) and Mr. GARDNER (United Kingdom) considered it unnecessary to alter Article 32 in that connection. Article 36 already provided that, upon the outbreak of hostilities, belligerents should communicate to one another the titles and ranks of all the persons designated in Article 3 of the present Convention. There could therefore be no doubts on the question of saluting by prisoners of war.

There were no further comments, and Article 32, in its new wording, was adopted unanimously.

### Article 34

The text adopted by Drafting Committee No. 1 read as follows:

“In every camp the text of the present Convention and its annexes and the contents of any special agreement provided for in Article 5, shall be posted, in the prisoners' own language, at places where all may read it. Copies shall be supplied, on request, to the prisoners who cannot have access to the copy which has been posted.

“Regulations, orders, notices and publications of every kind relating to the conduct of prisoners of war shall be issued to them in a language which they understand. Such regulations, orders and publications shall be posted in the manner described above and copies shall be handed to the prisoners' representative. Every order and command addressed to prisoners of war individually must likewise be given in a language which they understand.”

In the absence of any objection, Article 34, as proposed by the Drafting Committee, was adopted unanimously.

### Article 36

The Stockholm text of Article 36 had been adopted by Drafting Committee No. 1 without any modification.

Captain MOUTON (Netherlands) pointed out, in connection with the word "belligerents" in the first paragraph, that the Special Committee, when discussing another Article, had decided to adopt a different term, viz.: "the Parties to the conflict". It was desirable that the same change should be made in the present case.

Captain Mouton's suggestion was adopted with no dissentient votes.

Article 36, thus amended, was adopted unanimously.

### Article 37

Article 37, which reproduced the Stockholm text without any modification, was adopted unanimously.

### Article 37A—Treatment of other prisoners.

The following text had been adopted by Drafting Committee No. 1:

"Prisoners of war other than officers and prisoners of equivalent status shall be treated with the regard due to their rank and age.

"Supervision of the mess by the prisoners themselves should be facilitated in every way."

Mr. WILHELM (International Committee of the Red Cross) stated that presumably Article 37A was for the protection of prisoners who held a rank other than that of an officer, i.e.: non-commissioned officers. The fact that the Article related to that particular category of prisoners would have to be made clear, at any rate in the French text.

He also proposed that the wording of the second paragraph should be made clearer by substituting the words "the said prisoners" for "the prisoners". The supervision of the mess by prisoners of war was already covered by Article 24 relating to food rations.

Mr. DU MOULIN (Belgium) expressed complete agreement with the views put forward by the Representative of the International Committee of the Red Cross. He proposed that the Committee modify the wording in the way suggested. The title itself was not accurate. He suggested that it should read: "Treatment of prisoners of war of other ranks."

Mr. GARDNER (United Kingdom) explained that the Article, which had been proposed by his Delegation (see *Summary Record of the Ninth Meet-*

*ing*), applied to the treatment of all prisoners of war other than officers. He was strongly opposed to any attempt to restrict its provisions to non-commissioned officers only.

Captain MOUTON (Netherlands) supported the point of view of the United Kingdom Delegation. The provisions laying down that differences of age and rank must be taken into account should also apply to prisoners who were neither officers nor non-commissioned officers. In the Netherlands Navy there were various grades of sailors (first-class, second-class, third-class).

Mr. DU MOULIN (Belgium) observed that, if the Article was intended to apply to all prisoners of war other than officers, its place was not in a Chapter entitled "Rank of Prisoners of War". Besides, the provision regarding the age of prisoners was quite impossible to apply in dealing with large numbers.

General PARKER (United States of America) agreed, on the contrary, with the United Kingdom and Netherlands Delegations.

The CHAIRMAN put the proposal submitted by the Belgian Delegation to the vote.

It was rejected by a large majority.

Article 37A was adopted unanimously.

### Article 38

The following text had been adopted by Drafting Committee No. 1:

"The transfer of prisoners of war shall always be effected humanely and in conditions not less favourable than for the forces of the Detaining Power when they are transferred. Account shall always be taken of the climatic conditions to which the prisoners of war are accustomed and the conditions of transfer shall in no case be prejudicial to their health.

"The Detaining Power shall supply prisoners of war during transfer with sufficient food and potable water to keep them in good health; likewise with the necessary clothing, shelter and medical attention. The Detaining Power shall take adequate precautions especially in case of transport by sea or by air, to ensure their safety during transfer, and shall draw up a complete list of all transferred prisoners before their departure."

Mr. AGATHOCLES (Greece) said that his Government's Memorandum suggested that in the case of mass transports, columns of prisoners of war

should be protected by the marking mentioned in Article 21, fourth paragraph. The suggestion had already been considered by Drafting Committee No. 1. He had withdrawn it in view of the convincing arguments put forward by the Delegates of the United Kingdom and of the United States of America. He would be glad if the two Delegates in question would repeat their remarks at the present meeting. He would then be prepared to withdraw his amendment definitively.

Mr. GARDNER (United Kingdom) said that to extend the application of protective signs would automatically weaken their effect. Despite his country's legitimate desire to spare its soldiers' lives, it had always been compelled, for practical reasons, to set aside similar proposals.

General PARKER (United States) also said he was in sympathy with the proposal put forward by the Greek Delegate. The United States of America had lost a great many men during the war through the bombing of convoys of American prisoners of war by their own armed forces. In spite of all the thought which had been given to the matter, no practical solution had been found. The solution put forward by the Greek Delegation was also inadequate, and could not be accepted by the United States.

The CHAIRMAN said that the above observations would be recorded in the Minutes. He took it that the amendment submitted by the Delegation of Greece was withdrawn.

Article 38, as proposed by the Drafting Committee, was adopted unanimously, no further remarks being forthcoming.

#### Article 40

The following text had been adopted by Drafting Committee No. 1:

"In the event of transfer, prisoners of war shall be officially advised of their departure and of their new postal address. Such notifications shall be given in time for them to pack their luggage and inform their next of kin.

"They shall be allowed to take with them their personal effects, and the correspondence and parcels which have arrived for them. The weight of such baggage may be limited, if the conditions of removal so require, to what each prisoner can reasonably carry, but in no case to more than twenty-five kilograms per head.

"Mail and parcels addressed to their former camp shall be forwarded to them without delay. The camp commandant shall take in agreement

with prisoners' representatives any measures needed to ensure the transport of the prisoners' community kit and of the luggage they are unable to take with them, in consequence of restrictions imposed by virtue of paragraph 2.

"The costs of transfers shall be borne by the Detaining Power".

Major ARMSTRONG (Canada), Rapporteur, said that in the English text the term "prisoners' representatives" had been substituted for "spokesmen" in the third paragraph. This change had been discussed and adopted by the Drafting Committee in the case of Article 34, and a recommendation had been made that other Articles should be modified in the same way.

Captain MOUTON (Netherlands) remarked that an error seemed to have crept into the second paragraph, where it was stated that "the weight of such baggage may be limited... but in no case to more than twenty-five kilograms per head." Surely that should read: "to less than twenty-five kilograms".

Major ARMSTRONG (Canada), Rapporteur, said that the point raised by the Netherlands Delegate had been discussed at length in Drafting Committee No. 1. The latter had feared that the Stockholm text might result in transferred prisoners being forced to carry a weight exceeding twenty-five kilograms, which in the course of a long march, might try their strength unduly.

Mr. GARDNER (United Kingdom) added that a suggestion by the Delegate of the Union of Soviet Socialist Republics that the word "more" be substituted for the word "less" had met with general approval as a solution eliminating the apprehensions in question.

Mr. STROEHLIN (Switzerland) said that the wording submitted to the Committee for the second paragraph no longer had the slightest meaning in French. The paragraph began by authorizing prisoners to take their personal effects with them. It laid down that in certain exceptional cases the weight of such baggage might be limited. It was therefore intended to fix a minimum weight below which the Detaining Power could not go.

Captain Mouton (Netherlands), Mr. BAUDOY (France) and Mr. MOLL (Venezuela) proposed new and clearer wordings of the second paragraph of Article 40. A number of Delegations agreed on the following wording:

"They shall be allowed to take with them their personal effects, and the correspondence

and parcels which have arrived for them. The weight of such baggage should be such as a prisoner can reasonably carry, but should in no case be more than twenty-five kilograms per head."

Mr. GARDNER (United Kingdom) pointed out that the third paragraph would be affected by any modifications which might be introduced in the second paragraph. The new wording proposed seemed to change the entire meaning of the second paragraph. He must have time to think about it.

The Committee decided to postpone discussion on the point until a later meeting.

#### Article 41

The text proposed by Drafting Committee No. 1 read as follows:

"The Detaining Power may utilize the labour of prisoners of war who are physically fit, taking into account their age, sex, rank and physical aptitude, and with a view particularly to maintaining them in a good state of physical and mental health.

"Non-commissioned officers who are prisoners of war shall only be required to do supervisory work. Those not so required may request other suitable occupation which shall, so far as possible, be secured for them.

"If officers or persons of equivalent status request suitable work, it shall be found for them, so far as possible, but they may in no circumstances be compelled to work."

Mr. FILIPPOV (Union of Soviet Socialist Republics) reminded the meeting that his Delegation had tabled an amendment proposing that the word "Re-enlisted" should be inserted before "Non-commissioned officers" at the beginning of the second paragraph. A proportion of 15 to 20 % of the prisoners of war in a camp might be non-commissioned officers who were not regulars. The majority of non-commissioned officers were those who had only done their compulsory military service, and were not members of the regular army. There was nothing to prevent them from being required to do all types of work. It was only re-enlisted regular non-commissioned officers who should enjoy different treatment.

General PARKER (United States of America) said that the question was an interesting one. In the United States Army the percentage of non-commissioned officers was very high. But the question of re-enlistment did not arise during the last war. The proposal put forward by the Soviet Delegate

had many advantages, but would be extremely difficult to put into practice.

Captain MOUTON (Netherlands) remarked that in his country's army there were very few regular non-commissioned officers. If supervisory work were restricted to that category of prisoners only, it was to be feared that there would not be enough of them to carry it out.

Mr. LOKER (Israel) was of the same opinion.

Mr. FILIPPOV (Union of Soviet Socialist Republics) pointed out that there was a wide difference between non-regular and regular non-commissioned officers. The regulars were regarded as lower ranking officers, and it would be wrong to place them on an equal footing with other non-commissioned officers.

As there were no further requests to speak, the CHAIRMAN put Article 41 to the vote, paragraph by paragraph.

The first paragraph was adopted unanimously.

The Soviet amendment to the second paragraph was rejected by 14 votes to 9, with 8 abstentions.

Mr. GARDNER (United Kingdom) suggested a drafting change in the English text. He thought that the word "occupation" in the second sentence of the paragraph should be replaced by "work" which corresponded to the French word "travail".

Mr. Gardner's proposal was adopted.

The second paragraph was adopted by 24 votes to NIL, with 7 abstentions.

The Delegation of the Union of Soviet Socialist Republics reserved the right to move their amendment again a later date.

The third paragraph was adopted unanimously.

Article 41, as submitted, but with the word "work" substituted for "occupation" in the second paragraph of the English version, was adopted by 28 votes with no dissentient votes.

#### Article 44

The text adopted by Drafting Committee No. 1 was the same as that of Stockholm, with the exception of the first sentence of the second paragraph which now read as follows:

"Prisoners of war must be allowed, in the middle of the day's work, the same rests to which workers of the Detaining Power engaged

in the same calling are entitled, but not less than one hour's rest; they shall be allowed a rest of twenty-four consecutive hours every week, preferably on Sunday."

Mr. LOKER (Israel) reminded the meeting of the amendment submitted by his Delegation proposing that the words "or the day of rest observed in their country of origin" be inserted in the second paragraph immediately after the word "Sunday". The Drafting Committee had considered the proposed provision impracticable. He thought that their decision was regrettable one, for his proposal, which made it possible to institute a day of rest other than Sunday for prisoners who were not Christians, was in harmony with the general principles of the Convention.

Captain MOUTON (Netherlands) and Colonel NORDLUND (Finland) supported the amendment submitted by the Delegation of Israel.

Msgr. COMTE (Holy See) also approved the proposal. The issue involved was a matter of liberty of conscience.

Major ARMSTRONG (Canada) pointed out that the Article under consideration dealt with days of rest, and not with the day devoted to religious worship.

Mr. GARDNER (United Kingdom) agreed that the Israeli amendment contained no reference to religious worship. The Drafting Committee had considered that if the days of rest observed in the various countries of origin had to be taken into account, it might lead to controversy and discussion, and create confusion. The day of rest must be the same for all prisoners of war. The wording of the 1929 Convention, which Article 44 reproduced, gave rise to no difficulties in its application to the armed forces of the British Commonwealth, among whom there were men of all religions and all nationalities.

Mr. BAUDOY (France) remarked that in time of war it was impossible for a camp commandant to take into account all the religious requirements of each prisoner. He knew of one country, Turkey, which had introduced a law changing the day of rest from Friday to Sunday for practical reasons. That change had been rapidly accepted by the population, and had aroused no opposition among those of the Moslem faith who were used to devoting Friday to religious worship.

The French Delegation would have no objection to an addition such as that proposed by the Delegation of Israel, provided it did not result in all work becoming impossible.

Put to the vote, the Israeli amendment was adopted by 11 votes to 8, with 8 abstentions.

Mr. AGATHOCLES (Greece) reminded the Committee that his Government had submitted in its Memorandum a proposal concerning the first paragraph. The proposal was to lay down a maximum working day based on generally accepted standards, by adding the following sentence at the end of the first paragraph:

"In any event working hours shall not exceed eight, or in the case of agricultural labour, ten hours."

Major ARMSTRONG (Canada) pointed out that the Greek proposal had not been adopted by the Drafting Committee.

The Greek proposal was put to the vote, and rejected by 9 votes to 4, with 10 abstentions.

The first paragraph of Article 44, which was the same as the first paragraph of the Stockholm text, was adopted unanimously.

The second paragraph, as modified by the Drafting Committee, and with the addition at the end of the first sentence of the words "or the day of rest observed in their country of origin" after the word "Sunday", was adopted by 24 votes to NIL.

The third paragraph, which reproduced the third paragraph of the Stockholm text, was adopted unanimously.

Article 44 as a whole, was adopted unanimously.

#### Article 45

Article 45 as proposed by Drafting Committee No. 1 reproduced the Stockholm text, with the following modifications: In the first paragraph the words "working pay" had been substituted for the word "wages"; "Article 51" now read "Article 52".

Article 45 was adopted unanimously.

#### Article 47

The following text had been adopted by Drafting Committee No. 1:

"The organization and administration of labour detachments shall be similar to those of prisoner of war camps.

"Every labour detachment shall remain under the control of and administratively part of a prisoner of war camp. The military authorities

and the commander of the said camp shall be responsible, under the direction of their government, for the observance of the provisions of the present Convention in labour detachments.

"The camp commander shall keep an up-to-date record of the labour detachments dependent on his camp, and shall communicate it to the delegates of the Protecting Power, of the International Committee of the Red Cross, or of other agencies giving relief to prisoners of war, who may visit the camp."

Article 47 was adopted unanimously.

#### Article 48

The text proposed by Drafting Committee No. 1 read as follows:

"The treatment of prisoners of war working for the account of private persons, even if the latter are responsible for their safe-keeping, shall not be inferior to that which is provided for by the present Convention. The Detaining Power, the military authorities and the commander of

the camp to which such prisoners belong shall be entirely responsible for the maintenance, care, treatment and payment of the working pay of prisoners of war working for private individuals.

"Such prisoners of war shall have the right to remain in communication with the prisoner's representatives of the the camps on which they depend."

Article 48, as proposed by the Drafting Committee, was adopted unanimously.

#### Article 12

The CHAIRMAN proposed to defer the consideration of Article 12 until a later meeting as some of the delegations which had taken part in the work of Drafting Committee No. 1 wished to introduce further modifications to the Article before adopting it.

The Chairman's proposal was adopted.

*The meeting rose at 6 p.m.*

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## TWENTY-SEVENTH MEETING

*Thursday 7 July 1949, 10 a.m.*

*Chairman:* Mr. Maurice BOURQUIN (Belgium)

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#### Consideration of Articles adopted by Drafting Committee No. 2

The CHAIRMAN drew attention to the Report of Drafting Committee No. 2 reproduced below. He thanked all the members of Drafting Committee No. 2, and in particular General Parker (United States of America), Chairman, and Mr. Moll (Venezuela), Rapporteur, for the excellent work they had done and for the speed with which they had done it.

#### *Report of Drafting Committee No. 2*

In accordance with the terms of reference received from Committee II, Drafting Committee No. 2 dealt with the drafting of the following Articles: 58, 59, 61, 62, 63, 64, 65, 66,

67, 68, 69, 70, 71, 81, 100, 101, 101A, 102, 103, 104, 107, 110, 111, 112, 113, 114, 116, 122, Annexes, I, II and III.

#### *Article 58*

The Committee only made two alterations to Article 58. They were concerned with points of drafting and only affected the English text. As the amendment submitted by the Delegation of China (*see Summary Record of the Twelfth Meeting*) raised a question of principle, the Committee decided to refer it to Committee II.

#### *Article 59*

No alterations were made to Article 59. As the amendment submitted by the United Kingdom Delegation (*see Summary Record of*

*the Twelfth Meeting*) raised a question of principle, the Committee decided to refer it to Committee II. Hence no decision was taken with regard to the form of the capture card (Annex IV, II, of the Convention).

#### *Article 61*

The Committee supplemented the second paragraph of the Stockholm text, (which has become the third paragraph of the text submitted to Committee II) by a provision laying down that relief shipments could if necessary be limited in order to avoid placing a strain on transport or communications, or for reasons of public order. It was also considered expedient to specify, in the last paragraph, that the special agreements concluded between the Powers concerned should in no case delay the delivery of relief shipments to prisoners of war.

#### *Article 62*

The Committee adopted Article 62, as worded in the Stockholm text, with one drafting alteration.

#### *Article 63*

The Committee decided to delete Article 63, the main provisions of which have been included in Article 61.

#### *Article 64*

The Committee redrafted the third paragraph of Article 64; the new draft does not contain any reference to shipments sent by rail which, in the Stockholm text are the only ones to benefit by free transport on the territory of the other Power party to the Convention. The Committee decided to insert the following words at the beginning of the fourth paragraph: "Failing special agreement between the Parties concerned, ...".

At the meeting at which this Article was considered, a Representative of the World Postal Union expressed his views.

#### *Article 65*

The Committee inserted a new third paragraph, which laid down that belligerents would be at liberty to organize other means of transport than those specified in the first paragraph of the Article. The Committee furthermore decided to insert the following words at the beginning of the fourth paragraph: "Failing special agreements, ...".

#### *Article 66*

The Committee only made one alteration to the second paragraph, substituting, in the last sentence of this paragraph, "individual or collective consignments" for the words "light reading matter or educational works."

#### *Article 67*

The Drafting Committee decided to delete the words "in their camp" in the second paragraph of the Article. It was considered preferable to give prisoners of war the choice of consulting a lawyer either in the camp or outside it.

#### *Article 68*

The Stockholm text was adopted without alteration.

#### *Article 69*

The Committee introduced into the first paragraph of the Article the principle of election by secret ballot. The Committee also decided to add two new paragraphs to the Article, one of which, the third, provides that officers shall be placed in labour camps for privates and non-commissioned officers, while the other, the fifth, lays down that spokesmen must always be of the same nationality, speak the same language, and be familiar with the customs of the prisoners of war they represent.

#### *Article 70*

The Committee deleted the reference, at the end of the second paragraph, to the Articles of the Convention which deal with the special duties of spokesmen. A new paragraph was added, which provides that spokesmen shall not be held responsible for offences committed by prisoners of war.

#### *Article 71*

The Committee only made a few minor alterations, which were mainly drafting points.

#### *Article 81*

Article 81 was not altered in any way by the Committee. The latter decided to refer the consideration of the proposal submitted in the Memorandum by the Greek Government to Committee II, since the proposal in question depends on the decision taken by that Committee on Article 3 of the Convention.

*Article 100*

The Committee adopted Article 100 of the Stockholm text.

*Article 101*

Article 101 was adopted in the form submitted to Committee II by the Medical Experts Committee (see *Summary Record of the Seventeenth Meeting*).

*Article 101A*

The Committee considered that it was necessary to insert a new Article between Articles 101 and 102, in order to provide for the possibility of agreements between the Detaining Power, the Power on which the prisoners of war depend, and a neutral Power, permitting the internment of prisoners of war on neutral territory. This decision, which arose out of a proposal by the Canadian Delegation, aims at ensuring a reasonable standard of living for all prisoners of war, in the event of the Detaining Power being unable, for any reason, to comply with the minimum standards regarding the treatment of prisoners of war laid down in the Convention.

*Article 102*

The Committee adopted Article 102 of the Stockholm text.

*Article 103*

No alterations were made to this Article.

*Article 104*

The Committee considered that all accidents, irrespective of their nature, should be covered and therefore decided to delete the words "at work".

*Article 107*

In accordance with the Medical Experts Committee's recommendation to Committee II, the Committee decided to delete the word "active", since the term "military service" includes all forms of service (active, administrative, auxiliary, etc.), or, in other words, any activity calculated to contribute directly to the belligerent's war effort.

*Article 110*

The Committee made several alterations to this Article, among which the three following new provisions are of particular interest: death may be notified to the Prisoners of War Information Bureau, not only by the issue of certi-

ificates, as originally provided, but also in the form of lists, duly certified by a responsible officer. Moreover, burial or cremation must be preceded by a medical examination of the body. Lastly, the Committee decided to insert in Article 110 a new paragraph concerning the establishment of a Graves Registration Service by the Detaining Power.

*Article 111*

In addition to making a few alterations of minor importance, the Committee decided to say quite definitely, in the second paragraph, that the testimony to be taken from witnesses would include that of prisoners of war. It was also specified that the report to be communicated to the Protecting Power should contain the testimony of the aforesaid prisoners of war.

*Article 112*

The Committee made a considerable number of alterations to Article 112. It was first of all stipulated that the Power concerned should take steps to ensure that the Information Bureau should be provided with proper premises, supplies, and personnel to enable it to function efficiently. The expert Representative of the International Committee of the Red Cross requested that the attention of Committee II should be drawn to the reference, in the first and second paragraphs of Article 112, to the first paragraph of Article 3. It may, depending on what decisions are taken on Article 3, prove desirable also to refer to other paragraphs of that Article. The Committee also added, before the last paragraph, a new paragraph laying down that the Information Bureau would also be responsible for answering all inquiries regarding prisoners of war. Lastly, the Committee decided to complete the last paragraph by specifying that articles which had belonged to prisoners were to be handed over to the Power on which they depended, on the understanding that any articles which had not been handed over to that Power direct were to be returned in accordance with arrangements agreed upon between the belligerents concerned.

*Article 113*

Only the third paragraph of Article 113, dealing with the question of meeting the costs of the Central Agency, was altered.

*Article 114*

The Stockholm text was adopted.

*Article 116*

For this Article the committee adopted the Stockholm text, but decided to delete the fifth paragraph, concerning the authorization which the Detaining Powers could grant to representatives of bodies other than those referred to in the fourth paragraph, to visit prisoners of war whom they might desire to assist; the Committee considered that the provision in question should figure in Article 115.

*Article 122*

The Stockholm text was adopted.

*Annex I*

The Committee adopted, without alteration, the text submitted to Committee II by the Medical Experts Committee (*see Summary Record of the Seventeenth Meeting*).

*Annex II*

The Committee adopted the Stockholm text subject to one alteration in Article II.

*Annex III*

Article 3 of this Annex was altered so as to ensure that spokesmen and their assistants would be authorized to proceed to the place where relief shipments arrive. Article 7 was considerably altered; it now embodies new rules which are designed to ensure a more equitable distribution of consignments of clothing among prisoners. The other Articles remain substantially unaltered.

*Preamble*

As indicated in the Summary Record of the 20th Meeting of Committee II, the Drafting Committee had been instructed to draft the Preamble; and for this purpose the text adopted by Committee I was taken as a basis for discussion. Two amendments were submitted, one by the Delegation of the Union of Soviet Socialist Republics and the other by the Swiss Delegation, the latter reproducing, almost word for word, the text adopted by Committee I. As there were considerable differences of opinion in the Drafting Committee, the Chairman decided, after consulting the Chairman of Committee II, simply to take a vote on the above two amendments. This vote was not intended to result in a final decision and the formal submission of one or other of the two texts to Committee II; its sole purpose was to give that Committee an opportunity of ascertaining the views of the Drafting Committee.

The Rumanian and Soviet Delegations voted in favour of the Soviet amendment, whereas the seven other Delegations voted against it. The Swiss amendment was approved by seven votes to two (those of the Rumanian and Soviet Delegates).

The Soviet Delegate maintained that, in his opinion, no preamble was required. He proposed several times that the Committee should vote on the question of whether there should be a preamble to the Convention or not, but the Chairman refused to take a vote on the above question, since the terms of reference of the Drafting Committee only empowered it to draft a preamble and not to decide the question of substance of whether it should or should not exist. The Chairman reminded the Committee that according to the Summary Record of the 20th Meeting of Committee II, the Chairman of Committee II had proposed, at the said Meeting, that the question of the wording of the preamble should be referred to Drafting Committee No. 2; that proposal had been agreed to by Committee II. As he was unable to accept the Chairman's view, the Soviet Delegate accompanied by the Rumanian Delegate, withdrew from the meeting.

The texts of the two amendments submitted to the Drafting Committee in connection with the preamble were as follows:

Amendment submitted by the Delegation of the Union of Soviet Socialist Republics:

"The respect of the human person and of his dignity is a universal principle which is binding even in the absence of any contractual undertaking and all peoples consider it as a safeguard of civilization.

"This principle demands that the sufferings brought on by war be attenuated; it demands that those who have been placed "hors de combat" as prisoners of war be protected against any injury to their life, be respected and protected, that those who suffer be succoured and tended without any distinction of race, of nationality, religion, political opinions or any other quality.

"Solemnly affirming their will to adhere to this principle, to prosecute and to punish severely the breaches of this principle, the High Contracting Parties have agreed to the following:"

Amendment submitted by the Delegation of Switzerland:

"Respect for the personality and dignity of the human being is binding without contractual undertakings. Religions proclaim its divine

origin and all people consider this principle as one of the foundations of every civilization.

"By virtue of this principle, persons who are not directly engaged in the hostilities and those who have been withdrawn from hostilities, such as sick, wounded and prisoners, shall be respected, protected and cared for, regardless of race, nationality, religion, political opinion or any other circumstances.

"Solemnly proclaiming their intention to respect the personality and dignity of the human being, the High Contracting Parties have agreed as follows:"

The CHAIRMAN asked the Rapporteur if he had any comments to make before the meeting proceeded to vote, Article by Article, on the texts proposed by the Drafting Committee.

The Committee proceeded to discuss the Articles proposed by the Drafting Committee.

#### Article 58

Drafting Committee No. 2 had maintained the Stockholm text.

Mr. MOLL (Venezuela), Rapporteur, supplementing the comments contained in his Report, referred to the three amendments which had been tabled in connection with Article 58:

The first, which had been submitted by the United Kingdom Delegation (*see Summary Record of the Twelfth Meeting*), proposed drafting changes in the English version. It had been adopted without objection;

The second, submitted by the Greek Delegation (*see Annex No. 132*), had been rejected, the Drafting Committee considering that the proposal was already covered by Article 117.

The third, submitted by the Delegation of China (*see Summary Record of the Twelfth Meeting*), suggested the introduction of a new Article 58A. The Drafting Committee decided to refer the proposal in question to the Chairman of Committee II in order to have it considered in a plenary meeting or by the Special Committee.

Mr. AGATHOCLES (Greece) considered that his Delegation's proposal ought to be examined, and put to the vote.

The CHAIRMAN agreed to take a vote on the Greek amendment.

The Greek amendment was rejected by 15 votes to 2, with 3 abstentions.

As no delegate asked for a formal vote on Article 58 as a whole, the Article was adopted unanimously.

Mr. MOLL (Venezuela), Rapporteur, drew the attention of the Chairman to the Chinese amendment, which had not been put to the vote.

The CHAIRMAN replied that the Chinese amendment proposed a new Article 58A. The Chinese Delegation was not present at the meeting, and it was the custom for an amendment to be supported by the delegation tabling it. Where that was not done, the amendment was either withdrawn or abandoned. However, as the matter had been raised by the Rapporteur of the Drafting Committee in his verbal remarks concerning Article 58, a vote could be taken on the Chinese amendment.

The amendment submitted by the Chinese Delegation was rejected by 15 votes to NIL, with 3 abstentions.

#### Article 59

Mr. MOLL (Venezuela) Rapporteur, said that Article 59 itself had not been altered. The amendment submitted by the United Kingdom Delegation, proposing that the words "Power in whose service at the time of capture" should be substituted for the word "Nationality", referred to the capture card mentioned in the Article (*see Summary Record of the Twelfth Meeting*). The Drafting Committee felt that that very important matter, should be decided by Committee II.

Mr. GARDNER (United Kingdom) proposed for the sake of uniformity to adopt in his amendment the wording already agreed on by Committee II, namely "Power on which the prisoner depends" instead of "Power in whose service at the time of capture". He had two objections to the word "Nationality" on the capture card. They were as follows: (a) If another war like the last one occurred, many people would be anxious to conceal their nationality from the capturing Power. (b) Nationality was no indication of the Power responsible for persons captured.

Mr. BURDEKIN (New Zealand) considered that there would be no point in mentioning nationality in the case of a civil war; if only for that reason the United Kingdom amendment should, he thought, be supported.

General DEVIJVER (Belgium) suggested leaving it to the prisoner of war to decide whether he wished to declare his nationality or the Power

on which he depended. He proposed inserting the words "Nationality or Power on which the prisoner depends".

Mr. FILIPPOV (Union of Soviet Socialist Republics) thought it would be wiser to retain the word "Nationality", in order to facilitate the repatriation of prisoners to their country of origin.

Mr. WILHELM (International Committee of the Red Cross) said that the Central Prisoners of War Agency had based its filing system on nationality. He recognized that nationality was a useful indication, but realized that there was some risk for the prisoner of war in declaring his nationality, particularly if his country was occupied and he was serving with an allied army. The replacement of the word "Nationality" by "Power on which the prisoner depends" would not impede the work of the Agency.

The proposal of the Belgian Delegate should, he thought, be considered; but the essential thing was that there should be no confusion in the mind of the prisoner of war.

Mr. GARDNER (United Kingdom) suggested, as a solution, putting the two following rubrics on the capture card:

1. Nationality (optional)
2. Power on which he depends."

Mr. BAUDOY (France) thought that there was an element of risk, if the choice was left to the prisoner of war. If he left his nationality blank, he would be suspected of wanting to hide it.

After a further exchange of views, Mr. GARDNER (United Kingdom) said that the remarks of the French Delegate had convinced him that it would be dangerous to have the two rubrics in question on the capture card, and he therefore wished to revert to his original amendment.

The United Kingdom Delegation's amendment to replace the word "Nationality" by the words "Power on which the prisoner depends" was adopted by 20 votes to 6, with 1 abstention.

Article 59 was adopted unanimously.

#### Article 61

The text proposed by Drafting Committee No. 2 read as follows:

"Prisoners of war shall be allowed to receive by post or any other means individual parcels or collective shipments containing, in particular,

foodstuffs, clothing, medicaments and articles of a religious, educational and recreational character, which may meet their needs, including books, devotional articles, scientific equipment, examination papers, musical instruments, sports outfits and material allowing prisoners of war to pursue their studies or their artistic activities.

"Such shipments shall in no way free the Detaining Power from the obligations imposed upon it by virtue of the present Convention.

"The only limits which may be placed on these shipments shall be those proposed by the Protecting Power in the interest of the prisoners themselves, or, in respect of their own shipments only, on account of the exceptional strain on transport or communication system, by the International Committee of the Red Cross or any other body giving assistance to the prisoners.

"The conditions for the sending of individual parcels and collective relief shall, if necessary, be the subject of special agreements between the Powers concerned, which may in no case delay the receipt by the prisoners of relief supplies. Books may not be included in parcels of clothing and foodstuffs. Medical supplies shall, as a rule, be sent in collective parcels."

Mr. MOLL (Venezuela), Rapporteur, explained that Article 61 in its present form was the result of amalgamating Articles 61 and 63 of the Stockholm text. The changes made had been based on an amendment submitted by the United Kingdom Delegation (*see Annex No. 135*) which had aimed at grouping all the provisions applicable to collective and individual relief shipments in a single Article.

Put to the vote, Article 61 was adopted unanimously.

#### Article 62

The text proposed by Drafting Committee No. 2 reproduced the Stockholm text, with the following alteration: at the end of the second paragraph, the word "prisoners" had been substituted for the word "recipients".

Mr. MOLL (Venezuela), Rapporteur, pointed out that the United Kingdom amendment which he had just mentioned in connection with Article 61, included a proposal to delete Article 62.

The Drafting Committee had rejected that suggestion and adopted Article 62 in its original wording; it dealt especially with collective relief.

Put to the vote, Article 62 was adopted unanimously.

**Article 63**

Article 63 had been deleted.

**Article 64**

The text proposed by Drafting Committee No. 2 read as follows:

"All shipments of relief for prisoners of war shall be exempt from import, customs and other dues.

"Correspondence, relief shipments and authorized remittances of money addressed to prisoners of war or dispatched by them through the post office, either direct or through the Information Bureaux provided for in Article 112 and the Central Prisoners of War Agency provided for in Article 113, shall be exempt from any postal dues, both in the countries of origin and destination, and in intermediate countries.

"The cost of transporting relief shipments intended for prisoners of war and which, by reason of their weight or any other cause, cannot be sent through the post office, shall be borne by the Detaining Power in all the territories under its Control. The other Powers parties to the Convention shall bear the cost of transport in their respective territories.

"Failing special agreement between the parties concerned, the costs incident to the transport of such shipments and which are not covered by the above exemption, shall be charged to the senders.

"The High Contracting Parties shall endeavour to reduce, so far as possible, the charges for telegrams sent by prisoners of war, or addressed to them."

Mr. MOLL (Venezuela), Rapporteur, explained that, in all, five amendments to Article 64 had been tabled, namely those submitted by the Delegations of Canada, Belgium, the United Kingdom, the United States of America (*see Summary Record of the Twelfth Meeting*) and Australia (*see Annex No. 137*).

The Canadian and Belgian amendments proposed the insertion of a reference to the Universal Postal Convention. They had been rejected by the Drafting Committee, on the ground that the arrangements relating to parcels and remittances of money had not been adhered to by all the States.

Mr. ROULET (Universal Postal Union) regretted that the Drafting Committee had rejected the Belgian amendment. He drew the attention of the Committee to the text adopted by Committee III in the case of the Civilians Convention.

Mr. STROEHLIN (Switzerland) considered that the Article would be made clearer by adopting, in the case of prisoners of war, a wording similar to that adopted by Committee III for Article 100 of the Civilians Convention, which read as follows:

"To that effect, the exemptions provided for in the Universal Postal Convention of 1947 shall be extended to all the categories of internees mentioned in the present Convention".

He felt it would be useful if the Article contained a reference to what was now a world-wide agreement.

General PARKER (United States of America) stated that the matter had been fully discussed in the Drafting Committee, and a majority of its members had felt that a reference to the Universal Postal Convention would do more harm than good, owing to the fact that all countries had not adhered to the special arrangements of the Postal Union. That was also the opinion of the Delegation of the United States of America.

Mr. GARDNER (United Kingdom) said that it was true that some countries were not parties to the agreement concerning parcels, and that if Article 64 was made dependent on the Universal Postal Convention, those countries would not be bound to give free transport to prisoners' parcels. The Article as now worded bound them to give free transport to parcels, and his Delegation therefore supported the remarks of the United States Delegate.

The CHAIRMAN reminded the meeting that a vote could only be taken on the amendments tabled. The Delegations of the United Kingdom and the United States of America approved the text of the Article as it now stood; he wished to know if the other Delegations maintained their amendments.

Major ARMSTRONG (Canada) and General DEVIJVER (Belgium) agreed to withdraw their amendments.

Wing Commander DAVIS (Australia) explained that the first part of his Delegation's amendment aimed at bringing the provisions of the Prisoners of War Convention into line with those adopted for the Civilians Convention. If this was not done Committee III would have to change their wording. However, in view of the arguments put forward, he would agree to withdraw the first part of his amendment. On the other hand, he wished to maintain the second part referring to the third paragraph of Article 64.

The CHAIRMAN asked the meeting to vote on the second part of the Australian amendment.

The Australian amendment was rejected by 2 votes to 1, with 12 abstentions.

A vote was then taken on the text of Article 64 as submitted by the Drafting Committee.

The Article was adopted by 27 votes to NIL, with 2 abstentions.

### Article 65

Mr. MOLL (Venezuela), Rapporteur, said that Drafting Committee No. 2, after considering the amendment proposed by the United Kingdom Delegation (see *Summary Record of the Thirteenth Meeting, and Annex No. 140*) had rejected points 1 and 2 of the amendment in question and had adopted point 3.

The Drafting Committee had retained the first two paragraphs of the Stockholm text, and adopted the following third and fourth paragraphs:

"These provisions are not intended to detract from the right of any belligerent to arrange other means of transport if it should so prefer; nor to preclude the grant of safe conduct, under mutually agreed conditions, to such means of transport.

"Falling special agreements, the costs occasioned by the use of these means of transportation shall be borne proportionally by the belligerents whose nationals are benefited thereby."

Captain MOUTON (Netherlands) again drew attention to the recurrent use of the word "belligerents" in Article 65.

Colonel HODNETT (Ireland) suggested that the text should be improved by omitting the words "of this Section" in the first paragraph.

The CHAIRMAN drew the attention of the Drafting Committee to the remark made by the Netherlands Delegate.

Article 65 was adopted unanimously, the words: "of this Section" being omitted.

### Article 66

Drafting Committee No. 2 had adopted the Stockholm text with a modification in the second paragraph (where the words "individual or collective consignments" had been substituted for "light reading matter or educational works").

Mr. BURDEKIN (New Zealand) remarked that Article 66 did not mention the censorship of books sent to prisoners of war.

Mr. MOLL (Venezuela), Rapporteur, said that the censorship of books was covered by the provision stating that the transmission of consignments should not be delayed "under the pretext of difficulties of censorship" (last sentence of the second paragraph).

Mr. GARDNER (United Kingdom) thought that the second paragraph required clarification. There was no objection to censorship examination of parcels taking place in the camps in the presence of the addressee: but it would create difficulties, which would react against the prisoner, if written and printed matter addressed to him was examined in his presence.

He therefore proposed that the provision should be altered, and the first sentence of the second paragraph amended to read as follows:

"The examination of consignments intended for prisoners of war shall be carried out in conditions such as will not expose to damage the goods contained therein; except in the case of written or printed matter it shall be done..."

Captain MOUTON (Netherlands) seconded the proposal of the United Kingdom Delegate.

The CHAIRMAN agreed that it seemed necessary to clarify the point; but, as a vote could not be taken on a verbal amendment, he proposed postponing the decision to a later meeting. He suggested that either the New Zealand Delegate or the United Kingdom Delegate should in the meantime submit an amendment in writing, the matter having been raised by those Delegations.

### Article 67

Article 67 was adopted unanimously. It reproduced the Stockholm text less the words "in their camp" in the second paragraph, which had been omitted.

### Article 68

Article 68 reproduced the Stockholm text.

Major ARMSTRONG (Canada) drew attention to a slight drafting error in the English text. The word "spokesman" in the fourth paragraph should be replaced by "prisoners' representative". The latter expression should, he thought, be used throughout the Convention, though he was not sure if it had been accepted by Committee II.

The CHAIRMAN confirmed that the expression in question had been accepted by Committee II.

Mr. BURDEKIN (New Zealand) pointed out that the text agreed practically word for word with the text of the corresponding Article (90) in the Draft Civilians Convention; but in the latter there was an addition in the third paragraph, which should, he thought, also be made in the third paragraph of Article 68 of the Prisoners of War Convention; i.e. the words "and without alteration" should be inserted after the word "forthwith" at the end of the first sentence of the third paragraph.

The New Zealand Delegate's proposal was the subject of a discussion in which Mr. GARDNER (United Kingdom), Mr. STROEHLIN (Switzerland), General SKLYAROV (Union of Soviet Socialist Republics) and Mr. SÖDERBLOM (Sweden) took part.

Mr. GARDNER (United Kingdom) thought the addition dangerous, as it might delay the despatch of complaints and requests to the proper quarter.

Article 68, as proposed by the Drafting Committee, was adopted unanimously.

*The meeting closed at 12.50 p.m.*

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## TWENTY-EIGHTH MEETING

*Friday 8 July 1949, 10 a.m.*

*Chairman:* Mr. Maurice BOURQUIN (Belgium)

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### Article 66 (continued)

The amendment submitted by the Delegations of New Zealand, the Netherlands and the United Kingdom proposed the insertion of the words "except in the case of written or printed matter" in the second paragraph, before the words "it shall be done".

Put to the vote, the amendment was accepted by 26 votes to NIL.

Article 66, as amended, was adopted unanimously.

### Article 69

The wording proposed by Drafting Committee No. 2 was as follows:

"In every place where there are prisoners of war, except where officers are present, the said prisoners shall freely elect by secret ballot, every six months, likewise in case of vacancies, spokesmen, entrusted with representing them before the military authorities, the Protecting Powers, the International Committee of the Red Cross

and any other body which may assist them. These spokesmen shall be eligible for re-election.

"In camps for officers and persons of equivalent status or in mixed camps, the senior officer prisoner of the highest rank shall be recognized as the camp spokesman. In camps for officers, he shall be assisted by one or more advisers chosen by the officers; in mixed camps his assistants shall be chosen from amongst the prisoners of war who are not officers and by them.

"In labour camps for prisoners of war who are not officers and non-commissioned officers, officer prisoners of war of the same nationality shall be stationed for the purpose of performing camp administration duties carried out by prisoners of war. Moreover, these officers may be elected as spokesmen according to the first paragraph of this Article. In this case the assistants to the spokesman shall be chosen from the prisoners of war who are not officers and the non-commissioned officers.

"An elected representative must be approved by the Detaining Power before he has the right to function as a representative of the prisoners of war under this Convention. Where the Detaining Power refuses to approve a prisoner of

war elected by his fellow prisoners of war, it must give the reason for such refusal to the Protecting Power.

"In any case the spokesman must be of the same nationality, language and customs as the prisoners of war whom he represents. Thus, the prisoners of war distributed in different sections of a camp, according to their nationality, language or customs, will have, for each section, their own spokesman, in accordance with the provisions of the foregoing paragraphs."

Mr. MOLL (Venezuela), Rapporteur, said that the Drafting Committee had adopted a Greek amendment proposing that spokesmen should be elected by secret ballot. The Drafting Committee had also taken into account amendments submitted by the Delegations of Austria, the United States of America and the United Kingdom (*see Summary Record of the Thirteenth Meeting*).

Mr. BURDEKIN (New Zealand) proposed that in the English text the words "and the non-commissioned officers" at the end of the third paragraph should be omitted, as the expression "prisoners of war who are not officers" covered both non-commissioned officers and other ranks. A similar change was necessary at the beginning of the third paragraph.

Mr. MOLL (Venezuela), Rapporteur, said that the term "non-commissioned officers" had been put in at the express wish of the Delegation of the Union of Soviet Socialist Republics. However, he had since discussed the matter with a member of that Delegation, which saw no objection to simply saying "In labour camps for prisoners of war" (omitting the words "who are not officers and non-commissioned officers") at the beginning of the paragraph, and to using the words "prisoners of war other than officers, or a similar expression at the end of the same paragraph.

The CHAIRMAN said that it was essential to make the English and French texts agree; he proposed the adoption of the words "other than officers" in place of the words "who are not officers and the non-commissioned officers" at the end of the third paragraph. At the beginning of that paragraph the words "who are not officers and non-commissioned officers" should be deleted.

Mr. FENEŞAN (Rumania) drew attention to a slight drafting error which only concerned the French text.

Article 69 was adopted subject to the above modifications.

## Article 70

The following text was proposed by Drafting Committee No. 2:

"Spokesmen shall contribute to the physical, spiritual and intellectual well-being of prisoners of war.

"In case the prisoners decide, in particular, to organize a system of mutual assistance amongst themselves, this organization would be within the competence of the spokesman, in addition to the special duties entrusted to him by other provisions of the present Convention.

"Spokesmen shall not be held responsible, simply by reason of their functions, for any offences committed by prisoners of war."

Mr. MOLL (Venezuela), Rapporteur, said that the Drafting Committee had adopted the amendments submitted by the Delegations of Italy and the United Kingdom during the Thirteenth Meeting.

Article 70 was adopted unanimously.

## Article 71

The text proposed by Drafting Committee No. 2 read as follows:

"Spokesmen shall not be required to perform any other work, if the accomplishment of their duties is rendered more difficult thereby.

"Spokesmen may appoint from amongst the prisoners such assistants as they may require. All material facilities shall be granted them, particularly a certain freedom of movement necessary for the accomplishment of their duties (inspections of labour detachments, receipt of supplies, etc.)

"Spokesmen shall be permitted to visit premises where prisoners of war are detained, and every prisoner of war shall have the right to freely consult his spokesman.

"All facilities shall likewise be accorded to the spokesmen for communication by post and telegraph with the detaining authorities, the Protecting Powers, the International Committee of the Red Cross and their Delegates, the Mixed Medical Commissions and with the bodies which give assistance to prisoners of war. Spokesmen of labour detachments shall enjoy the same facilities of communications with the spokesman of the principal camp. Such communication shall not be limited, nor considered as forming a part of the quota mentioned in Article 60.

Spokesmen who are transferred shall be allowed a reasonable time to acquaint their successors with current affairs.

"In case of dismissal, the reasons therefore shall be communicated to the Protecting Power."

Mr. BURDEKIN (New Zealand) wondered whether the first paragraph should not refer specifically to "Spokesmen other than officers".

General PARKER (United States of America) pointed out that the provision applied to all spokesmen, irrespective of whether they were or were not officers.

Mr. MOLL (Venezuela), Rapporteur, shared the view of the United States Delegate. He thought that in that paragraph, the word "work" had not quite the same meaning as in the provisions relating to the work of prisoners of war. Administrative functions could be meant, for instance, in the case of an officer stationed in a labour camp.

Mr. GARDNER (United Kingdom) considered that the interpretation of the word "work" given by the Rapporteur was not correct. He would like it to be placed on record in the minutes of the meeting that the word "work" had, here, the same meaning as in the provisions dealing with the work of prisoners of war.

On the other hand he agreed with the Rapporteur that the paragraph should not be altered.

Article 71 was adopted without modification.

### Article 81

The CHAIRMAN proposed that the text submitted by Drafting Committee No. 2, which reproduced the Stockholm text, be put to the vote, a reservation being made, however, in respect of the addition proposed by the Greek Delegation which would be considered as soon as the Committee had taken a decision on Article 3.

The Committee agreed to the above proposal.

Article 81 was adopted.

### Article 100

The Article as submitted by Drafting Committee No. 2 reproduced the Stockholm text.

A lengthy discussion took place regarding the obligation which the last paragraph of the Article appeared to impose on the Detaining Power by

forcing it to keep on its territory prisoners, who for personal reasons did not wish to return to their own country. The Delegations of Canada and of the United Kingdom had proposed that the paragraph should be omitted.

Major ARMSTRONG (Canada) said that in the course of the discussions in the Drafting Committee, it had been suggested that the words "provided the prisoner of war gives reasonable cause to stay" should be added to the end of the last paragraph; he would like to know if that suggestion had been considered by the Drafting Committee.

Mr. MOLL (Venezuela), Rapporteur, replied that the proposal had not been adopted in view of the fact that the Detaining Power would not be obliged to accept the reasons put forward.

Mr. GARDNER (United Kingdom) said that he was still opposed to the adoption of the paragraph. He requested that each paragraph of the Article should be voted on separately.

However, after a further exchange of views, he suggested a compromise text based on an idea put forward by the Rapporteur, namely, the addition of the words: "provided that he can be sent at once to a neutral country willing to accept him in accordance with paragraph 2 above"; he would not formally propose that addition, unless it seemed likely to meet the wishes of other delegations.

Mr. BAUDOY (France) called attention to a drafting point in the French text, third paragraph, where it was said that a prisoner of war might not be repatriated "contre son gré" ("against his will"). He would prefer to say: "contre sa volonté".

The CHAIRMAN agreed that the change suggested by the French Delegate was justified. As no one had so far opposed the suggestion put forward by the United Kingdom Delegate, he sensed the possibility of agreement being reached; he therefore proposed postponing the vote on Article 100 until another meeting, so as to enable the United Kingdom Delegate to submit his amendment in writing.

### Article 101 and Annex I

Article 101 (*see Summary Record of the Seventeenth Meeting*), was adopted unanimously.

The text of Annex I, as drafted by the Medical Experts Committee (*see the above Summary Record*), was also adopted.

**Article 101A — Internment**

Mr. MOLL (Venezuela) Rapporteur, reminded the meeting that the Canadian Delegation had submitted an amendment proposing the inclusion of a new Article, dealing with accommodation in a neutral country, in Section I of Part IV of the Draft Convention (*see Summary Record of the Fourteenth Meeting*).

That amendment, which had been modified by the Drafting Committee, now formed Article 101A. It read as follows:

“The Detaining Power, the Power on which the prisoners of war depend, and a Neutral Power which may be acceptable to the two Powers, shall endeavour to reach agreements which will enable prisoners of war to be interned in future in a neutral territory until the close of hostilities.”

Article 101A was adopted unanimously, the words “in future” being omitted as redundant.

**Article 102**

Mr. MOLL (Venezuela), Rapporteur, said that the Drafting Committee had rejected amendments submitted by the Delegations of Canada and the United Kingdom during the Fourteenth Meeting. The wording adopted was a reproduction of the Stockholm text.

Mr. BAGGE (Denmark) pointed out that the second paragraph of Article 102 was closely connected with the amendment to the last paragraph of Article 100 which the United Kingdom Delegation was to submit; he felt, therefore, that a decision in regard to Article 102 should also be postponed to a later meeting.

The CHAIRMAN agreed with the above suggestion.

**Article 103**

Mr. MOLL (Venezuela), Rapporteur, said that the two amendments submitted by the United Kingdom Delegation during the Fourteenth Meeting had been rejected by the Drafting Committee. The text adopted was that of Stockholm.

Mr. GARDNER (United Kingdom) proposed that the words “prisoner medical officer” in the first paragraph, sub-paragraph (1), and in the third paragraph be replaced by the words “physician

or surgeon” which corresponded more closely to the French word “médecin”. It was necessary for the English and French texts to agree.

The above change in the wording was adopted.

Article 103 was then adopted unanimously.

**Article 104**

Mr. MOLL (Venezuela), Rapporteur, said that the Article proposed by the Drafting Committee reproduced the Stockholm text except that the words “at work”, which came after the word “accidents” in the latter text, had been deleted as suggested in an amendment tabled by the Delegation of the United States of America.

Article 104 was adopted unanimously.

**Article 107**

Mr. MOLL (Venezuela), Rapporteur, said that the Drafting Committee had adopted a recommendation by the Medical Experts Committee to the effect that the word “active” in the Stockholm text should be omitted. The proposed wording was that of the Stockholm text with the above modification.

Mr. GARDNER (United Kingdom) objected strongly to the omission of the word “active”. In his opinion, it was not for the medical authorities to decide whether or not a repatriated prisoner should be discharged from the armed forces as soon as he returned home. In some countries repatriated prisoners were frequently employed in pay offices, or on welfare work; and if the word “active” was deleted, complications would arise. He suggested that the Committee should note the view of the medical experts, and reject it.

Mr. BAUDOY (France) and General DILLON (United States of America) supported Mr. Gardner's remarks.

Mr. STROEHLIN (Switzerland) regretted that the matter had not been raised in the Drafting Committee.

Miss BECKETT (United Kingdom) wished it to be placed on record that her Delegation had opposed the deletion of the word “active” at the meeting of the Drafting Committee.

Colonel NORDLUND (Finland) said that the reason why his Delegation had submitted an amendment proposing the omission of the word "active" was that the Article did not seem quite clear as it stood, and might lead to confusion.

Mr. FILIPPOV (Union of Soviet Socialist Republics) was also in favour of deleting the word.

The CHAIRMAN invited the meeting to vote on the proposal to omit the word "active" from the Stockholm text.

The proposal was rejected by 13 votes to 12, with 3 abstentions.

The Stockholm text of Article 107 was therefore adopted without change.

*The meeting rose at 1 p.m.*

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## TWENTY-NINTH MEETING

*Friday 8 July 1949, 3 p.m.*

*Chairman:* Mr. Staffan SÖDERBLOM (Sweden)

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### Article 102

The CHAIRMAN said that at the last meeting the discussion of this Article had been postponed pending the adoption of Article 100. In the meantime the Delegate of the United States of America had thought out a formula for Article 102, which might make it possible for Committee II to take an immediate decision on the Article.

General PARKER (United States of America) said that he had given the matter careful consideration both in his capacity as United States Delegate and as Chairman of Drafting Committee No. 2. In his opinion, if the words "shall be repatriated" in the last paragraph were amended to read "may be repatriated", everyone's wishes would be met. What was generally desired was to ensure the repatriation of seriously wounded or sick, pending the constitution of a Mixed Medical Commission.

The above proposal did not give rise to any objection, and Article 102, thus amended, was adopted unanimously.

### Article 110

The text proposed by the Drafting Committee No. 2 read as follows:

"The wills of prisoners of war shall be drawn up in the form according to the law of the Detaining Power and will have to satisfy the conditions of validity required by the legislation

of their country or origin, which will take steps to inform the Detaining Power of the provisions of the law of succession in force in its territory. At the request of the prisoner of war and in all cases after death the will shall be transmitted without delay to the Protecting Power; a certified copy shall be sent to the Central Agency.

"Death certificates, in the form annexed to the present Convention or lists certified by a responsible officer, of all persons who die as prisoners of war shall be forwarded as rapidly as possible to the Prisoners of War Information Bureau established in accordance with Article 112. The death certificates or certified lists shall show particulars of identity as listed in the third paragraph of Article 15, the date and place of death, the cause of death, the date and place of burial and all particulars necessary to identify the graves.

"The burial or cremation of a prisoner of war shall be preceded by a medical examination of the body with a view to confirming death and enabling a report to be made and, where necessary, establishing identity.

"The Detaining Authorities shall ensure that prisoners of war who have died in captivity, are honourably buried, if possible according to the rites of the religion to which they belonged, that their graves are respected, suitably maintained and marked so as to be found at any time. Wherever possible, deceased prisoners of war who are dependent on the same Power shall be interred in the same place.

"Deceased prisoners of war shall be buried

in individual graves, unless unavoidable circumstances require the use of collective graves. Bodies may be cremated only for imperative reasons of hygiene, on account of the religion of the deceased or his express wish to this effect. In case of cremation, the fact shall be stated and the reasons given in the death certificate of the deceased prisoners of war.

"In order that graves may always be found, all particulars of burials and graves shall be recorded with a Graves Registration Service established by the Detaining Power. Lists of graves and particulars of the prisoners of war interred in cemeteries and elsewhere shall be transmitted to the Power on which such prisoners of war depended. Responsibility for the care of these graves and of records of any subsequent moves of the bodies shall rest on the Power controlling that territory, if a Party to the present Convention. These provisions likewise apply to the ashes which shall be kept by the Graves Registration Service until proper disposition thereof in accordance with the wishes of the home country."

Mr. MOLL (Venezuela), Rapporteur, said that amendments had been submitted by the Delegations of the United Kingdom, the Netherlands and India (*see Summary Record of the Fifteenth Meeting*).

The United Kingdom amendment (*see Annex No. 177*) had, however, been modified during the discussions, and the first point of the new amendment, which recommended the omission of the first paragraph, had been rejected, whereas the second point (modified) had been adopted and included in the second paragraph.

The new wording of Article 110 covered the provisions contained in the Netherlands amendment. The Indian amendment had, however, been rejected by the Drafting Committee.

Mr. GARDNER (United Kingdom) remarked that the term "law of succession" at the end of the first sentence of the first paragraph of the English version had a very limited meaning in the law of English-speaking countries, and certainly did not cover the whole of the provisions regarding wills.

General Parker (United States of America) observed that the text adopted by the Drafting Committee had been worded as follows: "...to inform the Detaining Power of its requirements in this respect".

Mr. MOLL (Venezuela), Rapporteur, confirmed General Parker's statement.

The text would, he said, be restored on this point to its original wording.

Mr. FILIPPOV (Union of Soviet Socialist Republics) pointed out, with reference to the first sentence of the first paragraph, that the wording of the 1929 Convention and that adopted at Stockholm, were simpler and more practicable than that drawn up by the Drafting Committee; camp commandants would have difficulty in applying the new provisions as there might be prisoners who were nationals of countries which were not Parties to the conflict. Camp commandants could not be acquainted with the legislation of all such countries. He suggested reverting to the Stockholm wording of that sentence.

Captain MOUTON (Netherlands) pointed out that the Drafting Committee had ignored the last paragraph of the amendment submitted by his Delegation, which proposed that the following paragraph should be added to Article 110:

"When neutral Powers have admitted prisoners of war to their territories they shall assume towards belligerents the responsibilities stipulated in this Article".

The proposed addition would, however, be necessary, as Article 3 extended the protection of the Convention to prisoners of war in neutral countries.

It would be best if the form in which prisoners' wills were drawn up were always in accordance with the legislation of the country of origin, as it was obviously in that country that they would have to be executed.

Mr. MOLL (Venezuela), Rapporteur, said, with regard to the first point raised by the Netherlands Delegate, that since Article 3 extended the protection of the Convention to prisoners of war in neutral countries, those prisoners would benefit by the provisions of Article 110. Moreover, it was very much easier for a prisoner to make his will if he was interned in a neutral country than if he was held in a prisoner of war camp.

As far as the second point raised by the Netherlands Delegate was concerned, Mr. Moll recalled that the legal experts on the Drafting Committee had urged that, as regards its form, the will should be subject to the general rule of private international law known as "locus regit actum". As regards their content, the provisions of the will must satisfy the conditions required by the legislation of the country of origin.

Mr. MAYATEPEK (Turkey) proposed that the apprehensions expressed by the Delegate of the Union of Soviet Socialist Republics should be met by placing a full stop after the words "their country of origin" in the first paragraph, and by

making the next sentence read as follows: "The Power on which prisoners of war depend shall take steps to inform..."

Mr. GARDNER (United Kingdom) said that the addition proposed by the Netherlands Delegation was unnecessary, as the diplomatic representatives of the Parties to the conflict would be able to undertake the necessary formalities in the case of the death of prisoners of war who had been admitted into neutral countries.

General PARKER (United States of America) entirely agreed with the United Kingdom Delegation's remarks. The United States of America had always followed the above practice.

Mr. BAGGE (Denmark), on the other hand, supported the proposal put forward by the Netherlands Delegation. He suggested the following wording, which was already to be found in the second sentence of the text proposed for Article 112:

"Neutral or non-belligerent Powers who may have received within their territory persons belonging to one of the categories referred to in Article 3, paragraph 1, shall take the same action with respect to such persons".

Captain MOUTON (Netherlands) withdrew his proposal, his objections having been met by the United Kingdom and the United States Delegates' explanations.

As there were no further speakers, the Committee proceeded to vote.

The amendment submitted by the Delegation of the Union of Soviet Socialist Republics proposing that the first sentence of the first paragraph of the text adopted by the Drafting Committee should be deleted and replaced by the first paragraph of the Stockholm Draft, was rejected by 17 votes to 7, with 1 abstention.

The proposal of the Turkish Delegation for a change in the wording of the first paragraph was rejected by 13 votes to 4, with 4 abstentions.

Article 110 was adopted with the following modification: the United States Delegate's observation concerning the first paragraph of the English version was taken into account and the wording "to inform the Detaining Power of its requirements in this respect" was restored.

### Article 111

The text proposed by Drafting Committee No. 2 read as follows:

"Every death or serious injury of a prisoner of war caused by a sentry, another prisoner of war, or any other person, shall be immediately followed by an official inquiry by the Detaining Power.

"A relevant communication shall be sent immediately to the Protecting Power. The testimonies of witnesses shall be taken, especially those of prisoners of war and a report containing such testimonies shall be forwarded to the Protecting Power.

"If the inquiry indicates the guilt of one or more persons, the Detaining Power shall take all measures for the prosecution of the person or persons responsible.

Mr. MOLL (Venezuela), Rapporteur, said that an amendment had been submitted by the Delegation of the United Kingdom.

The first point of that amendment, concerning the first paragraph, had been rejected. The proposal concerning the second paragraph had, however, been taken into consideration, i.e. it had been recognized as necessary that every witness, and especially prisoners of war, should testify at the enquiry, and that a report containing the testimony of the latter should be sent to the Protecting Power.

The Article proposed by the Drafting Committee was adopted.

### Article 112

Drafting Committee No. 2 proposed the following text:

„Upon the outbreak of a conflict and in all cases of occupation, each of the Parties to the conflict shall institute an official Information Bureau for prisoners of war who are in its power. Neutral or non-belligerent Powers who may have received within their territory persons belonging to one of the categories referred to in Article 3, paragraph 1, shall take the same action with respect to such persons. The Power concerned shall ensure that the Prisoners of War Information Bureau is provided with the necessary accommodation, equipment and staff to ensure its efficient working. It shall be at liberty to employ prisoners of war in such a Bureau under the conditions laid down in the Section of the present Convention dealing with work by prisoners of war.

"Within the shortest possible period, each of the Parties to the conflict shall give its Bureau

information referred to in paragraphs 4, 5 and 6 of this Article regarding any enemy person belonging to one of the categories referred to in Article 3, paragraph 1, who has fallen into its power. Neutral or non-belligerent Powers shall take the same action with regard to persons whom they have received under the conditions named in the preceding paragraph.

"The Bureau shall immediately forward such information by the most rapid means to the Powers concerned through the medium of the Protecting Powers, and likewise of the Central Agency provided for in Article 113.

"This information shall make it possible quickly to advise the next of kin concerned. Subject to the provisions of Article 15, the information shall include for each prisoner of war his surname, first name, army or regimental number, rank, place and full date of birth, nationality, first name of the father and maiden name of the mother, name and address of the person to be informed and the address to which correspondence for the prisoner may be sent.

"The information Bureau shall receive from the various departments concerned information respecting transfers, releases, repatriations, escapes, admittances to hospital and deaths, and shall transmit such information in the manner described in paragraph 3 above.

"Likewise, information regarding the state of health of prisoners of war who are seriously ill or seriously wounded shall be supplied regularly, every week if possible.

"All written communications made by the Bureau shall be authenticated by a signature or a seal. The Information bureau shall also be charged with replying to all enquiries sent to it concerning prisoners of war, including those who have died in captivity; it will make any necessary enquiries to obtain the information which is asked for and which is not in its possession.

"The Information Bureau shall furthermore be charged with collecting all personal valuables including sums in currencies other than that of the Detaining Power and documents of importance to the next of kin left by prisoners of war who have been repatriated or released, or who have escaped or died, and shall forward the said valuables to the Powers concerned. Other personal effects of such prisoners of war shall be transmitted under arrangements agreed between the belligerents concerned. Such articles shall be sent by the Bureau in sealed packets which shall be accompanied by statements showing clearly full identity particulars of the person to whom the articles belonged and by a complete list of the contents of the parcel."

Mr. MOLL (Venezuela), Rapporteur, said that the United Kingdom had submitted an amendment to the Article during a meeting of the Drafting Committee. Various points in it had been adopted.

Colonel NORDLUND (Finland) reminded the meeting of a suggestion made in the Memorandum by the Finnish Government that the words "every week if possible" in the sixth paragraph should be omitted. Weekly information was too much to ask.

The CHAIRMAN pointed out an omission in the French wording: the seventh paragraph should be completed by the word "écrites" after "communications". On the other hand, the first sentence of the seventh paragraph of the English version should form a separate paragraph, as in the French text. The reference to Article 3 in the first and second paragraphs should read: "the categories referred to in Article 3" instead of "the categories referred to in Article 3, paragraph 1".

The Committee agreed to these alterations.

Mr. BAGGE (Denmark) reverted to his proposal to add to Article 110 the second sentence of Article 112. Denmark had received prisoners of war whose nationality had been impossible to determine; no diplomatic representatives were therefore in a position to act on their behalf. It would be most useful to have a provision similar to that in Article 112, imposing on the Neutral Power the duty of undertaking the necessary formalities in the cases provided for in Article 110.

The CHAIRMAN reminded the Delegate of Denmark that Article 110 had been adopted. The consent of a majority of two thirds of the Committee would therefore be necessary to reverse the vote.

Mr. BAGGE (Denmark) said that if his remarks appeared in the Minutes his wishes would be met.

The CHAIRMAN put the Finnish proposal (to delete the words "and if possible every week" at the end of the sixth paragraph) to the vote.

The proposal was rejected by 13 votes to 7.

Mr. GARDNER (United Kingdom) pointed out that the fourth paragraph, concerning information forwarded by National Bureaux to the Powers concerned, mentioned particulars which had been deliberately omitted from Article 15 (*see Summary Record of the Twenty-fourth Meeting*). He therefore

proposed to specify that the information in question should include "so far as available" the particulars provided for in that paragraph.

The CHAIRMAN pointed out that the fourth paragraph had been expressly made subject to the provisions of Article 15, and that Mr. Gardner might therefore set his mind at rest.

General PARKER (United States of America) said that he nevertheless agreed with the United Kingdom Delegate. He proposed that the words: "in so far as available to the Information Bureau", be inserted after "include" at the beginning of the second sentence of the fourth paragraph.

The CHAIRMAN agreed that the provision would thereby be made the clearer.

The proposal was adopted by the Committee.

Article 112 was adopted unanimously, with the above mentioned modifications.

### Article 113

Mr. MOLL (Venezuela), Rapporteur, said that for the third paragraph the Drafting Committee had adopted the wording proposed by the International Committee of the Red Cross in their "Remarks and Proposals" (*see Summary Record of the Fifteenth Meeting*). The remainder of the Article had not been altered.

Mr. BAUDOY (France) stated that in his opinion the expression "invitées à" (are requested to) which had been used in the third paragraph was, to say the least, unusual, in an international convention. He would prefer to replace it by "acceptent de" (agree to).

Mr. MOLL (Venezuela), Rapporteur, speaking as Delegate of Venezuela, seconded the French proposal.

Mr. GARDNER (United Kingdom) said his Government could not accept that proposal. The problem of financing the Central Prisoners of War Agency was extremely complex; an unduly rigid provision in regard to it would raise questions which were difficult to solve, such as, for example, the proportional allocation of expenses. Moreover, the system had worked satisfactorily in the past without any special provisions in the Convention. He assumed that, thanks to the wording proposed by the Drafting Committee, the attention of Governments would be drawn to the fact that the work of the Agency must not, in view of its importance, be allowed to cease owing to lack of funds.

Mr. WILHELM (International Committee of the Red Cross) thanked the French Delegate for his proposal and said that the International Committee of the Red Cross would always do its utmost to ensure that the work of the Agency was carried on. The I.C.R.C. considered that the provision dealing with costs, which had been inserted by the International Red Cross Conference at Stockholm, served a useful purpose, but, on the basis of the idea thus introduced into the Article, had proposed a wording which was, he thought, better adapted to requirements; he therefore hoped that the wording in question, which Drafting Committee No. 2 had already adopted, would also be adopted by Committee II, in spite of the fact that it was drafted in a form which was perhaps unusual in a Convention.

Mr. BAUDOY (France) withdrew his proposal.

No further objection being raised, Article 113 was adopted unanimously.

### Article 114

Mr. MOLL (Venezuela), Rapporteur, reminded the meeting that amendments had been tabled by the Delegations of Canada, Belgium and the United Kingdom (*see Summary Record of the Sixteenth Meeting*).

All these amendments had been rejected, as the Stockholm text had been considered satisfactory.

Article 114 was adopted unanimously.

### Article 116

Mr. MOLL (Venezuela), Rapporteur, said that the amendments submitted by the Delegations of Australia and the United Kingdom (*see Summary Record of the Sixteenth Meeting*) had been rejected. The Stockholm text had been maintained, with the exception of the last paragraph which had been omitted.

Captain MOUTON (Netherlands) said that the title of the Article was unsatisfactory.

The CHAIRMAN pointed out that the question of the titles of Articles would be discussed at the conclusion of the proceedings of the Committee; the Netherlands Delegate's observation would be considered then.

Article 116 was adopted unanimously.

**Article 122**

Mr. MOLL (Venezuela), Rapporteur, said that amendments had been submitted by the Delegations of Belgium and Finland (*see Summary Record of the Twentieth Meeting*).

Discussion in the Drafting Committee had been mainly concerned with the question of whether the Convention would "complete" or "replace" Chapter II of the Regulations annexed to the Fourth Hague Convention. It had finally been decided to maintain the Stockholm text.

Article 122 was adopted unanimously.

**Annexes I, II and III**

The CHAIRMAN pointed out that the Annexes had been implicitly adopted by the adoption of the Articles relating to them and to which they referred.

*Annex I*

Drafting Committee No. 2 had adopted the text proposed to Committee II by the Committee of Medical Experts (*see Summary Record of the Seventeenth Meeting*).

*Annex II*

The Drafting Committee had only altered Article 11 which now read as follows:

*Article 11*

"The decisions made by the Mixed Medical Commission in each specific case shall be communicated, during the month following its visit, to the Detaining Power, the Protecting Power and the International Committee of the Red Cross. The Mixed Medical Commission shall also inform each prisoner of war examined of the decision made, and shall issue certificates similar to the models appended to the present Convention to those whose repatriation has been proposed."

Mr. BURDEKIN (New Zealand) said that his Delegation had submitted an amendment to Article 13 of Annex II. The amendment did not involve any alteration of substance, but only certain drafting changes (*see Annex No. 182*).

Mr. MOLL (Venezuela), Rapporteur, said that the amendment in question had been submitted after the Drafting Committee had concluded its work, and that consequently that Committee had not been able to consider it.

The CHAIRMAN, in order to speed up the proceedings, suggested that the New Zealand Delegate should get into touch with the Chairman and Rapporteur of Drafting Committee No. 2, who would then consider the proposed changes and report to the Committee.

The above procedure was agreed to by the Committee.

*Annex III*

The Drafting Committee had only altered the following Articles:

*Article 3*

"To enable the spokesmen or their assistants to verify the quality as well as the quantity of the goods received, and to make out detailed reports thereon for the donors, the said spokesmen or their assistants shall be allowed to go to the points of arrival of relief supplies near their camps.

*Article 7*

"When collective consignments of clothing are available, each prisoner of war shall have the property of at least a complete set of clothes. If a prisoner has more than one set of clothes, the spokesman shall be permitted to withdraw excess articles from those with largest number of sets, or particular articles in excess of one if this is necessary in order to supply prisoners who are less well provided. He will not, however, withdraw second sets of underclothing, socks or footwear, unless this is the only means of providing for prisoners of war with none."

*Article 8*

"The High Contracting Parties and the Detaining Powers in particular shall, as far as in any way possible, and subject to the regulations governing the supply of the population, authorize all purchase of goods made in their territories for the distribution of collective relief to prisoners of war. They shall similarly facilitate the transfer of funds and other financial measures of a technical or administrative nature taken for the purpose of making such purchases.

**Consideration of Articles 12, 28 and 46 as adopted by Drafting Committee No. 1****Article 12**

Major ARMSTRONG (Canada), Rapporteur, drew attention to the part of the Interim Report of Drafting Committee No. 1 (*see Summary Record of*

the *Twenty-fourth Meeting*) dealing with Article 12. It had not been possible to reach agreement on a text for that Article.

Mr. FILIPPOV (Union of Soviet Socialist Republics) said that in order to arrive at a solution his Delegation would accept the wording for the second sentence of the first paragraph, which had been proposed to Drafting Committee No. 1 by the United States and United Kingdom Delegations. His Delegation would, however, reserve the right to revert later to its own amendment.

Captain MOUTON (Netherlands) thought that the passage reading "medical or scientific experiments of any kind which are not justified by the medical, dental or hospital treatment of the prisoners concerned and carried out in their interests" in the third sentence of the first paragraph, was too long and complicated. In a similar Article, the Special Committee of the Joint Committee had adopted the more concise wording "biological experiments". Such experiments were never justified by medical treatment, nor were they ever in the interests of the prisoners. What was meant by "biological experiments" was the use of a human being for laboratory experiments.

Mr. GARDNER (United Kingdom) said that the omission of the above words would make it possible to interpret the new sentence as prohibiting all amputations, which, in fact, constituted physical mutilation. It was essential to make it clear that mutilation was only prohibited in so far as it was contrary to the interests of the prisoner.

Mr. BAGGE (Denmark) agreed with the United Kingdom Delegate.

Captain MOUTON (Netherlands) thought the objection of the United Kingdom Delegate could be met by also deleting the words "physical mutilation" in the third sentence of the first paragraph.

Mr. BAUDOY (France) said that the new wording might prevent a doctor from carrying out experiments in the interests of a prisoner or from trying out a new form of treatment; he drew the delegates' attention to the possible consequences of such a text.

Mr. ZUTTER (Switzerland) thought that the word "biological" introduced a rather subtle distinction, and that its meaning was far from precise; even if the wording of the Netherlands proposal were accepted, he thought that the concluding portion of the paragraph was useful and should be retained.

Colonel NORDLUND (Finland) reminded the Committee that the Memorandum by his Government proposed the omission of the words "to physical mutilation or", in the third paragraph of the Stockholm text. He considered that such operations were very clearly prohibited by the principle, laid down in the first paragraph, that humane treatment must be accorded to prisoners of war. There was a danger that the general force of this principle might be weakened by going into too much detail.

The CHAIRMAN put the different proposals relating to Article 12 to the vote:

The Canadian amendment, the French translation of which had been improved (the words "en leur possession" now read "en son pouvoir"; and the words "par la Puissance détentrice" now read "de la Puissance détentrice"), was adopted by 9 votes to 1, with 10 abstentions.

The compromise text submitted by the United States and the United Kingdom Delegations for the second sentence of the first paragraph of the working text was adopted by 18 votes to NIL.

It was decided, by 22 votes to NIL, that the compromise text, amended in accordance with the Canadian proposal, would form the second sentence of the working text prepared by Drafting Committee No. 1.

The Netherlands proposal, to replace the third sentence of the working text by the words: "In particular no prisoner of war may be subjected to biological experiments", was rejected by 17 votes to 3.

The Finnish proposal to delete the words "to physical mutilation or..." was rejected by 17 votes to 3.

The following version of Article 12 was adopted with no dissentient votes:

"Prisoners of war must at all times be humanely treated. Any act endangering the life or health of a prisoner of war is expressly prohibited and denounced as a serious breach of this Convention. In particular no prisoner of war may be subjected to physical mutilation or to medical or scientific experiments of any kind which are not justified by the medical, dental or hospital treatment of the prisoners concerned and carried out in their interests.

"Likewise, prisoners of war must at all times be protected, particularly against acts of violence and intimidation, against insults and public curiosity.

"Measures of reprisal against prisoners of war are prohibited.

**Article 28**

The Article adopted by Drafting Committee No. 1 read as follows:

"Every camp shall have an adequate infirmary where prisoners of war may have the attention they require, as well as appropriate diet. Isolation wards shall, if necessary, be set aside for cases of contagious or mental disease.

"Prisoners of war suffering from serious disease, or whose condition necessitates special treatment, a surgical operation, or hospital care, must be admitted to any military or civil medical unit where such treatment can be given, even if their repatriation is contemplated in the near future. Special facilities shall be afforded for the care to be given to the disabled, in particular to the blind, and for their rehabilitation, pending repatriation.

"Prisoners of war shall have the attention preferably of medical personnel of the Power on which they depend and, if possible, of their nationality.

"Prisoners of war may not be prevented from presenting themselves to the medical authorities for examination. The detaining authorities shall, upon request, issue to every prisoner having undergone treatment, an official certificate indicating the nature of his illness or injury, and the duration and kind of treatment received. A duplicate of this certificate shall be forwarded to the Central Prisoners of War Agency.

"The costs of treatment, including those of any apparatus necessary for the maintenance of prisoners of war in good health, particularly dentures and other artificial appliances, and spectacles, shall be borne by the Detaining Power."

The CHAIRMAN pointed out that the third paragraph of the Article had been adopted by the Special Committee of Committee II. He suggested that it should be considered together with the other paragraphs.

The Committee agreed to that procedure.

General DEVIJVER (Belgium), speaking as Rapporteur of the Special Committee, pointed out that the new wording of the third paragraph took account of a United Kingdom amendment; but whereas the United Kingdom Delegation wished to make the provision in question into a separate Article (Article 29A), it had been decided that its proper place was in Article 28.

Mr. GARDNER (United Kingdom) reverted to another amendment submitted by his Delegation which proposed the omission of the words "to the disabled, in particular" in the second sentence of the second paragraph. He again urged, as he had already done on many occasions that the blind must be given priority a regards treatment.

General DILLON (United States of America) and Mr. FILIPPOV (Union of Soviet Socialist Republics) expressed their sympathy for the case of blind prisoners of war; they considered, however, that the existing wording guaranteed priority, and that that was the unanimous opinion of the Drafting Committee.

Mr. BAUDOY (France) warmly welcomed the United Kingdom Delegate's suggestion. He himself had been blind and paralysed for many months; he thought that unlike those who were paralysed, the blind lost all hope and should therefore be given very special care.

Put to the vote, the amendment submitted by the United Kingdom Delegation was rejected by 11 votes to 6, with 7 abstentions.

Article 28 was adopted without further comment.

**Article 46**

The Article proposed by Drafting Committee No. 1 read as follows:

"The fitness of prisoners of war for work shall be periodically verified by medical examinations, at least once a month. The examinations should have particular regard to the nature of the work which prisoners of war are required to do.

"If any prisoner of war considers himself incapable of working, he shall be permitted to appear before the medical authorities of his camp. Retained doctors may recommend that the prisoners who, in their opinion, are unfit for work, be exempted therefrom."

Major ARMSTRONG (Canada), Rapporteur, drew the attention of the Committee to the term "Retained doctors", in the second paragraph of the text adopted by Drafting Committee No. 1. A recent decision of Committee II prompted him to propose that this wording be coordinated with that adopted for Article 103, by substituting the words "physicians or surgeons" for "doctors".

The proposal was adopted.

Article 46, as amended above, was adopted.

*The meeting rose at 6.20 p.m.*

## THIRTIETH MEETING

Tuesday 12 July 1949, at 10 a.m.

Chairman: Mr. Maurice BOURQUIN (Belgium)

**Consideration of Article 49 to 57A dealing with the financial resources of prisoners of war**      **Article 50**

General DEVIJVER (Belgium), Rapporteur of the Special Committee, explained that Articles 49 to 57A had been considered by a Committee of Experts appointed by the Special Committee. The latter had then adopted the Articles, merely making a few alterations in matters of detail. Committee II had now to take a decision on those texts. (*For the Summary Records of the Meetings of the Committee of Experts, see further on*).

**Article 49**

The text proposed by the Special Committee read as follows:

“Upon the outbreak of hostilities, and pending an arrangements of this matter with the Protecting Power, the Detaining Power may determine the maximum amount of money in cash or in any similar form, that prisoners may have in their possession. Any amount in excess which was properly in their possession, which has been taken or withheld from them, shall be placed to their account, together with any monies deposited by them, and shall not be converted into any currency without their consent.

If prisoners of war are permitted to purchase services or commodities outside the camp against payment in cash, such payments shall be made by the prisoner himself or the camp administrator and charged to the account of the prisoners concerned. The Detaining Power will establish the necessary rules in this respect.”

Article 49 was adopted with no dissentient votes.

The following text was proposed by the Special Committee:

“In accordance with Article 16, cash taken from prisoners of war at the time of their capture, and which is in the currency of the Detaining Power, shall be placed to their separate accounts, by virtue of the provisions of Article 54 of the present Section.

“The amounts in the currency of the Detaining Power due to the conversion of sums in other currencies that are taken from the prisoners of war at the same time, shall also be credited to their separate accounts.”

Article 50 was adopted with no dissentient votes.

**Article 51**

The following text was proposed by the Special Committee:

“The Detaining Power shall grant all prisoners of war a monthly advance of pay, the amount of which shall be fixed by conversion, into the currency of the said Power, of the following amounts:

Category I: Prisoners ranking below sergeants: eight Swiss gold francs.

Category II: Sergeants and other non-commissioned officers, or prisoners of equivalent rank: twelve Swiss gold francs.

Category III: Warrant officers and commissioned officers below the rank of major, or prisoners of equivalent rank: fifty Swiss gold francs.

Category IV: Majors, lieutenant-colonels, colonels and prisoners of equivalent rank: sixty Swiss gold francs.

Category V: General officers or prisoners of war of equivalent rank: seventy-five Swiss gold francs.

"The Swiss gold francs aforesaid is the franc containing 203 milligrammes of fine gold.

"However, the Parties to the conflict concerned may by special agreement modify the amount of advances of pay due to prisoners of the preceding categories.

"Furthermore, if the amounts indicated in paragraph one above would be unduly high compared with the pay of the Detaining Power's armed forces or would, for any reason, seriously embarrass the Detaining Power, then, pending the conclusion of special agreement with the Power on which the prisoners depend to vary the amounts indicated above, the Detaining Power:

- (a) shall continue to credit the account of the prisoners with the amounts indicated in the first paragraph above;
- (b) may temporarily limit the amount made available from these advances of pay to prisoners of war for their use, to sums which are reasonable but which for Category I shall never be inferior to the amount that the Detaining Power gives to the members of its own armed forces.

"The reasons for any limitations will be given without delay to the Protecting Power."

Mr. GARDNER (United Kingdom) reminded the meeting of the amendment submitted by his Delegation, which proposed the deletion of the word "gold" wherever it occurred in Article 51 or Article 52. His Government was opposed to any reference to the gold standard, which, incidentally, was not accepted by a considerable number of countries.

Put to the vote, the United Kingdom amendment was rejected by 9 votes to 9, with 9 abstentions.

Article 51 as proposed by the Special Committee, was adopted.

#### **Article 51A (new): Supplementary pay**

The following text was proposed by the Special Committee:

"The Detaining Power shall accept sums for distribution as supplementary pay to prisoners

of war which the Power on which the prisoners depend may forward to them, on condition that the sums to be paid shall be the same for each prisoner of the same category and shall be payable to all prisoners of that category depending on that Power, and shall be placed in their separate accounts by virtue of the provisions of Article 54 at the earliest opportunity. Such supplementary pay shall not relieve the Detaining Power of any obligation under this Convention."

Mr. BURDEKIN (New Zealand) said that his Delegation had submitted an amendment to this Article; it had unfortunately been submitted too late to be considered by Committee II; he would accept the Committee's decision on this point.

As there were no further comments, Article 51A was adopted with no dissentient votes.

#### **Article 52**

The following text was proposed by the Special Committee:

"Prisoners of war shall be paid fair working pay directly by the detaining Authorities. The rate shall be fixed by the said authorities, but shall at no time be less than one-fourth of one Swiss gold franc for a full working day. The Detaining Power shall inform prisoners of war, as well as the Power on which they depend through the intermediary of the Protecting Power, of the rate of daily working pay that it has fixed.

"Working pay shall likewise be paid by the detaining Authorities to prisoners of war permanently detailed to duties or to an artisanal occupation in connection with the administration, installation or maintenance of camps, and to the prisoners who are required to carry out spiritual or medical duties in favour of their comrades.

"The working pay of the prisoners' representative, and of his assistants and possible advisers, shall be paid out of the fund maintained by canteen profits. The scale of this working pay shall be fixed by the prisoners' representative and approved by the camp commander. If there is no such fund, the detaining Authorities shall pay these prisoners a fair working pay."

Article 52 was adopted with no dissentient votes.

**Article 53 and Annex V**

The text proposed by the Special Committee for Article 53 read as follows:

"Prisoners of war shall be permitted to receive remittances of money addressed to them individually or collectively.

"Every prisoner of war shall have at his disposal the credit balance of his account, as provided for in the following Article, within the limits fixed by the Detaining Power, which shall make such payments as are requested. Subject to financial or monetary restrictions which the Detaining Power regards as essential, prisoners of war may also have payments made abroad. In this case payments addressed by prisoners of war to dependents shall be given priority.

"In any event, and subject to the consent of the Power on which they depend, prisoners may have payments made in their own country, as follows: the Detaining Power shall send to the aforesaid Power through the Protecting Power, a notification giving all necessary particulars concerning the prisoners of war, the beneficiaries of the payments, and the amount of the sums to be paid, expressed in the Detaining Power's currency. The said notification shall be signed by the prisoners and countersigned by the camp commander. The Detaining Power shall debit the prisoners' account by a corresponding amount; the sums thus debited shall be placed by it to the credit of the Power on which the prisoners depend.

"To apply the foregoing provisions, the Detaining Power may usefully consult the Model Regulations in Annex V of the present Convention."

General SLAVIN (Union of Soviet Socialist Republics) said that at the Twenty-fifth Meeting of the Special Committee on July the 5th, his Delegation had opposed the inclusion in the Article of the words "Subject to financial or monetary restrictions which the Detaining Power regards as essential" which had been inserted at the beginning of the second sentence of the second paragraph. He maintained his objection and asked that a note should be taken of it in the minutes of the present meeting.

There were no other objections to Article 53, which was adopted, together with Annex V to the Convention ("Model Regulations concerning payments sent by prisoners to their own country") which related to Article 53. The text of Annex V read as follows:

*"Annex V*

"Model Regulations concerning payments sent by prisoners to their own country.

1. "The notification referred to in the third paragraph of Article 53 will show:

- (a) number as specified in Article 15, rank, surname and first names of the prisoner of war who is the payer;
- (b) the name and address of the payee in the country of origin;
- (c) the amount to be so paid in the currency of the country in which he is detained.

2. "The notification will be signed by the prisoner of war, or by his witnessed mark if he cannot write, and shall be countersigned by the camp leader in that camp.

3. "The Camp Commandant will add to this notification a certificate that the prisoner of war concerned has a credit balance of not less than the amount registered to be paid.

4. "The notification may be made up in lists, each sheet of such lists being witnessed by the camp leader and certified by the Camp Commandant."

**Article 54**

The text proposed by the Special Committee read as follows:

"The Detaining Power shall hold an account for each prisoner of war, showing at least the following:

1. The amounts due to the prisoner or received by him as advances of pay, working pay or derived from any other source; the sums in the currency of the Detaining Power which were taken from him; the sums taken from him and converted at his request into the currency of the said Power.

2. The payments made to the prisoner in cash, or in any other similar form; the payments made on his behalf and at his request; the sums transferred under Article 53, third paragraph."

Article 54 was adopted with no dissentient votes.

**Article 55**

The Special Committee proposed the following text:

"Every item entered in the account of a prisoner of war shall be countersigned or initialled by him, or by the spokesman acting on his behalf.

"Prisoners of war shall at all times be afforded reasonable facilities for consulting and obtaining copies of their accounts, which may likewise be inspected by the representatives of the Protecting Powers, at the time of visits to the camp.

"When prisoners of war are transferred from one camp to another, their personal accounts shall follow them. In case of transfer from one Detaining Power to another, the monies which are their property and are not in the currency of the Detaining Power shall follow them. They shall be given certificates for any other monies standing to the credit of their account.

"The Parties to the conflict concerned may agree to notify each other at specific intervals through the Protecting Power the amount of accounts of the prisoners of war."

Article 55 was adopted with no dissentient votes.

#### Article 56

The Special Committee proposed the following wording:

"On the termination of captivity by the release of a prisoner of war or on his repatriation, the Detaining Power shall give to him a statement, signed by an authorized officer of that Power, showing the credit balance due to that prisoner at the end of captivity. On the other hand, the Detaining Power shall send through the Protecting Power to the Government upon which the prisoner of war depends, lists showing the particulars of all prisoners of war whose captivity has been terminated by repatriation, release, escape, death or any other means, and showing the amount of their credit balances. Such lists shall be certified on each sheet, by an authorized representative of the Detaining Power.

"Any of the provisions of this article may be varied by mutual agreement between any two Parties to the conflict.

"The Power on which the prisoner of war depends shall be responsible for settlement with that prisoner of war in respect of any credit balance due to him from the Detaining Power on the termination of his captivity."

Article 56 was adopted with no dissentient votes.

#### Article 57

The following text was proposed by the Special Committee:

"Advances of pay, issued to prisoners of war in conformity with Article 51 shall be considered as made on behalf on the Power on which they

depend. Such advances of pay, as well as all payments made by the said Power by virtue of Article 53, third paragraph, and Article 57A shall form the subject of arrangements between the Powers concerned, at the close of hostilities."

Article 57 was adopted with no dissentient votes.

#### Article 57A

The Article proposed by the Special Committee reproduced the substance of the amendment tabled by the United Kingdom Delegation (*see Annex No. 128*). The Article read as follows:

"Any claim by a prisoner of war for compensation in respect of any injury or other disability arising out of work, shall be referred to the Power on which he depends, through the Protecting Power. In accordance with Article 45, the Detaining Power will, in all cases, provide the prisoner of war concerned with a statement showing the nature of the injury or disability, the circumstances in which it arose and particulars of medical or hospital treatment given for it. Such statement shall be signed by a responsible officer of the Detaining Power and the medical particulars shall be certified by a medical officer.

Any claim from a prisoner of war for compensation in respect of personal effects, monies or valuables impounded by the Detaining Power under Article 16 and not forthcoming on his repatriation, or in respect of loss alleged to be due to the fault of the Detaining Power or any of its servants shall likewise be referred to the Power on which he depends. Nevertheless, any such personal effects required for use by the prisoners of war whilst in captivity shall be replaced at the expense of the Detaining Power. The Detaining Power will, in all cases, provide the prisoner of war with a statement, signed by a responsible officer, showing all available information regarding the reasons for which such effects, monies or valuables are not forthcoming. A copy of such statement shall be forwarded to the Power on which he depends through the Central Agency for Prisoners of War provided for in Article 113."

Article 57A was adopted with no dissentient votes.

#### Article 3

General DEVIJVER (Belgium), Rapporteur of the Special Committee, went over the prolonged discussion to which this Article, the keystone of the Convention, had given rise in the Special Committee,

He explained, among other things, that in order to coordinate the Convention with the Hague Regulations of 1907 respecting the Laws and Customs of War on Land, the Special Committee had first of all decided to insert the four conditions with which militias or volunteer corps not forming part of the regular armed forces must comply, immediately after the end of sub-paragraph 1 of the first paragraph of Article 3. In order to avoid any possibility of misunderstanding, it was subsequently decided to subdivide sub-paragraph 1 into two separate sub-paragraphs, a new sub-paragraph 1 relating to members of the armed forces and members of militias or volunteer corps forming part of these armed forces, and a new sub-paragraph 2 relating to members of other militias and other volunteer corps which were required to fulfil the four conditions laid down in the Hague Regulations.

He also explained that, in order to take account of a Netherlands Amendment, the Special Committee had decided to delete sub-paragraph 6 of the first paragraph of Article 3, which dealt with resistance movements, and to incorporate its substance in the new sub-paragraph 2. Resistance movements would thus be placed on the same footing as the volunteer corps which were required to comply with the four conditions laid down in the Hague Regulations of 1907.

Another substantial alteration had been made to Article 3, the Special Committee having decided to delete the last paragraph of the Article, as it appeared in the Stockholm draft, and to substitute a new text based on another Netherlands amendment embodying the substance of the second paragraph of Article 4.

The text proposed by the Special Committee read as follows:

"Prisoners of war, in the sense of the present Convention, are persons belonging to one of the following categories, who have fallen into the power of the enemy:

(1) Members of the armed forces of a Party to the conflict as well as members of militias or volunteer corps forming part of these armed forces;

(2) Members of other militias and members of other volunteer corps, including those of organized resistance movements, belonging to a Party to the conflict and operating in or outside their own territory, even if this territory is occupied, provided that these militias or volunteer corps including these organized resistance movements fulfil the following conditions:

(a) that of being commanded by a person responsible for his subordinates

(b) that of having a fixed distinctive sign recognizable at a distance

(c) that of carrying arms openly

(d) that of conducting their operations in accordance with the laws and customs of war;

(3) Members of regular armed forces who profess allegiance to a Government or an authority not recognized by the Detaining Power;

(4) Persons who accompany the armed forces without actually being members thereof, such as civil members of military aircraft crews, war correspondents, supply contractors, members of labour units or of services responsible for the welfare of the military, provided that they have received authorization from the armed forces which they accompany, who shall provide them for that purpose with an identity card similar to the annexed model;

(5) Members of crews including masters, pilots and apprentices of the merchant marine and the crews of civil aircraft of the Parties to the conflict who do not benefit by more favourable treatment, under any other provisions in international law;

(6) Inhabitants of non-occupied territory who on the approach of the enemy spontaneously take up arms to resist the invading forces, without having had time to form themselves into regular armed units, provided they carry arms openly and respect the laws and customs of war.

"The following shall likewise be treated as prisoners of war under the present Convention:

1. Persons belonging, or having belonged, to the armed forces of the occupied country shall also benefit by the treatment reserved by the present Convention to prisoners of war, if the occupying Power considers it necessary by reason of such allegiance to intern them, even though it has originally liberated them while hostilities were going on outside the territory it occupies, in particular where such persons have made an unsuccessful attempt to rejoin the armed forces to which they belong and which are engaged in combat, or where they fail to comply with a summons made to them with a view to internment.

2. The persons belonging to one of the categories enumerated in the present Article, who have been received by neutral or non-belligerent Powers on their territory and whom these Powers are required to intern under international law, without prejudice to any favourable treatment which these Powers may choose to give and with the exception of Articles 7, 9, 14, first paragraph, 28, fifth paragraph, 49-57, 82, 116 and those Articles concerning the Protecting

Power. In this case, the Parties to a conflict on whom these persons depend shall be allowed to perform towards them the functions of a Protecting Power as provided in the present Convention, without prejudice to the functions which these Parties normally exercise in conformity with diplomatic and consular usage.

„Should any doubt arise whether persons resisting to the enemy belong to any of the categories enumerated above, such persons shall enjoy the protection of the present Convention until such time as their status has been determined by a military tribunal.”

Captain MOUTON (Netherlands) considered that sub-paragraph 3 of the first paragraph of Article 3, as finally adopted by the Special Committee, did not cover all the groups of combatants which might be included in that category; he therefore proposed that the following words should be added to the sub-paragraph in question: "... and members of volunteer corps under the conditions mentioned above if they act in liaison with the armed forces of one of the Parties to the conflict;”.

Mr. COHN (Denmark) suggested that organized resistance movements should also be mentioned in sub-paragraph 3.

The CHAIRMAN reminded the Committee that an amendment could only be considered on second reading if it had been regularly submitted. Only part of the addition which Captain Mouton wished to make was based on an amendment which had been regularly submitted; Committee II would therefore only be required to take a decision on that part of the proposed addition, as, under the Rules of Procedure, the other part of it could not be considered.

Captain MOUTON (Netherlands) said that in those circumstances he preferred to withdraw his proposal and submit an amendment to Article 3 when it came up for discussion in the plenary meeting.

Mr. MARESCA (Italy) wished to insert the words "and agreements" at the end of the last sentence of sub-paragraph 2 of the second paragraph. He pointed out that protection was accorded to the persons specified in that sub-paragraph not only in accordance with diplomatic and consular usage, but also, and more particularly, by virtue of consular agreements. Consequently, any restrictive interpretation would have the effect of excluding any functions which the Power concerned was entitled to exercise by virtue of such agreements, and would thus limit the application of the provision in question to activity based on usage.

Mr. WILHELM (International Committee of the Red Cross) then pointed out the similarity which existed between the new final paragraph of Article 3 and the second paragraph of Article 4. The latter was, however, more comprehensive, as it covered all the persons mentioned under Article 3, even those who were not fighting.

A discussion arose on the subject of the above two provisions, in the course of which General SLAVIN (Union of Soviet Socialist Republics) pointed out that the new last paragraph of Article 3 was covered by the second paragraph of Article 4, which had already been adopted during the Fourth Meeting. His Delegation had, in the Special Committee, already opposed the Netherlands amendment upon which the new final paragraph of Article 3 was based. He proposed that the Stockholm text should be restored.

The CHAIRMAN agreed that the new final paragraph of Article 3 was intended to replace the second paragraph of Article 4 and also that Article 4 had, in fact, already been adopted. To adopt the new final paragraph of Article 3 would therefore involve reversing a decision which had already been taken. That could only be done, according to the Rules of Procedure, by a two-thirds majority vote.

Colonel HODNETT (Ireland) feared that the wording adopted for the last sentence of sub-paragraph 2 of the second paragraph of Article 3 might allow a State, with which a neutral or non-belligerent Power had not entered into diplomatic or consular relations, to force that Power to accept the presence of a diplomatic mission in time of war.

Mr. GARDNER (United Kingdom) suggested a wording which would, he hoped, meet the objection of the Delegate of Ireland.

The CHAIRMAN reminded the Committee that an amendment could only be considered if it had been regularly submitted. He would now take a vote on Article 3.

The first point to decide was whether to adopt the new final paragraph of Article 3, which was intended to replace the second paragraph of Article 4. To do so would involve reconsidering Article 4, which had already been adopted, and, as he had pointed out, that would require the assent of two-thirds of the delegations present.

A vote was then taken, and only 10 of the 35 delegations present voted in favour of the proposal. As the latter had failed to obtain the necessary two-thirds majority, the last final paragraph of Article 3 was omitted.

The Committee then proceeded to vote on the first and second paragraphs; the first was adopted

by 31 votes to NIL, with 1 abstention; and the second by 33 votes to NIL, with 1 abstention.

Finally, the Committee voted on Article 3 as a whole (i. e. on the first two paragraphs, the third paragraph having been deleted). The Article was adopted by 28 votes to NIL, with 1 abstention.

### Article 81

The CHAIRMAN reminded the meeting that an amendment to Article 81 had been submitted by the Greek Delegation. The Committee had, however, decided during the Twenty-eighth Meeting not to consider that amendment until after the adoption of Article 3. The amendment in question proposed that the words: "or the organizations mentioned in Article 3, sixth paragraph" should be added at the end of sub-paragraph 1 of the first paragraph of the Stockholm text.

Put to the vote, the Greek amendment was rejected by 11 votes, with 10 abstentions.

Article 81 was accordingly adopted in the form in which it had been submitted by the Drafting Committee.

### Article 75

General DEVIJVER (Belgium), Rapporteur of the Special Committee, gave a short summary of the discussions which had taken place in that Committee on the subject of this new Article (Article 74 of the Stockholm text). He mentioned in particular that it had proved impossible to obtain unanimity on an agreed text, since the Soviet Delegation had insisted that a reference to the Nuremberg trial should be included in the Article while the other delegations would not agree to the inclusion of such a reference.

The United Kingdom Delegate had expressed the opinion that according to the Stockholm text prisoners of war convicted of war crimes against humanity were not entitled to all the advantages of the Convention, but only to some of them.

As it had proved impossible to agree on a compromise text, the Rapporteur proposed that Committee II should adopt the Stockholm text without alteration.

Mr. FILIPPOV (Union of Soviet Socialist Republics) drew the Committee's attention to the amendment submitted by his Delegation (see *Summary Record of the Eighteenth Meeting*). Its object was not to replace the former Article 74, but to supplement it. The text of the former Article 74 covered all crimes which prisoners of

war might have committed, including war crimes; that was not satisfactory. A special provision and a special regime should be provided for war criminals, who, by committing war crimes, had forfeited any right to be treated as prisoners of war; a reference to the principles of the Nuremberg trial was therefore perfectly legitimate.

He strongly recommended the Committee to adopt the Soviet amendment.

Mr. GARDNER (United Kingdom) requested that his reasons for opposing the Soviet amendment should be noted in the minutes of the meeting.

He pointed out that great efforts had been made by everyone in the Special Committee to arrive at an agreed text acceptable to all its members, but the divergence between the different points of view was so great that no agreement could be reached.

Reverting to statements which he had previously made in the Special Committee, he confirmed that in his opinion a prisoner of war convicted of war crimes or crimes against humanity should not be entitled to all the benefits of the Convention, but only to the following:

- (a) Suspension of the execution of death sentences for a period of at least six months, in order to allow time for making the notifications required by the Convention and for the Government of the Power on which the prisoner depends to make such representations as it thinks justified;
- (b) The right of appeal;
- (c) The guarantee of a minimum standard of treatment in the case of a sentence involving imprisonment (new Article 98), including the *proviso* that the Protecting Power shall have right of access to a convicted prisoner and that the prisoner shall have access to the Protecting Power;
- (d) The right to be repatriated after serving his sentence.

The above essential conditions of humanitarian treatment constituted a minimum below which it was not possible to go. The provision under point (c) above was probably the most important.

The amendment submitted by the Delegation of the Union of Soviet Socialist Republics, however, although it might appear at first sight to be reasonable, provided in reality none of the above safeguards. The Soviet idea that war criminals should only enjoy the privileges granted by the Detaining Power to other persons serving a sentence was a dangerous one, for in many countries the standard of treatment of convicted criminals did not comply with the minimum which ought to be adopted in all civilized countries.

He therefore urged the Committee to vote in favour of the Stockholm text.

Mr. BAUDOY (France) said that he had made every effort in the Special Committee to secure agreement on a compromise text, but without success. He would vote for the Stockholm text as interpreted by the United Kingdom Delegate.

General SLAVIN (Union of Soviet Socialist Republics) repeated the arguments already put forward by Mr. Filippov. Article 74 of the Stockholm text could not be applied to war criminals; nor should the latter benefit by the safeguards mentioned by the United Kingdom Delegate.

The Nuremberg principles had been accepted by the United States of America, France, the United Kingdom and the Union of Soviet Socialist Republics, not to mention the many States which had accepted them subsequently. They could therefore be said to have an almost universal force.

He proposed, in short, that the new Article 75 (former 74) should be interpreted as applicable to ordinary criminals, and the Soviet amendment as application exclusively to war criminals.

General DILON (United States of America) said he entirely agreed with the arguments put forward by the United Kingdom Delegate. Moreover,

the Soviet amendment would tend to introduce an element of uncertainty into the Convention, since the conditions of treatment of convicted criminals in many countries were unknown, whereas the safeguards proposed by the United Kingdom Delegate were definite.

He added that the idea of treating anyone inhumanely because he had been convicted of inhuman conduct was inadmissible. To adopt the Soviet amendment would be tantamount, in his opinion, to reverting to the barbarous law of retaliation.

The CHAIRMAN took a vote on the Soviet amendment, which was rejected by 22 votes to 8, with 1 abstention.

General SLAVIN (Union of Soviet Socialist Republics) requested that his proposal should be inserted in the minutes of the meeting as a minority proposal.

The CHAIRMAN then took a vote on the new Article 75, as adopted by the Special Committee (i.e. the Stockholm text of Article 74).

The new Article 75 was adopted by 24 votes to 6, with no abstentions.

*The meeting rose at 12.50 p.m.*

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### THIRTY-FIRST MEETING

*Tuesday 12 July 1949, 3 p.m.*

*Chairman:* Mr. Maurice BOURQUIN (Belgium)

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#### Communication by the Chairman

The CHAIRMAN said that he had been asked by the Chairman of the Drafting Committee of the Conference to remind Committee II that members of Drafting Committees 1 and 2 were invited to the meetings of the Drafting Committee of the Conference.

#### Article 40

The CHAIRMAN reminded the Committee that Article 40 had already been discussed and adopted

except for some drafting changes in the second paragraph (*see Summary Record of the Twenty-Sixth Meeting*). The Delegation of Venezuela had submitted an amendment proposing the replacement of the words: "mais en aucun cas à plus de vingt-cinq kilos" by "mais en aucun cas le poids autorisé ne dépassera vingt-cinq kilos". (No change in the English text.)

The amendment, put to the vote, was adopted by 17 votes, with 5 abstentions.

Article 40 was then adopted unanimously.

**Article 100**

The CHAIRMAN reminded the Committee that Article 100 had been considered during the Twenty-eighth Meeting, when it had been decided not to take a vote on the Article until a new proposal by the United Kingdom Delegation had been submitted in writing. The United Kingdom Delegation had now tabled an amendment proposing the following addition to the last paragraph:

“provided that he can be sent at once to a neutral country willing to accept him in accordance with the second paragraph above.”

Mr. DAY (United Kingdom) thought that the amendment would meet the objections of those delegations which did not wish a prisoner to be repatriated against his will; and it would also meet the wishes of his Delegation, in that it would not impose a burden on the Detaining Power by making that Power retain an unlimited number of sick and wounded prisoners who, for personal reasons, did not wish to return to their own country.

Mr. MOLL (Venezuela) thought the amendment acceptable; but it might perhaps be preferable to replace the words “at once”, in the addition proposed by the United Kingdom Delegation, by the words “if necessary” (éventuellement).

The CHAIRMAN asked the United Kingdom Delegate if he would accept the suggestion of the Delegate of Venezuela.

Mr. DAY (United Kingdom) wished to make an alternative proposal — namely, to replace the words “at once” by “within a reasonable period”.

Mr. MOLL (Venezuela) felt that this alternative proposal was, on the whole, acceptable; but he would prefer the United Kingdom Delegation to accept the words “if necessary”, as they did not imply any obligation.

Mr. ZUTTER (Switzerland) was against the United Kingdom amendment, as he considered that it did not only affect prisoners of war as prisoners, but also as refugees.

General SLAVIN (Union of Soviet Socialist Republics) considered that the United Kingdom amendment was unnecessary. In the opinion of his Delegation, the third paragraph of the Stockholm text was acceptable in its present form.

Put to the vote, the amendment submitted by the United Kingdom Delegation was rejected by 12 votes to 7, with 8 abstentions.

Mr. DAY (United Kingdom) asked for a vote on the modification proposed by the Delegate of Venezuela.

The CHAIRMAN said it was not possible to vote on amendments which were not tabled 24 hours beforehand. He had asked the Delegate of the United Kingdom if he could agree to the Venezuelan Delegate's proposal. As that proposal had not been accepted by the Delegate of the United Kingdom, he regretted that no vote could now be taken on it.

Article 100 was adopted by 28 votes to 2.

**Article 19**

General DEVIJVER (Belgium), Rapporteur of the Special Committee, reminded the Committee that the first paragraph of Article 19 of the Stockholm text had been adopted by Drafting Committee No. 1 with certain minor drafting changes. The proposed text had been adopted by Committee II during the Twenty-fifth Meeting. The fourth paragraph had been deleted by Committee II on first reading (see *Summary Record of the Fifth Meeting*).

With regard to the second and third paragraphs, amendments had been tabled by the Netherlands Delegation (see *Annex No. 103*), and the United Kingdom Delegation (see *Annexes Nos. 104 and 105*). As the amendments raised questions outside the terms of reference of Drafting Committee No. 1, they had been referred to the Special Committee. In the course of the discussions in the latter Committee the Delegate of the United Kingdom had said that his Delegation and that of the Netherlands had decided to combine their amendments, and to modify them in one respect in order to satisfy those delegates who considered that prisoners of war who had broken parole should enjoy the benefits of the Convention. On a vote being taken, however, the United Kingdom proposal had been rejected. The second and third paragraphs of the Stockholm text had therefore been retained.

Captain MOUTON (Netherlands) asked for a vote to be taken on the amendment submitted by his Delegation. He did not see the Netherlands Delegation should abandon a fundamental principle embodied in Article 12 of the Hague Regulations. It was because of its importance that that principle had been included in the Hague Regulations, and that was why the Netherlands Delegation would like to see it in the present Convention.

The Netherlands amendment was put to the vote, and rejected by 18 votes to 2, with 3 abstentions.

Article 19 was then adopted unanimously.

### Articles 29A and 29B

General DEVIJVER (Belgium), Rapporteur of the Special Committee, outlined the various changes made in Articles 29A and 29B as a result of discussions in Drafting Committee No. 1 and in the Special Committee of Committee II (see *Summary Records of the Special Committee*). The final texts now submitted for adoption by Committee II were as follows:

#### *Article 29A (new)*

"Prisoners of war who, though not attached to the medical service of their Armed Forces, are doctors, dentists, nurses or medical orderlies may be required by the Detaining Power to exercise their medical functions in the interests of prisoners of war dependent on the same Power. In that case they shall continue to be prisoners of war but shall receive the same treatment as corresponding medical personnel retained by the Detaining Power. They shall be exempted from any other work under Article 41."

#### *New Chapter III A Medical and religious personnel retained for the benefit of the prisoners of war Article 29B*

"Members of medical personnel and chaplains whilst retained in the hands of the Detaining Power to look after prisoners of war shall be granted all facilities necessary to provide for the medical care and religious ministrations of prisoners of war. Such retained personnel shall not be considered prisoners of war but shall receive all the benefits and protection of this Convention."

The CHAIRMAN said that he had already expressed his thanks to the members of the Special Committee, but he wished to repeat them, especially to Mr. Zutter (Switzerland), Chairman, and to General Devijver (Belgium), Rapporteur.

Mr. MOLL (Venezuela) suggested replacing the words "their medical functions" in the first sentence of Article 29A by "their professional activity".

The CHAIRMAN remarked that the Venezuelan Delegate's observations could now be addressed to the Drafting Committee of the Conference, as

the members of the Drafting Committees of Committee II were invited to be present at the Drafting Committee of the Conference.

Article 29A, as proposed by the Special Committee, was adopted.

Captain MOUTON (Netherlands) drew attention to his Delegation's amendment proposing that the text submitted by the Special Committee for Article 29B should be replaced by new provisions (see *Annex No. 110*). The amendment emphasized the fact that retained personnel should not be considered as prisoners of war, but that they should nevertheless benefit by the provisions of the present Convention. He thought that it was necessary for a camp commandant to know how he must treat such personnel. The Prisoners of War Convention had to serve as a guide to camp commandants; it was necessary that the latter should be able to find provisions there similar to those of Article 22 of the Wounded and Sick Convention, which authorized members of the medical personnel to make regular visits to prisoners of war in labour detachments or in hospitals outside the camp, and which laid down that the senior Medical Officer in each camp was responsible to the military authorities in the camp for everything connected with the activities of retained medical personnel.

The possibility that a Contracting Power might ratify the Prisoners of War Convention, but not the Wounded and Sick Convention, must also be taken into account; in that case the camp commandant would have doubts regarding the status and the rights of retained medical personnel. For that reason the Netherlands Delegation wished to insert in the Prisoners of War Convention an Article corresponding to Article 22 of the Wounded and Sick Convention.

Mr. MOROSOV (Union of Soviet Socialist Republics) was against the proposed amendment. In his opinion the treatment of medical personnel and chaplains was covered perfectly satisfactorily by the Wounded and Sick Convention; he saw no reason for repeating those provisions in the Prisoners of War Convention.

Mr. DAY (United Kingdom) agreed with the Soviet Delegate.

Mr. BAISTROCCHI (Italy) and Mr. ZUTTER (Switzerland) supported the Netherlands amendment.

The amendment put to the vote, was rejected by 15 votes to 13, with 1 abstention.

Article 29B, as proposed by the Special Committee, was adopted by 33 votes to NIL, with 1 abstention; it would appear in the Convention in a new Chapter III A.

### Preamble

The CHAIRMAN said that three amendments had been submitted to the Committee — a Swiss amendment (*see Annex No. 82*) and a Union of Soviet Socialist Republics amendment (*see Annex No. 83*), each of which proposed a text, and also a Rumanian amendment which suggested having no preamble whatsoever.

Mr. FENEȘAN (Rumania) remarked that the object of those who had proposed the inclusion of a preamble had been to provide a unifying factor by emphasizing from the outset the fundamental principles underlying the Convention. The text proposed by the International Committee of the Red Cross in their document "Remarks and Proposals" and the text submitted by the Soviet Delegation laid down certain principles, in particular that of respect for the human being. Discussions which had taken place in Drafting Committee No. 2 indicated that there were, however, other points of view. In his opinion, the text of a preamble should only include the guiding principles underlying the Convention, and not ideas of a metaphysical or philosophical nature which some delegations would like to insert in the text.

If a preamble was to be adopted, it should be adopted unanimously, but he thought there was very little likelihood of that being the case. He maintained that a preamble was unnecessary, especially as the Convention at present under review had never had one before; moreover, the inclusion of one now might make the adoption of the Convention by the greatest possible number of States more difficult.

Mr. BAUDOY (France) considered that the Rumanian Delegate's comments were to be regretted. He thought, as he had already said on more than one occasion, that declarations of general principles were out of place in individual Articles; it would, on the other hand, be most helpful to have them in a preamble. He thought the text proposed by the Swiss Delegation should be acceptable even to those who did not recognize any religion. There were many religions in the world some dead, some alive, others being created. But in all of them the principle of divine origin played an essential part. That principle could, in his opinion, be accepted by everyone. His Delegation wished to have a preamble and would

therefore vote for the text proposed by the Delegation of Switzerland.

Msgr. COMTE (Holy See) reminded the meeting that the principle of having a preamble had already been accepted unanimously by Committee II, and the Drafting Committee had been entrusted with the task of preparing a text (*see Summary Record of the Twentieth Meeting*). If the above decision was now to be reversed, it would have to be by a two-thirds majority. He himself considered that a preamble was indispensable.

Colonel HODGSON (Australia) declared that no vote had ever been taken as to whether or not there should be a preamble; the only decision taken was to refer the matter to the Drafting Committee. His Delegation had never changed its mind on the subject of the preamble, and in Committee III had from the beginning openly stated that it was against having one. It was true that there were conventions, peace treaties, etc. in which a preamble had a certain value; it recalled historical precedents and proclaimed certain essential aims and aspirations for the future. In the particular case, however, he had not so far heard one reason which convinced his Delegation that a preamble was necessary. Experience had shown that at every conference there was more trouble and argument about a preamble than about any other section of the work, and that had certainly been the case at the present Conference.

The Swiss Delegation's amendment was the wording which some delegations favoured. He imagined that it might prove acceptable to the majority of delegations; but the whole principle was contained in the first paragraph, and that had already been very much better said in the Preamble of the Declaration on Human Rights recently adopted by the General Assembly of the United Nations. His Delegation thought, therefore, that the Prisoners of War Convention should have no preamble.

Mr. STROEHLIN (Switzerland) suggested that the ideas of various delegations should be discussed before deciding whether or not to have a preamble. Even if it was decided not to have a preamble, it would be useful, from the point of view of the future, to have the views expressed on that subject recorded in the Final Record of the Conference. He supported the remarks of the French Delegate with regard to religions being mentioned in the text of a preamble.

Mr. BMMATE (Afghanistan) agreed with the Delegate of Switzerland that ideas should be discussed. He pointed out to the Committee that

the 1929 Prisoners of War Convention had had a Preamble, although it did not appear in Working Document No. 3. There had also been one in the 1864 and 1906 Conventions for the Relief of the Wounded and Sick in Armies in the Field. The text of the Preamble to the 1929 Prisoners of War Convention was reproduced in the "Manual of the International Red Cross" and stated that the Contracting Powers recognized:

"that, in the extreme case of a war, it will be the duty of every Power to mitigate as far as possible, the inevitable hardships of it, and to alleviate the fate of the prisoners of war, and that they are desirous of developing the principles which have inspired the International Conventions of the Hague, in particular the Convention concerning the laws and customs of war and the regulations annexed to it."

Mr. Bammate also referred to the Final Record of the Geneva Conference of 1929 (pages 443, 523 and 681 of the French text), and supported the text mentioning the divine origin which was adopted by Committee I. He said that religion was the basis of many civilisations and emphasized the fact that the text proposed by the Swiss Delegation was merely a statement of fact and not a dogmatic attitude taken up by the Conference on a religious subject.

He agreed that it was necessary to have a unanimous vote on the question. If a compromise was necessary, the Preamble might be adopted without being part of the Convention. Countries would then be able to sign the Convention without signing the Preamble unless they wished to do so.

Sir Robert CRAIGIE (United Kingdom) agreed with the Delegate of Afghanistan as regards a unanimous vote. A preamble should be a statement of the principles which had inspired the efforts of the delegates to the present Conference. One of those principles was the desire to mitigate the inevitable suffering of war, and a single sentence would suffice for a short preamble. He considered that the Convention would lack something if there was no preamble. His suggestion was, therefore, to have a purely formal preamble such as existed in the 1929 Convention. It would also have the advantage of shortening the present proceedings.

Mr. MARESCA (Italy) considered a preamble necessary for technical, legal and practical reasons; it was, in fact, often necessary to elucidate obscure

points in the actual text of the Convention. He referred to the IVth Hague Convention, which in its Preamble contained the de Martens clause widely quoted during the Nuremberg trials.

He thought the amendment proposed by the Swiss Delegation met all requirements; it was short and clear, and stated a fundamental principle which he particularly wanted to see stressed—namely that of the divine origin of the human being. He therefore recommended the adoption of that text.

Msgr. COMTE (Holy See), referring to the remarks of the Delegate of Australia, said that the preamble should be a solemn declaration of the principles underlying the whole Convention. He supported the views of the Afghanistan, French and Swiss Delegations, and urged the adoption of a preamble which mentioned the divine origin of man.

Mr. MOROSOV (Union of Soviet Socialist Republics) said that the discussion which had already taken place in Committee II had convinced his Delegation that it was necessary to draft a text which would be acceptable to all delegations, but, like the Australian Delegate he realized the difficulty of drafting such a text.

He could not accept the Swiss amendment with its abstract principles of religious philosophy in spite of the fact that it had been argued that it was merely a statement of fact. Further he pointed out that no delegation had ever objected to the principle of religious freedom, and Articles relating to that principle had always been discussed with the greatest sympathy.

Insistence on a preamble might create difficulties for certain States who wished to sign the Convention, and, like the Delegate of Rumania, he hoped Committee II would abandon the idea of having a preamble to the Convention under consideration.

The CHAIRMAN said that six Delegates had asked for the floor, and as it would not be possible to finish the discussion that day, he would adjourn the discussion to a later meeting.

He added that, apart from the Preamble, the Committee had finished the discussion on all the Articles of the Prisoners of War Convention, which had been submitted to it.

*The meeting rose at 6.35 p.m.*

## THIRTY-SECOND MEETING

Friday 15 July 1949, 10 a.m.

Chairman: Mr. Maurice BOURQUIN (Belgium)

**Preamble** (*continued*)

Mr. WINKLER (Czechoslovakia) felt that it was useless to delve into the past to find a solution to the problem of the Preamble. It was quite obvious that the question of whether to have a preamble or not was very important. In his opinion, expressions of faith as well as any philosophical declaration which might give rise to divergencies of opinion should be omitted from a document which was to be distributed throughout the world. The Swiss amendment was not satisfactory. If he was not mistaken, the Swiss Delegation had submitted the same draft text in Committee III, but had then withdrawn it, explaining that it had been tabled by mistake. He would be grateful if the Delegate of Switzerland would say why the amendment had not also been withdrawn in Committee II. As regards the two new amendments submitted by the Netherlands and the United Kingdom Delegations (*see Annexes Nos. 80 and 81*) he did not consider either of them suitable.

He agreed that a unanimous vote was necessary; otherwise it would be better to have no preamble. He therefore supported the amendment of the Rumanian Delegation.

Mr. NARAYANAN (India) said that he came from a country in which the principal races and religions of the world were represented, including those who did not believe in any particular form of divinity, but nevertheless believed in God. If it was not possible to have a preamble which appealed to everyone, it would be better not to have one at all. He, personally, was in favour of not having a preamble to the Convention.

General OUNG (Burma) suggested that it would be better not to discuss religion. It was dangerous to proclaim religious principles in an international Convention. A preamble should indicate the guiding principles of the Convention, and should therefore be unanimously adopted; if unanimity

was not possible, a preamble should not be adopted. He did not think they should go back to the 1929 Convention. The present Conference was being held because the 1929 views were out of date. He asked delegates to reject the amendments of the Swiss and Soviet Delegations, and appealed for tolerance in racial and religious matters. The Swiss amendment might satisfy Europe, the United States of America, Canada and the South American States; but there were many other States which it would not please, and the Conference was held to consider the views of all the countries represented at the Conference, and not only the views of the countries he had mentioned.

Mr. SIORDET (International Committee of the Red Cross) said that the I.C.R.C. was concerned by the divergencies of opinion which the question had raised. The International Committee of the Red Cross considered itself to some extent responsible for the discussion, as there was no preamble in the Stockholm text and the I.C.R.C. had been the first to suggest that the Prisoners of War Convention should have one. The I.C.R.C. thought that if the man in the street could not understand the reason of all the Articles in the Convention, a clearly worded preamble might make it easier for him by explaining above all the purpose and meaning of the Convention. The discussions had, however, shown that divergencies still existed which prevented general agreement on the question. He agreed that it would be better not to have a preamble if unanimous agreement on a text could not be reached. He wondered, however, whether the delegations could not find common ground for agreement in the principle of the protection of persons taking no part in military operations or placed „hors de combat” — a principle which underlay all four Conventions.

Mr. SÖDERBLOM (Sweden) thought that the Committee had been right to devote this meeting to discussing the Preamble. His Delegation would be ready to adopt the text submitted by the

United Kingdom Delegation. He also had a great deal of sympathy for the text proposed by the International Committee of the Red Cross. He appealed to the meeting to examine carefully the possibility of agreeing unanimously on a text. If such agreement was not possible, they should decide whether or not to have a preamble. If he personally saw no possibility of agreement on a text, he would vote against having any preamble.

Mr. COHN (Denmark) said that a preamble was a proclamation which endeavoured to explain the general spirit of a Convention, and the consequences of its application. A preamble should also help those who were called upon to implement and interpret the provisions of a Convention to carry out their task. He invited the Committee to adopt his Delegation's amendment (see *Annex No. 79*).

Mr. BMMATE (Afghanistan), supporting the Swiss amendment, repeated his proposal to keep the Preamble separate from the Convention, so that those who wished could sign the Convention only. He thought that by so doing unanimity could be reached.

The CHAIRMAN said that two other delegates had asked for the floor. He thought that after they had spoken the meeting might endeavour to reach a conclusion. He did not think that an extension of the discussion would make the situation any clearer.

Mr. MOROSOV (Union of Soviet Socialist Republics) thanked the Danish and United Kingdom Delegates and also the International Committee of the Red Cross, for having proposed preambles which did not contain the reference to religious principles to which his Delegation objected. The discussion had only shown more clearly than ever that it was better not to have a preamble, as there was no likelihood of unanimous agreement being reached on any text. He regarded the compromise proposal of the Afghanistan Delegate (that the Preamble should be kept separate from the Convention) as being merely an attempt to bring in by the back door a text which could not be brought in by the front door. If the Preamble did not form part of the Convention, it would no longer be a preamble. His Delegation supported the Rumanian amendment proposing that there should not be a preamble. Further discussion of the question seemed pointless.

The CHAIRMAN said that he would ask the Committee to vote on the question of whether they wished to have a preamble even without unanimous agreement, or whether they would not

consider having a preamble unless it was adopted unanimously. If it was decided to have a preamble to the Convention, they would then have to agree on a text.

Mr. MOROSOV (Union of Soviet Socialist Republics) intervened on a point of order to say that he did not understand the Chairman's proposal. A formal proposal by the Rumanian Delegation to delete the Preamble was before the meeting, and he thought they should vote first on that proposal. If it was accepted, there would be no need to vote on the other proposals submitted by the Delegations of Denmark, the United Kingdom and other countries. If the Rumanian proposal was rejected, they could then decide what text to adopt. The Chairman's proposal had not been moved by any Delegation, and had not been tabled twenty-four hours beforehand.

The CHAIRMAN observed that it was not only amendments which could be put to the vote. It was always possible in the course of a discussion to put a question of principle and suggest a new procedure. His proposal was intended to elicit an answer to the question which had arisen during the discussion. The proposal of the Rumanian Delegation was not strictly speaking an amendment. The Stockholm text had no preamble, and therefore the object of an amendment would be to insert one, whereas the Rumanian Delegation merely proposed that the Stockholm text should be maintained. For that reason he could not put the Rumanian proposal to the vote.

He wanted to have a vote which was not ambiguous. If a vote was taken on the question of whether or not to have a preamble certain delegations would feel embarrassed. That was why he considered that the actual question was to know whether the Committee only desired to have a preamble if it was adopted unanimously. If the answer was in the affirmative, the delegates could then endeavour to reach agreement on a text. If the answer was in the negative, there would be no preamble.

Mr. COHN (Denmark) considered that the Chairman's question might also prove embarrassing to some delegations. Many delegates although they desired unanimity, agreed that it could not be attained. Was there any provision for a unanimous vote in the Rules of Procedure? No delegation which had tabled an amendment had insisted upon a unanimous vote. Could a large majority vote not be accepted?

Mr. MOROSOV (Union of Soviet Socialist Republics) thought the remarks of the Danish Delegate showed clearly that the Chairman's proposal

did not reflect the views of the meeting. Many speakers had indicated that they did not want a preamble. He did not agree that the proposal by the Rumanian Delegation was not an amendment. A vote should first of all be taken on that proposal. If it was rejected, a vote could then be taken on the proposal put forward by the Chairman. If the latter was accepted, a text could then be decided upon.

Mr. GARDNER (United Kingdom) wished to say that there were some delegations who supported the Chairman's view. He thought the Soviet Delegation had forgotten that proceedings in the debate had always been on the basis of the Stockholm text, and even a proposal from one of the Drafting Committees had always been treated as an amendment and not as a substantive proposition. He hoped the Chairman would be allowed to put his proposal to the Committee, because throughout the proceedings the Chairman had always guided the Committee to the wisest course and the quickest result.

The CHAIRMAN replied that his only desire was to show clearly what had emerged from the discussion. During the discussions it had been said many times that, if there was to be a preamble, it must be unanimous. Some delegates thought that a preamble would be useful and necessary even if it was not adopted unanimously; but there were certainly many who considered that the existence of a preamble should depend upon a unanimous vote being obtained. As the latter seemed to be the predominant view, he wished to put it to the vote. He did not think there was a great deal of difference between his suggestion and the one put forward by the Soviet Delegate, except that the latter had divided his proposal into two parts, which might prove embarrassing to certain delegates.

The Danish Delegate was no doubt right in saying that there was no rule which imposed a unanimous vote; but he thought that the question under discussion was one of substance rather than of procedure. On the other hand, for such a case there was also no rule which imposed the "large majority" vote suggested by the Danish Delegate. His proposal was, he felt, the best way out of the present situation.

Mr. BAMBATE (Afghanistan) foresaw difficulties of procedure. He supported the view of the Delegate of the Union of Soviet Socialist Republics.

Mr. NARAYANAN (India) considered that the basic proposal was that contained in the Stockholm text. Several amendments to it had been tabled.

During the discussion one of the chief arguments advanced was that, unless there was unanimous agreement, it was not worth while having a preamble. He presumed that the Soviet Delegate was not pressing his amendment, as he asked for a vote on the Rumanian proposal. He submitted that it would be right and proper for the other amendments to be put to the vote one by one. If no text produced unanimity, there would be no preamble.

Mr. MIKAOUI (Lebanon) supported the Soviet proposal and the remarks of the Afghanistan Delegate.

The CHAIRMAN proposed taking a vote on the Indian Delegate's suggestion that each of the amendments for the modification of the Stockholm text by the addition of a preamble should be put to the vote one by one.

The Indian Delegate's proposal was adopted by 22 votes to 15, with 2 abstentions.

The CHAIRMAN therefore suggested that the amendments should be taken in chronological order, and asked the Soviet Delegate if he withdrew his amendment.

Mr. MOROSOV (Union of Soviet Socialist Republics) felt that the procedure was incorrect and made the situation very embarrassing. He had not withdrawn his amendment and wished a vote to be taken on it.

The Soviet amendment was rejected by 22 votes to 7, with 4 abstentions.

The Swiss amendment was adopted by 17 votes to 15, with 3 abstentions.

The Netherlands amendment was rejected by 12 votes to 1, with 14 abstentions.

The United Kingdom amendment was adopted by 15 votes to 13, with 4 abstentions.

The CHAIRMAN said that it had not been possible to have the Danish amendment distributed twenty-four hours in advance; but he hoped the delegates would have no objection to a vote being taken on it.

The Danish amendment was rejected by 18 votes to 1, with 5 abstentions.

The CHAIRMAN noted that two amendments (those of Switzerland and the United Kingdom) had been adopted with a majority of 2 votes in each case.

Colonel HODGSON (Australia) said that many delegations would now find themselves in a difficulty. His Delegation did not wish to vote on either amendment. There was still a motion before the meeting that there should be no preamble at all, and it was that motion which his Delegation supported.

The CHAIRMAN said that he had made his original suggestion simply to avoid the difficulty which had now arisen; and he agreed that the resulting situation was difficult.

Mr. SÖDERBLOM (Sweden) regretted that the meeting had not followed the Chairman's advice. He would find himself in the same embarrassing situation as those of his colleagues who thought that it was better not to have a preamble at all if unanimity could not be reached.

The CHAIRMAN suggested that the meeting should allow him to revert to his previous proposal, and call for a vote on the question of whether the adoption of a preamble should be subject to a unanimous vote.

Mr. BUDO (Albania) thought that the time had now come for the Committee to vote on the question of whether to have a preamble or not.

Mr. MIKAOUI (Lebanon) could not share the Chairman's view about reverting to the original proposal made from the Chair. That could only be done by a two-thirds majority vote. In any case, he was against a vote on the question of unanimity. If all the delegates except himself voted in favour of a preamble, it would, he felt, be ungracious on his part not to bow to the wishes of the majority.

Mr. MOROSOV (Union of Soviet Socialist Republics) said that the position now was that many delegates found it difficult to take part in the final vote. That being so, he felt that the Chairman's proposal could now be considered a new proposal, and his Delegation would support it as being the only way to settle the question.

Dr. PUYO (France) disagreed with the Soviet Delegate. The only way out of the deadlock was to vote on the United Kingdom and Swiss amendments.

The CHAIRMAN then put to the vote the proposal made by the Delegate of France, namely that the meeting vote on the question of whether one or other of the Swiss and United Kingdom amendments should be inserted as a preamble to the Convention.

The proposal of the Delegate of France was adopted by 18 votes to 16, with 2 abstentions.

Mr. GARDNER (United Kingdom) said that he merely wished to ask for guidance. What would be the effect of the vote they were now going to take? There was no preamble in the Stockholm text. There was, therefore, no text before the meeting. They were now going to vote on two documents, neither of which was an amendment of the other; both were on an equal footing. Would the vote be final, or would they have to vote again to decide whether the text adopted should be inserted in the Stockholm text?

The CHAIRMAN thought they would have to begin by voting on one of the new texts, and then decide whether they wanted that text to be the Preamble to the Convention. He therefore put the United Kingdom amendment to the vote.

The text of the United Kingdom amendment was adopted by 20 votes to 17, with 1 abstention.

A final vote was then called for, to decide whether the said text should be the Preamble to the Convention.

The proposal to make the United Kingdom amendment the Preamble to the Convention was rejected by 20 votes to 9, with 2 abstentions.

There would therefore, as a result of this decision, be no preamble to the Prisoners of War Convention.

*The meeting rose at 1.20 p.m.*

## THIRTY-THIRD MEETING

Friday 15 July 1949, 3 p.m.

Chairman: Mr. Staffan SÖDERBLOM (Sweden)

**Articles referred back to Committee II by the Coordination Committee**

The CHAIRMAN said that the object of the examination to which the Committee would now proceed, was not to make any fundamental changes in Articles already adopted by Committee II, but to consider the suggestions of the Coordination Committee, which had examined the Articles in conjunction with similar Articles adopted in the other Committees.

He asked Mr. Stroehlin (Switzerland), Representative of Committee II on the Committee of Experts of the Coordination Committee, if he had any comments to add to those contained in the documents before the Committee.

Mr. STROEHLIN (Switzerland) said that unfortunately he had not been able to attend all the meetings of the Committee of Experts of the Coordination Committee due to the fact that the meetings of Committee II had clashed with those of the Committee of Experts. He thought that the remarks in the documents were quite clear and did not need additional comment.

The Committee proceeded to consider the suggestions made by the Coordination Committee.

**Article 20**

The Coordination Committee suggested that a provision to the effect that prisoners of war might not be interned in the same places as prisoners under common law, should be added to the first paragraph of Article 20 of the Prisoners of War Convention (a similar provision being contained in Article 74 of the Civilians Convention).

The suggestion was unanimously rejected.

**Article 79**

The Coordination Committee drew attention to the fact that the last sentence of the second paragraph of Article 109 of the Civilians Con-

vention had no corresponding provision in the third paragraph of Article 79 of the Prisoners of War Convention. That was the provision laying down that account should be taken of the age, sex and state of health of the persons sentenced to disciplinary punishment.

Mr. GARDNER (United Kingdom) said that the divergency in question was due to the differences which necessarily existed between prisoners of war and internees.

The Committee decided to make no change in the third paragraph of Article 79.

**Article 85**

The Coordination Committee pointed out that the sentence "Its duration shall in any case be deducted from any sentence of confinement" which appeared at the end of the second paragraph of Article 112 of the Civilians Convention, had not been included in the second paragraph of Article 85 of the Prisoners of War Convention.

The Committee considered the point had been adequately covered in other Articles of the Prisoners of War Convention.

It accordingly decided to make no change in Article 85.

**Taking of Hostages**

The Coordination Committee drew attention to the fact that Article 31 of the Civilians Convention: "The taking of hostages is prohibited", had no counterpart in the Prisoners of War Convention.

Mr. GARDNER (United Kingdom) said that the treatment of prisoners of war was so completely covered in the Prisoners of War Convention, that it was impossible to imagine circumstances in which hostages could be taken without infringing

one or more of the existing Articles. The suggested addition would therefore have no practical justification.

The Committee decided to take no action on the observation of the Coordination Committee.

### Article 111

The Coordination Committee pointed out differences between the wording of the first paragraph of Article 111 of the Prisoners of War Convention, and that of the first paragraph of Article 120 of the Civilians Convention. The Coordination Committee suggested that the words "as well as any death the cause of which is unknown" should be inserted in the first paragraph of Article 111, immediately before the word "shall".

Mr. GARDNER (United Kingdom), Mr. QUENTIN-BAXTER (New Zealand), Mr. BAISTROCCHI (Italy) and General PARKER (United States of America) considered the wording of Article 120 of the Civilians Convention an improvement on that of Article 111 of the Prisoners of War Convention.

Mr. FILIPPOV (Union of Soviet Socialist Republics) was in favour of retaining the existing text without change.

It was decided, by 17 votes to NIL, with 5 abstentions, to alter the first paragraph of Article 111 of the Prisoners of War Convention, to read as follows:

"Every death or serious injury of a prisoner of war caused or suspected to have been caused by a sentry, another prisoner of war, or any other person, as well as any death the cause of which is unknown, shall be immediately followed by an official inquiry by the Detaining Power."

### Article 13

The Coordination Committee recommended the omission of the words "which they enjoyed at the time of their capture", in the first sentence of the third paragraph of Article 13 of the Prisoners of War Convention; the purpose of that recommendation was to take into account the case of prisoners of war who reached their majority while they were in captivity.

Mr. GARDNER (United Kingdom) reminded the meeting that the matter had been discussed at great length in the Drafting Committee of Committee II. He did not think that the interpreta-

tion given to those words by the Coordination Committee would be that given by a reasonable Detaining Power. If the words referred to were deleted, difficulties of interpretation would continually arise. He considered the Coordination Committee had gone outside its terms of reference in making a recommendation which involved a question of substance.

Mr. STROEHLIN (Switzerland) did not agree with the United Kingdom Delegate's last remark. It was clearly the function of the Coordination Committee to point out discrepancies in the texts, whether or not they involved questions of substance.

General DILLON (United States of America) thought that the principle underlying the Coordination Committee's recommendation should be accepted. He proposed that the existing text be retained, but that the words "and acquired thereafter by reason of age" be added at the end of the first sentence of the third paragraph.

Mr. GARDNER (United Kingdom) asked for time to study the legal implications of the United States Delegate's proposal.

Mr. MAYATEPEK (Turkey) suggested modifying the first sentence of the third paragraph to read: "Prisoners of war shall retain their full civil capacity according to the laws of the country of which they are citizens".

Mr. GARDNER (United Kingdom) said a proposal similar to that just made by the Delegate of Turkey had been discussed by the Drafting Committee of Committee II, and had been rejected. Civil rights were not confined to any one country. A prisoner of war having property in several countries would have civil rights in each of them.

After further discussion, the Committee decided to postpone consideration of the recommendation.

On the other hand, the Coordination Committee recommended the new following wording for the second sentence of the third paragraph of Article 13: "The Detaining Power may not restrict the exercise of the rights conferred by such capacity either within its own territory or..."

The recommendation was rejected.

### Article 16

The Coordination Committee drew attention to the fact that the first sentence of the sixth paragraph of Article 86 of the Civilians Convention

did not correspond with the second paragraph of Article 16 of the Prisoners of War Convention.

The Committee considered that the two Articles referred to different sets of circumstances.

It was therefore decided to make no change in Article 16.

#### Article 25 and 42A

The Coordination Committee recommended the omission of the second sentence of the second paragraph of Article 25 of the Prisoners of War Convention in view of the provisions contained in the first and third paragraphs of Article 42A of the same Convention.

The Committee decided that, while there was some redundancy, the provisions of the two Articles were far from being identical. It considered that it was in the best interests of the prisoners to retain all the provisions of both Articles 25 and 42A in the form in which they had been adopted by Committee II.

The Committee accordingly rejected the recommendation.

#### Article 26

The Coordination Committee drew attention to the substantial difference between the third paragraph of Article 26 of the Prisoners of War Convention and the third paragraph of Article 76 of the Civilians Convention, regarding the disposal of balances remaining in welfare funds after prisoners of war camps or places of internment had been closed down.

General DILLON (United States of America) saw no reason why the two Articles in question should be analogous.

Mr. GARDNER (United Kingdom) thought the Prisoners of War Convention should be brought into line with the Civilians Convention by adopting the wording of Article 76 of the Civilian Convention.

The Committee decided by 8 votes to 4, with 8 abstentions, to retain the text adopted by Committee II.

#### Article 32

The Coordination Committee suggested the deletion of the words "under the direction of his government" at the close of the first paragraph

of Article 32 of the Prisoners of War Convention, in order to bring Article 32 into line with Article 88 of the Civilians Convention.

General PARKER (United States of America) said his Delegation attached great importance to the retention of the words quoted, and strongly opposed their omission.

Mr. BAISTROCCHI (Italy) supported the Delegate of the United States of America.

Mr. QUENTIN-BAXTER (New Zealand) favoured the proposed omission. The responsibility of the Detaining Power was clearly defined in Article 1. The purpose of Article 32 was to provide that a responsible officer acting as camp commander, could not evade responsibility for unlawful acts by pleading that he was acting on the instructions of his government. The words "under the direction of his government" might give that officer the excuse he was looking for for relieving himself from any responsibility.

General PARKER (United States of America) raised a point of order; he considered that a two-thirds majority vote would be necessary to permit the discussion to proceed on what was a matter of substance.

General SKLYAROV (Union of Soviet Socialist Republics) agreed with the United States Delegate that a question of substance was involved. Committee II had rejected the New Zealand proposal after a lengthy discussion.

Mr. GARDNER (United Kingdom) did not agree with the United States Delegate's interpretation of the rule regarding the two-thirds majority vote. In his opinion, the rule only referred to the reopening of a matter on which a decision had already been taken; a two-thirds majority was not required by the Rules of Procedure for altering a decision previously taken. Whether or not a question of substance was involved, was irrelevant. The Committee had tacitly agreed to the discussion of Article 32 being reopened, and Mr. Gardner did not, therefore, consider that any delegate was justified in invoking the rule at the present stage.

Captain MOUTON (Netherlands) considered the words "under the direction of his government" superfluous.

Major ARMSTRONG (Canada) was in favour of retaining the words. He thought that in no circumstances should it be possible for a government to evade responsibility for the actions of a senior responsible officer.

The Committee rejected the recommendation of the Coordination Committee by 16 votes to 7.

Article 32 therefore remained unchanged.

General PARKER (United States of America) asked for a ruling on the point of order he had raised. Was it necessary to have a two-thirds majority for discussing a question of substance raised by the Coordination Committee?

Mr. GARDNER (United Kingdom) said that the Rules of Procedure made no distinction between matter of substance and matter of form. The Chairman of Committee II had recently ruled that consideration of an Article on which a decision had already been taken, could not be reopened unless it was decided to do so by a two-thirds majority of the delegations present. Mr. Gardner considered that if it was decided to apply the rule regarding a two-thirds majority vote, it should be applied before the discussion started.

The CHAIRMAN did not feel competent to give a definite ruling, but considered that if the discussion of a certain point was unopposed and a two-thirds majority vote not required, that constituted tacit assent to the discussion being reopened and to votes being taken by a simple majority.

#### Articles 24, 37 and 37A

The Coordination Committee suggested that the last sentence of Articles 37 and 37A of the Prisoners of War Convention should be deleted and the following sentence inserted between the first and second sentences of the fourth paragraph of Article 24, after the word "kitchens": "Supervision of the mess by the prisoners themselves shall be facilitated in every way."

After discussion, the Committee decided to make no changes in the Articles mentioned above.

#### Article 45

The Coordination Committee drew attention to the fact that the provisions of Articles 37 and 84 of the Civilians Convention, relating to the insurance of protected persons against accidents, had no counterpart in Article 45 of the Prisoners of War Convention.

The Committee considered that the Prisoners of War Convention contained sufficient provisions in Article 57A, and that it was not necessary for the armed forces to have a form of insurance similar to that of civil internees.

The Committee therefore decided to make no change in Article 45.

#### Retained Personnel (Article 22 of the Wounded and Sick Convention)

The Coordination Committee pointed out that the provisions of Article 22 of the Wounded and Sick Convention, which defined more particularly the duties of medical personnel and chaplains retained in prisoner of war camps, were inadequately reproduced in the Prisoners of War Convention.

General PARKER (United States of America), raised a point of order. He said the question had been thoroughly studied by Committee II and was a very important one of substance. He asked the Chairman to rule that discussion of the recommendation was out of order.

Mr. GARDNER (United Kingdom) supported the request made by the United States Delegate.

Mr. BAISTROCCHI (Italy) also supported the United States Delegate, but thought the Prisoners of War Convention would be improved by the addition of some of the provisions of Article 22 of the Wounded and Sick Convention, as had been proposed at one time by the Netherlands Delegation (*see Summary Record of the Thirty-First Meeting*).

Dr. PUYO (France) agreed with the Italian Delegate's observation.

The CHAIRMAN said that the discussion could only continue with the approval of two-thirds of the delegations present.

Captain MOUTON (Netherlands) thought that if the functions of the Coordination Committee were to be confined to drafting questions only, its work would be very limited. The task of the Coordination Committee was to coordinate similar Articles in the four Conventions in the cases where the Committees had arrived at different solutions.

He reminded the meeting that the Netherlands amendment on the point now raised by the Coordination Committee had been defeated by 15 votes to 13. Nevertheless, the Committee of Experts of the Coordination Committee had considered the question of sufficient importance to be revived. He did not wish to repeat the arguments he had made in the discussion on the amendment, but urged the Committee to consider the suggestion made by the Coordination Committee.

Mr. GARDNER (United Kingdom) objected to the discussion in progress being recorded, as he considered it was out of order and irrelevant. Where a question had been thoroughly examined

by Committee II, it should not be discussed again even if the Coordination Committee invited Committee II to do so and if a two-thirds majority decided that such a discussion should take place. That would not stop the work of the Coordination Committee. In his opinion the rule of the two-thirds majority should be enforced wherever necessary to secure the object for which it had been framed, namely to prevent endless recon-

sideration of subjects on which definite decisions had been taken previously.

The CHAIRMAN proposed to postpone the discussion for the present, as he did not yet wish to give a definite ruling on the matter.

The Committee agreed to adjourn the meeting.

*The meeting rose at 6 p.m.*

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### THIRTY-FOURTH MEETING

*Tuesday 19 July 1949, 2.15 p.m.*

*Chairman:* Mr. Maurice BOURQUIN (Belgium); subsequently  
Mr. Staffan SÖDERBLOM (Sweden)

#### **Articles referred back to Committee II by the Coordination Committee** *(continued)*

The CHAIRMAN reverted to the question raised at the last meeting of Committee II, namely whether the texts already adopted by Committee II could be discussed again at the request of the Coordination Committee without a decision to that effect being first taken by a two-thirds majority vote.

He thought that if the suggestions of the Coordination Committee were purely questions of drafting, not affecting the substance of the Articles in any way, they could be settled by a simple majority vote. If, on the other hand, they affected the actual substance of the Articles, Rule 33 of the Rules of Procedure must be adhered to. Since all the Articles of the Prisoners of War Convention had already been adopted, the Committee would have to take a decision by a two-thirds majority of the delegations present and without any previous discussion, if it intended to reconsider a decision that had already been taken. Committee I had already adopted a similar procedure.

Committee II, on being consulted, decided also to adopt the above procedure.

#### **Article 79** *(continued)*

The Coordination Committee pointed out that there was a discrepancy between the wording of sub-paragraph 3 of Article 79 of the Prisoners of

War Convention and sub-paragraph 3 of Article 109 of the Civilian Convention, which provided that fatigue duties should only be ordered in connection with the maintenance of the place of internment.

Mr. STROEHLIN (Switzerland) thought that it was desirable to bring Article 79 of the Prisoners of War Convention into line with Article 109 of the Civilian Convention in order to prevent prisoners of war from being required to undertake fatigue duties other than those concerned with the maintenance of camps.

Mr. GARDNER (United Kingdom) and General DILLON (United States of America) were both of the contrary opinion. As far as the Prisoners of War Convention was concerned at all events, the distinction was intentional; it resulted from the difference in status between a prisoner of war and a civilian internee.

At the CHAIRMAN's suggestion, the Committee decided to take no action on the Coordination Committee's observation.

#### **Article 13** *(continued)*

The Committee continued the discussion which had been begun during the thirty-third meeting.

An exchange of views took place between Mr. STROEHLIN (Switzerland), General DILLON (United States of America) and Mr. GARDNER

(United Kingdom) with regard to the substance of the Coordination Committee's recommendation. General Dillon pointed out that a change in civil capacity was not only brought about by a change in age, but also by other causes (divorce, mental diseases, etc.). Mr. Gardner noted, in particular, that the term "civil capacity" had no definite meaning when it referred to a prisoner of war. The intention of the authors of the text of Article 13 was actually to leave the prisoner the civil capacity he had enjoyed at the time of his capture. This concept was wide enough to cover changes which might arise in the civil capacity of a prisoner during captivity. Further, the deletion of the words recommended by the Coordination Committee would be to the disadvantage of prisoners rather than to their advantage as it would tend to restrict the meaning of the term "civil capacity".

The CHAIRMAN then intervened to point out that this was a question of substance, and that the Committee would first have to decide, by a two-thirds majority, whether they wished to reopen the discussion on Article 13 of the Prisoners of War Convention.

A vote was taken, and the Committee decided not to reopen the discussion.

The CHAIRMAN having been called away Mr. SÖDERBLOM (Sweden), Vice-Chairman, took the chair.

#### **Draft Report of Committee II to the Plenary Assembly**

Mr. SÖDERBLOM (Sweden), speaking as Rapporteur of Committee II, said that the draft Report of Committee II had been distributed that morning and would be considered at the meeting next day. He therefore requested any delegations who wished to propose alterations to the Report to be good enough to hand to him, or to the Secretariat of the Committee, a copy of the draft Report with the proposed corrections in writing in the margin. Delegations who proposed any alterations could submit their observations when the Report was being discussed by the Committee.

#### **Retained Personnel (Article 22 of the Wounded and Sick Convention) (continued)**

The CHAIRMAN pointed out that this question had already been discussed at the previous meeting. It undoubtedly raised a question of substance, and the Committee would first have to decide by a vote whether they intended to reopen the discussion.

A vote was taken and the necessary two-thirds majority was not obtained. The question was not therefore considered.

Mr. BAISTROCCHI (Italy) said that he reserved the right of his Delegation to reopen the question in the Plenary Assembly.

The CHAIRMAN pointed out that delegations who desired to reopen a question at a plenary meeting of the Conference were asked to submit a new proposal in writing within the prescribed time-limit.

#### **Article 11**

The Coordination Committee recalled that experience during the last war had shown that certain camp guards regarded prisoners of war as entirely dependent on them; it therefore wondered whether it would not be advisable to preclude this interpretation by adding at the end of the first sentence of the first paragraph of Article 11 of the Prisoners of War Convention, the words "or those who guard them". This addition would bring this paragraph into harmony with the general idea embodied in Article 26 of the Civilians Convention.

Mr. GARDNER (United Kingdom) considered that the proposed addition was merely a half measure, either not saying enough or saying too much to be satisfactory. If a reference was to be made to guards, it would also be necessary to mention the personnel of camps. He added that the question of the administration of prisoners of war camps was already dealt with in Article 32, and that it would be preferable to retain the text of Article 11 in the wording adopted by Committee II.

The Committee adopted this view by 11 votes to 1, with 8 abstentions.

#### **Article 65**

The Coordination Committee drew Committee II's attention to the fact that the third paragraph of Article 65 of the Prisoners of War Convention was not included in the corresponding Article (101) of the Civilians Convention; and wondered whether this paragraph served any useful purpose.

Mr. GARDNER (United Kingdom) stated that his Delegation regarded the substance of the third paragraph of Article 65 as of outstanding importance.

The CHAIRMAN then put the question of whether the discussion of the Article should be reopened, to the vote. The proposal to reopen the discussion on the Article was unanimously rejected.

The existing text of Article 65 was therefore retained.

#### Article 66

The Coordination Committee drew the attention of Committee II to the fact that the words "except in the case of written or printed matter" in the second paragraph of Article 66 of the Prisoners of War Convention did not appear in the corresponding Article 102 of the Civilians Convention.

The Committee did not discuss this point; and the text of Article 66, as adopted by Committee II, was retained.

#### Articles 68 and 71

The Coordination Committee asked Committee II whether it would not be desirable to incorporate in Article 68 of the Prisoners of War Convention (which dealt with prisoners' complaints and requests) the idea referred to in the last sentence of the fourth paragraph of Article 71 of the same Convention, namely that the correspondence referred to in that paragraph should not be considered as forming part of the quota mentioned in Article 60.

The CHAIRMAN noted that the point raised was merely a question of drafting and immediately opened the discussion.

After a brief discussion, the Committee decided to accept the Coordination Committee's suggestion.

Various opinions were expressed with regard to the best place in which to insert this provision in Article 68. It was suggested by various delegations that it should be inserted in the first, in the second or in the third paragraph or even that it should form a separate paragraph.

The Committee finally decided, by 16 votes to NIL, to insert the new sentence in the third paragraph of Article 68 which would then read as follows:

"Such requests and complaints shall not be limited nor considered as forming a part of the correspondence quota mentioned in Article 60. They must be transmitted forthwith. Even if they are recognized to be unfounded, they may not occasion any punishment."

#### Article 40

The Coordination Committee recommended that Committee II should adopt, in the second paragraph of Article 40 of the Prisoners of War Convention, the last sentence of the second paragraph of Article 118 of the Civilians Convention, which seemed to be more accurate and more intelligible than the existing text. The sentence in question read as follows:

"The weight of such baggage may be limited, if the conditions of transfer so require, but in no case to less than twenty-five kilograms per internee."

The CHAIRMAN reminded the Committee that the question of limiting the weight of the baggage which transferred prisoners of war were entitled to take with them, had already been discussed at great length in Committee II; and that it would be a waste of time to endeavour to find a new wording for insertion in the second paragraph of Article 40 of the Prisoners of War Convention, the meaning of which seemed to be perfectly clear.

General SKLYAROV (Union of Soviet Socialist Republics) agreed with the Chairman, and proposed that the existing text of Article 40 should be retained.

Put to the vote, the above proposal was adopted by 15 votes to 1, with no abstentions.

#### Article 29B

The Coordination Committee referred to the remarks already submitted on the subject of retained personnel (Article 22 of the Wounded and Sick Convention).

The CHAIRMAN pointed out that Committee II had already taken a decision on the matter (*see above*).

#### Article 95

The Coordination Committee pointed out to Committees II and III that the provisions relating to assistance by an interpreter, in the first paragraph of Article 95 of the Prisoners of War Convention and in the third paragraph of Article 62 of the Civilians Convention, did not agree. The Coordination Committee suggested to Committees II and III that they should both adopt the same wording to express the same idea, and say:

"The prisoner of war or any accused person shall have the right to be assisted by a competent interpreter both during preliminary investigation and during the hearing in court."

Mr. BAISTROCCHI (Italy) said that he was in favour of the proposed amendment, which would, in his opinion, result in prisoners of war receiving more effective protection.

General DILLON (United States of America), on the contrary, was of the opinion that the present wording of Article 95 was more comprehensive than that suggested by the Coordination Committee. According to the present wording of Article 95, a prisoner of war who was being prosecuted was in fact entitled to be assisted by an interpreter from the time when he was indicted until the end of the trial, and not only during preliminary investigation and the hearing in court.

Mr. FILIPPOV (Union of Soviet Socialist Republics) was also in favour of retaining the wording of Article 95 as adopted by Committee II.

The Committee agreed to retain the existing wording.

#### Article 94

The Coordination Committee suggested that the first sentence of the second paragraph of Article 61 of the Civilians Convention, which read as follows:

"Accused persons who are prosecuted by the Occupying Power shall be promptly informed, in writing, in a language they understand, of the particulars of the charge proffered against them, and they shall be brought to trial as rapidly as possible,"

should be inserted after being adapted, as the first paragraph of Article 94 of the Prisoners of War Convention.

The obligation of the Detaining Power to notify the accused person himself of the judicial proceedings was, in fact, implicitly contained in the English text of the last paragraph of Article 94 of the Prisoners of War Convention, although it was not formally stated.

The CHAIRMAN noted that there was a divergence between the French and English texts of the last paragraph of Article 94 of the Prisoners of War Convention.

He added that in order to comply with the suggestion of the Coordination Committee, it would be sufficient to make the French text

correspond to the English text by wording the last paragraph of Article 94 as follows:

"Si, à l'ouverture des débats, la preuve n'est pas apportée que la Puissance protectrice, le prisonnier de guerre et l'homme de confiance intéressé ont reçu l'avis ci-dessus au moins trois semaines avant l'ouverture des débats, ceux-ci ne pourront avoir lieu et seront ajournés."

General DILLON (United States of America) wondered whether, by so doing, the Committee would have complied with the Coordination Committee's proposal.

The CHAIRMAN considered that the English text and the adapted version of the French text of the last paragraph of Article 94 implicitly contained the idea which was the subject of the Coordination Committee's remark. Moreover, this question was also settled by the fourth paragraph of Article 95. There was therefore no reason, in the Chairman's opinion, to amend the text of Article 94 any further.

The Committee approved this point of view.

#### Article 98

The Coordination Committee pointed out that there was no provision in Article 98 of the Prisoners of War Convention corresponding to the fourth paragraph of Article 66 of the Civilians Convention, which read: "Proper regard shall be paid to the special treatment due to minors".

Mr. GARDNER (United Kingdom) observed that in time of war, in most armies, a very large number of the soldiers were minors. It was, after all, on their behalf that the Prisoners of War Convention had been drawn up.

The CHAIRMAN considered that, in the circumstances, there was no need to alter the wording of Article 98 of the Prisoners of War Convention, which should be applicable in its present form to very young members of the armed forces.

The Committee agreed with this point of view and the text of Article 98 was retained.

#### Articles 112 and 113

The Coordination Committee pointed out that Articles 112 and 113 of the Prisoners of War Convention concerning National Bureaux and the Central Prisoners of War Information Agency, did

not contain the following reservation: "...except in cases where such transmissions might be detrimental to the persons whom the said information concerns, or to their relatives", which appeared in the second paragraph of Article 123A of the Civilians Convention.

Mr. GARDNER (United Kingdom) pointed out that there was a fundamental difference between the position of civilian internees and that of prisoners of war. Civilians might already be on foreign territory at the outbreak of hostilities and might have reason for not wishing to give

news of themselves to their country of origin, whereas prisoners of war were then in the service of their country, who already knew all essential particulars concerning them. He therefore considered that there was no reason to insert the reservation in question in the Prisoners of War Convention.

The Committee agreed with this point of view and the text of Articles 112 and 113 remained unchanged.

*The meeting rose at 4.50 p.m.*

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### THIRTY-FIFTH MEETING

*Wednesday 20 July 1949, 3 p.m.*

*Chairman:* Mr. Maurice BOURQUIN (Belgium)

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#### **Recommendation of the Coordination Committee with regard to Annex III**

The CHAIRMAN said that the Coordination Committee had pointed out that there was no sentence in Article 5 of Annex III to the Prisoners of War Convention corresponding to the last sentence of Article 5 of Annex II to the Civilians Convention (Regulations concerning Collective Relief). The sentence read as follows: "Such forms and questionnaires, duly completed, shall be forwarded to the donors without delay."

He did not think that the addition involved any serious change.

As no delegate had any comments to make, he presumed that the Committee approved the recommendation of the Coordination Committee.

The Committee had thus completed its examination of the Articles referred back to it by the Coordination Committee.

#### **Draft Report of Committee II to the Plenary Assembly**

The CHAIRMAN said that the Delegation of the Union of Soviet Socialist Republics had informed him that it had not had sufficient time to examine the Report owing to the technical difficulties of

translation. He proposed, nevertheless, to examine the Report forthwith, but to defer decision to a subsequent meeting.

Mr. SÖDERBLOM (Sweden), Rapporteur, first of all drew the attention of the delegates to certain minor corrections (some of which had been suggested to him by the United Kingdom Delegation), to be made in both the French and English texts.

There was no objection to such corrections being made.

Captain MOUTON (Netherlands) proposed to omit from the comments on Article 3 (seventh paragraph of Part I, "General Provisions") the sentence indicating that sub-paragraph 5 of the Article was an important innovation. The fact that members of the crews of the merchant marine and of civil aircraft of Parties to the conflict were considered as prisoners of war was a firmly established rule of customary law, generally accepted and respected. He therefore moved the substitution of the sentence: "Sub-paragraph 5 is a codification of existing customary international law".

General DILLON (United States of America) was unable to accept a possibly controversial alteration of that kind.

Mr. GARDNER (United Kingdom) supported the United States Delegate. At the beginning of the last war, his Government had not treated crews of the merchant marine as prisoners of war. Agreements on the subject had only been concluded subsequently with the Powers concerned.

Mr. BAISTROCCHI (Italy) was of the same opinion and recalled the experiences of his own country.

General DILLON (United States of America) argued that sub-paragraph 5 of Article 3 was in fact an important innovation, because it constituted a new clause of conventional international law.

Mr. SÖDERBLOM (Sweden), Rapporteur, agreed. He moved that the words "in conventional international law" be added to the sentence in question, which would then read as follows: "Sub-paragraph 5 is also an important innovation in conventional international law".

The new wording was adopted by the Committee.

Mr. SÖDERBLOM (Sweden) Rapporteur, supporting a proposal by the Belgian Delegation, suggested a new wording for the beginning of the fourth sentence of the fourth paragraph of Part I ("General Provisions") of the Report. The passage in question should read:

"Thus, according to the advocates of this thesis, the organized resistance movement must be in proper control of its formations and subordinate units"

instead of:

"Thus, according to the advocates of this thesis, the headquarters of a resistance movement must be in proper control of the members, and should, preferably, also exercise control over definite territory."

The mention of "control definite territory" could be omitted as it had not been adopted by the Special Committee.

The Rapporteur said that, as no objections were raised, the text in its new form was adopted.

Mr. DU MOULIN (Belgium) wished to have a new wording for the twelfth paragraph of Section V "Relations of Prisoners of War with the Exterior" of Part III of the Draft Report, which read as follows:

"It should also be noted that an amendment suggested that the Universal Postal Convention should be mentioned in this Article. This was not adopted, however, in view of the fact that

certain countries have not adhered to the agreements relating to postal parcels, and they would thus be authorized not to grant exemption from transport charges for parcels sent to prisoners of war."

Mr. Du Moulin observed that the proposal to refer to the Universal Postal Convention in Article 64 had not been made by one delegation alone, as might be inferred from the above text. Furthermore, the amendment submitted by his Delegation would have avoided difficulties resulting from the fact that some countries had not adhered to the arrangements of the Universal Postal Convention relating to postal parcels.

Mr. GARDNER (United Kingdom) said that his Delegation had always opposed the inclusion of the reference in question, but for reasons other than those of non-adherence. He therefore moved the insertion of the words "inter alia" in the text just proposed by the Belgian Delegation ("notamment" in the French text).

The paragraph, reworded as follows, was adopted by the Committee:

"It should also be noted that it was proposed to make a reference in this Article to the Universal Postal Convention. Nevertheless, the consideration, *inter alia*, that certain countries had not adhered to the agreements of the Universal Postal Union relating to postal parcels, caused the proposition to be abandoned."

He added, reverting to Part I "General Provisions", that his Delegation did not approve of the last sentence of the twelfth paragraph, which read:

"Nevertheless, due note was taken of the fact that no Delegation in the course of the debates disputed the point of view that Article 3 could not be interpreted as depriving persons not coming under the categories enumerated of the inherent rights of the human person and the right of legitimate self-defence against illegal acts."

He considered that the above sentence did not take account of what had occurred in the Special Committee. His Delegation had, on several occasions, pointed out the danger of extending the application of the Convention to cover other categories of persons. He recollected that the United Kingdom Delegation had stated clearly that such an extension would be equivalent to rejecting the principles generally accepted at the Hague, and recognized in the Prisoners of War Convention. It was essential that a war, even an illegal war, should remain subject to these principles.

General DILLON (United States of America) preferred to omit the sentence, which added nothing to the text. Clearly, the persons not enumerated in Article 3 were not to be deprived of all rights. Nobody had ever disputed that.

Mr. COHN (Denmark) thought that the Report should follow the discussions closely, and he therefore opposed any alteration. The passage in question had been inserted in the minutes on the proposal of the Danish Delegation and it was right that it should figure in the Committee's Report. He had no recollection of the United Kingdom Delegation having raised any objection. He would agree, nevertheless, to the wording of the sentence to which objection had been taken, being slightly amended as follows in order to avoid all uncertainty:

"Nevertheless due note was taken of a statement by one of the Delegates to the effect that..."

Mr. BAISTROCCHI (Italy) thought that they should take into consideration, not only the speeches made during a single meeting, but the whole course of the discussion in the Special Committee. The observations made by the United Kingdom Delegation could be checked in the summary records; and, accordingly, they should appear in the Report together with the insertion requested by the Danish Delegation.

Mr. ZUTTER (Switzerland) thought that it was a question of the interpretation of the minutes. The fact that nobody had asked to speak after the Danish Delegate's statement did not necessarily mean that the Committee agreed with him.

Mr. GARDNER (United Kingdom) requested that an insertion should be made in the minutes to the effect that, when the United Kingdom Delegation had several times repeated statements during a discussion, it considered it unnecessary to confirm, after the vote was taken, that it maintained its view.

The CHAIRMAN considered that, since the summary records mentioned the statements made by the United Kingdom and Danish Delegations, there was no reason why they should not also appear in the Report.

The Chairman's proposal, which was seconded by Captain MOUTON (Netherlands), was not

opposed by the United Kingdom or Danish Delegations.

The proposal was adopted by the Committee.

Mr. GARDNER (United Kingdom) considered that the last sentence of the twenty-first paragraph of Section II ("Internment of Prisoners of War") concerning Articles 38, 39 and 40 was obscure:

"Moreover, where prisoners are authorized to take their personal effects with them, it was considered desirable to limit the amount any prisoner might take with him to twenty-five kilos, a limit which may in no case be exceeded."

In particular, the words "where prisoners are authorized", conflicted with the provisions of Article 40, and should be amended.

Mr. SÖDERBLOM (Sweden), Rapporteur, said that the wording in question would be improved. No further observations were made with regard to the Report.

General DILLON (United States of America) proposed that the Committee should give it its provisional approval, pending any remarks which might be made by the Delegation of the Union of Soviet Socialist Republics. A new meeting would not then be necessary.

General SKLYAROV (Union of Soviet Socialist Republics) thought that his Delegation would have certain observations and objections to submit. He would prefer the final approval of the Report to be postponed to a later meeting.

The Soviet Delegate's proposal was agreed to by the Committee.

Mr. GARDNER (United Kingdom) proposed, in conclusion, the inclusion of the following text:

"The Committee desires to place on record its appreciation of, and gratitude to, its distinguished Chairman and Vice-Chairmen and Rapporteur and to its Secretary and all the Secretariat staff as well as to the Expert of the International Committee of the Red Cross. Without their help and guidance, willingly given at all times, the Committee could not have achieved the results described in the above Report."

The CHAIRMAN thanked the United Kingdom Delegate, pending the Committee's approval of the proposal.

*The meeting rose at 6.15 p.m.*

## THIRTY-SIXTH MEETING

Friday 22 July 1949, 3 p.m.

Chairman: Mr. Maurice BOURQUIN (Belgium)

**Draft Report of Committee II to the Plenary Assembly** (continued)

General SKLYAROV (Union of Soviet Socialist Republics), said that before approving the Report, his Delegation would like to submit the following observations:

(1) In the third sentence of the second paragraph of Part I—"General Provisions", the Draft Report stated that Article 3 "has been given long and careful scrutiny, as a result of which it was decided to abandon the system contained in the 1929 text, of reference to the Hague Regulations, and to substitute instead the enumeration in a single Article of all the categories of persons who would qualify to receive the protection of the Convention". That sentence was liable to be misinterpreted and to convey the impression that the principles of the Hague referred to in the 1929 Convention had been abandoned. According to Article 122, however, the Prisoners of War Convention was complementary to Chapter II of the Hague Regulations. His Delegation therefore proposed that the passage be worded as follows: "...long and careful scrutiny, as a result of which it was decided to insert the enumeration...".

Mr. SÖDERBLOM (Sweden), Rapporteur, supported this amendment.

The CHAIRMAN noted that there was no objection to this proposal. He therefore considered it to be adopted.

(2) The Soviet Delegation would prefer the fifth paragraph of Part I—"General Provisions", which concerned Article 3, to be omitted. It considered that the text in question was a personal interpretation of Article 3.

"The problem was finally solved only by approaching it from a new angle. The desire to attach additional conditions to resistance movements was due principally to the fact

that such movements, according to the Stockholm Draft, did not have to depend formally on a Party to the conflict. It was therefore decided to show this dependence clearly by an express assimilation—considered by some to exist already by implication—of resistance movements to militias and corps of volunteers which, while not forming part of the armed forces of a party to the conflict, depend nevertheless on that party; it was likewise defined that these corps and militias might legally operate on their own territory even if it were occupied. There is therefore an important innovation involved which has become necessary as a result of the experience of the Second World War."

Mr. GARDNER (United Kingdom) considered that certain sections of the text could be retained and proposed the following compromise wording which would give an objective account of what had taken place during the discussion:

"The problem was finally solved by the assimilation of resistance movements to militias and corps of volunteers not "forming part of the armed forces" of a Party to the conflict. It was likewise defined...".

The CHAIRMAN noted that there was no objection to this proposal. He considered it to be adopted.

(3) In the thirteenth paragraph of Part I—"General Provisions", concerning Article 4, the Rapporteur had said that some delegations would have liked the provision for exceptions enumerated in the first Article of the 1929 Convention to be reproduced and the possibility of these derogations extended to exceptional circumstances which might make it impossible for a Detaining Power to apply the Convention, while at the same time specifying that the sanctioning of such derogations might in neither case affect the application of its fundamental principles. The Soviet Delegation proposed that the reference, which was not relevant

to Article 4, be deleted. Article 4 had been adopted on first reading without any addition or alteration.

Mr. GARDNER (United Kingdom) pointed out that the reference was to an amendment submitted by his Delegation. As his Delegation would raise the question again in plenary session, he had no objection to the Soviet Delegation's request being complied with.

The Committee agreed, and the following passage was deleted:

"Some Delegation would have liked the provision for exceptions to be reproduced and to extend the possibility of derogations to exceptional circumstances which might make it impossible for a Detaining Power to apply the Convention, while at the same time specifying that the sanctioning of such derogations might in neither case affect the application of its fundamental principles. These Delegations were of the opinion that it would be better to provide for derogations rather than risk abuses. The Committee while recognizing that certain derogations would be inevitable, decided, nevertheless, by a large majority that such a provision would be more dangerous than useful (this was also the majority opinion during the preparatory discussion) and further that the application of the Convention like every other obligation, is subject by implication to the general principles of law governing impossibility or difficulty of execution."

(4) Among the comments on Article II there was a statement (in the fifth sentence of the third paragraph of Part II — "General Protection of Prisoners of War") that "Other Delegations were much in favour of the principle of joint responsibility which they believed would prove an additional guarantee to prisoners of war." The term "additional" was not considered strong enough; the word "fundamental" should be used.

Mr. SÖDERBLOM (Sweden), Rapporteur, agreed to the proposed modification.

The CHAIRMAN noted that there was no objection to the proposal. He considered it to be adopted.

(5) Speaking of the second and third paragraphs of Article 19, the Report mentioned in the last sentence of the third paragraph of Part III, Section II ("Internment of Prisoners of War"), that: "The majority of the Delegations, however, rejected this principle and adopted the present text, considering that the principle adopted in Article 75 should apply also to prisoners guilty

of breaking parole". The opinion expressed in the last part of the sentence was inaccurate and the Soviet Delegation proposed that it should be deleted.

Major ARMSTRONG (Canada) supported the above proposal.

The CHAIRMAN considered it to be adopted. The following words were therefore deleted from the Report: "considering that the principle adopted in Article 75 should apply also to prisoners guilty of breaking parole".

(6) The Soviet Delegation would like to see a reference in the comments on Article 20 in the fourth paragraph of Part III, Section II ("Internment of Prisoners of War"), to its view that prisoners of war of different nationalities, languages and customs, who belonged to the armed forces of the same country, should not be separated.

The CHAIRMAN noted that there were no objections to the above suggestion. He therefore considered it to be adopted. The Rapporteur was instructed to insert a sentence to that effect in his Report.

(7) In the fourth paragraph of Part III, Section VI ("Penal and Disciplinary Sanctions") the opinion recorded with regard to Article 75, which was that of the Soviet Delegation, called for further elucidation. In the opinion of that Delegation, persons who committed crimes against the laws of war or against humanity forfeited their right to the protection of the Convention, but were not "outlawed in respect of international law" as the Report put it.

Mr. GARDNER (United Kingdom) felt that the drafting of the sentence containing that expression might be still further improved by wording it as follows:

"In their opinion, persons convicted of crimes against the laws of war or against humanity, had placed themselves outside the protection of the Convention."

The CHAIRMAN noted that no objection was raised to this proposal; he considered it to be adopted.

(8) The Soviet Delegation felt that in Part IV, Section I of the Report ("Direct Repatriation and Accommodation in a Neutral Country"), the sixth paragraph (in which Article 105 was discussed) should give a truer picture of the debate. The Soviet Delegation had expressed the view in the

Special Committee that it was undesirable to provide that prisoners of war undergoing disciplinary punishment, or prosecuted for an offence for which the maximum penalty was not more than ten years, or serving a sentence of imprisonment of less than ten years, were not to be excluded from repatriation or from accommodation in a neutral country.

The Rapporteur had no objection to the addition of a provision to that effect and proposed that the following penultimate sentence should be added to this paragraph — dealing with Article 105:

“Some delegations did not consider the establishment of such qualifications advisable”.

The CHAIRMAN noted that there was no objection to the proposal; he regarded it as adopted.

Mr. BAISTROCCHI (Italy) moved that there should be a reference in the second paragraph of Part III, Section VI, of the Report (“Relations between Prisoners of War and the Authorities”), to an important innovation contained in the new Convention and not in that of 1929. He spoke of the provision laying down that prisoners’ representatives were not to be held responsible simply by reason of their functions, for offences committed by prisoners of war.

Mr. SÖDERBLOM (Sweden) noted the suggestion. He proposed that the reference in question should be inserted at the end of the second paragraph.

Mr. BAISTROCCHI (Italy) moved that some further explanation should be inserted regarding Article 29B in the last sentence of the twelfth paragraph of Part III, Section II (“Internment of Prisoners of War”). He proposed to replace the sentence reading: “Neither suggestion was accepted by the Committee” by the words: “The Committee rejected these suggestions by a small majority”.

The CHAIRMAN noted that there were no objections to the two last proposals; he therefore considered them to be adopted.

General LELLO (Portugal) would like the comments in Part III, Section VI (“Penal and Disciplinary Sanctions”), III (a), dealing with the provision of the death penalty in the case of certain offences, to mention the fact that certain delegations had pointed out that the legislation of their country made no provision for the death penalty in such cases.

The CHAIRMAN noted that no objection was raised to the above addition; he considered it to be adopted.

Captain MOUTON (Netherlands) and Mr. DU MOULIN (Belgium) made two further observations on minor drafting points. They were adopted by the Committee with no dissentient votes.

The CHAIRMAN noted that nobody else wished to speak on the subject of the Report; he concluded therefore that the Committee approved it unanimously, as amended in the course of the two last meetings.

General SKLYAROV (Union of Soviet Socialist Republics) proposed that the Minutes should state that his Delegation, while approving the Report, did not regard the comments on the various Articles as having compulsory force.

The CHAIRMAN said that thought was self-evident. The Soviet Delegate’s remarks would be included in the Minutes.

### Closure of the Discussions

Before finally closing the discussions, the CHAIRMAN desired to thank all those present for their contribution to the common effort.

Mr. BAISTROCCHI (Italy), Mr. GARDNER (United Kingdom), Mr. ZUTTER (Switzerland), Msgr. COMTE (Holy See) expressed their thanks to the Chairman and to all his collaborators.

*The meeting rose at 5.30 p.m.*

## SPECIAL COMMITTEE OF COMMITTEE II

### FIRST MEETING

*Thursday 5 May 1949, 10 a.m.*

*Chairman:* Mr. Maurice BOURQUIN (Belgium), afterwards  
General Edwin P. PARKER (United States of America)

(The Special Committee, which it was decided to set up on 2 May 1949, at the sixth Meeting of Committee II, was entrusted with the examination of the following Articles, which showed divergencies of substance: 3, 11 (second paragraph), 26, 30, 42, 43, 49, 50 51, 52, 53, 54, 55, 56, 57, 60, 74, 105, 108, 109, 115, amendment submitted by the Delegation of the United Kingdom for an Article 14 A, amendment submitted by the Delegation of Austria for an Article 108A. Delegations of the following States were members of the Committee:

Australia, Belgium, Canada, Denmark, Spain, United States of America, Finland, France, Greece, Hungary, India, Israel, Italy, Netherlands, United Kingdom, Switzerland, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics. A representative of the International Committee of the Red Cross took part in the debates as an Expert).

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The meeting was opened by Mr. BOURQUIN, Chairman of Committee II.

#### **Election of Chairman and Vice-Chairman**

There being no agreement as to the nomination of the Chairman, the delegates of various countries declining this honour for practical reasons, Mr. GARDNER (United Kingdom) proposed that the Swiss Delegation should designate a Chairman for the Special Committee, such a choice being a guarantee of impartiality and equity in the conduct of their discussions.

This proposal, which was seconded by Mr. BIJLEVELD (Netherlands), was accepted.

On the proposal of Mr. BOURQUIN (Belgium), General PARKER (United States of America), was elected Vice-Chairman, and took the chair in the absence of the Swiss Delegation.

#### **Article 3, first paragraph, sub-paragraph (1)**

Mr. GARDNER (United Kingdom) suggested that the Committee should leave the Preamble of the Article until the Article had been considered as a whole.

Mr. YINGLING (United States of America) seconded this proposal.

This proposal was adopted.

Mr. GARDNER (United Kingdom) proposed that the list of persons in Category I should be clarified, and that no reference should be made, as in the Prisoners of War Convention of 1929, to the Hague Convention of 1907. It was the general practice not to introduce provisions in an international convention which referred to some other instrument: Conventions should be independent of one another.

Mr. Gardner proposed to leave out the words "whether as combatants or non-combatants" in sub-paragraph (1) in the amendment which his Delegation had proposed, (*see Annex No. 90*) and to reinsert the word "militia", which was

included in the initial text submitted to the Stockholm Conference. These two changes would have the advantage of bringing the wording of the international treaties concerned into harmony with one another. The United Kingdom Delegate did not see any reason for the precise inclusion of the four conditions of the Hague Rules in the present Convention: it would be preferable to include such terms as were adopted.

In reply to a question by Mr. LAMARLE (France), Mr. GARDNER (United Kingdom) explained that the words "whether as combatants or non-combatants" in the United Kingdom amendment, had been inserted to cover medical and religious personnel. As it seemed from the discussions in Committee II that these persons were in future to be treated as prisoners of war, there was no further need for the insertion of these words in Article 3.

Mr. LAMARLE (France) agreed.

Mr. YINGLING (United States of America) asked whether the Special Committee was competent to discuss questions of substance or was it only to discuss questions of form.

He added that the United States Delegation had no objection to including the word "militia" in sub-paragraph (i).

Mr. GARDNER (United Kingdom) was of opinion that the Special Committee could not confine itself to questions of wording, and ought also to consider the substance of the Articles referred to it.

General DEVIJVER (Belgium) shared the view that it was unnecessary to refer in the Convention to the Hague Convention, and that it was preferable to have a single text which would obviate the need for referring to other treaties.

This view was shared by Mr. LAMARLE (France).

As regards the attributions of the Special Committee, General DEVIJVER was of the view that, since the questions referred for its consideration were controversial, it could not confine itself to matters of wording but must go into the substance.

Mr. COHN (Denmark) and Mr. YINGLING (United States of America) agreed that the text of the Convention should not refer to other Conventions; but it would obviously be difficult to ensure that it did not contain points of international law of a wider scope which might be contained in another treaty.

The SECRETARY read the text of the Summary Record of the Sixth Meeting of Committee II, at which it was decided to set up a Special Committee to reword Articles 3 and 11 and to consider any other questions of substance which might be referred to it.

Wing Commander DAVIS (Australia) agreed with the Delegate of the United Kingdom. He would like to see a clear definition of the persons referred to under Point (2) of the United Kingdom amendment.

At the request of Mr. LAMARLE (France) and Mr. BAISTROCCHI (Italy), Mr. GARDNER (United Kingdom) read the text of the United Kingdom amendment as finally worded:

".....who are in the service of an adverse belligerent as members of the armed forces including militia or volunteer corps fulfilling the following conditions:

- (i) that of being commanded by a person responsible for his subordinates;
- (ii) that of wearing a fixed distinctive sign recognisable at a distance ;
- (iii) that of carrying arms openly;
- (iv) that of conducting their operations in accordance with the laws and customs of war."

Mr. BIJLEVELD (Netherlands) reserved the position of his Delegation on sub-paragraph (iv) of the United Kingdom amendment, pending the discussion of Article 74 of the Prisoners of War Convention referring to "Offences committed before capture".

Mr. GARDNER (United Kingdom) stated that the word "militia" had been reintroduced into the amendment to bring the present Convention into line with the Hague Rules.

On the other hand, Article 74 related only to acts perpetrated before capture. It provided for prosecution under the laws of the Detaining Power, whereas a prisoner of war would be tried under the provisions of Article 3.

Mr. YINGLING (United States of America) was of the opinion that a prisoner of war tried for an act committed before capture could only be tried under the laws relating to prisoners of war, continuing accordingly to enjoy the benefit of the Convention.

General DEVIJVER (Belgium) agreed to the inclusion in the text of the Article of the word "militia". He concurred with the interpretation by the Delegates of the United States of America of Article 74.

Mr. LAMARLE (France) stated that the French Delegation also agreed with the interpretation in question.

Mr. COHN (Denmark) pointed out in answer to the Delegate of the Netherlands that Article 74 conflicted only with the text proposed at Stockholm, but not with the text adopted for Article 3.

Mr. MARESCA (Italy), too, saw no conflict between Article 74, the object of which was to safeguard the benefit of the Convention for prisoners of war prosecuted for acts committed before capture, and Article 3 which defined the categories of persons entitled to claim the status of prisoners of war.

Mr. YINGLING (United States of America) agreed with the views of the Delegate of Italy. He pointed out that the Special Committee had no mandate to deal with Article 74.

General SKLYAROV (Union of Soviet Socialist Republics) wished to leave the first paragraph of Article 3 unchanged in the form in which it was adopted at Stockholm. He had no objection to the inclusion in the text of the provisions of the Hague Convention. But the purpose of the Special Committee was to improve texts rather than restate them.

Count DE ALMINA (Spain) supported the views of the Delegations of the United Kingdom and the United States of America.

The CHAIRMAN proposed to refer the modified text of the United Kingdom Delegation to the Drafting Committee.

This proposal was adopted unanimously.

**Article 3, first paragraph, sub-paragraph (2)**

Mr. MARESCA (Italy) wished to amend this point in such a way as to make it apply also to regular

forces claiming allegiance to a Government which had ceased to exist.

Mr. LAMARLE (France) realized that cases might arise where combatants claiming allegiance to an authority which was not recognized by the Detaining Power might be deprived of the benefit of the Convention; but he thought the word "authority" afforded sufficient safeguards to such combatants.

After an exchange of views on the subject, the Committee agreed that the word "authority" afforded sufficient safeguards to combatants claiming allegiance to Governments which had ceased to exist.

Mr. BIJLEVELD (Netherlands) proposed to add to the United Kingdom amendment the following words: "Members of regular armed forces who professed allegiance to a Government or an authority not recognized by the Detaining Power".

Mr. GARDNER (United Kingdom) was afraid that too much precision might end in limiting the effect of the Article. The point raised by the Netherlands' Delegate brought up the question whether it was possible to claim allegiance to something which did not exist. The case of resistance movements, which might exist without a Government of any kind, would have to be examined by the Special Committee later.

Mr. COHN (Denmark) and Mr. MARESCA (Italy) agreed with the United Kingdom Delegation.

The CHAIRMAN proposed that the Special Committee should adopt the United Kingdom amendment.

This proposal was unanimously adopted.

On the proposal of Mr. YINGLING (United States of America) it was decided to ask the Drafting Committee to put the amendment into final form.

*The meeting rose at 1 p.m.*

SECOND MEETING

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

*Chairman:* Mr. Philippe ZUTTER (Switzerland)

**Article 3, first paragraph**

General PARKER (United States of America), Vice-Chairman of the Special Committee, introduced the Chairman, Mr. Zutter (Switzerland).

Mr. ZUTTER, Chairman, thanked the Committee for the honour and the confidence shown him.

He said that in his opinion sub-paragraphs (3), (4) and (5) of the first paragraph of Article 3 were ready to be handed over directly to the Drafting Committee, and he would have proposed to proceed to discuss sub-paragraph (6), the most difficult provision of the Article. But, in view of the remarks made by certain delegates, who had submitted amendments to the sub-paragraphs before (6), he would not do so, but would proceed with the reconsideration of the first paragraph of Article 3 and its sub-paragraphs in their order.

The discussion was accordingly opened on sub-paragraph (3) of the first paragraph of Article 3.

**Article 3, first paragraph, sub-paragraph (3)**

Mr. WILHELM (International Committee of the Red Cross) said that there were two amendments submitted by the United Kingdom Delegation proposing:

the first: to replace sub-paragraph (3) by the words: "Persons who follow the armed forces without directly belonging thereto".

the second: to insert in the Convention an Article 10A to the effect that "Belligerents shall provide every person in their service in the categories mentioned in Article 3 of the present Convention with an identity card..."

Mr. WILHELM pointed out that the absence of identity cards for regular military personnel was of no great importance; but it was otherwise with the persons designated under sub-paragraph (3). He wondered therefore whether it would not be

preferable to maintain the condition regarding identity cards for the persons mentioned in the sub-paragraph, even if it involved the extension of the stipulation to all persons referred to in Article 3.

Mr. GARDNER (United Kingdom) stated that in his opinion the wording of sub-paragraph (3) was too rigid, and should be made more elastic. Under the present wording of the provision, persons who lost their cards would be unprotected, as they could not prove their prisoner of war status.

Further, the part of the sentence referring to "civil members of military aircraft crews" did not seem to be in its right place, and should be inserted elsewhere.

The CHAIRMAN said that there were two solutions—either to retain the present wording of sub-paragraph (3), or to adopt the United Kingdom proposal. A vote would seem to be indicated under the circumstances.

Captain MOUTON (Netherlands) wished to know, before deciding as to the necessity of voting, whether the persons to whom sub-paragraph (5) (mass rising) related were also under the United Kingdom amendment to hold identity cards.

Mr. GARDNER (United Kingdom) replied that in the view of his Delegation partisans should have cards, seeing that they should be organized and be under the command of a responsible leader who could very well issue such cards. In the case of mass rising (sub-paragraph (5)) it would of course be impossible in practice to comply with that obligation, so that the persons designated under sub-paragraph (5) would be exempt from the obligation to hold identity cards.

General SLAVIN (Union of Soviet Socialist Republics) wished to know how the persons referred to in sub-paragraphs (1), (2) and (3) would be treated if they were captured without being in possession of identity cards.

General DILLON (United States of America) explained that a captured person need not necessarily hold a card at the time of capture. It would suffice for the person to have received a card, and to be able to give proof of the fact. That is to say, the determining factor should be the status of the person concerned, and not the possession of a document. He added that he would prefer to see the term "civil members of military aircraft crews" inserted in sub-paragraph (4).

Mr. GARDNER (United Kingdom), replying to a question of the Soviet Delegation, said that the meaning of the United Kingdom amendment was that all persons to whom Article 3 related, other than those to whom sub-paragraph (5) related, should hold an identity card. The holding of an identity card should not, however, be the only means of proving prisoner of war status. Persons accompanying armed forces should be protected, even if they had no cards. The cards should not be an indispensable condition for the right to be treated as a prisoner of war but a supplementary safeguard.

Major ARMSTRONG (Canada) was for keeping the words "civil members of military aircraft crews" in the Article, but did not mind where they were put. He also pointed out that it would not always be possible for a captured person to be in possession of a card, even if entitled thereto. In case of doubt, the provision of the second paragraph of Article 4 to the effect that "Should any doubt arise whether one of the aforesaid persons belongs to any of the categories named in the said Article" (Art. 3) "the said person shall have the benefit of the present Convention, until his or her status has been determined by a responsible authority", could be applied.

Captain MOUTON (Netherlands) stated that in a general sense he was in favour of an extra protection by identity cards; but he greatly doubted whether such cards could be issued to partisans.

Mr. BAISTROCCHI (Italy) would like it to be stipulated—in order to give greater protection to the persons to whom sub-paragraph (3) related—that these persons should wear a fixed distinctive emblem, as in the case of partisans.

Mr. GARDNER (United Kingdom) proposed to read: "on condition that these persons have been duly authorized by the authorities of the armed forces which they are accompanying" to replace the end of sub-paragraph (3) from the words "provided they are".

Mr. WILHELM (International Committee of the Red Cross) suggested that the remarks of the Nether-

lands Delegation might be taken into account by making the obligation to hold identity cards somewhat less imperative. On the other hand how under the United Kingdom proposal was proof to be shown of the authorization by the authorities of the armed forces?

As a compromise to meet all the views expressed, he proposed to read after the word "military" in the Stockholm text the following:

"and who have been given an identity card, similar to the annexed model, delivered to them by the armed forces which they accompany".

Colonel NORDLUND (Finland) stated that he was prepared to adopt the text of the Stockholm Draft, which in his opinion gave all necessary protection.

He suggested that the words "civil members of military aircrafts crews" should be deleted, since, in the view of the Finnish Delegation, civilians had no place in military aviation.

Mr. BAUDOY (France) observed that cards were perishable means of identification. Metal identity discs would be preferable. He also stressed the necessity to establish promptly and in a manner admitting of no dispute the identity as a member of an armed force, as persons who were unable to furnish such proof in time were liable to be shot in the interval, considering the necessities of war.

General DEVIJVER (Belgium) supported the proposal of the I.C.R.C. to maintain the principle of the card, without making it an indispensable condition.

The CHAIRMAN said that there were three different questions involved:

- (1) The principle of an identity card;
- (2) The substance of sub-paragraph (3);
- (3) The question of the words "civil members of military aircraft crews", which some delegates wished to transfer to sub-paragraph (4) and others to omit entirely.

The first thing to be done, in his opinion, was to decide the last-named point.

After additional explanations from Mr. GARDNER (United Kingdom), General DILLON (United States of America) and Major ARMSTRONG (Canada)—the last-named having no preference as to whether the sentence figured under sub-paragraph (3) or (4)—the Finnish Delegate withdrew his amendment for the omission of the words "civil members of military aircrafts crews".

The CHAIRMAN took it that the sense of the meeting was to keep the words "civil members of military aircraft crews" in sub-paragraph (3) of the first paragraph of Article 3.

He proceeded to read the whole of sub-paragraph (3) as it would stand with the amendments of the United Kingdom Delegation and the International Committee of the Red Cross.

In order to avoid a vote, he asked the United Kingdom Delegation whether it would be prepared to withdraw its proposal, and to agree to the wording suggested by the I.C.R.C.

Mr. GARDNER (United Kingdom) thought there was very little difference between the two texts, except that the I.C.R.C. wording was more restricted than the text suggested by the United Kingdom Delegation.

The CHAIRMAN suggested that the I.C.R.C. text should be referred to the Drafting Committee, together with the various observations made in the course of the discussion.

General SLAVIN (Union of Soviet Socialist Republics) thought that too many amendments to sub-paragraph (3) had been proposed, and he was by no means certain that they would improve the sub-paragraph. The Soviet Delegation must have time to consider all these amendments, and for this purpose a written text should be circulated.

General DILLON (United States of America) thought the question had been sufficiently discussed, and proposed it should be put to the vote without delay.

The CHAIRMAN said he quite appreciated both points of view, but he was obliged to take the opinions of all the delegations into account.

Mr. WILHELM (International Committee of the Red Cross) said he would draft a new text, taking due account of all the opinions expressed, with a view to finding a way out of the dilemma. His text would not, however, take into account the proposal which the Italian Delegate had put forward on several occasions for a distinctive emblem. His proposal ran as follows:

"provided they have received authorization from the Armed Forces which they accompany, who shall provide them for that purpose with an identity card similar to the annexed model".

The above wording to take the place of the final passage of sub-paragraph (3) beginning with the words "provided they are in possession...".

The CHAIRMAN adjourned the meeting for five minutes to enable Delegates to consult one another and consider the bearing of the new wording.

On resuming, the CHAIRMAN stated that in accordance with the wish of several delegations, the two I.C.R.C. texts would be circulated in writing that afternoon to all delegations for their consideration at leisure.

Mr. BAISTROCHI (Italy) waived his proposal.

Mr. GARDNER (United Kingdom) read an amended version of the United Kingdom text.

The CHAIRMAN said that the new text would be circulated in writing to delegates at the same time as the second I.C.R.C. text.

General DILLON (United States of America) suggested that the first I.C.R.C. proposal should be circulated in conjunction with these texts, since it had been accepted by several delegations, including in particular that of the United States of America.

The CHAIRMAN said he would do so. The Special Committee would then be able to decide on the following day by a vote which text it was prepared to accept as definitive.

He proceeded then to take the question of the principle of an identity card. It was a question, he thought, for Committee II, more particularly as the proposal of the United Kingdom Delegation to insert a new Article 10A had not yet been considered. He therefore proposed to refer both points to Committee II.

It was unanimously decided to refer the two above mentioned questions to Committee II.

### **Article 3, first paragraph, sub-paragraph (4)**

The CHAIRMAN reminded members that there were two United Kingdom amendments, to omit sub-paragraph (4) and to insert a fresh paragraph reading as follows:

"Members of the Mercantile Marine or of civil aircrews who are taken into custody by a belligerent because they are in the service of an adverse belligerent shall also be prisoners of war. Nevertheless, except in the case of civilian members of the crews of military aircraft, they shall in all matters not dealt with specifically in this Convention retain their full civil status."

Miss GUTTERIDGE (United Kingdom) explained that, in the case of the question of the maintenance of the civil status of captured members of the Mer-

cantile Marine and of civilian aircraft, the United Kingdom Delegation was prepared to forego the second sentence in its amendment.

General SLAVIN (Union of Soviet Socialist Republics) asked whether the words: "they shall retain their full civil status" referred to their status in their country of origin or their status in the country of the Detaining Power.

Miss GUTTERIDGE (United Kingdom) answered that the words referred exclusively to their status in the country of origin.

Mr. STROEHLIN (Switzerland) proposed to adopt the text of sub-paragraph (4) as it stood in the Stockholm wording.

General DEVIJVER (Belgium) seconded Mr. Stroehlin's proposal.

General DILLON (United States of America) pointed out that, after the deletion of the second sentence of the United Kingdom amendment, as accepted by the United Kingdom Delegation, the text would differ very little from the Stockholm text, since prisoners of war retained their status in all circumstances.

Captain MOUTON (Netherlands) said that the United Kingdom amendment would put an end to the most favoured treatment clause. The reference involved to the Hague Conventions was one which must not be overlooked.

Miss GUTTERIDGE (United Kingdom) gave further explanations in regard to the reasons in favour of the amendment proposed by her Delegation. In particular, the expression "members of the Mer-

cantile Marine" seemed to her preferable to the wording "members of the crews of the Merchant Marine".

The provisions of the Eleventh Hague Convention were not applied during the last War, owing to the fact that all the belligerent States were not parties to it.

Captain MOUTON (Netherlands) repeated that the wording of the United Kingdom amendment seemed to apply to all members of the Mercantile Marine, and would enable the latter to be arrested even in their own homes. He considered that it would only be lawful to arrest members of the Mercantile Marine who had mustered on a ship, but not those who, after having completed their turn of service, were on board ship as passengers, and still less those who were living in their homes. The English proposal seemed to include fishermen. As fishing boats cannot be captured according to Article 3 of the Eleventh Hague Convention of 1907, fishermen cannot be made prisoners of war. Article 3 of the Stockholm draft referred only to crews of the merchant marine. For these reasons, he was in favour of the Stockholm text.

The CHAIRMAN, in view of the fact that several Delegations had expressed themselves in favour of the wording of the Draft Resolution, proposed to take a vote on it.

By 10 votes to 2, the Special Committee decided in favour of retaining sub-paragraph (4) as adopted by the Stockholm Conference.

The CHAIRMAN said that the next Meeting would take place on Thursday May 12, at 10 a.m.

*The meeting rose at 1 p.m.*

THIRD MEETING

Thursday 12 May 1949, 10 a.m.

Chairman: Mr. Philippe ZUTTER (Switzerland)

**Election of a Rapporteur**

The CHAIRMAN proposed that General DEVIJVER (Belgium) be elected Rapporteur.

Mr. COHN (Denmark) seconded this proposal, which was adopted unanimously.

General DEVIJVER (Belgium) in accepting, expressed his thanks for the honour conferred upon him.

**Article 3, first paragraph, sub-paragraph (3)**  
(continued)

Referring to sub-paragraph (3) of the first paragraph of Article 3, which had been examined in the course of the previous session, the CHAIRMAN proposed to the members of the Special Committee that the second text which had been submitted on that occasion by the International Committee of the Red Cross should be accepted.

There being no objection, the second text submitted by the International Committee of the Red Cross was adopted.

**Article 3, first paragraph, sub-paragraph (5)**

Major STEINBERG (Israel) in submitting the amendment of his Delegation, stated that he would like to see the word "spontaneously" deleted from sub-paragraph (5), for it occasionally happened that there were mass risings of civilian populations in response to an order broadcast by a Government or by a military chief. On the other hand, he wished to replace the word "time" by the word "possibility", that being a better way of expressing what was meant in the case in question.

Mr. GARDNER (United Kingdom) firmly opposed the adoption of the two amendments because they considerably changed the meaning of sub-paragraph (5). In their own interest both combatants and civilians must, in virtue of the generally ad-

mitted rules of war, observe certain obligations. Only one derogation from that rule could be taken into account, and that only temporarily and in exceptional circumstances, e. g. where, a country being invaded, the civilian population spontaneously took up arms without having had time to form themselves into regular armed units. Sub-paragraph (5) visualized precisely that situation; to accept the modifications proposed by the Delegate of Israel might preclude control, give rise to indiscipline and finally make war even less humane.

General PARKER (United States of America) shared the view expressed by the Delegate of the United Kingdom and preferred the Stockholm text.

Major STEINBERG (Israel) was not able to accept such an interpretation of his amendment. Unlike the United Kingdom Delegate, he considered that his amendment tended to make war more humane and would avoid the recurrence of what happened in Warsaw in 1939.

Mr. GARDNER (United Kingdom) drew the attention of the members of the Special Committee to a more serious aspect of the question. Article 122 stated that the present Convention was intended to complete Chapter II of the Rules annexed to the Hague Conventions of 29 July 1899 and 18 October 1907. Chapter I of that annex contained the definition of a combatant. Consequently, the Conference was not qualified to study the question or to modify the definition of combatant as contained in those Rules. If it was to be admitted that a certain class of people were in certain cases to remain outside the generally accepted rules of war, it was essential that those people should fulfil the two conditions mentioned in sub-paragraph (5), namely, that they should have taken up arms spontaneously and that they should not have had time to form themselves into regular armed units. To extend the definition of the word combatant might provoke even greater evils.

The CHAIRMAN put to the vote the amendment submitted by the Delegate of Israel.

The Israeli amendment was rejected by 7 votes to 3.

Mr. BAISTROCCHI (Italy) recalled that in the course of a former meeting of Committee II, his Delegation had expressed the wish to submit a new sub-paragraph to be inserted between the fifth and sixth sub-paragraphs. However, in order to facilitate the work of the Committee, the Italian Delegation was prepared to withdraw the proposed sub-paragraph. He proposed instead the deletion of the words "non-occupied" and the addition of the words "or in presence" after the words "on the approach", in order to afford to the civilian populations, rising *en masse* on the approach or in the presence of the enemy, the same protection as was afforded to the persons mentioned under sub-paragraph (3) of the paragraph.

Mr. GARDNER (United Kingdom) found in the Italian Delegate's proposal another attempt to modify the Rules of War adopted at the Hague in 1907. The Conference was empowered to draw up a Convention relating to the treatment of prisoners of war, but not to examine and revise the definition of "combatant". The United Kingdom Delegation could not therefore accept the Italian proposal. Moreover, no Government which had signed the Hague Convention would be able to ratify such modifications. The United Kingdom Delegate reminded the members of the Committee that it was in the interest of both the civilian population and of organized armies to observe the rules of war. To permit civilian populations to attack armed forces in occupation, would be contrary to the aim which the Committee, entrusted with studying the Civilians Convention, was trying to achieve.

Mr. BAISTROCCHI (Italy), while understanding the fears expressed by the Delegate of the United Kingdom, could not agree with his opinion. The Italian Delegation also wished to ensure the protection of the civilian population, but they considered that sub-paragraph (5) already constituted an exception to the rule generally accepted. On the other hand, a draft Convention could be modified and that was the object of the Committee's work.

General DILLON (United States of America) stated that the Hague Rules had proved their effectiveness during the last two wars and it would be advisable to retain them. At the same time the Committee, if it wished, was entitled to modify them in order to improve them. Finally, although he did not share entirely the view of the United Kingdom Delegate, he nevertheless was not disposed to accept the Italian proposal.

Mr. GARDNER (United Kingdom) in reply to the Delegate of the United States of America reserved the right to submit the question of principle to the Conference Bureau.

Mr. MOROSOV (Union of Soviet Socialist Republics) did not quite understand the attitude adopted by the Delegate of the United Kingdom. The members of the Diplomatic Conference were entitled to examine carefully the Stockholm Draft, to do all they could to improve it and, if necessary, to add or delete certain of the provisions. The United Kingdom Delegation had already submitted several amendments to this Article and he did not understand why they should be opposed to the adoption of the modifications proposed by the Delegations of Israel and Italy. Such an attitude might hold up the work of the Committee.

Mr. Morosov mentioned that he had not had time to look carefully into the amendment verbally proposed by the Italian Delegate; but at first sight he considered that the two modifications were not contrary to recognized international law. It was extremely difficult to make an arbitrary distinction between the moment when the civil population prepared to fight against the enemy and the moment when the action took place, and the territory was consequently occupied. According to sub-paragraph (5), the protection of those civilians who rose against the invader would cease at that moment. But it was just at that moment that they would need protection. The situation should not be envisaged from a strictly legal angle, otherwise one might lose sight of the real facts, which must be taken into account if the miseries, which unfortunately a war entailed, were to be prevented.

Mr. BAISTROCCHI (Italy) thanked the Soviet Delegate. The amendment of the Italian Delegation was intended to protect civilian populations rising *en masse* against armies of occupation.

Mr. GARDNER (United Kingdom), replying to the Soviet Delegate, agreed with him that the task of the Conference was to study and improve the Draft Convention drawn up at Stockholm. Article 122, to which he again referred, restricted the objects of the present Convention to the completion of Chapter II of the Rules annexed to the Hague Convention. The amendments proposed by the Delegations of Israel and Italy were for changes in the provisions of Chapter I of that Annex. The United Kingdom amendments on the other hand only referred to Chapter II.

The CHAIRMAN invited the Committee to discuss the Italian amendment rather than the question of principle raised by the Delegate of the United Kingdom.

Mr. STROEHLIN (Switzerland) suggested that the discussion should be adjourned until the Italian amendment had been submitted in writing.

Agreed.

The CHAIRMAN put for discussions the second amendment submitted by the Israeli Delegation with the scope of inserting between sub-paragraphs (5) and (6) a new sub-paragraph, temporarily numbered (5A), reading thus:

"Inhabitants who, having taken up arms in the conditions provided by sub-paragraph (5) continue to resist during the first period of occupation, without having had the possibility of setting up an Organization in conformity with the conditions set forth in sub-paragraph (6), provided they carry arms openly and conform to the laws and customs of war."

Major STEINBERG (Israel) stated that this amendment was intended to protect civilian populations which continued fighting under enemy occupation. In its present form, the text of sub-paragraph (5) did not take the actual facts sufficiently into account. There should be some provision for the protection of combatants who had no time to organize themselves, and ran the risk thereby of being treated as *francs-tireurs*.

Taking into account the discussion which had just taken place, as well as the text of sub-paragraph (5), Major Steinberg was prepared to substitute the words "the time" for the word "possibility" in the text proposed by his Delegation.

Mr. YINGLING (United States of America) disagreed with the extension of the scope of sub-paragraph (5). Armies of occupation should be protected against attacks by the civilian population. It was, in any case, difficult to put time-limits to "the period of occupation".

Brigadier PAGE (United Kingdom) shared the view of the Delegate of the United States of America.

The CHAIRMAN put the amendment proposed by the Delegation of Israel to the vote.

The Israeli amendment was rejected by 7 votes to three.

The CHAIRMAN said he had received an amendment submitted by the Delegation of Australia.

Wing Commander DAVIS (Australia) preferred to wait until the position of protected persons had been fixed, before formally presenting his amendment. He reserved the right to do so later.

*The meeting rose at 12.20 p.m.*

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#### FOURTH MEETING

*Thursday 12 May 1949, 3 p.m.*

*Chairman:* Mr. Philippe ZUTTER (Switzerland)

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#### Article 3, first paragraph, sub-paragraph (6)

In reply to a suggestion made by the Delegate of France, Mr. GARDNER (United Kingdom) agreed to accept the substitution in his amendment under (b) (iii) (*see Annex No. 90*) of the word "command" for the word "control".

General DEVIJVER (Belgium) asked how the Occupying Power was to know that "effective command" had been established. The Stockholm text was perfectly acceptable to his Delegation provided that it was clearly stated that the resistance troops were organized in military formations.

Mr. GARDNER (United Kingdom) replied that it had been sought under (b) (iii) of his amendment to apply to partisan forces the criteria of minimum characteristics of a regular army. Guerilla forces began by being groups of patriots and gradually established discipline. From the point of view of the application of the Convention, what was important was that "effective command" be established, and it would soon be apparent to the Occupying Power by the manner in which the partisans treated their prisoners and conformed generally to the rules of war.

Mr. COHN (Denmark) considered that it would help the partisans to keep the location of the

headquarters secret if a clause were added providing that their headquarters might be in a foreign country. He supported the Stockholm text, which was a result of a compromise between different points of view.

Mr. GARDNER (United Kingdom) agreed with the Delegate of Denmark. The adopted wording had taken into account the wish to avoid the obligation of having the location of the partisan headquarters or the name of the commander disclosed. The word "headquarters" was not intended to mean exclusively "military headquarters", but the "headquarters of the resistance organization"; it would bear the same relation to the guerilla troops as the home government bore to a regular army. He regarded the Stockholm text as inadequate from the point of view of the Occupying Power.

General DEVIJVER (Belgium) said the word "headquarters" signified the headquarters of the General Staff. If it were desired to give a broader meaning to the provision of the Article, he suggested the term "responsible authorities". The General Staff might very well have its headquarters outside the territory, and have combat units in the battle area.

Mr. FILIPPOV (Union of Soviet Socialist Republics) supported the Stockholm text, which conformed to the traditional principles established in the 1907 Hague Convention. He could not accept the amendments submitted by the United Kingdom. He saw no reason to delete from the Stockholm text the mention of "organized resistance movement". Further, the United Kingdom amendment tended to limit the application of the Convention. He referred to the question of non-international conflicts which was being debated by the Special Sub-Committee of the Joint Committee, where the categories of persons to be protected by the four Conventions in case of non-international conflict had already been established. The acceptance of the United Kingdom amendment would provide the Occupying Power with every opportunity of applying arbitrary solutions to the irregular forces.

Further, he wished to make a reservation with regard to sub-paragraphs 1 and 2 of the first paragraph of Article 3 which had been discussed at a previous meeting.

The CHAIRMAN proposed that a Working Party should be instructed with the consideration of sub-paragraph (6) and to submit suggestions to the Special Committee. On the other hand, after having examined Article 3 point by point, the

President considered it convenient to study the results obtained, in order to give to all delegates, including the Soviet Delegate, who had made a reservation with regard to sub-paragraphs (1) and (2) the opportunity of stating their views prior to submitting proposals.

Mr. GARDNER (United Kingdom) replied to the criticisms formulated by the Soviet Delegate, and said that the first point of sub-paragraph (6) of the Stockholm text had seemed unduly restrictive. Further, the phrase "organized resistance movement", while it had acquired a topical significance, had no stable meaning. The United Kingdom amendment used the word "partisans" but he felt that a better expression might be found. In the second place, there was no term in international law with regard to which there were more divergencies of opinion than the term "occupied territory". The United Kingdom amendments had sought to define more clearly what was meant by the Stockholm text. His Government would have great difficulty in ratifying a text containing a provision to the effect that all that a resistance movement had to do to be recognized was to declare itself as such. With regard to the criticism of the expression "capable of being communicated with", ( (b) (IV), of his amendment) this did not mean that if the resistance headquarters failed to answer a communication, the Occupying Power might proceed to violate all the provisions of the Convention. For example, if the Occupying Power desired to act in bad faith, it might equally well say that the distinctive emblem provided by the Hague Rules had not been worn, and disqualify the resistance movement on this ground also. The machinery of the Convention and its working would depend on the effective functioning of a Protecting Power or some other body. That body could not deal with a movement that could not be communicated with. The ultimate sanction behind the Conventions was the pressure of world opinion, and the Conventions were designed to strengthen the hand of neutral bodies who might intervene, say, for the recognition of irregular resistance troops. Even in the circumstances of war, the texts provided by the amendment of the United Kingdom could be applied, which were designed to meet the practical necessities of the Occupying Power and the realities of neutral mediation.

After a short adjournment in order to give members of the Sub-Committee an opportunity to talk over the various points that had been raised, it was decided, on the proposition of the CHAIRMAN, to set up a Working Party to draw up an acceptable text of sub-paragraph (6), composed of Delegates of the following countries:

Belgium, Denmark, the United States of America, France, the United Kingdom and the Union of Soviet Socialist Republics.

The representative of the International Committee of the Red Cross would also attend the meetings of the Working Party.

Mr. GARDNER (United Kingdom) withdrew sub-paragraph (6) of the United Kingdom Amendment.

*The meeting rose at 5.45 p.m.*

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## FIFTH MEETING

*Monday 16 May 1949, 10 a.m.*

*Chairman:* Mr. Philippe ZUTTER (Switzerland)

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### **Article 3, first paragraph, sub-paragraph (6)** *(continued)*

The CHAIRMAN stated that the Working Party instructed with the consideration of sub-paragraph (6) of the first paragraph of Article 3 of the Prisoners of War Convention had met on May 13. A text, which represented a compromise and took into account the Stockholm text and the various points of view expressed at the meeting held on May 13, had just been distributed to members of the Special Committee.

The President recalled that the Special Committee should, if they were to comply with their terms of reference, which were to facilitate the work of Committee II, as far as possible, be unanimous in their decisions. He therefore proposed that they should postpone the discussion of sub-paragraph (6) so as to enable delegates to study the new text. He would be glad, however, if the Rapporteur would give them a few observations regarding the meeting held on May 13.

General DEVIJVER (Belgium), Rapporteur of the Working Party, reported the following:

The Delegates of Belgium, Denmark, the United States of America, France, the United Kingdom and the Union of Soviet Socialist Republics were present at the meeting of May 13. In the course of the discussion, the Delegations of Belgium, Denmark, the United States of America, France and the Union of Soviet Socialist Republics, preferred the Stockholm text to the text proposed by the United Kingdom Delegation. Nevertheless, the Delegations of Belgium, Denmark and France were not opposed

to the Stockholm text, if amended so as to take into account certain suggestions contained in the United Kingdom amendment.

On the other hand the Danish Delegate had submitted the following new proposals to the effect that:

(1) The safeguards referred to in sub-paragraph (6) should be equally applicable to military organizations and organized resistance movements fighting outside belligerent territories;

(2) Members of a resistance movement should not be obliged to wear continually the distinctive emblem referred to in sub-paragraph (6) (b) in the Stockholm text, provided they wore the emblem when actually taking part in military operations;

(3) The responsible Head of the organized resistance movement should be entitled to have his domicile or his headquarters outside the territory of the belligerents.

The Working Party were practically unanimous in agreeing that these three points were implied in the Stockholm text.

The Delegates of Italy, the United Kingdom and the Representative of the International Committee of the Red Cross then stated their views.

The Delegate of Italy preferred the amended Stockholm text, incorporating the main points of the United Kingdom proposal.

The Representative of the International Committee of the Red Cross submitted a compromise

text, including the point which the United Kingdom Delegation considered essential — namely, that the headquarters of the partisans should be enabled to receive and to reply to communications.

The United Kingdom Delegate reiterated his reservations as regards the term "occupied territory" which appeared in the Stockholm text. The reservation was to the effect that acceptance of this expression was subjected to re-examination in the light of any definition of "occupied territory" reached in Committee III.

In view of the impossibility of arriving at a unanimous decision, General DEVIJVER (Belgium) Rapporteur, suggested that the Special Committee should decide to adopt either the Stockholm text, or the Stockholm text amended in accordance with the International Committee of the Red Cross proposal, to which he hoped the United Kingdom Delegation might ultimately agree. He supported the Chairman's proposal to postpone the consideration of sub-paragraph (6) to a later meeting.

General SLAVIN (Union of Soviet Socialist Republics) pointed out that the Working Party had not decided to refer two texts to the Special Committee, as the Rapporteur had just stated, but only one text, a Stockholm text, excluding the wording proposed by the Representative of the International Committee of the Red Cross.

General DEVIJVER (Belgium) Rapporteur wished to make it clear that the amended text submitted to the Special Committee had not been approved by the Working Party. It had been put into its present form, because it had been found impossible to reach unanimity on the Stockholm text. All the Delegations, except the United Kingdom, had expressed themselves in favour of the Stockholm text, if necessary amended. As Rapporteur of the Working Party, he had now submitted the amended Stockholm text incorporating the suggestions of the I.C.R.C. Representative in order to enable the Special Committee to arrive at a unanimous decision.

Sir Robert CRAIGIE (United Kingdom) agreed with the Chairman. It was best, if they were to reach a unanimous decision, to postpone the consideration of sub-paragraph (6). He was also prepared in a spirit of compromise to accept the text submitted by the I.C.R.C. Representative, provided one amendment, which he considered non-controversial, was accepted.

General SLAVIN (Union of Soviet Socialist Republics) could not admit that the text proposed

by the Representative of the International Committee of the Red Cross was the work of the Working Party.

General DEVIJVER (Belgium) Rapporteur, agreed, at the CHAIRMAN'S suggestion, to submit an amendment by his Delegation embodying the text in question.

General SLAVIN (Union of Soviet Socialist Republics) accepted the above proposal, and the consideration of sub-paragraph (6) of the first paragraph of Article 3 was postponed to a later meeting.

#### **Amendment submitted by the Danish Delegation**

Mr. COHN (Denmark) said that, in consequence of the atrocities committed in his country during the second World War, his Delegation thought it necessary to extend the scope of the first paragraph of Article 3 to include categories of persons other than those enumerated in the paragraph.

The amendment submitted by his Delegation (*see Annex No. 85*) took three different cases into account.

Its first purpose was to protect civilians acting in self-defence. That precept was recognized by the legislation of all countries and by International Law; it was also implicitly embodied in the Hague Rules of 1907. The explicit mention of the case would have been unnecessary, had not certain belligerents, during the last war, deliberately violated principles which were generally accepted.

Again, it would be advisable to recognize the right of civilian persons to defend themselves, when their life, their health or their means of livelihood were threatened, even if the case of self-defence could not be definitely established, in order that such civilians falling into enemy hands should not be summarily shot, but be treated as prisoners of war. Civilians were not entitled to that right under former International Law because, up to the last war, only members of the armed forces took part in military operations. However, International Law did not sanction belligerents shooting captured civilians, as they did during the last war. Therefore the Danish amendment was in no way contrary to the Hague Rules.

Finally, the Danish amendment referred to the case of civilian persons participating in the defence of their native land in the event of aggression or

of illegal occupation. All States agreed that wars of aggression constituted an international crime, and it was therefore obvious that resistance by the civilian population should in such a case be considered as an act of legitimate defence. It might be argued that it was difficult, if not impossible, for the civilian population to know whether it was a war of aggression or a defensive war. In most cases the distinction was easy to draw. In case of doubt, it should not be the belligerents who should decide the matter, but an impartial Court which would meet after the close of hostilities.

The Danish Delegate did not think the amendment submitted by his Delegation was a revision of the Rules of War established at the Hague, and consequently the present Conference was competent to consider it.

General DILLON (United States of America), while recognizing that the Danish Delegation had proposed its amendment with the eminently humanitarian aim of affording better protection to civilian populations, was unable to support it. He considered that the amendment would be better placed in the Laws and Customs of Warfare or, since it related to civilians, in the Civilians Convention.

Captain MOUTON (Netherlands) was not in a position to make a definitive statement; but he agreed with the Delegate of the United States of America that the cases to which the Danish amendment related should be dealt with by the Civilians Convention, though as a matter of fact they were already covered by No. 46 of the Hague Rules. He therefore saw no reason to insert this particular clause in Article 3. An extension of the scope of Article 3 might adversely affect civilians in time of war.

General SLAVIN (Union of Soviet Socialist Republics) supported the Danish proposal. He thought it should be inserted in the Prisoners of War Convention, which was its right and proper place. Civilians who took up arms in defence of the liberty of their country should be entitled to the same protection as members of armed forces.

He could not agree that the proposal should be referred to another Committee, nor was he convinced by the reasons put forward by the Delegates of the United States of America and of the Netherlands for inserting it in another Convention.

Colonel NORDLUND (Finland) also supported the Danish proposal to insert the new sub-paragraph (7) in the first paragraph of Article 3.

Miss GUTTERIDGE (United Kingdom), while thoroughly sympathizing with the motives which had induced the Danish Delegation to submit their amendment, was unable to support it, as she considered that the proposed text would not achieve the desired result. She shared the opinion of the Delegates of the United States of America and of the Netherlands. The Danish amendment would have the effect of abolishing the distinction between combatants and non-combatants. To accept the amendment would be tantamount to rejecting the principles generally accepted at the Hague, and recognized in the Prisoners of War Convention. It was essential that war, even illegal war, should be governed by those principles.

General DEVIJVER (Belgium) paid tribute to the humanitarian aims of the Danish proposal, but was of opinion that it would weaken the Prisoners of War Convention, which applied to members of regular armed forces and others of an analogous character. The Belgian Delegation endorsed the arguments so well expressed by the Delegates of the United Kingdom, the United States of America and the Netherlands, and could not agree to the insertion of the Danish amendment in the Prisoners of War Convention.

Mr. FALUS (Hungary) considered that the Danish amendment should be inserted in the Prisoners of War Convention, as the latter related to civilians captured by the enemy, who should therefore be treated as prisoners of war and not as they were during the last war.

Major STEINBERG (Israel) bearing in mind the terrible suffering undergone by his people, strongly supported the Danish amendment. Up to the last war combatants alone were involved in the event of conflict. That was no longer the case during the Second World War, in the course of which a belligerent Power was manifestly bent on exterminating a whole people, massacring women and children in cold blood. What should a people do in such circumstances? Should it not rightly and dutifully seek to defend itself? Persons attacked in this manner were surely entitled to be treated as prisoners of war when they fell into enemy hands. He therefore proposed that the Special Committee should accept in principle the amendment proposed by the Danish Delegate, and insert it in the Prisoners of War Convention. Taking into consideration the opinion of certain Delegates, he proposed that the amendment, when accepted by Committee II, should be referred to the Co-ordination Committee to decide whether a similar clause should be inserted in the Civilians Convention.

The CHAIRMAN said that there was obviously little possibility of an agreement being reached on the Danish amendment. He therefore proposed that it should be put to the vote. The result of the vote would serve as a guide to Committee II, with whom the final decision rested.

General SLAVIN (Union of Soviet Socialist Republics) saw no reason to take a vote. He considered that it was the business of the Special Committee to consider the amendments submitted to it, and then to refer them either to the Drafting Committee or directly to Committee II.

The CHAIRMAN said that, when the Special Committee began its work, it had decided to take a vote on every amendment submitted in writing. He emphasized the fact that there was no question of reaching a final decision.

Captain MOUTON (Netherlands) seconded the proposal of the Israeli Delegate to refer the amendment to the Co-ordination Committee. He also thought that it would be very useful to have the opinion of Committee III.

At the request of the CHAIRMAN, Mr. CAHEN-SALVADOR (France), Chairman of Committee III, explained that the Co-ordination Committee was only competent to act where separate motions were submitted, or where two Conventions were in conflict with one another. Therefore the Co-ordination Committee could only intervene where two Committees had each adopted a different text on the same matter. In the present case, it seemed clear that the question applied equally to two Conventions. Hence Committee II could continue to deal with the proposal, while the Danish Delegate could submit his amendment to Committee III.

Speaking on behalf of the French Delegation, he said that the latter approved entirely the principles of the Danish amendment, though they had certain reservations as to the form in which they were presented. The French Delegation considered that, in certain circumstances, it was undesirable to repeat the principles solemnly affirmed in the general Articles with which all four Conventions opened.

General DILLON (United States of America) said that he could not accept the Danish amendment, which was inapplicable in practice.

The CHAIRMAN agreed with the Chairman of Committee III. Whatever the decision of the Special Committee, it was clearly Committee II

which had to deal with the proposal. For that reason, he now considered that it was perhaps unnecessary to take a vote. The views of the various Delegates would appear in the minutes of the meeting. Committee II would thus be fully informed of the two divergent views of the question, which had been voiced in the present Committee.

Mr. COHN (Denmark) stated that he did not intend to submit his amendment to Committee III, since in his opinion it referred solely to the Prisoners of War Convention. He agreed with the Chairman's view that the best procedure would be to inform Committee II of the various opinions which had been expressed during the meeting.

General DEVIJVER (Belgium) Rapporteur, insisted that a vote should be taken. The Special Committee should, in his opinion, facilitate the work of Committee II by reaching a definite conclusion. In addition to the views expressed by the various Delegations, he would wish to inform Committee II which Delegations were in favour, in principle at any rate, of the insertion of the Danish amendment in the Prisoners of War Convention. The vote would, of course, merely indicate a tendency, and would not imply anything in the nature of a final decision.

Mr. COHN (Denmark) thought it would be premature to take a vote on his amendment.

After a discussion, in which General DEVIJVER (Belgium) and General SLAVIN (Union of Soviet Socialist Republics) maintained their opinions, it was decided, at the request of General SLAVIN, to take a vote on the question of whether the Special Committee had the right to put an amendment to the vote, when the author of the amendment did not wish a vote to be taken.

The Committee decided by 8 votes to 2 that it had the right to put an amendment of a Delegation to the vote, even if the latter did not wish a vote to be taken.

The Special Committee then voted on the question of whether it was necessary to put the Danish amendment to the vote, as proposed by the Belgian Delegate.

The Committee decided that the Danish amendment should not be put to the vote.

*The meeting rose at 1.20 p.m.*

SIXTH MEETING

Wednesday 18 May 1949, 10 a.m.

Chairman: Mr. Philippe ZUTTER (Switzerland)

**Article 3, first paragraph, sub-paragraph (6)**  
(continued)

The CHAIRMAN put the amendment proposed by the Belgian Delegation (*see Annex No. 84*) and the proposal submitted by the United Kingdom Delegation (*see Annex No. 92*) on the subject of the Belgian amendment, for discussion.

Major ARMSTRONG (Canada) gave full support to the Belgian proposal, which he considered better than the Stockholm text.

Mr. BAISTROCCHI (Italy) shared the Canadian Delegate's opinion. He agreed with the Belgian proposal. He suggested a slight alteration however in order to improve the wording. He thought a distinction should be made between organizations dependent on a Government and those dependent on responsible authorities. In the first case, the conditions proposed in the Belgian amendment were adequate; in the second case they were not, and for that reason he would prefer a supplementary condition to be made stipulating "that such organization, not being dependent on a Government, has obtained effective, even though temporary, control, of a specified area". The sentence could be added at the end of paragraph (b).

Mr. STROEHLIN (Switzerland) agreed with the Belgian proposal.

General SLAVIN (Union of Soviet Socialist Republics) was of the opinion that the texts proposed by the Belgian and United Kingdom Delegations were not satisfactory. Both conflicted with the Hague Regulations of 1907.

In addition to the four conditions laid down in the first Chapter of the Regulations as the conditions with which combatants not belonging to the armed forces must comply in order to qualify as belligerents, the two amendments proposed the application of two supplementary conditions to the effect that the military organization or the organised resistance movement must have "effective com-

mand" of its subordinate formations and units, and that such organizations or movements must be able to send and receive communications. It would be very difficult, if not impossible, to ascertain whether these two conditions were fulfilled and, further, they might easily be given an arbitrary interpretation. He was of the opinion accordingly that the amendments did not improve the Stockholm text, and that the latter should be retained in its present form.

Sir Robert CRAIGIE (United Kingdom) did not think the Belgian and United Kingdom amendments conflicted with the Hague Regulations. The latter referred to militia and volunteer corps, both of which would certainly be under effective command, and would have at their disposal means of communication. The present case, on the contrary, dealt with an entirely new situation, which had developed during the last war. Persons belonging to organized resistance movements must be protected; but, in their own interests, it was essential to establish a clear distinction between such movements and small groups of snipers. By accepting the Belgian amendment as modified by the United Kingdom, his Delegation had given proof of a marked spirit of conciliation, and could not do more. The United Kingdom Delegation hoped therefore that the Soviet Delegation would recognize that these amendments were not contrary to the Hague Regulations, and that they contained provisions, whose adoption was essential, if grave misunderstanding was to be avoided.

Mr. JONES (Australia) gave his support to the Belgian and United Kingdom amendments, which in his opinion were a definite improvement on the Stockholm text. The two conditions stipulated therein were essential, and should be inserted in the present Convention. The Hague Regulations were drawn up to apply to the conditions of warfare in 1907, and a Convention was now needed to apply to the new conditions which had developed during the last war.

Mr. FALUS (Hungary) did not think it expedient to include the two conditions stipulated by the Belgian and United Kingdom amendments in the present Convention. It would be difficult to ascertain whether the two restrictions which they embodied were fulfilled. It would be impossible to leave it to the Occupying Power to decide, which was likely to be arbitrary.

Further, he was of the opinion that new restrictive conditions would never prevent the patriots of an occupied country from rising against the Occupying Power. Everybody was aware of the treatment of patriots by the Germans in the last war. It was essential to provide measures of protection to avoid the recurrence of such incidents and, in particular, to prevent partisans being tortured in order to obtain information which would certainly be of far greater value than that obtainable from men belonging to the regular forces.

In these conditions, the Hungarian Delegate preferred to retain the Stockholm text.

Sir Robert CRAIGIE (United Kingdom) wished to replace the word "contrôle" in the French text of the United Kingdom amendment by the word "commandement".

He did not consider that the two conditions were restrictive. In the last war they were complied with by all organized resistance movements.

Mr. ZABIGAILO (Ukrainian Soviet Socialist Republic) could not accept the Belgian and United Kingdom amendments. Instead of improving the Stockholm text, they would only facilitate the violation of the new Conventions.

General SLAVIN (Union of Soviet Socialist Republics) reminded the United Kingdom Delegate of the first part of the Hague Regulations and in particular the following passage:

"Until a more complete code of the laws of war has been issued, the High Contracting Parties deem it expedient to declare that, in cases not included in the Regulations adopted by them, the inhabitants and the belligerents remain under the protection and the rules of the principles of the law of nations, as they result from the usages established among civilized peoples, from the laws of humanity and the dictates of the public conscience:

They declare that it is in this sense especially that Articles 1 and 2 of the Regulations adopted must be understood."

He was of the opinion that the essential and adequate conditions stipulated in Chapter 1 of the Hague Regulations had been included in the

Stockholm text, and that the two supplementary conditions advocated by Belgium and the United Kingdom were restrictive in character and inapplicable in practice.

General PARKER (United States of America) was prepared to accept the amendments referred to above as a compromise solution.

Mr. FALUS (Hungary) said that the conditions were unquestionably restrictive. The United Kingdom Delegate had himself stated at a previous meeting that the present Convention's scope called for restriction.

Again, at another meeting, the United Kingdom Delegate had said that the formation and growth of resistance movements were gradual, and that it was difficult for them to fulfil the required conditions from the outset.

Captain MOUTON (Netherlands) recalled that there were already divergences regarding the question in 1899 and 1907. There were two different points of view: that of the Powers who had already repeatedly suffered invasion and were likely to be invaded again, and that of the Powers who were more or less likely to be the Occupying Powers. A compromise solution had been found in 1907. It should be possible to find one in the present instance.

It should first of all be specified that the present Conference was not dealing with the laws and customs of war, or with the question whether a war was lawful or unlawful. The purpose of the Conference was to draft Conventions intended to protect persons in danger owing to war and, in the particular case they were considering, persons who belonged to partisan movements. Protection was sought for a new category of combatants, who had never been protected so far. It was quite possible that a partisan would not fulfil the conditions required by the Stockholm text; but he should be entitled to benefit by the stipulations of the Convention until an impartial judgment, rendered in the presence of a neutral Observer or Power, appointed to ensure the impartiality of the proceedings, had established whether or not he fulfilled the required conditions.

He was also of the opinion that the two supplementary conditions advocated by the Belgian and United Kingdom Delegations were implicit in the Stockholm text. The condition set forth in the United Kingdom amendment was in fact stipulated in sub-paragraph (6) (b) of Article 3, which laid down "that its members are under the command of a responsible leader". With regard to the other condition relating to communications, he gathered that the United Kingdom Delegation's insistence

was due to its belief that the Occupying Power must have the certitude that organized resistance movements would observe the laws and customs of war, particularly in the matter of the treatment of prisoners. The United Kingdom Delegation's anxiety on that point was quite justified. It could, he thought, be met by the addition in Article 7 of the Stockholm text of the words "and the organized resistance movements" after the words "the Parties to the conflict".

The CHAIRMAN emphasized the importance of finding a compromise solution of such an essential question. If that could not be done by the Special Committee, the question would again be raised in Committee II, where the same divergences would be apparent and a decision would be reached by a majority vote.

Mr. NARAYANAN (India) proposed to appoint a small Working Party to find a compromise solution.

Mr. GARDNER (United Kingdom) said that it was generally conceded by other Delegations that the two conditions embodied in the Belgian and United Kingdom amendments were implicit in the Stockholm text. He suggested that unless the resistance movements was capable of communicating and replying to communications, it would not be possible to operate Article 5 or 10 of the Stockholm text.

He recalled that his Delegation had already made wide concessions in order to reach a unanimous decision. If the Soviet Delegation could also see its way to make some concessions, a unanimous decision could still be reached.

He did not think a Working Party would attain any concrete or positive result. He thought it would be preferable to adjourn the discussion in order to allow delegates to engage in unofficial conversations, which sometimes led to better results than official working parties.

General SLAVIN (Union of Soviet Socialist Republics) shared the point of view of the Nether-

lands Delegate. The two conditions in point were implicit in the Stockholm text. The Belgian and United Kingdom amendments only contained one new element: They allowed of an arbitrary interpretation which should be avoided at all costs. That was why he preferred to stick to the Stockholm text. He agreed, however, that unofficial conversations might lead to a settlement.

Mr. BAISTROCCHI (Italy) repeated what he had said before. He recognized however the necessity to effect a compromise which would embody the various opinions set forth during the debate. The Netherlands Delegate had indicated the best means of reaching a settlement. He agreed with the latter in wondering whether the Stockholm text could not be slightly modified in order to meet the United Kingdom Delegation's point of view. He consequently proposed to replace the words "its members" in sub-paragraph (6) (b) by "its formations and units" and to add after "under the command" the words "and the supervision".

With regard to the question of communications, it would perhaps be possible to entrust a neutral Power with the task of ascertaining whether a resistance movement could send and receive communications.

He did not support the proposal of the Indian Delegate for the appointment of a Working Party. It would be better to continue the discussion by unofficial conversations until the question could again come before the Special Committee.

Mr. COHN (Denmark) was in full agreement with the Netherlands Delegate.

The CHAIRMAN thought it was preferable to adjourn, leaving it to the parties principally concerned to continue the discussion in unofficial conversations.

*The meeting rose at 1 p.m.*

SEVENTH MEETING

Thursday 19 May 1949, 10 a.m.

Chairman: Mr. Philippe ZUTTER (Switzerland)

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**Article 3, second paragraph, sub-paragraph (1)**

The CHAIRMAN put the amendment submitted by the Delegation of the United States of America for discussion. Its aim was to delete the first sentence and sub-paragraph (1) of the second paragraph, change numeral (2) of this same paragraph to (7) and delete the last paragraph.

General PARKER (United States of America) explained that his Delegation had proposed the deletion of sub-paragraph (1) of the second paragraph of Article 3, because they believed that the persons to whom the sub-paragraph referred ought to be covered by the Civilians Conventions, and not by the Prisoners of War Convention.

As to the deletion of the last paragraph of Article 3, it was his own Delegation that had proposed its insertion in the Stockholm text; after more careful consideration, however, the Delegation now considered that it would be preferable to delete it.

Captain MOUTON (Netherlands) was unable to agree to the deletion of sub-paragraph (1) of the second paragraph of Article 3, since the class of persons referred to therein ought to be protected by the Prisoners of War Convention.

After the capitulation of the Netherlands army in the last war, the Occupying Power had decided to send all members of the Netherlands Army back to their homes. Two years later however, for reasons of security, all officers and non-commissioned officers and shortly afterwards also the soldiers, were recalled and interned. It is obvious, that these officers and men should be treated as prisoners of war. On the other hand, members of the armed forces, who had been sent home and tried to join their own forces, should, when caught, also be treated as prisoners of war, which unfortunately was not the case in the last war. Many of those members of the armed forces were shot without proper trial. Finally, also members of the armed forces, who had been sent home, and who, called

up to be reinterned, refused to obey the internment-order, should, when caught, be treated as prisoners of war. They had been, however, punished more severely than prisoners of war captured in attempting to escape.

As a result of these experiences, the Netherlands Delegation had succeeded at Stockholm in obtaining the insertion of a new paragraph to Article 82 of the present Draft Convention, intended to cover the two cases he had indicated.

The Netherlands Delegate recalled that a United Kingdom amendment had proposed to transfer the substance of this new paragraph of Article 82 to Article 3. The United Kingdom Delegation had subsequently withdrawn its amendment (*see Summary Record of the Fourth Meeting*), probably with the intention of leaving it to the Netherlands Delegation to propose the change.

General DILLON (United States of America) pointed out that one of the main reasons which had led his Delegation to suggest the deletion of sub-paragraph (1) of the second paragraph was that it appeared to introduce a contradiction into the Convention. What legitimate reason could there be for extending its scope to include a category of persons who violated the Convention?

Article 108 stipulated that "prisoners of war shall be released and repatriated without delay after the cessation of active hostilities". The case cited by the Netherlands Delegate did not therefore refer to members of the armed forces, but to civilians.

The main thing, in his opinion, was to remain logical and not to be swayed by questions of sentiment when engaged in framing an international Convention. For this reason, and in spite of his great sympathy for the persons referred to by the Netherlands Delegate, he could not agree to the retention of sub-paragraph (1) of the second paragraph of Article 3.

Captain MOUTON (Netherlands) said that there could be no question of the violation of the Convention in the cases referred to. For there had been no repatriation, and it was therefore impossible

to invoke Articles 107 and 108, or Article 19 either, since members of the Dutch armed forces had been sent back to their homes unconditionally. The war had gone on however, and a portion of the Netherlands Army and Fleet had continued the struggle, either in England or at sea. It was therefore perfectly natural that soldiers, who had been sent back to their homes, should endeavour to rejoin their own units.

It would certainly be necessary to consider what should be the proper status of an army which had been demobilized under such conditions. It was quite logical to treat its members as civilians until such time as they were recalled in order to be interned; but from that moment, it was equally logical to treat them as prisoners of war. Similarly, it would be logical to treat as prisoners of war any soldiers recaptured by the Occupying Power when attempting to rejoin their own armed forces.

General DEVIJVER (Belgium) entirely agreed with the Delegation of the United States of America as regards the deletion of the last paragraph of Article 3; but he could not agree to the deletion of sub-paragraph (1) of the second paragraph of that Article. After the invasion of Belgium, for instance, a great number of Belgian soldiers forcibly demobilized by the enemy had found themselves in the same tragic position as that described by the Netherlands Delegate. He proposed to keep the Stockholm text in its present form, subject possibly to amendment, but with the main underlying idea intact.

Mr. BAUDOUY (France) entirely concurred with the views of the Netherlands and Belgian Delegates. During the last war, the Occupying Power had frequently for reasons of security arrested former soldiers, and subsequently deported them under various pretexts. The French Delegation insisted that persons who had been arrested for the sole reason that they had been members of armed forces, and might at some future time rejoin those forces, should be treated as regular soldiers and protected by military conventions.

Mr. BAISTROCCHI (Italy) agreed entirely with the Delegates of the Netherlands, Belgium and France, and was accordingly in favour of the retention of sub-paragraph (1) of the second paragraph of Article 3.

With regard to the last paragraph of Article 3, he reminded the Committee that the Italian Delegation in Committee II had agreed to accept its deletion, provided that the principles which it embodied, as advocated by the Delegation, were given expression in the Preamble to the Convention.

Mr. GARDNER (United Kingdom) said he thought all delegates were really in agreement in recognizing that a person interned because he had at one time belonged to armed forces ought to be granted the benefit of the Prisoners of War Convention. The Delegate of the United States of America had not mentioned that specific case; but on the other hand he had not refused to accept that point of view.

It was therefore merely a matter of drafting, and he proposed the appointment of a Drafting Committee for the purpose of drafting a text, which would indicate quite clearly that the category to which the Delegate of the United States of America had referred was excluded from the scope of the present Convention.

As regards the proposal contained in the amendment (sub-paragraph (6) of the United Kingdom amendment, *see Annex No. 90*), which his Delegation had agreed to withdraw, there was no change of opinion on their part; but they thought it better to allow the countries concerned to assume the responsibility of drafting the text of the sub-paragraph in question.

General SLAVIN (Union of Soviet Socialist Republics) entirely agreed with the views expressed by the Netherlands Delegate, and expressed himself in favour of the retention of sub-paragraph (1). He wished however to know whether an Occupying Power was authorized to demobilize an army which had surrendered. Personally he did not believe it was: he thought the only authority competent to do so was the Government of the occupied territory. In that case the members of an army which had surrendered and had been sent back to their homes by the enemy's orders, would always remain regular members of the armed forces, and should therefore enjoy the protection of the Prisoners of War Convention.

Mr. BAISTROCCHI (Italy) was against the appointment of a Drafting Committee. He proposed that they should ask the Rapporteur to elaborate a new wording for sub-paragraph (1) which would take due account of the various views expressed.

General DEVIJVER (Belgium) agreeing, it was decided to ask the Rapporteur to elaborate a new text for sub-paragraph (1) of the second paragraph which would take due account of the various views expressed.

### Article 3, third paragraph

Mr. COHN (Denmark) recognized that the text of the third paragraph of Article 3 was not satis-

factory, but he felt strongly that the fundamental idea underlying it ought to be retained.

The CHAIRMAN asked if he did not think the second paragraph of Article 4 afforded sufficient protection to the persons referred to in the last paragraph of Article 3.

General SLAVIN (Union of Soviet Socialist Republics) was in favour of retaining the third paragraph of Article 3. He reminded the Committee that the Hague Convention of 1907 had already provided, in its Preamble and in Articles 1 and 2 of the Regulations, for the protection of the persons referred to in the paragraph. The provision in the latter had been restated in the Convention of 1929; and there was no reason for not including it in the present Convention.

Mr. WILHELM (International Committee of the Red Cross) pointed out that the paragraph had been added at Stockholm. The I.C.R.C. was uncertain which category of persons it was desired to cover. The present Conference was engaged in framing a Convention to protect members of armed forces and similar categories of persons, such as members of organized resistance movements, and another convention to protect civilians. Although the two Conventions might appear to cover all the categories concerned, irregular belligerents were not actually protected. It was an open question whether it was desirable to give protection to persons who did not conform to the laws and customs of war; but in view of the fact that isolated cases might arise which deserved to be taken into account, it would appear necessary to provide for a general clause of protection, similar to the one contained in the Hague Convention of 1907, to which the Soviet Delegate had referred. It did not however seem expedient to introduce this conception into an Article, the main object of which was to define clearly all the categories of persons who should be protected by the present Convention.

Mr. COHN (Denmark) replied that it was not a question of granting the persons referred to in the paragraph the same rights and privileges as those of prisoners of war, but simply of affording "a minimum of protection".

The second paragraph of Article 4, cited by the Chairman, did not cover those persons, since in their case there could be no doubt that they belonged to one of the categories specified in Article 3, precisely because Article 4 did not refer to them.

Mr. BAISTROCCHI (Italy) reminded the Committee that his Delegation was in favour of transferring the paragraph to the Preamble of the Convention.

It would be desirable to arrive at a better wording, in order to define more clearly the safeguards to be accorded to the persons to which the paragraph in question related.

Mr. GARDNER (United Kingdom) quite understood the desire repeatedly advocated by the Delegates of Denmark and the U.S.S.R. to provide maximum safeguards to persons suffering from the war. It would be difficult, however, to insert in an Article, in which all the categories of persons who might be regarded as prisoners of war were already defined, a general clause of such a character as to render the preceding paragraphs entirely useless.

The present Convention was intended to protect combatants who complied with the rules and customs of war; and that rule of law should be retained. The principal object of the Convention was to define as clearly as possible the categories of persons entitled to its protection.

It was quite true that the 1907 Convention laid down in its Preamble that the great humanitarian principles ought to be observed even in cases to which the provisions of the Regulations did not apply. There was nothing to prevent the re-affirmation of those principles in the Preamble of the present Convention; but there could be no possible question of inserting a clause to that effect in Article 3. Accordingly Mr. Gardner could not accept the proposals of the Delegates of Denmark and the U.S.S.R.

Mr. COHN (Denmark) repeated that there was no question of granting the persons referred to in the paragraph the same rights as those accorded to prisoners of war, but simply of preventing such persons from being subjected to inhuman treatment or summarily shot.

Mr. FALUS (Hungary) thought there could be no objection to extending the scope of the Convention to as many persons as possible. He agreed with the Danish Delegate as regards the second paragraph of Article 4. In that connection he pointed out that according to the text the "responsible authority" might be called upon to decide with regard to such persons. If the expression "responsible authority" was interpreted to mean the Protecting Power, the persons referred to in Article 3 might be committed to its protection. He therefore proposed to retain the last paragraph of Article 3, subject to the deletion of the words "a minimum standard of protection" and inserting, at the end of the paragraph, the words "but considered deserving of protection by the responsible authority".

General DEVIJVER (Belgium) said that Article 3 defined the categories of persons protected by the Convention as clearly as was possible. The Article was not therefore a suitable place at which to introduce a humanitarian principle. Would the Danish Delegate be prepared to agree to the principle in question being embodied in the Preamble?

Mr. STROEHLIN (Switzerland) agreed with the Belgian Delegate.

In reply to the Hungarian Delegate's suggestion, he recalled the declaration made by the Head of the Swiss Delegation with regard to the role of the Protecting Power. That Power was certainly not competent in any case whatever to determine what persons complied, or did not comply, with the conditions required for treatment as prisoners of war.

General SLAVIN (Union of Soviet Socialist Republics) did not agree with the views expressed by the Delegates of the United Kingdom or Belgium. The main thing was to protect as many persons as possible, even if all the cases could not be accurately defined in advance. If the paragraph they were discussing was to remain effective, it was essential that it should continue to form part of Article 3. That would not prevent the principle in question from being reaffirmed in the Preamble.

Mr. COHN (Denmark) was prepared to submit an amendment to the third paragraph of Article 3. It could then be decided at what point it should figure in the Convention.

*The meeting rose at 1 p.m.*

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## EIGHTH MEETING

*23 May 1949, 10 a.m.*

*Chairman:* Mr. Philippe ZUTTER (Switzerland)

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### **Article 3, first paragraph, new subparagraph (7)**

The Marquis DE VILLALOBAR (Spain) said that two groups of civilians came under the first paragraph of the Danish amendment. They were those "acting in legitimate defence" and those defending their country "against illegal aggression or occupation". It was Committee III which should deal with the first category as these persons should not lose the right to be considered as civilians.

The second category might possibly be considered as prisoners of war and would thus automatically be entitled to protection under Articles 72 and following, in particular under Article 74, which covers penal sanctions. If such persons were to enjoy protection, the conditions requisite for the said protection should be specifically laid down, since, as the amendment stood, protection would be extended to civilians acting alone or in small groups in opposition to the decrees which any Occupying Power would not fail to pass, prohibiting possession of arms by the civilian population.

Major ARMSTRONG (Canada) was opposed to the Danish amendment. For one thing, the criterion

of "legitimate defence" was difficult to apply. Then, the Prisoners of War Convention was meant to apply to members of military formations, and should not be extended to cover civilians who acted as individuals. The place of an amendment of this kind was in the Civilians Convention.

Mr. BAISTROCCHI (Italy), while he considered that it was necessary to safeguard the principle of legitimate defence, thought that the Prisoners of War Convention was not the appropriate place for these provisions.

Mr. STROEHLIN (Switzerland) also considered the Danish amendment more appropriate to the Civilians Convention. The terms of the first paragraph, dealing with legitimate defence, needed in any case to be made more precise. These provisions, if placed in the Prisoners of War Convention, might have the effect of causing the enemy to take very severe measures against the civilian population.

Mr. BEELAERTS VAN BLOKLAND (Netherlands) stated that an amendment would shortly be submitted to paragraph (3) by his Delegation; and he asked for the discussion to be adjourned until it had been circulated.

Mr. COHN (Denmark) said that certain classes of civilians had been included under the Hague Regulations. The Danish amendment was designed to draw attention to a group of persons not protected by the Convention.

It was agreed to adjourn the discussion of the Danish amendment until the Netherlands amendment had been circulated.

**Amendment to sub-paragraph (5) of the first paragraph of Article 3 (continued)**

Mr. BAISTROCCHI (Italy) said that the amendment submitted by his Delegation (*see Summary Record of the Third Meeting*) created no new principle, and was intended to give some safeguard to civilians who took up arms on the approach of the enemy.

Mr. GARDNER (United Kingdom) thought that the deletion of the words "non-occupied" from the Stockholm text introduced an element of confusion. The Hague rules applied to civilians who took up arms immediately on being invaded, but not to those who rose up against the Occupying Power, unless they were organized into formations conforming to sub-paragraph (6) of Article 3. He thought the amendment would lead to the whole of the civilian population being regarded as potential combatants.

On a vote being taken, the Italian amendment to sub-paragraph (5) of the first paragraph was rejected by nine votes against and three in favour.

*The meeting rose at 11.45 a.m.*

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NINTH MEETING

*Monday 23 May 1949, 3 p.m.*

*Chairman:* Mr. Philippe ZUTTER (Switzerland)

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**Article 3, second paragraph, sub-paragraph (1)**  
*(continued)*

The CHAIRMAN stated that two new texts had been submitted to the Special Committee:

(1) The following, drafted by General Devijver (Belgium), Rapporteur, which took into account the amendments submitted by the Delegations of the United States of America (*see Summary Record of the Seventh Meeting*), France (*see Annex No. 86*) and the Netherlands (*see Annex No. 87*):

"Persons belonging, or having belonged, to the armed forces of an occupied country shall benefit by the treatment reserved by the present Convention to prisoners of war, if the Occupying Power considers it necessary to intern them as having belonged to any of these categories, even if the said Power has originally liberated them while hostilities were going on outside the territory it occupies, in particular also in the case of an unsuccessful attempt to join the armed forces to which they belong and which are still

engaged in hostilities, and in the case of failure to answer a summons in view of renewed internment."

(2) A new Danish amendment, intended to replace the preceding one (*see Annex No. 85*), which is as follows:

"Any person resisting the enemy who does not appear to belong to any of the categories enumerated in Article 3 or who is not protected by any other Convention, shall be entitled, should he fall into the hands of the enemy, to receive, in all circumstances, treatment in conformity with the provisions of the present Convention, until such time as his status has been determined by a regular competent court, which shall decide upon his case in conformity with the rules of law and in particular of the law of self-defence, as also of the stipulations of the present Convention relative to penal and disciplinary sanctions.

Even should the decision of such a court not allow the said person to benefit by the provisions of the present Convention, he shall nevertheless

remain safeguarded by the principles of the rights of man as derived from the rules established among civilized nations and the humanitarian stipulations of the present Convention."

Mr. BELLAN (France) warmly supported the latter part of the text submitted by the Rapporteur. The provision in question, which was the same as that figuring in the last paragraph of Article 82 of the Stockholm text, was more appropriately placed in Article 3.

The amendment submitted by the French Delegation preferred to specify "Officers or non-commissioned officers", in order not to leave the Occupying Power free to treat all the men in an occupied territory as prisoners of war, on the pretext that they had belonged to the armed forces of that territory. The French Delegation also thought it more logical to make a separate article of sub-paragraph (1) of the second paragraph of Article 3; but they did not wish to press the point.

Captain MOUTON (Netherlands) was ready to accept the text drafted by General Devijver, because he wished all categories of members of the armed forces, including private soldiers, to be protected. He saw no reason to make two separate articles.

Mr. COHN (Denmark) wished to make it clear that the new amendment submitted by his Delegation had taken the Belgian and Dutch proposals into account. The amendment specified, more particularly, that there should be a regular tribunal competent to deal with cases of all persons who did not appear to fall under one of the categories referred to in Article 3 or were not protected by any other Convention. The amendment also took the right of self-defence into account.

In view of the importance of this question, General SLAVIN (Union of Soviet Socialist Republics), seconded by Major ARMSTRONG (Canada), requested that the discussion should be adjourned, so as to allow delegates carefully to study the two texts just submitted to them.

### **Article 3, second paragraph, sub-paragraph (2)**

Mr. GARDNER (United Kingdom) stated that his Delegation had submitted their amendment (*see Annex No. 91*), because it seemed preferable to deal with persons interned in a neutral country in a separate article (Article 2A); but they did not wish to press the point.

He did, however, wish to draw the delegates' attention to the fact that Articles 72 to 107 of the

Stockholm text (Penal and Disciplinary Sanctions, Direct Repatriation and Accommodation in Neutral Countries) should also apply to such persons.

On the other hand, he was prepared to accept a slight change in the wording of the last sentence of the United Kingdom amendment, for the purpose of making it clearer.

Mr. STROEHLIN (Switzerland) asked the United Kingdom Delegate if he insisted on the retention of the last sentence of his amendment:

"The belligerent in whose service the internees are shall be allowed to perform the functions of a Protecting Power in a belligerent territory under the Convention".

To him (Mr. Stroehlin) it seemed useless, since a belligerent Power could always be represented diplomatically in a neutral country.

Mr. GARDNER (United Kingdom) said that Protecting Powers must not be confused with neutral Powers; and Article 116, *inter alia*, did not apply to neutral Powers.

Mr. WILHELM (International Committee of the Red Cross) reminded the Committee that it had been thought preferable at Stockholm to group all the categories of prisoners to whom the Prisoners of War Convention was intended to apply in a single Article, which had, moreover, been divided into two separate parts, dealing respectively with prisoners of war and persons assimilated to prisoners of war, to whom it had been thought expedient to add persons interned in neutral countries.

The text of the United Kingdom proposal had the advantage that the reservation contained in the Stockholm text (Article 3, second paragraph, sub-paragraph (2)) with regard to the "Rules of International Law peculiar to Maritime Warfare" was dropped.

He further thought that Articles 72 to 107 should apply also to internees in a neutral country, subject always to a reservation regarding the stipulations concerning escape and repatriation.

General SLAVIN (Union of Soviet Socialist Republics) was in favour of the Stockholm text.

The CHAIRMAN proceeded to take a vote on the United Kingdom amendment.

It was adopted by 7 votes to 6.

Mr. GARDNER (United Kingdom) proposed to refer the amendment to the Drafting Committee for the purpose of finding a form of words to which all members of the Committee could agree.

**Preamble of Article 3, first paragraph**

The Preamble of Article 3, first paragraph, to which there were no objections, was adopted without discussion.

Major ARMSTRONG (Canada) stated that his Delegation, with a view to taking account of all the various points of view expressed on the question, had substituted for its original amendment (*see Summary Record of the Fourth Meeting of Committee II*) a new amendment (*see Annex No. 96*). The main object of their proposal was to specify that the transferring Power should take steps to ascertain that the Power to which prisoners were being transferred was in a position to apply the provisions of the Convention. He added that his Delegation was of the opinion that it was preferable to leave the entire responsibility for observing the Convention to the Power by which the prisoners were effectively held.

Captain MOUTON (Netherlands) thought that the new amendment was decidedly better than the former. Nevertheless, he would like it to be clearly specified that it was not possible to transfer prisoners of war to a Power which was not a Party to the Convention.

General SLAVIN (Union of Soviet Socialist Republics) endorsed the reservation made by the Netherlands Delegate. He could not, on the other hand, accept the Canadian proposal to place the entire responsibility for observing the Convention upon the Power which received the prisoners of war. What would in fact occur if the prisoners were entrusted to neutral countries?

Mr. GARDNER (United Kingdom) stated that his Delegation withdrew its amendment (*see Annex*

*No. 97*) in favour of the Canadian amendment, on condition that the text of the latter was slightly altered by replacing the expression "has made certain"; for it was difficult to make future commitments and to be certain that the new Detaining Power would be in a position to carry out the provisions of the Convention.

To meet the objection raised by the Netherlands Delegate, his Delegation was prepared to retain the first sentence of the second paragraph of Article II.

The remark made by the Soviet Delegate did not apply, since a neutral Power, which was a Party to the Convention, had the same responsibilities as the other Powers.

Mr. BELLAN (France), General DILLON (United States of America), General SLAVIN (Union of Soviet Socialist Republics), and Mr. BAISTROCCHI (Italy) were in favour of maintaining joint responsibility, which assured more effective protection for prisoners of war.

Mr. GARDNER (United Kingdom) said that the question should also be considered from a practical point of view. During the last war his own country had, by virtue of the Convention, been obliged to transfer prisoners of war to other countries, because it was threatened with invasion. His country had also received prisoners of war sent from Allied States which had been invaded. It must be admitted that the principle of joint responsibility had not proved very efficient, and for this reason his Delegation preferred the principle of sole responsibility, and was prepared to accept the new Canadian amendment.

*The meeting rose at 5.40 p.m.*

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TENTH MEETING

*Tuesday 24 May 1949, 3 p.m.*

*Chairman:* Mr. Philippe ZUTTER (Switzerland)

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**Article II, second paragraph (*continued*)**

Major ARMSTRONG (Canada) urged the adoption of the principle of sole responsibility, as embodied in the amendment submitted by his Delegation.

Mr. STROEHLIN (Switzerland) stated that the Swiss Delegation supported the principle of joint responsibility for three reasons. In the first place it provided better safeguards for the prisoners of war. In the second place, when the capturing

Power transferred prisoners to one of its allies, it gave a mandate to that ally and could call it to account in regard to the treatment of prisoners. In the third place, Article 1 provided for the principle of joint responsibility by requiring that all parties to the Convention should ensure respect for its provisions.

General DEVIJVER (Belgium) favoured the principle of joint responsibility as providing maximum safeguards. The difficulties which might arise should not be exaggerated. He proposed the following amendment:

“Prisoners of war shall not be transferred by a Detaining Power to a Power not a party to the Convention. When prisoners are transferred to a Power party to the Convention, the responsibility for the application of the Convention is placed jointly upon both Powers, according to the provisions of an agreement made at the time of the transfer. The terms of this agreement shall be communicated to the Protecting Power.”

Mr. DRUGOV (Union of Soviet Socialist Republics) repeated what he had stated at the preceding meeting, that the spirit of the Convention was better reflected in the Stockholm text.

Mr. GARDNER (United Kingdom) could accept the amendment proposed by the Delegate of Belgium if it meant that an agreement between the two Powers would relieve the transferring Power of responsibility for the prisoners, but he did not think that could be the intention of the amendment and if it did not mean that, he was not clear what its purpose was. He asked the Delegate of Switzerland whether he considered that article 1 meant that neutral parties to the Convention were responsible for its application by belligerents. He cited the experience of the last war with regard to French prisoners in Italy who were transferred to Germany when Italy was invaded by the Allies. It could not be held that the Italian Government retained responsibility for those prisoners. Experience had been similar with regard to German prisoners in Greece. He asked where the responsibility lay when prisoners were transferred five or six times.

General DILLON (United States of America) replied to the Delegate of the United Kingdom that *bona fide* inability of a Power to carry out any provisions of a Convention released that Power from responsibility. It was at that point that joint responsibility, which could be reinforced by special agreement, came into play. That principle had been applied with success in a case where the pro-

vision of rations had broken down completely, and the Government of the United States of America had to send 175 tons of food and medical supplies daily until the situation was corrected. He urged the retention of the Stockholm text.

On a vote being taken, the Canadian amendment was rejected by 9 votes to 4.

The Stockholm text was approved.

#### Article 26

The CHAIRMAN drew attention to amendments submitted by the Delegations of Canada and of the United Kingdom. (*see Annexes No. 107 and No. 108*)

Major ARMSTRONG (Canada) wished to delete from the amendment submitted by his Delegation the second sentence of the first paragraph dealing with special agreements. It was always open to Governments to conclude such agreements, and it was not necessary to mention them specifically.

After a short discussion, the Stockholm text of the first paragraph of Article 26 was approved.

A discussion took place with regard to the second sentence of the second paragraph of the Stockholm text, and the amendment to it contained in the second paragraph of the United Kingdom amendment. It was held by the Delegates of France and the United States that the United Kingdom amendment laid too heavy a responsibility upon the camp spokesman and his deputies.

Mr. BELLAN (France) proposed the following wording:

“The canteens shall be managed by the camp leader. The Camp Commandant shall have the financial management of the canteens, and the camp spokesman shall have the right to check these funds”.

General DILLON (United States of America) proposed a compromise text:

“The spokesman or his assistant shall have the right to co-operate in the management of the canteen and in the audit of the canteen funds”.

The Special Committee decided to wait for the circulation of the amendment of the United States of America, and discuss it at the next meeting.

A discussion took place with regard to the first sentence of the second paragraph, and the third paragraph.

Two proposals were submitted to the Special Committee by the Delegation of the United Kingdom. The first, relating to the first sentence of

the second paragraph, was to substitute the term "camp welfare fund" for the term "special fund".

On a vote being taken, the United Kingdom amendment was rejected by 5 votes to 5.

The Stockholm text of the first sentence of the second paragraph was maintained.

The Committee then proceeded to a vote on the second United Kingdom proposal, relating to the third paragraph, viz. the proposal to delete the words "the profits of canteens" and substitute "the balance of the special fund shall be handed to a central welfare fund, or an international welfare organization".

On a vote being taken, the United Kingdom amendment was rejected by 7 votes to 1.

General DILLON (United States of America) proposed that the special fund having been established by the first sentence of the second paragraph, the wording of the United Kingdom amendment regarding the special fund should be retained in the second line of the third paragraph. It would then read "When a camp is closed down the balance of the special fund shall be ...".

This was approved.

*The meeting rose at 6 p.m.*

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## ELEVENTH MEETING

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

*Chairman:* Mr. Philippe ZUTTER (Switzerland)

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### Articles 30, 30A, 30B, 30C

Mgr. COMTE (Holy See) said that his Delegation attached great importance to Article 30, the only one in the Convention which dealt with the exercise of religious duties. He spoke not only in the name of the Holy See, but also in that of the religious organizations which had been convoked in 1947 by the International Committee of the Red Cross, namely, the World Council of Churches, the Y.M.C.A. and the Jewish Organization. He hoped that the Article might be made sufficiently wide to include all religious denominations. He considered that the privileges accorded by the Article would apply to a relatively small number of prisoners and would not therefore interfere with camp discipline.

He submitted the following amendment (*see Annex No 112*) with the aim of dividing the text of Article 30 into four new Articles, numbered 30, 30A, 30B and 30C. Furthermore, the following additions were planned:

Article 30A. Final sentence: "They shall be given all facilities, particularly with regard to means of transportation."

Article 30C. Final sentence: "The latter shall enjoy all the privileges accruing in virtue of the functions entrusted to him."

Mr. NARAYANAN (India) proposed that the Article should contain a phrase to include within its scope Indian ministers of religion, who were not ordained as in Western countries.

Mgr. COMTE (Holy See) considered that the term "qualified layman" covered the point made by the Delegate of India.

The amendment of the Holy See was supported by the Delegations of BELGIUM, CANADA, ITALY, the UNITED KINGDOM, SWITZERLAND and the Representative of the INTERNATIONAL COMMITTEE OF THE RED CROSS.

In reply to the Representative of the I.C.R.C., Mr. GARDNER (United Kingdom) said that the proposal to establish a Joint Committee of Committees I and II to deal with protected personnel had been rejected. Instead it had been agreed that each Committee should deal with the questions separately and coordinate later after decisions had been reached.

Mr. BELLAN (France) thought that any decision reached in Committee II with regard to the status of chaplains should not influence decisions reached in Committee I on protected personnel.

He supported the Holy See's amendment, but suggested the following modification of the final sentence of Article 30B:

"They shall be exempted from work in so far as required by the full exercise of their ministry".

Mr. COURVOISIER (World Council of Churches) said that the amendment submitted by the Delegate of the Holy See was a great improvement on the Stockholm text. He considered that the clearer the text of the Convention, the easier would be its application. Therefore it might be advisable to restate in Article 30 certain provisions with regard to chaplains and ministers who were prisoners of war. He supported the observation made by the Delegate of India. Finally, he proposed the addition in Article 30C, of the words "and the community concerned" after the word "authority".

On the proposal of the Delegate of the United Kingdom, it was decided to take the amendment as a working document in place of the texts set forth in the Draft Convention of Stockholm, and discuss it article by article.

#### Article 30

Mr. BELLAN (France) proposed the adoption of an amendment submitted by the Delegation of Canada, to substitute in the first sentence the word "latitude" for "liberty" and in the French and English texts the words "disciplinary routine" for the words "measures of order".

This was approved.

Article 30 of the amendment was adopted with the above changes.

#### Article 30A

Mr. BELLAN (France) proposed to substitute in the last sentence the word "They" for the words "Ministers of Religion".

The French Delegate's proposal was approved.

Mr. GARDNER (United Kingdom) proposed that the following phrase, taken from Article 22 of the Wounded and Sick Convention, and slightly modified should be inserted after the word "war" in the first sentence: "shall be allowed to minister to them freely in accordance with their professional ethics and".

Mr. BELLAN (France) drew attention to Article 41, and thought there was a tendency to confuse ministers of religion who happened to be prisoners of war and chaplains.

The proposal of the Delegate of the United Kingdom was referred to the Drafting Committee.

On the proposal of this same Delegate, the following drafting changes were approved:

At the beginning of the second sentence, substitute for the word "all" the word "necessary";

in the last sentence, substitute for the words "at liberty" the words "be free to"—the word "liberté" to be retained in the French text. After the word "correspond" add the words "subject to censorship";

in the last sentence, substitute for the word "ministry" the words "religious duties" in the English text only;

add after the word "detention" the words "and with international religious organizations".

The United Kingdom proposal to add a sentence stating that the correspondence of ministers in the exercise of their religious duties should be additional to the quota provided for in Article 60 was referred to the Drafting Committee.

Mr. GARDNER (United Kingdom) proposed the following addition to Article 30A of the Holy See's amendment:

"Chaplains shall be accorded additional opportunities for exercise and recreation including some freedom of movement in order to maintain mental and physical fitness for their particular duties. They shall also be granted the supplement of food given to working prisoners of war under Article 24."

This proposed addition was in conformity with an amendment submitted by the United Kingdom Delegation (*see Annex No. 113*).

A discussion took place as to whether Committee II should deal with protected personnel before the decisions of Committee I were known.

The CHAIRMAN requested the Delegate of the United Kingdom to submit a written text of his addition to the amendment submitted by the Delegate of the Holy See.

*The meeting rose at 1.10 p.m.*

TWELFTH MEETING

Monday 30 May 1949, 3 p.m.

Chairman: Mr. Philippe ZUTTER (Switzerland)

**Article 26, second paragraph, second sentence**  
(continued)

The CHAIRMAN drew attention to a proposition submitted by the Delegation of the United States of America (see *Summary Record of the Tenth Meeting*).

After a short discussion, the following text was adopted in substitution for the second sentence of the second paragraph of Article 26:

“The spokesman shall have the right to collaborate in the management of the canteen and of this fund.”

**Article 30A** (continued)

The addition to the working text submitted by the Delegation of the Holy See and proposed by the Delegation of the United Kingdom (see *Annex No. II3*) was accepted by the Delegate of the Holy See, and opposed by the Delegate of Switzerland. The latter considered that the Article should deal only with the spiritual functions of ministers of religion, and not with their physical needs, which should be dealt with elsewhere in the Convention.

On a vote, the United Kingdom amendment was adopted by 6 votes to 2.

**Article 30B** (continued)

The first amendment to Article 30B, proposed by the Delegation of the United Kingdom (see *Annex No. II3*) for the deletion of the words „in so far as it may be necessary” was approved by the Committee.

After a short discussion the second United Kingdom amendment to the Article was withdrawn.

The last sentence of Article 30B was amended to read “They shall not be forced to do any other work”.

**Article 30C** (continued)

Mr. COHN (Denmark) proposed the addition of the words “if they so desire” after “prisoner” in the United Kingdom amendment (see *Annex No. II3*).

A discussion took place with regard to the point contained in the Holy See amendment which gave the right of appointment of ministers to the Detaining Power.

Mgr. COMTE (Holy See) proposed the inclusion of a phrase requiring the “interested community” (i.e. the prisoners of war) to be consulted in the designation of ministers. The United Kingdom amendment required only the approval of the Detaining Power but did not give it the right of appointment. Finally the United Kingdom amendment was accepted as preferable by the Delegate of the Holy See.

Mr. COURVOISIER (World Council of Churches) thought that the minister should be elected by the interested community, subject—particularly in the case of the Roman Catholic hierarchy—to the approval of the local ecclesiastical authority, and that the consent of the Detaining Power should be sought as a final step.

In reply to a suggestion by the Delegate of the Holy See, Mr. GARDNER (United Kingdom) stated that he could not accept the deletion of the last phrase of the United Kingdom amendment to Article 30C, which contained a safeguard with regard to the military and security regulations of the Detaining Power. He proposed the insertion of the words “where necessary” after the word “Power” in his amendment, which he thought would meet the point raised by the Delegate of Denmark.

On the suggestion of the CHAIRMAN, the Committee decided to entrust the redrafting of this article to a Working Party composed of the Rapporteur and the delegates most interested in the question, including the Delegate of the Holy See and the representative of the World Council of Churches.

**Article 42**

The CHAIRMAN drew attention to two amendments to Article 42, one submitted by the Delegation of the Holy See and one by the Delegation of the United Kingdom.

tion of the United Kingdom (*see Annex No 116*), and the other by the Delegation of New Zealand (*see Summary Record of the Tenth Meeting of Committee II*).

In reply to the Delegate of the United States of America, who supported the Stockholm text as having been thoroughly examined and discussed, Mr. GARDNER (United Kingdom) said that the article concerning authorized labour had been the most disputed article in the whole Convention, and the most difficult of interpretation.

He reminded the Committee that in 1947 no text had been drawn up, and that the text presented for discussion to the Stockholm Conference by the International Committee of the Red Cross had been drafted by the I.C.R.C. after a great deal of study and research and subsequent to the 1947 Conference of Government Experts at Geneva. It had however not reached the delegations of some of the more distant countries until immediately before the Stockholm Conference, and for that reason had perhaps been insufficiently studied. The United Kingdom amendment re-submitted that

text for examination. The Stockholm text was too loose and liable to misinterpretation. For instance, the word "normally" in the first paragraph of the Stockholm text might be set aside as not applying to an abnormal situation which might arise during the course of hostilities, and the rest of the paragraph, which dealt with the feeding, sheltering, transportation etc. of human beings, might be held to apply to the whole of military operations. He drew the attention to the passage in "Remarks and Proposals" of the I.C.R.C. relative to Article 42 (page 51). He was prepared to leave that part of sub-paragraph (*e*) of the United Kingdom amendment dealing with mine removal to be discussed separately, if the Committee so desired.

Major ARMSTRONG (Canada) moved the adjournment of the meeting, to allow the New Zealand Delegate to attend the discussion of the amendment submitted by his Delegation.

Major Armstrong's suggestion was approved.

*The meeting rose at 6 p.m.*

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### THIRTEENTH MEETING

*Wednesday 1 June 1949, 10 a.m.*

*Chairman* : Mr. Philippe ZUTTER (Switzerland)

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#### **Article 30C** (*continued*)

The Delegation of the Holy See proposed for this Article the following new wording:

"Absence of a Minister of Religion.

When prisoners of war have not the assistance of a retained chaplain or of a prisoner of war minister of their faith, a minister belonging to the prisoners' or a similar denomination, or in his absence a qualified layman, if such a course is feasible from a sectarian point of view, shall be designated at the request of the prisoners of war concerned to fill this office. This designation, subject to the approval of the Detaining Power, shall take place with the agreement of the community of prisoners concerned and, wherever necessary, with the approval of the local religious authorities of the same faith. The minister thus designated shall comply with all

regulations established by the Detaining Power in the interests of discipline and military security."

This new draft gave rise to no discussions and, on the suggestion of the CHAIRMAN, it was decided to accept it.

The CHAIRMAN pointed out that Articles 30A, 30B, 30C, as they had been adopted by the Special Committee, would be read again during the second reading.

#### **Article 42** (*continued*)

A discussion took place with regard to the second sentence of sub-paragraph (*e*) of the United Kingdom amendment dealing with mine removal.

General SLAVIN (Union of Soviet Socialist Republics) thought that mine removal was permitted under the drafting of both the Stockholm text and the New Zealand amendment. He considered that the text proposed at Stockholm and taken up again by the United Kingdom Delegation should be carefully examined and amended where necessary. In his opinion it was more humane to employ prisoners of war, who are soldiers used to acting under discipline and who knew to handle mines, than to employ civilians on such work.

General DILLON (United States of America) was opposed to the principle advocated by the Soviet Delegate, permitting a choice to be made between the protection of the civilian or military population of the Detaining Power on the one hand and the protection of the prisoner of war on the other. He was opposed to the employment of prisoners of war on mine removal, because it was incompatible with the humane treatment for which provision was made elsewhere in the Convention, and also because it was a highly specialized and very dangerous job, and very few of the prisoners in any given camp would have the necessary training to carry it out.

Mr. COHN (Denmark) considered that the war-time attitude in relation to prisoners made it probable that, if they were used on such work, their training would not be as complete or as well supervised as necessary. He did not think however that prisoners should be completely exempted from such work.

He proposed that the vote be taken on two heads: (1) whether prisoners of war who had laid mines should be used to remove them, and (2) whether other categories of prisoners should be used on the work.

General PARKER (United States of America) pointed out that prisoners who had laid mines were not always competent to remove them, and moreover, that experts in mine removal were not always present in considerable numbers among prisoners captured, who were more usually infantrymen.

General SLAVIN (Union of Soviet Socialist Republics) proposed that a clause should be introduced stating that only those prisoners of war, who had undergone special mine removal training, were to be employed on this work.

Mr. GARDNER (United Kingdom) drew attention to the qualifying provisions in his amendment, which only authorized work connected with the removal of mines placed by the prisoners themselves or the forces to which they belonged, on condition that it was carried out in areas distant from the theatre of military operations and under conditions defined in Article 43.

On the proposal of Captain MOUTON (Netherlands) the vote was deferred until the next meeting in order to give delegations an opportunity of considering the point.

*The meeting rose at 1.05 p.m.*

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## FOURTEENTH MEETING

*Thursday 2 June 1949, 10 a.m.*

*Chairman* : Mr. Philippe ZUTTER (Switzerland)

### **Constitution of a Working Party to deal with Section IV. Articles 49 to 57**

The Special Committee decided to set up a Working Party to deal with Section IV, Financial Resources of Prisoners of War, Articles 49 to 57.

The Working Party (called Committee of Financial Experts of the Special Committee) was to be composed of the Delegates of the following countries:

Belgium, Canada, United States of America, France, Italy, United Kingdom, Union of Soviet Socialist Republics; any Delegation having a specific proposal to make with regard to Section IV to be entitled to participate, if it so desired.

It was understood that, in order to expedite the work, the Committee of Financial Experts might meet simultaneously with other organs of Committee II.

**Article 42** (*continued*)

After a short discussion, the second sentence of sub-paragraph (*e*) of the United Kingdom amendment (removal of mines by prisoners of war) was put to the vote, and was rejected by 10 votes to 6.

Captain MOUTON (Netherlands) considered that it was not sufficient to take out of the Convention the authorization for the use of prisoners of war on mine removal. A clause should be added specifically prohibiting such a practice.

Mr. BAISTROCCHI (Italy) thought that the Convention should not exclude the use of prisoners of war who were experts from work in connection with the removal of mines, or from indicating the position of mines if they were able to do so.

General PARKER (United States of America) supported the observations of the Delegate of the Netherlands.

Mr. Gardner (United Kingdom) thought that, if mine-lifting was specifically prohibited, it would be necessary to pursue such a course to its logical conclusion and make a list of prohibited occupations.

Captain IPSEN (Denmark) explained that, when the German army of occupation withdrew from his country at the end of the war, widespread minefields were left in many localities, and constituted a constant danger for the civilian population. It had been necessary to call upon Sweden, Norway and the United Kingdom for assistance in the removal of the mines. His Delegation could not accept an Article which excluded the use of experts among prisoners of war for mine removal.

Captain MOUTON (Netherlands) suggested that the difficulty might be overcome at the end of a war by inserting in the capitulation conditions a stipulation that the mines were to be removed by the enemy who laid them.

Captain IPSEN (Denmark) replied that such a solution could not be applied in all cases. Sometimes the Occupying Power withdrew without capitulating.

On the proposal of Mr. GARDNER (United Kingdom), the Committee adjourned for five minutes in order to permit delegations to discuss the question informally.

On resuming, it was decided to refer Article 42 to the Working Group set up at the beginning of the meeting, with the addition of the Delegation of Denmark.

**Article 3, first paragraph, sub-paragraph (6)**  
(*continued*)

Mr. BAISTROCCHI (Italy) proposed to add the words "lower formations and units" underlined at the end contained in the United Kingdom amendment (*see Annex No. 92*) to the first line of sub-paragraph (*b*) of the Belgian amendment (*see Annex No. 84*). The latter would then read:

"that the members of this organization, as well as its lower formations and units ..."

He also proposed that the criterion of "capable of being communicated with" be applied through the good offices of a neutral Power.

Doctor PUYO (France) supported both the Belgian and United Kingdom amendments, and suggested that they be merged in the following wording:

"(*a*) that the authority of the Government or the responsible leaders acknowledged by the organization be effectively exercised over all its formations and units, down to the very lowest, and that the Government or responsible leaders in question notify the Occupying Power by means of a channel through which communications can be received and replied to, of the participation in the conflict of the organization and the distinctive emblem of its members."

Mr. COHN (Denmark) proposed the deletion of the words in the first paragraph of sub-paragraph (6) "constituted in an occupied territory"; resistance movements were sometimes constituted outside the occupied territory. He also proposed the addition in paragraph (*b*) after the words "distinctive emblem" of the words "during their participation in hostilities".

Mr. GARDNER (United Kingdom) declared his readiness to accept the French amendment, but could not accept the Italian or Danish amendments.

After further discussion, the CHAIRMAN proposed that a vote be taken on the Stockholm text, not as a final vote, but as a guide to the tendencies represented in the Special Committee.

Eight votes were recorded in favour of the Stockholm text, and eight in favour of the Belgian proposal as amended by the various delegations.

It emerged from further discussion that, if certain drafting changes were made, the Stockholm text might be acceptable to certain other delegations.

Captain MOUTON (Netherlands) had two new suggestions:

(1) to include partisans in the volunteer corps mentioned in Article 3 sub-paragraph (1);

(2) to treat partisans as persons in revolt against the *de facto* government in occupied territory under Article 2 sub-paragraph (4).

The final decision with regard to the first paragraph of Article 3, sub-paragraph (6) was deferred.

*The meeting rose at 12.50 p.m.*

## FIFTEENTH MEETING

*Thursday 2 June 1949, 3 p.m.*

*Chairman:* Mr. Philippe ZUTTER (Switzerland)

### **Article 3, first paragraph, sub-paragraph (6)** *(continued)*

Mr. COHN (Denmark) reverted to the proposal he had made at the previous meeting with regard to Article 3, first paragraph, sub-paragraph (6). He now preferred to support the proposal of the Belgian Delegation, as amended by the United Kingdom Delegation, rather than to vote in favour of the Stockholm text and thereby prevent the continuance of the discussion in the Special Committee.

The CHAIRMAN said he imagined the Special Committee would be in sympathy with Mr. Cohn; but he thought it would be desirable to refer the matter to the Chairman of Committee II. If, however, the Special Committee could find a solution of the problem on its own initiative, no doubt everyone would be satisfied.

He proceeded to suggest that the Special Committee should adjourn the discussion of Article 3, in compliance with the wishes of certain delegations, and discuss Article 43 instead.

### **Article 43**

The CHAIRMAN stated that six amendments had been submitted to Article 43, by the Delegations of Canada, the United States of America, Greece, New Zealand, the United Kingdom, the Union of Soviet Socialist Republics.

Major ARMSTRONG (Canada) said that the purpose of point 2 of his amendment was simply to reintro-

duce a provision which had been omitted in error from the Convention. The amendment was as follows:

(1) "Delete the phrase" in view of climatic conditions "in the first paragraph, and substitute the phrase 'account shall also be taken of climatic conditions'."

(2) "Add a new sentence to the first paragraph as follows: 'Further, he must be granted suitable working conditions, especially as regards accommodation, food, clothing and equipment: such conditions shall not be inferior to those enjoyed by nationals of the Detaining Power employed in similar work.'"

Mr. STROEHLIN (Switzerland), while agreeing in principle with the Canadian amendment, thought it undesirable in an Article dealing with prohibited work to specify the conditions under which such work was to be carried out. In his opinion, Article 42 (Authorized Labour) was the proper place for the specification of conditions.

Mr. GARDNER (United Kingdom) reminded the Committee that he had already explained his views on the point in Committee II (*see Summary Record of the Tenth Meeting*). Certain kinds of work, which might be dangerous if carried out by a person who had not received adequate training, could be done without danger after proper training. What was required was to ensure the effective supervision of the conditions under which prisoners of war did their work; and that was the object of the United Kingdom amendment (*see Summary Record of the Tenth Meeting of Committee II*).

General SLAVIN (Union of Soviet Socialist Republics) introduced the amendment submitted by his Delegation as follows:

“Insert between the second and third paragraph of Article 43 the following new paragraph:

In utilizing the labour of prisoners of war, the Detaining Power shall ensure that in areas in which such prisoners are employed, the national legislation concerning the protection of labour and, more particularly, the regulations for the security of industrial workers, are duly applied.”

General DILLON (United States of America) opposed the United Kingdom amendment, which he regarded as a step backwards. It might be interpreted in such a way that prisoners of war, after undergoing adequate training, could be employed on dangerous work, such as removing mines.

On the other hand he was in favour of the Canadian amendment, and also supported the amendment submitted by the Soviet Delegation.

Miss BECKETT (United Kingdom) again explained the point of view of the United Kingdom Delegation, namely that certain kinds of work might be dangerous if the usual precautions were not taken. She was prepared to alter the first sentence of the United Kingdom amendment to read as follows:

“No prisoner of war shall be employed on work which would otherwise be regarded as unhealthy or dangerous, unless and until he has undergone adequate training. ...”

Mr. BAISTROCCHI (Italy) observed that all the members of the Special Committee were agreed that the Stockholm text of Article 43 was inadequate. All that seemed necessary to reach complete agreement was to alter the provisions of the first paragraph about unhealthy or dangerous work.

He was in favour of the New Zealand amendment (*see lower down*) as also of the Soviet amendment; but he thought the latter should make it quite clear what “national legislation” was to apply.

In the second paragraph of Article 43 he suggested that the words “humiliating work” should be replaced by the words “work calculated to humiliate the prisoner”.

The CHAIRMAN said that the point they had to settle was the expediency of inserting in the Convention the conception of “adequate training”, which figured in both the United Kingdom and the New Zealand amendments.

In the absence of the New Zealand Delegate he read the text of the New Zealand amendment, as follows:

“Delete the first paragraph, and substitute:

No prisoner of war may be employed on labour which is of an unhealthy or dangerous nature. He may, however, be subjected to the normal risks of civilian employment provided that he has first received adequate training, is provided with the necessary safeguards and is given conditions of treatment in respect of accommodation, food and equipment similar to those accorded to the nationals of the Detaining Power employed on the same kind of work, provided that such conditions are not less favourable than those accorded to prisoners of war under the present Convention.”

Mr. GARDNER (United Kingdom) withdrew the United Kingdom amendment in favour of the New Zealand amendment.

General DÉVIJVER (Belgium) accepted the Canadian amendment together with the Soviet proposal. The two amendments should be, in his opinion, amalgamated by the Drafting Committee; and the latter might also take the suggestions made by the Italian Delegation into account.

The CHAIRMAN suggested a vote on the insertion in the Convention of the idea of “adequate training”.

Mr. WILHELM (International Committee of the Red Cross) proposed to add to point (2) of the Canadian amendment, after the word “equipment”, the words “and occupational training”.

Mr. NARAYANAN (India) thought that a distinction ought to be made between work of a dangerous character, which should be absolutely prohibited, and work which would not be dangerous if carried out by persons who had received adequate training.

It would be necessary to find some form of words which would apply to work of the latter category.

Mr. MARESCA (Italy) thought that the idea of “adequate training” was far from clear. Did it refer to the occupational training of prisoners of war, or to training undergone during captivity?

Major ARMSTRONG (Canada) pointed out that the amendment submitted by his Delegation did not say anything about “adequate training”, but did introduce the idea of “climatic conditions”. He

asked for a vote by the Special Committee on the Canadian amendment.

On a vote being taken, the Canadian amendment was adopted.

Mr. GARDNER (United Kingdom) asked for a vote on the New Zealand amendment.

Captain MOUTON (Netherlands) thought the New Zealand amendment was not incompatible with the Canadian amendment, and some formula coordinating them should be found.

The CHAIRMAN pointed out that he had already made that suggestion himself.

Mr. QUENTIN-BAXTER (New Zealand) who had been detained at another Committee, arrived at the meeting and took part in the subsequent discussion as to the best means of coordinating the two amendments in question.

The CHAIRMAN put the New Zealand amendment to the vote, at the same time stating that the explicit purpose of the vote was to make possible a combined wording of the principles embodied in the two amendments (viz. of Canada and New Zealand).

On the vote, the New Zealand amendment was adopted by 9 votes to 3.

The Soviet amendment, on a further vote, was adopted unanimously.

The CHAIRMAN there upon referred Article 43 to the Drafting Committee, together with the three amendments of Canada, New Zealand and the U.S.S.R., with a view to coordinate all four texts.

**Article 3, first paragraph, sub-paragraph (6)**  
(continued)

General SLAVIN (Union of Soviet Socialist Republics) expressed his surprise at the interpretation given to a vote taken at the Fourteenth Meeting, when the Special Committee discussed the United Kingdom amendment. On a vote, 8 votes were for the United Kingdom amendment and 8 votes for the maintenance of the Stockholm text, i.e. against the United Kingdom amendment. The voting was thus equal, which under the rules of procedure involved the rejection of the amendment. The amendment was accordingly rejected.

The CHAIRMAN answered that he realized the anomaly. He had taken the vote on the Stockholm text, because it was simpler than a vote on the text of an amendment, which was itself amended by another amendment. It was true that under the Rules the voting should have been on the amendments first, and that in the event of a tied vote the amendment counted as rejected. The morning's vote was however merely an indication of opinion without practical effects of any kind. The question at issue could be taken up again in Committee II or elsewhere. The observation of the Soviet Delegate was quite correct and, according to Article 35 of the Regulations, the United Kingdom amendment was rejected. This would be recorded in the Summary Record and in the Report of the Rapporteur, with the explanations furnished.

**Article 105**

The CHAIRMAN said that three amendments had been submitted on Article 105 by the Delegations of the United States of America, Finland (Memorandum of the Finnish Government) and the United Kingdom.

General DILLON (United States of America) introduced the amendment submitted by his Delegation, as follows:

"In paragraph 1, insert the words 'or accommodation in a neutral country', after the word 'repatriation'."

The amendment was supported by Mr. STROEHLIN (Switzerland) and Mr. GARDNER (United Kingdom).

Considerable discussion took place on the question as to whether the word "hospitalisation" used in the French version of the amendment was the equivalent of the word "accommodation" used in the English version.

General DILLON (United States of America) pointed out that the two words had appeared in the French and English texts respectively of the 1929 Convention, but that had not prevented its successful operation during the last war.

The United States amendment was put to the vote and adopted unanimously.

*The meeting rose at 6 p.m.*

SIXTEENTH MEETING

Friday 3 June 1949, 10 a.m.

Chairman: Mr. Philippe ZUTTER (Switzerland)

**Article 105** (*continued*)

Colonel NORDLUND (Finland) withdrew the amendment proposed by his Government to delete as superfluous the last words of the second paragraph of this Article "if the Detaining Power consents".

Mr. GARDNER (United Kingdom) said his Government had submitted two amendments (*see Summary Record of the Fourteenth Meeting of Committee II*) to delete Article 105 in favour of a new article to follow Article 109. It was a matter of drafting and might be referred to the Drafting Committee.

On the other hand, the wording of the second paragraph of Article 105, "prisoners of war detained in connection with a judicial prosecution", and that of the third paragraph of Article 109, "prisoners of war against whom penal prosecution for a crime or an offence under common law is pending", raised a point of substance. He proposed the following wording in both articles:

"Prisoners of war detained in connection with a prosecution on a charge for which the minimum penalty would be", say, "three years imprisonment,"

the object being to avoid the detention of prisoners after the end of the war for trifling offences.

Mr. MARESCA (Italy) agreed with the Delegate of the United Kingdom that Articles 105 and 109 should be considered simultaneously.

Mr. ZABIGAILO (Soviet Socialist Republic of Ukraine) opposed the United Kingdom proposal to delete Article 105.

Mr. WILHELM (International Committee of the Red Cross) considered that the two articles dealt with completely separate matters. Article 105 permitted the Detaining Power to exercise clemency. That was not a provision which could be made mandatory.

He agreed with the Delegate of the United Kingdom that the Convention should provide for prisoners of war to be repatriated as soon as possible after the end of hostilities. In cases of serious crime, it would always be open to the Power of origin to decide on a further term of imprisonment, if it was considered desirable.

The CHAIRMAN put to the vote the question of considering Articles 105 and 109 simultaneously.

The proposal was rejected by a large majority.

Mr. GARDNER (United Kingdom) repeated his proposal to insert in the second paragraph of Article 105, after the word "prosecution", the words "on a charge for which the minimum penalty would be ten years".

Mr. STROEHLIN (Switzerland) supported the proposal made by the Delegate of the United Kingdom, but considered that it should be completed by a similar phrase in the first paragraph. He proposed the insertion, after the word "imposed" in the first paragraph, of the words "carrying a penalty of not less than ten years imprisonment".

General PARKER (United States of America) considered that the place for a provision of that nature was Article 109.

Mr. COHN (Denmark) shared the views of the Delegate of Switzerland. He supported the principle of the addition proposed by the Delegate of the United Kingdom, but pointed out that, if the latter's amendment was adopted, the whole of the second paragraph would apply exclusively to offences carrying severe penalties.

Mr. GARDNER (United Kingdom) accepted the Swiss proposal. He gathered there was agreement on the principle that the right to detain repatriable prisoners should be limited to prisoners convicted of offences carrying a minimum penalty of ten years.

General DILLON (United States of America) favoured the principle of limitation. Prisoners proposed for repatriation under the terms of Article 101 were usually in bad physical condition, and he thought that no Detaining Power would hesitate to repatriate them under any circumstances. He considered, however, that the proper place for a provision of that kind was in Article 109.

Captain MOUTON (Netherlands) said, that his Delegation agreed in principle, that cases of minor offences for which a prisoner of war was under trial or for which he had been sentenced, should not be regarded as a reason preventing his transfer to a neutral country under the circumstances to which the article referred. The criterium, however, should not be the penalty to which the prisoner was sentenced, because that might induce the courts of the Detaining Power to impose heavier penalties in order to justify the detention of certain prisoners. The maximum penalty laid down by law for the offence would therefore be a better criterium.

Insert after this:

“General DILLON (United States of America) agreed with the Delegate of the Netherlands that the criterium of the duration of the penalty, if adopted, might lead to the infliction of heavier sentences.”

Mr. GARDNER (United Kingdom) said he would be quite prepared to support a proposal that no prisoner of war eligible for repatriation under the terms of Article 101 should be detained, even if charged with, or convicted of, a judicial offence.

Mr. NARAYANAN (India) considered that it might be necessary to take into account differences of jurisprudence in the different countries. Perhaps it would be better to relate this provision to the nature of the offence rather than to the penalties imposed.

Mr. BAISTROCCHI (Italy) considered that the Convention should include a specific recommendation for clemency to be extended to prisoners of war under trial or sentence who were due for repatriation.

Further discussion revealed substantial agreement of principle.

The following text proposed by the Delegate of the United Kingdom, and amended by the Delegate of Switzerland, was put to the vote and unanimously approved:

- (1) To add a paragraph to article 105 after the first paragraph as follows:

“The prisoner of war prosecuted for an offence for which the maximum penalty

is not more than ten years, or who has been sentenced to less than ten years, shall similarly not be kept back.”

- (2) At the beginning of the second paragraph of the Stockholm text which is to become the third paragraph, add the word “Other”.

### Article 108

The CHAIRMAN welcomed the presence of the Delegate of Austria. The Austrian Delegation had submitted an amendment to this Article. Other documents for discussions were: the United Kingdom amendment (*see Annex No. 175*), a memorandum submitted by the International Committee of the Red Cross dated May 17, (*see Annex No. 174*), and an Italian amendment which had not yet been circulated.

General DILLON (United States of America), Chairman of the Sub-Committee on Penal Sanctions, said that Article 108 had been considered by this Sub-Committee. The Italian amendment had been rejected. It had been felt, however, at the sixteenth meeting, that the Occupying Powers had been too strongly represented on that Sub-Committee, and that the Occupied Powers had not had sufficient representation. The question had been referred to the Chairman of Committee II who agreed that the special Committee should examine it.

In presenting his amendment, Mr. GARDNER (United Kingdom) stated that sub-paragraph (1) was designed to fit certain circumstances which might arise at the end of hostilities. The principle of immediate repatriation was accepted, he felt, by all parties; but it was sometimes expedient for reasons connected with the military security of the Occupying Power, or even in the interest of the prisoners themselves, to continue to detain them. The Delegate of Hungary, at the fifteenth meeting of the Sub-Committee, had advanced the argument that economic conditions could only be restored by the immediate return of the prisoners. That was true of agricultural countries, but in countries with a high degree of industrial development, where industry had been disrupted as a consequence of defeat, the return of large numbers of men might cause serious unemployment, which might in turn lead to economic, social and political upheavals.

Sub-paragraph (2) in the United Kingdom amendment was designed as a safeguard against the abuse of the power given to the Detaining Power in Amendment No. (1).

*The meeting rose at 1 p.m.*

SEVENTEENTH MEETING

*Friday 3 June 1949, 3 p.m.*

*Chairman:* Mr. Philippe ZUTTER (Switzerland)

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**Article 108A**

Before discussing Article 108, the CHAIRMAN stated that the Austrian amendment, which proposed to insert a new Article in the Convention between Articles 108 and 109, could not be examined by the Special Committee, since it had not yet had a first reading in Committee II. It was the latter Committee which would have to take a decision with regard to this amendment (*see Summary Record of the Twentieth Meeting of Committee II*).

**Article 108** (*continued*)

The discussion opened on the three points of the United Kingdom amendment, submitted at the last meeting (*see Annex No. 175*).

The Delegations of Italy, Hungary, Finland, United States of America, India and the Soviet Socialist Republic of Ukraine all said they had listened with interest to the arguments put forward at the last meeting of the Special Committee by the Delegate of the United Kingdom in favour of the adoption of point (1) of the United Kingdom amendment, but, while understanding his reasons, they could not support them. Although it might be in the interest of the Detaining Power to keep prisoners as long as possible, the country of origin had reasons of a political, ethnographical, economic and financial nature for wishing them to return as soon as possible in order to take part in the work of national reconstruction. Further, the prisoners themselves had a natural desire to return to their homes without delay, and that consideration alone should be a determining factor. In those circumstances, all the above-mentioned Delegates categorically opposed the adoption of point (1) of the United Kingdom amendment and pressed for the retention of the Stockholm text.

Mr. GARDNER (United Kingdom), in view of the above opposition, withdrew points (1) and (2) of

his amendment; though the United Kingdom Delegation remained of the opinion that the Stockholm text was unpractical.

The CHAIRMAN said that the first three paragraphs of the Stockholm text were therefore adopted. The discussion continued on the fourth paragraph of Article 108.

Mr. GARDNER (United Kingdom) argued in favour of the third point of the United Kingdom amendment relative to the costs of repatriation. In his view, the fourth paragraph of the Stockholm text was inapplicable in practice. The second sentence should be modified, as it did not take into account the experiences of the last war. To prove his point he quoted cases of Japanese prisoners of war in British hands who had been repatriated on Japanese ships at the expense of the Japanese Government, while other prisoners of war in British hands had been repatriated on British ships at the expense of the British Government, because their country of origin had neither the ships nor the requisite foreign exchange to enable it to undertake the repatriation. It was clear from these two extreme cases that the conditions prevailing at the end of a war could not be foreseen. Hence anticipatory rulings to meet such conditions were useless, and provision would have to be made for special agreements to be concluded between the States concerned when the question actually arose.

Mr. BAISTROCCHI (Italy) paid tribute to the care taken by the Governments of the United Kingdom and the United States of America in the repatriation of Italian prisoners of war after the last war. He did not agree with the United Kingdom amendment; but neither was he quite satisfied with the text proposed by the International Committee of the Red Cross. For that reason he submitted the following amendment which was to substitute the fourth paragraph of the Stockholm text by the following:

"The cost of repatriation of Prisoners of War shall in all cases be fairly divided between the

Detaining Power and the Power to which the Prisoners of War belong. For that purpose the following principles shall be applied:

(a) When the two Powers have a common frontier, the Power to which the Prisoners of War belong shall be responsible for the costs of their repatriation from the frontier of the Detaining Power.

(b) When these two Powers have no common frontier, the Detaining Power shall be responsible for the costs of transport of Prisoners of War over its own territory as far as the frontier or port of embarkation. The costs of transport, from the frontier or from the port of embarkation of the Detaining Power to the frontier or the port of landing of the Power to which the Prisoners of War belong, shall be borne equally by the two Powers."

Major STEINBERG (Israel) favoured the United Kingdom amendment. But, where agreement between the States concerned was delayed, repatriation might be deferred indefinitely. Provision should be made, therefore, for the Stockholm text to come into force, where the Detaining Power and the Power on which the prisoners of war depended were unable to come to an immediate agreement.

Mr. DU MOULIN (Belgium) supported Major Steinberg's contention, and suggested a combination of the United Kingdom and Italian amendments to read as follows:

"In other cases the Parties concerned shall agree as to their respective shares of the repatriation costs. Should the Powers concerned fail to agree on an equitable distribution of those costs, the Detaining Power shall assume the costs of transporting prisoners of war over its own territory as far as the frontier or port of embarkation. The costs entailed in the transport of prisoners from the frontier or the port of embarkation of the Detaining Power as far as the frontier or the port of disembarkation of the Power on which the prisoners depend shall be borne equally by both Powers."

General DILLON (United States of America) again opposed the United Kingdom amendment, because it appeared to him to modify the text which had already been adopted by the Special Committee. In actual fact, prisoners of war would have to await repatriation—due to take place immediately—until such time as the interested Powers had reached an agreement, i.e. in practice until the Detaining Power agreed to repatriate the prisoners who had fallen into its hands.

Mr. GARDNER (United Kingdom) said that the Delegate of the United States of America had ascribed to the United Kingdom amendment a meaning which had not been intended. The first paragraph of Article 108, which had been adopted by the Special Committee, ordered the immediate repatriation of prisoners of war. Point (3) of the United Kingdom amendment on the other hand made no mention of repatriation, but merely spoke of the distribution of the costs. There was nothing against repatriation taking place prior to that distribution, now that the first and second paragraphs of the Article remained unaltered.

Wing Commander DAVIS (Australia) also agreed that it was impossible to foresee the position which might exist at the end of a war. For that reason point (3) of the United Kingdom amendment appeared to him perfectly acceptable, and he therefore supported it.

Mr. STROEHLIN (Switzerland) said that he could accept point (3) of the United Kingdom amendment, provided the following sentence was added:

"The conclusion of such an agreement shall not, in any case, justify the slightest delay in the repatriation of prisoners of war."

Mr. GARDNER (United Kingdom) accepted the above addition.

General SLAVIN (Union of Soviet Socialist Republics), after reviewing the different solutions proposed so far, said that the United Kingdom amendment, as modified by the Delegate of Switzerland's suggestion, appeared to be the simplest to apply in practice. He again emphasized the necessity of allowing the States concerned to conclude special agreements for repatriation, because in fact repatriation never took place without previous agreements between the Detaining Power and the Power upon which the prisoners of war depended.

Mr. BAISTROCCHI (Italy) proposed that the meeting should be adjourned so as to give Delegates an opportunity to consider the texts carefully and to discuss the matter informally.

The Committee agreeing, the CHAIRMAN adjourned the meeting for 5 minutes.

On resuming, the CHAIRMAN said that certain Delegates had suggested a solution, which he submitted to the Committee, consisting of a combination of the Italian amendment and point (3) of the United Kingdom amendment, completed as suggested by the Swiss Delegate. The resulting

text of the fourth paragraph of Article 108 would be as follows:

"The cost of repatriation of prisoners of war shall in all cases be equitably shared between the Detaining Power and the Power on which the prisoners depend. To this effect, the following principles shall be observed in the distribution of costs:

(a) When the two Powers have a common frontier, the Power upon which the prisoners of war depend shall assume the costs of their repatriation from the frontier of the Detaining Power.

(b) When the two Powers have no common frontier, the Detaining Power shall be responsible for the costs of transport of prisoners of war over its own territory as far as the frontier or the port of embarkation. As regards the balance of the costs, the Parties concerned shall agree on an equitable apportionment of the costs of repatriation to be borne by each. The conclusion of such an agreement shall in no case justify the slightest delay in the repatriation of prisoners of war."

General SLAVIN (Union of Soviet Socialist Republics) wished to receive the text of the above proposal in writing so that he might examine it before the next meeting.

The CHAIRMAN agreed, indicating that it would have to be considered as a working document and not as an amendment.

### Articles 109 and 109B

The CHAIRMAN said that the following amendments to Article 109 had been submitted by the Delegations of Australia, the United States of America, the Netherlands and the United Kingdom.

Mr. GARDNER (United Kingdom) introduced the amendment submitted by his Delegation. It proposed the introduction of a new Article 109B into the Convention to be worded as follows:

"On repatriation, any articles of value impounded from prisoners of war under Article 16, and any foreign currency which has not been changed in the Detaining Power's currency, shall be restored to them. Prisoners of war shall be allowed to take with them on repatriation personal effects up to a total weight of twenty-five kilograms.

Any articles of value impounded under Article 16 or monies in currencies, other than that of

the Detaining Power, belonging to a prisoner of war which, for any reason whatever, do not accompany a prisoner of war on repatriation, will be despatched to the Information Bureau set up under Article 112.

Other personal effects left behind by a prisoner of war on repatriation will be sent after him, only if he makes the necessary arrangements for transport, export licenses, payment of customs duties, etc."

Mr. GARDNER said that it might be desirable to delete the reference to Article 40 appearing in the first paragraph of Article 109 of the Stockholm draft. Proceeding, he explained the various reasons which, he contended, militated in favour of introducing into the Convention the proposed new Article 109B, as follows:

Article 16 relative to the impounding of objects belonging to prisoners of war, had no connection with repatriation. It would therefore be necessary to insert a special clause providing for the return of such objects in the Chapter dealing with Repatriation.

Limits of tonnage and availability of transport space must necessarily restrict the amount of baggage which repatriated prisoners of war were allowed to take with them.

Prisoners of war during their captivity sometimes accumulated an unduly large quantity of heterogeneous objects. It was therefore equitable that those prisoners, if they wished to take such articles into their country of origin, should be subject to the usual export regulations (licenses, customs duties, etc.).

Mr. WILHELM (International Committee of the Red Cross) said that the reference to Article 40 in the first paragraph of Article 109 of the Stockholm text was not in practice judicious. It was difficult to imagine any application, even by analogy, of Article 40 in a case of repatriation.

The United Kingdom amendment was rather a matter for the Drafting Committee. The principle laid down in the first sentence of the first paragraph appeared in the last sentence of the fourth paragraph of Article 16. The second paragraph was covered by the last paragraph of Article 112.

It was a fact however that the United Kingdom amendment raised two new points, viz. (1) limitation of the weight of baggage, which repatriated prisoners were allowed to take with them, to twenty-five kilograms (a similar limitation was already provided for in the Convention, in case of transfer of prisoners of war, Article 40), and (2) the stipulation that prisoners of war should them-

selves make the necessary arrangements for the export of their excess baggage (third paragraph of the amendment).

In reply to the Chairman, Mr. GARDNER (United Kingdom) agreed that the substance of the first sentence of the first paragraph and the second paragraph of his amendment had already been dealt with, though incompletely, in the provisions referred to by the Representative of the I.C.R.C. He accordingly suggested that the point should be referred to the Drafting Committee for the necessary co-ordination.

General DILLON (United States of America) proposed to refer it to the Committee of Experts.

The CHAIRMAN observed that the amendment might be split up as follows:

The first sentence of the first paragraph and the second paragraph might be submitted either to the Committee of Experts or to the Drafting Committee, to whom Article 16 had already been referred, and to whom Article 112 might also in his opinion be referred.

The second sentence of the first paragraph and third paragraph would then continue to be considered by the Special Committee.

Mr. GARDNER (United Kingdom) agreed to the proposal, if it facilitated the discussion. He repeated that Article 112 was not wholly satisfactory, and that was one of the reasons for the United Kingdom amendment. In any case, the experience of the last war had shown that the National Information Bureaux could not always cope with the duties assigned to them.

The CHAIRMAN pointed out that no decision had yet been reached as to whether the United Kingdom amendment should be split up in order to take into account the remarks of the Representative of the International Committee of the Red Cross, or as to whether the Committee should vote on the amendment as a whole.

In order to give Delegates time to consider this question, he adjourned the meeting.

#### Article 60

On resuming, the CHAIRMAN stated that the Universal Postal Union had not considered it necessary to be represented when the Special Committee examined Article 60, relating to the correspondence of prisoners of war. The Committee could therefore proceed with the examination of that provision forthwith.

*The meeting rose at 6 p.m.*

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### EIGHTEENTH MEETING

*Tuesday 14 June 1949, 10 a.m.*

*Chairman:* Mr. Philippe ZUTTER (Switzerland)

#### Article 108 (continued)

The CHAIRMAN reminded the Meeting that the first three paragraphs of the Article under discussion had been adopted at the previous Meeting; the fourth paragraph had been redrafted after discussion, and constituted the working text submitted at the Seventeenth Meeting and distributed on 4 June 1949.

General SKLYAROV (Union of Soviet Socialist Republics) considered that the new wording was not an improvement, but merely a repetition of what

already appeared in the Stockholm text. Sub-paragraph (b), last sentence, expressed a new idea, as it provided that the conclusion of this agreement shall in no circumstances justify any delay in the repatriation of prisoners of war. He wondered whether that amplification was really necessary, as in two other paragraphs of the same Article it was already stipulated that prisoners should be repatriated without delay.

Mr. BAISTROCCHI (Italy) remarked that, while the new wording was perhaps repetitive, it was nevertheless desirable to stress the importance and

urgency of repatriation. He considered that subparagraph (b), first sentence, should be worded more precisely; it might be reworded as follows:

“If the two Powers are not contiguous the Detaining Power shall bear the costs of transport of prisoners of war over its own territory as far as the frontier or port of embarkation nearest to the territory of the Power on which the prisoners depend.”

General PARKER (United States of America) supported the point of view expressed by the Italian Delegate.

The CHAIRMAN put to the vote the working text, together with the addition suggested by the Italian Delegate.

The text was adopted by a large majority.

### Articles 109, 109B (continued), 109C

The CHAIRMAN referred to the proposal made by the United Kingdom Delegation at the previous Meeting to delete the reference to Article 40 in the first paragraph.

Mr. GARDNER (United Kingdom) explained that Article 40 was not applicable to repatriation. It referred to the transfer of prisoners of war from one camp to another, the costs of which were borne by the Detaining Power. Furthermore, the Article contained other provisions which would delay repatriation, whereas it was universally agreed that repatriation should be effected as rapidly as possible.

General PARKER (United States of America) considered, on the contrary, that the reference to Article 40 was justified. The words “in conditions similar to” indicated that the conditions of transfer only applied to repatriation in a general way.

On a proposal by Mr. STROEHLIN (Switzerland), the CHAIRMAN suggested that the question of references which is of minor importance should be left in abeyance for the time being, and that the Committee should proceed with the examination of amendments to Article 109.

Mr. GARDNER (United Kingdom) explained that the new version of Article 109B, proposed by his Delegation (*see Annex No. 176, June 4, 1949*) aimed at defining precisely what actually occurred at the time of repatriation. It incorporated the provisions made in Articles 16 and 112. According to Article 16, objects of value and sums of money impounded from prisoners of war were to remain

in the custody of the Detaining Power and to be returned in their initial shape to prisoners of war when they were liberated.

Mr. BAISTROCCHI (Italy) considered that those provisions should be added to the first paragraph. As regards the reference to Articles 38 to 40, he would like mention to be made of the fact that repatriation was a very different operation from transfer between camps. Provision should be made for repatriation to be effected in conditions at least as good as, if not better than, those laid down for transfers.

General SKLYAROV (Union of Soviet Socialist Republics) did not see that objection could be taken to the first paragraph of the Stockholm text. In his view, the provisions of Articles 38 to 40 were applicable. However, if the United Kingdom Delegation pressed for the insertion of the principles contained in the new Article 109B he thought that a mere reference to Articles 16 and 112 would suffice. As regards the new Article 109C (*see Annex No. 176*), he said that the clauses inserted in the first paragraph were already to be found in Article 40.

After a discussion regarding the procedure to be adopted by the Committee, in which the CHAIRMAN, General DILLON (United States of America) and Mr. GARDNER (United Kingdom) took part, the new Article 109B as worded in the United Kingdom amendment was put to the vote.

It was adopted without opposition, but with some abstentions.

Mr. GARDNER (United Kingdom), taking into consideration some of the views expressed, suggested that the wording of Article 40 should be adopted for the first paragraph of Article 109C.

General DILLON (United States of America) agreed with the United Kingdom proposal.

He, as also General SKLYAROV (Union of Soviet Socialist Republics), raised objections with regard to the second paragraph of Article 109C. He maintained that prisoners during captivity would be unable to make the necessary arrangements for the transport of any personal effects which they might have acquired to increase their personal comfort.

The CHAIRMAN put to the vote the first paragraph of Article 109C of the United Kingdom amendment.

The paragraph was adopted unanimously.

Mr. GARDNER (United Kingdom) emphasized the importance of the second paragraph of the new Article 109C. The Detaining Power should not be bound to return all the personal effects of a repatriated prisoner of war. Nevertheless, there should be some provision for the restoration of such effects. The third paragraph of Article 13 guaranteed the retention of full civil capacity; a prisoner of war could therefore take the necessary steps regarding the transport of his personal effects, and any other arrangements connected therewith. If he was unable to attend to the matter personally, he could entrust it to the competent Information Bureau.

Mr. STROEHLIN (Switzerland) pointed out that the second paragraph of Article 109C was redundant, since the first paragraph of Article 109C provided that a prisoner of war could take with him any articles of value he possessed.

General DILLON (United States of America) enquired whether, in the absence of the second paragraph of Article 109C, the Detaining Power should be required *ex officio* to return all personal articles belonging to repatriated prisoners of war.

Mr. GARDNER (United Kingdom) replied that under Article 40 that would be the case, and furthermore the cost of transport would be borne by the Detaining Power. It was particularly the last point to which his Delegation took objection.

General DEVIJVER (Belgium) suggested the following wording in order to obviate the necessity of those expenses being borne by the Detaining Power:

“Any other personal articles entrusted to the Detaining Power by a repatriated prisoner of war shall be forwarded to him as soon as an agreement has been concluded between the Detaining Power and the Power of Origin of the repatriated prisoner of war with regard to the conditions and cost of transport.”

He pointed out, in that connection, that when the Belgian prisoners of war were repatriated, a considerable number of valuable personal articles were left behind in Germany.

Mr. GARDNER (United Kingdom) supported the wording proposed by the Belgian Delegate.

Put to the vote, the Belgian proposal was adopted by a substantial majority, and was therefore substituted for the second paragraph of the new Article 109C.

The Committee decided, by 8 votes to 4, that the reference to Article 40 should be retained in Article 109.

Mr. GARDNER (United Kingdom) considered in that case it would have to be clearly specified that the provisions of Article 40 only applied in so far as they were not at variance with the principles laid down in Article 108 and 109.

General DEVIJVER (Belgium) proposed to complete the first sentence of Article 109 by adding the words: “and taking into account the following stipulations and those of Article 108”.

There being no opposition to the additional sentence proposed by the Belgian Delegate, the CHAIRMAN said that it could be considered as adopted.

With the assent of the Committee, he requested the Swiss Delegate to prepare a draft in conformity with the views expressed by the various delegates.

The Committee then proceeded to examine the United States amendment (*see Summary Record of the Fifteenth Meeting of Committee II*).

General DILLON (United States of America) explained that the third paragraph of Article 109 of the Stockholm text contained a reference to “common law”, an expression which ought not to appear in the Convention, as it was a term which did not have the same significance in all languages.

Mr. GARDNER (United Kingdom) said that another amendment of his Delegation proposed to delete the third paragraph of Article 109, and to substitute a new wording without any reference to “common law,,.

He also said that it had been agreed, at the sixteenth Meeting, to insert the following words at the end of the first sentence of the first paragraph of Article 105:

“Prisoners of war prosecuted for an offence for which the maximum penalty is not more than ten years, or sentenced to less than ten years imprisonment, shall similarly not be kept back.”

He considered it would be expedient to embody that sentence in Article 109 as well.

Mr. STROEHLIN (Switzerland) supported the proposal of the United Kingdom Delegate.

Captain MOUTON (Netherlands) also agreed to the proposal. In addition, he supported the United States amendment to delete the words “for a crime or offence at common law”. If this omission was not approved, he asked that the words “or under international law” be inserted after the words “crime or offence at common

law" in the third paragraph; a proposal which figured in the Netherlands Government memorandum.

The CHAIRMAN considered that, according to the views expressed, the Committee was in agree-

ment as regards the substance of the text of Article 109.

He requested the Secretariat to prepare a draft taking account of the various alterations proposed.

*The meeting rose at 1 p.m.*

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## NINETEENTH MEETING

*Thursday 16 June 1949, 3 p.m.*

*Chairman:* Mr. Philippe ZUTTER (Switzerland)

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### Article 109 (continued)

The CHAIRMAN indicated that two new working texts had been drafted and distributed on subject of Article 109, one intended to replace the first paragraph of Article 109, and one intended to replace the second, third and fourth paragraphs of Article 109, taking into consideration the amendments submitted and Article 105.

They read as follows:

#### *Article 109—Details of Execution*

"Repatriation shall be effected in conditions similar to those laid down (proposal of Italy: "in conditions at least as favourable as those...") in Articles 38 to 40 inclusive of the present Convention for the transfer of prisoners of war, bearing in mind Article 108 and the provisions contained in it.

On repatriation, any articles of value impounded from prisoners of war under Article 16, and any foreign currency which has not been converted into the currency of the Detaining Power, shall be restored to them. Articles of value and foreign currency which, for any reason whatever, are not restored to prisoners of war on repatriation, shall be despatched to the Information Bureau set up under Article 112.

Prisoners of war shall be authorised to take away with them, on repatriation, personal effects which they themselves can reasonably carry, and which shall, in any case, be at least 25 kgs. per prisoner. The other personal effects of the repatriated prisoner shall be left in the charge of the Detaining Power which shall have

them forwarded to him as soon as it has concluded an agreement to this effect, regulating the conditions of transport and the payment of the costs involved, with the Power of Origin of the prisoner."

#### *Article 109A—Repatriated Prisoners*

"On repatriation, no difference in the order of departure of prisoners of war shall be made except such as are based on sex, health, age and duration of internment. Priority shall further be given to married prisoners of war who have children.

Prisoners of war prosecuted judicially for an offence for which the maximum penalty is not greater than ten years, or sentenced judicially to less than ten years of imprisonment, shall also be liberated by the Detaining Power for repatriation. The Detaining Power shall communicate to the Power of Origin the names of any prisoners detained until the end of judicial proceedings or until the completion of a punishment.

By agreement between the belligerents, commissions shall be established for the purpose of searching for dispersed prisoners and assuming their repatriation."

General DILLON (United States of America) considered the first sentence of the third paragraph of the first text (Article 109) unsatisfactory. He proposed to substitute for it the integral text, with a reservation of slight changes of style, of the second paragraph of Article 40.

A discussion then ensued as to whether it might not be better to amend the unsatisfactory sentence

in such a way as to fulfil all requirements rather than to replace it by a new text, or alternatively to insert in the third paragraph of the Working Text a reference to Article 40.

The Special Committee decided to adopt the suggestion of the Delegate of the United States of America.

Article 109, as amended, read as follows:

“Repatriations shall be effected in conditions similar to those laid down in Articles 38 to 40, inclusive, of the present Convention, for the transfer of prisoners of war, account being taken of Article 108 and the provisions set forth below.

On repatriation, any articles of value impounded from prisoners of war under Article 16, and any foreign currency which has not been converted into the currency of the Detaining Power, shall be restored to them. Articles of value and foreign currency which, for any reason whatever, are not restored to prisoners of war on repatriation, shall be sent to the Information Bureau mentioned in Article 112.

Prisoners of war shall be authorized to take away with them their personal effects, correspondence, and parcels addressed to them; the weight of such effects may be limited, if the conditions of repatriation necessitate it, to what the prisoner can reasonably carry, which shall be not less than twenty-five kilograms per prisoner.

Other personal effects of the repatriated prisoner shall be left in charge of the Detaining Power, which shall have them forwarded to him as soon as it has concluded an agreement to this effect, regulating the conditions of transport and the payment of the costs involved, with the Power of Origin of the prisoner.”

The Special Committee proceeded to examine the second working text (for an Article 109A).

The Delegates of the NETHERLANDS, the UNITED KINGDOM and the UNITED STATES OF AMERICA thought it might be unsuitable and even dangerous if eligibility for repatriation of prisoners of war, who had been subjected to judicial proceedings, was made dependent on the fact that the offence committed had not been punished by more than ten years imprisonment, or that they had not been sentenced to some greater penalty.

The CHAIRMAN said that, before arriving at a decision on this text, it would be necessary to know the outcome of the discussion of the United States of America amendment and especially, of points (2) and (3) of the latter, which were both connected with the third paragraph of Article 109 of the Stockholm text.

After discussion, the United States of America amendment was adopted with the deletion, in the third line of the third paragraph, of the words “for a crime or an offence at common law”.

At the end of this same paragraph the words “for a crime or offence at common law” were deleted and “under the legal provisions of the present Convention” was substituted.

General DILLON (United States of America) proposed to omit the word “married” in the second paragraph of Article 109 of the Stockholm text, which had been taken up again in the Working text for Article 109A.

The suggestion gave rise to a discussion on the subject of preferential repatriation of prisoners of war, whether married or not, with children.

In the discussion which followed, several delegates said that the larger the number of distinctions between prisoners of war in the matter of preferential repatriation, the greater would be the delay in repatriation as a whole. Certain delegates also made suggestions for reconciling the obligation to repatriate with as little delay as possible (Article 108, first paragraph) with the wish to favour certain categories of prisoners.

In the absence of agreement on the point, the CHAIRMAN asked General Devijver (Belgium) to draft a new text for the second paragraph of Article 109 of the Stockholm text in collaboration with the delegates who had taken part in the discussion, taking into account the suggestions which had been made.

The CHAIRMAN reminded the meeting of the proposal of the Canadian Delegation to substitute the word “facilitating” for the word “ensuring” at the end of the third paragraph of the second Working text.

After discussion, the Canadian proposal was rejected.

On the other hand, the Special Committee adopted a proposal by Captain MOUTON (Netherlands) to add the words “with the shortest possible delay” at the end of the third paragraph of the present Working text.

The Committee also adopted without discussion the Netherlands amendment providing that belligerents should forward to one another the names of prisoners of war who had been the object of judicial proceedings, and were due to be detained until the end of the proceedings or until the expiration of their sentences.

Wing Commander DAVIS (Australia) withdrew his Delegation’s amendment (*see Summary Record*

of the Fifteenth Meeting of Committee II). All the amendments to Article 109 were thus finally dealt with.

### Article 115

The CHAIRMAN said that amendments had been submitted by the Delegations of the United Kingdom (*see Annex No. 180*) and the Holy See (*see Summary Record of the Sixteenth Meeting of Committee II*).

Mr. GARDNER (United Kingdom) explained that the object of his amendment was principally to clarify the meaning and scope of Article 115.

He would be prepared to withdraw his amendment, if the Committee was willing to make the following changes in Article 115:

- (1) First paragraph: replace the first sentence of the paragraph by the text of the amendment proposed by the Delegation of the Holy See which reads as follows:

"Subject to the measures which the Detaining Powers may consider essential to ensure their security or to meet any other reasonable need, the representatives of religious organizations, relief societies or any other body assisting prisoners of war shall receive from the said Powers, from themselves and their duly accredited agents, all facilities for visiting the prisoners, and distributing relief supplies and material, from any source, intended for religious, educational or recreative purposes."

- (2) Second paragraph: delete the words "the supply of effective and sufficient relief" and substitute "the practical application of adequate measures".
- (3) Third paragraph: delete the paragraph, as the mention made therein of the International Committee of the Red Cross would only tend to weaken the position of the latter.
- (4) Fourth paragraph: insert in the paragraph the text of the last paragraph of Article 116.

General PARKER (United States of America) supported the suggestions made by the United Kingdom Delegate except his last point. He further wished the word "necessary" to be inserted before the word "facilities" in the amendment of the Holy See.

After some discussion the Committee decided:

Re first paragraph: to take as the first sentence of the paragraph the text of the amendment of the Holy See, completed by:

(a) the word "necessary" before "facilities";

(b) the words "and for assisting them in organizing their leisure time within the camps", which had been added to the first paragraph of Article 115 at Stockholm, but which, as pointed out by the Netherlands Delegate, did not appear in the amendment of the Holy See.

Re second paragraph: to retain the Stockholm text in the French text, and to replace the words "supply of effective and sufficient" by "effective operation of adequate relief" in the English text.

Re third paragraph: to retain the paragraph as it stood in accordance with the desire of the International Committee of the Red Cross, the United Kingdom Delegate having withdrawn his amendment on the point.

Re fourth paragraph: to retain the paragraph unaltered, the United Kingdom Delegate having withdrawn his proposal to insert therein the text of the last paragraph of Article 116.

### Article 60

The CHAIRMAN said that amendments to this Article had been submitted by the Indian and United Kingdom Delegations.

He added that the International Postal Union, not being especially interested in the Article, had decided not to be present at the meeting when it would be discussed.

Mr. GARDNER (United Kingdom) then introduced his amendment (*see Annex No. 133*) to the following effect:

First paragraph: Delete second and third sentences, and substitute:

"Where a Detaining Power requests adverse belligerents to restrict mail addressed to prisoners of war in order to prevent congestion in its postal machinery, the adverse belligerents shall take all possible steps to apply necessary restrictions where they are satisfied that to do so is in the interests of the prisoners of war."

Fourth sentence: Delete "must be conveyed by the most rapid means; they"

Second paragraph: Delete with a view to embodying in new Article 60A.

Fourth paragraph: Delete.

He was of the opinion that it was arbitrary to set a minimum amount of correspondence, and that it defeated the desired object. It was preferable for a prisoner to write one letter per month

and to have the certainty that it would be delivered than to be authorized to write two letters and four cards which would never be delivered. He based his opinion on the experience gained during the last war, and on the difficulties which were raised by the censorship of the correspondence of prisoners of war in Japan.

General DEVIJVER (Belgium) was absolutely opposed to the United Kingdom Delegate's point of view. For a prisoner of war the right to correspond was of the greatest importance. If the minimum number of letters and cards he could write each month was not determined, the Detaining Power would always find sufficient reasons to

restrict such correspondence still further. It was for the Detaining Power to adapt its censorship services to existing requirements, so that the minimum amount of correspondence mentioned in the Convention was respected.

The Delegates of the United States of America, Italy and the Netherlands supported the Belgian Delegate.

The United Kingdom proposals relative to the deletion of the second sentence and the substitution of a new wording for the third sentence were rejected by 6 votes to 2.

*The meeting rose at 6 p.m.*

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## TWENTIETH MEETING

*Friday 17 June 1949, 10 a.m.*

*Chairman:* Mr. Philippe ZUTTER (Switzerland)

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### Article 60 (*continued*)

The CHAIRMAN reminded the Committee that at their last meeting they had examined the first two points of the United Kingdom amendment. He put for discussion the third point suggesting that the words "must be conveyed by the most rapid means; they" should be deleted.

Mr. GARDNER (United Kingdom) explained that the present wording of the Article appeared to impose upon the Detaining Power the obligation to carry prisoners of war mail by air, which would not always be possible. He did not wish, however, to insist on his amendment if the expression "available" were added to the Stockholm text, as this would indicate that the most rapid means of forwarding mail would be employed wherever possible.

General PARKER (United States of America) supported this suggestion, which was then adopted by the Committee.

The CHAIRMAN said that the second paragraph of the United Kingdom amendment proposed to delete the second paragraph and to replace it by a new Article 60A (*see Annex No. 134*).

Mr. GARDNER (United Kingdom) said that his Delegation wished first of all to make a distinction between the provisions for the forwarding of telegrams and those for the forwarding of letters. Those were matters which came under two separate international organizations. One was the International Postal Union and the other the International Telecommunications Union. Moreover, letters were of permanent importance for prisoners of war, whereas telegrams were only an exceptional means of communication.

The new wording of the Article provided for a simpler means of recovering the cost of telegrams by merely debiting them to the prisoner's personal account.

General PARKER (United States of America) Mr. STROEHLIN (Switzerland) and General SKLYAROV (Union of Soviet Socialist Republics) did not think the reasons put forward were sufficient to warrant a separate Article.

Mr. GARDNER (United Kingdom) withdrew his amendment on this point.

Mr. STROEHLIN (Switzerland) also disagreed with the proposed new system for the recovery of

charges. It would create difficulties for those prisoners who had not yet an account, or who were employed in remote country districts. He moved that, if the proposal of the United Kingdom Delegation were adopted, the Stockholm text should still be retained.

General SKLYAROV (Union of Soviet Socialist Republics) supported this compromise solution. He thought personally that the Article adopted in Stockholm which provided that telegrams should be paid for out of the currency at the prisoners' disposal satisfied the suggestions contained in the United Kingdom amendment.

The Committee adopted the amendment proposed by the United Kingdom for a new Article 60A, as modified by the Swiss Delegate's proposal, as a second paragraph to Article 60.

Captain MOUTON (Netherlands) considered that this second paragraph should be more explicit regarding the period during which the prisoners of war had been without news—four or six months, for instance. The word "for a long period" were too vague.

Mr. BAISTROCCHI (Italy), General SKLYAROV (Union of Soviet Socialist Republics), Mr. GARDNER (United Kingdom) and General DILLON (United States of America) all agreed that the Stockholm text should retain its elasticity. The definition of the length of time during which a prisoner was without news depended on too many factors which varied from prisoner to prisoner and from camp to camp.

Captain MOUTON (Netherlands) then withdrew his proposal.

Mr. NARAYANAN (India) submitted the amendment proposed by his Delegation to add the words "and subject to conditions prescribed by the Detaining Power" after the words "shall be permitted", in the second paragraph. Experience had in fact shown that these factors must be taken into account.

Mr. BAISTROCCHI (Italy) appreciated the reasons for which the Indian Delegation had wished to make this addition, but he thought it would be dangerous to introduce a provision of this nature into the Convention, as it would considerably restrict the force of the provision.

Put to the vote, the Indian amendment was rejected by a large majority.

The CHAIRMAN reminded the Committee that the United Kingdom Delegation had moved the deletion of the fourth paragraph.

Mr. GARDNER (United Kingdom) observed that the formalities required by the Stockholm text could only cause delays in the distribution of mail. In support of his view, he quoted the opinion expressed by the representative of the Universal Postal Union, who stated at the Twelfth Meeting of Committee II that, in his opinion, "the limitations placed upon the correspondence of prisoners depended entirely upon the technical means of transport at the disposal of the various countries. With regard to labelling, not only sacks, but whole wagon-loads of prisoners of war mail had passed through Switzerland in transit during the last war, without it having been necessary to label and seal each sack. The question was one to be solved by the postal authorities in each country."

Mr. STROEHLIN (Switzerland) pointed out that when the Stockholm text was drafted, it was thought that:

- (1) by sealing the mail bags, censorship would be avoided in those countries where they were only in transit;
- (2) by labelling them, their transport through those countries would be accelerated.

He thought it might be preferable that both these operations should remain optional. In any case, it was desirable to retain provisions in the Convention which would allow the transport of prisoners of war mail to be speeded up.

General DILLON (United States of America) said that his Delegation shared this point of view, which was also that of his country's experts.

Mr. GARDNER (United Kingdom) drew the attention of the Delegates to the fact that the provisions of this paragraph would not prevent transit countries from opening the bags, should they so wish, if they were not Parties to the Convention. The signatory Powers could not do so, by virtue of Article 66 on censorship. It was for a postal Convention to settle technical questions such as those raised by the provisions in question.

Put to the vote, the United Kingdom amendment was rejected by a large majority.

Mr. GARDNER (United Kingdom), reverting to the second paragraph, said that he still had a drafting alteration to that paragraph to propose to the Committee. He suggested that the word "recognized", at the end of the paragraph, be deleted, as it merely weakened the preceding term "urgency".

The CHAIRMAN and the Delegation of the UNITED STATES OF AMERICA supported this point of view.

The Committee adopted this proposal.

The CHAIRMAN then summed up the discussion on Article 60 as follows:

First paragraph: The addition of the word "available" after "the most rapid means", in the last sentence.

Second paragraph: The new text to read as follows:

"Prisoners of war who have been without news for a long period, or who are unable to have news from their next of kin or to give them news by the ordinary postal route, furthermore, those who are separated from home by great distances, shall be permitted to send telegrams for which the charges shall be debited to their account with the Detaining Power, or against payment in the currency at their disposal. They shall likewise benefit by this measure in cases of urgency."

Third and fourth paragraphs: No alteration.

Wing Commander DAVIS (Australia) raised another question concerning Article 60. He asked if it would be possible to have an annex to the Convention in which set forms for telegrams, in accordance with a prearranged code, would be shown. Standards of this nature would permit a considerable reduction of the frequently exorbitant cost of such messages.

Mr. NARAYANAN (India) and Mr. BAUDOY (France) were in favour of this suggestion which was to the advantage of prisoners of war who were held in countries which were often very distant from their homes.

General DILLON (United States of America) was also in favour of this idea. He thought it might be well to ask the opinion of the Delegation of the Holy See on this matter, as that State had operated a system of code messages during the second world war between North Africa and Italy for the benefit of prisoners.

Mr. GARDNER (United Kingdom) was not opposed to this principle, although he thought that its operation might raise more difficulties than might appear at first sight. This system had been tried out in Great Britain, but it had taken many months to organize it satisfactorily. He suggested that the Australian Delegation should submit this proposal to the Plenary Meeting of the Conference, which might make a recommendation to the signatory Powers.

Major ARMSTRONG (Canada), on the contrary, did not think that the system suggested would be very difficult to apply. It was merely necessary to make a list of the proposed set forms. That list would be known to the signatory Powers, since it would appear in an Annex to the Convention. On the outbreak of hostilities, the proposed procedure would be ready for application.

Mr. WILHELM (International Committee of the Red Cross) pointed out that the Convention provided for the sending of telegrams by prisoners of war in certain cases, particularly when they had been without news for a long time. In practice such messages had already been sent in simplified forms.

The Convention further provided that prisoners of war could also send telegrams in cases of urgency, generally on personal or family matters. It would in most cases be impossible for such messages to be sent according to a set form.

Should the idea of forms be adopted, it was important that it should be merely considered as a possibility and not made compulsory.

In view of the importance of this question the CHAIRMAN requested the Rapporteur to mention in his Report the different views that had been expressed.

#### Article 14A

The United Kingdom Delegate had submitted an amendment (*see Annex No. 101*) with the object to introduce a new Article 14A, laying down the conditions and circumstances under which derogations from the present Convention might be permitted.

Mr. BAISTROCCHI (Italy) reminded the Meeting that his Delegation had proposed a compromise text in the following terms:

"Should exceptional circumstances prevent or delay the application of provisions contained in the present Convention, the Detaining Power shall inform the Protecting Power in order that measures may be taken to deal with the situation in the interests of the prisoners of war."

Mr. STROEHLIN (Switzerland) was not in favour of such provisions, which he regarded as dangerous. In some cases the Detaining Power might interpret the term "exceptional circumstances" as meaning "military requirements", which would nullify the effect of the Convention.

General PARKER (United States of America) and General SKLYAROV (Union of Soviet Socialist Republics) also opposed the proposals of the United Kingdom and of Italy.

Mr. GARDNER (United Kingdom) observed that all the Delegates recognized certain derogations to be inevitable. There was thus no disagreement in principle with the United Kingdom amendment. If no reference to such derogations were made in the text of the Convention, they might increase to a dangerous extent. In order to avoid abuses, the United Kingdom text laid down precise limits to the cases in which derogations might be authorized.

He thought the Italian Delegation's proposal interesting. It had a weakness, however, in that it laid down neither definition of, nor limit to, the exceptional circumstances justifying any derogation. He saw no objection, however, to combining the two amendments.

In conclusion, he expressed the opinion that, since it was recognized that there would be derogations, the Convention would be weakened if they were not mentioned in the text.

The CHAIRMAN put the United Kingdom amendment to the vote. It was rejected by a large majority.

#### Article 108A

Mr. BLUEHDORN (Austria) explained that the amendment submitted by his Delegation (*see Summary Record of the Twentieth Meeting of Committee II*) had two objects:

(1) A prisoner of war whose original status had changed during the time of his captivity should not be repatriated to the country of which he had been a national at the time of his capture. For example, a soldier from Prague who was an Austrian at the outbreak of the first World War and was a Czech at its end should not be repatriated to Austria but to Czechoslovakia.

(2) Prisoners of war must have the option of not returning to their country if they so desire.

In order to avoid any difficulty which might arise in regard to expenses, he suggested that they might add to the second paragraph of his amendment the following sentence:

"In that case, the Detaining Power shall not be required to meet the expenses of repatriation".

General SKLYAROV (Union of Soviet Socialist Republics) feared that a prisoner of war might not be able to express himself with complete freedom when he was in captivity. Furthermore, this new provision might give rise to the exercise of undue pressure on the part of the Detaining Power.

General PARKER (United States of America) shared that opinion.

The Austrian amendment was rejected by a large majority.

#### Article 74

Amendments to Article 74 of the Stockholm text were submitted by the Delegations of Norway, Netherlands and the Union of Soviet Socialist Republics.

Regarding the Norwegian proposal, the Chairman of Committee II expressed the hope that conversations would take place between the Norwegian, United Kingdom and Venezuelan Delegations.

Referring to the Memorandum of his Government, Captain MOUTON (Netherlands) stated that the application of the Stockholm text would give rise to certain difficulties. For that reason he suggested that they should revert to the system provided for in the 1929 Convention as regards penal and disciplinary sanctions.

As regards the amendment introduced by the Delegation of the Union of Soviet Socialist Republics, the CHAIRMAN, in agreement with Mr. GARDNER (United Kingdom) considered that it would be desirable that the matter be discussed between the Delegates of the Union of Soviet Socialist Republics, the United Kingdom, other delegations if necessary, and the Rapporteur. Consequently, he proposed that the examination of Article 74 should be adjourned until they had an opportunity of hearing the results of the proposed discussion.

This proposal was adopted.

#### Article 60 (continued)

Major STEINBERG (Israel) reverted to Article 60, in connection with which he wished to acquaint the Committee with the experiments made by his country during its last national war. By agreement between the belligerents, prisoners of war were allowed to send messages to their families by wireless or recorded on discs. In certain cases

they were allowed to send photographs or films concerning their life in captivity. He asked whether it would not be possible to take account of such possibilities in the new Convention.

Mr. STROEHLIN (Switzerland) considered that these experiments were of great interest. The Convention, however, was intended to provide a minimum treatment for prisoners of war—a minimum which could be realized in all circumstances.

This would not be the case if the provisions suggested by the Israeli Delegation were to be adopted.

The CHAIRMAN asked the Rapporteur to mention the foregoing discussion in his report.

The CHAIRMAN proposed to postpone the discussion on Article 3 until the following Meeting.

*The meeting rose at 1 p.m.*

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## TWENTY-FIRST MEETING

*Thursday 23 June, 3 p.m.*

*Chairman:* Mr. Philippe ZUTTER (Switzerland)

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### **Communication from the Chairman of the Special Committee**

The CHAIRMAN opened the meeting by reminding the Committee that the Bureau of the Conference had recommended all the organs of the Conference to accelerate their work. He therefore requested Delegates only to speak when they believed it to be absolutely necessary, and to make their observations as brief as possible.

He went on to say that the Special Committee had decided to refer Article 42 (Authorized Labour) to the Committee of Financial Experts instructed to examine the Articles relative to the financial resources of prisoners of war, and Article 43 (Dangerous or Humiliating Labour) to Drafting Committee No. 1. In view, however, of the close connection between those two Articles, and also in view of the fact that Drafting Committee No. 1 was already extremely busy, he wondered whether the Special Committee itself could not endeavour to finish the examination of those Articles. General Devijver (Belgium), Chairman of the Committee of Financial Experts, agreed to that procedure. The Swiss Delegation had prepared a working text for Article 42A and 43, which had been circulated to the Delegations on June 7th and might serve as a basis for discussion. He held additional copies of that working text, which could be placed at the disposal of any Delegations wishing to have them.

He added that the Chairman of Committee II wished that certain Articles adopted by the Special

Committee should be submitted to him at the beginning of the following week. The following Articles had been already adopted by the Special Committee, and could therefore be submitted to Committee II:

Articles 11, second paragraph, 26, 30, 30A, 30B, 30C, 60, 105, 108, 109, 115.

The above mentioned Articles had been published by the Secretariat.

The Rapporteur was prepared to submit the Articles in question in an interim report to Committee II.

In order to save time, the Chairman proposed that the Articles in question should be considered at the next meeting of Committee II, which would probably take place the following Tuesday.

### **Statement by General Lefebvre (Belgium) Rapporteur of Committee I, on Article 22 (New) of the Wounded and Sick Convention and Articles 29A, 29B, 29C**

On the proposal of the CHAIRMAN, the Committee proceeded to consider the United Kingdom amendment relative to Articles 29A, 29B and 29C (*see Annex No. 109*) of the Prisoners of War Convention, and of the working text set up by the Special Committee (*see further on*) relative to retained medical and religious personnel. He added that General

Lefebvre (Belgium), Rapporteur of Committee I, was present at the Meeting and was prepared to explain the text adopted by that Committee concerning retained personnel.

General LEFEBVRE (Belgium) said that Committee I had adopted a new Article 22 to replace the present version of the same Article in the Wounded and Sick Convention.

The new Article differed in certain respects from Articles 12 and 13 of the 1929 Convention. According to the latter, members of medical personnel who had been captured could not be retained as prisoners of war. Failing any agreement to the contrary, they were to be returned to the belligerent in whose service they were (Article 12, Sick and Wounded Convention, 1929). According to the new text of Article 22 on the other hand, medical personnel could be retained without prior agreement between the two parties concerned "only in so far as the state of health, the spiritual needs and the number of prisoners of war require". According to Article 13 of the 1929 Convention, captured medical personnel, until they were returned to the belligerent in whose service they were, were to receive the same treatment as the medical personnel of the Detaining Power, whereas under the provisions of the new Article 22 they would benefit by all the provisions of the Prisoners of War Convention during the whole time they were detained without, however, being deemed prisoners of war.

He enumerated the various facilities by which medical personnel would benefit "within the framework of the military laws and regulations of the Detaining Power" in the exercise of their medical or spiritual duties. He pointed out in particular the fact that the new text of Article 22 provided for the possibility of their eventual relief, a contingency for which there was no provision in the 1929 Wounded and Sick Convention.

Committee I had not presumed to ask Committee II to insert particular parts of the new Article 22 of the Wounded and Sick Convention in the Prisoners of War Convention, as obviously it was for Committee II to decide what it intended to do in that respect.

Mr. GARDNER (United Kingdom) thought that, as far as the Special Committee was concerned, the question was fairly simple. First of all, the status of captured medical personnel was different from that of prisoners of war and was therefore not a matter to be settled in the Prisoners of War Convention.

The new Article 22 of the Wounded and Sick Convention established two categories of medical personnel: (1) those to be retained in the camps for the care of prisoners of war, and (2) those who were not to be retained.

It was only category (1) that concerned the Special Committee. It was with that category that the United Kingdom amendment was concerned. Its object was not to define the status of captured medical personnel, but to determine the treatment they should receive and the conditions in which they should continue to exercise their duties for the benefit of the other prisoners of war.

Major ARMSTRONG (Canada) could not support the views of the United Kingdom Delegate. In his opinion, medical personnel, as members of the Armed Forces of one of the parties to the conflict, automatically acquired the status of prisoners of war as soon as they were captured, in accordance with Article 3, first paragraph, sub-paragraph 1 of the Convention. If it was desired to ensure them a privileged position, it would be necessary to accord them a special status. That was the principal object of the working text set up by the Special Committee which should be regarded as a Canadian amendment and was worded as follows:

"Members of medical personnel and chaplains whilst retained in the hands of the Detaining Power to look after prisoners of war shall be granted all facilities necessary to provide for the medical care and religious ministrations of prisoners of war. Such retained personnel shall not be considered prisoners of war but shall receive all the benefits and protection of this Convention."

General PARKER (United States of America) supported the Canadian Delegate's views:

After some discussion the CHAIRMAN put the United Kingdom amendment to the vote. The result was as follows:

Article 29 A was adopted by 7 votes to nil

Article 29 B was rejected by 5 votes to 2.

Article 29 C was adopted by 7 votes to nil.

The CHAIRMAN also wished the Committee to vote on the working text mentioned before considered as a Canadian amendment.

Mr. GARDNER (United Kingdom), however, raised objections both as to form and substance. The proposal had been submitted in the form of a working text and not as an amendment, and the Delegates could not know therefore that they

would be called upon to vote on the text. It was not sufficiently clear in substance: in particular, it did not state whether medical personnel were to be interned in prisoners of war camps, or to what kind of discipline they were to be submitted, or what laws would be applicable to them.

An exchange of views followed, in which General DILLON (United States of America), Miss GUTTERIDGE (United Kingdom), Mr. STROEHLIN (Switzerland), General SLAVIN (Union of Soviet Socialist Republics) and the CHAIRMAN took part, on the merits of the Canadian amendment, and more particularly on the point of order as to whether the Committee was competent to vote on the working text.

The CHAIRMAN decided the last question affirmatively, and the Committee accepted the Canadian amendment by 9 votes to 4.

Mr. GARDNER (United Kingdom) did not agree with the procedure adopted, and reserved the opinion of his Delegation.

The CHAIRMAN took note of the British reservations.

#### Article 74 (continued)

The CHAIRMAN reminded the Committee that at the last meeting it had been decided that conversations would take place between the Delegations principally concerned on the subject of the amendment to Article 74 of the Stockholm text submitted by the Soviet Delegation. As it had not been possible for those conversations to take place, he decided to defer the examination of this amendment to a later meeting.

The Norwegian Delegation, which had also submitted an amendment to Article 74, had asked him to defer its discussion for the time being, but had reserved the right to raise it at a later date.

Before passing to the next item on the agenda, he asked Captain Mouton (Netherlands) if the new amendment submitted by his Delegation to the new Article 89 was really intended to annul the Netherlands amendment to Article 74, which appeared in the Memorandum of the Netherlands Government.

Captain MOUTON (Netherlands) confirmed that, if the Netherlands amendment to the new Article 89 was accepted, the other amendments of the Memorandum of the Netherlands Government would automatically become irrelevant.

The CHAIRMAN said that, as the consideration of the new Article 89 did not come within the Special Committee's terms of reference, but within those of Committee II, it was no longer necessary for the Special Committee to deal with the matter. He requested Captain Mouton to draw attention to his Delegation's amendment when the new Article 89 was examined by Committee II (*see Summary Record of the Twenty-first Meeting of Committee II*).

#### Examination of a working text for Article 3

The CHAIRMAN said that a new working text (June 21), which had been drafted by the Rapporteur of the Committee in co-operation with the Secretariat, summed up the previous discussions on Article 3. The text in question, he said, was a working document to facilitate the work of the Committee, and suggested that it should be considered paragraph by paragraph. He said that the preamble, and sub-paragraphs (1) and (2) of the first paragraph, had already been adopted subject to certain reservations by the Soviet Delegation.

Working text with the following wording:

##### First Paragraph

"Prisoners of war, in the sense of the present Convention, are persons belonging to one of the following categories, who have fallen into the power of the enemy:

- (1) Members of armed forces who are in the service of an adverse belligerent, as well as members of militia or volunteer corps belonging to such belligerent, and fulfilling the following conditions:
  - (a) That of being commanded by a person responsible for his subordinates;
  - (b) That of wearing a fixed distinctive sign recognizable at a distance;
  - (c) That of carrying arms openly;
  - (d) That of conducting their operations in accordance with the laws and customs of war.
- (2) Members of regular armed forces who profess allegiance to a Government or an authority not recognized by the Detaining Power, and who fulfil the conditions set out in sub-paragraphs (a), (b), (c), and (d) above.
- (3) Persons who accompany the armed forces without actually being members thereof, such as civil members of military aircraft

crews, war correspondents, supply contractors, members of labour units or of services responsible for the welfare of the military, provided they have received authorization from the armed forces which they accompany, who shall provide them for that purpose with an identity card similar to the annexed model.

(4) Stockholm text.

(5) Stockholm text.

(6) No decision has yet been taken; the amendment submitted by the Belgian Delegation has not yet been put to the vote" (see *Annex No. 84*).

#### *Second Paragraph*

"The following shall likewise be treated as prisoners of war under the present Convention:

(1) Persons belonging, or having belonged, to the armed forces of the occupied country shall also benefit by the treatment reserved by the present Convention to prisoners of war, if the occupying Power considers if necessary by reason of such allegiance to intern them, even though it has originally liberated them while hostilities were going on outside the territory it occupies, in particular where such persons have made an unsuccessful attempt to rejoin the armed forces to which they belong, or where they fail to comply with a summons made to them with a view to internment. (Text prepared by the Rapporteur and appearing in a working text dated 23 May).

(2) The persons belonging to one of the categories enumerated in the present Article, who have been received by neutral or non-belligerent Powers on their territory and whom these Powers are required to intern under international law, without prejudice to any more favourable treatment which these Powers may choose to give and with the exception of Articles 7, 9, 14, first paragraph, 28, fifth paragraph, 49-57, 82, 116 and those Articles concerning the Protecting Power. In this case, the belligerents on whom these persons depend shall be allowed to perform towards them the functions of a Protecting Power as provided in the present Convention, without prejudice to the functions which they normally exercise in conformity with diplomatic and consular usage. (Text based upon the United Kingdom amendment for an Article 2 A (see *Annex No. 91*) adopted by the Special Committee).

#### *Third Paragraph*

"The Committee has to take a decision concerning the amendment of 10 May, submitted by the Netherlands Delegation (see *Annex No. 87*) and the Danish draft amendment concerning an Article 3 A. This draft appears in a working text dated 23 May. It reads as follows:

*Article 3 A.* Danish Draft amendment (See *Annex No. 88*) to replace: Danish amendment (see *Annex No. 85*) to Article 3, first paragraph sub-paragraph (7); Article 3, last paragraph, and Article 4, second paragraph, of Stockholm text.

Any person resisting the enemy, who does not appear to belong to any of the categories enumerated in Article 3 or who is not protected by any other Convention, shall be entitled, should he fall into the hands of the enemy, to receive, in all circumstances, treatment in conformity with the provisions of the present Convention, until such time as his status has been determined by a regular competent Court, which shall decide upon his case in conformity with the rules of law, and in particular of the law of self-defence, as also of the stipulations of the present Convention relative to penal and disciplinary sanctions.

Even should the decision of such a Court not allow the said person to benefit by the provisions of the present Convention, he shall nevertheless remain safeguarded by the principles of the rights of man as derived from the rules established among civilized nations and the humanitarian stipulations of the present Convention."

General SLAVIN (Union of Soviet Socialist Republics) said that according to the first paragraph, sub-paragraph 1, of the working text it would appear that members of the Armed forces would have to fulfil the four traditional requirements mentioned in (a), (b), (c) and (d) in order to obtain prisoner of war status, which was contrary to the Hague Regulations (Article 1 of the Regulations concerning the Laws and Customs of War, 18 October 1907).

General DEVIJVER (Belgium) pointed out that the above reproduced working text had been drafted with due regard to the Hague Regulations, and the first paragraph, sub-paragraph (1), of the working text carefully specified that only members of militia or volunteer corps should fulfil all four conditions.

The CHAIRMAN, in order to overcome the drafting difficulty, proposed that the first sentence of the first paragraph, sub-paragraph (1), until "conditions", should be split up as follows:

“(1) Members of the armed forces who are in the service of an adverse belligerent.

(2) The militia and volunteer corps of this belligerent provided they fulfil the following conditions...”

(wording of (a), (b), (c) and (d) to remain unchanged).

In that case, sub-paragraphs 2, 3, 4, 5 and 6 of the first paragraph would become sub-paragraphs 3, 4, 5, 6 and 7.

General SLAVIN (Union of Soviet Socialist Republics) said that, even with the suggested modification in the wording, the new sub-paragraphs (1) and (2) would not correspond to the Hague Regulation, as according to the latter it was necessary to distinguish between:

- (a) The militia or volunteer corps which constituted or were part of the army;
- (b) The militia or volunteer corps which were not part of the army.

Only those groups to which (b) related should fulfil all four conditions.

After some discussion it was considered desirable that the Committee should draft a text as close as possible to that of the Hague Regulation of 1907.

In view of the different observations made during the discussion, the CHAIRMAN moved the adoption of the following wording suggested by Mr. GARDNER (United Kingdom):

“(1) Members of armed forces who are in the service of an adverse belligerent as well as members of militia or volunteer corps forming part of the army of this belligerent.

(2) Members of the militia or volunteer corps of this belligerent which fulfil the following conditions:...”

(followed by (a), (b), (c) and (d) unaltered).

General SLAVIN (Union of Soviet Socialist Republics) thought that instead of mentioning “an adverse belligerent” it would be preferable to say “a party to the conflict”, which was the expression used in the Stockholm text.

Mr. GARDNER (United Kingdom) said that if the Soviet Delegate's proposal were adopted the wording proposed would read as follows:

“(1) Members of the armed forces of a party to the conflict as well as members of militia or volunteer corps forming part of these armed forces.

(2) Members of other militia or volunteer corps of this party to the conflict which fulfil the following conditions:...”

In order to terminate a prolonged discussion, the CHAIRMAN at the suggestion of General SLAVIN (Union of Soviet Socialist Republics) moved that a Working Party should be appointed and instructed to submit a new text based on the wording suggested by the text of the United Kingdom Delegate. He suggested that the party should be the same as that chosen to examine Article 74.

The CHAIRMAN said the next meeting of the Special Committee would take place the following morning, and that in principle Articles 74 and 3, which were still in abeyance, should be finally settled. He therefore requested the Delegates concerned to make every possible effort in order that the conversations which had been arranged for on the subject of the amendments to Article 74 should take place, and that in the meantime the new working text for the first paragraph, sub-paragraphs (1) and (2) of Article 3 should be prepared, if possible.

*The meeting rose at 6.30 p.m.*

TWENTY-SECOND MEETING

Friday 24 June 1949, 10 a.m.

Chairman: Mr. Philippe ZUTTER (Switzerland)

**Examination of a working text for Article 3**  
(continued)

*First Paragraph*

*Sub-paragraphs (1) and (2)*

The CHAIRMAN reminded the Committee that sub-paragraphs (1) and (2) of the working text had been referred to a small Working Party, and that the Preamble of the first paragraph had been adopted.

*Sub-paragraph (3)*

Sub-paragraph (3) of the working text was adopted without comment.

*Sub-Paragraph (4)*

Mr. GARDNER (United Kingdom) said that under United Kingdom law, masters, pilots and apprentices were excluded from the crews of the Merchant Marine. The United Kingdom amendment proposed to include that category of persons in the first paragraph, sub-paragraph (4), after "crews", and to insert after "marine" the words "and the crews of civil aircraft".

Mr. BAISTROCCHI (Italy) supported the amendment submitted by the Delegation of the United Kingdom.

General SLAVIN (Union of Soviet Socialist Republics) asked for more time to study the amendment which he had only just received.

It was decided to defer taking a decision on the United Kingdom amendment to sub-paragraph (4).

*Sub-paragraph (5)*

Sub-paragraph (5) of the working text was adopted without comment.

Major STEINBERG (Israel) reserved the right to submit again in a new form the amendment to

insert a new sub-paragraph (5A) in Article 3, which had been presented by his Delegation and rejected at a previous meeting (see *Summary Record of the Third Meeting*).

*Sub-paragraph (6)*

The CHAIRMAN remarked that lengthy discussions had already taken place on sub-paragraph (6). If the present Committee did not reach a decision the sub-paragraph would be referred back with a report to Committee II.

General SLAVIN (Union of Soviet Socialist Republics) considered that the Belgian amendment, submitted at the Sixth Meeting, weakened the Stockholm text and that the United Kingdom amendment to the text proposed by the Belgian Delegation weakened it still further. He had already expressed the opinion at previous meetings that the criteria proposed were too subjective and were liable to give rise to misunderstandings. He repeated that as a military man the term "effective command" conveyed nothing to him, and asked why the criterion of "to make and reply to communications" was applied to partisan forces and not to regular forces.

Mr. BAGGE (Denmark) said that the matter was of paramount importance to the smaller countries. He supported the Belgian amendment had been opposed by the Delegation of the Union of Soviet Socialist Republics, he hoped that a compromise solution might be found. It would be difficult for his Government to adhere to a Convention which contained no provisions concerning resistance movements.

Captain MOUTON (Netherlands) drew the attention of the Committee to a new Netherlands amendment which proposed the three following modifications to Article 3, first paragraph:

(1) to add to sub-paragraph (1) the words "in or outside their own territory even if this territory is occupied";

(2) to insert in sub-paragraph (2) the words "and members of volunteer corps under the conditions mentioned above" after the words "armed forces";

(3) to delete sub-paragraph (6).

Mr. GARDNER (United Kingdom) said that it had already been made abundantly clear that any departure from the Stockholm text was not acceptable to the Delegation of the Union of Soviet Socialist Republics. Compromise had been sought during friendly conversations, but without result; therefore the solution proposed by the Delegation of the Netherlands might well be the only possible solution; the United Kingdom Delegation would be prepared to accept it in the absence of any other.

It would create grave difficulties for his Government if the question was referred back to Committee II and a solution was arrived at which was contrary to the sense of the United Kingdom amendment to the texts submitted by the Belgian Delegation (*see Annex No. 92*). He therefore made an appeal to other Delegations to endeavour to go as far to meet the United Kingdom point of view as he himself had gone in an attempt to meet theirs, and to try and frame a workable text.

During the course of further discussion Captain MOUTON (Netherlands) said that there were two points of view: that of the Powers likely to be Occupying Powers in the event of another war (those were usually the great Powers) and the Powers whose countries were likely to be occupied (the smaller Powers). It was evident from the discussion that agreement was not likely to be reached; that was why he suggested a different

approach, by which partisans would not only benefit by the protection afforded by the Prisoners of War Convention, but would also have the advantage of being recognized as legitimate fighters under the Hague Regulations.

It was decided that private conversations should take place between the Delegations and that General Devijver (Belgium) be entrusted with arranging those conversations. The results of the conversations would be referred to the Special Committee. If no solution were found the question would then be submitted to Committee II.

#### *Second paragraph*

After a short discussion the second paragraph, sub-paragraph (1), of the working text for Article 3 — was adopted. The words "and which are engaged in hostilities" would be added after the word "belong".

The third paragraph of Article 82 would be deleted.

Sub-paragraph (2) was also adopted with the substitution of the term "parties to the conflict" for the term "belligerents" at the beginning of the second sentence.

#### *Third paragraph*

After an exchange of views it was decided that the Delegates of Denmark and the Netherlands, who had presented amendments to the third paragraph, should meet and draft a new text, which they would jointly present.

*The meeting rose at 1 p.m.*

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## TWENTY-THIRD MEETING

*Monday 27 June 1949, 3 p.m.*

*Chairman:* Mr. Philippe ZUTTER (Switzerland)

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### **Article 3, first paragraph, sub-paragraphs (1), (2), (6), and last paragraph**

The CHAIRMAN reminded the meeting that the Working Party entrusted with the study of the first paragraph, sub-paragraphs (1), (2) and (6),

of Article 3 was to meet the following morning at 10 a.m. with the Rapporteur in the Chair. The Delegations to take part in the work of the Party not having yet been designated, he proposed the following Delegations as members of the Group: Denmark, United States of America, France, Nether-

lands, United Kingdom, Union of Soviet Socialist Republics.

The meeting would remember that the Delegations of Denmark and the Netherlands had been invited to draw up a new working text for the last paragraph of Article 3.

**Article 3, first paragraph, sub-paragraph (4)**  
(continued)

The CHAIRMAN put the United Kingdom amendment to this resolution for discussion (see *Summary Record of the Twenty-second Meeting*).

Mr. FILIPPOV (Union of Soviet Socialist Republics) stated, in reply to a question by the CHAIRMAN, that his Delegation had no objection to the amendment.

There being no objection, the CHAIRMAN declared the United Kingdom amendment adopted without opposition.

**Article 42**

The CHAIRMAN explained that the question before the Committee was whether it would prefer to adopt the Stockholm text or that of the United Kingdom amendment (see *Annex No 116*).

Mr. BAGGE (Denmark) said that the amendment which had been submitted by his Delegation (see *Annex No 115*) should also be taken into account.

The CHAIRMAN replied that the Special Committee had already agreed that the removal of mines must be considered as dangerous, and that consequently prisoners of war could not be called upon to undertake it. As the Danish amendment aimed at re-introducing into the Convention the principle of the removal of mines by prisoners of war, in certain circumstances, the Chairman thought there was no need for the Special Committee to reconsider the question. Mr. Bagge would, nevertheless, be able to bring forward his amendment again when Article 42 was examined on second reading by Committee II.

The Chairman then put the United Kingdom amendment for discussion.

Miss BECKETT (United Kingdom) said that this amendment followed the text submitted to the Stockholm Conference by the International Committee of the Red Cross, which she considered more precise than the text which had resulted from the Conference deliberations. She was prepared to omit the second sentence of sub-paragraph

(e) of her amendment, dealing with the removal of mines by prisoners of war; but the last paragraph of the amendment must be maintained.

Mr. STROEHLIN (Switzerland) suggested that in the preamble of the United Kingdom amendment the words "obliged to do work included in" might be replaced by the words "engaged in", and that the words "of economic activity" should be deleted.

Miss BECKETT (United Kingdom) accepted the proposed amendments.

General DILLON (United States of America) recalled that the United Kingdom Delegation had said it would make special mention in its amendment of agriculture as work upon which prisoners of war could be employed. There was no such mention in the amendment before them, and he thought there ought to be.

Miss BECKETT (United Kingdom) welcomed General Dillon's suggestion. She proposed that agriculture should be mentioned in sub-paragraph (a), and that the other work considered permissible in sub-paragraphs (a), (b), (c), (d) and (e) should be specified in new sub-paragraphs (b), (c), (d), (e) and (f).

On a vote, the proposal was adopted without opposition.

A vote was then taken on the United Kingdom amendment which was adopted, as amended, by 6 votes to 5.

**Articles 42A and 43 (continued)**

The CHAIRMAN stated that a working text had been prepared by the Swiss Delegation, referring to Articles 42A (new) and 43. Amendments had been submitted to Article 43 by the Delegations of Canada, the United States of America, Greece, Italy, New Zealand, the United Kingdom and the Union of Soviet Socialist Republics.

The Special Committee had adopted the amendments of Canada, New Zealand, and the Union of Soviet Socialist Republics, while the United Kingdom amendment had been withdrawn in favour of the New Zealand amendment.

Mr. STROEHLIN (Switzerland) stated that the main principles embodied in the Canadian, New Zealand and Soviet amendments, and in the Stockholm text, had been condensed into the two Articles—42A (new) (Labour conditions) and 43 (Dangerous and humiliating work)—which figured in the working document prepared by the Swiss Delegation.

*Article 42A—Conditions of Work*

"Prisoners of war must be granted suitable working conditions, especially as regards accommodation, food, clothing and equipment; such conditions shall not be inferior to those enjoyed by nationals of the Detaining Power employed in similar work; account shall be taken of climatic conditions.

The Detaining Power in utilizing the labour of prisoners of war, shall ensure that in areas in which such prisoners are employed, the national legislation concerning the protection of labour, and, more particularly, the regulations for the security of industrial workers, are duly applied.

Prisoners of war shall receive training and be provided with the means of protection suitable to the work they will have to do and similar to those accorded to the nationals of the Detaining Power. Subject to Article 43, they can be submitted to the normal risks run by these civilian workers.

Conditions of labour shall in no case be rendered more arduous by disciplinary measures."

*Article 43—Dangerous or humiliating labour*

"No prisoner of war may be employed on labour which is of an unhealthy or dangerous nature.

No prisoner of war shall be assigned to labour which would be looked upon as humiliating for a member of the Detaining Power's own forces.

The removal of mines or similar devices shall be considered as dangerous labour."

Major ARMSTRONG (Canada) and Miss BECKETT (United Kingdom) both stated that they were in favour of the working text prepared by the Swiss Delegation.

Mr. MARESCA (Italy) wondered whether the second paragraph of Article 43, as worded in the working text, really took account of the Italian amendment and its suggestion of the following wording for the prohibition of humiliating work:

"No prisoner of war shall be employed on work of a deliberately humiliating character."

He wished the second paragraph of Article 43 to be amended in that sense.

Mr. BAUDOY (France) seconded the Italian Delegate.

After some discussion, during which several suggestions were made for giving effect to the Italian amendment, a vote was taken, and the amendment was rejected by 9 votes to 4.

The Committee then accepted Article 43 as worded in the working document, but with the omission of the words "for a soldier of the Detaining Power", at the end of the second paragraph, and the insertion in their place of the words "for a member of the armed forces of the Detaining Power".

(Mr. AGATHOCLES (Greece) in a communication to the Secretariat had indicated that the text adopted by the Special Committee for Articles 42A and 43 had taken the amendment contained in the Memorandum of the Greek Government into account. It was not therefore necessary for the Special Committee to consider the Greek amendment.)

**Article 74**

General DILLON (United States of America) proposed that the Special Committee should proceed to consider Article 74, on which it had proved impossible to come to an agreement.

The CHAIRMAN reminded the Committee that it had been agreed that conversations between the Delegations of the United Kingdom and the Union of Soviet Socialist Republics should take place to endeavour to frame a text to which both Delegations could agree. Conversations had taken place; but no agreement had yet been reached. It would therefore be preferable to wait until the conversations had led to some definite result before reconsidering Article 74.

General DEVIJVER (Belgium) agreed with the Chairman.

General DILLON (United States of America) pressed his point that the Special Committee, in order to save time, should at once begin to reconsider Article 74. A discussion ensued as to whether the Committee was entitled to consider the Article, the proposal to do so not figuring on the Agenda.

After an exchange of views, in which the principal speakers were General DILLON (United States of America), Miss BECKETT (United Kingdom), General DEVIJVER (Belgium), Mr. BAUDOY (France), Mr. FILIPPOV (Union of Soviet Socialist Republics) and the CHAIRMAN, the last named took a vote on General Dillon's suggestion.

This suggestion was rejected by 9 votes to 3.

*The meeting rose at 4.40 p.m.*

TWENTY-FOURTH MEETING

Friday 1 July 1949, 10 a.m.

Chairman: Mr. Philippe ZUTTER (Switzerland)

**Report on Articles 29A, 29C and 28, third paragraph, 41, fourth paragraph**

The CHAIRMAN reminded the Committee that at its twenty-first Meeting the Special Committee had adopted Article 29A, article 29C and a Canadian proposal concerning retained military medical personnel and chaplains.

The Prisoners of War Convention also contained other texts which dealt with military medical personnel and chaplains, particularly Article 28, third paragraph, and Article 41, fourth paragraph. Both those provisions had been considered by Drafting Committee No. 1, which had omitted the latter so as to take into account the new corresponding Article 29C. On the other hand, the Committee had been unable to co-ordinate Article 28, third paragraph, with Article 29A. Those Articles were to a certain extent similar; but the Committee considered that there was a question of substance which should be settled by the Special Committee.

Major ARMSTRONG (Canada), in his capacity of Rapporteur of Drafting Committee No. 1, summed up the divergent points of view which had been expressed in the Committee:

- (a) The Delegate of the United States of America wished to retain the third paragraph of Article 28, as he considered it important for a wounded or sick member of the armed forces to speak the same language as the personnel responsible for his care.
- (b) The United Kingdom Delegate wished to substitute the Stockholm text by the text of the United Kingdom amendment, Article 29A (*see Annex No. 109*), as he thought it preferable for prisoners of war to be cared for by the medical personnel of the armed force in which they were serving at the time of capture.
- (c) The Delegate of the Union of Soviet Socialist Republics considered that both texts had the same meaning, because the word "na-

tionality" in Russian signified that the wounded or sick prisoner should be cared for by the medical personnel of his own country.

After some discussion on the procedure to be adopted to accelerate the examination of the problem, the CHAIRMAN proposed to set up a Working Party, composed of the Rapporteurs of the Special Committee and of the Drafting Committee, with, in addition, a Representative of the International Committee of the Red Cross: the Working Party to consider the appropriate place for the various proposals adopted and to submit a text which would not only take account of the different views expressed, but would also accord with the rest of the Convention. The Working Party might further point out the possible effect of the provisions in question on other Articles of the Convention.

The Chairman's proposal was adopted.

**Article 19, second and third paragraphs**

The CHAIRMAN recalled that Article 19 had been referred to Drafting Committee No. I by Committee II. The Drafting Committee had adopted the first paragraph with slight modifications. The fourth paragraph had been omitted. The second and third paragraphs had been referred to the Special Committee, together with a Netherlands amendment (*see Annex No. 103*) and two United Kingdom amendments (*see Annexes No. 104 and 105*), the purpose of which was to insert in the Convention the principle contained in Article 12 of the Regulations annexed to the IVth Hague Convention of 1907 regarding liberation on parole. The Drafting Committee considered that those were questions of substance, which were outside its terms of reference.

The CHAIRMAN pointed out that the Drafting Committee had accepted the New Zealand pro-

posal to substitute the word "conditions" for the words "laws and regulations" in the first and second sentences of the first paragraph of the draft of the new Article, as it figured in the United Kingdom amendment. The United Kingdom Delegation had agreed to that proposal.

Mr. GARDNER (United Kingdom) said that he had got into touch with the Netherlands Delegate, and that they had mutually agreed to amalgamate their respective amendments and to modify them on one point, in order to meet the view of those who considered that prisoners who had broken their parole should continue to be protected by the Convention.

Therefore the new proposals for Article 19 were as follows:

- (a) The two first paragraphs of the second United Kingdom amendment to be retained;
- (b) The first paragraph of the Netherlands amendment to become the third paragraph, with the addition of the words: "but they shall benefit by the provisions of Article 98 of the present Convention";
- (c) The second paragraph of the Netherlands amendment to become the fourth paragraph.

Mr. WILHELM (International Committee of the Red Cross) pointed out that the new text omitted the idea expressed in the second paragraph of the Stockholm text to the effect that:

"such measure ("*release on parole or promise*") shall be taken particularly in cases where they can contribute to the improvement of their state of health".

The Stockholm Draft also had the advantage of encouraging governments to release prisoners on parole, which was not the case with the United Kingdom amendment, which was in the second paragraph to the effect that:

"... the hostile Government is not obliged to accede to the request of the prisoner of war to be set at liberty on giving his parole or promise".

General SKLYAROV (Union of Soviet Socialist Republics) objected particularly to the third paragraph of the new draft. He considered there was no necessity to insert in the Convention all the Hague Rules (Annex to the IVth Convention of 1907), some of which were obsolete. He understood, from private conversations he had had with the Delegates of the United Kingdom and the United States of America, that release on parole was no longer practiced in either of those countries.

In adopting Article 74, as it now stood in the Stockholm text, the Committee was about to accord the benefits of the Convention to war criminals, and yet they wished to withhold the benefits of the same Convention from soldiers who had fought for their country, but had broken their parole given to the enemy.

Captain MOUTON (Netherlands) thought that, if it was decided to omit Articles 10, 11 and 12 of the Annex to the IVth Hague Convention, the only Articles of the Annex not to be reproduced in the present Convention, it would be essential to insert a clause stating that they had been excluded deliberately.

Referring to the fourth paragraph (second paragraph of the Netherlands amendment), he explained that the paragraph in question provided for the case of a prisoner who, after being temporarily released on parole, failed to return to his quarters in proper time through a cause independent of his own will. In such cases it would not be right to deprive the prisoner of the protection of the Convention.

He was surprised to learn that the provisions of Articles 10, 11 and 12 of the Hague Rules were called obsolete. Did that imply that the conceptions of military honour and respect for the pledged word were now regarded as out of date, conceptions which were the fundamental principles of law and order? Grotius himself considered that to break parole even to the enemy was to undermine one of the foundations of international law—the principle of "*bona fides*".

The same principle which in international law was expressed in the adage "*pacta sunt servanda*". If we did not consider a breach of parole as a fundamental crime the very foundations of the law would be taken away. The miseries of the last war were caused by the violation of this basis of all human relations.

General SKLYAROV (Union of Soviet Socialist Republics) agreed with the Netherlands Delegate that failure to fulfil the pledged word was a serious crime; nevertheless he did not consider that it was more serious than a war crime, or that it justified depriving the offender of the protection afforded by the Convention.

Mr. COHN (Denmark) and General PARKER (United States of America) agreed with the Delegate of the U.S.S.R.

General SKLYAROV (Union of Soviet Socialist Republics) maintained that there was a fundament-

al difference between respect for the pledged word given to the enemy and good faith in international relations.

Mr. COHN (Denmark) remarked, in this connection, that the principles "pacta sunt servanda" and "bona fides" applied to international relations, whereas prisoners of war who broke their word after being released on parole were only guilty of a breach of the Convention.

Major STEINBERG (Israel) also considered that the penalty imposed on a prisoner who had broken his word after being liberated on parole was disproportionate to the seriousness of the offence. For example, he pointed out that, if one country invaded another in violation of a solemn undertaking, the nationals of the former country would not be deprived of the protection of the Convention, although it was proposed to withhold its protection from a prisoner of war who had broken his word.

Put to the vote, the United Kingdom proposal, as amended in accordance with the Netherlands proposal, was rejected by 8 votes to 2.

#### Article 74 (continued)

The CHAIRMAN said that the consideration of the amendment of the Soviet Delegation had not yet been terminated. Its aim was to complete Article 74 of Stockholm by adding a new Paragraph worded as follows:

"Prisoners of war convicted of war crimes and crimes against humanity under the legislation of the Detaining Power, and in conformity with the principles of the Nuremberg trial, shall be treated in the same way as persons serving a sentence for a criminal offence in the territory of the Detaining power".

General SLAVIN (Union of Soviet Socialist Republics) explained that war criminals, as opposed to prisoners of war released on parole who had escaped, did not deserve to remain under the protection of the Convention.

Mr. GARDNER (United Kingdom), while admitting that the Stockholm text was perhaps not perfect, nevertheless considered that the idea it expressed should be retained. The conversations he had had with the Soviet Delegation had failed to produce a compromise solution.

He drew attention to discrepancies between the English and French versions of the text adopted at Stockholm which, he considered, ought to be remedied. The French version read: "... qu'ils ont

commis avant d'avoir été faits prisonniers resteront, même s'ils ...". Those words should be translated: "... for acts committed prior to capture shall retain ..." instead of "shall enjoy".

Mr. LAMARLE (France) drew the Committee's attention to the fact that the amendment of the Soviet Delegation expressed a very sound idea—namely the distinction between prisoners of war guilty of war crimes and those who had been convicted of an ordinary criminal offence. There was, however, something lacking in the U.S.S.R. proposal, for it was essential to retain a minimum of protection against violent acts, in order, for example, to ensure the strict enforcement of the penalty, and to prevent the possibility of a miscarriage of justice. If provisions in that sense were included, the French Delegation would be prepared to accept the amendment of the U.S.S.R.

Captain MOUTON (Netherlands) thought that one safeguard should, in any case, be maintained—namely, repatriation. He thought that the proposal of the Soviet Delegate would authorize a State to send prisoners of war to concentration camps; and in view of past experiences that eventuality was undesirable.

General DILLON (United States of America) supported the United Kingdom and Netherlands Delegates.

Captain MOUTON (Netherlands) thought it should be possible to reach an agreement by adding to the proposal of the Union of Soviet Socialist Republics a reference to the fact that the provisions of Article 89 and those concerning repatriation would be retained.

Mr. COHN (Denmark) suggested another solution which might meet with general approval; namely to add to the Stockholm text of Article 74, after the word "benefits", the words "of the humanitarian principles".

In view of the fact that there was as yet no prospect of agreement in the Committee, the CHAIRMAN proposed, at the suggestion of General SLAVIN (Union of Soviet Socialist Republics) that a Working Party should examine the question, and draw up a compromise text taking account of the observations which had been made: the Working Party to consist of the Rapporteur and Delegates of the following countries: Denmark, United States of America, France, Netherlands, United Kingdom, Union of Soviet Socialist Republics.

The proposal was adopted.

*The meeting rose at 1.15 p.m.*

TWENTY-FIFTH MEETING

Tuesday 5 July 1949, 3 p.m.

Chairman: Mr. Philippe ZUTTER (Switzerland)

**Report of the Committee of Financial Experts** *Article 51*

The CHAIRMAN, on opening the meeting, thanked General DEVIJVER (Belgium) and Mr. WILHELM (International Committee of the Red Cross), Chairman and Rapporteur of the Committee of Financial Experts, for the drafting of the above Report. As that document had already been in possession of the delegates since 1 July, he considered it was not necessary to read it again, and he asked General Devijver if he had any further comments to add to his Report.

General DEVIJVER (Belgium) stated that the Report had been adopted unanimously by the Committee of Financial Experts.

The CHAIRMAN suggested that the new Articles contained in the Report be examined article by article and a vote taken on each article after discussion.

*Article 49*

Mr. GARDNER (United Kingdom) suggested the following change in the second sentence of the first paragraph: "Any amount in excess which was properly in their possession and which has been taken or withheld from them shall...."

That proposal, put to the vote, was accepted by 7 votes to 3.

Article 49, amended as above, was then put to the vote. It was adopted by 13 votes to NIL.

*Article 50*

Mr. WILHELM (International Committee of the Red Cross) pointed out that the substance of that article had already been included in Article 16, and proposed to insert the following reference at the beginning of the first paragraph: "In accordance with Article 16 ...".

The proposal was adopted.

Article 50, thus amended, was put to the vote, and adopted by 10 votes to 1.

Mr. GARDNER (United Kingdom) intimated that he would table an amendment to this article in Committee II.

Following some observations by Mr. STROEHLIN (Switzerland) a discussion ensued on the wording "Swiss gold franc", the weight of gold and the expression "fine gold".

General DEVIJVER (Belgium) pointed out that those objections had already been raised in the Committee of Financial Experts and that they had all been rejected. In his opinion, it would be preferable not to re-open the question.

In view of these remarks, the objections raised in this connection were dropped.

The Special Committee, however, agreed to replace the word "favourable" by "excessive" in the fourth paragraph.

Article 51, amended as above, was adopted without opposition.

*Article 51A (New)*

This Article was also adopted without opposition, subject to a reservation by Mr. GARDNER (United Kingdom) regarding payment of prisoners of war on the basis of the gold franc.

*Article 52*

Mr. WILHELM (International Committee of the Red Cross) suggested, in order to coordinate the provisions of that Article, that the words in brackets "in conformity with Article 41" in paragraph (2) be deleted.

The proposal was adopted.

Article 52, thus amended, was adopted without opposition.

*Article 53*

General SLAVIN (Union of Soviet Socialist Republics) said that he intended to abstain from

voting on that article as a whole, as he had an objection to submit to the second paragraph.

For that reason, the CHAIRMAN put the Article to the vote paragraph by paragraph.

All the paragraphs of Article 53 were adopted.

The Committee then adopted Article 53 as a whole by 14 votes to NIL.

*Annex*

That Annex was also adopted without opposition. It would be added to the Annexes to the Convention and bear the number V.

*Article 54*

That Article was adopted without opposition.

*Article 55*

Following upon some observations by Mr. WILHELM (International Committee of the Red Cross), the words "their personal effects and" were deleted from the third paragraph.

The Article, amended as above, was adopted without opposition.

*Article 56*

Mr. WILHELM (International Committee of the Red Cross) proposed a new text to replace the second paragraph of that Article.

The proposal was supported by General PARKER (United States of America) and General DEVIJVER (Belgium). It was opposed by Mr. STROEHLIN (Switzerland) and Mr. BAUDOY (France) who were in favour of inserting in that Article point (2) of the United Kingdom amendment (*see Annex No. 126*) which read as follows:

"The Power upon which the prisoner of war depends, shall be responsible for settlement with that prisoner of war in respect of any credit balance due to him from the Detaining Power on the termination of his captivity."

The amendment was put to the vote and adopted by 7 votes to 6. It was decided that the above text should be added to Article 56 as a third paragraph.

The two first paragraphs of Article 56 were then adopted separately, and the Committee adopted Article 56 as a whole—therefore with the three paragraphs—by 10 votes to NIL with 4 abstentions.

*Article 57*

That Article was adopted without opposition but with a small change in the title of the English

text, the word "compensation" being replaced by the word "adjustments".

*Article 57A*

The Article was adopted without opposition.

**Articles 28, 29A (29C), 29B**

The Committee examined the working text prepared by the Rapporteurs of the Special Committee and of Drafting Committee No. 1 concerning medical personnel, worded as follows:

- (1) Delete Article 28, third paragraph, and replace by the following text:

"Prisoners of war shall have the attention preferably of medical personnel of the Power on which they depend and, if possible, of their nationality."

(Former Article 28, third paragraph, and Article 29A of the United Kingdom amendment (*see Annex No. 109*)).

- (2) Introduce a new Article 29A of which the text is the following:

"Prisoners of war who, though not attached to the medical service of their Armed Forces, are doctors, dentists, nurses or medical orderlies may be required by the Detaining Power to exercise their medical functions in the interests of Prisoners of War from the same force. In that case they shall receive the same treatment as corresponding medical personnel retained by the Detaining Power. They shall be exempted from any other work under Article 41."

Substance of Article 29C as submitted by the United Kingdom Delegation (*see Annex No. 109*).

- (3) Introduce a new Chapter III A with the title: "Medical and religious personnel retained for the benefit of the prisoners of war".

This Chapter will comprise only one article (29B) with the following text:

"Members of medical personnel and chaplains whilst retained in the hands of the Detaining Power to look after prisoners of war shall be granted all facilities necessary to provide for the medical care and religious ministrations of prisoners of war. Such retained personnel shall not be considered prisoners of war but shall receive all the benefits and protection of this Convention."

Canadian amendment (*see Summary Record of the Twenty-first Meeting*).

The Working Party suggested that the text of Article 22 of the Wounded and Sick Convention should be reproduced in form of a foot-note.

General DEVIJVER (Belgium), Chairman of the Working Party, explained that the object of the above Document was to bring some order into the ideas put forward during the discussion up to date, and to find an appropriate place for the texts adopted by the Special Committee.

*Point (1)*

An addition to that text, proposed by Mr. GARDNER (United Kingdom), gave rise to discussion, and was finally rejected by 7 votes to 3.

Point (1) of the working text was then adopted in its original form without opposition, to replace the third paragraph of Article 28.

*Point (2)*

General DEVIJVER (Belgium) considered that Point (2) of the working text which merely reproduced the substance of Article 29C, submitted by the United Kingdom Delegation, did not present any difficulty. It had been agreed that this text would be incorporated in the Convention in the form of a new article which would for the time being bear the number 29A.

Mr. STROEHLIN (Switzerland) proposed that the words "from the same force" at the end of the first sentence, be replaced by the words "dependent on the same Power".

That proposal was accepted.

Mr. GARDNER (United Kingdom) observed that there was a contradiction between the second sentence of point (2) and Article 29B (see Point 3 of the working text). He therefore proposed that the second sentence of Point (2) should read as follows:

"In that case they shall continue to be prisoners of war but shall receive the same treatment..." (the rest of the sentence to remain unchanged).

That proposal was also adopted.

Point (2) of the working text (i.e. new Article 29A), amended as above, was then adopted unanimously.

*Point (3)*

General DEVIJVER (Belgium) explained that it had been considered necessary to introduce another new article defining the status of retained personnel.

For that purpose, the substance of the Canadian amendment had been reproduced to form, under No. 29B, the text of one single article to be included in a new Chapter III A entitled "Medical and Religious Personnel retained to assist the Prisoners of War"; that Chapter would be inserted in the Convention immediately before the Chapter dealing with religion.

It had also appeared necessary to add as a footnote to Article 29B, the text of the new Article 22 of the Wounded and Sick Convention.

As there was a certain amount of opposition to the insertion of that footnote, he explained that it was merely intended for information and was not indispensable.

Proposals were then made to insert the new Article 22 of the Wounded and Sick Convention, fully or in part, in the Prisoners of War Convention as a new article.

Put to the vote the proposals to insert the text in question as a footnote or as a new article, were rejected.

Captain MOUTON (Netherlands) stated that he would reserve the right to table an amendment on this point in Committee II.

Put to the vote, new Article 29B was adopted (without the footnote).

**Article 3, first paragraph, points (1), (2), (6), last paragraph** (*continued*)

General DEVIJVER (Belgium), Chairman of the Working Party, set up to study Article 3, stated that the latter's task in particular was to examine points (1), (2), (6) of the first paragraph and the last paragraph of this Article.

As regards point (1) of the first paragraph, he made the following comments on the conclusions arrived at by the Working Party:

They had considered it advisable to split the first paragraph of point (1), as shown in the working text submitted at the Twenty-first Meeting into two distinct parts which would read as follows:

- "(1) Members of armed forces of a Party to the conflict, as well as members of militia or volunteer corps belonging to these armed forces;
- (2) Members of other militia or other volunteer corps of that Party to the conflict who fulfil the following conditions: ..."

The Working Party had, however, deemed it advisable to leave open the question as to whether it was desirable to keep the expression "Party to

the conflict" which appeared in that new text, or whether it would be better to revert to the expression "adverse belligerent" which was used in the working text and moreover agreed with the terminology of the Hague Rules of 1907 on the laws and customs of war.

A discussion ensued on that point, during which it was pointed out, among other things, that the conditions of war had changed since 1907 and that there was no need to retain an obsolete terminology. Moreover, the Working Party had already declared itself in favour of the expression: "Party to the conflict".

The CHAIRMAN put that question to the vote and the Special Committee decided by 9 votes to 6 to adopt the expression "Party to the conflict".

Captain MOUTON (Netherlands) then referred to the amendment tabled by his Delegation regard-

ing point (6) of Article 3 (*see Summary Record of the Twenty-second Meeting*). Since adoption of that amendment would change both the substance and the form of points (1) and (2) of the working text, he asked whether the adoption of points (1) and (2), as quoted above, would in any way affect that aspect of the problem.

The CHAIRMAN replied that the adoption of the new points (1) and (2), proposed by the Working Party, was not final and that all rights were reserved should the adoption of the Netherlands amendment to point (6) of Article 3 compel the Committee to change the text of points (1) and (2).

The next items on the agenda would be examined during the next meeting. The Special Committee would then have to consider point (6) of the first paragraph of Article 3 and Article 74.

*The meeting rose at 6.20 p.m.*

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## TWENTY-SIXTH MEETING

*Thursday 7 July 1949, 3 p.m.*

*Chairman: Mr. Philippe ZUTTER (Switzerland)*

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**Article 3, first paragraph, sub-paragraphs (1), (2), (3), (7) new, Sub-paragraphs (1) and (2) new (former sub-paragraph (1)), (7) new, (6) old**

The CHAIRMAN proposed to sum up the position with regard to Article 3 by enumerating the various paragraphs one after the other, indicating the Special Committee's decision on each of them.

He reminded the Committee that the Preamble, the new sub-paragraphs (1) and (2), as well as the new sub-paragraphs (3), (4), (5) and (6) (corresponding to the former sub-paragraphs (2), (3), (4) and (5) of the first paragraph), had all been adopted.

The new sub-paragraph (7) (former sub-paragraph (6)) had still to be considered.

He therefore requested Genral DEVIJVER, Chairman of the Working Party, which had been instructed to examine Article 3, to inform the Committee of the conclusions reached by the Working

Party. A copy of the Working Party's Report was distributed to all the members of the Special Committee.

General DEVIJVER (Belgium) recalled that the Working Party had decided that the former sub-paragraph (1) of the first paragraph should be divided into two new sub-paragraphs, numbered (1) and (2).

New sub-paragraph (1) was worded as follows (The wording had already been adopted by the Special Committee):

"Members of the armed forces of a Party to the conflict as well as members of militias or voluntary corps forming part of these armed forces."

However, in order to take account of a Netherlands amendment, to insert in the new sub-paragraph a reference to resistance movements, thus enabling the former sub-paragraph (6) of the first paragraph to be omitted, the Working Party had

modified the text of the new sub-paragraph (2), which had already been adopted, to read as follows:

“Members of militias and voluntary corps, including organized resistance movements belonging to a Party to the conflict and operating in or outside their own territory, even if this territory is occupied, and who fulfil the following conditions: ...” (Conditions (a), (b), (c), (d) remaining unaltered).

A discussion took place on this text.

The Marquis of VILLALOBAR (Spain) remarked that, in order to secure more safeguards concerning the organized resistance groups, which would benefit by the Convention, the minimum number of combatants forming part of a group, should be determined.

Following observations made by General SLAVIN (Union of Soviet Socialist Republics), Mr. GARDNER (United Kingdom) and Mr. BAUDOY (France), it was decided to insert the word “other” before the words “militias” and “voluntary corps”, and also to insert the words “those of” between the words “including” and “organized resistance movements”.

A subsequent exchange of views convinced the Committee that it would be expedient to insert in the text, after the words “even if this territory is occupied, and ...” an additional sentence: “provided that these militias or voluntary corps, including organised resistance movements”.

Mr. BAUDOY (France) referring to the four conditions, considered that the words “recognizable at a distance” (under (b)) were too vague. He therefore proposed that it should be altered into “easily recognizable”. He also inquired the meaning of the word “fixed” in the expression “fixed distinctive sign”; and asked that a clause be inserted, specifying that the sign in question should be “constantly worn”.

General SLAVIN (Union of Soviet Socialist Republics) thought it would be preferable to adhere to the text of the Hague Rules of 1907 on the Laws and Customs of War.

Mr. COHN (Denmark) explained that the word “fixed” signified that “it could not be removed”. He was unable to agree with the suggested expression “shall be constantly worn”, which he considered too wide.

Mr. STROEHLIN (Switzerland) pointed out that Article 3 was also intended to cover resistance movements, which had not been the case in 1907; he was therefore in favour of the last wording proposed.

After some discussion, the Committee decided to reject the various proposals to alter the conditions specified under (b), and to retain the text submitted in the Working Party’s Report, subject to inserting, in the English text, the word “fixed” which appeared to have been inadvertently omitted.

Captain MOUTON (Netherlands) urged to use in the English text exactly the same wording as in the Hague Regulations. He therefore suggested to change the word “wearing” (a fixed distinctive sign) into “having”...

The text of the new sub-paragraph (2), as above amended, was adopted by 14 votes to NIL, and read as follows:

“Members of other militias and members of other voluntary corps, including those of organized resistance movements, belonging to a Party to the conflict and operating in or outside their own territory even if this territory is occupied, provided that these militias or voluntary corps, including these organized resistance movements, fulfil the following conditions: ... (the four conditions remaining unaltered).”

The CHAIRMAN said that thus the new sub-paragraph (7) (former sub-paragraph (6)) was suppressed.

General SLAVIN (Union of Soviet Socialist Republics) asked for a written text of the above, which was handed to him during the course of the Meeting.

*New sub-paragraph (3) (former sub-paragraph (2))*

Mr. GARDNER (United Kingdom), General SLAVIN (Union of Soviet Socialist Republics), General DEVIJVER (Belgium,) Commander MOUTON (Netherlands) and the CHAIRMAN all took part in the discussion which ensued, and during which several new texts were proposed for sub-paragraph (3), in particular by Mr. Gardner, General Devijver and Captain Mouton. It was also proposed that the provision should be omitted altogether.

The CHAIRMAN, in summing up the discussion, noted that the Committee was confronted with three alternative proposals:

- (1) to delete the new sub-paragraph purely and simply;
- (2) to adopt the Belgian Delegate’s proposal:

“Members of the regular armed forces and members of the organizations referred to in sub-paragraph (2) above, persons who claim to depend on a Govern-

ment or an authority not recognized by the Detaining Power.”;

- (3) to adopt the text in the Working Party's Report, which merely reproduced the text of sub-paragraph (2) of the Stockholm draft.

Put to the vote, the proposals referred to in (1) and (2) were rejected. The new sub-paragraph (3) therefore remained as worded in the Working Party's Report, or in sub-paragraph (2) (former) of the Stockholm text.

### Article 3, last paragraph

General DEVIJVER (Belgium), Chairman of the Working Party, explained that, after a long discussion, the Working Party had decided to give the Special Committee an opportunity to choose between three possible solutions:

- (1) To replace the last and third paragraph of Article 3 by the first paragraph of “Article 3A” of the Netherlands amendment (*see Annex No. 94*), as follows:

“Should any doubt arise whether a person resisting the enemy belongs to any of the categories enumerated above, such person shall enjoy the protection of the present Convention until such time as his status has been determined by military tribunal or by a competent military authority with officer's rank.”

- (2) If the Committee decided that the above solution was inadequate, there were two other possibilities: to add the second paragraph of “Article 3A” in the Netherlands amendment or the following wording proposed by Mr. Cohn (Denmark):

“Even in the case when a decision of the authority mentioned above would not allow him to be admitted to the benefit of the present Convention, this person will, however, remain under the protection of the humanitarian principles of this Convention and of the other humanitarian principles generally recognized between civilised nations. This will be in particular the case when the resistance of such a person will have been the consequence of an aggression entailing an attack on his own life, on his health or on those of the members of his family.”

- (3) To put to the vote the text of the last paragraph of Article 3 as it appeared in the Stockholm text.

Mr. COHN (Denmark) pointed out that his Delegation had submitted a new amendment, the object of which was to ensure a minimum of protection

to persons not referred to in Article 3, in order to prevent their being summarily shot. He thought that might well constitute a fourth solution. The text of the amendment was as follows:

“Nothing in the present Article shall be interpreted in such a way as to deprive persons not covered by the categories named in the said Article of their human rights and in particular of their right of self-defence against illegal acts as it is contained in their national legislation in force before the outbreak of hostilities or occupation.”

Mr. STROEHLIN (Switzerland) thought that the last paragraph of Article 3 should be as precise and concise as possible; he was therefore in favour of the first solution proposed by the Working Party.

General PARKER (United States of America), Captain MOUTON (Netherlands) and Major ARMSTRONG (Canada) agreed; but General SLAVIN (Union of Soviet Socialist Republics) preferred the proposal to insert, in the last paragraph of Article 3, a reference to the persons mentioned in the Danish amendment.

Mr. COHN (Denmark) asked that when the last paragraph was put to the vote, the Special Committee should also have an opportunity of voting on his Delegation's amendment.

The CHAIRMAN decided that the Committee would vote first of all on the first solution proposed by the Working Party; in the event of that text being adopted it would then decide whether it was necessary to complete it by adding a new provision.

Mr. BAUDOY (France) proposed, in the event of the first solution being adopted, to omit the words “or by a competent military authority with officer's rank”, at the end of the text in question.

The French proposal was adopted.

The text as proposed in the first solution and as amended above was adopted, by 9 votes to 1.

The Committee then decided against inserting any additional provision.

General SLAVIN (Union of Soviet Socialist Republics) pointed out that a minority had voted in favour of retaining the last paragraph of the Stockholm text, and that that proposal was one of the solutions envisaged by the Working Party. Consequently, he asked that a vote be taken on that point, and that the fact should be mentioned in the Summary Record of the Meeting.

Put to the vote, the last paragraph of the Stockholm text was deleted by 10 votes to 4.

In those circumstances, Mr. STROEHLIN (Switzerland) asked that the Summary Record should mention that, when a previous vote was taken on the three proposals of the Working Party, the Special Committee had already decided to adopt the first paragraph of "Article 3A" in the Netherlands amendment, replacing the third paragraph of the Stockholm draft.

Mr. COHN (Denmark) asked that the Summary Record of the Meeting should also mention that no objections had been raised, during the discussion in the Special Committee, against his view that Article 3 should not be interpreted in such a way as to deprive persons, not covered by the provisions of Article 3, of their human rights or of their right of self-defence against illegal acts.

**Article 74** (*continued*)

General DEVIJVER (Belgium), Chairman of the Working Party instructed to examine Article 74, explained that the Working Party had endeavoured to draft a text which, while taking account of the main principles put forward by the Soviet Delegation, should not contain any reference to the Nuremberg Trial, and should avoid the expressions „war crimes" and "crimes against humanity". However, it had proved impossible to agree on a compromise text, as the U.S.S.R. Delegation refused to omit the reference to the Nuremberg Trial which figured in its amendment while the other delegations refused to admit such a reference. In those circumstances, General Devijver considered that the question could only be decided by voting on the Soviet amendment.

The CHAIRMAN stated that the French Delegation had also submitted a new amendment, worded as follows:

"Prisoners of war sentenced for offences committed prior to capture shall, in all circumstances, be treated in conformity with the principles of humanity. They shall retain the right to a new trial if such new trial subsequently appears justified. Should this be the case, the new trial shall, like the first trial, be carried out with all necessary safeguards, in particular as regards defence. Finally, prisoners sentenced shall be entitled to repatriation at the expiry of their sentence."

Mr. BAUDOY (France) thought that the text of this last French amendment should prove acceptable to all the delegations; it was intended to replace Article 74 of the Stockholm text and not to complete it.

Mr. GARDNER (United Kingdom) and General DILLON (United States of America) said they did not wish to reiterate the reasons, which they had already given at some length, why they were unable to accept the amendment of the Union of Soviet Socialist Republics. Both Delegates also agreed that the French amendment seemed vague and incomplete.

General SLAVIN (Union of Soviet Socialist Republics) again explained the reasons for his Delegation's amendment, which he considered should be acceptable to all the Delegations; he asked that the text of the amendment should be inserted in the present Summary Record. It was as follows:

"Prisoners of war convicted of war crimes and crimes against humanity under the legislation of the Detaining Power, and in conformity with the principles of the Nuremberg Trial, shall be treated in the same way as persons serving a sentence for a criminal offence in the territory of the Detaining Power."

He considered that if the amendment of the Soviet Delegation were rejected, the implication would be that the Special Committee wished to protect war criminals, which it had no right to do.

The CHAIRMAN then put the amendment of the Soviet Delegation to the vote, and it was rejected by 9 votes to 4, with 2 abstentions.

Mr. GARDNER (United Kingdom) thought that the last part of the sentence in Article 74: prisoners "shall enjoy even if convicted the benefits of the present Convention" could only refer to the three following advantages guaranteed by it:

- (a) the right to appeal;
- (b) that sentences involving capital punishment shall only be carried out after a delay of at least six months;
- (c) the guarantee of a minimum standard of treatment, if condemned to imprisonment.

General SLAVIN (Union of Soviet Socialist Republics) also considered that prisoners convicted of war crimes or crimes against humanity should not enjoy all the benefits of the Convention. He could not, however, accept the United Kingdom Delegate's interpretation, which he considered entirely new, and with which the persons responsible for applying the Convention would not be familiar.

Captain MOUTON (Netherlands) supported the United Kingdom Delegate's interpretation, but

added that it should be completed by the addition of certain other advantages, in particular, that convicted prisoners of war should have the right to be repatriated after completing their sentence.

Mr. BAUDOY (France) agreed with the views expressed by the United Kingdom and Netherlands Delegates. He asked that the interpretation of the first Delegate should figure in the Convention. If that was impossible, he reserved his right to raise the question again.

Mr. STROEHLIN (Switzerland) quoted some other advantages (viz. the right to be visited by a representative of the Protecting Power, to receive and send letters, and to receive parcels, etc.) to which prisoners of war even convicted of war crimes or crimes against humanity should also be entitled.

General DEVIJVER (Belgium) pointed out that all those questions had been raised and discussed already by the Working Party. A text which took account of all the points mentioned had been submitted by the Netherlands Delegation but it was not acceptable to the Soviet Delegation. It was as follows:

“Prisoners of war convicted by virtue of the laws of the Detaining Power for war crimes or crimes against humanity shall serve their sentences in the same establishments and under the same conditions as members of the armed forces of the Detaining Power. These conditions shall in all cases conform to the requirements of health and humanity.

They shall have the right to put in requests or complaints direct to the representatives of the Protecting Power or, if peace has been signed, to the diplomatic representative of the country to which they belong.

They shall be entitled to receive and despatch correspondence, to take regular exercise in the open air, to have the medical care which their state of health may require, and the spiritual assistance they may desire. After their sentence has been served, they will regain the protection of the Convention as to the provisions covering repatriation.”

The CHAIRMAN then made a last appeal to the Soviet Delegation to withdraw its refusal, and to accept the text proposed by the Netherlands Delegation, which would then have unanimous approval.

General SLAVIN (Union of Soviet Socialist Republics) emphasized once again that his Delegation could not waive the reference to the Nuremberg Trial.

The PRESIDENT put then the French amendment to the vote, which was rejected by 8 votes to 1.

Mr. BAUDOY (France) said that in those circumstances he would continue to interpret Article 74 in accordance with the explanation given by the United Kingdom Delegate.

The Stockholm text was then adopted by 10 votes to 3, with 1 abstention.

The CHAIRMAN said that the Special Committee had now completed its work and he thanked all the members for their cooperation.

General DILLON (United States of America), Mr. BAUDOY (France), General SLAVIN (Union of Soviet Socialist Republics), and Mr. GARDNER (United Kingdom), in their turn, thanked the Chairman for the efficiency with which he had conducted the discussions.

*The meeting rose at 7 p.m.*

## **SUB-COMMITTEE ON PENAL (AND DISCIPLINARY) SANCTIONS**

**(Articles 72 to 99)**

### **FIRST MEETING**

*Monday 25 April 1949, 4.15 p.m.*

*Chairman:* General Joseph V. DILLON (United States of America)

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#### **Election of Chairman**

On behalf of the Secretary-General of the Conference, Mr. WURTH (Secretary of Committee II) opened the meeting, and proposed that the Sub-Committee should elect General DILLON (United States of America) as its Chairman.

The proposal was unanimously adopted.

General DILLON said he hoped to bring to the Sub-Committee the experience he had acquired on the subject of Penal Sanctions in connection with the preliminary meetings in 1947.

#### **Date of Next Meeting**

The CHAIRMAN asked the members of the Sub-Committee, and in particular the Delegation of the

Union of Soviet Socialist Republics, who had not taken part in the preliminary meetings in 1947, if they were agreed to commence work immediately.

After a debate, in which General SLAVIN (Union of Soviet Socialist Republics), Colonel PHILLIMORE (United Kingdom) and Mr. PESMAZOGLOU (Greece) took part, the Sub-Committee decided to meet the next morning, April 26, at 10 a.m.

The Delegate of Greece having to be present at the meetings of most Committees and therefore being unable to attend all the meetings of the Sub-Committee, the Committee decided to request the Chairman of Committee II, to nominate a sixth member to sit in case of need in place of the Delegate of Greece.

*The meeting rose at 5.50 p.m.*

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SECOND MEETING

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

*Chairman:* General Joseph V. DILLON (United States of America)

**Communication by the Chairman**

The PRESIDENT suggested that the Sub-Committee should adopt a less formal procedure than at the Committee; he would like in particular that unanimity be reached in their conclusions, that voting is unnecessary. Thus their recommendations will have more weight on the decision of the Committee as well as of the Plenary Session.

**Discussion of Articles 72 to 78A**

The CHAIRMAN proposed that in the course of this session, the Sub-Committee should examine Articles 72 to 78A on the general provisions of the chapter for Penal and Disciplinary Sanctions.

**Article 72**

Colonel PHILLIMORE (United Kingdom) proposed a change in the drafting of this Article consisting of putting the last paragraph at the beginning of the Article. In its present form and more especially in the English text, this provision does not express exactly the meaning which it is intended to convey.

Mr. WILHELM (International Committee of the Red Cross) recalled that this Article aims at defining that prisoners of war are submitted to the legislation of the detaining Power. Nevertheless, the provisions of the Convention overrule this legislation in certain cases. He had no objection to the proposal of the British Delegate but questioned whether in the new drafting the limitation of the last paragraph applies to paragraph 2 as well.

Colonel PHILLIMORE (United Kingdom) replied that in his opinion the limitation concerned the whole Article. He suggested that in a general way they first agree in principle before entering into details of drafting, which could be examined afterwards.

The CHAIRMAN was of the opinion that it would be preferable to treat each Article as a whole, including the drafting, to be submitted to the Committee.

Mr. BELLAN (France) said the difficulty was due to the fact that the English translation was too literal and did not always correspond to the spirit of the French version.

Colonel PHILLIMORE (United Kingdom) submitted a second amendment. He said he would like to see the second paragraph of Article 83, which has a general character, introduced into Article 72.

The CHAIRMAN said he did not quite see the reasons for this change. In his view Article 83, in its present form, firstly covers everything concerning escape, secondly it has the virtue to contain the provisions stated in the Convention of 1929.

Colonel PHILLIMORE (United Kingdom) replied that Article 52 of the Convention of 1929, which refers to this matter, was precisely an Article included in the "General Provisions" of Chapter III. He thought it logical to maintain this rule and to write in the same Article the principles of the limitation of legislation and the leniency in appreciating the question whether a breach committed by a prisoner of war should involve a disciplinary or a judicial penalty.

Mr. WILHELM (International Committee of the Red Cross) recognized that the second paragraph of Article 83 was of general scope; he nevertheless would not embody it in Article 72, which, in his opinion, must be limited to "droit applicable". On the other hand, he saw no objection to this paragraph completing Article 77, which requires in the second paragraph the judge to take into consideration that the accused is not a national of the Detaining Power.

Colonel PHILLIMORE (United Kingdom) had no objection so long as the forms of leniency demanded be linked in one article.

Making a motion of order, he suggested that the Sub-Committee should first study the nine articles of the general Provisions and secondly the amendments he will propose.

### Article 73

Colonel PHILLIMORE (United Kingdom) proposed a modification in the drafting which only concerned the English text.

### Article 74

Colonel PHILLIMORE (United Kingdom) called the attention of the Sub-Committee to the very sweeping amendment proposed by the Netherlands Delegation covering this article. In his view this amendment went too far and represented a going-back on the decisions taken at Stockholm. He suggested that the Sub-Committee did not deal with this question but request the Netherlands Delegation to explain their point of view to Committee II.

The CHAIRMAN equally opposed the Dutch amendment and said he used this opportunity to ask the Sub-Committee if they shared the opinion that the articles under study did not refer to war crimes.

Mr. WILHELM (International Committee of the Red Cross) pointed out that the I.C.R.C. had been asked to study the provisions of the 1929 Convention on sick and wounded containing sanctions in case of infractions to that Convention. These infractions may be war crimes, but this was not always the case. The I.C.R.C. had worked out four Articles to be submitted to Committees I, II and III, convened in Special Committee.

Mr. FILIPPOV (Union of Soviet Socialist Republics) was of opinion that Article 74 contained a very important principle touching war crimes. He proposed to refer the matter for consideration to the Joint Committee.

This proposal was adopted.

### Article 75

Colonel PHILLIMORE (United Kingdom) made two remarks, one concerning the place of the Article (Articles 74 and 75 should be interchanged), and the second referring to the reference to Article 95 and which, in his opinion, weakened and impaired

the tendency of Article 75; it would be convenient to suppress it.

Mr. BELLAN (France) recalled that it had been tried to ensure a minimum protection of prisoners of war, in reconciling the various forms of legislation existing between the countries. As to the drafting of paragraph 2 of Article 75, he proposed to cancel the words "that do not offer essential guarantees of independence and impartiality" because they appeared to him to open the door to various interpretations. The second paragraph of Article 75 would then read as follows: "In no case shall prisoners of war be tried by courts ... the procedure of which ... etc."

The CHAIRMAN and Colonel PHILLIMORE (United Kingdom) seconded this proposal.

Mr. WILHELM (International Committee of the Red Cross) said he shared the views just expressed by the Delegates of France and the United Kingdom and suggested a new drafting reconciling the two points of view.

Mr. BELLAN (France) was of opinion that general formulas may be useful but can be dangerous because they could be interpreted in one way or another. For this reason, the wording must be clear and precise.

Colonel PHILLIMORE (United Kingdom) expressed the fear that prisoners might be tried by special courts instead of regular or general legal courts, the special courts appreciating facts in a severe way.

Mr. WILHELM (International Committee of the Red Cross) appreciated the idea expressed by the United Kingdom Delegate. However, he pointed out that if, in Germany for example, courts have been to the disadvantage of prisoners of war, in Allied countries the contrary was the case.

After a debate in which took part the Chairman, Colonel PHILLIMORE (United Kingdom), Mr. WILHELM (International Committee of the Red Cross) and Mr. BELLAN (France)—the latter having insisted on the need for avoiding ambiguous terms—the Sub-Committee requested the French Delegate and the Representative of the I.C.R.C. to submit to them at the next meeting a text to take into account the points of view expressed.

Mr. WILHELM (International Committee of the Red Cross) pointed out in respect of the first paragraph of Article 75 that the present wording may lead to an interpretation which is quite contrary to the object of the clause. As the text

stands, if the reservation expressed in the second part of the sentence is borne out in practice, and the laws of the Detaining Power do in fact ascribe sole competence to the regular courts in certain cases, then the Detaining Power will not be bound by the first part of the sentence, which states that prisoners may, as a general principle, be tried only by military courts. To avoid this misconstruction it would be useful to amend the wording of this paragraph.

#### Article 76

Colonel PHILLIMORE (United Kingdom) thought the English text to be unsatisfactory. He pointed out that during the last war prisoners of war were tried for a second time because the authorities were of opinion that the punishment inflicted by the first court was not severe enough. Moreover, according to British law, the penalty inflicted can be aggravated if the accused appeals. He desired to avoid the occurrence of such eventualities with the amendment submitted by his Delegation and asked for the introduction of a second paragraph, worded as follows:

"The punishment inflicted at the first trial shall not in any case be increased as a result of an appeal or similar procedure."

The CHAIRMAN was of opinion that this question did not touch Article 76, which concerns only the principle "non bis in idem".

#### Article 77

Colonel PHILLIMORE (United Kingdom) thought that the first paragraph of Article 77 could be linked to Article 73 and moreover that the text should be more precise. Moreover, he suggested an amendment of the first sentence of the second paragraph, which proposal he later withdrew. He asked if it was indicated to provide for a modification on the form of penalty, as stated at the end of the second paragraph.

Mr. WILHELM (International Committee of the Red Cross) did not think this was necessary, all the more so that thereby they ran the risk of giving rise to the introduction of a new penalty, and favoured the suppression of the words "kind of penalty".

#### Article 78

No remark was made concerning this article.

#### Article 78 (new)

Colonel PHILLIMORE (United Kingdom) suggested the addition of a new article containing provisions regarding the character and extent of penalties inflicted on women.

Mr. BELLAN (France) pointed out that similar proposals had been formulated by the International Labour Office and thought it useful to study this amendment.

The CHAIRMAN invited the Sub-Committee to suspend work for fifteen minutes so that delegates might learn of the text of the amendment submitted by the Delegation of the United Kingdom.

#### Amendments submitted by the Delegation of the United Kingdom to Articles 72 to 78A (see Annexes No. 143-150).

Mr. FILIPPOV (Union of Soviet Socialist Republics) considered it was advisable to examine the amendments very carefully and proposed to adjourn the discussion.

Colonel PHILLIMORE (United Kingdom) asked if the Soviet Delegation would agree to discuss this text rapidly in order to resume its study at the next session if desired.

Mr. FILIPPOV (Union of Soviet Socialist Republics) stated that he agreed to this proposal but would like to reserve his definite opinion until the next meeting.

The CHAIRMAN did not agree to embody in Article 72 the second paragraph of Article 83.

Mr. WILHELM (International Committee of the Red Cross) recalled that Article 72 is limited to the statement of applicable law. He therefore asked if the second paragraph of Article 83 should not figure in Article 73 rather than in Article 72 as suggested by the United Kingdom Delegation. Thus the first paragraph of this article could apply to applicable law and the second paragraph to "le droit d'exception". Moreover, Article 73 (new) would contain the second paragraph of Article 72.

The CHAIRMAN and Colonel PHILLIMORE (United Kingdom) agreed to this proposal.

Coming to examination of the amendment of Article 74, the CHAIRMAN noticed that this Article had been invested with Article 75. He approved this modification.

Colonel PHILLIMORE (United Kingdom) pointed out that Article 75 of the Stockholm text did not take into account the decisions taken in the course of the preceding debate.

Mr. BELLAN (France) had worked out for Article 75 of the Stockholm text, in agreement with the Representative of the International Committee of the Red Cross, a new text, which read as follows:

"In no case shall prisoners of war be brought before war courts of whatever order, who would not assure to them the essential guarantees generally recognized, and particularly the procedure of which does not afford the accused ... etc."

This drafting omits the words "guarantees of independence and impartiality", which figured in Article 75 of the Stockholm text, and enforces the text instead of weakening it.

Colonel PHILLIMORE (United Kingdom) wondered whether the words "the essential guarantee generally recognized" were sufficiently implicit and if it would not be advisable to maintain the words "of independence and impartiality".

Mr. BELLAN (France) saw no objection to the introduction of those two words in so far as the text makes it clear that "courts of whatever order ... and the procedure of which ... etc."

Concerning this article, he questioned whether the last sentence would not raise objections in view of the usual rule of procedure in certain continental countries.

Colonel PHILLIMORE (United Kingdom) stated that the object of this addition was to avoid the aggravation of a penalty inflicted previously.

Mr. BELLAN (France) understood the value of the reasoning but feared that they would run the risk of creating conflict between the rules of the new Article 83, asking for leniency, and the principle of attenuating the punishment as provided by Article 77.

Mr. WILHELM (International Committee of the Red Cross) questioned whether the courts would not be induced to inflict severe penalties which would militate against the object they were trying to attain.

Colonel PHILLIMORE (United Kingdom) desired that in agreement with the preceding discussion, the words "kind of penalty" would be deleted from the second paragraph of Article 77.

Mr. WILHELM (International Committee of the Red Cross) pointed out that the expression adopted in this same paragraph "duty of allegiance" was not very opportune for it did not cover the case of neutrals engaged in foreign service. He suggested it should be replaced by the words "allegiance to the country they have served".

The CHAIRMAN agreed with this proposal on the condition that it cannot be applied to persons engaged by force against their own will. He asked that this question be reviewed in the course of the next session.

*The meeting rose at 1.15 p.m.*

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### THIRD MEETING

*Monday 27 April 1949, 10 a.m.*

*Chairman:* General Joseph V. DILLON (United States of America)

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#### Article 79

The CHAIRMAN invited observations on Article 79.

Mr. BELLAN (France) pointed out that on the previous day there had been no discussion on the new wording of Article 79 proposed in the amendment of the United Kingdom Delegation.

#### Amendments submitted by the United Kingdom Delegation to Articles 72 to 78A (continued)

Mr. FILIPPOV (Union of Soviet Socialist Republics) had observations to make on the United Kingdom amendment.

The CHAIRMAN, agreeing, asked the Soviet Delegate whether he wished to treat the British amend-

ment article by article. If so, he proposed to begin with Article 72. The numbering is that of the Stockholm text.

*Articles 72 and 73*

Mr. FILIPPOV (Union of Soviet Socialist Republics) said the Soviet Delegation did not think the amendment was an improvement of the Stockholm text. He proposed to leave the second paragraph as it stood in the original text.

The CHAIRMAN pointed out that it had been already decided to do so on the previous day.

Mr. WILHELM (International Committee of the Red Cross) confirmed what he had said the previous day, namely that the second paragraph of Article 72 should not be inserted in Article 83, but should take the place of Article 73, and that the present Article 73 should become the second paragraph of Article 72.

Mr. FILIPPOV (Union of Soviet Socialist Republics) did not oppose the new wording of Article 73, but said he would like to have the word "general" added to qualify the word "laws".

Colonel PHILLIMORE (United Kingdom) said he agreed in the case of the French text; but he considered the English text clear without the addition.

*Article 74*

Mr. FILIPPOV (Union of Soviet Socialist Republics) said it had been decided on the previous day to refer the Article back for consideration to Committee II.

*Article 75*

Mr. FILIPPOV (Union of Soviet Socialist Republics) said that the Soviet Delegation was against the proposed amendment, and thought that the first paragraph of the text of the Stockholm Draft Convention gave a perfectly adequate definition.

Mr. BELLAN (France) asked whether the Soviet Delegation was for maintaining the text proposed by the Stockholm Conference.

Mr. FILIPPOV (Union of Soviet Socialist Republics) replied in the affirmative.

Colonel PHILLIMORE (United Kingdom) said that it had been decided on the previous day to reject the United Kingdom amendment to the second paragraph of Article 75, and to adopt the Stockholm text with a slight change in the French text.

Mr. BELLAN (France) read the amendment he had proposed on the previous day:

"In no case shall prisoners of war be tried by courts of whatever order, that do not offer them essential guarantees, generally recognized, or in particular courts, the procedure of which does not afford the accused the rights and means of defence provided for in Article 95".

Mr. FILIPPOV (Union of Soviet Socialist Republics) accepted the text of this amendment.

*Article 76*

Mr. FILIPPOV (Union of Soviet Socialist Republics) said that the Soviet Delegation were against the United Kingdom amendment to Article 76. The text of the Draft Convention was clear and adequate.

Colonel PHILLIMORE (United Kingdom) agreed to withdraw his amendment on condition that the question was referred to Committee II.

Mr. FILIPPOV (Union of Soviet Socialist Republics) agreed.

The CHAIRMAN said that the Sub-Committee should strive to arrive at unanimity in order to give to the Committee a unanimous opinion. In this case, however, it being a matter of principle, he agreed to refer the whole question to the Committee.

Mr. WILHELM (International Committee of the Red Cross) in reply to Colonel PHILLIMORE (United Kingdom) thought that the latter's idea of avoiding a retrial by a more precise wording was good in itself. Nevertheless, he thought that in certain cases, in particular in the case of new evidence arising, a second trial should be possible. The United Kingdom Delegation's idea was that no prisoners of war should be punished more severely on a second trial; but he (Mr. Wilhelm) felt that, if the new evidence justified a more severe sentence, that should be possible in the superior interest of Justice.

Mr. BELLAN (France) thought that, where new facts called for a retrial, it was impossible to preclude either a mitigation or an aggravation of the sentence, as the case might be. The prisoner still enjoyed the protection of the Convention on appealing, but he did not enjoy the benefit of all the means of redress opened to ordinary persons. He thought the Stockholm text should be more precise, and suggested the following two amendments to Article 76:

- (1) After the words "be punished" insert "or convicted".
- (2) Add the following sentence at the end of the Article: "In case of appeal, the sentence inflicted in the first instance may not in any case be superior".

That arrangement would permit the revision of the facts of the case, and would meet the objection raised yesterday by the French Delegation.

Mr. FILIPPOV (Union of Soviet Socialist Republics) intimated that the Soviet Delegation would accept the text proposed by the French Delegation.

Mr. WILHELM (International Committee of the Red Cross) and Mr. PHILLIMORE (United Kingdom) were in favour of the adoption of the proposed French text, provided it was extended to take the United Kingdom point of view in the matter of appeal into account.

The CHAIRMAN approved the motion.

#### *Article 77*

Mr. FILIPPOV (Union of Soviet Socialist Republics) said that his Delegation would like to leave Article 77 as it stood in the Stockholm Draft Convention, as the text of the latter seemed sufficiently precise.

Colonel PHILLIMORE (United Kingdom) asked whether the objection of the Soviet Delegation to the new wording applied to the whole Article or merely to the second paragraph which alone contained substantial changes in the new text.

Mr. FILIPPOV (Union of Soviet Socialist Republics) replied that he was opposed only to the new second paragraph.

Colonel PHILLIMORE (United Kingdom) suggested that the Sub-Committee might return to the provision in question, when they had a clear and exact text before them.

#### *Article 78*

There were no observations on this text.

#### *Article 78A (new)*

Mr. FILIPPOV (Union of Soviet Socialist Republics) argued that in the opinion of the Soviet Delegation the treatment of women was sufficiently defined in Article 13 of the Stockholm Draft Con-

vention, and that it was not necessary to have a special Article on the nature and execution of sentences passed on women.

Colonel PHILLIMORE (United Kingdom) replied that one of the principles accepted in 1947 at the Conference of Government Experts in the course of the discussion of the chapter relative to "Disciplinary and Penal Sanctions" was to the effect that each section should, as far as possible, be complete in itself. In the matter of penal sanctions each section should contain all the necessary provisions without the need of referring to other sections of the Convention. If the subject was covered only by general articles, it might be overlooked in particular cases of application. For instance, it might happen that a junior officer, not knowing the general articles, would ignore the particular provision. He agreed that the subject was already dealt with in Article 13; but there would be great advantage, he thought, in repeating the provisions of the latter and embodying them in the chapter concerning penal sanctions.

Mr. FILIPPOV (Union of Soviet Socialist Republics) said he would like to have the opinion of the other delegations on the subject.

Mr. BELLAN (France) conceded that Article 78A added nothing to the provisions of Article 13. One might even admit that the repetition was useless. In that case there ought to be a reference to Article 13 in Article 78. He was inclined however to approve the proposal of the United Kingdom Delegation. The matter could be simplified, he thought, by merely adding a new paragraph to Article 78 referring back to Article 13.

The CHAIRMAN agreed in principle with this solution, but was not inclined to include a reference in the text of Article 78. He pointed out that Article 3 already defined who was entitled to the protection of the Convention. If a woman was a prisoner, then ipso facto she was entitled to that protection. Moreover, Article 13 also referred to the special treatment of women having regard to their sex. If there was to be a repetition of the reference to that special treatment in Article 78, it might confuse the situation even more instead of clarifying it. He was inclined accordingly to oppose the insertion of the proposed new Article 79.

Mr. WILHELM (International Committee of the Red Cross) said he leaned to the proposal of the Chairman. When in 1947 it was decided to include this Article in this section, it was not intended to refer to the general principles. But, if the special treatment of women was repeated in Article 78,

other questions of principle should also be referred to. He had the impression that Mr. Phillimore's idea also figured in paragraph 2 of Article 14.

Colonel PHILLIMORE (United Kingdom) said he would be sorry if agreement could not be reached on the point under discussion. For him, it was not a matter of principle but a matter of precision. He agreed to the point not being repeated in the disciplinary and penal articles because of the need of precision in the latter. The position of women was a special one and in the last war all armies had women soldiers. Actual experience showed that the Germans and Japanese did not accord privileged treatment to women. He insisted that the question was essentially a practical one. Experience showed that, where women were not confined separately from men, it took a long time for their Governments to discover the fact. He suggested that the question should be taken up again in the following day's meeting in view of the difficulty of the subject.

The CHAIRMAN had no objection to taking up the question on the following day.

#### Article 79 (continued)

Colonel PHILLIMORE (United Kingdom) had two observations to make concerning the order of the paragraphs of this article and the omission of sub-paragraph 2. The latter suggestion was always a possibility, so that it was not necessary to mention it specifically, the Parties to the Convention having the right not to grant privileges over and above the treatment provided for in the Convention.

The CHAIRMAN did not agree with the proposed omission. The provision in question had been inserted deliberately in order to prevent a single individual being deprived of the proposed privileges. He suggested a slight change in the English text. The question would come up again when Article 51 was discussed.

Mr. WILHELM (International Committee of the Red Cross) was also in favour of the text as it stood.

Mr. FILIPPOV (Union of Soviet Socialist Republics) said he would like to know the opinion of the representative of the International Committee of the Red Cross on the first sub-paragraph (fines).

Mr. WILHELM (International Committee of the Red Cross) replied that the experts had thought it natural to specify the penalties which might be inflicted. It seemed to them desirable to include fines, as provision was made for fines in the legislation of most countries.

Colonel PHILLIMORE (United Kingdom) asked for more detail as to the intention of the paragraph.

Mr. BELLAN (France) explained that during a certain time a prisoner of war was deprived of half of his wage-earnings. If sentenced to confinement, he did not work, and obviously therefore drew no pay.

The CHAIRMAN said that, fines being disciplinary penalties, the maximum amount must not exceed one half of the prisoners of war's pay and wage-earnings.

Colonel PHILLIMORE (United Kingdom) urged a clearer drafting of the sub-paragraph.

The CHAIRMAN agreed with his point of view.

Colonel PHILLIMORE (United Kingdom) further asked whether the confinement to which sub-paragraph 4 related was solitary confinement. Solitary confinement in the case of persons of imperfect mental development might prove a very severe penalty. He would not make imprisonment too lenient; but convicted persons should not be deprived of the possibility of contact with fellow-prisoners.

The CHAIRMAN thought that solitary confinement should not be too long. There was always the safeguard in the last paragraph of Article 79 to the effect that disciplinary penalties were in no case to be inhuman, brutal or detrimental to the health of prisoners of war.

Mr. WILHELM (International Committee of the Red Cross) pointed out that Article 89 also provided that prisoners of war should be allowed access to the outside world; that provision might, he thought, be sufficient.

Colonel PHILLIMORE (United Kingdom) agreed. If he had raised the question at all, it was solely at the request of the Delegation of India.

#### Article 80

The CHAIRMAN thought that the Sub-Committee could study the amendments to the following Articles as occasion served.

Colonel PHILLIMORE (United Kingdom) observed that his proposals only related to points of detail and order of the text; but he proposed to submit amendments to extend the text of Article 80.

**Article 81**

Mr. WILHELM (International Committee of the Red Cross) pointed out that Article 81 was left to the Committee.

**Article 82**

Colonel PHILLIMORE (United Kingdom) thought it necessary to raise an important question regarding the third paragraph of Article 82, added by the Stockholm Conference to the draft submitted by the I.C.R.C.

Mr. WILHELM (International Committee of the Red Cross) explained that the text had been inserted at the request of occupied countries which had had painful experiences during the war. In his opinion, the provision should not have a place in the Prisoners of War Convention but should figure in the Convention relative to Civilians, the persons referred to being civilians.

Mr. BELLAN (France) agreed with the I.C.R.C. Representative as to the place for the paragraph. He pointed out that under Article 81, an escaped prisoner of war returned to his country, being under occupation, was not to be considered to have successfully escaped. He also thought that Articles 81 and 82 should be reserved for discussion together by the Committee. Further, the French Delegation proposed to submit an amendment to paragraph 3 of Article 82.

Colonel PHILLIMORE (United Kingdom) thought that whatever decision was reached, the question dealt with in the third paragraph of Article 82 should appear elsewhere.

The CHAIRMAN agreed with the United Kingdom Delegate and the Representative of the International Committee of the Red Cross. On behalf of the United States Delegation he added that the latter would always oppose the inclusion of this provision in the Prisoners of War Convention.

He further proposed to omit the words "escaped or" in the first paragraph, and the words "of escape or" in the second paragraph.

Mr. WILHELM (International Committee of the Red Cross) explained that the text provided for three stages in escapes:

- (1) the attempt to escape, the prisoner of war not yet having left the camp;
- (2) the escape, the prisoner having left the camp but still being on enemy territory;

(3) successful escape, the prisoner of war having joined his country or a unit of his army. Only cases 1 and 2 were subject to penalties.

Mr. FILIPPOV (Union of Soviet Socialist Republics) would agree to the deletion of the last paragraph of Article 82, but wished to retain the words "who have escaped or" in the first paragraph because in Russian there was a great difference between "to escape" and "to attempt to escape".

Colonel PHILLIMORE (United Kingdom) specified that punishable escape was not the same as successful escape, according to Article 81. The English text was not clear. What was needed was to define successful escape.

The CHAIRMAN took it that the Sub-Committee knew very well what they wanted, so that the problem was merely a matter of drafting.

Mr. FILIPPOV (Union of Soviet Socialist Republics) proposed to refer the matter to the Drafting Committee.

Mr. BELLAN (France) agreed but reserved his opinion on the third paragraph of Article 82.

**Article 83**

Mr. BELLAN (France) had an amendment to the third paragraph of Article 83 as he considered the meaning not clear. He therefore suggested the following wording which, he said, without changing the paragraph, rendered the idea more correctly:

"In particular, offences committed by prisoners of war, for the sole intention of facilitating escape, and allowing of no violence against persons, such as offences against public property, theft without intention of self-enrichment, the drawing up and use of false papers and the wearing of civilian clothing, shall occasion disciplinary punishment only".

Mr. WILHELM (International Committee of the Red Cross) said he would like to have the views of the Committee on the point. He also wondered whether it should not be stated that breaches in respect of public property were not serious, because serious offences might be considered as acts of war.

Colonel PHILLIMORE (United Kingdom) thought that aspect of the point was covered by the words "with the sole intention of facilitating their escape". For the rest he agreed with the French Delegate.

The CHAIRMAN believed that the question raised by the French Delegation should be submitted to the Drafting Committee. He also thought that an offence committed solely in order to facilitate escape could hardly be considered as an act of war.

Mr. FILIPPOV (Union of Soviet Socialist Republics) wished to have the text of the French amendment in writing.

Colonel PHILLIMORE (United Kingdom) remarked that the substance of paragraph 2 of Article 83 did not relate only to escape, but also to disciplinary measures in general.

Mr. WILHELM (International Committee of the Red Cross) thought that discussion on this point should be resumed when Article 73 came up for discussion. In his opinion it would be sufficient to replace the second paragraph of Article 83 by a reference to Article 73, the final drafting being left to the Drafting Committee.

The CHAIRMAN agreed with that point of view. The substance of paragraph 2 of Article 83 would therefore be included in Article 73, a reference to Article 73 being included in Article 83. In reply to a request by the Union of Soviet Socialist Republics Delegation for explanation, he said that it would really be a case of a new Article 73, because there should in his opinion be a general

rule in the section dealing with all offences, and not only with some of them.

Mr. FILIPPOV (Union of Soviet Socialist Republics) stated that the Soviet Delegation desired to consider the matter, and would give its answer on the following day.

#### Article 84

Colonel PHILLIMORE (United Kingdom) remarked that the Sub-Committee were agreed as to the principle of Article 84 but it was in the wrong section. It would be better placed in Article 112 which dealt with notifications and communications. He pointed out that the structure of the Draft Convention was illogical in certain parts, and thought it would be necessary in the Report to the Committee to add references in the text of the Convention.

Mr. WILHELM (International Committee of the Red Cross) saw no objection to transferring Article 84 to Article 112, but pointed out that the latter Article was itself incomplete, and would have first of all to be completed.

Mr. FILIPPOV (Union of Soviet Socialist Republics) for his part was opposed to the transfer, and wished to maintain Article 84 where it stood, which he thought was the right place for it.

*The meeting rose at 12.30 p.m.*

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### FOURTH MEETING

*Thursday 28 April 1949, 10 a.m.*

*Chairman:* General Joseph V. DILLON (United States of America)

#### Study of Articles 85-93

The CHAIRMAN invited comments on Articles 85-93.

Colonel PHILLIMORE (United Kingdom) recalled that the 1947 Conference of Government Experts

had been obliged to work in great haste. The United Kingdom Government had given careful study to the texts, and its present proposals adhered to the general principles then formulated. The amendments submitted for study related in the main to the order and wording of the provisions of the Convention.

**Article 85**

Thus, in the new Article 80, in the latest draft submitted by the Delegation of the United Kingdom (*see Annex No. 152*), all the provisions of Article 85 of the Stockholm text would be found, except the provisions concerning the deduction of the period of preventive imprisonment. That provision was embodied in the new Article 82, first paragraph.

The only new element was the second part of the first paragraph of Article 80. It provided that the maintenance of the preventive imprisonment of prisoners of war should not be possible unless the same treatment was applicable to members of the armed forces of the Detaining Power for similar offences, or was necessary in the interests of camp order and discipline.

Mr. WILHELM (International Committee of the Red Cross) was of opinion that, of the three safeguards embodied in the new Article 80, paragraphs 1, 3 and 4, advocated by the United Kingdom, only that of paragraph 4 with regard to the applicability of Articles 88 and 89 to prisoners in preventive imprisonment was essential. The others would be difficult to apply.

Mr. BELLAN (France) said that the word "deduction", contained in the heading of the Stockholm text, should be omitted from the new heading of the Article for the reason that the provision relating to the deduction had been transferred to Article 82 and was no longer part of Article 80.

In reply to explanations by Mr. WILHELM (International Committee of the Red Cross) Mr. BELLAN (France) saw no objection to modify the last part of the first paragraph because of the wide interpretation it made possible. On the other hand, he thought that a too narrow interpretation of the third paragraph might be obviated by linking its last sentence with the fourth paragraph and saying, for example, that Articles 88 and 89 would always be applicable.

Colonel PHILLIMORE (United Kingdom) agreed with the French Delegate, and hoped that the latter's point could be taken into account in the final drafting.

In reply to a question of Mr. WILHELM (International Committee of the Red Cross) he said that he had not reproduced the first sentence of Article 85 in his text of Article 80, because he believed that the deduction of the period of preventive imprisonment would be the best safeguard. He would not however object to the sentence being reproduced.

Mr. BELLAN (France) thought the sentence should come at the beginning of Article 79.

Colonel PHILLIMORE (United Kingdom) and the CHAIRMAN agreed that this contention was logical.

**Article 86**

Colonel PHILLIMORE (United Kingdom) thought it more logical to place this Article, dealing as it did with the authority competent in matters of disciplinary action, at the beginning of Section II, "Disciplinary Sanctions". Article 86 would thus become the new Article 79 (*see Annex No. 151*).

Mr. BELLAN (France) agreed in principle.

Colonel PHILLIMORE (United Kingdom) said that the proposed text was an attempt to lay down a general principle with sufficiently specific provisions to give a prisoner of war the necessary safeguards. The charges proffered against him should be handed to him in writing, and he should be given an opportunity to defend himself. Prisoners of war had been convicted by the Japanese without knowing the charge against them or being given an opportunity of defence. That experience showed the importance of specific provisions.

Mr. BELLAN (France), though he too had been a prisoner of war, wondered whether the Article did not offer prisoners of war too much. The right accorded to an accused prisoner of war at the second paragraph to challenge members of the Court should be limited to a single occasion, to preclude abuse.

Mr. WILHELM (International Committee of the Red Cross) said that it would be necessary in the final drafting of the text to bring out clearly that the penalties in question were disciplinary and not judicial. He supported the proposal in the last part of the first paragraph of the Stockholm text the effect of which was to prevent disciplinary powers from being exercised by a prisoner of war over his comrades.

Mr. FILIPPOV (Union of Soviet Socialist Republics) wanted to know what was meant by the expression "Commandant of a camp or detachment", contained in the United Kingdom amendment.

Colonel PHILLIMORE (United Kingdom) explained that a week or two might pass before a prisoner of war after capture reached an organized

camp. Moreover, within a camp, working detachments might be organized; and furthermore prisoners might be transferred from one camp to another.

Mr. FILIPPOV (Union of Soviet Socialist Republics) asked whether it would not be possible to replace the words "Commandant of a detachment" by the words "responsible Officer" as in the original text of the Convention.

Colonel PHILLIMORE (United Kingdom) warmly welcomed Mr. Filippov's proposal. It covered all contingencies.

The CHAIRMAN agreed. He took it that, subject to drafting, the Committee approved the first paragraph.

In paragraph 2 of Article 86 of the Stockholm text he suggested an alteration concerning the English text only (the word "defendant" used instead of "the accused prisoner of war").

With most of the guarantees the United Kingdom Delegate advocated he agreed; but he supported the French Delegate's limitation to one occasion of the right of challenge. Further he would like to have in the last paragraph words to the effect that the prisoner of war should be able to use his means of defence with the help, if necessary, of an interpreter, and be able to call witnesses for the defence.

Colonel PHILLIMORE (United Kingdom), answering the various points mentioned in the discussion, emphasized the importance of the provision (third paragraph of the text he proposed) prohibiting the delegation of disciplinary power to a prisoner of war. He disagreed with the French Delegate on the question of the right of challenge by a prisoner of war; he thought that it ought to be possible to reject challenges in case of abuse. The Chairman's amendment would not make it compulsory for the charges against a prisoner to be communicated to him in writing. That obligation should be maintained.

The CHAIRMAN agreeing, it was decided to include the obligation in question in the final text.

Mr. WILHELM (International Committee of the Red Cross) drew attention to the importance of the new provision in the last paragraph of the text of Article 79 proposed by the United Kingdom Delegate requiring a record of disciplinary punishments awarded to be at the disposal of the representatives of the Protecting Power.

Mr. FILIPPOV (Union of Soviet Socialist Republics) proposed to omit the last part of the last paragraph on the ground that it was for the Protecting Power in any case to check the application of the Convention.

The CHAIRMAN said that the question would come up in the final drafting; but he pointed out that the United States Delegation wished to be specified that the record should be open to the Protecting Power's inspection.

Colonel PHILLIMORE (United Kingdom) hoped the Soviet Delegation would reconsider its suggestion. It was desirable that the Protecting Power should be able to cite a specific provision.

Mr. FILIPPOV (Union of Soviet Socialist Republics) concurred.

No further observations being made, the discussion of Article 86 was closed.

#### Articles 87, 88 and 89

Mr. WILHELM (International Committee of the Red Cross) explained that Articles 87, 88 and 89 embodied the essential safeguards to be accorded to prisoners of war while serving disciplinary sentences. There was nothing, however, to prevent the rearrangement or regrouping of these Articles. The provisions of Article 87, as drafted by the Government Experts and adopted at the Stockholm Conference, were reproduced in Article 82 of the draft submitted by the United Kingdom Delegate (*see Annex No. 154*). This new Article 82 also brought together provisions of other scattered Articles concerning the length of sentences and deduction. He was in favour of the proposed grouping.

Colonel PHILLIMORE (United Kingdom) said that at the beginning of the new Article 87 (*see Annex No. 159*), it was proper to make a declaration of principle to the effect that prisoners of war would continue to enjoy the benefits of Section II of the present Convention.

A new provision with regard to the imprisonment of women prisoners of war was introduced in the fourth paragraph. His Delegation would revert to this question later.

The provisions in the second paragraph of Article 88 in the Stockholm draft, regarding sanitary conditions in premises in which prisoners of war were to serve their sentences, had been transferred to form a third paragraph of the new Article 87.

Mr. BELLAN (France) and Mr. FILIPPOV (Union of Soviet Socialist Republics) and the CHAIRMAN

on behalf of the United States Delegation, declared their agreement with the new wording of Articles 87 and 88.

Following on an observation of Mr. WILHELM (International Committee of the Red Cross), it was decided to read in the new Article 87, first paragraph, "provisions of this Convention", and not "provisions of Section II of this Convention" as in the French translation of the amendment.

Mr. WILHELM (International Committee of the Red Cross) explained that Article 89 of the Stockholm text (new Article 88), merely grouped together various safeguards already laid down in the 1929 Convention, except in its last paragraph which embodied an essential point.

Colonel PHILLIMORE (United Kingdom) said that he had intentionally left out of his new text the second sentence of the third paragraph of Article 89 referring to transfers of money as he considered it purposeless, there being in practice no effective transfers of money within camps, but only book-keeping transactions between the Governments of the Detaining and the Protecting Powers.

The CHAIRMAN said that the United States Delegation had at first thought it unwise to make any reference to Articles 68 and 116 in the last paragraph of Article 89.

Colonel PHILLIMORE (United Kingdom), supported by Mr. WILHELM (International Committee of the Red Cross), thought that the experiences of the last war justified a specific reference to the two Articles in question.

#### Article 90

Colonel PHILLIMORE (United Kingdom) wondered if the word "convicted" could not be used in place of the word "punished", used in the Stockholm text, in the first paragraph, and further if the provisions of the second paragraph should not be incorporated in the general provisions.

The CHAIRMAN agreed. He also proposed to omit the word "expressly," in the first paragraph.

Mr. BELLAN (France) proposed to substitute for the word "puni" ("punished") the words "poursuivi et condamné" ("prosecuted and convicted"). He did not object to the deletion of the word "expressly" or to the transfer of paragraph 2.

Mr. WILHELM (International Committee of the Red Cross) agreed with the French Delegate as

to the transfer of the second paragraph. As to the word "expressly", it might be deleted from the English text where it was not so necessary because of the assumption in Anglo-Saxon law that a person was innocent until proved guilty; but he thought the word "expressément" should be retained in the French text. It should also be made clear that it was the legislation of the Detaining Power that was in question.

Colonel PHILLIMORE (United Kingdom) and Mr. FILLIPPOV (Union of Soviet Socialist Republics) concurred.

#### Article 91

Mr. WILHELM (International Committee of the Red Cross), recalling the discussions on the subject in 1947, said that it had been impossible to forbid the death penalty, inasmuch as it remained legal in several countries, but that its application had been limited.

Colonel PHILLIMORE (United Kingdom) proposed to transfer the provision with regard to the death penalty to Article 97 (*see Annex No. 168*), dealing with penalties in general.

The CHAIRMAN noted the Sub-Committee's agreement both as to the principle and as to the transfer of Article 91.

#### Article 92

Mr. WILHELM (International Committee of the Red Cross) explained that Article 92 reproduced the corresponding provision of the 1929 Convention, with the addition of a new safeguard in the last sentence.

Article 92 was approved.

#### Article 93

Mr. BELLAN (France) recalled the arguments adduced by the International Committee of the Red Cross at Stockholm, as a result of which all mention of the maximum duration of the preventive imprisonment was omitted in the first paragraph. He would like to see the provision of a maximum time limit, the extent of which had still to be determined. It might be three months.

The CHAIRMAN agreed with the French Delegate. He feared that, if all mention of a time limit was left out, there might be unlimited imprisonment of

prisoners, e.g. for offences committed before capture. Some limit ought therefore to be stated.

Mr. WILHELM (International Committee of the Red Cross) and Mr. FILIPPOV (Union of Soviet Socialist Republics) agreed.

Colonel PHILLIMORE (United Kingdom) said there seemed to be agreement on principles; but in the matter of the trial of prisoners of war, he felt it was impossible to secure a really fair trial during hostilities. The very reason why the Nuremberg trials after the war had earned their reputation for fairness was that the accused were allowed full facilities for their defence. It was a question whether it was in the true interests of prisoners of war to be tried during the war for crimes committed before their capture. For other cases he saw no objection to a three months time limit for preventive imprisonment, but would deplore any longer term.

The CHAIRMAN observed that fixing the duration of preventive imprisonment did not necessarily mean trial of the prisoner of war after that period. There was nothing to prevent the Detaining Power from having the trial later after the close of hostilities, when it would be possible for example to have witnesses.

Colonel PHILLIMORE (United Kingdom) agreed that in theory that was true. But in practice the fixing of a time limit would bring on the trial at the end of the prescribed time-limit. In the final drafting there might be a specific reference to offences committed before capture.

The CHAIRMAN did not agree. In the last war thousands of prisoners of war were not tried before the end of hostilities.

Colonel PHILLIMORE (United Kingdom) saw two reasons for that—first, the fear of reprisals and, secondly, the fact that many of the people in question were held, not as prisoners of war, but as war criminals.

The CHAIRMAN noted that the Sub-Committee was agreed as to the principle of the Article. He invited the United Kingdom Delegation to prepare a text for discussion fixing explicitly the maximum duration of preventive imprisonment.

Mr. BELLAN (France) speaking of the reference in the second paragraph of Article 93 to Articles 88 and 89, said it was normal that in specific cases the Detaining Power should be able to keep prisoners of war in solitary confinement. To make that possible, the reference to Articles 88 and 89

should be limited. As transfer to penitentiary establishments might prove useful in cases of solitary confinements, the reference should be to paragraphs 2 and 3 only of Article 88 (or to paragraphs 1, 3 and 4 of the new Article 87). Similarly, the right to send or receive letters should be suspended during the period of solitary confinement. The reference ought therefore to be limited to paragraphs 1, 3 and 4 of Article 89 (or to paragraphs 1, 2, 3 and 5 of the new Article 88).

In reply to a question by Colonel PHILLIMORE, as to how long the solitary confinement should last, Mr. BELLAN (France) thought the answer might be left to military experts; but in his opinion it should not exceed three months.

Colonel PHILLIMORE (United Kingdom) feared that a provision recognizing solitary confinement might encourage grave excesses.

The CHAIRMAN asked Colonel Phillimore, as he would be unable to attend future meetings of the Sub-Committee, to be good enough to put before it his observations on the Articles not yet discussed.

Colonel PHILLIMORE (United Kingdom) made a statement indicating the main ideas of the United Kingdom Delegation on the remaining Articles. In his absence, Miss Gutteridge would develop the different points further in the course of the discussion.

#### **Statement by Colonel Phillimore concerning Articles 94-99**

##### *Article 94*

Second paragraph: To the information to be included in the notifications should be added the reasons (other than the security of the State) for the proceedings being held in camera.

Further it should be stipulated that the notification must be sent to the prisoner himself.

##### *Article 95*

First paragraph, last sentence: for the words "in due time" read "three weeks beforehand".

The other proposals related to questions of translation or order of the text.

##### *Article 96*

The suggestions of the United Kingdom Delegation concerned form rather than substance. What was desirable, there or elsewhere, was to ensure that before the Court proceeded to a trial, all the conditions laid down in the Convention had been fulfilled.

*Article 97*

The proposals were for a clearer and fuller account of the conditions in which appeal was possible.

*Article 98*

No substantial change.

*Article 99*

Two amendments were proposed in regard to penitentiary treatment for women prisoners of war and during the transfer of prisoners of war to penitentiaries, for certain offences.

*The meeting rose at 1 p.m.*

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FIFTH MEETING

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

*Chairman:* General Joseph V. DILLON (United States of America)

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The CHAIRMAN put for discussion Articles 94 to 99, with the amendment submitted by the United Kingdom Delegation.

**Article 94**

Mr. WILHELM (International Committee of the Red Cross) requested a slight change in the wording of the last paragraph of Article 94 of the Stockholm text, as proposed on page 60 of the "Remarks and Proposals" of the I.C.R.C., as follows:

"Unless, at the opening of the trial, evidence is produced that the Protecting Power concerned has received the above notification within the prescribed time-limit, the hearing may not proceed and shall be adjourned."

He thought it was desirable to keep the proposal of the United Kingdom Delegation, requiring that the notification of prosecution should not only be sent to the Protecting Power, but should also be communicated to the prisoner of war under accusation. He also suggested the inclusion of this amendment in Article 95.

Miss GUTTERIDGE (United Kingdom) said that Mr. Wilhelm's last suggestion tallied with Colonel Phillimore's views. Colonel Phillimore had intended to draft a new fourth paragraph of Article 95 and insert it in Article 94.

Mr. BELLAN (France) suggested that it would shorten the discussion, if they were to agree to the substance of the proposed amendments, and return to them afterwards on questions of form.

Miss GUTTERIDGE (United Kingdom) agreeing, the CHAIRMAN remarked that, as the proposal was one of form, he proposed that they should go on to examine Article 95.

**Article 95**

Mr. BELLAN (France) pointed out that French legislation did not permit a defence counsel to speak alone with his witnesses. In order to comply with that peculiarity of French legislation, he proposed to modify the text adopted at Stockholm in Article 95, third paragraph, by replacing the words "likewise any witnesses for the defence" by the words "he may interview the witnesses for the defence, including prisoners of war in presence of the examining magistrate or his representative".

Miss GUTTERIDGE (United Kingdom) was in favour of redrafting the paragraph in order to take into account French and Anglo-Saxon law.

Mr. WILHELM (International Committee of the Red Cross) assented to the proposal made by the French Delegate and approved by the Delegate of the United Kingdom.

Miss GUTTERIDGE (United Kingdom) thought there should be a provision concerning the costs of the defence of an accused prisoner of war. She suggested that the costs should be charged to the Detaining Power, where the prisoner belonged to a country without Government at the time, or again where his Government was unable for any reason to defray such costs, or lastly where the

prisoner of war was unable to get in touch with the Protecting Power.

Mr. WILHELM (International Committee of the Red Cross) agreed that the point could be made clear. When a prisoner of war had a country of origin, his Government defrayed the expense of the defence through the intermediary of the Protecting Power.

In the case cited by the United Kingdom Delegation, he did not think it would be to the advantage of the prisoner of war to put the costs of the defence on the Detaining Power. In actual experience prisoners of war in such cases united to put up the money for the defence of their accused comrades, in order to avoid depending on the Detaining Power. He thought that a similar arrangement might be contemplated as a means of providing for the costs of defence of accused persons.

Miss GUTTERIDGE (United Kingdom) shared the point of view expressed by the Representative of the International Committee of the Red Cross. The costs of defence might perhaps be borne out of a special Fund.

The CHAIRMAN, speaking as a Representative of the United States of America, agreed to the proposal. He pointed out, however, that in his country every military tribunal was bound to provide a competent defence Counsel. The costs of the defence did not devolve on the accused, unless he wished to have a Counsel of his own choice.

Mr. WILHELM (International Committee of the Red Cross) referring to the second paragraph of Article 95, said he would prefer to keep the text adopted in 1929 and drop the modification adopted at Stockholm ("Failing a choice of counsel by the prisoner of war and the Protecting Power, the Detaining Power shall appoint competent counsel to conduct the defence"). It did not seem desirable to impose obligations on the Protecting Power, as the latter was supposed under the Convention only to be lending its assistance.

Miss GUTTERIDGE (United Kingdom) supported this proposal.

Mr. BELLAN (France) was of the opinion that it was difficult to enforce obligations against the Protecting Power, as the latter was merely the representative of the country of origin of the prisoner of war. As however the party concerned was disarmed and deprived of his liberty in an enemy country, it would be advisable for the Protecting Power to provide for his defence. That would be the sole obligation to impose on the Protecting Power.

The CHAIRMAN, speaking as Delegate of the United States of America, accepted the views expressed by the Delegate of France in the matter.

Miss GUTTERIDGE (United Kingdom) appreciated the attitude of the French Delegate, but thought the Sub-Committee should take into consideration the arguments of the Representative of the International Committee of the Red Cross.

#### Article 96

The CHAIRMAN said that the United States Delegation had a slight amendment to make in subparagraph (1) of the second paragraph of Article 96. The change only affected the English text.

#### Article 97

Miss GUTTERIDGE (United Kingdom), referring to a previous statement made by Colonel Phillimore, specified that the United Kingdom Delegation, while it agreed with the principle which the Article embodied, would wish the text to be more explicitly worded.

Mr. BELLAN (France) approved Miss Gutteridge's suggestion.

The CHAIRMAN favoured the acceptance of the proposal of the United Kingdom Delegation, but said he wished to review the proposal in order to see to what extent it affected the legal position in the United States of America.

#### Article 98

There were no objections to Article 98.

#### Article 99

Miss GUTTERIDGE (United Kingdom) proposed to insert in Article 99 a provision similar to that which had been inserted in the Article concerning the disciplinary treatment of women prisoners.

In reply to a question by Mr. BELLAN (France) she said that she did not think it necessary to insert a reference to the third paragraph of Article 77, but had no objection to such an insertion, if generally agreed to by the Sub-Committee.

Mr. WILHELM (International Committee of the Red Cross), replying to a question put by the CHAIRMAN, stated that in the second paragraph

the reference was doubtless to Articles 68 and 116. In 1947 the Government Experts had insisted on the necessity for prisoners of war to have the right to lodge complaints and the right to be visited by the Protecting Power. The reference should be retained, as the last named right especially had been frequently contested.

### Order of work

The CHAIRMAN proposed to return to Article 72 with a view to the definitive drafting of it and the following Articles.

Mr. DROUGOV (Union of Soviet Socialist Republics) remarked that on account of the many amendments made in the Stockholm Draft Convention, the Soviet Delegation wished for sufficient time to be able to study them.

Miss GUTTERIDGE (United Kingdom) seconded the proposal. She hoped that the greater part of

the amendments proposed by the United Kingdom Delegation would obtain the agreement of the members of the Committee.

Mr. WILHELM (International Committee of the Red Cross) approved of giving the Soviet Delegation the necessary time to study the amendments; but he thought the Sub-Committee could already proceed to a second reading of Articles 72 to 99. When once agreed on the questions of principle, the Sub-Committee could proceed to consider the Articles proposed by the United Kingdom Delegation.

Mr. DROUGOV (Union of Soviet Socialist Republics) maintained his request for time.

After general discussion, the Sub-Committee decided to meet for a second reading of Articles 72 to 99 on 4 May 1949 at 5 p.m.

*The meeting rose at 11.45 a.m.*

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## SIXTH MEETING

*Wednesday 4 May 1949, 5 p.m.*

*Chairman:* General Joseph V. DILLON (United States of America)

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### Article 72

The CHAIRMAN put the new wording of Article 72 proposed by the United Kingdom Delegation for discussion (*see Annex No. 143*).

Mr. BELLAN (France), Mr. WILHELM (International Committee of the Red Cross) and Mr. DROUGOV (Union of Soviet Socialist Republics) expressed their approval.

After a discussion between Miss GUTTERIDGE (United Kingdom), the CHAIRMAN and Mr. BELLAN (France), the Sub-Committee decided to adopt the following text for the first paragraph of Article 72:

“A prisoner of war shall be subject to the laws, regulations and orders in force in the armed forces of the Detaining Power, and the Detaining Power shall be justified in taking judicial or disciplinary measures in respect of any offence committed by a prisoner of war against such

laws, regulations or orders. However, no proceedings or punishments contrary to the provisions of this Chapter shall be allowed.”

The Sub-Committee decided that the text of Article 73, as drawn up at Stockholm, should be embodied without change in Article 72, and should constitute the second paragraph of that Article.

Miss GUTTERIDGE (United Kingdom) said it was desirable in that connection to examine the amendment to Article 73 submitted by the Indian Delegation to the following effect:

“Collective hunger strikes and political propaganda in the camps shall be subject to punishment of a disciplinary nature.”

Mr. BELLAN (France) desired to make two points. Firstly, collective disciplinary action was forbidden. But a collective strike should be followed by collective punishment, which was in conflict

with the proposed text. Secondly, what was to be understood by political propaganda? If it meant political discussions amongst prisoners, the Detaining Power was not qualified to suppress such propaganda, since prisoners must be allowed to retain their liberty of speech and thought.

The Government Experts in 1947 proposed to prohibit all propaganda by the Detaining Power among prisoners of war, but unanimously decided not explicitly to forbid it on the ground that it was already implicitly forbidden in the Convention.

Failing further explanations, therefore the French Delegation could not accept the proposed amendment.

The CHAIRMAN shared the view of the Delegation of France.

Miss GUTTERIDGE (United Kingdom) also agreed with that view, but added that she had discussed the question with the Legal Adviser of the Indian Delegation, the latter having drawn attention to the importance of the problem in the case of his country.

The CHAIRMAN proposed to accept Article 72 as reworded, and to state in their Report that the Sub-Committee had examined and rejected the amendment of the Indian Delegation.

This proposal was adopted.

### Article 73

The CHAIRMAN proceeded to take the amendment of the United Kingdom Delegation (*see Annex No. 144*) to make the second paragraph of Article 83 (with slight changes) read as the new Article 73.

Mr. BELLAN (France) was in favour of the proposal as rendering the meaning of the Convention clearer.

Mr. WILHELM (International Committee of the Red Cross) thought that the heading of the Article might be better worded.

*The meeting rose at 6.30 p.m.*

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## SEVENTH MEETING

*Thursday 5 May 1949, 9.30 a.m.*

*Chairman:* General Joseph V. DILLON (United States of America)

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### Article 73 (new) (*continued*)

The CHAIRMAN proposed the following title for the new Article 73: "Choice between Disciplinary or Judicial Proceedings."

The Chairman's proposal being adopted, Article 73 read as follows:

"In deciding whether proceedings in respect of an offence alleged to have been committed by a prisoner of war shall be judicial or disciplinary, the Detaining Power shall ensure that the competent authorities exercise the greatest leniency and adopt wherever possible disciplinary rather than judicial measures."

Article 73 was adopted.

### Article 74 (new)

Article 74 (*see Annex No. 145 and Article 75 Stockholm text*) was adopted with two slight changes in the wording of the English text to bring it into closer conformity with the French text.

As thus amended, Article 74 read as follows:

"A prisoner of war shall be tried only by a military court, unless the existing laws of the Detaining Power expressly permit the civil courts to try a member of the armed forces of the Detaining Power in respect of the particular offence alleged to have been committed by the prisoner of war.

In no circumstances whatever shall a prisoner

of war be tried by a court of any kind which does not offer the essential guarantees of independence and impartiality generally recognized, and in particular the procedure of which does not afford the accused the rights and means of defence provided in Article 95."

#### Article 75 (new)

Mr. DROUGOV (Union of Soviet Socialist Republics) recalled that the Sub-Committee had decided on the first reading of this Article (*Article 74 Stockholm text*) not to discuss it but to return it to the plenary Committee. That was an important issue which should be examined with care. He had no suggestion to make for the time being; but his Delegation would express its opinion in the course of discussion in the plenary Committee.

Mr. WILHELM (International Committee of the Red Cross) admitted that the new Article 75, which was in reality Article 74 of the Draft Convention adopted at Stockholm, completely modified the rule hitherto adopted. It was therefore not surprising that the new Article should give rise to controversy. It might be well to discuss the question in the plenary Committee in order to ascertain the different points of view.

The CHAIRMAN also considered that the issue involved was important and should be discussed by the plenary Committee. Nevertheless, as he himself had proposed the text of the present Article at Stockholm on behalf of the United States Delegation, he would like to make a few points clear. The Convention provided certain safeguards for prisoners of war, in particular the right to receive visits from the representatives of the Protecting Power and the right of complaint. He thought an accused prisoner of war ought to continue to enjoy the benefit of those safeguards whether he was being tried for an act committed before or after capture, and whatever the nature of the act. The primary object of the Conference was to draw up a Convention capable of improving the future lot of prisoners of war. Personally he was in favour of Article 75 in its present form, subject always to any possible improvements that might be made. That being so, he invited the Sub-Committee to refer it to the plenary Committee.

Miss GUTTERIDGE (United Kingdom) approved the proposal, reserving at the same time the right to express the opinion of the United Kingdom Delegation in the plenary Committee.

Mr. BELLAN (France) agreeing, the discussion ended.

#### Article 76

After an exchange of views between Miss GUTTERIDGE (United Kingdom), the CHAIRMAN and Mr. BELLAN (France), Miss GUTTERIDGE agreed to withdraw the second paragraph of the United Kingdom Delegation's amendment to Article 76 (*see Annex No. 147*). She hoped, however, that the change of wording proposed by the United Kingdom in the first paragraph, viz: the addition of the words "be sentenced or" before "punished" would tend to prevent prisoners of war being convicted and sentenced more than once for the same crime, as had frequently happened in Germany during the last war.

The CHAIRMAN did not approve of retaining the words as he feared they might prevent a prisoner of war from appealing, and possibly incurring a lesser penalty than that inflicted in the first instance.

Mr. BELLAN (France) and Mr. WILHELM (International Committee of the Red Cross) said that two different points were involved and, to meet the wishes expressed by the United Kingdom Delegate and by the Chairman a supplementary article would be required.

Following a long discussion, in the course of which Mr. BELLAN (France) clearly stated that the title of Article 76 "non bis in idem" left no doubt as to its correct interpretation, Miss GUTTERIDGE (United Kingdom) deferred to the view of the majority, and withdrew the amendment proposed by the United Kingdom Delegation.

The CHAIRMAN remarked that, the United Kingdom amendment having been eliminated, the text of Article 76 of the Draft Convention adopted at Stockholm remained unchanged, and would be submitted for the approval of the plenary Committee.

#### Article 77

After a discussion in which Mr. BELLAN (France), Miss GUTTERIDGE (United Kingdom), the CHAIRMAN, Mr. DROUGOV (Union of Soviet Socialist Republics) and Mr. WILHELM (International Committee of the Red Cross) took part, the Sub-Committee decided unanimously to submit the text of Article 77 adopted at Stockholm for the approval of the plenary Committee, omitting the words "the kind of penalty or" at the end of the second paragraph.

Miss GUTTERIDGE (United Kingdom) recalled that the Delegation of India had submitted an

amendment to the third paragraph of Article 77 adding the following words:

“collective punishment is permitted where the offence is not entirely limited to a particular individual and other prisoners of war are implicated by connivance or otherwise.”

The Sub-Committee decided to reject the Indian amendment, no one being in its favour.

### Article 78

Mr. BELLAN (France) said that the French text was absolutely identical with the text adopted at Stockholm, and he was ready to accept it.

Miss GUTTERIDGE (United Kingdom) said that the English text remained unchanged in substance though the wording had been improved.

The Sub-Committee unanimously decided to submit for the approval of Committee II the French text of Article 78 adopted at Stockholm, and the new wording of the English text proposed by the United Kingdom Delegation, the two texts being identical (*see Annex No. 149*).

### Article 78A

Miss GUTTERIDGE (United Kingdom) thought that, although provision had been made in the general articles for the case of women prisoners of war, it was desirable to insert the provision proposed in the amendment of her Delegation (*see Annex No. 150*) in order to prevent women being subjected in future to the same treatment as in the last war.

Mr. DROUGOV (Union of Soviet Socialist Republics) agreeing, the proposal was adopted unanimously.

The text of Article 78A read as follows:

“A woman prisoner of war shall not be awarded or sentenced to a punishment more severe, or treated whilst undergoing punishment more severely, than a woman member of the armed forces of the Detaining Power dealt with in respect of a similar offence.

In no case may a woman prisoner of war be awarded or sentenced to a punishment more severe, or treated whilst undergoing punishment more severely, than a male member of the armed forces of the Detaining Power.”

Mr. WILHELM (International Committee of the Red Cross) thought that adolescents of both sexes, under eighteen, should have the same safeguards as women.

Miss GUTTERIDGE (United Kingdom) considered the proposal unnecessary. In her country, at any rate, adolescents were not enrolled under the age of eighteen.

The CHAIRMAN pointed out that provision was made for the case of adolescents in Article 14 of the Prisoners of War Convention.

Mr. DROUGOV (Union of Soviet Socialist Republics), agreeing with the Chairman, the Sub-Committee decided it was not necessary to include a special provision for adolescents.

*The meeting rose at 11.45 a.m.*

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## EIGHTH MEETING

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

*Chairman:* General Joseph V. DILLON (United States of America)

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### Chapter III — II. Disciplinary Sanctions

Miss GUTTERIDGE (United Kingdom) considered it preferable to begin Part II of Chapter III with an article embodying the general provisions set out in Article 86 of the Stockholm Draft Convention (*see Annex No. 151*).

The CHAIRMAN thought that there was the choice of two possibilities: either to begin this Part of the Chapter with a definition of the authority competent to apply the sanctions, or to begin with a definition of the sanctions. Personally, he leaned towards the second alternative.

Mr. WILHELM (International Committee of the Red Cross) recalled that the order adopted for this Part of the Chapter in Stockholm corresponded to the wishes of the Government Experts at the 1947 Conference. They had expressed the desire that the articles forming the second part of this Chapter should be arranged as follows:

- (1) General articles fixing the character, nature and limitations of disciplinary sanctions;
- (2) articles concerning escape;
- (3) articles concerning the procedure in disciplinary action;
- (4) articles concerning the execution of the sentence.

The Representative of the International Committee of the Red Cross was willing, however, to reconsider the order of the present arrangement, though he thought the articles referring to the nature of punishment, being matters of substance and not of procedure, should be placed at the beginning of the chapter.

Mr. BELLAN (France) suggested an intermediary solution as to the arrangement of the second part of the Chapter:

- (1) Determination of the authority competent for the application of sanctions;
- (2) nature of the sanctions;
- (3) procedure;
- (4) execution of the sanctions.

Mr. DRUGOV (Union of Soviet Socialist Republics) stated that his Delegation was in favour of the order adopted at Stockholm.

Mr. BELLAN (France) said that it was really only a question of form of little importance.

The CHAIRMAN stated that, in view of the observations expressed by the different members of the Sub-Committee, it was better to follow the order adopted at Stockholm for the consideration of the amendments touching the substance of the Articles of the second Part of Chapter III. Later, if necessary, the Sub-Committee could draw up a new order for the Articles in question.

#### Article 79

Miss GUTTERIDGE (United Kingdom) thought that paragraph I of Article 79 of the Stockholm draft was not sufficiently clear. For this reason the United Kingdom Delegation had proposed the two new paragraphs contained in the draft amendment to Article 81 (*see Annex No. 153*).

The CHAIRMAN realized that the paragraph should be improved, and he was ready to accept the amendment proposed by the United Kingdom with a slight change in the wording.

Mr. BELLAN (France) having expressed a similar opinion, the Sub-Committee decided to adopt the first paragraph of the United Kingdom amendment with the following correction:

"(1) A fine which shall not exceed 50% of the pay and wages which the prisoner of war would otherwise receive under the provisions of Articles 51 and 52 during a period of not more than thirty days."

The second paragraph of the British amendment was therefore no longer necessary.

The remainder of the amendment was adopted without modification.

Article 79, as thus amended, read as follows:

#### "I. Nature of Punishment

The disciplinary punishments applicable to prisoners of war are the following:

- (1) A fine which shall not exceed 50 % of the pay and wages which the prisoner of war would otherwise receive under the provisions of Articles 51 and 52 during a period of not more than thirty days.
- (2) Discontinuance of privileges granted over and above the treatment provided for by the present Convention.
- (3) Fatigues, not to exceed two hours daily.
- (4) Confinement.

The punishment referred to under (3) shall not be applied to officers.

In no case shall disciplinary penalties be inhuman, brutal or dangerous to the health of prisoners of war."

#### Article 80

Miss GUTTERIDGE (United Kingdom) thought it desirable to cover in a single article all the provisions concerning the duration of penalties. She therefore proposed (*see Annex No. 154 Article 82*) to embody also in Article 80 some of the provisions at present figuring in Articles 85 and 87 of the Stockholm text.

Mr. BELLAN (France) and Mr. WILHELM (International Committee of the Red Cross) shared this view. Mr. WILHELM said that, although paragraphs 3 and 4 of the (new) United Kingdom text did not concern the duration of punishments, he nevertheless had no objection to keep them in this Article.

Mr. DROUGOV (Union of Soviet Socialist Republics) accepted this text.

The CHAIRMAN suggested a new title: "Limitations on Punishments".

The present French title was maintained on the understanding that it would be modified by the Secretariat, if necessary.

The Sub-Committee accepted this proposal. The text of Article 80, as amended, read as follows:

"II. *Duration and Reduction of Punishments*

The duration of any single punishment awarded shall in no case exceed thirty days. Any period of confinement awaiting the hearing of a disciplinary offence or the award of disciplinary punishment shall be deducted from an award pronounced against a prisoner of war.

The maximum of thirty days provided above may not be exceeded, even if the prisoner of war is answerable for several acts at the time when he is awarded punishment, whether such acts are related or not.

The period between the pronouncing of an award of disciplinary punishment and its execution shall not exceed one month.

If a prisoner of war is awarded a further disciplinary punishment, a period of at least three days shall elapse between the execution of any two of the punishments, if the duration of one of these is ten days or more."

**Article 81**

Mr. BELLAN (France) pointed out that Committee II had reserved the right to examine this Article. It was not therefore for the Sub-Committee to discuss it. His own Delegation favoured the Stockholm text.

The CHAIRMAN recognized the soundness of the French Delegate's remark. The Delegation of the United States was also ready to accept the Stockholm text.

**Article 82**

After an exchange of views between Mr. BELLAN (France), the CHAIRMAN and Miss GUTTERIDGE (United Kingdom), the Sub-Committee decided to adopt the two paragraphs proposed by the United Kingdom in place of the first paragraph of Article 82 of the Stockholm text (*see Annex No. 156*). The text of the two paragraphs read as follows:

"II. *Unsuccessful Escape*

A prisoner of war who attempts to escape but is recaptured before having made good his escape in the sense of Article 81 shall be liable only to a disciplinary punishment in respect of this act, even if it is a repeated offence.

A prisoner of war who is recaptured shall be handed over without delay to the competent military authority."

The second paragraph of the Stockholm text to remain unchanged and become the third paragraph of the new Article 82.

On the subject of the third paragraph, added at Stockholm, Mr. BELLAN recalled that the Sub-Committee (*see Summary Record of the third Meeting*) on the first reading of the Articles had urged its omission. He considered that the paragraph should be examined by Committee II at the same time as Article 81 and Article 3, in the case of which his Delegation intended to propose an amendment.

Mr. DROUGOV (Union of Soviet Socialist Republics) pressed for the maintenance of the third paragraph added at Stockholm.

The CHAIRMAN and Miss GUTTERIDGE (United Kingdom) were for its omission.

On the proposal of Mr. WILHELM (International Committee of the Red Cross) it was decided to refer the paragraph back to Committee II, the latter being alone competent to discuss the question of the substance and wording of the paragraph in view of its new and special character.

**Article 83**

Miss GUTTERIDGE (United Kingdom) stated that the first and last paragraphs of Article 83 remained unchanged (*see Annex No. 157 — Article 85*). She recalled that the Sub-Committee had decided during the third meeting to omit the second paragraph of Article 83 of the Stockholm text, and to insert it in Article 73, with a reference to this Article in Article 83.

After a discussion on the subject between Mr. BELLAN (France), the CHAIRMAN, Miss GUTTERIDGE (United Kingdom) and Mr. WILHELM (International Committee of the Red Cross), the text of the second paragraph of the United Kingdom proposal was slightly modified in order to take Mr. BELLAN's point of view into account.

Article 83 as amended read as follows:

“III. *Connected Offences*

Escape or attempt to escape, even if it is a repeated offence, shall not be deemed an aggravating circumstance if the prisoner of war is subjected to trial by judicial proceedings in respect of an offence committed during his escape or attempt to escape.

In conformity with the principle stated in Article 73, offences committed by prisoners of war with the sole intention of facilitating their

escape and which do not entail any violence against life or limb, such as offences against public property, theft without intention of self-enrichment, the drawing up or use of false papers, the wearing of civilian clothing, shall in general occasion disciplinary punishment only.

After an escape, or attempt to escape, the fellow prisoners who aided and abetted the offender shall be liable on this count to disciplinary punishment only.”

*The meeting rose at 12.30 p.m.*

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NINTH MEETING

*Friday 6 May 1949, 2.45 p.m.*

*Chairman:* General Joseph V. DILLON (United States of America)

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**Article 83** (*continued*)

The CHAIRMAN drew the attention of the Sub-Committee to the amendment proposed by the Delegation of the United Kingdom (*see Annex No. 157*) and to the further amendment concerning paragraph 2, also proposed by the same Delegation during the course of the previous meeting. He put Article 83, as amended during the eighth meeting, for acceptance.

Adopted unanimously.

**Article 84**

It was unanimously decided to accept the text of this Article as drawn up at Stockholm without modification. (*For the amendment submitted by the United Kingdom Delegation, see Annex No. 158*).

**Article 85**

Miss GUTTERIDGE (United Kingdom) pointed out that the Delegation of the United Kingdom attached great importance to the first paragraph of their amendment (*see Annex No. 152*). In her opinion a prisoner of war confined

awaiting trial should always benefit by the protection of the Convention. Furthermore, all the text of the proposed amendment by the Delegation of the United Kingdom was in accordance with the legal procedure obtaining in the United Kingdom, especially the last two paragraphs.

Mr. BELLAN (France) considered that the words “Limitations on” should precede the words “Confinement awaiting hearing” in the title of the Article.

The Sub-Committee agreed to this proposition.

After discussion, the CHAIRMAN stated that Article 85 as amended by the United Kingdom Delegation gave satisfaction to everybody, with the exception of paragraph 3 which it was agreed should be deleted.

The new Article now read as follows:

*Limitations on Confinement Awaiting Hearing  
(Régime)*

“A prisoner of war accused of an offence against discipline shall not be kept in confinement pending the hearing unless a member of the armed forces of the Detaining Power would be so kept if he was accused of a similar offence or if it is essential in the interests of camp order and discipline.

Any period spent by a prisoner of war in confinement awaiting the disposal of an offence against discipline shall be reduced to an absolute minimum and shall not exceed fourteen days.

The provisions of Articles 88 and 89 of this chapter shall apply to prisoners of war who are in confinement awaiting the disposal of offences against discipline."

#### Article 86

The CHAIRMAN presented the United Kingdom amendment (*see Annex No. 151*).

Mr. BELLAN (France) pointed out that the English and French texts of this amendment did not coincide. He found that the procedure outlined in paragraph 4 of the amendment proposed by the Delegation of the United Kingdom to be too lengthy and too formal, particularly as the penalty involved was a maximum of thirty days.

Mr. DRUGOV (Union of Soviet Socialist Republics) supported the contention of the French Delegation, and said he thought that paragraph 4, as it stood at present, was too detailed and involved.

Mr. WILHELM (International Committee of the Red Cross) considered that the United Kingdom amendment constituted a very real improvement on previous texts. He considered that the Sub-Committee was not far from obtaining the maximum guarantees necessary to protect prisoners of war undergoing disciplinary punishment. He suggested, however, the following text to replace paragraph 4 which was not entirely satisfactory:

"Prior to any disciplinary sentence being pronounced the accused now shall be informed precisely of the offences of which he is accused, and given an opportunity of explaining his conduct and of defending himself. He shall be permitted, in particular, to call witnesses and to have recourse, if necessary, to the services of a qualified interpreter. The decision shall be made in the presence of the accused prisoner of war and of the spokesmen".

The wording for paragraph 4 was adopted unanimously.

Mr. BELLAN (France) considered that the first paragraph of Article 86 of the Stockholm text was preferable to the second paragraph of the United Kingdom amendment, as it defined more precisely who had disciplinary powers and to whom such powers could be delegated. He accepted, moreover, that the word "Excepting" appearing at the beginning of the 1st paragraph

of Article 86 of the Stockholm text should be replaced by the words "Without prejudice to".

Mr. DROUGOV (Union of Soviet Socialist Republics) supported the contention of the French Delegate that as regards paragraph 1 of Article 86, the Stockholm draft was more precise than the corresponding paragraph in the United Kingdom amendment.

Mr. WILHELM (International Committee of the Red Cross) emphasized the importance of the records envisaged in the fifth paragraph of the United Kingdom amendment which, he said, would greatly facilitate the work of the Protecting Power and of the Delegates of the International Committee of the Red Cross.

Article 86 was finally adopted in the following form:

#### *Competent Authorities and Procedure.*

"Acts which constitute offences against discipline shall be investigated immediately.

Without prejudice to the competence of the Courts and higher military authorities, disciplinary punishment may be ordered only by an officer having disciplinary powers in his capacity as Camp Commandant, or by a responsible officer who replaces him or to whom he has delegated his disciplinary Powers.

In no case may such powers be delegated by the Camp Commandant to a prisoner of war or be exercised by a prisoners of war.

Prior to any disciplinary sentence being pronounced the accused now shall be informed precisely of the offences of which he is accused, and given an opportunity of explaining his conduct and of defending himself. He shall be permitted, in particular, to call witnesses and to have recourse, if necessary, to the services of a qualified interpreter. The decision shall be made in the presence of the accused prisoner of war and of the spokesmen.

A record of disciplinary punishments shall be maintained by the camp commandant and shall be open to inspection by representatives of the Protecting Power."

#### Article 87 (new) (Stockholm 88)

Mr. BELLAN (France) pointed out that the Stockholm text of this Article had already been adopted and transferred to the new Article 80 (*see Summary Record of the Eighth Meeting*).

Miss GUTTERIDGE (United Kingdom) stressed that the Delegation of the United Kingdom attach-

ed great importance to the first and fourth paragraphs of their amendment (*see Annex No. 159*).

Mr. BELLAN (France) agreed that the fourth paragraph was of great importance, but suggested that paragraph 1, which he did not consider so important, would be better transferred elsewhere.

After discussion, it was agreed that the first paragraph of the amendment proposed by the Delegation of the United Kingdom should commence the new Article 88, adding the words "in no case may he be deprived of the benefits of the provisions of Articles 68 and 116".

It was also agreed that the second sentence of the last paragraph of Article 88 (Stockholm text), slightly modified, should be inserted as the third paragraph of the new Article 87.

The new Article 87 was unanimously adopted in the following form :

*Place of Disciplinary Punishment*

"A prisoner of war shall not in any case be transferred to a penitentiary establishment (e.g. a prison, penitentiary, convict prison, etc.) to undergo a disciplinary punishment therein.

All premises in which disciplinary punishments are undergone shall conform to sanitary requirements; they shall in particular be provided with adequate bedding. A prisoner of war undergoing punishment shall be enabled to keep himself in a state of cleanliness.

Officers and persons of equivalent status shall not be lodged in the same quarters as non-commissioned officers or men.

Female prisoners of war undergoing disciplinary punishment shall be confined in separate quarters from male prisoners of war and shall be under the immediate supervision of a woman."

**Article 88 (new) (Stockholm 89)**

After discussion it was decided to substitute the title "Treatments" proposed by the Delegation of the United Kingdom in their amendment (*see Annex No. 160*) for the title "Essential Safeguards" heading Article 89 of the Stockholm text, as the former would seem to be the more adequate. In the French text the title was changed to "Régime".

It was decided that the first paragraph of the amendment proposed by the Delegation of the United Kingdom to Article 87 should replace the first paragraph of the amendment proposed by this same Delegation to Article 88 adding at the end the words: "In no case may he be deprived of the benefits of the provisions of Articles 68 and 116".

The first sentence of the first paragraph of the amendment proposed by the United Kingdom Delegation was accepted as the second paragraph of the new Article 88.

With regard to paragraphs 2, 3 and 4 of the amendment proposed by the Delegation of the United Kingdom it was agreed that these should be replaced by paragraphs 1, 2 and 3 of Article 89 of the Stockholm text.

The substance of the last paragraph of the amendment proposed by the Delegation of the United Kingdom and of the last paragraph of Article 89 of the Stockholm text had already been included in the first paragraph of the new Article 88.

This article was finally adopted in the following form:

*Treatment*

"A prisoner of war undergoing confinement as a disciplinary punishment shall continue to enjoy the benefits of the provisions of this Convention except in so far as these are necessarily rendered inapplicable by the mere fact that he is confined. In no case may he be deprived of the benefits of the provisions of Articles 68 and 116.

A prisoner of war awarded disciplinary punishment may not be deprived of the prerogatives attached to his rank.

Prisoners of war given disciplinary punishment shall be allowed to exercise and to stay in the open air at least two hours daily.

They shall be allowed, on their request, to be present at the daily medical inspections. They shall receive the attention which their state of health requires and, if necessary, shall be removed to the camp infirmary or to hospitals.

They shall have permission to read and write, likewise to send and receive letters. Parcels and remittances of money, however, may not be handed to them until the expiration of the sentence; they shall meanwhile be handed to the spokesman, who will hand over to the infirmary the perishable goods contained in such parcels."

**Article 89 (new) (Stockholm 90)**

Mr. BELLAN (France) proposed a modification in the French text of paragraph 1 of the United Kingdom amendment (*see Annex No. 161*).

The CHAIRMAN and Miss GUTTERIDGE (United Kingdom) mentioned that the first paragraph of Article 90 of the Stockholm text did not indicate

sufficient clearly which legislation should be applied. For this reason, they considered that the first paragraph of the amendment as drafted by the Delegation of the United Kingdom and as modified in the French text by the French Delegation, should be adopted in place of the first paragraph of the Stockholm text.

This proposal was adopted unanimously.

In order to conform to the legal procedure obtaining in France, the United Kingdom and the United States of America and according to the Hague Conventions, it was decided, moreover, to adopt paragraphs 2 and 3 of Article 90 of the Stockholm text, and to reject the corresponding paragraphs in the United Kingdom amendment.

The new Article 89 was finally unanimously adopted, as follows:

#### *General Principles*

"No prisoner of war may be tried or sentenced for an act which is not forbidden by the law of the Detaining Power in force at the time the said act was committed.

No moral or physical coercion may be exerted on a prisoner of war in order to induce him to admit himself guilty of the act of which he is accused.

No prisoner of war may be convicted without having had an opportunity to present his defence and the assistance of qualified counsel."

#### **Article 90 (new) (Stockholm 91)**

Miss GUTTERIDGE (United Kingdom) suggested that this Article which concerned the Death Penalty should be numbered 97 and linked with Article 98 of the Stockholm text — "Execution of penalties. I. Period of time allowed in case of death penalty."

Mr. BELLAN (France) replied that the Sub-Committee should consider the substance of the Articles only at the present time and that the order of the Articles should be decided later on in the proceedings.

The CHAIRMAN supported this remark.

As regards the substance, the Sub-Committee unanimously agreed to reject the amendment proposed by the United Kingdom Delegation (see *Annex No. 168 — Article 97*) and adopt, for Article 90, the Stockholm wording of Article 91 in its entirety.

#### **Article 91 (new) (Stockholm 98)**

The Sub-Committee decided to take up again for this Article the provisions of Article 98 of the Stockholm text.

#### **Article 92**

Miss GUTTERIDGE (United Kingdom) wished (see *Annex No. 165 — Article 94*) that this provision ("Procedure I. Conditions for validity of sentences", Article 92 of the Stockholm text), be linked with Article 95 of the Stockholm text (IV. Rights and Means of Defence) in order to ensure that a prisoner detained awaiting trial should have all the qualified assistance to which he is entitled, both before and during the trial.

Mr. WILHELM (International Committee of the Red Cross) pointed out that as far as adequate notification to the Protecting Power was concerned, this was assured by the last paragraph of Article 94 of the Stockholm text, and this should be a sufficient safeguard.

Miss GUTTERIDGE (United Kingdom) agreed with this point of view.

An amendment from the Indian Delegation was then presented which proposed that the following words "and unless furthermore the provisions of the present chapter have been observed", should be deleted from the last paragraph of the United Kingdom amendment and which also appeared in Article 92 of the Stockholm text.

This amendment was unanimously rejected as it would eliminate the most important provisions of the Article in question. It was agreed, however, that this should be formally recorded.

#### **Observations by Mr. Bellan (France) regarding Articles 93, 94 and 95**

Before the meeting rose Mr. BELLAN (France) said that before leaving Geneva for a short period, he wished to make the following observations with regard to Articles 93, 94 and 95 of the Stockholm text, which would be examined in his absence.

(1) Re Article 93: In certain cases it would be necessary to hold a prisoner of war incommunicated and in that case he could be provisionally confined in a penitentiary.

(2) Re Article 94, Paragraph 1: The Detaining Power should inform not only the Protecting

Power when judicial proceedings are opened against a prisoner of war, but also the spokesman of the camp concerned.

(3) Re Article 95, Paragraph 3: Taking into consideration French legislation and all legislation

based on Roman Law, there should be recognition of the possibility of the defence Counsel not being able to interview witnesses for the defence except in presence of the examining magistrate.

*The meeting rose at 6.15 p.m.*

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## TENTH MEETING

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

*Chairman:* General Joseph V. DILLON (United States of America)

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### Article 93

Miss GUTTERIDGE (United Kingdom) commented the amendment of her Delegation (*see Annex No. 163, Article 92*) to Article 93 of the Stockholm text.

Mr. WILHELM (International Committee of the Red Cross) stated that the United Kingdom amendment contained certain proposals which had already met with the approval of the members of the Sub-Committee. The principle of limiting the duration of confinement awaiting trial to three months had been adopted at the first reading. The principle mentioned at the outset of the second paragraph had been adopted and was now embodied in Article 85. The third and fourth paragraphs had been adopted in connection with the case of a prisoner of war undergoing disciplinary penalties.

On the other hand, the second sentence of the first paragraph of the United Kingdom amendment, providing that:

“Nevertheless a prisoner of war shall not be tried in circumstances where a fair trial is impracticable owing to his inability to call witnesses on his own behalf, more especially in respect of an offence which he is alleged to have committed before capture”

introduced a new element in the Article, which raised a highly delicate problem.

He recalled that Mr. Bellan (France) had expressed a wish that the Sub-Committee should consider the possibility of a prisoner of war being placed in solitary confinement.

Miss GUTTERIDGE (United Kingdom) did not consider it desirable to embody in the present Convention a provision relative to the solitary confinement of prisoners of war. She felt that such cases were extremely rare and applied primarily to spies who, according to general opinion, should not have the benefits of the privileges accorded by the present Convention.

Mr. DROUGOV (Union of Soviet Socialist Republics) considered the second sentence of the first paragraph of the United Kingdom amendment to be in contradiction to the decision taken by the Sub-Committee in connection with Article 74. The Sub-Committee had indeed decided to refer the whole question back to Committee II.

The CHAIRMAN did not think the United Kingdom amendment was in complete accordance with the object which the Government experts had set themselves in 1947 and 1948, viz. to expedite the judicial investigation and to limit the time of pre-trial confinement. In fact, this amendment went counter to that object. He was therefore inclined himself to favour the Stockholm draft with the addition of a provision for the limitation of confinement awaiting trial.

Miss GUTTERIDGE (United Kingdom) thought that further examination of the question was necessary, and it was for that reason that the United Kingdom Delegation had inserted the new sentence in their amendment. It would not always be desirable to apply prisoner of war treatment over a long period to prisoners of war who had committed

offences before capture. She cited, as an example, the case of the German soldiers who burnt Lidice. In such cases, confinement awaiting trial might be the proper treatment.

She acknowledged the truth of the remark of the Soviet Delegate and agreed to the discussion of the question being postponed, on condition that the point raised by the second sentence of the first paragraph of the United Kingdom amendment was mentioned in the Report of the Sub-Committee.

The CHAIRMAN proposed to word the new Article 93 as follows:

The first paragraph of the new Article to embody the first sentence of the first paragraph of the United Kingdom amendment, and the first part of the second paragraph as far as the words "three months"; the second paragraph to commence with the words "any period spent" (last sentence of the second paragraph) and end with the words "fixing any penalty"; the final paragraph of the United Kingdom amendment to be the third paragraph of the new Article.

Mr. WILHELM (International Committee of the Red Cross) and Mr. BAUDOY (France) agreed to the Chairman's proposal.

They at the same time supported the suggestion of the United Kingdom Delegation to include a mention of the point raised by the second sentence of the first paragraph of the amendment in the Report of the Sub-Committee.

Mr. DROUGOV (Union of Soviet Socialist Republics) agreed with the Chairman's proposal.

Miss GUTTERIDGE (United Kingdom) pointed out that the heading of the Article had been slightly modified in the English text, but that the change did not concern the French text.

The Sub-Committee then decided to adopt the following text for the new Article 93:

*"Confinement Awaiting Trial (Deduction; Regime)*

"Judicial investigations relating to a prisoner of war shall be conducted as rapidly as circumstances permit and so that his trial shall take place as soon as possible. A prisoner of war shall not be confined while awaiting trial unless a member of the armed forces of the Detaining Power would be so confined if he was accused of a similar offence, or if it is essential to do so in the interests of national security. In no circumstances shall this confinement exceed three months.

Any period spent by a prisoner of war in confinement awaiting trial shall be deducted

from any sentence of imprisonment passed upon him and taken into account in fixing any penalty.

The provisions of Articles 88 and 89 of this chapter shall apply to a prisoner of war whilst in confinement awaiting trial".

**Article 94**

Miss GUTTERIDGE (United Kingdom) stated that the modifications proposed by the United Kingdom (see Annex No. 162, Article 91) applied only to the form, and not to the substance, of Article 94 of the Stockholm text. She considered it preferable to include the fourth paragraph of Article 95 of the English version of the Stockholm draft in the new Article 94. The change in the wording of the beginning of the first paragraph only aimed at making the Stockholm text clearer.

The CHAIRMAN was not in favour of the insertion of the fourth paragraph of Article 95 in the new Article 94, the latter dealing with notification of indictment and not of judgment. On the other hand, he agreed that the new wording proposed by the United Kingdom in the first paragraph made the text more explicit.

Miss GUTTERIDGE (United Kingdom) accepted the Chairman's view concerning the inclusion of the fourth paragraph in Article 95, but suggested that two slight changes of wording might be made in the second paragraph. They would not affect the French text.

Mr. WILHELM (International Committee of the Red Cross) proposed the replacement of the word "institute" in the first sentence of the United Kingdom amendment by the word "open" and in the second paragraph the words "the said" by the word "this".

He further suggested a new wording for the last paragraph of Article 94 in the Stockholm text as follows:

"If on the opening of the trial no evidence is submitted to the court that the notice specified above was received by the Protecting Power within the time-limit fixed, the trial cannot take place, and shall be postponed".

The Sub-Committee having accepted these proposals, the text of the new Article 94 will read as follows:

*"Notification of Proceedings*

In any case in which the Detaining Power has decided to open judicial proceedings against a prisoner of war, it shall notify the Protecting

Power as soon as possible and at least three weeks before the date of trial. This period of three weeks shall run as from the day on which this notification reaches the Protecting Power at the address previously indicated by the latter to the Detaining Power.

This notification shall be in writing and contain the following information:

- (1) Surname and first names, rank, army or serial number, date of birth and profession or trade, if any, of the prisoner of war;
- (2) Place of internment or confinement;
- (3) Specification of the charge or charges preferred, giving the legal provisions applicable;
- (4) Designation of the court which will try the case, likewise the date and place fixed for the opening of the trial.

The same communication shall be made by the Detaining Power to the prisoner's spokesman.

If on the opening of the trial no evidence is submitted to the court that the notice specified above was received by the Protecting Power within the time-limit fixed, the trial cannot take place, and shall be postponed."

#### Article 95

Miss GUTTERIDGE (United Kingdom) pointed out that the new text proposed by the United Kingdom for Article 95 (*see Annex No. 164, Article 93*) was similar in substance to Article 95 of the Stockholm draft. The United Kingdom Delegation had omitted the provision added at Stockholm at the end of the second paragraph (*see remarks by the Representative of the I.C.R.C., Summary Record of the Fifth Meeting*), because they thought the Protecting Power should always be able to furnish an accused prisoner of war with Counsel for his defence.

The United Kingdom amendment contained, furthermore, a new paragraph concerning the cost of defence. Miss Gutteridge reminded that the Sub-Committee had already agreed as to the necessity of inserting a similar provision in the Convention, but had not yet decided where to place it.

She thought the spokesman should also be informed of the charge.

Mr. WILHELM (International Committee of the Red Cross) said that neither the Stockholm draft nor the amendment proposed by the United Kingdom took sufficiently into account the realities of experience. In the last war it was not the prisoner of war who chose his Counsel, but the Protecting Power, or the spokesman, or the Legal Adviser of the camp.

Under the new Convention every prisoner of war would have the advantage of being under the care of a Protecting Power. The I.C.R.C. therefore considered that provision for the cost of defence should be more elastic than it was in the United Kingdom amendment; he then suggested the following drafting for the second paragraph and the beginning of the third paragraph:

"Failing a choice by the prisoner of war, a choice which can be made by the Protecting Power or the Spokesman concerned, the Detaining Power shall provide qualified counsel and shall in that case be responsible for the cost.

In both cases, the defence counsel, etc. etc."

Mr. Wilhelm also thought in general the time-limits were too short and should be lengthened. He did not think it necessary to specify in the Article that the spokesman should be notified of the charge.

Miss GUTTERIDGE (United Kingdom) said that what her Delegation intended to state clearly in the fourth paragraph of their amendment was that the Detaining Power would not assume the cost of the defence except where prisoners of war were no longer in a position to communicate with their Governments—a case which would not often happen.

The CHAIRMAN preferred the text of the United Kingdom to the text proposed by the Representative of the International Committee of the Red Cross. He was personally in favour of the Stockholm draft with the addition of the fourth paragraph of the United Kingdom amendment.

Mr. WILHELM (International Committee of the Red Cross) feared that the text of the fourth paragraph of the amendment might raise difficulties of interpretation. He proposed, therefore, the following rewording:

"The cost of defence shall be charged to the Power upon which the prisoner depends. Where that Power has no longer an effective Government, or where, in exceptional cases, effective communication with that Power cannot be established, the Detaining Power shall meet the necessary cost of defence of that prisoner of war by qualified counsel".

Miss GUTTERIDGE (United Kingdom) was prepared to accept the Chairman's text with the changes proposed by the Representative of the I.C.R.C. for the fourth paragraph of her Delegation's amendment. She reminded moreover the Sub-Committee that the French Delegate had stated on the first reading that the French Delegation was not able to accept the Stockholm text with regard to the

third paragraph, because French legislation did not allow the defence to interview witnesses for the defence except in the presence of the examining magistrate.

After a discussion between Mr. BAUDOY (France) Miss GUTTERIDGE (United Kingdom), Mr. WILHELM (International Committee of the Red Cross) and the CHAIRMAN, Mr. BAUDOY (France) agreed to substitute for the words "with any witnesses for the defence, including prisoners of war" the words "He may also confer with any witnesses for the defence, including prisoners of war".

Mr. DROUGOV (Union of Soviet Socialist Republics) pointed out that the text of the new Article 95 had been considerably changed, and he could not express an opinion on it without seeing the new text in writing.

The CHAIRMAN stated that the following text would be submitted to the Soviet Delegation, to enable them to express their opinion on it at the next meeting:

*"Rights and means of defence"*

The prisoner of war shall be entitled to assistance by one of his prisoner comrades, to defence by qualified counsel of his choice, to the calling of witnesses and, if he deems necessary, to the services of a competent interpreter. He shall be advised of this right by the Detaining Power in due time before the trial.

Failing a choice by the prisoner of war, the Protecting Power shall be bound to find him an advocate, and shall have at least one week at its disposal for the purpose. The Detaining Power shall deliver to the said Power, on request, a list of persons qualified to present the defence. Failing a choice of counsel by the prisoner of war and the Protection Power, the Detaining Power shall appoint competent counsel to conduct the defence.

The defence counsel chosen by the Protecting Power or by the prisoner of war shall have at his disposal a period of two weeks at least before the opening of the trial, as well as the necessary facilities, to prepare the defence of the accused. He may, in particular, freely visit the accused and interview him in private. He may also confer with any witnesses for the defence, including prisoners of war. He shall have the benefit of these facilities until the term of appeal or petition has expired.

The indictment, as well as the documents which are generally communicated the accused by virtue of the laws in force in the armed forces of the Detaining Power, shall be communicated to the

accused prisoner of war in a language which he understands, and in good time before the opening of the trial.

The cost of defence shall be charged to the Power in whose service the prisoner of war is; where a prisoner of war has to meet a serious charge and that Power has no longer an effective Government, or where, in exceptional cases, effective communication with that Power cannot be established, the Detaining Power shall meet the necessary cost of the defence of that prisoner of war by a qualified lawyer.

The representatives of the Protecting Power shall be entitled to attend the trial unless this is, exceptionally, held in camera in the interest of State security. In such a case the Detaining Power shall advise the Protecting Power accordingly."

**Article 97 (Stockholm 96)**

Miss GUTTERIDGE (United Kingdom) drew attention to the new proposal, in the United Kingdom amendment (*see Annex No. 166, Article 95*) to Article 96 of the Stockholm draft, to take into account the case of judgment being given in the absence of the prisoner. It was a case which might occur in England under the existing procedure.

Mr. WILHELM (International Committee of the Red Cross) agreed that the English procedure must be taken into account, and proposed to add at the end of the first paragraph of Article 96 of the Stockholm draft the following sentence:

"and to the prisoner of war, if the judgment has been rendered in his absence".

On the other hand, he considered that notification to the spokesman must be retained in all cases.

Miss GUTTERIDGE (United Kingdom) and Mr. BAUDOY (France) accepted Mr. Wilhelm's amendment.

The CHAIRMAN did not want the amendment to the English text to create the impression that proceedings could take place in the absence of the prisoner. He proposed a modification of the English text involving no change in the French text.

He was also not satisfied with sub-paragraph (1) of the second paragraph of the Stockholm Article 96. For the words "The motives and wording of the judgment and sentence" he would prefer to read "The precise wording of the judgment and sentence".

Mr. DROUGOV (Union of Soviet Socialist Republics) approved the Chairman's proposal.

Miss GUTTERIDGE (United Kingdom) feared that this last amendment would not permit of all the information being obtained which it was desirable to obtain.

Mr. WILHELM (International Committee of the Red Cross) recalled that in too many cases the Protecting Power had been notified of a judgment without obtaining precise knowledge of the motives which prompted it. But the knowledge of such motives was of great importance, in particular for the Governments of distant lands, and especially in the case of the death sentence. That was the rea-

son why the authors of the Stockholm text had added the word "motives", and he urged that the word should be retained with the idea which it implied.

After a discussion between Miss GUTTERIDGE (United Kingdom), the CHAIRMAN and Mr. WILHELM (International Committee of the Red Cross) the Sub-Committee decided to prepare carefully a new text to indicate clearly what information the Protecting Power was entitled to ask for.

*The meeting rose at 1.00 p.m.*

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### ELEVENTH MEETING

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

*Chairman:* General Joseph V. DILLON (United States of America)

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#### Article 95 (*continued*)

Mr. DROUGOV (Union of Soviet Socialist Republics) stated that he could not accept the text proposed at the last meeting for the fifth paragraph of new Article 95. He did not think it desirable to include in the present Convention such details concerning the cost of defence; that was a matter which, generally speaking, was governed by the legislation of the different countries.

Miss GUTTERIDGE (United Kingdom) maintained her view. She thought it essential to insert a provision giving every prisoner who was not under the protection of a Protecting Power, or who for one reason or another had no government, the possibility of assuring his defence.

The CHAIRMAN, speaking in his capacity as Delegate of the United States of America, did not consider the question very important. The Convention of 1929 contained no similar provision, and no complaint on the subject had ever been lodged by countries holding prisoners of war. The United States Delegation would have no objection however to such a provision being inserted in the present Convention, in view of the fact that the latter went into greater detail than the preceding Convention.

Mr. BAUDOY (France) also thought the point was of minor importance. All Governments, which wished to aid their prisoners, provided for the costs of their defence.

Mr. WILHELM (International Committee of the Red Cross) thought it would be sufficient to add a precision which was found in the majority of legislative enactments, at the end of the second paragraph of the new text of Article 95 in the following terms: "and shall be responsible for the cost".

In reply to a question by Miss GUTTERIDGE (United Kingdom) he said that it was generally the country of origin which reimbursed the cost of defence to the Protecting Power. In a case where the country of origin had for the time being no government, the Protecting Power would bear the cost, and recover it later from the country of origin, when a Government was re-established there.

The CHAIRMAN wondered whether, in the absence of concrete cases of the contingency under discussion, it was any use introducing such a provision in the present Convention, particularly as the legislation of the United States of America and the legislation of several other countries made no provision for such cases.

Miss GUTTERIDGE (United Kingdom) admitted that Anglo-Saxon legislation did not cover the case. But the United Kingdom Delegation attached great importance to the insertion of the provision in the Convention. She could not but defer to the majority opinion of the Sub-Committee; but she wished a mention of her Delegation's amendment to be included in the Report to Committee II with a view to its reconsideration by the latter.

Mr. WILHELM (International Committee of the Red Cross) agreed with the United Kingdom Delegate as to the importance of the question. He recalled that the Government Experts had tried to solve it in 1947 by the addition of the third paragraph to Article 90 to the effect that "No prisoner of war may be convicted without having had an opportunity to present his defence and the assistance of qualified counsel". Would not that be sufficient safeguard?

The CHAIRMAN remembered that in 1947 the Government Experts had reached the same conclusion, and that finally the United Kingdom Delegate had admitted that the third paragraph of Article 90 contained a sufficient guarantee.

Miss GUTTERIDGE (United Kingdom) recognized that the third paragraph of Article 90 of the Stockholm text was satisfactory to a certain extent, but persisted in her opinion that it would be preferable to insert a more explicit provision in the Convention, and she wished her opinion to be recorded in the Report.

She reminded that in the course of a former discussion the members of the Sub-Committee had questioned whether it was desirable to impose an obligation on the Protecting Power and that they had hesitated to leave the words "be bound to" in the second paragraph of the text proposed for Article 95.

Mr. WILHELM (International Committee of the Red Cross) admitted that it was difficult to impose an obligation on a Protecting Power who was, in general, ready to do everything possible to help prisoners. He proposed to substitute for the words "shall be bound to find" the words "will find".

The Sub-Committee accepted this alteration and decided to adopt for the new Article 95 the text reproduced in the Summary Record of the Tenth Meeting with the two following modifications:

- (1) First sentence, second paragraph: instead of: "the Protecting Power shall be bound to find him an advocate", "the Protecting Power shall find him an advocate";
- (2) deletion of the fifth paragraph.

#### Article 97 (continued) (Stockholm 96)

The CHAIRMAN stated that the Sub-Committee had reached a certain amount of agreement concerning this Article at a former meeting.

After a discussion between Miss GUTTERIDGE (United Kingdom), Mr. WILHELM (International Committee of the Red Cross), the CHAIRMAN and Mr. DRUGOV (Union of Soviet Socialist Republics), the Sub-Committee decided to adopt the following text for the new Article 97:

##### *"Notification of judgments"*

Any judgment pronounced upon a prisoner of war shall be immediately reported to the Protecting Power in the form of a summary communication. This communication shall likewise be sent to the spokesman concerned if the sentence was not announced in his presence.

Furthermore, if a prisoner of war is finally convicted, the Detaining Power shall as soon as possible address to the Protecting Power a detailed communication containing:

- (1) The exact wording of the judgment;
- (2) a summarized report of any pre-trial inquiry and of the trial, emphasizing in particular the elements of the defence and of the prosecution;
- (3) indication, if he can, of the establishment where the sentence will be served.

The communications provided for in the foregoing paragraphs shall be sent to the Protecting Power at the address previously made known to the Detaining Power."

#### Article 96 (Stockholm 97)

Miss GUTTERIDGE (United Kingdom), speaking for the members of her Delegation, considered that the text adopted at Stockholm for Article 97 (old) was not sufficiently complete; which was why her Delegation had submitted an amendment containing four new paragraphs (*see Annex No. 167, Article 96*).

Mr. DRUGOV (Union of Soviet Socialist Republics) said that the Stockholm text contained all the requisite safeguards, and it was therefore unnecessary to insert in the new Article 96 the amendment proposed by the Delegation of the United Kingdom, which did nothing but reiterate the principles laid down at Stockholm.

Miss GUTTERIDGE (United Kingdom) recognized that this amendment might be shortened, but she still believed it would be good to retain certain points which it brought out.

The CHAIRMAN shared the view of the Soviet Delegate. He considered the Stockholm text to be sufficiently explicit, and saw no need to insert in an international Convention the details of the proposed amendment. The latter might indeed be dangerous, if it left any doubt as to the Protecting Power's interest in the prisoner after judgment had been pronounced in the first instance, of which there was no question in the present case.

Miss GUTTERIDGE (United Kingdom) was ready to accept Article 96 with slight changes of wording, if the Sub-Committee was satisfied that the Protecting Power would be informed, and if the means of defence as specified in Article 95 were equally applicable in the case of petition or appeal.

Mr. WILHELM (International Committee of the Red Cross) shared the point of view of the Soviet Delegate and of the Chairman. He drew the attention to the fact that neither the Stockholm text nor the text of the United Kingdom amendment took into consideration the situation in which a prisoner of war would find himself where the appeal was made, not by him, but by the prosecutor. It would be desirable to have a provision to cover such cases, for he feared that Article 95 (new) would not be applicable to them.

The CHAIRMAN, Mr. BAUDOY (France) and Miss GUTTERIDGE (United Kingdom) approved this proposal.

After a lengthy discussion it was decided to adopt the following text for the new Article 96:

*"Appeals*

Every prisoner of war shall have, in the same manner as the members of the armed forces of the Detaining Power, the right of appeal or petition from any sentence rendered with regard to him, with a view to the quashing or revising of the sentence or the reopening of the trial.

In no case may the sentence pronounced against a prisoner of war be made more severe on appeal or petition by the Prosecution."

Miss GUTTERIDGE (United Kingdom) wished a mention to be made in the Report that the Sub-Committee considered the United Kingdom amendment too detailed to be inserted in the Convention.

**Article 98 (Stockholm 99)**

Miss GUTTERIDGE (United Kingdom) explained that the text of the United Kingdom amendment (see Annex No. 170, Article 99) was essentially the same as the Stockholm text Article 99. Apart from slight changes of wording, the only difference was in the insertion of a provision concerning women prisoners of war.

The CHAIRMAN proposed the adoption of the Stockholm text as being more precise than the text of the United Kingdom amendment, but with the addition of the second paragraph of that amendment.

Miss GUTTERIDGE (United Kingdom) agreed to the Chairman's proposal, provided the heading of the Article proposed in the British amendment was retained.

The Sub-Committee accepted the proposal of the Chairman and the United Kingdom Delegate. The new Article 98 was accordingly adopted in the following form:

*"Imprisonment (Establishment and Regime)*

Sentences pronounced against prisoners of war after convictions regularly put into force, shall be served in the same establishments and under the same conditions as for members of the armed forces of the Detaining Power. These conditions shall in all cases conform to the requirements of health and humanity.

A woman prisoner of war against whom such a sentence has been pronounced shall be confined in separate quarters and shall be under the supervision of women.

However, prisoners of war sentenced to a penalty depriving them of their liberty shall retain the benefit of the provisions of Articles 68 and 116 of the present Convention. Furthermore, they shall be entitled to receive and dispatch correspondence, to receive at least one relief parcel monthly, to take regular exercise in the open air, to have the medical care their state of health may require, and the spiritual assistance they may desire. Penalties to which they may be subjected shall be in conformity with the provisions of Article 77, paragraph 3."

*The meeting rose at 12.45 p.m.*

TWELFTH MEETING

*Friday 20 May 1949, 10 a.m.*

*Chairman:* General Joseph V. DILLON (United States of America)

**Articles 72, 73, 74, 75, 76, 77 (new)**

The Sub-Committee decided to submit to Committee II, with certain minor Drafting changes, the texts adopted at previous meetings for Articles 72, 73, 74, 75, 76 and 77 (new).

**Articles 78 and 78A (new)**

On the proposal of the CHAIRMAN and Mr. DROUGOV (Union of Soviet Socialist Republics), the Sub-Committee decided to insert the two paragraphs of Article 78 A (new) between the first and second paragraph of Article 78.

**Articles 79 and 80 (new)**

The Sub-Committee decided to submit without alteration to Committee II the texts adopted at previous meetings for Articles 79 and 80 (new).

**Article 81**

The Sub-Committee decided to mention in its Report to Committee II that it had not examined Article 81 of the Stockholm text on the ground that it was not within its terms of reference.

**Article 82 (new)**

The Sub-Committee decided to submit to Committee II the text adopted at the Eighth Meeting for Article 82 (new), together with a note to the effect that for the third paragraph of Article 82 of the Stockholm text the Report of the Sub-Committee should be consulted.

**Articles 83 to 95 inclusive (new)**

The Sub-Committee decided to submit to Committee II, with certain minor Drafting changes, the texts adopted at previous meetings for Articles 83 to 95 inclusive (new).

**Article 96 (new)**

Mr. DROUGOV (Union of Soviet Socialist Republics) proposed to omit the words "on appeal by the prosecution" at the end of the second paragraph of Article 96 (new) (see Summary Record of the Eleventh Meeting). He was of the opinion that it was unnecessary to press the point, since the sentence inflicted on a prisoner of war should in no case be more severe.

Miss GUTTERIDGE (United Kingdom) reminded the meeting that the new paragraph had been inserted at the request of Colonel Phillimore in order to avoid the recurrence of incidents such as had taken place in Germany during the last war. She was for keeping the sentence. Its omission would require a change in the legislation of the United Kingdom, and it was not certain that the United Kingdom Government would agree to that — in which case the latter would only be able to ratify the present Convention with a reservation on the issue in question.

Mr. BAUDOY (France) said that the new paragraph entailed more drawbacks than advantages for prisoners of war. It might, in particular, cause Courts to pass maximum sentences in the first instance.

The Sub-Committee decided to delete the paragraph, and to state the reasons for its deletion in the Report to Committee II.

**Articles 97 and 98 (new)**

The Sub-Committee decided to submit to Committee II, with certain minor Drafting changes, the texts adopted at the previous meeting for Articles 97 and 98 (new).

*The meeting rose at 1 p.m.*

THIRTEENTH MEETING

Friday 20 May 1949, 3 p.m.

Chairman: General Joseph V. DILLON (United States of America)

**Preparation of the Report of the Sub-Committee on Penal Sanctions to Committee II**

The Sub-Committee, with a view to the preparation of a Report to be drafted by Mr. Baudouy (France) and Mr. Wilhelm (International Committee of the Red Cross), reconsidered the decisions taken at previous meetings on Article 72 to 99.

The decisions in question were as follows:

New Article 72 was a redraft of the Stockholm text, Article 73 of the latter constituting its final paragraph.

New Article 73 was composed of the second paragraph of Article 83, detached from its context in such a way as to form a new Article. The Sub-Committee considered this order more logical. As it formerly stood, it related only to escapes; as remodelled, it related to the whole chapter.

New Article 74 was a redraft of Article 75 of the Stockholm text, strengthening the second paragraph of the latter by adding the words "in particular".

New Article 75 was article 74 of the Stockholm text. The Sub-Committee had discussed the Article, but had decided that, because of its relation to the subject of war crimes, it would be better to refrain from any attempt at redrafting until it had been discussed in the main Committee.

The Sub-Committee stated that if it had refrained from considering the proposals with respect to penal and disciplinary sanctions put forward in the Memorandum by the Netherlands Government, it was for the reason that it thought those proposals were closely associated with the subject of war crimes, and were consequently outside the scope of the Sub-Committee.

New Article 76 was the same as Article 76 of the Stockholm text. The amendment submitted by the Delegation of the Netherlands in order to place this Article between Articles 90 and 91 was rejected. Article 76 was retained in its former position as a general Article applicable both to judicial and disciplinary matters.

New Article 77 was the same as Article 77 of the Stockholm text with certain minor drafting changes. Although the second sentence of the second paragraph was permissive and not mandatory, the Delegate of the United Kingdom feared that this Article might create difficulties in the English Courts. The latter would not be able to impose less than the minimum penalties prescribed. In the same sentence, the Sub-Committee had omitted the words "kind of penalty" which had preceded the words "the minimum penalty" as it considered that they were liable to lead to confusion.

New Article 78 was the same as Article 78 of the Stockholm text, with the insertion of two paragraphs concerning the nature and execution of punishment in the case of women prisoners of war.

New Article 79 was the same as Article 79 of the Stockholm text, with changes of wording in sub-paragraph (1) of the first paragraph in order to determine the maximum fine to be imposed on prisoners of war.

New Article 80 now grouped the provisions of the second paragraph of Article 85, and those of Articles 80 and 87 of the Stockholm text, which all dealt with limitations on disciplinary punishment.

New Article 81 had not been dealt with, as it did not fall within the terms of reference of the Sub-Committee.

Substantial changes had been made in the new Article 82.

The first paragraph of Article 82 of the Stockholm text had been redrafted, and the third paragraph deleted. The first paragraph of Article 85 of the Stockholm draft had been incorporated as the second paragraph in new Article 82. The third paragraph of new Article 82 was the same as the second paragraph of Article 82 of the Stockholm text, with a slight change of wording.

A discussion took place with regard to the omission of the third paragraph of Article 82 of the Stockholm text.

Mr. DROUGOV (Union of Soviet Socialist Republics) held that the Sub-Committee had no mandate to take a final decision with regard to the categories of persons mentioned in the third paragraph (prisoners of war who have been released from internment, likewise to members of an army that has capitulated and who have been sent home). His Delegation considered that it was a point of major importance to have those persons covered by the Convention.

The CHAIRMAN thought it was a question which would be better included under Article 3, dealing with the categories of persons protected by the Convention.

Mr. DROUGOV (Union of Soviet Socialist Republics) objected that the categories specified in the last paragraph of Article 82 were not included in Article 3 as it stood. If they were not included in Article 82, they ran the risk of being dropped altogether from the protection afforded by the Convention.

The CHAIRMAN replied that it was only partial protection that would be afforded to the categories in question if they were mentioned in Article 82; it would weaken other parts of the Convention to take half measures of this kind, and would add considerably to the difficulty of applying it where large numbers of prisoners were taken.

Mr. DROUGOV (Union of Soviet Socialist Republics) proposed that it should be mentioned in the Report that the third paragraph had been only provisionally deleted pending the decision of the Special Committee in regard to the different categories mentioned in Article 3.

The Sub-Committee agreed to this proposal.

New Article 83 was Article 83 of the Stockholm text. Extensive drafting changes had been made, but no change of substance.

New Article 84 was Article 84 of the Stockholm draft.

New Article 85 applied the principle of assimilation to members of the armed forces of the Detaining Powers. Substantial drafting changes had also been added to Article 85 of the Stockholm draft. The first sentence of the first paragraph had been removed to Article 86.

New Article 86. The first sentence of the first paragraph of Article 85 of the Stockholm text had been incorporated in the new Article, and three new paragraphs had been added. The first paragraph of the former Article 86 became the second paragraph of the new Article 86.

The first of the three new paragraphs prohibited the delegation of disciplinary powers to a prisoner

of war; that principle had been implicit in the former Article, but it had been considered necessary to express it clearly.

The second new paragraph amplified what was briefly stated in the Stockholm text as to the rights of the accused to defend himself in a disciplinary action.

The third new paragraph required a record to be kept of disciplinary punishment, open to inspection by representatives of the Protecting Power.

New Article 87 was a new Article containing the provisions of the first three paragraphs of Article 88 of the Stockholm text with a new paragraph added concerning the place of disciplinary punishment of female prisoners of war.

New Article 88 was Article 89 of the Stockholm draft with certain drafting changes. A new paragraph had been added to ensure that prisoners of war undergoing confinement should still enjoy the benefits of the Convention.

New Article 89 was Article 90 of the Stockholm text without substantial change.

New Article 90 was Article 91 of the Stockholm text without substantial change.

New Article 91 was Article 98 of the Stockholm text without substantial change. The Sub-Committee had considered that this was a more logical position for Article 98.

New Article 92 of the Stockholm text had been redrafted in the interests of clarity. No new principle had been introduced.

New Article 93 was Article 93 of the Stockholm draft with certain drafting changes. It also introduced a limitation of three months on pre-trial confinement, in order to prevent prisoners of war being left in confinement indefinitely because of the inability of the Detaining Power to secure the necessary evidence to bring the case to trial. Release from pre-trial confinement under this Article would not preclude re-trial at a later date. The principle of assimilation to members of the armed forces of the Detaining Power had also been introduced in the first paragraph.

Miss GUTTERIDGE (United Kingdom) reserved the right of her Delegation to raise the question of war crimes when the Article came up for discussion in the main Committee.

New Article 94 was Article 94 of the Stockholm text without substantial change.

New Article 95 was Article 95 of the Stockholm text. In the third paragraph, in order to make the Article conform to the law of most of the European Continental countries, the requirement that witnesses for the defence should be interviewed in private had been changed to permit interviews, but without insisting on their being held in private.

In the course of the discussion on the Article, the United Kingdom Delegate had suggested the inclusion of a paragraph with regard to costs of the defence. The suggestion had been rejected by a majority of the Sub-Committee.

An amendment submitted by the Delegation of the Netherlands was approved by the Sub-Committee, in order to:

- (1) replace at the beginning of the third paragraph the words "The defence counsel chosen by the Protecting Power or by the prisoner of war" by the words "The defence counsel of the prisoner of war";
- (2) add at the end of the fourth paragraph the following sentence: "The same communication in the same circumstances shall be made to the defence counsel for the prisoner of war".

The text of Article 95 (*see Summary Record of the Tenth Meeting*), was modified accordingly.

New Article 96 was Article 97 of the Stockholm text without substantial change.

Miss GUTTERIDGE (United Kingdom) considered that the text of Article 96 was not full enough, as it contained no reference to the notification of appeals to the Protecting Power or to the legal

assistance for the accused. It further afforded no assurance that the rights of the accused and the means of defence should be the same as at the first trial.

New Article 97 was Article 96 of the Stockholm text without substantial change. In order to make sub-paragraph (1) of the second paragraph conform to the ordinary legal procedure of the majority of countries, the word "precise" was substituted for the word "motives". In sub-paragraph (2) the words "and the prosecution" had been added.

New Article 98 was Article 99 of the Stockholm text with no substantial change.

The CHAIRMAN noted that certain amendments submitted by certain delegations to the Articles above-mentioned had been considered by the Sub-Committee as far as the text of the amendments in question was available at the time of the discussion, but it had not seen its way to recommend their adoption after discussion.

The CHAIRMAN said that the Sub-Committee had still to discuss Articles 105 and 109 at its next meeting.

*The meeting rose at 5.40 p.m.*

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## FOURTEENTH MEETING

*Wednesday 25 May 1949, 3 p.m.*

*Chairman:* General Joseph V. DILLON (United States of America)

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### **Draft Report of the Sub-Committee on Penal Sanctions to Committee II**

"The Sub-Committee entrusted by Committee II with the examination of the section of the Draft Convention relative to penal and disciplinary sanctions applicable to prisoners of war, has concluded examination of Articles 72 to 99. The Delegates of the United States of America, of France, of the United Kingdom and of the Union of Soviet Socialist Republics and the Representative of the International Committee of the Red Cross were present. The Sub-Committee, after exhaustive scrutiny of the

Draft established at Stockholm and of the amendments submitted by various delegations, herewith submits the following comments on each Article:

Article 72 (new) reproduces the first, second and third paragraphs of Article 72 of the Stockholm Draft and Article 73 of the same Draft.

Article 73 (new) reproduces the substance of the second paragraph of Article 83 of the Stockholm Draft. The Sub-Committee considers it desirable that the recommendations to leniency contained therein should apply to the whole Chapter, whereas in the original Draft they apply to escapes only.

Article 74 (new) is identical with Article 75 of the Stockholm Draft. The addition, at the close of the second paragraph, of the words "in particular" has, however, reinforced the Article as a whole.

Article 75 (new) submitted to the examination of the Sub-Committee consisted of the text of Article 74 of the Stockholm Draft. On account of the close relation of the subject of this Article with the question of war crimes, it was considered impossible to deal with it before the Committee had itself examined the whole of the question.

The proposals submitted by the Netherlands Government in their Memorandum did not appear to be within the Sub-Committee's terms of reference.

Article 76 (new) is the same text as Article 76 of the Stockholm Draft. An amendment submitted by the Netherlands Delegation was rejected.

Article 77 (new) is, except for a few slight alterations of wording, identical with Article 77 of the Stockholm Draft.

The Delegation of the United Kingdom pointed out that certain difficulties might arise before United Kingdom courts, which would be unable to apply penalties inferior to the minimum penalty prescribed, as indicated in the second sentence of the second paragraph.

The word "war" was deleted from this sentence, as in the opinion of the Sub-Committee, it constituted a danger for prisoners.

Article 78 (new) henceforth consists of four paragraphs. The first and fourth are those of Article 78 of the Stockholm Draft. The second and third, which are entirely new, cover women belonging to the armed forces, who are taken prisoner.

Article 79 (new) is the same as Article 79 of the Stockholm Draft except for a slight alteration intended to specify the maximum amount which can be imposed as fines on prisoners of war.

Article 80 (new) now contains four paragraphs. The first is taken from the first paragraph of Article 80, and from the second paragraph of Article 85 of the Stockholm Draft. The second paragraph is the same as the second paragraph of Article 80 of the Stockholm Draft. The third and fourth paragraphs consist of the text of Article 87 of the Stockholm Draft.

Article 81 submitted to the Sub-Committee for examination did not appear to be within its terms of reference. It was not considered.

Article 82 (new) now consists of three paragraphs. The first is the first paragraph of Article 82 of the Stockholm Draft and the second is the first paragraph of Article 85 of the same Draft.

The third paragraph gave rise to a lengthy discussion and the second part of the Stockholm Draft text was deleted.

The Delegate of the Union of Soviet Socialist Republics (Mr. Drougov) was of opinion that this was an important matter of principle.

The Chairman, Delegate of the United States of America (General Dillon), considered that the case of released prisoners should be included in Article 3.

The Soviet Delegate raised the objection that, as this category was not yet included in Article 3, its exclusion from Article 82 might entail no protection whatsoever.

General Dillon considered that such protection would be merely partial, and that it would weaken the other parts of the Convention and would add considerably to difficulties of application where a large number of prisoners of war were concerned.

The Soviet Delegate proposed that it should be mentioned in the Sub-Committee's Report that the second part of the third paragraph was only provisionally deleted, and on condition that the persons concerned should be included in Article 3.

All the members of the Sub-Committee agreed to this solution.

Article 83 (new), despite a large number of alterations in wording, remains substantially the same as Article 83 of the Stockholm Draft.

Article 84 (new) is the same as Article 84 of the Stockholm Draft.

Article 85 (new) contains a new first paragraph establishing the principle of giving prisoners an equivalent status to members of the armed forces of the Detaining Power. The first sentence of the first paragraph is embodied in Article 86.

Article 86 (new): the first paragraph has been taken from the former Article 85, the second paragraph consists of the first paragraph of the former Article 86 and finally, three new paragraphs have been added:

They bear on:

- (a) the fact that it is forbidden to delegate disciplinary powers to a prisoner;
- (b) the right of the accused to defend himself;
- (c) compulsory keeping of a record of disciplinary penalties, which record should be available to the representatives of the Protecting Power.

Article 87 (new) contains the first three paragraphs of Article 88 of the Stockholm text and also a new paragraph concerning disciplinary premises for women prisoners.

Article 88 (new) contains a new first paragraph relative to the application of the Convention to prisoners serving disciplinary sentences. The second paragraph was contained in the third paragraph of Article 88 of the Stockholm Draft. The new third, fourth and fifth paragraphs were the first, second and third paragraphs of Article 89 of the Stockholm Draft.

Article 89 (new) is Article 90 of the Stockholm Draft.

Article 90 (new) is Article 91 of the Stockholm Draft.

Article 91 (new) is Article 98 of the Stockholm Draft, which the Sub-Committee considered more logical to transfer to this part of the Convention.

Article 92 (new) is now drafted more clearly without any alteration of substance.

Article 93 (new) is Article 93 of the Stockholm Draft, reworded.

Preventive imprisonment has been limited to three months in order that prisoners may not be detained indefinitely owing to the impossibility of the Detaining Power's obtaining the necessary proofs before sentence. The end of preventive imprisonment will not prevent a resumption of the trial at a later date. The principle of giving prisoners of war a status equivalent to that of members of the armed forces of the Detaining Power has also been introduced. The Delegate of the United Kingdom (Miss Gutteridge) has reserved the right for her Delegation to raise the question of war crimes during the discussion of this Article by Committee II.

Article 94 (new) is Article 94 of the Stockholm Draft.

Article 95 (new) contains certain alterations due on the one hand to the adoption of the Netherlands amendment (*see Annex No. 172*) and on the other hand to the necessity for taking into account certain European laws which prohibit conversations between the witnesses and the defendants, unless they are in the presence of the examining magistrate.

The Delegate of the United Kingdom asked that a paragraph relative to the costs of the defence should be included. The proposal was rejected by the other members of the Sub-Committee.

Article 96 (new) is Article 97 of the Stockholm Draft. The Delegate of the United Kingdom did not consider that this text was sufficiently complete, as it contained no mention of the notification of Appeals to the Protecting Power. Further, it did not guarantee the rights of the accused and the means of defence. These should remain the same as those provided for at the initial trial.

Article 97 (new) is Article 96 of the Stockholm Draft. In order to coordinate sub-paragraph 1 with certain points of Anglo-Saxon law, the English word "precise" is substituted for "motives and" and the words „and the prosecution" have been added.

Article 98 (new) is Article 99 of the Stockholm Draft."

The CHAIRMAN stated that the amendments, submitted by a large number of delegations, had all been carefully examined. A number of them had been adopted by the Sub-Committee, but this had not been possible in the case of some of the others at the present stage of the work of the Conference.

Miss GUTTERIDGE (United Kingdom) submitted several proposals for modification of the Report, in particular for the insertion in the second paragraph of the comment on Article 77 (new) after the words "to the minimum penalty prescribed" of the words "for a determined infraction".

She further proposed the addition of the words "in sub-paragraph (2)" at the end of the comment relating to Article 97 (new).

The above proposals were adopted.

A discussion arose on the subject of the observations contained in the Draft Report in regard to Article 82 (new).

Mr. BELLAN (France) proposed that the second paragraph in regard to Article 82 (new) should read as follows:

"The third paragraph of the Stockholm text gave rise to lengthy discussions, and was finally dropped in the light of the following considerations."

The new wording was approved.

Miss GUTTERIDGE (United Kingdom) thought that the provision to the effect that "Preventive imprisonment is limited to three months" in the second paragraph in regard to Article 93 (new) was not happily worded. It should be specified that the reference was to the period of imprisonment preceding the opening of the trial.

She further suggested that the expression "proofs before sentence" in the same paragraph should be more explicit, and proposed to read instead: "proofs necessary before the hearing begins".

The CHAIRMAN said that the last paragraph of the Report contained a statement ascribed to him which was not quite accurate. He desired

to omit at the close of the paragraph the words "but this had not been..." and to substitute the words "other amendments submitted subsequently had not been examined". He quoted the case of an Australian amendment.

Miss GUTTERIDGE (United Kingdom) explained that the Delegation of Australia, after consultation with that of the United Kingdom, had withdrawn its amendment, as it was very similar to that submitted by the United Kingdom.

The CHAIRMAN suggested that the Secretary should read all the amendments submitted, so as to inform the Sub-Committee as to which amendments had not been taken into account.

Mr. WURTH (Secretary) read the amendment submitted by the Australian Delegation to omit the second paragraph of Article 88 (old) and to substitute the following:

"The conditions of confinement shall not be prejudicial to the health of any prisoner of war undergoing confinement. In particular the Detaining Power shall ensure that adequate bedding is provided, and that the place of confinement is hygienic, free from damp, adequately heated and lighted, particularly between nightfall and "lights-out", and of sufficient size to provide adequate cubic air space for each person."

Miss GUTTERIDGE (United Kingdom) imagined that the amendment was intended to provide a more detailed description of the required conditions of captivity than the Sub-Committee had considered necessary in Article 87 (new)—(old Article 88).

The CHAIRMAN had certain objections, but was not opposed to the adoption of the amendment.

Mr. DROUGOV (Union of Soviet Socialist Republics) pointed out that the Australian amendment was merely a repetition of what was already laid down in Article 23 (Quarters). He wondered whether it might not be simpler merely to refer back to the latter Article.

Mr. BELLAN (France) agreed, but thought the reference should include Article 27 (Hygiene). He proposed that the second paragraph of Article 87 (new) should be replaced by the following new wording:

"All premises in which disciplinary punishments are undergone shall conform to sanitary requirements in accordance with the provisions of Article 23: Prisoners of war undergoing

punishment shall be afforded facilities to enable them to keep themselves in a state of cleanliness in accordance with the provisions of Article 27".

A corresponding correction should therefore be inserted in the comments on Article 87 (new) of the Report. He proposed to insert the words "with the principles of the amendment submitted by the Australian Delegation" after the word "Stockholm" in the second line of the paragraph.

Mr. DROUGOV (Union of Soviet Socialist Republics) reserved the right, the CHAIRMAN assenting, to offer comments and suggestions as occasion might offer.

Mr. BELLAN (France) thought it might be clearer to indicate that Article 87 (new) would be composed in future of:

- (1) the first paragraph of Article 88 of the Stockholm text;
- (2) the second paragraph of Article 88 of the Stockholm text, as modified to embody the principles of the Australian amendment;
- (3) the second sentence of the third paragraph of the Stockholm text;
- (4) a new paragraph covering disciplinary premises for women prisoners of war.

Mr. WURTH (Secretary) read the amendment submitted by the Chinese Delegation, adding the following sentence to the first paragraph of the Stockholm text of Article 72:

"... as well as those which may come into force with particular reference to them as a result of the war".

Mr. BELLAN (France) pointed out that the subject matter of the Chinese amendment was already covered by the insertion in Article 72 (new) of the text of the old Article 73.

The Sub-Committee decided to reject the Chinese amendment on the ground that its substance was already embodied in the Convention.

Mr. WURTH (Secretary) read the amendment submitted by the Canadian Delegation to substitute the word "credit" for "pay" in sub-paragraph (1) of the first paragraph of Article 79 after the words "fifty percent of the monthly".

The CHAIRMAN observed that the word "credit" had a very much wider scope than the word "pay", and proposed rejection of the amendment.

It was thus decided.

Mr. WURTH (Secretary) read the amendments to Article 73 and 77 submitted by the Delegation of India.

Both amendments were rejected as having been already examined by the Sub-Committee.

Mr. WURTH (Secretary) read the amendment submitted by the Delegation of India to add to the numbering of Article 79 of the Stockholm text the following:

“Disciplinary penalties will be admissible where the punishable acts can be ascribed to the camp as a whole.”

The amendment was rejected, after Mr. BELLAN (France) and Mr. DROUGOV (Union of Soviet Socialist Republics) had pointed out that it might be taken to introduce into the Convention the idea of collective punishment.

Mr. WURTH (Secretary) read amendments to Articles 92, 93, 94 and 95 (old) submitted by the Delegation of India.

All the above amendments were rejected.

The Netherlands amendment to Article 76 was rejected as having been already examined.

Mr. WURTH (Secretary) read the Netherlands amendment to Article 95 (old) as follows:

Paragraph 3: Replace the words “The defence counsel chosen by the Protecting Power or by the prisoner of war” by the words “The defence counsel of the prisoner of war”. The last sentence of this paragraph to be worded as follows: “He shall have the benefit of these facilities until the term of appeal, or revision has expired”.

Paragraph 4: Add the following second sentence: “The same communication in the same circumstances shall be made to the defence counsel for the prisoner of war”.

The CHAIRMAN observed that the substance of the first part of the amendment had been included in the third paragraph of Article 95 (new).

The Sub-Committee decided to add the suggestion made under the heading “Paragraph 4” to the close of the fourth paragraph of the Article.

Miss GUTTERIDGE (United Kingdom) proposed in the interests of conformity to omit the second paragraph of Article 95 (new).

Mr. WURTH (Secretary) read the Netherlands amendment to insert between Articles 95 and 96 (old) a new Article worded as follows:

“All judgments shall be rendered in a judicial session and in the presence of the accused; the

latter shall be informed of his right to appeal provided by Article 97.”

Miss GUTTERIDGE (United Kingdom) doubted whether the first sentence of the Netherlands amendment could be applied in Great Britain.

The CHAIRMAN observed that the point had already been raised during the discussion of (new) Article 97 (Notification of Judgments).

Mr. WILHELM (International Committee of the Red Cross) said that the Netherlands amendment raised a new issue, namely the obligation to inform convicted prisoners of war of their right to appeal (second sentence of the amendment; see Articles 97 (old) and 96 (new)).

The CHAIRMAN said that, since prisoners of war had counsel for their defence, the latter would no doubt take all necessary measures on behalf of their clients. The insertion of a specific provision to that effect appeared unnecessary.

Mr. BELLAN (France) thought it preferable to add a clause to Article 96 (new) stipulating that the prisoner should be informed of channels of appeal and of the term of appeal, if only to cover the case of sentences passed in *absentia rei*.

The CHAIRMAN agreeing, the Sub-Committee decided that the following sentence should be inserted in Article 96 (new):

“He shall be fully informed of his right to appeal and likewise of the time-limit allowed for exercise of the said right.”

Mr. WURTH (Secretary) read the Netherlands amendment to Article 96, which proposes to add to the second paragraph:

“(4) Notification of the prisoner’s right to appeal, for the quashing or revision of the sentence rendered against him, and of his intention to make use of this right or not.”

A lengthy discussion ensued on this amendment. All the members of the Sub-Committee agreed that it was highly desirable that the Protecting Power should be informed of the possibility for a condemned prisoner of war to appeal, and of his intentions in the matter. It was further pointed out that the French and English texts did not agree in the second paragraph of Article 97 (new) = Article 96 (old). The French text said: “en cas de condamnation du prisonnier de guerre” (in the case of condemnation of the prisoner of war), whereas the English text said: “if a prisoner of war is finally convicted”.

The Sub-Committee decided to re-examine the whole of Article 97 (new) at a future meeting.

Mr. DROUGOV (Union of Soviet Socialist Republics) further drew the meeting's attention to an error in the Report in the third paragraph of Article 77 (new). It was not the word "war" which was

deleted, but the words "the kind of penalty of ..." (of the said penalty).

The CHAIRMAN fixed the next meeting for Friday, May 27 at 3 p.m.

*The meeting rose at 6 p.m.*

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## FIFTEENTH MEETING

*Friday 27 May 1949, 3 p.m.*

*Chairman:* General Joseph V. DILLON (United States of America)

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### Article 97 new (former 96)

Mr. WILHELM (International Committee of the Red Cross), with the object of adjusting the differences of opinion which had arisen among the delegates regarding the modification of this provision in the spirit of the Netherlands amendment (*see Summary Record of the Fourteenth Meeting*), proposed the following compromise text:

"Any sentence passed upon a prisoner of war shall immediately be reported to the Protecting Power and to the spokesman concerned, in the form of a summary communication. This communication shall also mention the means of appeal open to the prisoner and the time-limit provided for this purpose.

Furthermore, in the case of conviction, and even in the case of a sentence pronounced in the first instance if the death penalty is involved, the Detaining Power shall as soon as possible address to the Protecting Power a detailed communication containing ..." (the remainder of the article is unaltered).

After a discussion during which the members of the Sub-Committee considered the various reasons which might be advanced for or against the above text, and whether another solution could be found corresponding better to the particular requirements of each Delegation, as regards Article 97, the Sub-Committee decided:

(1) in the first paragraph, to retain the wording of the Stockholm Draft, as amended by the Sub-Committee (*see Summary Record of the Eleventh Meeting*);

(2) in the second paragraph, to accept the text proposed by the Representative of the I.C.R.C.

### Examination of amendments to Articles 72 to 99 (*continued*)

The Sub-Committee passed on to the study of the amendments submitted in the Memorandum of the Greek Government.

The amendment to Article 72 was rejected as having already been taken into account. (The Greek Government had asked for the substitution of the third paragraph by the following:

"The provisions of the present Convention are, however, „controlling”.)"

The amendment to Article 81 could not be considered as the provision in question was not within the terms of reference of the Sub-Committee.

The amendment to Article 90 was rejected as having already been taken into account, at least partially. (The Greek Government had asked:

(1) to insert in the first paragraph the words "of the Detaining Power" between the words "by the laws" and "in force";

(2) to insert this Article in Section I, General Provisions, as Article 74.)

The amendment to Article 91 was rejected as, in the Sub-Committee's opinion, the danger to which the amendment referred, did not exist.

The amendment to Article 95, substituting in the third paragraph the last sentence by: "He shall

have the benefit of these facilities until the term of appeal or petition for reprieve has expired", was also rejected, its substance having already been embodied in Article 95 (new).

The Sub-Committee then considered the amendment submitted to Article 79, first paragraph, by the Delegation of Finland reading as follows:

"Punishment by confinement, which has proved entirely ineffective in practice, should be deleted from the list contained in this Article. On the other hand, the Government of Finland is in agreement with the International Red Cross Committee's suggestion that the additional work rejected by the XVIIth Conference should be added to this list."

Mr. BELLAN (France) said that he fully appreciated the reasons underlying the Finnish amendment. It was a fact that confinement, instead of constituting a punishment for a prisoner of war, often meant a period of rest for him. Additional work, it must be remembered, might degenerate into actual cruelty in certain cases. He was therefore of the opinion that the present text should be retained.

Mr. WILHELM (International Committee of the Red Cross) pointed out that it was inaccurate to say that the International Committee of the Red Cross had advocated the inclusion of additional work among disciplinary penalties. In order to avoid all possible abuse in connection with disciplinary punishment, the Government Experts who met at Geneva in 1947 thought it useful to specify the various penalties to which prisoners might be liable. The list established included additional work, but the penalty was surrounded by all requisite safeguards to prevent it becoming inhuman, brutal or detrimental to the health of prisoners of war.

Despite these safeguards the Sub-Committee rejected the said amendment.

The CHAIRMAN then stated that all the amendments concerning the articles relative to penal sanctions (Articles 72 to 99 of the Stockholm text) had been examined. He mentioned, however, the suggestions put forward by the Government of the Netherlands in their Memorandum. The purpose of these suggestions was the embodiment in the Convention of provisions concerning trials for violations of the laws and customs of war committed by prisoners of war prior to their capture. In the Chairman's opinion this matter should not be examined by the Sub-Committee, as it was not within its terms of reference. He reminded the Meeting that at the last Meeting the Delegate of the Union of Soviet Socialist Republics had reserved the right

to make comments and suggestions of a general nature and called upon him to speak.

Mr. DROUGOV (Union of Soviet Socialist Republics) said that he had already made a certain number of comments. He wished, however, before submitting further observations, to have time to examine the final Report to be submitted.

The CHAIRMAN requested Mr. BELLAN (France) and Mr. WILHELM (International Committee of the Red Cross) to draw up the Sub-Committee's final Report on the work done and to submit it two or three days before the forthcoming Meeting to enable all the members of the Sub-Committee to examine it at leisure.

### Articles 105, 108 and 109

The CHAIRMAN was of the opinion that the Sub-Committee could now begin its examination of Articles 108 and 109, which were within its terms of reference. This would, however, entail consideration of Article 105, the study of which had been entrusted to the Special Committee of Committee II.

The United Kingdom Delegation had submitted four amendments:

One suggested the deletion of Article 105, and its replacement by a new Article 109A to follow the present Article 109;

the following suggested the deletion of the first, second and third paragraphs of the present Article 109;

the two last amendments proposed texts for two new Articles, 109A (already mentioned) and 109B, to follow the present Article 109.

The question of the deletion of the present Article 109 and the substitution for it of new provisions is closely connected with the question of the deletion of Article 105, the examination of which was entrusted to the Special Committee. A lengthy discussion followed to determine the procedure to be adopted by the Sub-Committee for the examination of the problem as a whole without exceeding its terms of reference, which included only Articles 108 and 109.

The CHAIRMAN asked the Italian Delegation for their opinion on the matter.

General RODA (Italy) suggested that Articles 105 and 109 should be left on one side and that Article 108, on which he wished to submit an amendment, should be considered.

The CHAIRMAN supported this suggestion.

General RODA (Italy) stated that he considered it desirable to modify the fourth paragraph of this Article as follows. The costs of repatriation of prisoners of war captured outside their national territory shall be borne by the Detaining Power as far as the place where the prisoners were captured; from thence, such costs shall be borne by the home Power (or by the Power served) to the place of repatriation. There existed, however, a somewhat similar text drafted by the International Committee of the Red Cross.

Mr. WILHELM (International Committee of the Red Cross) said that the I.C.R.C. had not submitted an amendment. At the Stockholm Conference, he had been requested to draft a model agreement to be attached to the Convention (Fourth paragraph). For the reasons already set forth, the Committee had not drafted the text in question. They had, however, drafted a working text containing certain general principles. Mr. Wilhelm read the text referred to (*see Annex No. 174*).

Mr. BELLAN (France) said that the above wording, although of considerable interest did not seem to him to go far enough, and suggested the following solution in cases where the two countries concerned were not contiguous: Costs shall be borne by the Detaining Power as far as its own frontiers; the costs across a country or countries through which the repatriates only travel in transit shall be borne, one half by the Detaining Power and one half by the Power on which the prisoners of war depend; the costs from the frontiers of the Power on which the prisoners of war depend to their destination shall be borne by that Power.

Miss GUTTERIDGE (United Kingdom) too was not entirely satisfied with the text of the International Committee of the Red Cross, and suggested the following alteration to the wording of the fourth paragraph: Delete the second sentence of this paragraph and replace it by the following:

"In any other case the Powers concerned shall agree on the division of the costs entailed by the repatriation of prisoners of war."

The CHAIRMAN pointed out to the Representative of the International Committee of the Red Cross

that in certain cases such as those provided for in (b) figure 2 of the I.C.R.C. text, for instance where prisoners were captured in the Colonies, the costs of repatriation when passing through the region where the prisoners had been captured might greatly exceed the costs of repatriation from the country of the Detaining Power direct to their country of origin.

Mr. WILHELM (International Committee of the Red Cross) explained that in such cases repatriation should be carried out by the most direct route, but that the costs should be shared by the two Powers concerned in proportion to what they might have been, had repatriation taken place through the region where the prisoners had been captured. He also recalled that the text of the I.C.R.C. was only a working document to allow for the easier and speedier conclusion of private agreements along the lines favoured by the Delegate of the United Kingdom.

Mr. DROUGOV (Union of Soviet Socialist Republics) said that further difficulties might arise from the implementation of the I.C.R.C. text, and thought that the solution by special agreement was the only one possible in practice.

General RODA (Italy) supported the text of the I.C.R.C. excepting as regards the eventuality provided for under (b) figure 1. In the latter case he would have preferred the solution suggested by the Delegate of France.

The CHAIRMAN asking if the Stockholm text should be altered, Mr. WILHELM (International Committee of the Red Cross) replied that, since the text referred to a model agreement which did not exist, it was impossible to do otherwise.

Mr. BELLAN (France) supported the opinion expressed by the Representative of the I.C.R.C. and, after again stressing the difficulty of arriving at a model agreement on the matter, proposed that the meeting should adjourn to give Delegates time to think over the problem.

The other members of the Sub-Committee supported this suggestion.

*The meeting rose at 6 p.m.*

SIXTEENTH MEETING

Wednesday 1 June 1949, 3 p.m.

Chairman: General Joseph V. DILLON (United States of America)

**Articles 105, 108 and 109** (*continued*)

The CHAIRMAN said that the Chairman of Committee II had asked him, if the Sub-Committee agreed, to discuss Article 105 without it being formally referred to them.

There being no objection, it was decided to consider the Article in conjunction with Articles 108 and 109.

The CHAIRMAN said the Delegate of Italy had a proposal to make on the question of costs of repatriation.

Mr. MARESCA (Italy) said that the addition of a fourth paragraph to Article 108 at Stockholm had a definite object. The Italian Delegate distinguished three classes of prisoners: those taken in the home country, those taken in enemy territory and those taken in territory which was that of neither the home or the enemy country. He gave examples of the application of Article 108 to all three.

After considerable discussion, the CHAIRMAN drew attention to the fact that the Delegates present with the exception of those of Italy and Austria, who had been specially invited for the present meeting, all represented Occupying Powers.

It was agreed on the CHAIRMAN's proposal to inform the Chairman of Committee II that the Penal Sanctions Sub-Committee considered Articles 105, 108 and 109 should be referred to the *ad hoc* Committee; it was felt that the Articles would be more appropriately considered by the latter Committee which was constituted on a wider basis of representation.

**Draft Report to Committee II** (*continued*)

Miss GUTTERIDGE (United Kingdom) thought it might be better to enlarge the comment on Article 96 (new). The following text was approved:

"Article 96 (new) is Article 97 of the Stockholm text. The Delegate of the United Kingdom did not consider this text sufficiently complete in that it does not provide that the prisoner of war shall be informed as to his rights of appeal or petition, or notification of appeal to the Protecting Power."

Concerning Article 89 (new), the following wording was adopted, after Miss Gutteridge (United Kingdom) had drawn attention to the fact that the Stockholm text had been slightly altered in making Article 90 into Article 89 (new):

"Article 89 (new) is substantially Article 90 of the Stockholm Draft revised so that the applicable law is that of the Detaining Power. The Sub-Committee believes this change attains greater precision."

With regard to Article 93 (new) Miss GUTTERIDGE (United Kingdom) drew attention to the fact that it had been decided to replace the words "preventive imprisonment" by "confinement while awaiting trial".

It was decided to change the wording accordingly of the Comment on Article 93 (new)

Concerning Article 75 (new) Mr. DROUGOV (Union of Soviet Socialist Republics) proposed to revise the second paragraph of the comment to read as follows:

"The proposals made by the Government of the Netherlands in their Memorandum, and the Delegation of the Union of Soviet Socialist Republics in the amendment concerning war crimes and crimes against humanity appeared to the Sub-Committee to be outside its terms of reference."

The Sub-Committee agreed.

For Article 73 (new), Mr. WILHELM (International Committee of the Red Cross) suggested the words

“they referred specially to escape” for “they referred to escape only”.

The suggestion was approved.

With regard to the comment on Article 79 (French text only), it was agreed to replace “au moyen d’amendes” by “en cas d’amendes”.

It was then agreed to revise the text of the comment on Article 87 (new) as follows:

“Article 87 (new) contains the first paragraph of Article 88 of the Stockholm text, a new second paragraph in the spirit of the Stockholm text, the second sentence of the third paragraph of the Stockholm text and a new third paragraph dealing with disciplinary premises for women prisoners of war.”

With regard to Article 97 (new) it was agreed to substitute for “figure 2” at the end of the second sentence, “sub-paragraph 2 of the second paragraph”.

#### Article 86

Miss GUTTERIDGE (United Kingdom) said that her attention had been called to a point in Article 86 (new), in the drafts circulated of the revised texts).

The Sub-Committee suggested that the last sentence of the fourth paragraph should be changed to read:

“The decision shall be announced to the accused prisoner of war and to the spokesman”.

The change was agreed to.

The CHAIRMAN said that that concluded the work of the Sub-Committee; the Secretariat would provide new copies of the drafts with the various revisions agreed upon. He thanked the members of the Committee for their work and declared the meeting adjourned.

*The meeting rose at 5.30 p.m.*

## SUB-COMMITTEE OF FINANCIAL EXPERTS OF COMMITTEE II

### FIRST MEETING

*Tuesday 7 June 1949, 10 a.m.*

*Chairman:* General René DEVIJVER (Belgium)

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#### **Election of the Chairman**

On the proposal of Mr. GARDNER (United Kingdom), the Committee unanimously elected General DEVIJVER (Belgium) as Chairman.

#### **Article 49**

Mr. GARDNER (United Kingdom) said his Delegation's amendments (*see Annexes No. 119 to No. 130*) did not propose any alteration in the substance, but only in the form, of the text adopted by the Stockholm Conference. Their object was to avoid repetitions, group together cognate provisions hitherto recorded in different Articles, and give the text of Section IV a more logical sequence.

Major ARMSTRONG (Canada), General PARKER (United States of America) and General SKLYAROV (Union of Soviet Socialist Republics), while admitting the desirability of certain changes in the Stockholm text, did not approve the fundamental changes in the arrangement of the Articles adopted by the Stockholm Conference, which the United Kingdom Delegation proposed.

Mr. GARDNER (United Kingdom) having drawn attention to the fact that the second sentence of Article 49 was duplicated in Article 50, the CHAIRMAN asked if there was any objection to deleting that sentence.

Mr. WILHELM (International Committee of the Red Cross) said that Article 49 laid down a general principle which dominated the whole Section IV;

considered in that light, Article 50 and the following Articles dealt with particular points in a logical sequence.

#### *First paragraph, first sentence*

Mr. GARDNER (United Kingdom) said the first sentence of the first paragraph of Article 49 fixed the maximum amount of cash a prisoner of war might hold; any cash held by a prisoner beyond that sum was illegally held, and the Detaining Power must retain the right, for security reasons, of confiscating any such sums discovered. But the second sentence, in fact, prohibited such a procedure.

After an exchange of opinions, the CHAIRMAN asked if the Meeting were prepared to accept the first sentence of Article 49.

Mr. GARDNER (United Kingdom) raised another objection. He wanted to omit the words "in agreement with the Protecting Power". Experience showed that it was often a considerable time before Protecting Powers functioned effectively. A literal interpretation of the Convention would permit the Detaining Power to leave the prisoner without any money at all, pending an agreement with the Protecting Power as to the maximum to be allowed.

Mr. BAISTROCCHI (Italy) and General PARKER (United States of America) opposed the omission of the above-mentioned words. Mr. Baistrocchi suggested that a wording should be found which would allow the Detaining Power to fix a maximum immediately, without prejudice to the ultimate approval of the Protecting Power.

Mr. WILHELM (International Committee of the Red Cross) explained that the words in question were inserted to ensure for the prisoner a reasonable maximum. The 1929 Convention had left the fixing of such a maximum to the belligerents. It was considered more practicable to entrust the control to the Protecting Power, which was usually on the spot from the commencement of hostilities.

General SKYLAROV (Union of Soviet Socialist Republics) drew attention to the fact that neither the Stockholm text nor the United Kingdom Amendment for a new Article 54 (*see Annex No. 124*) made it obligatory for the Detaining Power to fix a maximum amount of ready cash to remain in the possession of prisoners of war.

The CHAIRMAN said there were three proposals regarding the first sentence:

- (1) To accept the text adopted at Stockholm.
- (2) To accept the Stockholm text, deleting the words "in agreement with the Protecting Power".
- (3) To accept the sentence with the modification suggested by the Delegate of Italy, which was supported by the Delegations of the United States of America, Canada and France. As Delegate of Belgium he also supported it.

It was unanimously agreed to accept the third proposal; the text therefore read as follows:

"Upon the outbreak of hostilities, pending the conclusion of an agreement with the Protecting Power, the Detaining Power shall fix the maximum amount of money, in cash or in similar form, that prisoners may have in their possession."

*First paragraph, second sentence*

After discussion, the CHAIRMAN said the consensus of opinion seemed to be in favour of the Stock-

holm wording. He asked if the United Kingdom Delegate had a fundamental objection, which prevented him from supporting the general view.

Mr. GARDNER (United Kingdom) reiterated the arguments he had adduced earlier. The question of punishments had already been discussed by a Special Committee, but no decision had been taken which would sanction the penalties referred to in that sentence. If the Committee accepted the text, he would reserve the right to review the principle involved in the Special Committee.

The Committee adopted the second sentence of the first paragraph of the Stockholm text, subject to the above reservations.

*Second Paragraph*

The CHAIRMAN reminded the Committee that the Delegate of Italy had suggested the transfer of the paragraph to Article 54, as its substance was quite different from that of the first paragraph.

Mr. GARDNER (United Kingdom) observed that the paragraph under discussion was substantially the same as the first sentence of the second paragraph of the Article 53.

Mr. WILHELM (International Committee of the Red Cross) explained that the originators of the draft text submitted to the Stockholm Conference had intended a wide interpretation of the contents of Section IV. The addition of the second paragraph made at Stockholm was ill-advised as it limited the possibilities for prisoners of war to make purchases outside the camp.

Mr. BAISTROCCHI (Italy) supported the Representative of the I.C.R.C.

The CHAIRMAN adjourned the discussion to the next session.

*The meeting rose at 1 p.m.*

SECOND MEETING

Tuesday 7 June 1949, 3 p.m.

Chairman: General René DEVIJVER (Belgium)

**Article 49** (*continued*)

*Second paragraph (continued)*

Mr. GARDNER (United Kingdom) proposed to substitute for the second paragraph of Article 49, which was practically the same as the second paragraph of Article 53, sub-paragraphs 1 and 2 of the amendment of his Delegation (*see Annex No. 124*). He proposed to delete the phrase at the end of sub-paragraph 3, after the word "camps" in line four, and substitute the words "for individual or collective use".

On a vote being taken, sub-paragraph 2 of the United Kingdom amendment was approved by a majority of the Committee to take the place of the second paragraph of the Stockholm text.

General SKLYAROV (Union of Soviet Socialist Republics) was unable to vote in favour of the United Kingdom amendment because he did not think it constituted an improvement on the Stockholm text.

The CHAIRMAN asked whether the following amendment to the Stockholm text would be acceptable to the Delegates of the United Kingdom and the Union of Soviet Socialist Republics: Add, after the words "shall be made" in line 4 of the second paragraph the words "either by the prisoner himself or...".

Mr. GARDNER (United Kingdom) and General SKLYAROV (Union of Soviet Socialist Republics) signified their acceptance of the Chairman's proposal.

Mr. GARDNER (United Kingdom) observed that his amendment made the Detaining Power responsible for drawing up regulations with regard to the accounts of prisoners.

The CHAIRMAN agreed that the point was important. He suggested that it might be covered by adding to the end of the Stockholm text the words: "Regulations to this end shall be drawn up by the Detaining Power".

The Stockholm text of the second paragraph of Article 49 with the addition of the two amend-

ments suggested by the Chairman was unanimously approved, subject to re-drafting.

Mr. GARDNER (United Kingdom) drew attention to the subparagraph 3 of the amendment submitted by his Delegation.

After a short discussion it was decided that subparagraph 3 of the United Kingdom amendment should be considered under Article 53.

**Article 50**

Mr. GARDNER (United Kingdom) proposed the deletion of Article 50, on the ground that it duplicated Article 54.

Mr. BAISTROCCHI (Italy) shared Mr. Gardner's view. He considered, however, that the provisions of Article 50 were already contained in Article 16.

Mr. BAUDOY (France) drew attention to an amendment to Article 50 submitted by his Delegation providing for a receipt to be given to prisoners of war for articles of value impounded on capture.

On a vote, 5 votes were recorded in favour of the retention of Article 50, and 2 against.

The CHAIRMAN asked the Delegates of Italy and the United Kingdom, who had voted for the deletion of Article 50, whether they would support the retention of this Article, if Article 54 were amended so as to provide that sums taken from the prisoner at the time of capture should be his personal property.

Mr. BAISTROCCHI (Italy) was prepared to accept the retention of Article 50, to which he had no objection in principle, although it duplicated other provisions of the Convention.

Mr. GARDNER (United Kingdom) stated that he could not agree to repeating the same provisions in two different Articles.

Major ARMSTRONG (Canada) proposed a drafting amendment in the English text, and agreed, on the request of the CHAIRMAN to submit it in writing.

**Article 51**

The CHAIRMAN stated that various amendments to this Article had been presented, in particular one submitted by the Delegation of the United Kingdom (*see Annex No. 119, for an Article 49*) which proposed the substitution of Swiss paper francs for Swiss gold francs. He asked the views of the Sub-Committee on the point.

Mr. GARDNER (United Kingdom) said that on his return from the 1947 Conference of Government Experts, where he himself proposed that Swiss gold francs should be taken as a basis for the pay of prisoners of war, the technical experts in his country had informed him that such a basis was unacceptable to his Government. His instructions upon the point were imperative. The general trend of currencies in all countries was away from gold, and the experts considered that the Swiss paper franc was more likely to retain its stability than any currency based on gold.

The CHAIRMAN asked for the views of the Delegate of Spain, whose Delegation had submitted an amendment to Article 51 (*see Summary Record of the Eleventh Meeting of Committee II*).

The Marquis OF VILLALOBAR (Spain) was opposed to gold being taken as a basis for the advances made to prisoners of war. In wartime the rate of exchange for gold rose very rapidly, and the pay of prisoners might fluctuate widely. Certain advantages were assured to prisoners under the Convention such as food and lodging on an equal footing with the troops of the Detaining Power and canteen prices lower than market prices. These advantages might be completely offset, if it was the Detaining Power which fixed the rate of exchange for gold.

It was decided by 4 votes to 1 to maintain the gold standard, with a possible lowering of the rates fixed in the Stockholm text.

Mr. GARDNER (United Kingdom) stated in reply to the Chairman that his instructions were precise. He did not desire to reopen the discussion, but he could not agree with the majority vote. He suggested that the Article should be referred to the Special Committee.

The CHAIRMAN drew attention to the amendment submitted by the Delegation of Turkey, and the amendment submitted by the Delegation of Spain (*see Summary Record of the Eleventh Meeting of Committee II*). Both were inspired by the feeling that the rates fixed in the Stockholm text were too high.

Mr. BAISTROCHHI (Italy) reminded the Sub-Committee that the third paragraph of Article 51 left

considerable latitude to Powers to conclude special agreements with regard to rates of pay. He proposed the addition of a sentence to reinforce these provisions, such as the following:

“Should fluctuations in the rate of exchange affect the pay of prisoners of war, the Protecting Power shall notify the Power concerned with a view to concluding a special agreement.”

Mr. MAYATEPEK (Turkey) explained that the purpose of his amendment was to avoid difficulties which the Article might raise for countries that were not in a prosperous financial situation. Secondly, if preferential treatment was accorded to prisoners of war, that might affect the troops of the Detaining Power. In the third place members of the forces of the same Power might get different rates of pay in different countries, according to the exchange rate of the Swiss gold franc. In addition, the situation of prisoners of war, who worked and received a salary, had to be taken into account.

The CHAIRMAN reminded delegates that the troops of the Detaining Power were comfortably housed, fed and clothed, and their families were maintained, whereas the prisoner of war was deprived of everything. If the rates of pay had to be made up by the country of origin, as provided in the Turkish amendment, that would entail considerable delay before the prisoner received his pay. In reply to objections that had been raised with regard to the exchange rate of the gold franc, since it was the Swiss gold franc that was referred to, it was his opinion that the rate of exchange should be that current in Switzerland.

Major ARMSTRONG (Canada) said that the principle of assimilation to the pay of troops of the Detaining Powers would not be acceptable to his country since in many cases it would be far too low. He was opposed to the Turkish and Spanish amendments.

After further discussion, it was decided to reinforce the text of the Article in respect of the drawing up of special agreement. The task of finding a satisfactory wording was entrusted to the Delegate of Italy and the Representative of the International Committee of the Red Cross.

The CHAIRMAN proposed that the Representative of the International Committee of the Red Cross should be the Rapporteur of the Committee of Experts.

Agreed.

*The meeting rose at 6 p.m.*

THIRD MEETING

Thursday 9 June 1949, 10 a.m.

Chairman: General René DEVIJVER (Belgium)

Article 51 (continued)

The CHAIRMAN said that the Committee of Experts had at its last meeting decided to retain the gold standard as a basis for conversion. Nevertheless, several objections to that decision had remained unanswered. For that reason, and in order to expedite the examination of the provision in question, he had requested the Italian Delegation, jointly with the Representative of the International Committee of the Red Cross, to prepare a working text, worded as follows:

“The Detaining Power shall grant all prisoners of war monthly pay, the amount of which shall be fixed by conversion into the currency of the said Power, of the amounts indicated below and calculated on the basis of the Swiss gold franc at ... milligrams of fine gold:

- Category I . . . . .
- . . . . .
- . . . . .
- Category V. . . . .

“Nevertheless, if the amounts indicated above or the fluctuations in the price of gold are such as either to result in a disproportionate difference between the pay granted to prisoners of war and the amounts received by members of the armed forces of the Detaining Power, or to render the pay of prisoners clearly inadequate in relation to the purchasing power of the currency of the said Power, the belligerents concerned shall, at the suggestion of the Protecting Power in particular, agree among themselves to modify such amounts in an equitable manner.

“The Detaining Power shall at all times accept remittances ... (unaltered).”

The CHAIRMAN indicated that the draft was simply intended to serve as a basis for discussion.

The Marquis of VILLALOBAR (Spain) considered the text unsatisfactory for the following reasons:

- (1) The question of the gold rate and the rate of exchange was not settled;
- (2) It should be specified that the agreements referred to in the second paragraph of the working text should permit increase, but not reduction, in the pay of prisoners of war.
- (3) The word “pay” appeared to him ill-chosen, and should be replaced by the word “relief”.

The CHAIRMAN agreed in principle with the objections raised by the Spanish Delegate.

As regards point (1), he thought it was simply a question of finding suitable wording.

As regards point (2), he had no objection to Article 51 being re-drafted in the sense suggested by the Spanish Delegate.

As regards point (3), he agreed that the word “pay” did not quite correspond to the nature of the contribution made by the Detaining Power, and he suggested replacing it by the word “advance” or the term “advance of pay”.

After discussion, the Committee of Experts decided to replace the word “pay” by the term “advance of pay”.

General PARKER (United States of America), Major ARMSTRONG (Canada) and General SKLYAROV (Union of Soviet Socialist Republics) expressed their views on the second paragraph of the working text. One of the Delegates thought the scope too wide as regards the right to conclude special agreements, whereas the other two thought it was more restrictive than the third paragraph of the Stockholm text. These three Delegates, though for different reasons, preferred the Stockholm text.

Mr. GARDNER (United Kingdom) also raised objections to the working text drafted by the Italian Delegation in conjunction with the Representative of the International Committee of the Red Cross. He agreed with the view that the second paragraph

of that text was more restrictive than the draft adopted at Stockholm. He therefore suggested the following new wording:

“Nevertheless, if the amounts indicated above would be unduly favourable compared with the Detaining Power’s armed forces, or would for any other reason seriously embarrass the Detaining Power, then, pending the conclusion of a special agreement between the belligerents concerned to vary the amounts indicated above, the Detaining Power

- (a) shall continue to credit the accounts of the prisoners of war with the amounts indicated above,
- (b) may temporarily limit the amounts made available from these advances of pay to prisoners of war for their use to such sums as they think reasonable.”

The CHAIRMAN made several comments on the United Kingdom Delegate’s text, which he considered very flexible, and thought that it might meet with the general approval of the Committee.

A discussion then took place on the pros and cons of the wording submitted by the Delegate of the United Kingdom. Among others the CHAIRMAN, General PARKER (United States of America), Mr. MAYATEPEK (Turkey), Mr. BAISTROCCHI (Italy), the Marquis of VILLALOBAR (Spain) and Mr. WILHELM (International Committee of the Red Cross) took part in the discussion.

It was generally agreed to take into consideration the difficulties which the Detaining Power might encounter in implementing the provisions concerning advance of pay to prisoners of war in their hands. Nevertheless, several delegates pointed out that it would be necessary to find a wording which would be likely to be universally approved by the Committee of Experts. No such wording had yet been found, despite the various suggestions put forward during the discussion.

The CHAIRMAN suggested the following compromise text:

“Belligerents may, by special agreements, make any equitable change in the amount of pay due to prisoners of war in the above categories. The Power on which prisoners of war depend shall take into account, when concluding such agreements, the difficulties of implementation likely to be encountered by the Detaining Power.”

The above text gave rise to a fresh exchange of views during which Mr. MAYATEPEK (Turkey) once again proposed that the validity of an agreement

between the two States concerned should be limited to, say, six months. After this interval had elapsed, the Detaining Power would be entitled to take a unilateral decision and issue prisoners of war in its hands with an advance of their pay equal to the pay allotted to members of its own armed forces. He said that the provision might be added at the end of the first paragraph, and that it should be optional and not compulsory.

The CHAIRMAN asked the Delegate of Turkey to word his proposal precisely.

Major ARMSTRONG (Canada) said that certain countries would find it impossible to implement the Convention. He reminded the Meeting that the amendment submitted by his Delegation in view to introduce to Section I of Part IV a new Article, stipulated that:

“If the Detaining Power is not in a position, for any reason, to conform to certain minimum standards as regards the treatment of prisoners of war as envisaged in the present Convention, special agreements shall be concluded between the Detaining Power, the Power on which the prisoner of war depend and a Neutral Power which may be acceptable to the three Powers, which will enable prisoners of war to be detained in future in a neutral territory until the close of hostilities, the whole expense to be borne by the Power on which the prisoners of war depend.”

The Detaining Power could thus extricate itself from an embarrassing situation.

Mr. GARDNER (United Kingdom) considered such a solution would prove impracticable.

After a further exchange of views, the CHAIRMAN remarked that no agreement had been reached. Consequently, he invited the Delegates of Turkey and of Spain to find a compromise solution approximating to the Stockholm text, at the same time taking into consideration the proposal of the United Kingdom Delegate, and consulting the Representative of the International Committee of the Red Cross. Other delegates were, of course, equally entitled to submit any proposals they might consider useful.

In conclusion, the CHAIRMAN pointed out that, if it was impossible to come to an agreement in the Committee of Experts, it would be even more difficult to come to an agreement in the Special Committee or in Committee II.

*The meeting rose at 12.45 p.m.*

FOURTH MEETING

Friday 10 June 1949, 10 a.m.

Chairman: General René DEVIJVER (Belgium)

**Article 51 (continued) and Article 51A**

The CHAIRMAN made a statement with regard to the value of gold and its fluctuations since 1936. It followed from that statement that in 1936 the exchange value of 8 Swiss gold francs was 7.84 Swiss paper francs on the basis of a gold weight of 203 milligrams for 1 Swiss gold franc. In 1949, it was exactly 8 Swiss paper francs on the same basis of a gold weight of 203 milligrams for 1 Swiss gold franc. Was it excessive to pay a prisoner of war below the rank of Sergeant an amount of 27 centimes per day? He wondered whether it would not be possible to base the amount of pay of prisoners on a franc unit, which might be called a "captivity franc", related to the value of pure gold, instead of to the Swiss gold franc. He therefore suggested to add to Article 51 the following:

"The conversion of 203 milligrams of fine gold into the paper currency of the country where the prisoners of war are interned shall be effected on the basis of the official value of gold quoted by the National Bank of the Detaining Power."

The Convention of the Universal Postal Union had taken a similar franc unit as a basis for computing international postal rates.

Mr. GARDNER (United Kingdom) said that, according to the United Kingdom Treasury and Bank of England experts, methods of relating monetary units to gold were out of date; most countries were gravitating towards a planned currency unrelated to the fixed gold standard. The time would soon come when the Universal Postal Union would have to abandon the method described. It would therefore be a retrograde step to advocate it in a Convention drawn up in 1949. He considered the Chairman's proposal even less acceptable than the Stockholm text; and, if it was maintained and supported, he would have to refer to London for instructions.

The Marquis of VILLALOBAR (Spain) supported the working text which had been submitted by the

Delegate of the United Kingdom at the previous meeting, with the addition of a proviso to fix a minimum below which the pay of prisoners could in no circumstances be reduced.

After an exchange of views between Major ARMSTRONG (Canada) and the Marquis of VILLALOBAR (Spain) with regard to the discrepancies existing in the pay of members of the armed forces of their respective countries, Mr. GARDNER (United Kingdom) said that what was really important for a prisoner, once he had been captured, was not his pay but the amount of money he could spend. Where foodstuffs were abundant in the country of the Detaining Power, canteens were well stocked, and the Detaining Power was prepared to make sufficient advances to prisoners to enable them to purchase the goods available. For this reason, he thought it important to connect Article 51 with Article 26, which dealt with canteens.

Mr. MAYATEPEK (Turkey) supported the observations made by the Delegates of Spain and the United Kingdom.

After further discussion, it was proposed to insert the following new fourth paragraph in Article 51:

"Nevertheless, if the amounts indicated above are unduly favourable compared with the pay of the Detaining Power's armed forces or would, for any reason, seriously embarrass the Detaining Power, then, pending the conclusion of special agreement between the belligerents concerned to pay the amounts prescribed:

- (a) the Detaining Power shall continue to credit the account of the prisoners with the amounts indicated above;
- (b) the Detaining Power may reduce temporarily the amounts of advances of pay made available to prisoners of war to sums which are reasonable, having regard to the provisions of Article 26; those sums, as far as Category I are concerned, shall however never be

inferior to the amount that the Detaining Power gives to the members of its own armed forces. The reasons for such limitation shall be communicated to the Protecting Power without delay."

General SKLYAROV (Union of Soviet Socialist Republics), supported by Major ARMSTRONG (Canada), asked for time in order to study the text proposed.

It was decided to defer decision on the working text until the next meeting.

The CHAIRMAN put the amendment submitted by the Delegation of India for discussion, worded as follows:

Add the following clauses:

- (1) "The Detaining Power shall have the discretion to make the payment in coupons or any other manner to withhold cash payments from PW."
- (2) "On the cessation of hostilities, the Detaining Power shall issue a credit slip to each PW showing the balance at his credit for payment by the Home Power".

Mr. GARDNER (United Kingdom) considered that the first paragraph of the Indian amendment was covered by the first sentence of Article 49, and that the points of the second paragraph of that amendment were met by the first and second paragraphs of Article 56.

Major ARMSTRONG (Canada) agreed with the Delegate of the United Kingdom. The second paragraph of the Indian amendment, however, provided that a credit slip should be issued to the prisoner, whereas Article 56 provided that he should be paid in cash. He thought the Indian amendment should be considered at the same time as Article 56.

The proposal of the Delegate for Canada was adopted.

The CHAIRMAN put the amendment submitted by the Delegate of Canada for discussion (*see Annex No. 131*).

Major ARMSTRONG (Canada) said that his amendment provided for three categories only—(I) Ranks below sergeants, (II) Non-commissioned officers, (III) Commissioned officers. He considered that was a simplification, and asked why five categories had been provided for in Article 51.

General PARKER (United States of America) explained that there was a marked difference in the armed forces of his country between field officers

(Category IV) and generals (Category V) and it had seemed desirable to provide differential treatment for those categories.

Major ARMSTRONG (Canada) said that the same differences obtained in the Canadian Army. He withdrew his amendment.

The CHAIRMAN put the two amendments submitted by the Delegation of the United Kingdom (*see Annexes No. 119 and No. 120*), and the amendment submitted by the Delegation of New Zealand for a new Article 51 (A) (*see Summary Record of the Eleventh Meeting of Committee II*), for discussion.

Mr. GARDNER (United Kingdom) stated that the third paragraph of his first amendment was purely a matter of drafting.

Mr. WILHELM (International Committee of the Red Cross) proposed the addition of the word "concerned" after the words "belligerent Powers" of this same paragraph.

General SKLYAROV (Union of Soviet Socialist Republics) saw nothing in the Stockholm text which was not clear and in need of amendment. He was willing to admit that perhaps the English text needed changing; but he would abstain from voting on the point because of his insufficient knowledge of the English language.

There being no objection, the third paragraph of the first United Kingdom amendment was adopted.

Mr. GARDNER (United Kingdom) pointed out that the second United Kingdom amendment and the New Zealand amendment had much in common.

The first important principle was not to confuse supplementary pay with ordinary pay. It was preferable, as regards drafting, to deal with those two different subjects in separate articles.

Furthermore, the United Kingdom amendment made a distinction between ranks, because some Powers wished to distinguish between warrant officers and sergeants. The New Zealand amendment and the Stockholm text made a distinction only between categories.

Finally, the last sentence of the United Kingdom amendment and the last paragraph of the New Zealand amendment laid down a principle which it was important to have explicitly stated, namely, that in no circumstances could the pay be withheld from the prisoner by the Detaining Power.

The other points in the amendments were merely questions of detail and drafting.

Replying to the Delegates of the United States of America and the Union of Soviet Socialist Republics, Mr. Gardner added that his Delegation intended to propose to the Drafting Committee to substitute throughout the Convention the term "Power in whose forces prisoners of war were serving" for the term "Power on which prisoners of war depend".

He was prepared to substitute the word "category" for the word "rank", in conformity with the wishes that had been expressed.

The reference to Article 57A, which appeared in brackets at the end of the second United Kingdom amendment, was intended as a guide to the Committee, and was not part of the amendment.

He proposed the deletion of the words "unless the Protecting Power otherwise directs" in the second and third lines of the second paragraph of the New Zealand amendment.

All delegations present were in favour of the amendments with the exception of the Delegation of the Union of Soviet Socialist Republics, which preferred the Stockholm text.

The CHAIRMAN pointed out that the amendments were largely drafting amendments and involved no point of principle. However, in order that delegates might understand clearly the text upon which they would have to vote, he proposed that the United Kingdom Delegation in consultation with the Delegation of the U.S.S.R. should prepare a new working document combining the United Kingdom and New-Zealand amendments. When the text was ready for discussion, it would be submitted to the New Zealand Delegation.

*The meeting rose at 1.15 p.m.*

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## FIFTH MEETING

*Monday 13 June 1949, 3 p.m.*

*Chairman: General René DEVIJVER (Belgium)*

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### Articles 51 and 51A (continued)

The CHAIRMAN stated that the last meeting had discussed the question whether it would not be advisable to delete the fourth paragraph of Article 51 and to substitute for it a new Article 51(A), the text of which would be a combination of the United Kingdom amendment and the New Zealand amendment. He had requested the Delegates of the United Kingdom and Union of Soviet Socialist Republics to draw up a new working text dealing with the point, and he asked if it was now ready.

MR. GARDNER (United Kingdom) replied in the affirmative, and after a few preliminary explanations, read the following text:

"The Detaining Power shall accept sums for distribution as supplementary pay to prisoners of war which the Power on which the prisoners depend may forward to them, on condition that the sums to be paid shall be the same for each prisoner of the same category and shall

be payable to all prisoners of that category depending on that Power, and shall be placed in their separate accounts by virtue of the provisions of Article 54 of the present Section at the earliest opportunity. Such supplementary pay shall not relieve the Detaining Power of any other obligation under this Convention."

After discussion of the relative advantages and disadvantages of the proposed text, it was adopted without opposition.

The CHAIRMAN then asked if the text in question should be embodied in Article 51 as a new fourth paragraph, or if it should form a separate new Article numbered 51 (A).

All the members of the Committee of Experts, except the Delegate of the Union of Soviet Socialist Republics, were in favour of the latter course.

The CHAIRMAN pointed out that there were several points connected with Article 51 still to be settled, and particularly the question of the

gold content of the Swiss franc to serve as a basis in calculating the pay of prisoners of war (second paragraph of Article 51), and also the question of the wording of the new fourth paragraph of that Article.

The Committee of Experts agreed with the Chairman's proposal to fix the weight of fine gold contained in the Swiss gold franc at 203 milligrams.

Mr. GARDNER (United Kingdom) said he had asked the United Kingdom Experts for their opinion as to the gold content of the franc to serve as a basis for calculating the pay of prisoners of war; and until he had received their reply, he did not wish to state explicitly the attitude of the United Kingdom on the point.

The CHAIRMAN then took the question of the new fourth paragraph of Article 51. He read the text suggested at the previous meeting (*see Summary Record of the Fourth Meeting*).

Several changes were proposed; but the text was finally adopted by five votes to NIL in the following form:

"Nevertheless, if the amounts indicated above would be unduly favourable compared with the pay of the Detaining Power's armed forces or would, for any reason, seriously embarrass the Detaining Power, then, pending the conclusion of special agreement between the belligerents concerned to vary the amounts indicated above, the Detaining Power:

- (a) shall continue to credit the account of the prisoners with the amounts indicated above;
- (b) may temporarily limit the amount made available from these advances of pay to prisoners of war for their use, to sums which are reasonable but which for Category I shall never be inferior to the amount that the Detaining Power gives to the members of its own armed forces. The reasons for any limitation will be given without delay to the Protecting Power."

## Article 52

The CHAIRMAN stated that amendments to Article 52 had been submitted by the delegations of Australia, Canada, France and the United Kingdom.

He put for discussion the amendment submitted by the French Delegation, proposing the insertion of an additional paragraph to Article 52 as follows:

"When a prisoner of war who is employed as a worker, or is engaged on any gainful occupa-

tion, draws the pay due for his work, he shall cease automatically to draw his military pay. The latter shall either be paid out to persons in his country of origin designated by himself, or shall be handled over to him when his captivity comes to an end."

Mr. BAUDOY (France) explained the reasons for which his Delegation had submitted their amendment. Its main purpose was to ensure that prisoners of war should not appear to be more favourably treated than soldiers in the fighting line, by the fact of the former being allowed to receive wages in addition to their pay while ceasing to be exposed to any of the risks of war.

A discussion ensued in which the CHAIRMAN, Mr. BAUDOY (France), Mr. GARDNER (United Kingdom), Major ARMSTRONG (Canada) and General PARKER (United States of America) took part. The following objections were raised:

The adoption of the French amendment would substantially complicate the work of the administrative staff of the camps.

The monthly pay of eight Swiss gold francs to which the great majority of prisoners of war were entitled, even increased by wages which would never be very high, could never prove sufficiently attractive to tempt members of combatant units to surrender.

In view of the very low monthly rate of prisoners of war pay, they were practically compelled to work in order to earn a fair wage.

Moreover, the word "wages" was badly chosen, since it really amounted to an additional allowance for specific work.

Prisoners of war who were actually employed would be compelled to make larger purchases from the camp canteen, in order to meet their needs, than those who were not working.

The French amendment was rejected, by five votes to one.

The CHAIRMAN suggested that the Committee of Experts should consider the United Kingdom amendment and the Australian amendment; and he asked the United Kingdom Delegate to speak to his amendment.

Mr. GARDNER (United Kingdom) explained that two amendments had actually been submitted by his Delegation (*see Annexes No. 121 and No. 122 for articles 51 and 52*), both of which related to Article 52(A). He explained the distinction which the amendments were intended to introduce into the Conventions and the purpose of these amendments in so doing.

The CHAIRMAN noted with regard to the explanations furnished by the Delegate of the United Kingdom that the effect of the two amendments was to modify the substance, and not only the form, of the Convention. He proposed that the questions of substance should be examined first and put the following point for discussion:

Whereas the first paragraph of Article 52 lays down that prisoners working should be paid either by their employers or by the detaining Authorities, the third paragraph of the second United Kingdom amendment provides that "wherever prisoners of war are employed directly under the Detaining Power or on loan to private firms ..., the Detaining Power shall be entirely responsible for the payment" to them of the working pay earned by them.

Major ARMSTRONG (Canada) was in favour of entire responsibility devolving on the Detaining Power, as recommended in the United Kingdom amendment.

General SKLYAROV (Union of Soviet Socialist Republics) pointed out that the idea of the Detaining Power's responsibility was not new. It was to be found in Article 48, first paragraph.

After discussion the Committee of Experts decided:

(1) to delete in the first and second lines of the first sentence of the first paragraph of Article 52 of the Stockholm text the words "by their employers, or"; it being understood that the insertion in the sentence of the principle of the Detaining Power's entire responsibility for work carried out by prisoners of war for private persons had become a mere matter of drafting.

(2) to replace in this same text the word "wages" either by "working pay" or "working indemnity".

The CHAIRMAN pointed out another discrepancy between the provision in the second sentence of the first paragraph of Article 52 of the Stockholm text to the effect that the Detaining Power was to inform prisoners of war, as well as their country of origin of the rate of daily wages that it had fixed and the provision in the second paragraph of the second United Kingdom Amendment to the effect that the said notification was to be made to the Protecting Power.

Mr. GARDNER (United Kingdom) said that it would be excessively difficult to notify the country of origin, as in time of war relations were broken off between adverse belligerents.

Following this remark, the Committee of Experts decided, on a suggestion by the CHAIRMAN, that the said notification should be made to the country of origin through the intermediary of the Protecting Power.

The Chairman further pointed out another discrepancy between the second paragraph of Article 52 and the third paragraph of the first United Kingdom amendment. The Stockholm text laid down that the Detaining Authorities were to pay wages to "prisoners of war permanently detailed to duties or to an artisanal occupation in connection with the administration, installation or maintenance of camps", whereas the United Kingdom amendment laid down that such prisoners were to be paid working pay from the Camp Welfare Fund.

Mr. GARDNER (United Kingdom) pointed out that the United Kingdom amendment and that submitted by the Australian Delegation overlapped, and that it would be desirable to ask the Delegate of Australia to speak to his amendment before the Committee of Experts.

The CHAIRMAN, while not in principle against delegates who had submitted amendments coming to uphold them before the Committee of Experts, was nevertheless of the opinion that the said Committee had every latitude for discussion of these amendments on its own authority and without asking delegates responsible for amendments to attend meetings at which such amendments were discussed.

The above opposing points of view led to a discussion of the procedure to be followed in such circumstances and it was finally decided that the daily agenda of the Committee of Experts should indicate what amendments were likely to be discussed at the meeting or meetings foreseen for the day, and mention that delegates responsible for the said amendments were invited to attend.

*The meeting rose at 6.30 p.m.*

SIXTH MEETING

Wednesday 15 June 1949, 3 p.m.

Chairman: General René DEVIJVER (Belgium)

**Article 52** (*continued*)

The CHAIRMAN recalled the work accomplished so far by the Committee at the previous Meeting. He then requested the Delegate of Australia to explain the reasons for which his Delegation had submitted an amendment to Article 52.

Wing Commander DAVIS (Australia) said that in view of the Chairman's explanation of the work done by the Committee of Experts at the last Meeting, he would withdraw his amendment with the exception, however, of a sentence, stipulating that the wages of prisoners of war should be added to the pay they received under provisions of Article 51.

The CHAIRMAN observed that the proposed provision was in conformity with the decision of the Committee at its last Meeting. There was, however, a further question to be decided; and that was whether the administrative work of prisoner of war camps should be paid for out of the camps' special funds as suggested in the Australian amendment, or by the Detaining Power, as suggested in Article 52, second paragraph, of the Stockholm text. He put the point for discussion.

An exchange of views followed, in which Wing Commander DAVIS (Australia), Mr. GARDNER (United Kingdom), Major ARMSTRONG (Canada) Mr. BAISTROCCHI (Italy) and others took part.

Mr. GARDNER (United Kingdom) said that some distinction was necessary between administration and maintenance work in camps. He distinguished:

(1) Work done by prisoners of war which relieved the Detaining Power of camp administration (for example, personnel working in the Camp Commandant's office). Such work should be remunerated by the Detaining Power.

(2) Work done in the camp in connection with camp life (for example, duties performed by hospital attendants, cooks, etc.). Such duties should

not entitle the personnel concerned to any special indemnity.

(3) Duties which were inherent to the position of prisoners of war and carried out for their benefit (duties of the spokesman and his assistants). Such duties should be remunerated as provided in the third paragraph of the Stockholm text.

(4) Fatigues, which were part of a soldier's duty in any country and were not remunerated in any country.

Mr. WILHELM (International Committee of the Red Cross) said that the duties enumerated in Mr. Gardner's (1) and (2) above should form one category and those enumerated in his (3) and (4) another. That would bring the proposal closer into line with the Stockholm text.

General PARKER (United States of America) suggested a compromise taking into account the United Kingdom amendment and the Australian amendment.

General Parker's proposal was opposed by Mr. GARDNER (United Kingdom) and supported by Mr. BAISTROCCHI (Italy).

General SKLYAROV (Union of Soviet Socialist Republics) supported the Stockholm text without amendment.

The CHAIRMAN asked General PARKER (United States of America) to draft an accurate text to be read and considered at the beginning of the next Meeting.

The Committee proceeded to consider the provision at the end of the second paragraph of Article 52 to the effect that wages were also to be paid to prisoners of war who were required to carry out religious or medical duties for the benefits of their fellow prisoners, in accordance with the provisions of Article 41.

Mr. GARDNER (United Kingdom) considered that for various reasons it might be unfair and even dangerous to remunerate these prisoners.

The CHAIRMAN, on the other hand, pointed out that the prisoners undertook such duties because they were required to do so and did not volunteer for them. In his opinion they should be remunerated by the Detaining Power.

After some discussion between Mr BAISTROCCHI (Italy), Mr. BAUDOUY (France) and Mr. GARDNER (United Kingdom), the Committee decided by 5 votes to 1 to retain the part of the sentence in question in the second paragraph without alteration.

The CHAIRMAN proceeded to put the third paragraph of Article 52 for discussion. He pointed out that, if a spokesman was remunerated by the Detaining Power, it might be possible for the latter to bring pressure to bear on him.

Mr. GARDNER (United Kingdom) while he agreed with the Stockholm text, was opposed to the last sentence of the third paragraph, although he did not press for its deletion. He would welcome a compromise on the point.

The CHAIRMAN interpreted the United Kingdom Delegate's opposition as the expression of a wish for the extension of the spokesman's independence of the Detaining Power.

With the object of allowing the Delegate of the United States to prepare the compromise text which he had been asked to draft in connection with both the second and third paragraphs of Article 52, the Chairman invited the Committee to support the Stockholm text.

The result of the voting was that the Stockholm text of the third paragraph was maintained as a whole, by 6 votes to none.

The Committee of Experts proceeded to consider the fourth paragraph of Article 52.

A Canadian amendment had been submitted proposing to replace the word "change" in the second line of the Stockholm text by the word "increase".

Major ARMSTRONG (Canada) explained the reasons for the amendment, which he said were obvious.

Mr. GARDNER (United Kingdom) said that the fourth paragraph had no practical effect. Actually, the conclusion of special agreements between belligerents was already authorised under Article 5, on condition that such agreements did not restrict the rights of prisoners of war. The fourth paragraph, therefore, was superfluous.

Mr. WILHELM (International Committee of the Red Cross) agreed.

Major ARMSTRONG (Canada) agreed with the opinions expressed and withdrew his amendment.

The fourth paragraph of Article 52 was then put to the vote, and was unanimously rejected.

### Article 53

The CHAIRMAN reminded the meeting that the following amendments to Article 53 had been submitted: Canada, New Zealand, United Kingdom, Finland, Greece.

#### *First paragraph*

The Canadian amendment and the Finnish amendment related to the first paragraph of Article 53.

Major ARMSTRONG (Canada) explained that his amendment, proposing the deletion pure and simple of the first paragraph, was intended to prevent the creation of a sort of privilege in favour of members of well-to-do families, who would be able to send more money than the members of less well-to-do or poor families could, thus giving rise to inequality between prisoners of war. In his opinion, the wages and pay to be received by prisoners of war in application of Articles 51 and 52 should suffice.

The CHAIRMAN, while appreciating the reasons put forward, pointed out that the Finnish amendment proposed the exact opposite: it urged the suppression of any restriction on the receipt of money.

Mr. GARDNER (United Kingdom) supported the motion for the deletion of the first paragraph submitted by the Canadian Delegation, but for reasons other than those advanced by that Delegation.

General SKLYAROV (Union of Soviet Socialist Republics) wished the paragraph to be maintained; he pointed out that the same inequality already existed as regards the sending of individual relief parcels, and there was no more reason to prohibit the receipt of individual sums of money than there was to prohibit the receipt of individual relief parcels.

After some discussion the Committee decided to maintain the first part of the first paragraph by adding after the word "individually" in the third line the words "or collectively", and to delete the remainder of the paragraph, in accordance with the proposal of the Finnish Delegation.

*Second paragraph*

The Committee proceeded to consider the second paragraph of Article 53. Amendments had been submitted by the following Delegations: United Kingdom, New Zealand, Greece.

Mr. GARDNER (United Kingdom) explained the reasons which had prompted his Delegation to submit amendment (*see Annex No. 124 for an Article 54*).

General PARKER (United States of America) did not agree with the arguments of the Delegate of the United Kingdom.

During the discussion which followed the CHAIRMAN suggested that the third paragraph of the United Kingdom amendment might usefully be inserted in the second paragraph of Articles 53.

This view was supported by Mr. BAISTROCCHI (Italy).

Mr. GARDNER (United Kingdom) opposed that arrangement, as he considered that the text would then be even less satisfactory than the original Stockholm text. He withdrew his amendment.

The discussion continued upon the manner in which, irrespective of the opposition of the United Kingdom Delegate, the third paragraph of the amendment could be amalgamated with the second paragraph of Article 53.

To end the discussion, the CHAIRMAN proposed to put the first sentence of the Stockholm text to the vote without any amendment or addition.

The sentence was unanimously adopted.

*The meeting rose at 6.15 p.m.*

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SEVENTH MEETING

*Tuesday 21 June 1949, 10 a.m.*

*Chairman:* General René DEVIJVER (Belgium)

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**Article 52** (*continued*)

*Second and third paragraphs*

General PARKER (United States of America) submitted the working text which he had been asked to draft for the second and third paragraphs of Article 52, which read as follows:

Second paragraph:

“Working pay shall likewise be paid by the Detaining Power to prisoners of war who are employed regularly on work which is primarily for the benefit of the Detaining Power.”

Third Paragraph:

“Working pay shall be paid out of the fund maintained by canteen profits to prisoners of war detailed permanently for duties in connection with the administration, installation or maintenance of camps, furthermore to prisoners who are required, in conformity with Article 41, to carry out spiritual or medical duties in favour of their comrades, also to the spokesman and his

assistants. The scale of these wages shall be fixed by the spokesman and approved by the camp commander. If there is no such fund, the Detaining Power shall pay these prisoners of war a fair amount of working pay.”

During the discussion which followed the reading of that draft, the CHAIRMAN explained that the fund mentioned in the third paragraph referred to the “special fund” in accordance with the terminology so far adopted.

Major ARMSTRONG (Canada) suggested that, in the first sentence of the same paragraph, the words “for the benefit of prisoners of war” should be inserted after the word “duties”.

The CHAIRMAN said that the text did not raise any serious objections. However, as the Delegation of the Union of Soviet Socialist Republics had asked to be given time to study the text, it was decided that the Committee of Experts would vote on this text at its next meeting.

**Article 53** (*continued*)

*Second paragraph, second sentence*

The CHAIRMAN said that the Committee, at its last meeting, had accepted the first sentence of the second paragraph of Article 53 (Stockholm text), without pursuing the matter any further. It was therefore necessary to examine the second sentence of that paragraph.

Mr. GARDNER (United Kingdom) opposed the wording of this sentence as it appeared in the Stockholm text. He was of the opinion that pay and possible wages received by prisoners of war were intended for the improvement of living conditions in the camps, and not for transfers of funds. He thought that the second sentence of the second paragraph imposed an obligation on the Detaining Power; the latter would be compelled to obtain foreign currency merely to satisfy the wishes of the prisoners of war whom it detained. This was asking too much. In case of war, foreign currency was an economic weapon. The Detaining Power should have full liberty, if it could do so, to transfer currency abroad for the benefit of the prisoners in its hands, but this should not be an obligation.

General PARKER (United States of America) and General SKLYAROV (Union of Soviet Socialist Republics) pointed out that this obligation had already been provided for in the 1929 Convention and were in favour of the retention of the principle of possible transfers of currency to foreign countries.

Mr. GARDNER (United Kingdom) observed that the 1929 Convention only mentioned transfers to the prisoners' country of origin, and not to countries all over the world. He therefore suggested that the sentence be deleted, and replaced by the following:

"The Detaining Power may authorise the payment of certain sums in foreign countries, but may impose restrictions if it considers them necessary owing to its financial or economic position."

After some discussion, the CHAIRMAN moved the following wording for the second sentence of the second paragraph:

"Subject to financial or monetary restrictions applicable to the whole population of the Detaining Power, the latter may permit payments abroad on behalf and at the request of prisoners of war."

Mr. GARDNER (United Kingdom) said that he would be prepared to support this text if the words "applicable to the population of the Detaining Power as a whole" were deleted. He then described the difference which existed, in his opinion, between

the civilian population of a country and the prisoners of war who were detained therein.

After the members of the Committee of Experts had debated the question, the following text was drafted:

"Subject to financial or monetary restrictions considered essential by the Detaining Power, prisoners of war shall be authorized to make payments abroad."

All the Delegations voted in favour of this text, with the exception of the Delegation of the Union of Soviet Socialist Republics, who preferred that the Stockholm text be retained.

The text of the majority of the Committee was adopted.

The Committee then examined the amendment submitted by the Greek Delegation in which it was proposed to add the following sentence at the end of Article 53:

"Funds sent by heads of families to their next of kin shall be given priority."

Mr. AGATHOCLES (Greece) said that this amendment was sufficiently explicit and required no comment.

There was no opposition to the principle of this amendment, and, after some discussion, in which, among others, Mr. GARDNER (United Kingdom) and General PARKER (United States of America) took part, the amendment submitted by Greece was adopted in the following wording:

"Payments addressed to dependents shall be given priority."

The above sentence would become a separate paragraph.

*Third paragraph*

An amendment to this provision had already been submitted by the Delegation of the United Kingdom (*see Annex No. 125 for an Article 55*) which suggested that this paragraph be deleted, and a more detailed one substituted for it.

Mr. GARDNER (United Kingdom) urged the advantages of his amendment as compared with the Stockholm Draft:

(i) First paragraph of the amendment:

- (a) The amendment provided a clearer statement of the particulars relating to the person of the prisoner of war and the payee.
- (b) If a prisoner of war could not write, his duly authenticated mark would suffice.

- (c) The statement would be countersigned by the spokesman of the prisoner.
- (d) A certificate would be added by the Camp Commandant to the effect that the prisoner of war concerned had a credit balance of not less than the amount to be paid.
- (2) Second paragraph of the amendment:  
In the event of numerous requests for payment being submitted, they could be entered in lists.
- (3) The third paragraph of the amendment was already covered by the Stockholm text.

Mr. GARDNER (United Kingdom) added that, in his opinion, the whole of this matter should be dealt with in a separate article and not in connection with other matters.

General SKLYAROV (Union of Soviet Socialist Republics) considered that the foregoing amendment, while more detailed than the Stockholm Draft, added no new factor. He was therefore in favour of the Stockholm Draft.

General PARKER (United States of America) shared this point of view but was not against the introduction into the Stockholm Draft of the principle of a certificate covering prisoners' credit balances.

A discussion ensued on the advantages and drawbacks of the United Kingdom amendment as compared with the Stockholm Draft.

Mr. BAISTROCCHI (Italy) suggested that the substance of this amendment should be recast in the form of an annex to the Convention, and referred to in the third paragraph of Article 53.

Mr. GARDNER (United Kingdom) saw no objection to the conditions listed in his amendment being placed in an annex to the Convention. In that case, it would be necessary to abridge the third paragraph to avoid the repetition of the same clause.

General PARKER (United States of America) however, opposed the principle of the annex.

Mr. GARDNER (United Kingdom) therefore requested that his amendment should be put to the vote in accordance with the Rules of Procedure.

The three paragraphs of the United Kingdom amendment were voted upon and successively rejected.

The Committee, decided in favour of the Stockholm text being retained.

The CHAIRMAN enquired whether the Committee considered it necessary to amplify that text by the insertion of certain principles taken from the United Kingdom amendment.

The Committee replied in the affirmative.

In reply to an enquiry by the Chairman, as to which points of his amendment should, in his opinion, be inserted in the Stockholm text, Mr. GARDNER (United Kingdom) named the following:

- (1) Personal particulars of prisoners of war and payee.
- (2) Authenticated mark to replace signature of prisoners unable to write.
- (3) Signature, on authority for payment, of spokesman of prisoner.
- (4) Certificate relative to prisoner's credit balance.
- (5) Possibility to draw up lists of requests for payment, if necessary.

At the CHAIRMAN's request, the Committee decided not to include these points in the third paragraph, but to draft them in the form of an annex to the Convention, which would obviously necessitate an adaption of the third paragraph of Article 53.

The Committee requested Mr. GARDNER (United Kingdom) to draft this annex, which should contain matters of detail only, matters of principle remaining as in the Stockholm Draft, which was maintained as it stood.

*The meeting rose at 1 p.m.*

EIGHTH MEETING

Wednesday 22 June 1949, 10 a.m.

Chairman: General René DEVIJVER (Belgium)

**Article 52** (*continued*)

*Second and third paragraphs*

The CHAIRMAN explained that the Committee of Experts must take up a definite position with regard to the working text prepared by General Parker (United States of America) for the second and third paragraphs of Article 52. (*See Summary Record of the Seventh Meeting.*)

He drew attention to the fact that the provisions of the third paragraph of that text went beyond the scope of the paragraph and trespassed on the third paragraph of Article 52 which had already been adopted. In these circumstances, the alterations proposed to the third paragraph of the working text could only be adopted, in accordance with the Rules of Procedure, by a two thirds majority.

After discussion, the working text submitted by General Parker was put to the vote and rejected.

The Committee of Experts adopted the Stockholm text by 5 votes to NIL.

**Article 53** (*continued*)

*Annex*

The Committee proceeded to consider the text of the Annex to the Convention which the United Kingdom Delegate had been requested to draft; it contained the rules for the application of Article 53, third paragraph (*see Summary Record of the Seventh Meeting.*)

The CHAIRMAN pointed out that the Stockholm text of the third paragraph of Article 53 had been adopted without any alteration; but it would be necessary to add a sentence to the paragraph, and he suggested the following wording which was adopted without opposition:

“For the purpose of applying the provisions of the third paragraph above, the Detaining

Power shall consult the details which appear in Annex No. ...”.

He then read the text prepared by the United Kingdom Delegate.

This text, after some discussion in the Committee and some slight alteration, was accepted as follows:

“Rules regarding notification of payments desired by a prisoner of war in his own country

1. The notification referred to in the fourth paragraph of Article 53 should show:

(a) number, as specified in Article 15, rank, surname and first names of the prisoner of war who is the payer;

(b) the name and address of the payee in his own country to whom he desires payment to be made;

(c) the amount to be so paid in the currency of the country in which he is detained.

2. The notification should be signed by the prisoner of war, or by his witnessed mark if he cannot write, and shall be countersigned by the camp leader in that camp.

3. The Camp Commandant should add a certificate that the prisoner of war concerned had a credit balance of not less than the amount registered to be paid.

4. The notifications may be made up in lists, each sheet of such lists being witnessed by the camp leader and certified by the Camp Commandant.”

**Article 54**

The CHAIRMAN stated that amendments to article 54 had been submitted by the following Delegations: Canada, United States of America, United Kingdom, Australia.

Major ARMSTRONG (Canada) explained that the Canadian amendment (*see Summary Record of the*

*Eleventh Meeting of Committee II*) embodied two new principles:

- (1) The prisoner of war to keep a copy of his own account;
- (2) The Detaining Power to inform the Power of Origin at regular intervals of the amounts standing to the credit of prisoners of war.

A discussion followed in the course of which it was pointed out, *inter alia*, that to supply each prisoner of war with a copy of his account would involve a great deal of work for the Detaining Power. The copy would have to be certified by one of the Camp authorities, failing which it would be valueless. It was open also to falsification by the prisoner.

Notification of the amounts standing to the credit of prisoners of war to the country of origin through the intermediary of the Protecting Powers would be very difficult, and would be to the advantage of the country of origin rather than to that of the prisoners of war themselves. The Detaining Power ought not therefore to be required to make such notifications, but provision should be made for special agreements to be concluded between the Powers concerned for conveying such information.

It was also pointed out during the discussion that the second paragraph of Article 55 provided that a prisoner of war should have facilities for verifying his own account. The question of copies of accounts might well (it was suggested) be considered in connection with that provision.

Major ARMSTRONG (Canada) withdrew point 1 of his amendment (issue of a copy of the account) on the understanding that it would be inserted in the second paragraph of Article 55. He wished, on the other hand, to retain the possibility of concluding special agreements with regard to notifying the state of accounts (point 2 of his amendment). He also agreed to the provisions to that effect being embodied in Article 55.

Adopted.

General PARKER (United States of America) said he had withdrawn the amendment deposited by his delegation in order to take account of the terminology hitherto employed, namely "advance of pay" instead of "pay" and "working pay" instead of "wages".

The CHAIRMAN read the text of the Australian amendment with regard to the prisoner of war's freedom to operate freely on his account.

The Committee, after discussion, decided to drop the amendment, on the ground that its substance was already covered by the Convention.

Mr. GARDNER (United Kingdom) considered that the word "received" in the first sentence of subparagraph (1) of Article 54 was unduly restricted and should be replaced by some other term.

The Committee, after discussion, adopted the following wording for the opening sentence of subparagraph (1) of Article 54:

"1. The amounts due to the prisoner or received by him as an advance of pay ..." (Remainder unchanged.)

It was agreed, however, that the proposal had only been adopted provisionally, and that it should be submitted in writing to the Delegation of the Union of Soviet Socialist Republics to give them time to examine it and comment on it, if they thought fit at the next meeting.

Mr. GARDNER (United Kingdom) then suggested that the whole of the second paragraph of the United Kingdom amendment (*see Annex No. 123 for an Article 53*) should be dropped, except for the final sentence, which stipulated that "Each entry in his account shall be initialled by the prisoner of war concerned, or by the prisoners' camp leader on his behalf". That sentence, which was intended to replace the first paragraph of Article 55, should, he felt, be inserted in Article 54.

General PARKER (United States of America) and General SKLYAROF (Union of Soviet Socialist Republics) were not in favour of the suggestion; the CHAIRMAN then decided to close the discussion on Article 54 and return to the examination of the point raised by the Delegate of the United Kingdom when Article 55 came up for discussion.

## Article 55

The CHAIRMAN then returned to the question of the prisoner of war's signature being replaced by his initials (first paragraph of Article 55), raised by the Delegate of the United Kingdom.

After discussion, it was decided that the words "or initialled" should be added to the provision, following the word "countersigned".

Major ARMSTRONG (Canada) again raised the question of issuing to each prisoner of war a copy of his account, which he (Major Armstrong) had requested should be inserted in the second paragraph of Article 55.

The CHAIRMAN asked the speaker to draft a new text on that point.

He then reminded the Committee that the question of the last paragraph of the amendment sub-

mitted by Canada, relating to the notification by the Detaining Power to the Power on whom the prisoners of war depend of the amounts of the accounts of these still remained to be discussed. In accordance with the decision arrived at when Article 54 was being considered, such notification was not to be compulsory for the Detaining Power; but the two States concerned might conclude special agreements on the matter.

The following text was adopted as a new paragraph to be inserted in Article 55:

“Any two adverse belligerents may agree to notify each other at specific intervals through the Protecting Power, of the amount of accounts of Prisoners of War.”

The adoption of this text, however, was only provisional, since it had been decided that a written text should be circulated to the Delegation of the Union of Soviet Socialist Republics, to enable it to consider the text and to submit any observations it might desire to make at the next meeting.

Mr. GARDNER (United Kingdom) drew the attention of the meeting to the second sentence, added at Stockholm, of the third paragraph of Article 55 (“In case of transfer from one Detaining Power to another...”). He considered that the question of personal effects mentioned in it was already covered either by Article 16 or by Article 40; it was out of place in Article 55, which dealt with financial questions.

General SKLYAROV (Union of Soviet Socialist Republics) considered that Article 55 was perhaps not a suitable place for clauses referring to the personal effects of prisoners of war in the event of their being transferred from one Detaining Power to another. But as that question had not been dealt with either in Article 16, which related more particularly to the case of repatriation, or in Article 40, which was concerned solely with the transfer of prisoners of war within the Detaining Power's territory, there was no option but to retain the matter in Article 55.

The CHAIRMAN also thought that the question did not appear to be covered by any other Article, and that it would be preferable to maintain it in Article 55, where it would certainly not be out of place.

After an observation by Mr. WILHELM (International Committee of the Red Cross), explaining that the last sentences of the third paragraph of Article 55 had been added at Stockholm to fill a gap, the CHAIRMAN drew the attention of the Committee to the fact that Mr. Gardner's objection

was only concerned with the question of personal effects inserted in that sentence, and not with the remainder of the sentence.

Under those circumstances the Committee, after discussion decided:

- (a) to refer back for study by the Special Subcommittee of Committee II the question of what was to be done with the personal property of prisoners of war in the event of their transfer from one Detaining Power to another;
- (b) to maintain the rest of the sentence as it appeared in the Stockholm text.

### Article 56

The CHAIRMAN reminded the meeting of the Amendment presented by India, to Article 51, which the Committee of Experts had decided to examine at the same time as Article 56 (*see Summary Record of the Fourth Meeting*).

He considered that the first point of the amendment was already covered by Article 49; he asked the Delegate of India whether he was in agreement.

Mr. NARAYANAN (India) agreed with the Chairman and withdrew the first paragraph of his amendment.

Mr. ARMSTRONG (Canada) reminded the Meeting that his Delegation had submitted an amendment (*see Summary Record of the Eleventh Meeting of Committee II*) on the same lines as the Indian amendment. He considered that the practical question to be decided was whether it would be better for the prisoner of war repatriated at the close of hostilities to receive the balance of his account in the form of a credit voucher or in the currency of the Detaining Power.

During the discussion which followed it was pointed out that, according to the Stockholm text, failing any special agreement between the Powers concerned, the balances should be paid to the prisoner of war in cash by the Detaining Power, while according to the Canadian Amendment, under similar circumstances the balance of the account should be paid to the prisoner of war in the form of a document attesting the credit of his account.

During the ensuing discussion, the opinion was expressed that, so far as the prisoner of war was concerned, it did not matter whether he received the balance of his account in the form of a document or in the currency of the Detaining Power. Neither the one nor the other would be of any value unless the Power on whom the prisoner depends were willing to pay him; and in that case

the Home Power in question would either honour the document or buy back from the prisoner of war the amount of cash which he had brought with him in the Detaining Power's currency. In the contrary case, the prisoner of war would not be paid, no matter whether he had received a document or cash.

Mr. NARAYANAN (India) added that he would agree to the second paragraph of his amendment being inserted in Article 56 as a fourth paragraph. It was decided that this question should be discussed at the following meeting.

*The meeting rose at 1.15 p.m.*

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## NINTH MEETING

*Thursday 23 June 1949, 10 a.m.*

*Chairman: General René DEVIJVER (Belgium)*

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### **Article 53** (*continued*)

The Delegation of the Union of the Soviet Socialist Republics having raised no objections to this paragraph, Article 53 was unanimously adopted.

### **Article 54** (*continued*)

No objections having been raised to Point (1) by the Delegation of the Union of Soviet Socialist Republics, who at the Meeting of 22 June had reserved the right to take up the question again, Article 54 was adopted unanimously.

### **Article 55** (*continued*)

A proposal by the Canadian Delegation to insert in the second paragraph the clause "and obtaining copy of" between the words "consulting" and "their accounts" was adopted unanimously.

The Delegation of the Union of Soviet Socialist Republics had not had time to examine this paragraph and reserved its opinion.

### **Article 56** (*continued*)

The CHAIRMAN asked the Committee to continue the discussion of the amendments submitted by the Delegations of India and of Canada. He said that both amendments had the same object: they stipulated that prisoners should not be given the balance of their credit in cash but in the form of credit slips.

A discussion ensued, during which Mr. BAISTROCCHI (Italy) and Mr. GARDNER (United Kingdom) pointed out that the restrictions imposed by the majority of countries on the import or export of foreign currency would entail difficulties in the event of prisoners being paid their credit balances in cash. Further, it was pointed out that payment in cash might lead to a traffic in currency at the expense of the Home Government.

General SKLYAROV (Union of Soviet Socialist Republics) considered that the solution of the problem was in the hands of the Power on whom the prisoner is dependent. If that Power was prepared to compensate its nationals who were prisoners of war, it would do so irrespectively of whether such persons had foreign currency or credit slips. The Soviet Delegate was of the opinion that the Stockholm Draft was satisfactory, since it left it open to belligerents to conclude special agreements.

General PARKER (United States of America) was in favour of the Stockholm text. He pointed out that the purpose of the Convention was to ensure the protection of the prisoner's interests rather than those of their Government.

Mr. WILHELM (International Committee of the Red Cross), without touching on the substance of the question, suggested as a means of reconciling these points of view, and, in case the Stockholm Draft was adopted, to amplify it by a provision stipulating that prisoners should be issued with a document attesting the amount of the sum received.

A provision to that effect would prevent the fraudulent traffic feared by the United Kingdom Delegate.

The CHAIRMAN put to the vote the principle of eliminating cash payments and issuing certificate slips instead.

The principle was adopted by 3 votes to 2.

The CHAIRMAN asked the Committee to proceed to the examination of the amendment submitted by the Delegation of the United Kingdom (*see Annex No. 126*).

Mr. GARDNER (United Kingdom) explained the scope of his Delegation's amendment. It was, he said, more comprehensive than the Stockholm text inasmuch as it covered in particular all cases of repatriation, and introduced the principle of the issue of a statement signed by an authorized officer of the Detaining Power. The United Kingdom amendment was intended to replace Article 56.

In order to meet the wishes of the Italian Delegate, he suggested that the second paragraph of his amendment should be completed by the following provision:

"The Power in whose service the prisoner of war was may take into consideration the sums due to prisoners by the Detaining Power and referred to in Articles 51 and 51A".

After a general discussion of the amendment, the CHAIRMAN invited the Committee to vote on the United Kingdom amendment sentence by sentence.

This proposal was adopted by 4 votes to 3.

The first sentence of the first paragraph of the United Kingdom amendment, intended to replace the first two paragraphs of Article 56, was adopted by 4 votes to 3.

The second sentence of the first paragraph, intended to replace the provisions contained in the third paragraph of Article 56 was also adopted by 4 votes to 3.

The Delegate of the Union of Soviet Socialist Republics, supported by the Delegate of the United States of America, proposed that the term "the Power in whose service the prisoner of war was" contained in the United Kingdom amendment, should be replaced by "the Power on which he depends...".

Mr. GARDNER (United Kingdom) urged the retention of the term "the Power in whose service the prisoner of war was" in Article 56, whatever the Conference might decide as to the general use of the term "the Power on which he depends..." in the Convention.

The third sentence of the United Kingdom amendment was also adopted by 4 votes to 3.

The second paragraph of the amendment in question was rejected by 3 votes to 3, after the Italian Delegate had opposed its completion by the provision previously suggested by the United Kingdom.

Mr. GARDNER (United Kingdom) proposed to the Article the following addition: "All the clauses in this Article may be altered by the interested Powers by special agreement".

Mr. Gardner's proposal was unanimously adopted.

The Australian amendment (*see Summary Record of the Eleventh Meeting of Committee II*) was rejected by 5 votes to 1.

The amendment submitted by the Delegation of the United States of America was withdrawn, and Article 56 now read as follows:

"On the termination of captivity by the release of a prisoner of war or on his repatriation, the Detaining Power shall give to him a statement, signed by an authorized officer of that Power, showing the credit balance due to that prisoner at the end of captivity. On the other hand, the Detaining Power shall send through the Protecting Power to the Government on whom the prisoner of war depends lists showing the particulars of all prisoners of war whose captivity has been terminated by repatriation, release, escape, death or any other means, and showing the amount of their credit balances. Such lists shall be certified on each sheet, by an authorized representative of the Detaining Power.

All the clauses in this Article may be altered by the interested Powers by special agreement."

Mr. GARDNER (United Kingdom) while expressly maintaining his reservation concerning the expression "on whom the prisoner of war depends...", accepted the introduction of the words into the Article pending a final decision on the expression to be used.

## Article 57

The CHAIRMAN said that amendments to Article 57 had been submitted by the Delegations of the United States of America, of Canada and of the United Kingdom (*see Annex No. 128 for an Article 57A*). The United States amendment was no longer relevant and had therefore been withdrawn together with the Canadian amendment.

Mr. GARDNER (United Kingdom) was also prepared to withdraw his amendment provided the

Stockholm text was altered so as to be made clearer. He suggested the following wording:

“Advances of pay made to prisoners of war in accordance with Article 51, shall be considered to be made in the name of the Power on which they depend.”

The CHAIRMAN pointed out that this was only an alteration of form. The proposal was then unanimously adopted.

Mr. GARDNER (United Kingdom) drew the attention of the Committee to the fact that it would be proper to complete Article 57 if his Delegation's amendment concerning compensation, was accepted. He further said that it was not possible to compel the Powers concerned to conclude agreements, as stipulated in the Stockholm text. He would therefore have preferred the wording which appeared in the United Kingdom amendment, viz: “... shall be taken into consideration ...” to have been adopted.

As that wording had not been accepted, Mr. GARDNER (United Kingdom) wished to enter definite reservations.

#### Article 57A

Mr. GARDNER (United Kingdom) stated that the compensation system provided for in the 1929 Convention had been impossible to apply in practice during the last war. On the other hand, if the principle of compensation was accepted, such compensation should be borne by the Power on which the prisoner of war depended; but the Detaining Power should be under the obligation to give the prisoner a statement containing all necessary information. That was the object of the amendment submitted by the United Kingdom for an Article 57A.

Mr. GARDNER also noted that there had been an omission in the amendment. It concerned the replacement of objects for daily use, which should be the responsibility of the Detaining Power.

The amendment of the United Kingdom was to be completed and its discussion continued at the next meeting.

*The meeting rose at 1.15 p.m.*

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### TENTH MEETING

*Wednesday 29 June 1949, 3 p.m.*

*Chairman: General René DEVIJVER (Belgium)*

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#### Article 57A (continued)

Mr. GARDNER (United Kingdom), as agreed at the end of the last meeting, read the following text, of the proposed addition to his amendment for a new Article 57A “Indemnity”:

“However, personal effects which might be required by the prisoner during his captivity shall be replaced at the cost of the Detaining Power.”

He proposed to add the above sentence between the first and the second sentences of the second paragraph.

General PARKER (United States of America) and Major ARMSTRONG (Canada) were prepared to ac-

cept the amendment as altered, on the ground that it covered points which were not dealt with elsewhere in the Convention, and confirmed the practice adopted in their own countries during the last war.

General SKLYAROV (Union of Soviet Socialist Republics), although he had no objection to the second paragraph, was nevertheless of the opinion that the first paragraph was superfluous as it in fact duplicated the provisions of Article 45.

Mr. GARDNER (United Kingdom) said that the drafting of Article 57A was clearer and more complete than that of Article 45, and the importance of the matter was sufficient justification for the repetition.

The CHAIRMAN said that Article 45 had been adopted by the Drafting Committee, and there could be no question therefore of altering or omitting it. He moved, at the suggestion of Mr. WILHELM (International Committee of the Red Cross) to add a reference to Article 45 in Article 57A.

Mr. GARDNER (United Kingdom) was of the opinion that the first three sentences of the first paragraph added a certain substance to Article 45. He suggested that they should be retained, the beginning of the second sentence being altered to read as follows:

"In conformity with the provisions of Article 45, the Detaining Power shall in all cases issue prisoners of war with a statement..."

He agreed to delete the last sentence of the paragraph.

The Delegates as a whole approved Mr. GARDNER's proposal, with the exception of General SKLYAROV (Union of Soviet Socialist Republics), who objected to the repetition in the first paragraph of the provisions which already appeared in Article 45. He wished for time to compare the two texts.

The CHAIRMAN noted that the United Kingdom amendment, as modified, had been adopted by a large majority, but the Delegation of the Union of Soviet Socialist Republics wished to make certain reservations.

He proposed to number this Article "57 A".

Agreed unanimously.

### **Report of the Committee of Experts to the Special Committee**

The Committee having completed its labours, the Rapporteur, Mr. WILHELM (International Committee of the Red Cross) read the Report Article by Article.

#### *Article 49*

Mr. GARDNER (United Kingdom) noted that it was stated in the first paragraph of the Article (*see Summary Record of the First Meeting*) that:

"the Detaining Power 'must' whereas the Stockholm text, from which the paragraph was taken, said 'may'. He proposed to replace the word 'may'."

The Committee accepted his proposal and adopted Article 49 as altered.

#### *Article 50*

No observations.

#### *Article 51*

Article 51 was adopted with certain minor drafting corrections.

#### *Article 51A (new)*

No observations.

#### *Article 52*

Major ARMSTRONG (Canada) wished to substitute the word "and" for the word "furthermore" in the second paragraph of the English text.

The RAPPORTEUR said that he had taken the initiative in inserting in the second paragraph a reference in brackets to Article 41, in order to remind Delegates that the Drafting Committee of Committee II had decided to delete the fourth paragraph of that Article. The paragraph in question dealt with the same category of prisoners as that to which the second paragraph of Article 52 related. The Committee were still in ignorance of the place to be finally occupied by this provision.

The Committee decided to draw the attention of the Special Committee to the point.

The English text was adopted with the above alterations.

#### *Article 53*

The RAPPORTEUR said that the word "figurant" should be inserted at the end of the last paragraph after "Règlement-type" in the French text.

As regards the model regulations (*see Summary Record of the Eighth Meeting*), he said that he had altered the conditional tense used in the original draft and had replaced it by the future tense. That did not in any way affect the purely optional character of the application of the Regulations.

Mr. GARDNER (United Kingdom) proposed to substitute the words "the Detaining Power" for the word "it" in the second paragraph of the English text.

Major ARMSTRONG (Canada) proposed to substitute "may" for "can" in the last paragraph of the English text.

The above proposals were accepted, and the Article thus altered was adopted.

#### *Article 54*

A drafting alteration was made in the English text of the first sub-paragraph, the words "as

advances of pay..." being substituted for the words "in the shape of advances of pay..."

The Committee adopted the new wording.

*Article 55*

With a view to coordinating the French and English texts, the Committee decided to alter the end of the fourth paragraph of the French text as follows: "... les montants figurant aux comptes des prisonniers de guerre" (the amounts of accounts of prisoners of war).

The new text was adopted.

*Article 56*

The RAPPOREUR proposed a re-draft of the second paragraph of the French text, which was unanimously adopted, reading as follows:

"Les Puissances intéressées pourront, par accord spécial, modifier tout ou partie des dis-

positions prévues ci-dessus." (The Powers concerned may, by special agreement, modify all or part of the modalities mentioned above.)

The Article was adopted in its new form.

The English text, as originally drafted, and adopted by the Committee, remained unchanged.

*Article 57*

The new Article 57A being adopted, it was necessary to complete the reference in the third paragraph of Article 53 by a reference in Article 57 A.

The Article, as altered, was adopted.

The Report as a whole was unanimously approved.

Article 57A to be attached to the Report before the latter is submitted to the Special Committee.

*The meeting rose at 5.15 p.m.*

## Report of the Committee of Financial Experts of Committee II to the Special Committee

(July, 1st 1949)

The Committee of Experts appointed by the Special Committee on 2 June 1949 to consider Articles 49 to 57A of the Prisoners of War Draft Convention, together with the various amendments to these Articles, held ten meetings in the course of which the Articles in question were submitted to a close scrutiny. Representatives of the following countries took part in the work of the Committee: Belgium, Canada, the United States of America, France, Italy, United Kingdom, the Union of Soviet Socialist Republics, whilst a Representative of the International Committee of the Red Cross was also present as an Expert. General DEVIJVER (Belgium) was elected Chairman of the Committee. Delegates of the States which were not actually represented on the Committee were given the opportunity of defending the amendments which had been submitted by these States.

The Committee now submits the documents hereunder to the Special Committee:

- A. A new draft of Articles 49 to 57A based on the discussions which took place in the Committee.
- B. Comments on each separate Article, giving the reasons for the new wording adopted and the alterations made to the Stockholm text.

### A. ARTICLES 49-57A

#### *Article 49—Ready money*

“Upon the outbreak of hostilities, and pending an arrangement on this matter with the Protecting Power, the Detaining Power may determine the maximum amount of money in cash or in any similar form, that prisoners may have in their possession. Any amount in excess which has been taken or withheld from them, shall be placed to their account, together with any monies deposited by them, and shall not be converted into any other currency without their consent.

\* If prisoners of war are permitted to purchase services or commodities outside the camp against payment in cash, such payments shall be made by the prisoner himself or the camp administrator and charged to the account of the prisoners concerned. The Detaining Power will establish the necessary rules in this respect.”

#### *Article 50—Cash taken from prisoners*

“Cash taken from prisoners of war at the time of their capture, and which is in the currency of the Detaining Power, shall be placed to their separate accounts, by virtue of the provisions of Article 54 of the present Section.

The amounts in the currency of the Detaining Power, due to the conversion of sums in other currencies that are taken from the prisoners of war at the same time, shall also be credited to their separate accounts.”

#### *Article 51—Advances of Pay*

“The Detaining Power shall grant all prisoners of war a monthly advance of pay, the amount of which shall be fixed by conversion, into the currency of the said Power, of the following amounts:

- Category I. Prisoners ranking below sergeants: eight Swiss gold francs.
- Category II. Sergeants and other non-commissioned officers, or prisoners of equivalent rank: twelve Swiss gold francs.
- Category III. Warrant officers and commissioned officers below the rank of major, or prisoners of equivalent rank: fifty Swiss gold francs.
- Category IV. Majors, lieutenant-colonels, colonels and prisoners of equivalent rank: sixty Swiss gold francs.

Category V. General officers or prisoners of war of equivalent rank: seventy-five Swiss gold francs.

The Swiss gold franc aforesaid is the franc containing 203 milligrammes of fine gold.

However, the belligerents concerned may by special agreement modify the amount of advances of pay due to prisoners of the preceding categories.

Furthermore, if the amounts indicated in paragraph one above would be unduly favourable compared with the pay of the Detaining Power's armed forces or would, for any reason, seriously embarrass the Detaining Power, then, pending the conclusion of special agreement with the Power on which the prisoners depend to vary the amounts indicated above, the Detaining Power;

- (a) shall continue to credit the account of the prisoners with the amounts indicated in the first paragraph above;
- (b) may temporarily limit the amount made available from these advances of pay to prisoners of war for their use, to sums which are reasonable but which for Category I shall never be inferior to the amount that the Detaining Power gives to the members of its own armed forces.

The reasons for any limitations will be given without delay to the Protecting Power."

*Article 51A (new)—Supplementary Pay*

"The Detaining Power shall accept sums for distribution as supplementary pay to prisoners of war which the Power on which the prisoners depend may forward to them, on condition that the sums to be paid shall be the same for each prisoner of the same category and shall be payable to all prisoners of that category depending on that Power, and shall be placed in their separate accounts by virtue of the provisions of Article 54 at the earliest opportunity. Such supplementary pay shall not relieve the Detaining Power of any obligation under this Convention."

*Article 52—Working Pay*

"Prisoners of war shall be paid fair working pay directly by the detaining Authorities. The rate shall be fixed by the said authorities, but shall at no time be less than one-fourth of one Swiss gold franc for a full working day. The Detaining Power shall inform prisoners of war, as well as the Power on which they depend through the intermediary of the Protecting Power, of the rate of daily working pay that it has fixed.

Working pay shall likewise be paid by the detaining Authorities to prisoners of war permanently detailed to duties or to an artisanal occupation in connection with the administration, installation

or maintenance of camps, and to the prisoners who are required (in conformity with Article 41\*) to carry out spiritual or medical duties in favour of their comrades.

The working pay of the spokesman, and of his assistants and possible advisers, shall be paid out of the fund maintained by canteen profits. The scale of this working pay shall be fixed by the spokesman and approved by the camp commander. If there is no such fund, the detaining Authorities shall pay these prisoners a fair working pay."

*Article 53—Transfer of Funds*

"Prisoners of war shall be permitted to receive remittances of money addressed to them individually or collectively.

Every prisoner of war shall have at his disposal the credit balance of his account, as provided for in the following Article, within the limits fixed by the Detaining Power, which shall make such payments as are requested. Subject to financial or monetary restrictions which the Detaining Power regards as essential, prisoners of war may also have payments made abroad. In this case payments addressed by prisoners of war to dependents shall be given priority.

In any event, and subject to the consent of the Power on which they depend, prisoners may have payments made in their own country, as follows: The Detaining Power shall send to the aforesaid Power through the Protecting Power, a notification giving all necessary particulars concerning the prisoners of war, the beneficiaries of the payments, and the amount of the sums to be paid, expressed in the Detaining Power's currency. The said notification shall be signed by the prisoners and countersigned by the camp commander. The Detaining Power shall debit the prisoners' account by a corresponding amount; the sums thus debited shall be placed by it to the credit of the Power on which the prisoners depend.

To apply the foregoing provisions, the Detaining Power may usefully consult the Model Regulations in Annex No. 4 of the present Convention."

*Annex—Model Regulations concerning payments sent by prisoners to their own country*

(see Article 53, third paragraph)

"1. The notification referred to in the third paragraph of Article 53 will show:

- (a) number as specified in Article 15, rank, surname and first names of the prisoner of war who is the payee;
- (b) the name and address of the payee in the country of origin;

\* See hereafter: "B Comments."

(c) the amount to be so paid in the currency of the country in which he is detained.

2. The notification will be signed by the prisoner of war, or by his witnessed mark if he cannot write, and shall be countersigned by the camp leader in that camp.

3. The Camp Commandant will add to this notification a certificate that the prisoner of war concerned has a credit balance of not less than the amount registered to be paid.

4. The notification may be made up in lists, each sheet of such lists being witnessed by the camp leader and certified by the Camp Commandant."

*Article 54—Prisoner's accounts*

"The Detaining Power shall hold an account for each prisoner of war, showing at least the following:

- (1) The amounts due to the prisoner or received by him as advances of pay, working pay or derived from any other source; the sums in the currency of the Detaining Power which were taken from him; the sums taken from him and converted at his request into the currency of the said Power.
- (2) The payments made to the prisoner in cash, or in any other similar form; the payments made on his behalf and at his request; the sums transferred under Article 53, third paragraph."

*Article 55—Management of prisoners' accounts*

"Every item entered in the account of a prisoner of war shall be countersigned or initialled by him, or by the spokesman acting on his behalf.

Prisoners of war shall at all times be afforded reasonable facilities for consulting and obtaining copies of their accounts, which may likewise be inspected by the representatives of the Protecting Powers, at the time of visits to the camp.

When prisoners of war are transferred from one camp to another, their personal accounts shall follow them. In case of transfer from one Detaining Power to another, their personal effects\* and the monies which are their property and are not in the currency of the Detaining Power shall follow them. They shall be given certificates for any other monies standing to the credit of their account.

The belligerents concerned may agree to notify each other at specific intervals through the Protecting Power the amount of accounts of the prisoners of war."

\* Concerning the place of this sentence, see "Comments" further on.

*Article 56—Winding up of accounts*

"On the termination of captivity by the release of a prisoner of war or on his repatriation, the Detaining Power shall give to him a statement, signed by an authorized officer of that Power, showing the credit balance due to that prisoner at the end of captivity. On the other hand, the Detaining Power shall send through the Protecting Power to the Government upon which the prisoner of war depends, lists showing the particulars of all prisoners of war whose captivity has been terminated by repatriation, release, escape, death or any other means, and showing the amount of their credit balances. Such lists shall be certified on each sheet, by an authorized representative of the Detaining Power.

Any of the provisions of this article may be varied by mutual agreement between any two belligerents."

*Article 57—Compensation between belligerents*

"Advances of pay issued to prisoners of war in conformity with Article 51 shall be considered as made on behalf of the Power on which they depend. Such advances of pay, as well as all payments made by the said Power by virtue of Article 53, third paragraph, and Article 57A shall form the subject of arrangements between the Powers concerned, at the close of hostilities."

*Article 57A—Compensation*

"Any claim by a prisoner of war for compensation in respect of any injury or other disability arising out of work, shall be referred to the Power on which he depends, through the Protecting Power. In accordance with Article 45, the Detaining Power will, in all cases, provide the prisoner of war concerned with a statement showing the nature of the injury or disability, the circumstances in which it arose and particulars of medical or hospital treatment given for it. Such statement shall be signed by a responsible officer of the Detaining Power and the medical particulars shall be certified by a medical officer.

Any claim from a prisoner of war for compensation in respect of personal effects, monies or valuables impounded by the Detaining Power under Article 16 and not forthcoming on his repatriation, or in respect of loss alleged to be due to the fault of the Detaining Power or any of its servants shall likewise be referred to the Power on which he depends. Nevertheless, any such personal effects required for use by the prisoners of war whilst in captivity shall be replaced at the expense of the Detaining Power. The Detaining Power will, in all cases, provide the prisoner of war with a statement, signed by a responsible officer, showing

all available information regarding the reasons for which such effects, monies or valuables are not forthcoming. A copy of such statement shall be forwarded to the Power on which he depends through the Central Agency for Prisoners of War provided for in Article 113."

## B. COMMENTS

### Article 49

Re first paragraph: The purpose of this paragraph is to avoid that the necessity of concluding an agreement with the Protecting Power concerning the fixation of a maximum amount shall not make it possible for the Detaining Power to delay fixing the amount in question, and thereby prevent prisoners from receiving the sums which they really need in proper time. The first sentence of the Stockholm text was slightly altered for this purpose.

The United Kingdom Delegation made a reservation with regard to the second sentence which, it was considered, would not allow the Detaining Power to confiscate amounts in excess of the amounts to which prisoners of war are entitled if such sums had been illegally obtained.

Re second paragraph: The words "by the prisoner himself" were inserted in the first sentence in order not to exclude the possibility which has, in practice, frequently been granted to prisoners. The last sentence was added in order to take account of the idea embodied in Point No. 2 of the United Kingdom Amendment to Article 49.

### Article 50

This Article reproduces the Stockholm text without alteration, except that the English wording of the second paragraph has undergone a slight change.

### Article 51

Re first paragraph: The word "pay" has been replaced by the term "advance of pay". The Committee considered that the advances referred to in this Article were not in any way equivalent to the pay drawn by prisoners when serving in their own armed forces, and only represented a fraction of the latter, in many cases a very small one, intended to meet their needs for indispensable commodities.

Re second, third, fourth and fifth paragraphs: The system proposed in the Stockholm text for fixing advances of pay met with many objections and produced a lengthy discussion.

- (1) Some of these objections related to the gold standard itself adopted as a basis of calculation. On the one hand, it was pointed out

that there was a tendency at present to abandon gold as a monetary standard, and on the other, that both Powers in time of war fix an arbitrary price for gold, so that the system proposed in the Convention could not function normally. The majority of the Committee did not share these fears; and it was therefore decided to retain the gold standard, to fix the weight of the Swiss gold francs referred to in the Article at 203 milligrammes of fine gold, specifying that this did not really refer to the Swiss franc itself but to a unit described as a franc based on a given weight of gold.

- (2) Other objections concerned the fact that certain softcurrency countries, where the cost of living is low, would find great difficulty in paying the advance stipulated in the first paragraph, and that prisoners of war in such countries might be placed in a much more favourable position than the soldiers of the Detaining Power. The Committee considered that these objections were justified and with a view also to taking account of the Turkish and Spanish amendments, decided to:

a) insert at the beginning of the third paragraph the word "however", to indicate clearly that the amounts specified in the paragraph could always be altered, and either increased or decreased by special agreement.

b) add a fourth and a fifth paragraph which reproduce the substance of the United Kingdom proposal and are intended to relieve certain Detaining Powers of the difficulties referred to above, without relieving them of the duty to credit prisoners with the amounts stipulated, a system which is intended to ensure that both the Detaining Powers and those on whom the prisoners depend will make every effort to come to an agreement with regard to the amounts of advances of pay due.

### Article 51A

The Committee decided by a majority that the fourth paragraph of Article 51 of the Stockholm text should constitute a new Article; this was intended to make it clear that the question of supplementary pay is quite distinct from the question of advances of pay. The fourth paragraph as worded in the Stockholm text was replaced by a new text amalgamating the United Kingdom and New Zealand amendments, which clarifies the Stockholm text in several respects without altering the substance of the original text.

*Article 52*

Re first paragraph: It appeared that the expression "wages" was inappropriate and might give the impression that prisoners of war while fed and housed at the cost of the Detaining Power were in addition being remunerated for their work at a rate corresponding to the remuneration of a civilian worker responsible for maintaining himself and his family out of his wages. For this reason, it was decided to substitute the terms "working pay" wherever this was necessary.

Furthermore, and in order to meet the United Kingdom amendment, the Committee decided to delete the words "by their employers, or" in the Stockholm text in order to make it quite clear that the Detaining Power, having sole responsibility for prisoners' work, even if employed in private undertakings, should also be solely and directly responsible for paying their working allowances.

Lastly, the words in the last sentence "through the intermediary of the Protecting Power" were added in view of the fact that there were no direct relations between the belligerents.

Re second and third paragraphs: The Stockholm text was retained without alteration. The Committee after a lengthy discussion did not consider it expedient to make a distinction, as suggested in the United Kingdom and Australian amendments, between work performed for the benefit of the Detaining Power and work for the benefit of the prisoners themselves; nor was the Committee in favour of remunerating all work of the latter category from special funds derived from profits of canteens.

Further, the fourth paragraph of the Stockholm text was deleted, as the Committee considered that it should not be possible to reduce the minimum working allowances by means of special agreements, and that agreements between belligerents to increase this allowance were already covered by Article 5.

Finally, the Committee put between brackets the words "in conformity with Article 41" in order to draw attention to the fact that the last paragraph of Article 41 concerning medical and religious personnel has been deleted by Drafting Committee No. 1.

*Article 53*

Re first paragraph: The words "or collectively" were added because it was considered that cash remittances or gifts intended for the whole body of prisoners in one camp could quite well be paid into the fund provided for in Article 26.

Furthermore, with a view to taking the Finnish amendment into account and considering that there was no need in this case to contemplate, as in the case of relief consignments, the possibility of any

limitation, the Committee decided to delete the words in the Stockholm text "subject to the restrictions... themselves".

Re second paragraph: The second sentence of the Stockholm text was altered to meet the objections raised by the United Kingdom Delegation, which had pointed out that prisoners of war could not be treated on the same footing as the civilian population as regards payments abroad, and that the sums they received were intended primarily to better their lot while in captivity. This point of view was shared by the majority of the Committee.

The last sentence which was added to the Stockholm text reproduces a Greek amendment.

Re third paragraph: The Stockholm text is reproduced unaltered.

Re fourth paragraph: The Committee decided to add this paragraph to the Stockholm text to take account of the United Kingdom amendment, which contains more detailed stipulations than those in the third paragraph of the Stockholm text; the Committee decided not to embody these in the Convention in the form of a rule, but considered that they should figure in an annex to serve as a guide in applying the system provided in the third paragraph.

*Article 54*

The Stockholm text has not been substantially altered; nevertheless, for the sake of precision, it was decided to replace the words "in substance" by the words "at least"; and the words "the amounts received by the prisoner..." by the words "the amounts due to the prisoner or received by him...".

*Article 55*

Re first paragraph: The words "or initialled" were added as the result of a suggestion of the United Kingdom Delegation, with a view to simplifying the operation covered by this paragraph.

Re second paragraph: The words "and receiving a copy" were added to the Stockholm text to meet the Canadian amendment.

Re third paragraph: The Committee draws the attention of the Special Committee to the fact that the question of the ultimate disposal of the property of prisoners of war in the event of their being transferred from one Detaining Power to another should not properly be dealt with in this Article but should figure in some other part of the Convention.

Re fourth paragraph: This new paragraph reproduces in an optional form an idea embodied in the Canadian amendment.

*Article 56*

Re first paragraph: This paragraph, which was adopted by 3 votes to 2, and is to replace the three

paragraphs of the Stockholm text, reproduces the United Kingdom amendment, the substance of which was also contained in the Canadian and Indian amendments.

The following points were made in support of this new paragraph:

- (1) The payment of credit balances in cash at the end of hostilities might entail difficulties for prisoners of war owing to the restrictions imposed by most countries on the import or export of foreign currency; further, payment of the kind might give rise to currency trafficking by prisoners when such currency is converted into that of the Home Power;
- (2) This text is more complete than the Stockholm text, especially as regards provision for all eventualities at the end of hostilities.

The minority objected to the new paragraph on the grounds that it was the Stockholm text which provided that the belligerents concerned conclude agreement to substitute the issue of a voucher for payment in cash, while on the other hand, should there be no agreement, it would nevertheless be to the prisoner's advantage to have cash rather than a voucher, which the Power in whose service they are might refuse to honour.

Re second paragraph: By a small majority, the Committee rejected the principle of point 2 of the United Kingdom amendment according to which

the Power in whose service the prisoner of war is shall be responsible for the payment to prisoners of war of their credit balances; in the Committee's opinion, it was more appropriate to make it quite clear by the addition of the present paragraph that the question of responsibility could be settled by way of agreement.

*Article 57*

This Article reproduces the Stockholm text with a slight alteration in the first sentence in order to avoid the repetition of the word "advance". Moreover, the terms: "and Article 57A" have been added, as payment made in accordance with this last Article will also have to be taken into account in the financial agreements mentioned in Article 57.

*Article 57A*

This Article, which is in substance the United Kingdom amendment, is new. It confirms in a more general form and extending it to the property of the prisoner which has been confiscated a principle already found in Article 45, namely that it is the Power on which the prisoners depend which must satisfy their claims for compensation. Moreover, the Detaining Power must, in case of need, certify the exactitude of the claims. The Committee has, however, thought it better to make an exception to this rule, in the case of the personal effects which the prisoner needs during his captivity.

## Report of Committee II to the Plenary Assembly of the Diplomatic Conference of Geneva

### 1) WORK OF COMMITTEE II

The text of a Convention relative to the Treatment of Prisoners of War, revised and submitted for the approval of the Diplomatic Conference in the present Report, is the result of the work of Committee II. Notwithstanding the sometimes profound differences of opinion which came to light during the Meetings of the Committee, the latter was able to reach agreement on almost every point which provoked discussion. Under these circumstances the Committee recommends that the Plenary Meeting should adopt the draft Convention.

At its first Meeting which took place on 25 April 1949, the Committee elected as Chairman Mr. Maurice Bourquin, Head of the Belgian Delegation. At the same time it was good enough to nominate me as first Vice-Chairman and Mr. Meykadeh, Delegate of Iran, as second Vice-Chairman. The Delegate of Greece, Mr. Pesmazoglou, was elected Rapporteur, but had later to resign on being recalled urgently to Athens; the Committee then requested its first Vice-Chairman to take over the duties of Rapporteur as well.

Mr. Wurth, of the Federal Political Department, was nominated General Secretary of the Committee at the beginning of the Conference. He was assisted by Mr. Vallotton and Mr. Brelaz.

The working methods of Committee II were similar to those of the other general Committees of the Conference. Committee II began by examining, in a First Reading, the draft which was adopted by the XVIIth International Conference of the Red Cross, and used as a basis for discussion by the Committee. Mr. Wilhelm, Representative of the International Committee of the Red Cross, who was present at the debates of the Committee as Expert, was invited to comment on the origin,

structure and meaning of each Article. A very large number of amendments and new proposals were submitted by the various Delegations.

The Articles of the draft Convention dealing with penal sanctions and similar subjects were, from the first Meeting of the Committee, referred to a small Sub-Committee for consideration. This Sub-Committee was composed of members of the following Delegations: the United States of America, France, Greece, the United Kingdom and the Union of Soviet Socialist Republics. Its Chairman was General Dillon, Delegate of the United States of America.

At its Meeting of 2 May 1949, the Committee nominated a Special Committee which was instructed to put into shape two Articles upon which radical differences of opinion had been encountered during the First Reading. Later, several other questions were referred to this Special Committee as it had been impossible to reconcile the differences of opinion during the First Reading. I shall refer later to the various points dealt with by the Special Committee. The following Delegations were represented on it: Australia, Belgium, Canada, Denmark, Spain, the United States of America, Finland, France, Greece, Hungary, India, Israel, Italy, Netherlands, the United Kingdom, Switzerland, the Soviet Socialist Republic of the Ukraine, and the Union of Soviet Socialist Republics. The Committee nominated the Swiss Delegate, Mr. Zutter, as Chairman; General Parker (United States of America) Vice-Chairman, and General Devijver (Belgium) Rapporteur.

The Special Committee considered it expedient to delegate the preliminary examination of certain particularly difficult or highly technical points to a Working Party or Group of Experts. Thus,

Articles dealing with the financial resources of prisoners of war were submitted to a Committee of Experts under the Chairmanship of General Devijver, who, incidentally, also acted as Chairman, Rapporteur and mediator, in still other cases.

Committee II also set up a Drafting Committee on which sat Delegates of Albania, the United States of America, France, India, Norway, New Zealand (later, Canada), the United Kingdom, and the Union of Soviet Socialist Republics. The Chairman of this Committee, Mr. Bellan, Delegate of France, was assisted by Major Highet, Delegate of New Zealand, who also acted as Vice-Chairman and Rapporteur. Both later found it impossible to continue, and were replaced by Mr. Baudouy (France) and Major Armstrong (Canada) respectively. To relieve this Committee, a second Drafting Committee was set up later, composed of Delegates of the United States of America, Italy, Portugal, Rumania, the United Kingdom, the Holy See, Switzerland, Turkey, the Union of Soviet Socialist Republics and Venezuela. General Parker (United States of America) was Chairman of the second Drafting Committee, which nominated Mr. Moll (Venezuela) Rapporteur.

It was possible to refer most of the Articles to the Drafting Committee after preliminary examination by the full Committee in First Reading. In principle, the terms of reference of the Drafting Committees were to establish a new text which would take into account the proposals made at Meetings of the Committee; they were not called upon to decide differences of opinion. Committee II, however, did not rigidly interpret this principle. It did not hesitate to refer back to the Drafting Committees certain Articles upon which divergencies of view had not been reconciled in First Reading, where such divergences were of only secondary importance or largely technical in character. It was in this way possible for the full Committee to avoid voting in First Reading. A number of Articles met with general approval in First Reading; they were therefore unanimously adopted and referred directly to the Coordination and Drafting Committees of the Conference. The Committee agreed with its Chairman that, as soon as the slightest difference of opinion arose, it was preferable as far as possible to avoid imposing the will of the majority upon the minority by voting, without previously exhausting every pos-

sible means of reaching a compromise, even on points of secondary importance.

In the Committees it was very often necessary to resort to votes in order to clear the ground, to reveal the various points of view, or to make a choice between different possible solutions which several Delegations probably found almost equally satisfactory. This also applied to the Second Reading in full Committee. Opinions might differ on a point, a paragraph or a sentence. But even in these cases, all Delegations have in general unanimously approved the text of the Articles as a whole.

Finally, the Committee, at its Meeting of 5 May 1949, set up a Committee of Medical Experts to consider a draft model agreement (to be annexed to the Convention) dealing with the direct repatriation and accommodation in neutral countries of wounded and sick prisoners of war. Colonel Crawford (Canada), General Jame (France) and Colonel Sayers (United Kingdom) were named members of the Committee, which also included Delegates of Afghanistan, Belgium, Bolivia, Hungary, India, Ireland, Pakistan, Netherlands, Portugal, Rumania, Sweden, Switzerland, Turkey and Venezuela. Colonel Crawford acted as Chairman and Rapporteur. The Medical Experts unanimously adopted the text which was later adopted by the Committee, and which appears as Annex I of the new Convention. They also considered the text of the Article to which Annex I refers; and further, Annex II, and the text of the provision which prohibits the employment of a repatriated prisoner of war on military duties. On these points they made certain recommendations which were adopted by the Committee. They profited by the presence of two ex-members of Joint Medical Committees, Professor Walthard and Doctor d'Erlach.

The Report of Mr. Du Pasquier on the Articles common to all four Conventions will be placed before the Conference. As will be seen from his Report, these Articles of general interest have already been examined by the three general Committees of the Conference united as a joint Committee under the Chairmanship of Mr. Bourquin. It is therefore unnecessary for me to deal further with questions arising from them, and I will confine myself to a reference to Mr. Du Pasquier's Report.

## 2) COMMENTARIES ON THE DRAFT CONVENTION

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### Preamble

During the First Reading there was a discussion as to whether or not the Convention should have a Preamble. Drafting Committee No. II was asked to elaborate a text. The problem proved difficult, there being divergent views on the question of what general principles it should set forth. In Second Reading, two different texts were placed before the Committee, to which three more were added during the course of a succession of long discussions. Several Delegations came round to the point of view that it would be better to have no Preamble at all, while several pronounced themselves in favour of having a Preamble,

but only on the condition that unanimous agreement could be reached on a text.

The Committee took a preliminary vote to gauge the general opinion on the different drafts before it; there was a narrow majority in favour of two of them. As between these two texts, the Committee then made a choice, again by a narrow margin. It was obvious that opinion was very divided. The question of inserting this Preamble was then put to the vote, and the Committee decided in the negative by a large majority.

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## PART I

### General Provisions

#### Articles 1-10

Part I. is completely new and treats the application of the Convention *ratione materiae, personae et temporis*, and the procedure and organizations by which its enforcement shall be facilitated; it reproduces in part, the stipulations or ideas contained in Articles 82, 83, 86, 87 and 88 of the 1929 Convention. As its examination was referred to the Joint Committee, except for Articles 3 and 4, I shall limit myself to the two latter Articles.

Among the opening provisions of the Convention, Article 3 is of special importance. It may even be regarded as their basis since it specifies the persons who are to benefit by the treatment laid down for prisoners of war. It has been given long and careful scrutiny, as a result of which it was decided to insert the enumeration in a single Article of all the categories of persons who would qualify to receive the protection of the Convention. These categories are set out in two paragraphs; the first includes all persons who may be considered as prisoners of war in the traditional

sense, especially by reason of the fact that they fall into the power of the enemy; the second covers persons who find themselves already under the enemy's jurisdiction or who pass under the control of a neutral Power, but to whom, for practical reasons based mostly on experience, it seemed advisable to accord the same treatment as for prisoners of war.

There was unanimous agreement about the necessity of defining, in harmony with the Regulations attached to the IVth Convention of The Hague, the categories set out in the first paragraph. For this reason it was decided to reproduce expressly the four conditions which these Regulations imposed on militias and corps of volunteers. In order to show clearly that these conditions apply to militias and corps of volunteers not forming part of the regular armed forces, it was decided to divide category (1) in the first paragraph as it appeared in the Stockholm Draft. This division allowed at the same time the solution of one of the most difficult questions before the Committee — that of "partisans".

During the preparatory work for the Conference,

and even during the Conference itself, two tendencies have been observed. According to one of these, partisans must fulfil the conditions laid down by the Hague Regulations if they are to benefit by the provisions of the present Convention. Furthermore, they should also fulfil certain additional conditions. Thus, according to the advocates of this thesis, the organized resistance movement must be in proper control of its formations and subordinate units. Moreover, those in command of partisans should be in a position to receive communications and to reply to them. On the other hand, according to the other view, resistance movements should not be bound too closely by additional conditions which might be arbitrarily interpreted by the Occupying Power.

The problem was finally solved by the assimilation of resistance movements to militias and corps of volunteers not "forming part of the armed forces" of a Party to the conflict. It was likewise defined that these corps and militias might legally operate in or outside their own territory even if it were occupied. There is therefore an important innovation involved which has become necessary as a result of the experience of the Second World War.

The same experience showed also that prisoner of war status should not be refused to members of the armed forces of a regular government for the simple reason that the Detaining Power did not recognize it. This point is dealt with in sub-paragraph 3.

Sub-paragraph 4 reproduces in a more up-to-date form the text of Article 81 of the 1929 Convention. The discussion showed the danger of making possession of an identity card a condition of affording prisoner of war status to persons enumerated in the paragraph; the text has taken this point into account.

Sub-paragraph 5 is also an important innovation in Conventional International Law. As a result of the experience of the recent war, there was unanimous agreement that it was preferable to treat members of crews of the Merchant Marine fallen into enemy hands as prisoners of war rather than civilian internees. It was considered advisable to add the crews of civil aircraft, and to reserve to both the most favourable treatment which might be accorded them by virtue of other stipulations of International Law (particularly the XIth Hague Convention).

In sub-paragraph 6 "levée en masse" was reproduced textually from the Hague Regulations. Proposals to include under sub-paragraph 6, civilian populations who rise en masse in response to a radio appeal and civilians who rise spontaneously in the enemy's presence, were not accepted.

Sub-paragraph 1 of the second paragraph covers a category not before included in Conventional

International Law, viz. demobilized soldiers in occupied territory who are arrested by the Occupying Power because of their membership of the army of the occupied country. To avoid for the future treatment which such persons have sometimes suffered, it was considered necessary that they should be protected by the Convention in case of arrest. At the request of several Delegations the final text incorporated the ideas contained in the third paragraph of Article 82 of the Stockholm Draft.

Finally, sub-paragraph 2 of the second paragraph, by giving military personnel interned in neutral countries the protection of the Convention, defines the regime which they shall be accorded; this was dealt with only perfunctorily in the Vth Hague Convention. The text sets out the points on which the treatment of such persons may not be similar to that of prisoners of war in the strict sense of the term, and deals also with the possibility of their being accorded more favourable treatment. It should be noted that the category intentionally excludes prisoners escaped to neutral countries, and others who, in principle, should not be interned.

Certain Delegations wished to extend the application of the Convention to cover still other categories of persons. They had particularly in mind civilians who had taken up arms to defend their life, their health, their near ones, their livelihood, under an attack which violated the laws and conditions of war and desired to ensure that such civilians falling into enemy hands should not be shot after summary judgment but should be treated according to the provisions or at least the humanitarian principles of the Convention. Numerous possible solutions of this problem were carefully considered but in the end a majority of the Committee came to the conclusion that it would be difficult to take the course proposed without the risk of indirectly weakening the protection afforded to persons coming under the various categories of Article 3. One Delegation pointed out, in particular, that the acceptance of the proposed extension would be tantamount to rejecting the principles generally accepted at The Hague, and recognized in the Prisoner of War Convention. It was, according to the views of this Delegation, essential that war, even illegal war, should be governed by those principles. Nevertheless, another Delegation asked that the Summary Record should mention that no objections had been raised, during the discussion in the Special Committee, against his view that Article 3 could not be interpreted in such a way as to deprive persons, not covered by the provisions of Article 3, of their human rights or of their right of self-defence against illegal acts.

Article 4 in its first paragraph, states the very important principle that the application in its totality of the Convention to the persons covered in the preceding Article shall continue from the moment they have fallen into enemy hands until their liberation. There is now therefore no further question of exceptions such as the 1929 Convention mentions in its first Article in relation to persons captured during operations on sea or by air.

The second paragraph will ensure that in the future no person whose right to be treated as belonging to one of the categories of Article 3 is not immediately clear, shall be deprived of the protection of the Convention without a careful examination of his case. In the opinion of certain Delegations only a regular Court should be authorised to take a decision in such cases. The majority of the Committee, in spite of its sympathy with this point of view, was unable however to accept it.

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## PART II

### General Protection of Prisoners of War

#### *Articles 11-14A*

Part II corresponds to Part I of the 1929 text all of whose provisions it reproduces with the exception of Article 1.

The first paragraph of Article 11 begins with a principle which dates back to the Hague Regulations. It then underlines the responsibility of the Detaining Power for the application of the Convention. In order to emphasize this responsibility still more clearly and to prevent the Detaining Power from endeavouring to escape it by shifting responsibility for infractions to its agents, a majority of the Committee decided to insert in Articles 32 and 47 the words "under the control of his government" with reference to the responsibilities of Camp Commandants. The Delegations which opposed this insertion thought these words could be interpreted as restricting the individual responsibility of agents of the Detaining Power with respect to their conduct towards prisoners — a responsibility also clearly stated in Article 11 as well as in Articles 111 and 119.

The last two paragraphs of Article 11 are completely new and regulate responsibility in the case of transfer of prisoners from one Power to another; transfer to a Power which is not a party to the Convention is ruled completely out. The Stockholm Draft contained the principle of joint responsibility of the Power transferring and the Power receiving prisoners. Some Delegations thought this principle involved delicate problems in application, and might give rise to contention between allies. In their opinion joint responsibility did not give a satisfactory guarantee to prisoners, since the sharing might lead to a weakening or even the total disappearance of responsibility. Other Delegations were much in favour of the principle of joint responsibility which they believed would prove a fundamental guarantee to prisoners

of war. A majority of the Committee finally decided upon a text which, without adopting the principle in so many words, nevertheless took into account some of the objections to the system of single responsibility, and provided that the transferring Power shall bear a contingent responsibility.

Article 12, a more complete version of Article 3 in the 1929 Convention, was closely studied. Some Delegations proposed to insert a sentence to the effect that every attack on the life and health of prisoners of war should be considered as a grave crime. Others were opposed on the grounds that this would introduce a consideration of penal character into an Article where it would be out of place. Finally the present text, representing a compromise, was approved by a very large majority.

Some Delegations would have preferred to see the words "..... medical or scientific experiments of any kind which are not justified by the medical treatment of the prisoners concerned and carried out in their interest", replaced by the term "biological experiments", as expressing the same thing. The Committee however, preferred to keep the first wording which it considered clearer.

Article 13 repeats in greater detail the provisions of Article 4 of the 1929 Convention, paying particular attention to the treatment of women prisoners and the exercise by all prisoners of war of their civil capacity.

Article 14 defines more precisely the first paragraph of the former Article 4. The principle of treating all prisoners on the same basis, which occurred in the second paragraph of the former Article 4, is now reproduced in a form which takes account of the current terminology, in Article 14A; Article 14A adds age to the number of factors which give a right to preferential treatment.

## PART III

**Captivity**

## SECTION I

**Beginning of Captivity***Articles 15-18*

Section I reproduces the essential provisions of Part II and Section I of Part III of the 1929 Convention.

Article 15 contains a new provision which obliges each party to a conflict to issue an identity card to every person under its jurisdiction who may become a prisoner of war.

Moreover, under the 1929 Convention, a prisoner of war may confine himself to giving, if questioned, only his regimental or personal number. The Draft of our Convention obliges him to give information on four headings.

Article 16 increases to the prisoner of war the safeguards regarding articles of value and money impounded from him. Objects and articles of personal use which are to remain in his possession are specified. Finally, there is a provision that the prisoner of war may never be left without identity documents (cf. Articles 50, 109, 112).

The procedure of evacuation (Article 18) which, in its essential principles, was provided for in the Convention of 1929, has now been defined with all detail necessary to ensure that the evacuation of prisoners shall always be carried out humanely.

## SECTION II

**Internment of Prisoners of War***Articles 19-40*

Chapters I and II of Section II, dealing with the internment of prisoners of war, correspond roughly to Chapters I and II of Section II, Part III of the 1929 Convention.

The first paragraph of Article 19 contains provisions similar in their essentials to those of Article 9, first paragraph, of the 1929 Convention. It was unanimously adopted.

The second and third paragraphs, which deal with release on parole, were very carefully examined. Certain Delegations wished to see introduced the provisions in the Hague Regulations which deprive prisoners of war released on parole

of the benefit of the treatment stipulated for prisoners of war should they be recaptured bearing arms against the Power to whom they had given their word of honour. The majority of the Delegations, however, rejected this principle and adopted the present text.

In the third paragraph of Article 20, relating to places and methods of internment, the Committee considered it necessary to adopt a terminology that would avoid certain difficulties in the 1929 text which sought to avoid bringing together in the same camp prisoners of different races or nationalities. One Delegation was of the opinion that prisoners of war of different nationality, language and customs belonging to the armed forces of the same State should not be separated.

Guarantees for the security of prisoners of war have been given considerably greater force in Article 21, particularly in regard to the shelters which must be supplied for them, notification of the location of camps, and their marking. On the last point, there were two opposing trends of opinion. Some Delegations wished the camps to be marked by the letters "PG" or "PW", so placed as to be clearly visible from the air; other Delegations, representing smaller countries, feared that this method of indication might only serve as a landmark for enemy aircraft, and succeeded in convincing a majority of the Committee that the stipulation regarding the marking of camps should be made subject to military considerations.

Article 22 was introduced in order that prisoners of war in permanent transit camps might not be deprived of the guarantees accorded by the Conventions to prisoners in other camps; and to ensure that the Protecting Power might not be prevented from having permanent transit camps visited.

A new stipulation relating to women prisoners of war should be noted in Article 23, which relates to quarters.

Article 24 of the new Convention abandons the standards of the 1929 Convention where food rations of prisoners of war were put on the same basis as for troops of the Detaining Power's own forces. The new provision is that the basic daily food rations shall be sufficient in quantity, quality and variety to keep prisoners of war in good health and to prevent loss of weight or the development

of nutritional deficiencies. Account must also be taken of the habitual diet of the prisoners.

Article 26 introduces interesting stipulations regarding the utilisation of profits made by canteens, e.g. the right accorded to the prisoners' representative to collaborate in the management of the canteen and the handing over, when a camp is closed down, of any profits of the canteens to an international organization, to be employed for the benefit of prisoners of war.

Article 27, which deals with the hygiene of prisoners of war, is similar to the corresponding Article of the 1929 Convention. The two following Articles, which deal with medical care and medical inspections, introduce little that is new as compared with the corresponding Articles of the 1929 Convention; they merely amplify and clarify them.

On the other hand, Articles 29A and 29B take up, in completely new form, the ideas contained in Article 14 of the 1929 Convention. They are the logical consequence of the adoption by the Committee I of the new Article 22 of the Wounded and Sick Convention. Provision is made for the retention of medical personnel and chaplains who have fallen into the hands of the enemy, should this be considered necessary for the medical or spiritual needs of prisoners. We have here a new category of personnel who, although not prisoners of war, still benefit by the protection offered by the Convention. Article 29A provides that prisoners of war, who though not members of the military medical services of their own forces, are doctors, dentists, hospital orderlies, or nurses, may be required to carry out medical duties and shall in that case receive the same treatment as corresponding members of retained medical personnel. The following Article defines the position of medical personnel and chaplains retained with a view to assisting prisoners of war. Each person in this category shall enjoy all necessary facilities for the carrying out of his duties and have at the same time the protection of the Convention without being considered a prisoner of war.

It had at one time been considered that a marginal note should be added to Article 29B quoting the new text of Article 22 of the Wounded and Sick Convention. It was recalled in this respect that the text of our Convention would serve as a guide to Camp Commandants, who should also be in possession of the Wounded and Sick Convention and therefore have ready access to the provisions dealing with retained medical personnel and chaplains. It was also proposed to insert either a part or the whole of Article 22 of the Wounded and Sick Convention in our Convention as a fresh Article. The Committee rejected these suggestions by a small majority.

The Articles concerning the exercise of religion, namely Articles 30, 30A, 30B and 30C, make

more methodical and complete provision on this subject than the 1929 Convention. The Delegate of the Holy See and Mr. Courvoisier, Representative of the World Council of Churches, took part in the preliminary examination of this matter by the Special Committee. The new text, which did not give rise to any differences of opinion during the debates, restates essential provisions relative to the exercise of their religious duties by prisoners of war, irrespective of denomination. It provides for facilities for chaplains retained by one side or the other and for ministers of religion who are prisoners of war owing to their incorporation in fighting units at the time of their capture. It is provided that these ministers of religion may carry out their ministry amongst prisoners and that in such case they would be given the same status as chaplains. It appeared necessary to stipulate that ministers of religion who are prisoners of war and who carried out their duties might not be compelled to undertake any other form of work. This meant that, although the Detaining Power cannot compel them to undertake any form of labour beyond the exercise of their ministry, they remain free to participate in some of the work of the other prisoners. Such is the interpretation given during the discussion of the last sentence of Article 30B. The new text finally provides for the case of prisoners of war who cannot avail themselves of the services of either a detained chaplain or a minister of religion who is a prisoner.

The last Article in this Section, Article 31, which deals with the recreation, education, sports and games of prisoners of war, amplifies the corresponding provisions of the 1929 Convention.

Chapter V "Discipline" and Chapter VI "Rank of prisoners of war" reproduce the essential provisions of Chapters V and VI of Section I, Part III of the 1929 Convention. Chapter VII of that Convention, however, has been deleted and its provisions are now contained in the Section relating to financial resources of prisoners of war. Accordingly, Chapter VII "Transfer of prisoners of war after their arrival in camp" of the new Convention corresponds roughly to Chapter VIII of the 1929 Convention.

Articles 32, 33 and 34 contain some fresh stipulations, notably in relation to the obligation to salute incumbent on prisoners of war.

Article 35: "Use of Weapons", is new; experience has shown the necessity for it.

Our Convention has introduced a new principle, viz. the recognition of promotions in rank accorded to prisoners of war, in the second paragraph of Article 36.

Article 37: "Treatment of Officers", differs from Article 22 of the 1929 Convention in that it abandons the rule according to which officer

prisoners of war had to provide their food and clothing from what was paid to them by the Detaining Power. They are now put on the same basis in this respect as other prisoners of war.

The Committee considered it necessary to introduce a new Article 37A entitled "Treatment of other Prisoners" to correspond to Article 37, "Treatment of Officers". It was felt that non-commissioned officers and privates should retain their privileges in captivity.

The conditions of, and procedure for, transfer (Articles 38, 39, 40) have been provided for in more detail following on the experiences of the Second World War. The Committee considered it specially necessary that the attention of the Detaining Power be drawn to the additional precautions which should be taken in the case of transport by sea or by air. Moreover, prisoners are allowed to take with them their personal effects, and the correspondence and parcels which have arrived for them. The weight of such baggage may be limited, if the conditions of transfer so require, to what each prisoner can reasonably carry, but in no case more than twenty-five kilograms per head.

### SECTION III

#### Labour of Prisoners of War

##### *Articles 41-48*

This Section governs the labour of prisoners of war. The general provisions of Article 41 add to the rules laid down in the 1929 Convention that account shall be taken of the age and sex of prisoners of war, and that they should be maintained in a good state of physical and mental health. Certain Delegations wished the second paragraph to apply only to re-enlisted non-commissioned officers, but the majority, while agreeing that this might be desirable in certain countries, given the organisation of their armed forces, preferred to retain the original text on this point. A proposal to insert in Article 41 an obligation to have a special medical examination of prisoners before assigning them to work, was rejected; the majority of Delegations were of the opinion that this point was covered by other Articles.

On the other hand, the new Article 42A, which regulates the working conditions of prisoners of war, should be noted. It ensures them the treatment given to nationals of the country in which they are detained, particularly as regards the application of the laws for the protection of workers; in general, it represents a considerable improvement.

The 1929 Convention stipulated that the work of prisoners of war should have no direct relation to operations of war; it prohibited, in particular, their employment for the manufacture or transport of armaments as well as for the transport of material intended for the fighting forces. In Article 42, the new Convention maintains this principle and clarifies it by a limitative enumeration of the categories of work which prisoners may be required to do, apart from work connected with camp administration, installation, or maintenance; the enumeration covers: agriculture, with certain important exceptions, industries connected with production, the extraction of raw material, or manufacture, and commercial or artistic activities.

Our Convention also confirms the principle already laid down in the 1929 Convention, whereby prisoners of war may not be detailed for unhealthy or dangerous labour (Article 43). The types of labour coming under this heading are not enumerated in the text. Several Delegations desired an express prohibition of the employment of prisoners of war on the removal of mines or similar explosives by specifying this as a special category of dangerous work. The question gave rise to a long discussion in First Reading and in the Special Committee, where the majority adopted a third paragraph to this Article, stipulating that the removal of mines shall be considered dangerous work. The advocates quoted recent experiences. It is well known that during and at the end of the last World War, prisoners were detailed for mines removal in a large number of countries and the work often resulted in serious loss of life. In the circumstances, several Delegations considered it imperative from a humanitarian point of view, that prisoners of war should no longer be exposed to the risks entailed by this particular kind of labour. The opposite thesis was that it would be equally inhuman to exclude the possibility of employing prisoners of war — who might themselves have laid the mines and be accustomed to the work, or who could, as members of a disciplined military force, be easily trained to carry it out—when otherwise, mines removal would as often as not have to be carried out by the civilian population. In Second Reading, the majority of the Committee decided that the removal of mines or similar explosives should not be considered as dangerous labour within the meaning of Article 43. Mines removal was not, however, considered one of the types of labour authorized within the meaning of Article 42. A new second paragraph was inserted in Article 42, providing that mines removal might be authorized only in exceptional cases and under clearly defined conditions, viz. that it might be undertaken only at a distance from the scene of military operations and that

those detailed for it should be accustomed to it or should have received preliminary training.

Articles 44, 45, 46, 47 and 48 which deal with duration of labour, working pay and working accidents, medical supervision, labour detachments, and prisoners of war detailed to private employers, reproduce in greater detail the 1929 stipulations with exception of the Article dealing with the compensation of prisoners who are victims of working accidents. In future, the Detaining Power must provide these prisoners with all necessary care, but, as opposed to the 1929 provision, the Power on which the prisoner depends is now solely responsible for paying such compensation. It is worthy of note also that the Detaining Power is obliged to give a daily rest of one hour in the middle of the day, and as far as the weekly rest of prisoners is concerned, to take into account the day of rest observed in the prisoner's home country. In spite of certain difficulties of practical application which some Delegations thought would follow the insertion of these terms, a majority of the Committee accepted them as being appropriate to the universal character of the Convention.

#### SECTION IV

##### Financial Resources of Prisoners of War

###### *Articles 49-57A*

This Section is completely new: to meet a practical need, the Articles dealing with financial questions have been grouped together, whereas, in the former Convention they were scattered. It is new also in the sense that it profoundly changes the 1929 rules which were based for the most part on the liberal monetary system which operated before the First World War. It was necessary to take into account the more rigid financial and monetary controls which now exist without, however, excluding the possibility of applying the liberal concept when this could be to the advantage of the prisoner (see especially Article 53).

A principle basic to the whole system of our Convention with regard to the financial resources of prisoners is stated in the Article 49: the Detaining Power may, especially with a view to preventing escapes, fix a limit to the sums which a prisoner may dispose of. This limit must be a reasonable one, and shall therefore be fixed in agreement with the Protecting Power. Any sum in excess of the limit must be placed regularly to the prisoner's account.

The following Articles, 50 to 53 are concerned with the various sources from which prisoners may put themselves in funds. The Article were

drawn up in such a way that prisoners shall have enough money to meet current needs, including their everyday wants, without being enabled to enrich themselves as compared with their fighting comrades. Under the 1929 Convention pay was given only to officers; it has now been extended to all prisoners in order to cover those who, not being able to work, do not earn anything. The amount of pay has been fixed for the various ranks, which have, for this purpose, been divided into five categories, and it has been called an "advance of pay" to show that the amount is a part only of the amount paid to them in their army. In order to decide in advance the pay due to prisoners of the different categories, it was found necessary in the preparatory work for the Conference, to break with the complicated system adopted in 1929 and to adopt a fixed basis, the gold Swiss franc.

The choice provoked much discussion; some Delegations criticised it on the grounds that present trends are to abandon gold as an international monetary standard, or in pointing out that certain countries with weak currencies and a low cost of living would have great difficulty in paying prisoners at the rates fixed — even that payment of the standard rates would place prisoners of war in a better position than their own troops. The latter argument convinced a majority of the Committee which, in the third and fourth paragraphs of Article 51, adopted a system which would enable such countries to avoid the embarrassment referred to, and to come to an agreement concerning the amount of pay which should be advanced, with the Power on which the prisoners depend.

There is also a break with the 1929 Convention as regards ordinary pay. Firstly, as it is not a question, properly speaking, of a wage or salary on which a prisoner has to live, the term "working pay" has been introduced. Further, the rather impractical standards in the old Convention for fixing pay have been dropped; the Detaining Power itself shall fix the amounts of working pay, but may not go below a minimum which has been likewise fixed in terms of the gold Swiss franc. Finally, no matter whether prisoners work for private or public employers, the Detaining Power is itself responsible for paying them, and, contrary to the rule adopted in 1929, is responsible also for the working pay of prisoners assigned permanently in the capacity of artisans or clerks to the administration or management of camps. Certain Delegations wished to distinguish, in dealing with such personnel, between work which benefitted the Detaining Power mainly and work which was principally to the advantage of the prisoners themselves; they considered the latter should be paid partly from the profits of canteens.

The Committee decided in the end against making this distinction, considering that only the prisoners' representative and his assistants should, in order to guarantee their independence, be paid from this source.

A third possible source of funds to prisoners, that of being allowed to receive either individually or collectively, transfers of funds, is expressly provided for in Article 53. Amongst such transfers, those sent by the Power on which they depend and which form to a certain extent supplements of pay, have a special importance, and it was judged necessary in Article 51A to make detailed guarantees concerning their distribution.

The prisoner may, within the limits fixed by the Detaining Power, use the funds he has available to make purchases, even to make them abroad. To enable him in any case to make payments in his home country, and especially to his family, the system proved in the second World War has been introduced into Article 53, third paragraph; no material transfer of funds is necessary, any adjustment being a matter for Post-War settlement.

Where the former Convention confined itself to a reference to prisoners' accounts, the new one, in Articles 54 and 55, adopts a system of close control and gives both prisoners and the Protecting Power the possibility of checking the accounts regularly.

The winding up of accounts, in every case where captivity comes to an end, has also been carefully provided for. After much discussion a majority of the Committee eventually decided to depart from the 1929 rule which obliged the Detaining Power to pay to prisoners in cash, the credit balance of their account. It was felt that payment of this sort might cause difficulty for prisoners, especially in cases where there is official control of the import and export of foreign currency, and that, further, it would give rise to a certain traffic in currency in their home countries. For the future, a certificate showing the amount of their credit balance shall be given to them and a duplicate sent to the Power of origin which shall be responsible for payment to the repatriated prisoners of the sums shown on the certificate. Nevertheless, several Delegations would have preferred a stipulation to the effect that the two Powers concerned were jointly responsible for the equitable payment of the credit balances, since a part of the balances came from the working pay due to the prisoner by the Detaining Power.

The logical consequences of the system adopted for dealing with financial resources of prisoners is expressed in Article 57 and is the leaving of any adjustment between the Powers concerned for settlement after the end of hostilities, each being

called upon to make payments for the other's account.

Finally, Article 57A sets out in more general form and especially in extending it to cover the loss of the prisoner's property, the principle concerning claims for compensation for accidents sustained during work, contained in Article 45.

## SECTION V

### Relations of Prisoners of War with the Exterior

#### *Articles 58-67*

Article 58, which corresponds to Article 35 of the 1929 Convention, completes and clarifies the terminology of Article 35 by stipulating that the measures laid down for the implementing of the provisions of the present Section, as also every alteration made to these measures, shall be brought to the knowledge of the prisoners of war and of the Power on which they depend, by the Protecting Power.

Whereas Article 36 of the 1929 Convention stipulated only that the prisoner of war should be enabled to send to his next of kin, at the latest one week after his arrival in camp, a postcard informing them of his capture, Article 59 provides for a second message on a second card called "capture card" addressed directly to the Central Prisoners of War Agency. This "capture card" is intended to enable the Central Prisoners of War Agency to establish its card index even before having received from the Detaining Power the official lists of the prisoners of war whom they have captured; the establishment of these lists may take considerable time. A model capture card was adopted by the Committee.

Article 60, which deals with correspondence, attempts to remedy the difficulties arising from the slowness in forwarding prisoners of war correspondence and from the congestion of the censorship service. To reduce the time of forwarding, the first paragraph of Article 60 provides that prisoners of war' correspondence shall be forwarded "by the most rapid means available to the Detaining Power". Article 60 stipulates that the Detaining Power may limit the number of letters and cards which prisoners may write each month, a limitation which, however, cannot normally restrict the number to less than two letters and four cards. Such limitation was not provided for in the 1929 Convention. Nevertheless, taking into account the observations made in meetings, the Committee accepted an amendment authorizing the Detaining Power, on an intervention of the Protecting Power in the prisoner's own interests, to still further restrict the correspondence if it cannot find enough qualified translators

to cope with the censorship. Article 60 made another innovation, again in order to expedite censorship, by limiting also the correspondence which may be addressed to prisoners of war. Nevertheless, in order to eliminate the risk of abuse by the Detaining Power, such restrictions shall be put into force by the Power on which the prisoners depend only at the request of the Detaining Power.

Lastly, a new paragraph extends the number of cases in which prisoners of war may send telegrams.

A suggestion to introduce standard telegram forms in an Annex to the Convention, with a view to a reduction of charges, was not adopted by the Committee.

Article 61, dealing with relief shipments, enumerates the various articles which may be included in the shipments and makes very desirable additions to the rudimentary enumeration made in the corresponding Article 37 of the 1929 Convention. The enumeration includes that of Article 63, which stipulated that prisoners of war are entitled to receive articles of devotional books and musical instruments, etc.; it has accordingly been possible to delete Article 63. Article 61 provides expressly that relief shipments shall not relieve the Detaining Power of its obligations towards prisoners.

Moreover, in order to eliminate the risk of any arbitrary action by the Detaining Power, Article 61 stipulates that the only limits which may be placed on these shipments shall be those which are proposed in the interests of the prisoners themselves by the Protecting Power or by the body responsible for the forwarding of such shipments.

In view of the importance of collective relief shipments, it was considered desirable to provide for the conditions of their reception and distribution in a special Article which makes the practical details of receiving and allocating relief shipments the subject of special agreements between the Parties to the conflict (Article 62). Nevertheless, these agreements must not be allowed to cancel the principles which it seemed essential to establish concerning the distribution of these parcels by the prisoners' representative and the supervision which the Protecting Power or the body responsible for the forwarding of the relief shipments has the right to exercise over their distribution. If there is no agreement between the Parties concerned, the model agreement annexed to the Convention then applies (Annex III: "Draft Regulations concerning collective relief").

This model agreement is based chiefly on the experience of the Second World War. It is mainly intended to ensure that the prisoners' representative has every facility to make distributions. The

prisoners' representative shall not, however, be completely free in the matter, as the agreement provides that he must comply with the instructions of the donors. The agreement also provides that reserves of parcels may be set aside, in order to meet sudden emergencies.

Article 64 contains two new provisions which have no counterpart in the 1929 Convention. Firstly, relief shipments for prisoners of war shall enjoy free transport in all territory under the control of the Detaining Power, and in the territory of every other Power which is a Party to the Convention.

Secondly, there is a provision to extend the exemption from postal charges to telegrams sent by the prisoners. The Committee heard the opinion on this point of the Secretary-General of the International Telecommunications Union who was in favour of this suggestion.

It should also be noted that it was proposed to make a reference in this Article to the Universal Postal Convention. Nevertheless, the consideration, inter alia, that certain countries had not adhered to the agreements of the Universal Postal Union relating to postal parcels, caused the proposition to be abandoned.

Article 65 is entirely new and deals with special transport. It is also based on the experience of the Second World War, when, for instance, the International Committee of the Red Cross was itself obliged, on account of the lack of normal means of transport, to find special means of transport, first by sea, then towards the end of the war, by road. The object of the Article is to enable either the International Committee of the Red Cross or any other organization acceptable to the Parties to the conflict, whenever military operations make it impossible for the latter to fulfil the obligation of providing transport for relief supplies, to undertake on its own initiative to make arrangements in whatever way may prove necessary to ensure such transport. It is finally stipulated that the costs occasioned by these means of transportation shall be settled by special agreements; in the absence of such agreements they shall be borne proportionately by the Parties to the conflict whose nationals benefit by such facilities.

The greater part of Article 66 was already contained in Article 40 of the 1929 Convention. The new Article only completes and usefully clarifies the previous Article. An innovation to be noted is that Article 66 provides that both the shipping State and the receiving State shall each be entitled to censor mails once only.

Likewise, the greater part of Article 67 was contained in Article 41 of the 1929 Convention. The new Article thus only completes the former one.

## SECTION VI

**Relations between Prisoners of War  
and the Authorities***Articles 68-71*

Article 68 restates in greater detail Article 42 of the 1929 Convention relating to complaints and requests of prisoners of war. It provides in particular an innovation in that prisoners are given the right of unlimited recourse to the representatives of the Protecting Power in order to make known their grievances.

Articles 69 (Elections) and 70 (Duties), elaborate on Article 43 of the 1929 Convention without, however, making any essential change. It may be mentioned that Article 69 provides for the election of prisoners' representatives every six months, and in the event of the Detaining Power refusing to recognize the representative chosen, the reasons for such refusal shall be communicated to the Protecting Power concerned. Article 69 also includes useful details concerning the election of the prisoners' representative and his assistants in camps for officer prisoners, and (this is new) in camps which include both officers and privates. It provides further that officers may be assigned to labour camps in an administrative capacity, and that these officers may be elected as prisoners' representatives. Lastly, this Article contains another important innovation: prisoners' representatives shall not be held responsible simply by reason of their functions, for any offences committed by prisoners of war.

Article 71 dealing with prerogatives of prisoners' representatives makes several innovations as compared with Article 44 of the 1929 Convention. It stipulates, for instance, that prisoners' representatives may choose assistants from amongst the prisoners and that they shall be permitted to visit premises where prisoners of war are detained. Article 71 increases the number of organizations with which prisoners' representatives may correspond. It further stipulates that the prisoners' representatives of labour detachments shall enjoy all facilities for communication with the prisoners' representative of the principal camp. Finally, in the event of dismissal of the prisoners' representative, the grounds for this decision shall be communicated to the Protecting Power.

**Penal and disciplinary sanctions***Articles 72-98*

Although the Committee made no essential change in the great principle laid down at the Hague, according to which prisoners are subject to the regulations in force for members of the

armed forces of the Detaining Power, it wished to strengthen the protection due to those prosecuted or convicted, by completing and clarifying such points as seemed essential in the "code of procedure" with its minimum guarantees, which this chapter already constituted in the text of 1929.

In the arrangement of this Chapter, the three sub-Sections of the 1929 text were included (General Provisions; Disciplinary Sanctions; Judicial Procedures). Escape, however, was quite rightly transferred to the sub-Section referring to disciplinary punishments, while the order of the provisions in each sub-Section was improved.

I. The Committee introduced three new principles among the general provisions. The first repeated in its general form an appeal to the indulgence of the authorities of the Detaining Power when deciding the question of whether an offence should be the subject of judicial or disciplinary action. In the 1929 text, this principle referred only to offences connected with escape. The second principle is that in general prisoners should be judged by military courts and in all cases by courts offering essential guarantees of independence and impartiality (Article 74). The last principle allows the judge to lighten the sentence at his discretion, by drawing his attention to the fact that the accused prisoner is not a national of the Detaining Power, and is not bound to it by any tie of allegiance.

The Committee also settled two questions, the need for the solution of which was clearly demonstrated during the second World War. The first relates to the penal provisions established by a Detaining Power in wartime, designed solely for prisoners of war. In the future, by virtue of Article 72, second paragraph, infringements of these provisions shall only entail disciplinary action. The other question, which is of primary importance, refers to the application of the Convention to prisoners prosecuted and sentenced for offences committed before capture, in particular for offences against the laws and customs of war. This controversial point gave rise to long discussion. Although all Delegations were unanimous in agreeing that prisoners against whom proceedings were taken for such offences should have the benefit of the Convention, in any case until their guilt had been proved in court, certain divergences of view arose as to what treatment they should receive after sentence. Certain Delegations would have wished that prisoners sentenced on the basis of the principles of Nuremberg should no longer be subject to the Convention, but should receive the same treatment as that which the Detaining Power applied to criminals under its Common Law. In their opinion, persons convicted of

crimes against the laws of war or against humanity had placed themselves outside of the protection of the Convention. A great majority of the Committee considered on the contrary, that prisoners who had committed such offences should continue to have the benefit of the Convention. Certain Delegations emphasized that in this respect, the benefit of the Convention should be limited in fact to that conferred by Articles 91, 96, 98 and 109; it was necessary to provide expressly that even such prisoners should be accorded the conditions of imprisonment accepted as a minimum by civilized nations, because during the last war certain Detaining Powers did not grant this minimum. It was also pointed out in support of the decision of the majority that a mature legislation, such as a national legislation, clearly defines that anyone who breaks the law remains, without prejudice to his punishment, under the benefit of such legislation.

II. The arrangement of the sub-Section relating to disciplinary punishments has also been considerably improved. The Articles have been grouped in four parts in logical order: (a) Nature and duration of punishments (Articles 79 and 80); (b) Escape (Articles 81 to 84); (c) Procedure (Articles 85 and 86); and (d) Execution of punishments (Articles 87 and 88).

(a) The 1929 Convention stated: "Imprisonment is the most severe disciplinary punishment which may be inflicted on a prisoner of war." To avoid difficulties to which this wording might give rise, it was decided to introduce an important innovation a limitative enumeration of the various forms of disciplinary punishments applicable to prisoners. If "confinement" has been retained in this list, although certain Delegations questioned the utility of doing so, it was considered advisable to omit the idea of punishment by disciplinary measures affecting rations, accepted in 1929. It was also considered advisable to add a basic safeguard to the effect that the punishments specified shall never be "inhuman, brutal or dangerous to the health of prisoners of war". The 1929 maximum of thirty days was retained in relation with the duration of punishments, as were also the stipulations regarding the period which must elapse between two successive punishments, and the reduction which must be made in compensation for the time spent in detention pending trial. The latter, moreover, becomes an absolute rule, independent of its application to members of the armed forces of the Detaining Power. Lastly, the principle has been adopted that any punishment inflicted must begin not more than one month after sentence.

(b) There are two important innovations in the provisions relating to escape. First, the conditions

to be fulfilled in order that escapes may be regarded to successful have been accurately defined. Secondly, in order to prevent the Detaining Power from inflicting unduly severe punishments for certain breaches of minor importance normally associated with escapes, as an indirect form of penalising the latter, it was decided to mention such breaches explicitly, and to provide that they should only involve disciplinary punishment.

(c) With regard to procedure, the 1929 provisions were completed on two points, the importance of which has been demonstrated by experience. In the first place, the condition, treatment and maximum duration of preventive arrest have been defined. Further a point of great importance is that the accused shall now enjoy minimum safeguards for his own defence (Article 86, fourth paragraph). It should also be noted that Camp Commandants are now prohibited from delegating their disciplinary powers to prisoners of war, and are also required to keep a register of any disciplinary punishments inflicted, which register shall be accessible to representatives of the Protecting Power.

(d) The provisions regarding quarters and essential safeguards during the execution of punishments, are substantially the same as in 1929. It is also provided that women prisoners of war shall be entitled to separate quarters from ordinary prisoners. Above all, effect has been given to the hitherto implicit principle that prisoners of war undergoing disciplinary punishment shall, as far as this is compatible with the fact of detention, continue to benefit by the provisions of the Convention and, in any case, shall have the right to complain, and to be visited by the representatives of the Protecting Power.

III. The provisions relative to judicial proceedings are set forth in logical sequence in three parts; (a) General observations (Articles 89 to 91); (b) Procedure (Articles 92 to 97) and (c) Execution of penalties (Article 98).

(a) The principle, "nullum crimen sine lege", has been added to the fundamental principles contained in Article 61 of the 1929 Convention; it has however been specified, in order to take Article 75 into account, that both the legislation of the Detaining Power and International Law must be taken into consideration, provided that the latter is taken to mean its generally recognized provisions. It has also been laid down that no prisoner of war may be tried without having the assistance of qualified counsel.

While the Committee did not in the end retain the idea of restricting the death penalty to the offences in which it applied in the case of civilians, it made every endeavour to provide supple-

mentary guarantees by, for example, extending from three to six months the period which must elapse between sentence and execution, and by inserting the right of appeal to the clemency of the judges. On the subject of the death penalty, certain Delegations pointed out that their national legislation did not provide for this penalty.

(b) In the field of procedure, the regime for preventive detention and the cases to which it applied were defined. It was furthermore limited to three months in all cases. Certain Delegations would have preferred to retain the possibility of extending it in the special case of prisoners indicted with offences against the laws and customs of war, arguing that it was more difficult to try these prisoners equitably in war time than after the end of hostilities. In reply, it was pointed out that by virtue of the principle according to which a prisoner shall be tried without delay and shall be considered innocent until he is proved guilty, he must be released if he has not been brought before a Court within three months. On the other hand, there was nothing in the Conventions to prevent prisoners coming up for trial at a later date; they may even be accommodated in other camps so as to avoid all possibilities of obtaining false witnesses.

The provisions concerning the notification of judicial proceedings to the Protecting Power are similar in their essentials to those of the 1929 text. In the future, however, this notification shall also be forwarded, together with the judgment pronounced by the Court, to the prisoners' representative, in view of the useful role he has played in this matter in the past.

The same is true of the rights and means of defence accorded to the accused. It was considered advisable to provide for the communication to the accused of the specification of the counts or count of the indictment and of the procedure, to give to counsel the facilities necessary to prepare the defence, and to place an obligation on the Detaining Power to find the accused a lawyer if he or the Protecting Power have not selected one. It was

finally decided not to lay down specific regulations governing the expenses of defence, as it was considered that the Protecting Power should bear such costs when the defence counsel was chosen by it or by the prisoner, and that the question did not arise in the case of a lawyer selected by the Detaining Power.

The system of notification of judgments to the Protecting Power has been improved. In the future, the detailed notification which in the 1929 Convention was required for the death penalty only, is now to be made for all sentences. Certain Delegations would have preferred that this notification should be sent immediately after the trial in the first Court; this proposal was retained, however, only in the case of the death penalty; in all other cases it was deemed preferable, for practical reasons, that the detailed notification should be sent only when the whole proceedings, including any appeals, were terminated. To allow for Anglo-Saxon procedure, it was finally decided not to mention in the notification the reasons adduced and to replace them by an outline of the prosecution and the defence. It was further considered advisable that the prisoner should be fully informed of his right of appeal and that the Protecting Power should be informed as soon as possible if the prisoner has exercised such rights.

(c) The 1929 text contained only general principles concerning the treatment of prisoners of war after sentence had been passed. Article 98 (new) has made up for this deficiency by providing that the prisoner shall have the benefit of at least the minimum conditions in force in penitentiaries. Such conditions apply in all civilized countries, particularly with regard to hygiene, correspondence, medical or spiritual aid, the application of penalties and the provision of separate accommodation for women. Here also, as in the case of disciplinary detention, apply the provisions of the two Articles which grant every prisoner the right to be visited by representatives of the Protecting Power and to submit requests concerning the condition of detention.

## PART IV

**Termination of Captivity**

## SECTION I

**Direct Repatriation and Accommodation  
in a Neutral Country***Articles 100-107*

Article 100 amplifies the subject matter of Articles 68 and 72 of the 1929 Convention. It includes a new provision stipulating that no wounded or sick prisoner of war who is eligible for repatriation may be repatriated against his will during hostilities. This innovation was the subject of long discussion because it imposes on the Detaining Power the obligation of keeping in its territory until the end of hostilities prisoners who may have sufficient grounds for not wishing to return to their home country. In the opinion of some Delegations this would entail too heavy a burden for certain Detaining Powers. None of the various proposals aiming at a solution of the difficulty including that of sending such prisoners to a neutral country were, however, adopted by the Committee.

Article 101, covering cases of repatriation or accommodation, makes additions to the corresponding 1929 Article. It enumerates, for instance, the categories of persons to be repatriated direct or who may be accommodated in a neutral country. In default of special agreements between the parties to the conflict concerned to determine the cases of disablement or sickness entailing direct repatriation or accommodation in a neutral country, the model agreement annexed to the present Convention shall apply automatically. This new model agreement is substantially the same as that annexed to the 1929 Convention, being revised in the light of experience during the recent war.

Article 102 covers Mixed Medical Commissions, and prescribes that their appointment, duties and working shall be in accordance with the stipulations of Annex II of the Convention. Annex II is completely new and the necessity for it has been amply demonstrated.

Article 103 dealing with prisoners of war subject to examination by Mixed Medical Commissions, extends and specifies very usefully the categories of prisoners subject to examination by such Commissions.

Article 104, dealing with prisoners of war who meet with accidents at work, reproduces without change the corresponding provision of Article 71.

Article 105 covers repatriation or accommodation in a neutral country of prisoners undergoing disciplinary punishment or detained in connection with a judicial prosecution. It provides that prisoners of war undergoing disciplinary punishment or detained in connection with a judicial prosecution for an offence for which the maximum penalty is not more than ten years, or undergoing a sentence of less than ten years shall not, for these reasons, be excluded from repatriation or from accommodation in a neutral country. Some Delegations did not consider the establishment of such qualifications advisable. For other prisoners of war detained in connection with a judicial prosecution or conviction, the decision shall rest with the Detaining Power.

Articles 106 (Costs) and 107 (Activity after repatriation) reproduce the corresponding provisions of the 1929 Convention. It may be mentioned, however, that the word "active" in the expression "active military service" in Article 107 gave rise to long discussion. Some Delegations wished to see it deleted; others were in favour of keeping it because it is usual for many repatriated prisoners of war to depend on the administrative service of armies. Finally, the proposal to delete the word was rejected by the Committee by a small majority.

## SECTION II

**Release and Repatriation of Prisoners of War  
at the close of Hostilities***Articles 108-109*

Article 108 corresponds to the first paragraph of Article 75 of the 1929 Convention, which it profoundly modifies. Article 108 lays down the principle that prisoners of war shall be released and repatriated without delay at the end of active hostilities. A proposal which would authorize the postponement of the repatriation of prisoners when the material situation of their country may make such postponement desirable, was rejected. In particular, this Article raises the question of the

costs of repatriation. The Stockholm Conference had envisaged the possibility of establishing a model agreement on the subject. It was realized, however, that this would be extremely difficult. On the other hand, Article 108, in its third paragraph, outlines certain principles dealing with the apportionment of such costs. In general, these costs are to be equitably divided between the Detaining Power and the Power upon which the prisoner of war depends.

Article 109 includes certain entirely new provisions as compared with the 1929 Convention, concerning the conditions in which prisoners are to be repatriated. It contains in particular certain provisions for the restitution and transport of prisoners' property. It also provides that in the order of departure, no distinctions shall be made between prisoners of war, except such as are based on sex, health, age, duration of internment and family conditions, and the latter distinctions may only be made on condition that they cause no delay in general repatriation. Certain Delegations feared that a provision of this kind might cause certain delays in repatriation.

Finally, the sixth paragraph of Article 109 includes a provision similar to that contained in the second paragraph of Article 75 of the 1929 Convention, according to which prisoners of war

who are subject to criminal proceedings may be detained until the end of the proceedings, and if convicted, until they have served their sentence.

### SECTION III

#### Death of Prisoners of War

##### *Articles 110-111*

Section III of Part IV groups all the stipulations which refer to the death of prisoners of war. It corresponds to Article 76 of the 1929 Convention, but goes into more detail. The third and fourth paragraphs provide additional safeguards concerning the conditions of burial of prisoners. Finally, to correspond to a provision in the Sick and Wounded Convention, the Detaining Power is made responsible for setting up a system of registering graves.

It was considered necessary to insert Article 111 because of incidents which took place during the Second World War. It is now clearly stated that whenever there is doubt about the cause of death — for example, when it is alleged that a prisoner was killed while trying to escape — there shall be an inquiry, and if necessary, punishment by the Detaining Power of any persons found guilty.

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## PART V

### Information Bureaux and Relief Societies for Prisoners of War

#### *Articles 112-115*

Part V corresponds, with very slight changes, to Part VI of the 1929 Convention. The functions of the national Bureaux are defined in Article 112 as well as the information concerning identity which they must furnish to the adverse party, for each prisoner. A new provision aims at ensuring the efficient working of the Bureaux, and for this purpose authorizes the Detaining Power to employ in it prisoners of war, who shall continue to be protected by the stipulations regarding labour.

The conditions applying to the Central Agency and in relation to free transport apply also to the Information Bureaux except for a stipulation allowing them to send telegrams free of charge, and another which aims at assuring adequate financial resources to the Central Agency. Finally, the Article dealing with Relief Societies, which had remained substantially unchanged since 1907, has been brought up to date in order to take account of the greatest possible number of organizations which come to the relief of prisoners of war, and especially of the religious organizations.

## PART VI

**Execution of the Convention***Articles 116-130*

With the exception of Articles 116 and 122, these Articles all come within the terms of reference of the Joint Committee. Article 116, which amplifies similar provisions of the 1929 Convention, defines the right of representatives of the Protecting Powers and of the International Committee of the Red Cross to exercise their supervision direct, by visiting all places where prisoners of war may be, and to interview them.

Article 122 reproduces a provision of the 1929 Convention relative to the relations between our Convention and Chapter II of the Regulations which appear in the Annex to the IVth Hague Convention.

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It cannot be concealed that, on certain points to which they attributed a particular importance and upon which they had not received satisfaction, certain Delegations expressly reserved the right once more to defend their points of view at a Plenary Meeting. These statements appear in the Minutes of the Committee. It will be the responsibility of the Delegations concerned, if they so wish, to reintroduce their proposals at the Plenary Meeting at the proper time. It is therefore possible that there may still be changes which could substantially affect certain particular matters. The fact remains, however, that the Committee can present to the Conference a Convention which has been carefully revised, amplified and brought up to date, and which, once signed and ratified by the signatory Powers, will be a milestone in the evolution of International Law.

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3) TEXT FOR THE "PRISONERS OF WAR" CONVENTION  
DRAWN UP BY COMMITTEE II AND REVISED BY THE DRAFTING COMMITTEE  
AFTER CONSIDERATION OF THE RECOMMENDATIONS  
OF THE COORDINATION COMMITTEE

(In order to avoid any confusion, the provisional numbering of the Articles as originally adopted by the Committees was retained in this document. The final numbering has only been decided upon at the conclusion of the Plenary Meetings.)

The Chapter Headings form an integral part of the Convention. The marginal Headings of the individual Articles, on the contrary, do not form part of the Convention and do not therefore appear in the texts submitted to the Plenary Assembly of the Conference.)

PART I

**General Provisions**

*Article 1*

The High Contracting Parties undertake to respect and to ensure respect for the present Convention in all circumstances.

*Article 2*

In addition to the stipulations which shall be implemented in peace time, the present Convention shall apply to all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them.

The Convention shall also apply to all cases of partial or total occupation of the territory of a High Contracting Party even if the said occupation meets with no armed resistance.

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

*Article 2A*

In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:

- (1) Persons taking no active part in the hostilities, including members of armed forces, who have laid down their arms, and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely without any discrimination on a basis of race, colour, religion or faith, sex, birth or wealth. To this end the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:
- (a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
  - (b) taking of hostages;
  - (c) outrages upon personal dignity, in particular, humiliating and degrading treatment;
  - (d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.
- (2) The wounded and sick shall be collected and cared for.

An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict.

The Parties to the conflict should further endeavour to bring into force, by means of special agreements, all or part of the other provisions of the present Convention.

The application of the preceding provisions shall not affect the legal status of the Parties to the conflict.

### *Article 3*

Prisoners of war, in the sense of the present Convention, are persons belonging to one of the following categories, who have fallen into the power of the enemy:

1° Members of the armed forces of a Party to the conflict as well as members of militias or volunteer corps forming part of these armed forces;

2° Members of other militias and members of other volunteer corps, including those of organized resistance movements, belonging to a Party to the conflict and operating in or outside their own territory, even if this territory is occupied, provided that these militias or volunteer corps, including these organized resistance movements, fulfil the following conditions:

- (a) that of being commanded by a person responsible for his subordinates
- (b) that of having a fixed distinctive sign recognizable at a distance
- (c) that of carrying arms openly
- (d) that of conducting their operations in accordance with the laws and customs of war;

3° Members of regular armed forces who profess allegiance to a Government or an authority not recognized by the Detaining Power;

4° Persons who accompany the armed forces without actually being members thereof, such as civil members of military aircraft crews, war correspondents, supply contractors, members of labour units or of services responsible for the welfare of the armed forces, provided that they have received authorization from the armed forces which they accompany, who shall provide them for that purpose with an identity card similar to the annexed model;

5° Members of crews including masters, pilots and apprentices of the merchant marine and the crews of civil aircraft of the Parties to the conflict who do not benefit by more favourable treatment, under any other provisions in International Law;

6° Inhabitants of a non-occupied territory who on the approach of the enemy spontaneously take up arms to resist the invading forces, without having had time to form themselves into regular armed units, provided they carry arms openly and respect the laws and customs of war.

The following shall likewise be treated as prisoners of war under the present Convention:

1. Persons belonging, or having belonged, to the armed forces of the occupied country, if the occupying Power considers it necessary by reason of such allegiance to intern them, even though it has originally liberated them while hostilities were going on outside the territory it occupies, in particular where such persons have made an unsuccessful attempt to rejoin the armed forces to which they belong and which are engaged in combat, or where they fail to comply with a summons made to them with a view to internment.

2. The persons belonging to one of the categories enumerated in the present Article, who have been received by neutral or non-belligerent Powers on their territory and whom these Powers are required to intern under International Law, without prejudice to any more favourable treatment which these Powers may choose to give and with the exception of Articles 7, 9, 14, 28, fifth paragraph, 49-57, 82, 116 and those Articles concerning the Protecting Power. In this case, the Parties to a conflict on whom these persons depend shall be allowed to perform towards them the functions of a Protecting Power as provided in the present Convention, without prejudice to the functions which these Parties normally exercise in conformity with diplomatic and consular usage and treaties.

### *Article 4*

The present Convention shall apply to the persons referred to in Article 3 from the time they fall into the power of the enemy and until their final release and repatriation.

Should any doubt arise whether one of the aforesaid persons belongs to any of the categories named in the said Article, the said person shall have the benefit of the present Convention until his or her status has been determined by a responsible authority.

### *Article 5*

In addition to the agreements expressly provided for in Articles 9, 21, 26, 51, 55, 56, 57, 61, 62, 65, 100, 101, 108, 109 and 112, the Contracting Parties may conclude other special agreements for all

matters relating to prisoners of war, concerning which they may deem it suitable to make separate provision. No special agreement shall adversely affect the situation of prisoners of war, as defined by the present Convention, nor restrict the rights which it confers upon them.

Prisoners of war shall continue to have the benefit of such agreements as long as the Convention is applicable to them, except where express provisions to the contrary are contained in the aforesaid or in subsequent agreements, or where more favourable measures have been taken with regard to them by one or other of the Parties to the conflict.

#### *Article 6*

Prisoners of war may in no circumstances renounce in part or in entirety the rights secured to them by the present Convention, and by the special agreements referred to in the foregoing Article, if such there be.

#### *Article 7*

The present Convention shall be applied with the cooperation and under the scrutiny of the Protecting Powers whose duty it is to safeguard the interests of the Parties to the conflict. To this effect, the Protecting Powers may appoint, apart from their diplomatic or consular staff, delegates from amongst their own nationals or the nationals of other neutral Powers. The said delegates shall be subject to the approval of the Power near which they will carry out their duties.

The Parties to the conflict shall, to as great a degree as possible, facilitate the task of the representatives or delegates of the Protecting Powers.

The representatives or delegates of the Protecting Power shall not in any case exceed their mission under the present Convention. They shall, in particular, take account of the imperative necessities of security of the State wherein they carry out their duties. Their activities shall only be restricted as an exceptional and temporary measure when this is rendered necessary by imperative military necessities.

#### *Article 8*

The provisions of the present Convention constitute no obstacle to the humanitarian activities which the International Committee of the Red Cross or any other impartial humanitarian body may subject to the consent of the Parties to the conflict concerned, undertake for the protection of prisoners of war and for their relief.

#### *Article 9*

The Contracting Parties may, at any time, agree to entrust to an organization which offers all guarantees of impartiality and efficacy the duties incumbent on the Protecting Powers by virtue of the present Convention.

When prisoners of war do not benefit, or cease to benefit, no matter for what reason, by the activities of a Protecting Power or of an organization provided for in the first paragraph above, the Detaining Power shall request a neutral State, or such an organization, to undertake the functions performed under the present Convention by a Protecting Power designated by the Parties to a conflict.

If protection cannot be arranged accordingly the Detaining Power shall request or shall accept, subject to the provisions of this Article, 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 under the present Convention.

Any neutral Power or any organization invited by the Power concerned or offering itself for these purposes shall be required to act with a sense of responsibility towards the belligerent on which persons protected by the present Convention depend and shall be required to furnish sufficient assurances that it is in a position to undertake the appropriate functions and to discharge them impartially.

No derogation from the preceding provisions shall be made by special agreements between Powers one of which is restricted, even temporarily, in its freedom to negotiate with the other Power or its allies by reason of military events, more particularly where the whole, or a substantial part, of the territory of the said Power is occupied.

Whenever in the present Convention mention is made of a Protecting Power, such mention applies to substitute bodies in the sense of the present Article.

#### *Article 10*

In cases where they deem it advisable in the interest of protected persons, particularly in cases of disagreement between the Parties to the conflict as to the application or interpretation of the provisions of the present Convention, the Protecting Powers shall lend their good offices with a view to settling the disagreement.

To this effect, each of the Protecting Powers may, at the invitation of one Party, or on its own initiative, propose to the Parties to the conflict a meeting of their representatives, and in particular

of the authorities responsible for prisoners of war, possibly on neutral territory suitably chosen. The Parties to the conflict shall be bound to give effect to the proposals made to them in this respect. The Protecting Powers may, if necessary, propose

for approval by the Parties to the conflict a person belonging to a neutral Power, or delegated by the International Committee of the Red Cross, who shall be called upon to participate in such a meeting.

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## PART II

### General Protection of Prisoners of War

#### *Article 11*

Prisoners of war are in the hands of the enemy Power, but not of the individuals or military units who have captured them. Irrespective of the individual responsibilities that may exist, the Detaining Power is responsible for the treatment given them.

Prisoners of war may only be transferred by the Detaining Power to a Power which is a party to the Convention and after the Detaining Power has satisfied itself of the willingness and ability of such transferee Power to apply the Convention. When prisoners of war are transferred under such circumstances, responsibility for the application of the Convention rests on the Power accepting them while they are in its custody.

Nevertheless if that Power fails to carry out the provisions of the Convention in any important respect the Power by whom the prisoners of war were transferred shall, upon being notified by the Protecting Power take effective measures to correct the situation or shall request the return of the prisoners of war. Such requests must be complied with.

#### *Article 12*

Prisoners of war must at all times be humanely treated. Any unlawful act or omission by the Detaining Power causing death or seriously endangering the health of a prisoner of war in its custody is prohibited and will be regarded as a serious breach of the present Convention. In particular, no prisoner of war may be subjected to physical mutilation or to medical or scientific experiments of any kind which are not justified by the medical, dental or hospital treatment of the prisoner concerned and carried out in his interest.

Likewise, prisoners of war must at all times be protected, particularly against acts of violence or intimidation and against insults and public curiosity.

Measures of reprisal against prisoners of war are prohibited.

#### *Article 13*

Prisoners of war are entitled in all circumstances to respect for their persons and their honour.

Women shall be treated with all the regard due to their sex and shall in all cases benefit by treatment as favourable as that granted to men.

Prisoners of war shall retain the full civil capacity which they enjoyed at the time of their capture. The Detaining Power may not restrict the exercise, either within or without its own territory, of the rights such capacity confers except in so far as the captivity requires.

#### *Article 14*

The Power detaining prisoners of war shall be bound to provide free of charge for their maintenance and to grant them also the medical attention required by their state of health.

#### *Article 14A*

Taking into consideration the provisions of the present Convention relating to rank and sex, and subject to any privileged treatment which may be accorded to them by reason of their state of health, age or professional qualifications, all prisoners of war shall be treated alike by the Detaining Power, without any prejudicial discrimination of race, nationality, religious belief or political opinions, or any other distinction founded on similar criteria.

## PART III

**Captivity**

## SECTION I

**Beginning of Captivity***Article 15*

Every prisoner of war, when questioned on the subject, is bound to give only his surname, first names and rank, date of birth, and army, regimental, personal or serial number, or failing this, equivalent information.

If he wilfully infringes this rule he may render himself liable to a restriction of the privileges accorded to his rank or status.

Each Party to a conflict is required to furnish the persons under its jurisdiction who are liable to become prisoners of war, with an identity card showing the owner's surname, first names, rank, army, regimental, personal or serial number or equivalent information, and date of birth. The identity card may, furthermore, bear the signature or the finger-prints or both of the owner, and may bear, as well, any other information the Party to the conflict may wish to add concerning persons belonging to its armed forces. As far as possible the card shall measure  $6.5 \times 10$  cm. and shall be issued in duplicate. The identity card shall be shown by the prisoner of war upon demand, but may in no case be taken away from him.

No physical or mental torture, nor any other form of coercion may be inflicted on prisoners of war to secure from them information of any kind whatever. Prisoners of war who refuse to answer may not be threatened, insulted, or exposed to any unpleasant or disadvantageous treatment of any kind.

Prisoners of war who, owing to their physical or mental condition, are unable to state their identity shall be handed over to the Medical Service. The identity of such prisoners shall be established by all possible means, subject to the provisions of the preceding paragraph.

The questioning of prisoners of war shall be carried out in a language which they understand.

*Article 16*

All effects and articles of personal use, except arms, horses, military equipment and military documents, shall remain in the possession of prisoners of war, likewise their metal helmets and gas

masks and likewise articles issued for personal protection. Effects and articles used for their clothing or feeding shall likewise remain in their possession, even if such effects and articles belong to their regulation military equipment.

At no time should prisoners of war be without identity documents. The Detaining Power shall supply such documents to prisoners of war who possess none.

Badges of rank and nationality, decorations and articles having above all a personal or sentimental value may not be taken from prisoners of war.

Sums of money carried by prisoners of war may not be taken away from them except by order of an officer after the amount and particulars of the owner have been recorded in a special register, and an itemized receipt has been given legibly inscribed with the name, rank and unit of the person issuing the said receipt. Sums in the currency of the Detaining Power or which are changed into such currency at the prisoner's request shall be placed to the credit of the prisoner's account as provided in Article 54.

The Detaining Power may withdraw articles of value from prisoners of war only for reasons of security; when such articles are withdrawn, the procedure laid down for sums of money impounded shall apply.

Such objects, likewise the sums taken away in any currency other than that of the Detaining Power, and the conversion of which has not been asked for by the owners, shall be kept in the custody of the Detaining Power and shall be returned in their initial shape to prisoners of war at the end of their captivity.

*Article 17*

Prisoners of war shall be evacuated as soon as possible after their capture to camps situated in an area far enough from the combat zone for them to be out of danger.

Only those prisoners of war who, owing to wounds or sickness, would run greater risks by being evacuated than by remaining where they are, may be temporarily kept back in a danger zone.

Prisoners of war shall not be unnecessarily exposed to danger while awaiting evacuation from a fighting zone.

*Article 18*

The evacuation of prisoners of war shall always be effected humanely and in conditions similar to those for the forces of the Detaining Power in their changes of station.

The Detaining Power shall supply prisoners of war who are being evacuated with sufficient food and potable water, and with the necessary clothing and medical attention. The Detaining Power shall take all suitable precautions to ensure their safety during evacuation, and shall establish as soon as possible a list of the prisoners of war who are evacuated.

If prisoners of war must, during evacuation, pass through transit camps, their stay in such camps shall be as brief as possible.

## SECTION II

**Internment of Prisoners of War**

## CHAPTER I

**General Observations***Article 19*

The Detaining Power may subject prisoners of war to internment. It may impose on them the obligation of not leaving, beyond certain limits, the camp where they are interned, or, if the said camp is fenced in, of not going outside its perimeter. Subject to the provisions of the present Convention relative to penal and disciplinary sanctions, prisoners of war may not be held in close confinement except where necessary to safeguard their health and then only during the continuation of the circumstances which make such confinement necessary.

Prisoners of war may be partially or wholly released on parole or promise, in so far as is allowed by the laws of the Power on which they depend. Such measures shall be taken particularly in cases where this may contribute to the improvement of their state of health. No prisoner of war shall be compelled to accept liberty on parole or promise.

Upon the outbreak of hostilities, each Party to the conflict shall notify the adverse Party of the laws and regulations allowing or prohibiting its own nationals to accept liberty on parole or promise. Prisoners of war who are paroled or who have given their promise in conformity with the laws and regulations so notified, are bound on their personal honour scrupulously to fulfil, both towards the Power on which they depend and the Power which has captured them, the engagements of their paroles or promises. In such cases, the Power on which they depend is bound neither to require

nor to accept from them any service incompatible with the parole or promise given.

*Article 20*

Prisoners of war may be interned only in premises located on land and affording every guarantee of hygiene and healthfulness. Except in particular cases which are justified by the interest of the prisoners themselves, they shall not be interned in penitentiaries.

Prisoners of war interned in unhealthy areas, or where the climate is injurious for them, shall be removed as soon as possible to a more favourable climate.

The Detaining Power shall assemble prisoners of war in camps or camp compounds accorded to their nationality, language and customs, provided that those made prisoner while serving with the armed forces of a country of which they are not nationals shall not be placed, unless they so consent, in camps or compounds apart from the camps or compounds for prisoners of those national armed forces.

*Article 21*

No prisoner of war may at any time be sent to, or detained in areas where he may be exposed to the fire of the combat zone, nor may his presence be used to render certain points or areas immune from military operations.

Prisoners of war shall have shelters against air bombardment and other hazards of war, to the same extent as the local civilian population. With the exception of those engaged in the protection of their quarters against the aforesaid hazards, they may enter such shelters as soon as possible after the giving of the alarm. Any other protective measure taken in favour of the population shall also apply to them.

Detaining Powers shall give the Powers concerned, through the intermediary of the Protecting Powers, all useful information regarding the geographical location of prisoner of war camps.

Whenever military considerations permit, prisoner of war camps shall be indicated in the daytime by the letters "PW" or "PG", placed so as to be clearly visible from the air. The Powers concerned may, however, agree upon any other system of marking. Only prisoner of war camps shall be marked as such.

*Article 22*

Transit or screening camps of a permanent kind shall be fitted out under conditions similar to those described in the present Section, and the prisoners therein shall have the same treatment as in other camps.

## CHAPTER II

**Quarters, food and clothing of Prisoners of War***Article 23*

Prisoners of war shall be quartered under conditions as favourable as those for the forces of the Detaining Power who are billeted in the same area. The said conditions shall make allowance for the habits and customs of the prisoners and shall in no case be prejudicial to their health.

The foregoing provisions shall apply in particular to the dormitories of prisoners of war as regards both total surface and minimum cubic space and the general installations, bedding and blankets.

The premises provided for the use of prisoners of war individually or collectively, shall be entirely protected from dampness and adequately heated and lighted, in particular between dusk and lights out. All precautions must be taken against the danger of fire.

In any camps in which women prisoners of war, as well as men, are accommodated, separate dormitories shall be provided for them.

*Article 24*

The basic daily food rations shall be sufficient in quantity, quality and variety to keep prisoners of war in good health and to prevent loss of weight or the development of nutritional deficiencies. Account shall also be taken of the habitual diet of the prisoners.

The Detaining Power shall supply prisoners of war who work with such additional rations as are necessary for the labour on which they are employed.

Sufficient drinking water shall be supplied to prisoners of war. The use of tobacco shall be permitted.

Prisoners of war shall as far as possible be associated with the preparation of their meals; they may be employed for that purpose in the kitchens. Furthermore, they shall be given the means of preparing themselves the additional food in their possession.

Adequate premises shall be provided for messing.

Collective disciplinary measures affecting food are prohibited.

*Article 25*

Clothing, underwear and footwear shall be supplied to prisoners of war in sufficient quantities by the Detaining Power, which shall make allowance for the climate of the region where the prisoners are detained. Uniforms of enemy armed forces captured by the Detaining Power should

if suitable for the climate be made available to clothe prisoners of war.

The regular replacement and repair of the above articles shall be assured regularly by the Detaining Power. In addition, prisoners of war who work shall receive appropriate clothing, wherever the nature of the work demands.

*Article 26*

Canteens shall be installed in all camps, where prisoners of war may procure foodstuffs, soap and tobacco and ordinary articles in daily use. The tariff shall never be in excess of local market prices.

The profits made by camp canteens shall be used for the benefit of the prisoners; a special fund shall be created for this purpose. The prisoners' representative shall have the right to collaborate in the management of the canteen and of this fund.

When a camp is closed down, the credit balance of the special fund shall be handed to an international welfare organization, to be employed for the benefit of prisoners of war of the same nationality as those who have contributed to the fund. In case of a general repatriation, such profits shall be kept by the Detaining Power, subject to any agreement to the contrary between the Powers concerned.

## CHAPTER III

**Hygiene and medical attention***Article 27*

The Detaining Power shall be bound to take all sanitary measures necessary to ensure the cleanliness and healthfulness of camps, and to prevent epidemics.

Prisoners of war shall have for their use, day and night, conveniences which conform to the rules of hygiene and are constantly maintained in a state of cleanliness. In any camps in which women prisoners of war are accommodated, separate conveniences shall be provided for them.

Also, apart from the baths and showers with which the camps shall be furnished, prisoners of war shall be provided with sufficient water and soap for their personal toilet and for washing their underwear; the necessary installations, facilities and time shall be granted them for that purpose.

*Article 28*

Every camp shall have an adequate infirmary where prisoners of war may have the attention

they require, as well as appropriate diet. Isolation wards shall, if necessary, be set aside for cases of contagious or mental disease.

Prisoners of war suffering from serious disease, or whose condition necessitates special treatment, a surgical operation or hospital care, must be admitted to any military or civil medical unit where such treatment can be given, even if their repatriation is contemplated in the near future. Special facilities shall be afforded for the care to be given to the disabled, in particular to the blind, and for their rehabilitation, pending repatriation.

Prisoners of war shall have the attention preferably of medical personnel of the Power on which they depend and, if possible, of their nationality.

Prisoners of war may not be prevented from presenting themselves to the medical authorities for examination. The detaining authorities shall, upon request, issue to every prisoner who has undergone treatment, an official certificate indicating the nature of his illness or injury, and the duration and kind of treatment received. A duplicate of this certificate shall be forwarded to the Central Prisoners of War Agency.

The costs of treatment, including those of any apparatus necessary for the maintenance of prisoners of war in good health, particularly dentures and other artificial appliances, and spectacles, shall be borne by the Detaining Power.

#### *Article 29*

Medical inspections of prisoners of war shall be made at least once a month. They shall include the checking and the recording of the weight of each prisoner of war. Their purpose shall be, in particular, to supervise the general state of health, nutrition and cleanliness of prisoners and to detect contagious diseases, especially tuberculosis, malaria and venereal disease. For this purpose the most efficient methods available shall be employed, e.g. periodic mass miniature radiography for the early detection of tuberculosis.

#### *Article 29A*

Prisoners of war who, though not attached to the medical service of their armed forces, are physicians, surgeons, dentists, nurses or medical orderlies may be required by the Detaining Power to exercise their medical functions in the interests of prisoners of war dependent on the same Power. In that case they shall continue to be prisoners of war but shall receive the same treatment as corresponding medical personnel retained by the Detaining Power. They shall be exempted from any other work under Article 41.

### CHAPTER III A (*new*)

#### **Medical Personnel and Chaplains retained to assist Prisoners of War**

##### *Article 29B*

Members of medical personnel and chaplains whilst retained by the Detaining Power to look after prisoners of war shall be granted all facilities necessary to provide for the medical care of and religious ministrations to prisoners of war. Such retained personnel shall not be considered prisoners of war but shall receive all the benefits and protection of this Convention.

### CHAPTER IV

#### **Religion, intellectual and physical Activities**

##### *Article 30*

Prisoners of war shall enjoy complete latitude in the exercise of their religious duties, including attendance at the service of their faith, on condition that they comply with the disciplinary routine prescribed by the military authorities.

Adequate premises shall be provided where religious services may be held.

##### *Article 30A*

Chaplains who fall into the hands of the enemy Power and who remain or are retained to minister to prisoners of war, shall be allowed to exercise freely their ministry amongst prisoners of war of the same religion, in accordance with their religious conscience. They shall be allocated among the various camps and labour detachments containing prisoners of war belonging to the same forces, speaking the same language or practising the same religion. They shall enjoy the necessary facilities, including the means of transport for moving about from one camp or labour detachment to another. They shall in particular be authorized to visit prisoners of war under treatment in civilian hospitals. They shall be free to correspond, subject to censorship, on matters concerning their religious duties with the ecclesiastical authorities in the country of detention and with the international religious organizations. Letters and cards which they may send shall be in addition to the quota provided for in Article 60.

They shall be granted additional rations as provided for working prisoners of war in the second paragraph of Article 24, and they shall also be granted additional opportunities for exercise and recreation including some freedom of movement in order to maintain the state of mental and physical fitness required to carry out their religious duties.

*Article 30B*

Prisoners of war who are ministers of religion, without having officiated as chaplains to their own forces, shall be at liberty, whatever their denomination, to minister freely to the members of their community. For this purpose, they shall receive the same treatment as the chaplains retained by the Detaining Power. They shall not be obliged to do any other work.

*Article 30C*

When prisoners of war have not the assistance of a retained chaplain or of a prisoner of war minister of their faith, a minister belonging to the prisoners' or a similar denomination, or in his absence a qualified layman, if such a course is feasible from a confessional point of view, shall be appointed at the request of the prisoners concerned to fill this office. This appointment subject to the approval of the Detaining Power, shall take place with the agreement of the community of prisoners concerned and, wherever necessary, with the approval of the local religious authorities of the same faith. The person thus appointed shall comply with all regulations established by the Detaining Power in the interests of discipline and military security.

*Article 31*

While respecting the individual preferences of every prisoner, the Detaining Power shall encourage the practice of intellectual, educational, and recreational pursuits, sports and games amongst prisoners, and shall take the measures necessary to ensure the exercise thereof by providing them with adequate premises and necessary equipment.

Prisoners shall have opportunities for taking physical exercise including sports and games and being out of doors. Sufficient open spaces shall be provided for this purpose in all camps.

## CHAPTER V

**Discipline***Article 32*

Every prisoner of war camp shall be put under the immediate authority of a responsible commissioned officer belonging to the regular armed forces of the Detaining Power. Such officer shall have in his possession a copy of the present Convention; he shall ensure that its provisions are known to the camp staff and the guard and shall be responsible, under the direction of his Government for its application.

Prisoners of war, with the exception of officers, must salute and show to all officers of the Detaining Power the external marks of respect provided for by the regulations applying in their own forces.

Officer prisoners of war are bound to salute only officers of a higher rank of the Detaining Power; they must, however, salute the Camp Commander regardless of his rank.

*Article 33*

The wearing of badges of rank and nationality, as well as of decorations, shall be permitted.

*Article 34*

In every camp the text of the present Convention and its Annexes and the contents of any special agreement provided for in Article 5, shall be posted, in the prisoners' own language, at places where all may read it. Copies shall be supplied, on request, to the prisoners who cannot have access to the copy which has been posted.

Regulations, orders, notices and publications of every kind relating to the conduct of prisoners of war shall be issued to them in a language which they understand. Such regulations, orders and publications shall be posted in the manner described above and copies shall be handed to the prisoners' representative. Every order and command addressed to prisoners of war individually must likewise be given in a language which they understand.

*Article 35*

The use of weapons against prisoners of war, especially against those who are escaping or attempting to escape, shall constitute an extreme measure, which shall always be preceded by warnings appropriate to the circumstances.

## CHAPTER VI

**Rank of Prisoners of War***Article 36*

Upon the outbreak of hostilities, the Parties to the conflict shall communicate to one another the titles and ranks of all the persons mentioned in Article 3 of the present Convention, in order to ensure equality of treatment between prisoners of equivalent rank. Titles and ranks which are subsequently created shall form the subject of similar communications.

The Detaining Power shall recognize promotions in rank which have been accorded to prisoners of war and which have been duly notified by the Power on which these prisoners depend.

*Article 37*

Officers and prisoners of equivalent status shall be treated with the regard due to their rank and age.

In order to ensure service in officers' camps, other ranks of the same armed forces who, so far as possible, speak the same language, shall be assigned in sufficient numbers, account being taken of the rank of officers and prisoners of equivalent status. Such orderlies shall not be required to perform any other work.

Supervision of the mess by the officers themselves shall be facilitated in every way.

*Article 37A*

Prisoners of war other than officers and prisoners of equivalent status shall be treated with the regard due to their rank and age.

Supervision of the mess by the prisoners themselves shall be facilitated in every way.

## CHAPTER VII

**Transfer of Prisoners of War  
after their Arrival in Camp***Article 38*

The transfer of prisoners of war shall always be effected humanely and in conditions not less favourable than those under which the forces of the Detaining Power are transferred. Account shall always be taken of the climatic conditions to which the prisoners of war are accustomed and the conditions of transfer shall in no case be prejudicial to their health.

The Detaining Power shall supply prisoners of war during transfer with sufficient food and potable water to keep them in good health, likewise with the necessary clothing, shelter and medical attention. The Detaining Power shall take adequate precautions especially in case of transport by sea or by air, to ensure their safety during transfer, and shall draw up a complete list of all transferred prisoners before their departure.

*Article 39*

Sick or wounded prisoners of war shall not be transferred as long as their recovery may be endangered by the journey, unless their safety imperatively demands it.

If the combat zone draws closer to a camp, the prisoners of war in the said camp shall not be transferred unless their transfer can be carried out in adequate conditions of safety, or if they are exposed to greater risks by remaining on the spot than by being transferred.

*Article 40*

In the event of transfer, prisoners of war shall be officially advised of their departure and of their new postal address. Such notifications shall be given in time for them to pack their luggage and inform their next of kin.

They shall be allowed to take with them their personal effects, and the correspondence and parcels which have arrived for them. The weight of such baggage may be limited, if the conditions of transfer so require, to what each prisoner can reasonably carry, which shall in no case be more than twenty-five kilograms per head.

Mail and parcels addressed to their former camp shall be forwarded to them without delay. The camp commandant shall take, in agreement with the prisoners' representative, any measures needed to ensure the transport of the prisoners' community property and of the luggage they are unable to take with them, in consequence of restrictions imposed by virtue of the second paragraph.

The costs of transfers shall be borne by the Detaining Power.

## SECTION III

**Labour of Prisoners of War***Article 41*

The Detaining Power may utilize the labour of prisoners of war who are physically fit, taking into account their age, sex, rank and physical aptitude, and with a view particularly to maintaining them in a good state of physical and mental health.

Non-commissioned officers who are prisoners of war shall only be required to do supervisory work. Those not so required may ask for other suitable work which shall, so far as possible, be found for them.

If officers or persons of equivalent status ask for suitable work, it shall be found for them, so far as possible, but they may in no circumstances be compelled to work.

*Article 42*

Besides work done connected with camp administration, installation or maintenance, prisoners of war may be compelled to do only such work as is included in the following classes:

- (a) agriculture;
- (b) industries connected with the production or the extraction of raw materials and manufacturing industries, with the exception of iron and steel, machinery and chemical

industries and of public works, and building operations which have a military character or purpose;

- (c) transport and handling of stores which are not military in character or purpose;
- (d) commercial business, and arts and crafts;
- (e) domestic service;
- (f) public utility services having no military character or purpose.

Work connected with the removal of mines or similar devices, which are dangerous to the population because of their position, and were placed by the prisoners themselves before they were taken, or by other members of the forces to which they belonged, shall however exceptionally be authorized, on condition that it is carried out in areas distant from the theatre of military operations and in accordance with the provisions of Article 42A, provided that the prisoners or other members of the forces named above have suitable training or experience in the removal of mines.

Should the above provisions be infringed, prisoners of war shall be allowed to exercise their right of complaint, in conformity with Article 68.

#### *Article 42A*

Prisoners of war must be granted suitable working conditions, especially as regards accommodation, food, clothing and equipment; such conditions shall not be inferior to those enjoyed by nationals of the Detaining Power employed in similar work; account shall also be taken of climatic conditions.

The Detaining Power in utilizing the labour of prisoners of war, shall ensure that in areas in which such prisoners are employed, the national legislation concerning the protection of labour, and, more particularly, the regulations for the safety of workers, are duly applied.

Prisoners of war shall receive training and be provided with the means of protection suitable to the work they will have to do and similar to those accorded to the nationals of the Detaining Power. Subject to the provisions of Article 43, prisoners may be submitted to the normal risks run by these civilian workers.

Conditions of labour shall in no case be rendered more arduous by disciplinary measures.

#### *Article 43*

Subject to the stipulations contained in Article 42, second paragraph, no prisoner of war may be employed on labour which is of an unhealthy or dangerous nature.

No prisoner of war shall be assigned to labour which would be looked upon as humiliating for a member of the Detaining Power's own forces.

#### *Article 44*

The duration of the daily labour of prisoners of war, including the time of the journey to and fro, shall not be excessive, and must in no case exceed that permitted for civilian workers in the district, who are nationals of the Detaining Power and employed in the same work.

Prisoners of war must be allowed, in the middle of the day's work, a rest of not less than one hour. This rest will be the same as that to which workers of the Detaining Power are entitled, if the latter is of longer duration. They shall be allowed in addition a rest of twenty-four consecutive hours every week, preferably on Sunday or the day of rest in their country of origin. Furthermore, every prisoner who has worked for one year shall be granted a rest of eight consecutive days, during which his working pay shall be paid him.

If methods of labour such as piece work are employed, the length of the working period shall not be rendered excessive thereby.

#### *Article 45*

The working pay due to prisoners of war shall be fixed in accordance with the provisions of Article 52 of the present Convention.

Prisoners of war who sustain accidents in connection with work, or who contract a disease in the course, or in consequence of their work shall receive all the care their condition may require. The Detaining Power shall furthermore deliver to such prisoners of war a medical certificate enabling them to submit their claims to the Power on which they depend, and shall send a duplicate thereof to the Central Prisoners of War Agency.

#### *Article 46*

The fitness of prisoners of war for work shall be periodically verified by medical examinations, at least once a month. The examinations shall have particular regard to the nature of the work which prisoners of war are required to do.

If any prisoner of war considers himself incapable of working, he shall be permitted to appear before the medical authorities of his camp. Physicians or surgeons may recommend that the prisoners who are, in their opinion, unfit for work, be exempted therefrom.

#### *Article 47*

The organization and administration of labour detachments shall be similar to those of prisoners of war camps.

Every labour detachment shall remain under the control of and administratively part of a prisoner of war camp. The military authorities and the commander of the said camp shall be responsible, under the direction of their government, for the observance of the provisions of the present Convention in labour detachments.

The camp commander shall keep an up-to-date record of the labour detachments dependent on his camp, and shall communicate it to the delegates of the Protecting Power, of the International Committee of the Red Cross, or of other agencies giving relief to prisoners of war, who may visit the camp.

#### *Article 48*

The treatment of prisoners of war who work for private persons even if the latter are responsible for guarding and protecting them, shall not be inferior to that which is provided for by the present Convention. The Detaining Power, the military authorities and the commander of the camp to which such prisoners belong shall be entirely responsible for the maintenance, care, treatment and payment of the working pay of such prisoners of war.

Such prisoners of war shall have the right to remain in communication with the prisoners' representatives in the camps on which they depend.

### SECTION IV

#### **Financial Resources of Prisoners of War**

#### *Article 49*

Upon the outbreak of hostilities, and pending an arrangement on this matter with the Protecting Power, the Detaining Power may determine the maximum amount of money in cash or in any similar form, that prisoners may have in their possession. Any amount in excess, which was properly in their possession and which has been taken or withheld from them, shall be placed to their account, together with any monies deposited by them, and shall not be converted into any currency without their consent.

If prisoners of war are permitted to purchase services or commodities outside the camp against payment in cash, such payments shall be made by the prisoner himself or the camp administrator and charged to the account of the prisoners concerned. The Detaining Power will establish the necessary rules in this respect.

#### *Article 50*

Cash which was taken from prisoners of war, in accordance with Article 16, at the time of their capture, and which is in the currency of the

Detaining Power, shall be placed to their separate accounts, in accordance with the provisions of Article 54 of the present Section.

The amounts, in the currency of the Detaining Power, due to the conversion of sums in other currencies that are taken from the prisoners of war at the same time, shall also be credited to their separate accounts.

#### *Article 51*

The Detaining Power shall grant all prisoners of war a monthly advance of pay, the amount of which shall be fixed by conversion, into the currency of the said Power, of the following amounts:

- Category I: Prisoners ranking below sergeants: eight Swiss gold francs.
- Category II: Sergeants and other non-commissioned officers, or prisoners of equivalent rank: twelve Swiss gold francs.
- Category III: Warrant officers and commissioned officers below the rank of major, or prisoners of equivalent rank: fifty Swiss gold francs.
- Category IV: Majors, lieutenant-colonels, colonels or prisoners of equivalent rank: sixty Swiss gold francs.
- Category V: General officers or prisoners of war of equivalent rank: seventy-five Swiss gold francs.

The Swiss gold franc aforesaid is the franc containing 203 milligrammes of fine gold.

However, the Parties to the conflict concerned may by special agreement modify the amount of advances of pay due to prisoners of the preceding categories.

Furthermore, if the amounts indicated in paragraph one above would be unduly high compared with the pay of the Detaining Power's armed forces or would, for any reason, seriously embarrass the Detaining Power, then, pending the conclusion of a special agreement with the Power on which the prisoners depend to vary the amounts indicated above, the Detaining Power:

- (a) shall continue to credit the account of the prisoners with the amounts indicated in the first paragraph above;
- (b) may temporarily limit the amount made available from these advances of pay to prisoners of war for their own use, to sums which are reasonable, but which, for Category I, shall never be inferior to the amount that the Detaining Power gives to the members of its own armed forces.

The reasons for any limitations will be given without delay to the Protecting Power.

*Article 51A*

The Detaining Power shall accept for distribution as supplementary pay to prisoners of war sums which the Power on which the prisoners depend may forward to them, on condition that the sums to be paid shall be the same for each prisoner of the same category, shall be payable to all prisoners of that category depending on that Power, and shall be placed in their separate accounts, at the earliest opportunity, in accordance with the provisions of Article 54. Such supplementary pay shall not relieve the Detaining Power of any obligation under this Convention.

*Article 52*

Prisoners of war shall be paid a fair working rate of pay by the detaining Authorities direct. The rate shall be fixed by the said authorities, but shall at no time be less than one-fourth of one Swiss gold franc for a full working day. The Detaining Power shall inform prisoners of war, as well as the Power on which they depend through the intermediary of the Protecting Power, of the rate of daily working pay that it has fixed.

Working pay shall likewise be paid by the detaining Authorities to prisoners of war permanently detailed to duties or to a skilled or semi-skilled occupation in connection with the administration, installation or maintenance of camps, and to the prisoners who are required to carry out spiritual or medical duties on behalf of their comrades.

The working pay of the prisoners' representative, of his advisers, if any, and of his assistants, shall be paid out of the fund maintained by canteen profits. The scale of this working pay shall be fixed by the prisoners' representative and approved by the camp commander. If there is no such fund, the detaining Authorities shall pay these prisoners a fair working rate of pay.

*Article 53*

Prisoners of war shall be permitted to receive remittances of money addressed to them individually or collectively.

Every prisoner of war shall have at his disposal the credit balance of his account, as provided for in the following Article, within the limits fixed by the Detaining Power, which shall make such payments as are requested. Subject to financial or monetary restrictions which the Detaining Power regards as essential, prisoners of war may also have payments made abroad. In this case payments addressed by prisoners of war to dependents shall be given priority.

In any event, and subject to the consent of the Power on which they depend, prisoners may have payments made in their own country, as follows: the Detaining Power shall send to the aforesaid Power through the Protecting Power, a notification giving all the necessary particulars concerning the prisoners of war, the beneficiaries of the payments, and the amount of the sums to be paid, expressed in the Detaining Power's currency. The said notification shall be signed by the prisoners and countersigned by the camp commander. The Detaining Power shall debit the prisoners' account by a corresponding amount; the sums thus debited shall be placed by it to the credit of the Power on which the prisoners depend.

To apply the foregoing provisions, the Detaining Power may usefully consult the Model Regulations in Annex V of the present Convention.

*Article 54*

The Detaining Power shall hold an account for each prisoner of war, showing at least the following :

- (1) The amounts due to the prisoner or received by him as advances of pay, or working pay or derived from any other source; the sums in the currency of the Detaining Power which were taken from him; the sums taken from him and converted at this request into the currency of the said Power.
- (2) The payments made to the prisoner in cash, or in any other similar form; the payments made on his behalf and at his request; the sums transferred under Article 53, third paragraph.

*Article 55*

Every item entered in the account of a prisoner of war shall be countersigned or initialled by him, or by the prisoners' representative acting on his behalf.

Prisoners of war shall at all times be afforded reasonable facilities for consulting and obtaining copies of their accounts, which may likewise be inspected by the representatives of the Protecting Powers at the time of visits to the camp.

When prisoners of war are transferred from one camp to another, their personal accounts will follow them. In case of transfer from one Detaining Power to another, the monies which are their property and are not in the currency of the Detaining Power will follow them. They shall be given certificates for any other monies standing to the credit of their account.

The Parties to the conflict concerned may agree to notify each other at specific intervals through the Protecting Power the amount of accounts of the prisoners of war.

*Article 56*

On the termination of captivity, through the release of a prisoner of war or his repatriation, the Detaining Power shall give him a statement, signed by an authorized officer of that Power, showing the credit balance then due to him. The Detaining Power shall also send through the Protecting Power to the Government upon which the prisoner of war depends, lists giving all appropriate particulars of all prisoners of war whose captivity has been terminated by repatriation, release, escape, death or any other means, and showing the amount of their credit balances. Such lists shall be certified on each sheet by an authorized representative of the Detaining Power.

Any of the above provisions of this Article may be varied by mutual agreement between any two Parties to the conflict.

The Power on which the prisoner of war depends shall be responsible for settling with him any credit balance due to him from the Detaining Power on the termination of his captivity.

*Article 57*

Advances of pay, issued to prisoners of war in conformity with Article 51 shall be considered as made on behalf of the Power on which they depend. Such advances of pay, as well as all payments made by the said Power under Article 53, third paragraph, and Article 57A shall form the subject of arrangements between the Powers concerned, at the close of hostilities.

*Article 57A*

Any claim by a prisoner of war for compensation in respect of any injury or other disability arising out of work shall be referred to the Power on which he depends, through the Protecting Power. In accordance with Article 45, the Detaining Power will, in all cases, provide the prisoner of war concerned with a statement showing the nature of the injury or disability, the circumstances in which it arose and particulars of medical or hospital treatment given for it. This statement will be signed by a responsible officer of the Detaining Power and the medical particulars certified by a medical officer.

Any claim from a prisoner of war for compensation in respect of personal effects, monies or valuables impounded by the Detaining Power under Article 16 and not forthcoming on his repatriation, or in respect of loss alleged to be due to the fault of the Detaining Power or any of its servants shall likewise be referred to the Power on which he depends. Nevertheless, any such personal effects required for use by the prisoners of war whilst in captivity shall be replaced at the expense of the Detaining

Power. The Detaining Power will, in all cases, provide the prisoner of war with a statement, signed by a responsible officer, showing all available information regarding the reasons why effects, monies or valuables have not been restored to him. A copy of this statement will be forwarded to the Power on which he depends through the Central Agency for Prisoners of War provided for in Article 113.

## SECTION V

**Relations of Prisoners of War with the Exterior***Article 58*

Immediately upon prisoners of war falling into its power the Detaining Power shall inform them and the Powers on which they depend, through the Protecting Power, of the measures taken to carry out the provisions of the present Section. They shall likewise inform the parties concerned of any subsequent modifications of such measures.

*Article 59*

Immediately upon capture, or not more than one week after arrival at a camp, even if it is a transit camp, likewise in case of sickness or transfer to hospital or another camp, every prisoner of war shall be enabled to write direct to his family, on the one hand, and to the Central Prisoners of War Agency provided for in Article 113, on the other hand, a card similar, if possible, to the model annexed to the present Convention, informing his relatives of his capture, address and state of health. The said cards shall be forwarded as rapidly as possible and may not be delayed in any manner.

*Article 60*

Prisoners of war shall be allowed to send and receive letters and cards. If the Detaining Power deems it necessary to limit the number of letters and cards sent by each prisoner of war, the said number shall not be less than two letters and four cards monthly, exclusive of the capture cards provided for in Article 59, and conforming as closely as possible to the model annexed to the present Convention. Further limitations may be imposed only if the Protecting Power is satisfied that it would be in the interests of the prisoners of war concerned to do so owing to difficulties of translation caused by the Detaining Power's inability to find sufficient qualified linguists to carry out the necessary censorship. If limitations must be placed on the correspondence addressed to prisoners of war, they may be ordered only by the Power on which the prisoners depend, possibly at the request of the Detaining Power.

Such letters and cards must be conveyed by the most rapid method at the disposal of the Detaining Power; they may not be delayed or retained for disciplinary reasons.

Prisoners of war who have been without news for a long period, or who are unable to receive news from their next of kin or to give them news by the ordinary postal route, as well as those who are at a great distance from their homes, shall be permitted to send telegrams, the fees being charged against the prisoners of war's accounts with the Detaining Power or paid in the currency at their disposal. They shall likewise benefit by this measure in cases of urgency.

As a general rule, the correspondence of prisoners of war shall be written in their native language. The Parties to the conflict may allow correspondence in other languages.

Sacks containing prisoner of war mail must be securely sealed and labelled so as clearly to indicate their contents, and must be addressed to offices of destination.

#### *Article 61*

Prisoners of war shall be allowed to receive by post or by any other means individual parcels or collective shipments containing, in particular, foodstuffs, clothing, medical supplies and articles of a religious, educational and recreational character which may meet their needs, including books, devotional articles, scientific equipment, examination papers, musical instruments, sports outfits and materials allowing prisoners of war to pursue their studies or their cultural activities.

Such shipments shall in no way free the Detaining Power from the obligations imposed upon it by virtue of the present Convention.

The only limits which may be placed on these shipments shall be those proposed by the Protecting Power in the interest of the prisoners themselves, or, by the International Committee of the Red Cross or any other body giving assistance to the prisoners, in respect of their own shipments only, on account of exceptional strain on transport or communications.

The conditions for the sending of individual parcels and collective relief shall, if necessary, be the subject of special agreements between the Powers concerned, which may in no case delay the receipt by the prisoners of relief supplies. Books may not be included in parcels of clothing and foodstuffs. Medical supplies shall, as a rule, be sent in collective parcels.

#### *Article 62*

In the absence of special agreements between the Powers concerned on the conditions for the receipt and distribution of collective relief ship-

ments, the rules and regulations concerning collective relief shipments which are annexed to the present Convention shall be applied.

The special agreements provided for above shall in no case restrict the right of prisoners' representatives to take possession of collective relief shipments intended for prisoners of war, to proceed to their distribution or to dispose of them in the interest of the prisoners.

Nor shall such agreements restrict the right of representatives of the Protecting Powers, the International Committee of the Red Cross or any other organization giving assistance to prisoners of war and responsible for the forwarding of collective shipments, to supervise their distribution to the recipients.

#### *Article 63*

(Committee II has decided to delete Article 63, the contents of which are now found in Article 61.)

#### *Article 64*

All relief shipments for prisoners of war shall be exempt from import, customs and other dues.

Correspondence, relief shipments and authorized remittances of money addressed to prisoners of war or despatched by them through the post office, either direct or through the Information Bureaux provided for in Article 112 and the Central Prisoners of War Agency provided for in Article 113, shall be exempt from any postal dues, both in the countries of origin and destination, and in intermediate countries.

If relief shipments intended for prisoners of war cannot be sent through the post office by reason of weight or any other cause, the cost of transportation shall be borne by the Detaining Power in all the territories under its control. The other Powers party to the Convention shall bear the cost of transport in their respective territories.

In the absence of special agreements between the Parties concerned, the costs connected with transport of such shipments, other than costs covered by the above exemption, shall be charged to the senders.

The High Contracting Parties shall endeavour to reduce, so far as possible, the rates charged for telegrams sent by prisoners of war, or addressed to them.

#### *Article 65*

Should military operations prevent the Powers concerned from fulfilling their obligation to assure the transport of the shipments referred to in Articles 59, 60, 61 and 67, the Protecting Powers concerned, the International Committee of the Red Cross or any other body duly approved by

the Parties to the conflict may undertake to ensure the conveyance of such shipments by suitable means (railway cars, motor vehicles, vessels or aircraft, etc.). For this purpose the High Contracting Parties shall endeavour to supply them with such transport and to allow its circulation, especially by granting the necessary safe-conducts.

Such transport may also be used to convey:

- (a) correspondence, lists and reports exchanged between the Central Information Agency referred to in Article 113 and the National Bureaux referred to in Article 112;
- (b) correspondence and reports relating to prisoners of war which the Protecting Powers, the International Committee of the Red Cross or any other body assisting the prisoners, exchange either with their own delegates or with the Parties to the conflict.

These provisions in no way detract from the right of any Party to the conflict to arrange other means of transport if it should so prefer nor preclude the granting of safe-conducts, under mutually agreed conditions, to such means of transport.

In the absence of special agreements, the costs occasioned by the use of such means of transport shall be borne proportionally by the Parties to the conflict whose nationals are benefited thereby.

#### *Article 66*

The censoring of correspondence addressed to prisoners of war or despatched by them shall be done as quickly as possible. Mail shall be censored only by the despatching State and the receiving State, and once only by each.

The examination of consignments intended for prisoners of war shall not be carried out under conditions that will expose the goods contained in them to deterioration; except in the case of written or printed matter it shall be done in the presence of the addressee, or of a fellow-prisoner duly delegated by him. The delivery to prisoners of individual or collective consignments shall not be delayed under the pretext of difficulties of censorship.

Any prohibition of correspondence ordered by Parties to the conflict, either for military or political reasons, shall be only temporary and its duration shall be as short as possible.

#### *Article 67*

The Detaining Powers shall provide all facilities for the transmission, through the Protecting Power or the Central Prisoners of War Agency provided for in Article 113, of instruments, papers

or documents intended for prisoners of war or despatched by them, especially powers of attorney and wills.

In all cases they shall facilitate the preparation and execution of such documents on behalf of prisoners of war; in particular, they shall allow them to consult a lawyer and shall take what measures are necessary for the authentication of their signatures.

## SECTION VI

### Relations between Prisoners of War and the Authorities

#### CHAPTER I

#### Complaints of Prisoners of War with regard to conditions of captivity

##### *Article 68*

Prisoners of war shall have the right to make known to the military authorities in whose power they are, their requests regarding the conditions of captivity to which they are subjected.

They shall also have the unrestricted right to apply to the representatives of the Protecting Powers either through their prisoners' representative, or, if they consider it necessary, direct, in order to draw their attention to any points on which they may have complaints to make regarding their conditions of captivity.

These requests and complaints shall not be limited nor considered to be a part of the correspondence quota referred to in Article 60. They must be transmitted immediately. Even if they are recognized to be unfounded, they may not give rise to any punishment.

Prisoners' representatives may send periodic reports on the situation in the camps and the needs of the prisoners of war to the representatives of the Protecting Powers.

#### CHAPTER II

#### Prisoner of War representatives

##### *Article 69*

In every place where there are prisoners of war, except in those where there are officers, the prisoners shall freely elect by secret ballot, every six months, and also in case of vacancies, prisoners' representatives entrusted with representing them before the military authorities, the Protecting Powers, the International Committee of the Red Cross and any other body which may assist them. These prisoners' representatives shall be eligible for re-election.

In camps for officers and persons of equivalent status or in mixed camps, the senior officer among the prisoners of war shall be recognized as the camp prisoners' representative. In camps for officers, he shall be assisted by one or more advisers chosen by the officers; in mixed camps his assistants will be chosen from among the prisoners of war who are not officers and shall be elected by them.

Officer prisoners of war of the same nationality shall be stationed in labour camps for prisoners of war, for the purpose of carrying out the camp administration duties for which the prisoners of war are responsible. These officers may be elected as prisoners' representatives under the first paragraph of this Article. In such a case the assistants to the prisoners' representatives shall be chosen from among those prisoners of war who are not officers.

Every representative elected must be approved by the Detaining Power before he has the right to commence his duties. Where the Detaining Power refuses to approve a prisoner of war elected by his fellow prisoners of war, it must inform the Protecting Power of the reason for such refusal.

In all cases the prisoners' representative must have the same nationality, language and customs as the prisoners of war whom he represents. Thus, prisoners of war distributed in different sections of a camp, according to their nationality, language or customs, shall have for each section their own prisoners' representative, in accordance with the foregoing paragraphs.

#### *Article 70*

Prisoners' representatives shall further the physical, spiritual and intellectual well-being of prisoners of war.

In particular, where the prisoners decide to organize amongst themselves a system of mutual assistance, this organization will be within the province of the prisoners' representative, in addition to the special duties entrusted to him by other provisions of the present Convention.

Prisoners' representatives shall not be held responsible, simply by reason of their duties, for any offences committed by prisoners of war.

#### *Article 71*

Prisoners' representatives shall not be required to perform any other work, if the accomplishment of their duties is thereby made more difficult.

Prisoners' representatives may appoint from amongst the prisoners such assistants as they may require. All material facilities shall be granted them, particularly a certain freedom of movement necessary for the accomplishment of their duties

(inspections of labour detachments, receipts of supplies, etc.).

Prisoners' representatives shall be permitted to visit premises where prisoners of war are detained, and every prisoner of war shall have the right freely to consult his prisoners' representative.

All facilities shall likewise be accorded to the prisoners' representatives for communication by post and telegraph with the detaining Authorities, the Protecting Powers, the International Committee of the Red Cross and their delegates, the Mixed Medical Commissions and with the bodies which give assistance to prisoners of war. Prisoners' representatives of labour detachments shall enjoy the same facilities for communication with the prisoners' representatives of the principal camp. Such communications shall not be restricted, nor considered as forming a part of the quota mentioned in Article 60.

Prisoners' representatives who are transferred shall be allowed a reasonable time to acquaint their successors with current affairs.

In case of dismissal, the reasons therefore shall be communicated to the Protecting Power.

### CHAPTER III

#### **Penal and Disciplinary Sanctions**

##### I. GENERAL PROVISIONS

#### *Article 72*

A prisoner of war shall be subject to the laws, regulations and orders in force in the armed forces of the Detaining Power and the Detaining Power shall be justified in taking judicial or disciplinary measures in respect of any offence committed by a prisoner of war against such laws, regulations or orders. However, no proceedings or punishments contrary to the provisions of this chapter shall be allowed.

If any law, regulation or order of the Detaining Power shall declare acts committed by a prisoner of war to be punishable, whereas the same acts would not be punishable if committed by a member of the forces of the Detaining Power, such acts shall entail disciplinary punishments only.

#### *Article 73*

In deciding whether proceedings in respect of an offence alleged to have been committed by a prisoner of war shall be judicial or disciplinary, the Detaining Power shall ensure that the competent authorities exercise the greatest leniency and adopt wherever possible disciplinary rather than judicial measures.

*Article 74*

A prisoner of war shall be tried only by a military court, unless the existing laws of the Detaining Power expressly permit the civil courts to try a member of the armed forces of the Detaining Power in respect of the particular offence alleged to have been committed by the prisoner of war.

In no circumstances whatever shall a prisoner of war be tried by a court of any kind which does not offer the essential guarantees of independence and impartiality as generally recognized, and, in particular, the procedure of which does not afford the accused the rights and means of defence provided for in Article 95.

*Article 75*

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 present Convention.

*Article 76*

No prisoner of war may be punished more than once for the same act or on the same charge.

*Article 77*

Prisoners of war may not be sentenced by the military authorities and courts of the Detaining Power to any penalties except those provided for in respect of members of the armed forces of the said Power who have committed the same acts.

When fixing the penalty, the courts or authorities of the Detaining Power shall take into consideration, to the widest extent possible, the fact that the accused, not being a national of the Detaining Power, is not bound to it by any duty of allegiance, and that he is in its power as the result of circumstances independent of his own will. The said courts or authorities shall be at liberty to reduce the penalty provided for the violation of which the prisoner of war is accused, and shall therefore not be bound to apply the minimum penalty prescribed.

Collective punishment for individual acts, corporal punishments, imprisonment in premises without daylight and in general any form of torture or cruelty are forbidden.

No prisoner of war may be deprived of his rank by the Detaining Power, or prevented from wearing his badges.

*Article 78*

Officers, non-commissioned officers and men who are prisoners of war undergoing a disciplinary or judicial punishment, shall not be subjected to

more severe treatment than that applied in respect of the same punishment to members of the armed forces of the Detaining Power of equivalent rank.

A woman prisoner of war shall not be awarded or sentenced to a punishment more severe, or treated whilst undergoing punishment more severely, than a woman member of the armed forces of the Detaining Power dealt with for a similar offence.

In no case may a woman prisoner of war be awarded or sentenced to a punishment more severe, or treated whilst undergoing punishment more severely, than a male member of the armed forces of the Detaining Power dealt with for a similar offence.

Prisoners of war who have served disciplinary or judicial sentences may not be treated differently from other prisoners of war.

## II. DISCIPLINARY SANCTIONS

*Article 79*

The disciplinary punishments applicable to prisoners of war are the following:

- (1) a fine which shall not exceed 50 % of the advances of pay and working pay which the prisoner of war would otherwise receive under the provisions of Articles 51 and 52 during a period of not more than 30 days;
- (2) discontinuance of privileges granted over and above the treatment provided for by the present Convention;
- (3) fatigue duty not to exceed two hours daily;
- (4) confinement.

The punishment referred to under (3) shall not be applied to officers.

In no case shall disciplinary punishments be inhuman, brutal or dangerous to the health of prisoners of war.

*Article 80*

The duration of any single punishment shall in no case exceed thirty days. Any period of confinement awaiting the hearing of a disciplinary offence or the award of disciplinary punishment shall be deducted from an award pronounced against a prisoner of war.

The maximum of thirty days provided above may not be exceeded, even if the prisoner of war is answerable for several acts at the same time when he is awarded punishment, whether such acts are related or not.

The period between the pronouncing of an award of disciplinary punishment and its execution shall not exceed one month.

When a prisoner of war is awarded a further disciplinary punishment, a period of at least three days shall elapse between the execution of any two of the punishments, if the duration of one of these is ten days or more.

*Article 81*

The escape of a prisoner of war shall be deemed to have succeeded when:

- (1) he has joined the armed forces of the Power on which he depends, or those of an allied Power;
- (2) he has left the territory under the control of the Detaining Power, or of an ally of the said Power;
- (3) he has joined a ship flying the flag of the Power on which he depends or of an Allied Power in the territorial waters of the Detaining Power, the said ship not being under the control of the last named Power.

Prisoners of war who have made good their escape in the sense of this Article and who are recaptured, shall not be liable to any punishment in respect of their previous escape.

*Article 82*

A prisoner of war who attempts to escape or is recaptured before having made good his escape in the sense of Article 81 shall be liable only to a disciplinary punishment in respect of this act, even if it is a repeated offence.

A prisoner of war who is recaptured shall be handed over without delay to the competent military authority.

Article 78, fourth paragraph notwithstanding, prisoners of war punished as a result of an unsuccessful escape may be subjected to special surveillance. Such surveillance must not affect the state of their health, must be undergone in a prisoner of war camp, and must not entail the suppression of any of the safeguards granted them by the present Convention.

*Article 83*

Escape or attempt to escape, even if it is a repeated offence, shall not be deemed an aggravating circumstance if the prisoner of war is subjected to trial by judicial proceedings in respect of an offence committed during his escape or attempt to escape.

In conformity with the principle stated in Article 73, offences committed by prisoners of war with the sole intention of facilitating their escape and which do not entail any violence against life or limb, such as offences against public property, theft without intention of self-enrichment, the

drawing up or use of false papers, the wearing of civilian clothing, shall occasion disciplinary punishment only.

Prisoners of war who aid or abet an escape or an attempt to escape shall be liable on this count to disciplinary punishment only.

*Article 84*

If an escaped prisoner of war is recaptured, the Power on which he depends shall be notified thereof in the manner defined in Article 112, provided notification of his escape has been made.

*Article 85*

A prisoner of war accused of an offence against discipline shall not be kept in confinement pending the hearing unless a member of the armed forces of the Detaining Power would be so kept if he was accused of a similar offence, or if it is essential in the interests of camp order and discipline.

Any period spent by a prisoner of war in confinement awaiting the disposal of an offence against discipline shall be reduced to an absolute minimum and shall not exceed fourteen days.

The provisions of Articles 87 and 88 of this Chapter shall apply to prisoners of war who are in confinement awaiting the disposal of offences against discipline.

*Article 86*

Acts which constitute offences against discipline shall be investigated immediately.

Without prejudice to the competence of courts and superior military authorities, disciplinary punishment may be ordered only by an officer having disciplinary powers in his capacity as Camp Commandant, or by a responsible officer who replaces him or to whom he has delegated his disciplinary powers.

In no case may such powers be delegated to a prisoner of war or be exercised by a prisoner of war.

Before any disciplinary award is pronounced the accused shall be given precise information regarding the offences of which he is accused, and given an opportunity of explaining his conduct and of defending himself. He shall be permitted, in particular, to call witnesses and to have recourse, if necessary, to the services of a qualified interpreter. The decision shall be announced to the accused prisoner of war and to the prisoners' representative.

A record of disciplinary punishments shall be maintained by the Camp Commandant and shall be open to inspection by representatives of the Protecting Power.

*Article 87*

Prisoners of war shall not in any case be transferred to a penitentiary establishment (prisons, penitentiary, convict prison, etc.) to undergo disciplinary punishment therein.

All premises in which disciplinary punishments are undergone shall conform to the sanitary requirements set forth in Article 23. A prisoner of war undergoing punishment shall be enabled to keep himself in a state of cleanliness, in conformity with Article 27.

Officers and persons of equivalent status shall not be lodged in the same quarters as non-commissioned officers or men.

Women prisoners of war undergoing disciplinary punishment shall be confined in separate quarters from male prisoners of war and shall be under the immediate supervision of women.

*Article 88*

A prisoner of war undergoing confinement as a disciplinary punishment, shall continue to enjoy the benefits of the provisions of this Convention except in so far as these are necessarily rendered inapplicable by the mere fact that he is confined. In no case may he be deprived of the benefits of the provisions of Articles 68 and 116.

A prisoner of war awarded disciplinary punishment may not be deprived of the prerogatives attached to his rank.

Prisoners of war awarded disciplinary punishment shall be allowed to exercise and to stay in the open air at least two hours daily.

They shall be allowed, on their request, to be present at the daily medical inspections. They shall receive the attention which their state of health requires and, if necessary, shall be removed to the camp infirmary or to a hospital.

They shall have permission to read and write, likewise to send and receive letters. Parcels and remittances of money however, may be withheld from them until the completion of the punishment; they shall meanwhile be handed to the prisoners' representative, who will hand over to the infirmary the perishable goods contained in such parcels.

## III. JUDICIAL PROCEEDINGS

*Article 89*

No prisoner of war may be tried or sentenced for an act which is not forbidden by the law of the Detaining Power or by international law in force at the time the said act was committed.

No moral or physical coercion may be exerted on a prisoner of war in order to induce him to

admit himself guilty of the act of which he is accused.

No prisoner of war may be convicted without having had an opportunity to present his defence and the assistance of qualified counsel.

*Article 90*

Prisoners of war and the Protecting Powers shall be informed, as soon as possible, of the offences which are punishable by the death sentence under the laws of the Detaining Power.

Other offences shall not thereafter be made punishable by the death penalty without the concurrence of the Power upon which the prisoners of war depend.

The death sentence cannot be pronounced against a prisoner of war unless the attention of the court has, in accordance with Article 77, second paragraph, been particularly called to the fact that since the accused is not a national of the Detaining Power, he is not bound to it by any duty of allegiance, and that he is in its power as the result of circumstances independent of his own will.

*Article 91*

If the death penalty is pronounced against a prisoner of war, the sentence shall not be executed before the expiration of a period of at least six months from the date when the Protecting Power receives at the indicated address, the detailed communication provided for in Article 97.

*Article 92*

A prisoner of war can be validly sentenced only if the sentence has been pronounced by the same courts according to the same procedure as in the case of members of the armed forces of the Detaining Power, and if furthermore the provisions of the present chapter have been observed.

*Article 93*

Judicial investigations relating to a prisoner of war shall be conducted as rapidly as circumstances permit and so that his trial shall take place as soon as possible. A prisoner of war shall not be confined while awaiting trial unless a member of the armed forces of the Detaining Power would be so confined if he were accused of a similar offence, or if it is essential to do so in the interests of national security. In no circumstances shall this confinement exceed three months.

Any period spent by a prisoner of war in confinement awaiting trial shall be deducted from any sentence of imprisonment passed upon him and taken into account in fixing any penalty.

The provisions of Articles 87 and 88 of this Chapter shall apply to a prisoner of war whilst in confinement awaiting trial.

#### *Article 94*

In any case in which the Detaining Power has decided to institute judicial proceedings against a prisoner of war, it shall notify the Protecting Power as soon as possible and at least three weeks before the opening of the trial. This period of three weeks shall run as from the day on which such notification reaches the Protecting Power at the address previously indicated by the latter to the Detaining Power.

The said notification shall contain the following information:

- (1) surname and first names of the prisoner of war, his rank, his army, regimental, personal or serial number, his date of birth, and his profession or trade, if any;
- (2) place of internment or confinement;
- (3) specification of the charge or charges on which the prisoner of war is arraigned, giving the legal provisions applicable;
- (4) designation of the court which will try the case, likewise the date and place fixed for the opening of the trial.

The same communication shall be made by the Detaining Power to the prisoners' representative.

If no evidence is submitted, at the opening of a trial, that the notification referred to above was received by the Protecting Power, by the prisoner of war and by the prisoners' representative concerned, at least three weeks before the opening of the trial, then the latter cannot take place and must be adjourned.

#### *Article 95*

The prisoner of war shall be entitled to assistance by one of his prisoner comrades, to defence by a qualified advocate or counsel of his own choice, to the calling of witnesses and, if he deems necessary to the services of a competent interpreter. He shall be advised of this right by the Detaining Power in due time before the trial.

Failing a choice by the prisoner of war, the Protecting Power shall find him an advocate or counsel, and shall have at least one week at its disposal for the purpose. The Detaining Power shall deliver to the said Power, on request, a list of persons qualified to present the defence. Failing a choice of an advocate or counsel by the prisoner of war and the Protecting Power, the Detaining Power shall appoint a competent advocate or counsel to conduct the defence.

The advocate or counsel conducting the defence on behalf of the prisoner of war shall have at his disposal a period of two weeks at least before the opening of the trial, as well as the necessary facilities to prepare the defence of the accused. He may, in particular, freely visit the accused and interview him in private. He may also confer with any witnesses for the defence, including prisoners of war. He shall have the benefit of these facilities until the term of appeal or petition has expired.

Particulars of the charge or charges on which the prisoner of war is arraigned, as well as the documents which are generally communicated to the accused by virtue of the laws in force in the armed forces of the Detaining Power, shall be communicated to the accused prisoner of war in a language which he understands, and in good time before the opening of the trial. The same communication in the same circumstances shall be made to the advocate or counsel conducting the defence on behalf of the prisoner of war.

The representatives of the Protecting Power shall be entitled to attend the trial of the case, unless, exceptionally, this is held in camera in the interest of State security. In such a case the Detaining Power shall advise the Protecting Power accordingly.

#### *Article 96*

Every prisoner of war shall have, in the same manner as the members of the armed forces of the Detaining Power, the right of appeal or petition from any sentence pronounced upon him, with a view to the quashing or revising of the sentence or the reopening of the trial. He shall be fully informed of his right to appeal or petition and of the time limit within which he may do so.

#### *Article 97*

Any judgment and sentence pronounced upon a prisoner of war shall be immediately reported to the Protecting Power in the form of a summary communication, which shall also indicate whether he has the right of appeal with a view to the quashing of the sentence or the reopening of the trial. This communication shall likewise be sent to the prisoners' representative concerned and to the accused prisoner of war in a language he understands if the sentence was not pronounced in his presence. The Detaining Power shall immediately communicate to the Protecting Power the decision of the prisoner of war to use or to waive this right of appeal.

Furthermore, if a prisoner of war is finally convicted or if a sentence pronounced against a prisoner of war in the first instance is a death sentence, the Detaining Power shall as soon as possible address to the Protecting Power a detailed communication containing:

(1) The precise wording of the finding and sentence;

(2) a summarized report of any preliminary investigation and of the trial, emphasizing in particular the elements of the prosecution and the defence;

(3) notification, where applicable, of the establishment where the sentence will be served.

The communications provided for in the foregoing sub-paragraphs shall be sent to the Protecting Power at the address previously made known to the Detaining Power.

#### *Article 98*

Sentences pronounced against prisoners of war after a conviction has become duly enforceable, shall be served in the same establishments and under the same conditions as in the case of members of the armed forces of the Detaining Power. These

conditions shall in all cases conform to the requirements of health and humanity.

A woman prisoner of war against whom such a sentence has been pronounced shall be confined in separate quarters and shall be under the supervision of women.

In any case, prisoners of war sentenced to a penalty depriving them of their liberty shall retain the benefit of the provisions of Articles 68 and 116 of the present Convention. Furthermore, they shall be entitled to receive and dispatch correspondence, to receive at least one relief parcel monthly, to take regular exercise in the open air, to have the medical care required by their state of health, and the spiritual assistance they may desire. Penalties to which they may be subjected shall be in accordance with the provisions of Article 77, third paragraph.

#### *Article 99*

(Committee II has decided to delete Article 99, the contents of which are now found in Article 98).

## PART IV

### Termination of Captivity

#### SECTION I

#### **Direct repatriation and accommodation in a neutral country**

#### *Article 100*

Subject to the provisions of the third paragraph of this Article, Parties to the conflict are bound to send back to their own country, regardless of number or rank, seriously wounded and seriously sick prisoners of war, after having cared for them until they are fit to travel, in accordance with the first paragraph of the following Article.

Throughout the duration of hostilities, Parties to the conflict shall endeavour, with the cooperation of the neutral Powers concerned, to make arrangements for the accommodation in neutral countries of the sick and wounded prisoners of war referred to in the second paragraph of the following Article. They may, in addition, conclude agreements with a view to the direct repatriation or internment in a neutral country of ablebodied prisoners of war who have undergone a long period of captivity.

No sick or injured prisoner of war who is eligible

for repatriation under the first paragraph of this Article, may be repatriated against his will during hostilities.

#### *Article 101*

The following shall be repatriated direct:

- (1) Incurably wounded and sick whose mental or physical fitness seems to have been gravely diminished.
- (2) Wounded and sick who, according to medical opinion, are not likely to recover within one year, whose condition requires treatment and whose mental or physical fitness seems to have been gravely diminished.
- (3) Wounded and sick who have recovered, but whose mental or physical fitness seems to have been gravely and permanently diminished.

The following may be accommodated in a neutral country:

- (1) Wounded and sick whose recovery may be expected within one year of the date of the

wound or the beginning of the illness, if treatment in a neutral country might increase the prospects of a more certain and speedy recovery.

- (2) Prisoners of war whose mental or physical health, according to medical opinion, is seriously threatened by continued captivity, but whose accommodation in a neutral country might remove such a threat.

The conditions which prisoners of war accommodated in a neutral country must fulfil in order to permit their repatriation shall be fixed, as shall likewise their status, by agreement between the Powers concerned. In general, prisoners of war who have been accommodated in a neutral country, and who belong to the following categories, should be repatriated:

- (1) Those whose state of health has deteriorated so as to fulfil the conditions laid down for direct repatriation;
- (2) Those whose mental or physical powers remain, even after treatment, considerably impaired.

If no special agreements are concluded between the Parties to the conflict concerned to determine the cases of disablement or sickness entailing direct repatriation or accommodation in a neutral country, such cases shall be settled in accordance with the principles laid down in the model agreement concerning direct repatriation and accommodation in neutral countries of wounded and sick prisoners of war and in the regulations concerning mixed medical commissions annexed to the present Convention.

#### *Article 101A*

The Detaining Power, the Power on which the prisoners of war depend, and a Neutral Power acceptable to these two Powers, shall endeavour to conclude agreements which will enable prisoners of war to be interned in the territory of the said neutral Power until the close of hostilities.

#### *Article 102*

Upon the outbreak of hostilities, mixed medical commissions shall be appointed to examine sick and wounded prisoners of war, and to make all appropriate decisions regarding them. The appointment, duties and functioning of these commissions shall be in conformity with the provisions of the regulations annexed to the present Convention.

However, prisoners of war who, in the opinion of the medical authorities of the Detaining Power,

are manifestly seriously injured or seriously sick, may be repatriated without having to be examined by a mixed medical commission.

#### *Article 103*

Besides those who are designated by the medical authorities of the Detaining Power, wounded or sick prisoners of war belonging to the categories listed below shall be entitled to present themselves for examination by the mixed medical commissions provided for in the foregoing Article:

- (1) wounded and sick proposed by a physician or surgeon who is of the same nationality, or national of a Party to the conflict allied with the Power on which the said prisoners depend, and who exercises his functions in the camp.
- (2) wounded and sick proposed by their prisoners' representative.
- (3) wounded and sick proposed by the Power on which they depend, or by an organization duly recognized by the said Power and giving assistance to the prisoners.

Prisoners of war who do not belong to one of the three foregoing categories may nevertheless present themselves for examination by mixed medical commissions, but shall be examined only after those belonging to the said categories.

The physician or surgeon of the same nationality as the prisoners who present themselves for examination by the mixed medical commission, likewise the prisoners' representative of the said prisoners, shall have permission to be present at the examination.

#### *Article 104*

Prisoners of war who meet with accidents shall, unless the injury is self-inflicted, have the benefit of the provisions of this Convention as regards repatriation or accommodation in a neutral country.

#### *Article 105*

No prisoner of war on whom a disciplinary punishment has been imposed and who is eligible for repatriation or for accommodation in a neutral country, may be kept back on the plea that he has not undergone his punishment. Prisoners of war prosecuted for an offence for which the maximum penalty is not more than ten years or sentenced to less than ten years shall similarly not be kept back.

Other prisoners of war detained in connection with a judicial prosecution or conviction and who are designated for repatriation or accommodation in a neutral country, may benefit by such measures

before the end of the proceedings or the completion of the punishment, if the Detaining Power consents.

Parties to the conflict shall communicate to each other the names of those who will be detained until the end of the proceedings or the completion of the punishment.

#### *Article 106*

The costs of repatriating prisoners of war or of transporting them to a neutral country shall be borne, from the frontiers of the Detaining Power, by the Power on which the said prisoners depend.

#### *Article 107*

No repatriated person may be employed on active military service.

### SECTION II

#### **Release and repatriation of Prisoners of War at the close of hostilities**

#### *Article 108*

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

In the absence of stipulations to the above effect in any agreement concluded between the Parties to the conflict with a view to the cessation of hostilities, or failing any such agreement, each of the Detaining Powers shall itself establish and execute without delay a plan of repatriation in conformity with the principle laid down in the foregoing paragraph.

In either case, the measures adopted shall be brought to the knowledge of the prisoners of war.

The costs of repatriation of prisoners of war shall in all cases be equitably apportioned between the Detaining Power and the Power on which the prisoners depend. This apportionment shall be carried out on the following basis:

(a) If the two Powers are contiguous, the Power on which the prisoners of war depend shall bear the costs of repatriation from the frontiers of the Detaining Power.

(b) If the two Powers are not contiguous, the Detaining Power shall bear the costs of transport of prisoners of war over its own territory as far as the frontier or port of embarkation nearest to the territory of the Power on which the prisoners of war depend. The Parties concerned shall agree between themselves as to the equitable apportionment of the remaining costs of the re-

patiation. The conclusion of this agreement shall in no circumstances justify any delay in the repatriation of the prisoners of war.

#### *Article 109*

Repatriation shall be effected in conditions similar to those laid down in Articles 38 to 40 inclusive of the present Convention for the transfer of prisoners of war, having regard to the provisions of Article 108 and those of the following paragraphs.

On repatriation, any articles of value impounded from prisoners of war under Article 16, and any foreign currency which has not been converted into the currency of the Detaining Power, shall be restored to them. Articles of value and foreign currency which, for any reason whatever, are not restored to prisoners of war on repatriation, shall be despatched to the Information Bureau set up under Article 112.

Prisoners of war shall be allowed to take with them their personal effects, and any correspondence and parcels which have arrived for them. The weight of such baggage may be limited, if the conditions of repatriation so require, to what each prisoner can reasonably carry. Each prisoner shall in all cases be authorized to carry at least 25 kilograms.

The other personal effects of the repatriated prisoner shall be left in the charge of the Detaining Power which shall have them forwarded to him as soon as it has concluded an agreement to this effect, regulating the conditions of transport and the payment of the costs involved, with the Power on which the prisoner depends.

At the time of repatriation of prisoners of war, no distinction shall be made in the order of their departure, excepting where this is justified by their sex, health, age, length of captivity, or in the case of prisoners with children, by their family circumstances. Such distinction shall only be made on the condition that it does not cause any delay in general repatriation.

Prisoners of war against whom judicial proceedings are pending may, however, be detained until the end of such proceedings, and, if necessary, until the completion of the punishment. The same shall apply to prisoners of war already sentenced under the provisions of this Convention relating to judicial proceedings.

Parties to the conflict shall communicate to each other the names of any prisoners of war who are detained until the end of proceedings or until punishment has been completed.

By agreement between the Parties to the conflict, commissions shall be established for the purpose of searching for dispersed prisoners of war and of assuring their repatriation with the least possible delay.

## SECTION III

**Death of Prisoners of War***Article 110*

The wills of prisoners of war shall be drawn up in the form required by the law of the Detaining Power and must satisfy the conditions of validity required by the legislation of their country of origin, which will take steps to inform the Detaining Power of its requirements in this respect. At the request of the prisoner of war and, in all cases, after death, the will shall be transmitted without delay to the Protecting Power; a certified copy shall be sent to the Central Agency.

Death certificates, in the form annexed to the present Convention, or lists certified by a responsible officer, of all persons who die as prisoners of war shall be forwarded as rapidly as possible to the Prisoner of War Information Bureau established in accordance with Article 112. The death certificates or certified lists shall show particulars of identity as set out in the third paragraph of Article 15, and also the date and place of death, the cause of death, the date and place of burial and all particulars necessary to identify the graves.

The burial or cremation of a prisoner of war shall be preceded by a medical examination of the body with a view to confirming death and enabling a report to be made and, where necessary, establishing identity.

The Detaining Authorities shall ensure that prisoners of war who have died in captivity, are honourably buried, if possible according to the rites of the religion to which they belonged, and that their graves are respected, suitably maintained and marked so as to be found at any time. Wherever possible, deceased prisoners of war who are dependent on the same Power shall be interred in the same place.

Deceased prisoners of war shall be buried in individual graves, unless unavoidable circumstances

require the use of collective graves. Bodies may be cremated only for imperative reasons of hygiene, on account of the religion of the deceased or in accordance with his express wish to this effect. In case of cremation, the fact shall be stated and the reasons given in the death certificate of the deceased.

In order that graves may always be found, all particulars of burials and graves shall be recorded with a Graves Registration Service established by the Detaining Power. Lists of graves and particulars of the prisoners of war interred in cemeteries and elsewhere shall be transmitted to the Power on which such prisoners of war depended. Responsibility for the care of these graves and for records of any subsequent moves of the bodies shall rest on the Power controlling the territory, if a Party to the present Convention. These provisions shall also apply to the ashes which shall be kept by the Graves Registration Service until proper disposal thereof in accordance with the wishes of the home country.

*Article 111*

Every death or serious injury of a prisoner of war caused or suspected to have been caused by a sentry, another prisoner of war, or any other person, as well as any death the cause of which is unknown, shall be immediately followed by an official enquiry by the Detaining Power.

A communication on this subject shall be sent immediately to the Protecting Power. The statements shall be taken from witnesses, especially from those who are prisoners of war and a report including such statements shall be forwarded to the Protecting Power.

If the enquiry indicates the guilt of one or more persons, the Detaining Power shall take all measures for the prosecution of the person or persons responsible.

## PART V

**Information Bureaux and Relief Societies for Prisoners of War***Article 112*

Upon the outbreak of a conflict and in all cases of occupation, each of the Parties to the conflict shall institute an official Information Bureau for prisoners of war who are in its power. Neutral or non-belligerent Powers who may have received

within their territory persons belonging to one of the categories referred to in Article 3, shall take the same action with respect to such persons. The Power concerned shall ensure that the Prisoners of War Information Bureau is provided with the necessary accommodation, equipment and staff to ensure its efficient working. It shall be at liberty

to employ prisoners of war in such a Bureau under the conditions laid down in the Section of the present Convention dealing with work by prisoners of war.

Within the shortest possible period, each of the Parties to the conflict shall give its Bureau the information referred to in paragraphs 4, 5 and 6 of this Article regarding any enemy person belonging to one of the categories referred to in Article 3, who has fallen into its power. Neutral or non-belligerent Powers shall take the same action with regard to persons belonging to such categories whom they have received within their territory.

The Bureau shall immediately forward such information by the most rapid means to the Powers concerned through the intermediary of the Protecting Powers, and likewise of the Central Agency provided for in Article 113.

This information shall make it possible quickly to advise the next of kin concerned. Subject to the provisions of Article 15, the information shall include, in so far as available to the Information Bureau, in respect of each prisoner of war his surname, first names, rank, army, regimental, personal or serial number, place and full date of birth, nationality, first name of the father and maiden name of the mother, name and address of the person to be informed and the address to which correspondence for the prisoner may be sent.

The Information Bureau shall receive from the various departments concerned information regarding transfers, releases, repatriations, escapes, admissions to hospital and deaths, and shall transmit such information in the manner described in the third paragraph above.

Likewise, information regarding the state of health of prisoners of war who are seriously ill or seriously wounded shall be supplied regularly, every week if possible.

The Information Bureau shall also be responsible for replying to all enquiries sent to it concerning prisoners of war, including those who have died in captivity; it will make any enquiries necessary to obtain the information which is asked for if this is not in its possession.

All written communications made by the Bureau shall be authenticated by a signature or a seal.

The Information Bureau shall furthermore be charged with collecting all personal valuables, including sums in currencies other than that of the Detaining Power and documents of importance to the next of kin, left by prisoners of war who have been repatriated or released, or who have escaped or died, and shall forward the said valuables to the Powers concerned. Such articles shall be sent by the Bureau in sealed packets which shall

be accompanied by statements giving clear and full particulars of the identity of the person to whom the articles belonged, and by a complete list of the contents of the parcel. Other personal effects of such prisoners of war shall be transmitted under arrangements agreed upon between the parties to the conflict concerned.

#### *Article 113*

A Central Prisoners of War Information Agency shall be created in a neutral country. The International Committee of the Red Cross shall, if it deems necessary, propose to the Powers concerned the organization of such an Agency.

The function of the Agency shall be to collect all information it may obtain through official or private channels respecting prisoners of war, and to transmit it as rapidly as possible to the country of origin of the prisoners of war or to the Power on which they depend. It shall receive from the Parties to the conflict all facilities for effecting such transmissions.

The High Contracting Parties, and in particular those whose nationals benefit by the services of the Central Agency, are requested to give the said Agency the financial aid it may require.

The foregoing provisions shall in no way be interpreted as restricting the humanitarian activities of the International Committee of the Red Cross, or of the relief Societies provided for in Article 115.

#### *Article 114*

The national Information Bureaux and the Central Information Agency shall enjoy free postage for mail, likewise all the exemptions provided for in Article 64, and further, so far as possible, exemption from telegraphic charges or, at least, greatly reduced rates.

#### *Article 115*

Subject to the measures which the Detaining Powers may consider essential to ensure their security or to meet any other reasonable need, the representatives of religious organizations, relief societies, or any other organization assisting prisoners of war, shall receive from the said Powers, for themselves and their duly accredited agents, all necessary facilities for visiting the prisoners, distributing relief supplies and material, from any source, intended for religious, educational or recreative purposes, and for assisting them in organizing their leisure time within the camps. Such societies or organizations may be constituted in the territory of the Detaining Power or, in any other country, or they may have an international character.

The Detaining Power may limit the number of societies and organizations whose delegates are allowed to carry out their activities in its territory and under its supervision, on condition, however, that such limitation shall not hinder the effective operation of adequate relief to all prisoners of war.

The special position of the International Committee of the Red Cross in this field shall be recognized and respected at all times.

As soon as relief supplies or material intended for the above mentioned purposes are handed over to prisoners of war, or very shortly afterwards, receipts for each consignment, signed by the prisoners' representative, shall be forwarded to the relief society or organization making the shipment. At the same time, receipts for these consignments shall be supplied by the administrative authorities responsible for guarding the prisoners.

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## PART VI

### Execution of the Convention

#### SECTION I

#### General Provisions

##### *Article 116*

Representatives or delegates of the Protecting Powers shall have permission to go to all places where prisoners of war may be, particularly to places of internment, imprisonment and labour, and shall have access to all premises occupied by prisoners of war; they shall also be allowed to go to the places of departure, passage and arrival of prisoners who are being transferred. They shall be able to interview the prisoners, and in particular the prisoners' representatives, without witnesses, either personally or through an interpreter.

Representatives and delegates of the Protecting Powers shall have full liberty to select the places they wish to visit. The duration and frequency of these visits shall not be restricted. Visits may not be prohibited except for reasons of imperative military necessity, and then only as an exceptional and temporary measure.

The Detaining Power and the Power on which the said prisoners of war depend may agree, if necessary, that compatriots of these prisoners of war be permitted to participate in the visits.

The delegates of the International Committee of the Red Cross shall enjoy the same prerogatives. The appointment of such delegates shall be submitted to the approval of the Power detaining the prisoners of war to be visited.

##### *Article 117*

The High Contracting Parties undertake, in time of peace as in time of war, to disseminate the text of the present Convention as widely as

possible in their respective countries, and, in particular, to include the study thereof in their programme of military and, if possible, civil instruction, so that the principles thereof may become known to all their armed forces and to the entire population.

Any military or other authorities who in time of war assume responsibilities in respect of prisoners of war, must possess the text of the Convention and be specially instructed as to its provisions.

##### *Article 118*

The High Contracting Parties shall communicate to one another through the Swiss Federal Council and, during hostilities, through the Protecting Powers, the official translations of the present Convention, as well as the laws and regulations which they may adopt to ensure the application thereof.

##### *Article 119*

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

Each High Contracting Party shall be under the obligation to search for persons alleged to have committed, or to have ordered to be committed, such grave breaches, and shall bring such persons, regardless of their nationality, before its own courts. It may also, if it prefers, and in accordance with the provisions of its own legislation, hand such persons over for trial to another High Contracting Party concerned, provided such High Contracting Party has made out a *prima facie* case.

Each High Contracting Party shall take measures necessary for the suppression of all acts contrary to the provisions of the present Convention other than the above mentioned grave breaches.

In all circumstances, the accused persons shall benefit by safeguards of proper trial and defence, which shall not be less favourable than those provided by Article 95 and those following of the present Convention.

*Article 119A*

Grave breaches to which the preceding Article relates shall be those involving any of the following acts, if committed against persons or property protected by the Convention: wilful killing, torture or inhuman treatment, including biological experiments, wilful causing of great suffering or serious injury to body or health, compelling a prisoner of war to serve in the forces of the hostile power, or wilfully depriving a prisoner of war of the rights of fair and regular trial prescribed in this Convention.

*Article 119B*

No High Contracting Party shall be allowed to absolve itself or any other High Contracting Party of any liability incurred by itself or by another High Contracting Party in respect of breaches referred to in the preceding Article.

*Article 119C*

At the request of a Party to the conflict, an enquiry shall be instituted, in a manner to be decided between the interested Parties concerning any alleged violation of the Convention.

If agreement has not been reached concerning the procedure for the enquiry, the parties should agree on the choice of an umpire, who will decide upon the procedure to be followed.

Once the violation has been established, the Parties to the conflict shall put an end to it and shall repress it within the briefest possible delay.

*Article 119D*

The High Contracting Parties who have not recognized as compulsory *ipso facto* and without special agreement, in relation to any State accepting the same obligation, the jurisdiction of the International Court of Justice in the circumstances mentioned in Article 36 of the Statute of the Court, undertake to recognize the competency of the Court in all matters concerning the interpretation or application of the present Convention.

SECTION II

**Final Provisions**

*Article 120*

The present Convention is established in French and in English. Both texts are equally authentic.

*Article 121*

The present Convention replaces the Convention of July 27, 1929, in relations between the High Contracting Parties.

*Article 122*

In the relations between the Powers which are bound by the Hague Convention relative to the Laws and Customs of War on Land, whether that of July 29, 1899 or that of October 18, 1907, and which are parties to the present Convention, this last Convention shall be complementary to Chapter II of the Regulations annexed to the above-mentioned Conventions of the Hague.

*Article 123*

The present Convention, which bears the date of this day, is open to signature for a period of six months, that is to say, until the ....., in the name of the Powers represented at the Conference which opened at Geneva on 21 April 1949; furthermore, by Powers not represented at that Conference, but which are parties to the Convention of July 29, 1929.

*Article 124*

The present Convention shall be ratified as soon as possible and the ratifications shall be deposited at Berne.

A record shall be drawn up of the deposit of each instrument of ratification and certified copies of this record shall be transmitted by the Swiss Federal Council to the Governments of all the Powers in whose name the Convention has been signed, or whose accession has been notified.

*Article 125*

The present Convention shall come into force six months after not less than two instruments of ratification have been deposited.

Thereafter, it shall enter into force for each High Contracting Party six months after the deposit of the instrument of ratification.

*Article 126*

From the date of its coming into force, it shall be open to any Power, in whose name the present Convention has not been signed, to accede to this Convention.

*Article 127*

Accessions shall be notified in writing to the Swiss Federal Council and shall take effect six months after the date on which they are received.

The Swiss Federal Council shall communicate the accessions to all the Powers in whose name the Convention has been signed or whose accession has been notified.

*Article 128*

The situations provided for in Article 2 shall give immediate effect to ratifications deposited and accessions notified by the Parties to the conflict before or after the beginning of hostilities or occupation. The Swiss Federal Council shall communicate by the quickest method any ratifications or accessions received from Parties to the conflict.

*Article 129*

Each of the High Contracting Parties shall be at liberty to denounce the present Convention.

The denunciation shall be notified in writing to the Swiss Federal Council, which shall transmit it to the Governments of all the High Contracting Parties.

The denunciation shall take effect one year after the notification thereof has been made to the Swiss Federal Council. However, a denunciation of which notification has been made at a time when the denouncing Power is involved in a conflict shall not take effect until peace has been

concluded, and until after operations connected with release and repatriation of the persons protected by the present Convention have been terminated.

The denunciation shall have effect only in respect of the denouncing Power. It shall in no way impair the obligations which the Parties to the conflict shall remain bound to fulfil by virtue of the principles of the law of nations as they result from the usages established among civilized peoples, from the laws of humanity and the dictates of the public conscience.

*Article 130*

The Swiss Federal Council shall register the present Convention with the Secretariat of the United Nations. The Swiss Federal Council shall also inform the Secretariat of the United Nations of all ratifications, accessions, and denunciations received by that Government with respect to the present Convention.

*Signature clauses*

IN WITNESS WHEREOF the undersigned, having deposited their respective full powers, have signed the present Convention.

DONE at ..... this ..... day of ....., 1949, in the English and French languages and the original of which shall be deposited in the archives of the Swiss Confederation. The Swiss Federal Council shall transmit certified copies thereof to each of the signatory and acceding States.

## ANNEX I

MODEL AGREEMENT CONCERNING  
DIRECT REPATRIATION AND ACCOMMODATION IN NEUTRAL COUNTRIES  
OF WOUNDED AND SICK PRISONERS OF WAR

(see Article 101)

## CHAPTER I

**Principles for direct Repatriation  
and Accommodation in Neutral Countries**

## A. DIRECT REPATRIATION

The following shall be repatriated direct:

1. All prisoners of war suffering from the following disabilities as the result of trauma: loss of a limb, paralysis, articular or other disabilities, when

this disability is at least the loss of a hand or a foot, or the equivalent of the loss of a hand or a foot.

Without prejudice to a more generous interpretation, the following shall be considered as equivalent to the loss of a hand or a foot:

- (a) loss of a hand or of all the fingers, or of the thumb and forefinger of one hand; loss of a foot, or of all the toes and metatarsals of one foot;

- (b) ankylosis, loss of osseous tissue, cicatricial contracture preventing the functioning of one of the large articulations or of all the digital joints of one hand;
- (c) pseudarthrosis of the long bones;
- (d) deformities due to fracture or other injury which seriously interfere with function and weightbearing power;

2. All wounded prisoners of war whose condition has become chronic, to the extent that prognosis appears to exclude recovery—in spite of treatment—within one year from the date of the injury, as, for example, in case of:

- (a) projectile in the heart, even if the Mixed Medical Commission should fail, at the time of their examination, to detect any serious disorders;
- (b) metallic splinter in the brain or the lungs, even if the Mixed Medical Commission cannot, at the time of examination, detect any local or general reaction;
- (c) osteomyelitis, when recovery cannot be foreseen in the course of the year following the injury, and which seems likely to result in ankylosis of a joint, or other impairments equivalent to the loss of a hand or a foot;
- (d) perforating and suppurating injury to the large joints;
- (e) injury to the skull, with loss or shifting of bony tissue;
- (f) injury or burning of the face with loss of tissue and functional lesions;
- (g) injury to the spinal cord;
- (h) lesion of the peripheral nerves, the sequelae of which are equivalent to the loss of a hand or foot, and the cure of which requires more than a year from the date of injury, for example: injury to the branchial or lumbosacral plexus, median or sciatic nerves, likewise combined injury to the radial and cubital nerves or to the lateral popliteal nerve (N. peroneus communis) and medial popliteal nerve (N. tibialis); etc. The separate injury of the radial (musculo-spiral), cubital, lateral or medial popliteal nerves shall not, however, warrant repatriation except in case of contractures or of serious neurotrophic disturbance;
- (i) injury to the urinary system, with incapacitating results.

3. All sick prisoners of war whose condition has become chronic to the extent that prognosis seems to exclude recovery—in spite of treatment—within

one year from the inception of the disease, as, for example, in case of:

- (a) progressive tuberculosis of any organ which, according to medical prognosis, cannot be cured or at least considerably improved by treatment in a neutral country;
- (b) exudate pleurisy;
- (c) serious diseases of the respiratory organs of non-tubercular etiology, presumed incurable, for example: serious pulmonary emphysema, with or without bronchitis; chronic asthma\*; chronic bronchitis\* lasting more than one year in captivity; bronchiectasis\*; etc.
- (d) serious chronic affections of the circulatory system, for example: valvular lesions and myocarditis\*, which have shown signs of circulatory failure during captivity, even though the Mixed Medical Commission cannot detect any such signs at the time of examination; affections of the pericardium and the vessels (Buerger's disease, aneurisms of the large vessels); etc.
- (e) serious chronic affections of the digestive organs, for example: gastric or duodenal ulcer; sequelae of gastric operations performed in captivity; chronic gastritis, enteritis or colitis, having lasted more than one year and seriously affecting the general condition; cirrhosis of the liver; chronic cholecystopathy\*; etc.
- (f) serious chronic affections of the genitourinary organs, for example: chronic diseases of the kidney with consequent disorders; nephrectomy because of a tubercular kidney; chronic pyelitis or chronic cystitis; hydronephrosis or pyonephrosis; chronic grave gynaecological conditions; normal pregnancy and obstetrical disorder, where it is impossible to accommodate in a neutral country; etc.
- (g) serious chronic diseases of the central and peripheral nervous system, for example: all obvious psychoses and psychoneuroses, such as serious hysteria, serious captivity psychoneurosis, etc., duly verified by a specialist\*; any epilepsy duly verified by the camp physician\*; cerebral arteriosclerosis; chronic neuritis lasting more than one year; etc.
- (h) serious chronic diseases of the neuro-vegetative system, with considerable diminution of

\* The decision of the Mixed Medical Commission shall be based to a great extent on the records kept by camp physicians and surgeons of the same nationality as the Prisoners of War, or on an examination by medical specialists of the Detaining Power.

mental or physical fitness, noticeable loss of weight and general asthenia;

- (i) blindness of both eyes, or of one eye when the vision of the other is less than 1 in spite of the use of corrective glasses; diminution of visual acuity in cases where it is impossible to restore it by correction to an acuity of  $\frac{1}{2}$  in at least one eye\*; other grave ocular affections, for example: glaucoma, iritis, choroiditis; trachoma, etc.
- (k) auditive disorders, such as total unilateral deafness, if the other ear does not discern the ordinary spoken word at a distance of one metre\*; etc.
- (l) serious affections of metabolism, for example: diabetes mellitus requiring insulin treatment; etc.
- (m) serious disorders of the endocrine glands, for example: thyrotoxicosis; hypothyrosis; Addison's disease; Simond's cachexia; tetany; etc.
- (n) grave and chronic disorders of the blood-forming organs.
- (o) serious cases of chronic intoxication, for example: lead poisoning, mercury poisoning, morphinism, cocainism, alcoholism; gas or radiation poisoning; etc.
- (p) chronic affections of locomotion, with obvious functional disorders, for example: arthritis deformans; primary and secondary progressive chronic polyarthritis, rheumatism with serious clinical symptoms; etc.
- (q) serious chronic skin diseases, not amenable to treatment;
- (r) any malignant growth;
- (s) serious chronic infectious diseases, persisting for one year after their inception, for example: malaria with decided organic impairment, amebic or bacillary dysentery with grave disorders; tertiary visceral syphilis resistant to treatment; leprosy; etc.
- (t) serious avitaminosis or serious inanition.

#### B. ACCOMMODATION IN NEUTRAL COUNTRIES

The following shall be eligible for accommodation in a neutral country:

- (1) all wounded prisoners of war who are not likely to recover in captivity, but who might be cured or whose condition might

\* The decision of the Mixed Medical Commission shall be based to a great extent on the records kept by camp physicians and surgeons of the same nationality as the Prisoners of War, or on an examination by medical specialists of the Detaining Power.

be considerably improved by accommodation in a neutral country;

- (2) prisoners of war suffering from any form of tuberculosis, of whatever organ, and whose treatment in a neutral country would be likely to lead to recovery or at least to considerable improvement, with the exception of primary tuberculosis cured before captivity;
- (3) prisoners of war suffering from affections requiring treatment of the respiratory, circulatory, digestive, nervous, sensory, genito-urinary, cutaneous, locomotive organs, etc. if such treatment would clearly have better results in a neutral country than in captivity;
- (4) prisoners of war who have undergone a nephrectomy in captivity for a non-tubercular renal affection; cases of osteomyelitis, on the way to recovery or latent; diabetes mellitus not requiring insuling treatment; etc.
- (5) prisoners of war suffering from war or captivity neuroses; cases of captivity neurosis which are not cured after three months of accommodation in a neutral country, or which after that length of time are not clearly on the way to complete cure, shall be repatriated;
- (6) all prisoners of war suffering from chronic intoxication (gases, metals, alkaloids, etc.), for whom the prospects of cure in a neutral country are especially favourable;
- (7) all women prisoners of war who are pregnant or mothers with infants and small children;

The following cases shall not be eligible for accommodation in a neutral country:

- (1) all duly verified chronic psychoses;
- (2) all organic or functional nervous affections considered to be incurable;
- (3) all contagious diseases during the period in which they are transmissible, with the exception of tuberculosis.

## CHAPTER II

### General Observations

(1) The conditions given shall, in a general way, be interpreted and applied in as broad a spirit as possible.

Neuropathic and psychopathic conditions caused by war or captivity, as well as cases of tuberculosis in all stages, shall above all benefit by such liberal interpretation. Prisoners of war who have sus-

tained several wounds, none of which, considered by itself, justifies repatriation, shall be examined in the same spirit, with due regard for the psychic traumatism due to the number of their wounds.

(2) All unquestionable cases giving the right to direct repatriation (amputation, total blindness or deafness, open pulmonary tuberculosis, mental disorder, malignant growth, etc.) shall be examined and repatriated as soon as possible by the camp physicians or by military medical commissions appointed by the Detaining Power.

(3) Injuries and diseases which existed before the war and which have not become worse, as well as war injuries which have not prevented

subsequent military service, shall not entitle to direct repatriation.

(4) The provisions of this Annex shall be interpreted and applied in a similar manner in all countries party to the conflict. The Powers and Authorities concerned shall grant to Mixed Medical Commissions all the facilities necessary for the accomplishment of their task.

(5) The examples quoted above in Chapter I represent only typical cases. Cases which do not correspond exactly to these provisions shall be judged in the spirit of the provisions of Article 101 of the present Convention, and of the principles embodied in the present Agreement.

## ANNEX II

### REGULATIONS CONCERNING MIXED MEDICAL COMMISSIONS

(see Article 102)

#### *Article 1*

The Mixed Medical Commissions provided for in Article 102 of the Convention shall be composed of three members, two of whom shall belong to a neutral country, the third being appointed by the Detaining Power. One of the neutral members shall take the chair.

#### *Article 2*

The two neutral members shall be appointed by the International Committee of the Red Cross, acting in agreement with the Protecting Power, at the request of the Detaining Power. They may be domiciled either in their country of origin, in any other neutral country, or in the territory of the Detaining Power.

#### *Article 3*

The neutral members shall be approved by the Parties to the conflict concerned, who shall notify their approval to the International Committee of the Red Cross and to the Protecting Power. Upon such notification, the neutral members shall be considered as effectively appointed.

#### *Article 4*

Deputy members shall also be appointed in sufficient number to replace the regular members in case of need. They shall be appointed at the same time as the regular members, or at least, as soon as possible.

#### *Article 5*

If for any reason the International Committee of the Red Cross cannot arrange for the appointment of the neutral members, this shall be done by the Power protecting the interests of the prisoners of war to be examined.

#### *Article 6*

So far as possible, one of the two neutral members shall be a surgeon and the other a physician.

#### *Article 7*

The neutral members shall be entirely independent of the Parties to the conflict, which shall grant them all facilities in the accomplishment of their duties.

#### *Article 8*

By agreement with the Detaining Power, the International Committee of the Red Cross, when making the appointments provided for in Articles 2 and 4 of the present Regulations, shall settle the terms of service of the nominees.

#### *Article 9*

The Mixed Medical Commission shall begin their work as soon as possible after the neutral members have been approved, and in any case within a period of three months from the date of such approval.

*Article 10*

The Mixed Medical Commission shall examine all the prisoners designated in Article 103 of the Convention. They shall propose repatriation, rejection, or reference to a later examination. Their decisions shall be made by a majority vote.

*Article 11*

The decisions made by the Mixed Medical Commission in each specific case shall be communicated, during the month following its visit, to the Detaining Power, the Protecting Power and the International Committee of the Red Cross. The Mixed Medical Commission shall also inform each prisoner of war examined of the decision made, and shall issue to those whose repatriation has been proposed certificates similar to the models appended to the present Convention.

*Article 12*

The Detaining Power shall be required to carry out the decisions of the Mixed Medical Commissions

within three months of the time when it receives due notification of such decisions.

*Article 13*

If there is no neutral physician in a country where the service of a Mixed Medical Commission seems required, and if it is for any reason impossible to appoint neutral doctors who are resident in another country, the Detaining Power, acting in agreement with the Protecting Power, shall set up a Medical Commission which shall undertake the same duties as a Mixed Medical Commission, subject to the provisions of Articles 1, 2, 3, 4, 5 and 8 of the present Regulations.

*Article 14*

Mixed Medical Commissions shall function permanently and shall visit each camp at intervals of not more than six months.

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**ANNEX III**
**REGULATIONS CONCERNING COLLECTIVE RELIEF TO PRISONERS OF WAR**

(see Article 62)

*Article 1*

Prisoners' representatives shall be allowed to distribute collective relief shipments for which they are responsible, to all prisoners of war administered by their camp, including those who are in hospitals, or in prisons or other penal establishments.

*Article 2*

The distribution of collective relief shipments shall be effected in accordance with the instructions of the donors and with a plan drawn up by the prisoners' representatives. The issue of medical stores shall, however, be made for preference in agreement with the senior medical officers, and the latter may, in hospitals and infirmaries, waive the said instructions, if the needs of their patients so demand. Within the limits thus defined, the distribution shall always be carried out equitably.

*Article 3*

The said prisoners' representatives or their assistants shall be allowed to go to the points of arrival of relief supplies near their camps so as to enable

the prisoners' representatives or their assistants to verify the quality as well as the quantity of the goods received, and to make out detailed reports thereon for the donors.

*Article 4*

Prisoners' representatives shall be given the facilities necessary for verifying whether the distribution of collective relief in all sub-divisions and annexes of their camps has been carried out in accordance with their instructions.

*Article 5*

Prisoners' representatives shall be allowed to fill up, and cause to be filled up by the prisoners' representatives of labour detachments or by the senior medical officers or infirmaries and hospitals, forms or questionnaires intended for the donors relating to collective relief supplies (distribution, requirements, quantities, etc.). Such forms and questionnaires, duly completed, shall be forwarded to the donors without delay.

*Article 6*

In order to secure the regular issue of collective relief to the prisoners of war in their camp, and to meet any needs that may arise from the arrival of new contingents of prisoners, prisoners' representatives shall be allowed to build up and maintain adequate reserve stocks of collective relief. For this purpose, they shall have suitable warehouses at their disposal; each warehouse shall be provided with two locks, the prisoners' representative holding the keys of one lock and the camp commandant the keys of the other.

*Article 7*

When collective consignments of clothing are available, each prisoner of war shall retain in his possession at least one complete set of clothes.

If a prisoner has more than one set of clothes, the prisoners' representative shall be permitted to withdraw excess clothing from those with largest number of sets, or particular articles in excess of one, if this is necessary in order to supply prisoners who are less well provided. He shall not, however, withdraw second sets of underclothing, socks or footwear, unless this is the only means of providing for prisoners of war with none.

*Article 8*

The High Contracting Parties and the Detaining Powers in particular shall authorize, as far as possible and subject to the regulations governing the supply of the population, all purchases of goods made in their territories for the distribution of collective relief to prisoners of war. They shall similarly facilitate the transfer of funds and other financial measures of a technical or administrative nature taken for the purpose of making such purchases.

*Article 9*

The foregoing provisions shall not constitute an obstacle to the right of prisoners of war to receive collective relief before their arrival in a camp or in the course of transfer, nor to the possibility of representatives of the Protecting Power, the International Committee of the Red Cross, or any other body giving assistance to prisoners which may be responsible for the forwarding of such supplies, ensuring the distribution thereof to the addressees by any other means that they may deem useful.

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ANNEX IV

I. IDENTITY CARD

(see Article 3)

<p><b>NOTICE</b></p> <p>This identity card is issued to persons who accompany the Armed Forces of but are not part of them. The card must be carried at all times by the person to whom it is issued. If the bearer is taken prisoner, he shall at once hand the card to the Detaining Authorities, to assist in his identification.</p>		<p>Finger-prints (optional)</p> <p>(Right forefinger)</p>		<p>Any other mark of identification</p>
<p>Official seal imprint</p>	<p>Blood type</p>	<p>(Left forefinger)</p>		
<p>Religion</p>				
<p>Hair</p>	<p>Eyes</p>	<p>Weight</p>	<p>Height</p>	
<p>Photograph of the bearer</p>		<p>(Name of the country and military authority issuing this card)</p> <p><b>IDENTITY CARD</b></p> <p>FOR A PERSON WHO ACCOMPANIES THE ARMED FORCES</p> <p>Name .....</p> <p>First names .....</p> <p>Date and place of birth.....</p> <p>Accompanies the Armed Forces as.....</p> <p>Date of issue .....</p> <p>Signature of bearer .....</p>		

*Remarks.* — This card should be made out by preference in two or three languages, one of which is in international use. Actual size of the card, to be folded along the dotted line : 13 by 10 centimetres.

II. CAPTURE CARD

(see Article 59)

i. Recto

PRISONER OF WAR MAIL		Postage free
<b>CAPTURE CARD FOR PRISONER OF WAR</b>		
<p style="text-align: center;"><b>IMPORTANT</b></p> <p>This card must be filled out by each prisoner immediately on being taken and each time his address is altered (by reason of transfer into a hospital or another camp).</p> <p>This card is distinct from the particular card which each prisoner is allowed to send to his relatives.</p>	<p><b>CENTRAL PRISONERS OF WAR AGENCY</b></p> <p>INTERNATIONAL COMMITTEE OF THE RED CROSS</p> <p style="text-align: right;"><b><u>GENEVA</u></b> SWITZERLAND</p>	

2. Verso

Write legibly and in block letters — 1. Power on which the prisoner depends		
2. Name	3. First name (in full)	4. First name of father
.....		
5. Date of birth.....	6. Place of birth.....	
7. Rank.....		
8. Service number .....		
9. Address of next of kin.....		
*10. Taken prisoner on: (or) Coming from (Camp No., hospital, etc.) .....		
*11. (a) Good health — (b) Not wounded — (c) Recovered — (d) Convalescent — (e) Sick (f) Slightly wounded— (g) Seriously wounded.		
12. My present address: Prisoner No.....		
Name of camp .....		
13. Date.....		
14. Signature.....		
* Strike out what is not applicable — Do not add any remarks — See explanations overleaf		

*Remarks.* — This form should be made out in two or three languages, particularly in the prisoner's own language and in that of the Detaining Power.



III. CORRESPONDENCE CARD AND LETTER

(see Article 60)

PRISONER OF WAR MAIL

—  
Postage free

To .....

.....

Place .....

Street .....

Country .....

Department or Province .....

---

Country where posted.....

Name of camp.....

Prisoner of War No.....

Date and place of birth.....

Name and first names.....

Sender

\* \* \*

*Remarks.* — This form should be made out in two or three languages, particularly in the prisoner's own language and in that of the Detaining Power. It will be folded along the dotted line, the tab being inserted in the slit (marked by a line of asteriks); it then has the appearance of an envelope. Overleaf, it is lined like the postcard above; this space can contain about 250 words which the prisoner is free to write. Actual size of the folded form : 29 by 15 centimetres.



## V. REPATRIATION CERTIFICATE

(see Annex II, Article 11)

Committee II adopted on 8 July a new Annex IV/V concerning the repatriation certificate (Annex II, Article 11). The text is the following :

*Repatriation Certificate*

Date:  
 Prisoner of War:  
 Camp:  
 Hospital:  
 Surnames:  
 First Names :  
 Date of birth:  
 Rank:  
 Unit:  
 Army Number:  
 P.W. Number:  
 Injury—Disease:  
 Decision of the Commission:

Chairman of the  
 Mixed Medical Commission

A = direct repatriation  
 B = accommodation in a neutral country  
 NC = re-examination by next Commission

## ANNEX V

MODEL REGULATIONS CONCERNING PAYMENTS SENT BY PRISONERS  
TO THEIR OWN COUNTRY

(see Article 53)

1. The notification referred to in the third paragraph of Article 53 will show:
  - (a) number as specified in Article 15, rank, surname and first names of the prisoner of war who is the payer;
  - (b) the name and address of the payee in the country of origin;
  - (c) the amount to be so paid in the currency of the country in which he is detained.
2. The notification will be signed by the prisoner of war or his witnessed mark made upon it if he cannot write, and shall be countersigned by the prisoners' representative in that camp.
3. The Camp Commandant will add to this notification a certificate that the prisoner of war concerned has a credit balance of not less than the amount registered as payable.
4. The notification may be made up in lists, each sheet of such lists being witnessed by the prisoners' representative and certified by the Camp Commandant.



# COMMITTEE III

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ESTABLISHMENT

OF A CONVENTION

FOR THE PROTECTION OF CIVILIAN PERSONS

IN TIME OF WAR



## COMMITTEE III (CIVILIANS CONVENTION)

### FIRST MEETING

*Monday 25 April 1949, 11.30 a.m.*

*Chairmen:* General Nikolai SLAVIN (Union of Soviet Socialist Republics), Vice-President of the Conference ; subsequently Mr. Georges CAHEN-SALVADOR (France).

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#### **Election of Chairman**

In accordance with a proposal made at the last meeting of Heads of Delegations (to which the Chairman called attention), the Committee unanimously elected Mr. CAHEN-SALVADOR (France) as Chairman.

Mr. CAHEN-SALVADOR took the Chair. He thanked his fellow delegates for the confidence they had placed in him and expressed the hope that the Committee would be successful in drawing up a Convention acceptable to all, which, although envisaged as a wartime measure, would nevertheless contribute towards the consolidation of peace.

#### **Election of Two Vice-Chairmen**

In accordance with the proposal made at the last meeting of Heads of Delegations, the Committee unanimously elected Mr. MEVORAH (Bulgaria) and Mr. BOSCH VAN ROSENTHAL (Netherlands) as Vice-Chairmen.

#### **Election of Two Rapporteurs**

The CHAIRMAN considered that the importance of the Report justified the election not of one, but of two Rapporteurs.

Mr. SÖDERBLOM (Sweden) was of the same opinion. He proposed Colonel DU PASQUIER (Switzerland) as First Rapporteur, and suggested that a second Rapporteur—preferably English speaking—should be appointed to assist him.

Colonel DU PASQUIER (Switzerland) was unanimously elected First Rapporteur, and, on the proposal of Sir Robert CRAIGIE (United Kingdom), Mr. Max WERSHOF (Canada) was unanimously elected Second Rapporteur.

#### **Date of the Next Meeting**

Mr. DE ALBA (Mexico) and Mr. LIFSCHITZ (Nicaragua) having drawn attention to the necessity for the time-tables of meetings to be arranged in such a way as to enable delegations comprising only one or two members to follow the work of the three Committees, Sir Robert CRAIGIE (United Kingdom) proposed that for the current week Committees I and II should meet in the morning, and Committee III in the afternoon. The order of meetings could be reversed the following week, and so on alternately.

The CHAIRMAN having pointed out that the afternoons were in principle reserved either for plenary meetings or for meetings of the Coordination of Procedure Committees, the Committee decided, on the proposal of Mr. BOLLA (Switzerland), to confine itself to fixing the date of its next meeting, and to refer to the Bureau of the Conference the question of drawing up a time-table for future meetings which would take into account, as far as possible, the views just expressed.

The Committee decided by 21 votes to hold its next meeting on Tuesday, 26 April 1949, at 3 p.m.

*The meeting rose at 12.30 p.m.*

## SECOND MEETING

*Tuesday 26 April 1949 3 p.m.*

*Chairman:* Mr. Georges CAHEN-SALVADOR (France)

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**Preamble**

In opening the meeting, the CHAIRMAN said that the Preamble should not be considered as preceding, but as forming an integral part of the Convention. It was proposed to submit the Preamble to the Joint Committee for consideration, and several members of Committee III had suggested the advisability of awaiting the results of the discussion by the Joint Committee before embarking on any discussion in Committee III. The question, therefore, was whether discussion on the Preamble should be postponed.

Mr. DE ALBA (Mexico) was of the opinion that the Preamble should be drafted with the greatest care, and for that reason should not be considered until the end of the Committee's labours. It would appear however that the Preamble of the Civilians Convention should not be in the same form as those of the other Conventions; it should in any case make a formal and categorical appeal for the maintenance of peace.

Mr. DE LA LUZ LEÓN (Cuba) was in complete agreement with the above suggestion.

Mr. MEVORAH (Bulgaria) was likewise of the opinion that it was better to defer consideration of the Preamble, if only in order to avoid overlapping with the work of the Joint Committee, to which the Preamble had already been referred.

Mr. MOROSOV (Union of Soviet Socialist Republics) supported the proposal of the Delegate of Mexico.

The CHAIRMAN, summing up the above preliminary discussion, noted that general agreement had been reached on the necessity for a Preamble, as well as on the view that it might either be common to all four Conventions or different in each case, and that discussion of it could well be postponed for the time being. He suggested that the Committee should proceed with the discussion of Article 3.

**Article 3**

Mr. PESMAZOGLU (Greece) referred to proposals made by the International Committee of the Red Cross in its memorandum "Remarks and Proposals". He suggested that the Representative of the I.C.R.C. should be asked to give explanations on the subject.

Mr. PILLOUD (International Committee of the Red Cross) explained that the Stockholm Conference had suggested the transfer of the provisions of Part II to the end of the Convention, in which case the paragraph of Article 3 referring to Part II would have to be omitted. Further, in order to take account of the suggestions of the Norwegian Delegation at the Stockholm Conference, the I.C.R.C. had thought it necessary to propose a slightly modified wording which would be found on page 69 of the above-mentioned memorandum.

Brigadier PAGE (United Kingdom) said that Article 3 as approved by the Stockholm Conference contained a definition of protected persons which included all foreigners and not merely enemy aliens. The United Kingdom Delegation considered that neutrals and allies should continue to depend on their own diplomatic representatives, and that their interests should be safeguarded through the normal diplomatic machinery.

The United Kingdom Delegation would like to propose an amendment making it clear that neutrals and allies automatically retained all their peacetime rights in time of war. If Article 3 remained unchanged, the protecting Powers would be saddled with the responsibility of protecting the interests, not only of belligerents but also of all persons within the territory of a belligerent State other than its own nationals. Article 3 would also cover individuals participating in hostilities in violation of the laws of war. But it was essential, in the interests of the regular soldier and of the general conduct of war, that all persons engaged in hostilities should conform to the rules of war. They should in particular either belong to

a recognized military force, or form part of a "levée en masse". In its present form, Article 3 would mean that persons who were not entitled to protection under the Prisoners of War Convention would receive exactly the same protection by virtue of the Civilians Convention, so that all persons participating in hostilities would be protected, whether they conformed to the laws of war or not. The United Kingdom Delegation would like to suggest that there should be laws for combatants and separate laws for non-combatants. The whole conception of the Civilians Convention was the protection of civilian victims of war and not the protection of illegitimate bearers of arms, who could not expect full protection under rules of war to which they did not conform. Such persons should no doubt be accorded certain standards of treatment, but should not be entitled to all the benefits of the Convention. Furthermore, civilians in occupied territory had duties as well as rights. They had a right to respect for their life, and to protection against unlawful and criminal attacks; but in return it was their duty to behave in a peaceful manner and not to take part in hostilities.

To sum up, the United Kingdom Delegation considered that civilians should be treated by the enemy according to an internationally recognized set of rules. Civilians who violated those rules should cease to be entitled to the treatment provided for law-abiding citizens. The United Kingdom Delegation would not however oppose any reasonable proposal to ensure that such civilians were humanely treated.

Mr. CASTBERG (Norway) could not agree with certain of the points made by the United Kingdom Delegation. There were cases where diplomatic protection was inoperative, as, for example, in the case of stateless persons. He referred to the situation of ex-German Jews denationalized by the German Government, who found themselves in territories subsequently occupied by the German Army. In his view such persons should be able to claim protection under the Convention.

Saboteurs could not of course claim protection under the Prisoners of War Convention; they should nevertheless be protected against criminal treatment and torture.

He was in favour of the new wording of Article 3 suggested by the International Committee of the Red Cross on page 69 of "Remarks and Proposals".

General PAGE (United Kingdom), replying to the point made by the Delegate of Norway about stateless persons, said that the latter had had every assistance from the United Kingdom Government during the late war. The United Kingdom

Delegation would have no objection to stateless persons receiving the same treatment as nationals of the countries in which they found themselves. No doubt there should be a specific provision in the Convention to that effect.

Mr. SÖDERBLOM (Sweden) supported the view expressed by the Norwegian Delegate.

Mr. DAHL (Denmark) did the same.

Colonel DU PASQUIER (Switzerland) also agreed with the Scandinavian Delegates. The United Kingdom suggestion was entirely logical; but it must be remembered that diplomatic representation did not always function normally in time of war. It might even be non-existent, as in Northern France during the late war. If the Convention provided additional protection over and above diplomatic protection, that could only be regarded as an advantage.

In regard to the legal status of those who violated the laws of war, the Convention could not of course cover criminals or saboteurs. Moreover, Article 55 and those following established the principle that an occupying Power was entitled to lay down penal regulations to protect its troops. On the other hand, Article 29 and those following fixed the limits of such penal legislation and in particular prohibited torture and the taking of hostages.

He was in favour of the revised form of Article 3 as drawn up by the International Committee of the Red Cross.

Mr. MARESCA (Italy) preferred the text proposed by the I.C.R.C. to that suggested by the United Kingdom Delegation. He supported the former, but suggested that a clause be added providing that protected persons were under an obligation not to act in such a way as to violate the rules of war.

Mr. CASTRÉN (Finland) did not agree with the United Kingdom proposal to treat stateless persons as nationals of the countries in which they resided. It would be better, in his opinion, to treat them as neutrals and place them either under the protection of the United Nations or under that of the International Committee of the Red Cross.

He was in favour of the text of Article 3 submitted by the International Committee of the Red Cross.

Mr. MAJERUS (Luxemburg) agreed with the Delegates of Norway and Switzerland. Since the Convention was concerned with the protection of civilians, it would seem essential to define what was meant by the term "civilians" as opposed

to "military", and so avoid the use of the expression "protected persons".

General SCHEPERS (Netherlands) agreed with the Scandinavian Delegates. He pointed out, however, that he reserved his opinion with regard to the second paragraph of Article 3 as submitted by the I.C.R.C., until the question relating to non-international war had been decided by the Joint Committee.

The CHAIRMAN summed up the discussion which he considered provisionally as closed, no other speakers having asked for the floor on the subject of Article 3.

He noted that the United Kingdom Delegation had suggested that civilians should be divided into different categories, viz., neutrals, allies and stateless persons. To these it wished to add the category of persons who violated the laws of war, and advocated the definition not only of their rights but also of their duties. It had also been suggested that the term "civilian population" should be defined. Finally, a proposal had been made to treat separately the question of internal conflicts. On all these questions the United Kingdom Delegation has submitted an amendment, and Mr. Pilloud (International Committee of the Red Cross), at the instance of the Delegate of Greece, had proposed a new draft of the text recommended by the Stockholm Conference. It already seemed possible at that stage to take provisional action, and to put certain texts into final form, on the understanding always that texts drawn up at a first reading would be subject to a second reading and a second discussion before being adopted by the Committee.

Mr. MOROSOV (Union of Soviet Socialist Republics) preferred a discussion Article by Article, no decision being taken on any Article until the whole had been studied.

As regards Article 3, it should be considered as a whole without the elimination of any part, as it had been decided by the Joint Committee. Subject to those reservations he agreed with the United Kingdom Delegation.

With regard to the question of referring the second paragraph of Article 3 to the Joint Committee, the U.S.S.R. Delegation felt that if Committee III decided to take that step, the paragraph should be submitted to the Joint Committee by a representative of one of the delegations which had declared in favour of such action.

Brigadier PAGE (United Kingdom) wished to make it clear that he had not submitted a formal amendment to Article 3, but reserved the right to do so at a later stage. The draft amendment

submitted to the Secretariat had been submitted for the information of other delegations as a general indication of the United Kingdom Delegation's views. A formal amendment would be submitted when the time came.

Mr. DE GEOUFFRE DE LA PRADELLE (Monaco) felt, in view of the thorough study which had been made of the text by each delegation, that the Committee could already take a first reading decision—as suggested by the Chairman—at least on those parts of Article 3 which embodied provisions similar to those in the text approved at Stockholm, in the amendment of the United Kingdom Delegation or in the new text submitted by the International Committee of the Red Cross.

Mr. CLATTENBURG (United States of America) was anxious to know whether it would be possible, when the various amendments were considered, to reopen the discussion and submit new amendments.

Colonel HODGSON (Australia) said that the existence of two schools of thought had become evident during the discussion—that of those delegations which wished for a broad and "elastic" Convention, and that of those which wanted a restricted Convention. In his opinion, the rights of the State in relation to certain persons such as spies, saboteurs, fifth columnists and traitors, had been insufficiently defined. The only laws which protected a State against its enemies were, it seemed, the Criminal Laws in force before hostilities. It was desirable to provide for the necessary exceptions to the rules for protection contained in the Convention.

In reply to a remark by Miss JACOB (France) to the effect that the object of the Convention was to provide for the protection of persons, and not to safeguard the rights of States, Colonel HODGSON (Australia) said that the rights, duties and obligations of States had to be taken into account no less than those of individuals.

The CHAIRMAN felt that Article 3 had been sufficiently discussed. The procedure he had suggested for attacking the subject seemed to certain delegates to be too hurried. In the light of the various views expressed, perhaps the best method would be that suggested by the Soviet Delegation. If the Committee agreed, therefore, the general discussion on Article 3 would be considered closed, and Articles 11 to 24 discussed at the next meeting. At the close of the general discussion each Article would again be considered individually.

Mr. MOROSOV (Union of Soviet Socialist Republics) said that such was indeed the procedure he had suggested. He reserved the right to state the views of the Soviet Delegation on the questions raised by the Australian Delegation at a later stage.

In reply to Mr. CLATTENBURG (United States of America), the CHAIRMAN said that Article 4 would have to figure on the Agenda of the next meeting, since it had been referred to Committee III by the Joint Committee. He added that since the discussion on the first reading of the Articles was of a general character, it would of course be possible to submit amendments when the Articles were given their second reading.

Further, if the second paragraph of Article 3 was referred to the Joint Committee for discussion, the text should be introduced to that Committee by the delegation which had first suggested that it should be so referred.

Before closing the debate, the CHAIRMAN expressed satisfaction at the thorough way in which the discussion had been conducted. It was evidence of an effort on the part of the members of the Committee to arrive at mutual understanding and augured well for the work they had to do.

*The meeting rose at 6.30 p.m.*

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### THIRD MEETING

*Wednesday 27 April 1949, 3 p.m.*

*Chairmen: Mr. Georges CAHEN-SALVADOR (France); subsequently  
Mr. Nissim MEVORAH (Bulgaria)*

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#### **Election of a second Rapporteur**

Mr. WERSHOF (Canada), elected Second Rapporteur by Committee III at the first meeting, regretted that he would be unable to act in that capacity because of his numerous duties within the Canadian Delegation. He begged to propose Mr. Mill Irving (United Kingdom).

Mr. Mill Irving was unanimously elected Second Rapporteur of Committee III.

#### **Article 4**

Mr. CLATTENBURG (United States of America) said that his Delegation would propose an amendment to Article 4 to provide that the Civilians Convention should cease to apply not earlier than one year after the termination of hostilities. It would be noted that the Convention did not define the terms "occupied territory" or "military occupation". It was the view of the United States Delegation that the obligations imposed by the Convention on an Occupying Power should be applicable to the period of hostilities and to the

period of disorganization following on the hostilities; these obligations would vary according to the nature and duration of the occupation. Experience had shown that an Occupying Power did, in fact, exercise the majority of the governmental functions in occupied territory. A prolonged military occupation was, however, also characterized by a progressive return of governmental responsibility to local authorities. The Occupying Power should be bound by the obligations of the Convention only during such time as the institutions of the occupied territory were unable to provide for the needs of the inhabitants. The ultimate solution of such problems as revictualling, sanitation and war damage was not the responsibility of the Occupying Power. He quoted the case of the Allied occupation of Germany and Japan to show that the responsibility of the Occupying Powers for the welfare of the local populations was far less at present than during the period immediately following hostilities.

Colonel HODGSON (Australia) wanted the term "termination of hostilities", or "close of hostilities" to be more clearly defined. The date when a state of war ceased to exist would vary

according to countries, depending on administrative measures and questions such as trading with the enemy, contraband, war legislation and security measures. Did the expression used by the Delegate of the United States mean the date of the armistice?

Mr. CLATTENBURG (United States of America) replied that, in connection with the occupation of Germany, for example, the proposed period of one year would run from May 1945.

On the proposal of Colonel DU PASQUIER (Switzerland), the CHAIRMAN gave the floor to the Representative of the International Committee of the Red Cross.

Mr. PILLOUD (International Committee of the Red Cross) reminded the Committee that the Conference of Experts, which had drawn up in part the text submitted to the Stockholm Conference, had taken as a basis the provisions of the Prisoners of War Convention. For example, internment should end, in the case of civilians, at the same time as captivity in the case of prisoners of war, viz., at the cessation of hostilities, since hostilities alone justified such measures. The Stockholm Conference had suggested that the word "hostilities" should be qualified by "active", although the adjective did not seem to be necessary for the clarity of the text.

Mr. MEVORAH (Bulgaria) said that Article 4 was loosely drafted. A considerable time might elapse before an occupation ended. The United States of America proposed a delay of one year before the obligations of the Occupying Power ceased. Six months or two years might equally well be suggested. Would it not be better to say that these obligations should continue as long as the conditions provided for in the Convention existed?

Mr. DE ALBA (Mexico) would have preferred some reference to the signature of a peace treaty. Was there any connection between the present Convention and the work of the International Refugee Organization?

Mr. SINCLAIR (United Kingdom) said that Article 42 of the Agreement on the Rules of War annexed to the IVth Hague Convention dealt with the occupation of a territory, and Article 43 laid down that an Occupying Power should take all necessary steps for the maintenance of public order, while respecting as far as possible the laws in force in the country. Those were generally accepted principles. The responsibility of the Occupying Power should not exceed those

limits. To prolong these obligations until the conclusion of a peace treaty would be going much too far. It was enough to think of the obvious difficulties which would arise if the provisions of the present Convention were to be applied either to Germany or Japan at the present time in the absence of a peace treaty.

Mr. DE GEOUFFRE DE LA PRADELLE (Monaco) felt that Article 4 was sufficiently well-defined. The Conventions were drawn up for wartime. Therefore the end of hostilities could not mean the armistice (which only marked the suspension of hostilities); it meant the signing of a peace treaty. The end of an occupation was defined by the Agreement attached to the IVth Hague Convention. The present occupation of Germany was an entirely different case. While it was not desirable to dwell upon the point, it was nevertheless essential that Article 4 should be applicable to protected persons after the end of hostilities and the occupation, so long as those persons remained under conditions which called for such protection. As the Scriptures said, there was a time for peace and a time for war. As soon as peace was restored, the provisions of the Conventions concerning war should cease to be applicable, as otherwise they might conflict with the provisions of Conventions concerning peace (for example, treaties of agreements concerning settlement, or the work of organizations such as the International Refugees Organization). Article 4 as at present drafted was perfectly clear.

Mr. CASTBERG (Norway) agreed that, when an occupation lasted after the termination of hostilities, the responsibilities of the Occupying Power could not all be maintained indefinitely. He wondered, however, whether a time-limit of one year was the best solution. A more obvious course would appear to be to decide which obligations should cease (for example, those concerning food supplies) and which should be maintained (for example, those concerning justice).

Mr. CASTREN (Finland) did not agree with the Delegate of Monaco that the end of hostilities could be taken as coinciding with the signature of a peace treaty.

The CHAIRMAN wished to clarify certain points of the discussion. Under French legislation the Government was empowered to fix by decree the date on which hostilities should be considered as terminated within the country, and that date determined a return to peacetime legislation. In his opinion the Committee should entrust a small Sub-Committee with the task of deciding how they could best take into account the various points of

view expressed, thereby facilitating the second reading of Article 4.

The Chair was then taken over by Mr. MEVORAH, Vice-Chairman, since the Chairman was obliged to attend a meeting of Heads of Delegations.

General SCHEPERS (Netherlands) pointed out the connection existing between Article 4 and the fourth paragraph of Article 41 (transfer of protected persons), and suggested that the word "transfer" should be inserted before the word "release" and the words "as long as the peace treaty has not been signed" at the end of Article 41.

Mr. MARESCA (Italy) felt that the term "end of hostilities" could not be interpreted as "the signing of a peace treaty", but rather as the "termination of military operations". As far as occupation was concerned, the Article referred to occupation as defined by the IVth Hague Convention, namely occupation in wartime. An occupation which lasted beyond the date of cessation of hostilities only entailed obligations which were to be lifted progressively, as and when the local authority took over administrative powers. As far as protected persons were concerned, the provisions of the Convention should be applied until the time of their repatriation or release.

The CHAIRMAN asked the Representative of the International Committee of the Red Cross to explain the intentions of the authors of Article 4 in using the word "or" between the expressions "close of hostilities" and "of occupation".

Mr. PILLOUD (International Committee of the Red Cross) explained that the clause had been condensed. A distinction must be made between the application of the Convention in national territory and in occupied territory. In national territory the Convention would cease to be applicable at the end of hostilities, whereas in occupied territory it would cease at the end of the occupation.

## Article II

The CHAIRMAN, before entering upon the discussion of Article 11, drew attention to the footnote which according to the Stockholm Conference had suggested placing Part II at the end of the Convention, and asked if any delegates wished to speak on the subject.

Mr. PILLOUD (International Committee of the Red Cross) explained that the scope of Part II embraced the entire population of countries at war, while Article 3, defining persons protected

under the Convention, referred mainly to those of enemy nationality. Part II, therefore, had a wider scope than other parts of the Convention, and would in reality entail a revision of the IVth Hague Convention. It was for that reason that the competent Committee of the Stockholm Conference had suggested that it should be placed at the end of the Convention.

Mr. SINCLAIR (United Kingdom) said that Article 11, as indeed the whole portion of the Convention consisting of Articles 11 to 23, raised, on an even wider basis, the security question mentioned the previous day by the Australian Delegate. The full import of the Article must be understood and delegates made aware of the obligations which would be imposed on countries which gave refuge to foreigners. No nation was more conscious of the problem than the United Kingdom, which sheltered aliens from all corners of the globe. Accordingly, the ultimate attitude of his Delegation to Article 11 and to a number of other related Articles, would depend on a satisfactory solution to the problem of the definition of such obligations. He therefore reserved the position of the United Kingdom Delegation.

But his Delegation thought it well to point out at once that the Article, as framed, might operate in the opposite way to that intended by its authors. It was not desirable to prevent, by too rigid formulas, all reasonable discrimination that States might wish to exercise in favour of their own nationals, e.g., by improving the conditions of internment in cold countries, of races coming from tropical countries, or by permitting certain religious practices. Further, there was a danger in providing for treatment according to sex; as in some countries this might unfortunately mean that women were treated worse than men.

Colonel DU PASQUIER (Switzerland) replying to Mr. ABUT (Turkey) regarding the advisability of discussing Article 11 and Article 3 jointly, proposed postponing consideration of Part II, which could be dealt with separately, as the Representative of the International Committee of the Red Cross had said, and to proceed without delay to the consideration of Part III of the Convention (Status and Treatment of Protected Persons).

The Swiss proposal being on a point of order, the CHAIRMAN, after having informed the Turkish Delegate that Article 11 could again be discussed on the second reading of Article 3, asked for the sense of the meeting on the proposal of the Delegate of Switzerland.

The motion was put to the vote and rejected.

Discussion, therefore, continued in accordance with the agenda.

**Article 12**

Mr. WERSHOF (Canada) had no formal instructions from his Government to oppose Article 12 or Chapter II in general, but he thought he should point out that Article 12 in its present form was not in his opinion suitable for inclusion in an international Convention. It related to measures of protection to be taken by States in the interests of their own nationals. In view of the mandatory character of the Article, the Canadian Delegation must reserve its attitude. They had submitted an amendment to render the application of the Article optional instead of obligatory by substituting the words "may set up" for "shall endeavour to set up" in the first paragraph.

Mr. MAJERUS (Luxemburg) supported the previous speaker's view that the creation of hospital zones should be left to the initiative of States. As far as respect of those zones by belligerents was concerned, the value of agreements concluded at the beginning of a war appeared problematical, judging by the experience of the last war.

Mr. SPEAKE (United Kingdom) said that his country was prepared to take all necessary measures for the protection of the civilian population. It was, however, desirable to leave each country to decide on the best method for that purpose. A thickly populated country like the United Kingdom could not follow the particular method outlined without hampering its war effort. For those reasons he fully supported the suggestion of Canada that the Article should be phrased in permissive as opposed to mandatory terms. (*See Annex No. 204*).

Mr. DE GEOUFFRE DE LA PRADELLE (Monaco) asked for special consideration to be given to Article 12. It should be read in conjunction with Article 12 A. Those two Articles were the outcome of the "Monaco Draft", so-called not because it had been prepared exclusively by Monegasques but because the Institute of Military Medicine and Pharmacy had drawn it up under the patronage of H.S.H. the Prince of Monaco. (It might just as well be called the Luxemburg Draft since the final draft had been drawn up in that capital.) It was necessary to give the two Articles proper weight by maintaining their actual place in the Draft Convention.

Referring to the Canadian Delegate's misgivings, he pointed out that the term "shall endeavour" was in no way mandatory, but rather a recommendation. In that respect it was preferable to the word "may" which had an indifferent or even "neutral" character. The suffering with which the Conference was dealing did not allow it to remain neutral. The two Articles in question were, moreover, only complementary to the one concerning hospital zones in the Wounded and Sick Convention.

While objections might be raised to certain of the provisions, even from a humanitarian point of view, the underlying principle should be maintained, since in face of the monstrous development of modern technique, the only defence possible was a moral and ethical one. Such ideas were, in the last resort, the only reply to the atomic bomb. Articles 12 and 12 A marked a progressive step in human rights, and it would be a great pity if the Chapter were placed in an annex and not made an integral part of the Convention.

*The meeting rose at 6.30 p.m.*

**FOURTH MEETING**

*Thursday 28 April 1949, 3 p.m.*

*Chairman:* Mr. Georges CAHEN-SALVADOR (France)

**Election of a Vice-Chairman**

The CHAIRMAN announced that Mr. BOSCH VAN ROSENTHAL, having been called back to Holland, had been obliged to resign from the post of Vice-Chairman. In accordance with earlier suggestions

by the Bureau, Mr. Bosch van Rosenthal had asked if General Schepers, Deputy Head of the Netherlands Delegation, could be elected in his place.

Agreed unanimously.

**Articles 12 (continued) and 12A (1)**

Brigadier PAGE (United Kingdom), speaking on a point of order, asked whether Articles 12 and 12 A were to be discussed together. As a soldier and ex-prisoner of war, he fully appreciated the value of the Conventions and of the humanitarian work of Switzerland and the International Committee of the Red Cross. He had witnessed the treatment afforded to foreign workers in Germany, and hoped that a good Civilians Convention would be drafted.

In regard to the contention of the Representative of Monaco that Articles 12 and 12A were similar, the view of the United Kingdom Delegation was that those Articles, although similar, covered two distinct subjects; Article 12 applied to a more or less permanent zone in a home country or in an occupied territory, while Article 12A on the other hand, referred quite clearly to the fighting zones. For example, in a situation such as that of Dunkirk, during the late war, if such a convention had been in force, a small neutral zone might have been created.

Mr. GINNANE (United States of America) said that his Delegation believed that the English text of Article 12 would be formally binding. No country which wished to make a *bona fide* attempt to comply with the Convention could commit itself to an obligation which it could not fulfil. His Delegation could not commit itself to immediate application of Article 12 in its present form, and therefore welcomed the amendment of the Canadian Delegation to substitute for "shall endeavour to set up" in Article 12, first paragraph, the words "may set up". That modification would, at least in English, more accurately reflect the purpose of the Article.

Mr. DE GEOUFFRE DE LA PRADELLE (Monaco), replying to Brigadier Page, explained that he had suggested taking Articles 12 and 12A together merely for the sake of clarity in the discussion and had in no way meant that those two Articles applied to identical situations. He hoped that it would be possible to find a term in English equivalent to the French expression "s'efforceront" (endeavour to) which, in his opinion, should remain unchanged.

He offered his apologies to the International Committee of the Red Cross. Having read the document relating to the place to be given to Part II in the Convention, he wished to modify the views he had expressed at a previous meeting and to support the proposal of the I.C.R.C.

(1) Article 12A is referred to as 12 (b) in the text adopted at Stockholm.

Mr. LOKER (Israel) made the following comments:

- (1) He could not agree with the point of view that large States were in favour of precisely defined provisions while smaller States seemed to prefer a more elastic text. He supported the Canadian proposal as far as the English text was concerned. He felt that the words "s'efforceront" (shall endeavour to) in the French text should in the same way be replaced by "pourront" (may).
- (2) He agreed that Articles 12 and 12 A should be placed further on in the Convention, as the Representative of the I.C.R.C. had proposed for the whole of Part II.
- (3) The fact that safety zones should be situated as far away as possible from the actual fighting was not sufficiently stressed in the Article as drafted.
- (4) The third paragraph of Article 12 appeared to be in part redundant.

Mr. MOROSOV (Union of Soviet Socialist Republics) noted that the amendments submitted by the United Kingdom, the United States of America and Canada were not amendments of principle. He wondered whether they did not originate in the fact that the countries in question had abandoned the very idea of the possibility of creating safety zones, because they doubted the goodwill of Parties to the Convention.

Mr. MAGHERU (Rumania) felt that States should be obliged to enter into contractual engagements for the protection of their populations. All countries which had known the horrors of war would be in favour of the proposed text. The Rumanian Delegation thought it would be best to leave Article 12 unchanged, in order to safeguard the principles underlying the Article.

General SCHEPERS (Netherlands) said that he did not wish to express the point of view of the Netherlands Delegation on the proposed text at that stage, but would like to make a few comments. In Geneva as far back as 1938, a Committee of Experts had drafted a document on the subject of hospital zones. The draft had not been ratified by Governments and was therefore inoperative at the outbreak of war. That example showed the importance of dealing with the question by means of a Convention.

Mr. MARESCA (Italy) attached great importance to the adoption of a text constituting a solemn recommendation for the creation of safety zones.

The French expression "endeavour to set up" would seem to meet that requirement without, on the other hand, having the mandatory character to which objections had been raised by certain delegations. He would, however, support the point of view of the United Kingdom Delegation in order to facilitate the adoption of a text which seemed to him to constitute an important step forward in international law.

Mr. CASTRÉN (Finland) suggested a compromise solution which seemed to him to meet most points of view. His proposal would be to replace the phrase "shall endeavour to set up" by the words "are invited to set up"—an expression which was weaker than that used in the draft Convention although less weak than the proposed amendment "may set up".

Mr. DE ALBA (Mexico) warned the Committee against the adoption of a text lacking mandatory force, which would result not in a convention but in a simple declaration. If positive results were to be achieved, the text should not be weakened.

Mr. WERSHOF (Canada) wished to reply to the questions asked by the Soviet Delegate. He reminded the Committee that before the war several Governments had taken measures for the protection of their populations against the effects of war, without the need for such action having been dictated by means of international agreements. The situation in different countries regarding such protection varied according to circumstances, and, in his opinion, each Government should be sole judge of the measures to be adopted in the interests of its nationals. He added that, at the Stockholm Conference, consideration by the competent Committee of the corresponding article in the Wounded and Sick Convention (Article 18) had led to the replacement of the words "endeavour to set up" by "may set up". That amendment had not been accepted in the case of the Civilians Convention and therefore the question was again being raised.

Without wishing to make a definite pronouncement on the wording submitted by the Finnish Delegation, he recognized that it provided a possible solution. Finally, he wished to make it clear to the Soviet Delegate that the objections of the Canadian Delegate in no way meant opposition to the adoption of the principle underlying Article 12. His Delegation felt that safety zones should be set up whenever the States concerned thought it desirable. It was, however, unnecessary at the present time to make the creation of such zones obligatory.

Mr. DAHL (Denmark) was in favour of the adoption of the principles contained in Article 12. It was desirable, however, for the Article to be drafted in the form of a recommendation and not as a formal obligation.

Mr. MINEUR (Belgium), linking Article 12A with Article 12 as proposed by the Delegate of Monaco, made two comments on Article 12A, one on form, the other on substance. First, the last words of the Article—"the said zone shall remain in force"—seemed to be due to an oversight. It should read either, "the said zone shall be neutralized", or, "this agreement shall remain in force". On the question of substance, it would be well to add at the end of the first paragraph, sub-paragraph (b), the words: "as well as for the distribution of any other assistance which may be necessary".

Mr. DE GEOUFFRE DE LA PRADELLE (Monaco) regretted having to speak again, but since the text concerned the so-called Monaco draft, he wished to furnish the Committee with all the arguments in favour of its adoption. It was essential that the text should contain a more or less precise and more or less urgent commitment, with the minimum number of obligations, since it would otherwise lose its legal character. The Canadian Delegation, in that connection, need not be too apprehensive, since other examples existed of States, including Canada, concluding agreements for the regulation of situations affecting domestic legislation. A case in point was that of the conventions drawn up by the International Labour Organization. While he felt that the best formula was that proposed by the Mexican Delegation, he would be prepared, for the sake of unanimity on the moral obligation of Article 12, to accept the amendment proposed by the Finnish Delegation.

Mr. BLUEDHORN (Austria) wished to inform the Committee of a particularly interesting fact. During the last war the health resort of Baden, thirty kilometres from Vienna, had been declared a hospital zone, and a great number of wounded soldiers had been accommodated there. He was not sure how the German authorities, who were at that time in control in Austria, had negotiated the creation of that zone; the fact remained, however, that the town of Baden had never been bombed. That example showed the possibility and value of the creation of hospital zones.

Mr. CASTBERG (Norway) was prepared to accept the proposal of the Finnish Delegation in order that the agreement of great military powers should, if possible, be obtained. He could not, however,

agree to a neutral formula like that suggested by the United Kingdom Delegation, which omitted any mention of the need for the creation of zones (see *Annex No. 205*).

Mr. HAKSAR (India) recognized that the establishment of such zones was highly desirable. It was not, however, possible to impose mandatory obligations on States; for that reason he had listened with much interest to the proposal of the Finnish Delegation.

GUENENA Bey (Egypt) felt that Article 12 should not be interpreted to mean that a Government was under any compulsion to take the action indicated. Each State was free to carry out its responsibilities as it thought best. What was essential was that prospective adversaries should recognize the action taken.

Mr. QUENTIN-BAXTER (New Zealand) said that his Government was not ready to agree to the creation of safety zones on its territory in time of peace. He recognized, however, the value of the principle of the creation of such zones in wartime. No delegation had contested that principle. The weakest point in the text under consideration was the clause concerning reciprocity in the second paragraph of Article 12. Would that not provide a possible loop-hole and give a country which had decided against the creation of safety zones in its own territory, a chance of refusing to recognize the zones created by its adversary? It was essential that it should be possible for safety zones to be set up in all circumstances and internationally recognized.

Mr. FALUS (Hungary) noted that there was general agreement on principle. Like the Delegate of Mexico, he felt that any amendment which weakened the text was dangerous, and for that reason could not accept the proposal of the Finnish Delegation. He would prefer to make a distinction between peacetime and wartime and to say, first of all, „in time of peace already the Contracting Parties may” and afterwards, “in case of conflict, the Parties shall endeavour to set up”.

Mr. WU (China) was glad to see that unanimity seemed to have been reached in favour of the

eventual setting up of hospital and safety zones (although he had certain doubts about their efficacy in an atomic war). The Chinese Delegation supported the texts submitted by the Delegations of Canada and the United Kingdom. He wished to warn the Committee of the effect which would be produced upon public opinion, if the drawing up of the Civilians Convention had the effect of an immediate and general establishment of safety zones. Would it not be thought that the world was on the eve of a third world war?

The CHAIRMAN summed up the debate.

He was glad to see that unanimous agreement had been reached on the principle underlying Article 12. The idea of setting up hospital and safety zones should in no case be abandoned. That was an essential point.

It was natural that difficulties should arise in weighing certain obligations or certain options. Article 12 consisted of two parts: on the one hand, the setting up of hospital and safety zones by States which wished to provide shelter for their populations, and on the other hand, recognition of such zones by the enemy Powers. To what extent could a State be obliged to take precautionary measures? That was one question. To what extent could measures be imposed to enforce respect of the zones thus created? That was another question. He noted that while rejecting the idea of the immediate setting up of a drafting committee, delegations had, in reality, been concerned with the phraseology of the text to be adopted on the second reading. The terms suggested ranged from mere option to obligation, through the intermediate stages of invitation, exhortation and moral obligation. Various opinions had been expressed, but the general discussion had been so sincere, so imbued with a true humanitarian spirit, that it had supplied all the requisite material for a successful second reading.

He asked all delegations to make an effort at mutual understanding in order to reconcile the different points of view. It was his duty as Chairman to seek for a common ground, and this coincided, he was glad to say, with the instructions he had received as a member of the French Delegation.

*The meeting rose at 6.45 p.m.*

## FIFTH MEETING

Friday 29 April 1949, 3 p.m.

Chairman: Mr. Georges CAHEN-SALVADOR (France)

### Communication from the International Union for Child Welfare

The SECRETARY read a letter from the International Union for Child Welfare in which that body, which had cooperated in the drawing up of certain Articles in the draft Convention, expressed the hope that the clauses pertaining to the protection of women and children would be maintained in their entirety.

#### Article 12A (continued)

MR. DE GEOUFFRE DE LA PRADELLE (Monaco) said that the wording of Article 12 A might be improved so as to make it answer its purpose better. It was a question of measures to be taken within the zone of military operations. It therefore seemed preferable to define the competency of the military authorities rather than to define that of governments or attempt to provide for the signature of international agreements ill-adapted to meet an urgent situation.

General FARUKI (Pakistan) felt that the Article, if retained, should be completely redrafted in the light of the necessity for making a distinction between the position of military personnel and civilians.

Brigadier PAGE (United Kingdom) referred to the amendment to Article 12 A circulated by his Delegation (*see Annex No. 205*). Certain expressions in the Article should be made clearer. In the case, for example, of persons taking no active part in the fighting it should be stated that the reference was to civilians, since otherwise it might be taken to include, say, a division in reserve. He agreed with the drafting improvements proposed by the Delegate of Monaco. Finally, Article 14 of the Convention appeared to be closely allied to Article 12 A. All the above observations, however, referred only to the form, and not to the substance, of the Article.

The Marquis of VILLALOBAR (Spain) shared the views expressed by the Delegates of Monaco and the United Kingdom.

Mr. ABUT (Turkey) likewise agreed with the views expressed by the previous speakers. He drew attention, however, to the fact that the English text of Article 12 A of the Convention, as well as the English text of the amendment proposed by the United Kingdom Delegation, omitted all reference to the good offices of neutral States. If the reference to neutral States was added in the English text, his Delegation was prepared to support the United Kingdom amendment.

Brigadier PAGE (United Kingdom) saw no objection to amending the text as suggested.

MR. DE ALBA (Mexico) wondered, on the contrary, whether it would not be preferable to omit any mention of the good offices of neutral States, recourse to which might be impossible in an emergency.

General SCHEPERS (Netherlands) pointed out a further discrepancy between the French and English texts. In sub-paragraph (b), the English words "as for example" had been rendered as "ainsi que" ("as well as") in the French text.

M. MARESCA (Italy) agreed with the United Kingdom amendment. It seemed to him desirable, however, that the "productive work" referred to should be clearly defined as work "on behalf of the war effort".

MR. CASTRÉN (Finland) said that he agreed with the suggestions made by the Delegate of Monaco.

#### Article 13

Msgr. BERTOLI (Holy See) proposed that a reference to religious assistance should be included in Article 13. While reserving the right to submit

an amendment later on the matter, the Delegation of the Holy See would like to have a clause inserted after the reference to medical personnel, to provide that the Parties to the conflict were to permit Ministers of Religion to give spiritual aid to those of their coreligionists who might ask for it.

Mr. MARESCA (Italy) supported the foregoing proposal. In the second paragraph of Article 13, he proposed that the words "As far as military considerations allow" should be omitted, since it would be disastrous to create the impression that military exigencies might, to some extent, justify pillage. Pillage was in any case forbidden under the Hague Convention.

Mr. MINEUR (Belgium) proposed that the facilities accorded to medical personnel should be extended to special non-military services concerned with the protection of the civilian population. The Belgian Delegation proposed to submit an amendment on the subject.

Mr. MEVORAH (Bulgaria), supported by Mr. DE ALBA (Mexico), proposed that the words "so far as possible" in the first paragraph and "As far as military considerations allow" in the second paragraph, be omitted.

Brigadier PAGE (United Kingdom) supported the amendment of the Holy See. Indeed, he felt that the point should be covered in a separate Article. He also agreed with the proposal of the Italian Delegate regarding the drafting of the second paragraph. A great deal had been said about the difficulty of laying down, in a Convention, obligations which States must assume towards their own nationals, and he did not propose to deal again with that point. It seemed to him, however, that the subject matter of the first paragraph of Article 13 would be more appropriately placed in Part III, of the Convention, e.g. in Article 50. The United Kingdom Delegation proposed to submit an amendment (*see Annexes No. 208 and No. 209*) on the point.

Msgr. BERTOLI (Holy See) thanked the Delegate of the United Kingdom for the support the latter had given to his proposal. The reason why he had not himself suggested that the question should be dealt with in a separate Article was merely that he had followed the usual practice in humanitarian conventions, where questions of health, medical services and religious and moral assistance always came under the same heading.

Mr. CLATTENBURG (United States of America) warned the Committee against the omission of

words which might be of importance. Although States undoubtedly had a moral duty towards their own populations, they should not commit themselves to obligations which they might be unable to fulfil.

Colonel HODGSON (Australia) supported the remarks of the United States Delegate, and hoped that the phrases "so far as possible" and "as far as military considerations allow" would be maintained. In naval warfare, in particular, situations might arise in which the application of the provisions of Article 13 would be impossible. As regards spiritual care, he did not feel that that should constitute an obligation.

Mr. DE GEOUFFRE DE LA PRADELLE (Monaco) agreed with the views of the Delegate of Bulgaria. With regard to the observations of the Delegate of Australia about the special conditions of maritime warfare, it was for Committee I to study these conditions during the discussion of the draft Maritime Warfare Convention. It would be inappropriate to take them into account when drafting the Civilians Convention, which was mainly concerned with land warfare.

Mr. BAMBATE (Afghanistan) had understood that the suggestion of the Holy See concerning spiritual aid did not in any way constitute an obligation. The term "permit" used by Msgr. Bertoli was sufficiently clear on that point.

Msgr. BERTOLI (Holy See) confirmed the Delegate of Afghanistan's interpretation of the amendment in question.

#### Article 14

Mr. MINEUR (Belgium) proposed that the words "medical personnel and equipment" at the end of Article 14 should be replaced by "relief personnel and supplies".

Mr. WERSHOF (Canada) raised a point of procedure. He felt that the general discussion was losing itself in details and suggested a speedier method of work.

After an exchange of views on the subject, in which Mr. CID PROENÇA (Portugal), Mr. WU (China), Colonel HODGSON (Australia), Colonel DU PASQUIER (Switzerland) and Mr. STRUTT (United Kingdom) took part, the CHAIRMAN reminded the Committee that the procedure so far followed was that decided upon at the first meeting. In order, however, to facilitate the discussion, and to meet the wishes of several delegations, he would

ask for the Committee's views on the desirability of the immediate appointment of a Drafting Committee to study the various opinions expressed and amendments submitted.

It was unanimously decided to appoint a Drafting Committee.

Replying to a suggestion made by the Delegate of Australia and supported by the United Kingdom Delegate, that a number of *ad hoc* Sub-Committees should be set up to consider certain questions, the CHAIRMAN said that in his view there should only be the one Drafting Committee. The Drafting Committee would, however, have every opportunity of hearing the authors of the various amendments and of asking them to explain their points of view.

The Committee further decided that the Drafting Committee would consist of seven members, viz. the two Rapporteurs and five delegates; the list of members would be drawn up by the Bureau and submitted to the Committee at its next meeting. Mr. Pilloud (International Committee of the Red Cross) was also invited to assist the Drafting Committee in the capacity of expert.

#### Article 15

Mr. STRUTT (United Kingdom) agreed with the principle underlying Article 15. He did not, however, think that the provision at the end of the second paragraph could be applied, since civilian hospitals would, for instance, necessarily be in the proximity of large industrial centres. He suggested that such hospitals should be subject to inspection by representatives of the protecting Power.

#### Article 16

Mr. CLATTENBURG (United States of America) agreed with the substance of the Article. The amendment to it proposed by the Delegation of the United States of America suggested a definition of the term "harmful acts". The proposed amendment was worded as follows:

"The protection to which civilian hospitals are entitled cannot lapse unless they are used for purposes incompatible with their humanitarian functions, and then only after due warning which is unheeded. In any case a sufficient period shall be allowed for the removal of the wounded and sick.

"The fact that sick or wounded members of the armed forces are nursed in these hospitals, and the presence of portable arms and ammu-

nition taken from such combatants and which have not yet been handed to the proper service, shall not be considered to justify termination of protection."

#### Article 17

Mr. SEVERINI (Italy) proposed that the third paragraph should read as follows:

"The material and stores of civilian hospitals cannot be requisitioned and diverted from their normal use".

Brigadier PAGE (United Kingdom) supported the Italian amendment. He maintained, however, that the Article rightly belonged to the section of the Convention dealing with occupied territories (Part III, Section III).

#### Article 18

Mr. WERSHOF (Canada), referring to Articles 19 and 19A<sup>(1)</sup> as well as to Article 18, said that he felt that if the Red Cross emblem was to retain its full significance, its use must be restricted to the minimum. It was unnecessary for hospitals in territories far removed from the fighting zone to be distinguished by means of that emblem. He also thought that it should not be obligatory upon States to mark all hospitals and medical transports with the Red Cross emblem or to ensure that it was worn by all medical personnel. It should be for each State to decide to what extent such action was necessary within its own territory.

Mr. DAHL (Denmark) thought that the use of the Red Cross emblem should be extended to civilian personnel engaged on humanitarian work, as well as to representatives of civilian defence organizations.

Mr. MOROSOV (Union of Soviet Socialist Republics) felt that finger prints on the identity cards of personnel of civilian hospitals were unnecessary.

Mr. PILLOUD (International Committee of the Red Cross) drew attention to the views of the International Committee of the Red Cross on page 72 of "Remarks and Proposals". As had been pointed out by the Delegate of Canada, misuse of the Red Cross emblem must be avoided at any cost.

(1) Article 19 (b) of the text adopted at Stockholm.

Mr. STRUTT (United Kingdom) fully agreed both with the Soviet Delegate and with the Representative of the I.C.R.C.

Mr. NAJAR (Israel) said that his Delegation intended to submit a proposal to Committee I to recognize the Red Shield of David as having the same significance as the emblem of the Red Cross, the Red Crescent or the Red Lion and Sun. The

Red Shield of David had existed in Israel as an aid society for more than twenty years. In the event of the second paragraph of Article 18 being adopted, the Israeli Delegation would propose replacing the reference to Article 19 of the Convention of 1929 by a reference to the relevant Article in the Wounded and Sick Convention of 1949.

*The meeting rose at 6.10 p.m.*

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## SIXTH MEETING

*Monday 2 May 1949, 3 p.m.*

*Chairman:* General Jan Dirks SCHEPERS (Netherlands)

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### **Appointment of the Members of the Drafting Committee**      **Article 19**

The CHAIRMAN reminded the Committee of its decision that the two Rapporteurs should *ex officio* be members of the Drafting Committee and that the Representative of the International Committee of the Red Cross should be invited to act in the capacity of expert. As regards the other five members of the Drafting Committee, he proposed the appointment of a member of the Delegation of the Union of Soviet Socialist Republics, a member of the Delegation of the United States of America, Miss JACOB (France), Mr. CASTBERG (Norway) and Mr. WERSHOF (Canada).

The Chairman's proposal was adopted unopposed.

### **Article 18** (*continued*)

Mr. MINEUR (Belgium) pointed out that the second paragraph of Article 18 referred to the Convention of 1929. Since, however, two Conventions had been drawn up in 1929, it seemed advisable to state explicitly that the Convention referred to was that dealing with the wounded and sick in armies in the field.

Colonel HODGSON (Australia) objected to the adoption of identity cards and to the taking of finger prints. The Australian Government preferred the use of identity discs. Finger prints, he thought, should only be taken where the holder of an identity card or disc was illiterate.

In reply to the CHAIRMAN, Mr. PILLOUD (International Committee of the Red Cross) said there was a serious gap in the Wounded and Sick Convention of 1929 in the matter of hospitals. Its provisions were applicable only to military personnel, no provision having been made for civilian hospitals. The International Committee of the Red Cross itself had proposed that civilian hospitals should be protected by the Red Cross emblem in the case of the buildings but not in the case of the personnel. But the use of the emblem should be limited to hospitals controlled by the State to prevent abuse. In regard to the authority competent to authorize the use of the emblem, the International Committee of the Red Cross had proposed that it should be the authority in each country, under whose control the Red Cross was placed. The Stockholm Conference had, however, recommended that permission to use the Red Cross emblem should be granted by the State and the National Red Cross Society.

Mr. MARESCA (Italy) was in favour of the formula proposed by the International Committee of the Red Cross. As regards the marking of civilian hospitals, the adoption of the Red Cross emblem, known and respected throughout the world, was obviously the best solution.

Mr. Strutt (United Kingdom) agreed with the I.C.R.C. that if the Red Cross emblem was to retain its significance its use should be restricted

as much as possible. He was in favour of the wording of the first paragraph of Article 19 which had been proposed by the International Committee of the Red Cross at the Stockholm Conference.

Colonel HODGSON (Australia) asked a number of questions to which Mr. PILLOUD (International Committee of the Red Cross) replied as follows:

- (1) It was for the domestic legislation of each country to determine what authority should be competent to authorize the use of the Red Cross emblem.
- (2) Under the 1929 texts, military hospitals were not authorized to admit civilians nor were wounded military personnel in a civilian hospital entitled to the protection of the 1929 Convention. That situation should be remedied.
- (3) The marking of hospitals was optional and not obligatory. What was obligatory was respect for the emblem.

Mr. HAKSAR (India) agreed with the remarks of the Representative of the International Committee of the Red Cross.

Mr. STRUTT (United Kingdom) felt that a reference to Article 15 might usefully be included in Article 19 and that it should be made clear that the civilian hospitals referred to were those defined in that Article.

Mr. MARESCA (Italy) thanked the Delegate of Australia for having asked for a clearer definition of the term "responsible authorities".

Mr. NAJAR (Israel) referred to the amendment submitted by the Delegation of Israel concerning the recognition of the Red Shield of David as a protective sign. He stated that as far as the definition of the emblem was concerned Articles 19 and 19B should refer to Article 31 of the Wounded and Sick Convention to be signed in 1949.

The CHAIRMAN, summing up the discussion on Article 19, noted that no objection had been raised to the marking of civilian hospitals. The Drafting Committee would prepare a text taking into account the various detailed suggestions that had been submitted.

#### Article 19A (1)

Mr. PILLOUD (International Committee of the Red Cross) stated that the International Committee

(1) Article 19 (b) of the Stockholm text.

of the Red Cross, on page 72 of its "Remarks and Proposals", had advocated the omission of Article 19B on the ground that its application might entail a risk of misuse and so diminish the protective value of the Red Cross emblem.

Mr. MINEUR (Belgium) proposed that, if the Article was retained, the words "infirm and maternity cases" should be added at the end of the second paragraph.

Mr. STRUTT (United Kingdom) quoted the following passage from the observations of the International Committee of the Red Cross on Article 19A. "Hitherto, the use of the emblem has been confined to a clearly defined category of persons who are subject to military discipline. Even in these circumstances, the prevention of misuse had met with no small difficulties. If, therefore, the use of the emblem is extended to ill-defined categories of civilians, scattered over the country, who are not subject to discipline, proper registration or strict supervision, the combating of abuse would become impracticable, and the consequences would be borne by those who are legally entitled to the protection of the emblem."

Those were the considerations on which the International Committee of the Red Cross had based its proposal to omit Article 19A. He felt, however, that the transports referred to in that Article should enjoy the same protection as the hospitals, provided they were recognized by the State, were used exclusively for the transport of wounded, sick or infirm civilians and maternity cases, and were subject, when necessary, to inspection by the Protecting Power. Moreover, the second paragraph of Article 19A, which was similar to Article 28 of the Wounded and Sick Convention, would, in his opinion, be more appropriately included in the part of the Convention relating to occupied territories.

Mr. MARESCA (Italy) considered that the first paragraph might be adopted provided the word "transports" was qualified by the word "collective". He thought great caution should be exercised with regard to the second paragraph concerning requisitioning.

Mr. WU (China), supported by Mr. HAKSAR (India), advocated retention of the Article in its present form.

Mr. MOROSOV (Union of Soviet Socialist Republics) was likewise in favour of marking and protecting transport. He observed that the Red Cross emblem was not an end in itself but a means of drawing attention to an object meriting special protection; it should be used for the protection of transport as well as of hospitals.

The CHAIRMAN noted that no delegation had advocated the omission of the Article. It would therefore be for the Drafting Committee to make the text as explicit as possible while bearing in mind the need to reduce to a minimum the possibility of abuse of the emblem of the Red Cross.

### Article 20

Mr. VAN DEN BERG (Netherlands) drew attention to a discrepancy between the English and the French texts of the Convention. The term "matériel sanitaire" did not appear to correspond exactly to "hospital stores". Furthermore, the wording of the first paragraph was of too restricted a scope and did not appear to cover all the supplies necessary for combating epidemics.

Msgr. BERTOLI (Holy See) proposed that in the first paragraph, mention should also be made of the religious material required by ministers of religion in the exercise of their spiritual mission as provided for in the Conventions.

The above proposal was supported by Mr. MARESCA (Italy) and Mr. MINEUR (Belgium).

General OUNG (Burma) endorsed the proposals of the Delegate of the Holy See and suggested that protection should likewise be extended to religious buildings, members of religious orders, as well as to supplies sent to members of religious orders and aged and infirm persons. He also supported the suggestions of the Delegate of the Netherlands.

Msgr. BERTOLI (Holy See) thanked the Delegate of Burma. He hoped that the protection in question would be extended to ministers of all denominations.

Mr. MEVORAH (Bulgaria) was surprised that no delegate had referred to the addition of the word "civilians" in the first paragraph of the text adopted by the Stockholm Conference. It would be interesting to know the reasons underlying the Conference's decision to limit the facilities in question to civilians. The distinction between civilian and military personnel was very difficult to establish. Large numbers of women had, for instance, been associated with the war effort. The free passage of medicaments should, therefore, be safeguarded, whether they were intended for civilian or military personnel.

Mr. STRUTT (United Kingdom) was of the opinion that Article 20 required the most careful con-

sideration. Everyone was aware of the extent to which the United Kingdom depended on sea transport for the needs of its population. All questions concerning blockade and counter-blockade were of special interest to the United Kingdom. The United Kingdom Delegation did not question the principle underlying the Article; it wished, however, to draw attention to the difficulty of applying it. How would supervision by the Protecting Powers be organized? How could one know whether beneficiaries were performing any work of a military character or not? How would it be possible to make sure that certain States would not reduce the food rations of those in receipt of food parcels for the benefit of their own war effort?

Mr. CLATTENBURG (United States of America) noted that the principle underlying Article 20 gave rise to no objections. The United States Delegation whole-heartedly supported it. His people had gladly assisted the peoples of Europe during the last two wars, giving away some of their own food supplies which had grown scarce even in America, and going short themselves. It was, therefore, all the more necessary to exercise the greatest care in regard to the destination of such supplies in order to avoid the abuses to which the Delegate of the United Kingdom had referred. The United States Delegation had proposed an amendment (*see Annex No. 221*) in that connection, the object of which was to ensure the application of the above principle.

In regard to the question of the supply of medicaments to military personnel, he pointed out that the position of military personnel was dealt with in the Wounded and Sick Convention.

Colonel DU PASQUIER (Switzerland), repeating the remarks submitted by Mr. Bolla (Switzerland) in the Joint Committee, reminded the Committee that Switzerland had had considerable experience as a Protecting Power. Having already on several occasions been responsible for control over the distribution of material and food supplies, Switzerland was well aware of the difficulties involved in such operations. While not wishing to shirk their humanitarian task, those who had assumed it in the past considered that care should be taken not to go beyond what was practically possible.

Mr. HAKSAR (India) asked for further information on certain points raised by Article 20. In particular he desired an exact definition of the term "civilians". Further, he did not quite see what steps could be taken to make certain that the persons benefiting, to whom the second paragraph referred, did not perform any work of a military character.

Mr. MINEUR (Belgium) asked the Expert of the International Committee of the Red Cross how the last paragraph of Article 20 was to be interpreted. What State should authorize the passage of supplies?

Mr. PILLOUD (International Committee of the Red Cross) replied that it was the State enforcing the blockade that was meant. In reply to the Indian Delegate's question regarding the term "civilians", he said that it was necessary to remember that according to Article 11, the provisions of Part II covered "the whole of the population of the countries in conflict".

#### Article 21

Mr. WU (China) wondered whether it would not be advisable to standardize in the various Articles the categories of persons to be protected.

Mr. CLATTENBURG (United States of America) observed that Article 21 specially concerned children. The Stockholm Conference had laid down that adults were not to benefit by measures reserved for children.

General FARUKI (Pakistan) thought that Articles 12 to 20 should be made more coherent. He proposed the appointment of an *ad hoc* committee for the purpose. It was important to obviate any confusion regarding the categories of persons to be protected, the various methods to be applied, etc.

On the proposal of the CHAIRMAN, the Committee decided to defer consideration of the question raised by the Delegate of Pakistan until its next meeting.

*The meeting rose at 6.10 p.m.*

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### SEVENTH MEETING

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

*Chairman:* Mr. NISSIM MEVORAH (Bulgaria)

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#### **Proposal for the appointment of an *ad hoc* Committee to study Articles 12 to 20**

The CHAIRMAN asked the Delegate of Pakistan to give further particulars regarding his proposal, made at the previous meeting, to set up an *ad hoc* Committee.

General FARUKI (Pakistan) explained that his proposal referred to the drafting of Articles 12 to 20. The persons benefiting under those provisions were different in the different Articles. Would it not be advisable to standardize the list of beneficiaries? Were not more precise details necessary concerning the free passage of medical and other supplies for civilians? He had proposed the appointment of an *ad hoc* Committee to study these various questions, so that a clear text could eventually be submitted to the Committee.

The CHAIRMAN thought that the work of the Committee it was proposed to set up might overlap with that of the Drafting Committee. He

felt that the wishes of the Delegate of Pakistan would be met if he suggested that the question should be referred directly to the Drafting Committee for consideration.

General FARUKI (Pakistan) agreed to the Chairman's proposal which was adopted without opposition.

#### **Article 20 (continued)**

Mr. MINEUR (Belgium), reverting to the question which he had put to the Representative of the International Committee of the Red Cross at the previous meeting, asked for an explanation regarding the meaning of the last paragraph of Article 20. He wished to know whether the State referred to was indeed the blockading State and not the receiving State.

Mr. PILLOUD (International Committee of the Red Cross) replied that that interpretation cor-

responded to the intentions of the authors of the Article. It would be preferable, however, for the sake of clarity, to say "the Power which permits the passage of such consignment".

Mr. WERSHOF (Canada) confirmed that that was the exact interpretation to be given to the sentence added to the last paragraph on the proposal of the Canadian Delegation at the Stockholm Conference and adopted by the Conference.

On the invitation of the CHAIRMAN, Mr. MINEUR (Belgium) said he was prepared to submit an amendment in accordance with the suggestion made by the Representative of the International Committee of the Red Cross.

Mr. MARESCA (Italy) pointed out that, with a strict interpretation of the text, the condition laid down in the second paragraph, namely that the persons benefited must perform no work of a military character, would apply only to the persons mentioned in the paragraph, namely, to children under fifteen and expectant mothers. That condition therefore appeared to be redundant. It should, he thought, be included instead in the first paragraph, or else omitted altogether.

Colonel DU PASQUIER (Switzerland) wondered whether the condition might not be dropped. He would be glad to know the views of the representatives of the maritime Powers concerned, on that point.

Mr. SPEAKE (United Kingdom) was in favour of omitting the sentence referred to. He said that the main question considered by a blockading Power in relation to the passage of supplies, would be whether those supplies would, or would not, be of ultimate benefit to the war effort of an opposing belligerent.

Mr. BOIDÉ (France) also supported the proposal of the Swiss Delegation.

At the CHAIRMAN'S request, the French and Swiss Delegations undertook to submit a written amendment on the subject.

#### Article 21 (continued)

Brigadier PAGE (United Kingdom) drew attention to a discrepancy between the French and English texts in the third paragraph. The French text referred to children under twelve years and the English text to children under fifteen. In regard to the substance of Article 21, he felt that the provisions in the first paragraph would be better

placed in the part of the Convention dealing with occupied territories. The second paragraph contained no safeguards. Safeguards requiring the consent of parents, or possibly that of the Protecting Power, were needed.

Finally, the substance of the first and third paragraphs appeared to him to be covered by the provisions of Article 46. In regard to identity discs, the use of these might present certain drawbacks, children being liable to lose or exchange them, which would lead to regrettable confusion.

Msgr. BERTOLI (Holy See) supported the United Kingdom Delegate's proposal concerning the second paragraph. It was a question of ensuring respect for the fundamental rights of the family and for the rights of parents over their children.

Mr. CLATTENBURG (United States of America) stated that the United States Delegation, after thinking the matter over, was prepared to agree with the United Kingdom Delegation regarding the drawbacks attaching to the use of identity discs for children. He thought that the measures adopted for identifying children should be left to the initiative of the States concerned.

The CHAIRMAN observed that the reference to identity discs in the third paragraph was intended merely as an illustration. He feared that the wearing of such discs might sometimes, in occupied countries, serve as a means of persecution and thus would have the opposite effect to what was intended. He said, further, that the discrepancy between the French and English texts in the third paragraph, to which the United Kingdom Delegation had drawn attention, was a matter which should be cleared up.

Mr. CLATTENBURG (United States of America) explained that the Stockholm Conference had decided to reduce the age-limit in question from fifteen to twelve years on the proposal of a child welfare organization. After the age of twelve children were able to establish their own identity.

Mr. HAKSAR (India) felt that Article 21 should, in view of its importance, be carefully examined. It was necessary to reach a clear and humane solution. It did not appear to him that the system of identity discs was satisfactory.

Mr. TAUBER (Czechoslovakia) urged the necessity of amending the last paragraph in order to prevent children in occupied territories from being turned into citizens of the occupying Power.

Mr. DE ALBA (Mexico) paid a tribute to the welfare work carried out on behalf of children

by such countries as Switzerland, Sweden and the United States of America. He supported the proposal of the United States Delegation. He was also opposed to the use of identity discs.

General FARUKI (Pakistan) accepted the point of view of the Delegation of India. He felt that Article 46 might with advantage be substituted for Article 21.

Mr. MOROSOV (Union of Soviet Socialist Republics) had not intended to speak on the Article under discussion; but in view of the remarks of the Delegate of Pakistan he felt he must point out that Articles 46 and 21 did not overlap. Article 46 dealt specifically with children in occupied territories, whereas Article 21 was included in Part II of the Convention, which dealt with the protection of civilian populations in general. Without desiring to dwell overlong on the matter of identity discs, he proposed adding the words "or by any other means" to the third paragraph. Subject to that amendment, it seemed to him that Article 21 should be retained as it stood, since it dealt with a question of importance, namely, the means of coping with the dispersion of families in wartime and of enabling parents to trace children from whom they have been separated.

#### Article 22

Miss DE VEGESACK (Sweden) agreed with the principle of the Article, but wished to emphasize the need to provide safeguards, both in regard to the legitimate requirements of the State for its own security and in the interest of the civilians themselves so as not to expose their relatives or themselves to reprisals or other disagreeable consequences.

Mr. STRUTT (United Kingdom) made the following comments:

- (1) Article 22, dealing as it did with the rights of individuals, would be more appropriately placed in Part III, Section I, of the Convention.
- (2) The last sentence of the first paragraph alluded to the rapid despatch of mail. If that implied despatch by air mail, it should be noted that this method might be beyond the possibilities of belligerents.
- (3) The Stockholm Conference had added, at the end of the second paragraph, the words "in particular with the co-operation of the National Red Cross Societies". That indication was redundant. It was obvious that in time of war all Governments would be in contact with their own national Red Cross Society. The phrase in question should therefore be deleted.

The CHAIRMAN asked the Drafting Committee to get into touch with the Drafting Committees of the other Committees, so that the different wordings could be co-ordinated.

#### Article 23

Mr. SPEAKE (United Kingdom) said that his Delegation was submitting an amendment proposing that the following provision be added to Article 23: "provided they are acceptable to the Power concerned and conform to such regulations as it may prescribe to meet the requirements of security". It was essential that organizations responsible for the reunion of dispersed families should be prevented from playing a political role outside their humanitarian functions.

*The meeting rose at 5.30 p.m.*

## EIGHTH MEETING

*Wednesday 4 May 1949, 3 p.m.*

*Chairman:* General Jan Dirks SCHEPERS (Netherlands)

**Telegram of Condolence to Mr. Cahen-Salvador**

The CHAIRMAN proposed that a telegram of condolence be sent to Mr. Cahen-Salvador, Chairman of Committee III, who had lost a near relative.

The proposal was adopted.

**Article 24**

Mr. DAHL (Denmark) made certain reservations regarding Article 24. He referred to the secret instructions issued by the Danish Government during the last war forbidding the evacuation of Jutland. Sometimes cases arose where, in the higher interest of the State, the population must, even in case of danger, forgo their right to benefit by measures taken ostensibly on humanitarian grounds.

Miss DE VEGESACK (Sweden) and Mr. CASTRÉN (Finland) shared the views of the Delegate of Denmark.

Mr. PILLOUD (International Committee of the Red Cross) suggested adding the words "against their will" after the word "detained" in order to safeguard the freedom of action of the persons concerned. He added that, since Article 24 had a more restricted scope than Article 25, it seemed preferable for the latter Article to be placed at the beginning of Section I.

Mr. CLATTENBURG (United States of America), while fully understanding the apprehensions which dictated the Scandinavian Delegations' attitude, nevertheless thought that even in exceptional circumstances the provisions of Article 24 must be complied with, since it embodied a principle on which general agreement had been reached at the Stockholm Conference.

Mr. PASHKOV (Union of Soviet Socialist Republics) believed that the addition of the words "against their will" was not likely to ensure

respect for the liberty of individuals considering the physical and moral pressure which an Occupying Power might exercise. In his opinion it was preferable to retain the Stockholm text as it stood.

Mr. MARESCA (Italy) suggested that a careful analysis of the text was necessary in order to make its meaning clearer. The Article under discussion provided that no protected person could be sent to or detained in a particularly exposed area. The words "be sent to" might stand because it was difficult to imagine an authority so inhuman as to send crowds of people to their death. As for the term "detained", it seemed preferable to qualify it by the words "so far as possible" in order to cover cases where the evacuation of the population was likely to meet with difficulties. The second part of the Article related to an entirely different situation. It was not permissible to use the presence of protected persons to render certain areas immune from military operations. That was an absolute rule to which there could be no exception.

To a question by the CHAIRMAN, Mr. DAHL (Denmark) replied that the object of his proposal was to provide for an exception being made to the provisions of Article 24 when this was justified by measures taken in the general interest.

Colonel HODGSON (Australia) admitted that he did not fully understand the Danish Delegation's proposal. He felt, however, that Article 24 did not take sufficient account of realities. In the last war the bombing of England, and later of Germany, had shown that the entire area of a country might be exposed to danger at any given moment. Actually, all the principles laid down in Article 24 were also contained in Article 25; Article 24 might therefore be omitted.

Colonel DU PASQUIER (Switzerland) agreed with the Delegate of Italy. He also understood to a certain extent the misgivings voiced by the Dele-

gates of the Scandinavian countries. Until the invasion of Belgium in 1940, it had been generally recognized that, when an area was threatened by invasion, the civilian population should be evacuated; but the exodus of the population in Belgium and France at the beginning of the last war had not only endangered the fleeing people themselves, but had also interfered with military operations. It was acknowledged today that in the interest of the civilians, as well as of the military operations, civilians must be made to stay where they were. Such were no doubt the reasons for the Scandinavian Delegations' misgivings. He proposed a wording to the effect that no person could be detained in a specially exposed area "save in the case of collective measures necessary in the interests of the civilian population or of the State".

Mr. ABUT (Turkey) thought some provision similar to that in the fourth paragraph of Article 9 of the 1929 Prisoners of War Convention would be desirable.

Mr. CLATTENBURG (United States of America) observed that the principle to be defended was that the civilian population must not be deliberately exposed to attack. Discussion had centred on two interpretations of the word "detained". It should not be difficult, however, to find an adequate wording to safeguard the principle.

Mr. CASTBERG (Norway) thought it essential to maintain Article 24, if necessary with a different wording. It was not only applicable to the cases mentioned in the heading of Section I (Territories of the Parties to the Conflict and Occupied Territories), but also to the case of invasion.

Mr. SZABO (Hungary) was of opinion that Article 24 should be maintained as it stood in order to prevent a recurrence of certain distressing situations that had arisen during the last war.

General FARUKI (Pakistan) was likewise in favour of maintaining Article 24.

Mr. MARESCA (Italy) suggested that the point made by the Delegate of Norway could be met by modifying Article 3 of the Convention, and adding after the words "in the case of a conflict or occupation" in the first sentence of the first paragraph, the words "or of invasion".

The CHAIRMAN summed up the discussion. Only one proposal touching the substance of the question had been submitted, namely, that of the Delegate of Australia who suggested omitting Article 24. A decision on that proposal would be taken on the second reading. The other observa-

tions concerned points of drafting, which would be referred to the Drafting Committee. He considered it dangerous, however, to tamper with the general Articles at the beginning of the Convention because of their relation to the special provisions that followed. In his opinion it was preferable to redraft the latter provisions as and when they occurred rather than amend general Articles and so run the risk of unexpected repercussions affecting the whole tenor of the Convention.

#### Article 25

Mr. CASHMAN (Ireland) agreed with the provisions of Article 25. He suggested inserting the words "and their religious beliefs" after the word "honour".

Mr. BMMATE (Afghanistan) warmly supported the foregoing proposal. He did not think the expression "similar criteria" at the end of the Article was particularly well chosen. The word "criteria" suggested conceptions that made it possible by analogy to bring various situations under a recognized legal principle. Strictly speaking there was no analogy between the categories enumerated in the second paragraph of Article 25, and consequently there were no criteria. In order to preserve the value, as examples, of the terms of the enumeration, it would be well to insert the words "in particular" before the words "race, religious belief..." and to delete the words "similar criteria" and "any other". On the other hand two conceptions omitted in the Article should be incorporated. The first was that of nationality, the omission of which had been noted in the Canadian amendment to the Article in question (*see Annex No. 228*). The second was the recommendation of the United Kingdom Delegation, contained in its Memorandum, that equitable discrimination should not be made impossible by too rigid a wording. (*See Annex No. 401*).

Mr. CLATTENBURG (United States of America) stated that his Delegation had also submitted an amendment. It had a twofold purpose:

- 1) To replace the words "all protected persons shall be treated alike" in the second paragraph by "all protected persons shall be treated humanely".
- 2) To add a third paragraph providing that protected persons might be made subject to such measures of control and security as might be in force, or as might come into force, with respect to them as a result of the war.

Article 35 of Section II, Chapter III, might be interpreted to mean that protected persons might

be exempt from security measures other than those expressly promulgated at the beginning of a war. It would be disastrous if such a restriction could be imposed on the freedom of war legislation provided always that such legislation was humane.

Mr. DE ALBA (Mexico) drew attention to the Universal Declaration of the Rights of Man recently adopted by the United Nations Assembly in Paris. Article 25 was entirely in keeping with that Declaration, since the latter enjoined respect for human dignity and non-discrimination for racial, religious and other reasons. He proposed, however, to add the word "nationality" in the enumeration of factors in the second paragraph, after the words "political opinions". The proposal of the Delegate of Ireland to refer to religious beliefs in the first paragraph would seem to be met by the second paragraph which provided for non-discrimination for religious reasons.

Mr. MEULBLOK (Netherlands) pointed out the connection between Article 25 and Article 12 of the draft Prisoners of War Convention which stated that prisoners might not be subjected to "physical mutilation or scientific or medical experiments of whatever nature". A similar provision should be inserted for the protection of civilians and should be added as a third paragraph to Article 25.

Msrgr. BERTOLI (Holy See) supported the proposal of the Delegate of Ireland. He, too, felt that a clear unambiguous reference to religious beliefs should be inserted in the first paragraph of Article 25. Such a reference seemed particularly expedient as experiences of the last war had shown that the moral obligation in question had not always been respected by Governments.

*The meeting rose at 5.15 p.m.*

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## NINTH MEETING

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

*Chairman:* Mr. NISSIM MEVORAH (Bulgaria)

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### Article 25 (*continued*)

Miss JACOB (France) supported the proposal of the Delegate of Afghanistan to replace the words "any similar criteria" in the second paragraph by "in particular". She suggested that the text of the Article should be referred to the Drafting Committee for study, as the words "similar criteria" were also contained in Article 14 of the draft Prisoners of War Convention.

Mr. PILLOUD (International Committee of the Red Cross), referring to observations submitted at the previous meeting, explained that the word "nationality" had been omitted in Article 25 because internment or measures restricting personal liberty were applied to enemy aliens precisely on grounds of nationality.

Mr. MARESCA (Italy) agreed with the representative of the I.C.R.C. He referred to certain bilateral treaties, such as the treaties relating to the exchange of civil status documents, concluded

before the outbreak of hostilities, which continued in force in spite of the state of war. It would not be fair to deprive the persons to whom they applied of the benefit of those treaties by introducing the term nationality among the criteria on which discrimination must not be based.

General SCHEPERS (Netherlands), on the contrary, felt that the word "nationality" should be inserted, because there might be various categories of persons of enemy nationality.

Mr. HART (United Kingdom) supported the proposal of the Delegate of Ireland, the purpose of which was to ensure respect for religious beliefs. His Delegation also agreed with the suggestion of the Delegate of Afghanistan that the Article should prohibit all unfair discrimination.

Mr. HAKSAR (India) hoped that the Drafting Committee would be able to define the exact meaning of the notion "equitable discrimination".

Mr. CASTBERG (Norway) said that the views expressed by Mr. Maresca, Mr. Pilloud and General Schepers should be taken into account. For that purpose, a form of words should be found forbidding all discrimination based on nationality, except in cases covered by the present Convention or other treaties.

Article 25 was referred to the Drafting Committee.

### Article 26

Mr. DAY (United Kingdom) stated that his Delegation would submit an amendment to make it clear that—in so far as the Article referred to occupied territories—the responsibility of the Occupying Power should be limited to the acts of members of its armed forces or administration. The amendment would also suggest the transfer of Article 26, as at present drafted, to Part III, Section II, where it would apply to aliens in the territory of a belligerent. The Article, amended to read as follows: “The Party to the conflict in whose hands protected persons may be is responsible for the treatment granted to them by the members of its forces or administration irrespective of any individual responsibility ...”, should be transferred to Section III of Part III. If Article 26 remained unchanged and was intended to cover all treatment afforded to protected persons, the Occupying Power would be held responsible, for instance, for decisions of the local courts. Consequently, it might be obliged to interfere in all the details of local administration.

Mr. MARESCA (Italy) observed that Conventions involved the responsibility of the State and not that of individuals. Individual liability should not be confused with the responsibility of the State. Individuals obeyed orders and were executive agents. He referred to the principle embodied in the Hague Conventions, namely that of “objective responsibility”. Any breach of the provisions of the Convention committed by one of its executive agents, involved the responsibility of the State.

Colonel HODGSON (Australia) agreed with the views of the United Kingdom Delegation concerning the transfer of the Article. He noted a minor drafting point: the words “law officers” seemed redundant, since law officers were officials and that category of agents of the State was already mentioned. He would prefer the sentence to read: “officials, security officers and members of the armed or police forces”. Referring to the remarks of the Italian Delegate, he maintained

that individuals must be held responsible for their actions irrespective of orders received from the State. There was a dual responsibility for all inhumane acts.

Mr. MINEUR (Belgium) could not agree that all “law officers” could be regarded as belonging to the category of officials. In Belgium certain judges and counsellors to the Court formed an absolutely independent body and could in no sense be described as officials.

Mr. MARESCA (Italy) agreed that it was necessary to provide, to a certain extent, for individual responsibility. That was a step forward in international law; but was not the point sufficiently covered in Article 130? Generally speaking it was the responsibility of the State that must be insisted upon.

The CHAIRMAN noted that the discussion was taking an academic turn; but the exchange of views initiated by the representative of Italy touched upon important problems of internal and international criminal law which deserved careful consideration.

Mr. MOROSOV (Union of Soviet Socialist Republics) said that he had not fully understood the proposals of the Delegates of the United Kingdom and Australia, supported, on certain points, by the Italian Delegation. Article 26, as adopted at Stockholm, seemed to him quite clear and fair. The responsibility of a State under a convention or treaty should not be confused with individual acts of its agents. Article 130, to which the Delegate of Italy had referred, did not make the provisions of Article 26 redundant. He could not, however, agree to the inclusion of Article 26 in Section II. He shared the views of the Delegate of Belgium concerning the words “officials” and “law officers”. In conclusion, he felt that the essential meaning of Article 26 was that a State should be held wholly responsible for the maintenance of order in the territory under its control, irrespective of acts that might be committed by its agents.

Mr. CASTRÉN (Finland) considered that the Occupying Power could only be held responsible if it failed to take the necessary measures for the maintenance of order in the region occupied, or failed to punish criminals. Where the local authorities were not wholly dependent on the Occupying Power, the latter’s responsibility must be limited.

Mr. MINEUR (Belgium) reverted to the meaning of the term “official” in some countries. In the narrow sense an official was an agent of superior standing. In the wider sense, he was any civil

servant. Would it not be wise to specify whether the word "official" was to be understood in its narrower or wider sense?

Mr. CLATTENBURG (United States of America) pointed out that there was a difference in meaning between the French word "magistrat" and the English term "law officer". In the United States magistrates and law officers were two different categories of officials.

Mr. HAKSAR (India) said that, if he had understood his fellow-delegate correctly, the two amendments proposed by the United Kingdom concerned both enemy aliens within the territory of the party to the conflict and enemy aliens or protected persons in occupied territory. Thus interpreted, the United Kingdom amendments would limit the responsibility of the armed forces and administration of the Occupying Power. If the amendments were adopted, the Occupying Power might set up a puppet regime in order to escape its responsibilities. If that was to be the result of the proposed provisions, it would be wiser not to adopt them.

The CHAIRMAN felt that the real significance of the discussion would be clear to the Drafting Committee. The two responsibilities, that of the State, on the one hand, and that of the individual, on the other, must be clearly defined.

#### Article 27

Mr. DE ALBA (Mexico) wondered why the age-limit of children whose mothers were entitled to preferential treatment under the Convention had not been fixed at fifteen. Were there any arguments in favour of limiting the benefits of protection to mothers of children under seven? If no guarantee could be given that all children would be evacuated to safety zones, the mothers of children between the ages of seven and fourteen should also enjoy preferential treatment.

Mr. DUPONT-WILLEMEN (Guatemala) supported the views of the Delegate of Mexico. He asked the representative of the International Committee of the Red Cross to explain why the third paragraph referred to children under seven, while the second paragraph mentioned children under fifteen. He suggested, further, that mothers of abnormal

or crippled children of all ages should enjoy the special protection provided for.

Mr. TAUBER (Czechoslovakia) agreed with the Delegates of Mexico and Guatemala. He drew attention to the wording of the second paragraph of Article 27, which he suggested should be completed by the addition of the words "in accordance with Articles 20 and 21".

Mr. PILLOUD (International Committee of the Red Cross) replied that certain limits were necessary if protection was to be effective. The age of seven had been chosen on the advice of the child welfare organizations who had pointed out that up to that age a mother's care was essential to children. He also hoped that the following alternative text for the first paragraph, suggested by the International Council of Women and the International Abolitionist Federation, would be adopted. It read as follows: "Women shall be specially protected against any attacks on their honour, in particular against rape, enforced prostitution and any form of indecent assault".

Brigadier PAGE (United Kingdom) supported the suggestion of the I.C.R.C. regarding the new wording of the first paragraph of Article 27. The second and third paragraphs should, he thought, be drafted in more precise terms. Was it intended that mothers and children enjoying special protection should be entitled to better rations or better treatment than the women and children of the belligerent country itself? Could a Power occupying a thinly populated territory ensure that children would receive preferential treatment in all circumstances? He considered that the two paragraphs should be amended, and the first paragraph inserted in Section II of Part III, relating to aliens in the territory of a Party to the conflict, and the second in Section III of Part III, dealing with populations in occupied territories. His Delegation considered that alien mothers and children in belligerent territory should be given the benefit of the normal preferential treatment accorded in time of war to mothers and children generally. With regard to occupied territory, it was for the Occupying Power to see that the measures for maternal and child welfare in force before the war were maintained.

Two amendments (*see Annex No. 230*) would be submitted on the matter.

*The meeting rose at 5.15 p.m.*

## TENTH MEETING

*Friday 6 May 1949, 3.30 p.m.*

*Chairman:* General Jan Dirks SCHEPERS (Netherlands)

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**Article 27** *(continued)*

Mr. WERSHOF (Canada) believed that the proposal of certain delegates to replace the words "children under seven" in the third paragraph by "children under fifteen" would not improve the text. The Article had been criticized on the ground that it might be interpreted as granting better treatment to alien children in the territory of a belligerent than that accorded to the children of the belligerent's own nationals. Generally speaking, if a preferential regime was to be established and its preferential character was to be maintained, the number of beneficiaries should be restricted rather than increased.

General FARUKI (Pakistan) suggested that the definition of "protected persons" should be standardized.

Mr. HAKSAR (India) was in favour of the wording of the first paragraph as proposed by the International Council of Women and the International Abolitionist Federation and advocated by the International Committee of the Red Cross. He further drew attention to the third paragraph's arbitrary character. Finally, in his opinion, the standard of treatment to be given to the category of persons to whom Article 27 related should not be better in the national territory than the treatment given to the nationals of the country, while in occupied territory it should be no worse than the standard prevailing in the occupied country prior to the occupation.

Mr. MINEUR (Belgium) felt it should be specifically laid down that the treatment accorded to the persons to whom Article 27 related should in no circumstances be better than that given to the country's own population.

Mr. MARESCA (Italy) queried whether the word "preferential", which had a specific meaning in international law, had not better be replaced by

the word "special". He further suggested that in view of the extreme gravity of offences against the honour and dignity of women, a specific reference should be made to the responsibility of the Commander of the armed forces, as in the similar provisions in Article 51 of the Hague Convention.

**Article 28**

Mr. QUENTIN-BAXTER (New Zealand) feared that the International Committee of the Red Cross and the Protecting Powers would be inundated with appeals. He would be glad to hear the views of countries with long experience as Protecting Powers, and also the views of the representative of the I.C.R.C.

Mr. LOKER (Israel) said that he had submitted an amendment to the third paragraph to replace the words "may allow" by "shall facilitate so far as possible", which seemed to him stronger. Furthermore, he considered that the aid given by bodies other than the I.C.R.C. should be subject to the condition that the members of such bodies should be qualified and possess the necessary experience for the visits provided for under the Article.

Mr. MINEUR (Belgium) called attention to an ambiguity in the wording of the last paragraph: the word "they" might lead to misunderstanding.

Mr. PILLOUD (International Committee of the Red Cross), replying to the Delegate of New Zealand, said that what was to be feared was not so much the increased work, which the International Committee of the Red Cross, for its part, was prepared to shoulder, but rather that protected persons might be prevented from appealing to those who might be able to assist them.

Mr. WERSHOF (Canada) reminded the meeting of the various amendments to Article 3 submitted with the object of excluding spies and traitors

from the benefits provided by that Article. If those amendments were adopted, it would be necessary to add a clause to Article 28 to the effect that the rights conferred by the Article might be suspended for reasons of military security in the case of a protected person who had been detained as a spy, saboteur or enemy agent.

Mr. CASTBERG (Norway) concurred with the Delegate of Canada on the question of principle. It was obvious that a spy arrested on the territory of a belligerent or in occupied territory must be prosecuted. Nevertheless, it would not be right to submit him to inhumane treatment, to torture, and so forth. Moreover, it should be possible even for spies to communicate with the Protecting Power and the International Committee of the Red Cross.

Miss JACOB (France) pointed out that the words: "within the bounds set by military considerations" at the end of the second paragraph would seem to meet the point made by the Delegate of Canada in regard to spies and traitors.

#### Article 29 and new Article 29A

Mr. MOROSOV (Union of Soviet Socialist Republics) was strongly in favour of those provisions of Article 29 which were intended to prevent illegal and arbitrary measures of a police or similar nature being taken against innocent populations. Humanity should be protected against such abominable crimes. The acts committed during the last war would remain one of the darkest chapters in human history; over twelve million civilians had been exterminated in Europe and several millions in the Far East. The provisions of the Convention must take account of the lessons of the last war in order to render any repetition of such crimes impossible. The text as at present drafted seemed inadequate. That was why the Soviet Delegation had submitted an amendment proposing the introduction of a new Article 29 A worded as follows:

"The contracting States undertake to consider as a serious crime, murder, torture and maltreatment causing death, including medical experiments, as also all other means of exterminating the civilian population."

If that text was adopted, the following sentence at the end of Article 29 should be deleted: "Torture and corporal punishments are prohibited".

The above amendment partly covered that submitted by the Delegation of Denmark which read as follows:

"Protected persons may not be subjected to physical mutilation or to medical or scientific experiments of any kind, save in the case of a medical experiment made in the interest of the protected person himself during the course of his medical treatment."

Mr. CLATTENBURG (United States of America) agreed with the humanitarian principle underlying the Soviet Union's proposal. He could not, however, agree to the wording chosen to embody that principle in the Convention. His Delegation was of the opinion that draft Article 29A, in the form in which it had been submitted, dealt with war crimes, a subject that was being studied by the Joint Committee; it should therefore be referred to that Committee. Incidentally, the subject of the amendment was similar in some respects to the Genocide Convention actually under consideration by the Assembly of the United Nations. In the English text of the Soviet proposal, the words "torture and maltreatment causing death" could be read as meaning that torture which did not cause death was permitted, a defect all the more regrettable because the Soviet amendment proposed that the words "Torture and corporal punishments are prohibited" in Article 29 should be omitted. He urged, therefore, that Article 29 should be retained as it stood.

The CHAIRMAN having pointed out that the words "causing death" did not appear in the French text of the proposed amendment, Mr. MOROSOV (Union of Soviet Socialist Republics) explained that the French was the original text of the amendment.

Mr. CLATTENBURG (United States of America) withdrew the last part of his observations, which had been based on an error in translation.

Mr. WERSHOF (Canada) supported the statement of the Delegate of the United States of America.

Mr. MOROSOV (Union of Soviet Socialist Republics) maintained that the amendment proposed by his Delegation should be considered by Committee III and not referred to the Joint Committee. If certain delegations felt that the amendment should be rejected, they could say so, giving their reasons; but he, for one, did not feel that a full discussion of a text so vital for the protection of the civilian population could be refused on grounds of procedure. In his opinion, the author of an amendment was alone competent to decide to which Committee it should be referred. He did not agree that his amendment was covered by the Genocide Convention.

Mr. TAUBER (Czechoslovakia) considered that Article 29 should be fully discussed in Committee III. He warmly supported the proposal of the Soviet Union. He hoped that the text as approved at Stockholm would be amended in the sense proposed by the Soviet and Danish Delegations.

Mr. CASTBERG (Norway) pointed out that the Soviet proposal could be read in two ways. If it was interpreted as a proposal imposing definite obligations on the contracting parties to prosecute persons guilty of such acts, then Article 29 A could legitimately be regarded as an Article dealing with legal sanctions, common to the four Conventions, and, consequently, within the terms of reference of the Joint Committee. If, on the other hand, the proposed amendment was considered as laying down very definite prohibitions regarding torture, maltreatment and so on, then it might rightly be considered as coming within the terms of reference of the present Committee. His Delegation agreed as to the advisability of giving a wider scope to Article 29 in the sense proposed by the Delegations of Denmark and of the Soviet Union.

Mr. CLATTENBURG (United States of America) referring to the observations of several of the previous speakers, regretted that his statement regarding the agreement of the Delegation of the United States of America with the humanitarian principles embodied in the new draft Article had not been fully understood. He added that his Delegation, although it had not yet studied the Danish proposal, would gladly support it or any other proposal with the same object, provided it contained a prohibition of illegal and immoral acts and not a definition of the crimes or of the legal

sanctions entailed by a breach of the Convention. The latter question would be better dealt with in the final part of the Convention.

Mrs. MANOLE (Rumania) supported the amendment of the Soviet Delegation. Referring to the sufferings endured by her fellow countrymen, she urged the acceptance of the wider scope given to the Article in that amendment.

Mr. WU (China) observed that the two paragraphs of Article 29 had very different implications, and it was therefore desirable for the second paragraph to form a separate Article. Referring to the extortions suffered by the Chinese population during the last war, he hoped that the more comprehensive wording proposed by the Soviet Delegation would be adopted, with the omission however of the word "murder".

Colonel HODGSON (Australia) said he was certain that no Delegation wished to avoid discussion on the substance of the Soviet amendment. It should be noted, however, that the amendment seemed to be a moral declaration rather than a prohibition and might, therefore, overlap with the Preamble. Acceptance of the amendment as submitted would mean that the words "Torture and corporal punishments are prohibited" would be omitted and would not be replaced by any prohibition properly so called. The expression "undertake to consider as a serious crime" could hardly be interpreted as a formal prohibition. Nevertheless, the Australian Delegation was prepared to consider the proposed amendment, regarding it as a list of prohibited atrocities.

*The meeting rose at 6 p.m.*

## ELEVENTH MEETING

*Monday 9 May 1949, 3 p.m.*

*Chairman: Mr. Georges CAHEN-SALVADOR (France)*

### Articles 29 and 29A (continued)

The SECRETARY informed the meeting that the Delegation of the Union of Soviet Socialist Republics wished to modify the amendment they had submitted, as follows:

First line: replace "consider" by "qualify".  
Second line: replace "lourd crime" by "grave crime". (No change in the English text.)

Mr. DE ALBA (Mexico) supported the Soviet amendment. Many crimes had been committed

during the last war in the name of science. Science itself should be humanized, and the Conference would fail in its task if it did not achieve that end.

Mr. BARAN (Ukrainian Soviet Socialist Republic) believed that Article 29, as adopted at the Stockholm Conference, was inadequate. The people of the Ukraine were amongst those who had suffered most during the last war. He heartily welcomed the Soviet amendment.

Mr. MEVORAH (Bulgaria) likewise felt that the text drafted at Stockholm was weak. The second paragraph, for example, did not cover the case of murder, the most serious crime that could be committed. It might be said that murder was a crime under all legislations, and that its prevention and punishment were consequently everywhere assured. But that did not exclude the need for the Convention to be categorical on the point. At the Nuremberg trials the accused and their lawyers had invoked the non-retroactivity of laws as a reason why crimes committed against humanity should not receive the punishment they deserved. Fortunately, that thesis had not been admitted; but it was essential that murder should in future be prohibited under international law. The Danish amendment made useful additions to the Stockholm wording, but was still not adequate for the purpose. In conclusion, his Delegation supported the Soviet Union amendment.

Mr. CLATTENBURG (United States of America) said that it would be dangerous to give way to emotional impulses; crimes could not be outlawed merely by the drawing up of a convention.

The aim of the Conference was to define, as simply as possible, the duties of Governments towards war victims; and the duty of those Governments was to apply in good faith the Convention they had ratified. The use of a vague phraseology might lead to unforeseen interpretations of the Convention. The National Socialists had resorted to torture. It would be regrettable if torture was not specifically prohibited under Article 29.

The Stockholm Conference had unanimously adopted Articles 24, 27, 29, 30 and 31 of the draft Convention, covering particularly outrageous offences against international morality. It was essential that those Articles should be maintained in the spirit in which they had been drafted.

For that purpose, and in the light of the views expressed by the Soviet Union Delegation as to the advisability of giving as wide a scope as possible to Article 29, his Delegation proposed to submit the following amendment:

"The Contracting States specifically agree that each of them is prohibited from taking any measure which has as an object the physical suffering or extermination of protected persons in its power. The prohibition of this Article extends not only to murder, torture, corporal punishment, mutilation, and medical or scientific experiments not related to the necessary medical treatment of a protected person, but also to any other measures of brutality whether applied by civilian or military administrators."

His Delegation thought that the definition of offences and penalties should be included in Part IV of the Convention (Article 130; it was only the enumeration of criminal acts that came under Part III. He formally proposed that, if the Soviet Delegation maintained its desire for the definition in Article 29A of serious offences against the Convention rather than acts which the Convention was intended to prevent, a vote should be taken as to whether the Article in question rightly came under the Chapter under discussion or under Part IV of the Convention.

Mr. BUDO (Albania), unlike the Delegate of China, considered that "murder" must be included in the list of prohibited crimes. He was sorry he was unable to accept the amendment of the United States of America. Further, he preferred the Soviet amendment to that of Denmark, which seemed to him less clear and less comprehensive.

Mr. KUTEINIKOV (Byelorussian Soviet Socialist Republic) likewise supported the Soviet Union amendment. He felt that it expressed in clear and precise terms the hope of the whole world.

Mr. MINEUR (Belgium) paid a tribute to the humanitarian spirit that had inspired the Soviet proposal as well as the suggestions made by the Danish and United States Delegates. He proposed as a compromise that the second paragraph should read as follows:

"Torture, maltreatment, and operations not absolutely necessary in the interests of the protected person, or operations in the nature of scientific or medical experiments, are crimes and shall be considered as such by the Contracting States."

Mr. MOROSOV (Union of Soviet Socialist Republics) opposed the suggestion that a text based on a general principle could not prevent crimes against humanity because of dangerous interpretations to which it might give rise. His Delegation was convinced that the Conference had met, not to sign a scrap of paper, but to sign an

agreement commanding universal respect. They did not believe that a wording like the one they proposed could ever be interpreted as contrary to the humanitarian interests which were the object of the Convention. At a first glance, and so far as his Delegation could judge from a text not yet translated into French, the United States amendment would seem to be very similar to that proposed by the Soviet Union. But a more careful study of the text revealed the fact that it limited considerably the scope of the Convention. The words "in its power" limited the number of persons protected. What would become of the others? To illustrate his point, he recalled how, during the last war, German airmen had machine-gunned women and children in the fields. The amendment of the United States of America excluded such persons from protection. He thought, nevertheless, that certain parts of the United States amendment should be considered by the Drafting Committee.

On the point of procedure, he was surprised at the request for a vote. The Committee had decided to vote only on second readings. The Drafting Committee would, he felt sure, arrive at a text which would meet with unanimous approval. It would be very regrettable if the Committee failed to reach unanimous agreement on the fundamental question of the scope of the Convention.

The CHAIRMAN, before closing the discussion on Article 29, considered it desirable to sum up the results of the discussion.

He observed that all delegations were unanimous in considering that crimes against humanity must be prohibited and punished. It was indeed true that if the Conference failed to achieve that end, its work would be in vain. But there

were various conceptions of this task. The point of view that prevailed at Stockholm was that certain acts must be prohibited and outlawed. Such a prohibition, couched in simple and straightforward terms, seemed the most effective method. The other point of view was that, instead of being content with a mere prohibition without mention of legal sanctions, the acts in question should be declared to be crimes, and consequently should make those guilty of them liable to penalties. The two conceptions seemed to be contradictory; but in actual fact they were complementary.

The efforts of the Belgian Delegation and certain others showed that conciliation was possible. One solution, which might result in an acceptable wording, would be to state the principle simply and emphatically, and—in view of the important practical applications of the principle involved—to continue with the words "in particular" ("et notamment").

In any case, this interesting discussion had shown that the Delegations of the Soviet Union and of the United States of America were both anxious to refer the question to the Drafting Committee. That was an implicit recognition of the fact that there was no contradiction in principle between the two points of view.

He shared the desire of the Soviet Delegation for a unanimous solution. For it was unanimity which would give the Convention its value and executive force. He proposed that Article 29 should be referred to the Drafting Committee for examination in the light of the general discussion.

Agreed.

*The meeting rose at 6.45 p.m.*

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## TWELFTH MEETING

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

*Chairman:* Mr. Georges CAHEN-SALVADOR (France)

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### Article 30

Mr. MARESCA (Italy) welcomed the new principle of international law introduced in Article 30. Article 50 of the Hague Convention, which dealt

with the same subject, did not exclude the possibility of collective sanctions for individual acts for which populations might be considered collectively responsible. That provision embodied a conception of Germanic law. The conception of group

responsibility for individual guilt was entirely alien to Roman law, according to which there was no responsibility where there was no offence.

The embodiment of that conception in the rules of war had led to many abuses in the last war. In Rome, on 24 March 1944, several hundred innocent Italians had been shot because a dozen German soldiers had been attacked the day before.

The new provision in Article 30, prohibiting such acts in the future, was as important as that introduced by Article 47 of the Hague Convention, prohibiting pillage. The rule in question had the same moral force as that contained in the Preamble of the Draft Convention, forbidding torture. For those reasons his Delegation felt that, as in the two texts in question, it was essential to qualify the new principle by an adverb and to say that collective penalties were "strictly prohibited".

Mr. CLATTENBURG (United States of America) observed that the advisability of providing in Article 30 for the protection of private property has been discussed at Stockholm. The proposal had finally been approved by a small majority, which included the United States Delegation, in order to spare civilian populations the sufferings which might result from the destruction of their houses, clothing, foodstuffs and the means of earning their living, as had happened at Oradour and Lidice. There was no question in such cases of Government property. The prohibition having been defined as relating to property in general, the Soviet Delegation had tabled an amendment extending its terms to cover both State property and the property of social and co-operative organizations; but that had not been the intention of the authors of Article 30. His Delegation would prefer that the scope of the Article should not be extended. They were afraid of the consequences which might arise if States were given the right to inflict punishment for the destruction of State property, out of proportion possibly to the seriousness of the case, *e.g.* where a prisoner of war had broken a plate or dug a tunnel in order to escape. Moreover, the notion of State property would also hamper the activities of patriots in a resistance movement, who might have to destroy State property.

Mr. MOROSOV (Union of Soviet Socialist Republics) observed that Article 30 as it stood did not take into account the changes that had supervened in the economic structure of many countries. In some countries State property was the property of the people as a whole. Consequently, the destruction of such property affected not only the interests of the State but also those of individuals. The examples quoted by the United States Delegation were either acts not punishable

except by disciplinary measures or acts of resistance justified by military operations, and, as such, could not be compared with the acts to which Article 30 referred. That Article related only to destruction "not made absolutely necessary by military operations".

In reply to the CHAIRMAN, Mr. PILLOUD (International Committee of the Red Cross) said that Article 30 had not been modified at the Stockholm Conference. What the authors of the Article had desired to prevent was destruction, by way of reprisals, of the property of protected persons as well as all other private and public property. Their object had been to prohibit all destruction not necessitated by military operations. The wording adopted nevertheless permitted retreating forces to apply the "scorched earth" policy. That practice appeared to be compatible with international law, and the German Generals who had applied that policy in Norway were acquitted by the court that tried them.

Of the examples quoted by the United States Delegate, it was clear that the first came under Article III of the Convention and only entailed disciplinary penalties. As for saboteurs and partisans, it was obvious that they were only punishable in so far as they failed to comply with the laws of war.

The point of the Article was to prohibit the needless destruction of property of any kind.

Mr. DE GEOUFFRE DE LA PRADELLE (Monaco) stated that it was very important to take into account all cases which might arise under Article 30. The personal and real property to be protected against any form of useless destruction might consist either of enemy property situated within the national territory of the belligerents, or of property situated in enemy territory. In the latter case, a distinction had to be drawn between the case of property in invaded territory during the course of active military operations, and that of property in occupied territory, where the enemy was acting as the authority responsible for the maintenance of law and order, irrespective of actual hostilities.

As the Convention applied to civilians, it might be inferred that the property referred to in the Article was private property, including that belonging to public corporations. The Delegations of the United States of America and the Union of Soviet Socialist Republics were nevertheless in agreement in believing that that interpretation should be extended in such a way as to protect, not only the property of private persons, but also the property of the State. Whereas, however, the United States considered that such protection should only be extended to cases where the des-

truction of State property would cause direct suffering to private persons, the Soviet Union considered that subsequent suffering, which only became acute after the conclusion of hostilities, must also be taken into account. It was true that there were cases of destruction of State property which caused "untold sorrow" to individuals after the cessation of hostilities (in the words of the Preamble to the United Nations Charter). But in protecting the State, it was actually the individual who should be protected; whence the possibility, which was perfectly justified, of extending the principle of the protection of State property to a degree which, without going as far as was proposed by the Soviet Delegation, certainly exceeded the intentions of the United States Delegation.

The protection of State property was recognized in the Hague Conventions of 1899 and 1907. Article 23 of the Hague Regulations enumerated certain prohibitions, among which sub-paragraph (g) referred to the destruction or seizure of enemy property. The text did not say "the property of enemy nationals". It was legitimate therefore to consider that Article 23 applied not only to private property, but also to the property of public corporations, and therefore to State-owned property. Similarly, Article 55 of the Regulation imposed on the Occupying Power an obligation to regard itself as enjoying the usufruct of property belonging to the occupied State, while Article 53 authorized the seizure of movable property belonging to the State (which by inference precluded its destruction) only in so far as it might be made use of for military operations.

A perusal of the texts he had cited made it possible to frame a proposal intermediate between the United States and Soviet amendments; for there were forms of State property which were of no personal interest to individuals and which it might be useful, from a military point of view, to destroy, particularly during an invasion, for instance, airfields, or transport aircraft owned by a company under State control and situated in enemy territory. In order to take due account of that distinction, a text forming a compromise between the United States and Soviet amendments might be considered. It might possibly be drafted as follows:

"The destruction of real and personal property belonging to private persons, or intended solely for their personal use, is prohibited."

Mr. WERSHOF (Canada) thanked the Delegate of Monaco for his comments, though he could not agree with all his conclusions. It might also be useful to re-read the Tokio Draft which contained the germs of the Civilians Convention. The Tokio Draft, however, was limited to the protection of

enemy aliens in a belligerent country or in occupied territory. It was preferable not to over-extend the scope of the present Convention. While it was possible that the provisions of the Hague Conventions no longer corresponded to situations arising out of the last two wars, the present Conference was not concerned with the revision of the Hague Conventions, nor was it competent to draw up an integral code of the rules of war.

His Delegation could not accept the Soviet Union's proposal to extend protection to the property of persons other than private persons. It proposed to submit an amendment (*see Annex No. 233*) to make it clear that the Article referred exclusively to private property in the territory of a belligerent Power or in occupied territory.

Brigadier PAGE (United Kingdom) said that, since reference had most opportunely been made to Article 47 of the Hague Convention forbidding pillage, he thought Article 30 should be supplemented by a provision prohibiting pillage.

Mr. CLATTENBURG (United States of America) was grateful to the Delegate of Monaco for having reminded the Committee of the provisions of the Hague Convention which dealt with matters similar to those in the Article under consideration. He felt however that great care should be exercised in the matter. Article 135 provided that the Civilians Convention was to replace the Hague Convention "in respect of the matters treated therein"; and care should be taken not to impinge needlessly on existing provisions. As the Delegate of Canada had very properly pointed out, the present Conference had not been convened to revise the laws and customs of war; its purpose was to ensure the protection of war victims. Mr. Pilloud had said that the text of the Article had not been modified at Stockholm. That was true of the French but not of the English text; and it would be untrue to say that Article 30 had been adopted at Stockholm without discussion.

Mr. HAKSAR (India) drew attention to the possibility of conflict between the wording of the first paragraph of Article 30 and Article 55, which provided for the maintenance of penal legislation in force in occupied countries. An exact definition of public and private property was also desirable.

Mr. SZABO (Hungary) believed that all kinds of property should be protected where its destruction was not absolutely necessary for the prosecution of military operations—nationalized property and that of co-operatives as well as any other. He supported the Soviet amendment. In his opinion a reference in the present Convention to the provisions of the Hague Convention was appropriate

and even desirable, if a complete code for the protection of civilian persons was to be drawn up.

Mr. WU (China) pointed out that the last sentence of the second paragraph regarding the general destruction of property bore no important relation to collective penalties or measures of reprisal. To place the offence of destruction of property under the title of reprisal would minimise the crime of wanton destruction and sheer vandalism. He therefore felt that prohibition of destruction of property should either be omitted from the present Convention on the ground that it was already covered by the Hague Convention or be formulated in a separate Article. If the latter course was followed, the Article should be worded in such a way as to ensure the alleviation of the sufferings of war victims.

The Soviet Delegation's amendment was in principle acceptable to him, because it provided for the prohibition of destruction of all categories of property except in the case of military necessity. He suggested, however, that property might be classified into two general categories—public and private. He also preferred the words "movable and immovable" to "personal and real" in the English text.

Mr. MARESCA (Italy), seconded by Mr. CASTBERG (Norway), proposed the addition of a clause to the effect that all systematic destruction was strictly prohibited, in order to prevent any future application of the "scorched earth" policy to which the Delegate of the International Committee of the Red Cross had referred.

Mr. CASTBERG (Norway) believed that agreement could be reached on the wording so aptly proposed by the Delegate of Monaco. Identical reasons prevailed for the protection of private and public property where the property was such as mainly served the needs of individuals.

As regards the Soviet proposal, Article 53 of the Hague Convention raised difficulties that must be taken into consideration. If movable property of a State could be seized by an Occupying Power for the purposes of military operations, it must be admitted that it could also be destroyed by the Occupying Power.

He agreed with the Delegate of Canada that the Conference was not competent to draw up rules for the prosecution of war. The point at issue was the protection of civilians in their relations with an army of occupation and, in particular, in case of invasion.

Mrs. MANOLE (Rumania) warmly supported the Soviet amendment to protect the property of individuals, of corporations and of the State. She could speak from experience about the horrors of needless destruction during the last war. On the very last day of hostilities the largest library in Bucharest had been razed to the ground simply from a spirit of revenge. She could not agree with the Delegate of Canada that the present Conference was not competent to lay down rules of war.

The CHAIRMAN declared the discussion on Article 30 closed.

*The meeting rose at 1.30 p.m.*

### THIRTEENTH MEETING

*Wednesday 11 May 1949, 2.30 p.m.*

*Chairman: Mr. Georges CAHEN-SALVADOR (France)*

#### Article 31

No observations were submitted with regard to Article 31.

#### Article 31A (new)

Mr. CLATTENBURG (United States of America) referred to the amendment submitted by the Belgian Delegation for a new Article 31A concern-

ing the protection of civil and public servants in an occupied territory against decisions of the Occupying Power (*see Annex No. 236*). He wished to ask the Belgian Delegation what would have happened if such a clause had been in force when the Allies entered Germany in 1945, and whether it would have hampered the freedom of the Allies in regard to National Socialist officials in leading positions in public services.

Mr. MINEUR (Belgium) replied that the Belgian Delegation took a different view. It might be possible to reach a compromise solution since, after further consideration and after consulting the representative of the International Committee of the Red Cross, he wondered whether Article 31A would not be better placed in Section III of the Convention (Occupied Territories). He further proposed that a second paragraph should be added to the new Article as placed in Section III, with special reference to the judiciary, whose independence must be respected by the Occupying Power (*see Annex No. 237*).

Mr. CASTRÉN (Finland) seconded the Belgian proposal. The new Article would fill a gap in the Convention.

Colonel HODGSON (Australia) could not see his way to accepting the first part of the Belgian proposal. In some countries civil aviation and railroads had been nationalized. The personnel of such enterprises were accordingly officials. If those countries were occupied, it was obvious that the Occupying Power would itself take over the management of public services, and in consequence could not consider itself as bound in any way in relation to the officials in question. The amendment was not conceived in a realistic spirit.

Mr. WERSHOF (Canada) observed that the Delegate of Belgium had not given a definite reply to the question put to him by the Delegate of the United States. The Belgian amendment was reasonable, if one thought only of a civilized country invaded by National Socialist Germany; but it would not be reasonable if one thought of such a case as the invasion of Germany by the Allied Forces towards the close of the last war. It would have been out of the question for the Allied occupying forces to leave certain National Socialist officials in their government posts.

Mr. MINEUR (Belgium) believed that in spite of those difficulties an adequate wording should be found to ensure the protection of officials. He admitted, however, that it would have been out of the question to allow Nazis to continue to exercise their functions under the Allied occupation. The solution might be to provide that an Occupying Power should have the right to compel officials to resign, but to prohibit that Power from inflicting penalties on them, if they resigned for patriotic reasons without being asked to do so.

Mr. MOROSOV (Union of Soviet Socialist Republics) approved the Belgian amendment, particularly because it was intended to enforce respect

for patriotic sentiments in the event of invasion. He reserved the right, however, to suggest certain changes in the drafting of the Article.

Mr. HAKSAR (India) while fully appreciating the intentions of the Belgian Delegation felt that it would be dangerous to place officials in a separate category.

Mr. DE ALBA (Mexico) proposed, in order to speed up the work of the Committee, that the Belgian amendment should be referred to the Drafting Committee.

General OUNG (Burma) said that in his country officials had been ill-treated at the time of the Japanese invasion on the pretext that they were pro-British. Those who had remained at their posts for patriotic reasons had been treated as collaborators when the country was re-occupied by British forces. Those who were doing their duty towards their country should be protected by the Convention. For that reason he supported the Belgian amendment.

Mr. MARESCA (Italy) likewise supported the Belgian amendment. But he thought that the new provision should be co-ordinated with the second paragraph of Article 47, which stipulated that the Occupying Power could compel protected persons to work in order to ensure the proper functioning of public utility services. Obviously that provision also applied to officials. It was difficult to find an absolutely satisfactory wording. In the absence of a formal proposal, he suggested that officials serving a legitimate Government, to which they had sworn allegiance, should not be compelled to work for the Occupying Power or be molested if they resigned.

Mr. MINEUR (Belgium) said that the point at issue was not to establish privileges for officials, but to grant them special protection because of the particular situation in which they were placed — not in their personal interest but in the general interest of the occupied country. He supported the proposal of the Delegate of Mexico that the amendment should be referred to the Drafting Committee.

The amendment submitted by Belgium was referred to the Drafting Committee.

### Article 32

The CHAIRMAN said that five amendments to Article 32 had been submitted. That of the Canadian Delegation (*see Annex No. 239*) and that of the United States Delegation (*see Annex No. 240*)

related to the whole of the Article. —The other amendments, namely those of the Delegations of Finland (*see Annex No. 241*), Italy (*see Annex No. 242*) and Belgium (*see Annex No. 238*) respectively, related to parts of the Article only. The Belgian amendment dealt in particular with the third paragraph relating to the appointment of a special tribunal. The International Refugee Organization had also submitted a Memorandum on Articles 32 to 40 (*see Annex No. 243*). He would be glad if the representative of that organization, who had followed the work of the Conference in the capacity of Observer, would give the Committee the benefit of his views.

Mr. KULLMANN (International Refugee Organization) stated that the Articles in question were of special interest to the International Refugee Organization, because they dealt with the very distressing question of refugees in wartime. The considerations he proposed to submit were not based on theory, but on the actual experience of the inter-governmental protecting agencies during the last war.

With regard to Article 32, his Organization wished to submit three amendments:

- (1) To replace the words "... whether of enemy nationality or not, of uncertain nationality or stateless..." in the first sentence of the first paragraph, by the words "whether of enemy nationality or not, of determined or undetermined nationality, whether enjoying or not the protection of a Government...". That amendment was intended to co-ordinate the wording of the Article with that of the various inter-governmental agreements concerning refugees. A great number of persons, on account of the social changes or political conflicts of the present time, were stateless *de facto* though not stateless *de jure*. They had not been deprived of nationality either by individual or by collective measures. But, for reasons recognized as valid by the country which gave them refuge, they preferred not to look for protection to the authorities of their country of origin.
- (2) It would be useful to insert, after the first sentence in the first paragraph of Article 32, the following sentence:  
 "without prejudice to exceptional security measures, the contracting States shall grant all necessary facilities for the purpose of enabling the above mentioned persons to proceed to another country".
- (3) The text discussed at the Stockholm Conference had stipulated that no person could be repatriated against his will. No

doubt that Conference felt that the provision was not in its rightful place in an Article regarding the right to leave a territory. It had been deleted; but it would be advisable, he thought, to reinsert it.

Should, however, the Diplomatic Conference not wish to restore the wording submitted at Stockholm, it would nevertheless appear expedient to add the following sentence to the Article: "Refugees, persons at present dependent on the mandate of the International Refugees Organization, or subsequently placed under the mandate of a body responsible for the protection of certain classes of stateless persons, shall not be repatriated to their country of origin against their will."

Mr. GINNANE (United States of America) said that, as at present drafted, Article 32 purported to confer upon all aliens the right to leave the territory of a nation which became involved in war. Also, permission for an alien to depart might be refused only "on urgent grounds of security" as determined by a "special tribunal for aliens".

There were, resident in the United States, about 3 million aliens, most of whom regarded themselves as permanent residents. He believed that the drafters of Article 32 had been chiefly concerned with the repatriation of persons such as travellers, students and business men who found themselves in the territory of a belligerent at the outbreak of war. Such persons, however, only constituted a small percentage of the aliens residing in the United States. Under those circumstances, he felt that he could not agree that each of these 3 million aliens should have the right to depart without regard to the effect of his departure upon the country in which he had settled.

Secondly, he pointed out that in the law of the United States of America, the phrase "special tribunal for aliens" suggested a court staffed with judges rather than administrators. He did not personally think that that was what the drafters had intended; but nevertheless it was the usual connotation of the word "tribunal" in the law of his country. He believed that the issues of internal security involved in the decision as to whether a particular alien should be permitted to depart were not appropriate for judicial decision. A Government should be able to determine administratively by a regular and fair procedure whether the departure, or even the internment, of an alien was contrary to its national security. An administrative procedure would not only protect legitimate security interests, but would also result in speedier action on applications for leave to depart.

Mr. WERSHOF (Canada), explaining the amendment submitted by his Delegation, said that a State should have the right to retain on its territory young persons eligible for service in enemy forces. He agreed with the Delegation of the United States concerning the practical difficulties to which the right of mass departure would give rise. His Government thought that the decisions as to whether particular enemy aliens should be allowed to leave the country was an administrative question to be decided by government officials. It was not reasonable to expect a government to hand over the right of final decision to a tribunal.

Mr. MINEUR (Belgium) suggested that the expression "special tribunal for aliens" should be replaced by "administrative college" or "administrative commission".

Mr. CASTRÉN (Finland) thought that the third paragraph should stipulate that the procedure must be impartial. As regards the first paragraph, he preferred the Stockholm text to that of the International Refugee Organization.

Mr. SEVERINI (Italy) proposed that an addition should be made to the fourth paragraph so as to provide for the possibility of an appeal against any decision concerning internment or assigned residence. His Delegation considered that it might be possible to leave it to the police authorities to adopt the necessary measures for internment or direction to an assigned residence. The persons concerned could then appeal to the special tribunal for aliens. In such cases the tribunal would correspond for all practical purposes to a court of second instance.

Mr. DAHL (Denmark) agreed with the views of the Representative of the International Refugee Organization. His Delegation would submit amendments based on the suggestions of that Organization.

Mr. GIHL (Sweden) had no objection to the principles embodied in Article 32. In Sweden, a special body—the National Aliens Office—dealt with the problems raised in the Article. Proceedings were legal rather than administrative, and were all in writing. There was also an advisory body, composed of leading personalities, to which the Office referred.

Colonel HODGSON (Australia) was prepared, for practical reasons, to accept the amendment submitted by the Delegate of Canada. He explained that it had not been possible, during the last war, to arrange for an exchange between Australia and

Japan of civilians other than diplomatic and consular personnel and invalids. This was because of the long sea voyage, naval operations and considerations of security. If, however, the Committee should decide to retain the third, fourth, fifth and sixth paragraphs of the Stockholm text, he desired to make the following observations:

His Delegation agreed to the Stockholm proposal for the establishment of special tribunals for aliens. Such tribunals had been set up in Australia during the last two wars. On the other hand, he criticized the expression "assigned residence", and thought the wording of the second sentence of the fifth paragraph too vague. He was also opposed to the sixth paragraph on the ground that no country could be asked to give reasons for refusing permission to an alien to leave the country.

Mr. DUPONT-WILLEMEN (Guatemala) associated himself with the Delegate of Denmark in supporting the pertinent observations of the Representative of the International Refugee Organization. Unlike the Finnish Delegate, he believed that the wording proposed by the International Refugee Organization was better than the expression "stateless". The conception of "statelessness" sometimes went beyond the factual and sometimes beyond the legal limits, and was much less wide than the definition suggested by Mr. Kullmann.

Mr. SPEAKE (United Kingdom) said that his Delegation agreed, in principle, with the United States and other Delegations about the granting or withholding of permission for aliens to leave a country in time of war. He concurred in the Canadian Delegate's view that it was not desirable to make a tribunal responsible for deciding whether or not an alien should be retained. He was also of the opinion that no obligation could be imposed on a Government to afford facilities for aliens to leave a country on the outbreak of war. Such an obligation would involve too heavy a responsibility for many countries, particularly those which were surrounded by sea.

Mr. QUENTIN-BAXTER (New Zealand) agreed with the Canadian and Australian Delegations. He did not think that the first sentence of the fifth paragraph was conceived in a sufficiently realistic spirit. The hearing of such cases *in camera* should be the rule and not the exception.

Mr. NASSIF (Lebanon) suggested a compromise. There was a divergence of opinion in the Committee regarding the authority competent to decide whether aliens should be retained. Some delegations considered that competence should be

entrusted to a legal authority, while others preferred an administrative authority. Others again proposed that all reference to procedure should be omitted. Article 32 made a distinction between persons not of enemy nationality and persons of enemy nationality. In the case of the latter, the decision might be left to an administrative authority. In the case of persons not of enemy national-

ity, it might be recognized that in principle they had the right to be repatriated, without any special decision on the point.

The CHAIRMAN declared the discussion closed, and Article 32 was referred to the Drafting Committee.

*The meeting rose at 5.45 p.m.*

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#### FOURTEENTH MEETING

*Thursday 12 May 1949, 10 a.m.*

*Chairman: Mr. Georges CAHEN-SALVADOR (France)*

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#### Article 33

Mr. CLATTENBURG (United States of America) explained that the amendment of the United States Delegation to Article 33 (*see Annex No. 245*) was not intended to change the substance of the Article, but to define its application in practice. Consideration of the Note from the Head Office of International Railway Transport (*see Annex No. 33*) indicated that the United States Delegation was not alone in considering that some such change was necessary.

Mr. SPEAKE (United Kingdom) observed that, whereas Article 32 referred to arrangements made by individuals, Article 33 spoke of "repatriations", and thus implied that the Governments were responsible to a greater extent. The word "repatriation" had been dropped from the United States amendment. He was not at all sure that that amendment made the Stockholm text clearer. It was in reality a new text altogether.

Mr. DE ALBA (Mexico) referring to the statement of the representative of the International Refugee Organization, suggested that the words "no person shall be repatriated against his will" deleted from Article 32 at Stockholm, should be reinstated in Article 33.

At the request of Mr. WERSHOF (Canada), Mr. PILLOUD (International Committee of the Red Cross) explained that the authors of Article 33 had intended that the costs of transportation should in principle be borne by the individuals

themselves. Where communications were working normally there would be no call for State intervention. It was only in special cases, particularly that of transport by sea, that the State might have to intervene according to circumstances.

Mr. WU (China) considered that Article 32 was concerned with the departures organized by individuals, whereas Article 33 dealt with repatriations effected by the State. The United States amendment seemed to him acceptable if the word "departures" was replaced by the word "repatriations".

The CHAIRMAN, in referring the Article to the Drafting Committee, observed that the latter would have to consider three points in particular:

- (1) elimination of the ambiguity between the two conceptions of "departure" and "repatriation";
- (2) consideration of the question of cost of transport very properly raised by the United States amendment;
- (3) consideration of the question whether Article 33, as at present worded, was indispensable.

#### Article 34

Mr. CLATTENBURG (United States of America) said that his Delegation's amendment (*see Annex No. 246*) did not affect the substance of the Article. It had been submitted in order to take account of the special conditions obtaining in the United States. Under the law of his country, certain

persons against whom charges had been brought, could be released on bail pending trial, or even if convicted could be placed in correctional establishments where their liberty was not actually impaired. It would not be reasonable to prevent the internment of such persons in wartime, if the circumstances of individual cases made that necessary.

Mr. MINEUR (Belgium) said that the word "internement" in the French version of the United States amendment might be replaced with advantage by "détention" or "emprisonnement".

Article 34 was referred to the Drafting Committee.

### Article 35

Mr. MARESCA (Italy) paid tribute to the generous conception underlying Article 35. He thought, however, that the wording might be happier. In practice, the actual confiscation of alien property might be enforced under cover of control and security measures. Such a result would be entirely at variance with the clauses of the Hague Convention providing that private property could not be confiscated and that pillage was forbidden. Such confiscation would be all the more unjust in that the persons penalised would be precisely those who, having placed their confidence in the laws of their country of residence, had contributed by their work to the formation of an economic and spiritual link between that country and their country of origin. He suggested the addition of a paragraph on the following lines:

"Property belonging to protected persons shall not be confiscated in any form whatsoever. If, by reason of the conflict such property has been subject to restrictive measures, it should immediately after the close of hostilities be restored to the owners in good condition and exempt from any charges."

In answer to a remark by General SCHEPERS (Netherlands) to the effect that the Article of the Hague Convention forbidding pillage related to occupied countries, whereas Article 35 related to the national territory of one Party to the conflict, Mr. MARESCA (Italy) said that that was all the more reason why the principles of the Hague Convention should be applicable. If an Occupying Power had no right to confiscate the property of persons in an occupied territory, it had even less right to confiscate property of enemy aliens in its own territory.

The CHAIRMAN reminded the meeting that the International Refugees Organisation had submitted observations on the Article in question (*see Annex No. 243*).

Article 35 was referred to the Drafting Committee.

### Article 36

Mr. WERSHOF (Canada) introduced the amendment proposed by the Canadian Delegation explaining that its purpose was to ensure that enemy aliens should not be able to claim better treatment than that of nationals of the Detaining Power. In his opinion, unemployment relief and insurance benefits were not privileges, and should be granted to aliens in the same way as to nationals of the Detaining Power. Aliens should not, however, have the right under the Convention to demand cash allowances other than those which the Detaining Power granted to its own nationals.

Mr. MARESCA (Italy) observed that several ways of assisting protected persons deprived of their means of livelihood were being considered, namely paid employment, allowances made by the Detaining Power and allowances from other sources. The destitution of protected persons might be due to the confiscations referred to. That was the reason why the Delegation of Italy had submitted an amendment (*see Annex No. 249*) stipulating that such persons should be enabled to provide for their maintenance "by being given the opportunity of obtaining the payment of at least part of the income from their property".

Mr. SPEAKE (United Kingdom) was in entire sympathy with the contention of the Italian Delegate. He considered that the Detaining Power was under an obligation to provide for the needs of persons who had been deprived of their means of subsistence as a result of measures of control or security. Furthermore, it should be specified on humanitarian grounds that the persons concerned should not be compelled to accept or to do work for which they were physically unsuited. He would revert to this point in connection with Article 37.

Article 36 was referred to the Drafting Committee.

### Article 37

The CHAIRMAN said that two amendments had been submitted to Article 37, one by the Delegation of the United States of America (*see Annex*

No. 253), and another by the Delegation of Canada (see *Annexes No. 251 and No. 252*). The International Labour Organization had also submitted a report on the question (see *Annex No. 254*).

Mr. CLATTENBURG (United States of America) stated that the purpose of his Delegation's amendment was to allow aliens who were loyal to the country that had given them shelter to contribute to the war effort of that country, should they so desire. There were millions of aliens in the United States who, as experience had proved, were prepared to offer such co-operation.

Mr. WERSHOF (Canada) asked if Article 37 related to optional or compulsory employment. If compulsory employment was referred to, his Delegation felt that restrictions were justified in the case of enemy aliens who should not be forced to do work contrary to the interests of their country of origin, for that would be inhuman. On the other hand such restrictions would not be justified in the case of non-enemy aliens, neutral or allied, who should be subject to the same treatment as nationals.

Mr. SPEAKE (United Kingdom) wished to add a few words in support of the Delegate of Canada's observations. His Delegation felt that enemy aliens should not be compelled to join the armed forces or to work in munition factories or to assist in the dissemination of war propaganda.

Mr. MEVORAH (Bulgaria) asked the representative of the International Committee of the Red Cross to explain certain points. A perusal of Article 36 gave the impression that it imposed an obligation on the State. The same thing was true of Article 37 of the Draft submitted to the Stockholm Conference, which used the phrase: "Employment found for protected persons...". On the other hand, the wording of Article 37 adopted at Stockholm, however, laid down that "Protected persons may only be required to do work...". The latter wording recognized, by implication, the right of the Detaining Power to require protected persons to work. Was that change intentional? If it was due to an error, the word "required" might be replaced by the word "employed".

Mr. PILLOUD (International Committee of the Red Cross) replied that the change made in the text by the Stockholm Conference was intentional, certain Delegations at Stockholm, having expressed the view that, since compulsory work in wartime was a normal measure in the case of nationals, there was no reason to exempt protected persons from such work. Article 42 of the Prisoners

of War Convention also dealt with authorized work.

He added that the second paragraph of Article 37 had been deleted at Stockholm merely for drafting reasons and might with advantage be reintroduced.

Mr. WU (China) suggested that the treatment provided for might vary for different categories of aliens.

Mr. WOLF (International Labour Organization) stated that at the invitation of the International Committee of the Red Cross, a draft memorandum on the texts approved at Stockholm had been prepared by the International Labour Office, and had been submitted to the Governments of the sixteen countries represented on the Governing Body of the International Labour Office. Replies had been received from the Governments of Canada, Denmark, the United States of America, France, Italy, India, the United Kingdom and Turkey. The opinions expressed had differed on a number of points; and the Governing Body, considering that the divergencies could only be reconciled by negotiations which the members of the Governing Body had no authority to undertake, had decided to communicate the draft memorandum and the replies of the Governments to the Diplomatic Conference for information. The documents in question had been reproduced in Working Document No. 7. The Governing Body wished to emphasize the importance attached by the International Labour Organization to the humane treatment of civilian internees in accordance with modern civilised usage, and to express its urgent wish to see appropriate regulations adopted governing the work of such civilian internees with due regard to the standards laid down in the relevant Conventions and Recommendations adopted by the International Labour Conference.

Mr. MINEUR (Belgium) concurred in Mr. PILLOUD's view that it was normal for aliens who had been settled in a country for a long time to be placed on an equal footing with the nationals of that country, whose cultural and material interests they shared.

Basing himself on the amendment of the United States of America, he proposed that the last sentence of the first paragraph should be worded as follows: "but may not be employed, against their will, on work...".

The CHAIRMAN observed that Article 37 would have to be read in conjunction with Article 47 which dealt with the employment of protected persons in occupied territory, and also with

Article 84 which concerned employment of internees. The amendment proposed by the International Labour Organization was in line, subject to certain drafting changes, with the suggestion of the Representative of the International Committee of the Red Cross that the last paragraph, deleted at Stockholm, should be reinstated. Finally, he thought that it was essential to know the decisions arrived at by Committee II concerning the work of prisoners of war. The Drafting Committee would keep in touch with the Drafting Committee of Committee II.

Article 37 was referred to the Drafting Committee.

### Article 38

Mr. SINCLAIR (United Kingdom) did not think that Article 38 in its present form fulfilled the purpose for which it was intended. It seemed unwise to restrict, as it did, the power to intern, since the position of internees was not necessarily less favourable than that of persons in assigned residence. Internees were, at least, sure of their food and shelter. What was essential was to lay down explicit rules with regard to internment (*see Annex No. 259*).

Mr. KULLMANN (International Refugee Organization) reminded the Committee that the memorandum submitted by the I.R.O. (*see Annex No. 243*) contained observations relating to Article 38. The observations in question concerned *bona fide* refugees, *i. e.*, refugees originating from a country at war with the country of refuge. Article 38 made no distinction between neutral, allied or enemy aliens. The security and control measures taken by belligerent governments, however, generally drew a very definite distinction between the nationals of enemy and non-enemy countries. The severe provisions of Article 38 were in principle only applied to nationals of enemy countries. During the last war, persons admitted to England as *bona fide* refugees had not been automatically

subjected to internment, as were the nationals of enemy countries. That policy should be formally recognized. The International Refugee Organization, therefore, proposed the following wording:

“The special security measures applicable to the nationals of an enemy country shall not be applied automatically to refugees of the country in question merely on the ground of such origin.

“The refugees in question shall only be subjected to assigned residence or internment by individual decision which shall specify the grounds on which such exceptional security measures have been taken.”

Mr. LOKER (Israel), while agreeing with the proposal of the International Refugee Organization, nevertheless wished to make reservations regarding the wording of the text submitted by that Organization. The Israeli Delegation had submitted the draft of a new Article 40A. Should that amendment not be adopted, his Delegation would support the proposal of the I.R.O.

Mr. JONES (Australia) said that his Delegation would prefer the words “areas or zones of residence” to “assigned residence”. Australia had accorded more favourable treatment to stateless refugees than to enemy aliens.

Mr. WU (China) proposed that the memorandum of the International Refugee Organization should be referred to the Drafting Committee.

The CHAIRMAN said that the attention of the Drafting Committee should be drawn in particular to the proposal submitted by the International Refugee Organization, to the observations of the Delegates of the United Kingdom and of Australia, and finally to the proposal submitted by the Delegation of Israel, though the latter proposal should perhaps have been put forward in connection with Article 40.

*The meeting rose at 12.45 p.m.*

## FIFTEENTH MEETING

Friday 13 May 1949, 3 p.m.

Chairman: Mr. Georges CAHEN-SALVADOR (France)

### Article 39

Mr. WERSHOF (Canada) introduced the amendment submitted by the Canadian Delegation proposing to replace the word "shall" in the second paragraph by the word "may".

In the absence of any further observations, the CHAIRMAN referred Article 39, together with the Canadian Delegation's amendment, to the Drafting Committee.

### Article 40

Mr. WERSHOF (Canada) said that his Delegation had submitted an amendment to Article 40 (*see Annex No. 261*). Although his Delegation had made every effort to arrive at a compromise between its views and those of other Delegations, it nevertheless still did not admit the competence of tribunals to decide questions of internment. He did not think that Canada could be accused of harshness in its treatment of aliens. Of the 25,000 Germans residing in Canada only some 500 had been interned during the last war. The others had not even been placed in assigned residence. A single authority was responsible for decisions concerning internment, the Registrar General of Enemy Aliens, who himself was under the authority of the Minister of Justice. The Canadian amendment proposed the setting up of an Advisory Committee to give the greatest possible elasticity to that system. The final decision, however, would always rest with the competent administrative authority.

Mr. SEVERINI (Italy) reminded the meeting that his Delegation had suggested, in connection with Article 32, that provision should be made for recourse to an appeal tribunal (*see Annex No. 242*). If an appeal procedure of that sort was agreed to, the words "Decisions regarding the internment of protected persons" in Article 40 should be omitted from Article 40. The Article would then read:

"Decisions leading to a change in the status of protected persons...". Even if the proposal to provide for an appeal procedure was not approved, it would in any case be necessary to modify Article 40. For an appeal under Article 40 must come before an authority other than that which had taken the original decision regarding internment; otherwise one of the essential legal safeguards would be lacking.

Mr. MOROSOV (Union of Soviet Socialist Republics) proposed that the words "the special tribunal for aliens" should be replaced by "the competent tribunal of the country in question". The competent tribunal, in the view of his Delegation, must, in accordance with the rules of common law, be an appeal tribunal, and quite distinct, therefore, from the tribunal which took the original internment decision regarding internment. That proposal, however, was closely connected with the proposal concerning Article 32, and there appeared to be no point in discussing it until a decision had been taken on the latter Article.

Mr. JONES (Australia) stated that the Australian Delegation was tabling an amendment the purpose of which was to provide those concerned with the right "to make objections" to the competent special tribunal instead of the "right to appeal" to it. The right of appeal implied a judicial procedure, whereas a right of objection would enable internment decisions to be reviewed without the disclosure of facts which should, for security reasons, remain confidential.

Mr. MINEUR (Belgium) made certain observations regarding the amendment submitted by the Canadian Delegate. Point 5 of the second paragraph of that amendment provided that the competent authority of the Detaining Power "shall... give effect to the advice of the Advisory Committee". But, if a committee was advisory, then it was only competent to give advice. If its advice must be given effect to, it was no longer an advisory committee. The composition of the Advisory

Committee could best be left to the discretion of the Detaining Power. With regard to the observations submitted by the Italian Delegation, he had no objection to an appeal procedure provided it was in the hands of an administrative body. Finally, if the Belgian amendment to Article 32 was accepted, it would also be necessary to replace the words "special tribunal for aliens" in Article 40 by „committee or administrative board”.

Mr. DE ALBA (Mexico) remarked on the divergence of views between those Delegations which were in favour of an administrative procedure and those which were in favour of a judicial procedure. Consideration of Article 40 must, as the Soviet Delegate had pointed out, be subject to whatever decisions were taken on Article 32.

Mr. SPEAKE (United Kingdom) explained that in the United Kingdom the Government considered that nothing must detract from the responsibility of the Government Department which dealt with internment, namely the Home Office. Tribunals had sat for a few months in 1939 to consider cases of internment, but their decisions were only of an advisory character. He wished to make four distinct points:

- (1) Nothing must detract from the responsibility of the Government Department which dealt with internment. Doubtless there should be some right of appeal; but that was a matter for each Government to organize as it saw fit.
- (2) Nothing must restrict the liberty of the responsible Government Department to take immediate action without reference to a tribunal.
- (3) There could, as the Delegate for New Zealand had so ably explained, be no question of debating security questions with the Protecting Power.
- (4) The Swiss Government and the International Committee of the Red Cross would remember that in certain cases the interned persons themselves had refused all contact with the Protecting Power or with the I.C.R.C. for fear of reprisals on their families. That factor should be considered in connection with the obligation to notify all decisions to the Protecting Power.

Mr. WERSHOF (Canada) did not agree with the suggestion that the Canadian amendment could not be studied before a decision had been taken on Article 32. He wished to avoid any misunderstanding as to the procedure: Article 40 as well as Article 32 could be discussed at a first reading before being referred to the Drafting Committee.

In reply to the Belgian Delegate, he said that the advice of the Advisory Committee, referred to in point (5) of the second paragraph of the Canadian amendment, would remain subject to a decision by the Government in accordance with the first clause of that paragraph.

Actually, the standpoint of the Canadian Government was the same as that of the United Kingdom Government. The final decision in internment matters must remain with the Government.

The CHAIRMAN summarized the discussion:

In the matter of the measures to be taken with regard to aliens, it would be necessary to decide:

- (1) Whether the decision should lie with a Government or administrative authority, or with an administrative or judicial tribunal;
- (2) Whether there should be one procedure or two (i. e. whether there should be a right of appeal);
- (3) Whether the protected persons concerned should benefit by certain safeguards in regard to their defence;
- (4) Whether the procedure in regard to internment should be the same as for assigned residence.

The problems in question would be referred to the Drafting Committee.

#### Article 40A (New)

Mr. LOKER (Israel) reminded the meeting that his Delegation had submitted an amendment proposing the introduction of an Article 40A, the contents of which were substantially in agreement with the views expressed by the representative of the International Refugee Organization. The new Article was worded as follows:

“In applying the measures of detention and internment provided for in the preceding Articles 32 to 40, the Detaining Power shall not, in principle, consider persons deprived of nationality, the stateless or those unprotected by any Government as being enemy aliens.”

The CHAIRMAN decided that, as there were no observations on that text, it would be referred to the Drafting Committee.

#### Article 41

Mr. WERSHOF (Canada) introduced the amendment submitted by his Delegation (*see Annex No. 264*). He did not think the insertion of the

words "against their will" in the first paragraph of the Article was very happy. The transfer of a protected person to a Power which was not of party to the Convention should be absolutely prohibited.

In regard to the fourth paragraph, he thought that protected persons should be required to adduce valid reasons in support of their refusal to be transferred.

The Canadian amendment to the third paragraph was based on the same arguments as those put forward by his Delegation in connection with Article II of the Draft Prisoners of War Convention. Once an interned person had been transferred, responsibility for the application of the Convention should no longer rest on the transferring Power but solely on the receiving Power.

General SCHEPERS (Netherlands) referred to the amendment submitted by his Delegation (*see Annex No. 265*). The words "During hostilities or occupation" should be replaced by the words "As long as peace has not been concluded". If that amendment was adopted, it would be necessary to insert the word "transfer," in Article 4, before the word "release".

Mr. QUENTIN-BAXTER (New Zealand) agreed with the Canadian Delegate that the Power which had transferred protected persons to another Power could no longer be responsible for them in any way. For instance, in the case of internees transferred from New Zealand to the United States, how could New Zealand officials supervise the American administration? Again, to take a reduction *ad absurdum*, suppose New Zealand did not consider that the United States had fulfilled their obligations under the Convention, would New Zealand have to declare war on the United States? He proposed, therefore, to add a provision to the first paragraph so as to lay down that protected persons were not to be transferred to a Power which was not a party to the Convention or to a Power which, being a Party to the Convention, was unwilling or unable to carry out its obligations towards such persons. In any case, he formally opposed the idea of joint responsibility.

Mr. MARESCA (Italy) supported the Canadian proposal in so far as the first and fourth paragraphs were concerned. For the third paragraph, he suggested that a practical solution might be found by providing for authorization by the State of which the protected persons were nationals; the idea of joint responsibility should not, however, be excluded.

Mr. CLATTENBURG (United States of America) said the amendment submitted by the Delegation of Canada only added to his misgivings in regard to the first paragraph of Article 4I. The Convention applied to neutral and allied as well as to enemy aliens. In the case of a neutral, for instance, who had fled from a country not a party to the Convention after having committed a murder, the provisions of Article 4I should not preclude his extradition.

On the subject of what he might call the "private war" between New Zealand and the United States, to which allusion had been made in jest, he observed that joint responsibility was no new principle. Many transfers, both of civilians and of prisoners of war, had taken place during the last war. The same principles applied to both categories; and, since Committee II was at the moment dealing with the same problem, the work of the two Committees on that subject would have to be coordinated. He added that during the last war internees from thirteen other American Republics had been transferred to the United States of America, and a kind of cooperative internment had been practised in the Western hemisphere to the satisfaction of all concerned and without any friction between the foreign officials and the administrative officials of the United States of America. It seemed natural that a Power which had decided to transfer an internee in its hands should remain responsible for his fate, and that the principle of joint responsibility should, therefore, be maintained. That principle was a fair one, and the United States Delegation was in favour of its adoption. Moreover, if the country responsible for the transfer was not satisfied with the treatment given to the persons transferred, it could always take them back.

Colonel DU PASQUIER (Switzerland), speaking both as Delegate for Switzerland and as Rapporteur of the Committee, informed the meeting that Committee II, which had studied the problem, had declared itself in favour of maintaining the Stockholm wording. He proposed that Article 4I should be referred to the Drafting Committee for consideration. The Drafting Committee would keep in touch with the discussions in Committee II.

Mr. MINEUR (Belgium) felt that, if the principle of joint responsibility was maintained, the words "on the basis of agreements to be drawn up between them at the time of the transfer" should be added to the third paragraph of Article 4I.

Mr. SPEAKE (United Kingdom) endorsed the views of the New Zealand Delegate in regard to joint responsibility. He also supported the

amendment of the Netherlands Delegation to the fourth paragraph. He was doubtful as to whether the procedure suggested by Colonel Du Pasquier was practicable.

Mr. MOROSOV (Union of Soviet Socialist Republics) was in favour of joint responsibility. Any decision in the matter should be based on the major consideration of providing the best possible safeguards for the welfare of protected persons. Those Delegates who had supported the Canadian amendment seemed to have exaggerated the responsibility which the State effecting the transfer would have to assume in case of breaches of the Convention. The presence of supervising officials or observers was unnecessary. If a country "A" transferred nationals of a country "B" to a country "C", where the climate was dangerous, country "B" should 'through the good offices of the Protecting Power, be able to complain to country "A"; and it was only fair, as the United States Delegate had said, that country "A" should not be able to evade its responsibility in such a case.

Mr. WU (China) considered that even after the conclusion of hostilities or the occupation, protected persons should not be transferred to a country where they had legitimate reasons to fear persecution. The granting of asylum to political refugees was in accordance with inter-

national usage and was one of the governing principles of the International Refugee Organization.

For the same reason, he was opposed to the Netherlands amendment proposing to replace the words "During hostilities or occupation" by the words "As long as peace has not been concluded".

Mr. QUENTIN-BAXTER (New Zealand) was not convinced by the explanations of the Delegate of the United States of America. Obviously, both individuals and States were responsible for their actions; but that responsibility was limited to such consequences of their actions as could be foreseen.

Article 41 was referred to the Drafting Committee.

#### Article 42

The CHAIRMAN noted that no amendments had been submitted to Article 42. He therefore did not propose to discuss it for the moment. The amendment of the Canadian Delegation for the introduction of a new supplementary Article immediately after Article 42, would be referred to the Drafting Committee.

*The meeting rose at 6.45 p.m.*

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### SIXTEENTH MEETING

*Monday 16 May 1949, 2.30 p.m.*

*Chairman:* Mr. Georges CAHEN-SALVADOR (France)

#### Appointment of a second Rapporteur of the Committee Article 42

Brigadier PAGE (United Kingdom) informed the meeting that Mr. Mill Irving, appointed as second Rapporteur of the Committee, had been prevented from carrying out his duties and had been replaced provisionally by Mr. Hart.

Mr. Hart was unanimously elected second Rapporteur of the Committee.

Although discussion on Article 42 had been closed, the CHAIRMAN agreed, as an exception, to reopen the discussion for the purpose of considering an amendment submitted by the Italian Delegation.

Mr. MARESCA (Italy) explained that the amendment comprised two proposals:

- (1) to add "or their property" after "protected persons", so that the restrictive measures would cease not only in respect of protected persons but also of their property;
- (2) to delete the words "as rapidly as possible after" and to replace them by "at" (the close of hostilities).

Colonel HODGSON (Australia), while agreeing to the first part of the Italian amendment, could not accept the second point.

### Article 43

The CHAIRMAN, in the absence of the Greek Delegate, reminded the meeting of an amendment submitted by the Greek Delegation for the insertion of the words "or any armistice" in the enumeration of circumstances not warranting a change in the rights of protected persons under the Convention.

Mr. MEULBLOK (Netherlands) drew attention to a discrepancy between the English and French texts of the Convention. The French text covered the possibility of annexation which was not referred to in the English text. The omission was preferable, since annexation in time of war was not recognized under international law. The Netherlands Delegation would suggest that if it was desired to keep the provision in the French text, the word „annexion" should be replaced by some such expression as "infractio au statut".

Mr. CLATTENBURG (United States of America) recalled a remark made by one of the delegates at the preliminary meeting of experts of the National Red Cross Societies in 1946. The Delegate in question had said, with reference to the draft Convention for the Protection of Civilians, that all that his country could desire, if the Convention was accepted, was speedy occupation by one of the signatory Powers, because that would solve all problems! The United States Delegation felt that an impossible task should not be imposed on Governments. For those reasons his Delegation would submit an amendment proposing the addition to Article 43 of a second paragraph worded as follows: "Conversely, no provision of this Convention is intended to confer upon protected persons, including internees, in occupied territories, a right to standards of feeding or care higher than those prevailing before the occupation began, nor to confer upon the general population in such territories a right to services or facilities which did not previously exist there. A paragraph on those lines should be included to avoid all misunderstanding.

Mr. MARESCA (Italy) entirely approved Article 43. He would even suggest the addition of the words "nor can their legal status, either as regards their persons or their property, be affected, in any case or in any manner whatsoever, by such changes or arrangements".

Brigadier PAGE (United Kingdom) supported the amendment announced by the United States Delegation. He felt it would help to make Section III of the Convention more practicable.

Mr. DE GEOUFFRE DE LA PRADELLE (Monaco) supported the proposal of the Netherlands Delegate. Certain theories tended to confuse occupation with annexation, but such theories should be repudiated as contrary to positive international law. It was essential that no text should be adopted which might throw doubt on the legality of occupation.

### Article 44

Mr. WU (China) introduced the Chinese amendment (*see Annex No. 268*) to Article 44. He said that Article 44 provided for the repatriation out of occupied territory of all protected persons other than nationals of the occupied country. Article 32 on the other hand authorized all aliens, whether of enemy or other nationality, to leave the territory of a party to the conflict. Occupied countries must not be confused with conquered countries. Occupation did not effect the legal status of the inhabitants in relation to the occupying Power. The latter continued to regard them as nationals of enemy countries. They should not be deprived of the means of escaping from the bad treatment to which they might be subjected.

There was a plausible argument against the departure of nationals belonging to a Power whose territory was occupied—namely, that those who were suitable for military service would rejoin and reinforce the armed forces of their country. But that eventuality was covered by the second paragraph of Article 32, which entitled the Detaining Power to retain protected persons on urgent grounds of security. The case of women and children in occupied territory, who wished to rejoin their husbands, fathers or brothers in unoccupied territory, was particularly clamant. It would be senseless and inhuman to prevent them from doing so.

Brigadier PAGE (United Kingdom) suggested that, in order to clarify the wording, the Drafting Committee should be invited to incorporate the provisions of Article 32 in Article 44. The Convention would be applied in occupied territory mostly by army officers, whose task should be facilitated by as clear a wording as possible.

**Article 45**

The CHAIRMAN said that four amendments had been submitted to Article 45, viz. by Canada, Greece, Finland, and the Union of Soviet Socialist Republics (*see Annex No. 270*).

The Canadian Delegation had withdrawn its amendment.

The Greek amendment was to delete the words "against their will" in the first paragraph.

The Finnish amendment only concerned a drafting point, which the Finnish Delegation felt needed no explanation.

Mr. MOROSOV (Union of Soviet Socialist Republics) said that the purpose of the Soviet amendment was merely to define certain points in the Stockholm text, with which his Delegation fully agreed. The insertion of the words "by force" would ensure a formal prohibition of the deplorable practices carried out by certain European countries, where men had been loaded into trucks like cattle, and sent to distant countries to do forced labour.

The Soviet Delegation further proposed deletion of the words "against their will", because in occupied territory no one had the right to express an opinion. There was a risk of abuses arising out of the words "against their will".

It would also be advisable to lay down in the second paragraph that an evacuated population should be transferred back as soon as hostilities ceased in a given area.

The Soviet Delegation's view was that it should not be possible to transfer civilians except within occupied territory. It would therefore be desirable to strengthen the prohibition in the first paragraph by adding the words "into the territory of the occupying Power or the territory of any other country" after the words "out of occupied territory".

His Delegation wished mass evacuations to be prevented in future. For those reasons it would perhaps be preferable to say "forcible removals" rather than "deportations by force" as first proposed by the Soviet Delegation.

Mr. SLAMET (Netherlands) agreed with the principles underlying Article 45. In Indonesia, during the last war, numbers of women and children had been transferred to unhealthy climates and forced to build roads, and had died as a result. He would like to see it made clear in the first paragraph that the territory referred to was the national territory inhabited by the protected persons.

Moreover, the third paragraph should also lay down that such persons might provide themselves with money for their journey, and carry with them their luggage and personal effects; the occupying Power would have to provide the

necessary means of transport for the transfer or evacuation of such persons and their property.

Mr. MARESCA (Italy) said that in the last war the flower of Italian youth had been sent to Germany in cattle trucks. Such forced transfers must at all events be prohibited in the future. The term "deportation" in the last paragraph of the Article had better not be used, as "deportation" was something quite different.

Mr. CLATTENBURG (United States of America) had read the Soviet amendment with interest. He felt, however, that the words "except in cases of physical necessity" which that amendment wished to delete might be of value in the interest of protected persons. He quoted the case of part of the population of the little island of Wake who had been transferred to Japan. In spite of the bad treatment inflicted, nearly all had survived, whereas the inhabitants left on the island had died as a result either of the fighting or of the brutality of the Japanese field forces.

The CHAIRMAN, before declaring the discussion on Article 45 closed, noted that the Committee was unanimous in condemnation of the abominable practice of deportation. The sole purpose of every speaker had been to strengthen the interdictory provisions of the Article. He suggested that deportations should, in the same way as the taking of hostages, be solemnly prohibited in the Preamble.

He added that only three amendments had been submitted to Articles 46 to 55, two by the Canadian Delegation on Articles 47 and 54, and one by the Finnish Delegation on Article 49. The Canadian and Finnish Delegations had no comments to offer on their amendments, which only concerned drafting points.

**Article 46**

Mr. DE ALBA (Mexico) suggested the addition of a reference to neutral humanitarian organizations. Although he did not know what the view of the International Committee of the Red Cross would be on the matter, he, for his part, could see nothing but advantages in making a reference of that sort providing for the cooperation of organizations which specialized in child welfare.

Mr. MINEUR (Belgium) suggested that the word "language" should be inserted in the last paragraph between the word "nationality" and the words "and religion" so as to ensure that children were taught in their mother tongue. That was a particularly important point in the case countries like Belgium which had more than one national language.

**Article 47**

Mr. MARESCA (Italy) said that Document No. 10 contained the following amendment to Article 47. In order to avoid civilian populations being obliged to undertake labour useful to military operations under the guise of work connected with public services, his Delegation proposed to add the words "excluding, in any possible case, work which might prove useful to the conduct of active military operations". Further, the third paragraph made no mention of the legislation applicable in the case of work imposed on protected persons. No doubt the Hague Convention provided for the maintenance of existing legislation in the occupied territory; but on that particular point it was desirable to stipulate that the labour legislation in force in the occupied territory remained applicable to all persons compelled to do work under Article 47.

Brigadier PAGE (United Kingdom) preferred the term "pressure" to „propaganda" in the first paragraph. Apart from that, he agreed with the Italian Delegate. He noticed, however, that the list of permissible labour made no mention of agriculture or mining. But the principle that a population should work under the most normal possible conditions should be recognized, in order not to upset the economic system of the occupied territory. Agricultural work and work in mines should be authorized. What was important was to lay down that the Detaining Power could not compel protected persons to work, unless they were over eighteen years of age and then only on work necessary for the public services and the feeding, sheltering, clothing, transportation and health of the population. It was of course necessary to prohibit any work which might oblige protected persons to take part in military operations. He believed that the sentence "the work shall be neither unhealthy, nor dangerous" in the third paragraph should either be deleted or qualified by a reference to the conditions under which the same work was carried out in the territory prior to the occupation.

Mr. HAKSAR (India) said that his Delegation would submit a proposal embodying the suggestions contained in the memorandum submitted by the International Labour Organization (*see Annex No. 274*).

Mr. ABUT (Turkey) agreed with the principle of Article 47. He was submitting an amendment to the fourth paragraph proposing that the words "shall only be of a temporary nature" should be replaced by the words "shall not last longer than three months a year".

Mr. MEULBLOK (Netherlands) also supported the provisions of the Article; but he proposed in the first paragraph to substitute the words "armed or auxiliary forces" for the words "combatant or auxiliary forces", in order to conform to the terms of the Hague Convention. He thought it would be wise for the Drafting Committee to get in touch with the Drafting Committee of Committee II, in order to bring the text of the second paragraph of Article 47 into line with Article 42 of the Prisoners of War Convention (Authorized Labour).

Mr. MINEUR (Belgium), referring to his statement during the discussion on Article 31 A said that the reservations he had made concerning the work of officials had only referred to those engaged on duties of a political nature.

He agreed that it might be necessary to requisition the services of officials in order to ensure the continued functioning of technical services not of a political character.

It should be possible to find an acceptable wording on the point.

Mr. CASTBERG (Norway) supported the Belgian Delegate. Referring to the statement of the United Kingdom Delegate, with which he agreed in substance, he said that at the Stockholm Conference it was the Norwegian Delegation which had proposed the additional words in the second paragraph of Article 47. He, too, agreed that there should be no difficulty about compelling technical officials to carry on public utility services.

**Article 48**

The CHAIRMAN noted that no amendments had been proposed to Article 48, and that no speaker had asked for the floor.

*The meeting rose at 5.30 p.m.*

## SEVENTEENTH MEETING

Tuesday 17 May 1949, 3 p.m.

Chairman: Mr. Georges CAHEN-SALVADOR (France)

## Articles 49, 50 and 51

The CHAIRMAN said that two amendments had been submitted to Article 19—one by the Delegation of the United States of America (*see Annex No. 279*) and the other by the Delegation of Finland.

Mr. CLATTENBURG (United States of America) observed that Article 49, as adopted at the Stockholm Conference, imposed three sweeping obligations on the Occupying Power:

- (1) To ensure the food supply of the civilian population;
- (2) To import the necessary foodstuffs and products, if the resources of the occupied country were inadequate to ensure subsistence;
- (3) Not to requisition foodstuffs for the occupation forces or administration personnel until the needs of the civilian population had been provided for.

It was unnecessary to review the extent to which, during and after the last war, the United States of America had contributed to the food supplies of its allies and later of its former enemies. His Delegation was obliged to make reservations on the question of supplies, not because it wished to ignore a moral obligation which nobody could accuse the United States of America of having failed to carry out, but because it only wished to accept obligations which could be fulfilled in practice.

His Delegation was concerned with realities. The fact that it had been possible during the last war for the United States to export such large quantities of foodstuffs was due to his country having had an unprecedented series of record crops; but one could not base one's calculations on that always being the case. Moreover, dangers of submarine warfare could not be discounted, and it should be clearly understood that the victualling

of troops in occupied territory must take precedence over any other food requirements.

In regard to the right to requisition, Article 49, as it stood, confused an issue which had until now been perfectly clear. Article 52 of the Hague Regulations laid down that requisitions were not to be demanded except "for the needs of the army of occupation" and "in proportion to the resources of the country". According to the Article under discussion, the right to requisition was to depend on whether the subsistence of the civilian population was sufficiently provided for.

It would hardly be practical to imagine that an army of occupation would abandon its right to requisition foodstuffs for its own needs. It was for the sake of clarity that his Government was proposing the amendment in question, and not, let him repeat it, in order to evade a moral obligation which they had never contested. His observations concerning Article 49 applied equally to Articles 50 and 51.

Mr. CASTRÉN (Finland) said that his Delegation's amendment referred to the second sentence of the first paragraph, which had been added at the Stockholm Conference. He asked for an explanation of the term "international standards".

Mr. PILLOUD (International Committee of the Red Cross) replied that the sentence had been included at the request of the Netherlands Delegation, which had referred to certain proposals which were being studied by organizations of the United Nations and to the prevailing standards adopted in some countries, for instance, in South Africa.

The last three paragraphs of Article 49, as well as Articles 51 and 52, were based on experience gained during the last war in feeding the population of numerous territories, in particular that of Greece. The relief measures organized in that country by the Swedish Government in conjunction with the I.C.R.C., had made it possible to send more than 20,000 tons of foodstuffs there monthly.

Mr. MINEUR (Belgium) asked the Delegation of the United States of America for some explanation regarding the manner in which it considered the right to requisition should be limited. "Available foodstuffs" could be taken to mean any surplus foodstuffs that were not absolutely necessary for the feeding of the civilian population. He did not, therefore, think that there was any fundamental difference between that text and the Stockholm draft which stated that requisitioning was only permissible if the subsistence of the civilian population was sufficiently provided for.

Mr. HARASZTI (Hungary), on the other hand, considered that to accept the amendment of the United States of America would be tantamount to the all but total jettisoning of the principle, recognized at Stockholm, that the subsistence of the population must be safeguarded in all circumstances. The United States amendment substituted a mere promise on the part of the Occupying Power for a definite legal obligation. The second paragraph left the question of requisitioning entirely to the discretion of the Occupying Power. The text contained only one reservation, namely, that requisitioning was only admitted for the benefit of the occupying forces. That was no safeguard for the population of the occupied territory. The United States amendment considerably weakened the Stockholm text.

Brigadier PAGE (United Kingdom) wished to submit certain observations which applied equally to Articles 49, 50 and 51. The United Kingdom Delegation had proposed amendments to those Articles (*see Annex No. 280*) redistributing the subject matter contained in them.

In the first paragraph of Article 49 the reference to "international standards of nutrition" should be omitted, since those standards had not yet been established.

Regarding the second paragraph, the United Kingdom Government agreed with that of the United States that the Occupying Power must be under a moral obligation to ensure the food supply of the civilian population. When, however, those supplies were inadequate, it was incumbent on the army of occupation to make, at its discretion, an equitable distribution between its troops and the inhabitants.

He also proposed the deletion of the last paragraph but one as its provisions, being general in their application, would be better placed in a separate Article at the end of the Convention.

The United Kingdom Delegation had, in addition, drafted a very short Article 50 dealing with medical assistance.

In regard to relief consignments, his Delegation considered that the Occupying Power should have

the right to refuse consignments in certain cases. That reservation naturally did not refer to the International Committee of the Red Cross, but to other less well known organizations not offering the same guarantees of impartiality. The Occupying Power should have the right not only to refuse, but also to delay, relief consignments.

Mr. CASTBERG (Norway) thought that the consideration of the United Kingdom proposals was a matter for the Drafting Committee. He wished to keep to Article 49 and the amendment submitted by the United States of America. The latter appeared to relate only to the first two paragraphs. Paragraphs 3 to 6 would remain unchanged. He quite understood that great military Powers should only be prepared to contract obligations which they would be able to honour. He thought, however, that the Delegation of the United States of America had perhaps gone a little far in its reservations. The French text did not seem to impose as definite an obligation on the Occupying Power as the Delegation of the United States of America appeared to have inferred from the English text. The expression "s'efforceront d'assurer" in the French text was less imperative than the words "shall endeavour" in the English text. He hoped the right to requisition would be defined in such a way as to consolidate the undoubted progress which the Stockholm text represented. He suggested accordingly that the words "after the food supply of the civil population is assured" should be inserted in the United States amendment after the words "available in the occupied territory". Such a wording would be in the interests of occupied countries.

Msgr. BERTOLI (Holy See) pointed out that the United Kingdom amendment omitted all reference to impartial humanitarian bodies, and also limited relief measures by bodies other than the International Committee of the Red Cross. He was aware that the United Kingdom Delegation intended to propose the insertion of a special Article dealing with the activities of humanitarian organizations. His Delegation would gladly support such a proposal, but meanwhile they felt bound to make a formal reservation in regard to the omission from Article 49 of any reference to those bodies.

According to a decision by the Drafting Committee, the first paragraph of Article 13, which had been deleted from that Article, was to be added to Article 50. Since his Delegation had tabled an amendment to that paragraph, he reserved the right to submit the amendment again when Article 50 came under discussion.

Mr. MOROSOV (Union of Soviet Socialist Republics) feared that the numerous amendments proposed, most of them recently, to Articles 49 to 51 would make it difficult for his Delegation to enter into all the details of the discussion.

He wished however to make certain preliminary observations on the discussion itself and its general trend. The various amendments submitted seemed to him to restrict the scope of the text adopted at Stockholm, which provided that the vital interests of the population in occupied territories must be protected in all circumstances. That was a perfectly clear text based on a just principle. The amendment of the United States of America seemed to ignore the problem of the protection of war victims. The Delegate of Norway had already spoken on the matter. What he had said might have been expressed in much more forceful terms. If the United States amendment was adopted, it would not be an exaggeration to say that the very existence of the population of occupied territories would be endangered. He was surprised that such an attitude and the manner in which the matter was dealt with had not given rise to sharper criticism on the part of those Delegations whose countries had suffered under the Nazi occupation. Agreement must be reached on a text which was closer to the Stockholm draft. He hoped that the decision taken by the Conference would be in keeping with the humanitarian aims of the Convention they were considering.

The CHAIRMAN observed that the discussion had brought out two different conceptions, one of which was expressed in the Stockholm text and the other in the amendments of certain Delegations. The first conception was that the feeding of the civilian population constituted a moral and legal obligation. The other conception was that the feeding of the population depen-

ded only on a promise whose fulfilment was contingent on military exigencies. He hoped that some means would be found of conciliating those two views. He wondered whether all the questions of food supply and relief dealt with in Articles 49 to 54 could not, as one Delegation had suggested, be submitted for consideration to an *ad hoc* committee, in which the Delegations which had submitted amendments and those which were in favour of maintaining the Stockholm text could meet to discuss the points at issue.

Colonel DU PASQUIER (Switzerland), Rapporteur, hoped that the members of the *ad hoc* committee would not be the same as those who sat on the Drafting Committee, as otherwise the two committees could not meet simultaneously.

Mr. MOROSOV (Union of Soviet Socialist Republics) considered that the question should simply be referred to the Drafting Committee.

Mr. MAGHERU (Rumania) shared that opinion. He was against the appointment of too many Drafting Committees.

Colonel HODGSON (Australia) supported the Chairman's proposal.

Mr. WU (China) proposed that the question should be put to the vote without further delay.

The CHAIRMAN, having regard to the objections raised by the Soviet and Rumanian Delegates, preferred to defer the discussion to a later meeting in order to allow Delegations to consult together on the question.

The Committee concurred.

*The meeting rose at 6.30 p.m.*

## EIGHTEENTH MEETING

*Wednesday 18 May 1949, 3 p.m.*

*Chairman:* Mr. Georges CAHEN-SALVADOR (France)

### **Appointment of a Working Party for the Study of Articles 49 to 54**

The CHAIRMAN said that the Bureau had suggested that Committee III should set up a working party to study the amendments submitted to Articles 49 to 54, to hear the views of the authors of those amendments, and to submit proposals regarding the wording of the Articles to Committee III.

The Committee approved the above suggestion by 28 votes to one.

The CHAIRMAN said that the Bureau had proposed the following as members of the Working Party:

Mr. Mevorah (Bulgaria) who, as Vice-Chairman of the Committee, would seem to be indicated as Chairman of the Working Party; General Page (United Kingdom), Mr. Castrén (Finland), Mr. Mineur (Belgium) and Mr. Holmgren (Sweden).

Mr. CLATTENBURG (United States of America) proposed that Mr. da Silva (Brazil) should also be a member, and General OUNG (Burma) proposed the election of General Faruki (Pakistan).

The Working Party constituted as above was elected unanimously.

### **Articles 49 to 54**

Mr. MAJERUS (Luxemburg) wished to submit two proposals in the nature of a compromise to take account of the two trends of opinion existing on the subject of Article 49. He proposed to keep the words "the Occupying Power is bound ..." instead of the weaker expression "shall endeavour" in the United States amendment. On the other hand, the words in that amendment "within the means available to it" should be retained. He thought that in the first paragraph, the second sentence, which had been added at Stockholm, might be omitted.

A sentence based on the provisions in the Hague Regulations should be added to the second paragraph so as to avoid misunderstanding regarding the meaning of the word "available". It might be worded as follows: "Such requisitions shall be in proportion to the resources of the country and shall not affect the normal food supply of the civilian population".

Mr. MEVORAH (Bulgaria) warned the Committee against accepting amendments which, like that of the United States of America, tended to weaken the Stockholm wording. Obviously, to quote a maxim of common law, "no one is bound to do the impossible"; but that adage referred to absolute impossibility, whereas expressions such as "within the means available to it", "if possible" or "shall endeavour" would weaken to a regrettable extent the scope of the provisions under discussion.

Mr. MARESCA (Italy) was opposed to the retention of the second sentence of the first paragraph, which in his view was an interpolation. International law recognized the possibility of a State undertaking to apply rules not yet in existence, to which it had nevertheless subscribed, as for instance in the case of the most favoured nation clause. In no circumstances, however, could a State commit itself in advance to apply measures it had not approved, such as rules for the establishment of international standards of nutrition.

He agreed with the United Kingdom Delegation as to the desirability of a rearrangement of the subjects dealt with in Articles 49, 50 and 51, provided no part of their contents was omitted.

In the matter of the right to requisition, the amendment of the United States of America constituted a marked advance on the Stockholm wording. It laid down that the right of requisition could be exercised only to meet the need of the army of occupation. That suggestion should be retained. Furthermore, the principle of the payment of fair compensation should be laid down in the Convention.

In regard to food supplies, international law, as laid down in the Hague Regulations, imposed no obligation on the Occupying Power to ensure the food supply of the occupied territory. It was, however, the duty of an Occupying Power to ensure the food supply of the occupied territory within the means available to it.

Finally, in regard to Article 50, he strongly urged the Committee to accept the suggestion of the Delegation of the Holy See that religious assistance should be provided for in the same way as medical relief.

Miss JACOB (France) explained that, if the French Delegation took little part in the discussion, that did not mean that it considered the Stockholm wording perfect. As far as substance was concerned, however, Article 49 was the outcome of a compromise between the proposals of the International Committee of the Red Cross and those submitted by the French Delegation to the Conference of Experts in 1947. They embodied humanitarian principles which should be maintained. On those grounds, in so far as the food supply of the civil population was concerned, the French Delegation supported the Norwegian Delegate's proposal for a clearer definition of the meaning of the word "available" in the United States amendment.

General SCHEPERS (Netherlands) asked whether the relief societies mentioned in the third paragraph of Article 54 were the same as those to which Article 20 of the Wounded and Sick Convention referred, or whether relief societies in general were meant.

Mr. PILLOUD (International Committee of the Red Cross) having replied that all relief societies, whether recognized or not, were referred to, General SCHEPERS (Netherlands) said that his Delegation would submit an amendment (*see Annex No. 291*) proposing that it should be made clear that the relief societies referred to were those "duly authorized and recognized" by the Government of the occupied territory.

Mr. MINEUR (Belgium) reminded the meeting that his Delegation had submitted an amendment to Article 54 (*see Annex No. 290*). As the amendment in question was preceded by an explanatory statement he did not think it necessary to say more on the subject in the course of the general discussion.

The CHAIRMAN declared the discussion on Articles 49 to 54 closed.

### Article 55

Mr. MOROSOV (Union of Soviet Socialist Republics) explained that the main purpose of the amendment submitted by his Delegation was to coordinate the provisions of the first and second paragraphs.

The first paragraph laid down the principle of the maintenance in force of the penal legislation of the occupied territory, whereas the second paragraph referred to the right of the Occupying Power to subject the population of the occupied territory to penal laws intended to ensure the security of members of its armed forces or of its administration personnel.

It would seem advisable to add the words "except in cases where this constitutes a menace to the security of the Occupying Power" to the first paragraph. If that suggestion was adopted, the word "however" in the second paragraph could be omitted.

Apologizing for speaking on the United States amendment before it had been introduced by that Delegation, he observed that at first sight the amendment appeared to be very similar to that of his own Delegation. It differed however in that it gave the Occupying Power an absolute right to modify the penal legislation of the occupied territory. Such a right greatly exceeded the limited right laid down in the Hague Regulations, as well as in the Stockholm text.

Mr. GINNANE (United States of America) explained that his Delegation's amendment (*see Annex No. 294*) was prompted by the experience of the American authorities at the time of the occupation of Germany. On moving into Germany, the American army had found in existence a whole series of laws and provisions based on the National-Socialist ideology, including, in particular, racial discrimination. The United States Government had considered it necessary to abrogate the laws in question, which were incompatible with a legal system worthy of the name, and likewise to suppress the Courts set up in Germany for the purpose of administering those inhuman laws. If his Delegation's amendment to the first paragraph was accepted, the second paragraph would become redundant and could be omitted. The United States Delegation recognized the desirability of laying down that the Occupying Power should in no circumstances use the criminal law of the Occupied Power as an instrument of oppression. That matter was, however, dealt with in other clauses of the Convention, in particular, in the second paragraph of Article 59, relating to the death sentence.

Mr. DE GEOUFFRE DE LA PRADELLE (Monaco) thought that the Stockholm text should meet

the views of the Delegations of the Union of Soviet Socialist Republics and of the United States of America, without there being any need to modify it. It was a well-established principle of international law (as laid down, for instance, in Article 43 of the Hague Regulations) that accused persons should not be removed from the jurisdiction of their rightful judges. There were considerable differences between the penal laws of the various countries, and it should not be possible for the penal legislation of the Occupying Power to annul, in the case of the population of occupied territories, the force of the above principle of natural law which was recognized in positive law.

The Hague Regulations did not, however, preclude the operation of Courts applying penal legislation "imported" by the Occupying Power. An army of occupation brought with it in its baggage, as it were, its own code of military law, which it applied both to the members of its own army and to civilians in occupied territory who committed offences against the occupying forces.

Article 55 covered both aspects of the problem. The first paragraph reproduced the provision of Article 43 of the Hague Regulations, while the second paragraph was in conformity with the international usage which stipulated that the legal code of the army of occupation was applicable to the occupied territory. There could be no advantage in changing the present wording. The inherent drawbacks could only be sensed in the case of the Soviet amendment. On the other hand, they stood out very clearly in that of the United States of America.

The latter amendment gave the Occupying Power the right to legislate in place of the authorities of the occupied territory. The reasons given in support of that proposal were satisfactory in the particular case quoted, but would not hold good as a general rule.

What would be the position in the opposite case, that of an invader other than a democratic Power, who exercised that right? Under the United States amendment the invader could change the penal legislation of the occupied territory. The Committee should think very carefully before amending the wording of the Convention in the way suggested.

Article 57 referred to military or civil courts. The reference to civil courts to be set up by an Occupying Power should be omitted. The desirability of doing so was clearly shown by the fact that the Stockholm Conference had qualified the word "civil" by "non-political"—thereby

recognizing by implication the danger of the establishment of civil courts by the Occupying Power. In order to avoid the risk of courts assuming a political character, it would be preferable to exclude entirely the possibility of civil courts being set up and to adhere strictly to provisions relating to military tribunals.

In conclusion, Article 55 should be adopted as it stood, and all reference to civil courts in Article 57 should be omitted.

Mr. CASTBERG (Norway) believed that parts of the amendments both of the Union of Soviet Socialist Republics and of the United States of America might be accepted. The latter, however, went too far, as it gave the impression that the Occupying Power could change the legislation of the occupied territory as it thought fit. Such an interpretation would represent a retrogressive step of considerable importance in relation to existing international law. There were two possible solutions:

- (1) to enumerate the cases in which the Occupying Power could modify legislation (for the security of its troops and so forth); or
- (2) to refer to existing international law, by providing that the Occupying Power must respect the penal legislation in force in the occupied territory "unless absolutely prevented", which would simply mean reproducing the Hague text.

Mrs. MANOLE (Rumania) agreed with the Delegates of Monaco and Norway. The United States amendment changed the whole sense of Article 55. On the other hand, the Soviet amendment was within the spirit of the Convention and gave greater precision to the text in question.

Mr. DE ALBA (Mexico) remarked that the principal aim of the Convention was the protection of the civilian population. It was important, therefore, to adopt provisions which would not constitute a retrogression by comparison with those laid down at the Hague.

In order to take account of the legitimate concern expressed by the United States Delegation, he suggested the adoption of a wording to the effect that the Occupying Power could only modify the legislation of an occupied territory if the legislation in question violated the principles of the "Universal Declaration of the Rights of Man".

*The meeting rose at 5.30 p. m.*

## NINETEENTH MEETING

*Thursday 19 May 1949, 3 p.m.*

*Chairman:* Mr. Georges CAHEN-SALVADOR (France)

**Article 55**

Mr. MARESCA (Italy) agreed with the Delegate of Norway's proposed modification of the first paragraph of Article 55.

The provisions of the second paragraph should, however, be brought into line with others of the Civilian Convention, particularly with those relating to the treatment of partisans. Consequently he suggested that a reference to Article 3 of the Prisoners of War Convention should be added to that paragraph.

Article 57, which was closely related to Article 55, might, he thought, be worded as follows: "Breaches of the penal provisions published by the Occupying Power under Article 55, second paragraph, shall only be punishable after sentence has been pronounced by a regularly constituted court. The Occupying Power shall, for this purpose, be entitled to hand over the accused to its own regular military courts on condition that...". The words "non-political" and "or civil" should be deleted.

With regard to Article 58, which was also closely related to Article 55, as well as to Article 57, his Delegation suggested the addition at the end of the Article of the words: "and retains in all circumstances the right of self-defence".

Mr. DAY (United Kingdom) wished to include in Article 55 a provision to cover cases where local courts were unable to function and where the Occupying Power was obliged to set up others, as had been the case in certain territories occupied by the Allies in Africa. That might be done by adding the words "without prejudice to the effective administration of justice" to the first paragraph. The second paragraph should then say that the Occupying Power had the right to take such legislative measures as might be necessary to secure the application of the Convention and the proper administration of the territory.

Colonel HODGSON (Australia) asked for some enlightenment regarding the Soviet Union's amend-

ment to the Article in question. Would that amendment give the Occupying Power complete jurisdiction over civil courts—which would hardly be acceptable—or did it mean that those civil courts which were still functioning would be competent to decide whether or not the application of the penal laws constituted a threat to the security of the Occupying Power? That hardly seemed possible.

General SCHEPERS (Netherlands) drew attention to the close connection existing between Article 43 of the Hague Regulations and Article 55 under discussion. If Article 55 was adopted, what would remain of Article 43 of the Hague Regulations—since Article 135 of the Draft Convention laid down that that Convention would replace the Hague Convention in regard to the matters with which the former dealt? It was inadmissible that the new Convention should overrule an existing Convention of wider scope. Any possible misinterpretation must be avoided, for it was certain that the Occupying Power would be only too much inclined to adopt the interpretation most favourable to itself.

Mr. QUENTIN-BAXTER (New Zealand) thought that Article 55 should be worded in the light of Articles 49 to 54, which required the Occupying Power to share its food supplies with the population of the occupied territory. It was important that the latter should not be exempted from any war legislation enacted to promote production and to regulate the distribution of food supplies.

Article 55 was referred to the Drafting Committee.

**Article 56**

An amendment tabled by the United States of America to replace the words "brought to the knowledge of" by "publicly announced" was referred to the Drafting Committee without discussion.

Mr. MINEUR (Belgium) considered that Article 56, as worded, did not make it sufficiently clear that the penal provisions in question could not be retrospective in effect. He proposed the addition of a second paragraph reading as follows: "The effect of these penal provisions shall not be retro-active."

Article 56 was referred to the Drafting Committee.

#### Article 57

An amendment tabled by the United States of America (*see Annex No. 297*) was referred to the Drafting Committee without discussion.

Mr. MEULBLOK (Netherlands) thought that if the courts of appeal were situated outside occupied territory, adjudication would give rise to many difficulties, especially with regard to the movements of the condemned persons and their legal advisers. He therefore proposed to replace the last sentence of Article 57 by: "Courts of appeal shall preferably sit in occupied territory."

The CHAIRMAN reminded the meeting that the Delegations of Italy and Monaco had submitted their views on Article 57 during the discussion of Article 55.

In reply to an enquiry by Colonel HODGSON (Australia) regarding the amendment of the United States of America, Mr. GINNANE (United States of America) said that both the text of the amendment and the Stockholm text referred, in the view of his Delegation, to the courts of the Occupying Power.

Article 57 was referred to the Drafting Committee.

#### Article 58

Article 58 and the amendment to it tabled by the Delegation of the United States of America were referred to the Drafting Committee without discussion.

#### Article 59

Mr. WERSHOF (Canada) explained that the purpose of his Delegation's amendment was to reinstate the wording of the second paragraph more or less as it was before being amended by the Stockholm Conference. (The draft submitted to the Stockholm Conference stated: "The courts of the Occupying Power may not pass the death

sentence on a protected person unless he is guilty of homicide or of some other wilful offence which is the direct cause of the death of one or several persons.") The Stockholm wording would mean that if the occupied country had abolished the death penalty before the occupation, the Occupying Power could not pass a death sentence even in the case of the murder of members of its armed forces. It was not reasonable to expect that the Convention, if so worded, would be respected on that point.

Mr. GINNANE (United States of America) said that his Delegation would submit an amendment to replace the words "the law of the occupied Power" by the words "under applicable law". The purpose of the amendment was to avoid prejudicing the issue of any enquiry undertaken by international institutions with a view to codifying international law on penal matters. The present Conference was not competent to draw up a legal code for the repression of war crimes.

The abolition of the death penalty in the case of protected persons under 18 years of age (last paragraph) was a matter which called for very careful consideration before such a sweeping provision was adopted.

Mr. MINEUR (Belgium) did not wish to make any special comments on the amendment of the Belgium Delegation, which was accordingly referred to the Drafting Committee.

Mr. PILLOUD (International Committee of the Red Cross) said that Article 59 was one of those which had been most radically redrafted at the Stockholm Conference. In spite of the changes which had been made, or perhaps because of them, the text of the Article still lacked precision.

A stipulation should be added to the first paragraph to the effect that the duration of internment in lieu of imprisonment should not exceed that of the imprisonment which it replaced.

In the second paragraph the words "at the outbreak of hostilities" were not sufficiently clear, and could be interpreted to mean either peacetime legislation or legislation promulgated just before war broke out—at the time, for instance, of the partial mobilization of the armed forces. He himself preferred the first interpretation.

The statement in the third paragraph of the French text to the effect that the accused person was not bound by any "duty of obedience" to the Occupying Power, was wrong. The word "obéissance" should be replaced by "fidélité".

Mr. MARESCA (Italy) was of opinion that the penalty of internment was not appropriate to the offences mentioned in the first paragraph, and

that a more exact translation of the English expression "duty of allegiance" should be found than "devoir d'obéissance". He further thought that the age-limit mentioned in the third paragraph should be reduced from 18 to 16 years.

Mr. DAY (United Kingdom) proposed the omission of the first paragraph of Article 59. If a person had committed an offence, he should be punished. Internment was not a punishment; it was a precautionary measure to safeguard the security of the State.

He agreed with the Delegates of Canada and the United States of America regarding the substance of their amendments to the second paragraph. He believed, however, that the death penalty should be permitted in the case of any serious offence against the laws of war.

Article 59 was referred to the Drafting Committee.

#### Article 60

The CHAIRMAN reminded the meeting of the amendment submitted by the Delegation of Greece (Document No. 11), which drew attention to the provision that opinions expressed before the occupation were not punishable. That, the Greek Delegation thought, might, by implication, be taken to mean that opinions expressed during the occupation might be punishable—an argument which was clearly inadmissible.

Mr. GINNANE (United States of America) referred to his Delegation's amendment to insert, before the words "laws and customs of war" in the first paragraph, the words "laws of the Occupying Power or of the". That addition was essential, because the Article as it stood might be construed as meaning that the amnesty should extend to any crimes committed before the occupation so long as they had not been committed against the laws and customs of war.

Mr. QUENTIN-BAXTER (New Zealand) supported the above amendment. He also agreed with the Delegation of the United States of America that the present Conference should not attempt to establish any laws relating to war crimes, or take any step which might stand in the way of any developments that might result from some future international conference on that question. He therefore proposed that the words "breaches of the laws and customs of war" at the end of the first paragraph should be replaced by "crimes at international law".

Mr. MOROSOV (Union of Soviet Socialist Republics) stated that the speed at which the discussion was proceeding made it impossible for him to take up a definite position on the Articles under consideration. He asked for further explanations regarding the amendment of the United States of America. Did it mean that a Power would draw up in advance the laws to be applied in a territory which it intended to occupy, and would prosecute offenders against such laws after occupying it? If such was the case, the provision went far beyond the rights of occupation. He mistrusted new wordings, and felt it was safer to keep to the Stockholm text.

Mr. GINNANE (United States of America) replied that the United States amendment contemplated only the situation to which the United Kingdom Delegate had referred—namely, one where the entire system for the administration of justice had ceased to exist. In such a case the Occupying Power would have to assume complete responsibility for the maintenance of law and order. The purpose of the amendment was not to establish any new system of law, but to make normal activities possible in an occupied territory.

Mr. MOROSOV (Union of Soviet Socialist Republics) said that one point was not yet quite clear to him. He wished to know whether the Delegation of the United States of America insisted on maintaining their amendment as it stood or whether they were prepared to withdraw or modify it. If it were maintained in the form in which it was presented, it would, he thought, be in contradiction with the explanation just given.

Mr. GINNANE (United States of America) replied that his Delegation did not insist on any precise wording. They would gladly consider any alternative text which might be drawn up by the Drafting Committee.

Article 60 was referred to the Drafting Committee.

#### Article 61

Article 61 and the amendment to it tabled by the United States of America were referred to the Drafting Committee.

#### Article 62

Mr. GINNANE (United States of America) said that his Delegation intended to propose an amendment to replace the words "every facility" in the first paragraph by "the necessary facilities".

Mr. MINEUR (Belgium) preferred the term "every facility" because of its wider scope.

Article 62 was referred to the Drafting Committee.

#### Article 63

Article 63 and the amendment of the United States of America relating to it were referred to the Drafting Committee.

#### Article 64

Article 64 and the amendment of the United States of America relating to it were referred to the Drafting Committee.

#### Article 65

There were no observations on Article 65.

#### Article 66

The amendment of the United States of America was referred to the Drafting Committee; that of Canada was withdrawn.

Msgr. BERTOLI (Holy See) tabled an amendment to add to the first paragraph the words: "They shall also be entitled to receive any spiritual assistance which they may require."

The amendment, he said, related to assistance to which everybody was entitled, whatever the circumstances in which he found himself. It was not an innovation, as it was in conformity with Article 99 of the Draft Prisoners of War Convention, which made formal provision for religious assistance to prisoners serving a sentence.

Article 66 was referred to the Drafting Committee.

#### Article 67

Mr. DE GEOUFFRE DE LA PRADÈLLE (Monaco) drew attention to a defect in Article 67. The Article said that indicted or convicted persons should in no case be taken outside the occupied territory. Article 57, on the other hand, laid down that courts of appeal might sit outside occupied territory. The absolute form of the wording of Article 67 must not deprive such persons of the possibility of appearing before a court of appeal sitting in non-occupied territory.

Article 67 was referred to the Drafting Committee.

#### Article 68

There were no observations on Article 68.

#### Observations on the relation existing between the Hague Regulations of 1907 and the Civilians Convention

General SCHEPERS (Netherlands) wished, before the discussion on Section III was closed, to submit a few general observations on the relation existing between the Hague Regulations and the Convention under consideration. In view of the provision in Article 135 to the effect that "the present Convention shall replace, in respect of the matters treated therein, the Hague Convention relating to the Laws and Customs of War . . .", Article 43 to 68 of the present Convention should, in particular, be compared with Articles 42 to 56 of the Hague Regulations.

Article 43 of the Regulations makes the Occupying Power responsible for "ensuring, as far as possible, public order and safety". That was a completely general stipulation which was only partially covered by the provisions of the Draft Civilians Convention. To what extent could the above obligation be carried out if one took into consideration the special provisions—especially those concerning labour—contained in Article 47 of the Draft?

It would be impossible to submit within forty-eight hours all the amendments that would be necessary to bring the text of the present Draft into line with the Hague Regulations. He felt, however, that the attention of the Drafting Committee should be drawn to the question, which was of considerable importance.

Mr. PILLOUD (International Committee of the Red Cross) pointed out that the Hague Convention was intended to regulate relations between States, whereas the present Convention was concerned with the rights of individuals.

A similar situation had arisen in 1929 in connection with the drafting of the provisions regarding the treatment of prisoners of war, which were also covered by certain provisions of the Hague Regulations. It was said at the time that the Convention relative to the Treatment of Prisoners of War was "complementary to" the Hague Convention.

The same argument applied to the Civilians Convention. It seemed clear that whenever the new Convention dealt with matters already covered by the Hague Regulations, the new Convention would be applicable, whereas any question not covered by the new Convention would be governed by the Hague Regulations.

One particularly delicate point arose, however, in connection with the definition of the term "occu-

pation". Very special consideration should be given to the problems arising in connection with the replacement of Article 42 of the Hague Convention by Article 2 of the present Convention.

Mr. MINEUR (Belgium) was of opinion that the misgivings to which Article 135 had given rise might be allayed if the text were modified. It would be sufficient, he thought, if the following new wording of the Article were adopted: "In the relations between the High Contracting Parties who are bound by the Hague Convention concerning the laws and customs of war, whether the Convention of 29 July 1899 or that of 18 October 1907, the said Hague Convention shall remain applicable save in so far as it is expressly abrogated by the present Convention."

In reply to a question by Mr. CASTBERG (Norway), the Chairman said that the time had not yet come for the discussion of Article 135. There were several possible ways of dealing with the problem. French law frequently made use of a qualifying clause to the effect that "Any provision to the contrary is hereby abrogated" (Toutes les disposi-

tions contraires sont abrogées), leaving it to the judges to settle possible difficulties. That would be one solution. Another might be to call a meeting of the legal experts among the members of Committee III and to request them to study the problem which was a purely legal one. In any event it would be better to defer any decision on that Article until the Committee had discussed it.

#### **Procedure for the consideration of the other items on the agenda**

After an exchange of views concerning the method to be adopted for the consideration of the other items on the agenda, the Committee decided to continue to study the Draft Convention Article by Article, on the understanding that its work would be facilitated and expedited (1) by limiting the discussion to Article to which amendments had been submitted, and (2) by taking into account the decisions of Committee II in the case of Articles dealing with similar problems in the Prisoners of War Convention.

*The meeting rose at 6.30 p.m.*

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### TWENTIETH MEETING

*Friday 20 May 1949, 3 p.m.*

*Chairman:* Mr. Georges CAHEN-SALVADOR (France)

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#### **Communication from the International Union for Child Welfare**

The CHAIRMAN read a letter from the International Union for Child Welfare (*see Annex No. 200*). That association, which had taken part in the Stockholm Conference as an observer, urged that the Articles in the Draft Convention relating to the position of women and children, in particular Articles 12, 20, 21 and 27, should be adopted without substantial alteration.

#### **Article 69**

Mr. MARESCA (Italy) said that Article 69 should first lay greater emphasis on the exceptional

character of internment and the conditions governing the adoption of this measure, and then deal with the procedure to be followed. The Italian Delegation had submitted an amendment worded as follows:

"The Parties to the conflict may not intern protected persons except under the conditions stipulated in Articles 39 and 68, and according to the procedure laid down in Articles 32, 40 and 68*bis*."

The new Article 68*bis* would read as follows:

"Decisions regarding the internment of protected persons shall be taken only in accordance with a regular procedure similar to that stipulated in Articles 32 and 40."

**Article 70**

Mr. WU (China) said that internees were generally enemy aliens who had been interned for special reasons based upon their hostile attitude or upon any harmful acts they might have committed. The Detaining Power had every reason for adopting certain measures of control over them. His Delegation, therefore, proposed to add at the end of Article 70 the words "and with the measures of control which the Detaining Power may consider necessary to its security".

General SLAVIN (Union of Soviet Socialist Republics) said that it was impossible for his Delegation to express an opinion during the general discussion, on amendments which had only been submitted verbally.

The CHAIRMAN stated that no Delegation was bound to take a definite stand at the first reading. The amendments would be circulated as rapidly as possible, but in the meantime any comments made by their authors might assist the work of the Drafting Committee.

**Article 71**

Mr. MINEUR (Belgium) proposed to add the words "while respecting the national customs of the persons concerned" to the first paragraph. Replying to a question by General SLAVIN (Union of Soviet Socialist Republics) he explained that the purpose of adding those words was to take into account such things as diet, religious customs and the state of health of internees.

Mr. ABUT (Turkey) pointed out that the diet of internees was dealt with in Article 78; Mr. MINEUR (Belgium), however, wished to maintain his amendment, which seemed to him to be in the general interest.

**Article 72**

Mr. SPEAKE (United Kingdom) thought that family interests should be more fully safeguarded. All facilities should be provided to enable family life to continue (separate accommodation for individual families, etc.).

In the case of children interned at their parents' request, there should, he thought, be an age-limit, say 16 years. Above that age, the wishes of the children should be taken into account.

Mr. MINEUR (Belgium) drew attention to the new wording of Article 72 proposed by the Inter-

national Committee of the Red Cross ("Remarks and Proposals", page 77). His Delegation supported that proposal.

**Article 73**

Mr. CASHMAN (Ireland) said that it was essential to prevent misuse of the sign marking the places of internment. He pointed out that it was only the internees which would suffer as a result of such misuse. His Delegation proposed that the words "No place other than a place of internment shall be marked as such" should be added to the second paragraph.

The CHAIRMAN replied that the Drafting Committee would have to take into consideration the results of the discussions of the other two Committees concerning the use of distinctive signs.

General SCHEPERS (Netherlands) stated that his Delegation supported the proposal made by the International Committee of the Red Cross in "Remarks and Proposals", page 77.

**Article 74**

There were no observations on Article 74.

**Article 75 and new Article 75A**

Mr. SPEAKE (United Kingdom) drew attention to the last sentence of the first paragraph. His Delegation agreed with the principle expressed in that paragraph, but felt that the last sentence did not take sufficient account of facts. Instead of saying "in no case shall places of internment be located in unhealthy areas or in districts the climate of which is injurious for the internees", it would be better to say that if internment was considered necessary, those interned should be transferred as soon as possible to healthier and more suitable places.

Msgr. BERTOLI (Holy See) referred to his Delegation's amendment which proposed to include in the Draft Convention a new Article 75*bis* worded as follows:

"The Detaining Power shall place at the disposal of interned persons premises suitable for the holding of religious services of whatever denomination these services may be."

He reminded the meeting that the provision in question had been adopted by the Stockholm Conference and included in Article 82. For tech-

nical reasons, however, the provision in Article 82 had to be transferred to the Chapter dealing with places of internment. It corresponded to a provision which had already been included in Article 30 of the Prisoners of War Convention.

Mr. MINEUR (Belgium), Mr. CASTRÉN (Finland) and Mr. DE LA LUZ LEON (Cuba) spoke in turn in support of the Holy See's proposal.

#### Article 76

Mr. WERSHOF (Canada) introduced the amendment of the Delegation of Canada which proposed to delete the first paragraph and substitute:

"Whenever practicable, canteens shall be installed in all places of internment, where internees may procure ordinary articles and soap at prices no higher than those of the local market."

Further, the whole of Article 76 should be moved from its present position and placed in Chapter VII of Section IV, immediately after Article 93.

General SLAVIN (Union of Soviet Socialist Republics) having expressed the opinion that the provision relating to canteens would be more appropriately placed in the chapter dealing with places of internment, Mr. WERSHOF (Canada) replied that his Delegation did not intend to press the point.

Replying to a question raised by Mr. MINEUR (Belgium) who was surprised that the Canadian amendment made no mention of foodstuffs, the CHAIRMAN admitted that the English and French versions of the text adopted at Stockholm did not exactly correspond, the word "foodstuffs" having been omitted in the English text. This was apparently a mistake in printing which would be corrected. The Representative of the International Committee of the Red Cross agreed that the Stockholm Conference had really intended to mention foodstuffs.

Mr. MARESCA (Italy) supported the amendment of the Delegation of Canada.

With regard to the third paragraph of Article 75, his Delegation supported the proposal of the International Committee of the Red Cross ("Remarks and Proposals", page 78).

#### Article 77

Mr. CASHMAN (Ireland) did not consider the wording of Article 77 entirely satisfactory. To

provide for treatment similar to that of the civil population might be of little value in the case of camps in thinly populated areas. His Delegation proposed to submit an amendment to Article 77 (*see Annex No. 321*).

Mr. DE LA LUZ LEON (Cuba) agreed with the view expressed by the Delegate of Ireland.

#### Article 78

Mr. CASTRÉN (Finland) said that his Delegation had submitted an amendment to Article 78 (Document No. 9). His Delegation proposed, as in the case of Article 49, to delete from the first paragraph the last sentence referring to "international standards bearing on nutrition...".

Mr. SPEAKE (United Kingdom) presumed that the Drafting Committee would endeavour to bring the text of Article 78 into line with that of the corresponding Article adopted by Committee II. He hoped that provision would be made for sufficient rations to ensure the normal growth of children. He supported the amendment of the Delegation of Finland.

Mr. MARESCA (Italy) proposed to add to the first sentence of the first paragraph a stipulation to the effect that the internees' food rations should in no case be less than those provided for the civil population of the territory where they were interned.

#### Article 79

There were no observations on Article 79.

#### Article 80

Mr. MEULBLOK (Netherlands) suggested that the fourth paragraph should lay down that the official certificates of illness or injury must be issued by the medical authorities of the Detaining Power.

Mr. MINEUR (Belgium) proposed to delete the words "if necessary" in the first paragraph.

Mr. SPEAKE (United Kingdom) suggested that maternity cases should be mentioned in the second paragraph. The official certificates indicating the nature of the illness or injury should not, he thought, be handed to the individuals concerned but to their Governments.

At the CHAIRMAN's request, the SECRETARY announced that the United Kingdom Delegation had

submitted an amendment to Article 27 of the Prisoners of War Convention, proposing that a provision be added relating to women prisoners of war.

#### Article 81

Mr. MEULBLOK (Netherlands), having been advised that it would not be necessary to have a radioscopic examination each time the weight of an internee was checked, suggested replacing the last sentence of Article 81 by the following: "Such examination shall include the checking of weight of each internee, and, at least once a year, radioscopic examination."

#### Article 82

Msgr. BERTOLI (Holy See) said that he had submitted an amendment to Article 82 which was of special interest to the Holy See (*see Annex No. 326*). While agreeing with the observations of the International Committee of the Red Cross ("Remarks and Proposals", page 79), his Delegation proposed to transfer the provisions concerning places of worship to Article 75*bis*, and the provision contained in the fifth paragraph of Article 82 to Chapter V, Article 125*bis*.

Mr. SPEAKE (United Kingdom) explained that there were reasons for making a distinction between the position of ministers of religion who were prisoners of war and that of ministers of religion who were interned. When ministers of religion were interned, it was for reasons affecting the security of the State. There might be objections to their being allowed freedom of movement, which would not apply to the chaplains looking after prisoners of war. Such objections would justify certain reservations with regard to the last two sentences of the second paragraph.

Mr. MINEUR (Belgium) supported the amendment of the Holy See, adding that he could see no objection to the reservations advocated by the United Kingdom Delegation being included in the text of the Convention.

Msgr. BERTOLI (Holy See) said that the point had not escaped the notice of his Delegation. He thought that the qualification "Should they be too few in number" which appeared in the third sentence of the second paragraph of his Delegation's amendment might meet the wishes of the United Kingdom Delegation.

Mr. ABUT (Turkey) would prefer a more general term to designate ministers of religion. The latter term, he thought, was peculiar to certain religions.

#### Article 83

Mr. MEULBLOK (Netherlands) said that his Delegation supported the observations submitted by the International Committee of the Red Cross ("Remarks and Proposals", page 80).

#### Article 84

Mr. CLATTENBURG (United States of America) said that his Delegation would table an amendment proposing that the question of the insurance of internees detained for permanent administrative duties within the places of internment should be settled by agreements between the Powers concerned.

Mr. MARESCA (Italy) referred to the amendment submitted by his Delegation (Document No. 10). He proposed, in view of the outrages which had been committed in internee camps during the last war, that the following words should be added to the third paragraph:

"Internees shall not in any circumstances be required to undertake work of a definitely humiliating nature."

The Italian Delegation also proposed that the following sentence should be inserted in the fourth paragraph, after the first sentence: "Working conditions must not be less favourable than those generally prevailing in the district for work of a similar nature."

There was a discrepancy between the provisions of Article 84, first paragraph, which laid down the principle that the Detaining Power was not to employ internees as workers unless they so desired, and those of Article 37 which implied that protected persons could be required to do certain work.

The CHAIRMAN read an amendment submitted by the Delegation of Greece (Document No. 11). He reminded the Committee that the International Labour Organization had made a thorough study of Article 84 (Document No. 7).

Mr. SLAMET (Netherlands) endorsed the principles set forth by the International Labour Organization and supported the amendment of Italy. He would, however, like to have the amendment drafted in a more specific form by the Drafting Committee, as certain work might be humiliating for some ethnical groups but not for others.

Mr. DE ALBA (Mexico) said that the principle admitted in international law as regards occupation was that the legislation of the occupied Power

should be respected by the Occupying Power. That principle applied to labour legislation as to all other legislation. For that reason he considered that the views expressed by the International Labour Organization in its Memorandum (Comment No. 32) were sound. He also supported the suggestion of the Delegates of Italy and of the Netherlands.

Mr. MINEUR (Belgium) did not agree that Articles 37 and 84 were contradictory. Article 37 applied to the population in general, whereas Article 84 only concerned internees.

Mr. MARESCA (Italy) said that, if internees could not be compelled to do certain work, then it followed even more strongly that those who were not interned should not be compelled to do it.

Miss JACOB (France) said that the Delegation of France wished to propose, in the form of an amendment, the text suggested in the Memorandum submitted by the International Labour Organization. She suggested, accordingly, the addition of the following sentence at the end of the fourth paragraph of Article 84:

"The wages, insurance and any other working conditions shall not, however, be inferior to those generally applied to work of the same nature in the same district."

Mr. SPEAKE (United Kingdom) pointed out that, as the second paragraph of Article 84 was intended as a safeguard, the time-limit of three months, after which internees should be free to give up work, should be reduced to three weeks.

He suggested that provision should be made for the participation of internees in air raid precautions.

Generally speaking, work helped internees to maintain their morale. That was an important consideration from a humanitarian point of view, and it was therefore desirable to provide all facilities to enable internees to do some form of work, (such as the manufacture of toys, etc.), even though this might not be an economic proposition.

Mr. ABUT (Turkey) supported the text proposed by the International Labour Organization.

Mr. HAKSAR (India) said that his Delegation had already submitted an amendment to the same effect. He thought that the principle of paying internees in kind for their work was unsound.

General SCHEPERS (Netherlands) was surprised that, while prisoners of war could be required to work, there was no similar provision in the case of internees.

Mr. PILLOUD (International Committee of the Red Cross) replied that the reason why the principle of work for internees had not been adopted was because it might encourage internments in the economic interests of the Detaining Power.

#### Article 85

There were no observations on Article 85.

#### Article 86

Mr. CLATTENBURG (United States of America) made some comments on an amendment to be submitted by his Delegation (*see Annex No. 333*). He had visited an internment camp in the United States, the authorities of which had been particularly lenient towards the internees; and he had noted on that occasion the accumulation of the latter's baggage in premises which might have been set aside for recreational purposes. Such circumstances called for certain reservations as regards the right of internees to "remain in possession of all personal effects and personal articles".

The present wording of the Article concerning cash in the internees' possession required modification. The Detaining Power could not, for instance, assume the responsibility for holding in custody large amounts of money belonging to internees. His Delegation proposed to refer the point to the Drafting Committee.

Mr. MARESCA (Italy) supported the amendment of the Delegation of the United States of America. In his opinion, the whole of the fourth paragraph, from the words "Article 87" on, should be deleted. If, however, it was retained, the words "if hostilities are still proceeding" should be inserted in the second part of the paragraph.

Mr. HART (United Kingdom) also thought that the wording of Article 86 might interfere with exchange control. There was no valid reason why internees should be exempt, by reason of their internment, from the regulations applicable to the rest of the population.

Colonel HODGSON (Australia) entirely agreed.

#### Article 87

Mr. CLATTENBURG (United States of America) pointed out that there was a lack of co-ordination between Articles 86 and 87. Article 86 mentioned alien enemy property; but Article 87 made no reference to it. His Delegation proposed to submit

an amendment making it possible to freeze a portion of the assets of internees where such assets were considerable (*see Annex No. 335*).

Mr. WERSHOF (Canada) suggested that the first paragraph should be deleted. He failed to see why the Detaining Power should make an allowance of any kind to enemy aliens whom it considered dangerous. He was of the opinion that the analogy between internees and prisoners of war had been carried too far. Prisoners of war had earned a standard of treatment which had not been earned by internees.

Mr. MARESCA (Italy) proposed that internees should receive at least part of their frozen assets. That would be a practical and fair solution which would make allowances unnecessary.

Mr. MINEUR (Belgium) did not question the justice of the Canadian Delegate's statement. He thought, however, that if internees received allowances, they would be less inclined to work, and

belligerents would thus be unable to take advantage of the economic assets represented by the labour of internees.

### Working Party

The CHAIRMAN announced that Brigadier Page, who had been obliged to leave Geneva temporarily, had asked to be replaced on the Working Party appointed to consider Articles 49 to 54. The name of Mr. Quentin-Baxter (New Zealand) had been put forward by the United Kingdom Delegation and Mr. Quentin-Baxter had agreed to replace Brigadier Page.

The proposal was seconded by Captain PERRY (Australia) on behalf of the Australian Delegation.

Mr. Quentin-Baxter was unanimously elected a member of the Working Party.

*The meeting rose at 6 p.m.*

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## TWENTY-FIRST MEETING

*Monday 23 May 1949, 3 p.m.*

*Chairman:* Mr. Georges CAHEN-SALVADOR (France)

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### Article 88

Mr. SLAMET (Netherlands) said that in view of the numerous languages involved, the words "in his own language" should be replaced by the words "in the official language or one of the official languages of his country", in order to avoid any pretext for the non-application of the Convention.

Mr. MARESCA (Italy) proposed the omission of the words "and of the regulations adopted to ensure its application" at the end of the first paragraph. Those words, added at Stockholm, were unnecessary and possibly dangerous.

The second paragraph should include a reference to the internee committees mentioned in Article 90 and the following Articles.

Mr. HART (United Kingdom) felt that it was necessary to provide that internees should be

allowed to present petitions to a higher authority than the commandant. If that course were open to them, it would be unnecessary to specify any special qualifications for the post of commandant of a place of internment.

### Article 89

Mr. MARESCA (Italy) suggested that in the first paragraph the words "consistent with humanitarian principles" should be replaced by "in accordance with humanitarian principles".

### Article 90

Mr. WERSHOF (Canada) proposed that the words "subject, however, to a right of censorship by the Detaining Power", should be added to the first

sentence of the third paragraph. His Delegation would not insist upon the use of the word "censorship" which some Delegates appeared to dislike. They were convinced, nevertheless, that in one form or another the principle they had advocated should be maintained, the more so since it had been adopted by Committee II when drafting a similar clause.

Mr. CASTBERG (Norway) suggested that it might be explicitly stated that censorship of correspondence by the Detaining Power would be carried out "for security purposes".

Mr. WERSHOF (Canada) agreed.

#### Article 91

No amendments or observations were submitted in regard to Article 91.

#### Article 92

No amendments or observations were submitted in regard to Article 92.

#### Article 93

Mr. HART (United Kingdom) did not think Article 93 was clear. Work carried out by internees, including members of the internee committees, could only be of a voluntary nature, except for the ordinary domestic work of the camp; the organisation of the latter work was an internal matter, and the question of whether members of internee committees should be employed on it or not, should be decided by the internees themselves. It was unnecessary to devote an Article of the Convention to the matter.

Mr. MARESCA (Italy) thought that it should be stated that the work members of the internee committees might be required to perform was that referred to in the third paragraph of Article 84. He further suggested that a reference to Article 91 should be included in the third paragraph of Article 93.

#### Article 94

No amendments or observations were submitted in regard to Article 94.

#### Article 95

Mr. CLATTENBURG (United States of America) said that his Delegation would like to see and examine the model internment card referred to in Article 95.

Mr. MARESCA (Italy) felt that the word "arrest" in the first line was out of place, and proposed to substitute the words "the adoption of an internment measure".

#### Article 96

There were no observations on Article 96.

#### Article 97

Mr. CASTRÉN (Finland) proposed to delete the second paragraph of Article 97.

Mr. CLATTENBURG (United States of America) said that his Delegation wished to propose an amendment to the second paragraph. It should be stated that limits might only be placed on relief shipments for reasons of military necessity, and then only as a temporary measure.

Mr. SPEAKE (United Kingdom) thought that the third paragraph might very well be deleted.

The CHAIRMAN noted that several delegations were in favour of the retention of the first paragraph only of Article 97.

#### Article 98

Mr. CLATTENBURG (United States of America) pointed out that the Article referred to regulations concerning collective relief which were annexed to the Convention. These regulations, when examined, might cause some surprise.

#### Article 99

Mr. CLATTENBURG (United States of America) said that the provisions of Article 99, overlapped those of Article 97. The two Articles might well be made into one.

#### Article 100

Mr. HAKSAR (India) considered that the second paragraph of Article 100 should contain a reference to the provisions of Article 52 of the Universal Postal Convention of 1947.

Mr. SPEAKE (United Kingdom) pointed out that the correspondence of internees was of an entirely different nature to that of prisoners of war. The letters of internees would be addressed for the most part to destinations within the country of detention. He thought that the internees should be able to pay the ordinary postal charges.

With regard to the fifth paragraph, it was not desirable to encroach upon territory of the International Telecommunications Convention. The telegraphic communications of internees would always be too numerous and their number should be kept as low as possible. Reduced rates or exemption from telegraphic charges were not justified if the provisions of the Convention regarding welfare funds, etc., were properly applied.

Mr. WERSHOF (Canada) said that his Delegation had submitted an amendment covering the same ground as that of the Delegate of India. A similar amendment had been tabled by his Delegation in regard to Article 125.

Mr. MINEUR (Belgium) asked whether the term "shall endeavour" in the last paragraph implied an obligation, at any rate a moral obligation, or simply a recommendation. He was inclined to think that it was a recommendation, or the expression of a wish.

Mr. CLATTENBURG (United States of America) said that the provisions of the third paragraph took no account of the special situation of privately owned railways. His delegation proposed that it should be stated that the cost of transporting relief shipments should be borne by the State.

With regard to the fifth paragraph he thought that the reduction of rates for telegrams should be effected by multi-lateral agreements. During the last war the United States had concluded an agreement for that purpose with Japan.

Mr. MARESCA (Italy) doubted whether it was possible to commit countries through which the communications and shipments mentioned in the second paragraph passed if they were not Parties to the Convention.

Mr. ABUT (Turkey) supported the views of the Delegate of India regarding a formal reference to the Universal Postal Convention. In regard to shipments by rail, the views of the Head Office of International Railway Transport (*Document No. 12*) should be taken into account.

The CHAIRMAN agreed with the various speakers who had given their views on that Article. He was not in favour of attempts at a partial reproduction of texts to which reference was made. A simple reference was preferable. He drew the attention of the Chairman of the Drafting Committee to that point.

Mr. JONES (Australia) proposed the following amendment:

"All mails (including parcels), relief shipments and remittances of money addressed to

internees or dispatched by them through the post office, either direct or through the information bureau provided for in Article 123 and the Central Information Agency provided for in Article 124, shall be exempt from any postal dues and shall be free of any charge for road, rail and maritime conveyance, both in the countries of origin and destination, and in intermediate countries."

#### Article 101

Mr. SPEAKE (United Kingdom) observed that the Article corresponded to Article 65 of the Prisoners of War Convention. His Delegation proposed three changes:

- (1) In the second sentence of the first paragraph, the obligation to supply transport should be made to depend on whether the latter could be made available without serious prejudice to the conduct of the war.
- (2) In the second paragraph, sub-paragraph (b), the words "or any other body" should be deleted.
- (3) The last paragraph should be deleted, as it concerned a matter which should be settled by agreement between the Parties to the conflict.

General SCHEPERS (Netherlands) wondered whether the second sentence of the first paragraph was not too wide in scope. It seemed unnecessary for all the Contracting Parties to take action in the matter.

Mr. PILLOUD (International Committee of the Red Cross) saw no objection to the wording of the Article. The appeal was addressed to all the Contracting Parties. Moreover, there were precedents: during the last war, Sweden, Portugal, Turkey and Switzerland had furnished means of transport for the conveyance of relief supplies.

#### Article 102

Mr. CLATTENBURG (United States of America) proposed to submit an amendment to delete:

- (1) the second sentence of the first paragraph, so as to enable censorship to operate not only in the sending and receiving States, but also in intermediary states, as, for example, in Bermuda and Trinidad during the last war;
- (2) the third sentence of the second paragraph, so as to eliminate the privileged treatment it provided for light reading matter or educational works.

Mr. MINEUR (Belgium) asked the meeting to give further consideration to the question of censorship by intermediary states. He said that if the Stockholm text was maintained, then the word "transmission" in the third sentence of the second paragraph seemed inappropriate as it implied that the sentence in question referred to an intermediary state. It would be better to say "the despatch and delivery to internees".

Mr. MARESCA (Italy) suggested replacing the words "either for military or political reasons" in the third paragraph by the phrase "for essential military reasons".

### Article 103

Mr. HART (United Kingdom) thought that the obligation imposed on the Detaining Power under the first paragraph was too far-reaching. An internee should certainly be given every facility to appoint an agent to look after his affairs and to correspond with him, but it was not reasonable to expect that an internee should be enabled to conduct a whole business from his place of internment.

Mr. MARESCA (Italy) proposed to replace the word "lawyer" by the words "a duly qualified person".

### Article 104

Mr. CLATTENBURG (United States of America) said that in his opinion the Article did not take adequate account of the laws on enemy property. He proposed to insert in the first paragraph, after the words "internment conditions", the words "and applicable law". The second paragraph could then be deleted.

Mr. WERSHOF (Canada) believed that the amendment to the second paragraph submitted by his Delegation would meet the point made by Mr. Clattenburg. If the United States amendment were accepted, the Canadian amendment would be unnecessary. It should, however, be made clear that an internee or his agent must at all times be subject to wartime legislation relating to enemy property.

### Article 105

Mr. CLATTENBURG (United States of America) felt that the Article as at present worded took no account of the right of the occupying Power to requisition property. He proposed to insert,

at the beginning of the first paragraph, the words "Subject to the rights of the occupying Power under international law".

Mr. MINEUR (Belgium) said that Article 105 did not seem to him to be admissible. It created, in favour of internees, special conditions which ran counter to creditors' legitimate rights, and it did not take sufficiently into account the legal facilities which internees had at their disposal. Furthermore, when the suspension of civil suits applied to the next of kin of the internee, that meant an extension of facilities which condemned the whole system. His Delegation considered that the measures proposed for the suspension of civil suits were outside the scope of the Convention. He proposed the deletion of Article 105.

Mr. HOLMGREN (Sweden) drew attention to the observations of the International Committee of the Red Cross on page 82 of "Remarks and Proposals". He thoroughly agreed with them. The Stockholm wording seemed to him to be too categorical. The wording proposed by the International Committee of the Red Cross took account to a certain extent of the views of the Belgian Delegation, and offered a reasonable compromise between the Stockholm text and the views expressed by Mr. Mineur. It was reasonable for internees to be granted certain privileges provided they were not given the opportunity of abusing them.

Mr. MARESCA (Italy) felt that Article 105 was of some value. He, too, supported the proposal of the International Committee of the Red Cross.

### Article 106

No amendments or observations were submitted in regard to Article 106.

### Article 107

Mr. WERSHOF (Canada) introduced the Canadian Delegation's amendment (*see Annex No. 352*) which reproduced the substance of the first paragraph of the Stockholm text and proposed a new second paragraph. The first paragraph related only to internees in the territory of a Party to the conflict, the second to internees in occupied territory. The new provision referred to the legislation of the occupying Power.

Mr. WU (China) agreed that account should be taken of decrees, regulations and orders which the detaining Power might have promulgated with particular reference to internees.

Mr. CASTBERG (Norway) approved of the distinction made in the amendment of the Delegation of Canada. He thought the second paragraph of the amendment should, however, refer to the "provisions of the present Convention" instead of merely to the "provisions of the present Chapter".

Mr. MINEUR (Belgium), referring to the third paragraph, asked what ruling should be applied if new facts should come to light relating to the original charge. Penal law provided that if new facts were brought forward after sentence had been passed, the case could be re-opened in the interest of the accused.

The CHAIRMAN suggested that the question should be submitted by the Drafting Committee to a "duly qualified person".

Mr. MARESCA (Italy) agreed.

#### Article 108

Mr. WERSHOF (Canada) wished to know what wording the International Committee of the Red Cross proposed for Article 108.

Mr. PILLOUD (International Committee of the Red Cross) said that it had been impossible up to the present time formally to propose a new draft of the Article, since Committee II had not yet taken a decision as to whether Courts should be free to reduce, at their own discretion, the penalty prescribed.

The CHAIRMAN observed that Committee III had the same competence in the matter as Committee II. If the two Committees took divergent decisions, it would be for the Coordination Committee to decide the points at issue.

Mr. CASTBERG (Norway), Chairman of the Coordination Committee, was in full agreement with the proposed procedure. He felt, however, that the work of the Coordination Committee would be facilitated if Committees took account of one another's work on kindred subjects.

Mr. MINEUR (Belgium) believed that the first sentence of Article 108 was not couched in sufficiently legal terms. His Delegation proposed the following text:

"The courts or authorities shall, to the widest extent possible, take into consideration, in fixing the penalty, the fact that the status of internee may in itself imply a diminution of responsibility."

The remainder of the Article would remain unchanged.

Mr. CLATTENBURG (United States of America) asked for an adjournment of the discussion until his Delegation had had time to consider the English translation of the text proposed by the International Committee of the Red Cross.

The Committee decided to adjourn the discussion on Article 108.

#### Article 109

Mr. ABUT (Turkey) proposed that it should only be permissible to inflict fines up to 15% of the monthly allowance and 25% of the monthly wages of internees, and not up to 50%.

Mr. HART (United Kingdom) believed that it would be best not to lay down a limit regarding the amount deducted in the way of fines from internees' allowances and wages; the result of doing so might be to cause the commandant of a place of internment to make other disciplinary punishments more severe. The matter could well be left to the discretion of the commandant.

With regard to sub-paragraph (2), it would appear difficult to prevent the Detaining Power from withdrawing privileges which it had granted voluntarily over and above the treatment provided for in the Convention. It would, therefore, be wise not to regard the discontinuance of such privileges as a punishment.

Sub-paragraph (4) (additional labour) was illogical, since the work of internees was, in principle, voluntary.

Mr. DE ALBA (Mexico) thought that the stipulations in regard to the percentage of reductions on wages and allowances were unworthy of the Convention. In his opinion the Drafting Committee should make a synthesis of all the provisions of this Article and submit it to the Committee in an entirely different form.

Mr. QUENTIN-BAXTER (New Zealand) agreed in principle with the various views expressed. He felt, however, that the provision in sub-paragraph (2) should be retained. If it were omitted, the Detaining Power might feel obliged to withdraw privileges, over and above those required by the Convention, from all internees, so as to guard against any possible charge of discrimination against some of them. There was a corresponding clause in the Prisoners of War Convention.

*The meeting rose at 5.45 p.m.*

## TWENTY-SECOND MEETING

*Tuesday 24 May 1949, 3 p.m.*

*Chairman:* Mr. Georges CAHEN-SALVADOR (France)  
subsequently  
General Jan Dirks SCHEPERS (Netherlands)

**Article 110**

Mr. WERSHOF (Canada) introduced his Delegation's amendment which proposed the insertion of the words "in occupied territory" after the word "Internees" at the beginning of the final paragraph. The intention of the amendment was to indicate that the provisions of Article 110 were applicable only to internees in occupied territory. Internees in non-occupied territory of a Party to the conflict, on the other hand, could be punished quite legitimately for attempting to escape. Article 110 had been based on the corresponding Article of the Prisoners of War Convention; but it should be realised that the position of a prisoner of war was quite different from that of an internee, the latter not having the same patriotic reason for attempting to escape. In Canada, internees recaptured after an attempt to escape, had been liable not merely to disciplinary penalties, but also to imprisonment. The Article as at present worded would run counter to the maintenance of such a system.

Mr. JONES (Australia) regretted that he could not support the views of the Delegate of Canada. Australian legislation provided only for disciplinary punishment for an internee who attempted to escape. His Delegation preferred the Stockholm text.

Mr. MINEUR (Belgium) remarked that common law criminals who attempted to escape were not usually subjected to punishment. Why then should internees be given less favourable treatment than common law offenders?

Mr. MOLL (Venezuela) likewise disagreed with the Canadian amendment. The situation of civilian internees in the majority of countries was, in practice, comparable to that of prisoners of war. Indeed, their fate was often worse; and the barbed

wire psychosis was more strongly marked in their case than in that of prisoners of war. The Stockholm wording should, therefore, be maintained.

The CHAIRMAN being obliged to attend a meeting of the Bureau, General SCHEPERS (Netherlands) took the Chair.

Mr. MARESCA (Italy) supported the views of the Delegates of Australia and Venezuela. The third paragraph, in the light of the experience of the last war, did not adequately protect fellow-internees against reprisals following an attempt to escape. The Italian Delegation proposed that it should be laid down that "...the escape of an internee shall in no circumstances justify severer treatment of the other internees".

Mr. WERSHOF (Canada) realised that his proposal had received no support; he wanted to point out however, that the legal basis of all measures against internees who attempted to escape was the legislation relating to their case. Internment in Canada had been confined to dangerous suspects, who deserved no special consideration.

Mr. MOLL (Venezuela) believed that both the amendment and the explanations of the Delegate of Canada were based on premises which were not comprehensive enough. The Canadian Delegate's arguments were founded on the experience of a liberal country which had only interned a small number of dangerous persons. In other countries, in actual practice, a considerably larger number of civilians, many of them entirely inoffensive, had been interned. The problem should be approached as a whole, and account taken of the quite natural psychosis of persons deprived of their liberty. The cases of interned persons and common law offenders were in no way comparable.

Mr. ABUT (Turkey) did not quite understand the apprehensions of the Delegation of Canada. He

pointed out that Article 110 did not exempt internees who attempted to escape from all punishment, but merely laid down that they should not be liable to other than disciplinary penalties.

Mr. MARESCA (Italy) remarked that the reason in law why an escaping prisoner of war or internee was not considered as having committed an offence was that neither one nor the other had been deprived of his liberty through any fault of his own. They were victims of general circumstances, no legal bond having been set up between them and the Detaining Power. The true legal relationship was between the Detaining Power and the home Power of the prisoners and internees.

#### Article 111

Mr. HOLMGREN (Sweden) supported the proposal of the International Committee of the Red Cross in regard to offences against public property committed in an attempt to escape ("Remarks and Proposals", page 83). The word "petty" should be inserted before the phrase „offences against public property" in the third paragraph of the Article.

Mr. GINNANE (United States of America) said that his Delegation had submitted an amendment proposing the deletion of the third paragraph, as there were certain categories of offence which deserved more severe punishment than that provided for in the paragraph in question. Undue limitation of punitive measures might lead to consequences contrary to the interests of the internees themselves, as the Detaining Power might then be tempted to subject internees generally to much stricter supervision and control.

Mr. QUENTIN-BAXTER (New Zealand) agreed.

Mr. MINEUR (Belgium) thought that the proposal of the International Committee of the Red Cross might meet the objections of the Delegation of the United States of America.

Mr. GINNANE (United States of America) agreed that the text thus modified could be more readily accepted, but reserved the right to give a definite opinion when the point was considered by the Drafting Committee.

#### Article 112

No amendments or observations were submitted in regard to Article 112.

#### Article 113

General SCHEPERS (Netherlands) criticized the provision in the second paragraph, which laid down that a decision must be "made in the presence of the internee" and of a member of the internee committee. A decision involved an intellectual process which, by definition, excluded the presence of an eye-witness. Only the preliminary questioning and the resulting verdict could take place in the presence of the accused and of a member of the internee committee.

Mr. CASTRÉN (Finland) agreed with the above observation.

Mr. DE GEOUFFRE DE LA PRADELLE (Monaco) suggested that the point might be met by reversing the order of the two sentences of the second paragraph, since the defence of an internee should logically precede a decision by the commandant, and by replacing the words "the decision shall be made" by "the decision shall be pronounced".

Mr. HAKSAR (India) agreed that the paragraph was very clumsily worded, and suggested that it should be redrafted.

#### Article 114

No amendments or observations were submitted in regard to Article 114.

#### Article 115

No amendments or observations were submitted in regard to Article 115.

#### Article 116

Mr. WERSHOF (Canada) reminded the meeting that his Delegation had submitted an amendment supporting a proposal of the International Committee of the Red Cross ("Remarks and Proposals", page 83). The phrase "Articles 60 to 67" should be deleted and replaced by "Articles 61 to 67".

#### Article 117

Mr. MARESCA (Italy) said that the experience of the last war had shown that internees were often transferred for reasons which had nothing whatever to do with their personal interests.

Article 117 did not touch on the substance of that question, and his Delegation therefore proposed to introduce a new paragraph which would become the first paragraph of the Article. It would read as follows:

"The Detaining Power, in deciding the transfer of internees, shall take their interests into account and, in particular, shall not do anything to increase the difficulties of repatriating them or returning them to their own homes."

The second paragraph of Article 117 (the present first paragraph) would be made more complete by the insertion, after the second sentence, of the following provision: "Such conditions shall not be less favourable than those which may be provided for the organized evacuation of the local civilian population." The purpose of that provision was to give an additional safeguard to the internees, distinct from that provided under the present wording, namely that conditions of transfer should be at least equal to those provided for the forces of the Detaining Power.

Mr. SPEAKE (United Kingdom) suggested, in view of the detailed nature of the Article, that accommodation and clothing should also be mentioned in the second paragraph. The word "infirm" should be inserted in the third paragraph.

#### Article 118

Mr. CASTRÉN (Finland) suggested that the wording of the second paragraph should be brought into line with the second paragraph of Article 40 of the Prisoners of War Convention. The words: "to what each internee can reasonably carry", should be inserted after the word "demand".

#### Article 119

Mr. SPEAKE (United Kingdom) submitted two observations:

- (1) He was not sure whether the rule laid down in the opening words of Article 119 would always be in the interest of the internees as the latter might want their wills to be drawn up for execution in countries other than that in which they were interned.
- (2) Other documents besides wills might have to be drawn up. The Delegation of the United Kingdom had tabled an amendment to that Article (*see Annex No. 362*).

#### Article 120

Mr. SPEAKE (United Kingdom) did not think that the first paragraph of Article 120 went far enough. In his opinion, an official enquiry should be instituted by the Detaining Power in any case where the death of an internee was sudden or the cause of it uncertain.

#### Article 121

Mr. SPEAKE (United Kingdom) wondered whether Article 121 should be retained. The first paragraph was already included, in a more satisfactory form, in Article 42. The subject matter of the second paragraph appeared to ignore the fact that most adult internees were interned for reasons of security which remained unaffected by the state of an internee's health or the length of his detention. The third paragraph merely repeated, with reference to internees, what had already been said in Article 41.

Mr. WU (China) agreed with the United Kingdom Delegate's proposal to delete the third paragraph, since it overlapped with Article 41. If the paragraph were to be maintained, the words "Throughout the course of hostilities or occupation", at the beginning of the sentence, should be deleted, because those words could be taken to mean by implication that at other times internees could be removed to countries where they might have reason to fear persecution for their religious or political beliefs.

#### Article 122 and New Article 122B

Mr. MARESCA (Italy) made the following observations:

- (1) He proposed that in the first paragraph the words "as soon as possible after the close" should be replaced by the words "at the close".
- (2) The safeguards provided for internees in occupied territory did not seem entirely adequate. To remedy that defect the words "as soon as this is no longer justified by urgent security reasons on the part of the occupying Power, and..." should be inserted after the words "occupied territories".
- (3) The following words should be inserted at the conclusion of the first sentence of the second paragraph: "The competent authorities shall, however, be empowered to exercise leniency in view of the fact that the offence had been committed during internment and that the reasons for internment no longer exist".
- (4) Lastly, a new Article 122B should be added to deal with the question of costs of repatriation. It should be worded as follows:

"The costs of repatriating internees or returning them to their homes shall be borne by the Detaining Power."

Mr. SPEAKE (United Kingdom) said that the first paragraph was already covered by Article 42,

while the second and third paragraphs were based by analogy on the Prisoners of War Convention. In the case of internees, repatriation would often represent a major calamity, and the third paragraph, in particular, might open the way to possible political persecution.

Mr. PILLOUD (International Committee of the Red Cross) felt that it would be difficult to ask a Power which occupied a territory after the end of hostilities not to intern persons whom it considered dangerous. Its right to do so might, however, be limited to, say, six months.

### Article 123

Mr. WERSHOF (Canada) introduced the amendment of the Delegation of Canada which proposed to omit the word "arrested" in the second paragraph of Article 123. If one had to notify the Information Bureau of all cases of aliens arrested, say, for disorderly behaviour, or for driving a car whilst under the influence of drink, the result would be an accumulation of forms and papers which could only be a clog on the administration. In a federal country like Canada, such matters were dealt with by the Provincial authorities. Cases of assigned residence or internment could, however, be notified, as provided under Article 123.

Mr. SPEAKE (United Kingdom) proposed to insert, in the first sentence of the third paragraph, the word "available" after the word "means"; in the fourth paragraph, second sentence, the words "date of internment or subjection to assigned residence" after the word "informed"; in the fifth paragraph, the word "births" after the word "hospitals". The end of the fourth paragraph, from "for the person" to the end of the sentence, should be omitted.

He suggested that they should take into consideration the case of internees who for some reason or another did not wish information concerning themselves to be forwarded to their home country.

Mr. MARESCA (Italy) suggested that it should be laid down in the last paragraph that the Information Bureau would be responsible for taking care of luggage left behind when internees were transferred.

The CHAIRMAN drew the attention of the Drafting Committee to the last paragraph but one, where the word "written" should be inserted before the word "communications" in order to bring the wording into line with the corresponding Article of the Prisoners of War Convention.

### Article 124

There were no observations on Article 124.

### Article 125

Mr. WERSHOF (Canada) said that the reasons for his Delegation's amendment (which introduced a reference to Article 52 of the Universal Postal Convention) were the same as those which had prompted a similar amendment submitted by his Delegation to Article 100. Its purpose was to correlate the provisions in Article 125 with those of the Universal Postal Convention of July 5th, 1947.

Mr. MINEUR (Belgium) thought that the expression "shall enjoy... so far as possible" was stronger than the term "shall endeavour" used in the corresponding paragraph (the last) of Article 100.

In reply to a question by Mr. SPEAKE (United Kingdom), Mr. PILLOUD (International Committee of the Red Cross) said that during the last war all shipments sent to the Prisoners of War Central Agency had been exempt from postal and rail transport charges. It was essential that the Central Agency should be exempted by name from such charges, because shipments were not always addressed to internees — to quote only the case of the despatch of administrative documents to the National Bureaux. As far as exemption from telegraphic charges was concerned, Article 125 implied only a moral obligation. In order, however, to ensure the promptest and most efficient possible handling of the Agency's communications, it has been proposed to reserve a wavelength for its wireless messages in time of war. He added that the charges from which the Agency should be exempted should also include customs and import duties. In practice, up to the present time, the Agency had only been granted such facilities by courtesy and not as a right.

### Article 125A

Msgr. BERTOLI (Holy See) said that his Delegation had submitted an amendment (*see Annex No. 373*) introducing a new Article 125A which corresponded to Article 115 of the Prisoners of War Convention, but contained some additional words authorizing representatives of religious organizations to visit protected persons and to distribute relief supplies to them. This authorization, which appeared in Article 82 of the Stockholm Draft, had been deleted in the Holy See's amendment to Article 82 and transferred to the present Article.

Mr. MOLL (Venezuela) supported the proposal of the Delegate of the Holy See. During the last war, his Government had followed with the greatest interest the admirable work done in various countries by the Holy See, the Young Men's Christian Association and the American Quakers. It was highly desirable to strengthen the link thus established between those humanitarian organizations and the International Committee of the Red Cross.

#### Article 126

There were no observations on Article 126.

#### Article 127

Mr. WERSHOF (Canada) introduced his Delegation's amendment which proposed replacing the text of Article 127 by the following wording: "The High Contracting Parties shall endeavour, upon the close of hostilities or occupation, to facilitate the return to their domicile or all internees."

The text adopted at the Stockholm Conference dealt inadequately with a problem which really went beyond the scope of the Civilians Convention. The return of displaced persons or refugees to their place of domicile or their resettlement were matters for an organization such as the International Refugees Organization. That organization would no doubt cease to exist after a time; but at the end of any future conflict its place would

certainly be taken by a similar body established under international agreements. Most of the provisions of Article 127 should consequently be deleted.

Mr. MOLL (Venezuela) replied that he saw no reason why Article 127 should not be maintained, since the obligations it laid upon the Detaining Power merely implied collaboration with the international bodies referred to.

Mr. SCHNITZLER (International Refugees Organization) said that the Memorandum submitted by the I.R.O. (*see Annex No. 243*) concerning Articles 32 and 38, had a certain connection with Article 127. He thought that the second paragraph of Article 127 might be retained in the Civilians Convention, but he would prefer it to be placed in Section IV which dealt with refugees and internees. If the proposals of the I.R.O. in regard to Article 38 — providing that internment cases should be examined individually on their merits— were adopted, the retention of the first paragraph of Article 127 would no longer be necessary.

Mr. CASTRÉN (Finland) said that it might well be that Article 127 was inadequate to deal with the whole of so vast a problem; but he thought that the principles embodied in the Article should be maintained in the Civilians Convention. He therefore suggested that the Article should not be omitted, but referred to the Drafting Committee.

*The meeting rose at 6.15 p. m.*

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### TWENTY-THIRD MEETING

*Wednesday 25 May 1949, 3 p.m.*

*Chairman:* Mr. Georges CAHEN-SALVADOR (France)

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#### Working Party for the study of Articles 49 to 54

The CHAIRMAN announced that Mr. Holmgren (Sweden) was obliged to leave Geneva, and could not continue to attend the Working Party which was studying Articles 49 to 54. It was proposed that his place should be taken by Mr. Dahl (Denmark).

Mr. Dahl (Denmark) was unanimously elected member of the Working Party in the place of Mr. Holmgren (Sweden).

#### Appointment of a second Drafting Committee

The CHAIRMAN said that in order to speed up the work of the Drafting Committee, it would be

advisable to set up a second Drafting Committee for the purpose of studying the group of Articles relating to internment (Articles 69 to 122 inclusive). He suggested that the second Drafting Committee should consist of delegates who were neither members of the first Drafting Committee nor of the Working Party, so that all three groups could meet simultaneously, and complete their work of drafting in the course of a few days during which the meetings of Committee III would be suspended.

Mr. WERSHOF (Canada) supported the proposal.

The Chairman's proposal was adopted unanimously.

The CHAIRMAN proposed that the second Drafting Committee should consist of General Schepers (Netherlands), Vice-Chairman of Committee III, and one delegate from each of the following countries: United Kingdom, United States of America, Union of Soviet Socialist Republics, Denmark, Turkey and India.

The Chairman's proposal was adopted unanimously.

### Article 108

Mr. GINNANE (United States of America) proposed to omit the second sentence of the first paragraph. Crime was crime; and the United States Delegation saw no reason why an internee who was guilty of a crime should have any special protection.

Mr. JONES (Australia) drew attention to the defence of Article 108 in the International Committee of the Red Cross' pamphlet "Remarks and Proposals", page 82. The arguments used were the same as in the case of Article 77 of the Prisoners of War Convention. There would seem, however, to be a certain amount of confusion of ideas concerning the Article; and he, for his part, was inclined to agree with the proposal of the United States Delegation.

Mr. DE GEOUFFRE DE LA PRADELLE (Monaco) also supported the proposal of the Delegation of the United States of America.

### Preamble

Mr. CLATTENBURG (United States of America) introduced his Delegation's amendment (*see Annex No. 186*) which confined itself to a statement of general principles. It was not for a Preamble to set forth matters of substance, which should be dealt with in the Articles of the Convention.

Mr. CASTRÉN (Finland) drew attention to the Finnish Delegation's amendment (*Working Document No. 9*) which proposed the insertion of the word "unlawful" before the word "violence" in the first paragraph, sub-paragraph (1). He left it to the Drafting Committee to decide the point which was merely a matter of detail.

The CHAIRMAN reminded the meeting that the Greek Delegation had submitted an amendment (*Document No. 11*) which consisted in rewording sub-paragraph (1) to read: "Individuals shall be protected against any violence to their corporal integrity and human dignity".

Mr. PASHKOV (Union of Soviet Socialist Republics) said that his Delegation saw no objection to the text of the Preamble as it was drafted at the Stockholm Conference. The Soviet Union proposed, however, to make sub-paragraph (4) more complete by rewording it as follows:

"Murder, torture, maltreatments, as well as all other means of exterminating the civilian population are strictly prohibited."

The Soviet Delegation felt that it was essential that the right to live, expressed in the above terms, should find its place not only in the body of the Convention, but also in the Preamble. His Delegation was sure that the amendment would be acceptable to all Delegations.

Mr. LOKER (Israel) drew attention to the memorandum which the World Jewish Congress had issued on the subject of the Draft Civilians Convention. The Congress had approved the draft Preamble submitted by the International Committee of the Red Cross. It had, however, suggested that the words "and without distinction of race, nationality, religious belief or political opinion" should be inserted in the first paragraph, after the words "in all places", and that there should be a reference to deportation in sub-paragraph (2). Finally, it had wished to include the principle that "no one, even when deprived of his liberty," should be "prevented from giving news to his next of kin". The Delegation of Israel supported the above proposals.

Mr. DE ALBA (Mexico) felt that the importance and novel nature of the Civilians Convention called for a preamble drafted in solemn terms. It should consist of a statement of the general principles underlying the Convention as a whole. He agreed with the views expressed by the Delegation of the United States of America, but thought that the Preamble should also contain a solemn appeal in favour of peace. It was essential for the public opinion of the world to be enlightened

as to the real aims of the authors of the new Geneva Convention.

Tribute should be paid to Switzerland's love of peace and to the pioneers in the work of protecting civilian populations—to such men as Henry Dunant, Louis Appia and Frédéric Ferrière. It was fitting to declare, at the very beginning of the Convention, that "the ultimate ideal to be aimed at, as regards social and international relationships, was the peaceful settlement of disputes and the maintenance of a just peace between all the peoples of the world". A declaration on those lines would take its place beside the Charter of the United Nations and the Universal Declaration of the Rights of Man.

Mr. BMMATE (Afghanistan) agreed with the Delegate of the United States of America. It was a principle of law that anything unnecessary was inappropriate. Only the most general principles should be included in the Preamble. The enumeration of certain rules might appear to diminish the importance of those not enumerated and might lead to the belief that the imperative force of a rule depended on the degree of solemnity with which it was proclaimed.

Besides, would the prohibition of particularly obnoxious crimes be a sufficient "safeguard of civilisation"? It would be wiser to adhere to the general principles on which civilization depended.

He had one or two observations to make with regard to the actual wording of the proposed text. The two expressions "human rights" and "universal human law" both appeared to him defective. One, and even more so two, adjectives seemed too many. The conception of "law" as such was sufficient in itself. Law applied by definition to human beings, and all that was human was also universal. There was also a discrepancy between the English text which spoke of "human rights" and the French text which said "droit humain". The expression "droits de l'homme" would be a more exact rendering of the English and was, in any case, to be preferred.

The wording proposed in the United States amendment avoided most of the difficulties that had been mentioned. It had the advantage of being explicit and, at the same time, vital. It might seem inadequate to certain delegations who wanted to see a declaration of the principles of natural law.

He proposed, finally, that they should consider adopting the text suggested by the International Committee of the Red Cross ("Remarks and Proposals", page 67). He was prepared to propose it in the name of the Afghan Delegation, and hoped that the Drafting Committee would merely make a few changes in it in the light, in particular, of the United States amendment.

Mr. MOLL (Venezuela) read a statement by the Government of Venezuela. The death penalty was forbidden under the Constitution of Venezuela, and his Government could not under any circumstances agree to its retention.

He agreed with the proposal of the Delegate of Afghanistan to take the I.C.R.C. text as their pattern, and he also supported the Soviet amendment to replace the fourth paragraph of the Preamble by a more detailed statement.

Colonel DU PASQUIER (Switzerland) noted that the discussion had shown a sharp divergence between two conceptions. On the one hand, there was the view that the Preamble should consist of some sort of solemn and decorative frontispiece similar to the French "Déclaration des Droits de l'Homme". On the other hand, there was a desire that it should become an element of positive law incorporated in the Civilians Convention and serving as a guide to the latter's interpretation.

The second conception involved the technical drawback of repeating certain prohibitions which were covered in the Articles of the Convention. The subtle analysis of the Afghan Delegate was completely convincing on that point.

The Swiss Delegation supported the second version suggested by the International Committee of the Red Cross as a concise and substantive wording of the Preamble. They thought that it would be an improvement to include also the expression "universal human rights", even though to do so implied taking sides with the supporters of natural law against the sociological school.

Msgr. BERTOLI (Holy See) did not wish to go in detail into the drafting of the Preamble. He had listened with interest to the previous speakers, and was prepared to support any proposal which improved the wording of the Preamble or made it more explicit.

What was the main purpose of the Civilians Convention? It was to protect civilian populations against the horrors of war by means of rules based on natural law, the rights of man, love of one's neighbour, charity and respect of the human person. Those rules would, however, be deprived of their real value, unless account was taken of the principle and source from which they emanated. For those reasons the Delegation of the Holy See wished, without proposing a formal amendment, to suggest that a reference should be made in the Preamble to the divine origin of all rights. God was, indeed, the source of absolute justice and charity, without which Conventions were valueless. A reference of the kind he had in mind would enlist those great spiritual factors, in which the majority of people believed, in support of the rules laid down by the Conference.

Such a reference was to be found in the Declaration of Rights of the United States of America and in the Swiss Constitution, to quote only two examples, and was found also in the majority of national anthems. The highest political leaders, particularly in times of stress, did not hesitate to implore divine protection. The reference to the Divinity would be addressed to all those who believed in a Supreme Being, whatever their creed, and they constituted the great majority of the population in all countries of the world. A deep impression would be made on hundreds of millions of ordinary people to whom the conclusion of Conventions such as the one they were drawing up should bring relief and confidence.

Mr. DE GEOUFFRE DE LA PRADELLE (Monaco) said that the text of the Preamble, which had the merit of being in existence, was already in a form which they could accept. He felt, however, that it might be improved still further.

The Civilians Convention was an instrument of momentous value and historical significance. It was worthy of a Preamble in keeping with its importance. The Geneva Conference was continuing the work of the United Nations Organization. Its task was to ensure that individual liberties which were recognized in peace-time were also respected in time of war. The purpose of the Civilians Convention was, so to speak, to carry peace on into war. Since the text of the Convention could, with good reason, be compared to instruments such as the Universal Declaration of the Rights of Man of December 10th, 1948, it would be impossible to pay too much attention to the search for perfection in the style and the substance of the Preamble.

How was such perfection to be attained? The text as it stood was both too long and too short. Too long, because it contained a list of rules taken from the body of the Convention—sound arguments against the inclusion of such a list had already been presented—too short because the first part of it contained no statement of the motives which should provide a connection link between the Convention and a philosophical doctrine. He himself would prefer a reference to a transcendent ideal on the lines suggested by Msgr. Bertoli. He hoped the positivists and the supporters of natural law might both agree to a reference to that philosophy which was the source of all others.

If men like Dunant, Appia, Dufour, Gustave Ador or Gandhi were alive, it was they who would be asked to furnish phrases from the treasures of their conscience. Failing that solution, the best method would be to entrust the drafting of the Preamble, not to the Drafting Committee, but to a man who knew suffering and was at the same

time a jurist. Mr. Cahen-Salvador, Chairman of the Committee, and incidentally the author of the Preamble adopted at the Stockholm Conference, was just the man for the task, if he was prepared to accept it.

Mr. PILLOUD (International Committee of the Red Cross) thanked those speakers who had supported the texts suggested by the International Committee of the Red Cross. The second of those texts had the advantage of being suitable for inclusion in each of the four Conventions.

The International Committee of the Red Cross also welcomed the proposal of the Mexican Delegate for the inclusion in the Preamble of a solemn protest against war. The inclusion of such a protest had been recommended by various Conferences on human rights, and in particular by the Conference of Experts which had, in 1947, drawn up the texts adopted at the Stockholm Conference.

Mr. WU (China) agreed with the Delegate of Mexico that the Preamble should be limited to a statement of principles. He agreed in principle with the United States amendment, but felt that it might perhaps be enlarged to some extent in the light of views expressed during the discussion.

Mrs. MANOLE (Rumania) feared that the changes proposed in the Stockholm wording might limit the scope of the Preamble. In consequence, she felt that the United States amendment should be ignored, and suggested that the Stockholm text should be adopted with the addition proposed in the Soviet amendment.

Mr. SOKIRKIN (Union of Soviet Socialist Republics) said it was normal for certain principles expressed in the Preamble to be restated in the Convention. The United States amendment would take all soul from the text and it would become lifeless. He failed to understand the elimination of all reference to the "basis of universal human law". The Stockholm text enumerated certain specific and constructive rules briefly but clearly.

He agreed with the Delegate of Monaco regarding the historical value of the new Geneva Convention.

He was opposed to the United States amendment, and reserved the right to revert, if occasion arose, to the various amendments proposed during the discussion. His Delegation was in favour of the Stockholm text as modified by the amendment to which they had already referred.

Mr. CASHMAN (Ireland) warmly supported the views of the Delegate of the Holy See, because, in his opinion, a reference to the Divinity would

give to the Convention a solemnity and appeal which general humanitarian statements would never achieve.

Mr. WERSHOF (Canada) moved the closure of the discussion in accordance with Article 31 of the Rules of Procedure.

Mr. CASTBERG (Norway) supported the proposal.

Mr. MEVORAH (Bulgaria) and Colonel HODGSON (Australia) opposed the motion.

The motion to close the discussion was put to the vote and rejected by 16 votes to 11.

The CHAIRMAN moved that further discussion on the Preamble should be limited to the eight speakers listed (New Zealand, Finland, United States of America, Lebanon, Bulgaria, Australia, Italy and India), no other speakers being granted the floor. Their statements would be heard at the next meeting.

The proposal, supported by Colonel DU PASQUIER (Switzerland) and opposed by Mr. MINEUR (Belgium), was put to the vote and adopted by 14 votes to 11.

*The meeting rose at 6.30 p.m.*

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## TWENTY-FOURTH MEETING

*Friday 27 May 1949, 3 p.m.*

*Chairman:* Mr. Georges CAHEN-SALVADOR (France)

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### Preamble

Colonel HODGSON (Australia) said that the drafting of a preamble seemed to cause more difficulties in international conferences than that of any other part of a convention, each delegation wishing to include ideas based either on their own private philosophies or on some universally accepted theory.

In his opinion, a preamble was useful in explaining the circumstances that had led up to the framing of a particular resolution. In a peace treaty, for example, the historical facts that had led to its signature could be referred to.

No such reason for a preamble was to be found in the Conventions under consideration which were very clear in themselves. The Australian Delegation believed, therefore, that the proposed text could be omitted without loss. His Delegation realized, however, that the majority of other delegations were in favour of a preamble. If it was absolutely necessary to have one, the Australian Delegation would prefer a genuine preamble on the lines of the United States amendment, rather than a wording such as that adopted at Stockholm which included both general principles and operative clauses.

Mr. MARESCA (Italy) agreed that the wording adopted at Stockholm could be improved. It had, however, the great advantage of setting down in clear precise terms the humanitarian principles which would always have to be respected, even when it was impossible to apply the Convention.

Perhaps the best solution would be to combine the two types of preamble referred to, by first including a statement of general principles, and then laying down rules for their implementation. They would thus give expression to a series of basic legal values and moral principles essential to human society.

The Preamble should also introduce an idea which was missing, that of God as the true source of those values and of all the principles laid down in the Convention; the latter would then be built upon rock and not upon sand. Formerly, treaties all contained an invocation such as "In the name of the Holy Trinity", "In the name of Almighty God", etc. The treaties drawn up at the end of the last world war had departed from that tradition with results which were all too evident.

Mr. QUENTIN-BAXTER (New Zealand) agreed with the Delegate of Afghanistan that any false emphasis should be avoided. For this reason he

approved of the principle inherent in the United States amendment, and supported the proposal of the Delegate of Monaco that one person, namely Mr. Cahen-Salvador, Chairman of the Committee, should be entrusted with the rewording of a draft preamble which would not overlap the operative articles of the Convention.

Mr. CLATTENBURG (United States of America) strongly supported the Holy See's proposal that the Preamble should expressly recognize the divine origin of the rights of man.

Mr. NASSIF (Lebanon) echoed the views of another citizen of the Lebanon who, as Rapporteur of the Committee on Human Rights, had endeavoured to give prominence to the conception of God. It was in Geneva itself that Mr. Charles Malek had submitted an amendment to Article 15 of the Draft Declaration on Human Rights, providing that the family should be regarded as endowed by the Creator with inalienable rights prior to all acquired rights. Brazil, Argentine, Colombia, Bolivia, Cuba, Luxemburg, Australia, New Zealand, Pakistan and the Philippines had in turn given their support to such a declaration.

At the present Conference the Delegates of Afghanistan, Ireland, Monaco, Italy and the United States of America had already given their support to the particularly clear statement by the Delegate of the Holy See. He was not, therefore, speaking merely from a personal point of view, and he hoped that his would not be the voice of one crying in the wilderness.

It was for the Civilians Convention, the object of which was to humanize the rules of war, to proclaim the high principles on which the proposed protection was to be based. War, if it again broke out, should be humane, and individual rights should be respected as far as possible in war-time, in the same way as they were under true peace-time conditions.

What should the wording of the Preamble be? General principles would have to be carefully drafted so as to avoid what a Polish representative had, on another occasion, described as "an insipid rehash of old liberal texts".

It would also be necessary to enumerate the main provisions on which general agreement had been reached. This text would have to be briefly worded since it would probably be the only part of the Convention published in the headlines of certain newspapers, the only one which would be known to the man in the street, i. e. to the very person who was to be protected.

The part of the Preamble concerned with general principles should contain a reference to the conception of divinity. As President Benes had so rightly said at a meeting of the League of Nations

in 1934, understanding amongst the nations lay in respect for human beings whoever they might be, which was nothing more than respect for that which was divine in man. The objections raised against the introduction of the conception of divinity during the meeting of the Economic and Social Council of the United Nations in Paris (viz., the risk of impairing the universal nature of the declaration; a desire to adopt only such clauses as were based on realistic views; the view that such a conception might conflict with scientific discoveries) could not be upheld in the face of certain facts. It must be recognized that, without God, man was unbalanced, divided, faced with insoluble problems. Nearly eight hundred million Christians had been disappointed to find that the Declaration of Human Rights had not based itself on the concept of a supreme Divinity. Man must admit once and for all that he is a spiritual being and that spiritual things must govern his whole life. Since science had been mentioned, he must point out that it was agreed today that without higher spiritual aspirations, man would have remained, according to the laws of selection and adaptation, comparatively stationary and mediocre. If man progressed, if he improved, it was in response to the Higher Being who had created him and from whom he proceeded. It became more and more evident that a clear reference should be made to the Deity in whose likeness man was created. It would be a pity to miss such an opportunity once again.

Mr. CASTRÉN (Finland) saw no point in restating, in the Preamble, rules which had been set out in detail in the body of the Convention. On the other hand, the new wording proposed by the United States of America appeared to him inadequate. He therefore supported the second version proposed by the International Committee of the Red Cross ("Remarks and Proposals", page 67), but suggested that the last sentence should be expressed in less categorical terms. In his opinion the sentence "pledge themselves to respect and at all times to ensure respect" should be replaced by "pledge themselves to respect and at all times to ensure respect in all good faith in the light of the high principles mentioned above". There might be justifiable exceptions on grounds of *force majeure* or in the absence of reciprocity.

He supported the proposal to ask the Chairman of the Committee to draw up a new draft preamble on the basis of the text proposed by the International Committee of the Red Cross.

Mr. MEVORAH (Bulgaria) had come to the conclusion, after careful consideration, that a Preamble was indispensable. Without a Preamble, the Civilians Convention would be somewhat too tech-

nical in character and would run the risk of being regarded as a manual of the rules of war, and therefore as the "instrument of a future war".

But what should the Preamble contain? A reference to divine law or to natural law would be difficult to express in legal terms. The ideas in question were, moreover, somewhat out of date. The happenings of the last war had destroyed what was called "civilisation".

A solemn protest against all the horrors which the world has just experienced, a reminder of all humanity has suffered, should pour forth from the whole Convention and find a prominent place in the Preamble. The salient features of the Convention should be added, and that was precisely what had been done at Stockholm. The Drafting Committee could modify certain phrases in the Stockholm wording, or remove or add a sentence. Those were matters of detail. It was essential, however, that the task should be the responsibility of a group such as the Drafting Committee to which, incidentally, the Chairman might be requested to submit a preliminary draft.

Mr. HAKSAR (India) felt that the discussion should be confined to the subject matter. The Preamble should not be turned into an invocation or a prayer. The purpose of the text was to explain objectively the scope of the operative articles. If the Committee succumbed to the temptation of adopting a subjective approach, it would become involved in an inextricable labyrinth of doctrines or of theological and philosophical principles.

The CHAIRMAN informed the meeting that the Spanish Delegation had submitted an amendment to the Preamble. In accordance with the decision taken at the last meeting, the Delegate of Spain had agreed to refrain from speaking on his amendment. The Ukrainian Delegation had also agreed not to speak on the Preamble.

The Chairman summed up before closing the discussion.

As the Delegate of Monaco had rightly said, the date of the signature of the Civilians Convention would be a historic one.

In view of the high hopes to which the Convention had given birth throughout the world, it was necessary to explain the intention of the nations which had drawn it up. That was to put an end to the horrors of the 1939-1945 war and to condemn forcefully and finally all the atrocities which had revolted the conscience of mankind.

If the authors of the preamble drafted at Stockholm had not fully succeeded in their task, they had at least gone further than those who had drafted the original international conventions conceived for wartime. It was essential to remem-

ber that the Preamble was not intended by its authors to be a separate instrument, but to form an integral part of the Civilians Convention.

Putting aside for the moment the decisions taken at Stockholm, he noted that the discussion showed that there was almost complete agreement among the delegations regarding the need for a preamble.

Two theses had been put forward. Some speakers felt that a declaration of general principles was required, while others were in favour of laying down general rules. Personally, he believed they were both right. He considered that the Convention should be linked up with the general conceptions which make up the collective conscience of mankind, conceptions which must be respected at all times, such as the general love of peace, a desire for justice, the will to independence, respect for human law, and respect for the essential dignity and liberties of the individual. Was it necessary to aspire to the high planes of philosophy and religion? That would probably be a mistake. It was most important to avoid all controversial points and to leave everyone free to choose whatever basis he preferred for the collective conscience of mankind.

The Preamble, on the other hand, should not be a mere statement of aims, as such a statement would not be imperative but explanatory. Inspiration should certainly be drawn from the Universal Declaration of Human Rights, or possibly even from the principles of the French Revolution, but the wording should not be weakened by repetition. General rules should be laid down, wide enough in their scope to constitute, by themselves, a great advance on the past, a moral revolution, as it were, in the history of mankind. Certain of those rules were, no doubt, already embodied in the Articles of the Convention: viz., respect for the individual in Article 25, prohibition of torture in Article 29, prohibition of the taking of hostages in Article 31, prohibition of all executions without sentence passed by a regularly constituted tribunal in Articles 55 et seq. (to these should be added the prohibition of deportation). These rules should, however, be taken from the Articles in which they were embodied and placed at the beginning of the Convention in a very brief statement. The Articles would then become no more than the method of application of the above rules.

He appreciated the honour conferred upon him by the spokesmen of the various delegations, but felt that he could not undertake the drafting of the Preamble alone. It should not be the work of one man, but an expression of collective thought. It would be preferable to establish an *ad hoc* Working Party, of which he would be very pleased to be a member. That Working Party should attempt to reach unanimous agreement, so that the most persuasive and convincing act of faith possible

could be presented as a challenge to the collective conscience of mankind.

The proposal for the establishment of an *ad hoc* Working Party to study the Preamble was adopted unanimously.

#### **Closure of discussion on first reading**

Before closing the general discussion on the first reading of the draft Civilians Convention, the CHAIRMAN pointed out that the two Annexes to the Convention (one containing a "Draft Agreement relating to Hospital and Safety Zones and Localities", and the other—, "Draft Regulations concerning Collective Relief" for civilian internees) had not yet been studied by Committee III in plenary session.

He proposed that the second Annex, relating to collective relief, should be referred to the Working Party for the Study of Articles 49 to 54, and that the Annex relating to hospital and safety zones should be referred to the Drafting Committee responsible for studying Article 12.

General SCHEPERS (Netherlands) said that his Delegation had submitted an amendment (*see Annex No. 203*) to Article 12, and would also submit an amendment to the Annex.

Colonel DU PASQUIER (Switzerland), Chairman of the Drafting Committee, replied that an amendment relating to the Annex could be discussed by the Drafting Committee in connection with the

study of Article 12, upon which they had already embarked.

General SCHEPERS (Netherlands) agreed.

The Committee approved the Chairman's proposal regarding the two Annexes.

Before declaring the meeting closed, the CHAIRMAN suggested an adjournment of a few minutes to allow the Bureau to discuss the composition of the Working Party for the Preamble.

#### **Ad hoc Working Party for the Preamble**

On resuming, the CHAIRMAN, speaking on behalf of the Bureau, proposed that the Working Party should consist of nine members, representing the following countries: Afghanistan, United States of America, Finland, France, Lebanon, Mexico, Monaco, Rumania, Union of Soviet Socialist Republics.

Mr. BOURLA (Costa Rica) proposed the inclusion of a representative of Spain.

The CHAIRMAN replied that he did not think the Working Party could have more than nine members; it had, however, been agreed that all authors of amendments would be admitted to explain their views to the Working Party. The Delegate of Spain would be heard in that capacity.

In the absence of any other proposal the list of members proposed by the Bureau was adopted.

*The meeting rose at 5.45 p.m.*

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## TWENTY-FIFTH MEETING

*Tuesday 7 June 1949, 3 p.m.*

*Chairman:* Mr. Georges CAHEN-SALVADOR (France)

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#### **Progress of work**

The CHAIRMAN informed the meeting that the two Drafting Committees and the two Working Parties of Committee III had already reworded a number of Articles which could now be considered on the second reading.

The Drafting Committees and Working Parties were continuing their work, the first Drafting

Committee having already reached agreement on the wording of Articles 13 to 26. The second Drafting Committee (entrusted with the study of questions relating to internment) had completed their examination of some thirty Articles. The Report of the Working Party instructed to study Articles 49 to 54 would be completed during the course of the present week. The Working Party entrusted with the rewording of the Preamble

had only held one meeting, but would continue its work on the return of its Chairman, who was at present in France but was expected back very shortly.

### Procedure for the second Reading

The first reading had given rise to long and detailed discussion. The Bureau had made a point of intimating, however, that discussions during the second reading should be reduced to the absolute minimum. Under the Rules of Procedure a time limit could be imposed either on the length of individual speeches or on the total length of time taken up by the interventions of each Delegation taken as a whole. Further, any Delegate could move the closure of the discussion on a given point; if this motion was contested, one Delegate would be allowed to speak in favour of the motion, and one against it; a vote would then be taken.

Did the Committee consider that the two rules of procedure in question should be applied during the second reading?

Mr. QUENTIN-BAXTER (New Zealand) felt that the procedure outlined above should allow of exceptions in certain cases: where, for instance, a speaker felt that an important question of principle was involved, or where someone who had spoken believed that his point of view had been misunderstood by a subsequent speaker. In both those cases the time-limit set for speeches should admit of prolongation. It was for the Chairman to judge which cases called for relaxation of the rule.

Mr. NASSIF (Lebanon) pointed out that certain questions might not have been broached during the first reading. In such cases a longer time should be allowed for interventions.

Mr. MOROSOV (Union of Soviet Socialist Republics) asked if the procedure proposed was the one outlined by the Chairman, as amended by the New Zealand Delegate.

The CHAIRMAN replied that, in his opinion and in order to take account of various suggestions which had been made to him, the length of speeches should be limited to five minutes. That would be the general rule. He would, however, reserve the right not to apply it too rigidly, provided always that the exceptions did not become the rule, and the rule — the exception. As the Delegate of New Zealand had suggested, exceptions would be possible both in the case of statements on particularly important questions and in order

to clear up misunderstandings. In the same way, it would be possible to do as the Delegate of Lebanon had suggested and extend the time-limit in the case of speeches explaining any question which had not yet been discussed.

Mr. MOROSOV (Union of Soviet Socialist Republics), having again asked for an explanation of the exact procedure proposed, and Mr. BAMBATE (Afghanistan) and Mr. SINCLAIR (United Kingdom) having both spoken against too rigid an application of the time-limit for speeches, the CHAIRMAN proposed a time-limit of five minutes for each speaker and of ten minutes for each delegation, it being understood that the rule could be relaxed at his (the Chairman's) discretion. Any delegate who was not in agreement with the Chairman would, however, be entitled to move the closure of the discussion at any time, in accordance with the Rules of Procedure.

Mr. ABUT (Turkey) requested that delegations represented by only one member should have the right to speak for the same total time as the larger delegations.

Mr. MARESCA (Italy) endorsed the above request. He agreed with the Chairman's proposal on the understanding that the rule should be flexible.

Mr. BAMBATE (Afghanistan) and Mr. MINEUR (Belgium) supported the proposal of the Italian and Turkish Delegates.

Mr. WERSHOF (Canada) formally moved that the time-limit for any one speech should be five minutes, and that no delegation, however many of its members took part in the discussion, should be allowed to speak on one Article for more than ten minutes in all.

The above proposal was supported by Mr. CLATTENBURG (United States of America).

Mr. MOROSOV (Union of Soviet Socialist Republics) asked whether statements giving the reasons for a vote would be included in the time-limit.

The CHAIRMAN replied that such statements might be permitted, provided they were limited to a few sentences and were not obviously made with the intention of unnecessarily prolonging the discussion.

The Chairman's proposal of a time-limit of five minutes for each speaker and ten minutes for each delegation, with exceptions at the Chairman's discretion, was adopted unanimously.

### Communication from the International Union for Child Welfare

The CHAIRMAN said that he had received a second letter from the International Union for Child Welfare (*see Annex No. 272*).

That body urged the adoption of Articles 46, 52, 59, 78, 79 and 80, and made certain new suggestions.

The letter in question would be distributed to the delegations and referred to the Drafting Committee or Working Party concerned.

### Second reading of the Civilians Convention

The CHAIRMAN explained that the Chairmen-Rapporteurs of the various Committees and Working Parties would introduce the Reports of their respective Committees or Working Parties to Committee III. The speakers would be: Colonel Du Pasquier (Switzerland) for the first Drafting Committee; General Schepers (Netherlands), or in his absence Mr. Haksar (India), for the second Drafting Committee; Mr. Mevorah (Bulgaria) for the Working Party entrusted with the study of Articles 49 to 54; Mr. de Geouffre de la Pradelle (Monaco) for the Working Party on the Preamble. Later, when the proposals of Committee III were presented to the Plenary Meeting of the Conference, the Rapporteurs of Committee III, namely, Colonel Du Pasquier (Switzerland) and Mr. Hart (United Kingdom), would be responsible for giving the necessary explanations.

The Chairman put Article 13 for discussion, consideration of Articles 11, 12 and 12A being postponed for the time being as the Drafting Committee had not completed its work on them.

### Article 13

Colonel Du PASQUIER (Switzerland) said that Article 13 had been the subject of a lengthy discussion in the Drafting Committee.

A United Kingdom amendment (*see Annex No. 209*) had proposed the omission of the first sentence of the first paragraph on the grounds that it concerned the measures to be taken by a State with regard to its own nationals and was, therefore, not in its right place in the Convention. Agreeing with that suggestion, the Drafting Committee had deleted the first sentence, the substance of which would be placed either in Part III, Section III (Article 50), which dealt with the obligations of the Occupying Power towards the population of occupied territories, or in Part III, Section II, which dealt with the duties of a Party to the conflict in regard to aliens residing in its territory.

The words "infirm and expectant mothers" had been added to the second sentence of the first paragraph, as proposed by the Netherlands Delegation.

Mr. BARAN (Ukrainian Soviet Socialist Republic), Mr. BLUEHDORN (Austria) and Mr. MARESCA (Italy) raised certain objections to the wording of Article 13 proposed by the Drafting Committee.

Mr. MOROSOV (Union of Soviet Socialist Republics) felt that the proposed wording should not be adopted until the Articles of Sections II and III of Part III in which the sentence omitted from Article 13 was to be incorporated, had been discussed. He proposed, therefore, that any decision on Article 13 should be postponed pending approval of the Articles in question. If his suggestion for a postponement was not accepted, the Soviet Delegation would be obliged to vote against the omission of the first sentence of the first paragraph of the Stockholm text.

Mr. WERSHOF (Canada) opposed the Soviet Delegation's proposal to postpone consideration of Article 13. There was no question of omitting the first sentence of Article 13 from the Convention but merely of placing it in Sections II and III of Part III.

Mr. SINCLAIR (United Kingdom) proposed that the word "shipwrecked" in the second paragraph should be qualified by the words "on land".

Mr. MEVORAH (Bulgaria), speaking as Chairman of the Working Party to which Article 50 had been referred, said that the first sentence of Article 13 had not been taken into consideration when Article 50 was being reworded.

Mr. MOROSOV (Union of Soviet Socialist Republics) maintained his proposal for the postponement of the discussion. He suggested that a Joint Sub-Committee composed of the members of the Drafting Committee and of the Working Party of which Mr. Mevorah was Chairman, should be entrusted with the task of redrafting Articles 13 and 50.

Colonel DU PASQUIER (Switzerland), Rapporteur, saw no objection to the proposed postponement of the discussion; he pointed out, however, that a draft text of Article 50, including the first sentence of Article 13, had been referred to the Working Party of which Mr. Mevorah was Chairman.

Mr. QUENTIN-BAXTER (New Zealand) proposed that a single vote should be taken on the text of Article 13 as proposed by the Drafting Committee

and on the proposed transfer of the first sentence of the Stockholm text to Part III. If the latter recommendation was not later carried out, the whole question regarding Article 13 would have to be reopened. The Soviet Delegation would then have an opportunity of asking for the first sentence to be reinserted in the Article.

Mr. MINEUR (Belgium) supported the suggestion of the Soviet Delegate that a Joint Sub-Committee should be set up for the purpose of studying Articles 13 and 50.

The proposal to postpone the discussion was put to the vote and adopted by 22 votes to 6. It was at the same time decided to appoint a Joint Committee to consider Articles 13 and 50.

#### Article 14

Colonel DU PASQUIER (Switzerland), Rapporteur, reminded the meeting that Article 14 had been adopted as it stood except that, at the request of the Irish Delegation, chaplains had been included among the persons who should enjoy the right of passage.

Mr. PILLOUD (International Committee of the Red Cross) pointed out that the word "sanitaire" in the French text referred both to medical personnel and to equipment and should, therefore, be in the plural.

Mr. MINEUR (Belgium) proposed that the facilities granted under Article 14 to medical personnel should be extended to personnel of the special services concerned with the protection of the civilian population, and should include the provision of non-medical equipment, such as fire extinguishers, gas masks, lime, vaccines and disinfectants. The point might be met by replacing the word "medical" (sanitaires) by "relief" (de secours).

Colonel DU PASQUIER (Switzerland), Rapporteur, was not in favour of extending the scope of the Article. The Drafting Committee had already rejected the proposal of the Belgian Delegation.

Msgr. BERTOLI (Holy See), on the other hand, supported the Belgian proposal.

Mr. ABUT (Turkey) asked whether the term "chaplains" (aumôniers) would include the ministers of religions other than Christianity.

Colonel HODGSON (Australia) said that, in his view, a chaplain was a minister of religion appointed by one of the three services of the armed forces—army, navy or air force. Army chaplains were

not normally called upon to minister to civilians; but it was with civilians that the present Convention was concerned. It would, therefore, be best to use the expression "ministers of all denominations" which had been recommended by the Delegate of the Holy See.

Miss JACOB (France) said that in France the term "aumôniers" (chaplains) was used of persons responsible for the spiritual care of communities in colleges, hospitals and prisons, as well as of chaplains in the armed forces. The expression could well be used, therefore, in the Civilians Convention.

Mr. CASHMAN (Ireland) agreed with the interpretation of the word "chaplains" (aumôniers) given by Miss Jacob. He saw no objection, however, to the word being changed if the Committee so decided.

Mr. HAKSAR (India) proposed that the word "chaplains" should be replaced by "ministers of religion".

Mr. CLATTENBURG (United States of America) and Mr. WERSHOF (Canada) warned the Committee against increasing the number of beneficiaries under Article 14. To extend the scope of the Article in that way would be completely unrealistic, because it could not be reasonably expected that a besieging army would allow the right of passage to persons whose services to the besieged population might be such as to prolong the siege.

General FARUKI (Pakistan) thought it should be made clear that the passage of medical and religious personnel and equipment into besieged areas need not be authorized unless required.

The CHAIRMAN declared the discussion closed, and decided to put the wording of Article 14 to the vote, it being understood that the word "sanitaire" in the French text should be in the plural.

The proposal to replace the word "medical" ("sanitaires") by "relief" ("de secours") was put to the vote and rejected by 9 votes to 6.

The proposal to replace the word "chaplains" (aumôniers) by "ministers of religion" was adopted by 14 votes to 5.

Article 14, amended as above, was adopted unanimously (with one abstention).

#### Articles 15 and 19

Colonel DU PASQUIER (Switzerland), Rapporteur, explained that the Drafting Committee had considered an amendment submitted by the Delegation of Belgium (*see Annex No. 211*), the purpose of which was to make certain that all civilian hospi-

tals enjoyed the protection of the Convention even if they had not received State recognition. The amendment had been rejected by the Drafting Committee.

The Drafting Committee had also rejected an amendment, submitted by the Delegation of the United Kingdom, which proposed: (1) to replace the word "State" in each of the two paragraphs by the words "Power in control of the territory in which they are situated", and (2) to lay down that hospitals should be subject to inspection by representatives of the Protecting Power. The Drafting Committee had considered that Article 7 of the Convention provided, in general, for supervision by the Protecting Powers of the application of the Convention, and that there was, therefore, no point in making a special reference to that legal principle in this particular case.

The Drafting Committee had agreed that the last sentence of Article 15 was intended as a recommendation and that it was not meant to be mandatory. They had therefore decided to replace the words "the responsible authorities shall ensure" by "it is recommended".

Article 19 of the text adopted at Stockholm dealt with the marking of civilian hospitals. It was quite clear that the hospitals referred to were those recognized as such by the State in accordance with Article 15. For that reason the Committee had decided to amalgamate the two Articles, Article 19 becoming the third and fourth paragraphs of Article 15. As a result, there was now no reason for considering the Belgian amendment to Articles 15, 18 and 19, which he had mentioned.

With regard to the first paragraph of Article 19, as in the case of the preceding Article, the point arose as to whether the marking of civilian hospitals was intended to be obligatory or optional; the Drafting Committee had decided on the latter interpretation, and had replaced the word "shall" by the words "may be".

Again, it would be the responsible authorities who would give the necessary permission for the marking of civilian hospitals, and not "the State and the National Red Cross Society".

*The meeting rose at 6.30 p.m.*

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## TWENTY-SIXTH MEETING

*Wednesday 8 June, 3 p.m.*

*Chairman: Mr. Georges CAHEN-SALVADOR (France)*

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### Article 15

Mr. MARESCA (Italy) fully agreed with the Drafting Committee's proposal (*see Annex No. 212*) to include Article 19 as part of Article 15.

It would, however, be better to keep to the Stockholm wording for the third and fourth paragraphs (former Article 19). The obligation to respect hospitals involved an obligation to mark them, and it would therefore be wiser to retain the words "shall be marked".

General PAGE (United Kingdom) proposed to take into consideration the views expressed by the Delegate of Canada during the discussion on the first reading of Article 18, concerning the futility of marking hospitals in territories thousands of miles from the theatre of operations, by inserting

the words "In order to qualify for such protection..." at the beginning of the third paragraph.

Further, the United Kingdom Delegation wished to urge again, with reference to the Drafting Committee's decision, the desirability of hospitals being subjected to inspection by representatives of the Protecting Power in order to prevent any misuse of the emblem.

Mrs. MANOLE (Rumania) felt that the changes made in the Stockholm wording were, on the whole, unfortunate.

Under the new wording of the third paragraph, in which the words "responsible authorities" replaced the phrase "the State and the National Red Cross Society", the Occupying Power would have the right either to grant or to withhold permission for hospitals to be marked with the emblem

of the Red Cross. This state of affairs was made worse by the fact that the word "shall" at the beginning of the third paragraph had been replaced by the word "may". Such changes, although apparently trifling, were in actual fact radical. For the above reasons the Rumanian Delegation was in favour of retaining the Stockholm wording of the third paragraph.

Mr. MEULBLOK (Netherlands) pointed out that the first paragraph, as worded, provided no protection for auxiliary hospitals, the vital importance of which had been proved during the last war. He suggested that the words "on a permanent basis" in the Drafting Committee's wording should be deleted.

Mr. MINEUR (Belgium) felt that protection should be given to all civilian hospitals which were fulfilling their normal function. If protection was made to depend on official recognition, a number of establishments organized by private initiative might be left unprotected.

The Belgian Delegation's amendment providing protection for all hospital establishments had been rejected by the Drafting Committee. His Delegation, however, wished once more to bring that amendment—slightly modified after consultation with the International Committee of the Red Cross—to the attention of Committee III.

Mr. MOROSOV (Union of Soviet Socialist Republics) agreed with the Drafting Committee's wording as modified by the proposals of the Italian and Rumanian Delegates.

The Delegation of the Union of Soviet Socialist Republics proposed, therefore, that the Stockholm wording should be restored in the case of the third paragraph and that the first, second and fourth paragraphs of the text proposed by the Drafting Committee should be adopted.

Mr. LOKER (Israel) asked whether it could be confirmed that the reference in the third paragraph to an Article of the "Wounded and Sick" Convention dealing with the emblem; related to the text which would be finally adopted by the Conference in plenary meeting, and not to the present wording. The Chairman of Committee I had said that that would be so in the case of the corresponding Articles in the Wounded and Sick and Maritime Warfare Conventions. Should the reply be in the affirmative the Delegation of Israel would refrain from opening a discussion on the subject; he pointed out that the Conference had already been informed, in a letter dated 19 May 1949 from the Israeli Delegation, of the latter's intention to raise the question in plenary meeting. The Delegation had added that the same obser-

vation also applied to the clauses at the end of the second paragraph of Article 18 and at the end of the first paragraph of Article 19 A.

Msgr. BERTOLI (Holy See) said that he was willing to support the Belgian amendment as modified by agreement with the International Committee of the Red Cross. In his view, however, auxiliary hospitals should be protected under certain given conditions by means of the Red Cross emblem. The third paragraph should finish—as the first paragraph of Article 19 of the Stockholm text had done—with a reference to "the State and the National Red Cross Society", and not with the words "responsible authorities".

Colonel DU PASQUIER (Switzerland), Rapporteur, said that if the protection of hospitals had been made contingent on their recognition by the responsible authorities, it was because some form of control was necessary to prevent misuse of the emblem. That was the conclusion reached by the Drafting Committee, but its decision should in no way be understood in a restrictive sense. It was obvious that a State would have no reason for refusing recognition to any establishment which was, in fact, a hospital.

In reply to the question asked by the Delegate of Israel, the Rapporteur said that the Article referred to in the new third paragraph of Article 15 was certainly the Article as it would be adopted by the Conference.

The CHAIRMAN declared the discussion closed and proceeded to put to the vote the text proposed by the Drafting Committee and the amendments which had been submitted.

He first put to the vote the amendment submitted by the Belgian Delegation, which referred to the whole of the Article.

Mr. HAKSAR (India) remarked that it was difficult to express an opinion regarding the changes made in the amendment by the Belgian Delegation in consultation with the International Committee of the Red Cross, as the text of the modified amendment had not yet been distributed.

Mr. MINEUR (Belgium) said that in the circumstances he would refrain from modifying his amendment and would adhere to the original wording proposed on May 5th, 1949 (*see Annex No. 211*).

The amendment proposed on May 5th, 1949 by the Belgian Delegation was rejected by 12 votes to 1.

The amendment of the Netherlands Delegation, which proposed the omission of the words "on a permanent basis" from the first paragraph, was rejected by 16 votes to 14.

The proposal submitted by the Delegations of Rumania and the Union of Soviet Socialist Republics to retain the Stockholm wording for the third paragraph was adopted by 15 votes to 14.

In view of the reversion to the original Stockholm wording, the United Kingdom Delegation withdrew its amendment to add the words "in order to qualify for such protection..." at the beginning of the third paragraph.

It maintained, however, its proposal that hospitals should be subject to inspection by representatives of the Protecting Power.

The amendment was rejected by 17 votes to 4 with 11 abstentions.

Mr. LOKER (Israel) asked how the proposed reversion to the Stockholm wording for the third paragraph should be interpreted. Did it mean, as he understood, that the text in question was the Stockholm wording modified by the reference (adopted by the Drafting Committee) to "Article X of the Geneva Convention of 1949 for the Relief of the Wounded and Sick in the Armed Forces in the Field"?

Colonel DU PASQUIER (Switzerland), Rapporteur, said that the Committee's vote should be interpreted as maintaining the words "shall be" instead of "may be" in regard to the marking of hospitals. It would be advisable to refer the question of the actual wording back to the Drafting Committee.

The CHAIRMAN felt that the point raised by the Delegate of Israel had thus been met. The Drafting Committee would redraft the third paragraph, taking into account both the observations which had been submitted and the vote for the reintroduction of the Stockholm text.

In view of the adoption of the Stockholm wording, the Delegation of the Holy See did not press its proposals regarding the protection of auxiliary hospitals.

#### Article 16

Colonel DU PASQUIER (Switzerland), Rapporteur, said that the expression "acts harmful" in the first sentence of the first paragraph had been criticized, in particular by the Delegation of the United States of America. As the term had, however, been maintained by the Drafting Committee of Committee I in Article 16 of the Draft Wounded and Sick Convention, the Drafting Committee of Committee III had felt that they should do the same.

A Netherlands amendment had been submitted which proposed to add the words "infirm and

maternity cases" to the list of beneficiaries under the Article. For the sake of brevity the Drafting Committee had, however, adopted the term "patients" (*personnes hospitalisées*) which was more general and would cover all cases.

The Drafting Committee had not accepted United Kingdom amendments which proposed to delete the second sentence of the first paragraph and to replace the second paragraph by a new text. The second paragraph of Article 16 had been maintained in the form adopted at Stockholm.

General PAGE (United Kingdom) said that his Delegation did not wish to press the amendments submitted by them and rejected by the Drafting Committee. They felt, however, that the second sentence of the first paragraph would be better drafted as follows: "In any case a period which, having regard to all the circumstances, is reasonable, shall be allowed for the removal of the patients".

The United Kingdom amendment was rejected by 15 votes to 13.

The CHAIRMAN asked the Committee to vote on Article 16 as a whole.

Article 16 was adopted unanimously.

#### Article 17

Colonel DU PASQUIER (Switzerland), Rapporteur, said that the wording of Article 17 proposed by the Drafting Committee (*see Annex No. 217*) had been adopted by 4 votes to 3.

A minority of the Drafting Committee, consisting of the representatives of the United States of America, the United Kingdom and Canada, had requested that the wording they had proposed for the third paragraph (*see Annex No. 217*) should be included in the Drafting Committee's report. This had been done.

Lastly, the Drafting Committee had decided, by 4 votes to 3, to propose that Article 17 be transferred to Part III, Section III. The Delegation of the Union of Soviet Socialist Republics had opposed that proposal and had requested that Committee III should be informed of the fact.

Mr. AGATHOCLES (Greece) felt that the right of the Occupying Power to requisition material and stores of civilian hospitals should be limited as far as possible. With that object in view the Greek Delegation proposed to replace the word "patients" at the end of the third paragraph by the expression "the needs of the civilian population", which had already been used at the end of the second paragraph.

Mr. CLATTENBURG (United States of America) said that he had not been present at the meeting of the Drafting Committee which had rejected the United States amendment on the subject of requisitioning. He felt that his Delegation's amendment was stronger than the Stockholm wording, since it placed definite limits on the right of requisition. If Article 17 were to be transferred to Part III, Section III, it should be considered in conjunction with Articles 49 and 50.

Mr. MARESCA (Italy) thought that the first paragraph of the Stockholm wording was preferable to that adopted by the Drafting Committee. He proposed that the words "in enemy or occupied territory" should be reinserted after the words "civilian hospitals". The wording should then be clearer.

In regard to the third paragraph, he wished to press for the adoption of the amendment of the Italian Delegation which proposed to omit the words "as long as they are necessary for the wounded and sick". The work of a hospital was not limited to the care given to patients actually in hospital at any given moment. There might be a sudden increase in the number of those admitted. It was therefore necessary to prevent the requisitioning of hospitals' reserves of medical stocks which might have been accumulating for years. Moreover, the Hague Conventions made no provision for the requisitioning of medical and relief stores. It was essential not to take a retrograde step in international law. Besides, the Draft Wounded and Sick Convention contained a provision similar to that in Article 17 of the Stockholm text. It would be wrong to create a divergence between the two texts.

Mr. MOROSOV (Union of Soviet Socialist Republics) said that he was in favour of the text adopted by the majority of the Drafting Committee. He was, on the other hand, opposed to that proposed by the minority. He agreed with the views expressed by the Delegate of Greece, but felt that the Drafting Committee's wording provided sufficient protection for the material and property of civilian hospitals.

Mr. WERSHOF (Canada) observed that the provisions of Article 17 applied to action by the Occupying Power, each State being free, on its own national territory, to take decisions concerning its own nationals (and, in particular, in time of war, to turn a civilian hospital, if it saw fit, into a military hospital). That was the reason why the Article should be placed in Section III of Part III.

Again, a realistic attitude must be adopted; if an Occupying Power found itself short of medical supplies for the needs of its army, it could not be

reasonably expected to refrain from requisitioning the reserve stores of civilian hospitals.

Finally, the wording suggested by the minority of the Drafting Committee for the third paragraph was more favourable to the civilian population than that suggested by the majority since it provided that requisitioning should only take place in the case of urgent necessity.

Mr. QUENTIN-BAXTER (New Zealand) agreed with the Canadian Delegate's remarks. He drew the attention of the Committee to the point raised by the Delegation of the United States of America. As Article 17 was to be transferred to Section III of Part III, it would be premature to take any final decision regarding it before the Working Party entrusted with the study of Articles 49 to 54 had been able to submit its report on the matter.

Mr. BMMATE (Afghanistan) remarked that Article 17 referred to civilian hospitals without specifying whether hospitals recognized by the State were meant, or civilian hospitals in general.

Colonel DU PASQUIER (Switzerland), Rapporteur, replied that Article 15 and the following Articles should be read as a whole; in the case of Article 17, as in that of Article 15, the hospitals referred to were those recognized by the State. Difficulties regarding the "recognition" of hospitals should not, however, be exaggerated, as a State would have no reason for refusing recognition to any establishment which was, in actual fact, a hospital.

Mr. CLATTENBURG (United States of America) formally proposed that Article 17 be referred to the Joint Sub-Committee (composed of the members of the Drafting Committee and of the Working Party dealing with Articles 49 to 54) which had been set up to study Article 13.

The proposal was adopted by 17 votes to 12.

The CHAIRMAN then asked the Committee to make decisions on the various points raised in the course of the discussion. These decisions would serve as a guide to the Joint Committee to which the Article had been referred.

In the first paragraph the Italian Delegation had proposed to reinsert the words "in enemy or occupied territory".

The Italian proposal was adopted by 16 votes to 12.

No objections had been raised to the second paragraph.

The text which a minority of the Drafting Committee (United States of America, United Kingdom and Canada) had proposed for the third paragraph was rejected by 18 votes to 15.

The amendment of the Delegation of Greece

to the text adopted by the majority of the Drafting Committee (to replace the word "patients" by the words "for the need of the civilian population") was adopted by 16 votes to 3.

The CHAIRMAN wondered whether, in view of the adoption of the Greek amendment, it was necessary to take a vote on the amendment of the Italian Delegation which had proposed the omission of the words "so long as they are necessary for the patients".

Mr. CASTRÉN (Finland) considered that a vote should be taken, as the Italian amendment was wider in scope than that proposed by the Greek Delegation.

Put to the vote, the Italian amendment was rejected.

The CHAIRMAN said that the Committee had still to decide whether Article 17 should be transferred to Part III, Section III, as proposed by the Drafting Committee.

Mr. CASTRÉN (Finland) observed that the transfer had been rendered impossible by the adoption of the Italian Delegation's amendment to the first paragraph. The amended text did not merely apply to occupied territory.

Colonel DU PASQUIER (Switzerland), Rapporteur, considered that the question should be decided by the Joint Sub-Committee.

*The meeting rose at 7 p.m.*

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## TWENTY-SEVENTH MEETING

*Thursday 9 June 1949, 3 p.m.*

*Chairman:* Mr. Georges CAHEN-SALVADOR (France)

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### Article 18

Colonel DU PASQUIER (Switzerland), Rapporteur, summarized the principal changes adopted by the Drafting Committee.

The second paragraph of the text adopted at Stockholm authorized two categories of civilian hospital personnel to wear an armlet: in the new text (*see Annex No. 218*), as the result of a United Kingdom amendment, the right to do so was conferred solely on personnel regularly and exclusively engaged in the running and administration of civilian hospitals. The Drafting Committee had accepted the Belgian amendment allowing personnel regularly engaged in the "search" for patients for hospital treatment to wear the armlet.

The stipulation that identity cards should carry fingerprints, which had been criticized by the United Kingdom and Soviet Delegations, had been omitted. Again, following suggestions by the United Kingdom and United States Delegations, it had been decided to leave the issue of identity cards and armlets to the discretion of the responsible authorities.

Brigadier PAGE (United Kingdom) asked the Rapporteur whether the third paragraph applied only to hospital personnel or to civilian patients as well.

On Colonel DU PASQUIER (Switzerland), Rapporteur, replying that it was only the personnel that were referred to, Brigadier PAGE (United Kingdom) said that the expression "list of their personnel" in the English text should be changed to "list of such personnel" in order to make the meaning clearer.

Mr. MEVORAH (Bulgaria) proposed dropping the restriction introduced by the use of the adverbs "regularly and exclusively" or, in any case, to delete the words "and exclusively". Apart from the protection accorded to hospital personnel, it was also necessary to protect such people as surgeons who attended their own private patients in addition to their hospital work, or night watchmen who worked outside the hospital in the daytime.

In regard to the authority competent to issue the armlets, the expression "responsible authorities"

should be replaced by the same wording as had been adopted in the case of Article 15. There could be no divergence on that point between Articles 15 and 18.

Mr. CLATTENBURG (United States of America) observed that the words "in the running and administration" in the first paragraph of the English text did not correspond to the French "au fonctionnement ou à l'administration". They should be replaced by the words "in the operation or administration". In regard to the first observation made by the Delegate of Bulgaria, it would appear that auxiliary personnel should normally be covered under Article 54. Finally, the expression "by the State and National Red Cross Society" in the second paragraph had been introduced at Stockholm by the Chairman of the League of Red Cross Societies, who subsequently recognized that it had been a mistake on his part. The Delegation of the United States of America was in favour, therefore, of the text proposed by the Drafting Committee which spoke of the "responsible authorities".

Mr. MOROSOV (Union of Soviet Socialist Republics) supported the proposal of the Delegate of Bulgaria to omit the words "regularly and exclusively" and also to replace the words "the responsible authorities" by the wording which had been adopted in the case of Article 15.

Colonel DU PASQUIER (Switzerland), Rapporteur, thought that the point made by the Delegations of Bulgaria and the Soviet Union could be met by omitting the adverb "exclusively", which would not involve any serious departure from the meaning of the wording proposed by the Drafting Committee. The omission of the adverb "regularly" would on the other hand be liable to lead to a dangerous increase in the number of persons having the right to wear the armlet, and would consequently leave the door open to misuse of the Red Cross emblem.

The amendment proposed by the Delegation of Bulgaria (to delete the word "exclusively") was adopted by 30 votes to 6, with 2 abstentions.

In view of this decision, Mr. MOROSOV (Union of Soviet Socialist Republics) withdrew his Delegation's amendment to delete the adverb "regularly".

The amendment proposed by the Delegations of Bulgaria and the Union of Soviet Socialist Republics (to replace the words "responsible authorities" by the Stockholm wording) was rejected by 19 votes to 16.

Article 18, as amended by the omission of the adverb "exclusively" in the first paragraph, was adopted unanimously.

## Article 19

The CHAIRMAN reminded the meeting that Article 19 had been incorporated in Article 15, of which it now constituted the third and fourth paragraphs. The Drafting Committee had been instructed to reword the third paragraph.

## Article 19A

Colonel DU PASQUIER (Switzerland), Rapporteur, said that the provisions contained in Article 19A had been first introduced at the Stockholm Conference with a view to preventing misuse of the Red Cross emblem. The Drafting Committee (*see Annex No. 219*) had adopted a United Kingdom amendment limiting protection to vehicles "regularly and exclusively" engaged in the transport of wounded and sick persons.

Mr. MARESCA (Italy) was of the opinion that the obligation to mark hospital transports should be a general one, and should not be limited to occupied territories and zones of military operations.

The third paragraph provided for the possibility of vehicles being requisitioned in accordance with the "laws of war". That possibility did not appear to be consistent with the obligation to protect and respect such vehicles, which was laid down in the first paragraph. Moreover, Article 56 of the Hague Regulations prohibited the requisitioning of property belonging to charitable institutions. As such requisitioning was against the "laws of war", the paragraph served no useful purpose; and the Italian Delegation proposed that it be deleted.

Mr. AGATHOCLES (Greece) and Mr. MINEUR (Belgium) supported the second proposal of the Italian Delegation.

Mr. CLATTENBURG (United States of America) drew the Italian Delegate's attention to the fact that requisitioning could take place under Article 53 of the Hague Regulations.

Mr. DAY (United Kingdom) proposed that the words "or of medical supplies and equipment" should be added after the words "maternity cases" in the third line of the first paragraph.

He supported the proposal of the Italian Delegation to delete the last paragraph.

Mr. MEVORAH (Bulgaria) repeated the comments he had made in connection with Article 18. He proposed to omit the adverbs "regularly" and "exclusively", and also the portion of sub-paragraph (a), in the first paragraph, coming after

the word "reserved" ("and indicating clearly... to this Article;"). He considered that it was wiser, in general, not to restrict the scope of the texts too much.

He supported the Italian Delegation's proposal to delete the third paragraph.

Mr. MOROSOV (Union of Soviet Socialist Republics) pointed out that the Stockholm wording covered "transports conveying wounded and sick civilians...", while the Drafting Committee's wording spoke only of "vehicles". It was a mistake to substitute the conception of means of transport for the general conception of the transportation of wounded, sick, the infirm and maternity cases. He proposed, therefore, to revert to the Stockholm text for the beginning of the Article, but to replace the portion of the first paragraph coming after the words "shall be marked" by the clause concerning the marking of vehicles contained in sub-paragraph (b) of the wording adopted by the Drafting Committee.

He supported the proposal of the Italian Delegate to delete the last paragraph.

Colonel DU PASQUIER (Switzerland), Rapporteur, explained that when drafting the Article in its new form, the Drafting Committee had been guided by a desire to prevent an increase in the misuse of the Red Cross emblem; hence the use of the adverbs to which certain delegations were objecting.

In regard to the third paragraph, he agreed with the Delegate of the United States of America that the interpretation of the laws and customs of war was not quite so simple as the Italian Delegate had suggested. Under Articles 52 and 53 of the Hague Regulations, hospital transport could be requisitioned by the army which captured them, notwithstanding the provisions of Article 56. That was why the safeguards provided under the third paragraph were of value.

The CHAIRMAN re-read the first paragraph which, reworded in accordance with the amendment of the Soviet Delegation, read as follows :

"Transports conveying wounded and sick civilians, the infirm and maternity cases, shall be respected and protected in the same manner as the hospitals provided for in Article 15, and

shall be marked by the display of the distinctive emblem provided for in Article X of the 1949 Geneva Convention for the Relief of the Wounded and Sick in Armed Forces in the Field."

In the view of the Soviet Union Delegation the above paragraph should constitute the whole of Article 19A.

The above text was adopted by 18 votes to 17, with 3 abstentions.

Mr. WERSHOF (Canada) asked that consideration should be given to an amendment to the Stockholm wording of Article 19A, tabled by the Canadian Delegation, which proposed replacing the words "shall be marked" in the first paragraph by "may be marked".

The CHAIRMAN ruled that, as the discussion on Article 19A had been closed, it was no longer possible to consider the Canadian amendment.

#### Procedure

A discussion having taken place on questions of procedure, the CHAIRMAN noted that the discussions on the second reading seemed to certain delegations to be unduly long. But amongst those who complained, were to be found those who were at once the victims and the authors of the undesired prolixity.

It should be clearly understood that the Drafting Committee's text was the basis of their discussions. Amendments must be confined to that text, and must be submitted within the time-limit prescribed by the Rules of Procedure, except in the case of minor drafting amendments or of short and simple modifications arising out of the discussion; in such cases the Chairman was entitled to waive the Rules of Procedure.

He concluded by reminding the Committee that their task was not political but humanitarian. In those circumstances it should be possible to reach unanimity or quasi-unanimity on the wording of Articles to be adopted. The Committee must impose self-discipline so as to prevent a failure of the Conference as a result of undue prolongation of the discussions.

*The meeting rose at 7 p.m.*

TWENTY-EIGHTH MEETING

Friday 10 June 1949, 3 p.m.

Chairman: Mr. Georges CAHEN-SALVADOR (France)

**Article 20**

Discussion on Article 20 was again postponed.

**Article 21**

Colonel DU PASQUIER (Switzerland), Rapporteur, said that no really important point had been raised in regard to Article 21 (*see Annex No. 224*) in the Drafting Committee, apart from the question of its place in the Convention. Placed, as it was at present, in Part II, it applied to nationals as well as aliens. The minority of the Drafting Committee (Canada, United States of America, United Kingdom), had recommended the transfer of the Article to Part III, Section II, pointing out that it was not for an international Convention to stipulate what protective measures a State should take on behalf of children under 15 who were its own nationals. The majority, on the other hand, had felt that it could be left in Part II, since there could be no objection to reminding States of certain of their duties towards their own nationals.

The following changes had been made in the Stockholm text:

In accordance with a proposal by the Delegation of Burma, the words "separated from their parents" had been amended to read "separated from their families". At the request of the Delegation of the Holy See, safeguards had been provided to allow children to practise their own religion. In accordance with an amendment proposed by the Delegation of Israel, provision was made to ensure that the education of children should be entrusted, as far as possible, to persons of similar cultural tradition. In order to avoid the compulsory transfer of children to a neutral country where they might be subjected to influences likely to affect their ideological development, it had been laid down in the second paragraph that their accomodation in a neutral country would be conditional upon "the consent of the Protecting Power, if any".

The age of 12 had been retained in the third paragraph, notwithstanding a proposal by the Delegation of Burma to fix the age at 8 years (the age of 15 mentioned in the English version of the Stockholm text had been due to an error).

Brigadier. PAGE (United Kingdom) wished to maintain the proposal of the United Kingdom Delegation to transfer Article 21 to Section II of Part III. He proposed to reinforce the provisions contained in the second paragraph by adding the words "and under due safeguards for the observance of the principles stated in the first paragraph of this Article" after the word "Power". Lastly, if the Article was transferred to Part III, the words "if any" in the second paragraph should be deleted. They only appeared to have been introduced because of Article 21 being placed in Part II, where it referred both to nationals who, by definition, had no Protecting Power and to aliens who had one.

Mr. MOROSOV (Union of Soviet Socialist Republics) felt that the decision of the majority of the Drafting Committee to retain Article 21 in Part II of the Convention should be adhered to. The Stockholm text seemed, in general, to offer better protection to children than that proposed by the Drafting Committee. Accordingly, he suggested that the latter should be amended by reinserting the phrase "in all circumstances" (which appeared in the Stockholm draft) in the first sentence of the first paragraph, after the word "education". Lastly, the third paragraph should also be amended to provide additional safeguards regarding the identification of children, in particular those who had lost their parents as a result of the war. It would be necessary to revert to the Stockholm wording which said: "They shall furthermore ensure...".

Mr. MINEUR (Belgium) supported the United Kingdom Delegation's amendment to the second paragraph (to add the words "and under due

safeguards for the observance of the principles stated in the first paragraph of this Article”).

Msgr. BERTOLI (Holy See) was grateful to the Drafting Committee for having taken account of the amendment proposed by the Delegation of the Holy See. He supported the proposal of the United Kingdom regarding the wording of the second paragraph. Referring to his statement at the time of the first reading, he said that it was essential that the accommodation of children in a neutral country should in no way be prejudicial to the fundamental rights and the cultural and religious traditions of their families. In regard to the third paragraph, the question of the identification of children should be laid down in more precise terms. Accordingly, he proposed that the words “they shall furthermore examine the desirability of identifying” should be replaced by “they shall furthermore endeavour to arrange for the identifying”.

Mr. CLATTENBURG (United States of America) agreed to the wording advocated by the Drafting Committee, even though that Committee had not seen its way to accepting a United States amendment which had been approved by the International Union for Child Welfare. His Delegation was prepared to accept the Soviet amendment to add the words “in all circumstances” after the word “education” in the first sentence of the first paragraph, as well as the United Kingdom amendment to the second paragraph, which was, in his opinion, a wise and necessary precaution. As far as the third paragraph was concerned, he thought that it would be wiser not to revert to the over-categorical Stockholm wording. For in the case of a sudden invasion, the Power which was invaded might have no time to issue identity discs to all children; an unscrupulous Occupying Power might make that an excuse for disregarding the Convention.

Mr. QUENTIN-BAXTER (New Zealand) strongly supported the United Kingdom Delegation’s proposal to place the Article in Part III, Section II. If Article 21 remained in its present place, a Party to the conflict would be bound to facilitate the reception of its own orphans in a neutral country. That would, in many cases, be most undesirable.

At the request of Mr. WERSHOF (Canada), the CHAIRMAN read out the amendment proposed by the Delegation of the Union of Soviet Socialist Republics to the text drawn up by the Drafting Committee:

- (1) In the first paragraph delete the words: “to prevent children under fifteen who are orphaned or separated from their families as

a result of the war, from being left to their own resources”, and substitute: “to ensure that children under fifteen who are orphaned or separated from their parents as a result of the war, are not left to their own resources”.

- (2) Add after the words “and their education” in the first paragraph, the following phrase: “in all circumstances”.
- (3) Delete the third paragraph and substitute the following text:

“They shall furthermore ensure that all children under twelve can be identified at any time, in particular by the wearing of identity discs or by any other means.”

Mr. WERSHOF (Canada) proposed that discussion on the above amendment should be deferred until the following meeting.

Brigadier PAGE (United Kingdom) suggested that the discussion should be continued after a short interval, during which the wording of the Soviet Union amendment could be circulated.

Mr. MEVORAH (Bulgaria) felt that it was completely unnecessary to postpone the debate since the real object of the Soviet proposal was simply to restore the Stockholm wording with which the Committee was already familiar.

Mr. CLATTENBURG (United States of America) expressed some doubt as to whether that was a correct interpretation of the implications of the Soviet amendment.

Mr. MOROSOV (Union of Soviet Socialist Republics) replied that the interpretation of the Soviet amendment given by the Delegate of Bulgaria was not quite correct, since his Delegation was in agreement with certain points in the Drafting Committee’s text. He was also in favour of suspending the meeting.

The CHAIRMAN took the opinion of the Committee, who agreed to the proposed procedure. The discussion was resumed after a short interval during which the Soviet Union’s amendment was distributed to the members of the Committee.

Mr. WERSHOF (Canada) supported the minority proposal to transfer the Article to Section II of Part III. Part III already dealt (in Article 46) with the protection of children. He also urged the adoption of the Drafting Committee’s wording for the last paragraph. That wording left each Government free to decide whether or not it was necessary to institute a system of identification

for children. It was not reasonable to issue commands to Governments on matters which each individual State should decide for itself. He asked for a separate vote on that point.

Mrs. MANOLE (Rumania) was in favour of the decision of the majority of the Drafting Committee regarding the placing of the Article. She also supported the Soviet amendment.

Mr. BLUEHDORN (Austria) said that even now there were children in Austria who had not been identified. He therefore drew the special attention of the Committee to the importance for each country of the question of the identification of children. He felt that the importance of that question entirely justified the Soviet amendment.

Mr. JONES (Australia) agreed with the views expressed by the Canadian Delegation, and supported the recommendation of the minority of the Drafting Committee in regard to the placing of the Article.

Mr. MEROVAH (Bulgaria) observed that the third paragraph of the text adopted at Stockholm was much to be preferred to the one proposed by the Drafting Committee. The Stockholm wording indicated the result to be attained without laying down the means which States must employ in order to achieve that result; it thus respected their sovereignty.

Colonel DU PASQUIER (Switzerland), Rapporteur, drew attention to the fact that, if the Article was maintained in Part II, it was essential to retain the term "with the consent of the Protecting Power, if any".

The CHAIRMAN declared the discussion closed and proceeded to put the text proposed by the Drafting Committee and the various amendments to it to the vote.

The United Kingdom amendment transferring Article 21 to Part III, Section II, was rejected by 21 votes to 17.

The Soviet amendment deleting the words in the first paragraph "to prevent children under fifteen who are orphaned or separated from their families as a result of the war from being left to their own resources" and to replacing them by "to ensure that children under fifteen who are orphaned or separated from their parents as a result of the war, are not left to their own resources", was rejected by an equality of votes, viz. 19 to 19.

The Soviet amendment inserting the words "in all circumstances" after the words "education"

in the first sentence of the first paragraph was adopted by 32 votes to 2.

The United Kingdom amendment proposing the omission of the words "if any" was withdrawn by Brigadier PAGE (United Kingdom) who explained that the proposed modification would only have been relevant if Article 21 had been transferred to Part III, Section II.

The amendment proposed by the United Kingdom Delegation and supported by the Delegation of the Holy See (to add to the second paragraph the words "and under due safeguards for the observance of the principles stated in the first paragraph of this Article") was adopted unanimously.

The amendment submitted by the Soviet Delegation substituting the Stockholm wording of the third paragraph for that of the Drafting Committee, was rejected by 21 votes to 15 with 5 abstentions. The vote was taken by roll call at the request of Mr. WERSHOF (Canada).

Voting was as follows :

Against the amendment : Australia, Belgium, Canada, Denmark, Spain, United States of America, France, India, Ireland, Mexico, Norway, New Zealand, Netherlands, Portugal, United Kingdom, Holy See, Siam, Sweden, Switzerland, Turkey, Venezuela.

For the amendment: Albania, Austria, Byelorussian Soviet Socialist Republic, Bulgaria, Egypt, Ethiopia, Finland, Hungary, Israel, Italy, Lebanon, Rumania, Czechoslovakia, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics.

Abstentions: Burma, Pakistan.

The amendment submitted by the Delegation of the Holy See to replace the term "they shall furthermore examine the desirability of identifying all children" by the words "they shall furthermore endeavour to arrange for the identifying of all children", was adopted by 30 votes to 2.

The whole of Article 21, amended as above, was adopted unanimously.

## Article 22

Colonel DU PASQUIER (Switzerland), Rapporteur, explained that the Drafting Committee had replaced the words "All persons in the territory of a Party to the conflict or in a territory occupied by it", at the beginning of the first sentence in the Stockholm text, by the phrase "All protected persons". Also, the first paragraph of the wording adopted by the Drafting Committee (*see Annex No. 225*) took account of an amendment submitted by the United Kingdom Delegation who wished to avoid laying down an obligation to carry mail by

air. The second sentence of the Stockholm text had been reworded as follows: "This correspondence shall be forwarded speedily and without undue delay". The United Kingdom Delegation had, on the other hand, withdrawn an amendment which proposed the omission of the words "in particular with the cooperation of the National Red Cross Societies" in the second paragraph. The representative of the International Committee of the Red Cross had explained that out of approximately twenty-six million messages forwarded during the last war by the International Committee of the Red Cross, 90 per cent had been collected by the National Red Cross Societies. Lastly, the majority of the Drafting Committee had proposed that Article 22 should be transferred to Section I of Part III.

Mr. PILLOUÐ (International Committee of the Red Cross) said that the I.C.R.C. regretted that the majority of the Drafting Committee had decided to transfer the Article to Part III. The proposed transfer was not merely a drafting change; it would also have the effect of greatly reducing the significance of the Article. It would mean, in fact, that the right to exchange family news would be limited to protected persons; if, on the other hand, the Article were retained in its present place, it would apply to everyone whoever they might be. The right to receive family news must be recognized as an indefeasible right, and it would be a retrograde step to limit the scope of Article 22 by the transfer suggested by the Drafting Committee.

If, however, Article 22 was not transferred to Part III, it would be necessary to go back to the Stockholm wording, replacing the phrase "All protected persons" in the first paragraph by the words "All persons in the territory of a Party to the conflict, or in a territory occupied by it".

Mr. MOROSOV (Union of Soviet Socialist Republics) and Mr. BARAN (Ukrainian Soviet Socialist Republic) supported the views expressed by the representative of the International Committee of

the Red Cross and proposed that Article 22 should be retained in Part II. The Ukrainian Delegation also proposed that the Stockholm wording of the first paragraph should be restored.

Mr. ABUT (Turkey) suggested that the words "Red Crescent, Red Lion and Sun" should be inserted, in brackets, after the words "National Red Cross Societies" in the second paragraph.

The amendment of the Soviet and Ukrainian Delegations (to retain Article 22 in Part II of the Convention) was adopted by 29 votes to 5.

The Ukrainian amendment for the reinstatement of the Stockholm wording of the first paragraph was withdrawn.

The amendment, submitted by Mr. HAKSAR (India) and Mr. BLUEHDORN (Austria) (to replace the words "All protected persons" in the first paragraph by the words "All persons in the territory of a Party to the conflict, or in a territory occupied by it") was adopted unanimously.

The Turkish amendment inserting the words "(Red Crescent, Red Lion and Sun)" at the end of the second paragraph after the words "National Red Cross Societies", was adopted unanimously.

### Article 23

Colonel DU PASQUIER (Switzerland), Rapporteur, explained that the Drafting Committee (*see Annex No. 226*), taking a United Kingdom amendment into consideration, had completed Article 23 of the Stockholm draft by providing that the agencies engaged in the reunion of dispersed families must be acceptable to the Party to the conflict concerned and must conform to its security regulations.

As no delegate wished to speak on Article 23 it was adopted unanimously.

*The meeting rose at 7 p.m.*

## TWENTY-NINTH MEETING

Monday 13 June 1949, 3 p.m.

Chairman: Mr. Georges CAHEN-SALVADOR (France)

### Procedure

The CHAIRMAN drew attention to the decisions taken by the Bureau of the Committee with regard to procedure (*See Annex No. 184*).

No objection being raised, the decisions of the Bureau were adopted by the Committee.

Mr. MOROSOV (Union of Soviet Socialist Republics) nevertheless reserved the right to submit observations on the decisions at a later date, if necessary, as the text of the decisions had been late in reaching him.

### Article 24

Colonel DU PASQUIER (Switzerland), Rapporteur, explained that the Drafting Committee had only taken a decision on one of the two questions dealt with in Article 24, namely that relating to stratagems of war. The second question, concerning the sending of protected persons into exposed areas, or their retention there, appeared to be so complex that the Drafting Committee had decided to deal with it in two separate texts which would be inserted in Section II, III and IV of Part III.

Mr. CLATTENBURG (United States of America) supported the suggested procedure which consisted in dividing the subject matter dealt with in Article 24 among Articles 24, 35, 45 and 73. He suggested that consideration of Article 24 should be postponed until the other three Articles came up for discussion.

Mr. MOROSOV (Union of Soviet Socialist Republics) was of the opinion that Article 24, as it stood, gave clear expression to a humane idea and could be discussed forthwith.

The proposal of the Delegation of the United States of America to postpone consideration of Article 24 was adopted by 18 votes to 13.

### Article 25

Colonel DU PASQUIER (Switzerland), Rapporteur, explained that the first sentence of the first paragraph of the wording adopted by the Drafting Committee (*see Annex No. 229*) took account of a United Kingdom amendment referring to family rights, religious convictions and practices, manners, and customs. In the second sentence of the same paragraph, the Drafting Committee had adopted another of the suggestions of the United Kingdom Delegation and had replaced the words "protected, particularly against acts of violence or intimidation, against insults or public curiosity" by "shall not be exposed to acts of violence or threats thereof, or to insults or public curiosity".

The above wording had been opposed by a minority of the Drafting Committee (France, Norway, Union of Soviet Socialist Republics).

The second paragraph consisted of the first paragraph of Article 27 of the Stockholm text, as amended by the Drafting Committee.

In the third paragraph, the last words of the second paragraph of the Stockholm text "or any other distinction based on similar criteria" had been omitted as had been suggested in an amendment submitted by the Delegation of Afghanistan.

A fourth paragraph had been added at the request of the United States Delegation, in order to safeguard the vital interests of the State. The reservation thus introduced did not, however, restore to Governments the right to take arbitrary action, nor did it affect the general prohibitions resulting from the humanitarian principles of the Convention.

Consideration of an amendment submitted by the Netherlands Delegation prohibiting physical mutilation and medical or biological experiments, had been deferred until Article 29 came up for discussion.

Mr. MEULBLOK (Netherlands) said that he withdrew his Delegation's amendment to Article 25 in view of the fact that it was covered by the text

of Article 29 A as proposed by the majority of the Drafting Committee. In order that the Articles should, however, follow each other in a more logical sequence, he proposed placing Articles 29, 29 A, 30 and 31 before Article 28.

Mr. SZABO (Hungary) felt that the last paragraph added by the Drafting Committee to Article 25 was redundant since Articles 35 and 38 (in case of the territory of the Parties to the conflict) and Article 68 (in the case of occupied territories) already provided the necessary safeguards.

Mr. MOROSOV (Union of Soviet Socialist Republics) supported the proposal of a minority of the Drafting Committee to revert, in the case of the first paragraph, to the wording adopted at Stockholm. He agreed with the wording proposed by the Drafting Committee for the remainder of the Article.

Mr. CLATTENBURG (United States of America) said that, if he understood it correctly, the Soviet proposal to revert to the Stockholm wording for the first paragraph would, if adopted, result in the omission of safeguards, introduced by the Drafting Committee, concerning family rights, religious convictions and practices, manners and customs.

With regard to the Hungarian proposal to omit the last paragraph of the text, he pointed out that the wording of the preceding paragraph prohibited adverse discrimination founded on political opinions. That necessitated some means of distinguishing between those enemy aliens who were actively hostile on political grounds and those who did not possess such extreme views. For example, out of 300,000 Germans living in the United States during the last war, only 4,000 were National Socialists and had to be interned. The United States Government had no desire to limit the freedom of the 296,000; but it could not restrain the 4,000 without making distinctions based on political opinions.

So far as Articles 35 and 68 were concerned, he pointed out that they had not yet been discussed by the Drafting Committee; their contents were therefore unknown, and consequently, it could not be said that there was duplication of their purport.

Mr. MOROSOV (Union of Soviet Socialist Republics) wished to correct a misunderstanding. The remarks he had just made did not concern the first sentence of Article 25, to which the United States Delegate had just referred, but applied only to the second sentence of the first paragraph. That was the sentence which he wished to replace by the corresponding sentence in the Stockholm text.

Mr. WERSHOF (Canada) pointed out that the wording of the sentence in question was a repetition of the corresponding text in the Draft Prisoners of War Convention. The Drafting Committee had considered that as prisoners of war were, by definition, in captivity, they could very properly be "protected" against acts of violence or intimidation. Civilians, on the contrary, would, in the majority of cases, be neither imprisoned nor interned. It was, therefore, preferable to say that they should not be "exposed" to those acts. If it was desired to "protect" them individually, each one would have to be accompanied by a private detective.

Mr. BLUEHDORN (Austria) suggested that the words "founded, in particular, on" in the third paragraph, should be replaced by "under the pretext, in particular, of", or "by alleging, in particular".

The Committee proceeded to vote.

The Soviet amendment replacing the second sentence of the first paragraph by the corresponding sentence in the Stockholm text ("They shall at all times be humanely treated and protected, particularly against acts of violence or intimidation, against insults and public curiosity."), was adopted by 20 votes to 17.

The amendment submitted by the Austrian Delegation (to replace the words "founded, in particular, on" in the third paragraph by "under the pretext, in particular, of") was adopted by 12 votes to 9.

The Hungarian Delegation having withdrawn their amendment to the fourth paragraph in view of the fact that the Drafting Committee had not yet dealt with Articles 35, 38 and 68, the text of Article 25 as submitted by the Drafting Committee and as above amended, was adopted unanimously.

The transposition of Articles 24 and 25, proposed by the Drafting Committee, was adopted unanimously.

## Article 26

Colonel DU PASQUIER (Switzerland), Rapporteur, pointed out that the United Kingdom Delegation would have preferred to have transferred Article 26 to Section II of Part III and to have drawn up a new provision for Occupied Territories. In order to obviate the transfer, the Drafting Committee had adopted a wording which provided for the joint responsibility of a State only in the case of acts committed by its agents.

The following wording had been adopted by the Drafting Committee:

"The Party to the conflict in whose hands protected persons may be is responsible for the treatment accorded to them by its agents, irrespective of any individual responsibility which may be incurred."

Mr. BUDO (Albania) said that the new wording was more limited in scope than that of the Stockholm text. He preferred the latter draft which referred expressly, first, to the responsibility of the State, and then, to that of individuals. He therefore supported the amendment of the Union of Soviet Socialist Republics for the complete reinstatement of the Stockholm text.

Mr. DAY (United Kingdom), on the other hand, was in favour of the Drafting Committee's wording. Article 1 of the Convention would seem to meet the point made by the Delegate of Albania. Moreover, Article 26 as adopted at Stockholm appeared to conflict in some respects with the provisions of Article 55, which provided for the maintenance in force of the penal legislation of the Occupied Power. The only logical meaning of that Article was that the Occupying Power could not be held responsible for the decisions of the local courts. If the Occupying Power was to be held responsible for the treatment of every person in an occupied territory, it would have then the right to exercise control over the courts of that territory as well as over those local authorities which it might see fit to maintain. Such control would not be in the interests of the population of the occupied territory.

Mr. JONES (Australia) agreed with the previous speaker. He was in favour of the text proposed by the Drafting Committee. If the latter text was, however, rejected, he reserved the right to submit objections to the inclusion of the term "law officers" (magistrats) in the list of agents given in the Stockholm text. The expression "law officers" was too vague, and a more specific term should be found.

Mr. MOROSOV (Union of Soviet Socialist Republics) said that the Soviet Delegation's intention in asking for the Stockholm text to be reinstated was to prevent the possibility of a State throwing the responsibility for crimes, of which it itself was the instigator, upon authorities which were regarded as being independent of it.

The Soviet amendment reinstating the Stockholm wording was rejected by 24 votes to 10.

Article 26, as worded by the Drafting Committee, was adopted.

### Article 27

Colonel DU PASQUIER (Switzerland), Rapporteur, explained that the first paragraph of Article 27, amended in accordance with suggestions made after the Stockholm Conference by the International Alliance of Women and the International Abolitionist Federal Association, had been incorporated in Article 25 which had already been adopted.

The Drafting Committee, agreeing with the view expressed by the United Kingdom Delegation, had decided to transfer the second and third paragraphs to Sections II and III of Part III, instead of maintaining them in Section I, so as to avoid giving children and mothers of foreign nationality a privileged position in relation to nationals.

Mr. MOROSOV (Union of Soviet Socialist Republics) was in favour of leaving Article 27 where it was. He was, however, prepared to accept the procedure suggested by the Drafting Committee, on the understanding that he would be allowed to make comments on the paragraphs in question when the parts of the Convention in which they had been incorporated came up for consideration.

The CHAIRMAN assured him that he would be given ample opportunity to expound his views, adding that since Article 27 had been deleted, its place could be taken by a new Article 26 A, the adoption of which had been proposed in an amendment tabled by the Italian Delegation.

### Proposal for a New Article 26A

Mr. MARESCA (Italy) read the amendment, which consisted of a new draft Article worded as follows:

"Officials of a Party to the conflict who fall into the hands of an enemy Power and who do not benefit by more favourable treatment by virtue of other provisions of international law, shall be returned as soon as possible to their respective governments. In cases where they are interned pending their repatriation, they shall receive the same treatment as officer prisoners of war."

He explained that the above provision would cover either officials without diplomatic status who found themselves in a country that had become enemy territory by reason of the war, diplomats resident in non-enemy territory which had been occupied by the enemy, or officials or diplomats whose governments had ceased to be recognized by the enemy. Up to the present,

those officials had been treated as civilians. They were without financial resources and were completely at the mercy of the State into whose hands they had fallen. It was essential to protect them in the future.

Mr. WERSHOF (Canada) pointed out that the Italian amendment had been distributed after the first reading of the Civilians Convention. He suggested that it should be referred to the Drafting Committee.

The above suggestion was supported by Mr. MOROSOV (Union of Soviet Socialist Republics).

The Italian amendment proposing the adoption of a new Article 26 A was referred to the Drafting Committee for consideration.

### Article 28

Colonel DU PASQUIER (Switzerland), Rapporteur, said that there had been no amendments to the first paragraph of the Stockholm text of Article 28. In the second paragraph, at the suggestion of the United States Delegation, the words "or security" had been inserted after the word "military". The second half of the third paragraph had been modified in accordance with a proposal by the Delegation of Israel and now read as follows: "the Detaining or Occupying Powers shall facilitate as much as possible visits to protected persons by the representatives of other organizations, whose objet is to give spiritual aid or material relief to such persons".

Lastly, the Drafting Committee had taken no decision on an amendment submitted by the Canadian Delegation which proposed that the following paragraph should be added to the Article:

"The rights given by this Article may be suspended for reasons of military security in the case of a protected person who has been detained as a spy, saboteur or enemy agent."

The Drafting Committee considered that a decision must first be taken on an amendment to Article 3 submitted by the Australian Delegation (*see Annex No. 193*).

Mr. WERSHOF (Canada) said that if the Australian amendment were adopted, the Canadian amendment would no longer be necessary. He wished, however, to reserve the right to maintain the Canadian amendment should the Australian amendment be rejected.

Mr. MOROSOV (Union of Soviet Socialist Republics) doubted the advisability of discussing Article 28 before the Drafting Committee had taken a decision on the Article as a whole.

The CHAIRMAN replied that since Committee III was considering each Article paragraph by paragraph, it could vote on the first three paragraphs of Article 28, on the understanding that the Canadian Delegation reserved the right to propose an addition to these three paragraphs after Article 3 had been discussed.

GUENENA Bey (Egypt) suggested that the words "Red Crescent, Red Lion and Sun" should be added, in brackets, after the words "the National Red Cross Society".

The first, second and third paragraphs of Article 28 (the first as amended in accordance with the proposal of the Egyptian Delegation) were adopted by 37 votes to NIL.

### Article 29

Colonel DU PASQUIER (Switzerland), Rapporteur, said that the Drafting Committee proposed that Article 29 should consist of the unamended text of the first paragraph of Article 29 as adopted at Stockholm. The second paragraph of the Stockholm text had been omitted.

Article 29, in the form submitted by the Drafting Committee, was adopted by Committee III.

### New Article 29A

Colonel DU PASQUIER (Switzerland), Rapporteur, said that the Drafting Committee had devoted two long meetings to the consideration of amendments concerning a new Article 29 A, submitted by the Delegations of the United States of America and the Union of Soviet Socialist Republics. The Delegation of Denmark had withdrawn its amendment in favour of that of the United States of America. (*The text of the above amendments is to be found in the Summary Records of the Tenth and Eleventh Meetings.*)

The Drafting Committee had adopted, by 6 votes to 1 (that of the Soviet Delegation), a wording (*see Annex No 232*) which was more restricted than that proposed by the Delegation of the Union of Soviet Socialist Republics; it was based on the amendment submitted by the United States Delegation, and was adopted for the following reason: an article drafted in terms which were too general would appear to exceed the scope of Part III. The Soviet Delegate had stated that he did not wish the wording to prohibit blind weapons (such as the V. 2 for example)—which were particularly dangerous for the civilian population—as the question of the employment of such weapons was governed by the rules of war and in consequence came within

the scope of the Hague Convention; nevertheless, the Drafting Committee had thought it wiser to avoid all ambiguity by adopting a wording which could not be wrongly interpreted. Moreover, the suppression of crimes recognized as grave breaches of the Convention was provided for in Article 130.

If new provisions concerning breaches of the Convention were adopted as suggested by the International Committee of the Red Cross („Remarks and Proposals”, page 18), the acts of cruelty referred to in the amendment of the Soviet Delegation would be prominently placed among the serious crimes subject to penal sanctions.

Mr. AGATHOCLES (Greece) drew attention to the amendment, submitted by the Greek Delegation proposing the inclusion in the Civilians Convention of a provision prohibiting physical mutilation and scientific or medical experiments of any kind, similar to that contained in Article 12 of the Prisoners of War Convention.

Colonel DU PASQUIER (Switzerland), Rapporteur, said that if Article 29 A as proposed by the Drafting Committee were adopted, the amendment would, in his opinion, serve no useful purpose, as physical mutilation, scientific and medical experiments were included in the Drafting Committee's wording.

Mr. AGATHOCLES (Greece) did not press the amendment.

The CHAIRMAN informed the meeting that Article 29 A was still the subject of discussions between various delegations who were attempting to reach agreement on a wording which would give rise to no objections. He therefore proposed that the discussion be deferred.

The proposal was adopted.

*The meeting rose at 6.15 p.m.*

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### THIRTIETH MEETING

*Wednesday 15 June 1949, 3 p.m.*

*Chairman:* Mr. Georges CAHEN-SALVADOR (France)

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#### **Article 29A (continuation of discussion)**

Mr. CLATTENBURG (United States of America) said that the proposal for a new Article 29A had arisen out of the desire to prohibit at least some of the acts and measures which had caused such great suffering during the last ten years.

But there were important differences between the proposal of the majority of the Drafting Committee and that of the Soviet Delegation, even in its amended form (*see text of June 14th, Annex No. 231*).

By its reference to serious crimes, the Soviet proposal raised the question of war crimes. But if the latter problem was to be dealt with, it must be dealt with in full knowledge of the facts, and reference must be made to the Article concerned with sanctions, viz. Article 130. If vague provisions concerning war crimes were inserted, a new instrument of oppression might be created. The work of carefully codifying war crimes had been begun and

was being actively pursued by the United Nations. It would be wrong to interfere with that work.

Moreover, the proposal to consider as a “serious crime” “all means of exterminating the civilian population” called for serious consideration—and rejection. To begin with, the word “extermination” was so vague (and the discussion in the Drafting Committee had revealed that the expression was deliberately left vague) that it could be interpreted as prohibiting methods of warfare long sanctioned by international law. The United States could not accept such a drastic revision of the rules of war—however cleverly advanced as a humanitarian proposal. The present Conference was neither a disarmament conference nor a conference to re-write the Hague Conventions.

The text recommended by the majority of the Drafting Committee, although more modest, dealt, fully and adequately, with the real problem, namely, the protection of the inhabitants of an occupied

territory and of aliens in the hands of a belligerent. The text proposed by the Drafting Committee for Article 29A provided protection for all those persons against acts which had aroused the horror of the whole civilised world.

Mr. BARAN (Ukrainian Soviet Socialist Republic) criticized the amendment proposed by the United States Delegation in favour of which the Drafting Committee had decided, on the ground that it did not provide sufficient safeguards for the protection of the civilian population. The welfare of millions of human beings depended on Article 29A which was of paramount importance. The words "which has as an object the physical suffering or extermination of protected persons in its power" might enable the responsible authority to disclaim responsibility by alleging that the measures it had taken had been dictated by military necessity without any real intention to cause those sufferings or to exterminate protected persons. Moreover, the Article was applicable only to occupied territory, whereas the amendment of the Union of Soviet Socialist Republics covered the whole civilian population, whoever and wherever they were. For those reasons, the Ukrainian Delegation supported the Soviet amendment, as being both more comprehensive and more in accordance with the aim of the Conference, which was to protect the civilian population in time of war.

Mr. JONES (Australia), on the contrary, supported the Drafting Committee's wording. Referring to the criticisms of that text by the Ukrainian Delegate, who had considered it to be inadequate, he pointed out that Article 29A was connected with Article 130, and that an amendment to Article 130 providing effective penalties for crimes against the civilian population had been submitted in the Joint Committee. The Australian Delegation supported that amendment.

Mr. HARASZTI (Hungary) was surprised that the amendment of the Union of Soviet Socialist Republics had not received greater support in the Drafting Committee. It was natural perhaps that those countries which had not experienced the horrors perpetrated by the National-Socialists and Fascists, should not have an over-riding desire for protection. But what of the others? The memory of the Hungarian people was not so short-lived. In his view the Soviet amendment would provide the more adequate protection in the future for civilian populations against the crimes from which the Hungarian population had itself suffered: accordingly, his Delegation supported the Soviet amendment.

Sir Robert CRAIGIE (United Kingdom) was in full agreement with the views expressed in the Drafting Committee concerning the adoption of the wording it had proposed. All delegations were equally interested and concerned with the protection of their civilian population in war time. All were agreed on that principle. They only differed as to how it should be applied.

He asked the Soviet Delegation to bear in mind the efforts made in the Drafting Committee to meet their wishes as far as possible, and appealed to them to reconsider the matter so that unanimity could be reached.

Mr. BETOLAUD (France), in supporting the views expressed by the United Kingdom Delegation, remarked that the wordings proposed by the Soviet Delegation and the Drafting Committee respectively differed only in respect of the words "all other means of exterminating the civilian population". In view of the fact that the wording proposed by the Drafting Committee already contained a list of the crimes they wished to prohibit, he asked the Soviet Union Delegation to explain, giving concrete examples, exactly what was meant by the words in question.

Mr. WERSHOF (Canada) supported the text proposed by the majority of the Drafting Committee. He proposed that the voting on the Soviet amendment should be by roll call.

Mr. WU (China) agreed with the wording proposed by the Drafting Committee. Provision should, however, be made somewhere in the Convention to cover "those other means of exterminating the population" which were referred to in the Soviet amendment and which were not expressly mentioned anywhere in the Convention. China, for example, had suffered greatly from acts perpetrated on its territory during the last war. It was a known fact that the Japanese had ordered the planting of poppies in order to spread the habit of opium smoking; it was also reported that they had attempted to poison wells, etc. For those reasons he reserved the right to raise the question again during the discussion of Article 130A.

Mrs. MANOLE (Rumania) felt there was a fundamental difference between the wording proposed by the Drafting Committee and that of the Soviet amendment. The latter alone appeared to provide the civilian population with all the necessary safeguards. The Conference would fail in its task if those populations were not adequately protected.

Why hesitate to modify the rules of war, when the security of the civilian populations was at stake? The Conference had been convened to defend the interests of those populations and not to defend

the laws of war. All those countries which had suffered from the horrors committed by the armies of occupation should remember what they have lived through and support the Soviet amendment. The name of the Deity had been invoked at the Conference; but it should not be forgotten that it was in the church of Oradour, in France, that 300 to 400 people had been burned to death. It was right that the Delegation of the Union of Soviet Socialist Republics—the country which had suffered most during the last war—should propose safeguards against such atrocities.

The Rumanian Delegation urged all delegations to uphold the Soviet amendment.

Mr. MOROSOV (Union of Soviet Socialist Republics) drew the attention of the Committee to the changed wording of the Soviet amendment (*see Annex No. 231*) which included certain ideas taken from the United States amendment.

The clear and definite purpose of the Soviet amendment was to prohibit "all other means of exterminating the civilian population" wherever and whoever they might be.

He was surprised at the question asked by the Delegate of France. The thought of the innocent civilian victims of war, of whom one was reminded, in particular, by a certain monument in a Paris cemetery, should urge one continually to find more and still more effective means of protecting women and children against further massacres.

With reference to the objections raised in regard to the Soviet amendment, he would say that even if certain international institutions were at present engaged in defining the notion of war crimes, that fact should not prevent the Conference from also dealing with those crimes, and from issuing a warning to all those who sought to follow in the fatal path of National-Socialist Germany or of imperialistic Japan.

With regard to the query as to whether the Conference was competent to consider problems relating to the revision of laws of war, he could not agree to that competence being admitted in the case of the prohibition of the extermination of protected persons in occupied territory, as proposed in the United States amendment, and yet contested when it was a case of introducing the same prohibition in general terms, which was what the Soviet Delegation wished to do. As the Delegate of the Ukraine had so rightly said, criminals must not be allowed to escape just punishment by pretending that the results of their actions did not correspond to their intentions. That would be a cynical parody of the real object of the humanitarian conventions.

The truth was that certain delegations appeared to want to restrict the humanitarian scope of the

Stockholm text, while the Soviet Delegation, supported, he thought, by some twenty other delegations, wished to give it and the progressive ideas it contained their full force.

More than twelve million human beings belonging to civilian populations had been exterminated in the last war by measures which it was absolutely essential to exclude in the future.

He agreed with the suggestion that the vote on the important question at issue should be taken by roll call.

Mr. SINCLAIR (United Kingdom) drew attention to the fact that the draft amendment to Article 130, referred to by the Australian Delegate, had not yet been submitted as a formal amendment.

The CHAIRMAN asked whether the Committee would agree to hear a statement which the Delegate of Poland, who was following the work of the Committee as an observer, wished to make.

The Committee agreed.

Mr. KALINA (Poland) said that out of six million Polish citizens who had lost their lives in the last war, the majority had been victims of systematic measures of extermination. Members of the Conference could hardly conceive the methods followed by those responsible. It was on those grounds that the general wording proposed by the Soviet Delegation was in his view preferable to that of the Drafting Committee.

Mr. MEVORAH (Bulgaria) cited an example for the consideration of the Committee. Could a division which landed by parachute on enemy territory, be considered as occupying that territory? No! Certainly not, as the local authorities would still be there. What, then, should be the line of conduct of that division if the restricted text of the Drafting Committee was accepted? Would it not be better to adopt the more comprehensive wording proposed by the Soviet Delegation so as to protect civilian populations against any measures of extermination taken by such troops?

As regards the objection put forward by certain speakers to the effect that it was not for the Conference to concern itself with the laws of war, nearly every Article of the Draft Convention they were considering contained a rule regarding the conduct of war.

The CHAIRMAN, in declaring the discussion closed, informed the Committee that the Belgian Delegate had agreed not to speak on an amendment, which ought, nevertheless, to be taken into consideration. The amendment in question proposed replacing the words "aiming at the" in the Drafting Committee's text by the words "of such a character as to cause".

The "measure" need not then be taken with intent to cause suffering, and criminals would have no defence based on their alleged intentions.

A vote by roll call was taken on the Soviet amendment.

The Soviet Union amendment was rejected by 24 votes (Australia, Austria, Belgium, Brazil, Canada, China, Denmark, Spain, United States, Finland, France, Ireland, Italy, Norway, New Zealand, Pakistan, Netherlands, Peru, Portugal, United Kingdom, Holy See, Switzerland, Turkey, Uruguay) to 11 votes (Albania, Byelorussian Soviet Socialist Republic, Bulgaria, Hungaria, Israel, Mexico, Rumania, Czechoslovakia, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, Venezuela), with 7 abstentions (Afghanistan, Chile, Egypt, Ethiopia, Guatemala, India, Siam).

The Belgian amendment to the wording proposed by the Drafting Committee was adopted.

The CHAIRMAN then asked the Committee to vote on the whole of Article 29A (text proposed by the Drafting Committee), amended as above.

Mr. MOROSOV (Union of Soviet Socialist Republics) proposed that a separate vote should first

be taken on the last clause reading: "but also any other measures of brutality, whether applied by civilian or military agents", and then on the remainder of the Article, and that finally a vote should be taken on the Article as a whole. That procedure would enable the Soviet Delegation to put on record its approval of the last clause.

The above proposal was rejected by 15 votes to 10.

The whole of Article 29A, as proposed by the Drafting Committee and amended in accordance with the Belgian proposal, was adopted by 27 votes to 8.

Mr. MOROSOV (Union of Soviet Socialist Republics) said that his Delegation had voted against the wording just adopted because it did not meet the purpose of the Conference, namely, the protection of the civilian population. He reserved the right to re-submit the Soviet proposal to the Plenary Meeting of the Conference as a minority text of the Committee.

*The meeting rose at 6.40 p. m.*

### THIRTY-FIRST MEETING

*Thursday 16 June 1949, 3 p.m.*

*Chairman:* Mr. Georges CAHEN-SALVADOR (France)

#### Article 30 and New Article 48A

Colonel DU PASQUIER (Switzerland), Rapporteur, said that the Drafting Committee had been faced with a delicate problem in the matter of the protection of movable and immovable property. The point at issue was whether protection should only cover property belonging to private persons or should be extended to State and collective property.

The Delegation of the Union of Soviet Socialist Republics, which had supported the latter view, had pointed out that during the last quarter of a century new regimes had introduced new conceptions of property, the effect of which was that

the protection of State or collective property also affected individuals. The Drafting Committee had once again to compare the law as envisaged at Geneva with that contained in the Hague Convention. Although the underlying principle of the Soviet amendment had not been contested, the majority of the Drafting Committee had felt that the amendment went beyond the scope of a humanitarian convention.

The Drafting Committee had, however, felt that even if it was not possible to provide for the protection of property against bombardments or the acts of an invading army (a matter which came within the scope of the rules of war and of the Regulations annexed to the Hague Convention),

it was necessary to arrange for the protection of property in an occupied territory. It had, therefore, been decided to propose two texts to Committee III (*see Annexes No. 235 and 277*); one included the substance of Article 30 as drafted at Stockholm, omitting the last sentence of the second paragraph; the other, which would be placed, as a new Article 48A, in the part of the Convention relating to occupied territories (Part III, Section III), was in effect the same as the sentence which had been omitted from the new version of Article 30.

The wording proposed for Article 30 had taken account of a United Kingdom amendment prohibiting pillage.

The Italian Delegation's proposal to prohibit "systematic destruction" (scorched earth policy) had, on the other hand, been rejected by the Drafting Committee for fear that it might by implication appear to authorize destruction which was not systematic.

Mr. KUTEINIKOV (Soviet Socialist Republic of Byelorussia) hoped that the scorched earth policy would be strictly prohibited. In that respect the wording of Article 30 proposed in the Soviet Delegation's amendment (text proposed by the minority of the Drafting Committee—*see Annex No. 234*) was, in his opinion, better than the wording proposed by the Drafting Committee.

Byelorussia had grievously suffered from Fascist aggression. More than 350,000 buildings, including 1,000 schools and 1,500 clinics and hospitals, had been destroyed. All the large towns such as Minsk, Gomel and Vitebsk had been razed to the ground. In order to avoid the repetition of such crimes, the Delegation of Byelorussia strongly supported the amendment of the Soviet Delegation.

Mr. CLATTENBURG (United States of America) paid a tribute to the sufferings and heroism of the people of Byelorussia, and of all those who had resisted aggression. He agreed with the view of the Soviet Delegate that no discrimination should be made against legal systems in which property, generally speaking, was collectively or publicly owned. House property belonging to a State, or collectively owned, was as much entitled to protection as privately owned property. The Soviet Union proposal, however, extended protection to State owned property such as bridges, airfields, shipyards, military roads, and so forth. The majority of the Drafting Committee had felt that it was not for a humanitarian Convention to revise the rules of war by extending protection to such property as was of direct military value.

The United States Delegation, however, recognized the necessity of prohibiting the destruction of property in occupied territory, whether privately,

collectively or State owned, where not absolutely required by the necessities of war. Such was the object of the new Article 48A. His Delegation would, therefore, support the wordings proposed by the Drafting Committee for Article 30 and for the new Article 48A.

Mr. MEVORAH (Bulgaria) observed that the Soviet amendment and the proposals of the Drafting Committee covered much the same ground. The only difference between the texts appeared to be in respect of the place that should be assigned to the Article in the Convention.

As far as the protection of property was concerned, the wording of the Drafting Committee only provided safeguards for property situated in occupied territory. But why confine such safeguards to occupied territory? Would military units operating in a territory not yet occupied (for example, commandos or partisans) be free to commit crimes which were forbidden to an army of occupation? If the Committee desired to meet the wishes of millions of the living who were resting their hopes on this Conference and of the millions of dead, they must not hesitate to make the protection accorded to civilian populations as comprehensive as possible.

Mr. MOROSOV (Union of Soviet Socialist Republics) said that he could not agree with the arguments of the Delegate of the United States of America. Towns like Leningrad had been devastated by the German bombing during the second World War without military necessity; should a repetition of such destruction be permitted, when it threatened to destroy, step by step, all the treasures accumulated by mankind in the course of centuries? Should such useless destruction really be kept within limits only in occupied territories? He urged the adoption of his Delegation's proposal. If, however, the Soviet amendment was not adopted and some delegations preferred to repeat in regard to Article 30 the same mistake which they had made in the case of Article 29A, he would suggest that the draft of the new Article 48A should be amended by replacing the words "which is not absolutely required by the necessities of war" by "which is not made absolutely necessary by military operations".

Mr. SINCLAIR (United Kingdom) fully agreed with the views expressed by the United States Delegate and endorsed the tribute paid by him to all those countries which had suffered from destruction in consequence of aggression. The United Kingdom yielded nothing to any other nation in condemning the terrible acts committed during the last war. His Delegation was prepared to consider any wording to implement such condemnation, on

the condition that it was within the legitimate scope of the Convention. There could be no question of revising the laws of war.

In reply to the points raised by the Delegate of Bulgaria, he submitted that those questions related to the laws of war and not to the draft Convention under consideration.

Mr. TAUBER (Czechoslovakia) said that he would like to know the views of countries such as the Netherlands, Belgium, Norway and France, which, like Czechoslovakia, had been devastated during the last war. In his opinion, the Soviet amendment ensured the protection of the civilian population more effectively than the wording proposed by the Drafting Committee.

Colonel DU PASQUIER (Switzerland), Rapporteur, felt that it might be well to re-read Article 23(g) of the Hague Regulations in which it was forbidden "to destroy or seize the enemy's property unless such destruction or seizure be imperatively demanded by the necessities of war".

Article 3, which defined the scope of the Civilians Convention, an Article of paramount importance in the Stockholm text, did not cover the hostile acts referred to in Article 23 of the Hague Regulations. On the other hand, the Chapter of the Hague Regulations concerned with occupied territories did not deal altogether clearly or satisfactorily with the question of destructions. That was why the Drafting Committee had proposed a new Article 48A. If the Stockholm text of Article 30 were left in its present place in the Convention, there would be a danger of creating ambiguity between the Geneva and the Hague Conventions. The solution advocated by the Drafting Committee was, therefore, preferable to that proposed by the Soviet Delegation.

In regard to the amendment just proposed by the Soviet Union Delegation concerning the last words of the new Article 48A, it should be remembered that those words exactly reproduced the text of Article 23(g) of the Hague Convention referred to above. It seemed preferable to maintain them, in order to ensure that proper harmony existed between the Geneva and Hague Conventions.

The CHAIRMAN, summing up the discussion, said that the Drafting Committee had submitted two texts—one, for Article 30, containing three paragraphs, and the other, for a new Article 48A, consisting of a single paragraph.

The Soviet amendment, on the other hand, consisted of three paragraphs, the third of which could be divided into two sentences. The first and second paragraphs of the Soviet amendment and the first sentence of its third paragraph were identical to Article 30 as proposed by the Drafting

Committee. The only difference, therefore, was that between Article 48A, on the one hand, and the second sentence of the third paragraph of the Soviet Union, on the other.

The Committee would be asked to vote on the Soviet amendment. If it was rejected, then Articles 30 and 48A would be considered as adopted, subject to the amendment to Article 48A submitted by the Soviet Delegation during the meeting. The Committee would also have to take a decision on the latter amendment.

The Committee proceeded to vote on the Soviet amendment to Article 30, rejecting it by 17 votes to 14.

The Soviet proposal submitted during the meeting, for a change in the wording of Article 48A, was adopted by 22 votes to 10.

Mr. MOROSOV (Union of Soviet Socialist Republics) noted that the wording of Articles 30 and 48A, as recommended by the Drafting Committee, had only been adopted by a small majority. He therefore reserved the right to raise the question again in the Plenary Meeting of the Conference; for, in his opinion, neither those Articles, nor Article 29A which had been adopted at the previous meeting, afforded adequate protection to the civilian population.

### Article 31

Article 31, as proposed by the Drafting Committee, was a reproduction of the Stockholm text. It was adopted unanimously.

### Articles relating to Internment

The Committee then proceeded to discuss the Articles relating to internment, on which the second Drafting Committee had finished its work.

General SCHEPERS (Netherlands), Rapporteur, submitted the report of the Drafting Committee.

### Article 69

At the request of the Drafting Committee, Article 69 was provisionally reserved, as the numbering of the Articles mentioned in it might have to be changed.

### Article 70

Article 70, as proposed by the Drafting Committee (*see Annex No. 315*), was adopted unanimously.

**Article 71**

General SCHEPERS (Netherlands), Rapporteur, said that the Drafting Committee had rejected the Belgian amendment which had been submitted on the first reading; it had, however, adopted a Netherlands amendment relating to the support of persons dependent on internees and unable to earn a living on their own account.

Article 71, as proposed by the Drafting Committee (*see Annex No. 316*), was adopted unanimously.

Mr. WERSHOF (Canada) explained that he had abstained from voting on the Article, as he had just received instructions to submit an amendment of minor importance. He reserved the right to raise the question later, in the Plenary Meeting.

**Article 72**

General SCHEPERS (Netherlands), Rapporteur, explained that the Drafting Committee had considered two amendments, together with the observations of the International Committee of the Red Cross in their pamphlet "Remarks and Proposals", page 77. A United States amendment, which proposed the insertion of the words "in principle" before the words "be lodged" in the first sentence of the second paragraph, had been rejected by 2 votes to 1, with 4 abstentions. A United Kingdom proposal had been adopted, and, as a result of that decision, the word "camp" would be replaced throughout the Convention by the words "place of internment".

The wording proposed by the Drafting Committee (*see Annex No. 317*) was adopted unanimously.

**Article 73**

General SCHEPERS (Netherlands), Rapporteur, said that the wording submitted by the Drafting Committee (*see Annex No. 318*) took account of the proposals of the International Committee of the Red Cross ("Remarks and Proposals", page 77), and also of an United States amendment proposed by the United States Delegation.

Mr. SPEAKE (United Kingdom) proposed that the final decision on Article 73 should be deferred pending a decision by Committee II on the corresponding Article of the Prisoners of War Convention.

The CHAIRMAN replied that it was preferable to take a decision on the Article forthwith; its wording would be adjusted, if necessary, by the

Coordination Committee, to bring it into line with the corresponding Article of the Prisoners of War Convention.

Mr. BLUEHDORN (Austria) suggested that a drafting error in the French text should be corrected (the words "La Puissance protectrice" should have read "La Puissance détentric").

The Committee also decided to replace the words "Detaining Powers" in the third paragraph by the words "Powers concerned".

Article 73, as amended above, was adopted unanimously.

**Article 74**

In reply to a question by Mr. PILLOUD (International Committee of the Red Cross), General SCHEPERS (Netherlands), Rapporteur, said that the text of Article 74 as adopted by the Drafting Committee had originally been drafted in English. He agreed to the French text being modified to make it correspond more exactly with the original version.

The following wording was adopted (the French text being that proposed by Mr. Pilloud):

"Internees shall be lodged and administered separately from prisoners of war and persons deprived of their liberty for any other reason."

**Article 75**

General SCHEPERS (Netherlands), Rapporteur, said that a minor alteration should be made in the wording proposed by the Drafting Committee (*see Annex No. 319*). In the second sentence of the first paragraph, the word "permanent" should be deleted. In the third paragraph, the words "they shall be provided daily with sufficient water and soap for their personal toilet" should be replaced by "they shall be provided with sufficient water and soap for their daily personal toilet".

Article 75, as amended above, was adopted.

**New Article 75A**

General SCHEPERS (Netherlands), Rapporteur, reminded the meeting that Article 75A had been drafted in consequence of an amendment which had been submitted at the first reading by the Delegation of the Holy See (*see Summary Record of the Twentieth Meeting*). That amendment had been adopted unanimously by the Drafting Committee.

Article 75 A was adopted.

**Article 76**

General SCHEPERS (Netherlands), Rapporteur, said that the Drafting Committee had not agreed with the Canadian Delegation's proposal to transfer Article 76 to another place in the Convention. On the other hand, they had adopted the other part of the Canadian amendment, which concerned the price of goods in canteens (*see Summary Record of the Twentieth Meeting*).

The wording proposed by the Drafting Committee (*see Annex No. 320*) was adopted.

**Article 77**

General SCHEPERS (Netherlands), Rapporteur, said that in the course of the discussion in the Drafting Committee, the Irish Delegation had withdrawn its amendment to Article 77 (*see Annex No. 321*).

Mr. WERSHOF (Canada) preferred the Stockholm text to that adopted by the Drafting Committee (*see Annex No. 322*). The latter wording placed an obligation on all countries to provide air-raid shelters in all places of internment, even in those which were at great distances from the theatre of operations. Such an obligation was unreasonable in cases where air-raid shelters were not provided for the civilian population. The best solution would be to place internees on the same footing, in that respect, as the civilian population. That was what the Stockholm text had done.

He proposed that the question be referred back to the Drafting Committee for further consideration.

Colonel HODGSON (Australia) supported the above proposal. He thought that it was too much to lay down, in the second paragraph, that a Detaining Power must take "all precautions" against the danger of fire. It would be enough to say that "all reasonable precautions must be taken".

Article 77 was referred back to the Drafting Committee by 14 votes to 13.

**Article 78**

The text proposed by the Drafting Committee (*see Annex No. 324*) was adopted.

**Article 79**

The text proposed by the Drafting Committee was adopted. The wording adopted was the same as the Stockholm text, except that, in the second sentence of the first paragraph, the words "Should the internees not have sufficient clothing" were amended to read "Should any internee not have sufficient clothing, account being taken of the climate".

*The meeting rose at 6.45 p.m.*

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**THIRTY-SECOND MEETING**

*Friday 17 June 1949, 3 p.m.*

*Chairman:* Mr. Georges CAHEN-SALVADOR (France)

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**Article 80**

General SCHEPERS (Netherlands), Rapporteur, said that three amendments to Article 80 had been tabled (by the Delegations of Belgium, the Netherlands and the United Kingdom respectively); suggestions had also been submitted by the Inter-

national Committee of the Red Cross ("Remarks and Proposals", page 79).

The wording adopted by the Drafting Committee (*see Annex No. 325*) took account of most of the above suggestions.

Article 80, as proposed by the Drafting Committee, was adopted unanimously.

**Article 81**

General SCHEPERS (Netherlands), Rapporteur, said that the only change from the Stockholm text was in the last sentence which had been modified in order to take account of the amendment submitted by the Netherlands Delegation (*see Summary Record of the Twentieth Meeting*).

Article 81, as proposed by the Drafting Committee, was adopted unanimously.

**Article 82**

General SCHEPERS (Netherlands), Rapporteur, explained that a slightly modified version of the amendment proposed by the Holy See (*see Annex No. 326*) had been adopted unanimously by the Drafting Committee (*see Annex No. 327*).

At the suggestion of Mr. PILLOUD (International Committee of the Red Cross), the Drafting Committee agreed to omit the word "religieux", which occurred in the French text (second paragraph, third sentence) of the wording adopted by the Drafting Committee but not in the English version.

Article 82 was adopted unanimously, with 1 abstention.

**Article 83**

General SCHEPERS (Netherlands), Rapporteur, said that the Drafting Committee had taken account of suggestions made by the United States and United Kingdom Delegations.

At the suggestion of the Secretary, the Committee agreed to make a minor change in the wording submitted by the Drafting Committee (*see Annex No. 328*), replacing the words "et de bénéficié du" in the first sentence of the third paragraph of the French by the word "en", so as to make the French version read: "des jeux en plein air", which corresponded to the English phrase "outdoor games".

Article 83, as amended above, was adopted.

**Article 84**

General SCHEPERS (Netherlands), Rapporteur, said that Article 84 had been discussed in great detail.

The Drafting Committee (*see Annex No. 330*) had taken account of various suggestions made by the Delegates of the United States, India, Italy and the United Kingdom, as well as of those

contained in the memorandum submitted by the International Labour Organization (*see Summary Record of the Twentieth Meeting*).

Mr. MINEUR (Belgium) regretted the omission by the Drafting Committee of certain expressions contained in the Stockholm Draft. The words "Wages, insurance and all other working conditions" (in the first sentence of the fourth paragraph of the Stockholm text) had been replaced by "Wages for work" in the Drafting Committee's text (fourth paragraph, second sentence); that expression did not provide the internees with the same safeguards. Again, the last phrase of the fourth paragraph of the Stockholm text ("and shall be insured against accidents") had been omitted by the Drafting Committee. Moreover, the text suggested by the International Labour Organization had been shortened to some extent, and it would be wiser to reinstate it, rewording the whole of the last paragraph as follows: "Such wages, insurance and other working conditions should not, however, be inferior to those generally applied to work of the same nature in the same district".

Miss JACOB (France) supported the above proposal.

Mr. PILLOUD (International Committee of the Red Cross) thought that the first paragraph of the wording proposed by the Drafting Committee would be clearer if it simply referred to Article 37 of the present Convention, and not to both Articles 37 and 47, as the latter Article concerned occupied territories.

Mr. CLATTENBURG (United States of America) said that Article 84 had been very carefully considered by the Drafting Committee. He suggested, therefore, that it should be referred back to that Committee which could then give the delegations which had raised various points whatever explanations were necessary.

Mr. CASTBERG (Norway) supported the above proposal on the understanding that the Drafting Committee would be empowered to make changes in its own text, where necessary.

Mr. AGATHOCLES (Greece) considered that, in order to avoid abuses, it was desirable to lay down that internees could only be employed on the work mentioned in Article 37.

The CHAIRMAN replied that if Committee III decided to refer Article 84 back to the Drafting Committee, the latter could make whatever drafting changes were necessary. He put the question to

the meeting, which decided to refer the Article back for further consideration.

Article 84 was accordingly referred back to the Drafting Committee.

#### Article 85

General SCHEPERS (Netherlands), Rapporteur, explained that the text submitted by the Drafting Committee (*see Annex No. 332*) took account of suggestions made by the Canadian Delegation as well as of those contained in "Remarks and Proposals submitted by the International Committee of the Red Cross" (page 80).

Article 85 was adopted unanimously.

#### Article 86

General SCHEPERS (Netherlands), Rapporteur, referring to the text submitted by the Drafting Committee (*see Annex No. 334*), said that the United States amendment (*see Annex No. 333*) had been adopted. The fourth paragraph of the Stockholm text had been maintained in a slightly modified form.

At the end of the sixth paragraph the words "to buy foodstuffs, tobacco and toilet requisites" in the Stockholm text had been amended to read "to make purchases", the Drafting Committee having taken the view that the paragraph in question overlapped the provisions concerning canteens in Article 76.

Mr. JONES (Australia) apologized for submitting an amendment at the eleventh hour; but as the result of experience gathered in Australia during the last war, he thought it advisable to suggest that a new paragraph providing that "no woman internee shall be searched except by a woman" should be inserted after the third paragraph.

Mr. MARESCA (Italy) proposed to make the wording of the first sentence of the fourth paragraph clearer by saying "its legislation" instead of "the legislation" at the end of the sentence and by inserting the words "if hostilities are still proceeding" after the word "exception". The restrictions laid down were, he felt, no longer justified if repatriation or release took place after hostilities had ended.

Mr. BLUEHDORN (Austria) supported the first proposal of the Italian Delegate.

General SCHEPERS (Netherlands), Rapporteur, replied that the Drafting Committee had not seen fit to adopt the second proposal of the Italian

Delegate, which had already been the subject of an amendment submitted on the first reading of the Article (*see Summary Record of the Twentieth Meeting*). The amendment covered only one particular case; what was needed was a text which covered all situations. Under certain circumstances the Detaining Power would have the right to retain articles which were in the possession of internees at the time of their internment; this was so in the case of articles stolen by the internees, of currency belonging to them (so long as currency control was still in force), and of articles which should be retained for reasons of security or which it was unlawful for aliens to possess.

Put to the vote, the second Italian amendment was rejected.

The first Italian amendment (to replace the words "the legislation" in the fourth paragraph by "its legislation") was adopted.

Mr. CLATTENBURG (United States of America) asked whether it was necessary to retain the words "in force" as a description of the legislation referred to.

General SCHEPERS (Netherlands), Rapporteur, replied that the words had a certain significance as they made it clear that what was meant was not only the legislation of the occupied country but also that of the Occupying Power.

The CHAIRMAN agreed with the Rapporteur that on that point it was preferable to maintain the Drafting Committee's wording.

The Australian amendment (to insert a new paragraph reading: "No woman internee shall be searched except by a woman" between the third and fourth paragraphs) was adopted.

The whole of Article 86, as amended above, was adopted.

#### Article 87

General SCHEPERS (Netherlands), Rapporteur, said that the Canadian amendment proposing the omission of the first paragraph had not been adopted by the Drafting Committee (*see Annex No. 336*).

The Canadian Delegation had intimated that, if the paragraph was retained, their Government would be obliged to make reservations regarding it when signing the Convention, since it could not undertake to supply internees with funds. In order to take account, as far as possible, of that intimation and to limit the obligations of governments toward internees, the Drafting Committee had inserted the words "without adequate means" in the first sentence of the Article, after the word "internees".

The Drafting Committee had adopted the amendments to the third paragraph submitted by the United States of America (*see Annex No. 335*) and by the United Kingdom. The United Kingdom amendment proposed the insertion of the words "consistent with legislation in force in the territory in question" in the first part of the second sentence of the third paragraph of the Stockholm text, after the word "facilities".

Mr. THURROTT (Canada) thanked the Drafting Committee for having taken the Canadian amendment into consideration to some extent. He reserved the right of the Canadian Delegation to raise the matter again, if need be, at the Plenary Meeting of the Conference.

Mr. QUENTIN-BAXTER (New Zealand) pointed out that the meaning of the second paragraph, which was a reproduction of the Stockholm text, was not at all clear. It was based on a provision of the Prisoners of War Convention by which bulk remittances sent by the country of origin were distributed in amounts depending on the "category" of those who received them. In the case of prisoners of war those categories were clearly defined. This was not so, however, in the case of civilian internees. He proposed that the Article should be referred back to the Drafting Committee for revision.

General SLAVIN (Union of Soviet Socialist Republics) and Mr. CLATTENBURG (United States of America) were both of the opinion that the Article could be adopted as it stood, since the second paragraph made it impossible for the authority receiving the money or for the country of origin to accord better treatment to particular internees on account of their political views.

Mr. QUENTIN-BAXTER (New Zealand) maintained that the interpretation of the paragraph which had just been given made it all the more necessary for a clear wording to be drawn up by the Drafting Committee.

The second paragraph of Article 87 was referred back to the Drafting Committee by 20 votes to 9.

The first and third paragraphs of Article 87 were adopted.

### Article 88

General SCHEPERS (Netherlands), Rapporteur, said that the Drafting Committee had adopted the Stockholm text, with the two following modifications, proposed respectively by the Delegations of the Netherlands and the United Kingdom: 1) In the first paragraph, second sentence, the

words "in his own language" had been replaced by the phrase "in the official language, or one of the official languages of his country"; 2) in the second paragraph, the words "in the language of the internees" had been amended to read "in a language which the internees understand".

Mr. MINEUR (Belgium) supported the Drafting Committee's wording. He proposed, however, a slight change in the French text, viz. to replace the word "publications" in the first line of the third paragraph by "avis". (No change in the English text.)

General SCHEPERS (Netherlands), Rapporteur, agreed.

Article 88, as amended above, was adopted.

### Article 89

General SCHEPERS (Netherlands), Rapporteur, said that an amendment submitted by the Netherlands Delegation had been withdrawn. The Drafting Committee had therefore adopted the Stockholm text.

Article 89 was adopted unanimously.

### Article 90

General SCHEPERS (Netherlands), Rapporteur, informed the meeting that the wording proposed by the Drafting Committee was that adopted at Stockholm with one modification: in the first sentence of the second paragraph, the words "Protecting Powers" had been amended to read "Protecting Power". He added that the Drafting Committee had rejected an amendment submitted on the first reading by the Canadian Delegation (*see Summary Record of the Twenty-first Meeting*). They considered that it was superfluous, and feared that the Article might be wrongly interpreted if special provision was made for the censorship of complaints and petitions, which ought to be transmitted without delay. The general rules relating to the censorship of the correspondence of internees remained valid for all communications made under the provisions of Article 90, and the Canadian proposal was not, therefore, necessary.

Mr. THURROTT (Canada) insisted on maintaining his amendment and asked for further explanation, as he did not see how Article 90, as it stood, permitted censorship.

General SCHEPERS (Netherlands), Rapporteur, said that censorship, in the case in question, could

consist in deleting from such communications, under the general rules relating to the censorship of internees' correspondence, anything which was not strictly a complaint or a petition and which would normally be censurable.

Mr. THURROTT (Canada) maintained his amendment, notwithstanding the above explanation.

Mr. CLATTENBURG (United States of America) felt that the first paragraph of Article 102 should meet the point of the Canadian Delegation.

Mr. JONES (Australia) was in favour of the Canadian proposal. He thought, however, that it would be enough to state that the Detaining Power had the right of censorship with regard to matters of security.

The Canadian amendment was rejected by 10 votes to 5.

The whole of Article 90 was adopted.

#### Article 91

General SCHEPERS (Netherlands), Rapporteur, said that the Drafting Committee had adopted an amendment proposed by the United Kingdom Delegation concerning the first part of the second paragraph, the first sentence of which now read as follows: "Internees so elected shall enter upon their duties subject to their having received the approval of the detaining authorities". The Drafting Committee had adopted the Stockholm text for the remainder of the Article (with certain minor changes in the English version).

Article 91 was adopted unanimously.

#### Article 92

General SCHEPERS (Netherlands), Rapporteur, said that the wording adopted by the Drafting Committee was a reproduction of the Stockholm text, no amendment having been submitted.

Article 92 was adopted unanimously.

#### Article 93

General SCHEPERS (Netherlands), Rapporteur, explained that the Drafting Committee had slightly altered the second sentence of the third paragraph of the Stockholm text in the light of the views expressed when the Article was discussed. The sentence adopted by the Drafting Committee read as follows: "Committee members in labour detach-

ments shall enjoy the same facilities for communication with their committee in the principal place of internment".

The Stockholm text of Article 93, as amended above, was adopted unanimously.

#### Article 94

General SCHEPERS (Netherlands), Rapporteur, said that the text proposed by the Drafting Committee (*see Annex No. 338*) took account of a suggestion by the World Jewish Congress that the Detaining Power should be obliged to notify measures of internment not only to the country of origin but also to the Protecting Power.

Article 94 was adopted unanimously.

#### Article 95

General SCHEPERS (Netherlands), Rapporteur, said that the Drafting Committee had adopted the Stockholm text. The word "arrest" had, however, been replaced by "detention" in order to avoid any possible misunderstanding, and the words "a card" had been altered to read "an internment card". The model internment card which was to be annexed to the Convention had not yet been drawn up.

Article 95 was adopted unanimously.

#### Article 96

General SCHEPERS (Netherlands), Rapporteur, said that the two amendments which had been submitted—one by the United States of America and the other by Canada—as well as a suggestion made by the International Committee of the Red Cross, had all been adopted unanimously. The wording proposed by the Drafting Committee was that adopted at Stockholm with the following two changes: 1) In the last sentence of the first paragraph the words "by the most rapid means" had been replaced by the words "with reasonable despatch"; 2) A sentence reading "They shall likewise benefit by this measure in cases of recognized urgency" had been added to the end of the second paragraph.

Article 96 was adopted unanimously.

#### Article 97

General SCHEPERS (Netherlands), Rapporteur, explained that Article 97 had given rise to a lengthy discussion in view of its connection with Article 99.

The Drafting Committee had considered the two Articles together and had decided to delete Article 99, at the same time amending Article 97, in accordance with the suggestions of the United States Delegation. The amendment proposed by that Delegation had been included as the second paragraph of the text proposed by the Drafting Committee (see *Annex No. 339*).

After taking the above decision, the second Drafting Committee had received a letter from the Chairman of the first Drafting Committee informing them that Article 20 had been amended. The second Drafting Committee had not, however, thought it necessary to change the wording of Article 97 to bring it into line with that of Article 20.

Msgr. BERTOLI (Holy See) explained that the communication to the second Drafting Committee, to which the Rapporteur had referred, related to a change in the wording of Article 20, which had been asked for by the Delegation of the Holy See and adopted by the first Drafting Committee. As a result of that decision, the words "articles of a devotional character" had been replaced by the words "books and objects of a devotional character". A corresponding change in the wording of Article 97 was, therefore, indicated.

The above change of wording was put to the vote and adopted.

Article 97, as amended above, was adopted unanimously.

### Article 98

General SCHEPERS (Netherlands), Rapporteur, said that the wording submitted by the Drafting Committee maintained the Stockholm text.

Article 98 was adopted unanimously.

### Article 99

The CHAIRMAN observed that Article 99 had been deleted as a result of the discussion on Article 97.

(The decision to delete Article 99 was confirmed unanimously at the thirty-third meeting held on Friday, June 17th.)

### Letter from the Chairman of the Special Committee of the Joint Committee

The CHAIRMAN said that he had received a letter from the Chairman of the Special Committee of the Joint Committee informing him that the Special Committee, after consideration of Article 47 of the Wounded and Sick Convention, Article 50 of the Maritime Convention, Articles 121 and 122 of the Prisoners of War Convention, and Article 135 of the Civilians Convention, had found that the first three Articles related to the annulment of previous Conventions and their replacement by the new Conventions. Article 122 of the Prisoners of War Convention and Article 135 of the Civilians Convention, on the other hand, only related to the general significance of the two Conventions. They could not, therefore, properly be regarded as Articles common to the four Conventions. The Chairman of the Special Committee of the Joint Committee could not, on his own account, relinquish responsibility for the Articles in question. He therefore suggested that the Chairmen of Committees II and III, pending the next meeting of the Plenary Assembly which would give a ruling on the matter, should decide provisionally to proceed with the consideration of the Articles in which they were respectively interested.

The Committee agreed to act on the above suggestion.

### Progress of Work

The CHAIRMAN said that the first Drafting Committee, presided over by Colonel Du Pasquier (Switzerland), was overloaded, while the Drafting Committee entrusted with the study of Articles concerning to internment, presided over by General Schepers (Netherlands), had already completed its work.

He suggested that in order to speed up the work of the Committee, Articles 55 to 67 (Penal Legislation), 123 to 125 (National Bureaux and Central Information Agencies) and 12 (in so far as it related to the Annex on hospital and safety zones) should be referred to the Drafting Committee of which General Schepers was Chairman.

As consideration of those questions was likely to raise particularly delicate legal problems, it would be advisable to add Professor Castrén (Finland) and Mr. Maresca (Italy) to the seven members of that Committee.

The above suggestion was adopted unanimously.

*The meeting rose at 6.45 p. m.*

## THIRTY-THIRD MEETING

Monday 20 June 1949, 3 p.m.

Chairman: Mr. Georges CAHEN-SALVADOR (France)

**Article 99**

General SCHEPERS (Netherlands), Rapporteur, pointed out that the new wording adopted for Article 97 made Article 99 redundant.

The Committee agreed unanimously to omit Article 99.

**Article 100**

General SCHEPERS (Netherlands), Rapporteur, reminded the Committee that amendments had been submitted (*see Summary Record of the Twenty-first Meeting*) by the Delegations of the following countries: Canada, United States of America, India, Australia, United Kingdom and Belgium (*for the Belgian amendment, see Annex No. 340*). The Conference had also received a memorandum from the Head Office of International Railway Transport (*see Annex No. 35*).

The Belgian, Canadian and Indian amendments provided for a reference, in the second paragraph, to the Convention of the Universal Postal Union signed at Paris in 1947, Article 52 of which concerned exemptions from postal charges. On the advice of the legal adviser of the United States Delegation, the Drafting Committee had decided not to include a reference to another convention in the text of the Civilians Convention. The amendments of the three Delegations had therefore been rejected.

The United Kingdom Delegation had not pressed their amendment.

The Australian amendment (the purpose of which was to expand relief shipments as much as possible) and the United States amendment (concerning responsibility for the payment of charges) had been accepted for the second and third paragraphs respectively.

The fifth paragraph of the Stockholm text had been adopted as it stood.

The CHAIRMAN put the wording proposed by the Drafting Committee (*see Annex No. 341*) to the meeting for discussion.

Mr. MINEUR (Belgium) maintained that a formal reference should be made to the Universal Postal Convention.

He made a reservation with regard to the fifth paragraph, thinking it unlikely that his Government would agree to reduce the rates charged for telegrams. Besides, telegraphic charges were at present being considered by an International Telecommunications Conference meeting in Paris. It was essential, therefore, that there should be no discrepancy between the present Convention and the decisions of the Paris Conference on a technical point which was obviously a matter for the Telecommunications Office. He reminded the meeting of the observations concerning the paragraph in question, which had been submitted by the United States and United Kingdom Delegations on the first reading.

Mr. ABUT (Turkey) proposed that Article 100 should be referred back to the Drafting Committee for further consideration.

Colonel FALCON BRICENO (Venezuela) supported the proposal of the Belgium Delegation. A formal reference to the provisions of the Universal Postal Convention was essential.

The CHAIRMAN said that, before taking a decision on the proposal to refer Article 100 back to the Drafting Committee, Committee III should first take a decision on the substance of the Belgian amendment for the guidance of the Drafting Committee.

The Committee decided that the Belgian amendment should be taken into consideration.

On the above understanding, Article 100 was referred back to the Drafting Committee.

**Article 101**

General SCHEPERS (Netherlands), Rapporteur, explained that two amendments had been submitted, one by the United States Delegation and the other by the United Kingdom Delegation.

The former amendment, which proposed to omit the reference to Article 99 in the first paragraph of the Stockholm text and to replace the words "shall allow" in the second sentence of the same paragraph by "to allow", had been adopted unanimously.

The other amendment had originally been withdrawn by the United Kingdom Delegation, pending consideration by Committee II of the corresponding Article of the Prisoners of War Convention. Later, when it was decided that the Committees should work independently of one another, the United Kingdom Delegation had requested that the attention of the Coordination Committee should be drawn to Article 101 and had reserved the right to re-submit the amendment to the Committee at a plenary meeting.

Mr SPEAKE (United Kingdom) said that the proposals contained in the United Kingdom amendment, which he had already explained in part at the time of the first reading of the Article (*see Summary Record of the Twenty-first Meeting*), were: 1) to insert the words "where they can do so without serious prejudice to their conduct of the war" in the first paragraph after the words "safe conducts"; 2) to delete the words "or any other body assisting the refugees" in the second paragraph, sub-paragraph (b), and to insert the word "and" in the same sentence, after "Protecting Powers", (his Delegation believing that the International Committee of the Red Cross—in view of its extensive past experience—should have the benefit of advantages which could not be granted to organizations about which little was known and which did not for that reason offer the same safeguards); 3) to insert a new paragraph, worded as follows, between the second and third paragraphs:

"These provisions are not intended to detract from the right of any belligerent to arrange other means of transport, if it should so prefer, nor to preclude the grant of safe conduct, under mutually agreed conditions, to such means of transport.";

and 4) to delete the third paragraph.

Mr. MINEUR (Belgium) observed that there might also be neutral internees. The words "Protecting Powers" in sub-paragraph (b) of the second paragraph should, therefore, be replaced by the words "Powers concerned", and the word "belligerents" in the third paragraph by the word "Powers".

Again, if the third paragraph was to be maintained, the exact meaning of the word "proportionally" should be more clearly defined.

The CHAIRMAN declared the discussion closed. Objections having been raised in regard to the

regularity of considering the United Kingdom amendment after it had once been withdrawn, the Committee decided, by 20 votes to 12, to take account of it and to vote on the various points which it raised.

The first, second, third and fourth points of the United Kingdom amendment were rejected in turn.

The first two amendments proposed by the Belgian Delegate (drafting changes in the second paragraph, sub-paragraph (b), and in the third paragraph), were then adopted.

With regard to the Belgian proposal concerning the use of the word "proportionally" in the third paragraph, the CHAIRMAN asked what the Belgian Delegation proposed to substitute for that word in order to make the text clearer.

Mr. MINEUR (Belgium) suggested the words "in proportion to the importance of the shipments".

General SLAVIN (Union of Soviet Socialist Republics) objected to consideration being given to the foregoing amendment which had not been submitted within the prescribed time-limit.

The whole of Article 101 as proposed by the Drafting Committee (*see Annex No. 344*), together with the drafting changes proposed by the Belgian Delegation, was adopted.

## Article 102

General SCHEPERS (Netherlands), Rapporteur, said that the United States Delegation had tabled an amendment to Article 102 (*see Summary Record of the Twenty-first Meeting*). The United Kingdom Delegation had also tabled an amendment proposing that the words "light reading matter or educational works", in the second sentence of the second paragraph, should be replaced by the phrase "individual or collective consignments".

The United States amendment to the first paragraph had been adopted unanimously. The United States Delegation had withdrawn their amendment to the second paragraph in favour of that of the United Kingdom Delegation. The latter amendment had been adopted unanimously and so had the proposal of the International Committee of the Red Cross ("Remarks and Proposals", page 82) to omit the words "if possible". The third paragraph had been adopted as it stood. The result was the wording proposed by the Drafting Committee (*see Annex No. 346*). There was, however, an error in the second paragraph of the French text, where the word "ouvrages" was not the equivalent of the English word "consignments".

Mr. PILLOUD (International Committee of the Red Cross) explained that the word "ouvrages" had been left in the text inadvertently when the longer expression of which it formed part ("ouvrages récréatifs ou éducatifs") was deleted. The word should simply be omitted.

General SCHEPERS (Netherlands), Rapporteur, agreed.

Article 102 was adopted with one dissentient vote.

### Article 103

General SCHEPERS (Netherlands), Rapporteur, explained that the text proposed by the Drafting Committee (*see Annex No. 348*) had been based on a United Kingdom amendment (*see Annex No. 347*). Account had also been taken of an amendment proposed by the United States Delegation, who wished to insert the word "reasonable" before the word "facilities" in the first sentence of the first paragraph.

The wording proposed by the Drafting Committee was adopted unanimously.

### Article 104

General SCHEPERS (Netherlands), Rapporteur, said that the Drafting Committee had unanimously adopted the amendment proposed by the Delegation of the United States of America (to insert the words "and applicable law" after the words "internment conditions" in the first paragraph and to delete the second paragraph). The amendment had been explained by the United States Delegation during the twenty-first meeting.

The wording proposed by the Drafting Committee (*see Annex No. 349*) was adopted unanimously.

### Article 105

General SCHEPERS (Netherlands), Rapporteur, explained that amendments had been submitted by the Delegations of Belgium and the United States of America. The International Committee of the Red Cross had made various suggestions (*see Summary Record of the Twenty-first Meeting*). The Delegation of the United Kingdom had also submitted a new text for the Article (*see Annex No. 350*).

The Belgian amendment proposing the omission of the Article, had been rejected. On the other hand, the suggestions made by the United King-

dom Delegation had been agreed to, the wording adopted by the Drafting Committee being that contained in the United Kingdom amendment.

Mr. MINEUR (Belgium) did not wish to press for the omission of the Article. The Drafting Committee's wording might, however, be improved by the following changes: 1) by using the term "proceeding" instead of "civil proceedings"; 2) by placing the responsibility for informing the Court of the detention of an internee on the "commandant of the place of internment" and not on the "Detaining Power". In view of the urgent nature of the cases covered by the Article, it was wiser to have recourse to the nearest authority.

General SLAVIN (Union of Soviet Socialist Republics) criticized the above last-minute amendments. He proposed that the Committee should purely and simply return to the Stockholm text.

The Committee proceeded to vote. The amendment of the Soviet Delegation was rejected by 13 votes to 10. The first change proposed by the Belgian Delegate was adopted by 14 votes to 8. The second was rejected by 15 votes to 7.

The whole of Article 105 (amended by the omission of the word "civil") was adopted.

### Article 106

General SCHEPERS (Netherlands), Rapporteur, said that the wording proposed by the Drafting Committee (*see Annex No. 351*) was a slightly modified version of an amendment submitted by the Delegation of the United States of America. The modifications in question were merely drafting changes.

Put to the vote, Article 106 was adopted unanimously.

### Article 107

General SCHEPERS (Netherlands), Rapporteur, said that two amendments, both having the same purpose, had been submitted, one by the Canadian Delegation (*see Annex No. 352*) and the other by the Chinese Delegation. The Drafting Committee had taken account of the amendments, which only affected the first paragraph, by replacing the words "laws of the territory" by "laws in force in the territory". No change had been made in the second and third paragraphs.

The wording proposed by the Drafting Committee (which was the same as the Stockholm text apart from the change referred above) was adopted unanimously.

**Article 108**

General SCHEPERS (Netherlands), Rapporteur, explained that an amendment proposing a new wording for the first sentence of the first paragraph had been submitted by the Belgian Delegation (see *Summary Record of the Twenty-first Meeting*). Moreover, the United Kingdom Delegation had proposed that the first and fourth paragraphs of the Article should be omitted.

The first paragraph had been discussed at considerable length. The Belgian amendment had been rejected. The wording suggested at Stockholm by the International Committee of the Red Cross had been changed to some extent, in particular by the omission of the portion of the first sentence coming after the words "Detaining Power" and by the omission of the words "the kind of penalty or" in the second sentence; the Drafting Committee had considered that the judge should be empowered to reduce the severity of the penalty, but not to change its nature.

The United States Delegation had proposed the omission of the second sentence of the first paragraph of the text adopted by the Drafting Committee (see *Annex No. 353*).

Mr MINEUR (Belgium) regretted that the Belgian amendment to the first sentence of the first paragraph had not been taken into consideration. Moreover, he believed that the fourth paragraph of the wording submitted at Stockholm was better than that of the Drafting Committee, in that it was more precise. Preventive detention could in no circumstances be "taken into account" in fixing a penalty. It would be better to say that it would be deducted from the penalty, as the draft submitted at Stockholm had said.

Mr. SINCLAIR (United Kingdom) agreed with the proposal made by the United States Delegation. He explained the amendment to the Drafting Committee's wording, submitted by the United Kingdom Delegation. The amendment in question proposed that the words "In occupied territory" should be inserted at the beginning of the Article and that the words "Detaining Power" at the end of the first sentence should be amended to read "Occupying Power".

Mr. MARESCA (Italy) supported the Belgian Delegation's observation concerning the fourth paragraph. It would be wiser to revert to the wording submitted at Stockholm.

The CHAIRMAN asked the Committee to vote on the various amendments submitted.

The Belgian amendment replacing the words "shall ... take" in the first line of the first paragraph by "may ... take" was rejected.

The United States amendment proposing the omission of the second sentence of the first paragraph was rejected.

The United Kingdom amendment which proposed the insertion of the words "In occupied territory" at the beginning of the first paragraph, and the substitution of the words "occupying Power" for "Detaining Power", was rejected.

The Belgian amendment for the replacement of the fourth paragraph by the fourth paragraph of the text submitted at Stockholm by the International Committee of the Red Cross (not adopted by the Stockholm Conference, although the latter had declared that they were in favour of its general sense) was adopted.

Article 108, with the fourth paragraph amended as above, was adopted.

General SCHEPERS (Netherlands), Rapporteur, observed that the fourth paragraph, which had just been adopted, was unsound; it was a slight exaggeration to say that in every case preventive detention would be deducted from a penalty. He suggested, therefore, that the paragraph should be referred back to the Drafting Committee.

The CHAIRMAN replied that under the Rules of Procedure a vote could not be reviewed except by a two-thirds majority.

The proposal to refer the fourth paragraph back to the Drafting Committee was rejected by 12 votes to 8.

**Article 109**

General SCHEPERS (Netherlands), Rapporteur, said that a Canadian amendment had been adopted unanimously. It had proposed that the words "Fatigue duties" in sub-paragraph (3) should be replaced by the following sentence: "Fatigue duties, not exceeding two hours daily, in connection with camp maintenance".

The Drafting Committee had also accepted a United Kingdom amendment which proposed the omission of sub-paragraph (4). In order to take some account of another amendment proposed by the same Delegation, the Drafting Committee had restricted the period during which the fines provided for in the first paragraph were applicable to 30 days.

Mr. QUENTIN-BAXTER (New Zealand) regretted that the first paragraph of the text adopted by the Drafting Committee (see *Annex No. 355*) referred to the allowances mentioned in Article 87. If Article 87 was read, it would be seen that the fines could be imposed on allowances received by internees from their families or from charitable

institutions. That would be too harsh a measure. He also criticized both the fines on working wages (since, owing to the voluntary nature of the work, an internee could refuse to work if fines were levied on his earnings), and those on the allowances paid by the Detaining Power, the latter being accorded only to internees without adequate means so as to enable them to procure essential toilet requisites.

Mr. PILLOUD (International Committee of the Red Cross) agreed with Mr. Quentin-Baxter that it would be best to delete all reference to Article 87.

On a vote it was unanimously decided to omit the reference to Article 87.

The whole of Article 109, as amended above, (i.e. without the reference to Article 87 in the first paragraph) was adopted unanimously.

#### Article 110

General SCHEPERS (Netherlands), Rapporteur, explained that there had been two amendments to Article 110, submitted respectively by the Canadian and Italian Delegates (*see Summary Record of the Twenty-second Meeting*). The Canadian amendment had already been rejected on the first reading of the Article. The Drafting Committee had rejected the Italian amendment; they considered that it served no useful purpose in view of the fact that collective penalties were prohibited elsewhere in the Convention.

The wording proposed by the Drafting Committee, which was the same as that adopted at Stockholm, was adopted unanimously, less 1 vote.

#### Article 111

General SCHEPERS (Netherlands), Rapporteur, said that a United States amendment to the second paragraph (to replace the words "the greatest leniency" by "reasonable leniency") had been adopted. Another proposal by the same Delegation (to omit the third paragraph) had also been adopted.

Mr. PILLOUD (International Committee of the Red Cross) observed that, in French, the words

"indulgence raisonnable" (reasonable leniency) might be interpreted in a sense quite opposite to that desired by the authors of the amendment. The words in question could be interpreted as meaning that the Detaining Power could reproach the Court with having been excessively lenient and, therefore, not reasonable.

Mr. CLATTENBURG (United States of America) agreed, at the suggestion of Mr. De Rueda (Mexico), to delete the word "reasonable" and simply to say "leniency".

Article 111, as amended above, was adopted unanimously. It consisted of the first two paragraphs of the Stockholm text (with the above-mentioned change in the second paragraph). The third paragraph of the Stockholm text had been omitted.

#### Article 112

The CHAIRMAN put Article 112 to the vote and it was adopted unanimously. No amendments had been submitted to this Article, the wording of which reproduced the Stockholm text.

#### Article 113

General SCHEPERS (Netherlands), Rapporteur, explained that the Drafting Committee had adopted a wording (*see Annex No. 356*) similar to that of the corresponding Article of the Prisoners of War Convention. The second paragraph of the Stockholm text had, therefore, been modified and an additional paragraph added.

Article 113 was adopted unanimously.

#### Article 114

General SCHEPERS (Netherlands), Rapporteur, said that the text proposed by the Drafting Committee (*see Annex No. 357*) was based on the corresponding Article in the Prisoners of War Convention.

Put to the vote, it was adopted unanimously.

*The meeting rose at 6.30 p.m.*

## THIRTY-FOURTH MEETING

Wednesday 22 June 1949, 3 p.m.

Chairman: Mr. Georges CAHEN-SALVADOR (France)

**Article 115**

General SCHEPERS (Netherlands), Rapporteur, said that no amendment had been submitted to Article 115. The wording, which had been unanimously agreed to by the Drafting Committee, was an exact reproduction of the Stockholm text.

Article 115 was adopted unanimously.

**Article 116**

General SCHEPERS (Netherlands), Rapporteur, proposed that consideration of Article 116 should be deferred, as it referred to other Articles which had not yet been adopted and the numbering of which might be changed.

Consideration of Article 116 was deferred.

**Article 117**

General SCHEPERS (Netherlands), Rapporteur, explained that in the case of the first paragraph, the Drafting Committee had accepted a United States amendment to the third sentence of the English text (the French text maintaining the exact wording adopted at Stockholm). They had also adopted the proposals of the International Committee of the Red Cross ("Remarks and Proposals", page 83). The Italian amendment which had been submitted on the first reading (*see Summary Record of the Twenty-second Meeting*) had, on the other hand, been rejected. In the second paragraph, the amendments submitted by the Delegations of Canada (*see Annex No. 358*) and the United Kingdom had been combined by adding the words "adequate shelter" to the wording proposed by the Canadian Delegation. In the third paragraph, the United Kingdom amendment referred to at the time of the first reading (to replace the words "sick or wounded internees" by "sick, wounded or infirm internees") had been adopted (*see Summary*

*Record of the Twenty-second Meeting*). In the fourth paragraph, the Stockholm text had been maintained.

The Italian amendment mentioned above also proposed the addition of a new paragraph restricting the transfer of internees, the main purpose of the proposal being to avoid increasing the difficulties involved in repatriating internees or returning them to their homes. The Drafting Committee had not seen fit to adopt the suggestion since, in its view, the point was covered in Articles 41, 121 and 122.

The wording proposed for Article 117 (*see Annex No. 359*) had been unanimously adopted by the Drafting Committee.

Mr. MARESCA (Italy) urged the desirability of introducing the new paragraph proposed in the Italian Delegation's amendment, insisting that it was essential to take measures to prevent such transfers of internees. As an example, he cited the case of the Italian diplomats and consuls who were deported to Poland by the Germans in 1943, simply because they had remained loyal to their Government after the conclusion of the Armistice between Italy and the Allies. He thought that Article 41, which the Rapporteur had mentioned, referred to a completely different case, viz. that of aliens in the territory of a Party to the conflict who had not been interned.

Mr. POPPER (Austria) supported the views expressed by the Italian Delegate.

The CHAIRMAN asked the meeting to vote on the Italian amendment which proposed the addition of a new paragraph reading as follows:

"The Detaining Power, in deciding the transfer of internees, shall take their interests into account and, in particular, shall not do anything to increase the difficulties of repatriating them or returning them to their own homes."

The above amendment was adopted.

GUENENA Bey (Egypt) pointed out that in the fourth paragraph of the article the word "camp" had been used instead of the term "place of internment" which had been adopted for the Convention as a whole.

The CHAIRMAN said that the necessary correction to the wording of the text would be made.

The whole of Article 117, amended in accordance with the Italian and Egyptian proposals, was adopted.

### Article 118

General SCHEPERS (Netherlands), Rapporteur, said that the Drafting Committee had considered the suggestions of the Finnish Delegation concerning the second paragraph (*see Summary Record of the Twenty-second Meeting*) and had decided that the Finnish amendment was redundant. The third paragraph had been adopted without any change. The suggestions of the Delegations of the United States of America (to substitute the word "effect" for "ensure") and the United Kingdom (to omit the words "if necessary") had been adopted for the fourth paragraph. In other respects the wording proposed by the Drafting Committee reproduced the Stockholm text.

Article 118 was adopted unanimously.

### Article 119

General SCHEPERS (Netherlands), Rapporteur, said that amendments to Article 119 had been submitted by the Delegations of the United States of America (*see Annex No. 360*), the Netherlands (*see Annex No. 361*) and the United Kingdom (*see Annex No. 362*). The United Kingdom Delegation had withdrawn their amendment to the first paragraph; that of the United States Delegation had been adopted. The Stockholm wording of the second paragraph had been adopted, the United Kingdom amendment having been withdrawn and inserted in the third paragraph. The third paragraph had given rise to lengthy discussions at three meetings, general agreement having been eventually reached on the wording to be adopted. The fourth and fifth paragraphs reproduced the Stockholm text. Lastly, a new paragraph had been added in order to take account of the suggestions made by the Netherlands Delegation. The proposed wording had been adopted unanimously by the Drafting Committee (*see Annex No. 363*).

Mr. ABUT (Turkey) added that it had been decided to change the title of Chapter XI to read "Deaths and Injuries" instead of "Deaths".

Mr. MINEUR (Belgium) suggested three drafting changes in the text adopted by the Drafting Committee: 1) to delete the word "previously", which was redundant, in the first paragraph; 2) the second paragraph was badly drafted; it would be better to redraft it as follows:

"The deaths of internees shall be certified in every case by a doctor, and a death certificate shall be established stating the causes and circumstances of death";

3) the last words of the fourth paragraph (French text) would read better if drafted as follows: "et groupées dans la mesure du possible". (No change in the English text.)

The CHAIRMAN thought that out of consideration for those delegations which were not thoroughly familiar with the French language, it would be preferable if minor drafting amendments to texts adopted by the Drafting Committee were submitted by their authors to the Drafting Committee of the Conference. At its last meeting the Bureau of the Conference had considered the advisability of such a procedure.

Article 119, as proposed by the Drafting Committee, was adopted.

### Article 120

General SCHEPERS (Netherlands), Rapporteur, said that the Drafting Committee had adopted the Stockholm text, slightly modifying the first paragraph in order to take account of proposals made by the Danish and United States Delegations. The first paragraph read as follows:

"Every death or serious injury of an internee caused or suspected to have been caused by a sentry, another internee or any other person, as well as any death the cause of which is unknown, shall be immediately followed by an official inquiry by the Detaining Power."

Article 120 was adopted.

### Article 121

General SCHEPERS (Netherlands), Rapporteur, reminded the meeting that the United Kingdom Delegation had proposed the deletion of Article 121 (*see Summary Record of the Twenty-second Meeting*). The Drafting Committee felt, however, that the Article should be maintained (*see Annex No. 364*).

The second paragraph took account of a suggestion by Dr. Ferrière, a member of the Committee of Medical Experts, for the insertion in the Civilians Convention of a clause similar to that which appeared in the Prisoners of War Convention.

The third paragraph had been omitted since, in the view of the Drafting Committee, the point with which it dealt had already been covered in earlier Articles, in particular, in Article 41.

Article 121 was adopted.

### Article 122

General SCHEPERS (Netherlands), Rapporteur, said that the Drafting Committee had adopted the Stockholm text as it stood.

Mr. PILLOUD (International Committee of the Red Cross) apologized for suggesting a belated change in the wording which the International Committee of the Red Cross had itself submitted. He thought, on thinking it over, that the words "and, in occupied territories, at latest at the close of the occupation" in the first paragraph were unnecessary and should be omitted.

Mr. CASTRÉN (Finland) supported the above suggestion.

Mr. HAKSAR (India) felt that it was difficult for the Committee to take a decision on the first paragraph of Article 122 until they knew the final form which Article 4 was to take. The paragraph in question would have to be read in relation to Article 4.

Mr. POPPER (Austria) suggested that the paragraph should be referred back to the Drafting Committee.

The CHAIRMAN thought it well to warn the Committee against any hasty decision. He remarked that in certain cases, rare perhaps, but quite possible, the liberated Power might be tempted to continue to hold internees who were not its own nationals, in places of internment after the close of hostilities. Such a hypothesis would justify the retention of the words which the Representative of the International Committee of the Red Cross wished to delete.

Mr. CLATTENBURG (United States of America) believed, on the contrary, that, in view of the well-defined purpose of Articles 121 and 122, there could be no conflict between the two Articles, and that it was therefore desirable to omit the words mentioned by the Representative of the International Committee of the Red Cross.

On a vote being taken, the first paragraph of Article 122 was referred back to the Drafting Committee; the second and third paragraphs were adopted.

### New Article 122B

Mr. MARESCA (Italy) said that the Drafting Committee had rejected an Italian amendment (see *Summary Record of the Twenty-second Meeting*) for the inclusion in the Convention of a new Article 122B, worded as follows:

"The cost of repatriating internees or returning them to their own homes shall be borne by the Detaining Power."

The omission from the Convention of all reference to such an important matter would further complicate the already difficult problem of the repatriation of internees.

Mr. CLATTENBURG (United States of America) agreed with the Italian Delegate that a clause dealing with the costs of repatriation should be inserted in the Convention.

He pointed out that Article 33, which covered a particular case of repatriation, provided that "all costs in connection therewith from the point of exit in the territory of the Detaining Power" should "be borne by the country of destination...". That clause was in accordance with the practice followed during the last war and with the provisions contained in Article 108 of the Draft Prisoners of War Convention. In the case of internees, however, the Detaining Power should bear the cost of returning them to the place where they were apprehended, and if it wished, for one reason or another, to return an internee to his country of origin, the Detaining Power should bear the whole cost of repatriation. On the other hand, if internees themselves wished to return to their country of origin and not to the place where they were apprehended, any additional expense involved should be borne by the internees concerned or by their government, and not by the Detaining Power.

The whole question should be referred back to the Drafting Committee, so that the latter could consider it with particular reference to the memorandum of the Central Office of Railway Transport (see *Annex No. 35*) which had also raised that particular question.

Mr. MARESCA (Italy) insisted that his amendment was of value, pointing out that Article 33 covered an entirely different situation to that covered in the proposed new Article.

General SLAVIN (Union of Soviet Socialist Republics) could not agree. Article 33, being placed

in Section II of Part III, concerned aliens in the territory of a Party to the conflict, and it was not correct to say that internees were not covered by its provisions.

The CHAIRMAN, referring to a question put to him by the Rapporteur, asked the Committee to decide whether the question of costs of repatriation should or should not be dealt with in a new Article 122B.

The Committee decided by 17 votes to 10 that a new Article 122B should be introduced.

Article 122B was referred back to the Drafting Committee.

### **Annex II (Draft Regulations concerning collective relief)**

General SCHEPERS (Netherlands), Rapporteur, explained that the Drafting Committee had had to decide two questions of principle in connection

with Annex II: 1) The United Kingdom Delegation had proposed that Articles 2 and 7 of the Annex should be included in the body of the Convention. The proposal had been rejected, in order not to exclude the possibility of special agreements between the Parties; 2) the Netherlands Delegation had proposed the inclusion of an Article concerning the distribution of collective consignments of clothing (a decision to this effect had been taken in the case of Prisoners of War Convention). After having heard a statement by the Representative of the International Committee of the Red Cross, the Drafting Committee had decided that such an Article would be out of place in the Civilians Convention.

The Drafting Committee had then introduced one or two drafting amendments to the Stockholm text (*see Annex No. 381*).

Annex II was adopted.

*The meeting rose at 5 p.m.*

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## THIRTY-FIFTH MEETING

*Friday 24 June 1949, 3 p.m.*

*Chairman:* Mr. Georges CAHEN-SALVADOR (France).

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### **Progress of Work**

The CHAIRMAN read a memorandum from the President of the Conference addressed to all Delegations (*Document No. 13 dated 23 June 1949 — see Annex No. 6*). It dealt with the progress of the work and with the procedure to be followed with a view to speeding up the discussions.

The Chairman said that he had also received a letter from the Secretariat of the United Kingdom Delegation suggesting that the duties of Mr. Hart, co-Rapporteur of Committee III, who was obliged to leave Geneva, should be taken over by Mr. Speake and Mr. Day of the same Delegation.

The above proposal was agreed to unanimously.

### **New Article 26A**

Colonel DU PASQUIER (Switzerland), Rapporteur, explained that the Italian Delegation had tabled an amendment proposing the inclusion in

the Convention of a new Article 26 A concerning the treatment and repatriation of officials of a Party to the conflict who fell into the hands of an enemy Power. The amendment had been rejected by the Drafting Committee who considered that there was no point in creating a special class of privileged civilians in between the existing military and civilian categories. Such a class might be a very considerable one in some countries, in view of the number of their officials. Besides, in the last war, such an Article would have warranted the repatriation of Rudolf Hess, as well as of German officials captured in France after August 1944.

Put to the vote, the Italian amendment was rejected by Committee III.

### **Article 32**

Colonel DU PASQUIER (Switzerland), Rapporteur, reminded the meeting that the problems raised

in Article 32 wavered between the two extremes of individual liberty and State security. The Civilians Convention must find a solution which would strike a fair balance between those two conflicting demands.

The Stockholm text had set up a somewhat rigid system of special tribunals for aliens. The Drafting Committee had felt that a more elastic system should be established, and that it was wiser to leave it to the States concerned to decide whether responsibility for the decisions in question should be entrusted to a legal authority, or to an administrative authority which would have to be an "administrative board" of the kind proposed by the Belgian Delegation (*see Annex No 238*). What was essential was that the consideration of internment cases should be the responsibility of a number of persons and not of a single police official. The wording submitted by the Drafting Committee (*see Annex No. 244*) covered the first, second, third and sixth paragraphs of the Stockholm text. It had been based on a draft submitted by the United States Delegation (*see Annex No. 240*) and had been adopted unanimously.

Mr. SEVERINI (Italy) said that he noted with pleasure that account had been taken of the observations which the Italian Delegations had submitted, first at the Stockholm Conference and later at Geneva (*see Summary Record of the Thirteenth Meeting*), concerning the procedure for interning protected persons or for placing them in assigned residence. The Italian Delegation agreed that all reference to decisions regarding internment or the placing of persons in assigned residence should be omitted from Article 32 and that they should be dealt with instead in Articles 39 and 40.

Mr. CASTRÉN (Finland) proposed that the words "contrary to the national interests of the State" in the first sentence of the first paragraph should be replaced by the more specific wording used in the second paragraph of the Stockholm text which spoke of "urgent grounds of security".

Mr. JONES (Australia) suggested that the words "representatives of the Protecting Power" in the third paragraph should be amended to read simply "the Protecting Power".

Colonel DU PASQUIER (Switzerland), Rapporteur, did not think the above amendment was necessary, as the Protecting Power would always have to be "represented" by actual people.

Mr. JONES (Australia) said that he would not press his proposal.

Mr. MINEUR (Belgium) felt that it was important to say, in the second paragraph, that if a protected person was refused permission to leave territory, he should be entitled to have such refusal reconsidered "as soon as possible".

Mr. GINNANE (United States of America) said that the amendment of the Finnish Delegation was one of substance; he pointed out that Article 39 had been adopted unanimously by the Drafting Committee.

Mr. CASTRÉN (Finland) proposed that the Article should, in view of the remarks of the United States Delegate, be referred back to the Drafting Committee.

Colonel DU PASQUIER (Switzerland), Rapporteur, opposed the suggested procedure.

Mr. CASTRÉN (Finland) said that he would not press the point.

Put to the vote, the Belgian amendment for the insertion of the words "as soon as possible" in the second paragraph was adopted.

The whole of Article 32, as amended above, was adopted.

#### Article 40

The CHAIRMAN proposed, at the suggestion of the Rapporteur, that the Committee should next consider Article 40, in view of its close connection with Article 32 which the Committee had just adopted.

Colonel DU PASQUIER (Switzerland), Rapporteur, said that the Drafting Committee (*see Annex No. 262*) had adopted the same principles for both Articles, Article 40 providing for the possibility of appeal against the decisions taken under Article 32. The second paragraph of Article 40 had been reworded to bring it into line with the third paragraph of Article 32.

Mr. WERSHOF (Canada) stated that he had received instructions from his Government who wished him to explain what they understood by the phrase "administrative board" (*collège administratif*) in Article 40 before a vote was taken on that Article. The same interpretation applied equally to the phrase where it was used in Article 32.

Their interpretation of the words in question was that it would be permissible for the Canadian Government to establish a board within their Department of Justice, consisting of officers of

that Department or perhaps of the Minister of Justice assisted by some of his subordinates. Such a board would, according to their interpretation, be an "administrative board" within the meaning of Article 40.

Mr. MINEUR (Belgium) proposed that the first sentence of the first paragraph should be amended to read "Any person who has been interned or placed in assigned residence shall be entitled to have such action reconsidered as soon as possible...". This proposal corresponded to the decision taken in respect of Article 32.

Put to the vote, the Belgian amendment was adopted.

The whole of Article 40, as amended above, was adopted unanimously.

### Article 33

Colonel DU PASQUIER (Switzerland), Rapporteur, reminded the meeting that the first reading (*see Summary Record of the Fourteenth Meeting*) had shown that the Stockholm text required rewording in order to eliminate a certain ambiguity and in order to introduce particulars regarding the financial aspects of repatriation.

The required particulars would be found in the Drafting Committee's text, which was identical with the amendment submitted by the United States Delegation (*see Annex No. 245*) during the first reading.

Article 33 was adopted unanimously.

### Article 34

Colonel DU PASQUIER (Switzerland), Rapporteur, said that Article 34, as proposed by the Drafting Committee (*see Annex No. 247*), was based on a proposal by the United States Delegation (*see Annex No. 246*). As there were a great number of aliens in the United States of America, any suggestions made by the United States Delegation concerning the problem of the treatment of aliens deserved to be taken into consideration.

Article 34 was adopted unanimously.

### Article 35

Colonel DU PASQUIER (Switzerland), Rapporteur, reminded the meeting that Articles 32 to 34 referred to the situation of aliens on the territory of one of the Parties to a conflict at the beginning of a war, whereas Articles 35 to 37 dealt with their situation when they were kept there and not repatriated.

The Drafting Committee had adopted the principle contained in the first sentence of the Stockholm text, viz: that the situation of such persons should continue to be regulated by peacetime legislation. The text submitted by the Drafting Committee (*see Annex No. 248*) went on to enumerate a certain number of rights which should in any case be accorded to them. These were:

- (1) The right to receive individual or collective relief, as laid down in the second sentence of the Stockholm text;
- (2) The right to medical attention, which was mentioned in the first sentence of Article 13 of the Stockholm text. That sentence, having been placed in Part II, appeared to dictate the attitude which States should adopt towards their own citizens; it had therefore seemed preferable to transfer it to the part of the Convention dealing with aliens on the territory of a Party to the conflict and to lay down that the standard of treatment accorded to aliens should be the same as that accorded to nationals of the State concerned;
- (3) The right to practice their religion, as proposed by the Delegation of the Holy See on the first reading of Article 13 (*see Summary Record of the Fifth Meeting*);
- (4) The right, if resident in an area particularly exposed to the dangers of war, to move from that area to the same extent as nationals of the State concerned. That right was provided for in Article 24 of the Stockholm text;
- (5) The right of children under 15, pregnant women and mothers of children under 7 to the same preferential treatment as that received by nationals of the same category; this right had been contained in the second and third paragraphs of Article 27, which the Committee had decided to transfer to Sections II and III of Part III (*see Summary Record of the Twenty-ninth Meeting*).

Could it be contended that those five provisions, borrowed from different Articles, formed an incongruous whole? He, the Rapporteur, did not think so. He believed on the contrary that they were logically grouped around a basic principle and allowed the situation of persons who had not left their homes to be considered with as a whole.

Mr. MARESCA (Italy) drew the attention of the Committee to a point which was not covered in the Convention. Nothing was said there about property of protected persons. That omission was serious, and the Italian Delegation had s

an amendment to Article 35 (*see Summary Record of the Fourteenth Meeting*) in order to make it good. The amendment, proposed on the first reading, did not conflict with any measures of control which might be taken by a State in regard to enemy property. It did not interfere with the application in full of the rules of prize courts, nor with a policy of nationalization. It applied only to protected persons considered to be enemy subjects.

The Italian proposal had a basis which was at once legal, moral and logical. It was based, from the legal point of view, on the fundamental principle that the private property of aliens should be respected in all circumstances—a principle which was the cornerstone of all treaties dealing with domicile. From the moral point of view, it was founded on the idea that it would be unjust to deprive protected persons of property which they might have spent their whole lives in acquiring, taking part in the economic development of the country where they lived and so showing their faith in the destiny of that country. Lastly, from the logical standpoint, the Hague Regulations laid down two rules, namely, that pillage was forbidden and that private property must be respected. Article 30 of the Convention retained the first of those two rules. Misunderstandings might arise if Article 35 did not do the same in the case of the rule regarding respect for private property. An omission in the Convention of any reference to that question might be interpreted as a retrograde step in international law.

Mr. CASTRÉN (Finland) supported the Italian amendment. The principle underlying it was, he thought, absolutely right.

Mr. WERSHOF (Canada), on the contrary, was not in favour of consideration being given to the Italian amendment, not that he contested the soundness of the principle involved, or that the Canadian Government wished to confiscate the property of internees, but because the present Convention concerned individuals and not their property, and because it was not advisable to introduce provisions which were beyond its scope.

Mr. JONES (Australia) wondered whether it would not be wiser to refer the matter back to the Drafting Committee.

Mr. GINNANE (United States of America) said that he must oppose the Italian amendment as at present worded, as it appeared that it might cut across the enemy alien property laws of various States. He saw no reason, however, why it should not be referred back to the Drafting Committee.

Colonel DU PASQUIER (Switzerland), Rapporteur, said that in his view the Drafting Committee could not undertake the task of redrafting the Italian amendment which it had after due consideration unanimously rejected. The chief reason for its rejection was that it touched upon a very complex subject which was already dealt with in the Hague Regulations and which did not come within the terms of reference of the Conference.

The CHAIRMAN put the principle of the Italian amendment to the vote. It was rejected by 13 votes to 7.

The whole of Article 35 was adopted with one dissentient vote.

### Article 36

Colonel DU PASQUIER (Switzerland), Rapporteur, explained that the text proposed by the Drafting Committee (*see Annex No. 250*) took account of amendments submitted by the Canadian and United Kingdom Delegations. The Drafting Committee had tried to omit anything that could be considered as giving preferential treatment to protected persons by comparison with nationals of the countries where they lived; the treatment accorded to nationals should serve as the general standard of treatment to be accorded to everyone.

The second paragraph laid down that protected persons would be assisted by the Protecting Power if the measures of control adopted in regard to them made it impossible for them to earn their own living. The third paragraph reproduced the last sentence of the Stockholm text.

Article 36 was adopted with one dissentient vote.

### Article 39

Colonel DU PASQUIER (Switzerland), Rapporteur, said that the wording submitted by the Drafting Committee was very nearly the same as the Stockholm text. The words "fenced camps" in the first paragraph of the Stockholm text had been omitted in order that the rule laid down might be absolutely general. In the second paragraph, the words "because" had been replaced by the words "as if". Certain other drafting changes had been made in the English text in order to make it correspond more closely with the French.

Mr. SEVERINI (Italy) said that the Drafting Committee had been right in not specifying, in Article 39, which authorities would have to take decisions regarding internment. The Detaining Powers could thus follow their own legislation in the

matter, making either the police, the administrative or the military authorities responsible.

He considered that it was desirable to lay down that decisions regarding internment should not be taken until the persons concerned had been allowed to state their case. He also proposed to insert the words "and placing in assigned residence" in the first paragraph, after the word "internment". That addition was essential so that reference could be made in Article 40 to the "placing in assigned residence" of protected persons.

Colonel DU PASQUIER (Switzerland), rapporteur, objected to the above last minute amendments. If, however, the Committee agreed to them in principle, he would not object to them being referred back to the Drafting Committee with a view to their being included in an acceptable form in the Article as a whole; but that would complicate still further the work of the Drafting Committee.

Put to the vote, Article 39, as proposed by the Drafting Committee, was adopted unanimously, with one abstention (that of the Italian Delegation).

#### Article 42

Colonel DU PASQUIER (Switzerland), Rapporteur, said that the wording proposed by the Drafting Committee reproduced the Stockholm text as it stood. An Italian amendment concerning the property of protected persons had been rejected for the same reasons as those explained in the case of Article 35.

Article 42 was adopted unanimously.

*The meeting rose at 6.45 p.m.*

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### THIRTY-SIXTH MEETING

*Tuesday 28 June 1949, 3 p.m.*

*Chairman:* Mr. Georges CAHEN-SALVADOR (France).

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#### Procedure

The CHAIRMAN said that the belated submission of amendments by some delegations raised a question of procedure. It was essential to decide whether the Rules of Procedure should be strictly applied, in which case those amendments would be disregarded, or whether the latter should be considered. He proposed to consult the Committee regarding the advisability of considering the amendments in question when the Articles to which they referred came up for discussion.

#### Article 77

General SCHEPERS (Netherlands), Rapporteur, reminded the meeting that on June 16th (*see Summary Record of the Thirty-first Meeting*), at the request of the Canadian and Australian Delegations, the text of Article 77 as drawn up by the

Drafting Committee (*see Annex No. 322*) had been referred back to that Committee by Committee III.

The Canadian Delegation had thought that the wording originally adopted by the Drafting Committee was too rigid and that it was wrong in laying an obligation on the Detaining Power to provide air-raid shelters for internees even where such measures had not been taken for the protection of the civilian population. The Australian Delegation considered that the wording of the second paragraph went too far, in that it laid an obligation on the Detaining Power to take "all precautions" against the danger of fire.

The Drafting Committee had met the first of those two points by inserting the words "exposed to air raids and other hazards of war" in the first paragraph, after the words "places of internment", and the second by inserting the word "due" before the word "precautions" in the second paragraph.

The new version of Article 77 proposed by the Drafting Committee was adopted (*see Annex 323*).

**Article 84**

General SCHEPERS (Netherlands), Rapporteur, reminded the meeting that on June 17th (*see Summary Record of the Twenty-second Meeting*), following certain observations submitted by the Belgian Delegation and at the request of the Delegation of the United States of America, the text of Article 84 which the Drafting Committee had drawn up (*see Annex No. 330*) had been referred back to that Committee by Committee III.

The Drafting Committee had confined themselves to replacing the words "Articles 37 and 47" in the first paragraph by "Articles 37 or 47" in order to avoid a possible misinterpretation whereby a breach would only be regarded as existing if it were contrary to the provisions of both those Articles and not merely one of them. No change had been made in the remainder of the Article. The Drafting Committee had felt, in particular, that in the French text, in the second sentence of the fourth paragraph, it was better to speak of "rémunération" rather than "salaires", as proposed in the Belgian amendment, so as to allow payment to be made in kind if necessary. (The term "wages" was used in the English text in both cases.)

The CHAIRMAN said that an amendment had been submitted by the Belgian Delegation (*see Annex No. 329*). If the Rules of Procedure were to be strictly applied, that amendment ought not be taken into consideration. He felt, therefore, that he should ask the Committee to decide whether or not they would agree to consider it.

The Committee decided, by 17 votes to 10, to consider the Belgian amendment.

Mr. MINEUR (Belgium) explained that the amendment had been prepared by his Delegation after consultation with the International Labour Office. The basic idea was that internees should be placed, as far as possible, on the same footing as non-internees in the matter of conditions of work. Should, however, the Committee decide to adopt the Drafting Committee's text, the Belgian Delegation proposed to insert the words "and the other work referred to in the third paragraph" in the last sentence of the fourth paragraph, after "medical services".

Mr. AGATHOCLES (Greece) considered that there was a substantial difference between the wording proposed by the Drafting Committee and that proposed by the Belgian Delegation. Committee III had adopted the principle that the employment of internees on any work other than that provided for in Articles 37 or 47 was forbidden. That principle should be maintained. Moreover, it should not be forgotten that, in view of the pres-

sure which could be brought to bear on the internees, agreements concluded between them, the employers and the Detaining Power would provide the internees with no real safeguard and would not necessarily give a correct interpretation of their wishes.

Mr. MINEUR (Belgium), referring to the second objection raised by the Delegate of Greece, said that the Belgian amendment did not affect the safeguards for which provision was made in the first, second and third paragraphs of Article 84; the amendment merely introduced a new wording for the fourth and fifth paragraphs of the Article.

Mr. WERSHOF (Canada) was against the adoption of the Belgian amendment. The Drafting Committee had already considered an amendment submitted on the first reading by the Indian Delegation (*see Summary Record of the Twentieth Meeting*), dealing with agreements between the internees, the employers and the Detaining Power. That amendment, which, like the Belgian amendment, proposed that the conditions laid down in such agreements should not be less favourable than those obtaining for work of the same nature in the same district, had been rejected by the Drafting Committee. Moreover, the Stockholm text contained no such provision, and although, at first sight, the provision in question appeared to be based on humanitarian principles, it was in reality superfluous, as the work of internees was voluntary. Internees were free either to refuse or to accept the conditions offered to them.

The CHAIRMAN proposed the closure of the discussion.

The discussion was declared closed by 21 votes to 12.

The first three paragraphs of the wording proposed by the Drafting Committee for Article 84 were adopted.

The Belgian amendment replacing the fourth and fifth paragraphs of the Drafting Committee's text, was adopted by 18 votes to 15.

The whole of Article 84, as amended above, was adopted.

**Article 87**

General SCHEPERS (Netherlands), Rapporteur, reminded the meeting that on June 17th (*see Summary Record of the Twenty-second Meeting*), the Committee had referred Article 87 (*see Annex No. 336*) back to the Drafting Committee for reconsideration of the second paragraph; Committee III had felt that, when distributing allowances granted by the Home Power, no discrimi-

nation based on arbitrary considerations or on the political opinions of internees should be allowed. The Drafting Committee believed that the views of the Committee had been fully met by stating in a revised text (*see Annex No. 337*) that such allowances must not be allocated by the Home Power or distributed by the Detaining Power "on the basis of discriminations between internees" which were "prohibited by Article 25 of the present Convention".

Mr. WERSHOF (Canada) felt sure that Article 87 would be adopted by the Committee. He would, however, vote against the Article because he objected to the principle of allowances for internees which was laid down in the first paragraph.

The revised wording of Article 86 was adopted.

### Article 100

General SCHEPERS (Netherlands), Rapporteur, reminded the meeting that on June 20th (*see Summary Record of the Thirty-third Meeting*), the wording which had been drawn up for Article 100 (*see Annex No. 341*) had been referred back to the Drafting Committee for special consideration of a Belgian amendment (*see Annex No. 340*). Consideration of that amendment had given rise to a lengthy discussion.

The revised wording (*see Annex No. 342*) made no change in the first paragraph of the text originally submitted by the Drafting Committee. The representative of the International Committee of the Red Cross had been consulted and had indicated that he preferred that wording.

The second paragraph had likewise been maintained, as the Drafting Committee considered that there was no reason why correspondence sent to internees from within the country of internment should be exempt from postal charges. On the other hand, it had maintained exemption from postal charges on the correspondence sent by internees to destinations within the country of internment, so that internees should under no circumstances be compelled to work in order to procure the necessary funds to cover such postage charges. The text proposed by the Drafting Committee had been adopted by 6 votes to 2.

As regards the question of whether there should or should not be a reference to the Universal Postal Union in the text of the Convention, four members of the Drafting Committee had received instructions to insert such a reference. Accordingly, the text proposed by the majority of the Drafting Committee contained such a reference in the second paragraph. Another text, omitting such a reference, had, however, been submitted by the minority.

Mr. MINEUR (Belgium) dwelt on the advantages presented by the Belgian amendment. Should the Committee nevertheless decide in favour of the text adopted by the majority of the Drafting Committee, it was essential that the second sentence of the second paragraph of that text should be amended to read as follows:

"To that effect, the exemption granted to civilian internees of enemy nationality in the Universal Postal Convention of 1947 and the agreements of the Universal Postal Union, shall be extended to the other categories of protected internees mentioned in the present Convention. States not party to certain of the said agreements shall nevertheless be bound to grant exemption from such dues in the same circumstances."

Further, in the first sentence of the second paragraph, it would seem desirable to insert a comma after "...or despatched by them", as well as after the words "par voie postale" ("through the post office") in the French version.

Mr. JONES (Australia) pointed out that the original text adopted by the Drafting Committee had only taken the Australian amendment, which had been submitted during the first reading (*see Summary Record of the Twenty-first and Thirty-third Meetings*), partly into account. The Australian Delegation had accepted the resultant compromise which represented the opinion of the majority of the Drafting Committee. But the Belgian amendment and the new text proposed by the majority of the Drafting Committee both reintroduced a reference to the Universal Postal Union. Such a reference was, in his opinion, inadmissible, and, if the Committee decided to adopt either of the two versions mentioned, he would ask them to vote on the Australian amendment as originally proposed.

Mr. MONTOYA (Venezuela) remarked that the majority of the countries represented at the Conference were signatories of the Universal Postal Convention. He proposed that the Article should be referred once again to the Drafting Committee for reconsideration in view of that fact.

The CHAIRMAN declared the discussion closed.

The Belgian amendment proposing an alternative wording for the first and second paragraphs of the text proposed by the Drafting Committee was rejected by 16 votes to 8.

The subsidiary amendment of the Belgian Delegation affecting the first and second sentences of the second paragraph was rejected by 8 votes to 6.

The text proposed by the majority of the Drafting Committee was adopted by 23 votes to 8.

The CHAIRMAN explained that he understood that the decision just taken meant that the proposal of the Delegate of Venezuela would be dropped.

The Australian amendment was then rejected.

#### Article 122

General SCHEPERS (Netherlands), Rapporteur, reminded the meeting that on June 22nd (*see Summary Record of the Thirty-fourth Meeting*), the wording which had been drawn up for Article 122 had been referred back to the Drafting Committee following a remark by the representative of the International Committee of the Red Cross to the effect that the last words of the first paragraph ("and, in occupied territories, at latest at the close of the occupation") were redundant. The Drafting Committee had agreed with the opinion which had been expressed and had omitted those words.

Article 122, as amended above, was adopted.

#### Article 122B

General SCHEPERS (Netherlands), Rapporteur, explained that on June 22nd (*see Summary Record of the Thirty-fourth Meeting*), Committee III had taken the view that the Convention should contain an Article dealing with the question of the costs of repatriation of internees. The point, which had been raised by an amendment submitted by the Italian Delegation, had been referred back to the Drafting Committee for consideration. The latter had studied the question taking as their basis a United States proposal in favour of which the Italian Delegation had withdrawn their amendment.

The Drafting Committee had not, however, voted on the text it had drawn up (*see Annex No. 366*), as the wording was entirely new and had not been considered by Committee III on the first reading.

Mr. BAGGE (Denmark) agreed with the first, third and fourth paragraphs of the proposed wording. In regard to the second paragraph, he did not think the Detaining Power could be justly made responsible for the cost of repatriation except in the case of internees who had resided for a certain time on its territory. The Detaining Power should have the right to differentiate between such persons and those interned as a result of precipitate and mass entry into its territory. He suggested that the wording should be modified so as to refer to "permission to continue to reside" in the territory in question.

Mr. ABUT (Turkey) reminded the meeting that the principle of voluntary internment, at the re-

quest of internees, had been agreed to. It would not be fair for the Detaining Power to be made financially responsible for returning such persons to their homes. He suggested that a clause should be inserted relieving the Detaining Power from responsibility in such cases.

Mr. MINEUR (Belgium) supported the proposal of the Delegate of Denmark. He suggested that the wording of the second paragraph should read: "A Detaining Power which refuses a released internee having previously had his permanent domicile in its territory permission to etc.". He considered that the proposal of the Turkish Delegate should also be adopted.

The Delegate of Denmark agreed to the wording of his amendment proposed by the Belgian Delegate. The amendment, thus worded, was adopted.

The principle of the Turkish amendment was likewise adopted on the understanding that the Turkish Delegate would submit it in writing to the Drafting Committee.

The whole of Article 122B, as amended above, was adopted.

#### Articles 49 to 54

The CHAIRMAN proposed to suspend the meeting for a few minutes and then to proceed with the consideration of Articles 49 to 54, the study of which had been completed by the Working Party responsible.

Mr. MOROSOV (Union of Soviet Socialist Republics) proposed that the meeting be adjourned and that consideration of the Articles in question be deferred to the next meeting. His Delegation had not been able to submit amendments to those Articles until they had examined the explanatory note by the Chairman of the Working Party entrusted with the study of Articles 49 to 54. They had only received that document the previous day. As a result, it had not yet been possible to distribute the Soviet amendments. Postponement of the discussion would enable them to be distributed and so allow delegates to take cognizance of them before discussion took place.

The CHAIRMAN regretted that he could not agree to the foregoing procedure which would constitute a dangerous precedent. He proposed, however, to put the Soviet Union amendments for discussion after reading them aloud, as had been done in the case of the Belgian amendment.

Mr. QUENTIN-BAXTER (New Zealand) felt that the Soviet Delegation had acted properly in refraining from submitting amendments until it had

had cognizance of the report of the Working Party. On the other hand, the Articles in question were very intricate, and it would be wrong for the Delegations to be faced with amendments to them, which they had not previously seen. Accordingly, he supported the proposal to postpone the discussion both out of consideration for the Soviet Union Delegation and in order to give the other delegations sufficient time to study the amendments.

Mr. GINNANE (United States of America) fully agreed with the above point of view.

Mr. MEVORAH (Bulgaria), Chairman of the Working Party entrusted with the study of Articles

49 to 54, said that those Articles had been rearranged in a way which would have been difficult to follow without the explanatory note which he had drafted in order to assist the delegates. He regretted that, owing to material difficulties, it had been impossible to circulate the note simultaneously with the amendments. Consideration of the Articles might with advantage be postponed until the following meeting.

Mr. DAY (United Kingdom) supported the above proposal in view of the vital importance of the Articles in question.

*The meeting rose at 6 p. m.*

### THIRTY-SEVENTH MEETING

*Wednesday 29 June 1949, 3 p.m.*

*Chairman: Mr. Georges CAHEN-SALVADOR (France).*

#### Article 49

Mr. MEVORAH (Bulgaria), Rapporteur, explained that the Working Party had redistributed the subject matter contained in Article 49 as adopted at Stockholm. The only portion of that text which had been retained in the new version of Article 49 (*see Annex No. 281*) was the principle that an obligation rested on the Occupying Power to ensure the supply of foodstuffs and medicaments of the population, and the question of requisition. The remainder of Article 49 in the Stockholm text, had been redistributed among the Articles which followed.

In its opening words "To the fullest extent of the means available to it", the text of the Working Party took account of a United States amendment (*see Annex No. 280*) requiring the Occupying Power to endeavour, within the means available to it, to ensure the food supply of the population. The Working Party had omitted the word "civilian" before the word "population" in the first paragraph, being of the opinion that the case of relief intended for troops in camps in occupied territory must also be provided for. The reference to "international standards of nutrition", which had been introduced at Stockholm, had been rejected unanimously because it

did not appear possible to refer to standards which had not yet been established. The Belgian Delegation, supported by that of Denmark, had made certain suggestions concerning the second paragraph. Those suggestions had been embodied in the "Minority Text" (*see Annex No. 281*).

Mr. MOROSOV (Union of Soviet Socialist Republics) considered that a great many of the changes made in the Stockholm text by the Working Party were unjustified. The second paragraph of the new wording of Article 49 conferred on the Occupying Power a power to evaluate the food requirements of the civil population, which was not provided for in the Stockholm version. The Soviet Delegation was strongly opposed to that change. It considered, moreover, that the clause permitting the requisitioning of medical supplies should be omitted from the second paragraph. The Soviet Delegation also wished to draw the attention of the Committee to the fact that Article 49, in that respect, conflicted to some extent with Article 50 A. In order that the interests of the civilian population in occupied territory might be better protected, the words "only if the requirements of the civilian population are taken into account" in the second paragraph should be replaced by "providing the

needs of the civilian population are sufficiently covered". Lastly, it was essential in the first paragraph to provide expressly for "medicaments, vaccines, serums and dressings"; the term "medical supplies" did not appear adequate.

The Soviet Delegation had accordingly submitted an amendment (*see Annex No. 282*) to the Working Party's text.

Mr. MINEUR (Belgium) considered that the word "requisition" which appeared in the first part of the second paragraph and which had been substituted by the Working Party for the words "commandeer or use for its own purposes" in the Stockholm text was considerably more restrictive than the latter wording. There were, indeed, means other than requisitioning by which an occupied territory could be stripped of its resources by an Occupying Power, if only by purchases, legal on the surface, but financed by the large-scale printing of notes. It was for those reasons that the Belgian Delegation, jointly with the Danish Delegation, had submitted an amendment replacing the word "requisition" by the words "draw upon by means of requisition or by any other means". His Delegation further proposed to omit the words "and administration personnel" in the first sentence of the second paragraph; for an Occupying Power must not be allowed to think that it was authorized to increase unduly the strength of its army of occupation by attaching a large number of civilians to it, under the pretext that they were administrative personnel. Besides, that was a new idea which had not been provided for under the Hague Regulations.

Mr. BAGGE (Denmark) supported the proposal of the Belgian Delegate in the light of the experience of his country during the second world war.

Mr. DAY (United Kingdom) had every sympathy with the motives that had prompted the Delegates of countries which had suffered so acutely from the occupation during the last war, to propose the foregoing amendments. He felt, however, that the wording adopted by the Working Party, which provided, in particular, for the possible importation of foodstuffs for the civilian population, constituted a better safeguard. Administration personnel formed a part of the occupying forces. If the Hague Regulations only mentioned the "army of occupation", it was because, in 1907, occupying forces were not organized as they are at present and did not include an appreciable number of civilian administration personnel. The enumeration proposed in the Soviet amendment added nothing to the text, since the stores listed were already included under the heading of "medical supplies". It was better to adhere

to a more general term rather than to introduce an incomplete list which might be considered restrictive.

He thought it preferable, therefore, to retain the text of the Working Party.

Mr. QUENTIN-BAXTER (New-Zealand) raised objections to the amendment proposed by the Soviet Delegation. First of all, the change in the wording of the second paragraph, proposed under sub-paragraph (2a), was unnecessary in view of the specific and extensive obligation to be assumed by the Occupying Power under the first paragraph of the Working Party's text. Secondly, the significance of a generic term would only be lessened if it was replaced by a list which was bound to be incomplete. Again, he saw no contradiction between the provisions of Articles 49 and 50 A. The Belgian and Danish amendments could not, in his opinion, be adopted; it was essential to provide for the requirements of the administration personnel, and the word "requisition", which implied the idea of remuneration, must be maintained.

He strongly urged the adoption of the majority text of the Working Party.

Mr. GINNANE (United States of America) stressed the vital importance of Articles 49 to 54; the Conference would fail in its task if a solution were not found for those Articles. The Working Party had made a praiseworthy endeavour to arrive at texts acceptable to the greatest possible number of delegations. That had been achieved only by a succession of compromises on all the important issues. Although the United States Delegation would have preferred different solutions for certain points, it was prepared, in a spirit of conciliation, to support the text proposed for Articles 49 to 54 by the majority of the Working Party. It was not, on the other hand, in favour of adopting the amendment proposed by the Belgian Delegation. If the word "requisition" was replaced by the phrase "draw upon by means of requisition or any other means", an Occupying Power would be prevented from transferring food from an occupied territory where there was a surplus of agricultural products to another occupied territory where the population was starving. The result would be that trade, which is normally in the hands of Governments in time of war, would be stopped, and the agricultural country would be unable to receive manufactured goods in exchange for its surplus foodstuffs. The populations of both of the occupied territories concerned, would thus suffer.

The CHAIRMAN put Article 49, and the amendments relating to it, to the vote.

Paragraph 1 of the Soviet amendment (to insert the words "medicaments, vaccines, serums and dressings" after the word "foodstuffs" in the first paragraph) was rejected by 22 votes to 9.

The Belgian amendment proposing that the word "requisition" in the second paragraph should be replaced by the words "draw upon by means of requisition of any other means", was rejected by 21 votes to 13.

Sub-paragraph (2b) of the amendment proposed by the Soviet Delegation (to omit the words "as also medical supplies" in the first sentence of the second paragraph) was rejected by 20 votes to 9.

The Belgian amendment proposing the omission of the words "and administration personnel" in the first sentence of the second paragraph was rejected by 17 votes to 13.

Sub-paragraph (2a) of the Soviet amendment (to replace the words "only if the requirements of the civilian population are taken into account" in the second paragraph, by the phrase "providing the needs of the civilian population are sufficiently covered") was rejected by 18 votes to 9.

The whole of Article 49 as submitted by the Working Party was adopted by 26 votes, with 8 abstentions.

### Article 50 and New Article 50A

Mr. MEVORAH (Bulgaria), Rapporteur, said that the Working Party had introduced the phrase "To the fullest extent of the means available to it", at the beginning of Article 50 (see *Annex No. 283*), as they had done in the case of Article 49. Both the substance and the wording of Article 50 were somewhat different from the Stockholm version, and a sentence which had been taken from Article 13 (see *Summary Record of the Twenty-fifth Meeting*), reading: "Medical personnel of all categories shall be allowed to carry out their duties", had been added to the end of the first paragraph. The Working Party had also unanimously agreed to add a second paragraph relating to new hospitals set up in occupied territory. It had likewise decided to adopt the substance of an Irish amendment which had been supported by the Pakistan Delegation, and had added a new third paragraph worded as follows:

"In adopting health and hygiene measures and their implementation, the Occupying Power shall take into consideration the moral and ethical susceptibilities of the population of the occupied territory."

It was understood that the above wording would only impose a moral obligation on the Occupying Power.

The substance of Article 17 had already been agreed to by Committee III (see *Summary Record of the Twenty-sixth Meeting*), but the question of its transfer to Section II of Part III had not been decided pending a decision by the Joint Sub-committee; the majority of the members of that Sub-committee had considered that the transfer should take place. The Working Party had taken account of their decision by including the second and third paragraphs of Article 17, slightly modified, in a new Article 50 A.

It had not appeared necessary to retain the first paragraph of Article 17, as it was only a repetition of Articles 15, 30 and 50; Article 17 had, therefore, been deleted. However, as this deletion affected a text which had already been adopted by Committee III, the latter would have to agree to it by a two thirds majority.

Mr. MOROSOV (Union of Soviet Socialist Republics) requested that the first paragraph of Article 17 should be inserted at the beginning of Article 50. As Article 17 had already been adopted by the Committee, its contents could not be modified except by a two thirds majority. He urged the reinstatement of the following wording: "Civilian hospitals in enemy or occupied territory may pursue their activities and shall be protected against pillage".

Mr. SENDIK (Union of Soviet Socialist Republics) added that the Soviet Delegation also wished to replace the word "requisition", in the first paragraph of Article 50 A, by the words "make use of".

Colonel DU PASQUIER (Switzerland), speaking as a member of the Joint Committee, said that in his opinion the first amendment proposed by the Soviet Delegation was unnecessary. First of all, with regard to the objection raised by that Delegation that Article 17, having been adopted by the Committee, could only be modified or deleted by a two thirds majority, it should be noted that the summary record of the twenty-sixth meeting, during which Article 17 had been discussed and agreed to and then referred to the Joint Sub-committee, showed that it rested with the latter to make the necessary decisions regarding the transposition and exact wording of the Article; the decisions by Committee III on the various points raised had been taken solely for the guidance of the Joint Sub-committee.

In a legal text it was essential to avoid repetition. Hospitals were already protected under Articles 15 and 50, and pillage was prohibited under

Article 30; there was, therefore, no reason for expressly stating again, in Article 50, that civilian hospitals might pursue their activities and that they would be protected against pillage.

The expression "requisition of civilian hospitals" in the first sentence of Article 50 A, which the Soviet Delegation proposed replacing by the words "make use of civilian hospitals", was a technical term the use of which was even more fully justified in Article 50 than in the preceding Article 49 where the Committee had just decided that it should be retained.

The CHAIRMAN asked the Soviet Delegate if the explanations given by the Swiss Delegate satisfied him.

Mr. MOROSOV (Union of Soviet Socialist Republics) said that he wished to maintain his first amendment proposing that the first paragraph of Article 17 be retained and inserted at the beginning of Article 50.

The above amendment was rejected by 16 votes to 10.

Article 50, as proposed by the Working Party, was adopted.

The Soviet amendment proposing that the word "requisition" in the first paragraph of Article 50 A should be replaced by the words "make use of", was rejected by 19 votes to 8.

Article 50 A, as proposed by the Working Party (*see Annex No. 284*), was adopted with no dissentient vote.

#### **New Article 50B**

Mr. MEVORAH (Bulgaria), Rapporteur, said that Article 50B (*see Annex No. 285*) was based on an amendment submitted by the Delegation of the Holy See, the wording of which had been slightly modified in the light of similar changes which the Drafting Committee had made in the

wording of Article 35. There were no amendments to this Article which was adopted with no dissentient vote.

#### **New Article 50C**

Mr. MEVORAH (Bulgaria), Rapporteur, said that Article 50 C (*see Annex No. 286*) contained the last three paragraphs of the Stockholm wording of Article 49, which had been reproduced without modification. The Working Party had introduced a fourth paragraph based on an amendment proposed by the United Kingdom Delegation. The Danish Delegation had proposed that the words "and other National Red Cross Societies" should be inserted in the second paragraph after the words "International Committee of the Red Cross". The Working Party had rejected the above proposal, as they considered it redundant, the National Red Cross Societies being covered by the expression "impartial humanitarian bodies".

Mr. MOROSOV (Union of Soviet Socialist Republics) suggested that the wording should be made clearer by inserting the words "with food-stuffs and medical stores" in the first sentence of the first paragraph, after the word "supplied".

Mr. DAY (United Kingdom) considered that where relief supplies were concerned it was wiser not to introduce any form of wording which might limit the scope of the text. The supplies might, for instance, also include clothing, and it would be better to keep to a wording which was completely general.

The Soviet amendment was rejected by 18 votes to 8.

Article 50C, as proposed by the Working Party, was adopted.

*The meeting rose at 6.15 p.m.*

## THIRTY-EIGHTH MEETING

Thursday 30 June 1949, 3 p.m.

Chairman: Mr. Georges CAHEN-SALVADOR (France).

### Progress of Work

The CHAIRMAN proposed that the Working Party which had just completed the study of Articles 49 to 54, should relieve Drafting Committees I and 2 of part of their duties by undertaking the consideration of Articles 122 to 127.

The proposal, supported by Mr. JONES (Australia), who paid a tribute to the results achieved by the Working Party under the chairmanship of Mr. Mevorah, was adopted unanimously.

Mr. CASTRÉN (Finland) having asked to be relieved of his duties with the Working Party on account of those which he had to undertake as a member of the Drafting Committee of Committee II, Mr. Bluehdorn (Austria), on the proposal of Mr. QUENTIN-BAXTER (New-Zealand), was appointed in his place.

The CHAIRMAN informed the Committee of Mr. Mevorah's wish that the Working Party, which at present comprised 7 members, should also include a representative of the Delegation of the Union of Soviet Socialist Republics (or one of the Slav Delegations), and a representative of either the United States Delegation or that of the United Kingdom. It was agreed that the appointments should be made by the Delegations concerned, in consultation with the Chairman of the Working Party.

The CHAIRMAN said that he had received a letter from Mr. Castberg (Norway), Chairman of the Co-ordination Committee, informing him of the appointment of a Committee of Experts, whose task would be to prepare the work of the Co-ordination Committee, bringing to the attention of the latter any lack of co-ordination in the texts drawn up by Committees I, II and III. Mr. Mill Irving (United Kingdom), Rapporteur of the Co-ordination Committee, Mr. Mevorah (Bulgaria), and Mr. Bluehdorn (Austria) were members of the Committee of Experts. Mr. Castberg suggested that a delegate

chosen from each of the three main Committees should also be appointed to it.

On the proposal of the Chairman, Mr. Mineur (Belgium) was unanimously elected to be the representative of Committee III on the Committee of Experts of the Co-ordination Committee.

### Article 51

Mr. MEVORAH (Bulgaria), Rapporteur, said that the first sentence of the wording of Article 51 proposed by the Working Party (*see Annex No. 287*) was essentially the same as the first sentence of the wording adopted at Stockholm. In the new text, a restriction which favoured the Occupying Power ("except in the event of urgent necessity") had been added to the purport of the second paragraph of the Stockholm text. The word "requisition" in the Stockholm version, had been replaced by "divert" which had a wider meaning and included the prohibition of the requisitioning of consignments, of their diversion (in the strict sense of the word) and of any change in the purpose for which they were intended.

Mr. GINNANE (United States of America) wished to know if the text had been unanimously approved by the Working Party.

Mr. MEVORAH (Bulgaria), Rapporteur, replied that the wording of Article 51 had been discussed at great length. The present text represented a compromise solution. No member of the Working Party had formally opposed the text.

Mr. SOKIRKIN (Union of Soviet Socialist Republics) opposed the decision adopted by the Working Party, whereby an Occupying Power could, with the consent of the Protecting Power, requisition relief consignments "in the event of urgent necessity". The Soviet Delegation believed that the absolute interdiction of such requisitioning in the Stockholm text should be restored. His Dele-

gation would like to hear the views of the International Committee of the Red Cross on the matter, as the new wording might completely undermine the work of humanitarian organizations bringing relief to the populations of occupied territories.

Mr. CASTBERG (Norway) said that, if it had been the intention of the Working Party to permit the requisitioning of relief consignments for the benefit of the occupying forces, he would certainly have refused to consider the proposed text. But the intention of the provision was to make it possible for the Occupying Power to direct consignments of relief supplies in a given direction in the case of special circumstances (such as epidemics, difficulties of transport, etc.). In order, however, to avoid any ambiguity in the wording, he proposed to insert the words "in the interest of the population of the occupied territory" after the words "urgent necessity" in the Drafting Committee's text. He thought that the addition of those words should meet the point of the Soviet Delegation.

Mr. PILLOUD (International Committee of the Red Cross) said that the International Committee of the Red Cross had had considerable experience of relief consignments. He thought he could therefore say that the text proposed by the Working Party took no account of the practice followed in the last war. For example, Article 1 of the Agreement concerning relief supplies for Greece, which was concluded between Germany and the Blockading Powers through intermediary of the Swedish Government, stipulated that those supplies were intended exclusively for the Greek population. It had been the same in the case of supplies sent, in France, to the isolated areas known as the "Atlantic pockets". In fact, donors always made a similar stipulation in such circumstances. A provision contrary to that practice would be likely to discourage all relief measures. While fully appreciating the intention of the Norwegian Delegate, he feared that the wording of Article 51, even if modified as the latter had suggested, might leave a doubt in the minds of the donors.

Mr. DAY (United Kingdom), while understanding the arguments put forward by the representative of the International Committee of the Red Cross, gave an example of one of the situations which the Working Party had had in mind: it was obvious that if an epidemic was over in one town and had broken out in another, relief supplies of medical stores originally intended for the first town ought to be made available for use in the town where the epidemic was raging. The safeguards provided in the wording of the Working Party, together with that suggested by the Norwegian Delegate, appeared to be adequate.

Mr. MOROSOV (Union of Soviet Socialist Republics) warned the Committee against the policy of a certain majority of the Committee who apparently wished to restrict the humanitarian scope of the Stockholm text. The Soviet Delegation, for their part, wished to adhere to the latter text, and proposed that the second paragraph of the Stockholm wording should be restored.

Mr. CASTRÉN (Finland) thought that the addition proposed by the Norwegian Delegate was very necessary in order to explain a point in the Working Party's text which was not completely clear. He considered that the Article, thus amended, provided better safeguards for the civilian population than the Stockholm text and he therefore urged its adoption.

Mr. MEVORAH (Bulgaria), Rapporteur, said he had been much impressed by the remarks of the representative of the International Committee of the Red Cross. He wondered quite frankly whether the Working Party had not gone too far and opened the way to possible abuses. On further considerations, he felt that the words "except in the event of urgent necessity" were inappropriate. If the Committee should decide to revert to the Stockholm text, he would willingly agree to that solution.

Mr. QUENTIN-BAXTER (New Zealand) did not doubt the sincerity of Mr. Mevorah's remarks. He wished, however, to point out that the latter was speaking in his capacity as Delegate of Bulgaria, and not as Rapporteur or on behalf of the members of the Working Party which had adopted the Article under discussion.

Mr. MEVORAH (Bulgaria), Rapporteur, confirmed that that was so.

Mrs. LUCA (Rumania) supported the Soviet amendment, in the light, in particular, of the statement by the representative of the International Committee of the Red Cross.

Mr. BAGGE (Denmark) said that, although he was a member of the Working Party, he, like Mr. Mevorah, had been greatly impressed by the observations of the representative of the International Committee of the Red Cross. Speaking in his capacity as Delegate of Denmark, he proposed that the Stockholm wording should be restored, and that it should be strengthened by emphasizing the fact that relief consignments were intended for the civilian population. That could be done by adding the words "to bring assistance to the population of the occupied territory" after the word "destination".

The CHAIRMAN proposed to put Article 51 to the vote.

No objection having been raised to the first sentence of Article 51, it was adopted unanimously.

With regard to the second sentence, the Soviet amendment for the reinstatement of the Stockholm wording, was rejected by 17 votes to 10.

As a result of that decision, the Danish amendment (for an addition to the Stockholm text which the Soviet Delegate had wished to restore) became unnecessary.

The Norwegian amendment proposing that the words "in the interest of the population of the occupied territory" should be inserted after the words "urgent necessity", was adopted by 19 votes, with no dissentient votes.

The CHAIRMAN noted that the point of the Danish proposal had also been met by the adoption of the above amendment.

The whole of Article 51 thus amended was adopted by 21 votes, with no dissentient votes.

#### New Article 51A

Mr. MEVORAH (Bulgaria), Rapporteur, explained that Article 51A (*see Annex No. 288*) had been drawn up by the Working Party on the basis of a proposal of the United Kingdom Delegation to prohibit the illicit traffic of war weapons under cover of relief consignments.

Mr. ABUT (Turkey) feared that Article 51 might impede relief measures for the civilian population on insufficient grounds, in spite of the last sentence providing for the possibility of further relief consignments when the good faith of the sender had been re-established. He would like to hear the opinion of the representative of the International Committee of the Red Cross.

Mr. SOKIRKIN (Union of Soviet Socialist Republics) also wished to know the views of the representative of the International Committee of the Red Cross. He wondered how the good faith of the sender could be established? Would it be by a strict control of the consignments? But how could that be achieved when further consignments were prohibited? There was, in short, a contradiction between the first and second sentences of the Article. Everyone had a high regard for the experience of the International Committee of the Red Cross. It would be helpful to know if that Committee thought that the restrictions laid down in Article 51A were necessary.

Mr. PILLOUD (International Committee of the Red Cross) regretted that he had been unable to

attend the meetings of the Working Party as he had had to be present at those of Drafting Committee No. 1. Knowing the liberal attitude of the members of the Working Party, he was sure that he could have persuaded them that the Article, as worded at present, was not only useless, but dangerous. In its present place in the Draft Convention, the provision could only refer to collective consignments, which the Occupying Power was not obliged to accept unless the food supply of the occupied territory was inadequate. It was a question of moving considerable quantities of merchandise; for instance, the feeding of Greece had involved the movement of 20,000 tons a month. Such operations were not entrusted to private individuals, but to humanitarian bodies which had no interest in facilitating illicit traffic in arms. It might happen that weapons were slipped into certain parcels. That, however, could only happen in isolated cases, and it should be remembered that the Occupying Power had the right not only to check the consignments, but to seize everything which did not constitute relief supplies for the civil population. There had been several such cases in the last war. For example, the German authorities had discovered compasses, intended to facilitate the escape of prisoners of war, in certain parcels. In every such case, the International Committee of the Red Cross had been able to establish the good faith of the forwarding authorities, so that relief consignments had never, at any time, been stopped.

The International Committee of the Red Cross earnestly hoped that the Article in question would not be retained.

Mr. DAY (United Kingdom) pointed out the dangers which an Occupying Power might run in a partisan type of warfare. In view of the obligations imposed on the Occupying Power under Article 50C, in connection with the feeding of the civilian population, it would be difficult for that Power to examine all the relief consignments necessary for that purpose. He therefore supported the text proposed by the Working Party, which had adopted and improved a proposal submitted by the United Kingdom Delegation.

Mr. TAUBER (Czechoslovakia) thought that notwithstanding the difficulties alluded to by the United Kingdom Delegate, Article 51A should be omitted in view of the particularly convincing statement made by the representative of the International Committee of the Red Cross.

Mr. MOROSOV (Union of Soviet Socialist Republics) dwelt on the dangers to which Article 51A might give rise. He hoped that the vote would show which of the delegations were really imbued with

a humanitarian spirit. Such delegations would, in his view, vote purely and simply for the omission of Article 51A in accordance with the proposal of the Soviet Delegation.

The CHAIRMAN declared the discussion closed. The Soviet amendment proposing the omission of Article 51A, was adopted by 11 votes to 10.

Mr. WERSHOF (Canada) having asked for the vote to be taken again by roll-call, Mr. MOROSOV objected on the grounds that the vote had already been taken, and that under the Rules of Procedure a roll-call vote could only be asked for before a vote by show of hands had been taken. The Rules of Procedure also laid down that a vote, once taken, could only be reconsidered by a two thirds majority.

The CHAIRMAN read Article 36 of the Rules of Procedure, which he interpreted in the same sense as the Soviet Delegate. He put the matter to the vote of the Committee, who decided in favour of the Chairman's interpretation by 21 votes to 2.

Mr. GINNANE (United States of America) felt that a different interpretation would have had the advantage of limiting the number of requests for roll-call votes. Such requests were only made in cases where it seemed likely that there would only be a small majority. If requests for a roll-call vote had to be made before a vote by show of hands was taken, there would be a danger of increasing the number of such requests, thus retarding the work of the Committee.

### Article 52

Mr. MEVORAH (Bulgaria), Rapporteur, said that the wording of Article 52 proposed by the Working Party (*see Annex No. 289*) accorded the Protecting Power priority over neutral Powers as regards the supervision of the distribution of relief stores. Neutral Powers had been placed on the same footing as substitutes for the Protecting Powers such as the International Committee of the Red Cross and other impartial humanitarian bodies. Amended in that way, Article 52 did not overlap with Article 9. The latter dealt with the automatic replacement of the Protecting Power, while Article 52 spoke of certain of the Protecting Power's duties being delegated by agreement.

In the second paragraph, the Working Party had introduced a reservation to the Stockholm wording. The object of that reservation ("unless these latter are necessary in the interests of the economy of the territory") was to avoid the difficul-

ties which free transit might create (the danger of blackmarket dealings, inflation, etc.).

On the other hand, a third paragraph had been added, asking the Contracting Parties to permit the free transit and carriage of relief consignments; (only a moral obligation was laid on the Parties concerned).

M. SOKIRKIN (Union of Soviet Socialist Republics) criticized the wording of the last paragraph which, he considered, hindered humanitarian measures by permitting the levying of taxes on relief consignments in certain cases. He proposed that the second paragraph of the Stockholm text should be restored.

Mr. WERSHOF (Canada) did not propose to discuss the merits of the text submitted by the Working Party. He would, however, like to know whether the wording had been adopted unanimously and, if not, which members of the Working Party had voted for or against it, and which had abstained from voting.

Mr. MEVORAH (Bulgaria), Rapporteur, replied that the text was the result of a compromise and had been unanimously adopted. That fact, however, did not prevent any member of the Working Party from having a personal opinion, or from modifying his point of view in the face of new arguments.

The CHAIRMAN agreed with Mr. Mevorah's reply, but pointed out that, as a general rule, the conclusions reached by a Working Party should be considered as binding those members who had approved them.

Mr. GINNANE (United States of America) moved that the discussion be closed.

Agreed.

The amendment proposed by the Soviet Delegation (to revert to the Stockholm wording of the second paragraph), was rejected by 16 votes to 6.

Article 52, as proposed by the Working Party, was adopted by 18 votes, with no dissentient votes.

### Article 53

Mr. MEVORAH (Bulgaria), Rapporteur, said that the text proposed by the Working Party was the same as the Stockholm wording except that the phrase "which the Occupying Power may advance" had been omitted as the result of a suggestion by the Delegation of the United States of America. That phrase had been omitted in order that imaginary considerations of security invoked by the

Occupying Authorities should not hold up individual relief consignments. It was, however, obvious that the "imperative reasons of security" referred to were those which affected the Occupying Power; he saw no objection to that fact being stated.

Mr. SOKIRKIN (Union of Soviet Socialist Republics) considered that the omission of the phrase in question was unjustified. The Stockholm text had the advantage of admitting only one obstacle to individual relief consignments, namely, "imperative reasons of security which the Occupying Power may advance". If the purport of those words were omitted, other obstacles might be created. He proposed, therefore, that the whole of the Stockholm wording should be reinstated.

Mr. QUENTIN-BAXTER (New Zealand) said that the Working Party had omitted the phrase purely in the interests of the population of occupied territories; the omission of the words in question improved the tenor of the Article.

Put to the vote, the Soviet amendment for the reinstatement of the Stockholm text was rejected by 17 votes to 6.

Mr. WERSHOF (Canada) having objected to the consideration of an amendment proposed by Mr. MEVORAH (Bulgaria) (to add the words "of the Occupying Power" after "reasons of security") on the grounds that it had been submitted after the vote had been taken, the Bulgarian Delegate withdrew the amendment.

The wording of Article 53, submitted by the Working Party, was adopted by 17 votes, with no dissentient votes.

#### Article 54

Mr. MEVORAH (Bulgaria), Rapporteur, explained that the Working Party (*see Annex No. 293*), taking account of an amendment tabled by the United States Delegation and of implications contained in the Stockholm text, had adopted the following wording for the first sentence: "Subject to the temporary measures which might be imposed for urgent reasons of security by the Occupying Power".

On the proposal of the Belgian Delegate, the Working Party had added a new paragraph (*see Annex No. 290 and Summary Record of the Eighteenth Meeting*) relating to special organizations of a non-military character. The paragraph referred to civil security services which had existed in many countries during the last war and which were not covered by the term "other relief societies"; they were in fact well outside the limits of humanitarian organizations and were governed by national legislation.

Mr. SOKIRKIN (Union of Soviet Socialist Republics) considered that the changes introduced by the Working Party were unacceptable. He was strongly opposed to the new provisions which had been proposed and urged that the Stockholm text should be adopted as proposed in the amendment submitted by his Delegation (*see Annex No. 292*).

Mr. QUENTIN-BAXTER (New Zealand) said that Article 54, as submitted by the Working Party, represented a real achievement, which the Committee should not invalidate.

Mr. ABUT (Turkey) proposed that the words "Red Crescent, Red Lion and Sun" should be added, in brackets, after the words "Red Cross Societies" in the first paragraph, sub-paragraph (a).

Mr. CASTBERG (Norway) was in favour of the wording proposed by the Working Party. He suggested an amendment in order to qualify the implication contained in the first sentence of the first paragraph, namely, the insertion of the words "and exceptional" after the word "temporary".

The CHAIRMAN declared the discussion closed and put the Article, and the amendments to it, to the vote.

The first point of the Soviet amendment (to omit the words "Subject to temporary measures which might be imposed for urgent reasons of security by the Occupying Power" in the first paragraph) was rejected by 16 votes to 6.

The Turkish amendment for the insertion of the words "(Red Crescent, Red Lion and Sun)" in the first sentence of the first paragraph, sub-paragraph (a), was adopted.

The second point of the Soviet amendment (to omit the words "The other relief societies shall be permitted to continue their humanitarian activities under similar conditions" in the first paragraph, sub-paragraph (a)) was rejected by 16 votes to 6.

The third point of the Soviet amendment (to replace the second paragraph by the following text: "The other relief societies shall be permitted to continue their humanitarian activities under similar conditions, provided that they refrain from any act which might be harmful to the Occupying Power.") was rejected by 16 votes to 6.

The amendment proposed by the Norwegian Delegation (to insert the words "and exceptional" after the word "temporary" in the first sentence of the Article) was adopted by 11 votes to 2.

The whole of Article 54, as amended above, was adopted by 15 votes to 4.

*The meeting rose at 7.30 p. m.*

## THIRTY-NINTH MEETING

Wednesday 6 July 1949, 10 a.m.

*Chairman:* Mr. Georges CAHEN-SALVADOR (France) ; subsequently  
Mr. Nissim MEVORAH (Bulgaria).

### Article 37

Colonel DU PASQUIER (Switzerland), Rapporteur, observed that the wording proposed at Stockholm by the International Committee of the Red Cross had not drawn any parallel between nationals of the Parties to the conflict and alien internees so far as conditions of work were concerned. The wording adopted by the Drafting Committee (*see Annex No. 255*), on the other hand, had done so. The Article began with the words "In cases where citizens of a Party to the conflict are required to do compulsory labour...", and so took account of an amendment submitted by the Italian Delegation. The Drafting Committee had also adopted an amendment submitted by the Indian Delegation, replacing the words "may not be employed in" in the first paragraph of the Stockholm text, by "may not be compelled to do".

As the result of observations submitted during the first reading (*see Summary Record of the Fourteenth Meeting*), the United Kingdom Delegation had tabled an amendment concerning the legal conditions of work; that amendment was based on the memorandum of the International Labour Office. The Drafting Committee had not, however, considered it desirable to enter into such detail and had adhered to the Stockholm wording, subject to the two amendments referred to above.

Mr. SPEAKE (United Kingdom) introduced a second United Kingdom amendment (*see Annex No. 256*) relating to the Drafting Committee's text. The amendment covered much the same ground as that proposed by the Belgian Delegation (*see Annex No. 257*) and it provided protected persons with better safeguards in the matter of working conditions by placing them on an equal footing with nationals of the Parties to the conflict. With regard to the restrictions on the kind of work which internees might be required to do, the United Kingdom Delegation had thought that such restrictions should only be applied in the case

of enemy aliens; non-enemy aliens and neutrals should, in their opinion, be placed on exactly the same footing as nationals. They also proposed that it should be laid down that the work which protected persons could be required to do, must not be "directly related to the conduct of military operations".

Mr. GINNANE (United States of America) strongly supported the United Kingdom Delegation's amendment.

Mr. MEVORAH (Bulgaria) took the chair.

Mr. MINEUR (Belgium) agreed that the Belgian amendment was very similar to that proposed by the United Kingdom Delegation. His Delegation's amendment was, however, less restrictive as regards the work which protected persons of enemy nationality might be required to do, and also appeared to provide protected persons with better protection by stipulating that they should have the benefit of the same working conditions and also enjoy the same "safeguards" as national workers. The Belgian Delegation had based their amendment on the wording proposed by the International Committee of the Red Cross, but had made certain additions to it.

Mr. PILLOUD (International Committee of the Red Cross) said that on the preceding day Committee II had adopted an appreciably different wording for an Article on the same subject (Article 42 of the Prisoners of War Convention).

Mr. MOROSOV (Union of Soviet Socialist Republics) considered that the provisions contained in the United Kingdom and Belgian amendments under which all non-enemy aliens could be compelled to do any kind of work, even if such work contributed to the war effort of the Party to the conflict, were wholly unacceptable. Point 3) of the Belgian amendment, on the other hand,

should be retained, since it placed internees on the same footing as nationals of the Parties to the conflict so far as conditions of work and safeguards were concerned.

He recommended the adoption of the Stockholm text, as modified by the Drafting Committee and with the addition of point 3) of the Belgian amendment.

Mr. BLUEHDORN (Austria) suggested that Article 37 should be referred back to the Drafting Committee for re-drafting along the lines of Article 42 of the Prisoners of War Convention.

Mr. WERSHOF (Canada) opposed the proposal on the ground that the two problems of compulsory work, for internees, on the one hand, and for prisoners of war, on the other, were essentially different. It was for the Coordination Committee to establish any necessary concordance between the two texts.

The proposal to refer the Article back to the Drafting Committee was rejected.

Colonel DU PASQUIER (Switzerland), Rapporteur, referring to the statement by the Soviet Delegate, suggested that a separate vote should be taken on each point of the two amendments submitted on the second reading by the Delegations of Belgium and the United Kingdom respectively. If the United Kingdom and Belgium proposals concerning the work of non-enemy and neutral aliens were rejected, together with point 2) of the Belgian amendment, then the first paragraph of the Drafting Committee's text could be maintained, with the addition, at the end of the first paragraph, of the provisions contained in point 3) of the Belgian amendment. The Drafting Committee, whom he had consulted on the subject, was not opposed to such an addition.

The CHAIRMAN summed up the discussion. The Committee would have to take a decision on three points:

- (1) Should the restrictions on the types of work done be applied only to enemy aliens (sub-paragraph (2) of the Belgian amendment, second sentence of the United Kingdom amendment) ?
- (2) Should working conditions be the same as those enjoyed by nationals (sub-paragraph (3) of the Belgian amendment, first sentence of the United Kingdom amendment)?
- (3) Should the restrictions on the types of work authorized be those enumerated in the Drafting Committee's text, or should they be in accordance with the wording proposed in the Belgian amendment (sub-paragraph (2))?

Mr. MOROSOV (Union of Soviet Socialist Republics) considered that, as the first and second points of the Belgian amendment were closely connected, they should be voted on together.

Mr. QUENTIN-BAXTER (New-Zealand) could not agree with that point of view. Either each of the amendments should be voted on as a whole, or, if it was desired to vote on each point separately, they should choose one of the two amendments without connecting it with the other.

Mr. GINNANE (United States of America) pointed out that the two amendments raised three distinct issues. He suggested that each issue should be voted on in turn.

Mr. QUENTIN-BAXTER (New Zealand) and Mr. MOROSOV (Union of Soviet Socialist Republics) withdrew their suggestions regarding the procedure to be adopted in favour of the proposal of the Delegate of the United States of America.

The CHAIRMAN asked the Committee to vote on the question of whether the restrictions regarding work should be applied only to enemy aliens and not to neutrals (sub-paragraph (1) above).

The Committee agreed by 15 votes to 14 that the restrictions in question would only apply to enemy aliens.

The Committee was then asked to decide the question of whether the restrictions regarding the kind of work authorized should be expressed in the terms of the Belgian amendment (sub-paragraph (3) above).

The above wording was rejected by 20 votes to 7.

Before a vote was taken on point 3) of the Belgian amendment (sub-paragraph (2) above), Mr. POPPER (Austria) asked whether the words "protected persons" applied to all protected persons or only to those of enemy nationality.

Mr. MINEUR (Belgium) replied that the protected persons referred to were those who were compelled to work.

Mr. ABUT (Turkey) thought that the wording would be clearer if the text of sub-paragraph (3) of the Belgian amendment read "protected persons who are compelled to work", and if the words "at least" were inserted after the word "benefit".

Mr. MINEUR (Belgium) agreed to the addition of the words "who are compelled to work" but was opposed to the words "at least", which might imply that aliens would enjoy more favourable treatment than national workers.

Point 3) of the Belgian amendment was unanimously adopted.

The Turkish amendment proposing the insertion of the words "who are compelled to work", was adopted.

The Turkish amendment proposing the insertion of the words "at least", was rejected.

Mr. SPEAKE (United Kingdom) said that he would not press for a vote on the second United Kingdom amendment.

Mr. QUENTIN-BAXTER (New Zealand) requested that the final text should be distributed before a vote was taken on Article 37 as a whole.

Colonel DU PASQUIER (Switzerland), Rapporteur, read the following text (the first paragraph consisted of sub-paragraph (1) of the Belgian amendment; the second was a combination of sub-paragraph (2) of the Belgian amendment and the first paragraph of the Drafting Committee's text; the third paragraph reproduced the wording of sub-paragraph (3) of the Belgian amendment; the fourth paragraph was a reproduction of the second paragraph of the text drawn up by the Drafting Committee) :

"Protected persons may only be compelled to work to the same extent as nationals of the Party to the conflict in whose territory they are.

If the protected persons are of enemy nationality, they may only be compelled to do work which is normally necessary to ensure the feeding, sheltering, clothing, transportation and health of human beings; but they may not be compelled to do work that is otherwise of value in assisting the conduct of military operations.

In the above mentioned cases, protected persons who are compelled to work shall have the benefit of the same working conditions and of the same safeguards as national workers, in particular as regards wages, hours of labour, outfit, previous training and insurance against working accidents.

If the above provisions are infringed, the protected persons shall be allowed to exercise their right of complaint in conformity with Article 28."

Mr. QUENTIN-BAXTER (New Zealand) proposed that the opening words of the third paragraph ("In the above mentioned cases") should be replaced by the words "In the cases mentioned in the two preceding paragraphs", so as to make it completely clear that the clause in question applied to the first as well as to the second paragraph.

Mr. POPPER (Austria), referring to a suggestion by Mr. MINEUR (Belgium), proposed that the last sentence in the second paragraph should be replaced by the clearer wording of the United Kingdom amendment, the words "and which is not directly related to the conduct of military operations" being inserted at the end of the list of authorized categories of work, after the words "human beings".

The above proposal was adopted by 18 votes to 7.

Mr. MOROSOV (Union of Soviet Socialist Republics) said that he would vote against the adoption of the Article as a whole, in spite of the fact that it included several provisions with which the Soviet Delegation agreed, in particular those contained in point (3) of the Belgian amendment; his reason was that the proposed text appeared to conflict with a principle of international law, namely that neutrals could not be associated with the war effort of belligerents. He reserved the right to raise the matter before the Plenary Meeting of the Conference.

The whole of Article 37, as amended above, was adopted by 15 votes to 9 with 6 abstentions.

### Article 38

Colonel DU PASQUIER (Switzerland), Rapporteur, said that the wording adopted by the Drafting Committee (*see Annex No. 260*) was practically the same as the Stockholm text. The original version of the Drafting Committee's text had laid down that each decision regarding the placing of persons in assigned residence or internment must be taken individually. That provision had now been omitted, as Article 40 provided that each individual internee would have the right to have his case reconsidered by a tribunal or administrative board.

Mr. MARESCA (Italy) proposed to restore the words "by way of exception", which were contained in the Stockholm text and which had the effect of reducing the number of decisions in favour of internment and of preventing collective measures of internment. For the same reason, he suggested that the provision, which had first been adopted by the Drafting Committee, and then omitted, laying down that each decision must be taken individually, should be restored.

Mr. POPPER (Austria) supported the proposal of the Delegate of Italy. He suggested, moreover, that in the French text, the words "la mesure de contrôle" should be placed in the plural, so as to read: "les mesures de contrôle".

Mr. CLATTENBURG (United States of America) considered that assigned residence was more prejudicial to the interests of the persons concerned than internment, during which they at least received food, clothing and shelter from the Detaining Power.

Mr. SPEAKE (United Kingdom) was of the same opinion. Assigned residence was too often merely a cheap method of internment.

Mr. MOROSOV (Union of Soviet Socialist Republics) was in favour of the proposals of the Delegate of Italy. He considered that internment was a more severe measure than assigned residence.

Objections having been raised to the consideration of the Italian amendments (on the ground that they had not been submitted within the prescribed time-limit), the CHAIRMAN put the matter to the Committee. The latter decided, by 13 votes to 11, to consider the amendments in question.

In reply to a question put by Mr. MINEUR (Belgium), Colonel DU PASQUIER (Switzerland), Rapporteur, confirmed that the suggestions made, with regard to Article 38, by the International Refugee Organisation, had been considered by the Drafting Committee. The latter had not, however, felt that the proposed additions should be incorporated in that Article, since they were to be incorporated in Article 40 A.

Replying to a question by Mr. DE RUEDA (Mexico) regarding the difference between assigned

residence and internment, Colonel DU PASQUIER (Switzerland), Rapporteur, pointed out that different States attached different meanings to those two terms, and that treatment in each case varied according to the country concerned. In certain countries, internment was the severer measure; in others, on the contrary, assigned residence was the more severe. The only solution, therefore, was to draw up provisions which were reasonably elastic in the matter, and to let each State choose its own method of giving to each of the above two measures the meaning which it considered desirable. In regard to the omission, from the final wording proposed by the Drafting Committee, of the sentence concerning individual decisions with regard to internment and assigned residence, it must be conceded that it was difficult at the outbreak of war to ask a State to refrain from taking collective measures. It should, however, be remembered that under Article 40 each internee had the right to appeal against any measure of internment, and that automatically involved an individual decision.

The CHAIRMAN declared the discussion closed, and the Committee proceeded to vote.

The Italian amendment proposing that the words "by way of exception" should be inserted after the words "assigned residence or" was adopted by 14 votes to 13.

Further voting was postponed until the next meeting.

*The meeting rose at 1.30 p.m.*

## FORTIETH MEETING

*Wednesday 6 July 1949, 3 p.m.*

*Chairman:* Mr. Georges CAHEN-SALVADOR (France)

### Article 38 (continued)

The Committee continued to vote on Article 38 and the amendments thereto.

The Austrian Delegate's suggestion that the words "la mesure de contrôle" in the French text

should be replaced by "les mesures de contrôle", was rejected by 5 votes to 2.

Mr. GINNANE (United States of America) asked for a roll-call vote on the Italian amendment proposing the reinstatement of the final sentence

which the Drafting Committee had originally adopted. ("Each case shall be taken individually.")

The Committee decided on a roll-call vote by 14 votes to 11.

The Italian amendment was adopted by 15 votes to 13, with 8 abstentions.

The following countries voted in favour of the Italian amendment: Albania, Byelorussian Soviet Socialist Republic, Bulgaria, Denmark, Finland, Hungary, India, Israel, Italy, Mexico, Rumania, Syria, Union of Soviet Socialist Republics, Ukrainian Soviet Socialist Republic, Czechoslovakia.

The following countries voted against the Italian amendment: Australia, Austria, Belgium, Brazil, United States of America, France, Ireland, Norway, New Zealand, Netherlands, Portugal, United Kingdom, Switzerland.

The following countries abstained: Burma, Canada, Egypt, Ethiopia, Pakistan, the Holy See, Siam, Turkey.

The whole of Article 38, as amended above, was then adopted.

### New Article 40A

Colonel DU PASQUIER (Switzerland), Rapporteur, reminded the meeting that Committee III had instructed the Drafting Committee (*see Summary Record of the Fifteenth Meeting*), to examine the wording of an amendment, proposed by the Delegation of Israel, introducing a new Article. The Delegation of Israel wished to cover the case of aliens who, having left their country of origin for political reasons, were often more attached to the country which gave them shelter than to their own nationality. It would be wrong to treat them as enemies. Such had been the case, in particular, of German Jews who had taken refuge before the war in countries which later went to war with Germany.

The Drafting Committee (*see Annex No. 263*) had taken the proposed wording as their basis, without, however, adopting it in its entirety as it appeared to be too comprehensive.

Mr. LOKER (Israel) said that the Drafting Committee's text changed the original proposal of the Delegation of Israel quite appreciably. His Delegation's amendment made no mention of the word "refugees" which now appeared in the Drafting Committee's text. That term led to confusion, and it would be better to delete it and substitute the wording used by the International Refugee Organization ("aliens not enjoying the protection of a Government").

Mr. SPEAKE (United Kingdom) said that he shared the doubts of the Delegate of Israel as to the wisdom of inserting the word "refugees" in the Article. The United Kingdom Delegation had suggested that the wording proposed by the Drafting Committee should be further modified by inserting the words "as a general rule" after the words "shall not". The purpose of the latter proposal was to make it clear that the Article laid down a general principle rather than a rigid rule. The draft adopted by the Drafting Committee must not be open to the construction that under no circumstances can an enemy alien not enjoying the protection of a Government be subjected to the same measures of control as enemy aliens who do enjoy such protection.

Mr. MARESCA (Italy) criticized the wording of the phrase "according to their nationality *de jure*", which he suggested replacing by "according to their nationality of origin", an expression closer to the usual terminology of international law. He further suggested that the words "enemy aliens" should be omitted.

Mr. MOROSOV (Union of Soviet Socialist Republics) felt that Article 40 A was unnecessary as the questions with which it dealt had already been covered elsewhere in the Convention. Moreover the idea contained in the words "nationality *de jure*" was vague and inadequate. He would vote against the Drafting Committee's text.

Colonel DU PASQUIER (Switzerland), Rapporteur, thought that Article 40 A should be maintained because it took account of realities. The word "refugees" should be retained, and also the expression "enemy aliens". The words "nationality *de jure*" (*appartenance juridique*) appeared to be clear enough.

The Soviet amendment proposing the omission of Article 40 A was rejected by 22 votes to 8.

The United Kingdom amendment (to insert the words "as a general rule" after the words "shall not") was rejected by 14 votes to 12.

The proposal of the Israeli Delegation to omit the word "refugees" was rejected by 14 votes to 13.

The Italian Delegation withdrew their proposal to omit the words "enemy aliens".

The whole of Article 40 A was adopted by 24 votes to 8.

Mr. LOKER (Israel) explained that he had abstained from voting because his Delegation did not consider that the wording drawn up by the Drafting Committee corresponded to the amendment originally proposed.

**Article 44**

Colonel DU PASQUIER (Switzerland), Rapporteur, reminded the meeting that Article 44 concerned occupied territories. The Drafting Committee (see *Annex No. 269*) had adopted the principle contained in the Stockholm text, which they had tried to make more definite by introducing a provision obliging the Occupying Power to establish a procedure in conformity with Article 32.

An amendment submitted by the Chinese Delegation on the first reading (see *Summary Record of the Sixteenth Meeting*), had been rejected as redundant.

Mr. PASHKOV (Union of Soviet Socialist Republics) considered that the Stockholm wording was clearer than that of the Drafting Committee. The addition made by the latter might limit the extent to which the provisions of Article 32 were applied as one could not know what procedure would be established by the Protecting Power.

Colonel DU PASQUIER (Switzerland), Rapporteur, could not agree with that point of view. If the Government of a country which was invaded had set up tribunals or an "administrative board" to decide internment cases, there was little likelihood that the army of occupation would respect those courts. Other courts would be set up and it was essential to provide that in those circumstances the procedure laid down in Article 32 should be followed.

The Soviet amendment proposing the reinstatement of the Stockholm text, was rejected by 22 votes to 7.

The whole of Article 44 was adopted by 26 votes.

**Article 45**

Colonel DU PASQUIER (Switzerland), Rapporteur, said that the text proposed by the Drafting Committee (see *Annex No. 271*) set forth a principle on which all the members of that Committee had had no difficulty in agreeing, namely, the need to prohibit, once and for all, the abominable transfers of population which had taken place during the last war. The procedure for giving effect to that prohibition had, however, been difficult to determine.

In the first paragraph, as the result of a proposal by the Soviet Delegation (see *Summary Record of the Sixteenth Meeting*), the words "against their will", which occurred in the Stockholm text, had been omitted. The Drafting Committee had considered that they were valueless in view of the pressure which could be brought to bear on inter-

nees. The words "to the territory of the Occupying Power or to that of any other country, occupied or not", took account of a Soviet amendment (see *Summary Record of the Sixteenth Meeting*), and of a Netherlands amendment. The reservation contained in the second paragraph ("Nevertheless ...") took account of a suggestion made by the Delegate of Finland (see *Summary Record of the Sixteenth Meeting*).

A United Kingdom amendment to the third paragraph, which involved the insertion of the words "to the greatest practicable extent" after the word "ensure", had been rejected by 3 votes to 3. The fourth paragraph took into account the impossibility of the Protecting Power being informed in advance of any transfers and evacuations (in the light of the necessity for secrecy in regard to military operations). The new fifth paragraph included part of the subject matter dealt with in Article 24 of the Stockholm text (see *Summary Record of the Twenty-Ninth Meeting*).

The sixth paragraph was identical with the fifth paragraph of the Stockholm text.

Mr. PASHKOV (Union of Soviet Socialist Republics) wished the Article to prohibit not only forced transfers but also the transfer of workers in the service of belligerents. It would be sufficient for that purpose to add the words "any other transfer" in the first paragraph after the words "as well as". The Soviet Delegation was prepared provisionally to accept the words "les transferts forcés, en masse ou individuels" (individual or mass forced transfers) in the French text, in place of the phrase "rapt ou transferts" which they had proposed; but in the English text they wished the words "forcible removals" to be included in the wording adopted. Again, they maintained their proposal to omit the words "except in cases of physical necessity" from the second paragraph. Finally, his Delegation objected to the provision, in the fifth paragraph, under which protected persons could be detained in dangerous areas. He proposed a return to the wording used in Article 24 of the Stockholm text.

Mr. CLATTENBURG (United States of America) believed that the addition (suggested by the Soviet Delegation) of the words "any other transfer" would have hampered the evacuation of the religious and political minorities which the Allies, on entering Germany, had discovered in labour and concentration camps. As regards the proposed suppression of the words "except in cases of physical necessity", there were cases where, owing to the limited size of the territory, it was physically impossible to evacuate the population otherwise than to places outside the occupied territory. That was the case, for example, in the islands of

Wake and Guam, where the whole of the territory could be considered as dangerous.

Mr. BAGGE (Denmark) said that the fifth paragraph had arisen out of a proposal by the Danish Delegation which wished to avoid a repetition of the disastrous consequences of the mass flight of civilians on roads exposed to bombardment. He hoped that the Committee would adopt the Article as it stood.

Mr. DAY (United Kingdom) proposed an alternative wording for the third paragraph. The proposed wording which had been agreed to by a minority of the Drafting Committee (Canada, United States of America, United Kingdom), read as follows :

"The Occupying Power undertaking such transfers or evacuations shall ensure, to the greatest possible extent, that proper accommodation is provided to receive the protected persons, that the removals are effected in satisfactory conditions of hygiene, health, security and nutrition, and that members of the same family are not separated."

The above wording provided, everything considered, a better safeguard for the population of towns menaced with destruction. If accommodation had to be provided in advance for the population of such towns, it was almost certain that the evacuation would never take place.

Mr. MOROSOV (Union of Soviet Socialist Republics) felt that the amendment proposed by his Delegation had not been fully understood by the Delegate of the United States of America. If it was desired to avoid mass transfers of the population, such as had taken place during the last war, the Soviet amendment should be supported.

Mr. WERSHOF (Canada), like the Delegate of the United States of America, opposed the Soviet amendment for the insertion of the words "any other transfer" in the first paragraph. Such an addition might interfere with the liberation of workers or deportees.

The CHAIRMAN declared the discussion closed and put the amendments to Article 45 to the vote.

The Soviet amendment for the insertion of the words "any other transfer" after the words "as well as" in the first paragraph, was rejected by 22 votes to 7.

The Soviet amendment proposing the omission of the words "except in cases of physical necessity" in the second paragraph, was rejected by 16 votes to 9.

The wording proposed for the third paragraph by the minority of the Drafting Committee (Canada, United States of America, United Kingdom), was rejected by 14 votes to 13.

The Soviet amendment proposing that the fifth paragraph should be replaced by the Stockholm text of Article 24, was rejected by 18 votes to 10.

The subsidiary amendment submitted by the Soviet Union Delegation, proposing the omission of the words "unless the security of the population or imperative military reasons so demand" at the end of the fifth paragraph, was rejected by 17 votes to 9.

The whole of Article 45, as proposed by the Drafting Committee, was adopted.

#### Article 46

Colonel DU PASQUIER (Switzerland), Rapporteur, said that the wording adopted by the Drafting Committee (*see Annex No. 273*) had taken account of a suggestion by the Irish Delegation who proposed that the words "institutions devoted to the care of children" at the end of the first paragraph, should be replaced by the phrase "institutions devoted to the care and education of children".

The second paragraph should be regarded as supplementary to the provisions contained in Article 21 (*see Annex No. 224 and Summary Record of the Twenty-eighth Meeting*). It was right that the Occupying Power should "facilitate" the identification of children by the occupied Power.

The new fourth paragraph was based on an amendment submitted by the United Kingdom Delegation. It linked Article 46 with Article 123 which dealt with national Information Bureaux.

A new fifth paragraph had been adopted without opposition, on the proposal of the United Kingdom Delegation. It contained the substance of the second and third paragraphs of Article 27, the transfer of which had been decided upon (*see Summary Record of the Twenty-ninth Meeting*).

Mr. MOROSOV (Union of Soviet Socialist Republics) said that he would prefer simply to reinstate the two paragraphs of Article 27, which would mean the omission of the fifth paragraph of Article 46.

Mr. CLATTENBURG (United States of America) reminded the Committee that Article 35 (*see Summary Record of the Thirty-fifth Meeting*) already covered the essential part of the provisions of Article 27 so far as women and children on the territory of a Party to the conflict were concerned.

All that was now required was to cover the case of the same people in occupied territory. That was what the fifth paragraph of Article 46 did. That paragraph and Article 35, taken together, included all the provisions contained in the second and third paragraphs of Article 27 of the Stockholm text.

The Soviet amendment proposing the reinstatement of the second and third paragraphs of Article 27 of the Stockholm text, in place of the fifth paragraph of Article 46, was rejected by 14 votes to 8.

The whole of Article 46, as proposed by the Drafting Committee, was adopted.

### Article 48

Colonel DU PASQUIER (Switzerland), Rapporteur, said that the wording proposed by the Drafting Committee (*see Annex No. 276*) had been adopted by the latter unanimously.

The first paragraph reproduced the Stockholm wording. In the second paragraph, the expression "artificially created unemployment" had been considered unsound and an alternative wording had been found.

Article 48 was adopted unanimously.

### Progress of work

The CHAIRMAN informed the meeting that in view of the decisions taken by the Bureau of the Conference concerning the time-limit for the conclusion of the work of the main Committees (*see Annex No. 6*) it would probably be necessary to hold meetings at night, unless it was possible, meeting each morning and afternoon, to complete, by July 9th, the consideration of the 39 Articles on which the Committee still had to vote.

He appealed to the good will of the members of the Committee asking them to make exceptional efforts to conclude the work within the prescribed time-limit.

### Statement by the Soviet Delegation

General SLAVIN (Union of Soviet Socialist Republics) read a statement to the following effect:

"Consideration of the Draft Convention for the Protection of Civilian Persons in Time of War is nearly at an end. Committee III has already considered the most important provi-

sions of the Convention, and decisions have been taken, often unanimously, which will shortly be submitted to the Plenary Meeting of the Conference.

"We can now form a very clear picture of the main features of the Draft Convention. Its chief defect is that it does not contain sufficient safeguards for the protection of the civilian population against the most dangerous consequences of modern warfare.

"As you know, the second world war was accompanied by unprecedented destruction, and caused the death of millions of civilians.

"The peoples of the whole world are fully determined not to allow a repetition of such slaughter. The resolutions voted in New York by the United States Congress of the Representatives of Science and Culture, and in Paris by the World Congress of the Partisans of Peace, bear witness to that fact. The nations demand that steps be taken to avert the possibility of further aggression and to prevent a repetition of action leading to the extermination and death of millions of human beings, as well as to the destruction of precious cultural and material values.

"But if war breaks out, in whatever form, it will be essential to protect the life and property of the civilian population. The use of weapons and means of war intended for the extermination of human beings, cannot be permitted. It is obvious that a Conference which has assembled for the purpose of establishing the text of four Conventions for the protection of war victims, cannot be silent on such a matter. Consequently, the Delegation of the Union of Soviet Socialist Republics has drawn up a Draft Resolution, the text of which is given below, condemning the employment, in a future war, of any weapon intended for the mass extermination of human beings. The Soviet Delegation proposes that Committee III should adopt that Draft Resolution and submit it to the Plenary Meeting of the Conference.

"The draft in question points out that several Governments have not yet ratified the Protocol concerning the Prohibition of the Use in War of Asphyxiant, Toxic or Similar Gases and of Bacteriological Means, signed in Geneva on June 17th, 1925. It is unnecessary to point out that the strict observance of that Protocol in time of war is of vital importance in preventing disasters and in saving those who would otherwise inevitably be the victims of the use of asphyxiant and toxic gases for military purposes and of bacteriological warfare. The Soviet Delegation understands that approximately 20 of the countries taking part in this Conference have unfortunately not yet ratified the 1925

Protocol. It considers, therefore, that the Conference should point out that it is the duty of all governments which have not yet ratified the Geneva Protocol to do so at the earliest possible moment.

"The adoption of such a resolution, by a Conference which has been engaged for three months in drawing up Conventions for the protection of war victims, will be a substantial contribution to the efforts of the nations to settle, without delay and in a spirit of mutual understanding, questions which are vital to the real protection of the life and property of the civilian population in time of war.

"Again, the adoption of a resolution condemning the use in war of any weapons intended for the mass extermination of the civilian population would be a logical sequel to the work done by Committee III. It is the duty of the latter to adopt such a resolution for the sake of the millions of men and women scattered throughout the world. The Delegation of the Union of Soviet Socialist Republics appeals, therefore, to the delegations present at this Conference to support the proposed resolution, which reads as follows:

"The Conference decides that:

- (a) The employment in any future war of bacteriological and chemical means of warfare and of atomic and other weapons designed for the mass extermination of the population is incompatible with the elementary principles of international law and the conscience of peoples;
- (b) It is the duty of all Governments which have not hitherto ratified the Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or other Gases and of Bacteriological Methods of Warfare, signed at Geneva on 17 June 1925, to ratify that Protocol as soon as possible;
- (c) It is the duty of the Governments of all countries to obtain the immediate signature of a Convention relative to the prohibition of the atomic weapon as a means of mass extermination of the population."

The CHAIRMAN wished to make express reservations regarding the admissibility of the Draft Resolution. He also regretted the manner in which it had been introduced by the Soviet Delegation. The Chairman had had no warning of the intention of the Soviet Delegation, and the latter had

chosen to make their Declaration at a time when the great majority of delegates had already left the meeting. That was an unusual and discourteous procedure.

The President of the Conference would be informed of the matter; but, as far as Committee III was concerned, any possible discussion on the declaration could only take place when the Committee's work had been completed, and when, after due notice, the Committee was in a position to study the matter profitably, with a sufficient number of delegations present.

Mr. JONES (Australia) said that his Delegation fully agreed with the views expressed by the Chairman. His Delegation considered that the surprise manoeuvre of the Soviet Delegation was a breach of the rules of fair play.

Mr. MOROSOV (Union of Soviet Socialist Republics) said that if the Soviet Delegation had only been able to submit its resolution at the end of the work of the Committee, it was because they had had to wait until they were aware of the general form which the Civilians Convention would take, so that they could judge it as a whole.

In Conferences, resolutions were often submitted which were not within the framework of the Conventions to be concluded. A particular case in point was that of the proposal submitted by the French Delegation for the creation of a High International Committee for humanitarian questions; again, the Stockholm Conference had proposed the prohibition of certain weapons. Why should the same thing not apply at the Geneva Conference?

Consideration of the Soviet proposal could take place at a later meeting, and, if Committee III refused to discuss the question, it ought to be discussed at a plenary meeting of the Conference. The questions dealt with in the Soviet resolution were directly related to those which had been discussed during the last three months by the Conference, and he believed that the resolution would be supported by a large number of delegations.

The CHAIRMAN repeated his express reservations. He regretted the unusual and inappropriate attitude which the Soviet Delegation had adopted. Since only a few of its members were present, the Committee was not in a position to carry on discussion. He therefore declared the meeting closed.

*The meeting rose at 7.20 p.m.*

## FORTY-FIRST MEETING

Thursday 7 July 1949, 10 a.m.

Chairman: Mr. Georges CAHEN-SALVADOR (France)

### Article 20

Colonel DU PASQUIER (Switzerland), Rapporteur, said that Article 20 raised the delicate question of the free passage through an economic blockade of medical supplies, foodstuffs, clothing and tonics for the use of children under 15 and expectant mothers. The Stockholm text imposed a formal obligation to authorize such free passage. The delegations of the great maritime Powers had not seen fit to accept such a sweeping obligation without certain restrictions. An amendment submitted for that purpose by the United States Delegation (*see Summary Record of the Sixth meeting, and Annex No. 221*) had, however, been rejected by 3 votes to 3. Agreement had finally been reached on a proposal submitted by the Norwegian Delegate providing for free passage on the understanding that the consignments were not to be diverted from their destination. In spite of objections raised by the Bulgarian Delegate, during the first reading, the Drafting Committee had maintained the provision in the first paragraph to the effect that the supplies must be intended for the "civilian" population. The Drafting Committee had also maintained the expression "matériel sanitaire" (hospital stores) to which the Netherlands Delegation had objected.

On the proposal of the Delegate of Bulgaria "maternity cases" had been included in the list of beneficiaries under the Article.

Account had been taken of an amendment by the Holy See (*see Summary Record of the Sixth Meeting*), concerning the free passage of religious material, as well as of an amendment proposed by the French and Swiss Delegations (*see Summary Record of the Seventh Meeting*) for the omission of the condition that the beneficiaries should not perform work of a military character. (That condition had been considered unnecessary since the beneficiaries in question were children under 15 and expectant mothers or maternity cases.)

Mrs. LUCA (Rumania) said that the second paragraph of the text adopted by the majority of the Drafting Committee (*See Annex No. 223*) rendered the Article valueless. The restrictions introduced were excessive and the paragraph should be deleted.

Mr. GINNANE (United States of America) said that the United States of America, in applying an economic blockade, had always been careful to consider the requirements of civilians, particularly pregnant women and children under 15. During the last war his country had authorized the passage of supplies of food, medical supplies and clothing for those groups of persons. However, the United States of America attached a very great importance to the provision of safeguards against all possible forms of abuse. It was only after much discussion that the Drafting Committee had reached agreement on the compromise proposal submitted by the Norwegian Delegate. The proposed solution was a fair one and Committee III would be well-advised to give it their approval.

Mr. MOROSOV (Union of Soviet Socialist Republics) was of the opinion that the text proposed by the Drafting Committee was nothing more than a collection of fine phrases. Mention had been made of the necessity for making concessions to the great maritime Powers who applied the economic blockade. Why should concessions not be granted to great territorial Powers, which might also have to apply a similar blockade? For the Article to have any real value, free passage without any limitations should be authorized.

The Delegate of the United States of America had also spoken of possible abuses. His objections would have no foundation if the wording proposed by the minority of the Drafting Committee (*see Annex No. 222*), which provided for supervision by the blockading Power, were adopted.

Msr. BERTOLI (Holy See) was glad that the amendment submitted by his Delegation had been

accepted. He was not, however, completely satisfied with the wording submitted by the Drafting Committee and wished to propose a minor modification, namely, to replace the expression "objects necessary for religious services" by "objects necessary for religious worship".

Mr. SINCLAIR (United Kingdom) saw no reason why the amendment proposed by the Holy See should not be adopted. He agreed with the Delegate of the United States of America that the wording proposed by the Drafting Committee should be adopted.

Mr. BAGGE (Denmark) proposed that the word "reasonably" should be inserted before the word "satisfied" in the second paragraph.

Mr. MOROSOV (Union of Soviet Socialist Republics) supported the amendment submitted by the Delegation of the Holy See.

The CHAIRMAN declared the discussion closed; the Committee proceeded to vote.

The wording proposed by the minority of the Drafting Committee (Union of Soviet Socialist Republics) was rejected by 24 votes to 9.

The amendment submitted by the Delegation of the Holy See (to replace the words "for religious services" by the words "for religious worship") was adopted unanimously.

The first paragraph of the wording proposed by the majority of the Drafting Committee, modified in accordance with the amendment submitted by the Delegation of the Holy See, was then adopted.

The Rumanian Delegation's proposal for the omission of the second paragraph was withdrawn, as it really only formed part of the Soviet amendment which had been rejected.

The Danish Delegation's suggestion that the adverb "reasonably" should be inserted before the word "satisfied" in the first sentence of the second paragraph, was rejected by 11 votes to 9.

The whole of the second paragraph was adopted by 26 votes to 8.

No comments having been made on the third paragraph, the whole of Article 20, amended as above, was adopted by 26 votes to 8.

#### Article 41

Colonel DU PASQUIER (Switzerland), Rapporteur, introduced the text submitted by the Drafting Committee (*see Annex No. 266*).

The first paragraph reproduced the Stockholm wording less the words "against their will". The present wording was based on a proposal made by

the Canadian Delegation during the first reading (*see Summary Record of the Fifteenth Meeting and Annex No. 264*). It appeared to provide those concerned with a better safeguard in view of the pressure which might be brought to bear on them by the Occupying Power in order to obtain their consent to their transfer to a Power which was not a party to the Convention.

In the second and fourth paragraphs, taking account of the discussions to which the Netherlands amendment had given rise (*see Summary Record of the Fifteenth Meeting and Annex No. 265*), the Drafting Committee had decided not to fix the exact moment with effect from which repatriations and transfers respectively would be permitted. The Drafting Committee felt that this point must be covered by Article 4 which would fix the moment when the Convention would cease to apply. The question of the joint responsibility of the Detaining Power and of the Power which accepted the transfer of protected persons had been approached from a different angle to that set forth in the Stockholm text. The Power which accepted the persons transferred was, in principle, responsible for the application of the Convention, but should that Power fail to carry out the provisions of the Convention, then the Detaining Power must, on notification by the Protecting Power, take steps to rectify the situation.

A fifth paragraph had been added to the Stockholm text, in order to make it clear that the provisions of Article 41 in no way constituted an obstacle to the extradition of ordinary criminal offenders under extradition treaties concluded before the outbreak of hostilities.

Mr. MOROSOV (Union of Soviet Socialist Republics) reminded the meeting that the Soviet Delegation had already objected to the procedure by which a general rule was established only to have its effect destroyed by reservations. He wished to stress those objections once again as a question of principle was involved. The compromise solution which had been arrived at for the third paragraph was not good enough. It was essential to reinstate the Stockholm text which provided that responsibility would rest conjointly on the Power which transferred the protected persons and on the Power which received them.

He also thought that the words "during hostilities or occupation", which occurred in the Stockholm wording, but had been omitted in the text of the Drafting Committee, should be restored.

Mr. QUENTIN-BAXTER (New Zealand) regretted that the Soviet Delegation had been unable to accept the compromise text adopted by the majority of the Drafting Committee. That text was, nevertheless, a fair one. It made the Power

transferring protected persons responsible from the moment the Power accepting those persons failed to apply the provisions of the Convention. It therefore achieved the object of the joint responsibility clause. The new wording was not intended to limit the responsibility of the Detaining Power, but to avoid excessive responsibility being placed on a small Power in cases where a great Power, over which it had no influence or control, did not fulfil its obligations under the Convention. Secondly, it did not give a large country an unlimited right of interference in the affairs of a small country on the pretext of supervising the condition of transferred persons.

Mr. MEVORAH (Bulgaria) believed that the compromise at which they had arrived was acceptable. It could be explained on the analogy of the idea of a mandate. A mandatory always had the right to appoint a sub-mandatory, but nevertheless remained responsible for any breaches of the mandate committed by the latter.

Mr. GINNANE (United States of America) reminded the meeting that during discussions concerning both civilian internees and prisoners of war, the United States Delegation had always supported the principle of the responsibility of the Power transferring protected persons. This allowed him to state with even greater certainty that the solution proposed by the Drafting Committee was a practical one and should be accepted.

The CHAIRMAN declared the discussion closed, and the Committee proceeded to vote.

The Soviet Delegation's proposal to replace the second and third sentences of the third paragraph by the third paragraph of the Stockholm text was rejected by 22 votes to 9.

The whole of Article 41, as proposed by the Drafting Committee, was then adopted by 28 votes.

#### Article 56

Mr. HAKSAR (India), Rapporteur, said that the Drafting Committee had taken account of a suggestion by the United States Delegation by inserting the words "published and" in the Stockholm text, between the words "have been" and the word "brought".

The Drafting Committee had also adopted a Belgian amendment proposing that a sentence worded "The effect of these penal provisions shall not be retroactive" should be added at the end of the Article, after the word "language".

The Stockholm text of Article 56, amended as above, was adopted unanimously.

#### Article 57

Mr. HAKSAR (India), Rapporteur, said that the Drafting Committee had omitted the reference to "civil courts" in the text it had adopted (*see Annex No. 298*), because it believed that that expression should continue to be associated with the legal system of the occupied territories, and could not be applied appropriately to courts set up by the Occupying Power. The amendment submitted, on the first reading, by the Netherlands Delegation (*see Summary Record of the Nineteenth Meeting*) had been adopted unanimously.

The word "published" in the English version had been replaced by the word "promulgated" (no corresponding change had been necessary in the French version).

Article 57, as submitted by the Drafting Committee, was adopted unanimously.

#### Article 58

Mr. HAKSAR (India), Rapporteur, said that an amendment submitted by the United States Delegation had been adopted unanimously. It had consisted in saying "provisions of law applicable prior to" in the first sentence, instead of "provisions published prior to". Again, the last words of the Article ("accused owes no duty of allegiance to the occupying Power.") had been amended to read "accused is not a national of the occupying Power", in order to employ the same form of wording here as in Article 108.

The Stockholm wording, with the above modifications, was adopted unanimously.

#### Article 59

Mr. HAKSAR (India), Rapporteur, said that the wording proposed by the majority of the Drafting Committee (*see Annex No. 299*) provided that "simple imprisonment" could be inflicted as a punishment for the offences enumerated in the first paragraph, and not merely internment. The United Kingdom Delegation's proposal to omit the first paragraph (*see Summary Record of the Nineteenth Meeting*), had been rejected. The word "solely" had been inserted after the word "offence" in the first sentence, in order to make it clear that it was only acts harmful to the Occupying Power, which were referred to. The expression "the property of the Occupying Power" in the Stockholm text, had been replaced by the words "the property of the occupying forces or administration", in order to show that the reference was to property belonging to the Army of Occupation and not to all property belonging to the Occupying Power.

In the second paragraph, the Drafting Committee adopting a proposal by the Netherlands Delegation, had enumerated the acts for which the death penalty could be inflicted under Articles 55 and 56.

The inclusion of the word "espionage" in the second paragraph made the fourth paragraph of the Stockholm text redundant. The latter paragraph had therefore been omitted.

The words "at the time of the offence" had been added at the end of the final paragraph, in accordance with a proposal by the Belgian Delegation.

The minority of the Drafting Committee (Union of the Soviet Socialist Republics) had proposed that the Stockholm text should be maintained.

Mr. ALVES (Portugal) wished to point out, in the name of the Portuguese Delegation, that as the death sentence had been abolished in his country, his Government could not recognize it, and would in no circumstances agree to its application to Portuguese citizens. He accordingly made express reservations in regard to Article 59.

Mr. MOROSOV (Union of Soviet Socialist Republics) said that he would like to know the views of the Representative of the International Committee of the Red Cross on the text submitted by the Drafting Committee.

Mr. PILLOUD (International Committee of the Red Cross) greatly regretted the wording of the

second paragraph of the Article. The list of offences for which the death sentence was provided had been made so comprehensive that there would apparently be no change from the practice followed in occupied countries during the last war. The decision taken by the Drafting Committee was a bitter disappointment to those who had hoped that the Draft adopted at Stockholm would be accepted. He earnestly hoped that Committee III, after considering the matter afresh, would decide to reverse the Drafting Committee's decision. In his opinion the best way of amending the text would be to omit the whole of the last part of the paragraph after the words "death of one or more persons".

Mr. MOROSOV (Union of Soviet Socialist Republics) noted that the Drafting Committee's text was one more attempt to restrict the scope of the Stockholm wording. The Soviet Delegation wished to protest against provision for such an extensive use of the death penalty being made in a Convention whose purpose was the protection of the civilian population. He proposed that the Stockholm text should be restored, provision being made, however, for the death penalty in cases of espionage. The views expressed by the representative of the international Committee of the Red Cross were completely justified.

*The meeting rose at 1.15 p.m.*

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#### FORTY-SECOND MEETING

*Thursday 7 July 1949, 3 p.m.*

*Chairman:* Mr. Georges CAHEN-SALVADOR (France)

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#### **Article 59** (*continued*)

Mr. DAY (United Kingdom) said that in view of the special importance of the Article, which dealt with the death penalty for offences committed in occupied territory, the United Kingdom Delegation wished to make its position absolutely clear. The United Kingdom Government would scrupulously fulfil its obligations under the Convention, and was ready to accept and sign any practicable

provision which would give protection to the civilian population in time of war. It could not, however, subscribe to a provision in the Convention which would endanger the security of the British occupation forces.

In regard to the second paragraph, the United Kingdom Delegation wished, as a conciliatory gesture, to submit two amendments to the wording proposed by the Drafting Committee. Those amendments would, in its opinion, eliminate the

risk of arbitrary death sentences, without too greatly endangering the security of the occupying forces. The amendments were: 1) to omit the words "or which constitute serious public dangers", and 2) to omit, after the words "seriously damage", the sentence "the property of the occupying forces or administration or". Sabotage, unlawful hostilities by civilians and marauding, constituted a whole series of crimes punishable by the death penalty under the laws and customs of war, because they seriously endangered the members of the occupying forces. The object of the laws and customs of war was to establish a reasonable balance between the interests of the civilian population and those of the occupying forces. The Stockholm text utterly destroyed the balance between those two principles to the advantage of the civilian population. Those delegations which wished to see the death penalty abolished were doubtless actuated by praiseworthy motives; but they should not forget the disastrous consequences which disorders might have for the civilian population; if the occupying forces had no procedure for their effective suppression, would they not finally feel compelled to have recourse to arms in their own legitimate defence.

Mr. MINEUR (Belgium) suggested a few drafting changes. If the text of the minority of the Drafting Committee (an exact reproduction of the Stockholm text, with the addition of the words, "at the time of the infraction", after the word "age" at the end of the final paragraph) was to be considered, the word "offence" in the second paragraph should be replaced by "crime", because, in the scale of punishments for penal offences, it was only crimes which were punishable by death. In the French version of the text adopted by the majority of the Drafting Committee the words "pour l'espionnage" in the second paragraph should be replaced by "pour espionnage" and the words "blessures graves d'un" replaced by "blessures graves à un" (no change in the English text).

Mr. LAMARLE (France) said that he had been impressed by the statement of the representative of the International Committee of the Red Cross. The French Delegation recognized that the United Kingdom Delegation, in agreeing to the omission of certain sentences from the text proposed by the majority of the Drafting Committee, had made a laudable effort in the way of conciliation. A solution should be sought along those lines. He wished to propose a wording for the second paragraph which would, he felt, be supported by a considerable majority of the delegations. The paragraph would be based on the United Kingdom proposal (with the deletion of the sentences

already agreed to), but would make a further effort to take account of the interests of the occupied Power. It would be worded as follows:

"The penal provisions promulgated by the Occupying Power in conformity with Articles 55 and 56 may only impose the death penalty on a protected person in cases where the person is guilty of espionage, of serious acts of sabotage against the military installations of the Occupying Power and of intentional offences which have caused the death of one or more persons, provided that such cases were punishable by death under the law of the occupied territory in force before the occupation began."

The French Delegation appealed to all those who had put forward contrary arguments to support the proposed wording. The three categories of offence for which the death penalty was provided, covered all the acts against which the Occupying Power would be justified in defending itself by such a severe measure as the death penalty. The last clause in the paragraph had been taken from the Stockholm text and appeared to be completely reasonable.

Mr. MEVORAH (Bulgaria) felt that the notion of "intentional offences" in the second paragraph could with advantage be replaced by that of "premeditation". The effort made by the French Delegation was worthy of praise. While reserving the right to make a more detailed study of the amendment, he would, he thought, be able to support it.

Mr. QUENTIN-BAXTER (New Zealand) pointed out that in English the words "simple imprisonment" in the first paragraph had no legal meaning. He proposed that they should be replaced by the phrase "imprisonment of the least severe kind". Although he understood the reasons why many delegates wished to restrict the use of the death penalty, he believed that it was essential to maintain the wording of the second paragraph as adopted by the majority of the Drafting Committee, with, however, the modifications proposed by the United Kingdom Delegation which met with his approval. Patriots, even if they belonged to countries where the death penalty had been abolished must, like soldiers, be prepared to face the risks which their acts involved. Finally, the proposal of the Delegate for France was not acceptable as it would place the population of a country which had abolished the death penalty in peace time, in a privileged position compared with the population of other countries.

Mr. MARESCA (Italy) gave his full support to the proposal of the Delegate of France, which had,

he felt, succeeded in reconciling the interests of the Occupying Power with the legal requirements of the population of the occupied territory.

Mr. WERSHOF (Canada) considered that the proposal of the Delegate of France was a very interesting one. He wondered, however, whether the English version, as it had been read out, was in accordance with the statement of the Delegate of France. The wording might be interpreted as meaning that the Occupying Power could not inflict the death penalty for espionage, unless the legislation in force in the occupied territory before the occupation so provided. He suggested that the United Kingdom and French amendments should be referred back to the Drafting Committee for consideration. It would, in any case, be as well if the French Delegation would circulate an English version of its amendment.

The CHAIRMAN having declared the discussion closed, the Committee proceeded to vote.

The Soviet amendment (text proposed by the minority of the Drafting Committee) for the reinstatement of a slightly amended version of the Stockholm text of Article 59, was rejected by 14 votes to 10.

The CHAIRMAN pointed out that the form of words proposed in the New Zealand amendment to the first paragraph (to replace the words "simple imprisonment" by "imprisonment of the least severe kind") was not usual in legal parlance, at all events in the French language.

Mr. QUENTIN-BAXTER (New Zealand) accordingly withdrew his amendment on the understanding, however, that the attention of the Drafting Committee would be drawn to the matter so that a better term could be found either in French or in English.

The first paragraph of Article 59 was adopted by 24 votes.

The third and fourth paragraphs, to which no objections had been raised, were adopted unanimously.

Colonel HODGSON (Australia) supported the proposal of the Delegate of Canada to refer the second paragraph back to the Drafting Committee for consideration of the amendments submitted by the United Kingdom and French Delegations

Replying to the Chairman, Mr. PILLOUP (International Committee of the Red Cross) said that the points raised by the International Committee of the Red Cross had been met, in particular by the French amendment.

Mr. AGATHOCLES (Greece) hoped that if the Drafting Committee was to reconsider Article 59, it would comprise a member of the French Delegation who could explain the latter's views.

The CHAIRMAN replied that that was the normal procedure, authors of amendments being always heard by the drafting committees.

Colonel FALCON BRICENO (Venezuela) reminded the meeting of the statement made by the Delegate of Portugal and of the reservations he had expressed with regard to the application of the death penalty.

The Committee agreed to refer the second paragraph of Article 59 back to the Drafting Committee for consideration of the amendments submitted by the United Kingdom and French Delegations.

The CHAIRMAN asked the Drafting Committee to take account, so far as they considered it possible, of the observations concerning the death penalty made by the Delegations of Portugal and Venezuela.

#### Article 60

Mr. HAKSAR (India) said that the amendment submitted by the United States Delegation on the first reading (*see Summary Record of the Nineteenth Meeting*) had not been adopted by the Drafting Committee. The latter had considered that the proposed addition was incompatible with the provision of Article 55. The amendment submitted by the New Zealand Delegation during the first reading (*see Summary Record of the Nineteenth Meeting*) had also been rejected, the proposed wording being considered too vague. The Drafting Committee had maintained the wording of Article 60 adopted at Stockholm in its entirety.

Mr. QUENTIN-BAXTER (New Zealand) referred to his Delegation's amendment replacing the words "breaches of the laws and customs of war" at the end of the first paragraph by the words "crimes at international law". The New Zealand Delegation had later modified that amendment, proposing instead that the phrase "with the exception of the laws and customs of war" should be replaced by the words "except for an act forbidden by international law in force at the time the said act was committed". Committee II had unanimously agreed to introduce the purport of that amendment into the corresponding Article of the Prisoners of War Convention, and it was highly desirable that the same idea should be introduced into the Civilians Convention. It was true that the term

“international law” was at the moment vague, but work was being done in various United Nations commissions in order to make international law more definite. Besides, the term “laws and customs of war”, which was used in the Stockholm text, was no less vague and very much more dangerous. To verify that fact, it would be enough to ask the various Delegations whether a breach of the Convention they were drawing up was or was not a breach of the laws and customs of war. Their replies would certainly vary considerably.

Mr. MARESCA (Italy) felt that the rule laid down in the second paragraph of Article 60 was a very important one and fitted well into the general lines of the Civilians Convention. It was, however, incomplete. It was not enough to lay down that the offences would have justified extradition in time of peace. All the safeguards of judicial procedure must be observed. He cited, as an example, the deplorable case during the last war, of German Jews who, fearing that the German army would occupy the territory in which they lived, had approached his Consulate for Italian visas. They had committed no crime, but might have been accused of offences justifying extradition in time of peace, and would have enjoyed no protection under the wording of Article 60, had it then been in force. To remedy that situation, he proposed to add at the end of the second paragraph the words “in accordance with the laws of that country in all circumstances”.

Mr. AGATHOCLES (Greece) reminded the Committee that during the first reading (*see Summary Record of the Nineteenth Meeting*) he had referred to an amendment submitted by the Greek Delegation, relating to the first paragraph of Article 60. In order to prevent persons being prosecuted merely as a result of opinions expressed during the occupation, the Greek Delegation had proposed the insertion of the following new paragraph, after the first paragraph:

“A mere expression of opinion during the occupation, not liable to cause an uprising or any other effect harmful to the Occupying Power, cannot be the subject of a prosecution.”

Colonel HODGSON (Australia) strongly supported the intention of the Delegate of Italy, as there was here a serious gap in the Convention. He feared, however, that the amendment would not adequately cover the cases to which attention had been drawn. For example, when Hitler's Germany occupied France, if the Article in question had been in force, even amended as proposed by Mr. Maresca, the German forces could have arrested thousands of refugees, accusing them of fictitious crimes, and could have deported them, provided the pretended

crimes could be considered as justifying extradition. The intention of the Delegate of Italy appeared to be to bring the national tribunals of the occupied countries into the picture, so as to ensure that extradition could only take place in accordance with judicial processes providing those concerned with the necessary safeguards. The Italian amendment, in its present form, did not appear to achieve that object. The Italian Delegate should redraft his amendment so as to make it cover the situation which he had described, more adequately.

The CHAIRMAN declared the discussion closed, and the Committee proceeded to vote.

The amendment submitted by the New Zealand Delegation (to replace the words “with the exception of breaches of the laws and customs of war” at the end of the first paragraph by “except for an act forbidden by international law in force at the time the said act was committed”), was rejected by 11 votes to 9.

The amendment submitted by the Greek Delegation (to insert a new paragraph between the two paragraphs of Article 60) was rejected by 13 votes to 9.

A proposal by Mr. MINEUR (Belgium) to replace the word “*délit*” in the second paragraph (French text) by the more general word “*infraction*”, was adopted by 8 votes to 6. (No change in the English text.)

The Italian amendment (to add, at the end of the second paragraph, the words “in accordance with the laws of that country in all circumstances”) was adopted by 11 votes to 9, the Drafting Committee being instructed to redraft the paragraph so as to take account of the Italian amendment.

Mr. PILLOUD (International Committee of the Red Cross), referring to the remarks of Colonel Hodgson, requested that the purport of the Italian amendment should, if possible, be expressed more clearly by the Drafting Committee.

The CHAIRMAN replied that as the Drafting Committee had been asked to reword the second paragraph of Article 59, it might also consider the wording of the Italian amendment and then propose, by the required two-thirds majority vote, a new amendment taking account of the views expressed during the discussion.

The whole of Article 60 was adopted.

#### Article 61

Mr. HAKSAR (India), Rapporteur, said that the text drawn up by the Drafting Committee (*see*

*Annex No. 305*) had taken account of suggestions made by the United States and the United Kingdom Delegations.

It had been decided to limit notifications to the Protecting Power to cases of proceedings which might involve the death penalty or imprisonment for two years or more.

On the other hand, the Protecting Power would have the right to obtain information in all cases of proceedings against protected persons.

Mr. MOROSOV (Union of Soviet Socialist Republics) asked for the vote on Article 61 to be taken in two parts first, on the first and second paragraphs (which he would support), and then on the third paragraph (which he would oppose).

The first two paragraphs were adopted with no dissentient votes.

The third paragraph was adopted by 21 votes to 8.

Mr. PILLOUD (International Committee of the Red Cross) having suggested that the attention of the Drafting Committee be drawn to the faulty French version of the Article, the Rapporteur agreed to revise the French text.

The whole of Article 61 was adopted.

#### Article 62

Mr. HAKSAR (India), Rapporteur, said that the text drawn up by the Drafting Committee (*see Annex No. 306*) took account of suggestions made by the United States and United Kingdom Delegations.

Mr. PILLOUD (International Committee of the Red Cross) remarked that in order to make it correspond exactly to the English, the second paragraph of the French text should be amended to read "et qu'il n'y a plus de Puissance protectrice" instead of "et que la Puissance protectrice n'est plus en mesure de l'assister".

Mr. HAKSAR (India), Rapporteur, agreed.

Article 62 was adopted with no dissentient votes.

#### Article 63

Mr. HAKSAR (India), Rapporteur, explained that the text adopted by the Drafting Committee (*see Annex No. 307*) consisted of three paragraphs, of which the first two reproduced the Stockholm text. The third paragraph, which was new, introduced the procedure for appeals. It was based on an amendment submitted by the United Kingdom Delegation, which had given rise to discussions in the Drafting Committee concerning the relationship between military courts, the military authorities and the executive power. In order to cover all cases the Drafting Committee had adopted the principle of the right of the convicted person to petition to the competent authority of the Occupying Power.

Article 63 was adopted with no dissentient votes.

#### Article 64

Mr. HAKSAR (India), Rapporteur, said that the text adopted by the Drafting Committee (*see Annex No. 309*) had introduced changes in the Stockholm text of Article 64 corresponding to those which had been made in the case of Article 61. The new text was based on an amendment submitted by the United Kingdom Delegation (*see Annex No. 308*). A sentence had been added to the first paragraph, stipulating that a notification of the venue and date of sessions of the court must be sent to the Protecting Power in cases where the latter had the right to attend the Court proceedings.

Article 64 was adopted with no dissentient votes.

*The meeting rose at 6.30 p.m.*

## FORTY-THIRD MEETING

Friday 8 July 1949, 10 a.m.

Chairman: Mr. Georges CAHEN-SALVADOR (France)

**Article 55**

Mr. HAKSAR (India), Rapporteur, explained that the Drafting Committee had thought it advisable to include certain provisions in Article 55 in order to safeguard the security of the Occupying Power and prevent the recurrence of two cases which had occurred during the second world war. In the first case, the Occupying Power had found the legislation in an occupied territory was contrary to generally recognized humanitarian principles. In the other case, courts no longer existed in certain territories and the Occupying Power had, therefore, been obliged to make provision itself for the normal administration of justice.

The wording adopted by the Drafting Committee (*see Annex No. 296*) differed, therefore, from the Stockholm text in the sense that, in accordance with the spirit of amendments submitted by the United Kingdom (*see Annex No. 295*) and the Soviet Delegations (*see Summary Record of the Eighteenth Meeting*), it envisaged cases where the Occupying Power could change the penal laws of the occupied territory. The cases in question concerned the security of the Occupying Power and the application of the present Convention. The changes introduced were those which would be necessary in order to maintain order in the occupied territory, to ensure the security of the Occupying Power and to ensure that the provisions of the Convention were applied.

Mrs. SPERANSKAYA (Union of Soviet Socialist Republics) believed that all the additions made to the Stockholm text by the Drafting Committee, other than that proposed by the Soviet Delegation, were useless or dangerous. The Soviet Delegation wished to restore the Stockholm text, with the addition, at the end of the first paragraph, of the words "except in cases where this constitutes a menace to the security of the Occupying Power". The Soviet Delegation would vote for the text

submitted by the minority of the Drafting Committee (*see Annex No. 296*).

The text of the minority of the Drafting Committee was rejected by 16 votes to 9.

The text of the majority of the Drafting Committee was adopted by 20 votes to 8.

**Article 65**

Mr. HAKSAR (India), Rapporteur, said that the Drafting Committee (*see Annex No. 310*) had reversed the order of paragraphs of the Stockholm text so that the subject matter would be arranged in a more logical sequence.

The first paragraph of the Stockholm text (now the second paragraph of the Drafting Committee's text) had been altered to make it clear on what date the period of six months, for which the paragraph provided, was to start and in order to show that the judgment referred to was the "final" judgment.

The third paragraph was entirely new. It provided that, in certain grave and urgent circumstances, the period of suspension of the death sentence could be reduced.

Mrs. SPERANSKAYA (Union of Soviet Socialist Republics) wished to reserve the position of the Soviet Delegation on Article 65.

Put to the vote, Article 65 was adopted by 22 votes.

**Article 66**

Mr. HAKSAR (India), Rapporteur, said that the text adopted by the Drafting Committee (*see Annex No. 311*) had taken account of a United Kingdom amendment concerning the treatment of women, of an amendment submitted by the Delegation of the Holy See relating to spiritual assistance (*see Summary Record of the Nineteenth*

*Meeting*) and of a United States amendment proposing that the words "if possible" should be inserted in the first paragraph immediately before the words "be separated".

The CHAIRMAN asked if the Drafting Committee's omission of all reference to the right to exchange family correspondence was intentional. Such an omission implied that protected persons who were indicted or convicted would be placed in solitary confinement.

Mr. HAKSAR (India), Rapporteur, having replied that the point had not been considered by the Drafting Committee, the CHAIRMAN asked the Representative of the International Committee of the Red Cross for his opinion on the matter.

Mr. PILLOUD (International Committee of the Red Cross) replied that the question was dealt with in Article 22. As Article 22 was general in its application, there had not seemed to be any special point in referring to it here.

The CHAIRMAN thought that it was for the Drafting Committee to consider whether a reference to the above general provision should not be introduced by, for example, inserting the words "Without prejudice to the provisions of Article 22" at the beginning of the Article.

Mr. HAKSAR (India), Rapporteur, said that he noted the Chairman's remarks. They would be passed on to the Drafting Committee.

Article 66 was adopted with no dissentient votes.

#### Article 67

Mr. HAKSAR (India), Rapporteur, explained that the wording adopted by the Drafting Committee was essentially the same as the Stockholm text, except that the words "shall in no case be taken outside the said territory, but" had been omitted. As that principle had been embodied in the preceding Article, it seemed unnecessary to repeat it.

Put to the vote, Article 67 was adopted with no dissentient votes.

#### Article 68

Mr. HAKSAR (India), Rapporteur, said that Article 68 had given rise to a lengthy discussion in the Drafting Committee mainly because of an amendment submitted by the Italian Delegation,

proposing the adoption of an Article 68A (*see Summary Record of the Twentieth Meeting*), the purpose of which was to ensure that decisions regarding internment were taken by the Occupying Power in accordance with a procedure similar to that outlined in Articles 32 and 40 of the Stockholm text.

The Drafting Committee (*see Annex No. 312*) had taken some account of the Italian amendment by laying down in the second paragraph that decisions regarding internment must be taken by the Occupying Power in accordance with a regular procedure, and that they must be subject to periodical review. The Drafting Committee had not felt that they could make a specific reference to Articles 32 and 40, owing to the difference which existed between the situation in an occupied country and that in national territory.

Mrs. SPERANSKAYA (Union of Soviet Socialist Republics) proposed that the phrase "in conformity with the present Convention" should be inserted in the second paragraph immediately after the words "Occupying Power".

Mr. MINEUR (Belgium) pointed out an error in the second paragraph which merely affected the French text.

Without wishing to dwell at too great a length on the merits of the Italian amendment, he thought he might point out that the provisions governing internment procedure on the territory of belligerents included a large number of precise and well-defined safeguards; in the case of occupied territory, on the other hand, the safeguards relating to the same decisions were expressed in general terms without any precise definition. It would perhaps be advisable to rectify such a marked inequality in the safeguards granted to protected persons.

Mr. ABUT (Turkey) supported the Belgian Delegate's first remark, concerning the wording of the second paragraph. In order to make the wording clearer, the paragraph should be split into two sentences by placing a full stop after the words "Occupying Power". The second sentence would then begin with the words "Such decisions shall be subject...".

Mr. WERSHOF (Canada) thought that the second paragraph, together with the new amendments to it, should be referred to the Drafting Committee.

General SLAVIN (Union of Soviet Socialist Republics) considered that the remarks of the Belgian and Turkish Delegates were entirely justified. He suggested adding the words "in conformity with the present Convention" at the

end of the first sentence of the second paragraph, the latter having first been amended as proposed by the Turkish Delegate. He agreed that the second paragraph and the amendments relating to it, should be referred to the Drafting Committee for reconsideration.

Mr. QUENTIN-BAXTER (New Zealand) suggested that the English text would be improved by replacing the word "sentence" in the first paragraph by the word "subject", which conveyed the required meaning more correctly besides being the term already used in the Stockholm text.

Mr. HAKSAR (India), Rapporteur, agreed with the New Zealand Delegate's suggestion. He saw no objection to splitting the second paragraph into two sentences as suggested by the Delegate of Turkey.

With regard to the second point raised by the Belgian Delegate, the Drafting Committee had felt that in view of the disorder which might prevail in occupied territory, it would not be practicable to lay down an elaborate procedure for internement, similar to that provided for the territory of a Party to the conflict. They had felt that it would be wiser to content themselves with making the Occupying Power responsible for establishing a regular and systematic procedure to suit the circumstances. The Occupying Power would then have no excuse for making arbitrary decisions regarding internement.

The CHAIRMAN put Article 68 to the vote.

The Soviet amendment (to add the words "in conformity with the present Convention" after the words "Occupying Power" in the second paragraph) was adopted by 13 votes to 9.

The Belgian proposal, as amended by the Turkish Delegate, concerning the drafting of the second paragraph, was adopted unanimously.

The CHAIRMAN said the Committee would have to decide whether they should consider the proposal of the Belgian Delegation to describe in greater detail in the second paragraph the safeguards provided for protected persons whose internment was decided upon by the Occupying Power. The Canadian and Soviet Delegates having proposed that the paragraph should be referred back to the Drafting Committee, it was obviously for the latter to take account, if necessary, of the Belgian Delegate's proposal. In order, however, to let the Drafting Committee know Committee III's views on the matter, a decision would have to be taken on the principle of the Belgian proposal.

The principle of the Belgian proposal was adopted by 13 votes to 10.

The CHAIRMAN said, with the agreement of the Rapporteur, that the second paragraph would accordingly be referred back to the Drafting Committee.

The first paragraph of Article 68 was adopted with no dissentient votes.

#### Article 69

Mr. HAKSAR (India), Rapporteur, said that Article 69 called for no comments. The Article read as follows:

"The Parties to the conflict shall only intern protected persons in conformity with the provisions of Articles 38, 39, 40, 59 and 68."

Article 69 was adopted with no dissentient votes.

#### Article 116

Mr. HAKSAR (India), Rapporteur, reminded the meeting that consideration of Article 116 had been postponed pending the adoption of the other Articles referred to in it (*see Summary Record of the Thirty-fourth Meeting*). The necessary decisions having been taken in the meantime, it was now possible to vote on Article 116. The Articles referred to in the proposed text were Articles "61 to 66", and not Articles "60 to 67" as in the Stockholm text.

The Stockholm version of Article 116, with the above modification, was adopted with no dissentient votes.

The CHAIRMAN noted that Article 116 was the last of the Articles studied by the Drafting Committee presided over by General Schepers. He thanked Mr. Haksar for having been good enough to take General Schepers' place as Rapporteur while the latter was temporarily absent from Geneva. He paid a tribute to the clear explanations given by Mr. Haksar and to the ability with which he had carried out his duties.

#### Article 43

Colonel DU PASQUIER (Switzerland), Rapporteur, explained that the text submitted by the Drafting Committee (*see Annex No. 267*) did not take account of an Italian amendment (*see Summary Record of the Sixteenth Meeting*) referring to the "legal status" of protected persons, and to "their property". The Drafting Committee felt that the term "legal status" was inappropriate,

and that the question of property had already been dealt with in the laws and customs of war.

A reference to annexation, to be found only contained in the French version of the Stockholm text, had been omitted in the draft adopted by the Drafting Committee, since certain delegations had observed that a unilateral annexation in time of war was inadmissible in international law.

Lastly, a new paragraph, which had been added as the result of a suggestion by the United States Delegation (*see Summary Record of the Sixteenth Meeting*), provided that the responsibilities laid on the Occupying Power in connection with the feeding of the population of occupied territories were not intended to confer upon protected persons in those territories, including internees, higher standards of living than those prevailing before the occupation began.

Mr. PASHKOV (Union of Soviet Socialist Republics) criticized the text drawn up by the Drafting Committee. In his opinion, the word "annexation" had been omitted from the English version of the Stockholm text as the result of a mistake. It should be restored, since it provided protected persons with additional safeguards. The new second paragraph was in his opinion wholly unacceptable. The unfortunate results of occupation were well-known, and it was not appropriate to speak here of the standard of living of the population of occupied territories. Besides, an unscrupulous Occupying Power, accused of breaches of the provisions of the Convention concerning the feeding of the civilian population, might try to justify itself by referring to the paragraph in question.

He was in favour of replacing the first paragraph by the Stockholm text and of omitting the second paragraph.

Mr. CLATTENBURG (United States of America) felt that it was immaterial whether a reference to "annexation" was made or not, as the Article, as drafted, applied to all cases of occupation in time of war, including so-called "annexation".

The second paragraph was justified because, notwithstanding the obligations imposed by the present Convention and by the Laws and Customs of War, the Occupying Power could not be made responsible for solving problems which had existed in the occupied territory before the occupation began.

The CHAIRMAN declared the discussion closed and put to the vote the Soviet proposal to replace the first paragraph by the wording of Article 43 of the Stockholm Draft. The proposal was adopted by 12 votes to 10.

The Soviet proposal to omit the second paragraph was adopted by 10 votes to 9.

Article 43 of the Stockholm text was thus reinstated in place of the wording proposed by the Drafting Committee.

#### Article 48B

Colonel DU PASQUIER (Switzerland), Rapporteur, explained that Article 48 B, as adopted by the Drafting Committee (*see Annex No. 278*), had been drawn up as the result of a proposal by the Belgian Delegation that there should be a new Article 31A (*see Summary Record of the Thirteenth Meeting*). The purpose of the Belgian amendment was to prevent reprisals by the Occupying Power against officials or judges who refused to fulfil their functions for patriotic reasons or reasons of conscience. Later the Belgian Delegation modifying their amendment, had proposed the adoption of a new Article 48A. The modified text had been adopted by the Drafting Committee as the first paragraph of Article 48 B. The second paragraph had been introduced to avoid any possibility of the new Article 48B clashing with Article 47 which authorized the Occupying Power to requisition labour for essential public services.

Mr. MINEUR (Belgium) said that his Delegation, after considering the matter, would prefer the second paragraph to be omitted, as the field of application of Article 48 B was very different from that of Article 47. To link their provisions might cause misunderstandings as the result of which the populations of the occupied territories would suffer. Should the Committee nevertheless decide to retain the second paragraph, the Belgian Delegation proposed that it should be worded as follows:

"This prohibition does not prejudice the application of the second paragraph of Article 47. It does not affect the right of the Occupying Power to remove public officials from their posts."

Mr. CLATTENBURG (United States of America) was prepared to support the Belgian proposal, particularly with regard to the new wording of the second paragraph, which seemed preferable to that of the Drafting Committee.

Colonel DU PASQUIER (Switzerland), Rapporteur, felt that a second paragraph was absolutely essential in order to avoid any possible contradiction between Articles 47 and 48 B. The word-

ing proposed by the Belgian Delegation appeared to be just as acceptable as that proposed by the Drafting Committee.

Mr. PASHKOV (Union of Soviet Socialist Republics) would prefer, like the Belgian Delegation, to see the second paragraph deleted.

Mr. WERSHOF (Canada) supported the arguments of the Rapporteur. If the last sentence of the second paragraph were to be omitted, it would be impossible in the future to "alter the status" of officials or judges who behaved as the National-Socialists had done in Germany during the last war; consequently, it would be impossible to remove them. The Canadian Delegation would vote against Article 48 B, as they considered it

dangerous. If the Committee nevertheless decided to include the Article in the Convention, then the second paragraph, which was absolutely essential to the Article, must at all costs be retained.

The Committee proceeded to vote.

The amendment submitted by the Belgian Delegation and supported by that of the Soviet Union (to omit the second paragraph) was rejected by 18 votes to 10.

The subsidiary Belgian amendment proposing a new wording for the second paragraph, was adopted by 23 votes to 3.

The whole of Article 48 B, as amended above, was adopted with one dissentient vote.

*The meeting rose at 1.15 p.m.*

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#### FORTY-FOURTH MEETING

*Friday 8 July 1949, 3 p.m.*

*Chairman: Mr. Georges CAHEN-SALVADOR (France)*

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#### Article 4

Colonel DU PASQUIER (Switzerland), Rapporteur, said that the purpose of Article 4 was to determine the beginning and the end of the application of the Convention.

In regard to the beginning of the application, the Drafting Committee had had no difficulty in reaching agreement on the proposed text (*see Annex No. 198*). It was understood that the term "occupation" meant occupation without war, as provided for in the second paragraph of Article 2.

The problem was more complicated so far as the end of the application of the Convention was concerned. In order to facilitate its task, the Drafting Committee had studied the situation in the territory of the Parties to a conflict, and that in the occupied territories, separately. It had decided, in both cases, that the Convention should continue to be applied for a period of one year after the termination of military operations. That time-limit was necessary to allow the passions of war to subside and peace-time institutions to function normally again.

The Drafting Committee had felt that in occupied territories, the Occupying Power, in so far as it was still exercising governmental functions in the territory in question after the completion of the one-year period, should be bound by certain of the provisions of the Convention for the whole period of the occupation.

The Drafting Committee had rejected a Netherlands amendment proposing (*see Summary Record of the Third Meeting*) that the word "transfer" should be inserted before the words "release, repatriation or re-establishment" (which appeared in the Stockholm text and in the last paragraph of the Drafting Committee's text). The Drafting Committee had noted that a transfer did not liberate the protected person concerned, and that he should continue to enjoy protection under the Convention until he was liberated, repatriated or re-established.

Mr. SINCLAIR (United Kingdom) said that he was awaiting final instructions from his Government regarding the Article. He was, however, in a position to say, under existing instructions, that

any proposals in regard to the Article that were inconsistent with the idea of occupation as defined in the Hague Regulations, would be regarded as unacceptable by the United Kingdom Delegation. He accordingly reserved his Delegation's position in regard to the amendment which it had tabled that very day, and which proposed the deletion of the text adopted by the Drafting Committee and the reinstatement of the Stockholm text. In the circumstances, it was not his intention to move that amendment before the Committee.

Mr. BOSCH VAN ROSENTHAL (Netherlands) pointed out a discrepancy in the last paragraph of the draft proposed by the Drafting Committee, between the French text, where the word "établissement" was used and the English version which used the word "re-establishment".

Colonel DU PASQUIER (Switzerland), Rapporteur, explained that according to the explanation given by the International Committee of the Red Cross, the word "établissement" referred to the situation of protected persons whom it had not been possible to repatriate, and who were thus obliged to set themselves up in a country other than their country of origin. He thought that the word "re-establishment" had the same meaning; if the word "ré-établissement" had existed in French, it would have been used.

The CHAIRMAN having suggested that "re-establishment" might be translated by "nouvel établissement", the Rapporteur said that he would be willing to introduce that term into the French text.

Mr. PASHKOV (Union of Soviet Socialist Republics) proposed that all reference to a prolongation of the application of the Convention should be omitted from Article 4. He supported the first, second and fourth paragraphs, but proposed that the third should be deleted.

Colonel DU PASQUIER (Switzerland), Rapporteur, pressed for the retention of the third paragraph. That paragraph was indispensable in order to obviate, in particular, the danger of oppression by the Occupying Power in the occupied territory.

The CHAIRMAN took cognizance of the statement made at the beginning of the meeting by the United Kingdom Delegate.

He noted that objections had only been raised to the third paragraph. He consulted the Committee on the Soviet proposal to delete that paragraph.

The above Soviet amendment was rejected by 16 votes to 8.

The whole of Article 4 was then adopted by 19 votes.

#### Article 47

Colonel DU PASQUIER (Switzerland), Rapporteur, said that the text adopted by the Drafting Committee (*see Annex No. 275*) took account, in the first paragraph, of an amendment submitted by the Netherlands Delegation (*see Summary Record of the Sixteenth Meeting*) which was intended to bring the proposed wording into line with the terminology used in the Hague Conventions.

An amendment submitted by the United Kingdom Delegation (*see Summary Record of the Sixteenth Meeting*) proposed replacing the word "propaganda" by "pressure". The United Kingdom Delegation felt that only "pressure" was unlawful, while "propaganda" might be permissible. The majority of the Drafting Committee had rejected that suggestion, no doubt because of the bad impression left by certain propaganda in the last two wars, and had decided to retain the word "propaganda", but to include the term "pressure" as well.

In regard to the second paragraph, account had not been taken of an amendment submitted by the United States Delegation which proposed that the Occupying Power should be authorized to make protected persons do any work which had no military purpose. The United States Delegation had considered that that was an essential corollary to the provisions under which the Occupying Power was responsible for feeding the population of the occupied territory, the obligation on that population to work under certain specified conditions being a counterpart of its rights under Article 49 and the following Articles.

The clause at the end of the third paragraph of the Stockholm text, prohibiting unhealthy or dangerous work, had been omitted for fear of prohibiting work in coal mines, which was indispensable to the maintenance of public utility services such as water, gas, electricity and transport. The last sentence of the third paragraph had been inserted by the Drafting Committee in order to take account of observations submitted by the Italian Delegation (*see Summary Record of the Sixteenth Meeting*), by the International Labour Organization and by the International Committee of the Red Cross ("Remarks and Proposals", page 74, Article 37).

Mr. DE RUEDA (Mexico) drew attention to the word "salaire" (wages), pointing out that the latter might be changed under the law of a given country during the occupation.

Colonel DU PASQUIER (Switzerland), Rapporteur, stated that the point at issue was legislation and not hourly rates of pay. Legislation either laid down, generally, which authorities were responsible for fixing wages, or else it fixed sliding scales or even set up a framework for agreements between employers and employees.

Mr. PASHKOV (Union of Soviet Socialist Republics) opposed the clause which provided, in the second paragraph, for the possibility of requiring the civilian population to do work which was "necessary ... to needs of the army of occupation". He also criticized the omission by the Drafting Committee of the clause in the fourth paragraph of the Stockholm text under which requisition of labour could "only be of a temporary nature". He proposed that the fourth paragraph of the Stockholm text should be reinstated, with, however, the addition of the words "in an organization of military or semi-military character" which appeared in the fourth paragraph of the Drafting Committee's text.

Mr. DAY (United Kingdom) remarked, in regard to the Soviet Delegate's first criticism, that the text adopted by the Drafting Committee was in accordance with a practice observed by all countries signatories to the Hague Regulations. The Drafting Committee's wording, however, improved upon that of the Hague Conventions by laying down two conditions to which the work of the civilian population was subject, namely, fair wages and acceptable working conditions. He also approved of the omission by the Drafting Commit-

tee of the words "shall only be of a temporary nature". In modern warfare, direction of labour was essential to the economic life of belligerent countries; conditions might be equally difficult in occupied territories, and it might, therefore, be very much in the interests of the civilian population itself, if the Occupying Power, which was responsible for feeding the population, disposed of the necessary labour during the whole period of occupation.

Colonel DU PASQUIER (Switzerland), Rapporteur, said that the omission of the words in question followed as a result of the increase, by comparison with the Hague Conventions, in the obligations which the Civilians Convention placed on the Occupying Power.

The first paragraph was adopted with no dissentient votes.

In regard to the second paragraph, Mr. PASHKOV (Union of Soviet Socialist Republics) explained that the Soviet Delegation's proposal consisted in omitting the words "either to the needs of the army of occupation or" which followed the words "and then only on work which is necessary".

The above proposal was rejected by 22 votes to 8.

The second paragraph was adopted by 24 votes.

The third paragraph was adopted by 30 votes.

As far as the fourth paragraph was concerned, the Soviet Delegate's proposal to reintroduce the idea of the temporary character of the work, was rejected by 17 votes to 10.

The whole of Article 47 was adopted by 24 votes.

*The meeting rose at 5 p.m.*

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#### FORTY-FIFTH MEETING

*Saturday 9 July 1949, 10 a.m.*

*Chairman:* Mr. Georges CAHEN-SALVADOR (France)

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#### **Preamble**

Mr. CASTRÉN (Finland), Rapporteur, explained the difficulties which the Working Party entrusted with the study of the Preamble had encountered. Opinions had been expressed during the discussion, which were completely at variance with one another, not only as regards details, but on the

substance of the matter. Accordingly, it had not been possible to reach unanimous agreement on the wording. Towards the end, the work of the Working Party had been made more difficult by the absence of certain members and by numerous abstentions during the votes. Those factors had affected the results achieved.

In the circumstances it would be wrong to pre-

tend that the text submitted by the Working Party (*see Annex No. 191*) was the best possible solution. It seemed, however, to be acceptable in part, and might perhaps serve as a basis for discussion.

He referred to the Explanatory Note submitted by the Working Party, which contained the following information:

The Working Party which had been instructed to consider the Preamble (*see Summary Record of the Twenty-fourth Meeting*) held 7 meetings under the chairmanship of Mr. Cahen-Salvador (France), Chairman of Committee III. The Rapporteur was Mr. de Geouffre de la Pradelle (Monaco), and the Assistant Rapporteur—Mr. Castrén (Finland).

The Working Party decided at its first meeting to take amendments submitted by various delegations into consideration, as well as the suggestions of the International Committee of the Red Cross ("Remarks and Proposals", pages 66 and 67), and to take the Stockholm draft as the principal basis for discussion. The Rapporteur had been requested to submit the various documents mentioned above to the Working Party after having compared their wording with that of the preambles of recent major international treaties dealing with the same type of subject.

After hearing Mr. de Geouffre de la Pradelle's report at their second meeting, the Working Party decided at their third meeting, by 5 votes to 4, to adopt the French amendment (*see Annex No. 189*) as the initial basis for discussion.

The first paragraph of the above amendment, modified in accordance with suggestions by the Delegations of Finland and Mexico, was adopted with no dissentient votes.

In regard to the second paragraph, the Mexican Delegate said that he considered it preferable to mention only human dignity and respect for the human person, without referring to the "precepts of faith in one Divine authority". The Delegates of Venezuela and of Monaco, on the other hand, wished the latter expression to be maintained.

At the fifth meeting an amendment was submitted to the Working Party by the Delegation of Finland (*see Annex No. 188*). In its second paragraph, this amendment, unlike the French proposal, suggested a neutral wording referring to the "requirements of human fellowship and the principles of universal morality", which, in the opinion of its author, might reconcile the opposing tendencies which had become apparent. That proposal, supported by the Delegates of Mexico and of the Union of Soviet Socialist Republics, was opposed by the Delegates of the United States of America, Afghanistan, the Lebanon and the Holy See. Those against the motion pointed out that a large number of the Articles of the Convention contain provisions relating to religion and that it would, therefore, be

logical for the Preamble to contain an allusion to the religious inspiration of its text; this allusion would have the advantage of meeting the desires of the people of many countries; it would, moreover, be a plain statement of fact and in no way binding on the signatory Governments.

After the above discussion the Chairman proposed to put to the vote the amendments which differed on this particular point from the second paragraph of the French amendment. A United States amendment (*see Annex No. 187*), replacing that submitted at the Twenty-third Meeting, was rejected by 5 votes to 3. The Finnish amendment was adopted by 4 votes to 3, with one abstention.

In view of the result of the above voting, amendments which had been proposed by the Delegations of Ireland and the Holy See were not discussed.

At its sixth meeting, the Working Party discussed the third and fourth paragraphs of the French amendment, which was retained as the basis for discussion.

As regards the third paragraph, which condemned acts of barbarism and proclaimed respect for the dignity and the value of human personality, amendments submitted respectively by the Delegations of the United States of America and Finland were discussed. The United States Delegation considered that it was unnecessary to refer to past atrocities; thinking of the future, they asked for a stipulation that all persons not engaged in hostilities should be respected and protected without distinction of any kind. The Finnish Delegation, on the other hand, retained the French allusion to acts of barbarism in past wars, and, as regards the future, tried to ensure due respect for human beings by including in its text points from the French and United States amendments and from the text proposed by the International Committee of the Red Cross, all of which set forth different aspects of the question. The United States amendment was put to the vote and rejected by 5 votes to 3, while the Finnish amendment, amplified by a point from the French amendment and with one or two drafting changes, was adopted by 2 votes to nil, with 6 abstentions.

With reference to the fourth paragraph, the Delegation of the United States of America pointed out that the proposed text constituted in part an amendment to Article 1 of the Draft Convention itself and that it was therefore within the terms of reference of the Joint Committee rather than of Committee III. The Chairman having insisted that the Preamble could perfectly well contain a provision of the Convention, the text of the French amendment, completed at the request of the Finnish Delegation by the addition of the words "in the name of their peoples", was adopted by 4 votes to NIL, with 4 abstentions. That meant that if the above vote was subsequently confirmed by the

Committee and the Plenary Meeting, Article 1 of the Stockholm Draft would have to be omitted.

At its last meeting, the Working Party was asked to vote on the Preamble as a whole.

The Rapporteur considered that the second paragraph adopted by the Working Party (the second paragraph of the Finnish amendment) should not contain an isolated reference to the "requirements of human fellowship and the principles of universal morality"; that phrase had been taken from the French amendment where it was closely associated with the phrase referring to the "precepts of faith in one Divine authority". By itself, without that balancing clause, the phrase proposed by the Finnish Delegate might appear to be biased. He suggested, therefore, that the second sentence of the paragraph should be omitted. There were no objections to the foregoing proposal.

The Delegate of Mexico suggested omitting the words "and liberties which are the essence of its existence" from the third paragraph, pointing out that the Convention provided for restriction on individual liberty in the form of internment and imprisonment. The above proposal likewise met with no opposition.

The wording of the Preamble, as amended above, was put to the vote and adopted by 4 votes to 3, with 1 abstention. The Delegations of the following countries voted in favour of the wording adopted; France, Finland, Mexico and Rumania. The Delegations of the following countries voted against it: Afghanistan, the United States and the Lebanon. The Delegation of the Union of Soviet Socialist Republics abstained from voting. The Soviet Delegate said that his abstention was not due to disagreement on a matter of principle, but to his wish to reserve his vote until after the consideration of the "Preliminary Provisions" which, in the French Delegation's amendment, came immediately after the Preamble proper.

The Mexican Delegate, while continuing to support the text of the Preamble for which he had voted, said that he intended to take no further part in the discussion, in view of the opposing tendencies which had become apparent and of their possible consequences. He added that his Delegation would vote against the adoption of a separate preamble for each Convention.

The Delegate of the United States, for his part, proposed the omission of the Preamble and asked that his proposal should be put to the vote. The Chairman pointed out that as the Working Party had been instructed to prepare a draft Preamble as the result of an almost unanimous recommendation by the Committee, he could not put the proposal of the United States Delegation to the vote. The question of the expediency of voting on the request of the United States Delegate having

been put to the vote, it was decided by 4 votes to 3, with 1 abstention, that a vote could not be taken on the United States proposal, the question being declared inadmissible under the circumstances.

The Delegate of Spain was then asked to explain his amendment (*see Annex No. 185*) which proposed that a "Statement of Motives" of the Convention should be added to the Preamble. He stated that his Delegation was prepared to accept modifications to their text, and also any suggestions regarding the eventual place which it should occupy in the Convention, either as an annex or as an introduction to the table of contents. Put to the vote, the Spanish Delegation's proposal was rejected by 2 votes to 2, with 3 abstentions.

The Working Party then proceeded to consider the "Preliminary Provisions" in the French amendment, the Working Party deciding by 3 votes to 1, with 4 abstentions, that such an addition was desirable.

Three amendments to the "Preliminary Provisions" were submitted respectively by the Burmese, Soviet and Venezuelan Delegations.

The Delegation of Venezuela asked that the word "sanctions" should be substituted for the word "executions" under Fig. 3 of the Stockholm Draft, (sub-paragraph *(e)* of the French amendment), the reason being that the Constitution of Venezuela did not admit the death penalty. After some discussion it was unanimously decided to replace the term "executions" in the French amendment by the words "penal sanctions".

The Delegation of Burma proposed adding a new paragraph to the Preamble to provide that no one, even when deprived of his liberty, should be prevented from receiving and sending news. Put to the vote, the proposal was rejected.

The Soviet Delegation suggested replacing sub-paragraph *(a)* of the text proposed by the French Delegation and the new paragraph *(f)* which the French Delegation had proposed subsequently by the following provisions:

- (a)* Violence to the life and person of human beings; all murder, torture and cruel treatment, including medical experiments and all other means of exterminating the civilian population, shall be considered as grave crimes.
- (f)* Collective penalties, and all means of intimidation or of terrorism, the destruction of personal and real property belonging to private persons or to the State as well as to social and cooperative organizations, which is not rendered absolutely necessary by military operations.

Put to the vote, the above amendments were adopted by 4 votes to 2, with 2 abstentions.

Mr. WERSHOF (Canada) wished to ask a question relating to the discussion. The text drawn up by the Working Party consisted of two parts—the Preamble proper and the “Preliminary Provisions”. Would those two parts be considered as a whole or separately? The Canadian Delegation had tabled an amendment which also consisted of two parts: the first part proposed the omission of the Preamble proper, and the second—the omission of the “Preliminary Provisions”. The Canadian Delegation did not disagree with the principles set forth in the proposed Preamble, but considered that no preamble was needed. The reason they had tabled the above amendment was to give the Committee an opportunity to decide whether or not it wished to have a preamble. As far as the Preliminary Provisions were concerned, the Canadian Delegation agreed with some points in them, but not with others.

Miss ROBERT (Switzerland) withdrew an amendment (*see Annex No. 190*) which the Swiss Delegation had submitted, but which referred in actual fact to the Prisoners of War Convention. It was not that the Swiss Delegation did not prefer the wording of the Preamble proposed in that amendment to any other wording so far produced; but rather that they thought it better to withdraw their amendment in order to facilitate the discussion.

Mr. DE ALBA (Mexico) said that his Delegation was in favour of not having a preamble at all, in view of the difficulties which had been experienced in the Working Party. He therefore supported the Canadian proposal to omit the Preamble.

Mr. MONTROYA (Venezuela) very much regretted that the Swiss Delegation had felt it necessary to withdraw their amendment. Its wording was excellent, and the Venezuelan Delegation had decided, in conformity with Article 32 of the Rules of Procedure, to reintroduce it in their own name.

Colonel HODGSON (Australia) supported the Canadian proposal, particularly as the Australian Delegation had been the only one which had opposed the idea of having a preamble when the matter was originally discussed (*see Summary Record of the Twenty-fourth Meeting*).

The three original Conventions had survived the test of two world wars by their ideals and practical purpose, without any introductory preamble having been considered necessary. The drafting of a preamble caused more difficulty than any other provision; and, if there were conventions where such an introduction was of value, that was certainly not the case so far as the Civilians Convention was concerned. Moreover, the wording

resulting from the discussions in the Working Party was very far from being a genuine preamble, in that it contained certain elements of positive law.

Like the Delegate of Venezuela, he regretted the withdrawal of the Swiss Delegation's amendment. The Swiss proposal and the first amendment submitted by the Delegation of the United States of America (*see Annex No. 186*) were the only two Preambles worthy of the name amongst all those which had been submitted. A reason which had been given for having a preamble was that the latter should be a clarion call to the world proclaiming the aims which the Diplomatic Conference had sought to attain. Well, the Working Party's text appeared to be nothing but a bad digest of certain principles already formulated in the declaration of Human Rights — a Declaration which the Conference was not called upon to re-write.

The CHAIRMAN replying to the question asked by the Delegate of Canada said that what had been called the Preamble in the Stockholm text could really be divided into two parts — the Preamble and the Preliminary Provisions.

In order to facilitate the discussion, he proposed that the Preamble should be discussed first, and the Preliminary Provisions afterwards.

Mr. MOROSOV (Union of Soviet Socialist Republics) objected to the proposed procedure. To effect an arbitrary separation between two closely connected questions would not appear to be in accordance with the opinion arrived at by the Working Party. Besides, certain provisions, submitted by the Soviet Delegation for incorporation in particular Articles of the Convention, had been rejected by votes taken in Committee III on those Articles. Those proposals had now been included among the Preliminary Provisions. Obviously, therefore, if they were to be adopted, a two-thirds majority would be necessary. In any event, the intention of the French Delegation, in proposing the amendment which had served as a basis for discussion in the Working Party, was to group the Preamble and the Preliminary Provisions in a single whole. What had been joined together should not be split again into two parts.

Mr. CLATTENBURG (United States of America) supported the point of view expressed by the Soviet Delegation. The question should be discussed as a whole.

The Committee agreed.

Mr. CLATTENBURG (United States of America) agreed with the Swiss Delegation that the wording proposed for the Preamble by the latter was the

best which had so far been produced. He welcomed the Venezuelan Delegation's wise decision to reintroduce the former Swiss amendment in its own name. That amendment would be supported by the United States Delegation.

The United States Delegation was, on the other hand, opposed to the whole draft submitted by the Working Party, the four initial paragraphs of which seemed unwise and unsafe. They contained words which embodied concepts of hatred. The teaching of such terms and expressions in schools, far from preventing war, could only engender warlike feelings, so that the effect of the Preamble would be the opposite of what was intended.

The Preliminary Provisions merely reproduced certain provisions of the Convention itself. The United States Delegation was opposed to the inclusion of any rules of positive law in a preamble, whether they were included in the actual text of the preamble or immediately after it.

He shared the views of the Soviet Delegate, namely, that since certain matters had already been dealt with by Committee III, a two-thirds majority vote would be required before they could even be discussed again. This was particularly so in the case of point (a) and (f) of the Preliminary Provisions. The adoption of the provisions in question would only make the various parts of the Convention less self-contained and would complicate the application and interpretation of the latter.

Mr. MOROSOV (Union of Soviet Socialist Republics) raised a point of order. Each Delegation would have a good deal to say about the drafts under consideration. The first proposal, however, submitted by the Canadian Delegation, was that there should be no preamble. Was it, therefore, necessary to embark on a lengthy discussion during which points of view, which had already been explained, would again be developed, if the majority was in the end going to accept the Canadian amendment? Would it not be better to let delegates, who wanted to do so, speak on the Canadian proposal, and then to vote on it?

Mr. DE RUEDA (Mexico) seconded the point of order raised by the Delegate of the Union of Soviet Socialist Republics.

Mr. MIKAOU (Lebanon) raised a further point of order. He wished to know whether the Canadian proposal required a simple or a two-thirds majority vote. In the course of the discussions in the Working Party it was the Chairman himself who had remarked that it appeared impossible to take a vote on the United States proposal (identical to that of the Canadian Delegation) because the

Working Party had been entrusted by Committee III, by an almost unanimous vote, with the drawing up of the text of a preamble. That statement seemed to imply that a two-thirds majority vote was necessary.

The CHAIRMAN reminded the Committee that the question of the Preamble had been considered on the first reading at the twenty-third and twenty-fourth meetings. No vote had been taken by the Committee on the first reading, on that or on any other question. As Chairman, he had limited himself to remarking that the discussion which had taken place showed that the delegations were almost unanimously agreed upon the principle that there should be a preamble. As a matter of fact, only one out of 25 speakers had spoken against the adoption of a preamble.

Since the number of speakers permitted to take the floor on a point of order had already done so he asked whether, notwithstanding Article 30 of the Rules of Procedure, the Committee was prepared to allow the Delegate of Canada, as the author of the amendment for the omission of the Preamble and the Preliminary Provisions, to speak again.

The Committee agreed by 21 votes to 3 to hear the views of the Canadian Delegate.

Mr. WERSHOF (Canada) thanked the meeting for allowing him to speak. He dwelt on the confusion which reigned concerning the whole question of the Preamble.

The Canadian amendment was formed of two distinct parts, the first of which proposed the omission of the Preamble, and the second—the omission of the Preliminary Provisions.

Did the point of order raised by the Soviet Delegation concern the first or the second part of the amendment, or did it concern both parts? If the Committee were to vote on both parts of the amendment together, the situation would be far from clear, since certain delegations who were anxious to vote against one part might be prepared to vote for the other. The vote on each should, therefore, be taken separately.

The point of order raised by the Delegate of the Lebanon introduced an entirely new question, namely, whether or not the Canadian amendment required a two-thirds majority vote. In his opinion a two-thirds majority was not necessary. On the first reading, the Committee had not decided that there should be a preamble. It had merely voted unanimously for the creation of an "ad hoc" Working Party to study the Preamble.

The CHAIRMAN remarked that the Canadian Delegate had spoken on the substance of the question and not on a point of order.

In the matter of procedure, he himself had proposed a separate discussion on the two questions at issue, but the Committee had decided otherwise. As far as the method of voting was concerned, he reserved the right to propose at the appropriate stage the best and clearest way of taking the sense of the meeting.

Mr. MIKAOUI (Lebanon) said that he would not be able to vote on the point of order until he had received a clear reply to the question he had asked. Did the Chairman feel that the proposal of the Canadian Delegation involved the reconsideration by the Committee of a vote already taken and, in consequence, that it required a two-thirds majority vote? Or should the proposal be considered as a mere amendment on which the Committee could vote by a simple majority?

The CHAIRMAN read the relevant extract from the Summary Record of the Twenty-fourth Meeting of Committee III, held on May 27th. The document in question showed that the Committee had not voted on the Preamble during the first reading.

Replying to a question by Mr. CLATTENBURG (United States of America), the CHAIRMAN again said that, since the Committee had not voted on the question of having a Preamble, there was no question, when voting on the Canadian amendment, of reviewing a former vote, and no need for a two-thirds majority. A normal majority vote was all that was necessary.

Mr. MOROSOV (Union of Soviet Socialist Republics) suggested that the Committee should first vote on the proposal not to have a Preamble. If that proposal was accepted, there would be no point in discussing the other questions connected with the Preamble, including that of the Preliminary Provisions.

Mr. WERSHOF (Canada) agreed.

Msgr. BERTOLI (Holy See), referring to the Rules of Procedure and to earlier statements made by the Chairman during discussions by the Work-

ing Party, considered that a two-thirds majority vote was required.

The CHAIRMAN replied that, since no formal decision had been taken on the matter, all that was needed was a simple majority vote. The Committee would be asked to decide whether the whole of the Preamble should be omitted, including the Preliminary Provisions.

Mr. MOROSOV (Union of Soviet Socialist Republics) proposed the closure of the discussion.

Mr. MIKAOUI (Lebanon) opposed the motion.

The closure of the discussion was agreed upon by 25 votes to 12.

The CHAIRMAN said he would proceed to take the opinion of the meeting on the Canadian proposal to omit the Preamble altogether, including the Preliminary Provisions.

Colonel HODGSON (Australia) observed that the Committee had decided to discuss the Preamble and the Preliminary Provisions together, but not to vote on them together.

The CHAIRMAN replied that, in view of the statement made by the Delegate of Canada, who was the author of the amendment, the latter would be voted on as a whole.

Msgr. BERTOLI (Holy See), invoking Article 29 of the Rules of Procedure, proposed that the Canadian amendment should be voted on paragraph by paragraph.

Msgr. Bertoli's proposal for a separate vote on each paragraph was rejected by 20 votes to 19.

The Canadian amendment for the omission of the Preamble, including the Preliminary Provisions, was put to the vote and adopted by 27 votes to 17.

The CHAIRMAN said that there would, accordingly, be no Preamble, and no further discussion on the subject.

*The meeting rose at 1 p.m.*

## FORTY-SIXTH MEETING

*Saturday 9 July 1949, 3 p.m.*

*Chairman:* Mr. Georges CAHEN-SALVADOR (France)

### Article 12 and Annex I

Mr. HAKSAR (India), Rapporteur, said that the Drafting Committee had been unable to reach a compromise solution with regard to the hospital and safety zones provided for in Article 12. It had therefore decided to submit three texts to Committee III, two of them being referred to respectively as the majority and minority texts (improperly, as there had been no vote) (*see Annexes Nos. 201 and 202*); the third text was that contained in the amendment submitted by the Netherlands Delegation (*see Annex No. 203*). The Drafting Committee had also prepared a draft text for Annex I to which Article 12 referred, although the Annex could not be finally drafted until the final version of Article 12 was known. The Netherlands Delegation had also proposed an amendment to Annex I (*see Annex No. 377*).

Major ARMSTRONG (Canada) said that he supported the text of the minority because, unlike the majority text which used the language of the Stockholm draft, it was not mandatory. He pointed out, in that connection, that Article 18 of the Wounded and Sick Convention, which corresponded to Article 12 of the Civilians Convention, provided that the Contracting Parties "may" establish hospital zones and "may" conclude agreements on the recognition of the zones and localities created. That was exactly the shade of meaning required in Article 12 of the Civilians Convention.

Lastly, he asked that the minority text should be put to the vote paragraph by paragraph.

Mr. MEULBLOK (Netherlands) greatly regretted the absence of General Schepers (Netherlands), who had taken a special interest in the Article. General Schepers had pointed out, at the time of the first reading (*see Summary Record of the Fourth Meeting*), that the Committee of Government Experts which had met in Geneva in October 1938 had already prepared a draft Conven-

tion for the setting up of hospital zones and localities in time of war. That draft had, unfortunately, remained inoperative during the last war. It was in order to reach a practical solution to the question that his Delegation had submitted the amendment referred to above. In dealing with the creation of hospital and safety zones, that amendment differentiated between peacetime and wartime. It provided that such a zone could not be created simply by a decision of one of the Parties, but that a notification of that decision had to be made to the Contracting Parties (in peacetime) and to the Parties to the conflict (in wartime).

Mr. MOROSOV (Union of Soviet Socialist Republics) observed that the setting up of hospital and safety zones and localities in wartime necessarily involved provision for the reciprocal recognition of those zones and localities by the belligerents. That conception, which was contained in the Stockholm text, had been omitted in the majority text and should be restored. That was why the Soviet Delegation proposed simply to revert to the Stockholm text of Article 12. It was obvious that the personnel entrusted with the organization and administration of the safety zones should be included among the persons authorized to reside in such zones. That provision was contained in the Stockholm text. It was surprising that it should have been omitted in the majority text of the Drafting Committee.

Colonel HODGSON (Australia) regretted that representatives from continents other than Europe or America had not been included in the Drafting Committee, the majority of the members of which consisted of delegates of European countries. While appreciating the views of those countries on the question of safety zones, he failed to understand why they should attempt to impose on the rest of the world the decisions which they themselves felt it advisable to take.

The text submitted by the Netherlands Delegation was excellent and clear, and had the advantage, compared with the majority text, of not imposing obligations which it might not be possible to carry out. He was prepared to vote in favour either of the minority text or of that submitted by the Netherlands Delegation.

Mr. CLATTENBURG (United States of America) likewise believed that the majority text was too mandatory in character. He agreed that the Netherlands proposal was well thought out and generally acceptable and regretted that the Drafting Committee had not adopted it. He also regretted that there should be a divergence between Article 12 of the Civilians Convention and Article 18 of the Wounded and Sick Convention, the latter having been found acceptable by Committee I.

Miss JACOB (France) said that during the discussions in the Drafting Committee, the French Delegation had proposed that the two texts should be brought into line. That suggestion had not been followed. She felt, however, that the wording adopted by Committee I for Article 18 could be adapted, with appropriate changes, to the Civilians Convention. That would have three advantages: there would be no discrepancy between the two texts, the same Annex, in so far as medical personnel was concerned, would apply to both Conventions, and the provisions would not be of a mandatory character.

Mr. LOKER (Israel) wished to draw the attention of the Committee to the experience of setting up safety zones in Palestine. With all due respect to the International Committee of the Red Cross, which acted during the recent conflict in the capacity of a Protecting Power, and to the courage of its agents, it must be recognized that the safety zones set up in Jerusalem had not been as successful as had been anticipated. The difficulty was that safety zones could not be established without taking account, in particular, of strategic requirements. It was easier to take such factors into consideration in a big country than in a small one surrounded by numerous other countries. Consequently, he, too, preferred that a recommendation concerning safety zones should be inserted in the Convention, rather than a strict obligation which might often be difficult to apply. He thought that either the minority text or else the amendment of the Netherlands Delegation could be adopted.

Mr. MINEUR (Belgium) was surprised that the text of the majority of the Drafting Committee (both for Article 12 and Article 12A) made no

mention of the personnel administering the zone. He would like to know the reason for that omission.

Mr. SPEAKE (United Kingdom) agreed with the views expressed by the Representative of Israel. He considered that the minority text should be adopted after bringing it into line with the corresponding Article of the Wounded and Sick Convention.

Mr. MARESCA (Italy) supported the suggestion of the French Delegation which proposed a legal wording far preferable to that of the minority text. The words "shall consider the possibility of setting up" used in the latter, were open to criticism, while the word "may" contained in Article 18 of the Wounded and Sick Convention, corresponded to the legal terminology normally used in international law.

Mr. BAGGE (Denmark) believed that the difficulties referred to by the Delegate of Israel could be overcome. He would, nevertheless, prefer a wording which did not lay down an absolute obligation and therefore supported the Netherlands proposal. He could not vote for the majority or minority texts, both of which had omitted all reference to the personnel entrusted with the administration of the zones.

Colonel DU PASQUIER (Switzerland), Rapporteur, said that the reason why the personnel entrusted with the administration of the zones had not been referred to either in Article 12 or in Article 12A, was that it was intended to mention such personnel in the first Article of the Annex, as had been decided by Committee I in the case of Article 18 of the Wounded and Sick Convention.

Mr. ABUT (Turkey) supported the French proposal to bring the wording of Article 12 of the Civilians Convention into line with that of Article 18 of the Wounded and Sick Convention.

The CHAIRMAN said that he proposed to ask the Committee to vote on the Netherlands proposal in the first place, and then on the majority text of the Drafting Committee.

Miss JACOB (France) urged that a vote on the proposal of the French Delegation should be taken immediately after the vote on the Netherlands amendment, in the event of the latter being rejected.

Mr. PASHKOV (Union of Soviet Socialist Republics) asked the Chairman to put to the vote the amendment submitted by his Delegation proposing the reinstatement of the Stockholm text.

The CHAIRMAN replied that that only differed from the majority text on two points (personnel entrusted with the administration of the zones; "mutual" character of the recognition of the zones). He would therefore consider the Soviet amendment as an amendment to the text of the majority of the Drafting Committee.

The Netherlands amendment was rejected by 17 votes to 8.

The French Delegation's proposal to model the text of Article 12 on that of Article 18 of the Wounded and Sick Convention was adopted by 18 votes with no dissentient votes.

Mr. PASHKOV (Union of Soviet Socialist Republics) having pressed for a vote on the other amendments, the CHAIRMAN replied that he was unable to accede to that request since the 18 votes cast in favour of the French proposal constituted an absolute majority. In order, however, to satisfy the Soviet Delegation, he was prepared to count the number of abstentions.

11 abstentions were counted.

The Committee endorsed the Chairman's ruling by 19 votes to 8, and the discussion was declared closed.

General SLAVIN (Union of Soviet Socialist Republics) requested that the fact that his Delegation desired to maintain the Stockholm text, be recorded in the minutes of the meeting.

The CHAIRMAN reminded the meeting, that, according to the proposal of the French Delegation, Annex I should also be modelled, with the necessary modifications, on the Annex adopted by Committee I. The Drafting Committee would have to discuss the matter. He proposed that the Annex should be referred back to the Drafting Committee for consideration in the light of the decision taken in regard to Article 12 itself.

Replying to General SLAVIN (Union of Soviet Socialist Republics) who wished to know where the text would go after it had been studied by the Drafting Committee, the CHAIRMAN replied that after being studied there, it would be returned to Committee III for reconsideration. That procedure seemed to him to be the wisest so as to avoid any possible misunderstanding.

It was decided to refer Annex I back to the Drafting Committee.

#### Article 12A

Colonel DU PASQUIER (Switzerland), Rapporteur, reminded the meeting that Article 12A dealt with the question of neutralized zones in the regions where fighting was taking place.

The United Kingdom Delegation had feared that the proposed version of Article 12A might appear to limit the possibility of concluding agreements regarding neutralized zones, to States alone. It proposed that authority to conclude such agreements should be accorded to "Commanders in the field" (*see Annex No. 206*).

The Drafting Committee (*see Annex No. 207*) had not taken account of the above proposal, considering that the adverb "direct" made it sufficiently clear that the agreements did not necessarily have to be concluded through diplomatic channels, but could also be concluded between opposing military bodies. The Drafting Committee had, on the other hand, adopted the substance of the last sentence of the United Kingdom amendment and had modified sub-paragraph (b) of the first paragraph accordingly, adding the word "Civilian" before the word "persons". For it was necessary to avoid certain troops in reserve being regarded by some tendentious misinterpretation as "persons taking no active part in the fighting".

Mr. PASHKOV (Union of Soviet Socialist Republics) introduced an amendment tabled by his Delegation proposing that the word "Civilian" should be omitted from sub-paragraph (b) of the first paragraph of the Drafting Committee's text, and the phrase "including the personnel responsible for the administration, supervision and food supply of the said zones" re-introduced, (the words "as for example" in the Stockholm text being replaced by the word "including"). He pointed out that medical officers and medical personnel could be of service in caring for the wounded and sick in safety zones.

Mr. QUENTIN-BAXTER (New Zealand) was opposed to the above amendment.

The amendment proposed by the Soviet Delegation was rejected by 18 votes to 9.

Article 12A, as proposed by the Drafting Committee, was adopted by 23 votes to 6.

#### Article 11

Colonel DU PASQUIER (Switzerland), Rapporteur, said that Article 11 differed from Article 3 in that it extended the field of application of the Convention. Under Article 11 the provisions of Part II of the Convention applied to "the whole of the populations of the countries in conflict". That provision had been criticized by various delegations on the ground that it imposed duties on the Contracting Parties towards their own nationals. Moreover, there had been no formal

proposal that the Article should be omitted and no amendment to it had been submitted.

The text proposed by the Drafting Committee was similar to that of Stockholm, the following modifications having been introduced: 1) the words "irrespective of" were amended to read "without any distinction founded in particular on"; 2) the word "or" was inserted after the word "religion"; 3) the words "or any other distinction based on similar criteria" were omitted; 4) in the English text, the word "population" was amended to read "populations", and the word "attenuate" was replaced by the word "alleviate".

Article 11, as proposed, was adopted with no dissentient votes.

### Transfer of Part II

Colonel DU PASQUIER (Switzerland), Rapporteur, said that the majority of the Drafting Committee, taking account of a proposal made at Stockholm and taken up again by the International Committee of the Red Cross ("Remarks and proposals", page 70), had decided to propose to Committee III that Part II be placed between Parts III and IV. Articles 11 to 23 would then become Articles 113 to 126. The Soviet Delegation had voted against that decision. The United Kingdom and Swiss Delegations had abstained from voting.

The delegations supporting the transfer pointed out that Article 3 contained a definition of protected persons while Part III contained rules specifying the rights and the duties respectively of such persons and of the Powers in whose hands they were. It was not, therefore, logical to insert, between Article 3 and Part III, Part II, which concerned the wider group of persons defined in Article 11, and which did not constitute an essential part of the Convention.

Those opposing the transfer said that as Part II contained the provisions which were most general and applicable to the greatest number of people, it was logical to place it before the less general provisions of Part III.

Mr. PASHKOV (Union of Soviet Socialist Republics) was opposed to the transfer which might detract from the importance of Part II. Since the latter was more general in character, it could logically be placed before Part III with its numerous specific provisions.

The proposal to transfer Part II so as to make it follow Part III, was rejected by 14 votes to 9.

### Article 13

Colonel DU PASQUIER (Switzerland), Rapporteur, reminded the meeting that consideration of Article 13, as proposed by the Drafting Committee (*see Annex No. 210*), had been provisionally reserved (*see Summary Record of the Twenty-fifth Meeting*) pending the adoption by the Committee of certain clauses of Article 13 of the Stockholm draft, which had been transferred to other Articles. The transfers (to Articles 35 and 50, *see Summary Record of the Thirty-fifth and Thirty-seventh Meetings*), having now taken place, the adoption of the Drafting Committee's text was merely a formality.

Mr. JONES (Australia) observed that the Stockholm text said "the Parties to the conflict shall", whereas the Drafting Committee's text did not say by whom or against what the wounded and sick, the infirm and expectant mothers would be protected.

Mr. CAILLAT, Secretary, said that reading Articles 35 and 50 would show that the matter transferred from Article 13 of the Stockholm text had been satisfactorily replaced in the body of the Convention.

Mr. JONES (Australia) wished to press his point, and proposed adding the words "by the Parties to the conflict" at the end of the first paragraph of the Drafting Committee's text.

Mr. MARESCA (Italy) reminded the meeting that his Delegation (*see Summary Record of the Fifth Meeting*) had proposed the omission of the words "As far as military considerations allow" at the beginning of the second paragraph of the Stockholm text. That sentence would seem to cancel the obligation laid on the Parties to the conflict to "facilitate the steps taken to search for the killed and wounded".

Mr. GINNANE (United States of America) rose on a point of order against the consideration of the above two proposals.

The CHAIRMAN put the above motion to the vote. The Committee decided by 12 votes to 9 that the Australian proposal was not receivable.

The non-receivability of the Italian proposal was agreed to by 16 votes to 5.

The whole of Article 13 was then adopted with no dissentient votes.

**Article 17**

Mr. CAILLAT, Secretary, reminded the meeting that the Drafting Committee had proposed simply to omit Article 17. The second and third paragraphs of the Article had been transferred to a new Article 50A (*see Annex No. 284*), which had been adopted at the thirty-seventh meeting, and the whole of the first paragraph had been deleted as Articles 15, 30 and 50 already provided adequate protection.

The proposal to omit Article 17 was adopted with no dissentient votes.

**Articles 24 and 25A**

Mr. CAILLAT, Secretary, said that the Drafting Committee had proposed transferring the substance of the first part of Article 24 of the Stockholm text to sub-paragraph 4 of Article 35, to the fifth paragraph of Article 45, and to Article 73 (*see Summary Record of the Twenty-ninth Meeting*).

The Drafting Committee had also proposed that the second part of Article 24 should be placed immediately after Article 25 and that it should be known, in its reduced form, as Article 25A. It would read as follows:

“The presence of a protected person may not be used to render certain points or areas immune from military operations.”

The reason for changing the place of the Article was that it appeared more logical to place Article 24, which dealt with a particular case, after Article 25 the provisions of which were of a more general character.

The Drafting Committee's proposals were adopted with no dissentient votes.

**Article 27**

Mr. CAILLAT, Secretary, reminded the meeting that the first paragraph of Article 27 had been transferred to the second paragraph of Article 25 (*see Summary Record of the Twenty-ninth Meeting*),

and that the second and third paragraphs of Article 27 had been transferred to sub-paragraph 5 of Article 35 (*see Summary Record of the Thirty-fifth Meeting*) and paragraph 5 of Article 46 (*see Summary Record of the Fortieth Meeting*). All those texts had already been adopted by the Committee.

The above transfers were agreed to with no dissentient votes.

**Article 135**

Mr. CAILLAT, Secretary, read out the remarks of the Rapporteur of the Drafting Committee.

What was the relation, in positive law, between the Hague Conventions of 1899 and 1907 respecting the Laws and Customs of War on Land, and the present Convention for the Protection of Civilian Persons in Time of War? That was a question of considerable importance (*see Summary Record of the Nineteenth Meeting*).

The Stockholm draft provided that the Civilians Convention would, in respect of the matters treated therein, “replace” the Hague Conventions.

The text unanimously adopted by the Drafting Committee (*see Annex No. 375*) employed a form of wording suggested by Professor Castberg, according to which the Civilians Convention would “be supplementary to” Sections II and III of the Regulations annexed to the Hague Conventions of July 29th, 1899 and October 18th, 1907.

That wording did not attempt to define the respective fields of the Conventions, nor to establish a hierarchy; the Conventions remained in force on an equal footing. Certain points which had been merely touched upon in the Hague Convention had been dealt with more fully and defined more exactly in the Civilians Convention. In case of divergencies in the interpretation of the two texts, the difficulty should be settled according to recognized principles of law, in particular according to the rule that a later law superseded an earlier one.

Article 135 was adopted unanimously.

*The meeting rose at 7 p.m.*

## FORTY-SEVENTH MEETING

Thursday 14 July 1949, 3 p.m.

Chairman: Mr. Georges CAHEN-SALVADOR (France)

**Progress of work**

The CHAIRMAN observed that the Committee would consider Article 3 at its meeting on Monday July 18th, and would thus conclude on that day the second reading of the Civilians Convention.

It was anticipated that if the Coordination Committee had likewise submitted the wording of all the texts referred to it for study, Committee III would be able to take a vote on the whole of the Civilians Convention on Monday July 18th.

Committee III would then only have to approve the Report of its Rapporteurs in order to bring its work to an end.

Lastly, in accordance with the decision previously taken, the Committee might be called upon to consider the proposal put forward by the Delegation of the Union of Soviet Socialist Republics concerning the prohibition of the use of chemical means of warfare and atomic weapons.

In the absence of objections, the Chairman announced that the programme of work he had outlined was approved by the Committee.

**Communication from the Chairman of the Coordination Committee**

The CHAIRMAN read a letter he had received from the Chairman of the Coordination Committee forwarding the first set of documents prepared by that Committee. The letter anticipated that the work of the Coordination Committee would be finished by the end of the week, which would enable Committee III to carry out the programme of work just adopted.

By keeping to that programme, the Committee would be meeting the wishes expressed by the Bureau of the Conference, which, at its last meeting, again hoped that the work of the Conference would be completed at the earliest possible moment.

**Article 59**

Mr. HAKSAR (India), Rapporteur, reminded the meeting that Article 59 had been referred back to the Drafting Committee for the second paragraph only to be reworded (*see Summary Record of the Forty-second Meeting*).

Under the Stockholm text, the Occupying Power could not impose the death penalty except in the case of offences punishable by death under the law of the occupied country. That principle had, however, been rejected by the Drafting Committee by 4 votes to 2, with 1 abstention, as they had felt that it was not the laws of the occupied country which should be applied, but the laws and customs of war. The United Kingdom and French Delegations, which had both submitted amendments to the paragraph in question (*see Summary Record of the Forty-second Meeting*) had later agreed on a joint text. That text had been adopted, by a strong majority, in place of the second paragraph of the text previously adopted by the Drafting Committee (*see Annexes No. 299 and 300*).

Mr. MINEUR (Belgium) proposed to amend the second paragraph of the text adopted by the majority of the Drafting Committee by inserting the word "intentional" before "homicide" and again before "attempted homicide", and by inserting the word "particularly" before the words "grave acts".

Mr. BAGGE (Denmark) reminded the meeting of the statement made by the Representative of the International Committee of the Red Cross during the forty-first meeting. The Danish Delegation considered that the provisions in the final text submitted by the Drafting Committee were too severe; it would have preferred the Committee to have adopted the proposal put forward by the French Delegation on July 7th, at the forty-second meeting. If that proposal could not be

adopted, the Danish Delegation would prefer the Stockholm wording to be maintained.

General SLAVIN (Union of Soviet Socialist Republics) could not agree with the wording of the second paragraph of the text submitted by the Drafting Committee, that wording being too favourable to the Occupying Power. Since the proposal of the French Delegation appeared to have been discarded, he would support the Stockholm text.

Colonel FALCON BRICENO (Venezuela) referred to the statement which he had made on July 7th to the effect that the Constitution of Venezuela did not recognize the death penalty. He wished the meeting to take official cognizance of that fact.

Mr. DAY (United Kingdom) drew attention to the fact that the second paragraph of the Article had been referred back to the Drafting Committee in order to find a compromise between the proposals of the French and United Kingdom Delegations. That compromise was contained in the text which the Drafting Committee had now submitted. It was not a practical proposition—on humanitarian grounds alone, however worthy of consideration—to provide protected persons with safeguards which had very little chance of being respected by an Occupying Power concerned with its own security. It was wiser to accept a compromise which had some chance of being conscientiously respected. The proposed wording appeared to be entirely satisfactory; it limited the number of offences punishable by death, and it gave the Occupying Power the means of repressing crimes and offences which threatened it and its occupying forces and administrative personnel.

Mr. LAMARLE (France) explained that the French Delegation was willing to drop the condition expressed at the end of the amendment which it had submitted on July 7th. That condition had not been included in the Drafting Committee's new text. As far as France was concerned, the law of that country made the safeguard represented by the words "provided that such cases were punishable by death under the law of the occupied territory in force before the occupation began" illusory; the same thing was probably also true of most other countries.

In the compromise text adopted by the Drafting Committee there was an expression which was not contained in the original French amendment and which provided protected persons with an additional safeguard, namely, the word "essential". The Occupying Power was not entitled to impose the death penalty except for acts of sabotage of

installations having an essential military interest for the Occupying Power.

In the second paragraph the French Delegation, for its part, would have preferred not to treat "attempted homicide" on the same footing as "homicide". He feared that the courts of the Occupying Power might interpret this necessarily vague wording too freely.

Mr. MEVORAH (Bulgaria) was not satisfied with the explanations given by the Delegate of France. In his view, respect for the laws of the occupied country was the best safeguard for protected persons. What did it matter if the same Occupying Power was compelled to apply different rules in different occupied countries?

The CHAIRMAN said that one of the proposals made was out of order unless recourse was had to a special procedure. He spoke of the Stockholm text. That text had been rejected by the Committee on July 7th, and the latter could not reverse its previous decision except by a two-thirds majority vote. He proposed to close the discussion after having heard the four speakers still on the list.

Mr. MCCAHERN (United States of America) supported the new text proposed by the Drafting Committee. As compared with the laws and customs of war, that text considerably reduced the number of cases in which the death penalty could be imposed.

Colonel HODGSON (Australia) would have been unable to subscribe either to the Stockholm text or to the wording proposed by the French Delegation because of the stipulation that the offence in question had to be punishable by death under the law of the occupied country. He would accept the compromise solution drawn up by the Drafting Committee, which was probably one of the mildest military penal codes ever framed. He suggested that the sabotage of "lines of communication" should be specifically included in the reference to "installations having an essential military interest".

Mr. MARESCA (Italy) said that in his opinion the second wording submitted by the Drafting Committee was a considerable improvement on the first.

The CHAIRMAN proposed that the French proposal of July 7th, which had been reintroduced by the Delegation of Denmark, be put to the vote.

The correctness of the proposed procedure having been questioned, the point was put to the vote; the Committee agreed by 21 votes to 12 that

a vote could be taken on the French amendment reintroduced by the Danish Delegation.

The substance of the French amendment was adopted by 17 votes to 13.

The CHAIRMAN remarked that, in the presence of the above vote, the Belgian proposals were no longer relevant.

The Australian Delegation withdrew its proposal concerning sabotage of lines of communication.

The whole of the second paragraph of Article 59, as amended in accordance with the French proposal, was adopted by 21 votes to 11.

#### Article 60

Mr. HAKSAR (India), Rapporteur, reminded the meeting that the Drafting Committee (*see Summary Record of the Forty-second Meeting*) had been entrusted to redraft the second paragraph of Article 60 so as to take account of an amendment submitted by the Italian Delegation. The new wording drawn up by the Drafting Committee (*see Annex No. 302*) had been agreed to by that Delegation.

The new text proposed for Article 60 was adopted with no dissentient votes.

#### Article 61

Mr. HAKSAR (India), Rapporteur, said that Article 61 had been referred back to the Drafting Committee in order to bring the French wording into line with the original English text.

The new French text of Article 61 (*see Annex No. 305bis*) was adopted with no dissentient votes.

#### Article 66

Mr. HAKSAR (India), Rapporteur, explained that Article 66 had been referred back to the Drafting Committee at the request of the Chairman (*see Summary Record of the Forty-third Meeting and Annex No. 311*), for consideration of the advisability of including a reference to Article 22 in connection with the right to exchange family correspondence. The Drafting Committee had felt that if a reference were made to Article 22, other Articles should also be mentioned. It was better to make no reference at all rather than have an incomplete list; Article 22 was, in any case, drafted in general terms, and so covered the protected persons referred to in Article 66.

The Drafting Committee had, however, modified the beginning of the first paragraph which now read as follows :

“Protected persons indicted shall be detained in the occupied country, and if convicted they shall serve their sentence therein. They shall, if possible, be separated from other detainees...”

Mr. MINEUR (Belgium) suggested a minor drafting change. The words “Such persons” at the beginning of the fifth paragraph should read “Detained protected persons”.

The CHAIRMAN agreed. As a corollary the words “Detained protected persons” at the beginning of the sixth paragraph should read “Such persons”.

The new text of Article 66 was adopted with no dissentient votes.

#### Article 68

Mr. HAKSAR (India), Rapporteur, said that in the second paragraph of Article 68, the Drafting Committee had introduced the modification which had been adopted at the forty-third meeting at the request of the Delegation of the Union of Soviet Socialist Republics, the words “in conformity with the provisions of the present Convention” having been inserted at the end of the first sentence of the paragraph. The Drafting Committee had considered at length the Belgian Delegation’s proposal asking for a more precise definition of the safeguards provided for protected persons whose internment was decided upon by the Occupying Power. The proposal had not been adopted, as it was considered that the second paragraph already contained ample safeguards. The Drafting Committee had, on the other hand, adopted the Turkish Delegation’s proposal to divide the second paragraph into two sentences (*see Summary Record of the Forty-third Meeting*).

The Committee believed that Article 68 did not admit of references to Articles 38 and 39, and that it was not possible to push the analogy between the situation of internees on the territory of a belligerent and that of internees in occupied territory any further. The two situations were so entirely different that no argument by analogy was possible.

Mr. MINEUR (Belgium) did not wish to press the point.

Article 68 (*see Annex No. 313*) was adopted with no dissentient votes.

**Annex I**

Mr. HAKSAR (India), Rapporteur, reminded the Committee that at the forty-sixth meeting it had referred Annex I to the Drafting Committee. He said that the Drafting Committee's task had been made very much easier by the existence of Annex I to the Wounded and Sick Convention, which had already been adopted by Committee I. The Drafting Committee had confined itself to making a few minor editing changes in the latter text and to including references to the safety zones which did not figure in the Wounded and Sick Convention.

General OUNG (Burma) made a formal reservation in regard to Article 6 of Annex I which opened the way to the adoption of a variety of emblems. He asked the Committee to think about that question before it was too late.

With the above reservation, the CHAIRMAN put the text of Annex I as adopted by the Drafting Committee (*see Annex No. 378*), to the vote.

Annex I was adopted with no dissentient votes.

**Article 127 and New Articles 122A and 23A**

Mr. MEVORAH (Bulgaria), Rapporteur, explained that the wording of the Article now submitted as 122A (*see Annex No. 365*), was actually a version of the amendment to Article 127 submitted by the Canadian Delegation on the first reading (*see Summary Record of the Twenty-second Meeting*), which had been reworded by the majority of the Working Party entrusted with the study of Articles 123 to 127.

The text adopted by the Working Party was very concise and very different from the Stockholm text of Article 127. It left each State free to settle for itself the questions which had been dealt with in Article 127.

The minority of the Working Party had drawn up a text (*see Annex No. 227*) which reproduced the Stockholm text with certain modifications; nationals were not covered by it, as it spoke of "aliens" instead of "persons". The minority proposed that it should be included in the Convention immediately after Article 23.

Mr. WERSHOF (Canada) opposed the minority text. It was not that Canada — which gave its full support to the International Refugee Organization and had welcomed thousands of displaced persons on its territory — was not sympathetic to the principles contained in the minority text, but that the text in question went beyond the proper scope of the Civilians Convention.

Mr. CLATTENBURG (United States of America) asked for separate votes on the majority text (which might become Article 122A), and on the minority text (which might become Article 23A) in view of the fact that they dealt with two entirely different questions. It was possible that some delegations would vote for both texts, as there was no contradiction between them. Article 23A merely supplemented Article 23, which had already been adopted and which dealt with the reunion of dispersed families.

Mr. MINEUR (Belgium) supported the United States proposal.

Mr. MOROSOV (Union of Soviet Socialist Republics) was in favour of the amendment submitted by the Canadian Delegation, and against consideration of the United States proposal. The minority text was unacceptable; besides, to consider it side by side with the majority text would be meaningless, as the two proposals concerned the same Article, and the one excluded the other. For his part, he felt it was not possible to transform Governments into travel agencies in order to facilitate the return of internees. The obligation on Governments was limited to facilitating the return of internees to the place where they had resided before being interned.

The CHAIRMAN declared the discussion closed and put the Article to the vote.

The majority text was adopted by 21 votes, with no dissentient votes.

The proposal of the majority of the Drafting Committee to place the Article immediately after Article 122 (as Article 122A), was adopted with no dissentient votes. Article 127 of the Stockholm text was therefore omitted.

Mr. POPPER (Austria) requested that a vote should also be taken on the minority text, as several delegations appeared to wish to include an Article 23A in the Convention, worded in accordance with the minority text.

The CHAIRMAN replied that a vote could only be taken if the minority text was considered as an amendment to the proposal of the majority, which, judging from the discussion, was not the case.

**Part IV**

Following a question by Mr. CLATTENBURG (United States of America), the CHAIRMAN consulted the Committee, which unanimously adopted

the proposal of the Working Party to subdivide Part IV (Execution of the Convention) into two sections, viz.

1. General Provisions (Articles 126 to 130) ;
2. Final Provisions (Articles 131 et seq.).

### Article 123 and new Articles 123A, 123B and 123C

### Articles 124, 125 and 126

Mr. MEVORAH (Bulgaria), Rapporteur, explained that the Working Party had split Article 123 of the Stockholm text into four Articles, distributing its subject matter among them in a different and more logical order. The wording of the proposed new Articles was practically identical with that of the Stockholm text, the only change of any importance being the substitution of the expression "kept in custody for more than two weeks" for the words "it may have arrested" in the second paragraph of Article 123. The purpose of that modification was to avoid making it necessary to notify all arrests, even those in connection with trifling offences involving detention for one or two days only.

The CHAIRMAN agreed with the decision taken by the Working Party. He proposed that a simultaneous vote should be taken on Articles 123, 123A, 123B and 123C (*see Annexes Nos. 367—370*), as they corresponded in actual fact to a single Article of the Draft Convention.

Mr. MOROSOV (Union of Soviet Socialist Republics) supported the Chairman's proposal and went still further, suggesting that the same vote should also include Articles 124, 125 (*see Annexes Nos. 371 and 372*) and 126 (identical with the Stockholm text), on which there had been no apparent divergence of opinion in the Working Party. A Draft Article 126A, which was an addition to the Stockholm text, would be discussed separately.

There being no objection to the proposed procedure, the wording proposed above for Articles

123, 123A, 123B and 123C, as well as Articles 124, 125 and 126, were adopted with no dissentient votes.

### Article 126A

Mr. MEVORAH (Bulgaria), Rapporteur, said that an amendment submitted by the United Kingdom Delegation (*see Annex No. 374*) proposed the introduction of a new Article 126A to define cases where derogations from the Convention would be permissible. The Working Party had not taken a decision on the matter as it considered that the amendment was outside its competence.

Mr. DAY (United Kingdom) explained that the amendment, which had also been submitted to Committee II, was based on the precedent established in Article 1 of the Prisoners of War Convention of July 27th 1929. It provided that where circumstances rendered the implementation of the Convention impossible, the fundamental principles of the Convention were nevertheless to be respected. There were two schools of thought on the question in Committee II. One party held that if at any time it was impossible to carry out the Convention, the signatories to the Convention would be covered by the maxim that nobody can do the impossible. The other party, more realistically minded, were prepared to consider the United Kingdom proposal.

The CHAIRMAN ruled that the amendment should be considered either in relation to Article 2, which dealt with the application of the Convention, or in relation to Article 5, which provided for special agreements.

Since neither of those two Articles had been referred to Committee III (both being within the competence of the Joint Committee), it would seem that Committee III was not competent to take a decision on the United Kingdom amendment.

A vote was taken, and the Committee confirmed the above ruling by 11 votes to 5.

*The meeting rose at 7.30 p.m.*

## FORTY-EIGHTH MEETING

Monday 18 July 1949, 10.30 a.m.

Chairman: Mr. Georges CAHEN-SALVADOR (France)

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**Article 3**

Colonel DU PASQUIER (Switzerland), Rapporteur, introduced the text of Article 3 as submitted by the Drafting Committee (*see Annex No. 194*).

In its first paragraph, the Article contained a definition of persons protected under the Convention. The Drafting Committee had considered various questions which had been submitted to it. In its opinion, the final words of the first paragraph: "or Occupying Power of which they are not nationals", made redundant any special mention of stateless persons or persons deprived of their nationality. In the second paragraph, it had laid down the principle of reciprocity, namely, that protection under the Convention could only be claimed by nationals of States which were parties to it.

A particularly delicate question was that of the position of the nationals of neutral States. The Drafting Committee had made a distinction between the position of neutrals in the home territory of belligerents and that of neutrals in occupied territory. In the former case, neutrals were protected by normal diplomatic representation; in the latter case, on the other hand, the diplomatic representatives concerned were only accredited to the Government of the occupied States, whereas authority rested with the Occupying Power. It followed that all neutrals in occupied territory must enjoy protection under the Convention, while neutrals in the home territory of a belligerent only required such protection if the State whose nationals they were had no normal diplomatic representation in the territory in question. The text drawn up by the Drafting Committee had taken account of the above considerations.

The third paragraph of the Stockholm text had been slightly altered in order to make it clear that persons protected by the other humanitarian conventions could not claim protection under the Civilians Convention.

Mr. POPPER (Austria) did not think the French word "ressortissants" in the first sentence of the second paragraph corresponded exactly to the English word "nationals". The term "ressortissants" was the less satisfactory because in many cases of loss of nationality, the State on whose territory the person deprived of his nationality found himself, refused to recognize that decision. The person was, therefore, considered, in the country in which he found himself, to be a "ressortissant" of another State which did not recognize him as such. Who was to decide whether the Convention should apply in such cases, in particular in the case of persons whose country of origin was not a signatory to the Convention and did not recognize them as its subjects? Would it not be better to define the word "nationals" as meaning persons who were recognized as such by their country of origin? The first sentence of the second paragraph should be changed to read:

"Nationals of a State which does not recognize them as such shall benefit by the Convention even if the State in question is not bound by it."

Colonel DU PASQUIER (Switzerland), Rapporteur, replied that the authority competent to make decisions regarding the applicability of the Convention was—subject to any decision by the Joint Committee in regard to an interpretative clause—the Government in whose hands the protected person found himself. The cases to which the Delegate of Austria had alluded were very special cases which had not been considered by the Drafting Committee. He, personally, did not believe that the mere fact of the denationalization of a person who had been excluded from protection by reason of the fact that his country of origin was not a Party to the Convention, could automatically transform him into a protected person. It would all depend on the decision taken in his case by the Government of the country where he resided.

Mr. MOROSOV (Union of Soviet Socialist Republics) proposed the omission of the second paragraph. He considered that it was unnecessary, and that the first sentence was actually dangerous. Moreover, the provisions of the paragraph in question conflicted with the third paragraph of Article 2 which had been adopted by the Special Committee of the Joint Committee and which provided that if one of the Powers in conflict was not a party to the Convention but accepted and applied the provisions thereof, then the Powers who were parties to the Convention would be bound by it in relation to the said Power.

Again, why should both neutrals in the territory of a belligerent and nationals of a co-belligerent State be deprived of the protection of the Convention on the pretext that they enjoyed diplomatic protection? Such additional protection did them no harm.

The Soviet Delegation requested that a separate vote should be taken on each of the sentences in the second paragraph.

Mr. GINNANE (United States of America) said that the Drafting Committee had taken as their basis the fundamental principle that the category of protected persons would include all those who, in time of conflict or of the occupation of the territory where they were, did not enjoy the protection of normal diplomatic representation.

Applying that principle, the Drafting Committee had distinguished between the cases of (a) enemy aliens in the home territory of belligerents or in occupied territory, (b) neutral aliens in occupied territory, and (c) neutral aliens in the home territory of belligerents. The most significant difference in Article 3 between the Stockholm text and that submitted by the Drafting Committee lay in the fact that, in the Drafting Committee's text, neutral aliens in the home territory of belligerents were not protected by the Convention so long as they enjoyed the normal diplomatic protection of their own Governments.

The reason for the above change was that in the United States of America and in various other countries a large section of the population was composed of aliens who were permanently settled in its territory. In the United States those persons considered themselves as an integral part of the country, and in time of war were treated in practically all respects as American citizens. Their children were brought up as citizens of the United States. Such persons had no need of protection under the Convention. It was, moreover, desirable to facilitate the task of the Protecting Power by enabling it to concentrate its attention on those persons who had most need of its services, namely, those who lacked normal diplomatic representation.

Finally, he thought that it was only fair to provide that nationals of a State which was not a Party to the Convention, should not be protected by that Convention. In his opinion, there was no conflict between the second paragraph of Article 3 and the third paragraph of Article 2.

His Delegation supported the Drafting Committee's proposal.

Mr. MINEUR (Belgium) felt that the expression "normal diplomatic representation" was vague; he wondered what exactly it was intended to convey. Again, without wishing to criticize the wording submitted by the Drafting Committee, he felt bound to say that the text provided greater protection for enemy aliens than for neutrals. The former had definite rights, while neutrals had to depend on the uncertain outcome of diplomatic intervention and could not claim any of the above rights.

Mr. WERSHOF (Canada) drew attention to the provision laying down that "Nationals of a State not bound by the Convention are not protected by it". That new sentence, which did not figure in the Stockholm text, had been proposed to the Drafting Committee by the Norwegian Delegation and approved by the Delegations of the United States of America, France, the United Kingdom, Switzerland and Canada. Only the Soviet Delegation had voted against it. It appeared essential to remove all doubt on that point in the Convention, and it was to be hoped that a large majority of the members of Committee III would join the Drafting Committee in supporting the new provision. It would be unreasonable and contrary to all treaty practice to expect a Contracting Party to bind itself to extend the benefits of the Convention to the nationals of a country which itself refused to be bound by the Convention. Besides, the provision did not mean that nationals of a State not bound by the Convention would be deprived of all protection; they would enjoy the ordinary safeguards provided by international law.

As far as Canada was concerned, the position was very clear. The Canadian Government did not wish to insert in the Convention any provision which it could not carry out in practice. It would not expect its own citizens to be entitled to the safeguards of the Convention unless the Canadian Government signed and ratified it. His Government did not, therefore, see any reason why the safeguards of the Convention should be extended to the nationals of a State which refused to be bound by the Convention. The amendment proposed by the Soviet Delegation seemed to him to be unreasonable.

He agreed with the Delegate of the United States of America that there was no conflict between the last sentence of the third paragraph of Article 2 and the provision of Article 3 in question. On the contrary, the sentence in Article 3 reinforced the provisions contained in Article 2.

Lastly, in reply to the Delegate of Austria, he wished to say definitely, as a member of the Drafting Committee, that when the latter voted for the first sentence of the second paragraph, it never intended to exclude stateless persons from the benefits of the Convention. The English text could not be interpreted in the sense suggested. There was, however, no reason why improvements in the wording of the French version should not be introduced, if that would help to make the meaning clearer.

Mr. QUENTIN-BAXTER (New Zealand) strongly supported the remarks made by the United States and Canadian Delegates. He observed that the remarks made by the former on the subject of neutral aliens applied with equal force to nationals of a co-belligerent State.

He proposed that the third and fourth paragraphs of Article 3 be transposed.

Mr. HAKSAR (India) supported the text submitted by the majority of the Drafting Committee; he approved, in particular, of the first sentence of the second paragraph. With reference to the observations submitted by the Austrian Delegate, he remarked that the sentence in question was a derogation from the general provisions of the first paragraph. In consequence, stateless persons, who, by definition, were not "nationals of a State", would not be affected by the restriction introduced by the first sentence of the second paragraph.

Again, he saw no contradiction between Articles 2 and 3, as the former spoke of the status of the Parties to the Convention, whereas Article 3 dealt with protected persons.

Mr. BETOLAUD (France) felt that the word "ressortissants" was perfectly clear as it stood, and that any addition might, instead of helping, introduce fresh difficulties.

He thought that the term "normal diplomatic representation" was also clear enough. It obviously referred to diplomatic representation which operated in wartime in the same way as in peacetime. If, for example, the head of a diplomatic mission, accredited to Brussels, had his headquarters in Paris, diplomatic representation would be normal so long as communications between Paris and Brussels were also normal.

Mr. MOROSOV (Union of Soviet Socialist Republics) drew attention to the incorrect interpretation

which the Delegate of Canada had given to the Soviet amendment. The latter amendment had not been properly understood. The Soviet Delegation had never assumed that nationals of a State not signatory to the Convention were to enjoy the benefits of the latter if that country had not fulfilled its obligation under the third paragraph of Article 2.

Mr. CASHMAN (Ireland) reverted to the position of neutrals not enjoying diplomatic representation. In that connection Articles 3, 7 and 9 could, he thought, be worded more clearly. The Irish Delegation supported the wording of the second paragraph as submitted by the Drafting Committee, but reserved the right to submit an amendment on the point at a later stage.

Mr. MARESCA (Italy) supported the proposal of the Delegate of Austria regarding the desirability of defining the meaning of the term "ressortissants" more accurately.

Colonel DU PASQUIER (Switzerland), Rapporteur, said that if it was desired to word the text more precisely, as the Austrian Delegate had proposed, the following sentence might possibly be adopted: "Nationals of a State which recognizes them as such and which is not bound by the Convention, are not protected by it". He agreed with the interpretation of the words "normal diplomatic representation" given by the Delegate of France. There was no need to change the place of the third paragraph, which was complementary to the second paragraph. It was an integral part of the Convention, whereas the fourth paragraph was merely intended to prevent two Conventions from overlapping and was not, therefore, an integral part of the Civilians Convention.

He did not share the Irish Delegate's fear that neutrals who had no diplomatic representation would be insufficiently protected. Experience had shown that in certain cases, to which, although they were not connected with neutral persons, it was even more difficult to find a solution, the International Committee of the Red Cross had, with the consent of the Detaining Power, in actual fact replaced the Protecting Power. Such had been the case, in particular, of German prisoners of war in France, both during their captivity and later as free workers.

Lastly, he believed there was no conflict between Articles 2 and 3, because the application of the Convention which was dealt with in Article 2, should not be confused with the definition of protected persons under Article 3.

The CHAIRMAN said that agreement had been reached with regard to the first, third and fourth

paragraphs. He proposed to put the amendments to the second paragraph to the vote.

The first Soviet amendment (deletion of the first sentence of the second paragraph) was rejected by 26 votes to 7, with 2 abstentions.

The second Soviet amendment (to omit the second sentence of the second paragraph) was rejected by 25 votes to 11, with 3 abstentions.

The Austrian amendment (the adoption of the following text, proposed by the Rapporteur and supported by the Austrian Delegation, as the first sentence of the second paragraph: "Nationals of a State which recognizes them as such and which

is not bound by the Convention, are not protected by it.") was rejected by 14 votes to 6, with 13 abstentions.

The New Zealand Delegation's amendment (to transpose the third and fourth paragraphs) was adopted by 13 votes to 4, with 21 abstentions.

The whole of Article 3, modified in accordance with the New Zealand Delegation's amendment, was adopted by 28 votes to NIL, with 11 abstentions.

*The meeting rose at 1 p.m.*

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## FORTY-NINTH MEETING

*Monday 18 July 1949, 3 p.m.*

*Chairman:* Mr. Georges CAHEN-SALVADOR (France)

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### New Article 3A

Colonel DU PASQUIER (Switzerland), Rapporteur, explained that internal security was one of the main preoccupations of national leaders in time of war. It was essential, therefore, that the protection given by the Convention should not facilitate the subversive activities of "fifth columnists". In order to guard against that danger, the Drafting Committee, on the proposal of the Australian Delegation, had included a new Article 3A (*see Annex No. 195*) in the Convention.

The text of the new Article had been adopted by 5 votes (Canada, United States of America, France, United Kingdom and Switzerland). The Norwegian Delegation had abstained from voting. The Delegation of the Union of Soviet Socialist Republics had voted against the text, and had urged the omission of Article 3A.

The first paragraph restricted the protection given under Article 3 in the case of "definitely suspected" protected persons. The wording of the paragraph, however, clearly specified that there could be no question of arbitrary measures.

The second paragraph laid down that if, in occupied territory, a protected person was engaged in activities hostile to the "military" security of the Occupying Power, that person would be regarded as having forfeited rights of communi-

cation under the Convention. The word "military" had been introduced because of the fact that occupied territory was governed by military authorities.

The third paragraph confirmed the fact that the Party to the conflict concerned had obligations towards the persons referred to.

Colonel HODGSON (Australia) explained that Article 3A was intended to strike a fair balance between the rights of the State and those of protected persons. The Stockholm text did not leave the State with sufficient protection against spies, saboteurs and traitors. That was why the Australian Delegation had proposed the Article in question. The text adopted by the Drafting Committee had been carefully worded so as to ensure that only individual measures should be taken against individual persons. It was an indispensable complement to provisions which, without it, would in certain cases jeopardize the very security of the State. It would be impossible to invoke the Article for the purpose of justifying mass deportations or other practices and crimes which were condemned by the civilised world and against which the Civilians Convention provided effective protection.

In view of the fact that drastic measures were at present being applied in certain countries even in time of peace, it was hardly conceivable

that such countries would oppose the adoption of similar measures in wartime. That was why the Australian Delegation was unable to accept the amendment submitted by the Soviet Delegation, which limited so severely the provisions of Article 3A.

Mr. MOROSOV (Union of Soviet Socialist Republics), believed, on the contrary, that the Soviet proposal would meet the needs of the situation to which the Rapporteur had referred. The amendment submitted by his Delegation proposed the omission of the Article 3A proposed by the Drafting Committee and the inclusion in the Convention of a new Article 102A, worded as follows:

“Persons convicted of espionage and sabotage within the territory of the belligerent, as also in occupied territory, shall forfeit the right of correspondence and other forms of communication provided for in the present Convention.”

The text proposed by the majority of the Drafting Committee went too far—further than its authors had intended. It would permit a police official to invoke State security to justify his own arbitrary decisions. On the other hand, in occupied territory, traitors to their own country would be protected, since they would obviously not be suspected by the Occupying Power which made use of their services.

Article 3A was therefore inoperative and should be omitted, as its adoption would undo all the work done by the Conference up to the present. A new Article 102A should be added to the Convention, as the Soviet Delegation had proposed.

Mr. SINCLAIR (United Kingdom) spoke as the representative of a country which had already of its own accord assumed many of the obligations which the present Convention sought to make universally applicable. The United Kingdom had given haven to refugees of all nationalities, granting them protection under its laws and the same treatment as that accorded to its own citizens. There was, however, one thing which his country would never do, and that was to jeopardize the lives of its own citizens (or those of the thousands of men of other races who dwelt peacefully and honourably under its aegis) by omitting to take effective steps to counter, in time of war, the activities of those who abused its hospitality and conspired against its safety. It should be possible to counteract the dangers to which a country could be exposed in wartime by the activities of traitors and saboteurs—so clearly demonstrated in the last war, particularly in Holland when the Nazis occupied Amsterdam and Rotterdam—by the adoption of effective

measures against individuals suspected of giving assistance to the enemy.

In regard to occupied territory, the population could naturally be expected to do everything in its power to embarrass the invading forces. That was why it was necessary that a threat to the “military” security of the occupying forces should be the criterion, a much more restrained criterion than that applied in the case of the territory of the belligerents. The United Kingdom Delegation was prepared to accept that more restrained form of wording; they wondered, however, whether, when the time came, it might not appear inadequate from the point of view of the protection of both the Occupying Power and the occupied territory.

In short, the United Kingdom Delegation not only approved the new Article proposed by the Australian Delegation and adopted by the Drafting Committee, but also warmly recommended it to the other delegations.

Mr. MEVORAH (Bulgaria) felt that the authors of Article 3A had not been very happy in the expression they gave to their ideas, and that they had said rather more than they had intended. The proposed text was dangerous in its scope. Anyone could be “suspected” of being engaged in “hostile activities”. How should such suspicions be defined? The wording used was much too comprehensive. It could be made to include anything one wished. Besides, no proof was even required that the “suspicions” were founded on fact, and the decision, which might be absolutely final, was allowed to rest with the Power applying the provision in question. It would seem therefore that elementary human rights, rights which it was the purpose of the Convention to defend, would be seriously endangered.

It had been said that a fair balance must be struck between the rights of protected persons and those of the State, but in practically every Article the provisions giving protection were qualified by reservations taking careful account of the security of the State. It was therefore unnecessary to stricte a balance between the above rights by introducing an Article of general application, when that balance already existed in regard to all the important points in the Convention.

Mr. BETOLAUD (France) did not wish to discuss the proper place of the provisions in question. Whether they should be inserted after Article 3, as the majority of the Drafting Committee proposed, or after Article 102, as suggested by the Soviet Delegation, was a matter of secondary importance. He thought it well, however, to point out a mistake in the French text. The

word "jugement" in the third paragraph should read "procès" (the equivalent of the word "trial" in the English text), since the essential safeguards should cover the whole of the trial and not only the sentence, which was merely its final result.

All Delegations, including that of the Union of Soviet Socialist Republics, were agreed on the principle of Article 3A, although the amendment proposed by the Soviet Delegation was unsound in that it referred only to "convicted" persons. Action against spies, traitors and saboteurs, had to begin long before they were convicted. The Soviet Delegation's wording would render the Article unworkable.

The Article, as worded by the Drafting Committee, appeared to provide an effective means of combatting the mass deportations which took place during the second World War. The intention of its authors was that measures taken should be individual. The French Delegation supported it, because France had lost, in the camps of Buchenwald, Dachau, and elsewhere, hundreds of thousands of its citizens who had been subjected to mass arrest on political or religious grounds. That must not happen again. Article 3A made it possible to take effective measures against plots which jeopardized the security of the State, but stipulated that such measures should be individual and not collective.

Obviously the use made of the Convention would ultimately depend on the good faith of the Powers which applied it; but any Occupying Power which might be tempted to abuse its provisions would remember that it was laying itself open to facing, one day, as Hitler did, the consequences of a Divine judgment.

Mr. GINNANE (United States of America) felt that nothing further need be added to the arguments so clearly expressed by the Delegates of Australia, the United Kingdom and France. He supported the text submitted by the Drafting Committee, and was opposed to the Soviet amendment.

Mr. WINKLER (Czechoslovakia) said that the measures taken by certain countries, to which

the Delegate of Australia had alluded, had been taken in order to resist reactionary forces which were attempting to regain their lost position.

He opposed an Article which made it possible to reintroduce police methods known only too well from the time of the National-Socialist occupation, and which seemed prompted by a desire to help the Occupying Power rather than to protect the civilian population against the Occupying Power.

The CHAIRMAN declared the discussion closed, and the Committee proceeded to vote.

Mr. MOROSOV (Union of Soviet Socialist Republics) said that the Soviet Delegation would not insist on the text it proposed being placed after Article 102. It left it to the Drafting Committee to decide its proper place.

The amendment proposed by the Union of Soviet Socialist Republics was rejected by 30 votes to 9, with 5 abstentions.

Article 3A, as proposed by the Drafting Committee, was adopted by 29 votes to 8, with 7 abstentions.

In reply to a question put by Mr. BETOLAUD (France), it was agreed, on the proposal of the Rapporteur, that the foregoing vote should be taken as covering the replacement of the word "jugement" by "procès" in the first sentence of the third paragraph of the French text.

### Annex III

Mr. HAKSAR (India), Rapporteur, had no particular observations to make on Annex III as proposed by the Drafting Committee. Owing to an error, it had not been discussed at the same time as Article 96 (*see Summary Record of the Thirty-second Meeting*).

Put to the vote, Annex III (*see Annex No. 382*) was adopted with no dissentient votes.

*The meeting rose at 6.30 p.m.*

## FIFTIETH MEETING

Tuesday 19 July, 3.30 p.m.

Chairman: Mr. Georges CAHEN-SALVADOR (France)

**Suggestions of the Committee of Experts of the  
Coordination Committee Article 19A**

The CHAIRMAN explained that the Committee of Experts of the Coordination Committee had submitted its conclusions in the form of suggestions to each of the three main Committees. Those suggestions had been considered by the two Drafting Committees and the Working Party of Committee III.

Each of the three Rapporteurs would inform the Committee of the suggestions which it had been thought advisable to retain, and the Committee could vote on them.

**Article 16**

Colonel DU PASQUIER (Switzerland), Rapporteur of Drafting Committee No. 1, said that the Committee of Experts of the Coordination Committee had recommended the insertion in Article 16 of the words "outside their humanitarian duties", which already figured in the Wounded and Sick and Maritime Warfare Conventions.

The Drafting Committee was prepared to agree to the above suggestion. It proposed to insert the phrase in question in the first sentence of the first paragraph, after the word "commit".

Mr. PASHKOV (Union of Soviet Socialist Republics) opposed the suggestion. He would prefer to adhere to the wording which had been unanimously adopted by Committee III on June 8th (see *Summary Record of the Twenty-sixth Meeting*).

Mr. DAY (United Kingdom) on the other hand, supported the text proposed by the Drafting Committee.

The Drafting Committee's text was adopted by 24 votes to 6.

Colonel DU PASQUIER (Switzerland), Rapporteur, said that the Committee of Experts of the Coordination Committee had drawn the attention of Committee III to the essential difference between Articles 28 and 32 of the Wounded and Sick Convention and the third paragraph of Article 15 of the Civilians Convention, on the one hand, and Article 19A of the Civilians Convention, on the other. The first three of those provisions provided that the use of the emblem was subject, in the case of the conveyance of sick and wounded members of the forces, to the agreement of the competent military authority, and in the case of civilian hospitals, to the consent of the Government and of the national Red Cross Society. On the other hand, Article 19A of the Civilians Convention did not require any such authorization for the conveyance of wounded and sick civilians.

To take account of that suggestion, the words "with the consent of the State", should be inserted in Article 19A (see *Summary Record of the Twenty-seventh Meeting*), after the words "and shall be marked".

The above suggestion was adopted with no dissentient votes.

**Articles 37, 47 and 84**

Colonel DU PASQUIER (Switzerland), Rapporteur, said that the Coordination Committee had drawn the attention of Committee III to the advisability of comparing Articles 37 and 47 of the Civilians Convention with the fourth paragraph of Article 84 of the same Convention, in regard to working conditions generally and, in particular, insurance and protection against working accidents.

The Drafting Committee, after considering the question, had come to the conclusion that in the

French text of Article 37 (*see Summary Record of the Thirty-ninth Meeting*), at the end of the third paragraph, the word "protection" should be replaced by the word "assurance", in order to bring the French text into conformity with the English text, where the word "insurance" was already used.

Mr. BMMATE (Afghanistan) considered that the expression "protection and insurance" should be used, so as to include both terms.

The Rapporteur of the Drafting Committee having maintained his original proposal, it was decided by 23 votes to 3 to replace the word "protection" in the French text, by the word "assurance".

#### Article 126

Mr. MEVORAH (Bulgaria), Rapporteur of Drafting Committee No. 2, said that the Committee of Experts of the Coordination Committee proposed the addition of the words "and work" at the end of the first paragraph of Article 126 (which was a reproduction of the Stockholm text), so as to make the wording of that paragraph correspond exactly to that of the first paragraph of Article 116 of the Prisoners of War Convention.

The above suggestion, which had been agreed to by the Drafting Committee, was adopted with no dissentient votes.

#### Article 123C

Mr. MEVORAH (Bulgaria), Rapporteur, said that the Committee of Experts suggested that the Civilians Convention should lay down the same conditions for the forwarding of personal valuables as those contained in the corresponding Article of the Prisoners of War Convention. The words "which shall be accompanied by statements showing clearly full identity particulars of the person to whom the articles belonged and by a complete list of the contents of the parcels" should, therefore, be added to the second sentence of the Article.

The above suggestion, approved by the Drafting Committee, was adopted with no dissentient votes.

#### Article 119

Mr. HAKSAR (India), Rapporteur of the Working Party, said that the Committee of Experts suggested that a provision concerning the retention of the ashes of cremated internees and their transfer to the next of kin, should be added at

the end of the fifth paragraph of Article 119 in conformity with the wording of Article 13 of the Wounded and Sick Convention and Article 110 of the Prisoners of War Convention.

He supported the suggestion.

The above suggestion was adopted with no dissentient votes.

#### Article 73

Mr. HAKSAR (India), Rapporteur, explained that the Working Party was prepared to accept the suggestion of the Committee of Experts that Article 21 of the Prisoners of War Convention should be added, duly adapted, to the end of the third paragraph of Article 73 of the Civilians Convention. The words to be added were: "No place other than an internment camp shall be marked as such". The addition, the purpose of which was to prevent abuses, took account of a proposal to the same effect which had been made by the Irish Delegation at the first reading (*see Summary Record of the Twentieth Meeting*).

In reply to a question by the Representative of the International Committee of the Red Cross, the Rapporteur explained that the third paragraph of Article 73 was the only place in the Convention where the word "camp" had not been replaced by "place of internment", precisely because the marking in question could only concern a camp of a certain size.

The proposal of the Committee of Experts, as approved by the Working Party, was adopted without observations.

#### Article 88

Mr. HAKSAR (India), Rapporteur, said that the Committee of Experts proposed to add to the second paragraph of Article 88 a provision laying down that the texts of special agreements concluded under the Civilians Convention and its Annexes were to be posted inside places of internment. The provision in question would correspond to a similar provision in Article 34 of the Prisoners of War Convention.

The suggestion, which had been approved by the Working Party, was adopted with no dissentient votes.

#### Article 80

Mr. HAKSAR (India), Rapporteur, said that he proposed to give effect to the recommendation of the Committee of Experts by inserting the words "or mental" between the words "contagious" and "disease" at the end of the first paragraph of

Article 80. The purpose of the above recommendation was to bring the Article into line with Article 28 of the Prisoners of War Convention.

The proposal was adopted with no dissentient votes.

### Article 97

Mr. HAKSAR (India), Rapporteur, agreed with a recommendation by the Committee of Experts that the wording of Article 97 should be brought into line with that of Article 61 of the Prisoners of War Convention which was more precise and went more into detail.

The above proposal was adopted with no dissentient votes, the third paragraph being completed in the sense suggested by adding the following passage after the words "Powers concerned": "which may in no case delay the receipt by the internees of relief supplies. Books may not be included in parcels of clothing and foodstuffs. Medical supplies shall, as a rule, be sent in collective parcels".

### Article 61

Mr. HAKSAR (India), Rapporteur, said that the Committee of Experts had pointed out that Article 61 of the Civilians Convention stipulated that the notification to the Protecting Power of proceedings instituted by the Occupying Power against protected persons should be sent immediately and should in any case reach the Protecting Power eight days before the date of the first hearing. Now the time-limit laid down for that notification in the first paragraph of the new Article 94 of the Prisoners of War Convention was "at least three weeks before the opening of the trial".

The Working Party was prepared to agree to the latter time-limit.

The proposal was adopted with no dissentient votes.

Mr. HAKSAR (India), Rapporteur, agreed to the proposal of the Committee of Experts that a provision similar to that contained in the last paragraph of the new Article 94 of the Prisoners of War Convention should be included in Article 61 of the Civilians Convention.

The above proposal was adopted with no dissentient votes, the following sentence being introduced in the last paragraph of Article 61, after the word "hearing" (last word of the first sentence): "Unless at the opening of the trial evidence is submitted that provisions of this paragraph are fully complied with, the trial shall not proceed."

Mr. HAKSAR (India), Rapporteur, recommended that account should be taken of a suggestion by the Committee of Experts that a sub-paragraph (b) referring to the place of internment or detention, should be inserted in the third paragraph of Article 61 immediately after sub-paragraph (a), and that sub-paragraph (c), formerly sub-paragraph (b), should be amended to read as follows: "specification of the charge or charges (with mention of the penal provisions under which it is brought)".

The recommendation was approved with no dissentient votes.

### Article 64 and New Article 59A

Mr. HAKSAR (India), Rapporteur, referred to the observation made by the Committee of Experts, who considered that the last sentence of Article 64 was out of place in that Article. The Committee of Experts suggested that the provision in question should form a new Article 59A. The Drafting Committee agreed with that suggestion.

The suggestion was adopted by Committee III with no dissentient votes.

The CHAIRMAN observed that that completed the work of coordination. He thanked the Rapporteurs for their efforts to lighten the work of the Committee.

### Vote on the Civilians Convention as a whole

The CHAIRMAN proposed to take a vote on the whole of the Articles of the Civilians Convention, the consideration of which had been entrusted to Committee III. He explained that the vote in no way implied that Delegates could not submit amendments to the Plenary Meeting of the Conference.

Mr. MOROSOV (Union of Soviet Socialist Republics) said that he would abstain from voting. It was not possible to vote on one series of Articles, while other Articles—those which were common to the four Conventions and which had been referred to the Joint Committee—had not been voted upon. Moreover, the provisions adopted by the Committee were imperfect in many respects.

Article 9 deprived a State whose nationals were protected persons, of the right to appoint a substitute for the Protecting Power, that right being delegated to the Detaining Power.

Article 20 placed restrictions on the right granted to expectant mothers and children under 15 to receive consignments of medical and relief supplies.

Article 29A took no account of the Soviet Delegation's proposal that the acts enumerated in the Article should be considered to be "serious crimes".

Article 30 ignored the proposal made by the Soviet Delegation in regard to the formal prohibition of all destruction of personal or real property not made necessary by military operations.

Article 37 enabled a belligerent Power to compel neutral aliens on its territory to do any kind of work, even if such work contributed to the war effort of the belligerent Power.

Article 3 excluded neutral aliens on the territory of a belligerent from protection under the Convention if they enjoyed the protection of their own diplomatic representation.

Article 3A gave belligerents the right arbitrarily to deprive protected persons of protection under the Convention.

The Soviet Delegation considered that it was its duty to protest against such mistakes, and it reserved the right to bring them to the attention of the Plenary Meeting of the Conference.

The Articles drawn up by Committee III were adopted as a whole by 38 votes to NIL, with 8 abstentions.

#### **Receivability of the Draft Resolution submitted by the Delegation of the Union of Soviet Socialist Republics**

The CHAIRMAN reminded the meeting that on July 6th the Soviet Delegation had submitted a Draft Resolution regarding the use of certain weapons in war (*see Summary Record of the Fourtieth Meeting*). He had also received from the President of the Conference a letter dated July 14th, 1949, addressed to the President by the Delegations of Australia, Brazil, Canada, Chile, China, Colombia, Cuba, United States of America, France, Italy, New Zealand, Pakistan, United Kingdom, Uruguay and Venezuela (*see Annex No. 395*), concerning the Soviet Resolution. The above Delegation, with whom the Delegations of Belgium, the Netherlands and Luxemburg later associated themselves, were against considering the Soviet proposal.

The question of the receivability of the Soviet Delegation's proposal was thus clearly raised. He therefore put it for discussion.

General SLAVIN (Union of Soviet Socialist Republics) felt that as 13 days had elapsed since July 6, on which date the Soviet Delegation had submitted a Draft Resolution to Committee III, condemning the use in war of any weapon intended for the mass extermination of the civilian popula-

tion, it would be well to recapitulate the main points of the statement he had made at the fortieth meeting of the Committee.

The Soviet Delegation considered that the chief defect of the Draft Convention drawn up by Committee III was that it did not provide the civilian population with adequate protection against the most dangerous consequences of modern warfare. Should a new war break out in spite of the endeavours of the nations to prevent further aggression, further extermination of millions of human beings and further destruction of precious material and cultural values, then the life and security of the civilian population, as well as its property, would unquestionably have to be protected. The greatest danger to the civilian population in time of war would undoubtedly be the use of atomic weapons, bacteriological and chemical methods of warfare, and any other weapons intended for the mass extermination of the population.

It was obvious that the Conference, which had met for the purpose of drawing up the four Conventions for the protection of war victims, could not ignore the above question. The Soviet Delegation considered, therefore, that the logical sequel to the work done by Committee III for the protection of civilians in time of war would be the adoption of the Resolution which that Delegation had proposed, and a formal declaration in the name of the Conference, that: "The employment in any future war of bacteriological and chemical means of warfare and of atomic and other weapons designed for the mass extermination of the population is incompatible with the elementary principles of international law and the conscience of peoples."

The Soviet Delegation also considered it necessary to state, in the name of the Conference, that "It is the duty of the Governments of all countries to obtain the immediate signature of a convention relative to the prohibition of the atomic weapon as a means of mass extermination of the population."

Finally, in view of the fact that approximately 20 of the States taking part in the Diplomatic Conference had not yet ratified the Protocol concerning the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases and of Bacteriological Methods of Warfare, signed at Geneva on June 17, 1925, the Soviet Delegation considered that the Conference should state that it was the duty of those Governments to ratify the Protocol in question as soon as possible.

Clearly, the adoption of such a resolution in the name of the Diplomatic Conference would represent an important contribution to the efforts which had been made to settle, speedily and in a spirit of mutual understanding, those questions

on which the true protection of the life and property of the civilian population in time of war depended.

It was unfortunate that before the draft Resolution had even come up for discussion, certain delegations had considered it necessary to address a letter to the President of the Conference in which the contents and the nature of the Resolution submitted by the Soviet Union were completely distorted. The purpose of that letter, in which extremely questionable arguments were resorted to, was to prevent the consideration of the substance of the Soviet Delegation's proposal. The letter in question intentionally represented the Soviet Resolution as proposing that the Conference should "make unlawful the use in war of atomic weapons and bacteriological and chemical means of warfare" and "to make it the duty of the Governments of all countries to secure the immediate conclusion of a convention prohibiting the use of atomic weapons for mass destruction".

In reality the Soviet Resolution was merely a declaration, in the name of the Conference, to the effect that the employment of weapons designed for the mass extermination of the population was incompatible with the elementary principles of international law and the conscience of peoples, and that it was consequently "the duty of the Governments of all countries to obtain the immediate signature of a convention relative to the prohibition of the atomic weapon as a means of mass extermination of the population".

The second point in the Soviet proposal had also been misrepresented in the letter of July 14th. According to that letter, the Soviet Delegation apparently considered it necessary to "make it the duty of all Governments which had not done so to ratify the Protocol signed at Geneva on June 17, 1925". The Soviet resolution merely stated that the Conference decided that it was the duty of those Governments to ratify the said Protocol as soon as possible. Not being able to put forward valid objections to the substance of the Soviet proposal, the authors of the letter of July 14th had had recourse to a not very honourable manoeuvre. In their presentation of the Soviet Draft Resolution they had introduced statements which were not in the original, after which, to refute their own arguments which did not figure in the Soviet Resolution, they had advanced others.

After "refuting" their own arguments in such a "brilliant" fashion, without in any way damaging those really contained in the Soviet resolution, the Delegations in question alleged in their letter of July 14th that the Resolution was not within the competence of the Conference. They based that statement on the following facts:

1. The Swiss Government, which took the initiative of convening the present Conference, had at no time indicated as a purpose of this Conference the consideration of what weapons of warfare were legitimate; the four Draft Conventions which were distributed were concerned with war victims and not with weapons of war.

But the Preamble of the Draft Convention for the Protection of Civilian Persons in Time of War proposed by the XVIIth International Red Cross Conference began with the words "The High Contracting Parties, conscious of their obligation to come to an agreement in order to protect civilian populations from the horrors of war...". Further on, in sub-paragraph (1) of the rules which the Contracting Parties undertook to apply, it was laid down that individuals were to be "protected against any violence to their life and limb". Moreover, Article 30 of the Draft Convention contained a provision to the effect that "Any destruction of personal or real property which is not made absolutely necessary by military operations, is prohibited...".

The complete protection of civilian persons against any violence to their life and limb was closely linked with the question of the use in warfare of any means of mass extermination of the population. The question of the protection of property against destruction which was not made absolutely necessary by military operations was also linked with the use of weapons which, by their very nature (for example pilotless weapons or atomic energy), caused destruction which was not made absolutely necessary by military operations.

However, even had the Draft Conventions not contained the above provisions, it would have been enough that the proposals submitted to the Conference corresponded exactly to the aims pursued by the latter. Those aims, as stated in the Draft Conventions issued by the Swiss Government, were to "protect civilian populations from the horrors of war" and to protect individuals "against any violence to their life and limb".

2. Nor was there any foundation for the second argument contained in the letter of July 14th, namely, that the question of the prohibition of atomic weapons and of all other major weapons adaptable to mass destruction, including biological and chemical warfare, was being dealt with by the United Nations Organization, and that it did not, therefore, concern the present Conference.

The resolution submitted by the Soviet Delegation contained no suggestion that this Conference should take the place of the United Nations Organization. The Soviet Delegation had only one object, that of remedying, as far as possible, the flagrant defects in the four Draft Conventions

which had been established for the protection of war victims — drafts which did not protect those victims, in time of war, against the greatest dangers with which they might be threatened.

It was alleged in the letter of July 14th that the Conference would run the risk of compromising the humanitarian aim which it had pursued during long and arduous discussions, if it was to open a discussion at this late date on a subject which was not within its competence.

The authors of the letter considered, therefore, that the mere fact of appealing to the Governments, in the name of the Conference, to ratify as soon as possible the Protocol concerning the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases and of Bacteriological Methods of Warfare, and the statement that it was the duty of the Governments of all countries to obtain the immediate signature of a convention relative to the prohibition of the use of the atomic weapons as a means of mass extermination of the population, would compromise the humanitarian aims, to achieve which the Conference had met.

In the opinion of the Soviet Delegation, such a monstrous distortion of the subject made it even more imperative that the Conference should declare that the majority of the delegations present did not consider that an appeal to hasten the consideration of the problem of the prohibition of methods of mass extermination in war was contrary to humanitarian interests, or that it could compromise the humanitarian aims of the Conference.

It was not desirable, at this Conference, to analyse the work of the United Nations Atomic Energy Commission. Nevertheless, since the letter of July 14th alleged that the work of the latter had been delayed by the "impossibility of obtaining the agreement of certain Powers to the control and supervision of atomic energy", the Soviet Delegation wished to declare that that was not in fact true; the somewhat unsatisfactory position in that connection could be explained above all by the fact that the Governments of certain Powers had been reluctant to accept decisions which were acceptable to all peace-loving countries and would not prejudice the national sovereignty of certain of those countries. A further explanation was that the Governments of certain countries had steadfastly refused to consent to the prohibition of atomic weapons and to the signature of a convention prohibiting those weapons.

Proof of the fact that the Committee was entirely competent to discuss and accept the Resolution moved by the Soviet Delegation lay, not only in the arguments given above, but also in the fact that a resolution concerning the prohibition of the use of atomic energy for military purposes had been agreed to by the XVIIth International Red

Cross Conference held at Stockholm in August 1948, which included Government representatives.

Shortly before the close of the discussions on the Draft Conventions for the Protection of War Victims, the Stockholm Conference had adopted the following Resolution concerning blind weapons (Resolution XXIV):

"The Conference,

"considering that, during the Second World War, the belligerents respected the prohibition of recourse to asphyxiating, poison and similar gases and to bacteriological warfare, as laid down in the Geneva Protocol of June 17, 1925,

"nothing that the use of non-directed weapons which cannot be aimed with precision or which devastate large areas indiscriminately, would involve the destruction of persons and the annihilation of the human values which it is the mission of the Red Cross to defend, and that use of these methods would imperil the very future of civilization,

"earnestly requests the Powers solemnly to undertake to prohibit absolutely all recourse to such weapons and to the use of atomic energy or any similar force for purposes of warfare."

None of the Governments represented at the Stockholm Conference had raised any objections to the above Resolution.

The contention that Committee III and the Conference were not competent to consider the proposals of the Soviet Delegation was, therefore, clearly unfounded. The arguments which had been put forward made it obvious that any attempt to avoid, on some formal pretext, discussing the substance of the Resolution submitted by the Soviet Union, must be considered as an attempt to obstruct measures which would provide, in the name of the Conference, for the earliest possible solution of those important questions upon which the protection of the lives of millions of people throughout the world really depended.

The Soviet Delegation believed that a large number of the delegations present considered that the four Draft Conventions for the Protection of War Victims which had been drawn up by the present Conference were imperfect; those delegations, like that of the Soviet Union, wished to help as far as possible to remedy the most obvious defects in these Drafts. They would be ready to collaborate on a basis of mutual comprehension and cooperation, when these questions were taken up again later elsewhere.

The nations represented at the Conference were anxiously awaiting a decision on the matter. The Soviet Delegation, therefore, earnestly appealed to all delegations to support the Draft Resolution which it had submitted and to vote unanimously in its favour.

Mr. HARRISON (United States of America) formally stated his opinion that the draft Soviet Resolution was outside the scope of the Conference's work, and accordingly could not be considered either by the Committee or by the Plenary Assembly. He raised a point of order against the receivability of the Soviet proposal.

The CHAIRMAN, referring to Article 30 of the Rules of Procedure, reminded the meeting that under that Article, it was for the Chairman to take a decision on the point raised; if that decision was challenged, the Committee would be called upon to vote on the matter, after having first heard one speaker address the meeting for the motion and one against it. He therefore declared that after having weighed the arguments put forward by both sides with complete objectivity, he had come to the conclusion that the proposed Resolution was not receivable by Committee III.

Mr. MOROSOV (Union of Soviet Socialist Republics) felt that neither the point of order raised by the United States of America nor the Chairman's ruling were in accordance with the Rules of Procedure which provided that a point of order could only be raised on questions of procedure. He could have understood it if the United States Delegate had proposed the closure of the discussion on the receivability of the Soviet Draft Resolution; but there had been no discussion. What was more, the question which had been raised did not concern procedure, but the competence of the Conference to consider the Soviet Resolution. He protested against doubtful methods of procedure by which discussion of a question on the agenda could be evaded.

Sir Robert CRAIGIE (United Kingdom) agreed with the Chairman's ruling. He had not been convinced by the arguments of the Delegation for the Union of Soviet Socialist Republics, and wholeheartedly supported the point of order raised by the United States Delegation.

The CHAIRMAN having announced that he intended to proceed with the vote, Mr. MOROSOV (Union of Soviet Socialist Republics) proposed that it be taken by roll-call.

As no member of the Committee objected to the above proposal, it was decided that the vote would be taken in that form.

Mr. MEVORAH (Bulgaria) asked if the discussion was to be considered as closed.

The CHAIRMAN explained that of all questions of procedure, that of receivability or non-receivability was the most characteristic. As a magistrate by profession, and in his present capacity of Chairman of Committee III, he assured the

meeting that the decision which he had considered it his duty to take was in accordance with universally recognized legal principles. If the Committee approved that decision and agreed as to the non-receivability of the proposed Soviet Resolution, the substance of the question would not come up for discussion.

The Delegations of the following States voted against the receivability of the Soviet Resolution: Argentina, Australia, Austria, Belgium, Brazil, Canada, Chile, China, Colombia, Cuba, Denmark, Spain, United States of America, France, Greece, Guatemala, India, Ireland, Italy, Luxemburg, Mexico, Monaco, Norway, New Zealand, Pakistan, Netherlands, Portugal, United Kingdom, Holy See, Sweden, Switzerland, Turkey, Uruguay, Venezuela.

The Delegations of the following countries voted for the admissibility of the Soviet Resolution: Albania, Byelorussian Soviet Socialist Republic, Bulgaria, Hungary, Rumania, Czechoslovakia, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics.

The following countries abstained: Afghanistan, Burma, Ethiopia, Finland, Nicaragua, Thailand.

The declaration of non-receivability was thus adopted by 34 votes to 8, with 6 abstentions.

General SLAVIN (Union of Soviet Socialist Republics) having asked for the floor in order to explain the reasons for his vote, Mr. WERSHOF (Canada) objected on the grounds that the agenda had been exhausted.

General SLAVIN (Union of Soviet Socialist Republics) maintained his right to speak, pointing out, that the reasons for a vote could, according to international usage, be explained after as well as before the vote was taken.

The Committee decided, by 22 votes to 11, to hear the Head of the Delegation of the Union of Soviet Socialist Republics.

General SLAVIN (Union of Soviet Socialist Republics), in thanking the meeting for their courtesy, repeated that the Soviet Delegation considered as unfair the method by which consideration of a matter of such importance had been refused. He reserved the right to submit his Delegation's motion to the Plenary Meeting of the Conference.

The CHAIRMAN considered that by its vote the Committee had exhausted the agenda. He reminded the meeting, however, that a decision had still to be taken on the Report of its Rapporteurs, since that Report was the responsibility, not only of its authors, but of the Committee as a whole.

Approval of the Report would be the subject of the following and last meeting of Committee III.

*The meeting rose at 7.15 p.m.*

## FIFTY-FIRST MEETING

Wednesday 20 July 1949, 3 p.m.

Chairman: Mr. Georges CAHEN-SALVADOR (France)

### Report of the Committee to the Plenary Assembly

The CHAIRMAN said that the general portion of the Draft Report of Committee III, together with the comments on the first forty-two Articles had been the work of Colonel Du Pasquier (Switzerland); the comments on the remaining Articles had been drafted by Mr. Hart, Mr. Speake and Mr. Day (United Kingdom).

He suggested that the introductory remarks should first be discussed, then the Preamble, and lastly the relevant comments, Article by Article.

The above procedure was agreed to.

### Introductory Remarks

("Introduction" in final text)

Colonel DU PASQUIER (Switzerland), Rapporteur, said that when drafting the first pages of the Report, he had not been aware of the forthcoming departure of General Schepers (Netherlands) or of the active part which Mr. Haksar (India) would be called upon to play in the work of the Committee in taking over the chairmanship of the Working Party. That was why Mr. Haksar's name had not been included in the copies of the Draft Report which had been distributed, that omission would be rectified in the final text (*see Report of Committee III*).

Mr. MOROSOV (Union of Soviet Socialist Republics) warmly congratulated Colonel Du Pasquier on the manner in which he had presided over the Drafting Committee, and on the serious and important work which the Report represented.

While in no way wishing to detract from the value of the work accomplished, he felt that it would be wise to omit Sections III, IV and V of the "Introductory Remarks" (*see Annex No. 402*). The views expressed in those Sections did not always represent the opinion of all Delegations. The Soviet Delegation, for its part, could not

agree to the division of Delegates into "idealists" and "realists", strange terms which did not correspond to reality. It would be best to avoid further controversy by eliminating the cause of it. The reason for his suggestion was the same as in the case of the Preamble; once unanimity could not be reached on that part of the Report, it was better to omit it. The interesting details contained in the Report concerned the history of law rather than the work of the Committee.

Colonel DU PASQUIER (Switzerland), Rapporteur, jokingly referred to a private conversation during which Mr. Morosov had remarked that the word most frequently used in the French language was "but". While thanking the Soviet Delegate for his kind words, all the more to be valued when coming from such an eminent jurist, he noted with interest that the word "but" existed also in Russian!

He wished to point out, however, that, in speaking of "idealism" and "realism" he had in no way intended to define the attitude of any particular Delegation. Quite on the contrary! He had spoken of two "poles" of thought, and again of "opposite tendencies"; but such references were strictly impersonal.

He had, however, no undue pride of authorship, and although he thought that the introductory remarks might prove helpful to future students of the Convention—since they tended to bring out the philosophy underlying the discussions—he was quite prepared to withdraw the three Sections referred to by the Soviet Delegate if the Committee so desired.

Mr. MEVORAH (Bulgaria) observed that the introductory part of the Report reflected many shades of thought, conclusions and general ideas which would be admirable in a report of a personal nature. Since, however, the Report would be submitted as that of the Committee as a whole, he wondered whether it would not be better to agree on a text which could be unanimously

adopted. The best thing would be to pass directly to the concrete part of the Report and to omit those Sections of the "Introductory Remarks", which might give rise to reservations on the part of certain delegations.

Colonel HODGSON (Australia) was in favour of omitting Sections III, IV and V. He willingly conceded that those Sections were interesting and useful to lawyers and even to Governments; but they were out of place in the Committee's Report, which must be completely objective in character.

Sir Robert CRAIGIE (United Kingdom), for his part, would be very glad to see the three Sections maintained, as he felt that they gave a clear and impartial summary of the difficulties and tendencies with which the Committee had had to cope. He congratulated Colonel Du Pasquier on his Report. No doubt, the latter would be prepared to withdraw any passages to which delegations objected. The United Kingdom Delegation was ready to agree to the withdrawal of any such passages, if that was the general desire.

Mr. AGATHOCLES (Greece) and Mr. MARESCA (Italy) wished to maintain the three Sections which would be of the greatest value to those who would have to study and apply the Conventions.

Mr. LIFSCHITZ (Nicaragua) was in favour of maintaining Section V.

Mr. HAKSAR (India) endorsed the tributes paid to the work of Colonel Du Pasquier. He felt, however, that Sections III, IV and V should be omitted.

The CHAIRMAN thanked Colonel Du Pasquier for having himself offered to withdraw the three Sections, thus avoiding a vote on a question on which the Committee was divided. If the Sections in question were omitted, it might be possible to achieve unanimity on the remainder of the document.

As there were no objections, it was decided to omit Sections III, IV and V.

### Preamble

Colonel HODGSON (Australia) proposed the omission of the two last paragraphs (*see Annex No. 192*) of the Section entitled "The Problem of the Preamble". In his opinion, the Rapporteur should not try "to interpret" the motives of the majority of the Committee "in the light of semi-official explanations". The Preamble had been rejected by a majority, comprising, on the one

hand, those Delegations which, like Australia, had from the very outset been consistently opposed to a Preamble, and, on the other hand, those Delegations which believed that there should be unanimity on the wording of a Preamble.

Colonel DU PASQUIER (Switzerland), Rapporteur, agreed with the Australian Delegate's analysis of the discussion on the Preamble; he was prepared to withdraw the two paragraphs in question.

Mr. WERSHOF (Canada), speaking as the author of the amendment adopted by the Committee (*see Summary Record of the Forty-fifth Meeting*), wished to make it clear that the Canadian Delegation was not necessarily opposed to the idea of a Preamble, but thought that it was not essential to have one, and that if one was adopted, it ought to be a text which was acceptable to the vast majority of the Delegations. The chief reason why the Canadian Delegation had submitted its amendment was, however, to give the Committee an opportunity to decide whether they did or did not wish to have a Preamble.

The CHAIRMAN closed the discussion by proposing, in agreement with the Rapporteur, that the two paragraphs in question should be omitted.

Agreed.

### Comments on the Articles

The CHAIRMAN proposed to take the comments on the different Articles, Article by Article, and, where no objection were raised, to consider the comments as adopted.

Agreed.

### Articles 3, 3A, 4, 11, 12, 12A, 13 and 14

Comments adopted.

### Article 15

Mr. MINEUR (Belgium) drew the Committee's attention to the second sentence of the last paragraph of the comments on the above Article. The comment in question appeared to be contrary to the decision taken by the Committee.

Colonel DU PASQUIER (Switzerland), Rapporteur, thanked Mr. Mineur for his observation. The comments were in conformity with the wording of the Article adopted by Committee III, but it was possible that a mistake had been introduced

in the documents distributed; the necessary verification would be made.

On the above understanding, the comments on Article 15 were adopted.

### Articles 16, 17, 18 and 19A

Comments adopted.

### Article 20

Mr. MOROSOV (Union of Soviet Socialist Republics) asked for the following sentence to be inserted in the report:

"The Soviet Delegation considered that the adoption of the Norwegian proposal had given Article 20 the character of a simple recommendation with no obligatory force; that was not right in view of the humanitarian nature of the Article."

Colonel DU PASQUIER (Switzerland), Rapporteur, explained that, in accordance with a decision taken by the Rapporteurs of the three main Committees, it had been decided not to make express mention of Delegations submitting amendments which had been rejected by the different Drafting Committees or Working Parties. There was, however, no objection, subject to appropriate drafting changes, to including in the comments, on the formal request of a delegation, a reference to any particular amendment which had been rejected.

On the understanding that the above addition would be made, the comments on Article 20 were adopted.

### Articles 21, 22 and 23

#### Part III

### Articles 25, 25A, 26, 27, 28 and 29

Comments adopted.

### Article 29A

Mr. MOROSOV (Union of Soviet Socialist Republics) suggested that it should be mentioned at the beginning of the second paragraph that the amendment referred to had been submitted by the Soviet Delegation. He further wished a sentence to be added at the end of the same paragraph, to the effect that the Soviet Delegation considered it incorrect to say that the words "other means of exterminating the civilian population" authorized an "encroachment on the IVth Hague Convention".

Subject to the above modifications, which would be reworded by the Rapporteur, the comments on Article 29A were adopted.

### Article 30

At the request of Mr. MOROSOV (Union of Soviet Socialist Republics), the words "Certain Delegations" at the beginning of the second sentence of the fourth paragraph of the Draft Report were replaced by the words "The Soviet Delegation".

Comments adopted.

### Articles 31, 32, 33, 34, 35 and 36

Comments adopted.

### Article 37

Mr. MOROSOV (Union of Soviet Socialist Republics) wished the following sentence to be added to the comments:

"The Soviet Delegation was opposed to the proposal that it should be possible to compel aliens who were resident in the territory of a belligerent and who were not nationals of an enemy State, to do any work, including work for war industries. That, in its opinion, would not only be unjust, but contrary to international law."

It was agreed that the request would be taken into account.

Comments adopted.

### Article 38

Mr. SINCLAIR (United Kingdom) said that the comments did not accurately reflect the opinion either of the United Kingdom Delegation or of the United States Delegation, in whose name he was authorized to speak. He hoped, therefore, that both the second and the last two sentences of the third paragraph would be omitted. The sentences in question read as follows:

—The second sentence (coming after the word "internment"): "The Delegations of the United States and the United Kingdom explained that this was not the case in their internal organization."

—The penultimate and final sentences (after the words "Italian Delegation"): "It must, therefore, be admitted henceforth that, in international law, internment is a more severe measure than assigned residence. States in which this does not apply may possibly have to revise their terminology, if nothing else."

He pointed out that in his country "assigned residence" was not in fact employed as a method of control. His arguments during the discussion had been based on the experience of many of his compatriots who had been subjected to it in other countries.

The Rapporteur having agreed to omit the sentences in question, the comments, as amended, were adopted.

#### Article 39

Referring to an observation by Mr. SPEAKE (United Kingdom), Mr. WERSHOF (Canada) proposed that the second sentence of the second paragraph of the comments should be reworded to correspond more closely to the French text, the word "cases" being amended to read "conditions".

The CHAIRMAN explained that the change only affected the English translation of the text submitted by Colonel Du Pasquier, the Article adopted by the Committee not being disputed.

The Committee having agreed to the correction, the comments on Article 39 were adopted.

#### Articles 40 and 40A

Comments adopted.

#### Article 41

Mr. MINEUR (Belgium) pointed out that the second sentence from the end of the third paragraph stated that the majority had agreed that deportation (in French "expulsion") should be placed on the same footing as transfers, which were prohibited under the Convention. That meant that deportations could not take place in time of war—a prohibition which would seriously prejudice the sovereign rights of the States concerned. He was convinced that that was not the desire of the Committee.

The CHAIRMAN believed that the text of Article 41 left the matter open. The sentence in the comments referred to by the Belgian Delegate might therefore have dangerous repercussions and it would probably be best to omit it. It would be inadmissible for a State to be unable to expel a dangerous individual, particularly in war time.

Colonel DU PASQUIER (Switzerland), Rapporteur, hesitated about agreeing to the omission of the sentence in question. He feared that, if the question was left open, the provisions of the Convention might be evaded, "transfers" taking

place under the guise of "deportations". No doubt the comment could be omitted, but that would not solve the essential problem.

Mr. WERSHOF (Canada) said that his Delegation did not think that deportations could be considered as transfers prohibited under the Convention, but the majority of the Drafting Committee had decided otherwise. The Canadian Delegation would enthusiastically support any proposal made in the Plenary Assembly to revise the wording of Article 41 so as to make it clear that deportation was not covered by that Article. In the meanwhile, it was preferable to maintain the sentence in question in the comments on Article 41, since without it the meaning of the Article in its present form was not clear.

The CHAIRMAN noted that in view of the Canadian Delegate's explanations no change was possible in the comments; an important question affecting sovereign rights appeared, nevertheless, to be outstanding. It would be for one of the Delegations to raise it in the Plenary Assembly.

#### Articles 42, 43, 44, 45 and 46

Comments adopted.

#### Article 47

Mr. MINEUR (Belgium) suggested that the word "ouvriers" in the last sentence of the comments on Article 47 (French text) should be replaced by "travailleurs"—a more comprehensive term.

The proposal was agreed to, and the comments on Article 47 adopted.

#### Articles 48 and 48A

Comments adopted.

#### Article 48B

At the request of Mr. MINEUR (Belgium) the second sentence of the comments on Article 48B was amended to read as follows after the word "employed": "to carry out the duties provided for in the second paragraph of Article 47, and further recognizes...".

The comments, amended as above, were adopted.

#### Articles 49, 50, 50A, 50B, 50C, 51, 51A, 52, 53 and 54

Comments adopted, subject, in the case of Articles 50A and 54, to certain minor drafting changes made at the request of the Belgian, Danish and United Kingdom Delegations.

**Articles 55 and 56**

Comments adopted.

**Article 57**

Mr. GINNANE (United States of America) said that, to the best of his recollection, the reason for omitting a reference to civil courts was that those courts were more likely to be political in nature than military courts.

Mr. DAY (United Kingdom) thought that the reason given in the report, as drafted, had been mentioned during the discussion; he saw no reason, however, why the point mentioned by the United States Delegate should not also be included in the report.

The comments on Article 57, with the above addition, were adopted.

**Articles 58 and 59**

Comments adopted.

**Article 60**

At the request of Mr. MINEUR (Belgium), the word "délit" in the French text was replaced by "infraction" so as to make the wording of the comment correspond to that of Article 60.

**Articles 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71 and 72**

Comments adopted.

**Article 73**

Mr. SPEAKE (United Kingdom), Rapporteur, said that certain changes would be made in the comments on Article 73 as a result of decisions taken at the fiftieth meeting of the Committee.

Comments adopted.

**Articles 74, 75, 75A, 76, 77, 78, 79, 80, 81, 82 and 83**

Comments adopted.

**Articles 84 and 85**

Mr. MINEUR (Belgium) drew attention to the fourth paragraph of the comments on Article 84. That paragraph might be interpreted as meaning

that the safeguards accorded to internees working for employers other than State were not accorded to internees working for the State—in a nationalized industry, for example.

The CHAIRMAN remarked that the Report was based on the wording of the Article as adopted; but the Belgian Delegation was entitled to raise the matter in a Plenary Meeting, if it wished to.

Following a remark by Mr. ABUT (Turkey), the CHAIRMAN said that certain unusual expressions due to faulty French translation of the English text of the Comments on Articles 84 and 85 would be revised.

The comments on Articles 84 and 85 were adopted.

**Articles 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98 and 99**

Comments adopted.

**Article 100**

Mr. MINEUR (Belgium) felt that the Rapporteur had been too indulgent in regard to the wording which the Committee had adopted for Article 100. The drafting of that Article left much to be desired. A reference was made to the Universal Postal Convention, which only provided for exemptions in the case of small packages. The shipments referred to in the Civilian Convention were provided for in the "agreements" made by the Universal Postal Union. If there was to be a reference, it should be a complete one.

Besides, the Universal Postal Union only provided for exemptions in the case of despatches abroad, and not in the case of those within the country. Any reference in the Convention to the Universal Postal Union involved a limitation on the exemptions possible.

Lastly, exemption was unreservedly extended in Article 100 to all the categories of internees mentioned in the Convention. There were, however, a great number of exemptions of varying importance granted to Administrations, various categories of persons and so forth. The provision was, therefore, extremely vague; the wording should be made more specific by saying: "the exemptions in favour of enemy internees shall be extended to all categories of internees".

The CHAIRMAN asked the Rapporteur to discuss the matter with the Belgian Delegate with a view to dealing more fully with that point in the Report, in the light of the Summary Records of the Committee's meetings.

**Articles 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 122A, 122B, 123, 123A, 123B, 123C, 124, 125 and 126**

Comments adopted.

### Article 135

Mr. POPPER (Austria) raised objections to the last two paragraphs of the comments (*see Annex No. 376*). The last paragraph referred to the traditional rule whereby the later law superseded the earlier; but there was also the accepted rule of "specific" legislation. Interpretation of the Article would not be an easy matter.

The last paragraph but one stated that the Hague Conventions and the new Civilians Convention "continue to exist and to remain in force side by side", although the latter Convention was not yet in force.

Colonel DU PASQUIER, with the consent of Mr. Speake and Mr. Day, who had consulted him on the drafting of that part of their Report, agreed that the paragraphs in question should be omitted.

The comments on Article 135, as amended above, were adopted.

The Report as a whole was adopted unanimously.

Mr. MOROSOV (Union of Soviet Socialist Republics) read the following statement: "In voting for the Report of Committee III, the Soviet Delegation makes the formal reservation that it does not consider as binding, in respect of either the interpretation or the application of the Convention, the comments on particular Articles of the Convention for the Protection of Civilian Persons in Time of War contained in the different sections of the Report."

The CHAIRMAN observed that the Committee had thus reached the end of its labours after discussions which had been, at times, sharp and impassioned. That was often the price paid for convictions firmly held and for the defence of noble causes.

He expressed the hope that the results achieved would prove useful to humanity, and that the Convention would be adhered to unanimously and without delay by all Governments which had taken part in the Conference.

He thanked all members of the Committee for their cooperation, in particular, the Vice-Chairmen, Mr. Mevorah (Bulgaria) and General Schepers (Netherlands). The Committee had been able to appreciate the outstanding ability and prestige of both Delegates.

Colonel Du Pasquier, Chief Rapporteur of the Committee, Chairman of the Drafting Committee and also Rapporteur of the Joint Committee, deserved the highest praise. He warmly endorsed the congratulations which had been extended to Colonel Du Pasquier, with whom he would like to associate the other Rapporteurs, Mr. Hart, Mr. Speake and Mr. Day, not forgetting Mr. Haksar, a colleague as learned as he was modest who as temporary Chairman of the Working Party had rendered invaluable services to the Committee.

Lastly, the Secretariat should not be forgotten—the precis writers, the interpreters, the translators, and the secretaries, whose diligence and devotion had facilitated the Committee's task.

He wished, in particular, to thank the Secretary, who had proved a tactful and invaluable collaborator, and to whom he addressed his best wishes for a career which gave every promise of being brilliant.

He hoped that the mutual understanding and goodwill which had marked the discussions in spite of the sometimes vehement nature of the latter, were a sign that everyone would preserve a happy memory of the work carried out in common, and that the same spirit of friendship would contribute to the cause of peace and international understanding which everyone desired to serve.

Sir Robert CRAIGIE (United Kingdom) said that the task of Committee III had been a particularly heavy one. That task, thanks to the impartiality, good humour and drive of the Chairman, had been accomplished in three months, a remarkable short time when one reflected that new ground had to be broken and an entirely new Convention drawn up.

Mr. MINEUR (Belgium) likewise expressed the gratitude of the Committee to the Chairman, whose courtesy, patience and great ability had made it possible to succeed in a work of great importance.

The CHAIRMAN declared the work of Committee III at an end.

*The meeting rose at 7.45 p.m.*

## Report of Committee III to the Plenary Assembly of the Diplomatic Conference of Geneva

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### PART I

#### I. INTRODUCTION

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##### 1. Work of Committee III

Committee III, entrusted with the consideration of the Draft Convention for the Protection of Civilians, was constituted by nominating as Chairman, Mr. CAHEN-SALVADOR (France), President of Section in the Council of State, as vis-Chairmen, Mr. MEVORAH (Bulgaria) and General SCHEPERS (Netherlands), and, as Rapporteurs, Colonel DU PASQUIER (Switzerland), Professor at the Universities of Neuchâtel and Geneva, and Mr. G. V. HART (United Kingdom), Assistant Legal Adviser to the Home Office. Mr. Hart's functions, after his departure, were undertaken by Mr. W. P. SPEAKE (United Kingdom), an official from the Home Office, and Mr. W. C. DAY (United Kingdom), an official from the War Office.

The two Rapporteurs divided their work as follows:

Colonel DU PASQUIER dealt with the general observations and the Articles anterior to Section III of Part III, while Mr. HART and his colleagues dealt with Articles 43 ff. (Occupied Territories).

The Committee began its work by a first reading: speakers were given the opportunity of stating their views on the Stockholm Draft and of speaking on their amendments. No vote was taken; 24 meetings were held.

The drafting of the texts was entrusted to three Working Committees: the Drafting Committee, under the Chairmanship of Colonel DU PASQUIER, was instructed to deal with the first 48 Articles (the Articles common to the three Conventions excepted) and Article 135;

the Working Party, under the Chairmanship of Mr. MEVORAH, had to deal with Articles 49-54 (food supplies, public health and relief consignments in occupied territories), and with Articles 123 to 127; Drafting Committee No. 2 under the Chairmanship of General SCHEPERS, later Mr. HAKSAR (India), had to examine the whole of the Section relating to the treatment of internees, that is Article 69 and following Articles, further Articles 12 and 55-68 and Annexes I and II. In addition, a small Joint Working Party, composed of the Delegates from the first two sub-committees indicated above, had to deal with the embodiment in Articles 49 and 54 of the provisions which Committee III had decided to transfer to them.

A Special Committee was also set up, under the Chairmanship of Mr. CAHEN-SALVADOR; Professor DE GEOUFFRE DE LA PRADELLE (Monaco) was the Rapporteur, who was later replaced by Mr. CASTRÉN (Finland). This Committee drew up the Draft of the Preamble.

The second reading, viz. consideration of the proposals of the Drafting Committees, lasted during 25 meetings, and was concluded on 19 July, when the whole of the Convention was adopted by 38 votes to none with 8 abstentions.

In carrying out these duties, the collaboration of Mr. Claude PILLOUD, Expert from the International Committee of the Red Cross, has been extremely valuable. The Secretary of the Committee, Mr. Claude CAILLAT, did excellent work.

It should be added that the Committee also found the Memoranda of the International Refugee Organization and the International Labour Organization extremely useful.

## 2. Plan of the present Report

The plan followed in the present Report will consist of a summary of the discussions which have arisen on certain principles or certain Articles. We shall endeavour to render the spirit in which the Committee worked, and state the results arrived at.

We shall begin with the Stockholm Draft, on which no comment is necessary here whether historical or textual. It will suffice to show, wherever any amendment has been made, the way in which Committee III arrived at the new text.

As a report is not in the nature of a record of the proceedings, the number of votes recorded, whenever a decision was taken, will be given only in specially important cases.

## 3. The Problem of the Preamble

At Stockholm, the Committee on the Civilians Convention was the only one of the three legal committees to take the initiative of inserting, at the head of the Convention, a Preamble expressing two ideas: on the one hand, it proclaimed the existence of principles of universal human law which constitute a safeguard to civilization; on the other hand, it prohibited certain particularly odious acts of which there were so many tragic examples during the war.

At Geneva, during the first reading in Com-

mittee III, two meetings were devoted to this question. Some delegations considered that the Preamble should be confined to the solemn affirmation of the philosophical principles of human protection, and should avoid enumerating the most revolting forms of war crimes, since this would merely constitute a repetition of what is prohibited elsewhere in the body of the Convention. The discussion then reached a higher place in connection with various proposals to refer to the divine origin of man and to the Creator, regarded as the source of all moral law. No vote was taken, however, and Committee III set up a Working Party, on which 9 delegations were represented, to consider the question of the Preamble. A considerable number of amendments were submitted to this Working Party, and led to an animated but rather involved discussion, as may be seen by the report submitted jointly by Professor de Geouffre de la Pradelle (Monaco) and Professor Castrén (Finland) to which we refer. It resulted in the adoption of a Draft Preamble in four paragraphs.

When this draft was being discussed by Committee III at a second reading, several amendments were submitted, in particular, the first amendment of the Canadian Delegation which aimed at "omitting the Preamble adopted by the Working Party and refraining from adopting any Preamble at all". This led to a lengthy discussion on procedure, and it was finally decided to vote first on the most far-reaching amendment, the Canadian one, which was adopted by 27 votes to 17. This meant that no Preamble would be included.

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## II. COMMENTARIES CONCERNING THE DRAFT CONVENTION

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### PART I

#### General Provisions

##### Article 3

This provision is extremely important since it defines the entire range of "protected persons", that is to say persons entitled to claim protection under the Convention. Its influence permeates the whole Draft.

If the letter alone of the *first sentence* of the Stockholm Draft is taken into account, it will be

observed that persons protected under the Convention are those who, in the case of conflict or of occupation, find themselves in the hands of a Power of which they are not nationals. These conditions do not absolutely exclude the case of neutral states who have aliens in their power, and yet it is clear that the Convention does not cover them. The Committee therefore, adopting a suggestion put forward by Ireland, clarified

the matter by specifying that the sentence in question applied to a Party to the conflict or an Occupying Power.

The negative form of the phrase *in the hands of a Power of which they are not nationals* makes it unnecessary to mention stateless or denationalized persons and so forth, to whom the I.R.O. Memorandum drew the attention of the Conference; stateless persons, etc., not being nationals of the Detaining or Occupying Power are *ipso jure* protected persons.

The first sentence of the second paragraph lays down the principle of reciprocity: only nationals of a State signatory to the Convention can lay claim to protection under it. This is by no means a new departure but rather a confirmation of the present situation; the same conditions obtained under the 1929 Conventions. There is no conflict between this provisions and the third paragraph of Article 2 so long as a Power not Party to the Convention is not bound by it; that is to say, so long as it has not agreed to respect the Convention its nationals are not protected persons: as soon as such a Power becomes bound, i.e., as soon as it accepts and applies the provisions thereof, its nationals will automatically enjoy the benefits of the Convention.

At the first reading several Delegates argued that the Convention should merely regulate the relations between a belligerent State and the nationals of an enemy State, and that it should not include relations between the State and nationals of a neutral country. Other delegates, however, argued that stateless persons should be borne in mind and that, moreover, there might be, in the territory of a belligerent State, nationals of foreign States who did not benefit by any diplomatic representation either because their home country had broken off diplomatic relations with the country where they were or because they had themselves broken away from their country of origin.

Our Committee gave the most careful consideration to this problem and the majority recognized the weight of the reasons put forward by States sheltering a large number of aliens: the superposition of normal diplomatic representation and of the protection ensured by the Convention, would lead to complications and would be indefensible from the point of view of consistency of procedure.

"Normal diplomatic representation" should be understood to mean that which functions in peace time comprising at least one diplomatic representative accredited to a Ministry of Foreign Affairs.

When considering neutrals, we drew a distinction between those in the territory of a belligerent and those in an occupied country: in the first case, protected persons are only those whose

home country is not represented diplomatically in the normal way; in the second case, on the contrary, all neutrals enjoy protection since, in their case, diplomatic representatives are accredited to the occupied State, but not to the Occupying Power; the protection afforded is therefore much less effective.

Co-belligerents are far less likely to incur hardship through any measures the Occupying Power might take regarding them, their diplomatic representatives do not lose their authority and it is consequently unnecessary to protect them.

Such is the meaning and purport of the second paragraph of our Draft.

The third paragraph has been slightly amended in order to emphasize that persons benefiting by the other Geneva Conventions cannot simultaneously claim protection under the Convention for the Protection of Civilian Persons.

#### *Article 3A*

Modern warfare does not take place on the battlefields alone; it also filters into the domestic life of the belligerent; enemy secret agents penetrate into the inner workings of the war machine, either to spy or to damage its mechanism. Internal security is not the least of the difficulties which have to be coped with by the leaders of a belligerent nation.

Many Delegations have therefore felt the fear that, under cover of the protection offered by our Convention, spies, saboteurs or other persons dangerous to the State may be able to abuse the rights which it provides for them. The Delegations have considered it their duty to prevent the guarantees of the Convention acting to the advantage of surreptitious activities. The idea has thus arisen that, with respect to persons who are a secret threat to the security of the State, the benefit of the Convention should be restricted to a certain extent. Owing to the very great difficulty in tracking down these underground activities, it is intended to allow the State a free hand in its defence measures without imposing any obligations under the Convention other than the duty to ensure humane and legal treatment.

It was these considerations which resulted in Article 3A, on the proposal of the Australian Delegation.

The first paragraph restricts the protection granted by Article 3 to persons on the territory of a Party to the conflict. The wording of this Article will perhaps be criticised as being almost too elastic. It must however be pointed out that threats to security can take so many different forms that it is hardly possible to give a more exact definition of the "rights and privileges"

which may be withdrawn. It has in any case been specified that the elasticity of the wording must not be taken as justification of any arbitrary action and that the provision would only apply in the case of serious and definite suspicions.

In occupied territory, the fact that a national of the Occupied Power harbours resentment against the Occupying Power is likewise insufficient. Moreover, there can be no question of collective measures; the charges must be individual. In this case, the rights which the person may forfeit are more restricted to communication with third parties; their forfeiture is equivalent to placing the accused in solitary confinement.

If this second paragraph deals with *military* security, whereas the first paragraph deals with the security of the State, the reason is that occupied territory is ruled by a military government which exercises its powers in conformity with the laws and customs of war laid down in the Hague Conventions.

The third paragraph defines what was left somewhat vague by the first two paragraphs. It confirms the obligations of the State as regards humane treatment and correct penal procedure; it does nothing to weaken the force of the prohibition of torture or brutal treatment.

As the original text was drafted not only in the English language, but also in the light of Anglo-Saxon penal law, it has been very difficult to word the French text. To keep close to the English text and at the same time translate it clearly in a polished style, has been equivalent to attempting to square the circle. The French text fulfils the first of these requirements better than the second.

However this may be, the majority of 29 votes to 8 with 7 abstentions by which the Article was adopted, was no doubt of the opinion that adherence to the Convention of those Governments which fear infiltration of subversive elements should be facilitated.

#### *Article 4*

The purpose of this Article is to determine the beginning and end of the application of the Convention.

There was no difficulty with regard to the former: application begins at the outset of a conflict, or as soon as there is occupation. That is stated in the first paragraph of the draft. It was perfectly well understood that the word "occupation" referred not only to occupation during war itself, but also to sudden occupation without war, as provided in the second paragraph of Article 2.

The problem of the end of application is more

complex, and in order to clarify it, the Committee decided to draw a distinction between the territory of a party to the conflict or an occupied territory. In the first case, the Stockholm solution, namely, that application shall cease at the close of hostilities was abandoned, and it was decided that application should continue for an additional year. The mentality of war does not cease with the end of hostilities; the general excitement does not subside at once and acts of vengeance against a defenceless enemy are apt to be committed; there were many instances of this at the conclusion of the last war. There was no reason, on the other hand, to fear that the extension of application would serve as a pretext for prolonging internment or assigned residence, since Article 42 provides that such measures shall be brought to an end as soon as possible after the conclusion of hostilities.

If the words *general conclusion of military operations*, were used rather than "conclusion of hostilities", this was intended to avoid any confusion in countries such as France, which determine "the conclusion of hostilities" by decree, which automatically repeals all internal war legislation. In other words, the general conclusion of military operations means when the last shot has been fired.

How is the end of the occupation of an occupied territory to be determined? Recent events, and present history, have shown that the conditions under which wars terminate have undergone a profound change; and that occupation involves far more than it did formerly. It therefore seems logical and judicious to provide for a minimum period during which the provisions should continue to be enforced, a period fixed at one year after the general conclusion of military operations. Should occupation continue after that date, it appears normal that the Occupying Power should gradually hand over the various powers it exercises, and the direction of the various administrative departments, to authorities consisting of nationals of the Occupied Power. From that time on, the Occupying Power will, of course, no longer be in a position to undertake all the duties for which it was responsible as long as it continues to exercise the full prerogatives of the occupied State. A choice should therefore be made between provisions intended to protect the population of the occupied territory while occupation continues, and those, on the contrary, which should cease to apply as soon as the justification for them, namely, the exercise of powers by the Occupying Power, has ceased to exist.

The list of provisions maintained in force throughout the period of occupation requires some explanation. While it is perfectly natural that Articles 1-10, which contain the fundamental

provisions underlying the whole Convention, should be retained in force, the provisions of Part II (Articles 11-23) cease to have any justification after the period of a year dating from the conclusion of hostilities has elapsed, since they only have their *raison d'être* during the conflict itself. All the provisions of Section I of Part III, excepting Article 24, which only applies during active hostilities, would be retained. In Section III of Part III, the most important from this point of view, only Articles 44-46, which concern movements of population occurring in time of war, and those Articles which impose on the Occupying Power the duty of feeding the population and taking the hygienic measures which may continue to be necessary several months after the conclusion of hostilities, have been eliminated, for the latter (Articles 49-51 except 50C) cease to be justified as soon as the general situation has been more or less stabilized in collaboration with the local authorities. By making this distinction, the right to be protected against arbitrary acts until the conclusion of occupation will be safeguarded

by the provision of Article 4, while provisions which would constitute a heavy burden on the Occupying Power during the troubled period following the end of war, will only remain in force for one year after the conclusion of military operations.

The above list of Articles would naturally be subject to revision if the Conference itself decided to alter the provisions which concern the Article under consideration.

The fourth paragraph, which extends the period of protection for persons whose situation has not yet become normal, is also based, in a slightly different form, on the second part of Article 4 of the Stockholm Draft, and is closely related to Articles 42 and 122. The meaning of the word "reestablishment" may not seem perfectly clear: it relates to protected persons who cannot be repatriated, because, for example, they would be liable to persecution in their own country (Article 41, fourth paragraph) or because their homes have been destroyed. This implies that they will have to be settled in new homes.

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## PART II

### General Protection of Populations against certain Consequences of War

After specifying the persons entitled to protection under the present Convention, Article 3 makes reference to the provisions of Part II. Part II goes beyond Article 3 in giving a wider application to Articles 11-23. These Articles are applicable to the whole of the populations of countries in conflict; they thus concern not only the relations between a given State and aliens but also the relations between a given State and its own nationals.

Various Delegations criticised this principle, as they consider it inconsistent to impose on contracting States, in an international treaty, duties towards their own nationals. It cannot be denied that the regulations set forth in Part II are not in entire agreement with the traditional view of international law. It should not, however, be forgotten that the scope of that law is gradually becoming wider. The International Declaration of the Rights of Man is in itself evidence in support of this contention. Furthermore, certain provisions originally contained in this Part were transferred elsewhere when they provided for a questionable interference in the domestic affairs of the States (for example, the first sentence of Article 13).

The Stockholm Conference had recommended that

the whole of Part II should be removed from its present place and inserted after Part III; it was considered that Part III should logically follow immediately on Article 3 and that it was inadvisable to interpolate a part which would upset the normal sequence. Nevertheless, Committee III, by 14 votes to 9, decided to maintain Part II in its present position. It was pointed out in this connection that provisions of a more general nature should have priority over those of a more limited application.

#### *Article 11*

Article 11 has consequently been only very slightly amended. We have merely deleted the words "irrespective of race, nationality, religion, political opinion or any other distinctions based on similar criteria", as it is difficult to conceive criteria corresponding to distinctions as divergent as race, nationality, religion or political opinions. It was, however, essential to avoid any change of meaning and to preserve the illustrative nature of the enumeration, as opposed to a limitative one. We have therefore worded this passage more simply, viz: "without any distinction, in particular of race, nationality, religion or political opinions".

*Article 12*

Three texts had been submitted to the Committee, viz., one tabled by the Delegation of the Netherlands, one tabled by the Drafting Committee, and the Stockholm Draft. A fourth version, however, was preferred.

The Netherlands amendment cast a new light on the question of setting up security zones. The main innovation proposed consisted in the fact that the obligation to respect such zones might already be imposed in time of peace, whereas according to the Stockholm Draft agreements relative to such zones would be concluded only upon the outbreak of hostilities. According to the Netherlands amendment should a State notify another State of its intention to set up a security zone in a given area fulfilling the conditions laid down in the Draft Agreement annexed, and should the other Party not raise any objection, based on the provisions of the said Annex, within 20 days, it is in the event of war bound by such agreement. In other words, the consent of the other Party is considered to be acquired if it offers no observation during a period of 20 days. After the lapse of 20 days, the Annex would no longer be considered as a Draft Agreement but as Regulations.

This proposal was considered most interesting. If this system were adopted, the question of security zones would, on the outbreak of hostilities, be much further advanced than if one of the other drafts were preferred, as they provide for agreements only on the outbreak of hostilities. The Netherlands proposal was nevertheless rejected by 17 votes to 8. The time was doubtless not ripe for it, as the General Staffs had not had any opportunity of examining it in advance.

The Committee decided in favour of the text adopted by Committee I for Article 18 of the Wounded and Sick Convention, advocated by the French Delegation (18 votes in favour, with 11 abstentions). The Article is amplified by the annexed draft agreement. It does not very greatly differ from the Stockholm Draft. The mention of persons entrusted with the organization and administration of zones and localities, and with the care of persons assembled therein, has been deleted from the Article, which thus becomes less unwieldy. The mention is incorporated in the first Article of the Annex.

*Article 12bis*

This Article, which provides for neutralized zones to be improvised in the regions where fighting is taking place, was criticised during the general discussion on the grounds that it appeared to confer the right to enter into an agreement on this matter only on the States themselves, whereas in all probability it would devolve upon the Army Com-

mander to carry out the negotiations. After consideration, it seemed to us unnecessary to make any change in the text, in which it is laid down that any party (to the conflict) may propose to the adverse Party, *either direct* or through the intermediary of a third body, the establishment of a neutralized zone. The adverb "direct" makes it sufficiently clear that it is not necessarily a question of diplomatic procedure, but that the opposing military organs are fully competent to stipulate the necessary engagements. The inclusion of this interpretation in the present Report, ought, according to a conciliatory proposal, to clear up any difficulty in interpretation.

Under letter (b) of the Stockholm Text, which conferred the right to take refuge in the zones upon persons taking no part in the hostilities, and to the personnel entrusted with the organization, supervision and provisioning of such zones, appears to have given rise to a certain misunderstanding, for it does not state that the persons in question are civilians; an astute interpretation might hold that reserve troops could be considered as persons taking no part in hostilities. In order to settle this question definitely, we have adopted a part of the sentence concluding a United Kingdom amendment, so that the text under (b) now reads as follows:

"Civilian persons who take no part in hostilities and, while they reside in the zones, perform no work of a military character."

Lastly, in order to give a more suitable form to the last sentence of the last paragraph the following drafting was decided upon:

"The agreement shall fix the beginning and the duration of the neutralization of the zone."

*Article 13*

The first sentence of the Stockholm draft laid down that the Parties to the conflict shall ensure to civilians, as far as possible, adequate medical care and hospital treatment. Various Delegations held that this general principle ought not to appear under Part II, which relates not only to aliens but also to the national population. The Committee agreed with this point of view, and preferred to deal with medical obligations incumbent upon a State under Article 35 (2), which relates to protected persons in the territory of a Party to the conflict, and Article 50, which relates to occupied territories.

The remainder of Article 13 is almost identical with the Stockholm text. In the first paragraph, at the suggestion of the Netherlands Delegation, we added, after the words "wounded and sick persons," the words "the infirm and expectant mothers". Several Delegations proposed that, at

the beginning of the second paragraph, the reservation reading "As far as military considerations allow" should be deleted. We felt, however, that this part of the sentence should be retained because it gives the text the elasticity which a sense of reality requires.

#### Article 14

The first part of this Article, relating to the evacuation of besieged or encircled areas, gave rise to no remark. The second part, however, which concerns the passage of medical personnel and equipment intended for such areas had suggested certain amendments.

The Irish Delegation suggested the inclusion of chaplains among those benefiting by the right of passage. This was agreed to.

A Belgian amendment provided an opportunity for interpreting the term "medical equipment" as including bedding for the wounded and sick.

#### Article 15

Just as the Wounded and Sick Convention confers protection on military units and military hospitals, the Civilians Convention must ensure the protection of civilian hospitals. This is the aim of Articles 15 to 19. It is a matter here of making more comprehensive and of extending the regulation laid down in Article 27 of the Laws and Customs of War on Land, to the effect that in sieges and bombardments all necessary steps must be taken to spare, as far as possible, hospitals.

The international regulations governing this matter are influenced by various factors. It is a fundamental principle that these buildings shall remain untouched in battle, as well as the wounded and sick who cannot defend themselves; and that hospitals must be respected. As they are not always immediately recognizable, particularly from the air, a standard means of rendering them identifiable by the army of the adverse nation must be agreed upon. This, however, entails the danger of abuse and the consequent necessity for a method of control which will guarantee that a building displaying the accepted emblem shall in fact shelter wounded and sick only. There must be no opportunity for the wolf to wear sheep's clothing, that is to say, for combatants to infiltrate into hospitals.

Consequently, the proposals put forward by the International Committee of the Red Cross specifying that specially protected hospitals shall be recognized by the State, have been adopted both in Stockholm and Geneva. Well-meant objections, which would have led to extension of the idea of the protected hospital, were ruled out because, in the reality of war, they might have been a source

of vacillation, of uncertainty and, perhaps, of abuses.

It may be argued that the State itself, with the object of safeguarding certain buildings or even certain military installations, might, if unscrupulous, confer the title of hospital upon buildings not coming under that description. It must not, however, be forgotten that by virtue of the general powers conferred upon the Protecting Power under Article 7, the said Power is at all times entitled to supervise application of the Convention.

A slight change was made to the second sentence of the second paragraph of Article 15 (Stockholm Draft) so as to make it clear that no obligation is laid on the States to situate hospitals as far as possible from military objectives but that this precaution is recommended. They cannot, after all, be compelled to move existing hospitals. The Committee adopted the mere impersonal form: "it is recommended that..." in order to take account of this gradation of meaning.

Protection, State recognition and marking of a civilian hospital are closely associated. Marking is doubtless of a declaratory and not of a constitutive nature; troops observing that a hospital is not provided with the emblem would be in no way justified in taking it over as quarters. It is hardly to be feared, however, that those responsible for a hospital would omit to mark it. Unlawful use of the emblem is a much more likely contingency. It is for this reason that the right to display the emblem is a corollary of the condition of being a recognized hospital.

These considerations led the Committee to transform Article 19, which governs marking, into the third and fourth paragraphs of our Article 15. The third paragraph has been maintained almost as it stands in the Stockholm version and, by stressing that "the hospitals ... shall be marked..." as opposed to "may be marked", as certain delegations wished, the Committee made clear its decision to impose the said marking as an obligation for the States, and as a duty towards wounded and sick.

#### Article 16

It is obviously in the vicissitudes of battle that hospitals have the greatest need of protection. It is, however, essential that honest dealing should prevail and that hospitals should not be used clandestinely for military purposes. This is a knotty problem. How may we best define abuses which would result in loss of protection?

It has already been laid down in the 1929 Convention on Wounded and Sick (Article 7) that protection to which medical establishments and formations are entitled shall cease *if they are made use of to commit acts harmful to the enemy*. The term

*acts harmful* to the enemy is perhaps not very elegant. We endeavoured to find a better wording; but we returned to the traditional expression inasmuch as Committee I had come to the same conclusion. The expression is, perhaps, somewhat elastic, but it seems to us clear. It covers not only acts of warfare proper but any activity characterizing combatant action, such as setting up observation posts, or the use of the hospital as a liaison centre for fighting troops.

Precautions are taken in the second paragraph of Article 16, as in Article 17 of the Wounded and Sick Convention, to dispel any doubts and to prevent an unscrupulous enemy from attacking a hospital on some spurious pretext. The paragraph first lays down that members of the forces may be cared for in a civilian hospital without this being considered as an act harmful to the enemy. The hard-and-fast distinction between military and civilian hospitals drawn under the 1929 Convention will thus be abolished. This is a welcome simplification as it frequently happens that specialized services (radioscopy, etc.) are shared by members of the forces and by civilians. Secondly, the clause relative to small arms and ammunition taken from combatants is based on the third paragraph of Article 17 of the Wounded and Sick Convention. The other cases covered by this provision have no bearing on civilian hospitals.

The sole reason for the use of the word "patients", at the close of the first paragraph, is to avoid a lengthy enumeration as absolute precision would have necessitated the enumeration in Article 15, of wounded, sick, the infirm and maternity cases.

#### *Article 17*

This Article, since it concerns protection of hospitals in enemy or occupied territory, should properly be placed in Section III of Part III. The Committee has decided to transfer it to the said Part.

#### *Article 18*

After making provision for hospitals, the Convention deals with protection of their staff. Article 18, as adopted in Stockholm, laid down, in the first paragraph, the principle of protection and provided for these staffs to carry an identity card. The second paragraph conferred the right to wear the armlet to one part only of the staff—that exclusively engaged in collecting, transporting and caring of wounded and sick, as well as medical personnel exclusively engaged in the administration of the hospitals. The Committee considered that there was no point in maintaining these two categories, and that it was preferable for them to be grouped together. Consequently, all protected personnel will be entitled to wear the armlet.

What persons, then, would benefit by protection? Extension thereof to the authorities charged with administration of public health and hygiene services, as proposed by certain Delegations was not approved. Neither did the Committee consent to include among persons benefiting by protection those temporarily engaged in such work; the adverb "*regularly*" was therefore inserted in the first paragraph. The Committee refused, however, to restrict protection to personnel *exclusively* engaged in the work concerned. It is quite possible that a surgeon working regularly in a hospital may not be exclusively employed there and may have private patients; it would be improper to refuse him protection.

We have added to the duties entitling personnel to protection (removal, transport and care of wounded and sick) that of the *search* for them, so as to include hospital personnel who, in the event of catastrophes or of fire, explore ruins with the object of saving victims.

Should protection be restricted to personnel in direct contact with the wounded and sick? The Committee was not of this opinion as it considers that hospital personnel should be seen as a whole, each member being, in his or her own station, necessary to the life of the community; if certain cogs are removed, the hospital can no longer operate. Article 18 must therefore be considered to cover regular staff attached to the establishment, for example, cooks. The Representative of the International Committee of the Red Cross regretted this extension of the right to wear the armlet, as he feared it might result in a debasement of the emblem. In spite of this argument the Committee was unable to fall in with his views.

The bearing of an identity card and the wearing of an armlet are justified in occupied territory and in zones of military operations. The States are free to regulate these matters at their discretion.

#### *Article 19A*

Article 19 of the Stockholm Draft having been amalgamated with Article 15, the resulting blank space may now be used for *Article 19A* of the Draft. The said Article which seemed to certain Delegations too liberal and likely to lead to misuse of the emblem, was nevertheless allowed to stand, with the exception of the first paragraph, practically in the Stockholm wording. The Committee did not wish to restrict protection to vehicles "*regularly and exclusively*" conveying sick and wounded.

The second paragraph disappeared in the course of debates. It was considered unnecessary and was deleted.

#### *Article 20*

In modern warfare the blockade has become a powerful weapon. Nevertheless, humanitarian con-

siderations require that passage through the blockade should be allowed on behalf of sick persons, children and expectant mothers. These are the considerations which prompted the International Committee of the Red Cross to introduce *Article 20*.

The Stockholm text lays down that States *shall... permit the free passage* etc. Several Delegations raised very decided objections to which they attached capital importance, because, as they said, any exception to the strict enforcement of a blockade may result in contributing indirectly to enemy reinforcements; either the enemy may divert from their destination objects intended for a special purpose, or he may lighten the demands upon his own industry by devoting to war requirements the possibilities which he would otherwise have devoted to the manufacture of similar goods.

Between the two extreme solutions—obligation to authorize free passage, and a protest clause placing the onus for the decision on the State which is in control—a mean solution might be arrived at, if the original text were made more elastic by the introduction of objective conditions upon which the obligation of the State carrying on the blockade would depend. This was the proposal submitted by the Norwegian Delegation; it was adopted by the Committee by 26 votes to 8. Doubtless the conditions laid down under (a), (b) and (c) cannot be estimated with mathematical exactitude; it has been objected that they leave too broad a margin for subjective appreciation. In particular, the Soviet Delegation considered the proposal of the Norwegian Delegation as “unfair” and contrary to the humanitarian purpose of the Article, since instead of an obligation, it merely provided for a uni-lateral statement. Nevertheless, most of the Delegations supporting this compromise considered that it would not always be possible to raise the provisions of a Convention to the level of human aspirations, and that account must be taken of the special conditions applying in the case of certain Powers, who have in the blockade a powerful arm at their disposal should a conflict arise in which their future existence is at stake.

We have adhered to the rule that consignments of medicaments and medical equipment must be intended for the civilian population. Here, we were obliged to yield to arguments which showed that it would be impossible to demand free passage for medicaments intended for enemy forces, e.g. medicaments intended to combat malaria in certain territories peculiarly exposed to this disease.

The Holy See submitted an amendment providing that free passage should also be allowed in respect of articles necessary for religious worship. This was favourably received.

At the end of the first paragraph it was decided, upon the suggestion of the Bulgarian Delegation, to add, after the words “expectant mothers”, the words “and maternity cases”.

The French and Swiss Delegations submitted jointly an amendment which aimed at deleting the following words, at the close of paragraph 2 of *Article 20*: “... and that the persons benefited perform no work of a military character”. It is obvious that children under 15 years, expectant mothers or maternity cases, even if they are employed on war work after their recovery, cannot make any important contribution to the war effort. On the other hand, it is impossible to conceive of supervision exercised by the Protecting Power, instructed to ensure that women who have been given tonics during their pregnancy shall, during the months following, abstain from all work in a war industries factory. This reasoning appeared to be conclusive, and it was decided to abandon the condition.

#### *Article 21*

*Article 21* provides for special measures on behalf of children.

The first paragraph was completed by a few amendments and additions; it aimed at covering not only “children separated from their parents” but “children separated from *their families*” (Burmese amendment). The Holy See submitted an amendment to the effect that steps should be taken in the case of children to facilitate the exercise of their religion; this amendment was accepted. According to an amendment submitted by the Delegation for Israel, it was provided that their education should, as far as possible, be entrusted to persons of similar traditional culture.

The second paragraph contains an addition laying down that the consent of the Protecting Power, if any, shall be obtained when sending children into a neutral country. When the children in question are nationals of the country in which they are, they have no Protecting Power; but if the children are of enemy nationality, they have one; and it is for this reason that the expression “if any” is employed. It is designed to ensure the supervision of the Protecting Power, so that protected children shall not be compulsorily transferred in order to be subjected to ideological training.

The third paragraph has been made more flexible; the wearing of an identity disc, the compulsory character of which was criticised by several Delegations, will now be only a means of identification to which the attention of the Powers is drawn; it will, however, be permissible to replace it by any other means.

*Article 22*

The right to family news was neither contested nor reduced. A slight alteration of wording was made in the last sentence of the first paragraph to the effect that, as regards the forwarding of mail, transport by air is not required.

*Article 23*

It seemed justified to add to Article 23, as requested by the United Kingdom Delegation, a provision stipulating the approval of the Power concerned and the respect, by the body endeavouring to unite dispersed families, of such regulations as it may prescribe to meet the requirements of security.

## PART III

**Status and Treatment of Protected Persons**

Part III constitutes the main portion of our Convention. Two situations presenting fundamental differences had to be dealt with: that of aliens in the territory of a belligerent State and that of the population—national or alien—resident in a country occupied by the enemy. Nevertheless certain common principles govern both contingencies. The Convention is therefore divided into three Parts: common provisions—provisions relative to aliens in the territory of a party to the conflict—provisions concerning occupied territories. There is a fourth Part which lays down the status of internees and is related to the provisions of the Convention on prisoners of war governing the status of prisoners. We have made no alterations in the plan the International Committee of the Red Cross adopted for their Draft and we have merely transferred some Articles or parts of Articles with the object of improving the layout of the Convention.

## SECTION I

**Provisions common to the Territories of the Parties to the Conflict, and to Occupied Territories***Article 25*

*Article 25* will henceforth head this Section as it lays down the general principle of protection and should therefore precede Article 24 (now Article 25A) which governs particular cases only.

The *first paragraph* of the new Article 25 is taken from the Stockholm Draft, amended according to the United Kingdom proposal to the effect that in the matter of protected persons not only shall their person and honour be respected but also their family rights, their religious convictions and practices, their manners and customs.

The new *second paragraph* was transferred here from Article 27 because it lays down an equally general principle i.e. respect due to women. We have used exactly the same wording as that proposed to the International Committee of the Red Cross by the International Women's Congress and the International Federation of Abolitionists.

The *third paragraph* was taken up from the second paragraph of the Stockholm text and slightly amended as to its final clauses which prohibits distinctions of race, of religion, etc., without however precluding differential measures intended to adapt treatment to the habits and beliefs of the persons concerned.

The United States proposed and the Committee adopted a *final paragraph* which reserves such measures of control and security in regard to protected persons as may be necessary to the State as a result of war. It seemed fair, in view of the individual rights ensured, to take into account the vital requirements of the State. Obviously, however, this reservation does not re-establish arbitrary governmental power, it deals only with such persons as really constitute a danger for the security of the State and it leaves intact the general prohibitions imposed by the humanitarian principles of the Convention.

*Article 25A*

*Article 25A* replaces Article 24 of the Stockholm Draft. Article 24 of the Stockholm Draft covers two problems; that of compulsory residence of protected persons in areas particularly exposed and that of the stratagem of war which consists in sending civilians to, or of retaining them in, certain areas thus rendered immune from military operations. The last clause only now forms the substance of Article 25A.

The question of sending or retaining protected persons to or in a particularly exposed area—which approaches that of mass evacuation—appeared so complex that it seemed hardly possible to lay down one regulation covering both national and occupied territory. The Committee therefore decided to draft two separate texts which will be placed in Sections II and III (Article 35, Fig. 4, and Article 45).

#### Article 26

*Article 26* lays down the extremely important principle of the State's responsibility towards protected persons: this was not disputed, any more than that which "may rest in this matter on officials, law officers", etc. It was however, pointed out that according to Article 55, the courts of the Occupied Power shall continue to function and that further the Occupying Power may hand over certain powers to the local authorities. Treatment contrary to the Convention of a protected person does not therefore suffice to establish the responsibility of the State. It is required to establish such responsibility that such treatment be carried out by a person employed by the State. The new wording we adopted indicates this: "*the treatment accorded to them by its agents*".

#### Article 27

*Article 27* of the Stockholm Draft has been deleted from our Draft but its substance is to be found elsewhere therein. We have already mentioned the second paragraph of the new Article 25 which is adapted from the first paragraph of the former Article 27 (protection of women). Had the second and third paragraphs been allowed to stand in Section I, they would have had the effect of granting preferential treatment to alien children or to alien pregnant women who, according to strict application of the Article, would have been entitled to greater rights than autochthonal children and pregnant women. This would be to outrun the aim of the Convention: it is therefore more sensible to draft two separate provisions, one governing the territory of a Party to the conflict (Article 35, Fig. 5) and the other governing occupied territory (Article 46, fifth paragraph).

#### Article 28

It is not enough to grant rights to protected persons (Article 25) and to lay responsibility on the States (Article 26): protected persons must also be furnished with the support they require to obtain their rights; they would otherwise be helpless from a legal point of view in relation to the Power in whose hands they are. *Article 28* therefore charges such Powers to afford protected persons every

facility for making application to the Protecting Power, the International Committee of the Red Cross, etc.

The first two paragraphs are identical to the Stockholm Draft, with the addition at the close of the second paragraph of a clause relative to security.

The third paragraph, entirely due to the Stockholm Conference, was recast at the request of Israel: not only *may* the Powers *allow*, but *shall facilitate* the visits in question.

*Articles 29 to 31* (including 29A) lay down certain prohibitions which, in the light of the principles underlying our Convention, take first place and which unreservedly condemn the atrocities committed during the last war. A certain number of these prohibitions already appear, as regards occupied territory, in the Laws and Customs of War on Land (pillage, Article 47, collective penalties, Article 50).

#### Article 29

*Article 29* reproduces word for word the first paragraph of Article 29 of the Stockholm Draft. It calls for no comments.

#### Article 29A

*Article 29A* reintroduces the second paragraph of the original text (prohibition of torture and corporal punishment) but extends the scope thereof in view of the frightful experiences gone through by countless innocent victims.

An amendment submitted by the Soviet Delegation proposed to lay upon Contracting States the obligation to consider these acts of cruelty as *serious crimes* and, in place of the expression "*other measures of brutality*" advocated that of "*other means of exterminating the civilian population*". It was voted on by roll-call and rejected by 24 votes to 11 with 7 abstentions. While the Soviet Delegation considered this concept of "*serious crimes*" as fully compatible with the Hague Conventions, the majority felt that it involved a penal conception which should be dealt with in the Article concerning violations of the Convention (Article 130), and that the words "*other means of exterminating the civilian population*" by their very vagueness might be understood as authorizing encroachment on the IVth Hague Convention (Section II of the Laws and Customs of War) and on other international treaties governing means of combat,—a question entirely irrelevant to our Convention.

#### Article 30

The first paragraph of *Article 30* contains the clauses of the first paragraph of the Stockholm Draft to which we added, on the proposal of the

Union of Soviet Socialist Republics, the closing words of the second paragraph of the Stockholm Draft. This addition was in obedience to the requirements of consistency.

A *second paragraph*, which is new, corresponds with the Laws and Customs and forbids pillage. We have dropped the word "formally" which appears in Article 47 of the said Laws and Customs because we considered that, as it is not used in the other prohibitions, its use here would weaken them. All the prohibitions under consideration are absolute, and adverbs, be they ever so incisive, add nothing.

The *third paragraph* is merely the first sentence of the second paragraph of the Stockholm Draft.

The second sentence of the second paragraph of the Stockholm Draft gave rise to the most difficulties. The Soviet Delegation wished to prohibit all destruction of personal and real property, and to specify that this prohibition covered property belonging either to private persons or to the State, as also that belonging to social and cooperative organizations. Certain other Delegations opposed this proposal on the grounds that regulations governing property in time of war were within the terms of reference of the Laws and Customs of War on Land and that here, as in the case of Article 29A, we should refrain from any encroachment, our task being confined to protection of persons. This point of view carried the day. However, taking into account an opinion put forward by the Delegation of the Union of Soviet Socialist Republics, the Committee adopted one of the ideas underlying the Soviet amendment and drafted an Article 48A, which will be placed in the Section relative to occupied territory. This new Article forbids the Occupying Power to destroy real or personal property belonging individually or collectively to private persons or to the State or to social or cooperative organizations. Economic systems under which property has been socialized are therefore placed on the same footing as those under which private ownership has been maintained.

#### *Article 31*

The simplicity of the prohibition to take hostages laid down in *Article 31*, ensured its passage, undisputed, through the crucibles of Stockholm and Geneva.

## SECTION II

### **Aliens in the territory of a Party to the Conflict**

#### *Article 32*

The first task of the Convention is to solve the difficulties connected with the right of aliens to leave the territory of a State at war.

The Stockholm draft provided for a comparatively rigid system, based on the organization of special tribunals for aliens. The Committee, however, came to the conclusion that it would be impossible to impose a system, in this form, on contracting States, some of which house very large numbers of resident aliens, and that those States must be permitted to take special measures to protect themselves against acts constituting a threat to their security. Furthermore, the idea of a court or tribunal, which implies a judicial system, is liable to be very differently conceived and interpreted in different countries. In many of them, it necessarily implies a procedure offering excellent safeguards, but also involving considerable delay in settling disputed cases.

What really matters is that each case should be impartially considered, or reconsidered, by an authority comprising several persons, and not merely by a police official; whether such a body is part of the administration or the judiciary is of comparatively minor importance. The dividing line between the judiciary and the administration, moreover, varies very greatly according to the public law of different countries. It therefore appeared preferable to allow the contracting States to choose between a judicial or an administrative authority; and the Committee, in this connection, made use of a term figuring in a Belgian amendment which provided for a "college", in other words a group of several persons which decides cases by a majority.

Apart from this, the Committee adhered to the main lines of the Stockholm draft of the first, second, third and sixth paragraphs of Article 32, subject to the addition, in the last paragraph, of safeguards to the right of retained persons to be informed of the reasons for their retention, the paragraph as a whole being redrafted on the lines proposed by the United States Delegation.

The phrase "all protected persons" was inserted at the beginning of the Article in order to simplify and avoid the necessity of including the enumeration which figures in the Stockholm text, on the understanding that the above words implicitly refer to Article 3.

#### *Article 33*

The First Reading of this Article showed clearly that certain questions relative to the cost of repatriation were not sufficiently clearly defined in the Stockholm text, and the Committee's revised text defines these points more accurately.

#### *Article 34*

The main idea underlying this Article was to prevent the national hatred of aliens, which always appears at the beginning of a war, from

leading the prison authorities to subject detained enemy aliens to unduly severe treatment. The words of the Stockholm text: "...shall not be subjected to more stringent conditions, owing to the outbreak of hostilities", would have made it impossible for the authorities of a belligerent Power to cancel certain forms of partial liberties or release on parole, provided by the legislation of the United States. The Delegation of that country, for whom the question is of special importance in view of the very large numbers of resident aliens, therefore submitted an amendment which the Committee thought reasonable and adopted. It is no longer compulsory to subject detained persons to the same conditions as those prevailing before the outbreak of hostilities; certain liberal measures can be cancelled; the only principle which must be adhered to is that prisoners must be humanely treated, and not subjected to measures inspired by the passions of war.

Articles 32 and 34 having settled problems which arise mainly at the outset or initial stages of war, it becomes necessary to deal with the position of protected persons who have not been repatriated, and this is the purpose of Articles 35 to 37.

#### *Article 35*

The main object of the regulation proposed in *Article 35* of the Stockholm draft was retained and embodied in the first paragraph of the new text: namely, that aliens shall be treated in the same way as in time of peace.

After stating this principle, the Article proceeds to enumerate several special provisions numbered 1 to 5, intended to define certain methods of procedure.

1. The right of protected persons to receive individual or collective relief is already laid down at the end of *Article 35* of the Stockholm draft.

2. The first part of *Article 13* in Part II imposes on the Contracting Parties the obligation of ensuring medical care and hospital treatment to civilians; this was tantamount to prescribing the attitude they should adopt towards their own population, and therefore went beyond the scope of the Convention. As was already pointed out in connection with *Article 13*, it was desirable that this rule should be transferred to Section II of Part III; embodied in this way in *Article 35*, the recommendation applies solely to aliens. It is obviously impossible rigidly to define the character of the medical aid to which they are thus entitled, and it would be far more consistent simply to lay

down that aliens should be placed on the same footing as nationals of the State concerned.

3. The third special provision embodied in *Article 35* is intended to give effect to an amendment to *Article 13* submitted by the Holy See.

4. *Article 24*, as drafted at Stockholm, did not furnish a very satisfactory solution of the problem of residence in the districts exposed to special dangers, since this involved the very intricate question of population movements. The only way of solving this problem for resident aliens is to prohibit exceptional measures in their favour, in other words, to permit or to restrict their movements in the same way as those of nationals of the State concerned. Since it may be presumed that a State, in imposing collective measures of this kind, will safeguard the interests of its own citizens, those of aliens will be automatically protected.

5. For the reasons indicated above, under point 2, it was not intended that the special treatment provided in the second and third paragraphs in *Article 27* of the Stockholm text in favour of children under 15 and expectant mothers should not form the subject of a special provision rendering it compulsory for States to adopt a certain policy towards their own nationals coming within these categories; children and expectant mothers of alien nationality must be protected against any discrimination whatever and placed on the same footing as nationals of the country in which they were resident, should preferential treatment be instituted.

It may seem that points 1 to 5 above are to be regarded as a mere hotchpotch, and that *Article 35*, as drafted by the Committee, is a mere heterogeneous collection of provisions. We do not consider this to be the case; on the contrary, in our opinion these provisions are the logical consequence of the principle formulated at the outset, and are better calculated than a series of unrelated *Articles* to convey a clear general picture of the status applicable to protected persons who have not left the country in which they are resident.

The question of means of subsistence and employment, however, are of sufficient importance and scope to justify their being dealt with by special provisions which find their proper place in the following *Article*.

#### *Article 36*

This *Article*, which is intended to cover protected persons who have lost their gainful employment as a result of war, has the disadvantage,

in the Stockholm wording, of conferring advantages on protected persons of which nationals may have been deprived. This might result in such protection constituting a favour, which certainly cannot have been the intention of those responsible for framing the Convention.

For this reason the first paragraph of the Committee's draft, while based on the ideas underlying the Stockholm proposals, gives aliens the same possibilities and facilities for obtaining employment as the nationals of the country in which they are resident.

It is quite possible, however, that certain measures of control, such as the prohibition of employment of aliens in certain industries, might result in preventing protected persons from earning their living. It is obvious, in such cases, that the State concerned could not allow them to starve, and would therefore be compelled to take measures for maintaining them and their dependents.

The third paragraph reproduces the last sentence in the Stockholm text.

#### *Article 37*

This Article, as drafted at Stockholm, lays down the conditions under which protected persons may be required to work. But there is no parallel between the situation of nationals and the status which it is proposed to confer on aliens; hence nothing would prevent aliens being compelled to do work authorized under the Convention, even though this obligation does not apply to the nationals of the State in question. The Drafting Committee, whose attention had been drawn to this possibility by the Italian amendment, considered that it would be distinctly anomalous. Your Committee therefore decided that compulsion to work could only apply to nationals, and this principle is embodied in the first paragraph, drafted in conformity with a Belgian amendment.

The work which protected persons may be required to do is defined in the second paragraph. Several proposals were made with regard to protected persons themselves; some members considered that the restriction of the right to require aliens to work should only apply to enemy nationals, since it was the latter who were most liable to be victimized; they saw no reason why neutrals should not be placed on exactly the same footing as the nationals of the country concerned, and why they should not be required to undertake the same duties. Other speakers, on the contrary, considered that neutral protected persons ought to be entitled to the same protection as enemy nationals, since it was abnormal that a State should be allowed to compel a neutral citizen to work for war industries. The Soviet Delegation expressly

requested that its objections should be mentioned in the present report, because it considered that it was unjust, and contrary to international law, to compel neutral aliens to do any kind of work whatsoever. The former opinion prevailed by 15 votes to 14; this explains why the second paragraph of the draft Article only applies to protected persons of enemy nationality.

The remainder of the second paragraph is based on the first paragraph of Article 37 of the Stockholm draft, subject to a drafting alteration embodied in a United Kingdom amendment.

It had been decided at Stockholm to drop the last paragraph proposed by the International Committee of the Red Cross, which provided that protected persons should be entitled to the same labour conditions as nationals. But this left a gap to which attention was drawn by the International Labour Organization. This gap was covered by the insertion of a third paragraph, as drafted by the Belgian Delegation.

The fourth paragraph reproduces the text of the second paragraph of the Stockholm text, Article 37. It simply constitutes a reference to the right of complaint to which protected persons are entitled under Article 28, even though it is not specifically referred to in this Article.

#### *Article 38*

From *Article 38* to the end of the section, the Convention deals with control and security measure (the terms are synonymous) which may be taken by a State with regard to protected persons, as well as the guarantees by which the latter may benefit.

In addition to the application of ordinary penal legislation, there are two of these measures: assigned residence and internment.

Article 38 of the Stockholm text was drafted with the idea that assigned residence (we prefer the term "compulsory residence") was a less severe measure than internment. The Drafting Committee had placed assigned residence and internment on an equal footing, considering that the difference was a matter of the internal legislation of each State, and had suppressed the words "by way of exception", which dealt with internment only. However Committee III rejected this view by 14 votes to 13 and the words "by way of exception" were retained at the suggestion of the Italian Delegation.

The final sentence: "Each decision shall be taken individually", which had first been introduced by the Drafting Committee, was later deleted, the reason being that, at the outbreak of a war, collective measures for assigned residence or internment are inevitable emergency measures, and that the

right granted to every individual under Article 40 to apply to a court or administrative body for a revision of his case concerning assigned residence or internment constitutes a sufficient guarantee. Committee III nevertheless retained the final sentence by 15 votes to 13, with 8 abstentions, as it was no doubt of the opinion that this would eliminate the risk of mass orders for internment or assigned residence.

#### Article 39

Article 39, which is relative to grounds for internment, does not differ greatly from the original draft. In the first sentence we deleted the words "in fenced camps", so that it should not appear that there were several categories of internment, some in fenced camps and others in more or less open spaces. The details of organization are not in any way the business of the Convention. It is preferable that Article 39 should clearly outline the protection it affords in all cases of internment.

In the second paragraph, we slightly altered the case considered in the draft, i.e. that of a person who voluntarily demands internment because his situation renders it necessary. We preferred to provide for two conditions, that the person voluntarily requests internment, and that his situation makes internment necessary. The subjective reasons for the request are therefore without importance; the objective conditions become the determining factor.

#### Article 40

The internment procedure laid down in Article 40 is similar to that provided for in Article 32 with regard to the authorization to leave the territory. Article 40 also empowers a court or administrative board, to be selected by the Detaining Power, to take decisions in cases of appeal against internment or assigned residence. The term "assigned residence" obviously denotes a measure applicable to one person or one family, not the prohibition to enter or reside in a specified zone imposed upon an anonymous body of people such as all the nationals of a certain State.

We also included in Article 40 the principle of periodical re-examination as it appears in the Stockholm Draft. This takes place automatically as soon as the interested person has applied once, without success, to the appeal authority. The second wish expressed by the Italian Delegation has therefore been fulfilled.

The second paragraph of Article 40, concerning the notification to the Protecting Power of the decisions taken by the Detaining Power, has in this way been redrafted so as to coordinate it

with both the third paragraph of Article 32, and the first paragraph of Article 40. In this instance, we made no security reservations, as this was a matter of forwarding only names and not the grounds for a decision.

#### Article 40A

Article 40A was the result of an amendment submitted by the Delegation of Israel, submitting the following case. It sometimes occurs that there are refugees in a country A, whose nationality B is the result of their registration papers, although in fact they may no longer have any ties in that country, either because it has disowned them or because they themselves no longer wish to have any connection with it. This was the case of large numbers of German Jews prior to the last war. Should war break out between A and B, and should the law be strictly applied, these refugees, as nationals of B, would be treated as enemies by A, although they are bound to the latter by lasting ties. The object of Article 40A is to recommend to the States that they should not automatically consider as enemies those refugees who are not protected by their government, and also not to take account only of the legal citizenship of such refugees.

The absence of diplomatic protection *de facto*, which is peculiar to Article 40A, should not be confused with the absence of normal diplomatic protection which is mentioned in Article 3 as a criterion for the designation of protected persons.

#### Article 41

The rights and duties of these States with regard to protected persons within their territory throughout the war are laid down in Articles 35 to 40A. The application of these rules is governed by the principle of responsibility formulated in Article 26, and international legislation must therefore make provision for the case where a State wishes to transfer the protected persons under detention to another Power.

The principle that transfer to a Power which is not a Party to the Convention is prohibited, is not contested, and for this reason, the words "against their will" which had been added at Stockholm, and which the Canadian Delegation proposed to delete, have in fact been deleted. This is intended to ensure more effective protection in so far as the prohibition to transfer to a State which is not a Party to the Convention is unconditional, thus preventing any risk of obtaining the assent of the Party concerned by more or less open pressure.

There was some hesitation as to what was really meant by transfer. Extradition granted in

pursuance of treaties concluded before the outbreak of hostilities is not covered by the idea, and therefore remains unaffected by the provisions of this Article, as far as persons guilty of offences against ordinary criminal law are concerned. This is clearly laid down in the concluding paragraph, which is entirely new, and the absence of which would render normal extradition procedure impossible during war. It remained to be decided whether deportation should be regarded on the same footing as transfer; there was a majority in favour of this. Repatriation, which obviously constitutes a transfer, is dealt with separately in the second paragraph.

It was decided in that same paragraph, in view of the difficulty of specifying the time at which all repatriation would become lawful, not to specify any time limit and simply to refer to Article 4, which fixes the date when the provisions of the Convention cease to apply.

The question of joint responsibility, dealt with in paragraph 3 of the Stockholm draft, gave rise to lively discussion. Some Delegations, during the first reading in Committee III, resolutely opposed the principle, and the United Kingdom amendment submitted during the discussions in the Drafting Committee was adopted by 22 votes to 9 in preference to the Stockholm text; this avoids one of the drawbacks which joint responsibility was intended to prevent, namely the danger of the transferring Power ceasing to take any further interest in the interned, since, if the Protecting Power finds it necessary to intervene, the transferring Power will be compelled to intervene itself or even to take back internees who have been ill-treated.

The substance of the last paragraph of the Stockholm text, which has become the fourth paragraph of the existing text, has been retained.

#### *Article 42*

*Article 42* remains unaltered.

### SECTION III

#### Occupied Territories

#### *Article 43*

The Committee has decided to accept the text of *Article 43* as it was presented to the Stockholm Conference, in place of the text adopted at that Conference. Apart from drafting changes, the text now accepted provides that no annexation of the whole or part of an occupied territory by an Occupying Power can deprive the persons in the territory of the benefits of the Convention.

The majority of the Drafting Committee proposed the inclusion of a provision in this Article to the effect that the Convention was not intended to confer upon protected persons, including internees, in occupied territories, a right to standards of living higher than those prevailing before the occupation began. Committee III feel, however, that the standards of living prevailing immediately before the commencement of an occupation might be reduced by hostilities, far below the normal standards, even in war-time, of the territory. They have accordingly decided to omit this provision from the Article.

#### *Article 44*

The Committee recognize that the procedure set up in a territory, prior to occupation, in order to give aliens who wished to leave the territory the benefit of the provisions of Article 32, would probably have ceased to function by the time the occupation commenced. It has, therefore, provided specifically that the Occupying Power shall establish an appropriate procedure in accordance with the provisions of Article 32.

#### *Article 45*

Although there was general unanimity in condemning such deportations as took place during the recent war, the phrase at the beginning of Article 45 caused some trouble in view of the difficulty in reconciling exactly the ideas expressed with the various terms in French, English and Russian. In the end the Committee have decided on a wording which prohibits individual or mass forcible removals as well as deportations of protected persons from occupied territory to any other country, but which permits voluntary transfers.

The second paragraph deals with the problem of evacuations made necessary in the interest of the security of the civilian population, or for imperative military considerations. In principle, these evacuations take place only within an occupied territory which distinguishes them from the transfers envisaged in the first paragraph. Nevertheless, when it is physically impossible to retain evacuees in such territory, for example, if the latter is an island of limited size, they may be evacuated to another territory. This special case constitutes an exception to the first paragraph. A new provision has been added to the effect that persons thus evacuated shall be transferred back to their homes as soon as hostilities in the area in question have ceased.

The third paragraph is unchanged from the Stockholm text, although considerable doubt has been expressed as to whether the wording employed is in the best interest of the protected persons concerned.

The fourth paragraph has been altered because discussion showed that for reasons of military security it was impossible to inform the Protecting Power in advance of proposed transfers and evacuations; the Committee, therefore, confined itself to imposing on the Occupying Power the obligation to lodge the necessary information as soon as the transfer or evacuation had taken place.

The fifth paragraph derives from Article 24: the latter provided that no protected person could be sent to, or retained in areas which are particularly exposed. Discussion showed that the problem was more complex than it seemed at first sight; in fact, it could happen—and it frequently did happen during the war—that the population of a district, believing their homes threatened, might leave them so as to escape the danger. Such persons, however, are often more exposed to danger on the roads or in the battle zone than if they stay at home. It is also necessary to take into account, in addition to the principle of freedom of movement, the restrictions demanded by the security of the population or imperative military considerations such as the need to keep the roads open. A qualification to this effect has been included in the paragraph.

Finally, the sixth paragraph consists of the fifth paragraph of the Stockholm text.

#### *Article 46*

The first paragraph was passed without comment.

To appreciate what follows, it is necessary to refer to Article 21, and the recommendation made to the Contracting Parties to ensure the identification of all children of less than 12 years, either by the carrying of an identity disc, or by some other means. When an occupation takes place, the Occupying Power should maintain the arrangements put into effect in the territory in order to comply with the provisions of Article 21. If no arrangements have been made, it is hard to imagine that the Occupying Power could itself organize an entire system of identification; it has, therefore, been provided that the Occupying Power should merely facilitate the identification of children and the registration of their parentage.

As regards the third paragraph, it seemed an excessive burden to place on the Occupying Power all the responsibility for sending orphaned children to near relatives or educational institutions, without taking into account the local institutions. For that reason, in the wording adopted by the Committee, the Occupying Power is obliged to take action only when the local institutions are inadequate and its obligations have been expressed in more general terms. In addition it has been provided that the persons made responsible under the Occupying Power's arrangements for the

maintenance and education of these children should speak the same language as the children confided to their care.

The fourth paragraph is new, and connects Article 46 with Article 123 concerning Information Bureaux.

The fifth paragraph derives from the last two paragraphs of Article 27, suitably amended to deal specially with the situation applying in occupied territory.

#### *Article 47*

In the first paragraph of this Article, the Committee have included a prohibition of pressure aimed at securing voluntary enlistment in the armed or auxiliary forces of the Occupying Power, as well as propaganda which has the same objective.

They have extended the categories of work on which the Occupying Power may compulsorily employ protected persons over 18 years of age to include:—

- (a) work necessary to meet the needs of the Army of Occupation; and
- (b) work necessary not only for the public utility services, but also for the feeding, sheltering, clothing, transportation and health of the population of the occupied country.

A reservation has been included to the effect that the work shall not involve the protected persons in the obligation of taking part in military operations.

These additions incorporate the main provisions of Article 52 of the Hague Regulations so far as they concern compulsory work, and also recognize the need in modern war for an Occupying Power to have the right, taken by most independent belligerent governments, to control the employment of the population in order to ensure the efficient functioning of the economy of the country.

The provision in the third paragraph of the Article, as it appeared in the Stockholm text, that compulsory work shall be neither unhealthy nor dangerous, has been deleted, since such work, e.g., coal mining, might be essential to the life of the territory. In its place, the Committee have included a provision that the legislation in force in the occupied country concerning working conditions, such as wages, hours of work, equipment, preliminary training and protection against occupational accidents, shall continue to be applicable to the protected persons undertaking compulsory labour. The Committee recognizes that this legislation is likely to change from time to time during the occupation, and in particular that the appropriate wages may well be varied if prices rise

to an appreciable extent, but considers that sufficient provision has been made for such variations by the reference to the legislation "in force".

The last paragraph of the Stockholm text prohibited any requisitions of labour other than those of a temporary nature. Since the employment of the population on work necessary to the normal economy of the territory might well be a permanent measure, this paragraph has been deleted in favour of a provision that the requisition of labour shall at no time lead to a mobilization of workers in an organization of a military or semi-military character.

#### *Article 48*

The only change made in this Article is an amendment to the second paragraph. The words "artificially created unemployment and all planned schemes for restricting" have been deleted in favour of "all measures aiming at creating unemployment or at restricting". It was felt that the phrase "artificially created unemployment" was somewhat vague in that during an occupation a great number of new factors would be certain to arise which would affect the employment of certain sections of the population, and it would be impossible to decide which types of unemployment had been "artificially" created as distinct from being the inevitable consequences of the occupation.

#### *Article 48A*

This is a new Article incorporating the principle previously expressed in the first part of the second sentence of the second paragraph of Article 30 of the Stockholm text. This sentence prohibited the destruction of personal or real property not made absolutely necessary by military operations. The Committee felt that this measure was appropriate to occupied territory rather than to the territory of a party to the conflict. They have, therefore, included it in Part III, Section III of the Convention, dealing with occupied territory and have extended the definition of property to make it clear that it covers property belonging individually or collectively to private persons or to the State or to social or cooperative organizations.

#### *Article 48B*

This is a new Article which provides that the Occupying Power may not alter the status of public officials or judges in the occupied territories or in any way apply sanctions or take any measures of coercion or discrimination against them should they abstain from fulfilling their functions for

reasons of conscience. The Committee feels that it might be necessary for certain of these officials or judges to be compulsorily employed, to carry out the duties which are provided for in the second paragraph of Article 47, and further recognizes that the Occupying Power should have the right to remove public officials from their duties if this were necessary. A reservation to this effect has, therefore, been incorporated as the second paragraph of the Article.

#### *Article 49*

The Committee has decided to assemble together in *Article 49* all the obligations which an Occupying Power is required to assume in relation to the maintenance of the supplies in an occupied territory. It has accordingly transferred to a new Article 50C the obligations of the Occupying Power in regard to the relief supplies which may be sent to the territory from outside sources.

In its new form, Article 49 provides that to the fullest extent of the means available to it, the Occupying Power has the duty of assuring the food and also the medical supplies of the population. Subject to the same qualification it should, in particular, bring in the necessary foodstuffs, medical stores and other articles, if the resources of the occupied territory are inadequate. The reference to other articles is intended to cover not only food supplies and medical stores but also other urgently required goods which may be essential to the life of the territory. This new obligation replaces the mandatory but more restricted wording of the Stockholm text which compelled an Occupying Power to assure only the food supply of the civilian population and to apply international standards of nutrition if they have been established; thus while the obligations of the Occupying Power have been broadened, due regard has been paid to the difficulties which an Occupying Power is likely to face in wartime, e.g., in connection with currency, shipping and the availability of supplies. In particular, the reference to international food standards has been deleted, since such standards, not yet having been agreed, would give rise to wholly unknown commitments.

The second paragraph of Article 49 provides that the Occupying Power may requisition foodstuffs or articles and medical supplies in the occupied territory only for the occupation forces and administration personnel and only if the requirements of the civilian population are taken into account. Thus the Article restricts the right of requisition of the Occupying Power to the right provided by Article 52 of the Hague Regulations, with the exception that requisition is permitted for the administration personnel of the Occupying

ing Power as well as for the occupying forces, and imposes an additional condition that the requirements of the civilian population must be taken into account in such requisitioning. The proposal by certain Delegations to substitute for the word "requisition" the words "draw upon by means of requisition or by any other means" was rejected by the Committee since it was felt that an Occupying Power must have freedom to transfer (by other means than requisition) food and supplies from territory which enjoyed a surplus, to territories less fortunately situated. Other proposals to limit the right of requisition to the requirements of the occupying forces only, to the exclusion of the administration personnel, and to substitute for the words "only if the requirements of the civilian population are taken into account", the words "providing the needs of the civilian population are sufficiently covered" were also rejected. In the former case, the Committee felt that there was no essential difference between occupation forces and administration personnel in regard to the right to requisition and in the latter it was considered preferable to adhere to the general principles in the Hague Regulations rather than to invite violations of the Convention by laying down conditions which the circumstances of war might frequently prove to be impracticable.

A new principle has been included in the Article in that an Occupying Power is now placed under the obligation to make arrangements to ensure that fair value is paid for any requisitioned goods. The Committee, in incorporating this principle, had in mind the provisions of the Hague Regulations and were anxious to avoid any conflict with them or with any Convention which may subsequently be agreed to replace them. The provision has, therefore, been made subject to the provisions of other international Conventions and is intended to ensure that where and when, under the Hague Regulations, payment is made for requisitioned goods, the Occupying Power must see to it that the payment made represents the fair value of the goods.

The last paragraph of Article 49 provides, as did the Stockholm text, that the Protecting Powers shall, at any time, be at liberty to verify the state of the food and medical supplies in occupied territories, with the reservation that temporary restrictions may be imposed where they are necessitated by imperative military requirements. The Committee realized that during a war there may well be occasions when the admittance of the Protecting Power to certain areas in the territory may involve the disclosure of vital military information, such as, for example, preparations toward launching or repelling an invasion.

#### Article 50

Article 50, as adopted by Committee III, provides in the first sentence that the Occupying Power, to the fullest extent of the means available to it, has the duty to ensure and maintain, with the cooperation of national and local authorities, the medical and hospital establishment and services, public health and hygiene in the occupied territory, with particular reference to the adoption and application of prophylactic and preventive measures necessary to combat the spread of contagious diseases and epidemics. This obligation replaces the provision in the Stockholm text that the Occupying Power is bound to ensure and maintain, with the cooperation of national and local authorities, public health and hygiene in the territory, must continue to apply or introduce health or prophylactic measures and must facilitate the proper working of hospital establishments and dispensaries and the adequate supply of medicaments, etc.

The obligation in the Stockholm text with regard to the supply of medicaments, etc., has been strengthened and removed to Article 49.

Article 50 now provides for the obligations imposed on an Occupying Power by the first sentence of Article 13 of the Stockholm text. The first provision in this sentence, to the effect the medical care and hospital treatment must be ensured to civilians, has been covered by the inclusion in Article 50 of the obligation to ensure and maintain the medical and hospital establishments and services. The second obligation, that medical personnel of all categories shall be allowed to carry out their duties, has been maintained in the same form and included as the last sentence of the first paragraph of the new Article 50.

Article 50 also contains a new provision that if new hospitals are set up in occupied territory, and if the competent organs of the State are not operating there the occupying authorities shall confer the recognition provided for in Article 15. This provision is necessary because Article 15 extends the protection of the Red Cross, etc., emblem only to hospitals recognized by the State. The Committee consider that the term "State" cannot be regarded as covering an Occupying Power and, therefore, in a territory where the former State had ceased to function, e.g. in certain colonial or partially occupied territories, there would be no possibility of extending the protection of the Red Cross, etc., emblem to any hospital set up by the occupying authorities during the occupation.

Article 50 contains a further new provision to the effect that in adopting health and hygiene measures and in their implementation the Occupying Power shall take into consideration the moral

and ethical susceptibilities of the population of the occupied territory.

The second paragraph of Article 50 in the Stockholm text, which obliges the Occupying Power to accept consignments of medical relief supplies and to facilitate their allocation in occupied territory, has been deleted, since provision has now been made for medical stores to be dealt with under Articles 50C to 52 in the same way as other relief supplies.

#### *Article 50A*

The Committee has decided that the scope of Article 17 of the Stockholm text, relating to civilian hospitals in enemy or occupied territory, should be restricted to occupied territory only, and that the Article should consequently be transferred to Part III, Section III, dealing with occupied territory. The first paragraph of the Article, which provided that civilian hospitals should be allowed to pursue their activities and should be protected against pillage, has been deleted, since Article 50 now provides that the Occupying Power has the duty, subject to certain qualifications, to ensure and maintain hospital establishments and there is now in Article 30 a complete prohibition of all pillage.

The remainder of Article 17 now appears, with certain amendments, as Article 50A. The essential differences from the Stockholm text are that an Occupying Power may only requisition civilian hospitals temporarily, that it must make suitable arrangements in due time not only for the patients in the hospitals but also for the needs of the civilian population for hospital accommodation, and that the material and stores of civilian hospitals may not be requisitioned so long as they are necessary not only for the wounded and sick but also for the civilian population in general.

#### *Article 50B*

This is a new Article which provides that the Occupying Power shall permit ministers of religion to give spiritual assistance to the members of their religious communities in occupied territory, and obliges an Occupying Power to accept consignments of books and other articles required for religious needs, and to facilitate their distribution in the territory.

#### *Article 50C*

*Article 50C*, which lays down the principles governing the admittance of relief supplies to occupied territory, consists of the last three paragraphs of Article 49 of the Stockholm text with two amendments. Firstly, while the range of the relief supplies has been in no way limited,

it has been clearly specified that they cover, in particular, medical supplies as well as foodstuffs and clothing. The reference to tonics became superfluous and has been deleted.

Secondly, a new paragraph has been added to provide that a belligerent opposed to the Power occupying the territory, in permitting relief supplies to proceed to that territory, may search the consignments, may regulate their passage according to prescribed times and routes, and may have the right to be reasonably satisfied that the consignments are used for the relief of the needy population and are not used for the benefit of the Occupying Power. In order to indicate the practical method by which an opposing belligerent should gain the evidence necessary to enable it to be reasonably satisfied regarding the last named condition, a reference to the Protecting Power, acting on behalf of that belligerent in territory under the control of his adversary has been included.

#### *Article 51*

The provision in the Stockholm draft that relief consignments shall in no way relieve the Occupying Power of its responsibility to ensure the subsistence and hygiene of the occupied territories, has been amended to provide that these consignments shall in no way relieve the Occupying Power of its responsibilities under Articles 49, 50 and 50C. Since the responsibilities of the Occupying Power have now been carefully defined in some detail in these articles, the Committee have deemed it desirable to avoid confusion by eliminating any new definition of these responsibilities in Article 51.

The second paragraph of Article 51, which in the Stockholm text prohibited an Occupying Power from requisitioning relief consignments or diverting them from their destination, now provides for exceptions to be made in the event of urgent necessity, in the interest of the population of the territory and with the consent of the Protecting Power.

The Committee fully appreciate the desirability of preventing an Occupying Power from interfering with relief supplies to the detriment of the population. Nevertheless, they feel that some latitude must be allowed to the Occupying Power to deal with cases of emergency and they consider that the safeguards that are included in the Articles as adopted are sufficient to prohibit any abuse by the Occupying Power.

#### *Article 51A (now deleted)*

The Committee decided to reject a new Article proposed by the Working Party set up to consider Articles 49-54, which provided that

if it was proved that relief consignments from any particular source contained war material or other objects likely to endanger the safety of the Occupying Power, the latter might refuse to admit other supplies from the same source. The Committee consider that this Article might unduly prejudice the interests of the population of the territory, since it would provide an unscrupulous Occupying Power with too ready an excuse for restricting relief supplies.

#### *Article 52*

The Committee decided that it was desirable to maintain the principle that the supervision of the distribution of relief supplies is essentially a matter for the Protecting Power. They have accordingly deleted the provision in the first paragraph of Article 52 of the Stockholm text that other neutral Powers, as an alternative to the Protecting Power, may carry out this duty. They observed that under the Stockholm wording the way would have been left open for an Occupying Power to allocate the duty to a biased neutral Power, to the exclusion of the Protecting Power.

The Committee have, however, envisaged two situations in which it might be desirable for the supervision of relief supplies to be undertaken by a body other than the Protecting Power. The first is when the Protecting Power ceases to function and a substitute is appointed. No special provision for this eventuality has been considered necessary, in view of the provision in the last paragraph of Article 9, to the effect that whenever, in the Convention, mention is made of a Protecting Power, such mention shall also designate substitute bodies in the sense of the Article. The second situation would arise if the Protecting Power wished because of the pressure of other duties, or for some other reason, to delegate its duties, in this respect to another body. Provision for this possibility has been made by providing that the duties may be delegated to a neutral Power, to the International Committee of the Red Cross, or any other impartial humanitarian body. Since it is essential that such a body shall carry out these duties efficiently and without bias, the agreement of both the Occupying Power and the Protecting Power to the delegation of duties has been prescribed.

The second paragraph of the Stockholm text prohibited the raising of any transport or other charges in respect of relief supplies. The Committee feel that, having regard to the provisions included in Article 50C, relief supplies in the event of a major conflict might well assume large proportions. In view of the financial problems which occupied territories in war time would almost certainly be facing, in particular the danger of inflation, a

provision that such supplies should be distributed free in the territory might seriously endanger the economy of the territory. The Committee have consequently made provision for exceptions to be made where this is essential in the interest of the economy of the territory.

So far as transport, etc., charges in respect of relief supplies in transit to occupied territories are concerned, the Committee feel that an obligation on the Contracting Parties to provide free transport might well impose an unfair burden on a small neutral country through which large supplies were passing and might even prejudice, for financial reasons, the passage of such supplies. They have consequently substituted a permissive provision for the compulsory obligation to waive charges in the hope that countries which can afford to waive charges in respect of relief consignments, and find it practicable to make the necessary arrangements, will do so. This provision appears as the last paragraph of Article 52, which deals purely with the financial aspect of the transit of relief supplies. The blockade aspect of the passage of such supplies is dealt with separately in the last paragraph of Article 50C.

#### *Article 53*

The Committee have deleted from the Stockholm text the words "which the Occupying Power may advance". There were two objections to these words. Firstly, if genuine imperative reasons of security prevented an Occupying Power from permitting individuals to receive relief supplies, it would not be possible, on security grounds, for such reasons to be openly stated. Secondly, these words, by laying emphasis on the advancing of reasons by the Occupying Power rather than on the existence of the reasons themselves, could be taken to imply that it was sufficient for an Occupying Power to advance reasons whether or not they were genuine.

#### *Article 54*

The Committee have subjected the contents of this Article to the reservation "subject to temporary measures which might be imposed for urgent reasons of security by the Occupying Power." It has consequently been possible to delete the qualification in the third paragraph of the Stockholm text that the continuation of the humanitarian activities of relief societies is subject to their refraining from any act harmful to the Occupying Power. The order of the contents has also been altered, the first and third paragraphs now being combined in one sub-paragraph (a), and the second paragraph being contained in sub-paragraph (b). In addition a reference to

recognized national Red Crescent and Red Lion and Sun Societies has been included.

A new paragraph has been added which provides that the principles contained in the Article shall apply to the activities and personnel of special organizations of a non-military character existing, or which may be raised, for the purpose of ensuring the conditions of living of the civilian population by the maintenance of the essential public utility, relief distribution and rescue services. Such organizations were established under state arrangements in a number of countries which were occupied during the second World War.

#### *Article 55*

The Committee, while approving the principle expressed in the first paragraph of *Article 55* of the Stockholm text, have considered it desirable to make provision in the Article to cover certain situations which arose during the second World War. They have accordingly provided that the penal laws of an occupied territory may be repealed or suspended in the following two cases:

- (a) Where they constitute a menace to the security of the Occupying Power;
- (b) Where they constitute an obstacle to the application of the Convention, e.g. where laws providing for racial discrimination make it impossible for Article 25 to be applied in the territory.

Provision has been made for the local courts to continue to function, subject to the consideration at (b) above, (e.g. where the courts are corrupt or unfairly constituted) and to the necessity of ensuring the effective administration of justice (e.g. where during the hostilities preceding the the occupation local judicial administration has collapsed and the Occupying Power must consequently set up its own courts to ensure that offences against the local laws may be properly tried).

In the second paragraph the Committee have provided that in addition to promulgating penal provisions necessary to ensure its security, an Occupying Power may subject the population to provisions which are essential to enable it to fulfill its obligations under the Convention (e.g. in particular Articles 46, 49 and 50) and to maintain an orderly government.

#### *Article 56*

This Article has been amended to provide that the penal provisions enacted by the Occupying Power must be published as well as brought to the knowledge of the inhabitants, since under the Stockholm text it would have been legitimate for

the Occupying Power to bring the provisions to the knowledge of the inhabitants verbally, by radio or loud-speaker announcements. It has also been provided that the provisions thus published shall not be retroactive.

#### *Article 57*

The Committee feel that the setting-up, by an Occupying Power, of civil courts in an occupied territory may lead to the extension to that territory of part of the civil legislation of the Occupying Power. In addition, civil courts would be more likely to be political in character than military courts. They have accordingly deleted the reference to civil courts in this Article, and have substituted for the word "regular", which did not constitute an adequate safeguard, the expression "properly constituted". Thus the words "regular non-political military or civil courts" have now become "properly constituted non-political military courts". The term "occupied country" has been substituted for "occupied territory", since "occupied territory" might well comprise several countries.

The last sentence of the Article has been amended to read "Courts of appeal shall preferably sit in the occupied country" in order to emphasize the desirability of such courts sitting in the country concerned.

#### *Article 58*

The provision in the first sentence that the courts shall apply solely the provisions published prior to the offence has been amended in favour of a provision that the courts shall apply solely the provisions of law applicable prior to the offence, since it was possible that some of the provisions published prior to the offence might have been repealed at the time the offence was committed. The wording of the last sentence, to the effect that the courts shall take into consideration the fact that the accused owes no duty of allegiance to the Occupying Power has been amended to conform to the terms of Article 108, and it is now provided that the courts shall take into consideration the fact that the accused is not a national of the Occupying Power.

#### *Article 59*

With regard to the first paragraph, the Committee felt that the limitation of punishment in respect of certain offences against the Occupying Power to internment was unacceptable, since some of the offences in question might seriously harm the Occupying Power. Provision has accordingly been made for simple imprisonment to be awarded as an alternative to internment. The category

of offences concerned has been restricted to those intended *solely* to harm the Occupying Power, and the reference to the property of the Occupying Power has been amended to the property of the occupying forces or administration in order to cover cases where the occupying forces may include allies serving under the command of the Occupying Power.

The second paragraph of Article 59 has given rise to a great deal of discussion. A number of Delegations felt that the restriction of the death penalty to cases punishable by the death penalty under the law of the occupied Power at the outbreak of hostilities was illogical in that the question to be dealt with fell under the laws and customs of war and bore no connection with national legislation.

The Committee have, however, decided to adopt a text which provides that the death penalty shall be admissible only for espionage, serious acts of sabotage against the military installations of the Occupying Power and intentional offences which have caused the death of one or more persons, and only on condition that such cases were punishable by death under the law of the occupied territory in force before the occupation began. They have thus restricted the imposition of the death penalty in many circumstances to fewer cases than those provided for in the Stockholm text.

In the third paragraph, the words "and is in its power by reason of circumstances independent of his will" have been deleted, since these words cannot be held to be applicable to a person who has committed a serious offence against an Occupying Power.

Consequent on the inclusion of espionage in the second paragraph of the Article, the fourth paragraph of the Stockholm text became redundant and has been omitted.

The fifth paragraph of the Stockholm text remains unchanged.

#### *Article 59A*

This new Article has been added to provide that in all cases the duration of the period during which accused protected persons are under arrest awaiting trial or punishment should be deducted from any period of imprisonment awarded.

#### *Article 60*

An additional provision has been included at the end of the Article to provide that when a national of the Occupying Power is extradited from the territory by reason of an offence which he committed outside the territory before the outbreak of hostilities, the extradition shall be carried out in accordance with the procedure laid down by the laws of the occupied territory.

#### *Article 61*

The first paragraph of this Article now provides that before any conviction can be pronounced there must be a regular trial before the competent courts of the Occupying Power.

With regard to the provisions of the last sentence of the second paragraph of Article 61 of the Stockholm text, to the effect that the Protecting Power shall be immediately informed of all proceedings instituted by the Occupying Power against protected persons, the Committee have decided that the obligation on the Occupying Power to furnish this information should be restricted to cases where the charges involve the death penalty or imprisonment for two years or more. Provision has been made, however, for the Protecting Power to be furnished on request with all particulars regarding both these serious cases and other proceedings instituted by the Occupying Power against protected persons.

The Committee have considered it desirable to provide in a third paragraph for the details which are to be included in the notification to be sent to the Protecting Power in serious cases to be specified in the Convention, and for the notification to reach the Protecting Power three weeks before the date of the first hearing. Evidence that the conditions of this Article have been complied with must be given before a trial can proceed.

#### *Article 62*

In the first paragraph, the right given to the qualified counsel of accused persons to receive "every facility" for preparing their defence has been restricted to the right to receive "necessary facilities".

In the second paragraph, a provision has been included to the effect that when an accused person has to meet a serious charge and the Protecting Power is no longer functioning, the Occupying Power, subject to the consent of the accused, shall provide a counsel.

In the last paragraph, the provision that accused persons may, if they desire, be assisted by an interpreter, has been amended to provide that such persons shall be aided by an interpreter unless they freely waive such decision. In addition they have been given the right at any time to object to the interpreter and to ask for his replacement.

#### *Article 63*

An additional provision has been added as a third paragraph to provide that in the case of appeals the penal procedure provided in this section shall be applied, so far as it may be applicable, and that, where laws applied by the Court

make no provision for appeals, the convicted person shall have the right to petition against the findings and sentence to the competent authority of the Occupying Power.

#### *Article 64*

The first paragraph provides that the representatives of the Protecting Power shall have the right, save in cases of secrecy, to attend the sessions of any court judging a protected person. Since, in Article 61, it has now been decided to restrict the notification of impending proceedings to serious cases involving penalties of death or imprisonment for two years or more, it is now provided in Article 64 that a notification of the venue and date of sessions of the courts shall be sent to the Protecting Power to ensure that the Protecting Power may also be aware of trials for lesser offences.

In the second paragraph it is now provided that only judgements involving sentence of death or imprisonment for two years or more shall be communicated to the Protecting Power. A record of the other judgments is to be kept by the court and is to be open to inspection by representatives of the Protecting Power. The notification sent in serious cases is to contain a reference to the notification made in Article 61 and in the case of sentences of imprisonment, the name of the place where the sentence is to be served. With regard to the last sentence of the Stockholm text the Committee felt that the provision that judgments shall not be enforced until the expiration of the period allowed for appeal would react unfavourably on persons held in custody who were sentenced to comparatively short periods of imprisonment. Accordingly this provision has been deleted but it has been provided that any period allowed for appeal in various cases shall not run until notification of the judgment has been received by the Protecting Power.

#### *Article 65*

The order of the paragraphs appearing in the Stockholm text has now been reversed in order to give a more logical sequence. The provision in the first paragraph of the Stockholm text that no death sentence shall be carried out before the expiration of a period of six months from the notification of judgment to the Protecting Power, has been amended to provide that the period should run from the receipt by the Protecting Power of the notification of the final judgment confirming the death sentence, or of an order rejecting pardon or reprieve.

To meet cases of emergency in which the execution of the death sentence without six months

delay may be imperatively called for, a short paragraph has been added to the Article providing for the reduction of this period in individual cases in circumstances of grave emergency involving organized threat to the security of the Occupying Power or its forces. It has, however, been provided that in all cases the Protecting Power must be notified of such reduction and given reasonable time and opportunity to make representations to the competent occupying authorities in respect of such death sentence.

#### *Article 66*

Three new ideas have been incorporated in *Article 66*. A provision appeared in Article 67 of the Stockholm text that protected persons indicted or convicted by the courts in occupied territory shall in no case be taken outside the said territory. The Committee felt this prohibition to be too emphatic since it would preclude the appearance of convicted persons before appeal courts outside the occupied territory, or the possibility of their receiving health treatment outside the territory. The Committee considered that the principle behind this provision could be preserved by including in Article 66 a provision to the effect that protected persons indicted shall be detained in the occupied country and if convicted shall serve their sentence therein. The provisions of Article 45 will, of course, continue to apply to these persons.

The other two ideas which have been included are the right of such persons to receive any spiritual assistance which they may require, and the provision that women should be confined in separate quarters and should be under the direct supervision of women.

Lastly, the obligation to keep persons indicted or convicted by the Occupying Power apart from other detainees has been qualified by the words "if possible".

#### *Article 67*

The provision that protected persons indicted or convicted in the courts in occupied territory shall in no case be taken outside the said territory has been deleted in view of the amendments which have been made to Article 66. The remaining provision that such persons shall be handed over at the close of occupation to the authorities of the liberated territory, together with the relevant records, has been maintained.

#### *Article 68*

The words "against whom no specific charge can be preferred" have been deleted, in order to leave an Occupying Power freedom to intern

a person against whom it would have been possible to prefer a charge.

A new paragraph has been added to provide that decisions regarding the subjecting of protected persons in occupied territory to assigned residence or internment shall be made according to a regular procedure to be prescribed by the Occupying Power in accordance with the provisions of the Convention and shall be subject to periodical review by a competent body set up by the Occupying Power.

#### SECTION IV

##### Regulations for the Treatment of Internees

###### *Article 69*

The only changes made to the Stockholm text are of a drafting nature, and are intended to take account of the fact that the numbers of the Articles quoted have been changed during the course of the Committee's work on the earlier part of the text, and of the fact that the Articles in question contain not only points of principle but stipulations as to procedure.

###### *Article 70*

The changes from the Stockholm text are trivial and of a drafting character only.

###### *Article 71*

The third paragraph, which is new, is the only significant amendment. It is entirely self-explanatory. It was realized, of course, that so far as the territory of a belligerent is concerned the provision is in effect a duplication of the second paragraph of Article 36, but its adoption was agreed because of its value in connection with internees in occupied territory.

###### *Article 72*

The Committee's text incorporates three changes from the Stockholm text. The first is the removal of the reference to "camps or camp compounds". It was felt that these words had a military significance and that it would be as well to use instead phraseology which would not discourage methods of accommodation more suitable to civilians, in particular civilians who might be members of the same family.

As regards the second paragraph, whilst the principle of the Stockholm draft was agreed, it was agreed that some exceptions might legitimately be made. The Committee has, however, preserved a rigid text, and taken care to indicate clearly the sole grounds on which they feel that separation

of families during internment could be justified. In addition to this remoulding of the Stockholm text, there are certain clarifications in matters of detail. The addition of the words "and without parental care" would mean, for example, that if only one parent were interned, that parent would not have any right under the Convention to request the internment of a child in the care of the other. On the other hand, if both parents, or the only surviving parent, were interned, that right would exist. It had been suggested that internment of a child at the request of a parent might be limited to children under 16, but the general feeling was that this was unnecessary, since there was no strict obligation to act on the parents' request, but merely a moral obligation to consider all the circumstances, which would include amongst other things the age of the child.

The third paragraph of the Article has been added with a view to stating explicitly the principle which was merely implicit in the Stockholm text, namely the principle that family life shall, so far as possible, continue during internment.

###### *Article 73*

The first paragraph of the adopted text is new. It was inserted to take account of decisions reached by the Committee in relation to Article 24. (This latter Article had been deleted in favour of separate insertions on other parts of the text.)

A proposal that "no place other than an internment camp shall be marked as such" has been incorporated in the third paragraph.

Apart from these changes, there is no difference of substance from the Stockholm text. It should perhaps be mentioned that the substitution of the term "internment camps" in this Article for the original "places of internment" is intentional, it being regarded as unreasonable to require the marking, for example, of places where internees are kept merely in temporary custody pending transfer to a place of permanent internment, or the marking of hospitals or institutions simply because internees are being treated there.

One Delegation had proposed that the decision of Committee III on this Article should be deferred pending the decision of Committee II on the marking of Prisoners of War camps, but the Chairman ruled that reconciliation of the texts produced by the two Committees would be a matter for the Co-ordination Committee.

###### *Article 74*

The new draft preserves the principle of the Stockholm text, but uses more general language in order, particularly, to take into account the difficulties of states which might be attacked without warning. It was felt that such states

might, in the emergency, have to use parts of existing prisons, for example, until more suitable internment premises became available. Even if they should have to resort to "make-shift" methods in such circumstances, however, it should always be possible for them to keep internees out of contact with ordinary criminals and to provide for them separately in matters of administration. The new text is thought to secure these objectives.

#### *Article 75*

A new sentence has been added to the first paragraph to take account of the fact that in some cases the place where a protected person is first detained for purposes of internment may be in an area which is in fact an unhealthy area from his particular point of view, and possibly unhealthy from the point of view of any person who is not a native of that area. In such cases the obligation is not to refrain from interning him at all—as the Stockholm text might require—but to remove him as soon as possible to a permanent place of internment which would comply with the conditions laid down in the Stockholm text.

There is a new fourth paragraph which covers the possibility that men and women who are not members of the same family may, exceptionally, have to be accommodated in the same place of internment. It is thought desirable in such cases to stipulate for separate sleeping quarters and sanitary conveniences. Other changes from the Stockholm draft are minor matters of drafting.

#### *Article 75A*

This Article is an extract from the first paragraph of Article 82. It was considered that it was more suitable to mention premises for the holding of religious services in the accommodation part of the text than in the part of the text which deals with the religious duties of the inmates.

#### *Article 76*

The amendments to the first paragraph have the effect of absolving the Detaining Power from providing a canteen in the place of internment if other suitable facilities to the same end are available (e.g. if internees have access to, and the facilities to purchase from, local shops) and to ensure that prices charged to internees are not higher than local market prices.

Some Delegations felt that the specific mention of "soap" in this Article was confusing, in that Article 75 already required the Detaining Power to supply "sufficient" soap free of charge, and Article 76 might mean that the Detaining Power was required to provide soap in excess of the ration applied to the general population. The same considerations, it was said, applied to special

mention of foodstuffs in Article 76. The general view was, however, that Article 76 was simply a "morale-sustaining" Article, and that the internee was simply to be given the chance of purchasing, for example, a particular kind of soap, of his own choice, in substitution for a corresponding amount of the kind which the Detaining Power would normally provide under Article 75. It would be unreasonable in any case to contend that the provision of canteens was intended to put the internee in a superior position to the population at large.

The second paragraph of Article 76 has been amended slightly in order to convey the idea that other monies besides canteen profits may appropriately be allocated to general welfare purposes.

The third paragraph differs quite substantially from the Stockholm text because it was thought that in the territory of a belligerent the number of internees belonging to a particular nationality might often be small, and at the same time it was felt that money in welfare funds should be preserved for the benefit of internees in general as long as possible, rather than it should, as it were, cease to be available because there was no establishment housing internees of the same nationality as those who were the original beneficiaries of a particular welfare fund.

Other amendments to the Stockholm text of this paragraph are of a drafting character.

#### *Article 77*

The Stockholm text equates the position of the internee to that of the local population. The Committee was, however, requested to give special consideration to the possibility that many places of internment might be situated in areas where the local inhabitants were not provided with air-raid shelter, simply because they were able to fend for themselves by going out into the open country. It was felt that in such areas the internee might be at a disadvantage because he could not go out in the same fashion as the local inhabitant, and that it was not proper to shut out the possibility of affording him in such cases special facilities which, although on the face of it seeming superior to those of the local population, in fact only put him on equal terms with them. The opening words of the new draft are, however, so phrased as not to impose an obligation to instal air-raid shelters, for example, on countries which do not consider themselves within range of hostile action.

Other changes are of a minor drafting character.

#### *Article 78*

The main amendment to the first paragraph was the deletion of the sentence inserted at Stock-

holm about international standards of nutrition, to which the Committee found it impossible to attach any reality. The redraft of this paragraph also incorporates the idea of devising scales of rations which will prevent development of nutritional deficiencies.

The remaining paragraphs are as in the Stockholm text, except for the insertion of the words "under 15" in the fifth paragraph. The change is intended to reconcile the formula for the classes meriting preferential treatment with the formula used in Part II of the text (e.g. Article 20). It also removes the confusing word "their" which appeared in the English version of the Stockholm text of this paragraph.

#### *Article 79*

The only changes from the Stockholm text are intended to strengthen the drafting. They consist of the insertion of the words "account being taken of the climate" after "sufficient clothing" in the first paragraph, and of the words "including protective clothing" after "working kit" in the third.

#### *Article 80*

The only changes of substance from the Stockholm draft are the mention of mental cases in the first paragraph and that of maternity cases in the second. Other changes are of a drafting character.

It will be noted that in the fourth paragraph the words "medical authorities" have been substituted for the words "detaining authorities". There was considerable discussion at one stage of a suggestion that this might mean that the medical authorities might give inaccurate certificates because they feared for the effect of an accurate certificate on an internee's condition. It was also suggested that the word "reasonable" should be inserted before the word "request". Neither suggestion was thought sufficiently weighty to justify any further alteration in the text.

#### *Article 81*

The only substantial change from the Stockholm text is the specification of the period at which radioscopic examination should take place. It was hoped that 12-monthly intervals would be practicable for all signatories who held internees.

#### *Article 82*

The Article is a major re-arrangement of the Stockholm provision, the working document adopted for this purpose being provided by the Delegation of the Holy See. The only change from the first paragraph of the Stockholm text is

the deletion of the mention of premises, which has been incorporated in one of the Articles dealing with accommodation.

The second paragraph of the text adopted by the Main Committee consists of a strengthened version of the second and fourth paragraph of the Stockholm text. In view of the fact that the correspondence mentioned in the last two sentences could in any case be sent under the provisions of Article 96, it has been thought desirable to stipulate that correspondence under Article 82 should not count against any quota fixed under Article 96. Moreover, as the Article will govern the actions not only of internees but of outside bodies—who may not have detailed knowledge of the Convention—it has been thought proper to refer forward to Article 102, where mention is made of the over-riding right of censorship which is considered implicit in the Convention.

The third paragraph of the Committee's text is a strengthened version of the third and fifth paragraphs of the Stockholm text.

The sixth paragraph of the Stockholm text has not been reproduced.

#### *Article 83*

The changes from the Stockholm text are purely matters of drafting. The new text confines the second paragraph to educational matters and the third paragraph to recreation.

#### *Article 84*

A new sentence has been added to the first paragraph of the Stockholm text. The effect is to provide that whereas for persons not in internment it is only the compulsion to do certain kinds of work which is illegal, for internees the performance of that kind of work is in any case prohibited.

The specification of a six weeks period in the second paragraph is a compromise between the views of Delegates who were content to leave the Stockholm text as it stood and those who thought that the three months period stated in that text was too long, and should be reduced to three weeks.

The third paragraph contains two new provisions; one, that internees may be called upon to take a share in protecting themselves from aerial bombardment or other war risks; the other, that no internee may in any case be asked to perform tasks for which he is physically unsuited.

The fourth paragraph underwent considerable revision during the Second Reading in Full Committee. One of the effects, as regards work for employers other than the Detaining Power, is to ensure that the employer cannot subject internees to working conditions which would be less

favourable than the ordinary conditions applicable to civilian labour in the district. On the other hand, so far as the question of payment is concerned, it is not intended that the internees shall be entitled to receive by way of wages the whole of the amount paid over by such an employer, since this might lead to fantastic results, the internee being, unlike the ordinary worker in the district, a person who has been divested of all normal financial responsibilities.

#### *Article 85*

There are two minor changes from the Stockholm text. The first adds precision to the first sentence. The second substitutes the words "may visit" for the words "may be authorized to visit" in the third sentence—on the footing that the suggestion that any person could "visit" a place of internment without being authorized to do so is in any case absurd, and there is therefore no point in using the words "may be authorized".

#### *Article 86*

The first paragraph has been redrafted in terms more consonant with the attributes of a civilian and with the regime of a civilian internment establishment than the Stockholm text, which is basically a "prisoners of war" text.

The new text of the second paragraph protects the internees against abuse of their position by officials, but recognizes—as it must—that if an internee is in possession of currency in amounts sufficient to attract the attention of enemy property legislation, for example, he cannot be protected from the effect of such legislation by the fact that he is interned.

The fourth paragraph of the new text incorporates a further safeguard for women internees.

The fifth paragraph of the text takes account of the effects of wartime and immediate post-war legislation. The words "in force under public international law", which appeared in the Stockholm text, have been deleted as having no value, and the term "enemy property laws" broadened so as to include any laws in force in relation to property. An amendment aiming at the insertion of the words "if hostilities are still proceeding" after the word "exception" in line 6 of the Stockholm text of the fourth paragraph was rejected.

The last part of the sixth paragraph of the Stockholm text was omitted on the grounds that it overlapped Article 76.

The re-draft includes also minor drafting improvements.

#### *Article 87*

The new draft of the first paragraph restricts the obligation to pay allowances to cases where the internee is without adequate means. A consequential amendment is the deletion of the concluding words of the first paragraph of the Stockholm text. Certain fears had been expressed as to the wisdom of restricting allowances in this way, since it was felt that some internees might be tempted to work for the Detaining Power against their own real wishes. It was felt, however, that in view of the unequivocal language of the new Article 84, and the fact that the amounts to be spent in canteens would in any case be limited, these doubts were now groundless.

The second sentence of the second paragraph has been rephrased in order to make clear the type of discrimination which the second sentence of the Stockholm text—which has been transferred from the Prisoners of War text—was intended to prohibit. The effects will be to prohibit the Home Power from making discriminations of this kind in the matter of payment of allowances, and to require the Detaining Power, in addition to refraining from such discriminations itself, to see that the Internee Committee does not make such discriminations.

Two insertions in the third paragraph take account of the impact of local legislation on the property of an internee.

#### *Article 88*

The first paragraph incorporates, for technical reasons valid in several countries, the words "in the official language or one of the official languages", instead of the words "in his own language". The second sentence of this paragraph has been entirely redrafted, partly because it was apparent in discussion that the use of the term "regulations" was extremely confusing, especially in view of the terms of Article 130. The Committee took the view that the intention of Article 88 was that the staff of internment establishments should be given clear instructions as to what the Convention meant, in terms of camp administration, rather than that they should know the law.

Apart from a reference to special agreements in the second paragraph, the other amendments to the Stockholm text are purely matters of drafting.

#### *Article 89*

No change from Stockholm text.

#### *Article 90*

The Article substantially remains as drafted at Stockholm. It was suggested by one Delegation

that it would be desirable specifically to reserve the right of censorship in this Article, particularly in view of the insertion at Stockholm of the words "and without alteration". The view of the Committee generally was that to state a reservation on one Article might make it necessary to state a reserve on several others, since the first insertion would have created doubt as to the general right of censorship which otherwise is implicit in the Convention. It was generally accepted that a duty to transmit requests and complaints necessarily implied a right to read the documents in question to see whether they were in fact requests and complaints. Moreover, since there was no obligation to transmit without alteration a matter which was not a complaint and not a request, there could be no breach of the Convention if such matter were deleted from communications to representatives, for example, of the Protecting Power.

#### *Article 91*

The substitution of the word "For" for the word "In" at the beginning of the first sentence is intended to safeguard the position of internees in labour detachments. It was feared that it might otherwise be possible to contend that persons outside the place of internment at the time of an election, although part of that camp administratively, need not be afforded facilities for voting or for offering themselves as candidates.

The other change from the Stockholm draft is in the second paragraph. The Stockholm draft would have implied that no election need be held at all until the Detaining Power had given its approval. The Committee considered that the elections should be held in any case but that in a particular case a person elected need not be accepted by the Detaining Power if there was good reason against his acceptance.

#### *Article 92*

Stockholm text.

#### *Article 93*

In substance the new text is the Stockholm text. There is, however, a slight drafting change in the third paragraph which is intended to reconcile the original drafting with the principle set out in Article 85 that labour detachments remain an integral part of camp administration.

#### *Article 94*

The only change from the Stockholm text is the insertion of the words "and their Protecting Power" after the words "Home Power".

In making this change the Committee took account of a suggestion made by the Jewish World Congress. The insertion has no practical effect if the internee has in fact a "Home" Power, but might be of value in cases where he was of no nationality or of uncertain nationality.

#### *Article 95*

The only changes from the Stockholm text are the substitution of "detention" for "internment" in the first and tenth lines, and the use of the term "internment card" instead of the word "card".

#### *Article 96*

The only amendments of note to the Stockholm text are the substitution of "with reasonable despatch" for "by the most rapid means", a phrase which the Committee regarded as unreasonable, and the addition of a new sentence in the second paragraph, giving internees the right to telegraph facilities in case of recognized urgency. There are other changes of a minor verbal character.

#### *Article 97*

The Committee considered that *Article 97* and *Article 99* overlapped each other to a considerable extent and the changes made in *Article 97* are believed to incorporate the substance of *Article 99* as drafted at Stockholm. The second paragraph of the new *Article 97* is, however, a redraft in more realistic terms of what the Committee took to be the principle of the second paragraph of *Article 97* as drafted at Stockholm. The Committee took the view that there were two reasons which justified the imposition of restrictions, one being inequitable distribution (which resulted in some internees getting too many relief parcels and others getting too few) and the other being military necessity. They took the view in the first case that there should be no need to provide in the Convention for the arrangements which had to be made to correct such a state of affairs, because it could be assumed that the distributing bodies would realize in any case that these measures were in the interest of the internees in general. In the other case, there could be no question of delaying action until the consent of the International Committee of the Red Cross, for example, had been received, but it was an obvious precaution that bodies forwarding such consignments should be given such notice as would enable them to make alternative arrangements in respect of supplies which could not be transmitted or received for the reasons indicated.

The third paragraph contains a restriction on the scope of any special agreements which may be concluded under the Article. It also incorporates a sentence intended to avoid the holding up of foodstuffs and clothing by reason of their being mixed up with material requiring careful censorship, and a sentence discouraging, generally speaking, the sending of medical supplies in individual parcels.

#### Article 98

The text exhibits no change from the Stockholm text.

#### Article 99

Suppressed.

#### Article 100

There was a considerable feeling in favour of mentioning the International Postal Convention and associated agreements in the text of this Article.

Five difficulties presented themselves in this connection:

- (1) the list of signatories to the International Postal Convention and the Civilians Convention might be different;
- (2) that the International Postal Convention only deals with certain kinds of mail and not with all mail;
- (3) that in any case some countries who were parties to the International Postal Convention itself were not parties to some of the annex agreements;
- (4) that the International Postal Convention only provides free postage for civilian enemy aliens;
- (5) that the International Postal Convention only deals with international postal traffic and does not give the internee the right—which the Committee thought should be given—of free postage for his own correspondence within the territory where he is detained.

For these reasons the Committee found it difficult to draft a workable text by reference to the International Postal Convention, and have preserved the form of the Stockholm text. A sentence referring to the International Postal Convention has nevertheless been inserted in deference to the wishes of the large number of delegations who had been instructed to attempt to secure some kind of reference to the International Postal Convention in the text of this Article.

The second and third paragraphs are intended to express in a practical form the principle that there shall be no charge for the transport of relief supplies over the territories of signatories.

#### Article 101

The only substantial change from the Stockholm text is in the second sentence of the first paragraph. It was thought that the mandatory tone of the Stockholm text, with regard to the grant of safe conducts, was unreal. The new text does impose a moral obligation to facilitate the passage of the shipments mentioned in the Article whenever this is possible.

The word "proportionally" in the last paragraph has been replaced by the words "in proportion to the importance of the shipments".

#### Article 102

The second sentence of the first paragraph of the Stockholm draft was deleted on the score that it was inconsistent with censorship arrangements made during the second World War, in particular arrangements for "agency" censorship, and that there was no good case for prohibiting such arrangements.

In the second paragraph the words "if possible" have been deleted in the requirement which provides for the opening of packages in the presence of the internee or his nominee. The words "both light reading matter or educational works" have been replaced by the words "individual or collective consignments", since it was felt that the Stockholm words could be interpreted as meaning that other kinds of consignments *could* be delayed under the pretext of difficulties of censorship. The Stockholm text, in attempting to cope with a problem which had been a source of complaint in the past, had therefore produced a misleading impression which the new text seeks to correct.

#### Article 103

The new Article is completely different in form from the Stockholm text, which was based on provisions which were designed for prisoners of war. The Committee considered them unsatisfactory for internees for two reasons:

- (1) that, generally speaking, provisions in the wills of internees are intended to be carried out in the country of detention, and that there might therefore be practical as well as legal difficulties in making the Protecting Power or Central Agency the sole channel of communication;
- (2) that in any case the internee is, in the legal sense, a much more complicated person than the soldier, and documents appertaining to

an internee's affair have to conform to more formalities than those which appertain to the affairs of a prisoner of war, particularly if those documents have to be made effective in countries other than that in which they are drawn up.

It was suggested that the word "lawyer" in this paragraph might be replaced by the words "competent person", but the Committee thought there might be danger, from the internee's point of view, in such a substitution.

#### Article 104

A slight addition has been made to the Stockholm text of the first paragraph, making it clear that facilities for the management of property must be governed by ordinary wartime legislation as well as by the limitations imposed by a state of internement.

The second paragraph of the Stockholm text was regarded as unnecessary, since the internee could perform everything stated in the second paragraph under the stipulations of the first.

#### Article 105

This again is an entirely new Article, replacing in their entirety the provisions of the Stockholm text. The Committee's objections to the Stockholm text were that it implied that the Occupying Power, as the Power which is bound to enforce the provisions of the Article, was by implication empowered to interfere in the working of the ordinary Courts of Justice. (One delegation had, indeed, suggested that the Article should be deleted.) Moreover, it was thought there might well be cases where a moratorium on proceedings (for instance against a wealthy internee), would be quite unjust. The Committee thought therefore that the obligations of the Detaining Power should be limited to giving the Court such additional information as the Court would require in order to come to a proper decision in relation to the affairs of an internee. This requirement is common both to occupied territory and the territory of a belligerent, and the new draft consists therefore of a single paragraph in common terms.

#### Article 106

Apart from minor verbal changes, the text is the Stockholm text.

#### Article 107

In view of the fact that an Occupying Power has power to legislate in certain matters, it was decided to replace the words "laws of the terri-

tory" in the first paragraph by the words "laws *in force* in the territory". Otherwise, the Stockholm text is retained.

#### Article 108

The basis of discussion for this Article was the Article submitted to the Stockholm Conference. The International Red Cross Committee had suggested that the first sentence of the first paragraph of that text should be replaced by the words "The courts or authorities shall, in passing sentence, take as far as possible into account the fact that the defendant is not a national of the Detaining Power". It was also suggested that the words "the kind of penalty" should be removed from this paragraph so that the concluding phrase would read: "and shall not be obliged, to this end, to apply the minimum sentence prescribed".

In the fourth paragraph of the Stockholm text, the reference to disciplinary punishment was deleted by the Drafting Sub-Committee, on the ground that precisely the same requirement appears in Article 112 which deals exclusively with disciplinary matters. It was restored, notwithstanding the duplication, by the Committee in full session.

The remaining paragraphs of the pre-Stockholm text remain unaltered.

Some Governments considered the first sentence of the draft as adopted by Committee III was misleading—in that the only place in the text where it would be relevant would be in occupied territory, and there was already a specific provision to the same effect in Article 58, which deals with all offences in occupied territory. The other difficulty—raised by the second sentence of the first paragraph—is that in some countries sentence of death is the only one for certain offences, and the mere removal of the words "the kind of penalty" does not fully meet this difficulty.

The Committee as a whole did not feel called upon to take account of the legal and constitutional difficulties created for some countries by the first and fourth paragraphs of the text which they eventually adopted.

#### Article 109

The Article only differs in two matters of substance from the Stockholm text, that is, in the deletion of the references to allowances in Disciplinary Punishment (1), and in the suppression of Disciplinary Punishment (4) of the Stockholm text.

The Committee took the view that for most internees allowances would be small and would be provided strictly on a humanitarian basis. They therefore thought it was proper to place those allowances out of the reach of disciplinary sanctions.

They also thought that it was quite unjustifiable to extend by way of disciplinary punishment the hours which an internee might work for an employer. Indeed, it was pointed out that since work for all internees was voluntary, the effect of providing for this particular form of disciplinary punishment was to penalize specially those internees who chose to work, and the final result of this might be to cut down the numbers of internees willing to take up employment. For this reason it was considered that the two-hour time limit imposed by Punishment (4) of the Stockholm text should be transferred to Punishment (3), i.e. fatigue duties.

#### *Article 110*

The text remains as drafted at Stockholm. It had been suggested by one Delegation that that first paragraph should apply to occupied territory only, and by another that the third paragraph required strengthening. The Committee as a whole did not feel that these amendments were justified.

#### *Article 111*

The only changes from the Stockholm text are the deletion of the words "the greatest" in the second paragraph, and of the third paragraph as a whole. In the latter case it was felt that the paragraph, which had the effect of putting an escaped internee very largely outside the provisions of criminal law so long as he could contend that the offences he committed were done in the course of his attempt to escape, was rejected as entirely unreasonable and dangerous.

It was suggested by one Delegation that the first paragraph should be confined to occupied territory only, but the Committee did not feel able to accept this. An other Delegation asked for drafting changes making it clear that the Article covered escape from internment and not escape from other types of legal custody. The Committee, however, took the view that the only reasonable interpretation which could be placed on the text was that it did refer to escapes from internment and nothing else.

#### *Article 112*

The Article remains as at Stockholm.

#### *Article 113*

There are three amendments of substance, all self-explanatory, to the Stockholm text. The first is the first sentence of the second paragraph, which gives precision to the phrase stipulating that the accused "shall be able to use his means of defence". The Committee has substituted in

summarized form what it regards as the ingredients of a fair disciplinary enquiry. In the same paragraph occurs the second amendment, the substitution of the word "pronounced" by the word "made".

The third amendment is the addition of the fifth paragraph, requiring the Commandant to keep a record of disciplinary punishments and hold it open to inspection to representatives of the Protecting Power.

#### *Article 114*

The only change from the Stockholm text is the strengthening of the third paragraph which, in providing for the immediate supervision of women internees undergoing disciplinary punishment by a woman, gives more effective safeguards than the Stockholm text.

#### *Article 115*

The text remains as drafted at Stockholm.

#### *Article 116*

The Committee decided to restrict the range of Articles to be applied by analogy to Articles 61-66. They regarded the references in the Stockholm text to Articles 60 to 67—(both of them Articles peculiar to a condition of occupation)—as inappropriate.

#### *Article 117*

Apart from minor drafting changes the Articles as accepted differs from the Stockholm text in three respects only. The first insertion is a comparatively minor one—that of the words "clothing" and "shelter" with a view to adding strength to the first sentence of the second paragraph.

The second change is to add infirm internees and maternity cases to the third paragraph.

The third change is the addition of a new fifth paragraph, requiring the Detaining Power to take the interests of the internees into account.

It was suggested, in connection with the third paragraph, that the words "especially in case of transfer by sea or air" should follow the words "The Detaining Power shall take all suitable precautions to ensure their safety during transfer", but the Committee felt that the obligation was quite general, and that to single out particular methods of transfer for special mention might be weakening to the general principle.

#### *Article 118*

The only amendment of substance to the Stockholm text is the deletion of the words "if necessary" in the fourth paragraph—on the ground that the question of whether measures are necessary is a

matter which should be discussed between the Commandant and the Committee in any case, and that the Commandant should not be left to take decisions unilaterally as to whether there is any necessity to make arrangements.

It was agreed that the word "inform" in the second sentence of the first paragraph should be interpreted as meaning "despatch a notification to", and did not mean that the time allowed should be such that the next of kin could be expected to have received the information before the transfer actually took place.

#### *Article 119*

The first paragraph of the Stockholm text has been redrafted, mainly in order to take account of the fact that it may not be sufficient, in the interests of his heirs at law, for the will of an internee to be drawn up "under the same conditions as for the civilian population of the country of internment", since he may want it executed in some other country. Moreover, full provision for making the wills of internees legally effective has been made in Article 103 of the redrafted text, so that it is only necessary in Article 119 to ensure safe custody and transmission on the death of the internee, if such transmission has not already taken place.

The third paragraph of the Stockholm text was for similar reasons also regarded as unsatisfactory, particularly in its references to the "district official registrar"—a description which is "local" rather than "universal" in character—and to the camp Commandant. The essential, in the Committee's view, is to ensure that the *official* record of death is drawn up in the way which is most likely to ensure that subsequent legal transactions which may depend upon that record are not hampered. This would mean that there should be no difference between the official record of the death of the internee and the official record of the death of any other person in the territory, and the new third paragraph is drafted on that basis.

The fifth paragraph now includes an obligation to retain in safekeeping the ashes of deceased internees whose bodies have been cremated.

A new sixth paragraph, specifying an obligation to forward a list of graves, has been added.

#### *Article 120*

The amendments made to the first paragraph of Article 120 have the effect of making an enquiry obligatory not only when death or serious injury has been caused by the action of some other person, but also where it is merely suspected to have been so caused, or where the cause of death is not known. It was accepted by the Committee that the phrase "official enquiry" would include

a criminal prosecution, i.e. that where criminal prosecution is undertaken on the facts revealed on preliminary investigation, there need not be any other "official enquiry".

#### *Article 121*

The amendments which have been made to the Stockholm text are the deletion of the third paragraph, which was considered to be in effect a duplication of the stipulations of Articles 41 and 45 in this respect, and an extension of the list of persons meriting special consideration by adding expectant mothers and mothers with small children.

#### *Article 122*

The only change effected in the Stockholm text is the deletion of the words "and, in occupied territories, at the close of occupation" in the first paragraph. The reason for the deletion was that the close of occupation necessarily means that internment by the Occupying Power comes to an end. The Committee did not accept the view that the retention of the remainder of the paragraph, i.e. the phrase "Internment shall cease as soon as possible after the close of hostilities" bore the implication that no person could be interned after the close of hostilities.

#### *Article 122bis*

This is a new Article, inserted at the request of several Delegations who thought the financial principles governing repatriations should be set out in the Convention.

The second paragraph makes a distinction between repatriations effected at the wish of the Detaining Power, and what may be termed self-repatriation undertaken at the wish of the internee or of his Government.

#### *Article 122A*

This Article is based on Article 127 of the Stockholm text. The Committee, however, felt that the provisions of the original Article 127 were too wide. In particular they felt that the imposition of obligations as regards the nationals of a signatory, or even as regards aliens in general, was outside the scope of obligations which should be imposed by the Convention.

## SECTION V

### **Information Bureaux and Central Agency**

The Articles 123 to 127, as adopted by the Committee, contained in some instances material which does not appear under the corresponding number of the Stockholm text. Article 123 of the Stock-

holm text, for example, has been subdivided into four separate Articles. Article 127 of the Stockholm text has, as indicated in the note on Article 122A, been transferred to Section IV whilst the new Article 127 did not appear in the Stockholm text at all. The notes below refer to the new group of Articles as approved by the Committee.

#### *Article 123*

This Article is a redraft of paragraphs 1, 2 and 5 of the Stockholm text. It contains only one amendment of substance—the clarification of the term “arrested” (Stockholm paragraph two).

In this connection, whilst some Delegations thought that the taking into custody of a protected person under the ordinary procedure of criminal law should be entirely excluded from the Article, the Committee as a whole felt that in view of the large numbers of persons who disappeared completely during World War II, it would be desirable by way of safeguard to provide that detention in connection with criminal or quasi-criminal charges as well as detentions for political reasons—whether effected by State or Federal authorities or, for example, by “political” police—should be recorded by the appropriate bureau, unless the person in question was released within two weeks.

#### *Article 123A*

This is a redraft of paragraphs 3 and 7 of Stockholm Article 123.

In the discussions of this Article, it was pointed out that the protected person himself had, under Articles 32 and 40 as accepted by the Committee, the right to object to information about him being forwarded to the Protecting Power. The Committee, however, took the view that although transmission to a Protecting Power might, in certain circumstances, properly be waived, the obligation to transmit information to the Central Agency should be unconditional. They thought, however that it should be the duty of the National Bureaux to notify the Central Agency of any reasons, in-

cluding the expressed wishes of the person concerned which might help the Central Agency to decide whether or not further transmission would be detrimental to the protected person’s relatives.

#### *Article 123B*

This Article is a redraft of paragraphs 4 and 6 of the Stockholm Article 123. It incorporates the “place and nature of the action affecting the individual” as an additional item in the statistics likely to assist identification, and encourages the provision of further details which might be useful for the purposes of the Article.

#### *Article 123C*

This deals with personal valuables in the possession of persons covered by the Article, whilst they are in the power of a Signatory to the Convention, and corresponds to the last paragraph of the Stockholm Article. The drafting has been strengthened.

#### *Article 124*

Basically, the Article remains as drafted at Stockholm. The Committee has, however, incorporated in it a new third paragraph relating to the finances of the Central Agency and added to the fourth paragraph (corresponding to the old third) a reference to the Relief Societies described in the *new* Article 127.

The word “domicile”, which has been known to give rise to legal difficulties, has been replaced in the second paragraph by the word “residence”.

#### *Article 125*

The text remains as drafted at Stockholm. The Committee thought that it was desirable, in order to reduce the chances of any breakdown in notification arrangements—through inability on the part of the Central Agency, for example, to meet the full charges—that a moral obligation to attempt to make special arrangements should find its place in the Convention.

## PART IV

**Execution of the Convention**

*Note:* The Committee decided to subdivide Part IV into two sections, one "General Provisions" beginning with Article 126, and the other "Final Provisions" beginning with Article 131.

*Article 126*

The Article remains as drafted at Stockholm, except for a reference in the first paragraph to places, of work which, for internees as well as prisoners of war, may be outside the place of internment or detention to which the protected persons are attached for administrative purposes.

*Article 135*

Article 135 deals with the relations between our Convention and those of the Hague; and here the question is one of great difficulty. The Stockholm draft laid down that the present Convention was

to replace, in respect of the matters treated therein, the Conventions of the Hague. The Commission preferred the following wording proposed by the Norwegian Delegation: the present Convention "shall be supplementary to Sections II and III of the Regulations annexed to the aforesaid Hague Conventions". This wording is cautious in that it does not attempt to indicate any limitation between the Civilians Convention and the Hague Conventions, neither does it seek to establish a hierarchy; any such attempt, in a field as complex as this, would be a singularly dangerous undertaking.

*Annexes*

Discussion on the annexes revealed no serious difficulties on matters of principle, except in respect of the annex referring to safety zones. In this case, however, Committee III adopted, with minor drafting changes, the text accepted by Committee I for the corresponding annex in the Wounded and Sick Convention.

## PART II

### TEXT FOR THE CIVILIANS CONVENTION DRAFTED BY COMMITTEE III AND THE JOINT COMMITTEE, REVISED BY THE DRAFTING COMMITTEE, AFTER CONSIDERATION OF THE RECOMMENDATIONS OF THE COORDINATION COMMITTEE

(In order to avoid any misunderstanding, the provisional numbering of the Articles established by the Committees has been retained in this document. The final numbering will only be settled at the end of the Plenary Meetings.

The Chapter Headings form an integral part of the Convention. The marginal headings of the individual Articles, on the contrary, do not form part of the Convention and do not therefore appear in the texts submitted to the Plenary Meeting of the Conference.)

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## PART I

### General Provisions

#### *Article 1*

The High Contracting Parties undertake to respect and to ensure respect for the present Convention in all circumstances.

#### *Article 2*

In addition to the stipulations which shall be implemented in peace time, the present Convention shall apply to all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them.

The Convention shall also apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance.

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

#### *Article 2A*

In the case of armed conflict not of an International character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions :

- (1) Persons taking no active part in the hostilities, including members of armed forces, who have laid down their arms, and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely without any discrimination on a basis of race, colour, religion or faith, sex, birth or wealth.

To this end the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

- (a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
- (b) taking of hostages;

- (c) outrages upon personal dignity, in particular, humiliating and degrading treatment;
  - (d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.
- (2) The wounded and sick shall be collected and cared for.

An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict.

The Parties to the conflict should further endeavour to bring into force, by means of special agreements, all or part of the other provisions of the present Convention.

The application of the preceding provisions shall not affect the legal status of the parties to the conflict.

#### *Article 3*

Persons protected by the Convention are those who, at a given moment and in any manner whatsoever, find themselves, in case of a conflict or occupation, in the hands of a Party to the conflict or Occupying Power of which they are not nationals.

Nationals of a State which is not bound by the Convention are not protected by it. Nationals of a neutral State who find themselves in the territory of a belligerent State, and nationals of a co-belligerent State, shall not be regarded as protected persons while the State of which they are nationals has normal diplomatic representation in the State in whose hands they are.

Persons protected by the Geneva Convention for the Relief of the Wounded and Sick in Armed Forces in the Field, or by the Convention for the Relief of Wounded, Sick and Shipwrecked Members of Armed Forces on Sea, or by the Convention relative to the Treatment of Prisoners of War, shall not be considered as protected persons within the meaning of the present Convention.

The provisions of Part II are, however, wider in application, as defined in Article 11.

#### *Article 3A*

Where in the territory of a Party to the conflict, the Power concerned 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 this Convention as would, if exercised in the favour of

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

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

In each case such persons shall nevertheless be treated with humanity and in case of trial shall not be deprived of the rights of fair and regular trial prescribed by this Convention. They shall also be granted the full rights and privileges of a protected person under this Convention at the earliest date consistent with the security of the State or Occupying Power.

#### *Article 4*

The present Convention shall apply from the outset of any conflict or occupation mentioned in Article 2.

In the territory of Parties to the conflict, the application of the Convention shall cease one year after the general close of military operations.

In the case of occupied territory, the application of this Convention shall cease one year after the general close of military operations; however, the Occupying Power shall be bound, for the duration of the occupation, to the extent that such Power exercises the functions of government in such territory, by the provisions of the following Articles of this Convention: 1 to 10, 25, 26, 28, 29, 29A, 30, 31, 43, 45, 47, 48, 48A, 50C, 52 to 67, 126.

Protected persons whose release, repatriation or reestablishment may take place after such dates shall meanwhile continue to benefit by the present Convention.

#### *Article 5*

In addition to the agreements expressly provided for in Articles 9, 12, 12A, 33, 52, 84, 97, 98, 121 and 122, the Contracting Parties may conclude other special agreements for all matters concerning which they may deem it suitable to make separate provision. No special agreement shall adversely affect the situation of protected persons, as defined in the present Convention, nor restrict the rights which it confers upon them.

Protected persons shall continue to have the benefit of such agreements that concern them as long as the Convention is applicable to them, except for express provisions to the contrary in the aforementioned or in subsequent agreements, or except also for more favourable measures taken with respect to them by one or the other of the Parties to the conflict.

*Article 6*

Protected persons may in no circumstances renounce in part or in entirety the rights secured to them by the present Convention and by the special agreements referred to in the foregoing Article, if such there be.

*Article 7*

The present Convention shall be applied with the cooperation and under the scrutiny of the Protecting Powers responsible for safeguarding the interests of the Parties to the conflict. To that effect, the Protecting Powers may, apart from their diplomatic or consular staff, appoint delegates from amongst their own nationals or the nationals of other neutral Powers. The said delegates shall be subject to the approval of the Power with which they will carry out their duties.

The Parties to the conflict shall, to as great a degree as possible, facilitate the task of the representatives or delegates of the Protecting Powers.

The representatives or delegates of the Protecting Power shall not in any case exceed their mission under the present Convention. They shall, in particular, take account of the imperative necessities of security of the State wherein they carry out their duties. Their activities shall only be restricted as an exceptional and temporary measure when this is rendered necessary by imperative military necessities.

*Article 8*

The provisions of the present Convention constitute no obstacle to the humanitarian activities which the International Committee of the Red Cross or any other impartial humanitarian body may, subject to the consent of the Parties to the conflict concerned, undertake for the protection of civilian persons and for their relief.

*Article 9*

The Contracting Parties may at any time agree to entrust to an organization, which offers all guarantees of impartiality and efficacy, the duties incumbent on the Protecting Powers by virtue of the present Convention.

When persons protected by the present Convention do not benefit or cease to benefit, no matter for what reason, by the activity of a Protecting Power, or of an organization provided for in the first paragraph above, the Detaining Power shall request a neutral State, or such an organization,

to undertake the functions performed under the present Convention by a Protecting Power designated by the Parties to a conflict.

If protection cannot be arranged accordingly the Detaining Power shall request or shall accept, subject to the provisions of this Article, 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 under the present Convention.

Any neutral Power or any organization invited by the Power concerned or offering itself for these purposes shall be required to act with a sense of responsibility towards the belligerent on which persons protected by the present Convention depend and shall be required to furnish sufficient assurances that it is in a position to undertake the appropriate functions and to discharge them impartially.

No derogation from the preceding provisions shall be made by special agreements between Powers one of which is restricted, even temporarily, in its freedom to negotiate with the other Power, or its allies by reason of military events, more particularly where the whole, or a substantial part, of the territory of the said Power is occupied.

Whenever in the present Convention mention is made of a Protecting Power, such mention applies to substitute organizations in the sense of the present Article.

*Article 10*

In cases where they deem it advisable in the interest of protected persons, particularly in cases of disagreement between the Parties to the conflict as to the application or interpretation of the provisions of the present Convention, the Protecting Powers shall lend their good offices with a view to settling the disagreement.

To this effect, each of the Protecting Powers may, at the invitation of one Party, or on its own initiative, propose to the Parties to the conflict a meeting of their representatives, and in particular of the authorities responsible for protected persons, possibly on neutral territory suitably chosen. The Parties to the conflict shall be bound to give effect to the proposals made to them in this respect. The Protecting Powers may, if necessary, propose for approval by the Parties to the conflict a person belonging to a neutral Power, or delegated by the International Committee of the Red Cross, who shall be called upon to participate in such a meeting.

## PART II

**General Protection of Populations  
Against Certain Consequences of War**

*Article 11*

The provisions of Part II cover the whole of the populations of the countries in conflict, without any distinction founded in particular on race, nationality, religion or political opinions, and are intended to alleviate the sufferings caused by war.

*Article 12*

In time of peace, the Contracting Parties and, after the outbreak of hostilities, the Parties thereto, may establish in their own territory and, if the need arises, in occupied areas, hospital and safety zones and localities so organized as to protect from the effects of war, wounded, sick and aged persons, children under fifteen, expectant mothers and mothers of children under seven.

Upon the outbreak and during the course of hostilities, the Parties concerned may conclude agreements on mutual recognition of the zones and localities they have created. They may for this purpose implement the provisions of the Draft Agreement annexed to the present Convention, with such amendments as they may consider necessary.

The Protecting Powers and the International Committee of the Red Cross are invited to lend their good offices in order to facilitate the institution and recognition of these hospital and safety zones and localities.

*Article 12A*

Any Party to the conflict may, either direct or through a neutral State, or some humanitarian organization, propose to the adverse Party to establish, in the regions where fighting is taking place, neutralized zones intended to shelter from the effects of war the following persons, without distinction:

- (a) wounded and sick combatants or non-combatants.
- (b) civilian persons who take no part in hostilities, and who, while they reside in the zones, perform no work of a military character.

When the Parties concerned have agreed upon the geographical position, administration, food-supply and supervision of the proposed neutralized

zone, a written agreement shall be concluded and signed by the representatives of the Parties to the conflict. The agreement shall fix the beginning and the duration of the neutralization of the zone.

*Article 13*

The wounded and sick, as well as the infirm and expectant mothers, shall be the object of particular protection and respect.

As far as military considerations allow, each Party to the conflict shall facilitate the steps taken to search for the killed and wounded, to assist the shipwrecked and other persons exposed to grave danger, and to protect them against pillage and ill-treatment.

*Article 14*

The Parties to the conflict shall endeavour to conclude local agreements for the removal from besieged or encircled areas, of wounded, sick, infirm, and aged persons, children and maternity cases, and for the passage of ministers of all denominations, medical personnel and medical equipment on their way to such areas.

*Article 15*

Civilian hospitals, recognized as such by the State and organized on a permanent basis to give care to the wounded and sick, the infirm and maternity cases, may in no circumstances be the object of attack but shall at all times be respected and protected by the Parties to the conflict.

The recognition of such establishments by the State shall be certified by a document delivered to each of them. In view of the dangers to which hospitals may be exposed by being close to military objectives, it is recommended that such hospitals be situated as far as possible from such objectives.

The hospitals as defined in the first paragraph shall be marked by means of the emblem provided for in Article ..... of the Geneva Convention of ..... 1949 for the Relief of the Wounded and Sick in Armed Forces in the Field, with the consent of the State and of the National Red Cross Society.

The Parties to the conflict shall, in so far as military considerations permit, take the necessary

steps to make the distinctive emblems indicating civilian hospitals clearly visible to the enemy land, air and naval forces in order to obviate the possibility of any hostile action.

#### *Article 16*

The protection to which civilian hospitals are entitled shall not cease unless they are used to commit, outside their humanitarian duties, acts harmful to the enemy. Protection may, however, cease only after due warning has been given, naming, in all appropriate cases, a reasonable time-limit and after such warning has remained unheeded.

The fact that sick or wounded members of the armed forces are nursed in these hospitals, or the presence of small arms and ammunition taken from such combatants which have not yet been handed to the proper service, shall not be considered to be acts harmful to the enemy.

#### *Article 18*

Persons regularly engaged in the operation and administration of civil hospitals, including the personnel engaged in the search for, removal and transporting of and caring for wounded and sick civilians, the infirm and maternity cases shall be respected and protected.

In occupied territory and in zones of military operations, the above personnel shall be recognizable by means of an identity card certifying their status, bearing the photograph of the holder and embossed with the stamp of the responsible authority, and also by means of a stamped, water-resistant armband which they shall wear on the left arm while carrying out their duties. This armband shall be issued by the responsible authorities and shall bear the emblem provided for in Article .....of the Geneva Convention of..... 1949 for the Relief of the Wounded and Sick in Armed Forces in the Field.

The management of each hospital shall at all times hold at the disposal of the competent national or occupying authorities an up-to-date list of such personnel.

#### *Article 19A*

Transports conveying wounded and sick civilians, the infirm and maternity cases shall be respected and protected in the same manner as the hospitals provided for in Article 15, and shall be marked, with the consent of the State, by the display of the distinctive emblem provided for in Article ... of the Geneva Convention of ..... 1949 for the Relief of the Wounded and Sick in Armed Forces in the Field.

#### *Article 20*

Each High Contracting Party shall allow the free passage of all consignments of medical and hospital stores and objects necessary for religious worship intended only for civilians of another High Contracting Party, even if the latter is its adversary. It shall likewise permit the free passage of all consignments of essential foodstuffs, clothing and tonics intended for children under fifteen, expectant mothers and maternity cases.

The obligation of a High Contracting Party to allow the free passage of the consignments indicated in the preceding paragraph is subject to the condition that this Party is satisfied that there are no serious reasons for fearing:

- (a) that the consignments may be diverted from their destination; or
- (b) that the control may not be effective, or
- (c) that a definite advantage may accrue to the military efforts or economy of the enemy through the substitution of the above-mentioned consignments for goods which would otherwise be provided or produced by the enemy or through the release of such material, services or facilities as would otherwise be required for the production of such goods.

The Power which allows the passage of the consignments indicated in the first paragraph of this Article may make such permission conditional on the distribution to the persons benefited thereby being made under the local supervision of the Protecting Powers.

Such consignments shall be forwarded as rapidly as possible, and the Power which permits their free passage shall have the right to prescribe the technical arrangements under which such passage is allowed.

#### *Article 21*

The Parties to the conflict shall take the necessary measures to prevent children under fifteen, who are orphaned or separated from their families as a result of the war, from being left to their own resources, and in all circumstances to facilitate their maintenance, the exercise of their religion and their education. Their education shall, as far as possible, be entrusted to persons of a similar cultural tradition.

The Parties to the conflict shall facilitate the reception of such children in a neutral country for the duration of the conflict with the consent of the Protecting Power, if any, and under due safeguards for the observance of the principles stated in the first paragraph.

They shall furthermore endeavour to arrange for all children under twelve to be identified by the wearing of identity discs, or by some other means.

*Article 22*

All persons in the territory of a Party to the conflict, or in a territory occupied by it, shall be enabled to give news of a strictly personal nature to members of their families, wherever they may be, and to receive news from them. This correspondence shall be forwarded speedily and without undue delay.

If, as a result of circumstances, it becomes difficult or impossible to exchange family correspondence by the ordinary post, the Parties to the conflict concerned shall apply to a neutral intermediary, such as the Central Agency provided for in Article 124, and shall decide in consultation with it how to ensure the fulfilment of

their obligations under the best possible conditions, in particular with the co-operation of the National Red Cross (Red Crescent, Red Lion and Sun) Societies.

If the Parties to the conflict deem it necessary to restrict family correspondence, such restrictions shall be confined to the compulsory use of standard forms containing twenty-five freely chosen words, and to the limitation of the number of these forms despatched to one each month.

*Article 23*

Each Party to the conflict shall facilitate enquiries made by members of families dispersed owing to the war, with the object of renewing contact with one another and of meeting, if possible. It shall encourage, in particular, the work of organizations engaged on this task provided they are acceptable to it and conform to its security regulations.

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## PART III

### Status and Treatment of Protected Persons

#### SECTION I

#### Provisions Common to the Territories of the Parties to the Conflict, and to Occupied Territories

*Article 25*

Protected persons are entitled, in all circumstances, to respect for their persons, their honour, their family rights, their religious convictions and practices, and their manners and customs. They shall at all times be humanely treated, and shall be protected especially, against all acts of violence or threats thereof and against insults and public curiosity.

Women shall be specially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault.

Without prejudice to the provisions relating to their state of health, age and sex, all protected persons shall be treated with the same consideration by the Party to the conflict in whose power they are, without any adverse discrimination on alleged considerations, in particular, of race, religious beliefs or political opinions.

However, 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.

*Article 25A*

The presence of a protected person may not be used to render certain points or areas immune from military operations.

*Article 26*

The Party to the conflict in whose hands protected persons may be is responsible for the treatment accorded to them by its agents, irrespective of any individual responsibility which may be incurred.

*Article 28*

Protected persons shall have every facility for making application to the Protecting Powers, the International Committee of the Red Cross, the National Red Cross Society (Red Crescent, Red Lion and Sun) of the country where they may be, as well as to any organization that might assist them.

These several organizations shall be granted all facilities for that purpose by the authorities, within the bounds set by military or security considerations.

Apart from the visits of the delegates of the Protecting Powers and of the International Committee of the Red Cross, provided for by Article 126, the Detaining or Occupying Powers shall facilitate as much as possible visits to protected persons by the representatives of other organizations, whose object is to give spiritual aid or material relief to such persons.

*Article 29*

No physical or moral coercion shall be exercised against protected persons, in particular to obtain information from them or from third parties.

*Article 29A*

The Contracting States specifically agree that each of them is prohibited from taking any measure of such a character as to cause the physical suffering or extermination of protected persons in their hands. This prohibition applies not only to murder, torture, corporal punishments, mutilation and medical or scientific experiments not necessitated by the medical treatment of a protected person, but also to any other measures of brutality whether applied by civilian or military agents.

*Article 30*

No protected person may be punished for an offence he or she has not personally committed. Collective penalties and likewise all measures of intimidation or of terrorism are prohibited.

Pillage is prohibited.

Reprisals against protected persons and their property are prohibited.

*Article 31*

The taking of hostages is prohibited.

SECTION II

**Aliens in the Territory of a Party to the Conflict**

*Article 32*

All protected persons who may desire to leave the territory at the outset of, or during a conflict, shall be entitled to do so, unless their departure is contrary to the national interests of the State. The applications of such persons to leave shall be determined in accordance with regularly established procedures and the decision shall be taken as rapidly as possible. These persons permitted to leave may provide themselves with

the necessary funds for their journey and take with them a reasonable amount of their effects and articles of personal use.

If any such person is refused permission to leave the territory, he shall be entitled to have such refusal reconsidered as soon as possible by an appropriate court or administrative board designated by the Detaining Power for that purpose.

Upon request, representatives of the Protecting Power shall, unless reasons of security prevent it, or the persons concerned object, be furnished with the reasons for refusal of any request for permission to leave the territory and be given, as expeditiously as possible, the names of all persons who have been denied permission to leave.

*Article 33*

Departures permitted under the foregoing Article shall be carried out in satisfactory conditions as regards safety, hygiene, sanitation and food. All costs in connection therewith from the point of exit in the territory of the Detaining Power shall be borne by the country of destination, or, in the case of accommodation in a neutral country, by the Power whose nationals are benefitted. The practical details of such movements may, if necessary, be settled by special agreements between the Powers concerned.

The foregoing shall not prejudice such special agreements as may be concluded between Parties to the conflict concerning the exchange and repatriation of their nationals in enemy hands.

*Article 34*

Protected persons who are confined pending proceedings or subject to a sentence involving loss of liberty, shall during their confinement be humanely treated.

As soon as they are released, they may ask to leave the territory in conformity with the foregoing Articles.

*Article 35*

With the exception of special measures authorized by the present Convention, in particular by Articles 25 and 38 thereof, the situation of protected persons shall continue to be regulated, in principle, by the provisions concerning aliens in time of peace. In any case, the following rights shall be granted to them:

- 1) they shall be enabled to receive the individual or collective relief that may be sent to them;
- 2) they shall, if their state of health so requires, receive medical attention and hospital treatment to the same extent as the nationals of the State concerned;

- 3) they shall be allowed to practise their religion and to receive spiritual assistance from ministers of their faith;
- 4) if they reside in an area particularly exposed to the dangers of war, they shall be authorized to move from that area to the same extent as the nationals of the State concerned;
- 5) children under fifteen years, pregnant women and mothers of children under seven years shall benefit from any preferential treatment to the same extent as the nationals of the State concerned.

*Article 36*

Protected persons who, as a result of the war, have lost their gainful employment, shall be granted the opportunity to find paid employment. That opportunity shall, subject to security considerations and to the provisions of Article 37, be equal to that enjoyed by the nationals of the Detaining Power.

Where a Detaining Power applies to a protected person methods of control which result in this being unable to support himself, and especially if such a person is prevented for reasons of security from finding paid employment on reasonable conditions, the Detaining Power shall ensure his support and that of his dependants.

Protected persons may in any case receive allowances from their home country, their Protecting Power, or the relief societies referred to in Article 28.

*Article 37*

Protected persons may be compelled to work only to the same extent as nationals of the Party to the conflict in whose territory they are.

If protected persons are of enemy nationality, they may only be compelled to do work which is normally necessary to ensure the feeding, sheltering, clothing, transport and health of human beings and which is not directly related to the conduct of military operations.

In the cases mentioned in the two preceding paragraphs, protected persons compelled to work shall have the benefit of the same working conditions and of the same safeguards as national workers, in particular, as regards wages, hours of labour, clothing and equipment, previous training and insurance against accidents.

If the above provisions are infringed, protected persons shall be allowed to exercise their right of complaint, in accordance with Article 28.

*Article 38*

Should the Power, in whose hands protected persons may be, consider the measures of control

mentioned in the present Convention to be inadequate, it may not have recourse to any other measure of control more severe than that of assigned residence or, as an exceptional measure, internment, in accordance with the provisions of Articles 39 and 40. Each decision shall be taken individually.

*Article 39*

The internment of protected persons may be ordered only if the security of the Detaining Power makes it absolutely necessary.

If any person, acting through the representatives of the Protecting Power, voluntarily demands internment, and if his situation renders this step necessary, he shall be interned by the Power in whose hands he may be.

*Article 40*

Any protected person who has been interned or placed in assigned residence shall be entitled to have such action reconsidered as soon as possible by an appropriate court or administrative board designated by the Detaining Power for that purpose. If the internment or placing in assigned residence is maintained, the court or administrative board shall periodically, and at least twice yearly, give consideration to his or her case, with a view to the favourable amendment of the initial decision, if circumstances permit.

Unless the protected persons concerned object, the Detaining Power shall, as rapidly as possible, give the Protecting Power the names of any protected persons who have been interned or subjected to assigned residence, or who have been released from internment or assigned residence. The decisions of the courts or boards mentioned in the first paragraph of the present Article shall also, subject to the same conditions, be notified as rapidly as possible to the Protecting Power.

*Article 40A*

In applying the measures of control mentioned in this Convention, the Detaining Power shall not treat, as enemy aliens exclusively on the basis of their nationality *de jure* of an enemy state, refugees who do not, in fact, enjoy the protection of any government.

*Article 41*

Protected persons shall not be transferred to a Power which is not a party to the Convention.

This provision shall in no way constitute an obstacle to the repatriation of protected persons, or to their return to their country of residence after the cessation of hostilities.

Protected persons may be transferred by the Detaining Power only to a Power which is a party to the Convention and after the Detaining Power has satisfied itself of the willingness and ability of such transferee Power to apply the Convention. If protected persons are transferred under such circumstances, responsibility for the application of the Convention rests on the Power accepting them, while they are in its custody. Nevertheless, if that Power fails to carry out the provisions of the Convention in any important respect, the Power by which the protected persons were transferred shall, upon being so notified by the Protecting Power, take effective measures to correct the situation or shall request the return of the protected persons. Such request must be complied with.

In no circumstances shall a protected person be transferred to a country where he or she may have reason to fear persecution for his or her political opinions or religious beliefs.

The provisions of this Article do not constitute an obstacle to the extradition, in pursuance of extradition treaties concluded before the outbreak of hostilities, of protected persons accused of offences against ordinary criminal law.

#### *Article 42*

In so far as they have not been previously withdrawn, restrictive measures taken regarding protected persons shall be cancelled as soon as possible after the close of hostilities.

### SECTION III

#### **Occupied Territories**

#### *Article 43*

Protected persons who are in occupied territory shall not be deprived, in any case or in any manner whatsoever, of the benefits of the present Convention by any change introduced, as the result of the occupation of a territory, into the institutions or governments of the said territory, nor by any agreement concluded between the authorities of the occupied territories and the Occupying Power, nor by any annexation by the latter of the whole or part of the occupied territory.

#### *Article 44*

Protected persons who are not nationals of the Power whose territory is occupied, may avail themselves of the right to leave the territory subject to the provisions of Article 32, and decisions thereon shall be taken in accordance with the procedure which the Occupying Power shall establish in accordance with the said Article.

#### *Article 45*

Individual or mass forcible transfers as well as deportations of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country, occupied or not, are prohibited, regardless of their motive.

Nevertheless, the Occupying Power may undertake total or partial evacuation of a given area if the security of the population or imperative military reasons so demand. Such evacuations may not involve the displacement of protected persons outside the bounds of the occupied territory except when for material reason it is impossible to avoid such displacement. Persons thus evacuated shall be transferred back to their homes as soon as hostilities in the area in question have ceased.

The Occupying Power shall not undertake such transfers and evacuations before having ensured proper accommodation to receive the protected persons; such displacements shall be effected in satisfactory conditions of safety, hygiene, health and nutrition. Members of the same family shall not be separated.

The Protecting Power shall be informed of any transfers and evacuations as soon as they have taken place.

The Occupying Power shall not detain protected persons in an area particularly exposed to the dangers of war unless the security of the population or imperative military reasons so demand.

The Occupying Power shall not deport or transfer parts of its own civil population into the territory it occupies.

#### *Article 46*

The Occupying Power shall, with the co-operation of the national and local authorities, facilitate the proper working of all institutions devoted to the care and education of children.

The Occupying Power shall take all necessary steps to facilitate the identification of children and the registration of their parentage. It may not, in any case, change their personal status, nor enlist them in formations or organizations subordinate to it.

Should the local institutions be inadequate for the purpose, the Occupying Power shall make arrangements for the maintenance and education, if possible by persons of their own nationality, language and religion, of children who are orphaned or separated from their parents as a result of the war and who cannot be adequately cared for by a near relative or friend.

A special section of the Bureau set up in accordance with Article 123 shall be responsible for taking all necessary steps to identify children whose identity is in doubt. Particulars of their parents

or other near relatives should always be recorded if available.

The Occupying Power shall not hinder the application of any preferential measures in regard to food, medical care and protection against the effects of war which may have been adopted prior to the occupation in favour of children under fifteen years, expectant mothers, and mothers of children under seven years.

*Article 47*

The Occupying Power may not compel protected persons to serve in its armed or auxiliary forces. No pressure or propaganda which aims at securing voluntary enlistment is permitted.

The Occupying Power may not compel protected persons to work unless they are over 18 years of age, and then only on work which is necessary either for the needs of the army of occupation or for the public utility services and for the feeding, sheltering, clothing, transportation and health of the population of the occupied country. Protected persons may not be compelled to undertake any work which would involve them in the obligation of taking part in military operations. The Occupying Power may not compel protected persons to employ forcible means to ensure the security of the installations where they are performing compulsory labour.

The work shall be carried out only in the occupied territory where the persons whose services have been requisitioned are. Every such person shall, so far as possible, be kept in his usual place of employment. Workers shall be paid a fair wage and the work shall be proportionate to their physical and intellectual capacities. The legislation in force in the occupied country concerning working conditions, such as wages, hours of work, equipment, preliminary training and protection against occupational accidents, shall be applicable to the protected persons assigned to the work referred to in this Article.

In no case shall requisition of labour lead to a mobilization of workers in an organization of a military or semi-military character.

*Article 48*

No contract, agreement or regulation shall impair the right of any worker, whether voluntary or not and wherever he may be, to apply to the representatives of the Protecting Power, in order to request the said Power's intervention.

All measures aiming at creating unemployment or at restricting the opportunities offered to workers in an occupied territory, in order to induce them to work for the Occupying Power, are prohibited.

*Article 48A*

Any destruction by the Occupying Power of real or personal property belonging individually or collectively to private persons, or to the State, or to social or co-operative organizations, which is not made absolutely necessary by military operations, is prohibited.

*Article 48B*

The Occupying Power may not alter the status of public officials or judges in the occupied territories, or in any way apply sanctions to or take any measures of coercion or discrimination against them, should they abstain from fulfilling their functions for reasons of conscience.

This prohibition does not prejudice the application of the second paragraph of Article 47. It does not affect the right of the Occupying Power to remove public officials from their posts.

*Article 49*

To the fullest extent of the means available to it, the Occupying Power has the duty of ensuring the food and medical supplies of the population; it should, in particular, bring in the necessary foodstuffs, medical stores and other articles if the resources of the occupied territory are inadequate.

The Occupying Power may not requisition foodstuffs, articles or medical supplies available in the occupied territory, except for use by the occupation forces and administration personnel, and then only if the requirements of the civilian population are taken into account. Subject to the provisions of other international Conventions, the Occupying Power shall make arrangements to ensure that fair value is paid for any requisitioned goods.

The Protecting Power shall, at any time, be at liberty to verify the state of the food and medical supplies in occupied territories, except where temporary restrictions are made necessary by imperative military requirements.

*Article 50*

To the fullest extent of the means available to it, the Occupying Power has the duty of ensuring and maintaining, with the co-operation of national and local authorities, the medical and hospital establishments and services, public health and hygiene in the occupied territory, with particular reference to the adoption and application of the prophylactic and preventive measures necessary to combat the spread of contagious diseases and epidemics. Medical personnel of all categories shall be allowed to carry out their duties.

If new hospitals are set up in occupied territory and if the competent organs of the occupied State are not operating there, the occupying authorities shall grant them the recognition provided for in Article 15.

In adopting measures of health and hygiene and in their implementation, the Occupying Power shall take into consideration the moral and ethical susceptibilities of the population of the occupied territory.

*Article 50A*

The Occupying Power may requisition civilian hospitals only temporarily and only in cases of urgent necessity for the care of wounded and sick, and then on condition that suitable arrangements are made in due time for the care and treatment of the patients and for the need of the civilian population for hospital accommodation.

The material and stores of civilian hospitals cannot be requisitioned so long as they are necessary for the needs of the civilian population.

*Article 50B*

The Occupying Power shall permit ministers of religion to give spiritual assistance to the members of their religious communities.

The Occupying Power shall also accept consignments of books and articles required for religious needs and shall facilitate their distribution in occupied territory.

*Article 50C*

If the whole or part of the population of an occupied territory is inadequately supplied, the Occupying Power shall agree to relief schemes on behalf of the said population, and shall facilitate them by all the means at its disposal.

Such schemes, which may be undertaken either by States or by impartial humanitarian organizations such as the International Committee of the Red Cross, shall consist, in particular, of the provision of consignments of foodstuffs, medical supplies and clothing.

All Contracting Parties shall permit the free passage of these consignments and shall guarantee their protection.

A Power granting free passage to consignments on their way to territory occupied by an adverse party to the conflict shall, however, have the right to search the consignments, to regulate their passage according to prescribed times and routes, and to be reasonably satisfied through the Protecting Power that these consignments are to be used for the relief of the needy population and are not to be used for the benefit of the Occupying Power.

*Article 51*

Relief consignments shall in no way relieve the Occupying Power of any its responsibilities under Articles 49, 50 and 50C. The Occupying Power shall in no way whatsoever divert relief consignments from the purpose for which they are intended, except in cases of urgent necessity, in the interests of the population of the occupied territory and with the consent of the Protecting Power.

*Article 52*

The distribution of the relief consignments referred to in the foregoing Article shall be carried out with the co-operation and under the supervision of the Protecting Power. This duty may also be delegated, by agreement between the Occupying Power and the Protecting Power, to a neutral Power, to the International Committee of the Red Cross or to any other impartial humanitarian body.

Such consignments shall be exempt in occupied territory from all charges, taxes or customs duties unless these are necessary in the interests of the economy of the territory. The Occupying Power shall facilitate the rapid distribution of these consignments.

All Contracting Parties shall endeavour to permit the transit and transport, free of charge, of such relief consignments on their way to occupied territories.

*Article 53*

Subject to imperative reasons of security, protected persons in occupied territories shall furthermore be permitted to receive the individual relief consignments sent to them.

*Article 54*

Subject to temporary and exceptional measures imposed for urgent reasons of security by the Occupying Power:

- (a) recognized National Red Cross (Red Crescent, Red Lion and Sun) Societies shall be able to pursue their activities in accordance with Red Cross principles, as defined by the International Red Cross Conferences. Other relief societies shall be permitted to continue their humanitarian activities under similar conditions;
- (b) the Occupying Power may not require any changes in the personnel or structure of these societies, which would prejudice the aforesaid activities.

The same principles shall apply to the activities and personnel of special organizations of a non-military character, which already exist or which

may be established, for the purpose of ensuring the living conditions of the civilian population by the maintenance of the essential public utility services, by the distribution of relief and by the organization of rescues.

*Article 55*

The penal laws of the occupied territory shall remain in force, with the exception that they may be repealed or suspended by the Occupying Power in cases where they constitute a threat to its security or an obstacle to the application of this Convention. Subject to these considerations and to the necessity for ensuring the effective administration of justice, the tribunals of the occupied territory shall continue to function in respect of all offences covered by the said laws.

The Occupying Power may, however, subject the population of the occupied territory to provisions which are essential to enable the Occupying Power to fulfil its obligations under this Convention, to maintain the orderly government of the territory, and to ensure the security of the Occupying Power, of the members and property of the occupying forces or administration and likewise of the establishments and lines of communication used by them.

*Article 56*

The penal provisions enacted by the Occupying Power shall not come into force before they have been published and brought to the knowledge of the inhabitants in their own language. The effect of these penal provisions shall not be retroactive.

*Article 57*

In case of a breach of the penal provisions promulgated by it by virtue of Article 55, paragraph 2, the Occupying Power may hand over the accused to its properly constituted, non-political military courts, on condition that the said courts sit in the occupied country. Courts of appeal shall preferably sit in the occupied country.

*Article 58*

The courts shall apply only those provisions of law which were applicable prior to the offence, and which are in accordance with general principles of law, in particular the principle that the penalty shall be proportionate to the offence. They shall take into consideration the fact that the accused is not a national of the Occupying Power.

*Article 59*

Protected persons who commit an offence which is solely intended to harm the Occupying Power,

but which does not constitute an attempt on the life or limb of members of the occupying forces or administration, nor a grave collective danger, nor seriously damage the property of the occupying forces or administration or the installations used by them, shall be liable to internment or simple imprisonment, provided the duration of such internment or imprisonment is proportionate to the offence committed. Furthermore, internment or imprisonment for such offences shall be the only measure adopted for depriving protected persons of liberty. The courts provided for under Article 57 of the present Convention may at their discretion convert a sentence of imprisonment to one of internment for the same period.

The penal provisions promulgated by the Occupying Power in accordance with Articles 55 and 56 may impose the death penalty on a protected person 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 offences which have caused the death of one or more persons, provided that such offences were punishable by death under the law of the occupied territory in force before the occupation began.

The death penalty may not be pronounced against a protected person unless the attention of the court has been particularly called to the fact that since the accused is not a national of the Occupying Power, he is not bound to it by any duty of allegiance.

In any case, the death penalty may not be pronounced against a protected person who was under 18 years of age at the time of the offence.

*Article 59A*

In all cases the duration of the period during which a protected person accused of an offence is under arrest awaiting trial or punishment shall be deducted from any period of imprisonment awarded.

*Article 60*

Protected persons shall not be arrested, prosecuted or convicted by the Occupying Power for acts committed or for opinions expressed before the occupation, or during a temporary interruption thereof, with the exception of breaches of the laws and customs of war.

Nationals of the Occupying Power who, before the outbreak of hostilities, have sought refuge in the territory of the occupied State from the consequences of an offence committed outside the occupied territory, shall not be arrested, prosecuted, convicted or deported from the occupied territory, unless, according to the law of the

occupied State, the said offence would have justified extradition in time of peace, and unless extradition is carried out in accordance with the procedure laid down by that law.

*Article 61*

No sentence shall be pronounced except after a regular trial before the competent courts of the Occupying Power.

Accused persons who are prosecuted by the Occupying Power shall be promptly informed, in writing, in a language which they understand, of the particulars of the charge preferred against them, and shall be brought to trial as rapidly as possible. The Protecting Power shall be informed of all proceedings instituted by the Occupying Power against protected persons in respect of charges involving the death penalty or imprisonment for two years or more; it shall be enabled, at any time, to obtain information regarding the state of such proceedings. Furthermore, the Protecting Power shall be entitled, on request, to be furnished with all particulars of these and of any other proceedings instituted by the Occupying Power against protected persons.

The notification to the Protecting Power, as provided for in the second paragraph above, shall be sent immediately, and shall in any case reach the Protecting Power three weeks before the date of the first hearing. Unless at the opening of the trial evidence is submitted that the provisions of this Article are fully complied with, the trial shall not proceed. The notification shall include the following particulars:

- (a) description of the accused;
- (b) place of internment or detention;
- (c) specification of the charge or charges (with mention of the penal provisions under which it is brought);
- (d) designation of the court which will hear the case;
- (e) place and date of the first hearing.

*Article 62*

Accused persons shall have the right to present evidence necessary to their defence and may, in particular, call witnesses. They shall have the right to be assisted by qualified advocate or counsel of their own choice, who shall be able to visit them freely and shall enjoy the necessary facilities for preparing the defence.

Failing a choice by the accused, the Protecting Power may provide them with an advocate or counsel. When an accused person has to meet

a serious charge and the Protecting Power is no longer functioning, the Occupying Power, subject to the consent of the accused, shall provide an advocate or counsel.

Accused persons shall, unless they freely waive such assistance, be aided by an interpreter, both during preliminary investigation and during the hearing in court. They shall have at any time the right to object to the interpreter and to ask for his replacement.

*Article 63*

A convicted person shall have the right of appeal provided for by the laws applied by the court. He shall be fully informed of his right to appeal or petition and of the time limit within which he may do so.

The penal procedure provided in this Section shall apply, so far as it is applicable, to appeals. Where the laws applied by the Court make no provision for appeals, the convicted person shall have the right to petition against the finding and sentence to the competent authority of the Occupying Power.

*Article 64*

The representative of the Protecting Power shall have the right to attend the trial of any protected person, unless the hearing has, as an exceptional measure, to be held in camera in the interests of the security of the Occupying Power, which shall then notify the Protecting Power. A notification in respect of the date and place of trial shall be sent to the Protecting Power.

Any judgment involving a sentence of death, or imprisonment for two years or more, shall be communicated, with the relevant grounds, as rapidly as possible to the Protecting Power. The notification shall contain a reference to the notification made under Article 61 and, in the case of sentences of imprisonment, the name of the place where the sentence is to be served. A record of judgments other than those referred to above shall be kept by the court and shall be open to inspection by representatives of the Protecting Power. Any period allowed for appeal in the case of sentences involving the death penalty or imprisonment of two years or more shall not run until notification of judgment has been received by the Protecting Power.

*Article 65*

In no case shall persons condemned to death be deprived of the right of petition for pardon or reprieve.

No death sentence shall be carried out before the expiration of a period of at least six months from the date of receipt by the Protecting Power of the notification of the final judgment confirming such death sentence, or of an order denying pardon or reprieve.

The six months period of suspension of the death sentence herein prescribed may be reduced in individual cases in circumstances of grave emergency involving an organized threat to the security of the Occupying Power or its forces, provided always that the Protecting Power is notified of such reduction and is given reasonable time and opportunity to make representations to the competent occupying authorities in respect of such death sentences.

*Article 66*

Protected persons accused of offences shall be detained in the occupied country and if convicted they shall serve their sentences therein. They shall, if possible, be separated from other detainees and shall enjoy conditions of food and hygiene which will keep them in good health, and which will be at least equal to those obtaining in prisons in the occupied country.

They shall also have the right to receive any spiritual assistance which they may require.

Women shall be confined in separate quarters and shall be under the direct supervision of women.

Proper regard shall be paid to the special treatment due to minors.

Protected persons who are detained shall have the right to be visited by delegates of the Protecting Power and of the International Committee of the Red Cross, in accordance with the provisions of Article 126.

Such persons shall have the right to receive at least one relief parcel monthly.

*Article 67*

Protected persons who have been accused of offences or convicted by the courts, in occupied territory, shall be handed over at the close of occupation, with the relevant records, to the authorities of the liberated territory.

*Article 68*

If the Occupying Power considers it necessary, for imperative reasons of security, to take safety measures concerning protected persons, it may, at the most, subject them to assigned residence or, in exceptional cases, to internment.

Decisions regarding such assigned residence or internment shall be made according to a regular procedure to be prescribed by the Occupying

Power in accordance with the provisions of the present Convention. Such decisions shall be subject to periodical review by a competent body to be set up by the said Power.

SECTION IV

**Regulations for the Treatment of Internees**

CHAPTER I

**General Provisions**

*Article 69*

The Parties to the conflict shall not intern protected persons, except in accordance with the provisions of Articles 38, 39, 40, 59 and 68.

*Article 70*

Internees shall retain their full civil capacity and shall exercise such attendant rights as may be compatible with their status.

*Article 71*

Parties to the conflict who intern protected persons shall be bound to provide for their maintenance free of charge, and to grant them also the medical attention required by their state of health.

No reduction from the allowances, salaries or credits due to the internees shall be made for the repayment of these costs.

The Detaining Power shall provide for the support of those dependent on the internees, if such dependants are without adequate means of support or are unable to earn a living.

*Article 72*

The Detaining Power shall, as far as possible, accommodate the internees according to their nationality, language and customs.

Throughout the duration of their internment, members of the same family, and in particular parents and children, shall be lodged together in the same place of internment, except when separation of a temporary nature is necessitated for reasons of employment, health or for the purposes of enforcement of the provisions of Chapter IX of this Convention. Internees may request that their children who are left at liberty without parental care shall be interned with them.

Wherever possible, interned members of the same family shall be housed in the same premises and given separate accommodation from other internees, together with facilities for leading a proper family life.

## CHAPTER II

## Places of Internment

*Article 73*

The Detaining Power shall not set up places of internment in areas particularly exposed to the dangers of war.

The Detaining Power shall give the enemy Powers, through the intermediary of the Protecting Powers, all useful information regarding the geographical location of places of internment.

Internment camps shall be indicated by the letters "IC", placed so as to be clearly visible in the daytime from the air. The Powers concerned may, however, agree upon any other system of marking. No place other than an internment camp shall be marked as such.

*Article 74*

Internees shall be accommodated and administered separately from prisoners of war and from persons deprived of liberty for any other reason.

*Article 75*

The Detaining Power is bound to take all necessary and possible measures to ensure that protected persons shall, from the outset of their internment, be accommodated in buildings or quarters which afford every possible safeguard as regards hygiene and health, and provide efficient protection against the rigours of the climate and the effects of the war. In no case shall permanent places of internment be situated in unhealthy areas, or in districts the climate of which is injurious to the internees. In all cases where the district in which a protected person is temporarily interned is in an unhealthy area, or has a climate which is harmful to his health, he shall be removed to a more suitable place of internment as rapidly as circumstances permit.

The premises shall be fully protected from dampness, adequately heated and lighted, in particular between dusk and lights out. The sleeping quarters shall be sufficiently spacious and well ventilated, and the internees shall have suitable bedding and sufficient blankets, account being taken of the climate and the age, sex, and state of health of the internees.

Internees shall have for their use, day and night, sanitary conveniences which conform to the rules of hygiene, and are constantly maintained in a state of cleanliness. They shall be provided with sufficient water and soap for their daily personal toilet and for washing their personal laundry; installations and facilities necessary for this purpose shall be granted to them. Showers or

baths shall also be available. The necessary time shall be set aside for washing and for cleaning.

Whenever it is necessary, as an exceptional and temporary measure, to accommodate women internees who are not members of a family unit in the same place of internment as men, the provision of separate sleeping quarters and sanitary conveniences for the use of such women internees shall be obligatory.

*Article 75A*

The Detaining Power shall place at the disposal of interned persons, of whatever denomination, premises suitable for the holding of their religious services.

*Article 76*

Canteens shall be installed in every place of internment, except where other suitable facilities are available. Their purpose shall be to enable internees to make purchases, at prices not higher than local market prices, of foodstuffs and articles of everyday use, including soap and tobacco, such as would increase their personal well-being and comfort.

Profits made by canteens shall be credited to a welfare fund to be set up for each place of internment, and administered for the benefit of the internees attached to such place of internment. The Internee Committee provided for in Article 91 shall have the right to check the management of the canteen and of the said fund.

When a place of internment is closed down, the balance of the welfare fund shall be transferred to the welfare fund of a place of internment for internees of the same nationality, or, if such a place does not exist, to a central welfare fund which shall be administered for the benefit of all internees remaining in the custody of the Detaining Power. In case of a general release, the said profits shall be kept by the Detaining Power, subject to any agreement to the contrary between the Powers concerned.

*Article 77*

In all places of internment exposed to air raids and other hazards of war, shelters adequate in number and structure to ensure the necessary protection shall be installed. In case of alarms, the internees shall be free to enter such shelters as quickly as possible, excepting those who remain for the protection of their quarters against the aforesaid hazards. Any protective measures taken in favour of the population shall also apply to them.

All due precautions must be taken in places of internment against the danger of fire.

## CHAPTER III

**Food and Clothing***Article 78*

Daily food rations for internees shall be sufficient in quantity, quality and variety to keep internees in a good state of health and prevent the development of nutritional deficiencies. Account shall also be taken of the customary diet of the internees.

Internees shall also be given the means by which they can prepare for themselves any additional food in their possession.

Sufficient drinking water shall be supplied to internees. The use of tobacco shall be permitted.

Internees who work shall receive additional rations in proportion to the kind of labour which they perform.

Expectant and nursing mothers and children under 15 years of age shall be given additional food, in proportion to their physiological needs.

*Article 79*

When taken into custody, internees shall be given all facilities to provide themselves with the necessary clothing, footwear and change of underwear, and later on, to procure further supplies if required. Should any internees not have sufficient clothing, account being taken of the climate, and be unable to procure any, it shall be provided free of charge to them by the Detaining Power.

The clothing supplied by the Detaining Power to internees and the outward markings placed on their own clothes shall not be ignominious nor expose them to ridicule.

Workers shall receive suitable working outfits, including protective clothing, whenever the nature of their work so requires.

## CHAPTER IV

**Hygiene and Medical Attention***Article 80*

Every place of internment shall have an adequate infirmary, under the direction of a qualified doctor, where internees may have the attention they require, as well as appropriate diet. Isolation wards shall be set aside for cases of contagious or mental diseases.

Maternity cases and internees suffering from serious diseases, or whose condition requires special treatment, a surgical operation or hospital care, must be admitted to any institution where adequate treatment can be given and shall receive care not inferior to that provided for the general population.

Internees shall, for preference, have the attention of medical personnel of their own nationality.

Internees may not be prevented from presenting themselves to the medical authorities for examination. The medical authorities of the Detaining Power shall, upon request, issue to every internee who has undergone treatment an official certificate showing the nature of his illness or injury, and the duration and nature of the treatment given. A duplicate of this certificate shall be forwarded to the Central Agency provided for in Article 124.

Treatment, including the provision of any apparatus necessary for the maintenance of internees in good health, particularly dentures and other artificial appliances and spectacles, shall be free of charge to the internee.

*Article 81*

Medical inspections of internees shall be made at least once a month. Their purpose shall be, in particular, to supervise the general state of health, nutrition and cleanliness of internees, and to detect contagious diseases, especially tuberculosis, malaria, and venereal diseases. Such inspections shall include the checking of weight of each internee and, at least once a year, radioscopic examination.

## CHAPTER V

**Religious, Intellectual and Physical Activity***Article 82*

Internees shall enjoy complete latitude in the exercise of their religious duties, including attendance at the services of their faith, on condition that they comply with the disciplinary routine prescribed by the detaining authorities.

Ministers of religion, who are interned, shall be allowed to minister freely to the members of their community. For this purpose the Detaining Power shall ensure their equitable allocation amongst the various places of internment in which there are internees speaking the same language and belonging to the same religion. Should such ministers be too few in number, the Detaining Power shall provide them with the necessary facilities, including means of transport, for moving from one place to another, and they shall be authorized to visit the internees who are in hospital. Ministers of religion shall be at liberty to correspond on matters concerning their ministry with the religious authorities in the country of detention and, as far as possible, with the international religious organizations of their faith. Such correspondence shall not be considered as forming a part of the quota mentioned in Article 96. It shall, however, be subject to the provisions of Article 102.

When internees do not have at their disposal the assistance of ministers of their faith, or should these latter be too few in number, the local religious authorities of the same faith may appoint, in agreement with the Detaining Power, a minister of the internees' faith or, if such a course is feasible from a denominational point of view, a minister of similar religion or a qualified layman. The latter shall enjoy the facilities granted to the ministry he has assumed. Persons so appointed shall comply with all regulations laid down by the Detaining Power in the interests of discipline and security.

*Article 83*

The Detaining Power shall encourage intellectual, educational and recreational pursuits, sports and games amongst internees, whilst leaving them free to take part in them or not. It shall take all practicable measures to ensure the exercise thereof, in particular by providing suitable premises.

All possible facilities shall be granted to internees to continue their studies or to take up new subjects. The education of children and young people shall be ensured; they shall be allowed to attend schools either within the place of internment or outside.

Internees shall be given opportunities for physical exercise, sports and outdoor games. For this purpose, sufficient open spaces shall be set aside in all places of internment. Special playgrounds shall be reserved for children and young people.

*Article 84*

The Detaining Power shall not employ internees as workers, unless they so desire. Employment which, if undertaken under compulsion by a protected person not in internment, would involve a breach of Articles 37 or 47 of the present Convention, and employment on work which is of a degrading or humiliating character are in any case prohibited.

After a working period of six weeks, internees shall be free to give up work at any moment, subject to eight days notice.

These provisions constitute no obstacle to the right of the Detaining Power to employ interned doctors, dentists and other medical personnel in their professional capacity on behalf of their fellow internees, or to employ internees for administrative and maintenance work in places of internment and to detail such persons for work in the kitchens or for other domestic tasks, or to require such persons to undertake duties connected with the protection of internees against aerial bombardment or other war risks. No internee may, however, be required to perform tasks for which he is, in the opinion of a medical officer, physically unsuited.

The Detaining Power shall take the entire responsibility for all working conditions, for ensuring

that all employed internees are insured against accidents and sickness due to their work, in accordance with its national legislation, for medical attention and for the payment of wages. Wages for work done for employers other than the Detaining Power shall be determined by special agreements between the internees, the employers and the Detaining Power. Such agreements, however, shall not contain less favourable conditions than those obtaining for work of the same nature in the same district. In determining wages, account may be taken of the fact that the Detaining Power has to provide for the internee's maintenance and for the medical attention required by his state of health. Internees permanently detailed for the administration, kitchen, maintenance and medical services, and for the work mentioned in paragraph 3, shall be paid fair wages by the Detaining Power and shall be insured by the said Power against working accidents. In respect of internees thus detailed, the other working conditions and insurance benefits shall not be inferior to those applied generally to work of the same nature in the same district.

*Article 85*

All labour detachments shall remain part of and dependent upon a place of internment. The competent authorities of the Detaining Power and the commandant of a place of internment shall be responsible for the observance in a labour detachment of the provisions of the present Convention. The commandant shall keep an up-to-date list of the labour detachments subordinate to him and shall communicate it to the delegates of the Protecting Power, of the International Committee of the Red Cross and of other humanitarian organizations who may visit the places of internment.

CHAPTER VI

**Personal Property and Financial Resources**

*Article 86*

As far as possible internees shall be permitted to retain their personal effects and personal articles. Monies, cheques, bonds, etc., and valuables in their possession may not be taken from them except in accordance with established procedure. Detailed receipts shall be given therefore.

The amounts shall be paid into the account of every internee as provided for in Article 87. Such amounts may not be converted into any other currency unless legislation in force in the territory in which the owner is interned so requires or the internee gives his consent.

Articles which have above all a personal or sentimental value may not be taken away.

A woman internee shall not be searched except by a woman.

On release or repatriation, internees shall be given all articles, monies or other valuables taken from them during internment and shall receive in currency the balance of any credit to their accounts kept in accordance with Article 87, with the exception of any articles or amounts withheld by the Detaining Power by virtue of its legislation in force. If the property of an internee is so withheld, the owner shall receive a detailed receipt.

Family or identity documents in the possession of internees may not be taken away without a receipt being given. At no time shall internees be left without identity documents. If they have none, they shall be issued with special documents drawn up by the detaining authorities, which will serve as their identity papers until the end of their internment.

Internees may keep on their persons a certain amount of money, in cash or in the shape of purchase coupons, to enable them to make purchases.

#### *Article 87*

All internees without adequate means shall receive regular allowances, sufficient to enable them to purchase goods and articles, such as tobacco, toilet requisites, etc. Such allowances may take the form of credits or purchase coupons.

Furthermore, internees may receive allowances from the Power to which they owe allegiance, the Protecting Powers, the organizations which may assist them, or their families. The amount of allowances granted by the Home Power shall be the same for each category of internees (infirm, sick, pregnant women, etc.) but may not be allocated by that Power or distributed by the Detaining Power on the basis of discriminations between internees which are prohibited by Article 25 of the present Convention.

The Detaining Power shall open a regular account for every internee, to which shall be credited the allowances named in the present Article, the wages earned and the remittances received, together with such sums taken from him as may be available under the legislation in force in the territory in which he is interned. Internees shall be granted all facilities consistent with legislation in force in such territory to make remittances to their families and to other dependants. They may draw from their accounts the amounts necessary for their personal expenses, within the limits fixed by the Detaining Power. A statement of accounts shall be furnished to the Protecting Power, on request, and shall accompany the internee in case of transfer.

## CHAPTER VII

### **Administration and Discipline**

#### *Article 88*

Every place of internment shall be put under the authority of a responsible officer, chosen from the regular military forces or the regular civil administration of the Detaining Power. The officer in charge of the place of internment must have in his possession a copy of the present Convention in the official language, or one of the official languages of his country, and shall be responsible for its application. The staff in control of internees shall be instructed in the provisions of the present Convention and of the administrative measures adopted to ensure its application.

The text of the present Convention and the texts of special agreements concluded under the said Convention shall be posted inside the place of internment, in a language which the internees understand, or shall be in the possession of the internees committee.

Regulations, orders, notices and publications of every kind shall be communicated to the internees and posted inside the places of internment, in a language which they understand.

Every order and command addressed to internees individually must likewise be given in a language which they understand.

#### *Article 89*

The disciplinary regime in places of internment shall be consistent with humanitarian principles, and shall in no circumstances include regulations imposing on internees any physical exertion dangerous to their health or involving physical or moral victimization. Identification by tattooing or imprinting signs or markings on the body is prohibited.

In particular, prolonged standing and roll-calls, punishment drill, military drill and manoeuvres, or the reduction of food rations, are prohibited.

#### *Article 90*

Internees shall have the right to present to the authorities in whose power they are, any petition with regard to the conditions of internment to which they are subjected.

They shall also have the right to apply without restriction through the internee committee, or if they consider it necessary, direct to the representatives of the Protecting Power, in order to indicate to them any points on which they may have complaints to make with regard to the conditions of internment.

Such petitions and complaints shall be transmitted forthwith and without alteration, and even

if the latter are recognized to be unfounded, they may not occasion any punishment.

Periodic reports on the situation in places of internment and as to the needs of the internees may be sent by the internee committees to the representatives of the Protecting Powers.

*Article 91*

In every place of internment, the internees shall freely elect by secret ballot every six months, the members of a committee empowered to represent them before the Detaining and the Protecting Powers, the International Committee of the Red Cross and any other organization which may assist them. The members of the Committee shall be eligible for re-election.

Internees so elected shall enter upon their duties after their election has been approved by the detaining authorities. The reasons for any refusals or dismissals shall be communicated to the Protecting Powers concerned.

*Article 92*

The internee committees shall further the physical, spiritual and intellectual well being of the internees.

In case the internees decide, in particular, to organize a system of mutual assistance amongst themselves, this organization would be within the competence of the committees in addition to the special duties entrusted to them under other provisions of the present Convention.

*Article 93*

Members of internee committees shall not be required to perform any other work, if the accomplishment of their duties is rendered more difficult thereby.

Members of internee committees may appoint from amongst the internees such assistants as they may require. All material facilities shall be granted to them, particularly a certain freedom of movement necessary for the accomplishment of their duties (visit to labour detachments, receipt of supplies, etc.).

All facilities shall likewise be accorded to members of internee committees for communication by post and telegraph with the detaining authorities, the Protecting Powers, the International Committee of the Red Cross and their delegates, and with the organizations which give assistance to internees. Committee members in labour detachments shall enjoy similar facilities for communication with their internee committee in the principal place of internment. Such communications shall not be limited, nor considered as forming a part of the quota mentioned in Article 96.

Members of internee committees who are transferred shall be allowed a reasonable time to acquaint their successors with current affairs.

CHAPTER VIII

**Relations with the Exterior**

*Article 94*

Immediately upon interning protected persons, the Detaining Powers shall inform the Power to which they owe allegiance and their Protecting Power of the measures taken for executing the provisions of the present Chapter. The Detaining Powers shall likewise inform the parties concerned of any subsequent modifications of such measures.

*Article 95*

As soon as he is interned, or at the latest not more than one week after his arrival in a place of internment, and likewise in cases of sickness or transfer to hospital or to another place of internment, every internee shall be enabled to send direct to his family, on the one hand, and to the Central Agency provided for by Article 124, on the other, an internment card similar, if possible, to the model annexed to the present Convention, informing his relatives of his detention, address and state of health. The said cards shall be forwarded as rapidly as possible and may not be delayed in any way.

*Article 96*

Internees shall be allowed to send and receive letters and cards. If the Detaining Power deems it necessary to limit the number of letters and cards sent by each internee, the said number shall not be less than two letters and four cards monthly; these shall be drawn up so as to conform as closely as possible to the models annexed to the present Convention. If limitations must be placed on the correspondence addressed to internees, they may be ordered only by the Power to which such internees owe allegiance, possibly at the request of the Detaining Power. Such letters and cards must be conveyed with reasonable despatch; they may not be delayed or retained for disciplinary reasons.

Internees who have been a long time without news, or who find it impossible to receive news from their relatives, or to give them news by the ordinary postal route, as well as those who are at a considerable distance from their homes, shall be allowed to send telegrams, the charges being paid by them in the currency at their disposal. They shall likewise benefit by this provision in cases which are recognized to be urgent.

As a rule, internees' mail shall be written in their own language. The Parties to the conflict may authorize correspondence in other languages.

#### *Article 97*

Internees shall be allowed to receive, by post or by any other means, individual parcels or collective shipments containing in particular foodstuffs, clothing, medical supplies, as well as books and objects of a devotional, educational and recreational character which may meet their needs. Such shipments shall in no way free the Detaining Power from the obligations imposed upon it by virtue of the present Convention.

Should military necessity require the quantity of such shipments to be limited, due notice thereof shall be given to the Protecting Power and to the International Committee of the Red Cross, or any other organization giving assistance to the internees and responsible for the forwarding of such shipments.

The conditions for the sending of individual parcels and collective shipments shall, if necessary, be the subject of special agreements between the Powers concerned, which may in no case delay the receipt by the internees of relief supplies. Parcels of clothing and foodstuffs may not include books. Medical relief supplies shall, as a rule, be sent in collective parcels.

#### *Article 98*

In the absence of special agreements between Parties to the conflict regarding the conditions for the receipt and distribution of collective relief shipments, the regulations concerning collective relief which are annexed to the present Convention shall be applied.

The special agreements provided for above shall in no case restrict the right of internee committees to take possession of collective relief shipments intended for internees, to undertake their distribution and to dispose of them in the interests of the recipients.

Nor shall such agreements restrict the right of representatives of the Protecting Powers, the International Committee of the Red Cross, or any other organization giving assistance to internees and responsible for the forwarding of collective shipments, to supervise their distribution to the recipients.

#### *Article 100*

All relief shipments for internees shall be exempt from import, customs and other dues.

All matter sent by mail, including relief parcels sent by parcel post and remittances of money, addressed from other countries to internees or

dispatched by them through the post office, either direct or through the information bureaux provided for in Article 123 and the Central Information Agency provided for in Article 124, shall be exempt from all postal dues both in the countries of origin and destination and in intermediate countries. For this purpose, the exemptions provided for in the Universal Postal Convention of 1947 shall be extended to all the categories of internees mentioned in the present Convention.

The cost of transporting relief shipments which are intended for internees and which, by reason of their weight or any other cause, cannot be sent through the post office, shall be borne by the Detaining Power in all the territories under its control. Other Powers which are Parties to the present Convention shall bear the cost of transport in their respective territories.

Costs connected with the transport of such shipments, which are not covered by the above paragraphs, shall be charged to the senders.

The High Contracting Parties shall endeavour to reduce, so far as possible, the charges for telegrams sent by internees, or addressed to them.

#### *Article 101*

Should military operations prevent the Powers concerned from fulfilling their obligation to assure the transport of the mail and relief shipments provided for in Articles 95, 96, 97 and 103, the Protecting Powers concerned, the International Committee of the Red Cross or any other organization duly approved by the Parties to the conflict may undertake to ensure the conveyance of such shipments by suitable means (railway, cars, motor vehicles, vessels or aircraft, etc.). For this purpose, the High Contracting Parties shall endeavour to supply them with such transport, and to allow its circulation, especially by granting the necessary safe-conducts.

Such transport may also be used to convey:

- (a) correspondence, lists and reports exchanged between the Central Information Agency referred to in Article 124 and the National Bureaux referred to in Article 123;
- (b) correspondence and reports relating to internees which the Protecting Powers, the International Committee of the Red Cross or any other organization assisting the internees, exchange either with their own delegates or with the Parties to the conflict.

The costs occasioned by the use of such means of transport shall be borne, in proportion to the importance of the shipments, by the Parties to the conflict whose nationals are benefited thereby.

*Article 102*

The censoring of correspondence addressed to internees or dispatched by them shall be done as quickly as possible.

The examination of consignments intended for internees shall not be carried out under conditions that will expose the goods contained in them to deterioration. It shall be done in the presence of the addressee, or of a fellow-internee duly delegated by him. The delivery to internees of individual or collective consignments shall not be delayed under the pretext of difficulties of censorship.

Any prohibition of correspondence ordered by the Parties to the conflict either for military or political reasons, shall be only temporary and its duration shall be as short as possible.

*Article 103*

The Detaining Powers shall provide all reasonable facilities for the transmission, through the Protecting Power or the Central Agency provided for in Article 124 or as otherwise required, of wills, powers of attorney, letters of authority, or any other documents intended for internees or dispatched by them.

In all cases the Detaining Powers shall facilitate the execution and authentication in due legal form of such documents on behalf of internees, in particular by allowing them to consult a lawyer.

*Article 104*

The Detaining Power shall afford internees all facilities to enable them to manage their property, provided this is not incompatible with the conditions of internment and the law which is applicable. For this purpose the said Power may give them permission to leave the place of internment in urgent cases and if circumstances allow.

*Article 105*

In all cases where an internee is a party to proceedings in any court, the Detaining Power shall, if he so requests, cause the court to be informed of his detention and shall, within legal limits, ensure that all necessary steps are taken to prevent him from being in any way prejudiced, by reason of his internment, as regards the preparation and conduct of his case or as regards the execution of any judgment of the court.

*Article 106*

In so far as circumstances permit, every internee shall be allowed to receive visitors, especially near relatives, at regular intervals and as frequently as possible.

So far as is possible, internees shall be permitted to visit their homes in urgent cases, particularly in cases of death or serious illness of relatives.

## CHAPTER IX

**Penal and Disciplinary Sanctions***Article 107*

Subject to the provisions of the present chapter, the laws in force in the territory in which they are detained will continue to apply to internees who commit offences during internment.

If general laws, regulations or orders declare acts committed by internees to be punishable, whereas the same acts are not punishable when committed by persons who are not internees, such acts shall entail disciplinary punishments only.

No internee may be punished more than once for the same act, or on the same count.

*Article 108*

The courts or authorities shall in passing sentence take as far as possible into account the fact that the defendant is not a national of the Detaining Power. They shall be free to reduce the penalty prescribed for the offence with which the internee is charged and shall not be obliged, to this end, to apply the minimum sentence prescribed.

Imprisonment in premises without daylight, and, in general, all forms of cruelty without exception are forbidden.

Internees having served disciplinary or judicial sentences shall not be treated differently from other internees.

The duration of preventive detention undergone by an internee shall be deducted from any disciplinary or judicial penalty involving confinement to which he may be sentenced.

Internee committees shall be informed of all judicial proceedings instituted against internees whom they represent, and of their result.

*Article 109*

The disciplinary punishments applicable to internees shall be the following:

- (1) a fine which shall not exceed 50% of the wages which the internee would otherwise receive under the provisions of Article 84 during a period of not more than 30 days;
- (2) discontinuance of privileges granted over and above the treatment provided for by the present Convention;
- (3) fatigue duties, not exceeding two hours daily, in connection with the maintenance of the place of internment;
- (4) confinement.

In no case shall disciplinary penalties be inhuman, brutal or dangerous for the health of internees. Account shall be taken of the internee's age, sex and state of health.

The duration of any single punishment shall in no case exceed a maximum of thirty consecutive days, even if the internee is answerable for several breaches of discipline when his case is dealt with, whether such breaches are connected or not.

#### *Article 110*

Internees who are recaptured after having escaped or when attempting to escape shall be liable only to disciplinary punishment in respect of this act, even if it is a repeated offence.

Article 108, paragraph 3, notwithstanding, internees punished as a result of escape or attempt to escape may be subjected to special surveillance, on condition that such surveillance does not affect the state of their health, that it is exercised in a place of internment and that it does not entail the abolition of any of the safeguards granted by the present Convention.

Internees who aid and abet an escape or attempt to escape, shall be liable on this count to disciplinary punishment only.

#### *Article 111*

Escape, or attempt to escape, even if it is a repeated offence, shall not be deemed an aggravating circumstance, in cases where an internee is prosecuted for offences committed during his escape.

The Parties to the conflict shall ensure that the competent authorities exercise leniency in deciding whether punishment inflicted for an offence shall be of a disciplinary or judicial nature, especially in respect of acts committed in connection with an escape, whether successful or not.

#### *Article 112*

Acts which constitute offences against discipline shall be investigated immediately. This rule shall be applied, in particular, in cases of escape or attempt to escape. Recaptured internees shall be handed over to the competent authorities as soon as possible.

In case of offences against discipline, confinement awaiting trial shall be reduced to an absolute minimum for all internees, and shall not exceed fourteen days. Its duration shall in any case be deducted from any sentence of confinement.

The provisions of Article 114 and 115 shall apply to internees who are in confinement awaiting trial for offences against discipline.

#### *Article 113*

Without prejudice to the competence of courts and higher authorities, disciplinary punishment may be ordered only by the commandant of the place of internment, or by a responsible officer or official who replaces him, or to whom he has delegated his disciplinary powers.

Before any disciplinary punishment is awarded, the accused internee shall be given precise information regarding the offences of which he is accused, and given an opportunity of explaining his conduct and of defending himself. He shall be permitted, in particular, to call witnesses and to have recourse, if necessary, to the services of a qualified interpreter. The decision shall be announced in the presence of the accused and of a member of the internee committee.

The period elapsing between the time of award of a disciplinary punishment and its execution shall not exceed one month.

When an internee is awarded a further disciplinary punishment, a period of at least three days shall elapse between the execution of any two of the punishments, if the duration of one of these is ten days or more.

A record of disciplinary punishments shall be maintained by the commandant of the place of internment and shall be open to inspection by representatives of the Protecting Power.

#### *Article 114*

Internees shall not in any case be transferred to penitentiary establishments (prisons, penitentiaries, convict prisons, etc.) to undergo disciplinary punishment therein.

The premises in which disciplinary punishments are undergone shall conform to sanitary requirements; they shall in particular be provided with adequate bedding. Internees undergoing punishment shall be enabled to keep themselves in a state of cleanliness.

Women internees undergoing disciplinary punishment shall be confined in separate quarters from male internees and shall be under the immediate supervision of women.

#### *Article 115*

Internees awarded disciplinary punishment shall be allowed to exercise and to stay in the open air at least two hours daily.

They shall be allowed, if they so request, to be present at the daily medical inspections. They shall receive the attention which their state of health requires and, if necessary, shall be removed to the infirmary of the place of internment or to a hospital.

They shall have permission to read and write, likewise to send and receive letters. Parcels and remittances of money, however, may be withheld from them until the completion of their punishment; such consignments shall meanwhile be entrusted to the internee committee, who will hand over to the infirmary the perishable goods contained in the parcels.

No internee given a disciplinary punishment may be deprived of the benefit of the provisions of Articles 96 and 126 of the present Convention.

*Article 116*

The provisions of Articles 61 to 66 inclusive shall apply, by analogy, to proceedings against internees who are in the national territory of the Detaining Power.

CHAPTER X

**Transfers of Internees**

*Article 117*

The transfer of internees shall always be effected humanely. As a general rule, it shall be carried out by rail or other means of transport, and under conditions at least equal to those obtaining for the forces of the Detaining Power in their changes of station. If as an exceptional measure such removals have to be effected on foot, they may not take place unless the internees are in a fit state of health, and may not in any case expose them to excessive fatigue.

The Detaining Power shall supply internees during transfer with drinking water and food sufficient in quantity, quality and variety to maintain them in good health, and also with the necessary clothing, adequate shelter and the necessary medical attention. The Detaining Power shall take all suitable precautions to ensure their safety during transfer, and shall establish before their departure a complete list of all internees transferred.

Sick, wounded or infirm internees and maternity cases shall not be transferred if the journey would be seriously detrimental to them, unless their safety imperatively so demands.

If the combat zone draws closer to a place of internment, the internees in the said place shall not be transferred, unless their removal can be carried out in adequate conditions of safety, or if they are exposed to greater risks by remaining on the spot than by being transferred.

When making decisions regarding internees, the Detaining Power shall take their interests into account and, in particular, shall not do anything to increase the difficulties of repatriating them or returning them to their own homes.

*Article 118*

In the event of transfer, internees shall be officially advised of their departure and of their new postal address. Such notification shall be given in time for them to pack their luggage and inform their next of kin.

They shall be allowed to take with them their personal effects, and the correspondence and parcels which have arrived for them. The weight of such baggage may be limited if the conditions of transfer so require, but in no case to less than twenty-five kilograms per head.

Mail and parcels addressed to their former place of internment shall be forwarded to them without delay.

The commandant of the place of internment shall take, in agreement with the internee committee, any measures needed to ensure the transport of the internees' community property and of the luggage the internees are unable to take with them in consequence of restrictions imposed by virtue of the second paragraph.

CHAPTER XI

**Deaths**

*Article 119*

The wills of internees shall be received for safe keeping by the responsible authorities; and in the event of the death of an internee his will shall be transmitted without delay to a person whom he has previously designated.

Deaths of internees shall be certified in every case by a doctor, and a death certificate shall be made out, showing the causes of death and the conditions under which it occurred.

An official record of the death, duly registered, shall be drawn up in accordance with the procedure relating thereto in force in the territory where the place of internment is situated, and a duly certified copy of such record shall be transmitted without delay to the Protecting Power as well as to the Central Agency referred to in Article 124.

The detaining authorities shall ensure that internees who die while interned are honourably buried, if possible according to the rites of the religion to which they belonged, and that their graves are respected, properly maintained, marked in such a way they can always be recognized, and grouped as far as possible.

Deceased internees shall be buried in individual graves unless unavoidable circumstances require the use of collective graves. Bodies may be cremated only for imperative reasons of hygiene, on account of the religion of the deceased or in accordance with his expressed wish to this effect.

In case of cremation, the fact shall be stated and the reasons given in the death certificate of the deceased. The ashes shall be retained for safe-keeping by the detaining authorities and shall be transferred as soon as possible to the next of kin on their request.

As soon as circumstances permit, and not later than the close of hostilities, the Detaining Power shall forward lists of graves of deceased internees to the Powers on whom deceased internees depended through the Information Bureaux provided for in Article 123. Such lists shall include all particulars necessary for the identification of the deceased internees as well as the exact location of their graves.

*Article 120*

Every death or serious injury of an internee caused or suspected to have been caused by a sentry, another internee or any other person, as well as any death the cause of which is unknown, shall be immediately followed by an official enquiry by the detaining Power.

A communication on this subject shall be sent immediately to the Protecting Power. The evidence of any witnesses shall be taken, and a report including such evidence shall be prepared and forwarded to the said Protecting Power.

If the enquiry indicates the guilt of one or more persons, the Detaining Power shall take all necessary steps to ensure the prosecution of the person or persons responsible.

CHAPTER XII

**Release, Repatriation and Accommodation  
in Neutral Countries**

*Article 121*

Each interned person shall be released by the Detaining Power as soon as the reasons which necessitated his internment no longer exist.

The Parties to the conflict shall, moreover, endeavour during the course of hostilities, to conclude agreements for the release, repatriation, return to places of residence or the accommodation in a neutral country of certain classes of internees, in particular children, pregnant women and mothers with infants and young children, wounded and sick and internees who have been detained for a long time.

*Article 122*

Internment shall cease as soon as possible after the close of hostilities.

Internees in the territory of a Party to the conflict against whom penal proceedings are

pending for offences not exclusively subject to disciplinary penalties, may be detained until the close of such proceedings and, if circumstances require, until the completion of the penalty. The same shall apply to internees who have been previously sentenced to a punishment depriving them of liberty.

By agreement between the Detaining Power and the Powers concerned, commissions may be set up after the close of hostilities, or of the occupation of territories, to search for dispersed internees.

*Article 122A*

The High Contracting Parties shall endeavour, upon the close of hostilities or occupation, to facilitate the return of all internees to their last residence or to their country of origin.

*Article 122B*

The Detaining Power shall bear the expense of returning released internees to the places where they were residing when interned, or, if it took them into custody while they were in transit or on the high seas, the cost of completing their journey or of their return to their point of departure.

Where a Detaining Power refuses permission to reside in its territory to a released internee who previously had his permanent domicile therein, such Detaining Power shall pay the cost of the said internee's repatriation. If, however, the internee elects to return on his own responsibility or in obedience to the Government of the Power to which he owes allegiance, the Detaining Power need not pay the expenses of his journey beyond the point of his departure from its territory. The Detaining Power need not pay the cost of repatriation of an internee who was interned at his own request.

If internees are transferred in accordance with Article 41, the transferring and receiving Powers shall agree on the portion of the above costs to be borne by each.

The foregoing shall not prejudice such special agreements as may be concluded between Parties to the conflict concerning the exchange and repatriation of their nationals in enemy hands.

SECTION V

**Information Bureaux and Central Agency**

*Article 123*

Upon the outbreak of a conflict and in all cases of occupation, each of the Parties to the conflict shall establish an official information bureau

responsible for receiving and transmitting information in respect of the protected persons who are in its power.

Each of the Parties to the conflict shall, within the shortest possible period, give its Bureau information of any measure taken by it concerning any protected persons who are kept in custody for more than two weeks, who are subjected to assigned residence or who are interned. It shall furthermore require its various departments concerned with such matters to provide the aforesaid Bureau promptly with information concerning all changes pertaining to these protected persons, as, for example, transfers, releases, repatriations, escapes, admittances to hospitals, births and deaths.

*Article 123A*

Each national Bureau shall immediately forward information concerning protected persons by the most rapid means to the Powers of whom the aforesaid persons are nationals, or to Powers in whose territory they resided, through the intermediary of the Protecting Powers and likewise through the Central Agency provided for in Article 124. The Bureaux shall also reply to all enquiries which may be received regarding protected persons.

Information Bureaux shall transmit information concerning a protected person unless its transmission might be detrimental to the person concerned or to his or her relatives. Even in such a case, the information may not be withheld from the Central Agency which, upon being notified of the circumstances, will take the necessary precautions indicated in Article 124.

All communications in writing made by any Bureau shall be authenticated by a signature or a seal.

*Article 123B*

The information received by the national Bureau and transmitted by it shall be of such a character as to make it possible to identify the protected person exactly and to advise his next of kin quickly. The information in respect of each person shall include at least his surname, first name, place and date of birth, nationality, last residence and distinguishing characteristics, the first name of the father and the maiden name of the mother, the date, place and nature of the action taken with regard to the individual, the address at which correspondence may be sent to him and the name and address of the person to be informed.

Likewise, information regarding the state of health of internees who are seriously ill or seriously wounded shall be supplied regularly and if possible every week.

*Article 123C*

Each national Information Bureau shall furthermore be responsible for collecting all personal valuables left by protected persons mentioned in Article 123, in particular those who have been repatriated or released, or who have escaped or died; it shall forward the said valuables to those concerned, either direct, or, if necessary, through the Central Agency. Such articles shall be sent by the Bureau in sealed packets which shall be accompanied by statements giving clear and full identity particulars of the person to whom the articles belonged, and by a complete list of the contents of the parcel. Detailed records shall be maintained of the receipt and dispatch of all such valuables.

*Article 124*

A Central Information Agency for protected persons, in particular for internees, shall be created in a neutral country. The International Committee of the Red Cross shall, if it deems necessary, propose to the Powers concerned the organization of such an Agency, which may be the same as that provided for in Article 113 of the Convention of 1949 relative to the Treatment of Prisoners of War.

The function of the Agency shall be to collect all information of the type set forth in Article 123 which it may obtain through official or private channels and to transmit it as rapidly as possible to the countries of origin or of residence of the persons concerned, except in cases where such transmissions might be detrimental to the persons whom the said information concerns, or to their relatives. It shall receive from the Parties to the conflict all reasonable facilities for effecting such transmissions.

The High Contracting Parties, and in particular those whose nationals benefit by the services of the Central Agency, are requested to give the said Agency the financial aid it may require.

The foregoing provisions shall in no way be interpreted as restricting the humanitarian activities of the International Committee of the Red Cross and of the relief Societies described in Article 127.

*Article 125*

The national Information Bureaux and the Central Information Agency shall enjoy free postage for all mail, likewise the exemptions provided for in Article 100, and further, so far as possible, exemption from telegraphic charges or, at least, greatly reduced rates.

## PART IV

**Execution of the Convention**

## SECTION I

**General Provisions***Article 125A*

Subject to the measures which the Detaining Powers may consider essential to ensure their security or to meet any other reasonable need, the representatives of religious organizations, relief societies, or any other organizations assisting the protected persons, shall receive from these Powers, for themselves or their duly accredited agents, all facilities for visiting the protected persons, distributing relief supplies and material from any source, intended for educational, recreational and religious purposes, or for assisting them in organizing their leisure time within the places of internment. Such societies or organizations may be constituted in the territory of the Detaining Power, or in any other country, or they may have an international character.

The Detaining Power may limit the number of societies and organizations whose delegates are allowed to carry out their activities in its territory and under its supervision, on condition however, that such limitation shall not hinder the supply of effective and adequate relief to all protected persons.

The special position of the International Committee of the Red Cross in this field shall be recognized and respected at all times.

*Article 126*

Representatives or delegates of the Protecting Powers shall have permission to go to all places where protected persons are, particularly to places of internment, detention and work.

They shall have access to all premises occupied by protected persons and shall be able to interview the latter without witnesses, personally or through an interpreter.

Such visits may not be prohibited except for reasons of imperative military necessity, and then only as an exceptional and temporary measure. Their duration and frequency shall not be restricted.

Such representatives and delegates shall have full liberty to select the places they wish to visit. The Detaining or Occupying Power, the Protecting

Power and when occasion arises the Power of origin of the persons to be visited, may agree that compatriots of the internees shall be permitted to participate in the visits.

The delegates of the International Committee of the Red Cross shall also enjoy the above prerogatives. The appointment of such delegates shall be submitted to the approval of the Power governing the territories where they will carry out their duties.

*Article 128*

The High Contracting Parties undertake, in time of peace as in time of war, to disseminate the text of the present Convention as widely as possible in their respective countries, and, in particular, to include the study thereof in their programme of military and, if possible, civil instruction, so that the principles thereof may become known to the entire population.

Any civilian, military, police or other authorities who in time of war assume responsibilities in respect of protected persons must possess the text of the Convention and be specially instructed as to its provisions.

*Article 129*

The High Contracting Parties shall communicate to one another through the Swiss Federal Council and, during hostilities, through the Protecting Powers, the official translations of the present Convention, as well as the laws and regulations which they may adopt to ensure the application thereof.

*Article 130*

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

Each High Contracting Party shall be under the obligation to search for persons alleged to have committed, or to have ordered to be committed, such grave breaches, and shall bring such persons, regardless of their nationality, before its own courts. It may also, if it prefers, and in accordance with the provisions of its own legislation, hand such persons over for trial to another High Con-

tracting Party concerned, provided such High Contracting Party has made out a *prima facie* case.

Each High Contracting Party shall take measures necessary for the suppression of all acts contrary to the provisions of the present Convention other than the grave breaches defined in the following Article.

In all circumstances, the accused persons shall benefit by safeguards of proper trial and defence, which shall not be less favourable than those provided by Article 95 and those following of the Convention of ..... relative to the Treatment of Prisoners of War.

*Article 130A*

Grave breaches to which the preceding Article relates shall be those involving any of the following acts, if committed against persons or property protected by the Convention: wilful killing, torture or inhuman treatment, including biological experiments, wilful causing of great suffering or serious injury to body or health, unlawful deportation or transfer or unlawful confinement of a protected person, compelling a protected person to serve in the forces of a hostile Power, or wilfully depriving a protected person of the rights of fair and regular trial prescribed in this Convention, the taking of hostages and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly.

*Article 130B*

No High Contracting Party shall be allowed to absolve itself or any other High Contracting Party of any liability incurred by itself or by another High Contracting Party in respect of breaches referred to in the preceding Article.

*Article 130C*

At the request of a Party to the conflict, an enquiry shall be instituted, in a manner to be decided between the interested parties concerning any alleged violation of the Convention.

If agreement has not been reached concerning the procedure for the enquiry, the parties should agree on the choice of an umpire, who will decide upon the procedure to be followed.

Once the violation has been established, the Parties to the conflict shall put an end to it and shall repress it within the briefest possible delay.

*Article 130D*

The High Contracting Parties who have not recognized as compulsory *ipso facto* and without special agreement, in relation to any State accepting the same obligation, the jurisdiction of the

International Court of Justice in the circumstances mentioned in Article 36 of the Statute of the Court, undertake to recognize the competency of the Court in all matters concerning the interpretation or application of the present Convention.

SECTION II

**Final Provisions**

*Article 131*

The present Convention is established in French and in English. Both texts are equally authentic.

*Article 132*

The present Convention, which bears the date of this day, is open to signature for a period of six months, that is to say, until the ..... in the name of the Powers represented at the Conference which opened at Geneva on 21 April 1949.

*Article 133*

The present Convention shall be ratified as soon as possible and the ratifications shall be deposited at Berne.

A record shall be drawn up of the deposit of each instrument of ratification and certified copies of this record shall be transmitted by the Swiss Federal Council to the Governments of all countries in whose name the Convention has been signed, or whose accession has been notified.

*Article 134*

The present Convention shall come into force six months after not less than two instruments of ratification have been deposited.

Thereafter, it shall come into force for each High Contracting Party six months after the deposit of the instrument of ratification.

*Article 135*

In the relations between the Powers who are bound by the Hague Conventions relative to the Laws and Customs of War on Land, whether that of 29 July, 1899, or that of 18 October, 1907, and who are parties to the present Convention, this last Convention shall be supplementary to Sections II and III of the Regulations annexed to the above-mentioned Conventions of the Hague.

*Article 136*

From the date of its coming into force, it shall be open to any Power in whose name the present Convention has not been signed to accede to this Convention.

*Article 137*

Accessions shall be notified in writing to the Swiss Federal Council and shall take effect six months after the date on which they are received.

The Swiss Federal Council shall communicate the accessions to the Powers in whose name the Convention has been signed or whose accession has been notified.

*Article 138*

The situations provided for in Article 2 shall give immediate effect to ratifications deposited and accessions notified by the Parties to the conflict before or after the beginning of hostilities or occupation. The Swiss Federal Council shall communicate by the quickest methods any ratifications or accessions received from Parties to the conflict.

*Article 139*

Each of the High Contracting Parties shall be at liberty to denounce the present Convention.

The denunciation shall be notified in writing to the Swiss Federal Council, which shall transmit it to the Governments of all the High Contracting Parties.

The denunciation shall take effect one year after the notification thereof has been made to the Swiss Federal Council. However, a denunciation of which notification has been made at a time when the denouncing Power is involved in a conflict shall not take effect until peace has been concluded, and until after operations con-

nected with release, repatriation and re-establishment of the persons protected by the present Convention have been terminated.

The denunciation shall have effect only in respect of the denouncing Power. It shall in no way impair the obligations which the Parties to the conflict shall remain bound to fulfil by virtue of the principles of the law of nations as they result from the usages established among civilized peoples, from the laws of humanity and the dictates of the public conscience.

*Article 140*

The Swiss Federal Council shall register the present Convention with the Secretariat of the United Nations. The Swiss Federal Council shall also inform the Secretariat of the United Nations of all ratifications, accessions, and denunciations received by that Government with respect to the present Convention.

*Signature Clauses*

In witness whereof the undersigned, having deposited their respective full powers, have signed the present Convention.

Done at ..... this ..... day of ....., 1949, in the English and French languages, and the original of which shall be deposited in the archives of the Swiss Confederation. The Swiss Federal Council shall transmit certified copies thereof to each of the signatory and acceding States.

**ANNEX I****DRAFT AGREEMENT RELATING TO HOSPITAL AND SAFETY ZONES AND LOCALITIES**

(see Article 12)

*Article 1***Persons benefited**

Hospital and safety zones shall be strictly reserved for the persons mentioned in Article 18 of the Geneva Convention for the Relief of the Wounded and Sick in Armed Forces in the Field, and in Article 12 of the Convention relating to the protection of civilians, and for the personnel entrusted with the organization and administration of these zones and localities, and with the care of the persons therein assembled.

Nevertheless, persons whose permanent residence is within such zones shall have the right to stay there.

*Article 2***Prohibited Work**

No persons residing, in whatever capacity, in a hospital and safety zone shall perform any work, either within or without the zone, directly connected with military operations or the production of war material.

*Article 3***Prohibition of access**

The Power establishing a hospital and safety zone shall take all necessary measures to prohibit access to all persons who have no right of residence or entry therein.

*Article 4***Conditions**

Hospital and safety zones shall fulfil the following conditions:

- (a) They shall comprise only a small part of the territory governed by the Power which has established them.
- (b) They shall be thinly populated in relation to the possibilities of accommodation.
- (c) They shall be far removed and free from all military objectives, or large industrial or administrative establishments.
- (d) They shall not be situated in areas which, according to every probability, may become important for the conduct of the war.

*Article 5***Obligations**

Hospital and safety zones shall be subject to the following obligations:

- (a) The lines of communication and means of transport which they possess shall not be used for the transport of military personnel or material, even in transit.
- (b) They shall in no case be defended by military means.

*Article 6***Markings**

Hospital and safety zones shall be marked by means of oblique red bands on a white ground, placed on the buildings and outer precincts.

Zones reserved exclusively for the wounded and sick may be marked by means of the Red Cross emblem (Red Crescent, Red Lion and Sun) on a white ground.

They may be similarly marked at night by means of appropriate illumination.

*Article 7***Notification and Refusal of Recognition**

The Powers shall communicate to all the Contracting Parties in peacetime or on the outbreak of hostilities, a list of the hospital and safety zones in the territories governed by them.

They shall also give notice of any new zones set up during hostilities.

As soon as the adverse party has received the above mentioned notification, the zone shall be regularly established.

If, however, the adverse party considers that the conditions of the present agreement have not been fulfilled, it may refuse to recognize the zone by giving immediate notice thereof to the party responsible for the said zone; or may make its recognition of such zone dependent upon the institution of the control provided for in Article 8.

*Article 8***Inspection**

Any Power having recognized one or several hospitals and safety zones instituted by the adversary shall be entitled to demand control by the Power protecting its interests, for the purpose of ascertaining if the zones fulfil the conditions and obligations stipulated in the present agreement.

To this effect the representatives of the Protecting Power shall at all times have free access to the various zones and may even reside there permanently. They shall be given all facilities for their duties of inspection.

*Article 9***Sanctions**

Should the Protecting Powers note any facts which they consider contrary to the stipulations of the present agreement, they shall at once draw the attention of the Power governing the said zone to these facts, and shall fix a time limit of five days within which the matter can be rectified. They shall duly notify the Power whose interests they protect.

If, when the time-limit has expired, the Power governing the zone has not complied with the warning, the adverse party may declare that it is no longer bound by the present agreement in respect of the said zone.

*Article 10***Respect for Zones**

In no circumstances may hospital and safety zones be the object of attack. They shall be protected and respected at all times by the Parties to the conflict.

*Article 11***In case of Occupation**

In the case of occupation of a territory, the hospital and safety zones therein shall continue to be respected and utilized as such.

Their purpose may, however, be modified by the Occupying Power, on condition that all measures are taken to ensure the safety of the persons accommodated.

*Article 12***Localities**

The present agreement shall also apply to localities which the Powers may utilize for the same purposes as hospital and safety zones.

**ANNEX II****DRAFT REGULATIONS CONCERNING COLLECTIVE RELIEF**

(see Articles 97 and 98)

*Article 1*

The internee committees shall be allowed to distribute collective relief shipments for which they are responsible to all internees who are dependant for administration on the said committee's place of internment including those internees who are in hospitals, or in prisons or other penitentiary establishments.

*Article 2*

The distribution of collective relief shipments shall be effected in accordance with the instructions of the donors and with a plan drawn up by the internee committees. The issue of medical stores shall, however, be made for preference in agreement with the senior medical officers, and the latter may, in hospitals and infirmaries, waive the said instructions, if the needs of their patients demand. Within the limits thus defined, the distribution shall always be made equitably.

*Article 3*

Members of internee committees shall be allowed to go to the railway stations or other points of arrival of relief supplies near their places of internment so as to enable them to verify the quantity as well as the quality of the goods received and to make out detailed reports thereon to the donors.

*Article 4*

Internee committees shall be given the facilities necessary for verifying whether the distribution of collective relief in all subdivisions and annexes of their places of internment has been carried out in accordance with their instructions.

*Article 5*

Internee committees shall be allowed to fill up, and to cause to be filled up by members of the internee committees in labour detachments or by the senior medical officers of infirmaries and hospitals, forms or questionnaires intended for

the donors, relating to collective relief supplies (distribution, requirements, quantities, etc.). Such forms and questionnaires, duly completed, shall be forwarded to the donors without delay.

*Article 6*

In order to secure the regular distribution of collective relief supplies to the internees in their place of internment, and to meet any needs that may arise through the arrival of fresh parties of internees, the internee committees shall be allowed to create and maintain sufficient reserve stocks of collective relief. For that purpose, they shall have adequate warehouses; each warehouse shall be provided with two locks, the internee committee holding the keys of one lock, and the commandant of the place of internment the keys of the other.

*Article 7*

The High Contracting Parties and the Detaining Powers in particular shall, so far as is in any way possible and subject to the regulations governing the food of the population, authorize purchases of goods to be made in their territories for the distribution of collective relief to the internees. They shall likewise facilitate the transfer of funds and other financial measures of a technical or administrative nature taken for the purpose of making such purchases.

*Article 8*

The foregoing provisions shall not constitute an obstacle to the right of internees to receive collective relief before their arrival in a place of internment or in the course of their transfer, nor to the possibility of representatives of the Protecting Power, or of the International Committee of the Red Cross or any other humanitarian organization, giving assistance to internees and responsible for forwarding such supplies, ensuring the distribution thereof to the recipients by any other means they may deem suitable.

**ANNEX III**  
**INTERNMENT CARD**  
 (see Articles 95 and 96)

1. Front

CIVILIAN INTERNEES MAIL		Postage free
<b>POST CARD</b>		
<p align="center"><b>IMPORTANT</b></p> <p>This card must be completed by each internee immediately on being interned and each time his address is altered by reason of transfer to another place of internment or to a hospital.</p> <p>This card is not the same as the special card which each internee is allowed to send to his relatives</p>	<p><b>CENTRAL INFORMATION AGENCY                  FOR PROTECTED PERSONS</b></p> <p>INTERNATIONAL COMMITTEE                  OF THE RED CROSS</p>	
(Size of internment card — 10×15 cm.)		

2. Reverse side

Write legibly and in block letters. — 1. Nationality		
2. Name	3. First names (in full)	4. First name of Father
.....		
5. Date of Birth.....	6. Place of Birth .....	
7. Occupation .....		
8. Address before detention .....		
9. Address of next of kin .....		
.....		
*10. Interned on : (or) Coming from (hospital, etc.) on : .....		
*11. State of health.....		
12. Present address .....		
13. Date.....	14. Signature.....	
.....		
*Strike out what is not applicable — Do not add any remarks — See explanations on other side of card.		



ANNEX III (continued)  
CORRESPONDENCE CARD

1. Front

Civilian Internee Mail		Postage free
<b>POST CARD</b>		
To .....		
<i>Sender :</i>  Name and first names  Place and date of birth  Internment address	Street and number .....  <u>Place of destination</u> (in BLOCK CAPITALS) .....  Province or Department.....  Country (in BLOCK CAPITALS) .....	

2. Reverse side

	Date : .....
..... ..... ..... ..... ..... ..... ..... ..... ..... .....	
Write on the dotted lines only and as legibly as possible.  (Size of correspondence card — 10×15 cm.)	



