Election of a Chairman

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

Agreed.

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

Extension of the terms of reference of the Special Committee

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

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

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

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

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

Article 2, fourth paragraph

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

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

Colonel Du Pasquier (Switzerland) considered that the French Draft of 26 April (see Annex
No. 12) might be a useful basis for discussion, as it united all criteria of a material nature granting, from the point of view of international law, belligerent status to insurgents. He proposed, however, a slight change of form, namely, to replace the words "authority responsible" by "established authority". The Greek proposal had, in his eyes, the disadvantage of having recourse to formal criteria, which might prevent speedy application of the Conventions.

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

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

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

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

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

The meeting rose at 7.30 p.m.

SECOND MEETING
Friday 6 May 1949, 10 a.m.

Chairman: Mr. Plinio Bolla (Switzerland)

Article 2, fourth paragraph (continued)

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

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

According to the terms of the French amendment, what body was going to decide that "the adverse party possessed an organized military force, an
authority responsible for its acts acting within a defined territory and having the means of observing and enforcing the Convention'.

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

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

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

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

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

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

In reply to the question raised by the Delegate for Australia, Mr. Lamarle (France) indicated that in the case of civil war there was no reason to institute special litigation proceedings. The same methods would be applied in this instance as in the instance of the other disputes which might arise, with the reservation that the conditions for the application of the Convention, in case of civil war, were effectively fulfilled. The French Delegation supported the proposal made by the Delegation for Monaco purporting to study the possibility of providing in case of differences for a procedure of conciliation and possibly of arbitration. They reserved the position they would take during this examination.

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

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

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

Mr. Pilloud (International Committee of the Red Cross) asked for time to study the questions raised by the Delegate for the United Kingdom.
With regard to the proposal submitted by the Delegate for Uruguay, he recalled that in virtue of a mandate conferred on him by the Tenth International Red Cross Conference, the I.C.R.C. were bound to extend their humanitarian activities to civil war. It was therefore unnecessary to introduce a reference to the International Committee in the text of paragraph 4. Each time the Committee had intervened in this type of conflict, their first step had been to ask the parties to apply the Geneva Conventions of 1929. They had often been successful in this field, but there had also been failures, and their démarches were not always well received. Application of the Conventions, either totally or partially, had even been achieved in situations which did not exactly correspond to the definition given in the French proposal. Therefore, if limitations were to be included in paragraph 4, Mr. Pilloud was of the opinion that there should likewise be introduced a clause stipulating that the present provisions would not prevent the voluntary application of the Conventions by Parties to a conflict which did not correspond to the definition given in this paragraph.

The meeting rose at 1 p.m.

THIRD MEETING
Monday 9 May 1949, 10 a.m.

Chairman: Mr. Plinio Bolla (Switzerland)

Article 2, fourth paragraph (continued)

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

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

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

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

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

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

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

Mr. Yingling (United States of America) noted that the answer given by the Delegate of France to the second question was very close to the
United States Delegation's point of view. With regard to the answer to the first question, the Delegate for the United States of America considered there must be more than an organized military force. That force must also be subject to a duly constituted civil authority.

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

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

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

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

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

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

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

(1) Should the Conventions be extended to cases of armed conflict which were not of an international character?

(2) Would it be appropriate to define more clearly than was the case in the Stockholm text the cases of armed conflict which were not of an international character?

(3) Which of the following criteria should be adopted: formal criteria, factual criteria or a combination of formal and factual criteria?

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

(a) The application of the Convention to the letter or by analogy;

(b) The question of reciprocity;

(c) The clause known as the "Discretionary Clause", as suggested by the International Committee of the Red Cross at the preceding meeting;

(d) The Italian proposal purporting to apply the humanitarian principles of the Conventions to cases of conflicts not expressly stipulated;

(e) The clause reserving the juridical status of Parties to the conflict;

(f) The situation of the insurgents at the close of a conflict (Norwegian proposition).

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

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

If a delegation were placed in the minority on a given point, it should be understood that its votes on the subsequent questions submitted to
the Committee should be expressed, subject to the general attitude adopted by that delegation.

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

The Chairman asked the Committee to pronounce on the principle of extension of the Conventions to cases of armed conflict which were not of an international character.

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

The meeting rose at 1 p.m.

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FOURTH MEETING

Wednesday 11 May 1949, 10 a.m.

Chairman: Mr. Plinio Bolla (Switzerland)

Article 2, fourth paragraph (continued)

Mr. de Geouffe de la Pradelles (Monaco) considered it was indispensable to distinguish between rebellion, which was more than an uprising, but had not yet taken on the proportions of a civil war, as defined in international law.

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

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

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

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

By 10 votes for, 1 against, and 1 abstention, the Committee was of the opinion to abandon the Stockholm text and to define more clearly the cases of armed conflict not of an international character to which the Conventions should apply.

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

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

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

Mr. Yingling (United States of America) said that his country would not be willing to give a free hand to any organism, whether the Security Council or any other, with regard to deciding whether the Conventions should come into effect. They were, however, not adverse to the proposal that under certain circumstances some body...
should be called upon to act as a fact-finding agency to determine whether the conditions governing the application of the Conventions were fulfilled or not.

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

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

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

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

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

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

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

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

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

The meeting rose at 12.30 p.m.

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**FIFTH MEETING**

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

_Chairman: Mr. Plinio Bolla (Switzerland)_

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

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

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

(a) that the de jure government has recognized the status of belligerency of the adverse party, without restrictions, or for the sole purposes of the application of the present Convention, or

(b) that the adverse party presents the characteristics of a State, in particular, that it possesses an organized military force, that it is under the direction of an organized civil authority which exercises de facto gov-
ernmental functions over the population of a determinate portion of the national territory, and that it has the means of enforcing the Convention, and of complying with the laws and customs of war; application of the Convention in these circumstances shall in no way depend upon the legal status of the parties to the conflict. This obligation presupposes, furthermore, in all circumstances, that the adverse party declares itself bound by the present Convention, and, as is the de jure government, by the laws and customs of war (and that it complies with the above conditions in actual fact).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The value of the Conventions depends largely upon the means of controlling their application, hence the need for providing for the intervention by a Protecting Power. The latter would obviously act only with the approval of the Detaining Power.

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

The meeting rose at 12.45 p.m.

SIXTH MEETING

Wednesday 18 May 1949, 10 a.m.

Chairman: Mr. Plinio Bolla (Switzerland)

Article 2, fourth paragraph (continued)

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

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

Although supporting the Stockholm text, Mr. Castberg (Norway) had taken part in the drafting of the text of the Working Party with a view to finding a compromise solution permitting the reconciliation of the various points of view. He observed that in virtue of paragraph 4 of this text the Convention may be applied even though the conditions contained in the first three paragraphs were not fulfilled. In reply to objections raised at the preceding meeting by the Delegations for France and for the United Kingdom, the Delegate for Norway pointed out that Articles 55 and 60 of the Civilians Convention would protect the loyal supporters of the de jure government and that the application of the Convention for the protection of the insurgents would not cause any difficulties either.

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

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

Mr. Yingling (United States of America) said that his Delegation was opposed to the insertion of the clause contained within brackets in the second paragraph of the text drawn up by the Working Party. The Conventions as they now stood contained no conditions in this respect with regard to war between States, and there seemed no reason to include provisions of this kind to apply to civil war.
The Delegate for the United States of America considered that the Norwegian proposal raised a question of national law, and therefore did not come within the competence of the Conference.

Mr. de Geouffre de la Pradelle (Monaco) concurred with the Delegation of the United States of America with regard to reciprocity as mentioned in paragraph 2.

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

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

Mr. Hart (United Kingdom) supported the proposal that the text submitted by the Working Party should be reconsidered by it in the light of the comments which had been made at the present Meeting. He strongly supported the view of the Delegate for Monaco that the Working Party should examine the provisions to see what parts of it could in fact be applied to civil war.

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

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

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

The meeting rose at 12:45 p.m.

SEVENTH MEETING

Thursday 19 May 1949, 9:30 a.m.

Chairman: Mr. Plinio Bolla (Switzerland)

Article 2, fourth paragraph (continued)

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

He was of the opinion that the Norwegian amendment should be completed to enable the repression of acts which, under international law, were considered as war crimes. Furthermore, it would be appropriate to state clearly that in no case could rebels be sentenced by virtue of provisions published after the offence had been committed, and also that the stipulations of the present Convention relating to death sentences should be applicable to them.

Mr. Maresca asked the Committee not to attach too much importance to the terms “legal government”, “de jure government” or “insurgents”, these concepts being strange to international law.
In conclusion, the Delegate for Italy proposed to revert to the text which was drawn up at the meeting of Government Experts in 1947, and in all cases of armed conflict not of an international character to provide only for the application of the principles underlying the Conventions.

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

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

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

The Chairman suggested that the Norwegian proposal be referred to the Working Party, without prejudging the final decision which would be taken by the Committee on the basic problem. To facilitate the task of the Working Party, he asked the Committee to give their views on the principle of de facto reciprocity, such as was stipulated in brackets in the second paragraph of the proposal of the Working Party.

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

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

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

*The meeting rose at 11.45 a.m.*
ELECTION OF A VICE-CHAIRMAN

On the proposal of Mr. Castberg (Norway), seconded by Mr. Lamarle (France), Colonel Blanco (Uruguay) was unanimously elected Vice-Chairman of the Committee by acclamation.

ARTICLE 40/44/119/130

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

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

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

Mr. de Geouffre de la Pradelle (Monaco) observed that the Protecting Power might be involved in the dispute and that it could not be simultaneously judge and party. He gave several examples of disputes occurring in peacetime between the High Contracting Parties in respect of interpretation and application of Conventions, and considered that such disputes should be referred to the International Court of Justice. Moreover, he pointed out that Article 30 of the Wounded and Sick Convention of 1929 might be effective in a case of localized international war, or of an armed conflict not of an international character. He proposed to merge this Article 30 with Article 41 of the Stockholm Draft of the same Convention, retaining, in particular, the obligation stipulated at the end of Article 30.

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

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

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

The Chairman invited the Committee to pronounce on the advisability

(a) of conferring on the International Court of Justice competency for the settlement of disputes arising outside of periods of armed conflicts;

(b) to extend to the Prisoners of War and Civilians Conventions the enquiry procedure envisaged in the Wounded and Sick and the Maritime Conventions for the wartime period.

In reply to questions raised by Mr. Yingling (United States of America) and Mr. Morosov...
(Union of Soviet Socialist Republics), Mr. Bagge (Denmark) indicated that according to the Danish amendment, each Party signatory to the Convention could at its discretion refer the disputes to the International Court of Justice. On the other hand, if such a dispute were submitted to the Court, its decision would have a mandatory character for both parties.

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

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

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

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

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

Mr. Morosov (Union of Soviet Socialist Republics) felt that the procedure under Article 30 of the Wounded and Sick Convention of 1929 was sufficient to permit the punishment of violations of the Convention. But it did not provide for a satisfactory solution with regard to disputes relating to the procedure of enquiry. Therefore, the Soviet Delegation had tabled an amendment to Article 41 of the Wounded and Sick Convention proposing to replace this Article by Article 30 of the Convention of the Wounded and Sick of 1929 with the addition of the following sentence:

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

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

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

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

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

The meeting rose at 1 p.m.
NINTH MEETING

Wednesday 25 May 1949, 3.30 p.m.

Chairman: Mr. Plinio Bolla (Switzerland)

Article 1

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

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

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

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

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

Article 1 was adopted without a modification.

Article 2, third paragraph

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

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

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

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

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

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

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

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

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

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

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

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

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

The meeting rose at 6 p.m.

TENTH MEETING

Friday 27 May 1949, 10 a.m.

Chairman: Mr. Plinio Bolla (Switzerland)

Article 2, third paragraph (continued)

On the proposal of Mr. Morosov (Union of Soviet Socialist Republics), seconded by Colonel Hodgson (Australia), the Chairman invited the Committee to vote successively on the amendments tabled by the Canadian, Norwegian and Belgian Delegations, and then to vote on the text prepared by himself.

The amendment of the Canadian Delegation (see Annex No. 8) was rejected by 5 votes to 1 with 2 abstentions.
The proposal of the International Committee of the Red Cross (see Annex No. 10), as amended by the Norwegian Delegation (deletion of the words “after a reasonable lapse of time”), was rejected by 3 votes to 2 with 3 abstentions. The Belgian amendment (see Annex No. 9) was rejected by 3 votes to 1 with 4 abstentions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Mr. Morosov (Union of Soviet Socialist Republics) felt that the Italian proposal was somewhat similar to the problem of acquired rights, and that for this reason it should be adopted.
Miss Gutteridge (United Kingdom) was in agreement with the French and Norwegian Delegations. A peace treaty did not represent the result of violence, but the acceptance by a defeated Power of terms which it found itself able to accept.

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

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

Article 5/6/6/6

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

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

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

Mr. Lamarle (France) felt that protected persons should not be prevented, in certain circumstances, from renouncing their rights. In this connection, he recalled the statement he had made in the Joint Committee and the historical examples he had cited (see Summary Record of the Fourth Meeting of the Joint Committee).

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

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

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

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

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

The meeting rose at 1.15 p.m.
Joint Committee  
SPECIAL COMMITTEE  
I1TH MEETING

ELEVENTH MEETING

Monday 30 May 1949, 10 a.m.

Chairman: Mr. Plinio Bolla (Switzerland)

Article 6/7/7/7

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The meeting rose at 1.15 p.m.

TWELFTH MEETING

Tuesday 31 May 1949, 10 a.m.

Chairman: Mr. Plinio BOLLA (Switzerland)

Article 6/7/7/7 (continued)

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

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

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

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

Mr. ZANETTOS (Greece) proposed the retention of the last sentence of the first paragraph, which had been introduced at Stockholm at the request of the Greek Delegation.

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

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

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

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

Colonel HODGSON (Australia) considered that when approving the activities of a Protecting
Power a State took into account the membership of the diplomatic and consular mission of that Power. It could, moreover, at any time, withdraw the approval given to a diplomat, if he ceased to be "persona grata".

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

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

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

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

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

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

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

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

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

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

The meeting rose at 1 p.m.
THIRTEENTH MEETING
Wednesday 1 June 1949, 10 a.m.

Chairman: Mr. Plinio Bolla (Switzerland)

Article 7/8/8/8

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

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

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

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

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

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

Mr. Maresca (Italy) indicated that the amendment tabled by his Delegation also tended to bring into line the Article examined with the following Article, which stipulated that humanitarian international bodies offering every guarantee of impartiality and efficacy might be called upon to perform the duties of a Protecting Power.

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

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

The Burmese amendment was therefore not adopted.

Article 8/9/9/9

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

Miss Gutteridge (United Kingdom) said that the purpose of the United Kingdom amendment was to lay down conditions under which substitutes for the Protecting Powers would be designated, i.e. when there was no government representing protected persons able to entrust the protection of their interests to a neutral Power. Substitutes for Protecting Powers ought to act with impartiality and a sense of responsibility to the country to which the protected persons belonged. It might be possible to add the amendment submitted by the French Delegation on 28 April to the United Kingdom proposal.
Mr. CAHEN-SALVADOR (France) considered that this Article was one of the most important ones in the Convention, since its purpose was to ensure the supervision of the application of the Conventions without which the latter would lose a large measure of their efficiency. To avoid a recurrence of facts similar to those which had taken place during the last conflict, the French Delegation considered it necessary to introduce a provision preventing the Government of an occupied country from being able to establish a derogation of the provisions relating to Protecting Powers by concluding a special agreement with the occupying Power. This was the purpose of the French amendment (see Annex No. 22).

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

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

Mr. de GEOUFFRE DE LA PRADELLE (Monaco) seconded the French proposal. He felt, however, that only a properly constituted organization, possessing the ways and means of fulfilling all the duties which devolved on the Protecting Powers, and enjoying a recognized status, would be able to carry out these duties appropriately.

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

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

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

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

The meeting rose at 1 p.m.
FOURTEENTH MEETING

Thursday 2 June 1949, 10 a.m.

Chairman: Mr. Plinio Bolla (Switzerland)

Article 8/9/9/9 (continued)

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

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

Mr. de Geouffre de la Pradelle (Monaco) considered that the first paragraph of the Article adopted at Stockholm might fix a time limit for the creation of the body stipulated therein.

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

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

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

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

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

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

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

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

Mr. Sokirkin (Union of Soviet Socialist Republics) asked what would be the situation in
case of the absence of a neutral or independent organization which was willing to undertake the duties devolving upon the Protecting Powers.

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

Mr. Maresca (Italy) supported the United Kingdom amendment and suggested to complete it by the words “whatsoever the reason”.

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

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

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

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

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

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

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

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

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

The meeting rose at 1 p.m.
FIFTEENTH MEETING

Friday 3 June 1949, 10 a.m.

Chairman: Mr. Plinio Bolla (Switzerland)

Article 8/9/9/9 (continued)

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

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

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

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

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

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

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

The meeting rose at 1.15 p.m.
SIXTEENTH MEETING
Friday 3 June 1949, 3.30 p.m.

Chairman: Mr. Plinio Bolla (Switzerland)

Article 8/9/9/9 (continued)

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

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

The following Members took part in the discussion: Mr. Yingling (United States of America), Colonel Hodgson (Australia), Mr. Agathocles (Greece), Mr. Sokirkin (Union of Soviet Socialist Republics), Mr. Cahen-Salvador (France) and Mr. Maresca (Italy).

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

The meeting rose at 6 p.m.

SEVENTEENTH MEETING
Tuesday 7 June 1949, 10 a.m.

Chairman: Mr. Plinio Bolla (Switzerland)

Article 8/9/9/9 (continued)

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

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

(i) The Detaining Power shall invite a neutral State designated by the International
Committee of the Red Cross or shall invite an organization provided for in paragraph 1 to undertake the functions performed under the present Convention by a Protecting Power designated by the Parties to a conflict.

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

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

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

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

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

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

Mr. Siordet (International Committee of the Red Cross) considered that it was not up to the International Committee of the Red Cross to nominate the neutral State to whom the Detaining Power should address a request (second paragraph, Fig. 1, of the United Kingdom proposal).

Mr. Alexander (United Kingdom) agreed to the omission of the words criticized by the Delegate of the I.C.R.C.

Mr. Agathocles (Greece) proposed that in the second paragraph, Fig. 1, the body provided for in the first paragraph should be mentioned first, as it offered more guarantees of impartiality and efficacy than a neutral State. In view of the fact that, according to the statement of the Representative of the International Committee of the Red Cross, the neutral State would be appointed by the Detaining Power itself, there is reason to fear that the State so appointed might belong to that category of States which, though maintaining the outward appearance of neutrality, at the legal point of view, are actually concealed allies of a belligerent Power.

Mr. Cahen-Salvador (France) thought that the neutral State should be mentioned first. The Greek proposal was rejected by 4 votes to 1 with 2 abstentions.

The Chairman asked the Committee to express their opinion on a new wording of the second part of the second paragraph adopted at Stockholm, which would run as follows: "............. by requesting either a neutral State or the body provided for in the first paragraph to assume..............".

A vote was taken and resulted in, 2 in favour, 2 against with 3 abstentions. The proposed wording was therefore rejected, in accordance with Rule 35, second paragraph, of the Rules of Procedure of the Conference.

The second paragraph, Fig. 1, of the United Kingdom proposal, the words "designated by the International Committee of the Red Cross" being deleted, was then adopted by 6 votes with 1 abstention.

Article 8 Wounded and Sick and 9 of the other Conventions, was adopted by the Special Committee in the following form (as in the Prisoners of War Convention):

"Furthermore, if prisoners of war do not profit, or cease to profit no matter for what reason by the activity of a Protecting Power or of the above mentioned body, the Detaining Power shall invite a neutral State, or an organization provided for in paragraph 1 above, to undertake the functions performed under the present Convention by a Protecting Power designated by the Parties to a conflict."

The Chairman asked the Committee to express their opinion on the second paragraph, Fig. 2, of the United Kingdom proposal.
Mr. Cahen-Salvador (France) thought that Fig. 2 served no useful purpose as it hardly seemed likely that there would be any other international organization than the body foreseen in the first paragraph which would be in a position to play the part of a Protecting Power.

Mr. Yingling (United States of America) and Mr. Sokirkin (Union of Soviet Socialist Republics) agreed.

Colonel Hodgson (Australia), however, thought that there was no reason for dismissing a possibility which might occur one day. He pointed out that the United Kingdom proposal might, for instance, be applied to the International Refugee Organization or to the Commission of Human Rights.

A vote was taken on the second paragraph, Fig. 2, of the United Kingdom proposal and resulted in, 3 in favour, 3 against with 1 abstention. The proposal was thus rejected, in conformity with Rule 35, second paragraph, of the Rules of Procedure.

The meeting rose at 1 p.m.

EIGHTEENTH MEETING

Wednesday 8 June 1949, 10 a.m.

Chairman: Mr. Plinio Bolla (Switzerland)

Article 8.9/9.9 (continued)

The Chairman put point 3 of the second paragraph of the United Kingdom proposal under discussion (see Summary Record of the Seventeenth Meeting).

Mr. Sokirkin (Union of Soviet Socialist Republics), supported by Mr. Yingling (United States of America), preferred the Stockholm text to the United Kingdom proposal, since the latter was of a nature to weaken the obligation on the part of the Detaining Power to find a substitute for the Protecting Power.

Mr. Alexander (United Kingdom) considered the Stockholm text by no means clear, since neither the International Committee of the Red Cross, nor any other humanitarian body, could undertake all the duties of a Protecting Power.

Colonel Hodgson (Australia) agreed with the last speaker.

Mr. Sokirkin (Union of Soviet Socialist Republics) said that the Article examined only dealt with substitutes for the Protecting Powers. He therefore saw no reason to mention the International Committee of the Red Cross at this point, if the latter was not in a position to replace the Protecting Power. The International Committee of the Red Cross remained at liberty to offer its humanitarian services in accordance with the provisions of the preceding Article Wounded and Sick and 8 of the other Conventions.

With a view to reconciling these different points of view, the Chairman suggested the following wording:

"If protection cannot be arranged accordingly, the Detaining Power shall invite an impartial humanitarian organization, such as the International Committee of the Red Cross, to assume the humanitarian functions performed by Protecting Powers under the present Convention."

Mr. Siordet (International Committee of the Red Cross) said that, in spite of the fact that Article 7 Wounded and Sick and 8 of the other Conventions reserved the right of initiative to the International Committee of the Red Cross, it might be well to mention that institution and other impartial humanitarian bodies in Article 8 Wounded and Sick and 9 of the other Conventions, and to give those institutions the possibility of volunteering their services.

Mr. Alexander (United Kingdom), Mr. Lamacle (France) and Mr. Maresca (Italy) were prepared to accept the Chairman’s suggestion, but
thought that it ought to be completed taking into consideration the remark made by the Representative of the International Committee of the Red Cross.

Colonel Hodgson (Australia) and Mr. Yingling (United States of America) supported the Chairman’s proposal.

Mr. Sokirkin (Union of Soviet Socialist Republics) was also in favour of that proposal, but considered that the Detaining Power could not be compelled to accept the services of any organization whatever.

Mr. Yingling (United States of America) agreed with the last speaker.

Mr. Alexander (United Kingdom), in order to take account of the above observations, proposed to add the following sentence to the Chairman’s proposal:

"...or shall accept, subject to the provisions of this Article, the offer of the services of an impartial humanitarian organization".

This proposal was adopted by 6 votes to 4. The Paragraph thus adopted reads as follows:

"If protection cannot be arranged accordingly, the Detaining Power shall invite or shall accept, subject to the provisions of this Article, the offer of the services of an impartial humanitarian organization, such as the International Committee of the Red Cross, to assume the humanitarian functions performed by Protecting Powers under the present Convention."

The Chairman then put the third paragraph of the United Kingdom amendment under discussion.

Mr. Alexander (United Kingdom) said that the purpose of this provision was to make it possible to object to a neutral Power or to a humanitarian body.

Mr. Lamarle (France) agreed that the right to object was necessary, but pointed out that as long as no organization whose services could be objected to had been created, on the basis of the first paragraph, a gap would continue to exist.

Mr. Alexander (United Kingdom) wished to make it clear that the right of objection contemplated in the United Kingdom proposal could be exercised either by the Detaining Power or by the Power on whom the protected persons depended, if such a Power existed.

The meeting rose at 1 p.m.

NINETEENTH MEETING
Thursday 9 June 1949, 10 a.m.

Chairman: Mr. Plinio Bolla (Switzerland)

Article 8/9/9/9 (continued)

The Chairman invited the Committee to continue the discussion of the third paragraph of the United Kingdom proposal.

Mr. Lamarle (France) could not agree to the first sentence of the United Kingdom proposal, since it conferred on the Detaining Power the right to object to the International Committee of the Red Cross which appeared to him unacceptable.

Mr. Alexander (United Kingdom) advocated that the Committee should be realistic and should consider that in wartime a Detaining Power would accept the offices of an organization only if it offered certain minima conditions.

Likewise, the neutral Power invited by the Detaining Power might give rise to objections on the part of the Power to which protected persons belonged. There was also the question of protection of nationals of a country whose government had ceased to exist. Responsibility for payment of such services was a problem which
seemed difficult to be solved in the Conventions but which should be taken into consideration in the framework of the provision under discussion.

As a result of an exchange of views between Mr. Maresca (Italy), Mr. Siordet (International Committee of the Red Cross), Mr. Yingling (United States of America), Colonel Hodgson (Australia) and Mr. Sokirkin (Union of Soviet Socialist Republics), Mr. Alexander (United Kingdom) withdrew his proposal and reserved the right of introducing it in a different form in the fourth paragraph of the United Kingdom proposal.

The Chairman opened the discussion on the fourth paragraph of the United Kingdom proposal.

Mr. Alexander (United Kingdom) proposed that this paragraph be amended as follows: "Any neutral Power, or any organization invited by the Power concerned, or offering itself for these purposes, shall act with a sense of responsibility towards the belligerent to which persons protected by the present Convention owe allegiance and shall furnish sufficient assurance that it is in a position to undertake the appropriate functions and to discharge them impartially."

Mr. Sokirkin (Union of Soviet Socialist Republics) asked who was to decide whether the conditions were fulfilled.

Mr. Alexander (United Kingdom) considered that this decision should be taken by the Powers concerned, i.e., the Detaining Power and the Power to which the person to be protected belonged, if such existed.

Pending the distribution of the new wording proposed by the United Kingdom Delegation, the Chairman invited the Committee to return to the study of the amendment tabled by the French Delegation (see Annex No. 22), with relation to Article 9, third paragraph, of the Prisoners of War Convention, examination of which had been suspended at the Thirteenth Meeting.

Mr. Siordet (International Committee of the Red Cross) pointed out that it might be advisable to introduce into all the Conventions a provision similar to that in Article 9, third paragraph of the Prisoners of War Convention.

Mr. Lamarle (France) was willing to agree to the proposal of the Representative of the International Committee of the Red Cross.

Miss Gutteridge (United Kingdom) supported the French amendment.

After a few remarks made by Mr. Maresca (Italy), Colonel Hodgson (Australia) and Mr. Yingling (United States of America), Mr. Lamarle (France) announced that he would submit a new text including the comments made.

The Chairman opened the discussion on the last paragraph of Article 8 Wounded and Sick and 9 of the other Conventions, (text of Stockholm).

Mr. Sokirkin (Union of Soviet Socialist Republics) indicated that his Delegation preferred the Stockholm text.

Colonel Hodgson (Australia) and Mr. Siorde (International Committee of the Red Cross) concurred in this view.

The Committee unanimously adopted the last paragraph of Article 8 (in the French version, and decided to substitute in the English version the words "applies to" for "shall also designate".

The meeting rose at 1.15 p.m.
TWENTIETH MEETING
Friday 10 June 1949, 10 a.m.

Chairman: Mr. Plinio Bolla (Switzerland)

Article 38/42/117/128
Dissemination of the Convention

The Chairman put the Article under discussion. Two amendments had been submitted, referring solely to the Prisoners of War Convention and to the Civilians Convention, by the following Delegations: Canada (see Annex No. 8) and the United States of America.

Mr. Yingling (United States of America) stated that the amendment submitted by his Delegation was intended to take account of the constitutional limitations which affect certain governments. It tended, as proposed in the first point of the Canadian amendment, to introduce the expression "if possible" after the words "military and" before the word "civilians".

The second Canadian amendment proposed to delete the words "if possible" before the words "of the population".

The Committee adopted these two amendments unanimously.

The first paragraph of Article 117 of the Prisoners of War Convention was adopted, as follows:

"The High Contracting Parties undertake, in time of peace as in time of war, to disseminate the text of the present Convention as widely as possible in their respective countries and, in particular, to incorporate the study thereof in their programme of military, and if possible, civil instruction, so that the principles thereof may become known to all their armed forces and to the population."

The first paragraph of Article 128 of the Civilians Convention shall read similarly, except the last sentence which should read as follows:

"so that the principles thereof may become known to the whole of the population."
Mr. YINGLING (United States of America) pointed out that it was customary, when a treaty is drafted in more than one language, to stipulate that each of these texts shall be equally authoritative.

Mr. DE GOUFFRE DE LA PRADELLE (Monaco) proposed to insert a provision that, in case of divergencies between the French and English texts, preference should be given to the text which would be more favourable to protected persons.

The proposal was seconded by Mr. MARESCA (Italy), but was opposed by Mr. YINGLING (United States of America) and Miss GUTTERIDGE (United Kingdom); both were of the opinion that the Article in question did not relate to the interpretation of the Convention.

Mr. DE GOUFFRE DE LA PRADELLE (Monaco) withdrew his proposal, but reserved his right to resubmit it in connection with the problem of the settlement of disagreements.

The amendment submitted by the United Kingdom and the United States Delegations was adopted by 11 votes to nil, with one abstention. The Article therefore reads as follows:

"The present Convention is established in French and in English. Both texts are equally authentic."

Article 44 / 47 / 123 / 132

This Article was adopted, subject to the insertion of the words: "Geneva" and "21 April 1949", into the two blank spaces.

Article 45 / 48 / 124 / 133

This Article was adopted without discussion.

Article 46 / 49 / 125 / 134

The Chairman reminded the Meeting that, in the course of debates in the Joint Committee (see Summary Record of the Ninth Meeting), the Canadian Delegation had proposed that the period for coming into force of the present Conventions should be six months.

The Article, thus completed, was adopted unanimously.

Articles 47 / 50 / 121, 122 / 135

The Chairman stated that amendments to Article 135 of the "Civilians" Convention had been submitted by the Delegations of Finland, Norway and Belgium.

The Delegation of Finland had further proposed in the course of debates on the occasion of the Sixth Meeting in the Joint Committee that Article 122 of the Prisoners of War Convention should be deleted.

Mr. KRUSE-JENSEN (Norway) proposed that Article 135 of the Civilians Convention should be referred to Committee III as this was not a Common Article.

Concurring with this view, and considering that Article 122 of the Prisoners of War Convention was not a Common Article, the Committee decided to adopt only Articles 47 of the Wounded and Sick, 50 of the Maritime and 121 of the Prisoners of War Conventions.

Article 48 / 51 / 126 / 136

This Article was adopted.

Article 49 / 52 / 127 / 137

Mr. YINGLING (United States) proposed that the period after which accessions shall take effect should be fixed at six months.

The Article, thus completed, was adopted.

Article 50 / 53 / 128 / 138

The Committee noted that in the English version the words "accession" and "adhesion" are successively used to describe the same act and requested the Drafting Committee to decide which of these terms was to be preferred.

The Article was adopted with this reservation.

Article 51 / 54 / 129 / 139

The Chairman reminded the Meeting that the Delegation of Finland had pointed out in the course of debates in the Joint Committee that the last sentence of this Article was superfluous, as the denunciation of an international treaty
could in no way impair the other international obligations of the denouncing Party.

In reply to questions put by Colonel Hodgson (Australia) and Mr. YINGLING (United States), Mr. SIORDET (International Committee of the Red Cross) specified that in certain cases the Convention was intended to continue to be binding beyond the period of one year, running not from the conclusion of peace but from the denunciation of the Convention, and in any case until the operations connected with the release and repatriation of protected persons were terminated, or until the conclusion of the peace treaty.

Mr. de GEOUFFRE DE LA PRADELLE (Monaco) suggested that the last sentence of the Article should be replaced by a provision similar to that in the so-called de Martens clause figuring in the Preamble of the IVth Hague Convention of 1907, which reserves the application of the principles of the law of nations.

The meeting rose at 1.10 p.m.

TWENTY-FIRST MEETING
Friday 10 June 1949, 4.30 p.m.

Chairman: Mr. Plinio Bolla (Switzerland)

Article 51/54/129/139 (continued)

The Chairman said that the Delegation for Monaco proposed to replace the last sentence by the following:

"The denunciation shall in no way impair the obligations which the denouncing Party shall remain bound to fulfill by virtue of the principles of the Law of Nations as they result from the usages established among civilized peoples, from the laws of humanity, and the dictates of the public conscience."

Mr. LAMARLE (France) considered this sentence was unnecessary, since the act of denunciation applied only to one treaty and did not affect the other obligations of the denouncing party. The Conventions were an attempt to codify unwritten humanitarian basic principles. It was therefore merely necessary to define that the denunciation did not affect the humanitarian principles contained in the Convention.

Mr. YINGLING (United States of America) proposed to delete the last sentence, since it was dangerous to insert legal conclusions in a Convention of this kind.

Miss GUTTERIDGE (United Kingdom) was in agreement with the United States Delegate. She remarked that whether the principles of international law were inserted or not, they still remained valid.

The text proposed by the Delegation for Monaco was adopted by 5 votes to 2, with 1 abstention. It would replace the last sentence of the Stockholm draft.

At the suggestion of Mr. ALEXANDER (United Kingdom), the Chairman agreed to prepare a better wording for the other sentences of the Article.

Article 52/55/130/140

The Chairman indicated that the Delegation for the United States of America had submitted an amendment to these Articles, according to which only one copy, and not the original document of the Convention, should be forwarded to the United Nations Organization for registration. The amendment runs as follows:

"The Government of the Swiss Confederation shall register the present Convention with the
Secretariat of the United Nations. The Government of the Swiss Confederation shall also inform the Secretariat of the United Nations of all ratifications, accessions, and notices of termination received by that Government with respect to the present Convention."

Mr. Lamarle (France) pointed out that according to Article 102 of the United Nations Charter, Members of the United Nations were obligated to communicate treaties they signed to the United Nations for registration, failing which no party to such treaties might invoke them before any organization of the United Nations. It therefore seemed unnecessary to introduce this provision into the Conventions.

Mr. Castberg (Norway) pointed out that this clause existed in several treaties. Since Switzerland was not a member of the United Nations it would seem necessary to include this provision.

Mr. de Geouffre de la Pradelle (Monaco) felt that this provision was unnecessary, since it referred to a measure under the internal regulations of the United Nations.

Mr. Maresca (Italy) pointed out that registration or non-registration with the United Nations did not affect the validity of a treaty, and recalled that the 1929 Geneva Conventions contained a similar clause with relation to registration with the League of Nations.

Mr. Lamarle (France) was not opposed to the Article provided it was understood that the formality of registration would in no way affect the conditions of validity and operation of the Convention as such.

Mr. Yingling (United States of America) said that the United Nations Observer at the Stockholm Conference had specifically asked that such a clause be introduced.

The aforementioned United States amendment proposing a substitute text for the Stockholm Draft was adopted by 6 votes for, 1 against, with 1 abstention.

A second United States amendment relating to the signature clauses, was adopted, subject to the phrase in the second paragraph being worded in the French version: "en langues française et anglaise".

The text of the amendment reads as follows:

"In witness whereof the undersigned, having deposited their respective full powers, have signed the present Convention.

Done at ........... this ...... day of ............. 1949, in the English and French languages, the original of which shall be deposited in the archives of the Government of the Swiss Confederation. The Government of the Swiss Confederation shall transmit certified copies thereof to each of the signatory and acceding States."

The meeting rose at 6.20 p.m.

TWENTY-SECOND MEETING

Monday 13 June 1949, 10 a.m.

Chairman: Mr. Plinio Bolla (Switzerland)

Article 4/5/5/5 (continued)

The CHAIRMAN opened the discussion on the amendment tabled by the United Kingdom Delegation (see Summary Record of the Tenth Meeting).

Miss Gutteridge (United Kingdom) pointed out that the amendment under consideration was a redraft of the Stockholm text, laying stress on the "fundamental rights" of protected persons, in lieu of the "situation" of protected persons, as referred to in the Stockholm Draft. The present draft aimed at giving more flexibility to the provision so that agreement could be concluded which might temporarily affect the rights of protected persons, but would ultimately be to their benefit.

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Mr. Yingling (United States of America) was opposed to this amendment since the Conventions were intended to lay down a minimum standard of treatment for protected persons and it would not be legitimate to withdraw certain of these rights with a view of ultimate benefit to protected persons. Moreover, it would be difficult to draw a distinction between rights which were fundamental and those which were not.

The United Kingdom amendment was rejected by 6 votes to 1 with 2 abstentions.

After a discussion in which Mr. Yingling (United States of America), Miss Gutteridge (United Kingdom) and Mr. Siordet (International Committee of the Red Cross) took part, the Committee considered that the wording of the second sentence of the first paragraph of the Stockholm text ought to be amended to define clearly that this sentence referred to all special agreements. The Chairman was asked to make a redraft of this sentence.

The Soviet amendment was rejected by 1 vote for, 7 against with 1 abstention.

Mr. Yingling (United States of America) considered the French amendment unnecessary, since the requisite restrictions were already stipulated in various specific provisions. Moreover, it should be assumed that the Detaining Power would in any case have the means of preventing the Protecting Power from going beyond the limits set to its activities.

General Oung (Burma) was opposed to the French amendment because it did not go far enough.

Mr. Lamarle (France) indicated that the French amendment was applicable to all the Conventions.

Mr. Sokirkin (Union of Soviet Socialist Republics) was opposed to the views of the United States Delegation in this respect. The Article examined was expressed in very general terms, and it would be necessary, therefore, to define the scope of the Protecting Power, so that conflicting trends between the Protecting Power and the Detaining Power might be avoided.

The French amendment was adopted by 5 votes to 3 with 1 abstention.

The Article was completed by the following provision:

"The representatives or delegates of the Protecting Power shall not in any case exceed the limits of their mission as defined in the present Convention. They shall, in particular, take account of the imperative necessities of security of the State wherein they carry out their duties. Their activities shall only be restricted as an exceptional and temporary measure when this is rendered necessary by imperative military necessity."

Mr. Sokirkin (Union of Soviet Socialist Republics) said that the purpose of the Soviet amendment was to lead the Protecting Power to act in full agreement with the Detaining Power. Such agreement was a presupposed condition for the proper interplay of rights and responsibilities between the Protecting Power and the Detaining Power.

In addition to the military requirements referred to in the French amendment, there might be other considerations, and the word "sovereignty", being a well-defined concept, should appear in the text of the Article as proposed by the Delegation of the U.S.S.R.
Mr. SiorDET (International Committee of the Red Cross) concurred in this view.

The United Kingdom proposal was adopted by 7 votes to 2 with 1 abstention subject to modifications in the wording.

Mr. ALEXANDER (United Kingdom), in reply to a question submitted by the CHAIRMAN, said that the form the organization referred to in the first paragraph could not yet be foreseen. If an unchallengeable organization came into being, offering all the requisite guarantees, the paragraph just adopted would not be operative, but until then, the drafting of its provisions should cover all possibilities.

Mr. LAMARLE (France) asked that the explanation given by Mr. Alexander should be mentioned in the Report to be submitted by the Special Committee to the Joint Committee.

The CHAIRMAN opened the discussion on the new wording (see further on) presented by the French Delegation to its amendment (see Annex No. 22) which had been examined during the Thirteenth and Nineteenth Meetings.

Mr. LAMARLE (France) said that the new wording of the French text had taken into account the comments made in the preceding discussion by various delegations, and in particular by the Italian Delegation.

Mr. Sokirkin (Union of Soviet Socialist Republics) pointed out that the expression "freedom to negotiate" was ambiguous, whereas in the first version of the French amendment the words "sovereignty" and "occupation of territory" were well-defined ideas in international law.

Mr. LAMARLE (France) observed that the new text was inspired by the experience of France in the recent war. One of the attributes of sovereignty was the active and passive right of representation. A government might have this right, yet be under the control of an Occupying Power.

Mr. Slavin (Union of Soviet Socialist Republics) considered that the first drafting was clearer than the second drafting of the French amendment, and ruled out difficulties of interpretation.

By 6 votes to 2 with 1 abstention the Committee adopted the French proposal.

The text adopted ran as follows:

"No derogation from the preceding provisions shall be made by special agreements between Powers one of which is restricted, even temporarily, in its freedom to negotiate with the other Power of its allies by reason of military events, more particularly where the whole, or a substantial part, of the territory of the said Power is occupied."

The meeting rose at 1.15 p.m.

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TWENTY-THIRDO CT MEETING

Tuesday 14 June 1949, 10 a.m.

Chairman: Mr. Plinio BOLLA (Switzerland)

Article 4/5/5/5 (continued)

The CHAIRMAN submitted the new draft of the Article which he had drawn up at the request of the Committee (see Summary Record of the Twenty-second Meeting).

This text was adopted with slight modifications.

Mr. Maresca (Italy) proposed that the expression "Parties to the conflict" in the first paragraph should be replaced by "Contracting Parties", and that the words "during and after hostilities" be added after the words "may conclude".

Mr. de Geouffre De La Pradelle (Monaco) supported the Italian proposal but, in order to extend the scope of the Article to the Protecting Powers, suggested that the expression "the Parties concerned" be used.

Mr. Sokirkin (Union of Soviet Socialist Republics) felt that it was not within the terms of refe-
rence of the Special Committee to provide for situations before and after hostilities, but only to ensure application of the Convention during a conflict. Such special agreements as were mentioned in the Article to be examined, were an exception rather than a rule. After the cessation of hostilities, the Convention would cease to operate and only specific provisions would continue to be applicable, but these special agreements should be considered as additions to the Convention and for use in wartime only.

Mr. Alexander (United Kingdom) reserved the right of his Delegation to come back to this point subsequently before the Joint Committee since their amendment had not been adopted on the occasion of the last meeting. He agreed to accept the Italian amendment but would abstain from voting.

The first Italian proposal to replace the words “Parties to the conflict” in the first paragraph by “Contracting Parties” was adopted by 6 votes, for, 1 against, with 5 abstentions.

The second proposal adding the words “during and after hostilities” in the first paragraph was defeated by 7 votes to 3 with 2 abstentions.

A third Italian proposal to replace the phrase “the rights which it confers upon them” at the end of the first paragraph by “the rights which it stipulates on their behalf” was defeated by 6 votes to 3 with 2 abstentions.

The Article was adopted as a whole by 10 votes to 2 and runs as follows:

“In addition to the agreements expressly provided for in Articles 12, 18 and 24, the Contracting Parties may conclude other special agreements for all matters concerning which they may deem it suitable to make separate provision. No special agreement shall adversely affect the situation of the wounded and sick, or of the members of medical personnel or of chaplains, as defined by the present Convention, nor restrict the rights which it confers upon them.”

The second paragraph of the Article remained unchanged.

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

The Italian Delegation proposed to introduce the following new Article:

“No contracting Party shall be allowed to absolve itself or any other contracting Party of any liability incurred by itself or by another contracting Party as a result of a failure to observe the present Convention”.

This amendment would be examined in relation to Articles 39 and 40 Wounded and Sick, 43 and 44 Maritime, 119 Prisoners of War and 130 Civilians, dealing with Penal Sanctions.

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

The Chairman observed that the Special Committee (see Summary Record of the Sixth Meeting), having considered that the scope of the fourth paragraph of Article 2 was too wide, had asked a Working Party to draw up a new provision of a more limited character.

Two methods which did not rule each other out, and which might possibly be dissimilar in the case of the four Conventions, were submitted by the Working Party:

“—either restrict the cases of conflicts not of an international character to which the Conventions should apply

—or restrict the contractual provisions to be applied in the case of a conflict which was not of an international character.”

The application of the Civilians Convention raised the greatest difficulties. After having successively abandoned the idea of an application by analogy—which was considered dangerous, because it permitted too much freedom of interpretation—and that of an enumeration of the Articles which would be inapplicable in the case of civil war—a system which appeared complicated and of doubtful efficacy—the Working Party considered it advisable to impose on the Contracting States only one obligation; that of complying in all cases with the underlying humanitarian principles of the Convention. This mandatory provision should be followed by a recommendation to the Parties to the conflict urging them, by means of special agreements, to put into effect all or part of the contractual provisions.

With regard to the three other Conventions, the Working Party considered that certain civil wars were sufficiently akin to international wars to justify the application of the provisions of these three Conventions as a whole.

However, it would be necessary to define these civil wars. Two concepts had been formulated in this connection: either to take as a basis formal criteria, or to take into consideration factual elements. The Working Party reached a compromise formula including amongst the formal criteria that of recognition of the status of belligerency of the insurgents by the *de jure* government; this would, however, not affect the legal status of the Parties to the conflict, provided that the dissident party possesses as factual criteria:
(1) an organized civil authority exercising *de facto* governmental functions over the population of a determinate portion of the national territory;

(2) a military force under the direction of the above civil authority;

(3) the means of enforcing the Convention and the other laws and customs of war.

The Working Party considered that it was up to the *de jure* government, under the supervision of the public opinion of the world, to judge whether the dissident party fulfilled the requisite conditions. On the other hand, it was of the opinion that the *de jure* government could not refrain from the application of the three Conventions, should the dissidents not comply therewith.

The draft Articles prepared by the Working Party were as follows:

(a) **Civilians Convention (new Article 2A):**

   "In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, the Parties to the conflict should endeavour to bring into force, by means of special agreements, all or part of the provisions of the present Convention, and in all circumstances shall act in accordance with the underlying humanitarian principles of the present Convention."

(b) **Wounded and Sick, Maritime and Prisoners of War Conventions (new Article 2A):**

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

   a. that the *de jure* government has recognized the status of belligerency of the adverse party, even for the sole purposes of the application of the present Convention, or

   b. that the adverse party possesses an organized civil authority exercising *de facto* governmental functions over the population of a determinate portion of the national territory, an organized military force under the direction of the above civil authority, and the means of enforcing the Convention and the other laws and customs of war; application of the Convention in these circumstances shall in no wise depend on the legal status of the Parties to the conflict.

   This obligation presupposes, furthermore, that the adverse party likewise recognizes its obligation in the conflict at issue to comply with the present Convention and the other laws and customs of war.

The provisions relating to the Protecting Powers shall, however, not be applicable, except in the instance of special agreement between the Parties to the conflict. In the absence of such agreement, an impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict.

In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, but which does not fulfil the conditions as set out above, the Parties to the conflict should endeavour to bring into force, by means of special agreements, all or part of the provisions of the present Convention, and in all circumstances shall act in accordance with the underlying humanitarian principles of the present Convention.

In all cases foreseen in the foregoing provisions, total or partial application of the present Convention shall not affect the legal status of the Parties to the conflict.

The **Chairman** added that amendments to the proposal made by the Working Party had been submitted by the French and Italian Delegations, whereas the Greek and Norwegian Delegations had withdrawn their amendments.

**Mr. Hart** (United Kingdom) was in agreement with the suggestion to use the text of the Working Party as a basis to which certain additions were desirable, and the United Kingdom Delegation would circulate those texts shortly.

After a discussion between General **Slavin** (Union of Soviet Socialist Republics), **Mr. Alexander** (United Kingdom) and Mr. **de Géouffre de la Pradelle** (Monaco), the Committee decided to take the Stockholm Draft as a basis of discussion and to consider the proposal made by the Working Party as an amendment to this text. The amendments tabled by the Italian, French and United Kingdom Delegations would be considered as amendments to the principal amendment.

**Mr. Alexander** (United Kingdom) tabled the motion to limit the time of speeches to 5 minutes.

The **Chairman** agreed to put this proposal to the vote at the next meeting.

*The meeting rose at 1.15 p.m.*
Article 2, fourth paragraph (continued)

The Chairman reminded the Committee of the motion tabled by the United Kingdom Delegation at the preceding meeting to limit the time of speeches to five minutes.

Mr. Alexander (United Kingdom) suggested that in view of the importance of the subject being discussed this morning, the time of speech of the first statement of each delegation on the subject of civil war should not have any time-limit, but that subsequent statements on this subject should be limited to five minutes.

This suggestion was adopted.

The Chairman proposed to examine first the French amendment of 8 July (see Annex No. 13), then the other two amendments made by the Italian and United Kingdom Delegations, and, lastly, the Stockholm Draft.

Mr. Lamarle (France) paid a tribute to the spirit of conciliation which all delegations had shown in this very complex matter. He felt that despite of the efforts made, the text of the Working Party still contained dangerous elements from the very nature of the subject it dealt with. The French Delegation considered that signatory Governments who were confronted with an insurgent movement would be in a dilemma: either they would never apply the clauses of the Conventions, or they would implicitly recognize that the adverse party had a character which was tantamount to that of a State.

The French Delegation wished the humanitarian rules contained in the Preamble of the Civilians Convention to be applied also to war of a non-international character. Such a Preamble should be added to the three other Conventions, and contain also a definition of judicial guarantees in penal matters.

Mr. Yingling (United States of America) felt that it would be difficult to mention the Preamble, in this Article, before knowing what provisions would be contained in that Preamble. He considered it would be preferable if the French amendment referred only to those Articles of the Convention which would be applied to civil war.

Sir Robert Craigie (United Kingdom) was in favour of some formula on the lines of the French amendment, and, subject to consideration of certain principles to be embodied in it, would be ready to support that amendment.

Mr. Yingling (United States of America) could not support the French amendment because it removed any obligation of the Parties to the Convention to apply it in any circumstances. The draft proposed by the Working Party included a definition of the restricted circumstances in which the Conventions would apply to civil war, and established the mutual obligations of the Parties.

General Oung (Burma) considered that the French proposal met all situations and was acceptable to the Asiatic countries he represented in the Special Committee.

Commander Smith (Australia) would support the draft of the Working Party.

Mr. de Geouffre de la Pradelle (Monaco) and Colonel Blanco (Uruguay) were in support of the French amendment.

Mr. Castberg (Norway) reminded the Committee that the Working Party’s document was a compromise, setting out very rigid conditions for the application of the Conventions. It was an improvement that point 4 of this proposal should contain the concept that, however it may be the humanitarian principles would be applied. The Norwegian Delegation would therefore vote in favour of this proposal and not in favour of the French amendment. The Norwegian Delegation advocated that a Committee of enquiry should determine whether the criteria for application of
the Convention were fulfilled, and that the findings of such a Committee should be made mandatory.

Mr. Carry (International Committee of the Red Cross) supported the French amendment. He feared that the rigid conditions laid down in the Working Party's document would result in interminable discussions between the Parties to the conflict, before it were decided that the Conventions could be applied. The merit of the French amendment was in adopting and embodying the humanitarian principles referred to in point 4 of the Working Party's document.

Mr. Yingling (United States of America) observed that the legal government would be the only signatory of the Conventions, and the dissidents would not be parties bound by its obligations. The French amendment spoke of the parties endeavouring to bring into force the Convention, and did not even obligate the High Contracting Parties to apply the humanitarian principles, as set out in point 4 of the Working Party's draft.

Sir Robert Craigie (United Kingdom) felt that the application of the Conventions to civil war created a new situation, containing many pitfalls; there was a danger in making the Articles too mandatory.

Mr. Lamarle (France), in reply to the Delegate for the United States of America, said that according to the French amendment the de jure governments were bound to apply the Conventions even if the dissidents were not obligated to do so.

Mr. de Geouffre de la Pradelles (Monaco) pointed out that the rebels might be regarded as already bound by the Convention, for two reasons. First, because the humanitarian provisions of the Geneva Conventions are of a super-contractual character; and also, and more particularly, because the Contracting Parties undertake not only to respect them, but to ensure respect for them, an article providing for their dissemination among the population through instruction. Therefore, the rebels are a part of the population in revolt of the Contracting State.

Mr. Carry (International Committee of the Red Cross) stated that the International Committee of the Red Cross would welcome the reinsertion in the Conventions of the words "in the name of their peoples", which had been deleted from Article 1 by the Stockholm Conference.

General Slavin (Union of Soviet Socialist Republics) felt that the draft of the Working Party did not give satisfaction. The object of the Conventions was to provide for their immediate application in case of a conflict of a non-international character. It was not for the Parties to the conflict to decide whether the Conventions should be applied or not. It was of paramount importance that upon the outbreak of a conflict, the application of the Conventions should be automatic. Eventually special agreements might be taken into consideration in the course of the conflict, but it would not be acceptable to leave persons who required protection without defence, and the Working Party's proposal, therefore, seemed unacceptable.

A suggestion made by the Norwegian Delegation to make decisions as to fulfilment of conditions dependable on a Committee of Enquiry, weakened the provisions further. He asked the French Delegate to formulate a new draft which could then be compared with the Stockholm text.

Mr. Agathocles (Greece) asked that the French proposal be referred to a Working Party, for re-drafting.

After an exchange of views, the Chairman summed up by saying that a Working Party, to include Representatives from France, which would have the Chairmanship, Italy, Monaco, the United Kingdom and the Union of Soviet Socialist Republics, would be set up to examine the French amendment and to report to the Special Committee.

The meeting rose at 1.15 p.m.
TWENTY-FIFTH MEETING

Thursday 16 June 1949, 10 a.m.

Chairman: Mr. Plinio BOLLA (Switzerland)

Article 8/9/9/9 (continued)

The Chairman recalled, in connection with this Article, the Memorandum submitted by the International Refugee Organization (see Annex No. 24) asking that a mention be made of that Organization, in addition to the reference of the International Committee of the Red Cross, with regard to the possibility of its fulfilling the functions of substituting Protecting Powers in the interests of stateless persons.

After an exchange of views, in which several delegations considered that the possibility of inviting the International Refugee Organization for this purpose was adequately covered by the first and the third paragraphs of the Article, Dr. Schnitzler (International Refugee Organization) recalled that the Secretary-General of the United Nations Organization had sent a Memorandum to the Economic and Social Council in respect of a permanent body to be set up to look after the legal protection of persons who were stateless. Such protection had a wider scope than the care and maintenance of refugees and displaced persons given by the International Refugee Organization. The protection of refugees had previously been carried out by the High Commissioner of the League of Nations and the Inter-Governmental Committee for Refugees. It was now hoped that the permanent organization to be set up by the United Nations for the legal protection of refugees would be included in the Article examined.

The Chairman invited to consider Article 8 of the Wounded and Sick Convention, paragraph by paragraph.

After a general discussion on points of drafting Article 8 Wounded and Sick and 9 of the other Conventions was adopted as a whole by 6 votes to 2, with 1 abstention (see Annex No. 25).

At the request of Mr. Sokirkin (Union of Soviet Socialist Republics), the Chairman agreed that in the Report of the Special Committee to the Joint Committee mention would be made that the Soviet Delegation was in favour of the Stockholm text.

Article 51/54/129/139 (continued)

After a general discussion on points of drafting, the Article in question was adopted by the Committee (see Annex No. 57).

The meeting rose at 1.15 p.m.
TWENTY-SIXTH MEETING
Monday 20 June 1949, 10 a.m.

Chairman: Mr. Plinio Bolla (Switzerland)

State of work

The Chairman summed up the work done by the Special Committee.

(1) War not of an international character.

A Working Party to deal with this question had been set up and had concluded its work. A Report on its work would be given by its Chairman, Mr. Lamarle (France), upon his return and the matter would then again be discussed by the Special Committee.

(2) Settlement of disputes.

A Working Party under the chairmanship of Mr. de Geouffre de la Pradelle (Monaco) had not yet concluded its work, but a Report would be drawn up the following week.

(3) Question of the High International Committee.

There was a French proposal in regard to this matter, and the Chairman of the Joint Committee intended to bring up the question in a meeting of the Joint Committee.

(4) Article 122 Prisoners of War Convention and Article 135 Civilians Convention.

These two Articles were referred for examination to Committee II and Committee III respectively.

(5) Penal Sanctions for violation of the Conventions.

The Chairman announced that a joint amendment submitted by several delegations had been withdrawn, and would be substituted by another joint amendment in a few days.

In reply to a question asked by the Delegate for the Union of Soviet Socialist Republics, Captain Mouton (Netherlands) said that the Netherlands, amendment on this subject, sponsoring the proposal made by the International Committee of the Red Cross in "Remarks and Proposals", stood until the new joint amendment would be tabled by several delegations, then it would be withdrawn.

The Chairman said that, with regard to the question of Penal Sanctions, it would be preferable for the Special Committee to suspend their discussions until the joint amendment had been tabled.

The meeting rose at 11 a.m.
TWENTY-SEVENTH MEETING  
Thursday 23 June 1949, 3 p.m.

Chairman: Mr. Plinio Bolla (Switzerland)

Designation of four Rapporteurs

The Chairman recalled that, at its Meeting on 3 May 1949, the Joint Committee had set up a Special Committee to deal with Article 2, fourth paragraph. No Rapporteur had been appointed until the outcome of the discussions on that subject would become known. The Chairman now invited the Special Committee to appoint one or more Rapporteurs to submit reports to the Joint Committee on the subjects which had subsequently been submitted to the Special Committee for consideration.

After an exchange of views, Mr. Alexander (United Kingdom) moved the proposal to invite Mr. Bolla (Chairman) to undertake the duties of a Rapporteur. This proposal was seconded by Mr. Lamarle (France).

The Chairman felt that it would be more appropriate to designate the Chairman of the Working Party which had dealt with the matter of civil war, Mr. Lamarle (France), to act as Rapporteur for this question. The Chairman of the Working Party which had considered the question of the settlement of disputes, Mr. de Geoufré de la Pradelle (Monaco), could act as Rapporteur on that subject.

The task of reporting on Penal Sanctions could be entrusted to Captain Mouton (Netherlands) who had been associated with the Committee of Legal Advisers of the International Committee of the Red Cross.

The Chairman himself would be ready to prepare a Report on all the other Common Articles.

The Committee agreed to the above proposals submitted by the Chairman.

The meeting rose at 3.35 p.m.

TWENTY-EIGHTH MEETING  
Friday 24 June 1949, 10 a.m.

Chairman: Mr. Plinio Bolla (Switzerland)

Article 2, fourth paragraph (continued)

Mr. Lamarle (France) presented the text drawn up by the second Working Party on the basis of the remarks formulated at the previous discussion of the French amendment to the proposal submitted by the first Working Party (see Summary Record of the Twenty-fourth Meeting). He pointed out that it offered in all cases and circumstances the chief advantage of permitting the automatic implementation of concrete and precise provisions which were the essence of humanitarian rules to be observed in cases of armed conflict not of an international character. These provisions had been reinforced, and enlarged to take into consideration the com-
ments made, in particular, by the Delegations for the United Kingdom and Burma, and the Representative of the International Committee of the Red Cross. The text, moreover, contained no clause of a political character which could possibly lead to contestation.

The Working Party considered that it was not appropriate to mention deportation, which was irrelevant in the case of civil war. On the other hand, it considered it necessary to introduce new clauses, in particular, the clause stipulating that the wounded and sick should be collected and cared for.

The text submitted to the Committee ran as follows:

"First paragraph. In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:

(1) Persons taking no active part in the hostilities, and those placed hors de combat by sickness, wounds, captivity or any other cause, shall be treated humanely in all circumstances and without any discrimination. To this end, the following acts are and shall remain prohibited with respect to the above-mentioned persons:

(a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
(b) taking of hostages;
(c) outrages upon personal dignity, in particular, humiliating and degrading treatment;
(d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

(2) The wounded and sick shall be collected and cared for.

(3) No adverse discrimination shall be practised on the basis of differences of race, colour, religion or faith, sex, birth or wealth.

Second paragraph. An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict.

Third paragraph. The Parties to the conflict should further endeavour to bring into force, by means of special agreements, all or part of the other provisions of the present Convention.

Fourth paragraph. The application of the preceding provisions shall not affect the legal status of the Parties to the conflict."

The Chairman indicated that the Soviet Delegation had asked for instructions from their Government regarding this new text, and had expressed the desire that the vote be deferred. The Soviet Delegation were, moreover, prevented from taking part in the discussions on that day, their members being occupied in other Committees.

There followed an exchange of views between Mr. Lamarle (France), Sir Robert Craigie (United Kingdom), Commander Smith (Australia), and General Oung (Burma) on the advisability of continuing the examination of the new text in the absence of the Soviet Delegation.

By 7 votes to 1, the Committee decided to continue the study of the new text, but to postpone the vote.

The Record of the Meeting would be elaborated more detailed than was customary in order that the delegations who were not present might have a complete picture of the discussions.

Mr. Yingling (United States of America) reiterated the point of view of the United States Delegation that it would be unfortunate if the obligation were not laid upon the Contracting States to apply the Conventions in certain instances of civil war. They therefore preferred the proposal made by the first Working Party (see Summary Record of the Twenty-third Meeting). The text drawn up by the second Working Party would in any case require certain modifications.

Mr. Yingling remarked firstly that the present Conference could not bind any Party who was not a Party to the Convention. Moreover, the acts of violence enumerated had already been prohibited by other international Conventions, and it seemed to serve no useful purpose to repeat such an enumeration.

With regard to judicial guarantees, the Delegate for the United States of America observed that standards varied from one country to another. In some countries, the accused person was considered guilty until proved innocent. Therefore the wording should include the concept that people should be given those specific judicial guarantees which were mentioned in the present Convention.

It might, furthermore, be more appropriate to say that the Parties to the conflict should accept the offer of the International Committee of the Red Cross.

Mr. Castberg (Norway) considered that the new text represented genuine progress, as com-
pared with the preceding proposal submitted by the French Delegation on 8 June (see Annex No. 13).

But the latter, by referring to the Preamble, granted the advantage of covering all the protected persons, whereas the new text covered only two categories of persons: those who took no part in the hostilities, and those who had been placed hors de combat. As a result of this, certain persons remained without protection, which was particularly regrettable in the instance of prohibiting to take hostages.

Mr. Lamarle (France) indicated that the expression “each Party to the conflict...” had been introduced as a result of the comment made in the course of the debates, that in accordance with Article 1, the Contracting State undertook to ensure respect for the Convention by its nationals. He was of the view that the Working Party's text protected all persons, except combatants at the time they were engaged in the fighting.

With regard to judicial prosecutions, Mr. Lamarle shared the point of view of the United States Delegate, and suggested that the term “judicial guarantees”, should be clearly defined, and that, in particular, mention should be made of the rights of defence.

Mr. Castberg (Norway) pointed out that, according to the proposal under discussion, a government with the intention of executing combatant insurgents, or of taking them as hostages instead of capturing them, would be at liberty to do so.

Mr. Yingling (United States of America) wished to reinforce what Mr. Castberg had said. It was necessary that the de jure government should treat insurgents as regular combatants.

Mr. Maresca (Italy) was of the view that Article 1 laid only an obligation on the Contracting State and its agencies. He proposed that the prohibition to take hostages should be completed by the prohibition of collective penalty. He approved the remarks made with regard to judicial prosecution, and considered that it would be appropriate to adopt the formula contained in Article 58 of the Civilians Convention.

Lastly, he suggested stipulating expressly that the Parties would be responsible for all acts committed by persons belonging to their armed forces.

To take into account the remark made by the Delegate for Norway, the Chairman proposed to complete the enumeration of persons protected by the following words: “...and those who surrender...”.

Mr. Siorbet (International Committee of the Red Cross) preferred the formula: “...and persons who lay down arms...”. Moreover, he remarked that the French proposal of 8 June 1949 referred to the Preamble, and felt that this suggestion should be adopted. Should the Conference adopt a Preamble, a reference to the latter could be reintroduced into the Article, whilst maintaining the enumeration of the acts prohibited.

The Chairman indicated that this was a task which could be undertaken by the Coordination Committee.

Sir Robert Craigie (United Kingdom), suggested adding the words “In respect of the above humanitarian principles,...” in paragraph 1, point 3, at the beginning of the sentence.

The meeting rose at 12.15 p.m.
TWENTY-NINTH MEETING
Monday 27 June 1949, 10 a.m.

Chairman: Mr. Plinio Bolla (Switzerland)

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

The CHAIRMAN recalled that the International Committee of the Red Cross had communicated (see Annex No. 50) a correction to the texts published in the Working Document No. 3 of the Conference. The amendments submitted by the Netherlands Delegation, the Delegation of the United States of America, the Italian Delegation, and the Canadian Delegation, had been withdrawn in favour of the new joint amendment, tabled by the following States: Australia, Belgium, Brazil, the United States of America, France, Italy, Norway, Netherlands, the United Kingdom and Switzerland (see Annex No. 49).

The Greek Delegation had made certain additional observations in their Memorandum, and the Delegation of the Union of Soviet Socialist Republics had proposed the addition of Article 10A to the Wounded and Sick Convention and Article II A to the Maritime Warfare Convention (see Summary Record of the Sixth Meeting of the Convention II).

The basic Document was the Stockholm text as amended by the International Committee of the Red Cross.

Captain Mouton (Netherlands) presented the Joint Amendment.

He stated that the sole object of the amendment was to ensure respect to the Conventions. He pointed out that the Wounded and Sick Conventions of 1906 and 1929 and the Maritime Convention of 1907 contained a provision whereby the High Contracting Parties were obliged to propose to their legislators, should their penal laws be inadequate, the necessary measures for repression of any act contrary to these Conventions. The Prisoners of War Convention of 1929 contained no such provisions. Captain Mouton referred to the Report published in 1934 by Colonel Favre, Member of the International Committee of the Red Cross, showing that many penal laws did not contain Articles repressing all acts contrary to the Conventions of 1907 and 1929. The absence of such Articles led to violations and to reprisals. In many cases the penal provisions which were introduced applied only to nationals of the country in question and not to the nationals of other countries.

The Stockholm Conference went a step further and envisaged an obligation on each Contracting Party to search for offenders against the Convention irrespective of their nationality, and to prosecute them before their own courts, or to hand them over for trial to another Contracting Party.

In pursuance of a recommendation of the Stockholm Conference, the International Committee of the Red Cross convoked a group of experts, who drew up new proposals. The Committee published them in its pamphlet “Remarks and Proposals” (pages 18 to 19).

The Netherlands Delegation, in cooperation with the Delegations which had been signatories of the joint amendment, had proposed a text imposing on the High Contracting Parties the obligation to enact legislation providing effective penalties for persons committing, or ordering to be committed, any of the grave breaches enumerated in the amendment.

Article 5 of the Genocide Convention had been taken as a model for this amendment. It was felt preferable to use the term “grave breaches” instead of “crimes”, as the idea of what constituted a crime varied from one country to another.

No time limit for the enactment of the legislation in question was specified; but it might be found advisable in that connection to consider the insertion of a provision on the lines of Article 29 of the Wounded and Sick Convention of 1929 namely a notification to the Swiss Government of the penal laws, however, without fixing a time limit.

Mr. Sokirkin (Union of Soviet Socialist Republics) considered that the new proposal seemed in certain respects an improvement on the Stockholm Draft; but the two-year time
limit laid down in the latter should not be dis­

pensed with. Again, the term “crimes” was
easily understandable in every country, and
seemed preferable to “grave breaches”.

Mr. Kruse-Jensen (Norway) was in support
of the amendment, but asked what the words “in
so far as this Convention cannot be otherwise
implemented” at the beginning of the first para­
graph of Article 17 meant.

Captain Mouton (Netherlands) replied that
in certain countries special legislation would have
to be passed to punish violation of an international
Convention, whereas in others that would not be
necessary.

The Chairman proposed the deletion of the
phrase “in so far as this Convention cannot be
otherwise implemented”, and also of the words “in
accordance with their respective Constitutions”.

The Chairman’s proposal was accepted
by the authors of the amendment.

Mr. Yingling (United States of America) was
opposed to the mention of a time limit, as the
legislative systems of the various countries differed
from one another. He added that he could not
accept the substitution of the word “crimes” for
“grave breaches”. It would be for the penal
legislation of each nation to classify the breaches
enumerated in the Conventions.

Mr. Jones (Australia) agreed with the Delegate
of the United States of America.

Mr. Sokirkin (Union of Soviet Socialist
Republics) reminded the meeting that the Soviet
amendment, introducing Articles 10A and 11A
of the Wounded and Sick and Maritime Warfare
Conventions, had been unanimously approved by
Committee I. The amendment proposed that
certain acts should be treated as serious crimes.

The proposal to add to the first paragraph of
Article A a time limit of two years was rejected
by 6 votes to 1 with 3 abstentions.

The proposal to replace the words “grave
breaches” by “grave crimes” was rejected by 7
votes to 1 with 3 abstentions.

The first paragraph of Article A was adopted
by 10 votes to 1 with 1 abstention, in the following
form:

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

Mr. Sokirkin (Union of Soviet Socialist
Republics) stated as grounds for his adverse vote
that the Article as drafted was nothing more than
a recommendation, as it did not include the
words “grave crimes” and gave no time limit.

The meeting rose at 1 p.m.

THIRTIETH MEETING
Monday 27 June 1949, 3.30 p.m.

Chairman: Mr. Plinio Bolla (Switzerland)

First part of the Report of the Special Committee
to the Joint Committee

The Chairman introduced the Report he had
prepared for the Joint Committee on questions
which had not been entrusted to other Rapporteurs.

Proposals were made by Mr. Yingling (United
States of America), Mr. Alexander (United
Kingdom), Mr. Maresca (Italy) and Mr. Sokirkin
(Union of Soviet Socialist Republics). The last
named requested in particular that the Report
should only be finally approved if the Articles
adopted by the Special Committee had already
been distributed.

The Chairman said that the proposals made
would be borne in mind as far as possible, and
suggested that the Committee should give its final approval of the Report up to Article 4 Wounded and Sick and 5 of the other Conventions inclusive, and its provisional approval to the remaining Articles which had not yet been distributed.

Agreed.

Mr. JONES (Australia) reserved the opinion of the Head of his Delegation who was at the moment not in Geneva.

Articles 39, 40/43, 44/119/130 (continued)

The CHAIRMAN asked the Committee to proceed to the examination of the second paragraph of Article A of the joint amendment discussed at the preceding meeting.

Mr. Sokirkin (Union of Soviet Socialist Republics) considered that the text was too vague and that the terminology in particular should be more precise. He preferred the Stockholm text, which contained the expression "war crime".

Mr. Maresca (Italy) thought that the obligation to search for persons accused of breaches of the Convention should be limited to the Parties to the conflict. He suggested that the words "in accordance with conditions provided for in its own laws" should be added after "if it prefers".

Mr. De Gouffre de la Pradelle (Monaco) considered that the intention of the authors of the amendment would not be fulfilled, if the effect of the Article was limited to the Parties to the conflict. He proposed that, in order to give effect to the proposal submitted by the Delegate of Italy, an obligation should be laid on the State holding the person concerned in order to hand him over as soon as the country claiming him instituted proceedings. He regretted that the words "war crimes" had not been included in the text.

Captain Mouton (Netherlands) said that the aim was not to produce a penal code, but to make it obligatory for the Contracting Parties to include certain provisions in their own codes. "War crimes" were breaches of provisions in the laws of war and were thus covered by the word "breach". The latter word could, however, be replaced by the word "violation".

Mr. Cahen-Salvador (France) said that "breach" was a general term applicable to all violations of laws or regulations. He considered that a person could only be handed over to another Contracting Party if the latter had already brought, or declared itself ready to bring proceedings against the person concerned for similar or connected breaches.

General Oung (Burma) suggested that the word "offence" should be substituted by the word "breach" in English.

The meeting rose at 6.45 p.m.

THIRTY-FIRST MEETING
Tuesday 28 June 1949, 10 a.m.

Chairman: Mr. Plinio Bolla (Switzerland)

Articles 39, 40/43, 44/119/130 (continued)

The Committee continued to examine Article A as proposed in the joint amendment (see Annex No. 49).

The CHAIRMAN suggested, with a view to the remarks made during the previous Meeting, that the last sentence of the second paragraph of the Article be altered as follows: 
"...or if it prefers, and provided that a prima facie case has been made out by another High Contracting Party concerned, hand them over, in accordance with the provisions of its own legislation, for trial to such Contracting Party."
Mr. Sokirkin (Union of Soviet Socialist Republics) suggested that the second paragraph of Article A be replaced by the corresponding provisions of the Stockholm Draft.

Mr. Agathocles (Greece) pointed out that the Article leaves it to the discretion of a State to decide as to the possibility of delivering an accused person another State for judgment, even if the latter is not qualified to do so. He suggested that it should be made clear that the other State should give proof of its interest and its competence.

The amendment of the Delegation of Greece was rejected by 6 votes to 5.

The proposition made by the Delegation of Italy to insert the words “in accordance with the provisions of its own legislation”, was adopted by 6 votes to 2 with 3 abstentions.

Thus amended, the second paragraph of Article A was adopted by 10 votes, with 1 abstention.

No delegation having asked to speak, the third paragraph was adopted.

The Committee proceeded to the consideration of Article B mentioned in the joint amendment.

The Chairman asked the Committee to proceed to the consideration of Article B for each Convention separately.

(a) Wounded and Sick Convention

Mr. Sokirkin (Union of Soviet Socialist Republics) recalled that the Drafting Committee of Committee I had adopted the amendment submitted by the Delegation of the Union of Soviet Socialist Republics for Article 10 A. He asked that reference to this amendment be made in Article B.

Captain Mouton (Netherlands) called attention to the fact that all the acts mentioned in the Soviet amendment are covered by Article B.

Mr. Sokirkin (Union of Soviet Socialist Republics) thought that mention should expressly be made of certain acts which are not covered by Article B and which are also grave breaches. The Soviet proposal was rejected by 6 votes to 2, with 1 abstention.

Mr. Maresca (Italy) supported by Mr. Bagge (Denmark) proposed to add the words “and the seizure” after “destruction”.

Mr. Jones (Australia) and Mr. Sinclair (United Kingdom) supported this proposal in so far as the word “saisie” was translated into English by “appropriation”.

After discussion it was agreed to use the word “appropriation” in French also.

The Italian proposal was adopted by 8 votes with 1 abstention.

Thus completed Article B of the Wounded and Sick Convention was adopted by 8 votes with 1 abstention.

(b) Maritime Convention

Completed in the same manner, Article B of the Maritime Convention was adopted by 8 votes with 1 abstention.

(c) Prisoners of War Convention

An exchange of views between Mr. Cahen-Salvador (France), Mr. Yingling (United States of America), Mr. Alexander (United Kingdom) and Mr. Siorret (International Committee of the Red Cross) ensued on the advisability of mentioning here breaches of the judicial guarantees provided for in the Conventions.

By 4 votes to 4, with 1 abstention, the Committee rejected this suggestion.

Article B was adopted by 7 votes to 1, with 2 abstentions, subject to the French translation of the English word “fair” of the text of the Conventions Prisoners of War and Civilians.

The meeting rose at 1.15 p.m.
Articles 39, 40, 43, 44, 119/130 (continued)

The Committee proceeded to examine Article B (see Annex No. 49).

(c) Prisoners of War Convention.

The CHAIRMAN read the end of the Article in the new French version which runs as follows: "...... d'être jugé régulièrement et impartialement selon les prescriptions de la présente Convention".

This new wording was adopted.

(d) Civilians Convention.

Mr. MARESCA (Italy) seconded by Mr. SOKIRKIN (Union of Soviet Socialist Republics) proposed to delete the word "unlawful" before the word "deportation".

Mr. YINGLING (United States of America) and Mr. SINCLAIR (United Kingdom) noted in this connection that some countries had enacted legislation concerning aliens which provides for deporting persons who have entered the national territory illegally. Such deportations are legal and are therefore not subject to the Article in question.

Captain MOUTON (Netherlands) said that the French translation of the words describing the just mentioned breach could be improved.

After some discussion on this point, the Committee agreed on the following translation: "la destruction et l'appropriation de biens non-justifiées par des nécessités militaires et exécutées sur une grande échelle de façon illicite et arbitraire".

Mr. MARESCA (Italy) having asked that collective penalties should be included in the list breaches, Captain MOUTON (Netherlands) pointed out that these were already prohibited by Article 50 of the Hague Regulations, as well as by the guarantees of a fair trial stipulated in the new Article B.

Mr. MARESCA (Italy) considered that Article 50 of the Hague Regulations to which the Netherlands Delegate had referred did not exclude the idea of joint responsibility.

Mr. SOKIRKIN (Union of Soviet Socialist Republics) seconded the Italian proposal.

Captain MOUTON (Netherlands) agreed with Mr. Maresca’s arguments.

Mr. SINCLAIR (United Kingdom) and Mr. YINGLING (United States of America) thought that it would be inadvisable to include collective penalties in “grave breaches”, since such penalties are not always illegal and depend upon the offence for which they have been imposed.

An exchange of views then took place between Captain MOUTON (Netherlands), Mr. YINGLING (United States of America), Mr. MARESCA (Italy), Sir Robert CRAIGIE (United Kingdom), Mr. KRUSE-JENSEN (Norway) and Mr. SOKIRKIN (Union of Soviet Socialist Republics) with reference to the expediency of treating collective penalties as grave breaches.

At the request of the Netherlands Delegation, a vote on this point was adjourned to the next Meeting.

As the Committee had not voted on this Article at the Thirty-first Meeting, it was now adopted by 6 votes to 1.

Second part of the Report drawn up by the Special Committee and submitted to the Joint Committee

The second part of the Report (Articles 5, 6, 7, 8 Wounded and Sick and 6, 7, 8, 9 of the other Conventions) was unanimously adopted.
Article 2, fourth paragraph (continued)

The Committee continued to examine the proposal submitted by the second Working Party (see Summary Record of Twenty-eighth Meeting).

Mr. Sokirkin (Union of Soviet Socialist Republics) stated that his Delegation had not yet received instructions from his Government on the point in question and was consequently not in a position to take part in the discussion.

At Sir Robert Craigie’s (United Kingdom) suggestion, the Committee decided to continue the discussion of this Article but to adjourn the vote to a subsequent meeting.

The Chairman then put the Article for discussion paragraph by paragraph.

First paragraph.

Mr. Yingling (United States of America), seconded by Sir Robert Craigie (United Kingdom) proposed to replace the words “each Party to the conflict” by the word “these” referring to the High Contracting Parties.

Mr. Siordet (International Committee of the Red Cross) thought that this would tend to distort the meaning of those who had framed this Article, and who wished to bind not only the legal Government, but also the insurgents.

The Chairman noted that the Representative of the International Committee of the Red Cross had, at the twenty-eighth Meeting, with a view to meeting the Norwegian Delegate’s proposal, proposed to complete the enumeration of the persons entitled to protection by adding the words “......... and persons who lay down arms.........”.

Mr. Alexander (United Kingdom) preferred the words: “including members of armed forces who have laid down their arms”.

Mr. Yingling (United States) thought that combatants should also be entitled to some protection. The use of poison or gas for instance was prohibited by international law; but international law only applied to wars between States, and the prohibition should be extended to cover civil wars also. He therefore proposed that all combatants should be entitled to the protection as stated by the humanitarian principles of the Convention.

Mr. Alexander (United Kingdom) proposed to delete point 3 and embody this idea in point 1.

Mr. Siordet (International Committee of the Red Cross) seconded this proposal, provided that mention was also made of the nationality.

Mr. Yingling (United States of America) proposed to replace the words “civilized peoples” by “the present Convention”.

Second paragraph.

Mr. Alexander (United Kingdom) proposed to alter the paragraph as follows:

“Provided that the other Party to the conflict is also prepared to do so, the High Contracting Party concerned shall accept, if offered, the services of an impartial humanitarian body, such as the International Committee of the Red Cross.”

Third and Fourth paragraphs.

No observations.

The meeting rose at 6 p.m.
THIRTY-THIRD MEETING

Wednesday 29 June 1949, 4 p.m.

Chairman: Mr. Plinio Bolla (Switzerland)

Third part drawn up by the Report of the Special Committee and submitted to the Joint Committee

The third part of the Special Committee's Report presented to the Joint Committee (Articles 38/41/117/118 to 43/46/120/131) was adopted unanimously.

Articles 39, 40, 43, 44, 119, 130 (continued)

The Committee continued to examine Article B "Civilians".

The Chairman put for discussion the proposal which the Delegate of Italy had tabled at the previous Meeting to include collective punishments in the "grave breaches" referred to in the Convention.

Captain Mouton (Netherlands) pointed out that collective punishments were already forbidden in the Civilians Convention. The act could however be committed on a minor scale, for instance if a camp commandant ordered an earlier reveille, because some internees were always too late for their work. Such an act could not be called a grave breach and was covered in the last paragraph of Article A. In serious cases these breaches were covered by implication in the provision of the present Article according to which protected persons were guaranteed fair and regular trial. Captain Mouton therefore considered the Italian amendment superfluous.

The Italian proposal was rejected by 5 votes to 2, with 2 abstentions.

The new Article B was adopted by 9 votes with 2 abstentions, its wording being as follows:

"Grave breaches to which the preceding Article relates shall be those involving any of the following acts, if committed against persons or property protected by the Convention:

the wilful killing, torture or maltreatment, including biological experiments, the wilful causing of great suffering or serious injury to body or health, the unlawful deportation or transfer or unlawful confinement, compelling a protected person to serve in the forces of a hostile Power, or wilfully depriving a protected person of the rights of fair and regular trial prescribed in this Convention, the taking of hostages and the extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly."

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

The Committee proceeded to consider the Italian proposal (see Summary Record of the Twenty-third Meeting).

The Chairman said that the Delegation of Italy had modified its proposal by replacing the words "as a result of failure to observe the present Convention" by the words "as a result of breaches provided for in the preceding Article".

Mr. Maresca (Italy) said that the amendment tabled by his Delegation followed logically from the preceding Article on breaches of the Convention and was complementary to it. The State must be held responsible for offences committed by its nationals, and it would be illogical for individuals to be prosecuted while the State was able to evade its liability by means of agreements with another State.

The Italian proposal was adopted by 4 votes to 2, with 4 abstentions.

Article 2, fourth paragraph

At the request of the Delegation of the Union of Soviet Socialist Republics, the discussion was adjourned.

The meeting rose at 5 p.m.
Joint Committee

SPECIAL COMMITTEE

34TH MEETING

THIRTY-FOURTH MEETING

Friday 1 July 1949, 10 a.m.

Chairman: Colonel Hector Blanco (Uruguay)

High International Committee (Article 7A)

(continued)

The Committee proceeded to consider the French proposal to set up a High International Committee (see Annex No. 21).

The Chairman summarized the discussion on the French proposal which had already taken place in the Special Committee (see Summary Record of the Thirteenth Meeting), and in the Joint Committee (see Summary Record of the Eighth Meeting).

Mr. Bagge (Denmark) doubted the possibility of forming a body fulfilling all requirements, composed of members from different States and capable of working effectively to the satisfaction of all the Nations. The formation of such a body would be difficult and would involve heavy expenditure.

Under these circumstances, he saw no reason for instituting a new body, the more so as the International Committee of the Red Cross had already given numerous proofs of its efficiency.

Mr. Sokirkin (Union of Soviet Socialist Republics) shared the view of the Delegate of Denmark. The body in question would have to be acknowledged, and the members forming part of it accepted by the Nations as a whole. It would have to act in the event of there no longer being a neutral State capable of undertaking the duties of a Protecting Power, and would therefore be in some way outside and superior to the existing world.

His Delegation could not agree with the assumption, on which the French proposal was based, that no neutral State would be left in the event of a future war.

Colonel Hodgson (Australia) considered that a new body, if it was formed, should fill an existing need and should be practical. He pointed out the apparent contradiction between the intention that the body should take over all the duties of a Protecting Power and the limitation of its rôle in practice to the humanitarian tasks which are only part of those duties.

Again, the belligerents have the right to refuse the intervention of a Protecting Power, whereas exception could not be taken to that of the High International Committee.

He invited the French Delegation to withdraw its proposal and suggested that it should address a preliminary enquiry to the various States through diplomatic channels.

Mr. Yingling (United States of America) stated that while the French Delegation deserved commendation for submitting a concrete proposal, nevertheless, the project was too extensive for consideration at this Conference and should be pursued through the normal channels. He had previously indicated that the United States Delegation would support a Conference resolution recommending to Governments consideration of the question of setting up a body as a substitute for the Protecting Powers.

Sir Robert Craigie (United Kingdom) thought that the Conference had insufficient time at its disposal to make a detailed study of the French proposal which raised many practical difficulties. It was however of interest, and could not be disregarded. He suggested the introduction in the final act of a recommendation to the Governments, inviting them to study the action to be taken in cases where a Protecting Power no longer existed.

Mr. Cahen-Salvador (France) said that the sole object of the French proposal was to fill a gap in the Conventions. The body which they proposed to form would not be costly. It could meet on a piece of internationalized territory, or...
on several such territories in different parts of the world.

His Delegation felt that the Conference was particularly competent to discuss the problem and he would welcome any proposals made. He suggested that a clause should be added to Article 8 Wounded and Sick and 9 of the other Conventions obliging the Nations to form without delay a body which would be capable of taking the place of Protecting Powers no longer in a position to carry out their rôle, and whose Statute would form an integral part of the Conventions.

Sir Robert Craigie (United Kingdom) thought that a Resolution might lead to a consultation amongst the Governments. He said that a draft Resolution drawn up by his Delegation would be distributed to members of the Committee.

The meeting rose at 12.45 p.m.

THIRTY-FIFTH MEETING
Monday 4 July 1949, 10 a.m.

Chairman: Colonel Hector Blanco (Uruguay)

Article 2, fourth paragraph (continued)

The Committee continued to examine the proposal submitted by the second Working Party (see Summary Record of the Twenty-eighth Meeting).

Colonel Hodgson (Australia) said that the Delegation of Australia was in favour of the text drawn up by the first Working Party (see Summary Record of the Twenty-third Meeting). He requested that this text should be submitted to the Joint Committee at the same time as the one based on the proposal under discussion.

Mr. Lamarle (France) said that he did not merely make reservations on particular points in the text of the first Working Party, but disagreed with the whole principle on which it was based. The Delegation of France could only support a draft based on the proposal of the second Working Party which confined itself to the application of humanitarian principles in case of civil war.

Mr. Sokirkin (Union of Soviet Socialist Republics) said that he had not yet received instructions from his Government regarding the text under discussion, but hoped to receive them within a few days. He proposed that both discussion and voting of the second Working Party's proposal should be postponed until Thursday, 7 July 1949.

This proposal was rejected by 7 votes to 1.

Mr. YINGLING (United States of America) pointed out that it had already been decided at a previous meeting to continue with the discussion of the text. He proposed that the vote on the various amendments should be postponed to Thursday 7 July 1949 but that discussion on that date should be limited to short statements.

Mr. Agathocles (Greece) supported the proposal submitted by the Delegation of the United States of America.

This proposal was adopted by 7 votes to nil, with 1 abstention.

The Chairman then put for discussion the amendments previously submitted to the second Working Party's proposal.

Mr. YINGLING (United States of America) said that his Delegation's amendment (see Summary Record of the Twenty-second Meeting) to the first paragraph consisted of replacing in the English text the words "each Party to the conflict" by the words "such Party" and not by the word "these".

Miss Robert (Switzerland) thought that the principle of the amendment in question also applied to the third paragraph of the proposal.

Mr. Lamarle (France) said that if insurgents claimed the privileges of a Power they should
also undertake the corresponding responsibilities. The third paragraph should be omitted altogether unless both Parties to a civil war were to be bound by it.

Sir Robert Craigie (United Kingdom) supported the United States amendment on the ground that insurgents could not be bound by an agreement to which they were not a party, whereas any civilized government should feel bound to apply the principles of the Convention even if the insurgents failed to apply them. He did not agree with the suggestion of the Delegate of Switzerland, as there was a distinction between the first and third paragraphs of the proposal, the former being mandatory and the latter an exhortation.

Mr. Lamarle (France) said that he would not insist on the wording of the proposal if a better wording could be found. He wished, however, to place on record the great difficulty which existed in applying the rules of international warfare to cases of civil war.

Colonel Hodgson (Australia) considered that the de jure government would be bound to carry out all the provisions of the Article even if the insurgents were mere bandits, whereas no obligation whatsoever would rest on the latter.

Mr. Lamarle (France) said that they wished to achieve practical and not merely verbal reciprocity. He added that the French Government was not in any way embarrassed by the prospect of abiding the elementary humanitarian rules laid down, even in cases where the other party did not apply them.

Mr. Agathocles (Greece) was of the view that, from the legal standpoint, they should be considered bound by the Convention; failure by the insurgents to accede to the Conventions was not an insurmountable obstacle; he based his arguments on two reasons:

(a) The Conventions which were being drafted could and should be considered as law making Conventions, i.e., as rules which should be applicable not only on behalf of or against the Contracting Parties, but also in circumstances which were analogous to those governed by the said Conventions;

(b) Insurgents and even bandits were obviously nationals of some State, and were thereby bound by the obligations undertaken by the latter; since practically all civilized States would sign the Conventions which were being drawn up, it therefore followed that, subject to exceptions, any insurgent or bandit would be a national of a

Signatory State, and would ipso facto be bound by the Convention. This legal interpretation enabled insurgents to be considered as automatically bound by the Convention — the aim of the rules which were being drawn up — since the de jure governments would apply the humanitarian principles even without being bound by the Conventions to do so; it was mainly insurgents which should be required to observe a humane attitude.

For these reasons, Mr. Agathocles was strongly in favour of maintaining the words “each Party to the conflict”.

Mr. Siordet (International Committee of the Red Cross) concurred with these views.

Mr. Maresca (Italy) proposed the deletion from the first paragraph, sub-paragraph 1, of the word “captivity”, which implied the status of a prisoner of war and was incompatible with the idea of civil war. His Delegation had first thought of substituting the word “capture”, but the Norwegian amendment (see Summary Record of the Twenty-eighth Meeting) made this unnecessary.

Mr. Yingling (United States of America) saw no difficulty in the use of the word “captivity” which meant “taking into custody” either by police or by opposing troops.

Sir Robert Craigie (United Kingdom) proposed to delete the first paragraph, sub-paragraph 3, and to replace the words “in all circumstances and without any discrimination” in the first paragraph, sub-paragraph 1, first sentence, by the words “treated humanely, without any discrimination on a basis of race, colour, religion or faith, sex, birth or wealth.”

Mr. Siordet (International Committee of the Red Cross) supported the above proposal subject to mention also being made of nationality.

Mr. Yingling (United States of America) thought that the inclusion of the word “nationality” might raise legal difficulties, as the laws of different countries would have to be taken into account.

Mr. Lamarle (France) said that the word “nationality” had not been included in the second Working Party’s proposal owing to the fact that it might be perfectly legal for a government to treat insurgents who were its own nationals differently from foreigners taking part in a civil war. The latter might be looked on as being more guilty than nationals of the country concerned, or they might, on the other hand, be treated less severely or merely regarded as subject to deportation.
Mr. Maresca (Italy) withdrew the Italian proposal (see Summary Record of the Twenty-eighth Meeting) to add collective penalties to the list of acts prohibited.

The Chairman put for discussion the United Kingdom amendment to the second paragraph (see Summary Record of the Thirty-second Meeting).

Mr. Yingsling (United States of America) objected that the amendment as worded would oblige the High Contracting Party to accept the services of a humanitarian body chosen by the insurgents. Again, no mention was made of any obligation to take action to secure the services of an impartial humanitarian body. He suggested that in the original wording of the proposal tabled by the second Working Party the words "may offer its" should be replaced by "shall be requested to furnish its".

Mr. Siordet (International Committee of the Red Cross) preferred the text produced by the second Working Party. The strength of the International Committee of the Red Cross was its independence, which would be jeopardized if the I.C.R.C. were mentioned in any mandatory clause.

Sir Robert Craigie (United Kingdom) said that he would not insist on the amendment, but would like to hear the views of delegates who had not yet spoken.

Mr. Lamarle (France) preferred the original text, particularly so after hearing the views expressed by the Representative of the International Committee of the Red Cross.

Mr. Cohn (Denmark) shared the views of the United States Delegate.

Mr. Maresca (Italy) said that his proposal (see Summary Record of the Twenty-eighth Meeting) to add a new fifth paragraph reading "each Party to the conflict shall be responsible for all acts committed by persons belonging to their armed forces" would no longer apply if the United States amendment proposing to substitute in the first paragraph the words "such Party" for the words "each Party to the conflict" were adopted.

The meeting rose at 1.30 p.m.

THIRTY-SIXTH MEETING

Wednesday 6 July 1949, 10 a.m.

Chairman: Colonel Hector Blanco (Uruguay)

Last part of the first Report (from Article 44/47/123/132)

Mr. Lamarle (France) pointed out that the communication to the United Nations provided for in Article 52 Wounded and Sick, 55 Maritime, 130 "Prisoners of War", 140 "Civilians" was a mere formality and entailed no legal effect whatsoever as regards the validity of the Conventions.

Colonel Hodgson (Australia) thought that, according to Article 102 of the Charter of the United Nations, the original Conventions had to be transmitted to the United Nations Secretariat for registration.

Mr. Yingsling (United States of America) pointed out that only a certified copy, and not the original, has to be transmitted to the United Nations for registrations. Colonel Hodgson (Australia) declared himself satisfied.

The last part of the first Report of the Special Committee of the Joint Committee had been adopted.
International Committee (Article 7A)
(continued)

The Chairman, on behalf of Uruguay, supported the proposal made by the French Delegation to set up a High International Committee. Since, through the interplay of alliances, countries which at the beginning of a conflict might be neutral, would subsequently become belligerents, the Chairman felt that there should be a proportionate representation for Latin and North America to the extent of one third of the membership. He suggested that a time limit of six months should be allowed to set up this organization which, in the event of a war when there were no Protecting Powers, would safeguard the populations and human values.

The Delegation of the United Kingdom had prepared a draft resolution as suggested at the end of the Thirty-fourth Meeting which was as follows:

"(1) Whereas the High Contracting Parties recognize that circumstances may arise in a future international conflict in which there will be no Protecting Power with whose cooperation and under whose scrutiny the Convention for the Protection of Victims of War can be applied, and

(2) Whereas Article 8 of the Convention of .......... for the Relief of the Wounded and Sick in Armed Forces in the Field, Article 9 of the Convention of .......... for the Relief of Wounded, Sick and Shipwrecked Members of Armed Forces on Sea, Article 9 of the Convention of .......... relative to the Treatment of Prisoners of War, and Article 9 of the Convention of .......... for the Protection of Civilian Persons in Time of War provide that the High Contracting Parties may at any time agree to entrust to a body which offers all guarantees of impartiality and efficacy the duties incumbent on the Protecting Powers by virtue of the aforesaid Conventions,

(3) The High Contracting Parties recommend that consideration shall be given as soon as possible to proposals for the setting up of a High International Committee, the members of which shall be selected from amongst persons of high standing, without distinction of nationality, known for their moral authority, their spiritual and intellectual independence and the services they have rendered to humanity and the functions of which shall be, in the absence of a Protecting Power, to fulfil the duties performed by Protecting Powers in regard to the application of the Conventions for the Protection of Victims of War."

Mr. Sokirkin (Union of Soviet Socialist Republics) considered that the present Conference was not competent to study the French proposal, and it would be advisable that it should be studied thoroughly in the usual diplomatic way. It had also been pointed out that such an organism as proposed was not absolutely necessary, nor was its structure practicable. The Soviet Delegation, therefore, felt that neither the French proposal nor the United Kingdom Resolution could be accepted.

Mr. Yingling (United States of America) advocated deleting the words "High Contracting Parties", since the Resolution would be adopted by the Conference in its final act.

The United States Delegation would not object to presenting a Resolution recommending to the Governments that such a body be contemplated. The United States Delegation considered, however, that the matter was too extensive for immediate decision. If the third paragraph were worded in such a way as to invite consideration of the constitution of a body such as mentioned in the second paragraph, the United States Delegation would be able to support it.

Colonel Hodgson (Australia) supported the first and second paragraphs of the proposed Resolution with the minor change suggested by the Representative of the United States of America. He felt that the third paragraph went too far, since it indicated the framework to be given to the High International Committee.

General Oung (Burma) was in support of the French proposal and of the United Kingdom Resolution. Such a Committee as proposed would require international confidence which could only be obtained if there were equal representation of the five Continents in its membership. A certain permanency and also regional activity would be required, and it could be assumed that the duties to be discharged would go far beyond the duties of a normal Protecting Power. A permanent control of the wartime duties of the Committee would seem necessary.

Mr. Sokirkin (Union of Soviet Socialist Republics) remarked that any recommendation by this Conference in the line of the United Kingdom Resolution would lead to the conclusion that they were actually in sympathy with the French proposal. The French Government could at its discretion present its proposal through the usual channels.

Mr. Cahen-Salvador (France) said that such a body as envisaged would be called upon to
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act only when the conflict had broken out, but that it should already have a structure which had been previously set up, including a peacetime staff liable to be enlarged in time of war. It did not seem reasonable to be deterred by the question of costs in view of the losses of all kinds which war entitled.

Mr. Sokirkin (Union of Soviet Socialist Republics) and Mr. Cohn (Denmark) both agreed as to the advisability of deleting any implication that a future international war was inevitable, in view of the effect this would produce on the public mind. Standardization of wartime conditions should be avoided.

After discussion the United Kingdom Resolution was amended as follows:

"Whereas circumstances may arise in the event of the outbreak of a future international conflict in which there will be no Protecting Power with whose co-operation and under whose scrutiny the Conventions for the Protection of Victims of War can be applied; and

Whereas Article 8 of the Convention of . . . . . . . . for the Relief of the Wounded and Sick in Armed Forces in the Field, Article 9 of the Convention of . . . . . . . . for the Relief of Wounded, Sick and Shipwrecked Members of

Armed Forces on Sea, Article 9 of the Convention of . . . . . . . . relative to the Treatment of Prisoners of War, and Article 9 of the Convention of . . . . . . . . for the Protection of Civilian Persons in Time of War provide that the High Contracting Parties may at any time agree to entrust to a body which offers all guarantees of impartiality and efficacy the duties incumbent on the Protecting Powers by virtue of the afore said Conventions;

Now, therefore, it is recommended that consideration be given as soon as possible to the advisability of setting up an international body, in the absence of a Protecting Power, the functions of which shall be to fulfil the duties performed by Protecting Powers in regard to the application of the Convention for the Protection of Victims of War."

This Resolution was adopted by 7 votes to nil with 1 abstention.

Colonel Hodgson (Australia) expressed the hope that the French Government would take the initiative in consulting the States through the diplomatic channel, and on the basis of the replies received would call an international Conference.

The meeting rose at 1.15 p.m.

THIRTY-SEVENTH MEETING

Friday 8 July 1949, 10 a.m.

Chairman: Colonel Hector Blanco (Uruguay)

Article 2, fourth paragraph (continued)

After an exchange of views, the Special Committee agreed to begin a discussion on the substitute proposal by the Delegation for the Union of Soviet Socialist Republics for the Draft submitted by the second Working Party which dealt with Article 2, fourth paragraph. The vote on this proposal would be deferred until the afternoon.

The proposal made by the Soviet Delegation was worded as follows:

A. Wounded and Sick and Maritime Conventions.

"In the case of armed conflict not of an international character occurring in the territory of one of the States, Parties to the present Convention, each Party to the conflict shall apply all the provisions of the present Convention guaranteeing:

Humane treatment for the wounded and sick; prohibition of all discriminatory treat-
ment of wounded and sick practised on the basis of differences of race, colour, religion, sex, birth or fortune."

B. Prisoners of War Convention.

"In the case of armed conflict not of an international character occurring in the territory of one of the States, Parties to the present Convention, each Party to the conflict shall apply all the provisions of the present Convention guaranteeing:

Humane treatment for prisoners of war; compliance with all established rules connected with the prisoners of war régime; prohibition of all discriminatory treatment of prisoners of war practised on the basis of differences of race, colour, religion, sex, birth or fortune."

C. Civilians Convention.

"In the case of armed conflict not of an international character occurring in the territory of one of the States, Parties to the present Convention, each Party to the conflict shall apply all the provisions of the present Convention guaranteeing:

Humane treatment for the civilian population; prohibition on the territory occupied by the armed forces of either of the parties, of reprisals against the civilian population, the taking of hostages, the destruction and damaging of property which are not justified by the necessities of war, prohibition of any discriminatory treatment of the civilian population practised on the basis of differences of race, colour, religion, sex, birth or fortune."

Mr. Morosov (Union of Soviet Socialist Republics), in introducing his Delegation’s proposal, said that it had been set up by a desire to find a compromise text which would take into account the principal suggestion made by the two Working Parties and certain amendments which had been submitted by various delegations. Its guiding principle was that the obligation should be laid on both Parties in all the Conventions. Special emphasis was laid in the Civilian Convention upon prohibition to exterminate populations.

However, it did not seem possible to apply all the provisions of the Conventions in a conflict of a non-international character.

The novel features of the Soviet proposal were that the paragraph concerning special agreements was deleted. This deletion would be preferable to the proposal drawn up by the second Working Party tending to set up a universal Convention in miniature to be applied in the case of civil war.

It would hardly seem possible to summarize in twenty-five lines the four hundred Articles of the four Conventions, as the Working Party had tried to do. Such a procedure would inevitably entail the renunciation of many provisions drawn up by the Conference for the protection of war victims.

The Soviet proposal had, therefore, selected humanitarian elements of both texts worked out by the Working Parties without seeking to give them a concrete form. Inhuman treatment of human beings and any other acts which would be condemned in the case of international war between States should likewise be condemned in the instance of civil war.

The paragraph concerning the legal status of the Parties to the conflict appeared redundant and had been deleted, since the legal status of such Parties would in no way be affected.

It did not seem necessary to mention the International Committee of the Red Cross, since the Committee or any other body would always be free to offer their services to perform humanitarian duties.

Sir Robert Craigie (United Kingdom) felt that the Soviet proposal offered greater elasticity than the Stockholm text. However, he felt that the term "all the provisions", in the Wounded and Sick and Maritime Conventions was not appropriate, as the governments would find difficulty in applying all these provisions to insurgents’ leaders. Difficulty would also be found in determining which provisions of the Conventions concerning humane treatment should be applied. He felt it therefore regrettable that mention of the International Committee of the Red Cross had not been made. Moreover, if civil war developed to considerable proportions, there would be an inclination on both sides to introduce, by special agreements, as many as possible of the provisions of the Convention. It would therefore seem appropriate not to delete the paragraph on special agreements. Lastly, the United Kingdom Delegation could not see their way to accepting the deletion of the paragraph on the legal status of the Parties.

Mr. Lamarle (France) considered that the Soviet proposal was an interesting suggestion by reason of its concision and its purpose in reconciling the various points of view. He was in agreement with Section A of the proposal. The French Government, however, could not see their way to applying all the rules contained in the Conventions to a non-international war. The concept of national sovereignty was intimately bound up with the idea of civil war, and, in such cases, all governments would insist that their sovereignty remains intact. The Delegate for France had already expressed this idea when the matter of
the limitation of the rights of the Protecting Power had been discussed. Likewise, all rules governing the régime for the treatment of prisoners of war could not be applied in a civil war because, here again, the mandates conferred upon Protecting Powers would thereby impair the sovereignty of governments. The same remarks would hold for the Civilians Convention. Lastly, the mention of the International Committee of the Red Cross corresponded to an unavoidable necessity, since it might have to substitute a full Protecting Power whose intervention might not be acceptable, by reason of the need for safeguarding the national sovereignty.

Mr. Morosov (Union of Soviet Socialist Republics) would be in agreement with the maintenance of the paragraph on special agreements, and with the mention of the International Committee of the Red Cross. With regard to the treatment of prisoners of war and civilians, in both cases the Soviet text aimed at the application of the most humane treatment possible, but this did not involve the application of all the contractual provisions. The purpose was to apply the general provisions, but not the technical ones, such as those relating to courts and penal sanctions.

Mr. Cohn (Denmark) was in agreement with the remarks made in favour of the Soviet proposal by the Delegates for the United Kingdom and France. The sovereignty of the State would remain intact although humanitarian treatment was given to war victims. He proposed therefore to replace the term “all the provisions of the present Convention” by “those provisions of the present Convention which guarantee”. The words “each Party to the conflict” should be replaced by “the signatory Parties”.

It seemed impossible to apply to insurgents the régime of prisoners of war, including army pay.

He suggested to add a criterion to the conditions of application, precisating that the word “political armed conflict” should be inserted. This would differentiate between cases of a judicial character and those of a political character.

Colonel Hodgson (Australia) reiterated that his Delegation would be unable to accept the Stockholm text nor the text submitted by the second Working Party. He felt there was little difference between the Soviet text and the text of the second Working Party. The new Soviet text appeared to lay stress on the humanitarian character of the obligations, but each Party was left to evaluate the conditions under which they would apply the Conventions. It was certainly not intended to apply its provisions to bandits, but only to conflicts of the magnitude of a civil war. The Australian Delegation would adhere to the text of the first Working Party.

Miss Robert (Switzerland) recalled that the Swiss Delegation had supported the text of the first Working Party which had not met with the general agreement, and was therefore in support of the text of the second Working Party. The formula “each Party to the conflict” was not acceptable as only the de jure governments were bound by the Convention. This term should be replaced by “High Contracting Parties” (see Summary Record of Thirty-seventh Meeting).

Mr. Lamarle (France) did not consider that the adjective “political” was appropriate, because the conflict might be of a religious character or have aspects pertaining to common law. The French Government was prepared to apply the principles contained in the text of the second Working Party, even to bandits.

Mr. Maresca (Italy) felt that the term “each Party to the conflict” should remain. He could accept the term “all the provisions”. On the other hand, the term “prisoner of war” was not acceptable, as applied to insurgents, since this was a definite concept according to the rules of warfare. These implied a payment of army pay, and penal sanctions, for instance.

The meeting rose at 1.00 p.m.
THIRTY-EIGHTH MEETING
Friday 8 July 1949, 3.30 p.m.

Chairman: Colonel Hector Blanco (Uruguay)

Article 2, fourth paragraph (new Article 2A)
(continued)

There were under consideration:

The Drafts of the first Working Party (see Summary Record of the Twenty-third Meeting).

The Italian and the United Kingdom amendments thereto.

The Draft of the second Working Party (see Summary Record of the Twenty-eighth Meeting).

The amendments submitted thereto during the discussion.

The Soviet proposal (see Summary Record of the Twenty-seventh Meeting).

All the above were to be examined on the basis of the Stockholm text.

At the suggestion of Mr. Alexander (United Kingdom), it was agreed to vote first on the Soviet proposal, which was rejected by 1 vote for, 9 against.

Amendments submitted during the discussion of the proposal of the second Working Party.

First paragraph.

Preamble: The amendment tabled by the United States Delegation to replace “each Party to the conflict” by “such party” was rejected by 1 vote for, 4 against with 5 abstentions.

Figure 1, first paragraph.

The amendment tabled by the Delegations for Norway and the United Kingdom to begin the sentence as follows:

“Persons taking no active part in hostilities, including members of armed forces, who have laid down their arms...”

was adopted by 5 votes for, 1 against with 4 abstentions.

Sir Robert Craigie (United Kingdom) had previously proposed that the word “who” should be replaced by “which”, to indicate that the armed forces as a whole must lay down their arms. The amendment was rejected by 1 vote for, 3 against with 6 abstentions. The United Kingdom amendment to word the end of the sentence as follows:

“shall in all circumstances be treated humanely, without any discrimination on a basis of race, colour, religion or faith, sex, birth or wealth”

was adopted by 5 votes for, 1 against with 4 abstentions.

The Italian proposal to replace the word “captivity” by “detention” was adopted by 4 votes for, 1 against with 5 abstentions.

Figure 1, second paragraph.

The Italian amendment to word this paragraph:

“to this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons”

was adopted by 5 votes for, with 5 abstentions.

Figure 1, letter d.

The amendment tabled by the Delegation for the United States of America to replace the expression “by civilized peoples” by the expression “by the present Convention” was rejected by 1 vote for, 2 against with 7 abstentions.

Figure 3.

The proposal made by the United Kingdom Delegation to delete this sentence was adopted by 6 votes for, with 4 abstentions.

Second paragraph.

The amendment tabled by the United States Delegation to word this paragraph as follows:
"An impartial humanitarian body, such as the International Committee of the Red Cross, shall be requested to furnish its services to the Parties to the conflict" was rejected by 3 votes for, 3 against with 4 abstentions.
The Delegation for Italy withdrew their amendment to add a new paragraph.
The amended Article 2A would run as follows:

First paragraph

1. In case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:

   (1) Persons taking no active part in the hostilities, including members of armed forces, who have laid down their arms, and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely without any discrimination on a basis of race, colour, religion or faith, sex, birth or wealth. To this end the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

      (a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;

      (b) taking of hostages;

      (c) outrages upon personal dignity, in particular, humiliating and degrading treatment;

      (d) the passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

   (2) The wounded and sick shall be collected and cared for.

Second paragraph.

An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict.

Third paragraph.

The Parties to the conflict should further endeavour to bring into force, by means of special agreements, all or part of the other provisions of the present Convention.

Fourth paragraph.

The application of the preceding provisions shall not affect the legal status of the Parties to the conflict."

Paragraph 1 of the above amended proposal for Article 2A was rejected by 5 votes for, with 5 against.
Paragraph 2 was rejected by 4 votes for, 5 against with 1 abstention.
Paragraph 3 was rejected by 5 votes for, with 5 against.
Paragraph 4 fell because of the preceding votes.
The amended Article as a whole was therefore rejected.

The meeting rose at 6.45 p.m.
THIRTY-NINTH MEETING
Monday 11 July 1949, 3.30 p.m.

Chairman: Mr. Plinio Bolla (Switzerland)

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

Colonel BLANCO (Uruguay), thought that he could not vote, in view of the vote taken on the draft drawn up by the second Working Party on 8 July when he was President and stated that he would have voted in favour of this text and that therefore, the vote would have been 6 to 5. He reserved his right to vote on a future occasion in this connection.

Mr. LAMARLE (France) reserved the position of his Delegation with regard to the validity of the vote on the second Working Party's draft.

Sir Robert CRAIGIE (United Kingdom) associated his Delegation with the remarks made by the Delegate for France.

The **Chairman** noted the declarations made by the Delegations for Uruguay, France and the United Kingdom.

The **Chairman** pointed out that two amendments had been tabled concerning the Draft submitted by the first Working Party of 25 May (see *Summary Record of the Twenty-third Meeting*), by an Italian amendment of 30 May, a United Kingdom amendment of 14 June.

The Italian amendment was rejected by 7 votes for, nil against, with 3 abstentions.

Sir Robert CRAIGIE (United Kingdom) reserved the right to submit the United Kingdom amendment of 14 June to the Joint Committee, and refrained from tabling it before the Special Committee.

The draft drawn up by the first Working Party of 25 May, considered as an amendment to the Stockholm text, was rejected by 4 votes for and 7 against.

Article 2, fourth paragraph, of the Stockholm text, was rejected by nil vote for, 9 against with 1 abstention.

The **Chairman** concluded that the Special Committee had decided that Article 2, fourth paragraph, should be deleted and should not be replaced by another text.

General OUNG (Burma) explained that the Eastern countries he represented in the Special Committee could not agree to an extension of the Conventions to civil war, and if such a provision were included, they would not be able to sign the Conventions. He had, therefore, voted against this paragraph.

Colonel HODGSON (Australia) considered that the Special Committee should submit to the Joint Committee a report in which the texts of the two Working Parties might be inserted as an addendum. It would be for the Joint Committee to decide whether a special Article or a paragraph under Article 2 should be inserted to cover the case of civil war.

Mr. MOROSOV (Union of Soviet Socialist Republics) agreed that it was not for the Special Committee to decide whether the text on this subject should be inserted or not in the Convention. The Soviet Delegation asked that its text be included in the report to the Special Committee as a minority text. He felt that the other two Working Party texts which had been rejected should also be submitted as minority texts.

On the proposal by Sir Robert CRAIGIE (United Kingdom), the **Chairman** agreed to act as Rapporteur on this question before the Joint Committee.

**Report drawn up by the Working Party on the settlement of disputes**

(a) Procedure of good offices and consultation (Article 9 Wounded and Sick and Article 10 of the other Conventions).

Mr. SOKIRKIN (Union of Soviet Socialist Republics) suggested that the proposed addition "interpretation of the Conventions", as suggested by the United States Delegation, be deleted.
The Soviet proposal to delete the word "interpretation" was rejected by 2 votes for, with 10 against.

The following wording for the first paragraph of Article 9 and 10 in the other Conventions, as proposed by the Working Party, was adopted by 10 votes for, nil against with 2 abstentions:

"In cases where they deem it advisable in the interest of protected persons, particularly in cases of disagreement between the Parties to the conflict as to the application or interpretation of the provisions of the present Convention, the Protecting Powers shall lend their good offices with a view to settling the disagreement."

The second paragraph in the text proposed by the Working Party, which corresponded to the Stockholm text, was adopted by 10 votes for, 1 against with 1 abstention.

\((b)\) Procedure of enquiry and conciliation (Article 41 Wounded and Sick and Article 45 Maritime Conventions).

The Chairman opened the discussion on the text adopted by the Working Party which reads as follows:

"At the request of the belligerent, an enquiry shall be instituted, in a manner to be decided between the interested parties concerning any alleged violation of the Convention.

"If an agreement has not been reached concerning the procedure for the enquiry, the parties should agree on the choice of an umpire, who will decide upon the procedure to be followed.

"Once the violation has been established, the belligerents shall put an end to it and shall repress it within the briefest possible delay."

Mr. YINGLING (United States of America) recalled that the United States Delegation still preferred the method of selecting the Commission of Enquiry as laid down in the Stockholm text and asked that the words "while accepting this solution" in the Report of the Working Party be deleted.

The text proposed by the Working Party was adopted by 10 votes for, 1 against with 1 abstention.

Mr. LAMARLE (France) recalled the views of certain delegations that procedure before the International Court would be slow and inadequate.

\((c)\) Judicial Settlement.

The Chairman recalled that the Working Party had proposed to insert the following provision in the Conventions:

"The States, Parties to the present Convention, who have not recognized as compulsory ipso facto and without special agreement, in relation to any other State accepting the same obligation, the jurisdiction of the International Court of Justice in the circumstances mentioned in Article 36 of the Statute of the Court, undertake to recognize the competency of the Court in all matters concerning the interpretation or application of the present Convention."

Mr. SOKIRKIN (Union of Soviet Socialist Republics) objected to the addition proposed by the Working Party of a provision according to which Parties signatories to the Convention would be bound by the Statute of the International Court of Justice. All countries were not members of the United Nations, and there was a difference between the status of Member countries and Non-Member countries concerning the International Court, as set out in Article 35 of the Statute of the Court. He, therefore, considered that the Working Party's draft went against the stipulations of the United Nations Charter and were not within the province of the present Conference.

The proposal made by the Working Party to insert in the four Conventions a new provision on judicial settlement was adopted by 10 votes for, 1 against with 1 abstention.

Mr. LAMARLE (France) pointed out that there might be cases when the two parties to the dispute might not be in agreement as to recourse to the International Court of Justice or to a Commission of Enquiry.

Mr. COHN (Denmark) observed that two courses might be followed: the applicant might ask the adverse party which procedure it preferred, and if there were disagreement, the case could be settled by the International Court itself.

M. PILLOUD (International Committee of the Red Cross) felt it was important to find a proper place in the Convention for the insertion of this Article. He considered it would be preferable to introduce a new paragraph into Article 9, Wounded and Sick and into Article 10 of the other Conventions.

Mr. LAMARLE (France) recalled the views of certain delegations that procedure before the International Court would be slow and inadequate.
He suggested the addition of the words: "as a main procedure in peacetime and as a subsidiary procedure in wartime".

Sir Robert Craigie (United Kingdom) proposed to introduce a paragraph as follows at the beginning of the text adopted by the Special Committee:

"If the difference has not been settled by means of good offices, consultation, enquiry or by any other means foreseen in a Convention in force between the States, or by a special agreement concluded between the parties, the parties should submit the difference to an impartial judicial or arbitration body, which might be the International Court of Justice."

Mr. Yingling (United States of America) thought that the difficulty raised by the French Delegate might be overcome by adding to the end of the text "... which cannot be settled by any other means".

Mr. Lamarle (France) accepted this proposal.

Colonel Hodgson (Australia) suggested that this point should be referred back to the Working Party for further consideration. He felt that, according to Articles 34, 35 and 36 of the Statute of the International Court of Justice, some of the High Contracting Parties to the present Conventions would not be competent to apply to the Court, and the Court would not be competent to receive their applications.

Mr. Lamarle (France) agreed to refer the matter back to the Working Party.

Mr. Yingling (United States of America) saw no purpose in such a course. The Working Party held the view, which was shared by the United States Delegation, that parties to the present Convention could agree that matters concerning the interpretation or application of the Convention could be referred to the International Court. The latter course should be used only if other courses failed.

Mr. Cohn (Denmark) concurred with this view.

Mr. Lamarle (France) agreed to prepare a compromise text.

Sir Robert Craigie (United Kingdom) supported this proposal made by the Delegate for France.

The Chairman agreed to leave the matter in abeyance until the next meeting.

Designation of a Rapporteur for the question of the Settlement of Disputes

The Chairman suggested, and Mr. Yingling (United States of America) seconded, the designation of Mr. Cohn (Denmark) as Rapporteur for the question of the settlement of disputes.

This suggestion was accepted.

Designation of a Rapporteur for the question of the High International Committee

The Chairman proposed that Mr. Alexander (United Kingdom) be designated as Rapporteur for the question of the High International Committee.

This proposal was accepted.

The meeting rose at 5.50 p.m.
FORTIETH MEETING
Tuesday 12 July 1949, 3 p.m.

Chairman: Mr. Plinio Bolla (Switzerland)

Report on Penal Sanctions in case of violation of the Conventions

Mr. Sokirkin (Union of Soviet Socialist Republics) considered that the Report should have presented more clearly the views of all the delegations with regard to Penal Sanctions.

The Chairman noted that the Special Committee approved the Report on Penal Sanctions.

Settlement of Disputes (continued)

Mr. Yingling (United States of America) felt that no amendment was necessary to the text adopted for the judicial settlement of disputes. The practical procedure which would be followed would be that a Party to the conflict which had a complaint would bring it to a Protecting Power, under, say, Article 9 of the Wounded and Sick Convention. That Power would use its good offices to try and get the Parties to the conflict to agree to a settlement of the dispute. If this failed, the Parties to the conflict were obligated, under Article 41, to try to find some method of settlement. If they agreed, they would not apply to the International Court. If not, one or the other party would go to the Court.

The United States Delegation suggested that the new Article should be inserted in the Convention by the Drafting Committee in an appropriate place.

Mr. Lamarle (France) concurred with the Delegate for the United States of America and felt that the selection of recourse to be followed would be carried out automatically. He, therefore, withdrew his proposal.

Sir Robert Craigie (United Kingdom) was of the same opinion as the Delegates for the United States of America and France, and suggested that the text, as passed by the Special Committee, should remain unchanged.

Mr. Sokirkin (Union of Soviet Socialist Republics) did not see the practical necessity for including in the Conventions a mandatory provision of recourse to the Court of Justice. The present Conference was not competent to obligate the States to recognize the jurisdiction of the Court of Justice, since some of the signatory countries might not be members of the United Nations. Article 36 of the Statute of the Court stipulated that the States Parties to the Statute might at any time declare that they recognized as compulsory ipso facto and without special agreement, in relation to any other State accepting the same obligation, the jurisdiction of the Court in certain circumstances. It did not, therefore, seem appropriate for the present Conventions to include a provision which was contrary to the Statute of the Court.

Mr. Maresca (Italy) shared the views of the Delegates for France, the United States of America and the United Kingdom. He felt, however, that the International Court was competent to deal with the legal aspect of certain questions which might be taken up by other bodies as regards the other aspects. There was no contradiction between the present Conventions and Article 36 of the Statute of the Court, since the latter stipulated only that the States Parties to the Statute were free to recognize the jurisdiction of the Court.

Mr. Cohn (Denmark) considered that it was appropriate that the new provision should be an independent Article and that the Drafting Committee should select its place of insertion.

The Chairman agreed with this suggestion. During the Thirty-ninth Meeting on 11 July the Special Committee had agreed to insert in the Prisoners of War and Civilians Conventions an Article on the procedure of enquiry which would...
be worded similarly to Article 41 of the Wounded and Sick and Article 45 of the Maritime Conventions. A coordination between those Articles and Articles III of the Prisoners of War and 120 of the Civilians Conventions should be established.

He proposed that the Special Committee drew the attention of Committees II and III to the need for correlating these articles.

The meeting rose at 4.15 p.m.

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FORTY-FIRST MEETING
Friday 15 July 1949, 4 p.m.

Chairman: Mr. Plinio Bolla (Switzerland)

Approval of three Reports drawn up by the Special Committee of the Joint Committee

1) Draft Resolution concerning Article 8 Wounded and Sick and Article 9 of the other Conventions.

Mr. Sokirkin (Union of Soviet Socialist Republics) suggested that the last sentence of this Report, proposing that the text adopted be inserted in the final Act of the Conference, be deleted.

This proposal was accepted, and the Report thus amended was adopted.

2) Settlement of Disputes (Articles 9 Wounded and Sick and 10 of the other Conventions; 41 Wounded and Sick and 45 Maritime Conventions).

After an exchange of views between Mr. Yingling (United States of America), Mr. Cohn (Denmark), Rapporteur, and the Chairman, the following wording was adopted for the third paragraph of the commentary concerning Articles 41 Wounded and Sick and 45 Maritime Conventions:

"In the text submitted by the Special Committee, the initiative for the enquiry procedure lay with either one of the belligerents and not with any other Contracting Party."

3) Application of the Conventions to armed conflicts not of an international character.

In response to a request made by Mr. Sokirkin (Union of Soviet Socialist Republics), the Chairman proposed to include the Soviet Delegation's proposal in a new Annex F instead of incorporating it in the Report.

This proposal was accepted.

At the suggestion of the Chairman, a conclusion would be added to the Report to the effect that the Special Committee invited the attention of the Joint Committee to the following texts:

The second draft of the first Working Party (Annexes B and C);

The draft of the second Working Party as amended by the Special Committee (Annex E);

The proposal submitted by the Soviet Delegation (Annex F).

The Chairman proposed, and Colonel Blanco (Uruguay) agreed to the suggestion that his statement made at the meeting of the Special Committee on the 11 July 1949, in regard to the reasons why he had abstained from voting at the Thirty-eighth Meeting, be appended to the Report.

Colonel Blanco (Uruguay) accepted this suggestion.

General Oung (Burma) recalled that the Asiatic countries which were represented by him at the Special Committee could not see their way to accepting Conventions which were extended to civil wars. He asked that this statement be included in the Report.

He felt that the last paragraph should be deleted.

Mr. Yingling (United States of America) and Colonel Hodgson (Australia) were in favour of the retention of the last paragraph as being a fair statement of the views of the majority of the Committee.

The deletion of the last paragraph was defeated by 5 votes in favour of its maintenance, 1 against, with 2 abstentions.

The Report, as amended, was unanimously approved.

The meeting rose at 6 p.m.
First Report drawn up by the Special Committee of the Joint Committee
27 June 1949

At its Third Meeting on 29 April 1949, the Joint Committee charged a Special Committee with the task of finding a compromise formula for the provision in the fourth paragraph of Article 2 of the four draft Conventions relating to armed conflicts not of an international character. The ten following Delegations were elected members of this Special Committee: Australia, United States of America, France, Greece, Italy, Monaco, Norway, United Kingdom, Switzerland, Union of Soviet Socialist Republics.

At its Seventh Meeting on 17 May 1949 the Joint Committee decided to extend the terms of reference of the Special Committee to include the consideration of the Articles common to the four draft Conventions, in order that the second reading might be facilitated. The Joint Committee decided at the same time to include in the membership of the Special Committee the Delegations for Burma and Uruguay, thus ensuring the representation of Asia and Latin America. Moreover, it was decided that any delegation tabling an amendment could participate in the discussions on that amendment which took place in the Special Committee.

The Special Committee held its First Meeting on 3 May 1949. It nominated as its President Mr. Bolla (Switzerland). At its Eighth Meeting on 23 May 1949, it elected as Vice-President Colonel Blanco, Delegate for Uruguay, and at its Twenty-seventh Meeting on 23 June 1949 it designated four Rapporteurs, Mr. Lamarle (France) for the question of application of the Conventions in the case of civil war, Mr. de Geouffre de la Pradelle (Monaco) for the question of settlement of disputes, Captain Mouton (Netherlands) for the question of Penal Sanctions, and Mr. Bolla (Switzerland) for the other questions.

The Special Committee has until now held 30 meetings. It reached a final conclusion with regard to all the questions which had been referred to it, with the exception of the following:

(a) Article 2, fourth paragraph (application of the Conventions in case of civil war):

This provision was twice examined by a first Working Party. The Special Committee is working at present at a proposal drawn up by a second Working Party.

(b) Article 9/10/10/10, and Article 41/45/45/45 (settlement of disputes):

These texts and the amendments tabled in connection with them are at present being considered by a Working Party.

(c) Article 122 (Prisoners of War) and Article 135 (Civilians) were referred by the Special Committee respectively to Committees II and III, who decided to examine them.

(d) A French proposal relating to the institution of a High International Committee with the cooperation of which, and under whose supervision the Conventions would be applied, failing a Protecting Power, was referred to the Joint Committee after a preliminary discussion (see Annex No. 21).

(e) Articles 39-40/43-44/119/130 (Penal Sanctions in case of violation of the Conventions) are at present being considered by the Special Committee.

Some of the Articles adopted by the Special Committee have already been distributed, namely Articles 1/1/1/1, 2/2/2/2 and 4/5/5/5. The present Report is concerned only with those Articles.

Article 1:

No amendment was tabled in regard to this provision which is identical in the four Conventions, and which was adopted according to the Stockholm drafting.

Article 2:

The Special Committee decided to separate from this Article the fourth paragraph relating to the application of the Conventions to conflicts not
of an international character, with a view, possibly, to replace this paragraph by an Article 2A.

The first and second paragraphs did not give rise to any amendments and were adopted according to the Stockholm text.

With regard to the third paragraph, amendments had been tabled by the Delegations for Canada, Belgium, and Italy. A further suggestion had also been made by the International Committee of the Red Cross in their "Remarks and Proposals".

The Canadian proposal suggested adding the following sentence:

"The Convention shall also apply to a Power not a Party to the present Convention so long as this Power complies therewith."

The Belgian proposal suggested replacing the third paragraph by the following text:

"Should one of the Powers in conflict not be a Party to the present Convention, the Powers which are a Party to the latter need only be bound by it in so far as their mutual relations are concerned. However, the Powers which are a Party to the Convention shall invite the Power which is not a Party to it to accept the terms of the said Convention; as from the latter Power's acceptance of the Convention, all Powers concerned shall be bound by it."

The Delegation for Italy, considering that the text of the third paragraph might give rise to two interpretations, suggested clarifying it by using the following wording:

"The Powers who are a Party to the present Convention shall be bound by it in their mutual relations, even if one of the Powers in conflict is not a Party to the present Convention."

The International Committee of the Red Cross suggested adding to the third paragraph the two following sentences:

"In the event of an international conflict between one of the High Contracting Parties and a Power which is not bound by the present Convention, the Contracting Party shall apply the provisions thereof. This obligation shall stand unless, after a reasonable lapse of time, the Power not bound by the present Convention states its refusal to apply it, or in fact fails to apply it."

The proposal submitted by the International Committee of the Red Cross was taken up by the Delegation for Norway, with, however, the deletion of the words "after a reasonable lapse of time".

At its Tenth Meeting, the Special Committee rejected the Canadian amendment by 5 votes to 1, with 2 abstentions. It likewise rejected the Norwegian proposal by 3 votes to 2 with 3 abstentions, and the Belgian amendment by 3 votes to 1 with 4 abstentions. In the course of the debates, the President of the Special Committee had submitted a compromise text, running as follows:

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

The first sentence of this text was adopted unanimously. The second by 7 votes with 1 abstention. The Australian Delegation suggested the first sentence of the text adopted should be amended as follows:

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

This suggestion was referred to the Drafting Committee of the Conference.

The majority of the Special Committee were guided by the following considerations:

Article 2, third paragraph, referred to the possibility of a conflict in which one or several States would be engaged on the one hand, and several States, on the other. When in either one or other group of belligerents, or in both, one or several States were not Parties to the Convention, the clausula si omnes would not be applicable; on the other hand, the States Parties to the Conventions must remain bound by it in their mutual relations. In the instance of a war of this character, the Convention could not directly govern the relations between a State Party to the Convention and an adverse State not Party to the Convention. As a general rule, a Convention could lay obligations only on Contracting States. But, according to the spirit of the four Conventions, the Contracting States shall apply them, in so far as possible, as being the codification of rules which are generally recognized. The text adopted by the Special Committee, therefore, laid upon the Contracting State, in the instance envisaged, the obligation to recognize that the Convention be applied to the non-Contracting adverse State, in so far as the latter accepted and applied the provisions thereof. The Contracting State was therefore not bound to apply the Convention in its relations with the adverse non-Contracting State if the latter declared that it did not recognize itself bound by the Convention or while making such a statement, it did not abide by it in practice. A hypocritical declaration, belied by the facts, was not sufficient.
On this point, the text adopted differed from the Belgian amendment. But a declaration was necessary, contrary to the Canadian amendment, according to which an attitude on the part of the non-Contracting State in conformity with the Convention would have sufficed to make it applicable. The declaration of the non-Contracting State might be made spontaneously; it might also be brought about by a summons or by an invitation on the part of the Contracting State, or by intervention on the part of an international body. In this connection, the Convention could not lay down a uniform procedure, nor fix the details of the latter. The Convention would be applicable as soon as the declaration was made. It would cease to be applicable as soon as the declaration was clearly disavowed by the attitude of the non-Contracting belligerent.

(The text adopted by the Special Committee is contained in Annex No. 14.)

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

The Canadian amendment was withdrawn.

The United Kingdom Delegation proposed to delete this provision in the Wounded and Sick and Maritime Conventions. This proposal was rejected by 4 votes to 2 with 2 abstentions during the Second Meeting. The United Kingdom Delegation then tabled amendments to the four Conventions. In the Wounded and Sick and Maritime Conventions these amendments ran as follows:

"Besides the agreements expressly provided for... the Parties to the conflict may conclude special agreements regarding medical personnel and chaplains. Such agreements shall in no case adversely affect or restrict the fundamental rights which the present Convention confers on medical personnel and chaplains."

In the Prisoners of War Convention the amendment would run as follows:

"In addition... the Parties to the conflict may conclude special agreements for all matters relating to prisoners of war, concerning which they may deem it suitable to make separate provision. Such agreements shall in no case adversely affect or restrict the fundamental rights which the present Convention confers upon prisoners of war."

In the Civilians Convention the amendment ran as follows:

"Besides... the Parties to the conflict may conclude special agreements for all matters concerning which they may deem it suitable to make separate provision. Such agreements shall in no case adversely affect or restrict the fundamental rights which the present Convention confers upon protected persons."

The United Kingdom Delegation considered that it was desirable to provide for the conclusion of agreements which might temporarily affect the rights of protected persons, but would ultimately be to their benefit.

The United Kingdom amendments were rejected at the Twenty-second Meeting by 6 votes to 1 with 2 abstentions. The Special Committee considered it would be difficult to distinguish between rights of protected persons which were fundamental and those which were not. Such a distinction might open the way to all kinds of abuse, and the purpose of the Conventions was to secure minimum guarantees for the persons which they were intended to protect.

The Special Committee considered during the Twenty-second and Twenty-third Meetings that the second sentence of the first paragraph of the Stockholm text was not sufficiently clear, and by a new wording endeavoured to define clearly that the agreements which did not adversely affect the situation of protected persons included both the agreements expressly stipulated in the Articles of the four Conventions, and the other special agreements concluded by the Parties to the conflict.

An Italian proposal to replace the words "Parties to the conflict" by "Contracting Parties" was adopted by 6 votes to 1 with 5 abstentions at the Twenty-third Meeting. A second Italian proposal to add the words "during and after hostilities" after "may conclude" was rejected by 7 votes to 3 with 2 abstentions. A third Italian proposal to replace the phrase "the rights which it confers upon them" by "the rights which it stipulates in their behalf" was rejected by 6 votes to 3 with 3 abstentions.

The second paragraph of Article 4/5/5/5 did not give rise to any discussion and was adopted in the Stockholm text.

The Italian Delegation proposed to add a third paragraph to run as follows:

"No agreement, even should it take the form of a clause of a treaty intended to regulate matters which have remained in suspense at the conclusion of an armed conflict, shall relieve any Party of the responsibilities it has incurred as a result of its failure to observe this Convention."

After a debate, during the Tenth Meeting the Italian Delegation withdrew their proposal as an amendment to Article 4/5/5/5, reserving the right to submit it subsequently at a more appropriate place.

(Congering the text adopted by the Special Committee, see Annex No. 16.)
Second Report drawn up by the Special Committee of the Joint Committee
28 June 1949

Article 5/6/6/6:

A Finnish proposal suggested the readoption of the text submitted at the XVII International Red Cross Conference in Stockholm (see Annex No. 18), to be completed however, by the insertion of the word “inalienable” before the word “rights”.

The International Committee of the Red Cross, in their booklet “Remarks and Proposals,” suggested a new wording for the text adopted in Stockholm (see Annex No. 17).

The Special Committee considered that this new wording should not be substituted for the Stockholm text. The latter did not lay a direct obligation on protected persons. It laid upon the Contracting States the obligation not to take into account renunciation of certain of his rights by a protected person.

The Special Committee considered that the insertion of the word “inalienable” was tantamount to a tautology, any valid renunciation being conceivable solely with regard to alienable rights. Furthermore, the Finnish amendment, tending to declare null and void, not all renunciations, but only those which had been brought about by constraint or any other means of coercion, was defeated by four votes to three with one abstention. The majority of the Special Committee considered that this amendment weakened the scope of the Article, and opened the way to abuse. The minority held that, in certain circumstances, it might be even in the interests of protected persons to renounce rights conferred upon them by Conventions, and gave examples taken from the history of the first World War, in particular, that of Alsation and Lorrainer prisoners of war, who had asked to fight for France, and that of Czechoslovak prisoners of war, who had built up an army for the liberation of their country.

Article 6/7/7/7:

Amendments were tabled by the Delegations of Canada, Italy, the United Kingdom and the Union of Soviet Socialist Republics.

The first Canadian amendment suggesting the introduction of the words “by belligerents” after the words “the present Convention shall be applied” was withdrawn.

The second Canadian amendment proposed to translate the word “contrôle” in the French text, by “scrutiny” and not by “supervision”. During the discussions, other translations had been suggested, in particular “observation” and “examination”, but finally “scrutiny” was unanimously adopted by the Anglo-Saxon Delegations who were members of the Special Committee. The fundamental concept was that the Protecting Power could not give orders or directives to the Detaining Power. It was entitled to verify whether the Convention was applied and, if necessary, to suggest measures on behalf of protected persons.

The third Canadian amendment proposed the deletion of the last sentence of the first paragraph, according to which the Detaining Power may refuse its approval only if serious grounds are adduced. This deletion was approved by 8 votes to 1 with 1 abstention. The majority of the Special Committee felt that in accordance with common practice, a State was not obliged to supply the reasons why it refused approval of a diplomatic or consular agent, and that a fortiori this would also hold good for delegates selected from outside the diplomatic or consular staff. Such staff did not require to apply for further approval when the State to which they belonged agreed to protect the interests of a belligerent within the State, to which such personnel was accredited. The latter State, however, might at any time withdraw the approval which it had previously given.

An Australian proposal, suggesting the addition of the words “or consular” between “diplomatic” and “staff”, was unanimously adopted at the Twelfth Meeting.

The Soviet amendment proposed to add the following sentence to the Article:

“In regard to their cooperation in the application of the Conventions, and the supervision of this application, the activity of the Protecting Powers or of their delegates may not infringe the sovereignty of the State or be in opposition to State security or military requirements.”
This amendment was defeated by 7 votes to 1 with 1 abstention. The majority of the Special Committee considered it advisable to extend to the other Conventions the scope of this limitation which had already been mentioned in several specific provisions of the Conventions, for instance under Article 116, second paragraph, of the Prisoners of War Convention. They shall, in particular, take account of the imperative necessities of security of the State wherein they carry out their duties. Their activities shall only be restricted as an exceptional and temporary measure when this is rendered necessary by imperative military necessities.”

This amendment was adopted by 5 votes to 3 with 1 abstention. The majority of the Special Committee considered it advisable to extend to the other Conventions the scope of this limitation which had already been mentioned in several specific provisions of the Conventions, for instance under Article 116, second paragraph, of the Prisoners of War Convention (Concerning the draft of the adopted Article, see Annex No. 19).

Article 7(8)(8):(8)

An Italian amendment, supported by the International Refugee Organization, proposing to add, in addition to the reference to the I.C.R.C., the words “or any other impartial humanitarian body”, was adopted by 7 votes with 3 abstentions.

The Special Committee did not think it advisable to add to the conditions which such a body was to fulfil, that of being of an international character. There were humanitarian bodies which were not of an international character, and it would be regrettable if a provision in the Conventions prevented them from carrying out their activities in wartime.

Article 8(9)(9):(9)

Amendments were tabled by the Delegations of Australia, France, Italy, the United Kingdom and an Aide-mémoire was submitted by the International Refugee Organization.

The French proposal to set up, already in peace time, a specific body which would be able to serve as a substitute for the Protecting Powers was referred to the Joint Committee after a preliminary discussion.

The first paragraph of the Article was unanimously adopted, subject to the amendments which might subsequently appear necessary when a decision had been reached with regard to the French proposal.

The second paragraph was recast to include the ideas contained in the Australian, United Kingdom and Italian amendments, and was replaced by the second, third and fourth paragraphs of the text adopted by the Special Committee.

This text differed essentially from the Stockholm draft on the following points:

According to the text of the Special Committee, the Detaining Power, under the conditions fixed by the second paragraph of the Stockholm draft, was obligated to apply first, either to a neutral State or to a body appointed in accordance with the first paragraph (there may be several such bodies), with a view to their undertaking the duties devolving, under the present Convention, upon the Protecting Powers appointed by the Parties to the conflict. In addition to the neutral States and differing from the Stockholm draft, the text of the Special Committee mentioned the bodies referred to under the first paragraph. These bodies were expressly provided for to carry out the tasks devolving upon the Protecting Powers with the maximum guarantees of impartiality and efficacy. It was only if such protection could not be thus ensured, that the Detaining Power would have to apply to a humanitarian body such as the I.C.R.C. However, such a body could not undertake all the tasks devolving upon the Protecting Powers under the Convention, but only those of a humanitarian character.

If the Detaining Power did not, on its own initiative, apply to a humanitarian body in the circumstances envisaged, any body of this kind might offer it its services, and it might not refuse them. This latter obligation laid upon the Detaining Power was offset by the condition that the body offering its services should be able to afford sufficient guarantees of its ability to perform the duties in question and to fulfil them with impartiality. The same guarantees must be given by any neutral Power or body invited by the Detaining Power. The question may arise as to the necessity for permitting a Detaining Power to claim guarantees of efficacy and impartiality from a neutral Power or a body which it had itself invited. But it might occur that grounds for doubt might subsequently arise. Moreover, the right to demand guarantees was likewise granted to the Detaining Power as well as to the Power, if any, on which the persons to be protected depended, and which might not necessarily be the Power of which such persons were nationals.
A United Kingdom proposal suggested the obligation for the Detaining Power, should it be impossible to ensure protection in accordance with the new second paragraph, of first applying to a recognized international institution, and of accepting the services of such an institution, but this proposal was defeated by 3 votes to 3 with 1 abstention.

A minority of the Special Committee would have preferred to abide by the second paragraph of the Stockholm text, or at least the second and third paragraphs of the new text. They were mainly apprehensive that the possibility afforded by the new fourth paragraph to the Detaining Power might unduly weaken the obligation incumbent upon the latter to find a substitute for the Protecting Power.

The Special Committee did not deem it necessary to mention explicitly the International Refugee Organization, since the latter might be included both amongst the bodies referred to under the first paragraph, and those referred to under the third paragraph of the new text.

To avoid a repetition of events similar to the agreement concluded, during the recent conflict, between the Vichy Government and the German Government, with regard to French prisoners of war in Germany, the French Delegation proposed to insert, in the Prisoners of War Convention, a new paragraph worded as follows:

"No derogation by special agreement may be made to the preceding provisions when one of the Powers concerned with the protection of its prisoners is deprived totally or partially of its sovereignty, in particular when the territory of the said Power is wholly or partially occupied by the troops of the Detaining Power or of the Allies of the latter."

The Special Committee felt that this provision would be appropriate in all four Conventions. To take into account criticisms with regard to details, the French Delegation worded their amendment as follows:

"No derogation from the preceding provisions shall be made by special agreements between Powers one of which is restricted, even temporarily, in its freedom to negotiate with the other Power or its Allies by reason of military events, more particularly where the whole, or a substantial part, of the territory of the said Power is occupied."

In this form the French amendment was approved by 6 votes to 2 with 1 abstention.

Article 8/9/9/9 as a whole was adopted at the Twenty-fifth Meeting by 6 votes to 2 with 1 abstention in the text as drafted by the Special Committee (see Annex No. 25).

Third Report drawn up by the Special Committee of the Joint Committee

6 July 1949

Article 38/42/117/128:

In adopting unanimously (at the Twentieth Meeting) similar amendments submitted by the Delegations of Canada and the United States of America, concerning the first paragraph of Articles 117 Prisoners of War and 128 Civilians, the Special Committee (see Annex No. 8) has brought into concordance the Prisoners of War and Civilians Conventions, on the one hand and the Wounded and Sick and Maritime Conventions on the other.

The obligation to incorporate the study of the Conventions in their programmes of civil instruction was undertaken by the Contracting States only in so far as possible, in order to take into account the constitutional limitations of certain governments with regard to public education.

Article 38A/42A/118/129:

By 11 votes with 1 abstention the Special Committee decided to insert in the Wounded and Sick and Maritime Conventions a similar provision to Article 129 of the Civilians Convention.

A recommendation was made that all countries using the same official language, which was neither French nor English, would agree to draw up a common translation of the Conventions.

Article 43/46/120/131:

Similar amendments tabled by the Delegations for the United States of America and the United Kingdom proposing to delete in the Stockholm text the sentence: "In case of doubt as to the interpretation of any particular stipulation, the
French text shall be considered as authoritative" were adopted by 11 votes with 1 abstention (Twentieth Meeting).

A proposal made by the Delegation for Monaco, according to which in case of divergency between the French and English texts preference should be given to the text which was most favourable to protected persons, was withdrawn, the Delegation for Monaco reserving the right to submit it later in the course of discussion on the settlement of disputes.

Article 44/47/123/132:
This Article was approved during the course of the Twentieth Meeting including the introduction in the two last blank spaces of the words “Geneva" and “21 April 1949".

Article 45/48/124/133:
This Article was adopted without discussion at the Twentieth Meeting.

Article 46/49/125/134:
The period after which the Conventions would take effect was fixed at six months. The Article, thus completed, was unanimously adopted in the course of the Twentieth Meeting.

Articles 47/50/121/122-135:
Article 122 of the Prisoners of War Convention and Article 135 of the Civilians Convention were referred to Committees II and III, who decided to examine them. These are, in fact, not common Articles. Articles 47 of the Wounded and Sick, 50 of the Maritime, and 121 of the Prisoners of War Conventions were adopted as they stood in the course of the Twentieth Meeting.

Article 48/51/126/136:
This Article was adopted without discussion in the course of the Twentieth Meeting.

Article 49/52/127/137:
The period after which accessions would take effect was fixed at six months. The Article, thus completed, was unanimously adopted in the course of the Twentieth Meeting.

Article 50/53/128/138:
Having noted that the English text used successively the words “accession" and “adhesion" to express the same idea, the Special Committee decided in the course of the Twentieth Meeting to ask the Drafting Committee of the Conference to select one or other of these terms. Subject to this reservation, the Article was unanimously adopted.

Article 51/54/129/139:
During the discussions in the Sixth Meeting of the Joint Committee, the Finnish Delegation pointed out that the last sentence of the Stockholm text was superfluous, because denunciation of an international treaty could have no effect on the other international obligations of the denouncing Party.

The purpose of the sentence in question was in reality to establish that obligations deriving from the principles of international law continued to bind the denouncing Party. On the proposal made by the Delegation for Monaco, and guided by the clause known as the de Martens Clause contained in the Preamble of the Fourth Hague Convention of 1907, the Special Committee in the course of the Twenty-first Meeting decided by 5 votes to 2 with 1 abstention, to replace the last sentence of the Article by a new provision stipulating that denunciation would in no way impair the obligations which the Parties to the conflict would remain bound to fulfil by virtue of the principles of the law of nations, as they result from the usages established among civilized peoples, from the laws of humanity and the dictates of the public conscience.

The Stockholm text was, moreover, recast by the Special Committee in the course of the Twenty-fifth Meeting to determine clearly the time when denunciation would take effect. This time would be situated one year after the notification of denunciation to the Swiss Federal Council. However, if the denouncing Power were involved in a conflict at the time of notification of the denunciation, and the conflict lasted more than a year, as from such denunciation, the denunciation would have no effect as long as peace had not been concluded, and operations connected with the release and repatriation of the persons protected (in the Civilians Convention: the operations connected with the release, repatriation and re-establishment of the protected persons) had not been terminated.

Draft of the Article adopted by the Special Committee, (see Annex No. 57).

Article 52/55/130/140:
The amendment tabled by the United States Delegation proposing to specify that only a copy and not the original of the Convention should
be transmitted to the United Nations Secretariat by the Government of the Swiss Confederation for registration, was adopted by 6 votes to 1 with 1 abstention.

Draft of the Article adopted by the Special Committee, (see Annex No. 58).

Signature Clauses.

The amendment submitted by the United States Delegation, concerning the Signature Clauses, was adopted, subject to the sentence in the second paragraph being worded in the French version as follows: "en langues française et anglaise".

Fourth Report drawn up by the Special Committee of the Joint Committee
12 July 1949

(Report on penal sanctions in case of violation of the Conventions)

Penal Sanctions were discussed in the Special Committee of the Joint Committee on 27, 28 and 29 June. (Twenty-ninth — Thirty-third Meetings.) The Joint Committee itself dealt, in its Sixth Meeting of 4 May, with the question of whether the Stockholm text of the Articles 39-40/ 43-44/ 110/ 130 or the corresponding Articles in "Remarks and Proposals" of the Red Cross should serve as a basis for discussion. The Netherlands Delegation had tabled the International Committee of the Red Cross’ Articles as their own amendment. This amendment has been replaced by the joint amendment submitted by the Netherlands, Australia, Belgium, Brazil, the United States of America, France, Italy, Norway, the United Kingdom and Switzerland (see Annex No. 49), which has also replaced the proposals made by the United States of America, Italy and Canada.

The Greek Delegation had made some observations in a Memorandum. The amendments tabled by the Union of Soviet Socialist Republics were also relevant.

The basic document was the Stockholm text containing corrections as indicated in the rectifying note submitted by the I.C.R.C. (see Annex No. 50).

The Netherlands Delegate presented the joint amendment with the following introduction:

"The sole object of the Articles dealing with violation is to increase respect for the Conventions, and to strengthen them and the protection they provide by supplying a means of deterring people from violating their provisions and, if necessary, by enforcing obedience to the Conventions. Such Articles existed already in the Wounded and Sick Convention of 1906 and 1929 and the Maritime Convention of 1907. The Prisoners of War Convention of 1929 did not contain such a provision. Moreover, the Articles only laid an obligation on the Contracting Parties to propose to their legislators, should their penal laws be inadequate, the necessary measures for the repression, in time of war, of any act contrary to the Convention. Captain Mouton did not know whether all the High Contracting Parties had proposed measures for the repression of such acts to their legislators, but it is certain that many countries have not inserted the necessary provisions in their penal code (see the Report of Colonel Guillaume Favre, member of the International Committee of the Red Cross of 1934).

The absence of such provisions resulted in many violations in the second World War and brings in the danger of possible reprisals. Furthermore, some Contracting Parties had made provisions which would allow their tribunals to try only their own nationals and nothing could be done in respect of nationals of another country where these offences had not been made punishable or against persons which had ordered such offences to be committed. Hence the necessity for stronger wording.

The Stockholm text is already stronger than the previous ones in so far as it has inserted an Article dealing with violation in the Prisoners of War Convention and laid an obligation on each Contracting Party to search for persons alleged to be guilty of breaches, and to indict such persons whatever their nationality before its own tribunals or, if it prefers, to hand them over for judgment to another Contracting Party. Nevertheless many objections against the texts of 1907 and 1929 remain.

The first paragraph, taking up the wording of
the first paragraph of Article 29 of the Wounded and Sick Convention, still reads "the High Contracting Parties shall propose to their legislators". This provision had not the desired result after 1907 and 1929, so why should we hope that it will be better this time.

The Stockholm Conference was not satisfied with its creation and recommended that the International Committee of the Red Cross should submit proposals to a later Conference. Hence the Articles submitted by the International Committee of the Red Cross in their "Remarks and Proposals".

Right at the beginning of this Conference it had become clear, however, that many delegations had strong objections to these proposals and the Netherlands Delegation, which first wanted to give these Articles the chance of being discussed, decided that much time could be saved by trying in the first place to draw up, in collaboration with the delegations which had raised objections, a text which would be acceptable to them and which would at the same time improve and strengthen the Stockholm text.

The proposals made by the International Committee of the Red Cross were gratefully used and so were the amendments tabled by the Union of Soviet Socialist Republics Delegation on the interdictory Articles in the four Conventions.

The improvements of the Stockholm text are as follows:

(a) Instead of providing for an obligation to "propose to the legislators", we borrowed the much stronger wording of Article V of the Genocide Convention which lays down the obligation to enact legislation "to provide effective penalties".

(b) To the penal responsibility of the author of a breach we added the responsibility of whoever ordered the breach to be committed. In order to allow for reluctance to include all breaches even trifling ones in penal legislation, we limited the obligation to enact legislation to grave breaches which no legislator would object to having included in the penal code, and left the Contracting Parties free to take their own measures for the repression of breaches which do not come within the category defined as grave breaches.

This category has been carefully defined, so as to avoid including acts which allow for various degrees of gravity and without therefore be considered to be grave breaches if only committed in their less serious forms. The inclusion of grave breaches which have to be penalized, guarantees a certain amount of uniformity in the national laws, which is very desirable when tribunals are also dealing with accused of other nationalities. Finally, the handing over of accused persons has been made conditional by the clause which lays down that the Power asking for an accused who is in the hands of another Power has to make out a prima facie case.

It seems clear however, that if a Contracting Party does not hand over an accused person, it has to bring him to trial before its own courts."

Captain Mouton suggested that this text which was evolved with much pain and labor is an advance and improvement on the past and goes as far as is possible at this moment. If accepted, as he sincerely hopes it will be, ex post facto legislation will be avoided.

There remain many things to be desired. It might, for instance, be advisable to state that a grave breach of the Conventions should not be considered as a political crime. There are ideas which were omitted on purpose.

The word "crime" instead of "breach" did not seem to be an improvement, nor could general agreement be reached at this stage regarding the notions of complicity, attempted violation, duress or legitimate defence or the plea "by orders of a superior". These should be left to the judges who would apply the national laws.

The Diplomatic Conference is not here to work out international penal law. Bodies far more competent than we are have tried to do it for years.

Captain Mouton added that the proposals concerning safeguards for the accused as submitted by the International Committee of the Red Cross have neither been adopted. These safeguards are already laid down in the Prisoners of War Convention and in the Civilians Convention. When the accused are of their own nationality, the Contracting Parties should not be obliged to follow international rules of procedure.

The authors of the amendment therefore think that the text laid down in this joint amendment goes as far as is practicable at this moment and will be acceptable to all delegations.

During the discussion, the following points were raised:

1. The Delegation of the Union of Soviet Socialist Republics wanted a time limit of two years similar to that in the Stockholm text.

The Netherlands Delegate replied, that this time limit as provided for in Article 119 of the Prisoners of War Convention: "Within a maximum period of two years the governments of the High
Contracting Parties shall, if their penal laws are inadequate, enact or propose to their legislative Assemblies the measures necessary for the repression, in time of war, of all acts contrary to the provisions of the present Convention, did not appear in the corrected version of the Stockholm text, as reproduced in the rectifying note submitted by the I.C.R.C. (see Annex No. 50).

The American Delegate pointed out that in the wording of the joint amendment Article A: "The High Contracting Parties undertake to enact legislation to provide effective penalties..." the legislator could not be bound by a time limit and as far as his country was concerned, such a time limit was not acceptable.

The Netherlands Delegate suggested that a certain moral pressure on the legislators could be exercised if the first part of the last sentence of Article 29 of the Wounded and Sick Convention of 1929 were inserted, namely:

"They shall communicate to one another, through the Swiss Federal Council, the provisions relative to such repression" without mentioning a time limit.

The Delegate of Monaco drew the attention of the Committee to the fact that such provisions already existed in the Stockholm draft of two Conventions and have been added to the other two Conventions (see Article 38A, Article 42A, Article 118 and Article 129).

The Union of Soviet Socialist Republics Delegate was of the opinion that the Article as drafted was no more than a recommendation as it did not include a time limit.

His proposal to add to the first paragraph of Article A a time limit of two years was rejected by 6 votes to 1, with 3 abstentions (Twenty-ninth Meeting).

2. The Delegate of the Union of Soviet Socialist Republics proposed to replace the word "breaches" by "crimes" as used in the Union of Soviet Socialist Republics' amendment on Article 2A of the Wounded and Sick Convention and in similar amendments presented to the other Conventions. The word "crime" should be used, otherwise there was no place for the words "accused" and "trial". Besides the words "war crimes" were used in the Stockholm text.

The Netherlands Delegate answered that this word was omitted in the correction of the I.C.R.C.

This Delegate, and the United States of America, United Kingdom, French and Australian Delegates were opposed to the word "crime", firstly because this word had a different meaning in the national laws of different countries and secondly because an act only becomes a crime when this act is made punishable by a penal law. The Conference is not making international penal law but is under-taking to insert in the national penal laws certain acts enumerated as grave breaches of the Convention, which will become crimes when they have been inserted in the national penal laws.

A proposal made by the Burmese Delegate to use the word "offences" was not acceptable to other delegations.

The President of the Union of Soviet Socialist Republics' proposal to replace the word "breaches" by "crimes" was rejected by 7 votes to 1, with 3 abstentions (Twenty-ninth Meeting).

3. The Norwegian Delegate asked what was meant by the words "in so far as this Convention cannot be otherwise implemented" (Article A).

The Netherlands Delegate answered that in some countries the enumerated grave breaches could be punished without special legislation.

The President proposed to delete these words so that the first sentence of Article A would read:

"The High Contracting Parties undertake to enact...any legislation necessary to provide effective penalties..."

This was adopted.

4. The President further proposed to delete the words "in accordance with their respective Constitutions". These words appeared in Article V of the Genocide Convention which was used to draft the first part of Article A.

This proposal was adopted.

The first paragraph of Article A was adapted by 10 votes to 1, with 1 abstention (Twenty-ninth Meeting).

5. In the second paragraph of Article A the Italian Delegate proposed to limit the obligation of the Parties to the conflict, to search for persons alleged to have committed any of the grave breaches and to bring them before the courts.

The Netherlands Delegate answered that each Contracting Party should be under this obligation, even if neutral in a conflict. The principle of universality should be applied here. The Contracting Party in whose power the accused is, should either try him or hand him over to another Contracting Party.

The President was of the opinion that a neutral State did not violate its neutrality by trying or handing over an accused, under an international obligation.

The proposal was withdrawn.

6. The Italian and the Monegasque Delegates preferred the word "extradition" to "handing over".

The Netherlands Delegate explained that the use of the word "extradition" was less practicable
because of the large variety of extradition laws and extradition treaties.

The notion “handing over” was a notion of customary international law in so far as it was extensively practised by States after the last war in connection with the activities of the United Nations War Crimes Commission.

7. The Italian Delegate proposed to insert the words “in accordance with the provisions of its own legislation” after: “if it prefers”.

This proposal was adopted by 6 votes to 2, with 3 abstentions. (Thirty-first Meeting).

The President suggested the following wording for the last sentence:

“or if it prefers, and provided that a prima facie case has been made out by another High Contracting Party concerned, hand them over, in accordance with the provisions of its own legislation, for trial to such Contracting Party”.

This was adopted.

8. A proposal made by the Delegate for Greece, that the Contracting Party asking for an accused person to be handed over should give proof of its interest and of its competence to try the accused person in question, was rejected by 6 votes to 5 (Thirty-first Meeting).

9. The question of the French Delegate, who asked what was meant by “a prima facie case” and whether this was not in contradiction with the general principle that an accused person was not guilty until his guilt had been proved, was answered by the Netherlands and the United States Delegates who referred to the use of this term by the United Nations War Crimes Commission; it meant there that the State asking for the accused to be handed over had to provide statements which would satisfy the Commission (or in this case the Detaining Power) that a finding of guilt to the charges against the accused was highly probable.

10. A second proposal tabled by the Union of Soviet Socialist Republics Delegate to replace the words “grave breaches” by the words “war crimes” was replied to by the Netherlands and United States Delegates who objected that the term “war crimes” was under consideration by the International Law Commission of the United Nations, and that a war crime was a breach or violation of the laws of war, so that the word “breach” or “violation” was preferable in view of the objections raised to the use of the expression “war crime”.

The proposal was rejected by the Chairman, seconded by the Australian Delegate, on the ground that the Committee had already decided this question in the first paragraph of Article A.

The second paragraph of Article A was adopted, with the amendment mentioned under (7), by 10 votes with 1 abstention (Thirty-first Meeting).

The third paragraph of Article A was unanimously adopted.

The whole of Article A was adopted by 6 votes to 1 (see new Article 39/43/119/130, Annex No. 51).

11. During the discussion on Article B, the Delegate of the Union of Soviet Socialist Republics asked that the wording of the Soviet amendment roA, as modified at a later period, should be added to Article B in the Sick and Wounded Convention.

The Netherlands Delegate pointed out that all the points of the Union of Soviet Socialist Republics text as adopted by the Drafting Committee I were covered by Article B of the Sick and Wounded Convention, and that Article B covered at the same time other interdictory provisions in other Articles of the Convention.

The Union of Soviet Socialist Republics proposal was rejected by 6 votes to 2 with 1 abstention (Thirty-first Meeting).

12. The Italian and Danish Delegates suggested the addition of the words “...and seizure...” after “destruction”.

The Australian and British Delegates proposed the word “appropriation”. This was adopted (also in the French text) by 8 votes, with 1 abstention.

Article B of the Wounded and Sick Convention and of the Maritime Convention, thus amended, was adopted by 8 votes with 1 abstention (see new Article 40 Wounded and Sick Convention, and new Article 44 Maritime Warfare Convention, see Annex No. 55).

The English text was translated as follows into French:

“...la destruction et l'appropriation de biens non justifiées par des nécessités militaires et exécutées sur une grande échelle de façon illicite et arbitraire”.

13. During the discussion of Article B of the Prisoners of War Convention and the Civilians Convention, difficulty arose as to the translation of the words “fair trial” into French.

The Delegate of the United Kingdom suggested changing the wording into “wilfully depriving the prisoner of war (e.g. the protected person) of his rights of trial and of the proper judicial safeguards prescribed in the Convention”.

The President said that deprivation of the judicial safeguards of the Convention might mean the violation of one of the Articles of the Convention, but in the standing text it would not always be a grave breach if one of the Articles of the Convention was violated, as long as the accused was tried in a fair way.
The British suggestion was rejected by 4 votes to 4, with 1 abstention. (Thirty-first Meeting).
The President proposed the following text in French:

“d’être jugé régulièrement et impartiallement selon les prescriptions de la présente convention”.

This was adopted.

Article B of the Prisoners of War Convention was adopted by 7 votes to 1 with 2 abstentions (see new Article 119A, Annex No. 33).

14. In Article B of the Civilians Convention the Italian Delegate, seconded by the Delegate of the Union of Soviet Socialist Republics, proposed to delete the word “unlawful” before “deportation”. The proposal was withdrawn after the United States Delegate had explained that deportation could be lawful if based on aliens legislation.

15. The Italian Delegate suggested including collective penalties in the enumeration of grave breaches, and was seconded by the Delegate of the Union of Soviet Socialist Republics. Article 50 of the Hague Regulations had made such punishments possible provided the population was regarded as being collectively responsible.

After some discussion the proposal was rejected by 5 votes to 2, with 2 abstentions (Thirty-third Meeting), on the grounds that such a punishment could not be regarded as being the result of a fair trial and that offences should not be inserted when they could be of varying degrees of gravity and would not be considered to be a grave breach if committed in their less serious form, for instance if a Camp Commandant punished the internees by ordering “reveille” half-an-hour earlier than normal because of a certain number being late for work.

Article B of the Civilians Convention was adopted by 9 votes, with 2 abstentions (see new Article 130A, Annex No. 55).

Finally, the Italian amendment to insert a new Article (40bis, 44bis, 119bis, 130bis) was discussed in the course of the same Meeting.

The President drew attention to a change by the Italian Delegation in the wording of their amendment, the words “as a result of a failure to observe the present Convention” being replaced by the words “as a result of breaches provided for in the preceding Article”.

The Italian Delegate explained that this amendment was a logical consequence of the preceding Article. The State remained responsible for breaches of the Convention and could not refuse to recognize its responsibility on the ground that the individuals concerned had been punished. There remained, for instance, the liability to pay compensation.

The Italian proposal was adopted by 4 votes to 2, with 4 abstentions (see new Article 40A144A119B130B, Annex No. 56).

Fifth Report drawn up by the Special Committee of the Joint Committee
15 July 1949

Draft resolution concerning Article 8/19/19

At its Ninth Meeting on 11 July, the Joint Committee adopted the following text as the first paragraph of Article 8/19/19:

“The Contracting Parties may at any time agree to entrust to an organization which offers all guarantees of impartiality and efficacy the duties incumbent on the Protecting Powers by virtue of the present Convention.”

With a view to making this provision more specific, the French Delegation proposed the adoption of a new Article 7A (see Annex No. 21).

In accordance with its terms of reference, the Special Committee examined the French proposal at the Thirteenth and Fourteenth Meetings but in view of the importance of this entirely new question, decided that it would be more appropriate to discuss the matter in the Joint Committee. A debate took place accordingly at the Eighth Meeting of the Joint Committee.

The Delegate of France explained that the purpose of the proposal to set up a High International Committee was to fill a gap in the Conventions. Provisions had been made for substitutes for Protecting Powers, but such substitutes would not be able to function in all instances particularly where the conflict extended to a very large number of Powers and assumed the character of
a world war with, as a consequence, the elimination of neutrals. Only a permanent body, set up in peacetime, would be able to fill this gap. The French Delegation had studied ways of setting up such a body and, while it was fully aware that its proposals would require exhaustive study, hoped that the Conference would be able to come to a clear decision on the basis of their proposal, so that subsequent study of the question could be undertaken easily and quickly.

The Joint Committee decided to refer these proposals to the Special Committee, which then considered them at its Thirty-fourth and Thirty-sixth Meetings. A draft resolution, tabled by the United Kingdom Delegation and amended in the course of discussion, was carried without contrary vote and with one abstention.

The text adopted (see Summary Record of the Thirty-sixth Meeting) recommended that the advisability of setting up an international body to be vested with the functions set out in the first paragraph of Article 8/9/9/9, should be examined as soon as possible. It was expected in the Committee that the French Government would take the initiative in the matter of these conversations.

Sixth Report drawn up by the Special Committee of the Joint Committee
16 July 1949

Settlement of Disputes

At its Sixth Meeting on 10 May, the Conference, in Plenary Assembly, asked the Joint Committee to study the advisability of introducing into the Conventions a procedure for the settlement of disputes which might arise in connection with the interpretation or the application of the Conventions.

The Joint Committee then referred this question to the Special Committee at its Seventh Meeting.

In course of its Seventh Meeting the Special Committee set up a Working Party and designated as its President Mr. de Goufiere de la Pradelle, Delegate of Monaco. This Working Party held eight meetings, the last of which was under the Chairmanship of Mr. Georg Cohn, Delegate of Denmark.

The Special Committee studied the Report of the Working Party in course of the Thirty-ninth and Fourtieth Meetings, and adopted the conclusions contained therein. These concerned:

(a) procedure of good offices and consultation (Article 9/10/10/10);
(b) procedure of enquiry and conciliation (Article 41/45/—/—);
(c) procedure of judicial settlement (new provision).

(a) Article 9/10/10/10.

The first paragraph was amended, according to the proposal made by the United States Delegation, i.e. that it mentioned not only the disputes connected with the application of the Conventions, but also those pertaining to their interpretation. The addition of the word "interpretation" was opposed by the Soviet Delegation for, in its view, it was not incumbent upon Protecting Powers to interpret the Conventions.

The second paragraph of the Article was adopted according to the Stockholm text. The amendment submitted by the Delegation of Israel was thus rejected. The object of this amendment was to obligate the Protecting Power to submit a proposal to the Parties to the conflict when it was asked to do so by one of these.

The first paragraph, amended by the Working Party (see Summary Record of the Thirty-ninth Meeting) was passed by 10 votes for with 2 abstentions, and the second paragraph by 10 votes for and 1 against.

(Draft of Article adopted by the Special Committee, see Annex No. 27).

(b) Article 41/45/—/—

Amendments which were substantially similar and which had been tabled by the United Kingdom Delegation and the Soviet Delegation were passed with a few modifications by 10 votes to 1 and 1 abstention (see Summary Record of the Thirty-ninth Meeting).

The Special Committee considered that Articles 41 and 45 of the Stockholm drafts set up a procedure for recruitment which was too complicated, and that it would be appropriate to revert once more to the provision contained in Article 30 of
the Wounded and Sick Convention of 1929, while defining its terms more clearly.

In the text submitted by the Special Committee (see Summary Record of the Thirty-ninth Meeting), the initiative for the enquiry procedure belongs to either one of the belligerents and not to all the Contracting Parties. The membership of the Commission of enquiry was determined by agreement between the Parties and not from a previously established list. The enquiry procedure was not closed by a mere recommendation, but by findings which were mandatory for the Parties.

The Special Committee, moreover, decided by 9 votes for, 2 against with 1 abstention, to propose the introduction of the same provision into the Prisoners of War Convention (Article 120C) and the Civilians Convention (Article 130C).

(c) Judicial Settlement

On the basis of a proposal tabled by the Danish Delegation on May 4th completed on June 10th (see Annex No. 54), the Working Party examined the advisability of stipulating a procedure of judicial settlement of disputes relating to the interpretation and application of the Conventions. They had proposed to the Special Committee a text submitted by the Delegation of France and amended by the United States Delegation, which was adopted by 10 votes for, 1 against with 1 abstention (see Summary Record of the Thirty-ninth Meeting).

The Soviet Delegation considered that this text did not take account of the provisions of the Statute of the International Court of Justice dealing with the competency of the Court, and that it related to a question which was not within the sphere of the present Conference.

The Special Committee, moreover, proposed to leave to the Drafting Committee of the Conference the decision as to the place in the Conventions where this provision, which was drafted as an independent Article, could most appropriately be inserted.

Seventh Report drawn up by the Special Committee of the Joint Committee

16 July 1949

Article 2, paragraph four

(Application of the Conventions to armed conflicts not of an international character)

The four Draft Conventions approved at Stockholm by the XVII International Red Cross Conference included, in Article 2, a fourth paragraph which provided for the application of the provisions of the Convention by each of the adversaries (the Prisoners of War and Civilians draft Conventions speak of each Party to the conflict),

"in all cases of armed conflict not of an international character which may occur in the territory of one or more of the High Contracting Parties",

independently of the legal status of the Parties to the conflict; moreover, this status would not be affected by the application of the Convention. The Prisoners of War and Maritime draft Conventions stipulated, however, that the application would take place only on condition that the adverse party likewise complied with the provisions of the Convention.

Article 2, fourth paragraph, of the drafts was discussed at length in its first reading in the Joint Committee at its three first meetings. It was referred on 29 April 1949 to a Special Committee comprising the following countries: Australia, United States of America, France, Greece, Italy, Monaco, Norway, United Kingdom, Switzerland, Union of Soviet Socialist Republics. At its Seventh Meeting of 17 May 1949, the Joint Committee decided to include in the membership of the Special Committee Burma and Uruguay, so that Asia and Latin America might be represented on it.

At its first meeting on 3 May 1949, the Special Committee, in addition to the working text represented by the Stockholm drafts, had before it the following proposals:

(1) A Canadian amendment;
(2) A French amendment;
(3) A Hungarian amendment;
(4) An Australian amendment;
(5) A Greek amendment;
(6) A proposal submitted by the United States Delegation to the second Meeting of the Joint Committee;

(7) A proposal submitted by the Delegation of Italy to the Second Meeting of the Joint Committee;

(8) A proposal submitted by the Delegation of Spain to the First Meeting of the Joint Committee.

The Delegation of Canada proposed to delete the fourth paragraph of Article 2.

The Hungarian amendment aimed at standardizing the four Conventions by deleting the reciprocity clause provided for in the Stockholm text of the Prisoners of War and Civilians draft Conventions.

The French amendment proposed to restrict the application of the provisions of the Convention, within the scope of the fourth paragraph to Article 2, to the case when the adverse party possessed an organized military force, an authority responsible for its acts acting within a determinate territory and having the means of respecting and ensuring respect for the Convention.

The Greek amendment was at once withdrawn, the Delegation of Greece being in agreement with the French amendment which was also supported by the Delegation of Italy, the latter, however, suggesting that in cases which were not provided for under the French proposal, the Parties to the conflict should be bound to respect the humanitarian principles embodied in the Preamble of the draft Civilians Convention.

The Delegation of Spain also supported the French amendment, but would have preferred to stipulate that

"the Conventions should only be applied in cases where the legal government was obliged to have recourse to the regular military forces against insurgents organized as military and in possession of a part of the national territory".

The Australian amendment tended to apply the provisions of each Convention (or at all events, the basic principles of the Convention), within the scope of the fourth paragraph of Article 2, only if:

(a) the de jure government had recognized the insurgents as belligerents; or

(b) the de jure government had claimed for itself the rights of a belligerent; or

(c) the de jure government had accorded the insurgents recognition as belligerents for the purposes only of the present Convention; or

(d) the dispute had been admitted to the agenda of the Security Council or the General Assembly of the United Nations as being a threat to international peace, a breach of the peace, or an act of aggression.

The Delegation of Australia, moreover, suggested that the expression "non-international conflict" should not be used, but be replaced by the terms "civil war in any part of the home or colonial territory of a Contracting Party".

The suggestion made by the Delegation of the United States of America likewise proposed to introduce the following complementary conditions into the fourth paragraph of Article 2:

— that the insurgents must have an organization purporting to have the characteristics of a State;

— that the insurgent civil authority must exercise de facto authority over persons within a determinate territory;

— that the armed forces must act under the direction of the organized civil authority and be prepared to observe the ordinary laws of war;

— that the insurgent civil authority must agree to be bound by the provisions of the Convention.

All the proposals tending to introduce complementary provisions into the text of the fourth paragraph of Article 2 had a common criterion, i.e. that it would be dangerous to weaken the State when confronted by movements caused by disorder, anarchy and banditry, by compelling it to apply to them, in addition to its peacetime legislation, Conventions which were intended for use in a state of declared or undeclared war.

To this, the delegations which were in favour of the Stockholm text replied that the latter text presupposed an armed conflict resembling an international war in dimensions, and did not include a mere strife between the forces of the State and one or several groups of persons (uprisings, etc.).

The Special Committee forthwith indicated the lines which it intended to follow by two decisions carried by a clear majority:

— firstly, on 9 May 1949 it rejected, by 10 votes to 1 with 1 abstention, a proposal the purpose of which was to exclude any extension of the Conventions to conflicts not of an international character;

— it then voted against the Stockholm text of the fourth paragraph of Article 2 on 11 May 1949 by 10 votes to 1 with 1 abstention, considering that it was too wide in scope,
Two ways were then open to the Special Committee:

— either limit the cases of conflicts not of an international character, to which the Conventions would apply;

— or restrict the provisions of the Conventions which should be applied in conflicts not of an international character.

These two ways did not exclude each other, and the possibility of solving the problem in different ways in the four Conventions increased the number of solutions to be envisaged.

After a general discussion of the question at the four first meetings, a Working Party, including the following States: Australia, United States of America, France, Norway, and Switzerland, was set up at the meeting on 11 May 1949.

This Working Party submitted a first Draft on 13 May 1949 which is appended to the present Report, Annex A (see also Summary Record of the Fifth Meeting).

This Draft defined the cases of non-international conflicts to which the provisions of the Conventions would be applicable (except those referring to Protecting Powers); the Draft was partly based on formal criteria taken from the Australian amendment, and partly on factual criteria taken from the French amendment and the suggestion made by the United States Delegate. In addition to the possibilities envisaged, the Parties to the conflict were to endeavour to bring into force, by means of special agreements, all or part of the provisions of the Convention or in any case to comply with the underlying humanitarian principles of the Convention; the right of initiative of the International Committee of the Red Cross or any other impartial humanitarian body was safeguarded; it was specified that full or partial application of the Convention would have no effect on the legal status of the Parties to the conflict. The Draft left unsettled the question of reciprocity, upon which the Special Committee had not yet made a pronouncement.

The Draft of the Working Party was discussed by the Special Committee at its Fifth, Sixth and Seventh Meetings and at the close of the last meeting was referred to the same Working Party with the request to submit a new text taking into account, in so far as possible, the many comments submitted.

The new text bears the date 25 May 1949; it is appended to the present Report: Annexes B and C (see also Summary Record of the Twenty-Third Meeting).

This Draft is characterized by the fact that it comprises different regulations for the Civilians Convention, on the one hand, and for the three other Conventions on the other. With regard to the first, the Draft confines itself to obligating the Parties to the conflict, in the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, to endeavour to bring into force, by means of special agreements, all or part of the provisions of the Convention, and in all circumstances to act in accordance with the underlying humanitarian principles of the Convention. In the case of the other three Conventions, the Draft preserves the distinction between the two categories of international conflicts; all the provisions of the Convention, except those on Protecting Powers, are applicable to conflicts of the first category, subject to special agreements between the Parties to the conflict; in this instance, however, the adverse party must likewise recognize its obligation, in the conflict in question, to respect the Convention and the other laws and customs of war; in conflicts of the second category, the Parties would endeavour to bring into force, by means of special agreements, all or part of the provisions of the Convention, and in all circumstances would act in accordance with the underlying humanitarian principles of the Convention; to fall under the heading of the first category, the conditions of a non-international conflict should be the same as in the first Draft with, however, certain adaptations; the right of initiative of the International Committee of the Red Cross and any other impartial humanitarian body was safeguarded; it was expressly stated that total or partial application of the present Convention would not affect the legal status of the Parties to the conflict.

The second Draft called forth several written amendments:

(a) an Italian amendment of 30 May 1949, tending to add, as a condition to the application of the provisions of the Convention to conflicts of the first category, de facto respect of the Convention by the adverse party;

(b) a Greek amendment of 30 May 1949, the contents of which it is unnecessary to indicate, since it was withdrawn without discussion;

(c) a United Kingdom amendment of 14 June 1949, tending to admit application of the provisions of the Convention to conflicts of the first category only after a period of six months, dating from the beginning of the conflict, and to provide for the competency of the International Court of Justice in cases of disputes with regard to the existence of the conditions governing application of the provisions of the Convention;
The second Draft drawn up by the Working Party and its amendments were discussed by the Special Committee at its Twenty-third and Twenty-fourth Meetings.

The main objections to the second Draft of the Working Party were that the sub-division of non-international conflicts into two categories would raise interminable discussions at the beginning of each civil, colonial, or other war as to whether it belonged to one or the other category; no jurisdiction had been provided for to determine whether the conditions for full application of the Conventions had been met in a specific case; that in reality such a decision was left to the discretion of the de jure government; and that the conditions in question would very seldom be fulfilled.

The French amendment, having been supported by several delegations, it was decided on 15 June 1949 to hand it over for consideration to a second Working Party, composed of the Delegations of France, Italy, Monaco, the United Kingdom and the Union of Soviet Socialist Republics.

The second Working Party submitted a Draft dated 17 June 1949 to the Special Committee. It is appended to the present Report under Annex D (see also Summary Record of the Twenty-eighth Meeting).

This draft might be summarized as follows:

In the case of armed conflict, not of an international character, occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall apply the provisions of the Preamble to the Convention for the Protection of Civilian Persons in Time of War.

"The Parties to the conflict should further endeavour to bring into force, by means of special agreements, all or part of the other provisions of the Convention for the Protection of Civilian Persons, likewise those of the Convention for the Relief of Wounded and Sick, the Convention relative to the Treatment of Prisoners of War, and the Maritime Convention. "The application of the foregoing provisions shall not affect the legal status of the Parties to the conflict."

(d) a French amendment of 8 June 1949 worded as follows:

"In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall apply the provisions of the Preamble to the Convention for the Protection of Civilian Persons in Time of War.

"The Parties to the conflict should further endeavour to bring into force, by means of special agreements, all or part of the other provisions of the Convention for the Protection of Civilian Persons, likewise those of the Convention for the Relief of Wounded and Sick, the Convention relative to the Treatment of Prisoners of War, and the Maritime Convention. "The application of the foregoing provisions shall not affect the legal status of the Parties to the conflict."

The second Draft drawn up by the second Working Party was examined by the Special Committee at its Twenty-eighth, Thirty-second, Thirty-fifth and Thirty-eighth Meetings.

During the discussion, the Delegation of the Union of Soviet Socialist Republics proposed to word the fourth paragraph of Article 2 as reproduced in Annex F (see also Summary Record of the Thirty-seventh Meeting).

The Soviet Delegation pointed out, in support of its proposal, that it would be scarcely possible, as the second Working Party had endeavoured to do, to sum up in a few lines the provisions drawn up for the protection of war victims, an application of which would be justifiable in the case of non-international conflict.

The Soviet proposal met with the contention that it did not determine sufficiently clear the provisions of the Conventions which would be applicable in the case of a non-international conflict, and that it did not except from such application a number of rules which it would be impossible to require a de jure government to recognize in favour of insurgents.

The Soviet proposal was rejected by 9 votes to 1 at the meeting of 8 July 1949.

The text proposed by the second Working Party was amended in various places and was worded in the form appended to the present report under Annex E (see also Summary Record of the Thirty-eighth Meeting).

The text thus adapted was lost by 5 votes for and 5 against.

The Vice-Chairman, Colonel Blanco, Delegate of Uruguay, who presided over the meeting, thought he should abstain from voting. Concerning this action, he made at the next meeting on 11 July 1949 a declaration which is recorded under Annex G.

The Committee then reverted to the second proposal of the first Working Party.

At the Thirty-ninth Meeting on 11 July, 1949, the Italian amendment to the second proposal of the first Working Party was rejected by 7 votes against, none for with 3 abstentions. The United Kingdom amendment to the same proposal was withdrawn, the sponsor Delegation reserving the right, however, to submit it again before the Joint Committee. The second proposal of the first Working Party was finally rejected by 7 votes to 4.

The Delegate of Burma declared that his nor any other Asiatic State he was representing in the Special Committee could accept Conventions referring to civil war.
Mention has already been made of the objections which were formulated to the second proposal made by the first Working Party.

The second Working Party's proposal was contested, on the grounds mainly that it did not take into account the existence of civil wars which resembled international wars sufficiently close to justify, in the general interest, the application to them of the provisions of the Wounded and Sick, Maritime and Prisoners of War Conventions as a whole, with the exception of the rules relating to the Protecting Power; according to those in favour of the second draft of the first Working Party, this would arise when insurgents had set up a government which they obeyed, had regular organized forces, had afforded adequate guarantees of order; the de jure government could not in the face of this evidence deny the existence of these conditions, without calling forth condemnation on the part of world public opinion.

Although the Special Committee almost unanimously agreed that the four Conventions should contain a clause extending at least part of their benefits to non-international war, it was impossible to rally a majority in the Special Committee in favour of a text embodying this idea. There are grounds for hope that the long discussions of the Special Committee on this point have not been superfluous, and that the Joint Committee will be able to draw from them the elements for some reasonable solution. Civil wars sometimes leave the most painful wounds in the organism of nations and their healing is most difficult; it was in the well-conceived interest of the Parties to the conflict, and above them of the country which they desired to serve, to reduce the excesses and horrors of such conflicts to the greatest possible extent.

The Special Committee drew the attention of the Joint Committee on the following texts:

(a) the second Draft drawn up by the Working Party (Annexes B and C);
(b) the Draft drawn up by the first Working Party, as amended by the Special Committee (Annex E);
(c) proposal submitted by the Delegation of the Union of Soviet Socialist Republics (Annex F).

ANNEX A

First Draft drawn up by the first Working Party.

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

(a) that the de jure government has recognized the status of belligerency of the adverse party, without restrictions, or for the sole purposes of the application of the present Convention, or

(b) that the adverse party presents the characteristics of a State, in particular, that it possesses an organized military force, that it is under the direction of an organized civil authority which exercises de facto governmental functions over the population of a determinate portion of the national territory, and that it has the means of enforcing the Convention, and of complying with the laws and customs of war; application of the Convention in these circumstances shall in no wise depend upon the legal status of the parties to the conflict.

(2) This obligation presupposes, furthermore, in all circumstances, that the adverse party declares itself bound by the present Convention, and, as is the de jure government, by the laws and customs of war (and that it complies with the above conditions in actual fact).

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

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

(5) In all circumstances stipulated in the foregoing provisions, total or partial application of the present Convention shall not affect the legal status of the Parties to the conflict.”
Wounded and Sick, Maritime and Prisoners of War Conventions: (new Article 2a)

(1) In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply the provisions of the present Convention, provided:

(a) that the de jure government has recognized the status of belligerency of the adverse party, even for the sole purposes of the application of the present Convention, or

(b) that the adverse party possesses an organized civil authority exercising de facto governmental functions over the population of a determinate portion of the national territory, an organized military force under the direction of the above civil authority, and the means of enforcing the Convention and the other laws and customs of war; application of the Convention in these circumstances shall in no wise depend on the legal status of the Parties to the conflict.

(2) This obligation presupposes, furthermore, that the adverse party likewise recognizes its obligation in the conflict at issue to comply with the present Convention and the other laws and customs of war.

(3) The provisions relating to the Protecting Powers shall, however, not be applicable, except in the instance of special agreement between the Parties to the conflict. In the absence of such agreement, an impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict.

(4) In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, but which does not fulfil the conditions as set out above, the Parties to the conflict should endeavour to bring into force, by means of special agreements, all or part of the provisions of the present Convention, and in all circumstances shall act in accordance with the underlying humanitarian principles of the present Convention.

(5) In all cases foreseen in the foregoing provisions, total or partial application of the present Convention shall not affect the legal status of the Parties to the conflict.

ANNEX C

Second Draft drawn up by the first Working Party.

Civilians Convention: (new Article 2a)

“In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, the Parties to the conflict should endeavour to bring into force, by means of special agreements, all or part of the provisions of the present Convention, and in all circumstances shall act in accordance with the underlying humanitarian principles of the present Convention.”

ANNEX D

Draft drawn up by the second Working Party.

Paragraph 1. — “In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:

(1) Persons taking no active part in the hostilities, and those placed hors de combat by sickness, wounds, captivity or any other cause, shall be treated humanely in all circumstances and without any discrimination.
To this end, the following acts are and shall remain prohibited with respect to the above-mentioned persons:

(a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
(b) taking of hostages;
(c) outrages upon personal dignity, in particular, humiliating and degrading treatment;
(d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

(2) The wounded and sick shall be collected and cared for.

(3) No adverse discrimination shall be practised on the basis of differences of race, colour, religion or faith, sex, birth or wealth.

Paraphrase 2. — An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict.

Paraphrase 3. — The Parties to the conflict should further endeavour to bring into force, by means of special agreements, all or part of the other provisions of the present Convention.

Paraphrase 4. — The application of the preceding provisions shall not affect the legal status of the parties to the conflict.

ANNEX E

Draft submitted by the second Working Party and amended by the Special Committee.

§ 1. In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:

(1) Persons taking no active part in the hostilities, including members of armed forces, who have laid down their arms, and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely without any discrimination on a basis of race, colour, religion or faith, sex, birth or wealth.

To this end the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

(a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
(b) taking of hostages;
(c) outrages upon personal dignity, in particular, humiliating and degrading treatment;
(d) the passing of sentences and the carrying out of executions without previous 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.

"§ 2. An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict.

"§ 3. The Parties to the conflict should further endeavour to bring into force, by means of special agreements, all or part of the other provisions of the present Convention.

"§ 4. The application of the preceding provisions shall not affect the legal status of the Parties to the conflict."
ANNEX F

Proposal made by the Delegation of the Union of Soviet Socialist Republics

The proposal made by the Soviet Delegation was worded as follows:

A. Wounded and Sick and Maritime Conventions.

“In the case of armed conflict not of an international character occurring in the territory of one of the States Parties to the present Convention, each Party to the conflict shall apply all the provisions of the present Convention guaranteeing:

Humane treatment for the wounded and sick; prohibition of all discriminatory treatment of wounded and sick practised on the basis of differences of race, colour, religion, sex, birth or fortune.”

B. Prisoners of War Convention.

“In the case of armed conflict not of an international character occurring in the territory of one of the States parties to the present Convention, each Party to the conflict shall apply all the provisions of the present Convention guaranteeing:

Humane treatment for prisoners of war; compliance with all established rules connected with the prisoners of war régime; prohibition of all discriminatory treatment of prisoners of war practised on the basis of differences of race, colour, religion, sex, birth or fortune.”

C. Civilians Convention.

“In the case of armed conflict not of an international character occurring in the territory of one of the States parties to the present Convention, each Party to the conflict shall apply all the provisions of the present Convention guaranteeing:

Humane treatment for the civilian population; prohibition on the territory occupied by the armed forces of either of the parties, of reprisals against the civilian population, the taking of hostages, the destruction and damaging of property which are not justified by the necessities of war, prohibition of any discriminatory treatment of the civilian population practised on the basis of differences of race, colour, religion, sex, birth or fortune.”

ANNEX G

Declaration made by Colonel Blanco (Uruguay)

In course of the last meeting held on July 8th under my chairmanship, the Special Committee pronounced itself concerning the proposal submitted by the second Working Party, who is studying the question of applying the Conventions in case of civil war.

Of this proposal, amended in course of the meeting, each paragraph was put to the vote.

At the time of the vote on the first paragraph, five delegations voted for and five delegations voted against the proposed text.

In the presence of this result, I have asked the Secretary of the Committee, if in case of a partition of the votes the President was allowed to vote. The Secretary replied that the rules of the Conference were silent on this point.

Consequently, in my character of Delegate of Uruguay, I declare that if I had not been called upon to preside over the meeting, I would have voted in favour of all the paragraphs as proposed by the second Working Party, such as they were amended in course of the discussion and I reserve my right to vote in this connection at a later occasion.
Report drawn up by the Joint Committee and presented to the Plenary Assembly

Following the decision taken by the Conference at the Plenary Meeting on 26 April 1949, the Articles common to the four Conventions were referred to the Committee known as the Joint Committee. Its Chairman was Mr. Maurice Bourquin (Belgium), Professor at the University of Geneva, and its Rapporteur Colonel Claude Du Pasquier (Switzerland), Professor at the Universities of Geneva and Neuchâtel.

The Joint Committee examined the following provisions (the Article of the Wounded and Sick Convention is followed by the corresponding Articles of the other three Conventions, in the order Maritime Warfare Convention, Prisoners of War Convention and Civilians Convention):

Articles 1/1/1/1
2/2/2/2
4/5/5/5
5/6/6/6
6/7/7/7
7/8/8/8
8/9/9/9
9/10/10/10
38/42/117/128
—/—/118/129
39, 40/43, 44/119/130
41/45/—/—
43/46/120/131
44/47/123/132
45/48/124/133
46/49/125/134
47/50/121/—
48/51/126/130
49/52/127/137
50/53/128/138
51/54/129/139
52/55/130/140.

The Joint Committee entrusted a Special Committee with the preparation of the texts. This Committee, composed of twelve delegations, was under the Chairmanship of Mr. Plinio Bolla (Switzerland), a Judge of the Supreme Federal Court, and held 41 meetings. Within this Committee various Working Parties were set up, regarding which seven Reports of the Special Committee give all the information wanted.

The Joint Committee devoted seven meetings to a first reading of the Articles common to the four Conventions. After the Reports drawn up by the Special Committee had been received, the Committee held six meetings.

The Articles which the Joint Committee had to deal with did not form a complete whole. They were really separate provisions which should be considered separately, especially as they vary considerably in scope. Some — and they are many — were adopted without discussion (Stockholm text). It will not be commented upon them; the present Report will only refer to those which gave rise to discussion either in the Special Committee or in the full Committee.

Article 2/2/2/2:

As this Article gave rise to no discussion in the Joint Committee, we have only to refer to the first Report drawn up by the Special Committee and presented to the Joint Committee. The Rapporteur, Mr. Bolla, explained that the Special Committee decided to detach from this Article the fourth paragraph, which relates to the application of the Convention to armed conflicts not of an international character. This paragraph now forms Article 2A.

The first and second paragraphs were adopted without opposition as they stand in the Stockholm text.

As regards the third paragraph (see Annex No. 4), this gave rise to a more animated discussion. It was finally decided to adopt the solution embodied in the text accepted by the Special Committee and ratified by the Joint Committee. This text provides that, in case of a conflict in which one of the parties it not a signatory to the Convention, the provisions thereof shall nevertheless apply if the non-signatory party accepts and applies its provisions. This calls for a declaration — a suspensive condition — and for application; when it is admitted that a non-signatory State is not applying the Convention, this would constitute a resolutory condition.
Article 2A: Application of the Conventions to Armed Conflicts not of an international character

In the Stockholm Draft, the fourth paragraph of Article 2 stipulated that, in all cases of armed conflict not of an international character, each of the Parties to the conflict should be bound to implement the provisions of the Conventions.

At the present Conference, the question immediately arose of deciding what was to be understood by “armed conflict not of an international character which may occur in the territory of one of the High Contracting Parties”. It was clear that this referred to civil war, and not to a mere riot or disturbances caused by bandits. States could not be obliged as soon as a rebellion arose within their frontiers, to consider the rebels as regular belligerents to whose benefit the Conventions had to be applied. But at what point should the suppression of the rising be regarded as a civil war? What criterion should be adopted?

The first solution considered was to impose the application of this Convention only when the rebellion had asserted and organized itself with enough strength and coherence to represent several of the features of a State (the existence of an army, an authority responsible for its actions, a specified area of territory, etc.). A further possible solution was to make the criterion the recognition of the rebels as belligerents by the State in conflict with them or by other States. But in view of the enormous practical difficulties to which these differentiations would have given rise, and the very thorny problems presented by the application to civil war of Conventions drawn up for international war, an attempt was made to find another principle which might provide a solution, and it was proposed to restrict the obligations of the legitimate government and the rebel authority to the most obvious and imperious rules of the Conventions, that is, to humanitarian duties as a whole.

These different ways of approaching the problem are described in the Seventh Report of the Special Committee of the Joint Committee, which also gives an account of the various stages in the work of the Special Committee and its successive Working Parties.

The conclusion of the Special Committee did not take the form of a recommendation: the Committee restricted itself to submitting to the Joint Committee, in the Annexes A to F attached to its Report, five texts or groups of texts among which a choice had to be made.

The first and second Drafts of the first Working Party, reduced to their simplest terms, make it obligatory for both Parties to apply the Convention but subject to one of the following two conditions:

- the recognition of belligerent status by the legitimate government to its adversaries (the formal criterion), or
- the existence of the features of a state on the rebel sides (the material criterion).

The Joint Committee rejected them.

The Draft of the second Working Party, whether in its first form or in the form as amended by the Special Committee, abandons the idea of applying the Conventions as a whole and also of defining the objective conditions which would make it obligatory. It repeats the wording of the Stockholm text: “conflict not of an international character” and lays down a minimum of humanitarian rules which both Parties are bound to respect. It is this Draft, as amended by the Special Committee (Annex E, which is identical to the joint proposal of France, Greece, Italy, the United Kingdom, Switzerland and Uruguay), which was approved by the Joint Committee, the final vote being 27 against 6, with 14 abstentions.

In the course of the discussion, it was made clear that, in spite of the term “the High Contracting Parties” which appears at the beginning of the Article, this text imposes obligations only on the Parties to the conflict, and that neutrals are not bound by the Convention in the case of a purely internal conflict.

Lastly, Annex F consists of a proposal made by the Union of Soviet Socialist Republics, submitting drafts for four different Articles for each of the four Conventions; it stresses the fact that in the case of an armed conflict not of an international character, each of the Parties to the conflict is bound to apply all the stipulations of the Convention guaranteeing humane treatment for all protected persons. It further stipulates that all the rules relating to the prisoners of war régime must be applied to the combatants. The proposal was rejected by 25 votes to 9 with 3 abstentions.

Article 4/5/5/5

The first sentence of the first paragraph (see Annex No. 16) refers on the one hand to the agreements expressly provided for in various Articles of the Conventions, and, on the other hand, to special arrangements on all other matters concerning which the parties may deem it suitable to make special provision. The second sentence provided that such agreements shall in no case adversely affect the situation of protected persons. The intention of those who drafted this text was to provide that the latter rule should apply equally to the agreements expressly provided for in various Articles as to the others. This, however, did not meet with the approval of one delegation, which would have preferred to limit the application of the second sentence to the special agreements expressly pro-
vided for at the beginning of the Article. An amendment proposing this interpretation was rejected by 16 votes to 8, with 3 abstentions.

Article 6/7/7/7

The third paragraph (see Annex No. 19) was drawn up by the Special Committee with special reference to a proposal made by the Delegation of the U.S.S.R. which had submitted the following amendment:

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

The Soviet Delegation, however, was not satisfied and maintained its amendment which was rejected by 17 votes to 7, with 8 abstentions. The majority felt that the Protecting Power has no authority to intervene except for the purpose of seeing that the provisions of the Convention are duly respected; these represent commitments freely entered into. It is accepted in international law that a commitment always involves, by force of circumstances, a certain restriction of the freedom of action of the State which has entered into it, but that the sovereignty of the State is not thereby affected, since the signature of a Convention itself constitutes a manifestation of its sovereignty and a declaration of the will to be bound by it.

Article 8/9/9/9

For the purpose of determining clearly the scope of the text adopted, one cannot do better than reproduce a passage from the Report submitted by Mr. Bolla, Judge of the Federal Court, in his capacity as Chairman of the Special Committee of the Joint Committee:

"According to the text of the Special Committee, the Detaining Power, under the conditions fixed by the second paragraph of the Stockholm Draft, was obligated to apply first, either to a neutral State or to a body appointed in accordance with the first paragraph (there may be several such bodies), with a view to their undertaking the duties devolving, under the present Convention, upon the Protecting Powers appointed by the Parties to the conflict. In addition to the neutral States and differing from the Stockholm Draft, the text of the Special Committee mentioned the bodies referred to under the first paragraph. These bodies were expressly provided for to carry out the tasks devolving upon the Protecting Powers with the maximum guarantees of impartiality and efficacy. It was only if such protection could not be thus ensured, that the Detaining Power would have to apply to a humanitarian body such as the International Committee of the Red Cross. However, such a body could not undertake all the tasks devolving upon the Protecting Powers under the Convention, but only those of a humanitarian character.

If the Detaining Power did not, on its own initiative, apply to a humanitarian body in the circumstances envisaged, any body of this kind might offer its services, and it might not refuse them. This latter obligation laid upon the Detaining Power was offset by the condition that the body offering its services should be able to afford sufficient guarantees of its ability to perform the duties in question and to fulfill them with impartiality. The same guarantees must be given by any neutral Power or body invited by the Detaining Power. The question may arise as to the necessity for permitting a Detaining Power to claim guarantees of efficacy and impartiality from a neutral Power or a body which it had itself invited. But it might occur that grounds for doubt might subsequently arise. Moreover, the right to demand guarantees was likewise granted to the Detaining Power as well as to the Power, if any, on which the persons to be protected depended, and which might not necessarily be the Power of which such persons were nationals."

One delegation raised objections to the second, third and fourth paragraphs, which it regarded as diminishing the freedom of choice of a belligerent State in regard to the substitutes for Protecting Powers. These three paragraphs, however, were adopted by 24 votes to 10.

The fifth paragraph was added by the Special Committee in order to render impossible agreements such as that which was entered into between the Vichy Government and the German Government on the subject of French prisoners of war in Germany.

Question of the High International Committee

The French Delegation had submitted a proposal (see Annex No. 21) to insert a new Article for the purpose of establishing a "High International Committee" consisting of thirty members, whose duty would be, in the event of a conflict, to "supervise the application and ensure the respect for the Convention". The object of the proposal was to make provision for the absence of any Protecting Power in the event of a world wide war in which there were no neutral States. The International Committee of the Red Cross, it is clear, would only
be able to undertake humanitarian duties, and could certainly not undertake any mandate of an administrative nature which devolved on the Protecting Power.

This proposal was referred to the Special Committee of the Committee for consideration, and is dealt with in the fifth Report of the Special Committee. The idea was accepted, but instead of an Article incorporated in all the four Conventions, it was embodied in a draft Resolution recommending to the Powers "that consideration be given as soon as possible to the advisability of setting up an international body" to fill the gap to which the French Delegation had drawn attention.

During the discussion in the Joint Committee, various objections were raised with regard to the practical difficulties which this High International Committee would encounter. The Resolution was, however, adopted by 25 votes to 8 with 6 abstentions (see Summary Record of the Thirty-sixth Meeting).

Settlement of Disputes. Article 9/10/10. Article 41/45/119C/130C. Article 41A/45A/119D/130D

To deplore the inadequacy of the procedure for settling disputes under international law is almost a commonplace. Whereas national legislations generally provide for the repression of any infringement of their rules, and whereas all legal disputes are settled by the national courts of justice, the dogma of State sovereignty in international law has proved an insurmountable obstacle to any generalization of a system of compulsory international jurisdiction.

It is true that the period in which we are living has witnessed undoubted progress in this respect; arbitration by agreement has made considerable progress, while the establishment of an International Court of Justice has broken fresh ground. But at every stage in the study of our Conventions, these questions inevitably arise: in the event of a violation of a Convention, how is the injured State to obtain justice? In cases of differences of opinion as to the interpretation of the text, how can the law be declared, and how can a dispute with regard to the interpretation of one of our Conventions be settled by arbitration while the two parties are at war with one another?

This was the reason why, at the first reading, the Delegate of Monaco proposed, in connection with Article 9/10/10/10, the revision of the conciliation procedure and the insertion of an arbitration clause in the Conventions (see Summary Record of the Sixth Meeting). A draft Resolution concerning the procedure for the settlement of disputes was submitted, at the same time, by the Delegations of Austria, Denmark, Finland, France, Monaco and the Netherlands.

The Plenary Meeting, at its Sixth Meeting on 10 May 1949, adopted this draft Resolution, which was referred for consideration to the Joint Committee, who in turn passed it on to the Special Committee. The latter prepared a report (Sixth Report see page above) and submitted texts of the three Articles 9/10/10/10 (see Annex No. 27), 41/45/119C/130C (see Summary Record of the Thirty-ninth Meeting of the Special Committee), and a new Article, whose place in the Convention was decided by the Drafting Committee (41A/45A/119D/130D), (see Sixth Report).

Article 9/10/10/10

The question dealt with here is the conciliation procedure intended to result in a meeting between the mandatories of the two parties, in the event of a dispute regarding the application of the Conventions. The Special Committee added the case of a dispute concerning the interpretation of a Convention; and one delegation protested against the inclusion of this expression, since, it was argued, it was not the duty of the Protecting Powers to intervene in juridical questions which were not within their competence and concerned the interpretation of the Conventions. But the text in question does not confer any duty of interpretation on the Protecting Power: if there is a dispute on a question of interpretation, this implies that the two parties attribute different meanings to one and the same provision, and in such cases, the Protecting Powers are simply required to "lend their good offices with a view to settling the disagreement" by arranging for a meeting of the representatives of the two parties, as provided in the second paragraph, or by proposing a neutral personality for their acceptance.

This Article was adopted by 24 votes to 6, with 4 abstentions.

Article 41/45/119C/130C

This provision, which now applies to the Prisoners of War and Civilians Conventions, deals with violations of the Convention and establishes a procedure for enquiry, or possibly arbitration. It is simpler than Article 41 of the Wounded and Sick Convention in the Stockholm text, and reverts to the imperative wording of Article 30 of the 1929 Convention: "once the violation has been established, the belligerents shall put an end to it and shall repress it within the briefest possible delay".

There was no opposition to this Article.
Stockholm drafts covered two points:

Repression of Abuses and Infractions of the Conven­tio n 10, with 10 abstentions.

competence of the Security Council.

opinion that the present Conference was not considered at variance with our text as it was of parties to its Statute, shall be determined by the Court in all legal disputes concerning:

(a) the interpretation of a treaty;
(b) any question of international law;
(c) the existence of any fact which, if established, would constitute a breach of an international obligation;
(d) the nature or extent of the reparation to be made for the breach of an international obligation."

For States which have already adhered to the Statute of the Court, the only effect of the new Article is to extend the competence of the Court to their disputes concerning the Convention with States signatories to it, but which have not adhered to the Statute.

With reference to these States, they are bound to accept compulsory arbitration, within the framework of the Conventions, in their disputes with all the Contracting Parties.

One delegation objected to the insertion of this Article and invoked Article 35 of the Statute of the Court, which provides that the conditions in which the Court is open to States which are not parties to its Statute, shall be determined by the Security Council, a provision which the Delegation considered at variance with our text as it was of opinion that the present Conference was not competent to settle questions which fell within the competence of the Security Council.

The Article was nevertheless adopted by 17 votes to 10, with 10 abstentions.

Repression of Abuses and Infractions of the Conven­tions: Article 39/43/119/130, Article 40/44/119A/ 130A, Article 40A/44A/119B/130B

Those of the above Articles which figured in the Stockholm drafts covered two points:

(1) an undertaking by the Contracting Parties to complete their national legislation by the incorporation of penal provisions for the repression of acts constituting a breach of the Conventions;

(2) the obligation for the Contracting States to apprehend persons charged with acts contrary to the Conventions, regardless of their nationality, and to refer them for trial to their own Courts, or if necessary, to those of another Contracting State.

Moreover, the Stockholm Conference had, in Resolution XXIII, expressed the wish that the International Committee of the Red Cross should continue its work on the repression of abuses and infractions of the humanitarian Conventions and should submit proposals on the subject to a subsequent Conference. For this reason the International Committee of the Red Cross convened a Committee of Experts in December 1948, which prepared new texts; these appear in the "Remarks and Proposals" of the International Committee of the Red Cross (see pages 5, 18, 33, 64, 84). This Draft contained comparatively far-reaching innovations, which impinged on the domain of international penal law.

The Special Committee of the Joint Committee considered it advisable to proceed more cautiously; it followed the lead of the Experts Committee in devoting a special article to "grave" violations, but without any reference to an international jurisdiction. The fourth Report drawn up by the Special Committee of the Joint Committee, for which Captain Mouton (Netherlands) was responsible, contains all the relevant information relative to the origin of the texts adopted. It will suffice here to recall his statement that it is not the duty of this Conference to frame rules of international penal law. The sole purpose of the present Report is to summarize the Joint Committee's reception of the proposals of the Special Committee, and to draw the relevant conclusions.

Article 39/43/119/130

The first of the three proposals submitted by the Special Committee recapitulates (see Annex No. 51) the substance of the two points in the Stockholm draft already referred to above; but the emphasis is laid on the clauses dealing with "grave" breaches, which are defined in the following Article.

Certain delegations were opposed to the abolition of the two years' time limit for the enaction of the necessary legislative measures. But it was pointed out in reply that in certain federative States, where the federal authority is not competent to adopt penal legislation, it takes a great deal of time to bring the constituent States to adopt the necessary legislation. The amendment to re-insert the time limit was rejected.

An amendment to substitute the words "serious crimes" for "grave breaches" was also rejected.
The third paragraph is dealing with the other acts contrary to the provisions of the Conventions. The text submitted by the Special Committee reads: “Each High Contracting Party shall take measures necessary for the repression...”, but a United Kingdom amendment was submitted to replace, in the English text, “repression” by “suppression” and also, in the French text, “répression” by “suppression”. At a meeting of the Joint Committee it was proposed, in French, to adopt the word “redressement”; and this was adopted. By using the word “suppression” in the English text, it was intended to signify that all necessary measures would be taken to prevent a recurrence of acts contrary to the Convention, which was perfectly clear. In the French text the following was a satisfactory translation: “...prendra les mesures nécessaires pour faire cesser les actes contraires aux dispositions”. It was tacitly adopted by the Joint Committee at its Meeting on 25 July 1949.

A fourth paragraph was added, as the result of the adoption of a French amendment, to ensure to the accused safeguards in procedure and the right to select their own counsel.

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

This Article (see Annex No. 55) contains the list of grave breaches. No objections were raised in the Committee, except a Finnish amendment to replace the expression “maltreatment”, which was considered unduly vague, by the words “inhuman treatment”.

The proposal to introduce the term “serious crimes”, already made with regard to the preceding Article, was again rejected, since the specialists in criminal law explained that crime is a technical term used in penal law as opposed to misdemeanour or offence, and which is therefore too restricted with reference to the wider term “breach”.

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

This is a new provision (see Annex No. 56) inserted at the suggestion made by the Italian Delegation, intended to render null and void, in advance, any contractual exemption by which a victor State could prevail upon the conquered State to cease to hold the victor responsible for any violations of the Conventions committed by the organs of the latter; any clauses of this kind might render useless the prosecution of individual guilty persons, for where a State has obtained a promise that it shall not be held responsible, it would be extremely difficult to condemn an individual agent acting under its orders. This provision was the only means of ensuring that the compulsory character of the prosecution, as proclaimed in the preceding Article, should continue in force.

The scope of this Article is comparatively restricted. It does not cover special financial arrangements under which a State can finally liquidate a claim to damages by an agreed lump sum payment or a settlement in compensation.

The Article was adopted by 18 votes to 16, with 3 abstentions. The minority criticized the Article as wanting in clearness.