Sixteenth Meeting

Wednesday 27 July 1949, 3.30 p.m.

President: Mr. Max Petitpierre, President of the Conference

Prisoners of War Convention

Article 42A

The President: We will now resume the consideration of the Prisoners of War Convention, and start with Article 42A. As no amendment is submitted to this Article, it is adopted.

Article 43 (continued)

The President: An amendment to this Article is submitted by the same delegations who presented an amendment to Article 42 (see Annex No. 118).

Major Armstrong (Canada): The only reason I wish to speak on Article 43 is to explain the reason for the amendment. If you recall, in the discussion in Committee II when Article 42 came up after the decision to include the second paragraph that was deleted this morning, some change had to be made in the first paragraph. Since that paragraph of Article 42 has been again deleted by this Assembly, the delegations sponsoring the amendment request that the Plenary Assembly should adopt again the regulations as they were in the 1929 Convention, as first paragraph of Article 43:

“No prisoner of war may be employed on labour which is either unhealthy or of a dangerous nature”.

(First point of the Amendment.)

The second point of the amendment is a disposition added by the Special Committee of Committee II, who learned during the discussions that some delegates felt that mine-lifting might be permitted under Article 42 as it then read and a delegation put forward this amendment: “The removal of mines or similar devices shall be considered as dangerous labour”. The co-sponsors of the mentioned amendment would request that since the second paragraph of Article 42 concerning mine-lifting has been deleted, the second point of the amendment relating to Article 43 should also be adopted which makes a specific statement that the removal of mines and similar devices shall be considered as dangerous labour.

Dr. Puyo (France): After the vote taken on Article 42 this morning, Article 43 will have to be altered in order to coordinate the two Articles.

The French Delegation would like to point out, however, that there may be prisoners who are prepared to volunteer for the work of removing mines. Attention was drawn to this fact this morning. In France, for instance, a substantial number of prisoners of war had, in fact, volunteered to undertake this work. Consequently, this possibility must not be excluded, particularly as such a possibility would be to the advantage of the civilian population, to whom several delegates referred this morning. We therefore propose to substitute the words “unless he is a volunteer” for the words “Subject to the stipulations contained in Article 42, second paragraph” at the beginning of Article 43.

The first paragraph would therefore read as follows:

“Unless he is a volunteer, no prisoner of war may be employed on labour which is of an unhealthy or dangerous nature.”

The President: Does anyone else wish to speak?

This not being so, we will vote successively on the two proposed amendments.

The French Delegation proposes that the words “unless he does so voluntarily” be added to the amendment No. 1.

I think it will be desirable to vote first of all on that proposal. Then, if it is accepted, the Assembly can vote on amendment No. 1 thus completed.

The French proposal was adopted by 18 votes to 10, with 8 abstentions.

We will now proceed to vote on amendment No. 1 with the addition proposed by the French Delegation, which you have just accepted.
Amendment No. 1 was adopted by 25 votes to none, with 10 abstentions.

We will now go on to amendment No. 2, which consists of adding a new third paragraph to Article 43.

Amendment No. 2 was adopted by 22 votes to 1 with 12 abstentions.

We have now to vote on Article 43 as a whole, as modified by the two amendments just adopted.

Article 43 was adopted by 25 votes to none, with 9 abstentions.

Article 44

The President: An amendment has been proposed by the Greek Delegation.

Mr. Agathocles (Greece): According to Article 44 the duration of a prisoner's daily labour is based on the duration of daily labour permitted for civilian workers in the district, employed in the same work. This draft ensures just treatment of prisoners belonging to a country where the climatic conditions are not very different from those in the country where they have to carry out such work. Where the climates of the two countries are diametrically opposed however, e.g., when a worker from the North is required to work in a tropical country for the same number of hours as a native labourer it is doubtful whether such treatment would be endurable for the prisoner. I believe it would not; and this argument also holds good in the reverse case.

In theory, a prisoner ought not to be required to carry out more intensive work than that which he does in his own country, regard being paid to conditions of climate where he works. Obviously, however, it would be extremely difficult to apply that rule in a camp containing prisoners of war belonging to different countries. For these reasons we have proposed an amendment fixing the maximum daily hours of work on the basis of the virtually universal rule, i.e. eight hours for workers in general and ten hours for agricultural labour.

Our proposal, if adopted, would require no change in Article 44, but would merely expand it.

Mr. Söderblom (Sweden), Rapporteur: I should like to point out that this question has already been raised in Committee II. This Committee found that the provisions of Article 44 were sufficient, and it decided not to accept the Greek suggestion. The Greek amendment was then put to the vote; 9 delegations voted against, 4 in favour, and there were 10 abstentions.

Mr. Ahokas (Finland): After the Rapporteur's explanation, I shall refrain from speaking.

Mr. Gardner (United Kingdom): I want to say briefly why my Delegation—as, I think, Committee II—rejected this proposal. The spirit behind it is one with which we all would sympathize but it disregards, I believe, the practical circumstance, surrounding the employment of prisoners of war in what is, perhaps, the best occupation in which they can be employed namely in agriculture.

If you go into the northern part of the country which I have the honour to represent you will find that agricultural labourers—indeed all the farm workers—during the winter work no more than four or five hours in the days which are shortest. Against that their hours in the long days of June and July are certainly longer than ten. I would go further, and I would say that in my country generally, and I suspect in most countries—certainly in countries which are liable to have heavy thunderstorms or rain coming on suddenly—it would be impossible to get the harvest in if the workers were restricted to ten hours a day. In harvest time people work almost from sunrise until sunset, and if prisoners of war employed on those farms were to get more favourable treatment it would only result in antagonism on the part of the civil population against the prisoners.

We believe that the provisions of the Article as it stands, with its prohibition against excessive hours and its relation of hours to those hours which are worked by the people side by side with whom the prisoners are working, is an adequate precaution against exploitation of prisoner labour, and that this particular amendment would introduce practices which, in the long run, would act adversely upon the prisoners' interests.

Mr. Agathocles (Greece): Just a few words of explanation. There is no question of stipulating eight and ten hours of work. We are fixing a maximum, the maximum amount of work which can be required of prisoners of war, and not a compulsory standard of ten hours for agricultural labour and eight hours for other work.

The President: We shall now take the vote.

The amendment was rejected by 16 votes to 3, with 7 abstentions.

Article 44 as a whole was unanimously adopted by 36 votes with no abstentions.

Articles 45, 46, 47, 48, 49 and 50

The above mentioned Articles were adopted.
Article 51

The President: An amendment has been submitted by the Delegation of the United Kingdom, proposing to delete the word “gold” wherever it appears and to delete the second paragraph.

Mr. Söderblom (Sweden), Rapporteur: The Article concerns certain payments to be made to prisoners of war, both officers and men of other ranks. Should these payments be made on a gold basis or not?

The question was considered by a Committee of financial Experts who, after an exhaustive discussion, came to the conclusion that it is preferable to maintain the gold basis.

When the problem came before Committee II, opinions were very divided: 9 votes in favour, 9 votes against, and 9 abstentions. In accordance with internal procedure, the amendment was rejected.

In my capacity as Rapporteur, I venture to request that one delegation should tell us the reasons in favour of the abandonment of the gold basis, while another might speak in favour of retaining this basis. This would be the means of clarifying the whole problem.

Mr. Gardner (United Kingdom): Twenty years ago today the Geneva Conventions for the protection of the sick and wounded and for the protection of prisoners of war were signed in this city. At that time, one of the greatest world slumps in history was coming on all the countries in the world, and we all experienced the terrific consequences which followed in the succeeding years. It is common knowledge that those years compelled countries which had adhered to the gold standard to abandon it as no longer workable or useable, and that today the majority of the countries in the world, I think I am right in saying, no longer have a fixed gold value for their currencies. The United Kingdom Government believes that as the years move forward gold will more and more cease to be a true measure of the comparative value of currencies in terms of commodities to be bought by them.

We are drafting a Convention which may never come into operation and which, at any rate, we hope will not come into operation for a good many years and he would be a brave man who would prophesy what the relation of gold to international currencies will be say, 20 years, or even 10 years, from today. Unless we can be reasonably sure that gold will continue to be a true measure of value in terms of purchasing power the whole case for linking the measurement of pay for prisoners of war to gold disappears in the view of the United Kingdom’s Government—may I say in the considered view of my Government, for their attitude has been carefully reviewed in London in the light of the decisions taken in the Expert Committee here and subsequently in accordance with the somewhat inconclusive result reached in Committee II. My Government instructs me in the light of those decisions that we should press you most strongly to separate the measurement of the pay of prisoners of war from gold because no man can foresee what relation it will bear to the currencies of the world or to the value of commodities in the years that lie ahead of us. In the 20 years since 1929 the whole relation of currencies to one another in the world has been transformed and it is no exaggeration, I suggest, to say that we are moving towards a world in which currencies will be related to one another on a series of factors of which gold may well not even be one and if we are to plan wisely and to look ahead we shall surely not pin our faith to a standard which is passing away with the changing conditions of the world.

You may ask what will be the effect if we delete gold from this Article. The effect will be to link the measurement of the pay of prisoners of war to the Swiss franc and there again the choice has been deliberate. It is not in any sense related to sentiment. We are advised by the experts in money matters in the City of London, who, I venture to think, are recognized as knowledgeable on the subject as those in any other part of the world, that the Swiss franc is more likely to remain in relation to other currencies a reasonably steady measure of the relative value of those currencies than any other measure at present open to us. Certainly I am advised—and I can only pass on the advice because I am not personally an expert in the matter—that it is likely to be a better measure of the relationship of the currencies of the different countries than gold is likely to be in the years that lie ahead in this troubled world. That is the case for divorcing the measurement of the pay of prisoners of war from gold and basing it simply on the Swiss franc whatever may be the measurement of that franc from time to time.

The President: I will now ask the delegates to vote on the amendment submitted by the United Kingdom Delegation. The delegations who accept this amendment are requested to raise their hands.

The amendment was accepted by 21 votes to 10, with 5 abstentions.

Mr. Zutter (Switzerland): The United Kingdom amendment which we have just accepted provides for the deletion of the word “gold” wherever it appears. I should like to know whether the
paragraph appearing under the Categories I, II, III, etc., namely:

"the Swiss gold franc aforesaid is the franc containing 203 milligrams of fine gold", remains or is omitted.

The President: The amendment submitted by the United Kingdom Delegation proposed the omission of the word "gold" wherever it appears as well as the omission of the second paragraph, so that by its vote the Meeting has just decided to omit the second paragraph.

We will now proceed to Article 51A.

Mr. Gardner (United Kingdom): I did not hear you put Article 51 as a whole to the vote and as there are other important aspects of it I think we ought to adopt it.

The President: I must apologize for an oversight. The subject of the vote should be the whole of Article 51. I now put Article 51 to the vote.

Article 51 was adopted by 37 votes, no opposition, one abstention.

Article 51A

Article 51A was adopted.

Article 52

The President: We have before us an amendment submitted by the United Kingdom Delegation proposing to delete the word "gold" in the first sentence of the first paragraph. This amendment is connected with that submitted to Article 51. I presume no discussion is necessary and, if nobody wishes to speak, I will put this amendment immediately to the vote. (Approval).

The amendment submitted by the United Kingdom Delegation was adopted by 26 votes to 2 with 10 abstentions.

The President: We will now vote on the whole of Article 52 as amended.

Article 52 was adopted as a whole by 34 votes, no opposition, one abstention.

Articles 53, 54, 55, 56 and 57

The above mentioned Articles were adopted.

Article 57A

Mr. Söderblom (Sweden), Rapporteur: There is a small change in the English text at the end of the third sentence of the second paragraph. It should read: "the reasons why such effects" etc.

The President: Are there any comments on the remark just made by the Rapporteur? As there are none, the remark is noted. Does anybody wish to speak?

This not being the case, Article 57A is adopted.

Article 58

The President: We have before us an amendment submitted by the Greek Delegation proposing to replace this Article by the following:

"Upon the outbreak of hostilities, the belligerents shall publish the measures taken by them for the execution of the provisions of this section, and shall notify such measures to all prisoners falling into their hands, and to the Protecting Power. Any alteration in such measures shall also be notified in the same way."

Mr. Söderblom (Sweden), Rapporteur: This amendment was discussed by Committee II which rejected it by 15 votes to 2 with 3 abstentions. The majority were of the opinion that Article 34, which deals with the posting of the provisions of the Convention in prisoners camps, and Article 117, which deals with the dissemination of the text of the Convention, provide sufficient guarantee.

Mr. Agathocles (Greece): Article 58, which deals with the notifications by belligerents of measures taken to implement the provisions of Section V of the Convention (External relations of prisoners of war), provides that such notification shall be made as soon as prisoners of war have fallen into their hands. This means that belligerents are only required to inform prisoners, and the Powers on which they depend, through the Protecting Power, of the measures taken for implementing the provisions in question.

The time for making this notification does not seem very appropriate. Why wait until prisoners have actually been captured, since the time of capture cannot be foreseen, in order to notify the conditions under which they will be treated? It would be more logical, easier, and more expedient to issue this notification at the outbreak of hostilities, which would ensure that all the persons concerned would be informed in due time.

Moreover, the Conference has already agreed, in a similar case in the same Convention, namely
the third paragraph of Article 19, which deals with notifications in connection with the internment of prisoners of war, that such notification shall be made at the outbreak of hostilities. This was already provided by the 1929 Convention. The expediency of coordinating provisions which are so similar is a reason in favour of our amendment.

It seems that the two Articles mentioned by the Rapporteur do not settle the question. Similar questions are treated differently in the third paragraph of Article 19, on the one hand, and in Article 58, on the other. The lack of coordination between these texts may well lead to conflicting interpretations.

The President: As no one wishes to speak, I will take a vote on the amendment submitted by the Greek Delegation.

The amendment submitted by the Greek Delegation was rejected by 16 votes to 4, with 15 abstentions.

We will now take a vote on Article 58 as a whole. Article 58 was adopted by 33 votes, with 1 abstention.

Articles 59, 60, 61, 62, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74

The above mentioned Articles were adopted without discussion.

Article 75

The President: There is an amendment submitted by the Delegation of the Union of Soviet Socialist Republics proposing to complete Article 75 by a second paragraph drafted as follows:

“Prisoners of war convicted under the laws of the country where they are in captivity for war crimes or crimes against humanity, in accordance with the principles laid down at Nuremberg, shall be subject to the prison régime laid down in that country for persons undergoing punishment.”

General Sklyarov (Union of Socialist Soviet Republics): During the work of the Conference, the Soviet Delegation has several times mentioned the question which has just been raised, and has pointed out that Article 75 of the Prisoners of War Convention needs amplification. It should be stated in a second paragraph that prisoners of war, convicted under the legislation of the country in which they are held in captivity—for war crimes or crimes against humanity, in conformity with the principles of Nuremberg—should be subject to the treatment normally given to prisoners serving their sentence in that country. The Soviet Delegation regards this point as an important question of principle, and suggests its inclusion as an addition to Article 75.

In submitting this proposal, the Soviet Delegation is basing its attitude on the fact that persons guilty of war crimes or crimes against humanity, once their guilt has been established and they have been sentenced by a regular court, cannot and should not enjoy the privileges of the Convention. These persons, who have lost all human dignity, and are guilty of very serious crimes against humanity, have themselves erased their name from the list of protected persons entitled to benefit under the provisions of the Convention. We intended the procedure against these persons to be safeguarded by all the guarantees generally recognized for this type of crime. In other words, all guarantees necessary to ensure a just and impartial sentence should be provided. As soon as the sentence begins to run however, that is as soon as it is implemented, convicted persons should be subject, as I have said, to the treatment which is the rule in the country in which they are detained, for persons serving a sentence of the same kind.

The proposal made by the Soviet Delegation, when considered by the Special Committee and later by Committee II, met with objections from certain delegations. In our opinion it is necessary to make a brief review of these objections.

The most serious objection concerns the inclusion in Article 75 of an allusion to the principles of Nuremberg. This objection is not well-founded. For example, the Delegate of the United States of America, in reply to an enquiry by the Delegate of the Union of Soviet Socialist Republics as to his objections to this proposal, stated that, although the Government of the United States of America had signed the Statute of the Nuremberg Court together with the Governments of the United Kingdom, France and the Union of Socialist Soviet Republics and still recognizes as valid the principles known as the “Nuremberg Principles”, it had to be borne in mind that a certain number of States are represented at this Conference who are not Parties to the agreements relative to the Nuremberg Court.

The United States Delegate was however obliged to recognize immediately that these States afterwards adhered to the principles of the Nuremberg Statutes and that, further, the General Assembly of the United Nations, in a resolution taken in the name of all members of this Organization had agreed with these principles. Thus a heavy majority of the States participating in the present Conference had accepted and recognized
the principles contained in the Statute of the Nuremberg Tribunal. Some States, which are not members of the United Nations and are represented at this Conference, had not up to the present raised any objection to the inclusion in Article 75 of the allusion to the principles of the Nuremberg Trial. It must be emphasized, which is rather strange, that the objections made to this inclusion emanate entirely from delegations whose Governments have, in one form or another, expressed their agreement with the Nuremberg principles.

The United States Delegate has also objected that the Commission set up to codify international law is at present engaged in modifying the Nuremberg principles. The United States Delegation has also stated that it was not possible before the work was ended to make any allusions on the lines proposed by the Soviet Delegation. In our opinion there is no basis to this argument, for a close study of the codification of the Nuremberg provisions, which should be effected by the Commission for the codification of international law, in no way excludes the possibility and necessity of adding to Article 75 an allusion to the principles in question, where persons sentenced for war crimes or crimes against humanity are concerned.

The provisions contained in the Statute of the Nuremberg Tribunal, and Article 6 in particular, do not require any complementary study or commentary, for their wording is both clear and precise. In this case the objections raised against the proposal of the U.S.S.R. are merely a legal subterfuge by means of which some Delegations wish to avoid the allusion that we propose.

For Article 75 to be quite clear as regards war crimes and crimes against humanity, it should make some allusion to the principles of Nuremberg. These principles define very specifically the nature of the crimes a conviction for which would render prisoners of war liable to the same code of punishment as that to which convicted persons are subject in the country where the prisoners are detained.

The second objection which has been raised against the proposed addition to Article 75 by the Soviet Delegation was that this addition deprived prisoners of war sentenced for war crimes or crimes against humanity of humane treatment. This is not the case, since the object of the Soviet proposal is not to place prisoners of war in unfavourable circumstances, but to ensure that they should serve their sentence in the same conditions as any other common law criminal and under the system obtaining in the country where the prisoners are detained. We do not think it possible to support here the principle that prisoners of war convicted in accordance with the legislation of the countries where they have committed offences of such gravity as war crimes or crimes against humanity, should serve their sentence under better conditions than other persons serving sentences in the same country for less serious offences. Nevertheless this also means that while these prisoners of war are serving their sentence, they shall be treated in accordance with the humanitarian principles which are an essential part of the penal system of every State. The most elementary justice demands that prisoners of war who have forfeited their place among protected persons by reason of their crimes should not, while they are serving their sentences, enjoy the benefits of the Convention which they have so flagrantly violated.

The suggestion to complete Article 75 is an important matter of principle since it is also preventive. Those who flout the honour and the conscience of the nations, those who dare to violate the stipulations of this Convention and to follow the fatal path which leads to war crimes or crimes against humanity, should realize now what will be their punishment, namely that they will be deprived of the privileges granted by the Convention and that they will be subject to conditions similar to those applying to persons serving sentences in the same country.

For this reason it is quite inadmissible that, as the present text of Article 75 implies, those who commit a war crime should have the guarantee of the protection of the present Convention even if they are convicted.

Mr. Lamarle (France): The question we are dealing with now gave rise to prolonged and laborious negotiations, not only in Committee II but also in the Special Committee and in the Special Working Party set up for the purpose of finding a compromise. The French Delegation made some contribution to these endeavours, but they were unfortunately fruitless and the French proposal only obtained one vote, its own, in the Special Committee, as I think it was called (the Committee of which Mr. Zutter was Chairman).

You can scarcely be surprised, therefore, if I do not feel inclined to renew these endeavours, and if I have notified my wish to speak, it was in order to clear up another point which will affect the future and may even affect the present.

The French Delegation had pointed out that Article 75, in the form adopted by Committee II, is absolute, peremptory and unlimited. The French Delegation have cited several examples to show that this absence of any limitation, if I may so express myself, is distinctly unfortunate, and that it would be really grotesque to allow certain war criminals to receive their pay. And we pointed out, the Nuremberg Tribunal did not agree to pay Marshal Goering the quintuple salary to which he was entitled, as Prime Minister of Prussia, Marshal of the Reich, and the holder of several
other important offices. We were all agreed on this point; but Article 75, as it is now drafted, would compel the Allies, as Occupying Powers in Germany, to issue to war criminals still serving their sentences in prison their handsome pay as Generals or Field Marshals; and I can scarcely imagine that anybody really wishes to do this.

In France we certainly have no intention of issuing military pay to war criminals of less importance, who are still awaiting their trial in that country. This was why I made a reservation. In this instance, I was somewhat luckier. The Special Committee, speaking, if I may put it in this way, through the mouth of the United Kingdom Delegate, Mr. Gardner, had recognized that my remark was well-founded. And in view of the assurances I gave him, Mr. Gardner agreed that Article 75 should be interpreted as conferring guards of a primarily legal character to war criminals awaiting trial or already convicted. In other words, they would be entitled to be treated humanely in the widest sense of the word, to have a fair trial with all proper legal guarantees, by a regularly constituted Court, and also to have the possibility of appealing against the verdict or sentence, and if necessary asking for a new trial.

The Special Committee—the one I referred to above with Mr. Zutter as Chairman—made neither comment on, nor objection to this interpretation. I even requested that this should be noted in the Minutes, forgetting that no Minutes of this Meeting were taken, but there will be a Record of today's Meeting, and a very important one.

As I have no hope of being able to induce the Meeting to adopt the proposal for which only France voted, I wish to explain clearly how France interprets, and will interpret Article 75, an interpretation accepted by the Special Committee, as the United Kingdom Delegate has pointed out, and as I have already stated.

Mr. Winkler (Czechoslovakia): My country is one of the countries which suffered from crimes against humanity committed in the last war. This fact is well known all over the world, and therefore it is not necessary to take up your time by speaking of details of all the horrors we and other countries experienced during the war and during the Nazi occupation. Having these facts in mind it is only natural that our Delegation attaches a very great importance to the provisions of Article 75 and especially to the amendment submitted to our Conference by the Soviet Delegation. By this fact at the same time we should like to state our position in this matter.

We consider this matter as a question of principle, as a matter on which the Convention we are discussing must be absolutely clear, so that it will leave no doubt about the intention of its authors.

The Soviet amendment concerns those prisoners of war who have been convicted for war crimes or for crimes against humanity in accordance with the principles of the Nuremberg Trial. In other words, it concerns those war criminals who not only give by their deeds clear evidence that they do not respect the provisions of this Convention and other Conventions concerning the war, but also manifest that the very basic principles of humanity mean nothing to them and that they are always ready to violate the elements of human law, written or unwritten, of human society. The main purpose of our Convention is to guarantee the humanitarian principles even in war; and the Conventions resulting from this Conference must form, if I may say so, a charter of those humanitarian principles. It would be a very bad service to humanity to include in such a charter of humanitarian principles provisions giving special protection and granting special benefits to the war criminals and criminals against humanity, that is, to the most dangerous enemies to the very life of humanity. This is the main reason, this reason of principle, for which my Delegation cannot accept the text of Article 75 as it stands without adding to it an exception concerning war criminals and criminals against humanity as stipulated in the Soviet amendment.

During the long discussion in Committee II we heard arguments against the amendment saying that it is inhuman, that it is barbarous to treat inhumanity by inhumanity. Those arguments, however, seem to me to be entirely out of place. We read in the amendment that prisoners of war convicted, etc., shall be subject to the prison régime laid down in the country, where they are in captivity, for prisoners undergoing punishment. I ask you, what is inhuman in subjecting convicted criminals to the existing prison régime applied for all prisoners undergoing punishment in the same country? Nobody can see anything inhuman in that, unless he considers inhuman the very fact that war criminals and criminals against humanity are going to be put in prison. I think it would be much more inhuman not to protect human society against the inhumanities of these inhuman beings.

Other arguments put forward against the amendment in question contend that this principle itself would be acceptable, if the amendment did not refer to the principles of the Nuremberg Trial and if it did not use the words “war criminals” and “criminals against humanity”. These arguments we cannot understand either. We see here again the question of principle. The Nuremberg Trial was a result of cooperation and agreement between the Great Powers who were allies in the last war. So was the Moscow Declaration concerning prosecutions and punishment of war criminals. In abandoning and denying this agreement and this coopera-
tion we feel that there is a grave danger to one of the very fundamental principles of international law, of the principle *Pacta sunt servanda*; and this is being endangered at a Conference engaged in creating new international Conventions. Having in mind that we are working on Conventions which are humanitarian par excellence, we could never accept provisions protecting the greatest enemies of human society, the war criminals. I appeal to all delegations not only in the name of Lidice and Terezin but in the name of Majdanky and Oswiecim and in the name of all the pillaged and burnt-out villages of many countries and in the name of the millions of people massacred by the war criminals of the last war, to join with us with voting for the amendment in question.

General Dillon (United States of America): At the outset I should like to clear up some of the confusion in the issue with which we are dealing. We do not believe that the Nuremberg principle or charter is in issue here at all. Any arguments to that address are in our view irrelevant and can only confuse the main issue. Secondly, those delegations who join us in opposing the Russian Delegation's amendment are as anxious as the proposers of that amendment that those who commit war crimes and crimes against humanity shall be punished.

Let that be clearly understood; but we want to be assured that the nature of their punishment is not changed by the nature of their crime. It is a well-established principle of modern penology that the nature of the punishment does not follow the nature of the crime.

The Russian Delegate has stated that I regarded the Nuremberg principle as the main issue. I have already stated that I do not regard it as being in issue at all. The Czechoslovakian Delegate finds me in agreement with him when he states that this Convention must be clear and definite at all times. For the reason that the Soviet amendment makes uncertain the punishment that will be accorded to a war criminal or a person who commits a crime against humanity, for the reason that the Soviet amendment makes his punishment uncertain—for that reason mainly—the United States Delegation objects to the amendment and opposes it.

Now just exactly what does Article 75 do? What is it intended to accomplish? It gives to a prisoner convicted of a crime, a pre-capture crime, the right to the minimum standards of a prison regime as laid down in Article 98. If his conviction entails a sentence of death, it gives him the benefit of Article 97, which requires that his Government should be notified of his conviction and that his execution should be delayed for six months. If the principle of granting a man convicted and sentenced to death a six months' respite is to be denied by this Conference, then the United States Delegation cannot agree with such a conclusion.

We do not know the prison regime existing in the various nations throughout the world. We cannot know it. Therefore what the Soviet amendment proposes is to ask this Conference to adopt a punishment which is uncertain.

We cannot possibly know what regime exists in the various nations throughout the world; but I personally have seen Dachau, I personally have seen Buchenwald, and I know some of the outrageous regimes which have existed. It would be immoral, unjust, and I repeat, barbarously—barbarously inhuman—to subject any prisoner of war to such uncertainty and such regimes.

That is the issue—only that—in this proposal made by the Soviet Delegation. No other issue is involved. Do not be confused by any talk about the Nuremberg principle or any talk about the heinousness of war crimes. Consider but one principle: do you want certainty in the punishment of all criminals? Do you want uniformity in the nature of that punishment? If you do, you must reject the Soviet amendment. The United States Delegation will vote against the Soviet amendment.

Mr. Mevorah (Bulgaria): I should like to stress a few points. We are dealing with the question of an inconsistency in our attitude to certain more closely-related theories.

May I recall that when the Joint Committee discussed Article 3A of the Civilians Convention, submitted or at least supported by the United Kingdom Delegation, this Article seemed to us rather strange. It stipulated the complete forfeiture of civil rights by certain persons suspected of activities directed against the security of the State, who would by reason of that forfeiture lose the benefit of all privileges and rights granted by the Convention.

I wonder what is the exact difference between these two hypotheses. The case I have just mentioned concerns hostile activity, which has not yet been proved by trial, since the proceedings have only reached the stage of enquiry and nothing exists but more or less indefinite suspicions. Yet we would be ready to decree the complete forfeiture of the rights and privileges granted by the Convention. Why should we now change our opinion? We are dealing with war crimes and crime against humanity. What does this mean? The principles are well established and adequately defined, since there was a preliminary agreement in London when they were outlined, though, I admit, somewhat briefly; but later came the Records, we have witnessed convictions, and have thus been able to reach a clear definition of what we now call war crimes or crimes against humanity.
In these circumstances, why should we now refer to definitions which are not admitted in the field of international public law? On the other hand, as soon as the words “crimes against humanity” are pronounced, they immediately call up the vision of a person who has lost all sense of humanity, whose remaining instincts are those of a brute, who would not hesitate to smash a child’s body against a wall, who would shoot anybody and who would order summary executions without trial or sentence, who would torture his victims or, in violation of the prohibition which we have adopted, would take hostages and perhaps, worse still, would execute them. If this is clear for a layman, it must be still more apparent for a jurist, especially if he has studied the Nuremberg trials. This has already become history and we should have no hesitation in referring to a matter which is quite clear to everybody.

If you had sufficient courage to deprive of their civil rights persons suspected of actions against the State, and thereby to deprive them of the privileges and rights of our Convention, I consider there is all the more reason to do so in this case. Criminals must by necessity be deprived of their civil rights.

I have given my full attention to previous interventions. It is obvious that we all agree on the principles, but in spite of that there is a difference of opinion as regards their application. It has just been said that we cannot refer to Nuremberg because it has nothing to do with our Convention. I venture to say that the remark is somewhat egoistical. Nuremberg has, in fact, much in common with our Convention. We cannot, of course, apply the London agreements or the Nuremberg judgments (which were pronounced for war crimes) to persons who have been guilty of activities directed against the State, but that standard might be admitted in the estimation of crimes.

The United States Delegate (I beg him not to be offended) stated with much emphasis that the nature of the punishment cannot be influenced by the nature of the offence. According to him this was an existing principle of penal law, which, he added, was established and undisputable.

I must admit that this is the first time this principle has been brought to my notice. Everything I have read in my life and all I have learnt at universities has led me to believe the contrary; it is evident that the nature of the offence is directly proportionate to the nature of the punishment. This is what is called proportional punishment.

We could not in fact inflict the death penalty on a person who stole a loaf. If we unanimously decide that the crimes in question are of primary importance, we should thereby make the punishment proportionate to the magnitude of the crime. But what the United States Delegate said surprised me for another reason. He stated that the penalty should not be proportionate to the crime, but there is no question in the Soviet amendment of making the penalty proportionate to the crime, since it is assumed that sentence has already been pronounced.

We are dealing with war criminals convicted as such, and with the regime to which such prisoners should be subject. In order not to prolong this theoretical discussion, I should like to ask you one single question: if you are prepared to deprive persons responsible for acts hostile to the State of their civil rights (although this has not yet been proved and they have not yet been tried), surely you ought a fortiori to have the courage to sentence war criminals guilty of crimes against humanity to the loss of their civil rights, particularly if these criminals have been tried in accordance with the principles of our Convention. For the whole of this Convention still applies to persons convicted of crimes as atrocious as those which were tried at Nuremberg.

I therefore urge you to weigh this matter very carefully. I quite understand that we are rather tired of it. Perhaps we might ask our distinguished and gracious President to allow us a short rest, for we must at all costs continue to think and act logically, and avoid contradictions of fact. Our desire to adopt an Article is not sufficient reason for creating contradictions which would do the Convention little honour.

The President: There should have been a meeting of the Bureau at 6 p.m.; but it has been adjourned to a subsequent date which will be notified later, as I wish to finish the discussion of Article 75 today.

Mr. Haraszti (Hungary): I have to make a few brief remarks on behalf of the Hungarian Delegation in regard to Article 75. In the first place I notice that certain delegations wish to avoid all reference to the principles of Nuremberg. That is to be regretted, for the aim of this Conference is the protection of war victims. I am convinced that we cannot effectively protect war victims, if we are not ready to convict war criminals who are responsible for the death and torture of millions of men, women and children.

I have to draw the Meeting’s attention to the fact that the principles of Nuremberg were accepted during the last World War by the Great Powers and afterwards by most of the countries represented here. They represent remarkable progress in the field of international law. I consider that it is not for this Conference to disavow those principles. If we pass them over in silence, or even if we are not prepared to confirm them, we
must not be astonished if a revision of the Nuremberg proceedings as well as the principles of Nuremberg is asked for. Under those conditions the Hungarian Delegation considers that we ought of clearly indicate that we approve of those principles. If we fail to give this point of view due emphasis, we put ourselves on the side of those who do not recognize those principles. In that case it is better to say so clearly, at once.

That is the principal reason which makes it impossible for the Hungarian Delegation to accept the arguments put forward by the Delegate of the United States of America, who asserts that he is absolutely convinced of the necessity of punishing war criminals, but desires to avoid, by means of arguments which are not convincing—from a lawyer’s point of view at any rate—any reference to the principles of Nuremberg.

I had intended to say a few words on the subject of those arguments; but I think that the speech made by the Bulgarian Delegate has rendered it unnecessary.

As regards the question of the treatment of war criminals, the Hungarian Delegation considers that it is impossible to grant such persons the same protection as is given to prisoners of war. The latter deserve all the protection which the Convention provides, but it would not be justifiable to put them on a footing of equality with persons who have committed crimes against humanity. The Hungarian Delegation is convinced that war criminals ought to receive the same treatment as persons imprisoned for having committed crimes and punished in accordance with the penal code of the Detaining Power. There is no reason for placing war criminals in a privileged situation.

The absurd consequences of the text submitted by Committee II have been demonstrated by the Delegate for France, and I regret that he did not draw the inference from his intervention. The Minutes do not form an integral part of our Convention, and we need very clear texts which will not call for further reference to the Minutes.

Consequently, the Hungarian Delegation considers that the only way to eliminate all possible misunderstanding is to insert the amendment submitted by the Union of Soviet Socialist Republics in the text of our Convention. The Hungarian Delegation will vote for the amendment submitted by the Delegation of the Union of Soviet Socialist Republics.

Mr. Söderblom (Sweden), Rapporteur: There has twice been a question of the interpretation of Article 75. It has been pointed out that the guarantees afforded by it are merely the right of appeal, postponement of the carrying out of capital punishment, and the benefits of minimum treatment. We ought to add to these: the right to repatriation, once the sentence has been served.

One delegate thought fit to repeat this interpretation, so that it should appear in the Minutes of our Meeting. For that reason I desire to say that the text is to be found in the Record of the Twenty-Sixth Meeting of the Special Committee, in the Report of Committee II.

Captain Mouton (Netherlands): I will be very short. We noticed some confusion in the discussion this afternoon and we will try to help a little bit to clear up the issue. We regret that the Delegate of France mentioned an example which in our opinion is perhaps not quite correct. He said that it would be undesirable that a war criminal could receive his pay after he was convicted. I do not think there is any reason to be afraid of that because I do not know of any country where convicted prisoners are paid.

I should like to say in a few words what we are actually doing here. In view of the U.S.S.R. amendment I have to state this, that it is quite true that there is a doctrine in international law that he who violates the rules of international law cannot invoke the protection of the same law. You can find this in works by writers like Gentili and in the Lieber rules of 1863. On the other hand we must not forget that international law is not a static thing but is progressive. It develops and the Netherlands Delegation has no reason whatsoever to oppose such evolution.

International law follows the development of ordinary law at least to a certain extent and we do want to contribute to the development of international law. That is one of the purposes for which we are gathered together here. It is also true that before this Conference there have been four decisions taken by Courts, three of them Supreme Courts, who have ruled that the provisions for the punishment of prisoners of war do not apply in cases of war crimes. The reason given for these decisions was that the drafters of the Convention of 1929 simply did not take account of crimes committed before capture but only thought of crimes committed during captivity.

When the experts gathered here in 1947 after the experience of this last war and after the experience of several trials of war criminals, they realized that they could not, on the simple fact that somebody is alleged to have committed a war crime, put that person outside the protection of the Convention and for that reason we thought that we should at least make a provision that nobody would lose the protection of the Convention until condemned by a Court. But when you take this
step why not take one step more? What is there against leaving even a war criminal (and do not forget that there are gradations in the criminality; we always hear of frightful types of war criminals in these discussions here but there might be some of a minor character and the difficulty is to know where to draw the line) protected by the few provisions of this Convention which still apply? I am sure that in the case of any of your soldiers who are accused of war crimes and are convicted by Courts you would still want to have them treated in a humane way and would want them to be repatriated after their sentence is finished.

The last few things I want to say are these. I know that it seems audacious to mention in the U.S.S.R. amendment the Nuremberg principles and the words “war crimes” or “crimes against humanity”. I want to draw your attention to the fact that the so-called Nuremberg principles are laid down in a charter which was made for one single case. At the moment, because the Assembly of the United Nations has asked the International Law Commission to draft rules which will be judged by the Assembly later about the principles of Nuremberg, we think that this Conference should not touch a subject which is under discussion at the moment in Lake Success. We have heard from the Delegate of Bulgaria, that even for a layman “war crimes” and “crimes against humanity” are very precise notions. I should like to answer him and say that war crimes is a notion which is more definite than crimes against humanity but both are difficult to define specifically. In several courts of the world, in several universities and in the International Law Commission we are studying very hard to get a good and clear definition of what both these notions mean and what they entail, and I can tell you that the notion of crimes against humanity is even for lawyers, and lawyers who are specialists in this specific field of international law, a concept which is not very clear yet. For that reason I think we should leave this alone because I cannot see any necessity to mention these notions which are being studied by the International Law Commission. They should not be mentioned in this Article.

I will finish by saying that so far as I have noticed nobody in this Meeting has stated that we do not want to convict war criminals. On the contrary, the Delegate of the United States of America has very clearly stated that all the countries who have suffered during this war are very much convinced of the necessity to try war criminals but it has nothing to do with the issue of this Article. This Article only deals with the few provisions of this Convention which still cover war criminals who have been convicted and I think that in view of the line of development of international law we should leave Article 75 as it stands.

Mr. Morosov (Union of Soviet Socialist Republics): The Soviet Delegation wishes once more to draw the attention of all delegates to the question now under discussion. We consider that the present position is scandalous, and I have no hesitation in using the word, which I wish to stress quite particularly. Everything is quite clear, and it is really scandalous that a certain number of delegations should insist on retaining Article 75 in its existing form. Surely the delegations which have spoken in defence of this Article have now arrived at a logical no-thoroughfare. If we consider the arguments of the Soviet Delegation as they were set forth by the French Delegate, this is, I repeat, perfectly clear. The various points of view advanced and the various tendencies revealed in these discussions are as clearly reflected here as in a drop of water.

Everything has its limits. It is hardly a sign of strength to argue in favour of a provision which everyone must regard as quite illogical. But this is precisely what the adoption by the Conference of Article 75, as submitted to you now, would mean. No one will ever be able to understand such a decision. It is proposed to punish persons for breaches of the Convention, by raising the left hand, and to ensure, by raising the right hand, that the same persons shall be entitled to the benefits of the Convention the provisions of which they have violated. Even those who are accustomed to think that proposals emanating from the Soviet Delegation are generally odious, who are always and on principle opposed to its proposals, must grasp quite clearly that Article 75 as submitted to them cannot be adopted, and that its adoption would be a very serious mistake. Even for those actuated by the most reactionary principles, it is impossible to go so far in defiance of all logic and common sense. If anyone believes that the Soviet amendment can be drafted differently, can be altered or completed, that is quite another matter, and could if necessary be considered.

But we must repeat that the question cannot be settled by a simple vote, without thorough examination of the matter and without consideration of the serious consequences which the adoption of such an Article would entail. It would be a tragic, monstrous thing to grant persons guilty of crimes against humanity or war crimes the protection of the Convention. The Delegation of the Union of Soviet Socialist Republics calls upon the delegates not to adopt an Article the inevitable result of which would be to grant to these categories of persons benefits which are not even stipulated for persons convicted of infinitely less serious crimes.

The Delegate for the United States of America thinks that the Soviet amendment would cause
some confusion. In doing so, he is hardly logical. He admits that his Government, like himself, agrees with the principles of Nuremberg, and then proceeds to argue that our amendment would lead to confusion. Yet that amendment is founded on the principles of Nuremberg, which are a model of clarity and precision. I imagine that the Governments which signed them knew perfectly well what they were signing and were far from considering those principles confused.

Further, here is a summary of the Article 6 of the Nuremberg Statute: “The following acts, or any of them, are crimes coming within the jurisdiction of the Tribunal for which there shall be individual responsibility”:

\[(b)\] war crimes: namely, violations of the laws or customs of war. Such violations shall include, but not limited to, murder, ill-treatment or deportation to slave labour or for any other purpose of civilian population of or in occupied territory, murder or ill-treatment of prisoners of war or persons on the seas, killing of hostages, plunder of private or public property, wanton destruction of cities, towns or villages, or devastation not justified by military necessity;”

Now these questions are actually dealt with in several Articles of our Conventions; you will even find passages from point \((b)\) of the Nuremberg Statute.

Why, should we say, therefore, in drafting Article 130A, that this Article, and Article 51 are based on confused ideas, when we are agreed on the principle? No one here present can deny the Nuremberg principle. But the United States Delegate nevertheless seems afraid to see it figure in our Convention. This is quite incomprehensible. Anyone who objects to the Article we have submitted can, if it is rejected, make another proposal; but he is not entitled to adopt Article 75, as now submitted to the Conference. The Soviet Delegation is absolutely opposed to this Article being included in the Convention.

The President: If no one else wishes to speak, we shall proceed to take a vote on the amendment submitted by the Soviet Delegate.

Mr. Gardner (United Kingdom): The United Kingdom Delegation has been referred to twice in the course of the debate. May I consider those two points first?

It is perfectly true that in Committee II I stated as my considered view which is shared by, I think, most other delegations. The effect of Article 75 is that a man in prison does not get paid. The reason is that under Article 72 prisoners of war are subject to the same laws, regulations and general orders as the military forces of the Detaining Power. To the best of my knowledge those laws, regulations, and orders in all countries deprive a soldier sent to prison of pay.

The Delegate for Bulgaria seemed to think there was some inconsistency between our attitude here and our attitude towards Article 3A in the Civilians Convention. I think he overlooked the fact that anybody falling under Article 3A of the Civilians Convention who is convicted would receive all the benefits of the Convention. There is, therefore, so far as convicted criminals are concerned, no inconsistency between the United Kingdom attitude under that Article and its attitude here.

I only want to recall briefly what it is that divides the two sides. We are all agreed that a prisoner of war charged with a crime should have all the benefits of all the judiciary guarantees as laid down in this Convention. We are all agreed that anybody convicted of a crime—not only of a war crime, mark you, or a crime against humanity, but of any crime—deserves to be punished and should be punished, and the Prisoners of War Convention provides for his punishment.

The difference between the two parties is a narrow one, but an important one. On the one side, some of us hold that what is laid down for a convicted prisoner in this Convention is a minimum demand for any prisoner anywhere under the laws of humanity. There are others who hold that what is laid down in this Convention is all right for the criminal prisoner of war, that it is quite right that that minimum should be laid down for him, but the Convention should lay down no minimum for one convicted for war crimes or crimes against humanity. It is because the man in question is in the hands of the enemy as a prisoner of war, not because he has fallen into their hands as a war criminal or as a criminal convicted of a crime against humanity, but because he is a prisoner of war that we hold that, if he is convicted, he should enjoy the benefits of this Convention.

What are they? First, if he is sentenced to death under Article 91, that sentence must be suspended long enough for his Government to consider the facts of the case and to make any representations they think fit. Nobody, even a convicted war criminal in the hands of his captors, because he is a prisoner should be deprived of that. Secondly, he should have the same right of appeal as prisoners of the Detaining Power. Does anyone dispute that a convicted war criminal ought to have every right to appeal? Thirdly, the notification of his conviction and his rights of appeal should be communicated to the Protecting Power. Is there any reason why the war criminal should be deprived of that? Finally, if
he is sent to prison, he shall enjoy the minimum standards laid down under Article 98 for any criminal put in prison who is in the hands of the enemy as a prisoner of war. We submit that those things are the minimum which should be given to anybody anywhere; even in peace-time, if a citizen of the United Kingdom is convicted in a foreign Court, these are the things we should seek to secure for him through diplomatic channels. We repudiate, therefore, any suggestion that we are trying to be soft towards war criminals. We have provided for their punishment; but we have insisted, and we shall continue to insist, in the vote that is to take place, that if you punish a war criminal in the name of the law of humanity your punishment must conform to the law of humanity. Unless the Soviet amendment really means treating him worse than Article 98 when he is imprisoned, I do not believe there is any difference in practice between the parties; there is only a difference in the way it is expressed. I ask the Conference to endorse the view which Committee II took on the same amendment and to uphold the Stockholm text (former Article 74).

Mr. Morosov (Union of Soviet Socialist Republics): I ask for a vote by roll-call.

The President: Are there any objections to this proposal?

Mr. Agathocles (Greece): I propose a vote by secret ballot.

Mr. Morosov (Union of Soviet Socialist Republics): The Soviet Delegation wishes to express its unqualified opposition to a vote by secret ballot. Voting procedure is not an end in itself. A vote is merely a means of indicating clearly the collective intentions of the Conference. Our proposal is a very important one. Since some delegations, in spite of the warnings they have received from this rostrum, are ready to encourage future war criminals and to help them to tread the fatal path which awaits them, I think it is absolutely essential that the name of the country and the delegate representing these views should be known when a vote is taken. We ought to know those who have ventured to defend such an unjust and mistaken contention in this Conference.

The attempt to vote by secret ballot clearly shows the weakness of those who uphold this unjust contention, and the lack of boldness they have displayed in defending it. The Soviet Delegation categorically opposes a vote by secret ballot. If we were dealing with questions according to diplomatic traditions, it would be quite a different matter; but this is not the case today.

The Greek Delegate will not object to my telling him that he has not adequately considered the proposal he has just made. I beg him not to press his suggestion.

The Soviet Delegation maintains its proposal; and I repeat that it will never agree to accept Article 75 in the wording proposed by Committee II.

Mr. Agathocles (Greece): I made my suggestion not from personal motives, but relying on the unanimous desire of the Meeting which, on two occasions, when voting by roll-call was requested, decided by a majority of several votes to vote by secret ballot. I have no reason to press the point, and if no other delegation supports my proposal, I shall consider it withdrawn.

The President: Does anybody wish to support the proposal of the Greek Delegate?

This not being the case, I consider the proposal has been withdrawn in accordance with the declaration just made by the Greek Delegate.

There remains only one proposal, that of the U.S.S.R. Delegation to vote by roll-call; is there any opposition?

This not being the case, we will now vote by roll-call.

The results of the roll-call were:

In favour:

Against:
Argentina, Australia, Belgium, Brazil, Canada, China, Denmark, United States of America, Ireland, Italy, Luxemburg, Mexico, Norway, New Zealand, Netherlands, Portugal, United Kingdom, Holy See, Sweden, Switzerland, Thailand, Turkey, Uruguay.

Abstentions:
Finland, France, Greece, India, Israel, Liechtenstein, Nicaragua.

Absent:
Afghanistan, Austria, Burma, Bolivia, Chile, Columbia, Costa Rica, Cuba, Egypt, Ecuador, Spain, Ethiopia, Guatemala, Iran, Lebanon, Nicaragua, Pakistan, Peru, Salvador, Syria, Venezuela.

The amendment submitted by the Soviet Delegation was accordingly rejected by 23 votes to 8, with 7 abstentions.

Article 75 as a whole was adopted by 27 votes to 8, with 3 abstentions.
Prisoners of War

General Slavin (Union of Soviet Socialist Republics): The Soviet Delegation requests that it should be noted in the Records that it voted against Article 75.

The President: This declaration is duly noted.

Article 30A

Before the close of this meeting I wish to inform you that the United Kingdom Delegation has informed me that it is unable to attend the meetings of the Working Party set up to examine Article 30A. We are therefore obliged to replace this Delegation on the Working Party, and I propose that we should call upon the Bulgarian Delegation to do so. The Netherlands Delegation is requested to summon this Working Party.

Does anybody wish to comment on these remarks? I note that this is not the case.

The meeting rose at 7.50 p.m.

SEVENTEENTH MEETING

Thursday 28 July 1949, 10 a.m.

President: Mr. Max Petitpierre, President of the Conference

Prisoners of War Convention

The President: We will resume our consideration of the provisions of the Prisoners of War Convention beginning with Article 76.

Articles 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93 and 94

The above mentioned Articles were adopted.

Article 95

The President: For Article 95 we have an amendment submitted by the Greek Delegation. I call upon the Rapporteur to speak.

Mr. Söderblom (Sweden), Rapporteur: This amendment was already submitted by the Greek Government in a document which was circulated before the Conference started. It proposes to replace the last words "ou d'appel" of the third paragraph of the Stockholm text by "et celui en grâce". The Penal Sanctions Committee of Committee II considered that the wording it had adopted was sufficient likewise to cover cases of appeal. Committee II unanimously adopted this text.

The Drafting Committee of the Conference made a slight alteration on this particular point. In the third paragraph of Article 95 the two words "ou d'appel" in the French text have been deleted. The English text will include the words "appeal or petition".

In my opinion I consider that the text submitted by the Drafting Committee fully meets the wishes of the Greek Delegation.

Mr. Agathocles (Greece): In view of the Rapporteur's explanation, I withdraw this amendment.

The President: The amendment is withdrawn. Does anyone wish to speak on Article 95? Article 95 was adopted.

Articles 96, 97 and 98

The above mentioned Articles were adopted.

Article 100

The President: To this Article no amendment has been submitted.
Mr. Gardner (United Kingdom): We will ask that Article 100 be put to the vote by paragraphs in order that we may invite the Conference to vote against the last paragraph. We believe that, though this paragraph was inspired by the best of motives, it in fact introduces a wrong principle, the principle that an alien who has been held in a foreign country for reasons of the security of that country, should be able to insist on remaining in that country, when under the Convention he no longer ought to do so but ought to be returned to his own country. We rest our objection on the fact that experience has shown that this kind of provision, had it been in operation, would have compelled us to retain for many months, indeed for years, in Britain aliens whose motives for staying have no connection with any motive that has been advanced by those who advocate this particular paragraph. Their motives will be various. There will be individuals who rightly expect that if they return to their own country they will be prosecuted for crimes for which they ought to be prosecuted and for which, if they are guilty, they ought to be punished. There will be individuals who want to remain in the Detaining Power’s country because conditions, such as food and treatment etc., are better than in their own country. There will be individuals, and this is probably the largest category of all, who will want to remain because of liaisons with women in the country of the Detaining Power. We suggest that a Convention for the protection of prisoners of war, which recognizes no justification for retaining as a prisoner of war a man who is seriously disabled by wounds or sickness, should not impose upon the Detaining Power the obligation to keep as a prisoner of war and, most of all, should not impose upon the Detaining Power the obligation of retaining an alien in its country, whom has no claim to be there except his own particular desire not to return to his own country.

Mr. Söderblom (Sweden), Rapporteur: Lengthy discussions on this question took place in Committee II and its sub-Committees. The Report submitted by Drafting Committee No. 2 of Committee II proposed a compromise solution, which consisted of adding to this last paragraph the following clause:

“provided that he can be sent at once to a neutral country willing to accept him in accordance with the second paragraph above”.

This compromise proposal was re-submitted to the Committee by one delegation, but was rejected by 12 votes to 7, with 8 abstentions. The Committee further adopted Article 100 as a whole by 28 votes to 2.

Mr. Bourquin (Belgium): I should like to indicate as briefly as possible our reasons for urging that this last paragraph of Article 100 should be retained. A situation might arise—it actually arose during the last war—which must be borne in mind. If the Detaining Power is authorized to repatriate prisoners against their will, this is what might happen: the Detaining Power, in need of economic assistance, would repatriate the prisoners who seemed most likely to be useful from that point of view. Even if a prisoner did not wish to be repatriated, he would be repatriated by force; once he was back in his own country steps would be taken to compel him, by some means or other, to collaborate in the economy of the Occupying Power. Cases of this kind did occur; they occurred in Belgium. That is why, so far as we are concerned, we consider it essential that this third paragraph should be retained.

Mr. Lamarle (France): During the discussions which took place in the Drafting Committee and in Committee II, the French Delegation shared the opinion of the majority, i.e. it was in favour of the last paragraph. The explanations just given by the United Kingdom Delegate have led the French Delegation to revise its opinion on the matter; first of all, because it is not always easy, in such a situation, to say definitely that the interned person has reason to fear persecution. It might be pure fancy, an understandable fancy on the part of a wounded or sick person; but nevertheless, fancy simply due, perhaps, to the fact that the person concerned considers that the climate is better in the country where he is a prisoner, or to other similar reasons. This wish may be a perfectly reasonable one, of course, but it is one which cannot be taken into consideration in all cases by the Detaining Power. Moreover, as the United Kingdom Delegate pointed out, no question of any kind of right of sanctuary arises. It cannot be said that the right of sanctuary is being violated, for the interested Party never
had any right to be received in the territory of the Detaining Power.

Furthermore, as the United Kingdom Delegate has already pointed out, it is by no means certain that in all or even in the majority of cases, the Detaining Power will return him against his will. It is natural, however, or at least it seems natural to me, for the reasons I have already stated, that the Detaining Power should reserve its own discretion. This would of course not prevent it from taking account of any circumstances which seemed to merit consideration.

Mr. Baistrocchi (Italy): The Italian Delegation agrees with the views expressed by the Belgian Delegate, and will vote in favour of retaining the last paragraph of Article 100.

The President: We will now take a vote on each of the three paragraphs in turn, as requested by the United Kingdom Delegation.

Is there any opposition to the first paragraph?

As this is not the case, it is adopted.

Is there any opposition to the second paragraph?

As this is not the case, it is adopted.

With regard to the third paragraph, we will first take a vote on the United Kingdom proposal that it should be deleted.

Eighteen delegations have voted in favour of retaining, and eighteen in favour of deleting this paragraph (in other words, for the adoption of the amendment); seven delegations abstained.

The President: According to the Rules of Procedure, the proposal made by the United Kingdom Delegation is rejected. It is open to any delegation, however, after a lapse of 24 hours, to ask the Conference, in Plenary Meeting, to reconsider the question. This is prescribed by Rule 35, second paragraph, of the Rules of Procedure.

Mr. Gardner (United Kingdom): There is a drafting point on Article 100. As the third paragraph disappeared a drafting amendment is necessary at the beginning of the first paragraph; perhaps that could be left to the Drafting Committee.

The President: At present, as the third paragraph of Article 100 has not been deleted, there is no need to alter the first paragraph. As I have already stated, however, it is open to the United Kingdom Delegation, or to any other delegation, to ask tomorrow, after the lapse of 24 hours, for a new vote. At that time, if the result of the voting is different from what it was today, it will be possible to reconsider the first paragraph.

Does anyone else wish to speak on Article 100?

As this is not the case, the Article is adopted.

Articles 101, 101A, 102, 103, 104

Articles 101 to 104 were adopted.

Article 105

The President: An amendment to Article 105 has been submitted by the Delegation of the Union of Soviet Socialist Republics.

General Sklyarov (Union of Soviet Socialist Republics): The Soviet Delegation considers that the wording of Article 105 adopted by Committee II should be altered. The Stockholm text was completed by the addition of the following words:

“prisoners of war prosecuted for an offence for which the maximum penalty is not more than ten years’ detention, or sentenced to less than ten years, shall similarly not be kept back.”

This Article conflicts with the principle expressed by the clause of Article 109 of the Prisoners of War Convention, which specifies that prisoners of war convicted of a common law offence may be retained until they have completed their sentence. This provision of Article 109 is perfectly justified: for, if we admit that persons convicted of criminal offences—in this particular case prisoners of war—must be repatriated unconditionally, that is tantamount to exonerating them from all punishment for the crimes they have committed.

It is difficult to suppose that they would continue to serve a sentence in their own country for a crime for which they had been convicted by an enemy court, and which might amount to ten years’ detention. It must be remembered that persons sentenced to 10 years’ detention have, under the criminal laws of most countries, been convicted of a serious crime. Consequently, if the provisions of Article 105 provide for the repatriation more or less automatically of “...prisoners of war sentenced to a maximum of ten years’ detention...”, this would be equivalent to granting an improper amnesty to persons convicted of serious crimes.

Such a position would be in contradiction with the spirit of the Convention; and this is why the Soviet Delegation proposes the deletion of the first paragraph of Article 105.

Mr. Gardner (United Kingdom): I hope the Conference will maintain the text as submitted by Committee II, for this reason. This Article is in the Section dealing with the direct repatriation during war time of sick and wounded pris-
oners or with their accommodation in neutral countries. The position of the fit being repatriated at the end of hostilities is dealt with in Article 109 on this particular point, in the sixth paragraph of that Article which Committee II decided should not include a provision on these lines.

If these words were deleted, a prisoner of war, who had qualified for repatriation owing to his physical or medical condition and who has been sentenced for some comparatively minor offence to a short sentence of imprisonment, even as short as one, two or three months, would not be repatriated unless the Detaining Power chose to release him, he would be retained to serve his sentence. More than that, a man charged with some minor offence might be retained for the proceedings to be heard and determined.

If a man misses a repatriation of sick and wounded during war time he may have to wait a very long time before the next repatriation takes place; and so it was that Committee II accepted the view that it was really only serious offences which would prevent a man who was disabled from being repatriated when his time came.

There were naturally differences of opinion as to how to draw the line between serious and other offences, and this particular line—which is a rough line—was drawn as a result of a discussion within the Committee itself. Some might think a better line could be drawn, others might think that this line is good enough. According to my recollection, there was no sharp difference in the Committee about the desirability of drawing such a line to give a man, charged with or sentenced for a minor offence, the opportunity to go home.

I would point out that a man who is charged has got to be charged with an offence carrying a maximum sentence of more than ten years. It is true that if he has already been sentenced, the line drawn is not less than ten years. We felt that generally speaking anything less than those two standards might be treated, in the case of a sick man—and it is only the sick and wounded people that we are talking about—as not serious and the man allowed to go home instead of having perhaps to stay with the Detaining Power away from his own people for perhaps many months and in some cases even for years.

I hope that the Conference will, on general humanitarian grounds, retain the text as produced by Committee II.

Mr. MEvorah (Bulgaria): It seems to me that there is a discrepancy in the second sentence of Article 105. Its aim is clearly to prevent the possibility of a prisoner being detained for an offence which, although generally considered serious, is not sufficiently serious to fall within the scope of this phrase. May I explain my point of view. We are dealing with a certain category of offences which cannot merely be classified as rape, murder, etc. All we can do is to define the offences by naming their penalties, since it is these with which we are most concerned. We have fixed a total of ten years as the maximum penalty and, at the same time, we have also adopted ten years as the same a maximum for sentences actually pronounced.

There seems to me to be a huge difference between the maximum penalty provided for and a sentence which has already been pronounced, since penal legislation usually provides for a minimum and a maximum and leaves to the Judge’s discretion the fixing of an equitable penalty between these two extremes. This method is fair and correct, and makes it possible to take attenuating or aggravating circumstances into account. Usually, however, in normal cases without attenuating or aggravating circumstances, the Judge inflicts a medium penalty half-way between the maximum and minimum provided. Consequently the case I have just cited should refer to offences involving a maximum of seven and a half years’ imprisonment, in other words half-way between a maximum of ten years and a minimum of five years, provided for as the penalty.

When we find a reference, at the end of the sentence, to a maximum sentence of ten years in the event of conviction, we must also consider the previous stage of the proceedings, that is, before sentence has been passed. The only case to be considered here is the penalty provided by law. Suppose, for example, that fifteen years’ imprisonment is the maximum penalty provided by law for a given offence. This penalty, framed in the criminal code, corresponded, before conviction, to an offence for which ten or fifteen years’ imprisonment could be inflicted. In such a case, the penalty inflicted was, say, ten years’ imprisonment. If the minimum penalty was eight years and the maximum was twelve years, the sentence passed of ten years would be a medium between the two. But if a sentence of ten years had been passed, punishment was inflicted for an offence which at most should have entailed 12 or 15 years, at the discretion of the Court.

I recall these facts to show you that the two classes of penalties, or in other words offences, are not the same if you look at them from the point of view of the penalty provided under the law, and the penalty inflicted after conviction. In the latter case, we are considering a much more serious class of offences, whereas the offences in the former category are not very serious. To show you clearly what I mean, here is an example.
Take the case of rape committed under normal conditions—i.e. abnormal conditions. Let us suppose first that the punishment provided by the criminal code is ten years’ imprisonment; in such a case, it would not be possible to release the detained prisoner by virtue of the provisions of Article 105. If the Court had already passed sentence and inflicted not the maximum penalty of ten years, but only eight years, for example, it would be impossible to retain this sentence. You see, therefore, that the same offence may produce directly opposite results, according to the position envisaged, in other words, whether we take the period before or after conviction.

May I add in conclusion, that if, after taking into account all the various criminal codes in the world, we were to take the means, we should find that a penalty of ten years, that is to say, a penalty fixed at ten years, falling between the maximum and the minimum, generally corresponds to a very serious offence. Even murder, in certain cases, may only be punishable by ten years’ imprisonment; and if attenuating circumstances are granted, a clever lawyer can easily get the sentence reduced to less than ten years. There are also a large number of other offences for which the average penalty is less than ten years’ detention.

Can all serious crimes therefore be included in this category, immediately after those disciplinary offences we have already dealt with in the first sentence of this paragraph? These two classes of offences which have entailed disciplinary sanctions, and those which entail or may entail sentences of less than ten years are obviously quite different, and the logical conclusion must be that they should be treated quite differently. A different solution should be found.

The President: We will now proceed to take a vote on the amendment submitted by the Delegation of the Union of Soviet Socialist Republics.

The President: The voting was as follows: 15 Delegations voted in favour of the amendment, 15 against, and 14 abstained. According to the second paragraph of Rule 35 of the Rules of Procedure, the amendment is rejected. But any delegation may, after the lapse of twenty-four hours, ask for a new vote.

We will now take a vote on Article 105 as a whole.

Article 105 was adopted by 32 votes to 8, with 1 abstention.

Articles 106 and 107

These Articles were adopted.
The Committee's final decision was the result of persistent efforts on the part of the delegates to arrive at a compromise agreement which would take account of the different views expressed in the course of the discussion. Although the principle of an equitable apportionment of repatriation costs had already been accepted at Stockholm, Committee II failed to arrive at the agreement it hoped to reach. We nevertheless believe that the solution contained in the text under consideration is an equitable one, and that the costs are apportioned in such a way as to take account of the interests of all the Parties concerned.

The Delegate of the Union of Soviet Socialist Republics drew our attention to the fact that it would be unfair for belligerents who had been victims of aggression to be compelled also to bear the whole or a part of the costs of repatriating prisoners from their own frontier as far as the territory of the country on which the prisoners depend.

May I venture, in my turn, to point out to the Soviet Delegate that all wars involve at least two belligerents; and this implies that prisoners are taken on both sides. It therefore seems quite fair that these costs should be equitably apportioned between the two Parties. If necessary, moreover, the question could be settled by special agreements.

During the discussions, we emphasized this principle of equity, and we believe that it is perfectly right that this principle should be maintained in the Article now under discussion.

Mr. Lamarle (France): May I first make a short remark concerning the drafting of the first sentence of the provision under (b) of the fourth paragraph of Article 108, which is not at present under discussion. I believe everybody will agree that the exact meaning of this phrase would be better emphasized if it read "as far as its frontier or its nearest embarkation port". It might possibly be supposed that another frontier, not that of the Detaining Power, was intended. Everybody will certainly agree that the frontier and port of the Detaining Power is meant. I believe that this alteration will be advisable and will not raise any objection.

The French Delegation shares the views of the delegations who consider that the cost of repatriation as from the frontier should be, as far as possible, fairly shared by agreement between the two Powers concerned. The Soviet Delegate has said that it would not be fair if in a war of aggression the Power which is the victim of the aggression should be obliged to send back prisoners perhaps to destinations 5, 6 or 10,000 kilometres from their place of internment. This is certainly true, but it is difficult to make the distinction. Repatriation would not only affect the prisoners of a Power which is the victim of aggression. There would be others who would also have to be repatriated. From a general standpoint, it would be desirable for the two Powers to bear equal shares of the costs, under a mutual agreement.

The French Delegation believes that the various observations made here could be given effect if instead of deleting the last two sentences of the provisions under (b) from the words: "The Parties concerned shall agree . . ." onwards, the whole of the last sentence, beginning with the words "The conclusion of this agreement . . ." be deleted. This last sentence might prove to have rather unfortunate consequences. For instance, if the Power situated at 15,000 kilometres from the prisoners' place of internment delayed negotiations for sharing the costs, the Detaining Power would be obliged, under this clause, to repatriate them immediately and in consequence, to advance the costs of the operation. If agreement finally proves impossible, the result will be that the Detaining Power will have borne the whole of the costs; this is not within the intentions of anyone present here. A reasonable compromise would perhaps be to delete the last sentence only.

Mr. Söderblom (Sweden), Rapporteur: The suggestion as to the drafting seems judicious to me and should be adopted without further proceedings. I hesitate to give an opinion on the remaining question which raises a great many difficulties. I think a vote should be taken on these two divergent views.

Mr. Baistrocchi (Italy): I apologize for again taking the floor. May I draw the attention of the Meeting to the fact that the last sentence was adopted by Committee II after lengthy debates. It is based upon a most important principle to which we attach particular value. Article 108 starts with the sentence: "Prisoners of war shall be released and repatriated without delay". On this point we have frequently stated that we do not wish the necessary agreements on the allocation of repatriation costs to serve as a pretext for delaying this operation. The Italian Delegation urges that this last sentence be maintained in the present text.

The President: We will now vote on the matter. I should like first to settle the question raised by the Delegate of France who asked for two words to be changed in the last paragraph under (b) of Article 108. This alteration is accepted by the Rapporteur. Are there any objections?

Mr. Baistrocchi (Italy): We oppose this proposal.
The President: If I have rightly understood, the Italian Delegation is opposed to this proposal.

The French Delegation made two proposals: to replace in Article 108, paragraph (b), first sentence, the words “as far as the frontier or port of embarkation” by the words “as far as its nearest frontier or port of embarkation to the territory of the Power on which the prisoners of war depend”.

The French Delegation made another suggestion to which I will revert later.

The alteration in the substance of the phrase proposed by the French Delegation is accepted.

We have now two amendments before us, one submitted in writing by the Soviet Delegation for the deletion in Article 108, sub-paragraph (b), of the last two sentences; and another submitted verbally to-day by the French Delegation for the deletion only of the last sentence of sub-paragraph (b) of the last paragraph of Article 108. We shall vote on these two amendments in turn, beginning with that tabled by the Soviet Delegation as this the differed the most from the text proposed by the Committee. The delegations who accept this amendment are requested to signify.

The amendment in question was rejected by 16 votes to 15, with 13 abstentions.

I put to the vote the amendment submitted by the French Delegation.

This was rejected by 20 votes to 6, with 18 abstentions.

Will you now vote on the whole of Article 108. Article 108 was adopted by 35 votes to none, with 11 abstentions.

I propose that we should now adjourn. The Bureau will meet in a few minutes. Another Plenary Meeting will be held at 3 p.m.

The meeting rose at 11.50 a.m.

EIGHTEENTH MEETING

Thursday 28 July 1949, 3 p.m.

President: Mr. Max Petitpierre, President of the Conference

“Prisoners of War” Convention

Article 109

The President: An amendment has been received from the Delegation of the Union of Soviet Socialist Republics, proposing:

I. In the sixth paragraph, delete the words “judicial prosecution” after “Prisoners of war against whom”, and replace by “criminal prosecution for a crime or felony in criminal law”.

II. In the same paragraph, delete the words “under the judicial provisions of the Convention” following “The same shall hold true of prisoners of war already sentenced” and replace by “for a crime or felony in criminal law”.

Mr. Söderblom (Sweden), Rapporteur: Article 109 deals with the repatriation of prisoners after the close of hostilities.

The sixth paragraph of that Article enables a Detaining Power to retain prisoners of war against whom judicial proceedings are pending. The amendment now proposed to us is to delete in two separate places the words “judicial proceedings”, replacing them by the expression “criminal prosecution for a crime or felony in criminal law”.

The rectification in question is in accordance with the unanimous view of those who drafted the Article. I feel sure that I am justified in saying this, as I do not believe that those who drafted the Article intended that a prisoner should be detained because proceedings were being taken against him or because he was summoned to appear before a court for neglect of some obligation in civil law. The authors of this Article were thinking of a prisoner of war who is subject to criminal proceedings. I ask you to correct me if I am wrong. If I am not, I shall propose to the Meeting to accept the rectification proposed.
The President: Is any objection raised to the proposal submitted by the Delegation of the Union of Soviet Socialist Republics?

Mr. Quentin-Baxter (New Zealand): I do not wish to oppose what I believe to be the principle of the Soviet amendment but I feel that it raises technical difficulties of interpretation which must be discussed now. The English wording of the amendment says "for a crime or felony in criminal law". Now in common law a felony is a certain class of crime and therefore it adds nothing to the English text nor do the words "in criminal law". The whole phrase is embodied in the three words "for a crime". On the other hand I believe, although my knowledge of civil law is very scanty, that the French phrase means something very different and that it is much nearer to the intention of the Soviet Delegate. The word "délit" I understand to have a very different meaning. It is a class of offence which is less than a crime yet more than a petty offence, but that word does not in any way correspond to the word "felony" in the English text. It seems to me that the English and French texts mean nearly the same thing, and I think that is more than a point of translation. For this reason I would suggest that if the Soviet Delegate agrees, we should vote on the principle contained in his Delegation's amendment, and that we should refer it later to a small group of lawyers to try to find a phrase in English and in French which will correspond and have a definite meaning. I do not think that it would be a difficult or a lengthy job, and I think that if it were done it would be well worth while, but if the amendment were left in its present form, my Delegation would be bound to vote against it for the technical reasons which I have just given.

Mr. Söderblom (Sweden), Rapporteur: From the remarks made by the New Zealand Delegate, I conclude that an adjustment of the English and French texts is much desired. For my part, I venture to suggest that Mr. du Moulin of the Belgian Delegation should be requested to meet the Delegates of New Zealand and of the U.S.S.R. in order to make this alteration.

General Dillon (United States of America): The United States Delegation shares fully the views expressed by the New Zealand Delegate.

The President: We are going to vote on the principle of the amendment. I also consider that the wording of the French text should be considered. The words "poursuite pénale pour crime ou un délit de droit pénal" should be replaced by "poursuite pénale pour crimes ou délits". I therefore propose to adopt the Rapporteur's suggestion and to request a member of the Belgian Delegation to contact Delegates of the U.S.S.R. and of New Zealand in order to adjust the text.

If you accept this method, we could vote later on the amendment submitted by the U.S.S.R. Delegation.

General Dillon (United States of America): I do not understand what we are voting on. What is the principle of the amendment?

The President: The principle of the amendment is in fact the amendment itself; but the final form to be given to Article 109 must remain in abeyance, that is to say, the form will be examined in the light of the suggestion just made by the Rapporteur and the Meeting will be able to come to a decision later on the whole of the Article, when the Committee of three members has studied the question and finished its work.

General Dillon (United States of America): Could we defer voting on this matter until we have the text of this Working Party?

The President: I myself am prepared to accept this proposal. Is the U.S.S.R. Delegation prepared to do so?

General Sklyarov (Union of Soviet Socialist Republics): The U.S.S.R. Delegation agrees with the suggestion made by the Delegate of New Zealand, and also the President's proposal, that a vote should be taken first on the principle of the amendment and that the amendment should then be sent to the Drafting Committee.

The President: As no delegation opposes the actual principle of the amendment, I take it we can vote today on the principle itself. Voting on Article 109 as a whole will be postponed till the select Committee of 3 members has decided upon the final text of this Article.

The amendment submitted by the Delegation of the U.S.S.R. was adopted by 34 votes to none, with 6 abstentions.

The President: Voting on Article 109 as a whole is therefore postponed till a later meeting. Does anyone wish to speak on Article 109?

Mr. Gardner (United Kingdom): The United Kingdom Delegation wants to object to the fifth paragraph of Article 109. Shall we do it now or when we come to the vote?

The President: I think the United Kingdom Delegation may now submit its objections.
Mr. Gardner (United Kingdom): The United Kingdom Delegation invites the Conference to reject the fifth paragraph of Article 109 for two reasons. The first is that if it is applied at all it can only be applied by causing delay, and almost certainly considerable delay in the carrying out of repatriation. Yet, the second sentence of the paragraph says “on the condition that it does not cause any delay”. In other words, you say in the first sentence that you shall observe certain distinctions in the order of departures, and in the second sentence that you must not take the time which is essential if you are to pay due regard to those distinctions. We have a strong objection to provisions being inserted in the Convention which we believe to be ineffective because they are self-contradictory.

Our second objection is that we believe that the attempt to fix distinctions in the order of departure is not really seriously meant. In the discussions on this particular paragraph in Committee II it was unanimously agreed that it was not these distinctions which should determine the order of departure, but that the order should be determined by their speediest method of emptying the camp in which the prisoners were detained, and of conveying them to their homes by whatever means of transport was available. Therefore we suggest that if you want general repatriation to be carried out without delay you must pay attention, not to the particular characteristics of the prisoners set out in this paragraph, but to the location of the prisoners and the means of transport available; any distinctions made, if repatriation is delayed, should be distinctions based on those factors and not on the factors referred to in the fifth paragraph. For that reason we ask the Conference to reject the fifth paragraph of Article 109.

Mr. Lamarle (France): I entirely endorse the remarks made by the United Kingdom Delegate, as would anyone aware of the practical difficulties (transportation and so on) repatriation involves.

Mr. Agathocles (Greece): In view of the fact that the final text of Article 75 was adopted yesterday it seems to me that the sixth paragraph of Article 109 should be amended as it is diametrically opposed to Article 75 as adopted yesterday.

I draw the Meeting’s attention to this point in order that some solution may be found.

Mr. Lamarle (France): The Delegate for Greece has said what I myself intended to say, therefore all I can say is that I wholeheartedly support him.

The President: Two questions are before us: the first is the deletion of the fifth paragraph of Article 109, as proposed by the United Kingdom Delegation and supported by the Delegation of France; the second is the discrepancy said to exist between Article 75, already adopted, and the sixth paragraph of Article 109.

I suggest that these questions should be considered separately.

We will first vote on the proposal put forward by the United Kingdom Delegation for the deletion of the fifth paragraph of Article 109.

The proposal submitted by the United Kingdom was adopted by 23 votes to none, with 20 abstentions.

The President: As regards the contradiction between the sixth paragraph of Article 109 and Article 75, pointed out by the Delegations of Greece and France, I do not know whether the Rapporteur is in a position to express an opinion.

If he wishes, we might discuss another Article, and return later to the one now under discussion.

Mr. Söderblom (Sweden), Rapporteur: I am afraid this discrepancy is not clear to me. It might perhaps be advisable to have this point explained.

Mr. Lamarle (France): The discrepancy to which I drew attention mainly relates to Article 105, which covers the case of men eligible for repatriation for reasons of health and who are detained in connection with a judicial prosecution or conviction involving a sentence of less than ten years. The sentence would under that clause be void.

The Article we have just examined covers repatriation in general and allows of no restrictions of this sort.

I hardly think the discrepancy would be difficult to clear up; it would be a matter for the Drafting Committee.

General Dillon (United States of America): The alleged contradiction is illusory rather than real. Article 105 deals with repatriation during hostilities, and of those who are eligible for repatriation, approved by the Mixed Medical Commission under Article 105, there are going to be very few, at best, who are undergoing any sentence. Article 109 deals with repatriation at the close of hostilities. These two decisions were taken by Committee II after long and serious consideration of the matter: the decisions were deliberately made because the Committee felt it was willing, in the case of repatriation under Article 105 during hostilities, to take the proposal of a maximum of 10 years to apply but they were unwilling to apply it in a general repatriation at
the close of hostilities. There is no contradiction; we just took different decisions in the two Articles, and I think the decisions taken are correct and we should not regard them as inconsistent.

The President: Does any delegation wish to propose an alteration to the sixth paragraph of Article 109?

Mr. Lamarle (France): General Dillon’s explanations seem to me relevant and they have convinced me.

Mr. Gardner (United Kingdom): I am unable to find any inconsistency between Article 75 and Article 109, and unless some inconsistency can be proved I suggest that we reject the proposal made by the Greek Delegation.

The President: As no alteration is proposed to the sixth paragraph of Article 109, this paragraph is adopted as drafted by Committee II.

The vote will be taken on Article 109 as a whole when the Working Party concerned reports on the amendment tabled by the Soviet Delegation, which has just been adopted.

Does anyone else wish to speak on Article 109? As this is not the case, we shall proceed to Article 110.

Article 110

Mr. Sinclair (United Kingdom): It appears to the United Kingdom Delegation that Article 110 in its present form stipulates two requirements that may well be found to be mutually incompatible in practice and therefore to place upon the Detaining Power an obligation which will not possibly be fulfilled by it. I can perhaps best illustrate that by reading the relevant words of the Article:

“The wills of prisoners of war shall be drawn up in the form required by the law of the Detaining Power and must satisfy the conditions of validity required by the legislation of their country of origin...”.

I think it is indisputable that it would be universally agreed that the provisions of this Article should ensure that wills become duly operative in the country where they have to take effect. In the circumstances, I would be quite prepared to suggest an alteration of wording that could secure that position, but it may be thought to be insufficiently removed from a question of substance in the strict sense; in which event I should like to suggest that the rewording of this Article, in this particular connection, should be referred to a small Working Party.

General Dillon (United States of America): The United States Delegation shares fully the view which has just been expressed by the Delegate of the United Kingdom.

The President: Is the Rapporteur now in a position to express an opinion?

Mr. Söderblom (Sweden), Rapporteur: I believe that it would be advisable to examine the text of this paragraph very closely.

The President: I call upon the Delegate of the Union of Soviet Socialist Republics to speak.

General Sklyarov (Union of Soviet Socialist Republics): Article 112 on the Agenda refers to the Report of the Drafting Committee, which is also connected with Article 110. I consider that this document should be studied in connection with Article 110, for it corresponds to the statement which the Delegate of the United Kingdom made a few minutes ago.

The President: A certain number of comments have been made on Article 110. As it is impossible to discuss them all at this Meeting, I propose that we should proceed to the following Article. We shall attempt to decide how far these comments are justified or not. I shall again put Article 110 for discussion before the end of the Meeting.

Article 111

The President: We shall now consider Article 111.

Article 111 was adopted.

Article 112

The President: With regard to Article 112 the Drafting Committee has made a proposal which is the subject of the very document which the Soviet Delegation has just referred to.

Mr. Söderblom (Sweden), Rapporteur: The Drafting Committee suggested to the Assembly that the word “nationality” appearing in the fourth paragraph should be replaced by “indication of the Power on which they depend”. This change is in my opinion not only justified, but necessary. Allow me to remind you that Article 15, in which identity cards are mentioned, does not use the term nationality, but refers to persons who are under the jurisdiction of the Belligerent Parties... etc.
In Annex IV (capture card), the word "nationality" has been avoided. The wording is the following: "the Power on which the persons concerned depend".
We must adopt a term which has been approved for the rest of the Convention.
Article 112 was adopted.

Articles 113 and 114

Articles 113 and 114 were adopted.

Article 115

The President: An amendment to Article 115 has been submitted by the Delegation of the Union of Soviet Socialist Republics. It proposes to delete in the first sentence of the first paragraph the words "Religious organizations".

Mr. Söderblom (Sweden), Rapporteur: I have asked to speak only to say that in the first paragraph of Article 115, the wording of the last sentence of the French text is not as clear as could be desired. I propose two slight alterations, so that the sentence should read as follows:

"Such societies or bodies may be constituted either in the territory of the Detaining Power, or in any other country, or they may have an international character."

I hope that the reason for this alteration is sufficiently clear for there to be no need of any further explanation, and if the French-speaking Delegations have no objections, this alteration could be accepted straight away.

It would also be better to delete the only two commas which appear in the same sentence of the English text. At any rate it would be an improvement.

The President: Is there any objection to the Rapporteur's comment, which is exclusively concerned with the wording of Article 115?

As this is not the case, his proposal is therefore adopted.

Mr. Filippov (Union of Soviet Socialist Republics): In the opinion of the Delegation of the Soviet Union it is unnecessary in Article 115 to include religious organizations in the enumeration of the various organizations which may assist prisoners of war.

We do not see the necessity of giving a complete list here of all the organizations engaged in different forms of relief and assistance to prisoners of war.

We see no reason to make special reference to religious organizations for they seem to us to be included in the idea of relief societies, as defined in Article 115.

For this reason we propose to alter this Article by adopting the amendment submitted by the Soviet Delegation, that is to say, to delete the words "...religious organizations".

Msgr. Comte (Holy See): More than once during the discussion in Committee II the advisability, and perhaps even necessity, was urged of making our Conventions clear and exact. It is precisely in order to achieve this clarity and exactitude that we have asked for a reference to religious organizations in Article 115.

No doubt many of you remember the origins of Article 115 and Article 30. Certain delegates and the Stockholm experts had considered it advisable to condense in a single Article everything concerning the religious assistance to be given to prisoners of war and the facilities to be granted them for the exercise of their religious duties, to whatever faith they might belong. During the discussions in Committee II, it was thought that certain provisions of Article 30 would be more appropriately inserted elsewhere. We have no objections to this, since the wording of Article 30 is clear and precise and we hope to see Article 115 equally clearly worded.

The Delegate of the Union of Soviet Socialist Republics has expressed the opinion that it is not necessary to make any special reference to religious organizations, as these are already included in the term Relief Societies; he also said that it was neither possible nor advisable to enumerate all the Relief Societies and religious bodies and I agree with him, firstly because this enumeration would probably be very long, and also because there is always the danger that a list may appear restrictive. But I do not agree with the Delegate of the Soviet Union when he affirms that the term "Relief Societies" is sufficient to cover religious organizations. A Relief Society, whether temporary or permanent, founded to give aid to assisted persons in a given situation, is one thing, and a religious organization, the normal purpose of which is to serve religion, but in certain exceptional circumstances may direct part of its energies towards humanitarian ends, is another. The religious organizations—let us say, if you like, the Churches and Religions—which are mentioned in this Article side by side with Relief Societies, cannot surrender a right, which is at the same time a duty of mutual help and charity, especially when the exercise of this right is more necessary than ever, for it is only too well known, how fiercely human passions are aroused in time of war.
All of us here know how much has been done by the International Committee of the Red Cross, mentioned in Article 113, and everyone here has made a point of paying the most solemn and whole-hearted tribute to the magnificent work which it has accomplished, but we all know equally well, how vast its task was in the last conflict, and what substantial aid it received from relief societies and religious organizations.

I cannot mention all these religious organizations by name, but I should like to refer particularly to the Young Men's Christian Association, the Society of Friends, the American Joint Distribution Committee, and the Vatican Information Bureau; there are many others which I have omitted, but, as I said, it is not necessary to name them all.

Imagination does not dare to dwell on what a new conflict would mean and the misery it would engender, specially with the newly invented weapons, and now that there is no longer any real distinction between combatants and non-combatants. It is precisely to establish a balance between the evils and the remedies, to help, succour and comfort prisoners of war, that the religious organizations are anxious to be mentioned in Article 115, where they would naturally take their place side by side with the International Committee of the Red Cross and other Relief Societies which are to assist prisoners of war. Mention of these organizations would be a well deserved tribute to the work which they have accomplished in the past, and a preparatory measure for future events—events which we all hope will never come to realization. Since we are assembled however, to establish a Convention for the protection of prisoners of war, the religious organizations consider themselves in honour bound to take part in this humanitarian work, which corresponds so closely to our religious principles. This is why the Delegation of the Holy See requests this Assembly to vote in favour of Article 115 in the form in which it was submitted.

The President: We shall now vote on the amendment submitted by the Delegation of the Union of Soviet Socialist Republics.

The amendment was rejected by 25 votes to 8, with 3 abstentions.
Article 115 was adopted by 32 votes to none, with 9 abstentions.

Article 116

Article 116 was adopted.

Article 122

Article 122 was adopted.

Annexes I, II, III, IV

Annexes I, II, III, IV were adopted.

Mr. Gardner (United Kingdom): I have only just spotted in Annex IV ("I. Identity Card"), a reference to Article 3. It should be a reference to Article 15. I apologize for not spotting it earlier.

The President: Note has been taken of the remarks of the United Kingdom Delegate.

Mr Söderblom (Sweden), Rapporteur: I am not absolutely sure; but I think that the reference to Article 3 is correct. This can easily be checked by the Secretariat.

General Dillon (United States of America): I was just going to say what the Rapporteur has said, that properly it is the key to Article 3, I think.

The President: The United States Delegate, the Rapporteur and the Secretariat have checked the reference and it appears to be correct. I therefore think the United Kingdom Delegate is mistaken on this point. Perhaps he will kindly tell us if he agrees. (Mr. Gardner agreed.)

Annex V

Annex V was adopted.

Titles of chapters and sections

The President: Will the delegates kindly let us hear their opinions on the titles of the chapters and sections of the Convention the bulk of which has now been adopted?

Does anyone wish to speak on the titles? Since no delegation wishes to speak, I take it that you agree with the details figuring in this Document.

Article 110 (continued)

We will resume the consideration of Article 110, on which several remarks were made.

Mr. Söderblom (Sweden), Rapporteur: I am glad to have had a few minutes to consider this Article. I rather agree, as one delegation pointed out in the course of the debate, that the Meeting should refer to the Drafting Committee's Report. The Drafting Committee explains certain editorial
modifications of Article 110 and also mentions the fact that the United Kingdom Delegation had preferred another text for the first paragraph of the Article. This text is to be found in the Report I have just quoted.

In my opinion this is a text that would do very well as the first paragraph of Article 110. If you think it advisable I see no objection to the United Kingdom Delegation's text being put to the vote. The adoption of this text would solve the difficulty and there would be no reason to return to the Article. If it is adopted, I would remind you that the Drafting Committee also mentioned in the Report that some doubt had arisen as to the coordination of the English and French texts, and that improvements, not affecting the substance, might be made.

If we are going into the question of coordination, I would suggest that we should refer the matter to the Select Committee just set up, which will report to us. I think this would be the best way to solve the difficulty.

Mr. Gardner (United Kingdom): The United Kingdom Delegation accepts the proposal made by the Rapporteur to adopt the wording suggested in the Drafting Committee's Report.

The President: Is there any objection to the Rapporteur's proposal?

No one having asked to speak, I take it that you approve the proposal made by Committee II to replace the text of the first paragraph of Article 110 by the one mentioned in the Report of the Drafting Committee.

Mr. Gardner (United Kingdom): It is only the first sentence that is replaced, it is not the whole paragraph.

The President: That is true.

Articles 3, 30A, 109 (continued)

Mr. Söderblom (Sweden), Rapporteur: We have now reached the end of the Agenda, but three Articles remain, namely Article 3, which has to be considered after Article 2 had been discussed in the light of the Joint Committee's Report, Article 30A, which has to be coordinated with Article 20B, and finally the Report of the sub-Committee on Article 109.

Articles 13, 20 (continued)

Mr. Söderblom (Sweden), Rapporteur: There is still one small correction to be made which we might entrust to the kind offices of the Secretariat. It concerns the expression “capturer” (French). In the French text of the Convention, the words “capturer, capture”, etc. have been deleted in order to give the Convention the widest scope possible by covering members of armed forces taken prisoner on surrender or in other circumstances which cannot, properly speaking, be described as capture.

This term has been replaced by “who have been taken prisoner” or “who have fallen into the hands of the enemy”, for instance in Articles 3, 4, 17, 50, 50, etc. The word “capture”, however, has survived in the third paragraph of Article 13 and has been introduced into the third paragraph of Article 20 as the result of the adoption of an amendment proposed by the Soviet Delegation. I think we might ask the Secretariat to delete this word in the two Articles mentioned, which would then read as follows: Article 13, first sentence third paragraph:

“Prisoners of war shall retain the full civil capacity which they enjoyed at the time when they were taken prisoner”;

Article 20, third paragraph. (No change in the English text.)

This is a mere correction.

The President: Does the Meeting agree to the motion brought forward by the Rapporteur?

Since no one wishes to speak, it is taken as agreed.

With the exception of the Articles just mentioned and the common Articles, we have now finished our consideration of the Prisoners of War Convention.

I wish to express our most sincere thanks to Mr. Söderblom, Rapporteur of Committee II, both for the Report which he has presented to the Conference and for his active part in the debates of the Assembly. (Applause.)

Article 105 (continued)

General Sklyarov (Union of Soviet Socialist Republics): The Delegation of the Union of Soviet Socialist Republics moves the inclusion, in the Agenda of a forthcoming Plenary Meeting of the Conference, of the Soviet Delegation's proposal relative to Article 105, which obtained a tied vote at today's Meeting and which should therefore be put to the vote again.

The President: The motion has been noted. The question will probably figure in the Agenda of tomorrow afternoon's Plenary Meeting. I must remind the Meeting, however, that there will be no discussion, but merely a vote.
Mr. Gardner (United Kingdom): The United Kingdom Delegation further wishes Article 100, upon which we tied yesterday, to be put on the Agenda for new votes.

The President: This motion has been noted and the question will also figure on the Agenda of tomorrow afternoon’s Plenary Meeting.

Common Articles

The President: We will now consider the Articles common to the four Conventions. We will base our work on the Wounded and Sick Convention. To save time I suggest we should consider each Article for the four Conventions simultaneously. There will thus be one vote on any given Article or amendment, except where an amendment does not concern all the Conventions or where a delegation specially asks us to proceed otherwise.

I take it that you agree with this proposal.

The Rapporteur, Colonel Du Pasquier, being absent, I call upon the Delegate of Switzerland to put the matter for discussion.

Mr. Bolla (Switzerland): As you are aware, the Stockholm Draft contained a number of provisions which were repeated in identical or almost identical terms in the four Conventions or at least in two or three of the Conventions. This Conference has decided in Plenary Meeting that these common provisions should be considered separately and referred to a Joint Committee having, in reality, the same membership as the Plenary Meeting.

The Joint Committee elected Mr. Maurice Bourquin, Delegate for Belgium, as Chairman and Colonel Du Pasquier, Delegate for Switzerland, as Rapporteur, whose place I have unexpectedly been asked to take.

These common provisions are, I need hardly say, of varied content, and it would be fruitless to seek to divide them into categories.

We have first the introductory provisions on the application of the Conventions, on special agreements, on acquired rights, on the activity of the International Committee of the Red Cross and international bodies carrying out similar work, on the Protecting Powers and their substitutes, and generally speaking on the measures required in the absence of Protecting Powers. One group of Articles concerns the settlement of disputes and another sanctions for breaches of the Conventions. Lastly, we considered the final provisions, which are similar to those in all international treaties, on the entry into force of the Convention, ratification, accession, termination and so on.

That, briefly, was the work assigned to us.

The common Articles were examined at the first Reading by the Joint Committee and then referred to a Special Committee. The Special Committee submitted their proposals to the Joint Committee which then proceeded to a second Reading.

The Joint Committee’s Report, drawn up by Colonel Du Pasquier, was circulated and I think it unnecessary to read it to you.

I am entirely at your disposal for any additional information you might desire to have on any of the Articles.

The President: We will now consider the common Articles.

Articles 1, 2

Articles 1/1/1/1 and 2/2/2/2 were adopted.

Article 2A

The President: Amendments have been submitted by the Delegation of the Union of Soviet Socialist Republics and by the Delegation of Burma asking for the deletion of Article 2A and the consequential reference in Article 3. We further have a recommendation by the Drafting Committee.

If no one wishes to speak we may vote at once on the two amendments and on the proposal made by the Drafting Committee.

Mr. Morosov (Union of Soviet Socialist Republics): No other issue has given rise to such a long discussion and to such a detailed and exhaustive study as the question of the extension of the Convention to war victims of conflicts not of an international character. That is quite natural. If wars between States have always been attended by cruelty, the mass extermination of innocent persons, and the destruction of material and cultural values of mankind, civil and colonial wars lead to even greater cruelty. This is indisputable. Now-a-days we can see colonial wars attended by unspeakable cruelty and destruction, unprecedented infringements of international law, and acts of barbarism against the civilian population. It is unnecessary, in spite of the proposals that have been made to delete this Article from the Convention, to produce proof that civil and colonial wars should be governed by the rules of international law. We have only to read the United Nations Charter (which states as the aims of the Organis-
The maintenance of peace and international security, the adoption of collective measures in order to repress all acts of aggression or other infringements of peace) to understand clearly that the members of the United Nations cannot neglect such events as civil or colonial wars, wherever they may occur.

The fundamental principle on which the United Nations Organization rests proves that these considerations are right. It is well known that the conflicts which took place in Indonesia and in other parts of the world have been examined on several occasions by the Security Council. The four Draft Conventions for the protection of war victims which we have prepared are based on the principles of international law; they also amplify the provisions of international law relative to the laws and customs of war, and in particular guarantee the protection of war victims. Obviously then, the special provisions of international law relative to periods of war should be extended to all cases of armed conflict, including those of a non-international character. The provision for the application of the four Conventions to colonial and civil wars is supported by the overwhelming majority of the delegations present at this Conference. Certain delegations propose to extend the humanitarian clauses of the present Convention in the greatest possible measure to conflicts of a non-international character, whereas other delegations are striving to restrict the application of the Convention in the cases mentioned, as far as possible.

This is the fundamental difference of principle between the draft of the fourth paragraph of Article 2 of all four Conventions proposed by the Soviet Delegation and the draft Article 2A as submitted by the majority of the Drafting Committee and based on the French proposal. We must choose between these two proposals. We have already said that Article 2A, as worded by the Joint Committee, is intended to restrict the application of the Convention as far as possible in conflicts of a non-international character; this will at once become clear if we examine the Article attentively. It is proposed that, in the case of a conflict of a non-international character, none of the provisions of the four Conventions for the protection of war victims, except those of Article 2A, shall be applied if the Parties do not decide by a special agreement to apply all or part of the other provisions of the Convention. Article 2A is thus, as it were, a miniature Convention which is intended to replace the four Conventions in conflicts of a non-international character. The obvious outcome of such a measure is that a large number of important provisions concerning the protection of war victims will not be put into operation. This is tantamount to denying the
which ensure that the persons covered by these Conventions are treated in accordance with humane principles, particularly those provisions which prohibit all discrimination of race, colour, religion, sex, birth, occupation or social status.

As regards the Prisoners of War Convention, all the provisions should be implemented which guarantee prisoners of war humane treatment, as well as all those provisions which prohibit discrimination of the grounds which we have just mentioned.

Lastly, as regards the Civilians Convention, we consider that here again all the provisions should be implemented which ensure that the civilian population shall receive humane treatment, and which prohibit such measures as reprisals against civilians, the taking of hostages, the mass execution of civilians, or the destruction of property not rendered absolutely necessary by military operations, and, of course, all discrimination founded on race, colour, religion, sex, birth, social status, etc.

In contrast to the text of Article 2A, which restricts the application of the Convention, the proposal submitted by the Soviet Delegation is based on the necessity of giving effect to many important provisions of the Conventions, in order to ensure the protection of war victims in the case of conflicts of a non-international character.

Allow me to draw your attention particularly to the fact that the wording which we propose makes it possible to avoid, in cases of conflict of a non-international character, a purely automatic implementation of provisions which, for certain specific reasons, can only come into force in cases of conflicts between States. At the same time, our wording makes it possible to put into practice all those progressive provisions which, by reason of their nature, can and should be implemented in conflicts of a non-international character.

These are the grounds on which the Delegation of the Soviet Union appeals to all the delegations present to support this essentially humanitarian proposal, and to act upon it in cases of colonial conflicts, civil wars, or any other conflicts of a non-international character. The Delegation of the Soviet Union therefore urges them to adopt its proposal.

General Oung (Burma): It is because of the conflicts arising in certain parts of the world, including mine—conflicts caused by foreign ideologies—that I am submitting my amendment that Article 2A and the consequential reference in Article 3 be deleted. In doing so I refer not only to Article 2A adopted by the Joint Committee but also to the U.S.S.R. amendment and the original Stockholm text, known to us as Article 2, paragraph 4.

I regret having to take up your time, but you will perhaps remember that at the very first meeting, when Article 2 was discussed, I affirmed clearly that humanitarian principles are to us more important than national and racial issues and that such they are very strictly observed, and also that we were strongly of the opinion that the inclusion of this Article in the Convention is a very serious danger to sovereignty and civilian rights. To give international recognition to insurgency would certainly be as grave an error as recognition of aggression.

In view of its great importance I crave your indulgence for a patient hearing of views which have not hitherto been fully submitted for your consideration. I will be as brief as possible over an issue of such a magnitude.

I will start, Sir, with the seventh Draft Report drawn up by the Special Committee of the Joint Committee. In this Report you will find that the Special Committee voted against the Stockholm text by 10 votes to 1 with 1 abstention, considering (according to the Report) that it was too wide in scope. This declaration, I regret to state, does not give you a complete picture: in fact, if you refer to the Report of the Fourth Meeting of the Special Committee held on 11th May, the complete picture was that the Special Committee was of the opinion that the Stockholm text should be abandoned and a clearer definition should be given of the cases of armed conflict not of an international character, to which the Convention should apply. It is clear that this was the only agreement ever reached by the Special Committee in its lengthy considerations on Article 2, paragraphs 2 and 4, but what has happened to this one and only agreement? It has been abandoned: it has been completely lost sight of in the adopted text and also in the U.S.S.R. text.

In the Report drawn up by the Joint Committee and submitted to the Plenary Assembly, a reference is made to Article 2A. The Joint Committee accepted the second Working Party's text by 21 votes to 6 with 14 abstentions. You will also find in the third paragraph of this Report that only 2 solutions are possible, but it says that in view of 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. That was after finding that there were only two possible solutions. Then an attempt was made, and if you will excuse my language, it must be said that a futile attempt was made, which was no solution. The observation in the Report of the Joint Committee is really an apology for the adoption of the Article—the Article which would never have been accepted if such an observation had been known before the meeting of the Joint Committee. So the fact remains that we have an adopted text before us, the U.S.S.R. and the Stockholm text, not only...
without any distinction or clarification but with increased vagueness.

I am casting no aspersions on those who have ignored the necessity for definition. All tribute should be paid to those various delegations who have submitted amendments and proposals and to the two Working Parties who spent hours in endeavouring to find a solution. I pay a tribute to their sincerity, tolerance, sense of fairness and loyalty to the principles underlying this Conference. Their failure—if I may be permitted to use the word—was because the subject cannot be fitted into the scope of the Convention.

The seventh Report of the Special Committee of the Joint Committee continues:

"it is commonly agreed that it would be dangerous to weaken the State when confronted by a movement caused by disorder and anarchy, by compelling it to apply to them, in addition to its peace-time legislation, Conventions which were intended for use in a state of civil war".

The Stockholm text according to the above mentioned Report presupposed:

"an armed conflict representing an international war in dimensions and did not include mere strife between the forces of the State and one or several groups of persons in uprisings, etc."

Have the texts before us made these points clear? Have they removed the difficulties and dangers and clarified the vagueness? I say, Sir, they have not done so. The present texts do not remove the danger to the State, nor do they include mere strife. I will endeavour to make it clearer when I come to discuss the proposed text in detail.

After this difficult and insoluble distinction in regard to armed conflict comes reciprocity—the second and also insoluble difficulty. "The Convention should only be applied if the insurgent civil authority accepted it": this was said by the honourable Delegate for the United States of America at a meeting on the 11th May. I repeat: it says that the insurgent civil authority should accept the Convention.

The adverse party should, in all reason and sense of justice, be made to comply with the unqualified provisions laid down for the observance of the High Contracting Party. Will we not endanger very seriously the strength and structure of a High Contracting Party by binding it to a one-sided agreement—why should we embarrass or weaken it because it has signed the Convention? It would be far better if we did not become one of the contracting parties, as by doing so we will be bound by the Conventions in our internal affairs.

In the Summary Record of the Meeting of May 11th you will find that the Draft of the Working Party left unsettled the question of reciprocity, upon which the Special Committee have not yet made a pronouncement. Not only has the Special Committee found itself unable to make such a pronouncement but the two texts before us have totally ignored it—again, this was on account of the impossibility.

In the seventh Report presented by the Special Committee you will find a very lucky reference to the French amendment, which was the one and only hopeful sign in our discussions. It was supported, as you will see in the Report, by several delegations. It was decided to hand it over to the second Working Party; what was the result when it was proposed to the Special Committee? It was rejected: the first paragraph by 5 votes to 5, the second by 5 votes to 4, the third by 5 votes to 5, and it was not necessary to vote on the fourth. All hope of agreement previously secured by the original French amendment, was thus lost in the desire for a compromise.

You will see in the seventh Report of the Special Committee that the failure to take into account the existence of civil wars which resemble international wars was the reason given for the rejection of the proposal submitted by the Working Party. The other reasons were not mentioned in the Report. From a reference to previous papers I will give you these reasons: the reason why the text tabled by the second Working Party was rejected by the Special Committee was because the Article did not define armed conflict not of an international character; because it proposed an impossible condition: to bind down a non-contracting party; because of paragraphs 1 and 2, which were considered redundant; because of the vague reference to "civilized people" instead of confining the Conventions only to contracting Parties, and lastly because of the objection to include civil wars—domestic matters—in an international Convention.

None of these objections have been covered. The proposal submitted by the second Working Party presented as bare a picture as when it was considered by the Special Committee, and though dangerously vague was adopted by the Joint Committee without discussion. I submit it now to you for rejection.

I will close my observation on the seventh Report with references to the last paragraph, which reads as follows:

"hoped that the long discussions of the Special Committee have not been superfluous and that the elements of some reasonable solution will be able to be drawn".

Well, the discussions are not superfluous. On the other hand, they have been very thorough. Very careful considerations have clearly revealed the fact that no satisfactory solution can be arrived at, no compromise would meet the case,
and that the only reasonable course is to ignore it completely in our Conventions.

The only remark of the Report which can be fully accepted is the description that civil wars leave the most painful wounds in the organism of nations, and their healing is most difficult. Because we fully agree to this able and very true description, we strongly recommend the deletion of Article 2A, as the inclusion will only be an incentive to armed conflicts with all their terrible effects.

May I now refer to the adopted text, as it stands, for your consideration? It starts with the reference to “armed conflicts not of an international character”. You see that no attempt has been made to define this phrase. To go further, the phrase may include banditry, uprisings, disorders, rebellion and civil war. By not defining it, all the above degrees of armed conflict fall within the Article that you are now asked to adopt. Even the lesser forms are discarded, rebellion and civil war are by themselves most undesirable inclusions in the Conventions. They may easily be the work of paid mercenaries and “Quislings” acting for their own gain and at the expense of the civilians on behalf of foreign ideologies. Some of you, especially the delegations of Colonial Powers, have really been remarkably broadminded to support the Article, though it is going to encourage Colonial wars. We, the broadminded to support the Article, though it

The paragraph therefore is entirely unnecessary.

Those follow, and I ask you to read them. They are probably considered the most obvious rules of the Convention referred to. “The Great International Convention for the Protection of War Victims affirms that in armed conflicts not of an international character, violence to life and person, in particular murder of all kinds—(I do not know how many kinds of murder there are)—mutilation, cruel treatment and torture are and shall be prohibited”. I will not proceed further on this. The paragraph is entirely unnecessary. When we talk about the humane treatment of persons taking no part in hostilities, there is surely no need to treat persons who take no part in the hostilities otherwise than humanely. In our country we give such persons every encouragement, and even rewards. Very humane treatment. The paragraph therefore is entirely unnecessary.

To succeed in convincing you, and to make absolutely sure that I convince you, I will proceed a bit further on the other paragraphs of the Article. Paragraph 3 says:

“The Parties to the conflict should bring into force all or part of the other provisions of the Convention”.

Surely this interference with the position of the High Contracting Parties is unjustified, as it is
unnecessary and impracticable. As was pointed out by the Delegate for Denmark the other day, by the inclusion of the "insurgents" in the term "Parties to the conflict", no special agreements are necessary, there seems to be no necessity to conclude special agreements to the provisions of the Convention, so this paragraph also seems to be unnecessary.

Paragraph 4—the last—is an attempt to safeguard the legal status of the de jure government. I say it is only a bait—but it is a bait—which I hope will fail in its object. Whether or not you safeguard the legal status of the de jure government, the mere inclusion of this Article in an international Convention will automatically give the insurgents a status as high as the legal status which is denied to them. It can easily be imagined that this paragraph is going to be an encouragement and an incentive to the insurgents.

I do not think I need to go into the Stockholm text. The same objections and criticisms apply. I will conclude with some general observations. I repeat that I have all the time stressed our strong objections to the extension of the Conventions to civil war and insurgency, and the expansion of protected persons to include rebels.

I do not understand why foreign governments would like to come and protect our people. Internal matters cannot be ruled by international law or Conventions.

We say that external interference in purely domestic insurgency will but aggravate the situation, and this aggravation may seriously endanger the security of the State established by the people. Each Government of an independent State can be reasonably expected to treat its own nationals with due humanity, and there is no reason to make special provisions for the treatment of persons who had taken part in risings against the national government as distinct from the treatment of other offenders against the laws of the State.

At this stage I would like to emphasize that the object of our Conference is to establish international Conventions for the protection of war victims, and while doing so we should not disregard the equal rights of nations, large or small. As the honourable Delegate for the U.S.S.R. did so, I also would like to make a reference to the United Nations Organization. It is also not the object of the Conference to intervene in matters essentially within the domestic jurisdiction of any State, nor to aggravate the situation, especially that of a domestic nature.

If you include provisions for armed conflicts not of an international character in the Conventions, you will not only be going well beyond the scope of the Conference but also you will be going against the high principles laid down by the United Nations Organization. Do you think that it is justified or fair to do so when the Great Powers at this Conference have been so reluctant in the complete acceptance of provisions likely to effect the security of their States, even in matters within the bounds of the Conference, i.e. international wars? When you have to discuss the constitution and functions of Protecting Powers in international wars, the matter of international disputes, the regulations against fifth columnists etc., when you rightly dispute over the use of words such as "control", "war crimes", reasonable fears of small nations in matters of internal dispute and infractions of national laws against its own citizens, external intervention in domestic insurgencies, may be sympathetically considered, especially when we have all along supported the necessity of safeguarding the security of the State.

We express these observations with bitter experience of insurgencies. These are our very strong views. We appeal especially to the Delegations of France, Greece, Italy, the United Kingdom, Switzerland and Uruguay, those who sponsor the Article that has been adopted, for a reconsideration of their views. I hope you will not vote against us simply because you sponsored the Article. We have not had the full opportunity to place our views before you. We have done so now, and we hope we shall get your sympathy.

I think I have stated my case. I apologize for having taken up so much of your time, and I thank you, Mr. President and Fellow Delegates, for having given me this patient hearing.

In the attempt to embody a clause extending part of the benefits of the Conventions to non-international war, an Article which happens to be one of the longest, vaguest and most dangerous to the security of the State in the Convention has been placed before you.

In the wise words of one of the delegates it is described as redundant. I repeat that it is not only redundant; the sincere desire to reduce the excesses and horrors of such conflicts has not achieved anything. On the other hand, its inclusion is especially harmful and beyond the scope of our Conference. The Article, I repeat once and for all, is an incentive to armed conflicts and I propose the complete deletion of any extension of the Conventions to civil war and insurgency.

The President: I propose that we should adjourn the debate and resume it tomorrow morning, as we cannot in any case finish our discussion of Articles 2 and 2A now.

I propose to hold two Plenary Meetings tomorrow, the first at 10 a.m. and the second at 3 p.m. We will hold one Plenary Meeting on Saturday morning and then adjourn till Monday.

The meeting rose at 6.25 p.m.
COMMON ARTICLES

Article 2A (continued)

The President: We will continue this morning to consider Article 2A, which is one of the common Articles. Several speakers already spoke yesterday afternoon on the subject; there are no further names on the Agenda.

Dr. Dimitriu (Rumania): The prolonged discussions in the Special and the Joint Committees have drawn attention to the great importance of the provisions of Article 2A. Our Delegation feels that neither proposals intended only to give greater precision to the existing provisions, nor those claiming to be no more than a detailed summary—which, of its nature must be restrictive—will allow us to arrive at a definition of those humanitarian principles which should also apply in warfare of a non-international character. A draft text should therefore be prepared which is both flexible and precise, and which embodies these basic principles. It would therefore not be advisable to provide for special agreements as the only means of applying the Conventions; that might destroy all safeguards for the practical application of this Article.

The amendment submitted by the Soviet Delegation (see Annex No. 15) takes account of this point by proposing the application of all humanitarian stipulations of the present Convention without seeking to enumerate all the provisions contained in the Convention. At the same time, it lays down in the Civilians Convention, important obligations the object of which is to prevent the extermination of civil populations. The Article as it is drafted in this amendment contains, in our opinion, the only formula which would allow the Contracting Parties to ensure the efficient application of the Convention in warfare of a non-international character, i.e. to apply all the humanitarian stipulations without necessitating the enumeration of a quantity of technical details. This solution is still more interesting if we consider the very complex nature of non-international wars; it involves no legal difficulty and cannot infringe the sovereignty of the State.

For these reasons the Rumanian Delegation supports the proposal contained in the Soviet amendment.

Mr. Cohn (Denmark): The Burmese Delegate alluded to a remark I had made on the question under consideration today. I should like to point out, however, that this remark, or if you prefer, criticism, did not refer to the provisions prescribed in Article 2A. This Article is, in my opinion, perfectly satisfactory; it relates only to humanitarian obligations which we can agree to apply to all, and consequently to the insurgents or rebels referred to in this Article.

My remark concerned something quite different, namely the fact that throughout all the Articles of the four Conventions, the terms "belligerents" or "belligerent Parties" have been replaced by the expression "Parties to the conflict". In these circumstances the reference in the Records of the Committees as suggested by the Swedish Delegate with regard to the word "neutral" is not sufficient to solve the difficulty which I have pointed out. For this difficulty does not relate to Article 2A itself, nor to the term "High Contracting Party" used in that Article, nor to the position of neutrals. It simply relates to the fact that the expression "Parties to the conflict" has been used throughout the Convention instead of the word "belligerents".

It is surprising that it should be so difficult to secure understanding for something which is really perfectly clear and simple. I will therefore try once more to explain what I mean.

We had all agreed that it was not possible to accept the idea that parties such as rebels, insurgents, partisans, or even ordinary criminals, should be able to claim the benefits of the Convention; and that it was essential to determine certain conditions and fix certain limits. This is why we set up a sub-Committee to consider this point. This sub-Committee was unable to define the con-
ditions or to fix limits; it was not successful in finding a solution to the problem, which is certainly a complex and arduous one. What did the Subcommittee actually do? It simply evaded the difficulty without solving it. And how did it succeed in evading it? Simply by recognizing humanitarian obligations and duties only to the Parties to the conflict. If we had confined ourselves to Article 2, the whole question would have been settled most satisfactorily since the Article only deals with humanitarian duties, acceptable to everyone. But this was unfortunately not the case; and it was decided, at the same time, to substitute, in all the other Articles of the Conventions, the expression “Party to the conflict” for the words “belligerent Party”; and this, in our opinion, is a very dangerous step, which might have grave consequences, and we consider it quite unacceptable. For, it will thus become necessary to interpret the expression “Party to the conflict” wherever it occurs, in the same sense as in Article 2A.

This raises another difficulty; for we are no longer dealing with humanitarian duties only but with the whole subject matter of the four Conventions, not only as regards the mutual relations between the Parties, but also as regards the relations between the Parties to the conflict and those which are not Parties to it. We must recognize that all these “Parties to the conflict”, however small and insignificant they may be (for example, a gang of ordinary criminals engaged in armed conflict), will have the benefit of all the rights recognized by the Convention, not only as regards their own government but also in respect of other States, even those outside the conflict. To give you an example: a small gang of criminals, in armed conflict with its own government, would have the right to intercept ships owned by other countries, to demand the expulsion of wounded, sick or shipwrecked men, and, in fact, would be entitled to demand the observance of all the obligations and to claim all the rights embodied in the four Conventions.

We therefore find ourselves faced with a very serious and, in my opinion, insuperable difficulty, since we cannot revert to the original wording and speak of “belligerents” instead of “Parties to the conflict”. The real truth is that we are in certain cases obliged in international law, to recognize as belligerents, Parties which are not States, and the question cannot be solved unless rules and conditions of this kind are embodied in the Convention. The only way out is to take a decision as to whether a Party to the conflict, which is not a State, is entitled to claim the benefit of the rules laid down in the four Conventions.

This is why the Danish Delegation has prepared a draft resolution intended to decide whether the question of the recognition of a Party to the conflict by a Party outside the conflict shall be determined, not by a Convention, but in accordance with the general rules of international law, in all special cases.

Colonel Du Pasquier (Switzerland), Rapporteur: I owe the Meeting a few words of explanation in regard to the special point just raised by the Delegate of Denmark. The question was brought up in the Joint Committee during the discussion of the Draft Report. The eighth paragraph of the comment on Article 2A of the Joint Committee’s Report was the subject of the statement made by the Delegate of Denmark, but it has not been modified.

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 upon the Parties to the conflict, and that neutrals are not bound by the Convention.

The point raised by the Delegate of Denmark was of a wider scope; he proposed that the Joint Committee should insert into the Report a few lines which, if I remember rightly, would have made it clear that our Conventions were not concerned with the question as to what rules of international law did or did not oblige all States to recognize the status of belligerency, if a rebellion proved on a sufficiently large scale to warrant the term of belligerent being applied to it as a Party.

The draft declaration submitted to the Committee’s meeting was not voted upon as the Chairman of the Joint Committee pointed out that a sentence drafted entirely by one member of the meeting could not be inserted in the body of a Report. In order to simplify matters, the Delegation of Denmark did not press the point. This was doubtless the origin of the resolution which has just been brought to your attention and which I personally have not yet seen. It should obviously be examined, but I should like the Assembly to be informed that this point has already been examined by the Joint Committee. If I understand right, some internationalists do not completely share the opinion which has just been expressed with regard to the existence of regulations in international law which do or do not oblige the States to recognize belligerency in case of civil war. The difficulties mentioned just now by the Delegate of Denmark do not appear to be a matter of concern to the majority of the members of the Committee.

Mr. de Alba (Mexico): We are now confronted with one of the most difficult problems with which the Conference has to deal. This Conference was convened to examine the problem of protecting war victims. Each of our four working documents has its own individual character; but they all have
the same purpose—the protection of victims of war. We feel that the problem of these victims should not be approached solely from the angle of what may be called classical international law. There is hardly an aggression or military occupation which can be described as "undeclared war" in the sense of the English "technicité" or French "technicité". It may even be argued that in certain cases a state of war, which has lasted for years, is not really an international war at all. This was why the Stockholm Conference took particular care in drafting the Article under consideration, which was taken as a basis of discussion in this Conference.

From the very outset of our proceedings the Mexican Delegation signified its approval of the Stockholm text; and we should like to pay a well-earned tribute to the valuable work and the efforts of our Committee. Nevertheless Article 2A, as it is submitted to you today, appears to be inadequate. We must dispel the idea that the protection accorded to prisoners of war and to the wounded and sick by the Conventions, could result, during conflicts not of an international character, in encouraging rebellion or revolt. Revolutions break out for reasons beyond human comprehension, and beyond the scope of protective enactments.

The Delegate of Burma, in the course of his very interesting speech yesterday, expressed the fear that the adoption, not only of the Stockholm text, but even of the Article we are now discussing, might lead to domestic disturbances. He feared that it might encourage revolutions and uprisings, and that the rebels would invoke the protection of the Convention.

The aim of the Mexican Delegation is to ensure that in all non-international wars of whatever character, whether civil wars, wars of resistance or wars of liberation, the right of the stronger and the lex talionis shall not prevail, and that methods disregarding all humanitarian considerations and the fundamental rights of man shall be prohibited.

I myself am an advocate of the ideas of Gandhi and Tolstoi on non-resistance; for I firmly believe that brutal repression always leads to a reaction, generally stronger than the original movement.

We should not like to be misunderstood. If we adhere to the original idea of Stockholm, it is only in the interests of justice and humanity. We would not wish the humanitarian ideal to raise internal political complications. The Prisoners of War Convention clearly indicates those who can claim the status of prisoners of war. The wounded and sick in a conflict, not of an international character, also deserve the protection of the Convention. We have taken a step forward in the humanitarian sphere as regards protection in warfare of a non-international character. Article 2A as proposed by the Committee also has a humanitarian purpose but it seems to us too detailed. You all know that detailed enumerations are rarely complete.

The Mexican Delegation would like to ask the Representative of the International Committee of the Red Cross whether the text submitted by the Committee covers all the cases which had been foreseen at Stockholm, and whether the spirit of the Stockholm Declaration is reflected in the wording of the Article submitted to us.

Miss GUTTERIDGE (United Kingdom): The United Kingdom Delegation realizes that in discussing whether the term "belligerent" or "Party to the conflict" should be used in these Conventions, we are entering into a much wider field than that covered by Article 2A. But as the point has already been raised, the United Kingdom Delegation wish to take the opportunity of expressing their doubts as to whether it is always satisfactory in every case in which the expression occurs to replace the word "belligerent" throughout these Conventions by the expression "Parties to the conflict". The word "belligerent", I need hardly remind the Conference, has a well understood meaning in international law and is used in particular in relation to questions of neutrality. Certain rights are accorded in international law to belligerents, and the wholesale replacement of the word "belligerent" in these Conventions by the expression "Parties to the conflict", the wholesale replacement of one expression in an international treaty by another expression can lead to legal consequences which I am certain are not intended by the framers of these humanitarian Conventions.

The United Kingdom would therefore urge very strongly that before it is too late further careful consideration should be given to the use of these expressions "Parties to the conflict" and "belligerents" throughout the Convention, using in whatever Article the expression occurs the more appropriate term.

Colonel FALCON BRICENO (Venezuela): The Working Document provided in the fourth paragraph of Article 2 that:

"in the case of armed conflict not of an international character ....... each Party to the conflict shall be bound to apply ....... the provisions of the present Convention".

We must be quite certain of what is meant by "armed conflicts not of an international character".

There is no doubt that this does not apply to the exploits of bandits or to riots of any kind, but to civil war, a sociological phenomenon of political history which often in essence is a form of class struggle. This class struggle was apparent.
during the colonial period of South and Central America and has become evident in the rise of political parties. Many civil wars could be compared with those which were fought between patricians and plebeians of ancient Rome and to the conflict between the proletariat and capitalism.

Let us leave the problems raised by a definition of civil war on one side, however. This Conference has a serious aim and what we are listening to are not the opinions of a Delegate but those of the representative of a Government. In the period in which we are living, the twentieth century, we must be practical. Our work is to establish humanitarian Conventions and the more we bear this in mind the more useful shall we be to humanity.

With regard to Article 2 which has been submitted to us by the Working Party, I ask myself —in my personal capacity and not as the Representative of my Government—what would be most useful for the people of South America. In my opinion, and in this instance I speak in the name of the Delegation of Venezuela, we should revert to the Stockholm term: “armed conflicts which are not of an international character”.

My Delegation supports the text submitted by the Delegations of France, Greece, Italy, the United Kingdom, Switzerland and Uruguay, in which the fourth paragraph of Article 2 is replaced by a new Article 2A.

Mr. Winkler (Czechoslovakia): As we read in the seventh Report submitted by the Special Committee of the Joint Committee dealing with the different drafts of the Article in question, the Special Committee almost unanimously agreed that the four Conventions should contain a clause extending at least part of their benefits to non-international conflicts. The voting in the Joint Committee itself showed again that almost all delegations there present considered it necessary to include armed conflicts of a non-international character in the four Conventions. Therefore I do not want to argue as to the types of armed conflicts to be covered by the Conventions.

I would like to make some remarks with regard to the text concerning Article 2A as it now stands before us in the version adopted by Committee II. My Delegation cannot consider this text sufficient, mainly because it contains too many restrictions. These restrictions are of different kinds: firstly, there are restrictions as to the persons protected by this provision, and reading the enumeration of the protected persons in paragraph 1, point 1, we see a very considerable restriction. For example, we do not find any mention of the persons of war; the wording “members of armed forces who have laid down their arms” does not cover persons who have fallen into the power of the enemy—i.e. prisoners of war.

That means that if we adopt the text of Article 2A as it stands, prisoners of war would not benefit, in an armed conflict of a non-international character, by any protection at all.

In sub-paragraph 2 of paragraph 1 we read an enumeration of the acts which are, and shall remain, prohibited with respect to the above-mentioned persons. By argumentation a contrario one might think that acts such as violence to life, murder, etc., are allowed with respect to the above non-mentioned persons, especially to prisoners of war. I suppose that was not the intention of the authors of the present text of Article 2A, but the text as it stands makes such an interpretation possible. Our Delegation considers that this possibility is a great danger.

Secondly, the present text contains restrictions as to the provisions of the Conventions which are to be applied in an armed conflict not of an international character. It gives a text and an enumeration of the acts prohibited, but the text and enumeration in such a case can never be complete. The authors of the text themselves seem to have been aware of this gap, and probably that is why they stipulate, in paragraph 3 of Article 2A, that the Parties to a conflict shall endeavour to bring into force all the benefits of the Conventions.

This stipulation, however, is hardly of any value because it presents merely an appeal to the Contracting Parties but it does not contain a straight obligation, so there is no duty whatever to comply with the provisions of the Conventions.

For these reasons my Delegation prefers a clearly stipulated obligation, and instead of the text and enumeration, a general formula covering all the important provisions of the Conventions, such as is contained in the Soviet amendment.

Mr. Bolla (Switzerland): May I state, very briefly, the reasons which led the Swiss Delegation to vote as it did just now on this important question.

The Stockholm Draft provided for the application of all the provisions of all the Conventions to all armed conflicts of a non-international character. But very soon it was evident to us that a whole series of provisions drawn up in view of international war were not applicable, even by analogy, to non-international conflicts. I am referring, in the first place, to a number of provisions in Convention IV which relate to the protection of civilians. But even among other provisions which can be conceived as being applicable, either directly or by analogy, to civil war, there were a considerable number, which, if they were applied, would put obstacles in the way of the legitimate government whose duty it is, in a non-international war, to compel rebels and insurgents to respect the national law of the country.
An attempt was made at the Conference to distinguish between different kinds of non-international conflicts.

It was suggested on the one hand, that non-international conflicts which most resembled international wars, should form one category, while another would include all other non-international conflicts. It was also proposed that nearly all the provisions of the three first Conventions, Wounded and Sick, Maritime Warfare, and Prisoners of War should apply to those in the first category, while at least the humanitarian principles of the three Conventions should be applied to the conflicts of the second type. As regards the fourth Convention for the protection of civilians, it was proposed to apply, at any rate its fundamental humanitarian principles, to non-international conflicts of both types. The Swiss Delegation accepted this solution; but it was soon compelled to recognize that it would meet with resolute and widespread opposition, and would have practically no chance of success.

We were, moreover, compelled to admit that at least two of the arguments brought against this solution were relevant. The first was that there would be interminable discussions at the commencement of every civil war, to determine whether the conflict should be classified under Category I or Category II; the second was that no provision had been made for an authority whose duty it would be to make the classification, should no agreement be reached by the parties.

On the outbreak of a civil war, however, it is obviously desirable that humanitarian activities should begin without delay, without waiting for arbitral or judicial decisions, or for the result of difficult and possibly interminable negotiations between the parties concerned.

In the hope of reaching some constructive solution, we were then compelled to fall back on an alternative which, I must admit, is a far more modest one, but which was adopted by a large majority in the Joint Committee. It consists in applying, in non-international conflicts, at least a minimum of humanitarian measures, and also provides that the International Committee of the Red Cross or any other impartial humanitarian body will have the right to intervene. I should like to stress, once more, that this solution was a compromise, and has naturally come in for criticism from both sides. On the one hand—and these were the criticisms we heard yesterday from the Soviet Delegate and this morning from the Delegate for Mexico—we are told that it does not go far enough, while on the other—and this was the charge brought against it by the Burmese Delegate—it is said it goes much too far. These two criticisms compensate each other. And to those who complain that the suggested solution does not go far enough, there is a pertinent reply: half a loaf is better than no bread.

A comparatively modest solution is certainly better than none. Moreover our solution involves a factor which must be regarded as of prime importance—viz. the official recognition of the right of the International Committee of the Red Cross, or any other impartial body, to offer its services. This means that the International Committee of the Red Cross will not be exposed to the risk of its services being refused by the Parties to a conflict in case of civil war.

In reply to the criticisms made by the Burmese Delegate last night, which the Delegate for Mexico repeated this morning, I should like to say this:

The Burmese Delegate is afraid that Article 2A might be invoked against the legitimate government, in cases of individual outbreaks of banditism or organized movements of the kind; but I do not consider that this apprehension is well-founded. These provisions are applicable in the event of an armed conflict; in other words, an armed conflict must actually be going on. But outbreaks of individual banditism, or even movements of the kind, complicated or aggravated by the existence of a conspiracy, do not really constitute an armed conflict in the proper sense of the term. Nor does a mere riot constitute an armed conflict. An armed conflict, as understood in this provision, implies some form of organization among the Parties to the conflict. Such organization will, of course, generally be found on the governmental side; but there must also be some degree of organization among the insurgents.

As soon as an armed conflict is in process, Article 2A requires the legitimate government to certain humanitarian principles, the violation of which would make it to forfeit the respect of the public opinion of the world. Are we prepared to admit that a legitimate government, faced by a rebellion involving a certain degree of organization, should have the right to act with cruelty towards the opposing Party, or to ill-treat or torture some of its members? Is it intended that it should have the right to inflict humiliating or degrading treatment or to disregard the legal safeguards generally regarded as essential throughout the civilized world, and by so acting to place itself beyond the ban of civilized opinion? Do we wish to authorize it to refuse to search and care for the enemy wounded and sick? I feel sure that we should be unanimous in answering no. A victory obtained by a legitimate government under such conditions would indeed by a Pyrrhic victory, or to speak more accurately, a victory involving disastrous consequences, since violence necessarily breeds further violence.

What I fear, in the event of this Conference rejecting the text adopted by the Joint Committee, is this:
Provisions were framed at Stockholm to ensure, even in civil war, some protection to the victims. These provisions were, here in Geneva at this very Conference, the subject of lengthy discussions. If as a result of these the Conventions we are engaged in establishing should be found not to contain a single word relating to civil war, it would be natural to conclude that the Diplomatic Conference of Geneva actually did not wish to frame any regulations whatever for the purpose of protecting the victims of civil war. And in that event I fear that the generous offers of service made by the International Committee of the Red Cross would meet with a categorical refusal, based on this a contrario argument.

In the Special Committee, however, the Representative of the International Committee of the Red Cross informed us that in the course of the civil wars which have occurred during recent years, his organization had succeeded in displaying, naturally under very difficult conditions, a certain degree of activity. It would be extremely regrettable if activity of this kind should be rendered impossible by the deletion of the text of Article 2A as it now stands, from all the four Conventions.

May I say a few words in reply to the Danish Delegate’s statement?

He pointed out that there is a reference in Article 2A to “Parties to the conflict”, and that this expression also occurs in a considerable number of other Articles in all four Conventions. He feared that, even in cases of civil war, the use of this term would make it impossible to attempt to apply, to neutrals for instance, the remaining provisions of the four Conventions.

I do not believe this inference is justified; and in any case, it certainly does not represent the intentions of those responsible for drafting this text. In the minds of the authors of the text adopted by the majority of the Joint Committee, the provisions embodied in Article 2A are intended to constitute a complete and exhaustive code of the obligations assumed by the Contracting States in the event of non-international conflicts; apart from this text, no other Article of the four Conventions applies to civil wars. Where the term “Parties to the conflict” is used in other Articles of the Convention, it should always be understood as referring to Parties to an international conflict. Where it refers to Parties to a non-international conflict, Article 2A enumerates the only obligations by which they are bound, and by which States which are not Parties to the conflict are also bound.

The question of belligerency is completely outside this scope of the provisions and of the solutions proposed in the four Conventions. For that matter, the Danish Delegate told us that he intended to submit a draft resolution on this point; we shall therefore have another opportunity of discussing the matter when this draft is submitted to the Conference.

One more remark with regard to a criticism made just now, by the Delegate of Czechoslovakia, in connection with Article 2A. He told us that the text does not contain any provision in favour of prisoners of war, although prisoners of war are members of the armed forces who have laid down their arms. It is true that Article 2A does not guarantee the treatment accorded to prisoners of war by the third Convention in its entirety—for example, as regards pay—but it does guarantee them at least a minimum of humanitarian treatment, without any distinction based on differences of race, colour, religion, sex, birth or wealth. And that is at least something! The Swiss Delegation therefore urges you to adopt the text of this Article, as drafted by the Joint Committee. The present version is the one recommended to the Special Committee—and I venture to reply here without perhaps being qualified to do so, to a question raised by the Mexican Delegate—by the International Committee of the Red Cross. It constitutes a compromise, which represents the only possible balance between the claims of idealism so eloquently pleaded by the Mexican Delegate this morning, and the rights of realism which the Burmese Delegate recalled yesterday, with at least as much eloquence.

The President: A question has been put by the Mexican Delegate to the International Committee of the Red Cross. Is there a Member or Representative of this Committee present who is in a position to reply to this question?

Mr. Carry (International Committee of the Red Cross): The International Committee of the Red Cross had no intention of speaking on a question which, in their opinion, comes within the exclusive competence of governments. As they have been asked to give their views, however, and as a proposal has been made to omit any text concerning the question of conflicts not of an international nature, the International Committee of the Red Cross feel that they cannot refuse the invitation to speak on the matter. Their position is clear; the International Committee of the Red Cross was in favour of the text which they themselves submitted to the Stockholm Conference and which provided for the full application of the Conventions in the event of conflicts not of an international nature.

In a Diplomatic Conference, however, realistic and practical views must be taken, and the Committee was aware from the outset of the work that the original text, even in the Stockholm
wording, had no chance whatever of being adopted by Governments and that a compromise solution should accordingly be sought. Several drafts have been submitted, including that of the French Delegation, the text of which was adopted by the Joint Committee.

The International Committee of the Red Cross gave it their support and still give it today, because this text is simple and clear and has the merit of ensuring, in the case of civil war, at least the application of the humanitarian rules which are recognized by all civilized peoples. This text therefore, without being a complete expression of the ideal which the International Committee has in view, ensures a minimum protection and— which is still more important—gives impartial international bodies, such as the International Committee of the Red Cross, means of intervention.

Adoption of the Burmese proposal would in our opinion be a calamity. This proposal would create a dangerous gap in the mechanism for the protection of war victims; worse still, it would imply that this Conference implicitly accords the Parties to the conflict the right to perform acts which the draft Convention was intended to prohibit. Another consequence would be that it could be used at any time in the future as a pretext for rebutting an intervention by the International Committee of the Red Cross, and for this reason the latter wish to draw your attention to the disastrous consequences which might arise by the deletion of any text which covers the problem which has been placed before us.

I appeal to you most urgently to provide at least minimum protection for war victims even in conflicts not of an international nature.

The President: We will now vote on the matter; I suggest we should first vote on the amendment submitted by the Delegation of the U.S.S.R.

General Oung (Burma): I am very glad to have been offered some criticism, that of the Mexican Delegation being particularly constructive. I happened to speak on delicate subjects. I do not know why I go where others fear to tread, but since I have come to this Conference I feel we should tell our brother Delegates whatever is on our minds, discuss with them and hear their criticisms, frankly and fearlessly offered. Various delegations have submitted observations. This is a subject which, prior to this Conference, I thought I had prepared very carefully, presenting my case fairly well, but so far I have received no reply to the real point I had endeavoured to make. Instead, suddenly I am faced with the threat that because of proposing this vote I must lose the respect of other countries, indeed, that I might be placed outside the laws of humanity. Those were the words we heard just now and I do not think they were at all justified. I am charged with stating that the Article went too far. I would not flatter it. What I said was that it was dangerously vague. I proposed its deletion because it would incite and encourage insurgency.

You think I proposed this text because we wish to perform acts of cruelty against our own countrymen? Believe me, nothing like that happened. As I said in one of the Committee meetings, we have not shot one rebel for being a rebel after having made him a prisoner. We have taken so long to achieve peace in Burma because we are fighting our own countrymen. We do not want to intensify the conflict by cruel acts and that is why we have refused direct intervention from foreign States. Yesterday, out of deference to my host and to the Chairman of my Committee, I omitted all references to this point but since it has been brought up as prime importance in support of the Article under discussion, I would refer to parts of my speech which I passed over yesterday.

The second paragraph of Article 2 of the Convention as proposed says: “An impartial humanitarian body such as the I.C.R.C. may offer its services to Parties to the conflicts”. It may offer them at the request of the de jure government or of the insurgents or of the shadow behind the insurgents; neither is the agreement of the de jure government necessary. Surely you do not accept that. The acceptance of these views which are those of a race like any other need not place that race beyond the laws of humanity. Acceptance of outside intervention, even if it be from a humanitarian organization, would certainly confuse the issue, create further misunderstanding, prolong the dispute or even involve a State in an international dispute of serious dimensions. I again appeal to your sense of justice, to the declaration in the Charter of the United Nations, that you do not intervene in matters essentially within the domestic jurisdiction of any State nor aggravate the situation, especially that of a domestic nature.

Since I have always happened to speak on delicate subjects I have always been defeated by abstentions. I am afraid I have been placing some of my friends in an embarrassing situation, that of either voting for me or of not voting for me. For this reason I respectfully request the Chairman—and I hope the delegates will agree—that this vote should be taken under the rules of procedure providing for a secret ballot.

Mr. Morosov (Union of Soviet Socialist Republics): I should just like to make a few remarks in regard to the method of voting which has been
suggested by the Delegate of Burma. I have already had the occasion to express my views against the secret ballot, which had been suggested in other circumstances, as voting should be carried out openly and not in the way suggested. We should not make use of the secret ballot for such matters as these, which are not fundamental and which are actually in opposition to the underlying principles of the work of our Conference and to the humanitarian attitude which should be observed in all cases of armed conflict. During this Conference, the Burmese Delegate alone has found it necessary to oppose the application of humanitarian principles in the case of civil war. We are firmly opposed to a secret ballot, for this would not be in keeping with the objects of our Conference.

With regard to the Burmese Delegate’s statement that he had received no reply to the questions raised by him, I beg to say that this statement is not correct, as numerous replies have been given during the debate.

I may add that this attitude in this respect takes us back to the dark period of Saint Bartholomew’s eve, or to incidents in history which have only been surpassed by certain barbaric acts committed during the last war.

The suggestion made by the Burmese Delegation would purport to entail a repetition of such acts, and runs contrary to the conscience of the peoples. If the Burmese Delegate is not satisfied with this reply, I regret that I cannot give him another, as I must remain within the limits of diplomatic courtesy.

Mr. Alexander (United Kingdom): My Delegation does not feel that we need follow our Soviet colleague in questioning the good faith of the motives of our colleague from Burma in coming to a decision on the procedural point before us. It seems to me that this proposal to be a very simple point. If the Soviet Delegation do not want a secret vote on their amendment, I would certainly be prepared to support them, but I feel it would be only a matter of courtesy and common sense to accept the proposal made by the Delegate of Burma and to have a secret vote for his amendment.

Speaking as the Representative of one of the sponsors of the original text which came before the Joint Committee we, for our part, would not be averse to a secret vote on that text, and we therefore support the suggestion of our colleague from Burma.

Mr. Yingling (United States of America): The United States Delegation fully supports the remarks which have just been made by the Delegation of the United Kingdom. The United States Delegation does not need to vote secretly on anything which comes before this Conference, but it respects the rights of those people who desire such a method of ballot.

The President: I agree, that the Burmese Delegate’s proposal to take a vote by secret ballot, only refers to his own amendment. I agree that the votes on the other questions connected with Article 2A shall be taken by a show of hands. I propose to consult the Conference with reference to the Burmese Delegate’s proposal, and to ask it to decide whether a vote is to be taken by secret ballot, or, on the contrary, by show of hands. I propose to adopt the following procedure for these votes.

I will first take a vote on the amendment submitted by the Soviet Delegation; this will be by show of hands. I shall then take a vote on the recommendation of the Drafting Committee (see its Report to the Plenary Assembly) also by show of hands. I will then proceed to take a vote on the Article as a whole. At that point, delegations in favour of the Burmese Delegation’s proposal will have an opportunity of voting against the Article as a whole. Before this vote, I will take a vote on the Burmese Delegation’s proposal to vote by secret ballot.

Delegations who are in favour of the amendment submitted by the Soviet Delegation are requested to signify it.

Mr. Winkler (Czechoslovakia): I should like to say a few words after the President has announced the result of the voting.

The President: We will complete the votes which have to be taken, and I will then call upon the Delegate of Czechoslovakia.

The amendment submitted by the Soviet Delegation is rejected by 20 votes to 11, with 7 abstentions.

We will now take a vote on the recommendation of the Drafting Committee’s recommendation. Delegations in favour of this recommendation are requested to signify it. The recommendation of the Drafting Committee is adopted by 34 votes to none, with 10 abstentions. We will now take a vote on the proposal made by the Burmese Delegation to vote by secret ballot on the Article as a whole, and also on its proposal to delete the Article.

Mr. Morosov (Union of Soviet Socialist Republics): May I make a suggestion with regard to procedure? I wonder how we can vote for the deletion of a text which was adopted a few minutes ago. This seems to me impossible from the point of view of procedure, since it requires a two-thirds majority of the delegations present to re-
verse a decision which has already been taken. Otherwise, it would be incomprehensible. I should be happy to know your opinion on this point.

The President: I am a little surprised by the remark made by the Delegate of the Union of Soviet Socialist Republics. We have just taken two successive votes, one on the amendment, and the other on a recommendation which was in the nature of an amendment. The first amendment was rejected, whilst the second was adopted. We now have before us a final text on which we must take a decision. In this connection I should like to remind you that since the beginning of our Plenary Meetings, each time an amendment has been submitted, irrespective of whether it was adopted or rejected, I have always thereafter proceeded to take a vote on the whole Article to which the amendment in question referred.

The Delegate of Nicaragua has asked to speak. I shall call upon him to do so once the voting has taken place and we have heard the Delegate of Czechoslovakia.

We shall now vote on the Burmese Delegation’s proposal regarding a secret ballot.

This proposal was adopted by 22 votes to 14, with 11 abstentions.

A secret ballot will therefore be held. I would ask the Delegations of Ireland, the Soviet Socialist Republic of the Ukraine and Guatemala to be so kind as to furnish one teller each. I would remind you that the procedure for voting will be as follows: delegations accepting the text of Article 2A, as submitted by the Joint Committee, will vote “yes”; those in favour of the rejection of Article 2A, as was proposed by the Burmese Delegation, will vote “no”; lastly, the delegations abstaining will place a blank voting paper in the ballot-box.

Is there any delegation without a voting paper?

Mr. Lamarle (France): I beg your pardon, but a few delegations, including my own, thought that there was to be a secret ballot on the proposal made by the Delegation of Burma. We had already filled in our voting paper. As things are, may we ask the Secretariat to be so good as to repeat exactly the subject of the vote, and perhaps to give us fresh voting papers.

The President: In point of fact, the proposal made by the Delegation of Burma is not an amendment; it is a motion to vote “no” on the whole of Article 2A, in other words to reject the Article outright. I therefore suggested that we might take one vote only.

The Delegations in favour of Article 2A will vote “yes”, those rejecting it, on the motion of the Burmese Delegation, will vote “no”. Will any Delegation requiring fresh voting papers please ask for them?

The secret ballot took place.

I propose that, while the votes are counted, we should hear the three Delegates who asked to speak just now.

Mr. Winkler (Czechoslovakia): I did ask to speak, but now I think it unnecessary.

The President: I call upon the Delegate of Nicaragua.

The Delegate for Nicaragua apparently does not wish to speak either. I call upon the Delegation of Bulgaria.

Miss Papouktchieva (Bulgaria): The Delegation of Bulgaria merely wished to ask for a small point to be cleared up; but this no longer seems necessary.

The President: This is the result of the vote: 47 voting papers were issued; 47 have been returned.

Article 2A was adopted by 34 votes to 12 with 1 abstention.

I propose to adjourn the discussion. This afternoon’s Meeting will begin at 3.15 p.m.

The meeting rose at 1.05 p.m.
20th PLENARY MEETING

TWENTIETH MEETING

Friday 29 July 1949, 3.15 p.m.

President: Mr. Max Petitpierre, President of the Conference

PRISONERS OF WAR CONVENTION

The President: We shall resume to consider the Articles which we have not yet adopted, namely Articles 3, 29B, 30A, 12, 100 and 105.

Article 3 (continued)

I would remind you that this Article was referred to the Drafting Committee (see its Report), which revised the wording. In addition, the Drafting Committee has submitted a proposal in the same Report.

Lastly, two delegations have submitted amendments; the Netherlands Delegation (see Annex No. 93 bis) and the Irish Delegation (see Annex No. 93).

Does anyone wish to speak on Article 3?

General Schepers (Netherlands): After a full consideration of the question, and having discussed it with other delegates, the Delegation of the Netherlands withdraws its amendment.

Mr. Rynne (Ireland): These amendments which the Delegation of Ireland have tabled to subparagraph 2 of paragraph B of Article 3 (see Annex No. 93) are only amending amendments. They are designed to make clear that, during a conflict, when any of the persons coming within the categories previously mentioned in the Article are interned in a neutral or non-belligerent country, the functions of a Protecting Power may be performed by the Power upon which the persons normally depend, when that Power already possesses diplomatic or consular representation in the country concerned. In other words, these amendments make it clear that Article 3 of the Convention does not purport to make a fundamental change in the existing international practice as to the reception of foreign representatives.

Since there is no new point of substance involved in the amendment now being proposed, the Irish Delegation is confident that the other delegations here present will have no difficulty in accepting them.

General Sklyarov (Union of Soviet Socialist Republics): The Delegation of the U.S.S.R. consider that the two amendments to Article 3 proposed by the Delegation of Ireland are unacceptable.

The Irish Delegation's amendment proposes to amplify the text of Article 3 by including the concept that the Parties to the conflict will only exercise the functions of a Protecting Power on behalf of persons interned in neutral territory "where diplomatic relations exist between the Parties to the conflict and the neutral or non-belligerent Power concerned". This would place belligerent Powers in an unfair position as regards the protection of persons interned in neutral territory who belong to the armed forces of the belligerent countries.

For instance, if nationals of States B and C are interned in the territory of State A, and if States B and C are in conflict, should State B be in diplomatic relations with State A while State C is not, State C cannot exercise the functions of a Protecting Power with regard to its nationals.

However, according to the principles of international law, if State C has no diplomatic relations with State A, it cannot be deprived of the right to protect the interests of its nationals, in particular to exercise the functions of a Protecting Power, if not directly, at least with the help of a State which is in diplomatic relations with State A.

It is unnecessary to repeat here details which we have already included in the text of Article 3, as the question whether or not the functions of a Protecting Power can be exercised, will be settled in accordance with the provisions of recognized international law, including the provisions of the present Convention.

Now as regards the second amendment, submitted by the Delegation of Ireland, proposing to grant more favourable treatment to persons who have been accommodated by neutral or non-belligerent powers in their territories only in cases where diplomatic relations exist between the Parties to the conflict and the neutral or non-belligerent Power concerned, we do not see the necessity of the alteration.
Where these diplomatic relations exist, the question of more favourable treatment, that is of treatment provided for by the stipulations of international law and by this Convention, will be decided by means of diplomatic agreements or conversations, if necessary.

It is clear that, if the neutral Power prefers to grant the persons concerned more favourable treatment, it will do the same in respect of persons belonging to the armed forces of any Party to the conflict.

As regards persons who have been accommodated by the neutral or non-belligerent Power in its territory, the question will likewise be equitably settled by the neutral Power as regards nationals of any belligerent.

It is therefore unnecessary to include in the Convention provisions which are a consequence of the fact that the decisions are made in accordance with recognized international practice, by means of diplomatic conversations, if necessary.

For the reasons which I have just given, the Soviet Delegation will vote against the amendments submitted by the Delegation of Ireland.

General Dillon (United States of America): The Delegate of Ireland has offered to clear up the United States Delegation's misunderstanding in regard to the first amendment. The Irish Delegation's amendment is dated July 22nd, thus predating by five days the paper which it is proposed to amend. For that reason there is some confusion, and as the Irish Delegation has offered to clear up the matter from the rostrum, we give place to the Irish Delegate.

Mr. Rynne (Ireland): I am very greatful to the Delegate of the United States of America for having explained the position concerning the document now before us, namely the new text established by the Drafting Committee. Our amendments, of course, refer to sub-paragraph 2 of paragraph B of that document.

With regard to the doubts expressed by the Soviet Delegation on the subject of the Irish Delegation's amendments, I should like to say that nothing is further from our minds than the intention to deprive any protected person or any prisoner of war of the protection to which he is entitled under this Convention in time of war, if he happens to find himself in a neutral country without diplomatic representation of his own. We would, however, consider it not only unfair but entirely anomalous and contrary to ordinary everyday diplomatic practice if any State—perhaps I should say a fortiori a neutral State in time of war—could be compelled, without its agreement and simply by virtue of a Convention such as this, important though it is, to accept representatives from a country from which it had not accepted them during time of peace, or perhaps even from a country in which such representatives were not recognized in any way by their own government.

However, it would obviously be grossly unfair, as the Soviet Delegation pointed out, if these people without their own diplomatic representation in such a neutral country were to be deprived of all protection, but we believe that that is adequately covered by Article 5 of the Prisoners of War Convention as now drafted, which says "that in addition to agreements expressly provided for by certain Articles of the Convention the Contracting Parties may conclude other special agreements for all matters relating to prisoners of war concerning, which they may deem it suitable to make separate provision". We can see no reason whatever why— to use the letters used by the Soviet Union Delegation—a State "A", which is a belligerent with internees in a neutral State "B" and with no diplomatic representation with "B", would not immediately make an agreement with the neutral State under Article 5 to have those internees in State "B" looked after by the diplomatic or consular representative already there of some other State, a neutral State or any kind of State, that happened to have its representative already in the neutral country.

We think that should be perfectly adequate to meet all possible necessities of the Prisoners of War Convention without in any way interfering with the ordinary international rule whereby every country is entitled to give its agreement before it accepts any diplomatic representative from any other country. On the one hand you have agreement; on the other hand you have agreement under Article 5; and we cannot see how any delegation here could object to such a situation. It seems to us to be a perfectly normal reason.

The President: We shall now proceed to vote; we will vote first on the amendment submitted by the Irish Delegation, then on the proposal made by the Drafting Committee and lastly on the whole of Article 3 as submitted by that Committee.

The amendment of the Irish Delegation is adopted by 17 votes to 6, with 8 abstentions.

We shall now vote on the proposal of the Drafting Committee. The delegations in favour of the proposal are requested to raise their hands.

Mr. Yingling (United States of America): What is the proposal? What are we voting on?

The President: As I said just now this concerns the proposal figuring in the Report presented by the Drafting Committee to the Plenary Assembly, Part III, Convention relative to the Treatment of Prisoners of War. This proposal reads as follows:
"The Drafting Committee draws the attention of the Plenary Assembly to an apparent contradiction between the provisions of this Article and those of Article 29B of the same Convention. With a view to coordinating the text of the two Articles, the Committee suggests that a paragraph reading as follows should be added to Article 3:

"This Article shall in no way affect the status of medical personnel and chaplains as provided for in Article 29B of the present Convention."

This is simply a reference to another provision, in order to avoid any contradiction between the two Articles.

Will delegations in favour of this proposal please signify in the usual manner?

This proposal is adopted by 19 votes nem. con., with 15 abstentions.

We shall now vote on Article 3 as a whole.

Mr. ABUT (Turkey): I think that there are still two more proposals by the Drafting Committee on the same Article.

The President: I do not know whether the Delegate of Turkey was present at the beginning of the debate. The amendment submitted by the Delegation of the Netherlands was withdrawn and there is therefore no need to take a vote on it. It is on the text submitted by the Drafting Committee that we are now going to vote.

Mr. ABUT (Turkey): I am referring to the Report presented by the Drafting Committee. Under Article 3 there are two alterations proposed by the Drafting Committee. It is on these two alterations that I wish to speak.

Mr. SÖDERBLOM, Rapporteur: These two points have already been incorporated by the Drafting Committee in the text which you have before you.

The President: The Rapporteur confirms what I have just said.

We shall therefore now vote on Article 3 as a whole, as it was finally worded by the Drafting Committee in a new text including the alterations to which the Delegate of Turkey has just referred. I am now putting to the vote Article 3 as a whole, with the amendment which has just been adopted.

Article 3 as a whole was adopted by 33 votes nem. con. with 3 abstentions.

Article 29B (continued)

The President: You will remember that Article 29B was adopted by 26 votes to 10, with 1 abstention.

Article 30A (continued)

The President: The Working Party has reconsidered Article 30A in order to coordinate it with Article 29B. I now put to the vote the text which the Working Party has submitted (see Annex No. 114).

Article 30A was adopted by 27 votes to 2, with 8 abstentions.

Article 12 (continued)

The President: You will remember that at a previous meeting we voted on the proposal tabled by the Delegation of the United Kingdom to replace the wording submitted by the Drafting Committee by the text which had been adopted by Committee II. As there was a tied vote, the Delegation of the United Kingdom, in accordance with Article 35 of the Rules of Procedure, moved that the vote should be repeated.

We shall therefore proceed to vote again on this provision.

The Delegate of the Netherlands wishes to speak; before asking him to do so, I wish to remind him that only points of order may be raised, and that there can be no new discussion on the substance of Article 12.

General SCHEPERS (Netherlands): The day before yesterday, the Delegation of the Netherlands asked to be informed of the opinion of the Drafting Committee on the alteration made to this text. At that time the Drafting Committee was in session and our Delegation did not press the point, because it did not wish to prolong the discussion. But as the Drafting Committee is now no longer in session, it should be possible to know its opinion. We consider that the Plenary Meeting cannot decide whether an alteration made by the Drafting Committee is acceptable or not, without first knowing the reasons for which the Drafting Committee altered the text drawn up by Committee II.

The Delegation of the Netherlands therefore proposes to request the President or the Rapporteur of the Drafting Committee to explain the reasons of this modification.
The President: A member of the Drafting Committee has already explained why the alteration was made to the text, the principal reason being that it was considered preferable to use the singular in this instance in order to specify more clearly the position of prisoners of war. These explanations were also given by the Delegate of Denmark at the meeting at which the decision was taken. I think that in these circumstances the meeting is in a position to take a decision. We shall now proceed to vote.

May I remind you that the two alternative texts are the following ones: first, the text submitted by the Drafting Committee retaining the words (at the end of the first paragraph):

"...medical... treatment of the prisoner concerned and carried out in his interest...".

On the other hand, the original text adopted by Committee II:

"...hospital treatment of the prisoners concerned and carried out in their interests...".

In one instance the word "prisoner" is in the singular and in the other in the plural.

I will ask you to vote first on the text as drawn up by the Drafting Committee, and given in the Document we are now considering.

19 votes are in favour of this text.

I will now put the original text drawn up by Committee II to the vote.

18 votes are in favour of this text.

The text of Article 12 as submitted by the Drafting Committee was adopted by 19 votes to 18, with 4 abstentions.

Article 100 (continued)

The President: Voting on the third paragraph of this Article resulting in a tie, the United Kingdom Delegate moved a repetition of this vote. You are therefore asked to vote for or against the third paragraph of this Article.

The third paragraph of Article 100, as proposed by the Committee, is adopted by 21 votes to 17, with 3 abstentions.

Thus the whole of Article 100, on which we voted paragraph by paragraph, is adopted.

Article 105 (continued)

The President: The vote taken yesterday morning on the amendment submitted by the Delegation of the U.S.S.R. resulted in a tie. The Delegation of the U.S.S.R. has requested a repetition of this vote, in accordance with Article 35 of the Rules of Procedure.

We will therefore vote on this amendment. The amendment is adopted by 19 votes to 7, with 14 abstentions.

The whole of Article 105, as amended, is adopted nem. con, with two abstentions.

Maritime Convention

Article 11A (continued)

The President: This Article had been adopted provisionally, subject to possible modifications of Article 3 of the Prisoners of War Convention. I wish to remind you that the part of this Article which is correlated to Article 11A has not been altered. Other modifications have, however, been made. I refer to the enumeration figuring in Article 3.

Article 11A was finally adopted.

Wounded and Sick Convention

Article 10A (continued)

We have here again the same question of correlation with Article 10A of the Wounded and Sick Convention. This Article was adopted provisionally, subject to possible modifications of Article 3 of the Prisoners of War Convention.

Article 10A of the Wounded and Sick Convention was finally adopted.

Article 42 (continued)

This Article had been referred to the Drafting Committee, subsequent to the adoption of an amendment submitted by the Delegation of Turkey.

The Committee has submitted a proposal on the wording of the last paragraph of this Article (see Report of the Drafting Committee).

Does anyone wish to speak on the rewording proposed by the Drafting Committee?

As this is not the case, this text is adopted.

Common Articles

Article 4/5/5

The President: No amendments have been submitted.

The Article was adopted.
Article 5/6/6/6

The President: No amendments have been submitted.
The Article (Stockholm text) was adopted.

Article 6/7/7/7

The President: The New Zealand Delegation has submitted an amendment proposing to delete the last sentence of the third paragraph of Article 7 "Prisoners of War" and "Civilians".

Mr. Quentin-Baxter (New Zealand): The Special Committee of the Joint Committee added a new third paragraph to Article 6 of the Sick and Wounded Convention and Article 7 of the other three Conventions. The last sentence of that new paragraph, which refers to the activities of the Protecting Powers, reads:

"Their activities shall only be restricted as an exceptional and temporary measure when this is rendered necessary by imperative military necessities".

There was no such provision in the present Prisoners of War Convention—the 1929 Convention. It is the object of my Delegation to delete that sentence from the text of the Prisoners of War and of the Civilians Conventions, but not from the Wounded and Sick or from the Maritime Warfare Conventions; and I will explain first the reason why we have made a distinction between the two. The Wounded and Sick Convention and the Maritime Warfare Convention have operated for many years without having in them any clause concerning Protecting Powers. If there were no such provision in the new text we would still have every reason to believe that they would prove useful and workable Conventions, but they have not been written in the light of a Protecting Power provision, and since it has been decided to bring such a provision into those Conventions we think it is proper and necessary that this proviso should be in those Conventions, because it is obvious and reasonable that the activities of a Protecting Power in sea warfare and on the field of battle must be restricted.

However, with the Prisoners of War Convention as with the Civilians Convention we believe that entirely different considerations apply. The Protecting Power provision is really the essence of those Conventions: Article after Article in those two Conventions lays down rules—mere rules—but the vital force which animates those rules and gives them effect is the presence of the Protecting Power. It is not the function of a Protecting Power to command or to overrule: it is its function to observe, to comment, to make representations, and to send reports to the outside world. If we are faced with an unscrupulous belligerent, the presence of the Protecting Power and the ability of the Protecting Power to examine what is going on and to observe is the only preventive measure which we have. It is the only inducement to that Power to observe the Conventions, but the value of the Protecting Power is, of course, not limited to that case. Any belligerent which has the will to carry out the provisions of these Conventions is glad of the activities of the Protecting Power, because the Protecting Power is an impartial referee which will establish the good faith of a Detaining Power or of an Occupying Power.

For these reasons, then, we feel that the whole protection which these two Conventions offer hinges basically upon the activity of the Protecting Power. We feel that any special provision which detracts from the rights of the Protecting Power weakens the strength of those Conventions.

Now let me admit immediately that there are certain circumstances in which consideration of military security demands a specific restriction upon the rights of the Protecting Power. That is regrettable, but it is necessary, and the texts of the Prisoners of War and of the Civilians Conventions have been drawn up with that idea in view. Let me give you some examples. In Article 40 of the Civilians Convention, which deals with the obligation of an Occupying Power to provide food supplies, we have this provision:

"The Protecting Power shall, at any time, be at liberty to verify the state of the food and medical supplies in occupied territories, except where temporary restrictions are made necessary by imperative military requirements."

Now my Delegation has some association with the Working Group which drew up the text of that provision: we supported that reservation strongly because we believed that military security demanded it, but although it is only a specific provision we know that delegates from countries which have had the bitter experience of occupation, agree to this reservation only reluctantly, anxiously, and not without some heart-burning, and this proviso affects only one paragraph of one Article of one Convention. The sentence which it is my Delegation’s desire to omit affects the whole text of two Conventions.

Now I can give you other examples to show that throughout the Civilians and the Prisoners of War Conventions the question of a reservation on the rights of a Protecting Power has been covered. For instance, in Article 126 of the Civilians Convention, which deals with the right
of the Protecting Power to visit the places of internment, we have a specific provision,

"such visits may not be prohibited except for reasons of imperative military necessity, and only as an exceptional and temporary measure".

That again we feel is a necessary and a proper provision. There is a similar provision in Article 116 of the Prisoners of War Convention.

I quote those examples in order to illustrate to this Conference that the sentence—the general sentence—to which we object is not necessary. It seems to us very strange that a Conference whose delegates have watched jealously each specific proviso qualifying any one right of a Protecting Power should, in the end, agree to accept a sweeping reservation which covers the whole text of the two Conventions.

We think that the Conference will not underestimate the effect of this proviso. It applies as a temporary measure, but in war-time temporary circumstances tend to recur. It applies only as an exceptional measure, but in war-time exception tends to become the rule. It applies only in the case of imperative military necessity, but a belligerent fighting for his very survival will tend to interpret such a phrase broadly. We feel that this sentence casts a shadow over the whole text of the Prisoners of War and of the Civilians Conventions. We feel that it is not demanded by any legitimate reason of military security; we feel that there are specific provisions which cover the case of military security in those cases where it is really necessary.

As an additional proof we would remind you once again that in the existing Prisoners of War Convention, drawn up 20 years ago, there is no such reservation as the one to which we object.

We feel that this is a retrograde step, the seriousness of which has not been fully realized. In our opinion it reduces very substantially the value of the whole of the texts which this Conference has before it and therefore we hope that you will support us in deleting this sentence from the Civilians Convention and from the Prisoners of War Convention.

The President: As no one else wishes to speak, we will proceed to vote on the amendment proposed by the New Zealand Delegation.

Mr. Sokirkin (Union of Soviet Socialist Republics): The Soviet Delegation cannot accept the New Zealand proposal to delete the last sentence of the third paragraph of Article 7 of the Prisoners of War and Civilians Conventions respectively. It should not be forgotten that the Protecting Powers may be prevented by the military situation from exercising their functions.

Moreover, quite apart from any provision in the Convention authorizing the Powers concerned to restrict the activity of the Protecting Powers for reasons of military necessity, a limitation of this kind will exist in fact, and this cannot be ignored.

We should therefore be placing the Protecting Powers in a false position, since they might think that their activity was not subject to any restriction. It must be noted, however, that such activity must not exceed certain specified limits.

But on the other hand, the Article does not contain any provision with regard to a temporary and exceptional limitation, for military reasons, of the activity of the Protecting Powers by the Powers concerned; this would seem to imply that the Powers concerned would in fact be authorized to limit the activity of the Protecting Powers at their own discretion on military grounds.

The sentence which the New Zealand Delegation wishes to delete does not restrict the activity of the Protecting Powers to any considerable extent, and it should be retained. The limitation of such activity, temporarily and for exceptional reasons, can only be justified on military grounds.

In the absence of such a provision, the Powers concerned could, I repeat, imagine that they are entitled to limit the activities of the Protecting Powers of their own accord. This would place both the Protecting Power and the Powers concerned in a false position.

The sentence which remained in the text prevents any such erroneous interpretation; it should therefore not be deleted.

These are the grounds on which the Soviet Delegation proposes to reject the amendment tabled by of the New Zealand Delegation and to retain the text as it stands, including the sentence in question.

Colonel Hodgson (Australia): My Delegation supports the amendment proposed by New Zealand for the deletion of the last sentence of Article 7 of the Prisoners of War Convention and of the Civilians Convention respectively. We have noticed from the beginning of this Conference, right up to the present, that delegation after delegation has maintained that full authority, and the highest status should be given to the Protecting Power to enable it to carry out its function of being, in fact, a real protector to the categories you desire protected and any delegation which votes for the retention of this sentence has been completely, or will be completely, inconsistent because, as it stands, it will completely invalidate the true functions of a Protecting Power. The New Zealand amendment is not based on hypothetical cases. It is not a theoretical amendment but it is one of real practical necessity. My
country during two World Wars has had experience as an Occupying Power or as a Detaining Power. Regrettably, as a Protecting Power we completely failed in our duty. At the beginning of the second World War my country was a Protecting Power. There were tens of thousands of internees. We had hundred of thousands of pitiful appeals to find out what had happened to their sons, their husbands, and their children. In not one case were we allowed to go to those camps. In not one case did we find out where those camps were located and we were unable to give one response to the many appeals. In every case the reason given was “imperative military necessity prevents us even giving you the information to enable you to carry out your duties as a Protecting Power”. That was at a time when there was no such provision in the 1929 Convention or in any other Convention but here and now, you propose to put it in and make it legal. Now if the state of affairs which I have just described could exist when there was no such provision in the Convention, what can happen now if it is accepted and you legalize it so that the whole work of the Protecting Power can be nullified on the grounds of urgent military necessity? I should like to know if the delegations who have declared openly the principles they have done would venture to vote against this amendment. I just ask you to watch carefully those delegations who do vote against such an amendment.

The President: We will now proceed to take a vote. As has already been pointed out, the amendment submitted by the New Zealand Delegation only concerns the Prisoners of War and the Civilians Conventions.

We will therefore first take a vote on Article 6 of the Wounded and Sick Convention and on Article 7 of the Maritime Warfare Convention.

No amendments have been submitted to these two Articles.

Are there any comments on these Articles?

As no one wishes to speak, the two Articles in question are adopted.

We will now take a vote on the amendment to Article 7 of the Prisoners of War Convention and the Civilians Convention.

The delegations in favour of this amendment are requested to signify. The amendment is adopted by 23 votes to 6, with 6 abstentions.

We will now take a vote on Article 7 as a whole of the Prisoners of War and Civilians Conventions respectively. Delegations wishing to vote for the adoption of the Article, subject to the amendment which has just been adopted, are requested to signify.

Article 7 was adopted by 25 votes to none, with 9 abstentions.

Article 7/8/8/8

The President: No amendments have been submitted; no one wishes to speak.

The Article was adopted.

Article 8/9/9/9

The President: Various amendments have been submitted by the Delegation of the Union of Soviet Socialist Republics (see Annex No. 26). An amendment has been submitted by the Delegation of Ireland (see Annex No. 199). I wish to point out that the amendments submitted by the Soviet Delegation concern the four Conventions, whereas the amendment submitted by the Irish Delegation concerns the Civilians Convention only.

Mr. Cashman (Ireland): The purpose of the amendment to Article 9 of the Civilians Convention proposed by the Delegation of Ireland is to ensure that where neutral aliens are protected persons under Article 3 of that Convention, they shall have a substitute for a Protecting Power, to look after their interests.

In Article 3 of the Civilians Convention, as adopted by Committee III, protected persons are to include the nationals of neutral countries who find themselves residents in the territory of a belligerent State where their countries of origin are not diplomatically represented or who find themselves living in occupied territory. The common Articles dealing with Protecting Powers and substitutes therefore were, however, prepared before Article 3 was adopted in its present form and are so worded as to apply only to the nationals of countries which are Parties to the conflict and to the nationals of an occupied country. Neutral aliens in occupied territory, and neutrals without diplomatic representation in the territory of the Party to the conflict in which they are residents, are consequently now left without the benefits of a Protecting Power or a substitute organization. This is obviously an oversight which our proposal is intended to rectify. We seek to have the provisions of Article 9 extended to nationals of a neutral State who are either in occupied territory or who find themselves without diplomatic representation in the territory of the belligerent State. The salient portion of the Article which would be so adapted and extended would be the second paragraph. This reads as follows:

“when persons protected by the present Convention do not benefit, or cease to benefit, no matter for what reason, by the activity of a Pro-
tecting Power, or of an organization provided for in the first paragraph above, the Detaining Power shall request a neutral State or such an organization to undertake the functions performed under the present Convention by a Protecting Power designated by the Parties to the conflict."

Thus, according to our proposal, protected neutral aliens could be looked after either by another neutral State or by an organization such as the International Red Cross Committee. Such an arrangement should be easy to conclude with regard to neutral aliens residents in the territory of a belligerent State, while neutrals in occupied territory could doubtless be taken in charge by the Protecting Power responsible for the interests of all the other inhabitants of the territory.

Alternatively, the persons to be protected could be entrusted to the I.C.R.C. or an organization of a similar nature. The Irish Delegation feel therefore that the amendment they propose in this connection will find unanimous support because they are convinced that to leave one class, however small, of persons entitled to protection without a Protecting Power would be anomalous and contrary to the spirit of the Convention.

Mr. Sokirkin (Union of Soviet Socialist Republics): The Delegation of the Union of Soviet Socialist Republics has submitted a number of amendments to Article 8(9)/9(9). I would like to review briefly the motives which induced us to submit certain amendments to the Article under consideration.

The aim of Article 8(9)/9(9) is, as we see it, to establish the procedure by which the Detaining Power may be substituted for the Protecting Power in the event of the latter being unable to fulfil their function or when they cease to exist. The Stockholm Draft provided for substitution in two instances; firstly, when an agreement is come to by the Contracting Parties, and secondly, when the activity of the Protecting Power is not extended to protected persons, that is to say when the protection assumed by the Protecting Power comes to an end and the Government on which the protected persons depend ceases to exist. It was not by chance that the Stockholm Draft entrusted the functions of a substitute for the Protecting Power to the Detaining Power.

The addition of the words "no matter for what reason" gives the Detaining Power the right to substitute itself for the Protecting Power irrespective of whether the Government to which the protected persons belong exists or not. According to the addition made by the Special Committee, the Detaining Power can substitute itself at will for the protecting body even if a Government on which protected persons depend does in fact exist, and is the body which will naturally protect its own nationals. Obviously, we cannot prevent the Government of the country to which the protected persons belong from taking part in the choice of the substitute for the Protecting Power. We consider, however, that the right to select the substitute can be transferred to the Detaining Power in one case only: when there is no Government of the country of which protected persons are nationals.

For these reasons, we propose to delete the words "no matter for what reason", which have been added to the second paragraph of the text proposed by the Special Committee. To make myself quite clear, and to exclude the possibility of Article 8(9)/9(9) being interpreted in any other way, we propose to add in the second paragraph, after the words "the Detaining Power", the following sentence: "in the event of the Government of the country of which protected persons are nationals, having ceased to exist".

This addition clarifies the sense of the Article by explicitly stipulating that the functions of the Protecting Power can be transferred to the Detaining Power. The Protecting Power's right of choice, in the sense of the amendment of the Soviet Delegation, may be transferred to the Detaining Power only in the event of the Government on which the protected persons depend having ceased to exist.

In all other cases of substitution of the Protecting Power by the Detaining Power, the substitution could only be made on the initiative and in accordance with the views of the Government of which the protected persons are nationals.

The Delegation of the Union of Soviet Socialist Republics has likewise proposed to delete in the third and fourth paragraphs the words "humanitarian organization", and to replace them by the words "a relief society". We consider that the term "relief society" more accurately defines the category of organizations suited to assume the functions previously assumed by the Protecting Power. These are the reasons why the Union of Soviet Socialist Republics considers it necessary to make this alteration in Article 8(9)/9(9).

As regards the order in which the amendments which we are proposing should be considered and voted on, we recommend that the first amendment to be considered and put to the vote should be the amendment proposing the deletion of the words "in no matter for what reason". We could then pass on to the addition, after the words "Detaining Power", of the words "in the event of the Government of the country of which protected persons are nationals have ceased to exist".

We could then consider the amendment concerning the deletion, in the third paragraph, of the words "humanitarian organization" and their replacement by the term "relief society".
Allow me also to say a few words on the amendment submitted by the Delegation of Ireland. This Delegation proposes to extend the provision of Article 9 of the Civilians Convention to nationals of neutral countries who might be in occupied territory or in the territory of a belligerent, when these neutral countries have no regular diplomatic representative.

We consider that this amendment does not relate to Article 9, which deals with the question of the substitutes for the Protecting Power. The question of protected persons is dealt with in Article 3, in which both the categories of persons and the functions of the Protecting Power are quite clearly defined. There is no connection between this Article and Article 9, which deals only with the substitutes for the Protecting Power.

It is unacceptable that the functions of the substitute for a Protecting Power should be wider in scope than those of the Protecting Power itself. For these reasons, the Delegation of the Union of Soviet Socialist Republics proposes to reject the amendment proposed by the Delegation of Ireland, as having no connection with Article 9.

The President: We shall now proceed to vote.

Mr. Maresca (Italy): The Delegate of the Union of Soviet Socialist Republics has proposed the deletion of part of the sentence appearing at the beginning of the second paragraph, which reads as follows: "no matter for what reason". What do these words mean? What is their purpose and what part do they play in the construction of this sentence? Can they be deleted as unnecessary? Or would their deletion, on the contrary, tend to weaken the effect of the provision? Would their deletion tend to limit its field of application?

These are the questions which we should consider before replying to the proposal which has just been made.

The Common Article 8/9/9/9 is one of the most important Articles of our Convention, for it provides the machinery for replacing the Protecting Power, the Power which, as the Representative of the United Kingdom pointed out one day, is not only essential to protected persons, but also to the Protecting Power.

In order to make provision for the various ways in which the Protecting Power may be replaced, the following wording was used: "prisoners of war do not benefit, or cease to benefit", by the activities of the Protecting Power.

In spite of the apparent comprehensiveness of the term, this sentence makes provision for only two contingencies. The first is where there is no Protecting Power (for example, when it was never called upon to exercise its functions). The second is where the neutral Power which has been entrusted with the functions of a Protecting Power has been involved in the war and is therefore unable to carry out its duties. But other cases may arise. If we take into account the legal character of the Protecting Power and the system of legal relations which come into play, we can see how many possibilities may arise, in case this Power could default.

In order that the Protecting Power is in a position to carry out its functions, the Power on which the protected persons depend must first entrust it with the mandate and this mandate must be accepted. It is also necessary for the Detaining Power to have accepted the Protecting Power appointed by the Power on which the protected persons depend. Here we have two systems of legal relations.

For the system of legal relations to be a reality, the Power on which the protecting persons depend must exist and continue to exist, its Government must exist and must continue to exist, its recognition by the Detaining Power in whose hands the protected persons are must be a fact and continue to be a fact. You can see how many possibilities have to be taken into account, if the Protecting Power defaults.

You have all learnt from the experiences of the last war, experiences which have been so numerous, varied and cruel. These historical facts are fresh in your memory, and each of the abstract possibilities which I have just described corresponds to a concrete case which arose during the last war. The Head of the French Delegation one day recalled with restrained feeling that the Provisional Government of Algiers was regarded by the enemy—our common enemy—as a band of rebels. How can a Protecting Power be appointed to a Detaining Power in such a case? It is clear that an appointment of the kind would be simply disregarded. Other delegates have recalled what happened in their country when a Government which continued to be the symbol of their national independence exercised its functions in exile while the national territory lay under the yoke of the Occupying Power. Under these circumstances, how could a Protecting Power be designated?

The Delegation of Italy ventures in its turn to speak of its own experiences. In September 1943, the legitimate Government of Italy, the only Government to which the Italian soldiers, diplomats and civil servants owed allegiance, was at war with our common enemy. On the shores of the Lake of Garda, Germany had created a puppet Government in its own image, and for its own purposes, and no longer recognized the legitimate Government of Italy as the Italian Government. How could a Protecting Power have been designated by two such Governments?
How could it have sacrificed the duties which it was bound to fulfil with regard to Germany?

There are other possibilities, and other concrete cases which could be recalled.

How can all these possibilities be summed up in a single term? How can we take into account all the concrete realities which we have encountered and which—God forbid—we may encounter again?

It is for this reason that the Special Committee and the Joint Committee considered it advisable to insert in the sentence under discussion, the words "no matter for what reason". All possibilities, and all concrete cases should be covered by this term. Provision had to be not only for the possibility of the Power on which prisoners of war depend having ceased to exist, but also for all the other possibilities which I have described.

This sentence is therefore necessary. If it were to be deleted, the effect of the proposal would be weakened. We believe that it should be retained.

Colonel Du Pasquier (Switzerland), Rapporteur: It is my duty to comment first of all on the amendment submitted by the Delegation of Ireland.

This amendment, we were told a short while ago, is based on the assumption that there would be an omission in the Article now under discussion (8/9/g/9), and in justification it is pointed out that Article 3, proposed to the Plenary Meeting for the Civilians Convention, was drawn up later than Article 9.

This is correct, but the position is not affected, because Article 9 is intended to be applied more widely, to a much larger circle of protected persons, since this circle includes all the neutrals, whether they have diplomatic representatives or not; consequently Article 9 does not need no alteration in order to be adopted to Article 3, which has limited the circle of protected persons.

Moreover, as the Soviet Delegate correctly pointed out a moment ago, it is really Article 3 which is at issue here; it is no longer an Article common to the four Conventions which is in question, but an Article 9, which would stand alone in the Civilians Convention.

In my opinion, the addition proposed by the Delegation of Ireland is unnecessary and the adjustment between Articles 3 and 9 can be effected without more ado.

We have the second paragraph of Article 9 to provide for the case in which protected persons do not benefit, or cease to benefit by the activities of the Protecting Power. It is stated that the Detaining Power is bound to take steps to provide them either with a Protecting Power in the shape of a neutral State or to ensure the intervention of a humanitarian body.

Since the Detaining Power itself must take the initiative of compensating the absence of protection for these neutrals deprived of normal diplomatic representation, it seems to me that the machinery set up by Article 9 meets all requirements and that it is unnecessary to insert the addition proposed by the Irish Delegation.

For my part, I am rather in favour of rejecting the amendment proposed by the Irish Delegation, while leaving the latter free to reintroduce its proposal when we come to deal with the corresponding Article of the Civilians Convention.

I will only say a few words as regards the proposals made by the Delegation of the U.S.S.R. Just now, the Delegate for Italy gave us a striking picture of the various aspects of that very complex question, the existence or non-existence of a Government. It appears to me that we have here a major reason for rejection of the Soviet amendment.

The suggestion was to add, in particular, the following words: "in the event of the Government of the country of which protected persons are nationals having ceased to exist". But we are not told who is to decide whether the Government in question has ceased to exist.

The experiences of the late war have proved that certain Governments continued to function to a certain degree, and were recognized by certain States as existing, when other States denied that they existed at all.

This occurred frequently; and, if the application of this paragraph depended on the recognition or the existence of this kind, difficulties in international law would inevitably arise which our Committee and even our Meeting would regret to have caused.

I think it is far more in accordance with the spirit and aim of our Convention to maintain the text proposed by the Joint Committee.

As regards the expression "relief society" which was to be substituted for "humanitarian organization", I must say that in French this is most unsatisfactory. A relief society is an association of persons who agree to help each other, e.g. a lifeboat society. It is therefore not the same thing as a humanitarian organization which is set up to give all kinds of assistance or relief to third parties.

I think that here too the wording introduced by the present Draft should be maintained.

Colonel Hodgson (Australia): My Delegation will support the amendment submitted by the Delegation of Ireland because we think it is a useful one and it does fill a gap in the Convention, but we agree that it should be more appropriately applied to Article 3 because there is a gap in that Article which this particular amendment does.
purport to fill in relation to occupied territory. We are not quite clear about the Soviet amendment. Should it be accepted, the phrase would then read:

"...a relief society such as the International Committee of the Red Cross".

I am not sure whether the International Committee of the Red Cross calls itself a relief society. If that term is either sufficiently embracing or comprehensive I do not know. I should think not. Therefore, I would be pleased if you would be good enough to invite the Representative of the International Committee of the Red Cross to explain briefly the attitude of the Committee towards this particular amendment and what they consider the effect of it would be.

Mr. Morosov (Union of Soviet Socialist Republics): I wish to speak again; but, as the United Kingdom Delegate has asked to speak for the first time, I shall be glad to leave to him the floor, and not to speak myself until those delegates have spoken who are speaking for the first time.

Sir Robert Craigie (United Kingdom): I only wish to make a very short statement in regard to the Irish Delegation's amendment. It is not clear to the United Kingdom Delegation that there is any gap, as has been suggested, in Article 3 Civilians as at present drafted. The second sentence of Article 3 says that:

"Nationals of a neutral State who find themselves in the territory of a belligerent State, and nationals of a co-belligerent State, shall not be regarded as protected persons while the State of which they are nationals has normal diplomatic representation in the State in whose hands they are.""

Therefore the point raised by the Irish Delegation seems to be entirely covered as far as Article 3 is concerned, but when we come to the Article under discussion there does seem to be a gap, for it may well be that where there is no normal diplomatic representation there should be provisions not only for the appointment of a Protecting Power but, failing that, for the appointment of a substitute for the Protecting Power and if that is the intention, as I believe it is, of the Irish amendment it seems to us to be very reasonable, and we hope that the Conference will take it into consideration.

The President: Three delegates still wish to speak, two of them for the second time. I ask them to be as brief as possible in order that we may come to a decision this evening on the Article under consideration.

A question has been put to the International Committee of the Red Cross. If one of their Representatives is able to reply to this question, I will call upon him to speak.

Mr. Siordet (International Committee of the Red Cross): The Head of the Australian Delegation has put a clear question: Can the International Committee of the Red Cross be called a relief society? The answer of the International Committee of the Red Cross is: No! Strictly speaking it is not a relief society. In the course of the late war and other conflicts, the International Committee transported thousands of tons of relief supplies, but only in the capacity of a neutral intermediary.

If you will allow me, I will add a few words on the Rapporteur's able statement on relief societies. The three Conventions under discussion mention "relief societies"; the Wounded and Sick Convention mentions "societies acting as auxiliaries to the medical services of the army"; and the Prisoners of War and Civilians Conventions mention "Relief societies assisting prisoners of war or internees". If in the Article on the Protecting Power and its replacement the term "relief society" is used instead of the expression "humanitarian organization", misunderstanding might arise, as it might mean that only relief societies provided for under the Conventions could act in the absence of the Protecting Power. But the relief societies mentioned in the three Conventions are all national societies. It is not at all certain that they could take the place of a Protecting Power for a belligerent who is an enemy of their country. In the opinion of the International Committee of the Red Cross, it would therefore be preferable to adhere to the expression adopted in the text proposed by the Joint Committee.

Mr. Morosov (Union of Soviet Socialist Republics): I should like to reply to the very eloquent speech of the Delegate for Italy. Unfortunately, the warmth of his speech was not always in proportion to the cogency of his arguments. In this special case, the speech of our Italian Fellow-Delegate, who as a rule raises interesting questions and supports them by relevant arguments, was ill-founded. Actually, he was arguing in two directions. For instance, it was said that the text of Article 8/9/9 as drafted by the Joint Committee should be retained, for if it is admitted that two governments can exist, one legitimate, but exiled from its own territory by circumstance, and the other illegitimate, nobody would know which of these two governments should select the Protecting Power.

I can understand that the question should be put in this way; what I cannot understand is that, leaving it unanswered, a conclusion can be reached.
which seems to have no connection with the arguments put forward by the Delegate for Italy.

The selection of the Protecting Power should be a matter for the legitimate government, whether it is still in its national territory, or exiled from it by circumstance, since it is the legitimate government which is recognized by international law.

On the other hand, it must be pointed out that the situations referred to by the Delegate for Italy are not the only ones which may actually arise. We must admit that there may be others for which the text of Article 8/g/g/g submitted by the Joint Committee might be taken into account. We are dealing with the legitimate government in the strictest sense, that is, the government recognized by all, residing in its own territory, which exercises authority and is, in the fullest sense, a legitimate government.

What will be the consequences of such a situation if Article 8/g/g/g is applied? Although there is a legitimate government recognized by all and residing in its own country, the enemy would select the Protecting Power. That would be in flagrant contradiction both with international law and with Article 6/7/7/7.

Let me give you an illustration: there is one government or country which I will call A another country or another government which I will call B, which is the Protecting Power. As a result of underground intrigues, country B has abandoned its position as Protecting Power of the nationals of country A.

In that case, according to Article 8/g/g/g it would devolve on the enemy to choose the Protecting Power. If he chooses, for example Power X, the legitimate government will reply: “I refuse to accept Power X, I prefer Power C”. The enemy might then retort: “The choice does not concern you. According to Article 8/g/g/g of the Convention I am the person entitled to choose the Protecting Power and I select Power X to undertake the protection of nationals of your country.” This would be the actual situation created by Article 8/g/g/g if left in its present form.

I wish to place it on record, on behalf of the Delegation of the U.S.S.R., that my Delegation will never approve an Article which leaves to the enemy the choice of the Protecting Power which he may wish to impose on a legitimate government.

We consider that your amendment should be adopted to prevent the contingency to which I have just invited your attention. This is of utmost importance to us, and I repeat that the Article will have no practical value in our eyes if our amendment is not inserted in it.

Further, it has been asked on whom responsibility would rest to decide whether the government is legitimate or not. I do not think the question arises; it would in any case be difficult to answer. You might say that everything depended on the situation created in this case by international law; but you cannot evade answering a question merely because it is difficult to answer. I would submit that our amendment is not intended to eliminate a problem but merely to strengthen the Article submitted to us.

If no reply is given to the question raised, that does not mean that the enemy is free to select the Protecting Power. Various methods of solving this problem are conceivable. First of all there is the conciliation procedure. No one has suggested the application of the machinery we have devised.

The Delegation of the U.S.S.R. presses for the adoption of its amendment recommending the deletion, in the second paragraph, of the words “no matter for what reason” and the insertion in this paragraph of the words “in the event of the government of the country of which protected persons are nationals having ceased to exist” after the words “Detaining Power”.

Mr. Cashman (Ireland): We are very grateful for the observations of the Rapporteur, and of the Delegates of Australia and the United Kingdom. Arising out of their remarks, we submit a few short observations.

The question here is the provision of something in the nature of a Protecting Power for neutral protected aliens. Articles 7 and 9, as drafted, do not cover these persons. They enable a Protecting Power to provide only for the nationals of a belligerent country or for the nationals of an occupied territory. That is the reason for our amendment.

When we were preparing the amendment, we considered putting it into Article 3 of the Civilians Convention; but as that Article is really exclusively for protected persons we felt it would be wrong to bring into that Article anything about Protecting Powers, and therefore we are thrown back on Articles 7 and 9.

We did not wish to interfere in any material way with the wording of these Articles, because they have given a great deal of trouble in the Special Committee of the Joint Committee, and therefore we sought a way which would enable a Protecting Power to provide for neutral aliens, and at the same time would not alter the text of Articles 7 and 9 in any material respect. We felt from that point of view that in Article 9 machinery was provided—i.e., where persons did not benefit by the protection of a Protecting Power—the Detaining Power would make alternative provision. That of course related to nationals of belligerent territories or occupied territories, and we felt it could be adopted and extended to apply also to neutral aliens, by adding a paragraph to Article 9 which did not alter the text already prepared but merely put an
additional paragraph to it, and that seemed to us to be the most suitable way.

We think that, as it has produced the necessary effect, it might well be adopted.

Mr. Maresca (Italy): The Italian Delegation has followed the remarks made by the Delegate of the Union of Soviet Socialist Republics with the closest attention. I wish to express my appreciation of the clarity of his arguments and of his wit. Unfortunately, I cannot agree with his conclusions. I would like to ask him to consider carefully the consequences of the deletion of the words “no matter for what reason” and the addition of the words “in the event of the government of the country of which the protected persons are nationals having ceased to exist”.

A single eventuality would be taken into account, namely that the government on which these persons depend has ceased to exist. But what is to happen if the government on which such persons depend still exists, but is not recognized by the Protecting Power? No protecting Power will be in a position to act, for the Power in whose hands the prisoners are will never accept the State designated by a government which it has ceased to recognize. Again, how is a puppet government, or a Quisling government to appoint a Power? It will never do so, for it will say: “These prisoners of war are dependent on us, they are rebels...”.

The Protecting Power would in fact, no longer exist. What kind of situation would arise if the machinery we have evolved could no longer work?

I fully agree with the Delegate of the Union of Soviet Socialist Republics when he says that it would in any case be regrettable if the Detaining Power were itself to select the Protecting Power. But that contingency is less serious than the situation that would arise if our provision were unable to be carried out.

I should further like to draw your attention to the fourth paragraph. Its provision is of a nature, in my opinion, to allay the legitimate fears that might be caused by the idea of the Detaining Power selecting the Protecting Power.

In conclusion, I believe that the text submitted to us can provide the guarantees which would be compromised by any alteration of it. It would therefore be preferable to retain the text as it stands.

The President: We shall now proceed to vote. Our first vote will be taken on the amendment proposed by the Delegation of Ireland.

The amendment was adopted by 23 votes to 8, with 6 abstentions.

The President: We shall now vote point by point on the amendment submitted by the Soviet Delegation. I shall first put to the vote the first amendment proposing the deletion in the second paragraph of Article 8/g/g of the words “no matter for what reason”.

The amendment was rejected by 20 votes to 8, with 9 abstentions.

The President: We shall now vote on the second amendment which proposes to add to the second paragraph the words “in the event of the Government of the country of which the protected persons are nationals having ceased to exist”.

The amendment was rejected by 19 votes to 8, with 11 abstentions.

The President: We shall now vote on the second amendment which proposes to add to the second paragraph the words “in the event of the Government of the country of which the protected persons are nationals having ceased to exist”.

The amendment was rejected by 19 votes to 8, with 11 abstentions.

The President: We shall now vote on the two last points of the Soviet amendment taken together. They propose to substitute in the third paragraph the words “…a relief society” for “…a humanitarian organization”, and in the fourth paragraph, to substitute “…a relief society invited” for “…organization invited”.

The amendments were rejected by 23 votes to 10, with 2 abstentions.

The President: We shall now proceed to vote on the Article as a whole.

The Article as a whole was adopted by 30 votes to 8, with no abstentions.

The meeting rose at 7.30 p.m.
The President: Before starting with Article 9/10/10 I will ask the Rapporteur to make a short statement in regard to Article 8/9/9/9.

Article 8/9/9/9 (continued)

Colonel Du Pasquier (Switzerland), Rapporteur: Both at the Plenary Meeting and in the Mixed Committee we have heard Mr. Cahen Salvador's eloquent speeches proposing the setting up of a High International Committee. I refer to what I have already said on the subject in my Report, under Article 8/9/9/9 (see Report of the Joint Committee to the Plenary Assembly).

I have to inform the Conference that the draft amendment submitted by the French Delegation has been modified as a result of the discussions which took place in the Special Committee and the draft resolution which was drawn up.

I mention this point for information only, and I presume that the President of the Conference will open the discussion on the draft when the examination of the Articles of the Conventions is closed.

The President: We will now proceed to discuss Article 9/10/10/10. We have an amendment tabled by the Delegation of the U.S.S.R. and I call upon the Delegate of the U.S.S.R. to speak.

Mr. Sokirkin (Union of Soviet Socialist Republics): Article 9 of the Wounded and Sick Convention and the corresponding Articles in the other Conventions, as adopted by the Joint Committee, make the Protecting Powers responsible for functions which are not within their competence, namely the participation in the interpretation of the stipulations of the Convention, and in the solution of differences which may arise between the Parties to the conflict. One of its stipulations which states that the Protecting Power shall, in case of necessity, lend its services and good offices in order to facilitate the application of the Convention (as stipulated in the Stockholm text, Article 9) is inadmissible. The Protecting Powers cannot be called upon to take any part in interpreting the provisions of the Convention, nor can they be called upon to exercise functions which, by their very nature, they cannot exercise.

According to Article 6/7/7 of the Conventions, the duties of the Protecting Powers consist in supervising and facilitating the application of the Convention. Thus, the Soviet Delegate objects to the stipulations of Article 9; not only are these stipulations incorrect, but they are also contradictory to the stipulations of Article 6/7/7/7, which defines the rights and obligations appertaining to the Protecting Power.

It should not be left to the Protecting Powers to settle differences, for that is not within their competence. On the other hand, it would be more reasonable for them to be granted the rights stipulated in Article 9 of the Stockholm text, which provides that the Protecting Power shall facilitate the application of the Convention. The Soviet Delegation is therefore of the opinion that the words "or interpretation" should be omitted from the first paragraph of Article 9 of the Stockholm text; also that in the same paragraph the words "with a view to settling the disagreements" should be substituted for the words "with a view to facilitating the application of the Convention". In other words, the Soviet Delegation proposes to restore the Stockholm text of Article 9 in its entirety, which better corresponds to the definition of the activity of the Protecting Powers.

Colonel Du Pasquier (Switzerland), Rapporteur: For those who have taken part in the debates of the Special and the Joint Committees, this amendment is an old acquaintance. On each occasion it was rejected by the two Committees I have just named. Legal experts will tell you that there is no clear line of demarcation between the application and the interpretation of legal or treaty texts, and that when there is any disagree-
ment as to the possibility of applying any Article, its meaning must be clearly defined, and from that time that meaning is the interpretation of the Article. If one person states that such or such provisions cover a case and another person replies that they do not, that already raises a question of interpretation and it is perfectly right that the authors of these texts should have also considered the question of conciliation in interpreting them. Arguments concerning application are often merely arguments concerning interpretation.

With regard to the duty of the Protecting Power in this matter, the Soviet Delegation, whose remarks we have just heard, seems to have some misgivings as to whether Article 9/10/10/10 should be understood as attributing to the Protecting Power the duty of interpreting the text, a duty similar to that of a judge. An examination of the procedure laid down in Article 9/10/10/10 will lead us to consider the Protecting Power merely as an intermediary; this is clearly stated at the end of the first paragraph, which alludes to good offices. It is evident that these offices would lead to a meeting of the Parties (which is the object of the second paragraph) or the nomination of a person who could act as an arbitrator. In any case, the Protecting Power only intervenes in order to bring the two adversaries in this legal conflict into contact. Thus I cannot see how anyone can take umbrage. This was exactly the view taken by the Joint Committee, which rejected by a large majority, if I remember rightly, the amendment which we are now discussing. I think the Plenary Meeting would do well to follow the Joint Committee's example.

Mr. Cohn (Denmark): The Rapporteur has already advanced the arguments which militate against the amendment submitted by the Delegation of the Union of Soviet Socialist Republics. All I have to say is that the Danish Delegation cannot approve the amendment, and that it prefers the text which figures in the Report of the Drafting Committee.

I may add that the Delegate of the Union of Soviet Socialist Republics expressed the opinion that a certain contradiction existed between Article 9 and Article 6 of the Convention. In my opinion it would be very difficult to prove that any such contradiction exists, for only one statement is made in Article 6, i.e., that the Protecting Powers are called upon to safeguard the interests of the Parties to the conflict. Thus the task of the Protecting Powers is not defined in any way and it would be impossible to my mind to find any contradiction between the two Articles. Otherwise I can only refer to the arguments brought forward by the Rapporteur.

The President: If there is no other comment, I will put the amendment submitted by the Delegation of the U.S.S.R. to the vote. Unless there is any objection, I propose to put the two parts of the amendment to the vote at the same time, as the one appears to depend on the other. The amendment submitted by the U.S.S.R. Delegation was rejected by 25 votes to 10, with 9 abstentions.

We will now vote on Article 10 as a whole. The Article was adopted by 34 votes in favour, no opposition, with 8 abstentions.

Article 38/42/117/128

The President: There are no amendments to this Article; but the Rapporteur will make a statement.

If there are no observations, I will put Article 117 to the vote.

The Article was adopted by 37 votes in favour, no opposition, with 1 abstention.

Article 38A/42A/118/129

The President: As the Rapporteur has nothing to say, and as there seems to be no objection, I will take this Article as adopted.

Article 39/43/119/130

The President: There are two amendments submitted by the Delegation of the Union of Soviet Socialist Republics (see Annexes No. 53 and 53A).

Colonel Du Pasquier (Switzerland), Rapporteur: For the moment I do not wish to give any explanations in regard to the Article and will leave the floor to the Soviet Delegation, so that the reasons for their amendment can be placed before the Meeting.

There is, however, another point to which I must draw attention. It has been discovered quite recently that Committee I had recommended, in connection with Article 39, that the High Contracting Parties should adapt their legislation so as to implement, both in time of peace and in time of war, the prohibitions set forth in Article 42 of the Wounded and Sick Convention, and punish any infractions which might occur.

It now appears that this recommendation, which was of course intended to reach the Joint Committee (to which Article 39 had been referred) never came into the hands of its Chairman. No letter on the subject was addressed to him, so
that the Joint Committee, although it had studied Article 39 and had drafted the text of it, was unaware of the wish expressed by Committee I, which might perhaps have made some difference in its decisions and in the drafting of the text.

In these circumstances, and taking account also of Article 43 of the Maritime Warfare Convention, it would appear that the question should be reconsidered by a Working Party. The question is that of the protection of the emblems, and, in the second paragraph, the protection of the Swiss national arms.

Obviously the question should be dealt with by a Committee of specialists, and for that purpose we might have recourse to the Working Party of the Special Committee under the Chairmanship of Captain Mouton. I propose—and this need not delay consideration of the Soviet amendment—that we should refer this question back to the Working Party, which would report on the matter at a later Meeting.

Unfortunately, I have just learned that Captain Mouton has left the Conference. However, the Chairman of the Special Committee of the Joint Committee, Mr. Bolla, might be invited to take his place. I feel that we should then have a Working Party fully qualified to deal with these questions which might, in a very few days, propose any amendments to be made to Article 39 in accordance with the wish of Committee I.

The President: If the Conference agrees with the proposal of the Rapporteur, I will ask Mr. Bolla to get in touch with his colleagues in order to examine this question. Meanwhile, we can continue to discuss the two amendments submitted by the Soviet Delegation.

Mr. Morosov (Union of Soviet Socialist Republics): This is perhaps the fifth or sixth time in the course of our proceedings that the Soviet Delegation has drawn the attention of the Conference to a misunderstanding in connection with Article 39 and the corresponding Articles of the other Conventions which ought to be cleared up at once. When this question was being discussed in conjunction with Articles 10 and others of the Maritime Warfare, Wounded and Sick, and Prisoners of War Conventions, this Article was divided into two parts; it was decided to retain the first part which referred to crimes, torture, etc., whereas the second part, for which the Soviet Delegation pressed and in which these acts were described as "serious crimes", was accepted in principle; it was, however, decided that this part should be inserted in Article 39 and the corresponding Articles, which we are at present considering. Time has passed since then, however, and the Delegations which upheld the point of view of the Soviet Delegation have forgotten this decision and we are now again engaged in discussing where this clause dealing with "serious crimes" should be inserted.

I would recall the discussion which took place in the Committee and the semi-official talks during which agreement had been reached to embody this conception in Article 39 and in the corresponding Articles of the other Conventions. We were all agreed in describing certain acts as "serious crimes".

In order that acts constituting the most serious breaches of the Conventions should be defined in Article 39 with greater force, the Soviet Delegation proposed to substitute for the words "grave breaches" the words "serious crimes". Acts such as murder, mutilation, torture, etc., are described in the criminal law of all countries as crimes. We cannot agree with the point of view of certain delegations who consider that to apply this description to breaches of the Conventions, such as I have referred to, would constitute an interference with the internal affairs of the State. It is quite obvious that this is not the case, and that there is no question whatever of interfering with the internal affairs of any State. I should like to point out that no one could deny that the Soviet Delegation, during these debates, has consistently opposed any violation of the sovereignty of the State.

Our proposal is simply to call breaches of the Convention "crimes" if they deserve that description. We all agreed on this point, but as soon as we try to put an agreement into effect, and endeavour to find an appropriate wording, we find ourselves caught up in a vicious circle. On the one hand, we are told that everyone is agreed, but on the other it is pointed out that such a term cannot be inserted in the Convention. No one, I may point out, has adduced any legal arguments against such insertion. I should like to know if there is a law—and, if so, in what country—under which murder is not considered a crime. In order that such crimes shall be adequately punished it is essential that a State should be under the obligation to incorporate in its legislation provisions for the effective punishment of those guilty of serious crimes. We sincerely hope, at this late stage of the Conference, that this misunderstanding will be cleared up and that it will prove possible to find a suitable form of words to describe such acts appropriately. The Soviet Delegation further proposes that the text of Article 39, and the corresponding Articles of the other Conventions, be supplemented by a provision that persons accused of such crimes shall be brought to trial, and that the States shall be required to adapt their own legislation to the provisions of the Conventions which lay down
that acts described as breaches of the law shall be prosecuted.

This proposal would enhance the importance of Article 39/43/119/130 and render it more effective in dealing with grave breaches of our Conventions. I appeal to the Chair, in view of the fact that our amendments relate to different subjects, to take a vote on each of them separately; that is, to call for a vote first on the amendment for the deletion of the word "breaches" in these Articles and their replacement by the word "crimes" and subsequently on the other amendment which proposes a new text for the Article in question.

Mr. COHN (Denmark): The Rapporteur has requested the Delegate of the Union of Soviet Socialist Republics to explain the difference between the amendment submitted by that Delegation and the text adopted by the Committee.

I must admit that the Danish Delegation is not altogether clear as to what this difference consists in. The Delegate of the Union of Soviet Socialist Republics referred to the amendment which proposes to replace the word "infractions" by the word "crimes". It is easy to understand the difference here and, for my part, I have no objection to accepting this alteration.

But I refer principally to the other amendment. In order to be able to take a decision on a proposal, it is necessary to understand exactly what difference there is between the amendment and the original text. I should therefore be grateful to the Delegate of the Union of Soviet Socialist Republics if he would give us some explanation on the second amendment, the only one which gives rise to some difficulty. He mentioned a misunderstanding; for my part, I do not understand very well where the misunderstanding lies.

The PRESIDENT: The Delegate of the U.S.S.R. wished the Conference to vote separately on these two amendments. He did not suggest a separate discussion; but I noticed that in his remarks he did not refer to the second amendment. I suggest to the Conference that it might be convenient not only to vote on these two amendments separately but to discuss them separately, and (if there is no objection) we will confine the discussion for the moment to the first amendment.

Mr. SINCLAIR (United Kingdom): The Soviet proposal to substitute in these Articles the word "crime" for the words "grave breaches" has been very fully thrashed out both in the Special Committee and in the Joint Committee, and you will all have read the results in the Reports of those Committees and in particular in the Special Report on penal sanctions.

It is not a question as to whether or not these grave breaches are crimes, it is simply a question of finding appropriate words for carrying out the intention behind these Articles which all the delegations who were responsible for framing those Articles were attempting to secure. That intention was to ensure that any persons who committed breaches of these Conventions would be suitably dealt with and punished according to the seriousness of the offences that they committed, and therefore it would have been quite inappropriate to have gone into the question of establishing a new penal code in these Articles.

For that reason the proposal in the present Soviet amendment has been rejected throughout this Conference.

Finally, I should like to take this opportunity of reminding the Conference that possibly the Articles now before you represent one of the biggest achievements of statemanship on the part of this Conference. They are the result of free and open discussion between a number of delegations representing countries who started with very diverse views; and, if it had not been possible to find some way of reconciling those views, we might have had a position which would have created one of the most serious deadlocks in the Conference. As the result of those deliberations and consequently the Joint Committee being able to find a result acceptable, there is today being asked to give your final approval to proposals that have originated from ten delegations in this Conference coming from four different Continents.

Colonel DU PASQUIER (Switzerland), Rapporteur: I merely wish to raise a small textual point. The text of Article 39/43/119/130, as it has now been distributed, was previously distributed at the last meeting of the Joint Committee. It was then decided to make an alteration in the third paragraph of Article 39 for the purpose of making its meaning clearer. This third paragraph is at present worded as follows:

"Each High Contracting Party shall take measures necessary to put an end to all acts contrary to the provisions of the present Convention" (see Annex No. 5 and Summary Record of the Eleventh Meeting of the Joint Committee).

The Joint Committee preferred the following text:

"Each High Contracting Party shall take measures necessary to put an end to all acts contrary..." etc. (see Report of the Joint Committee).

That, therefore, is how this Article must read in future and I believe that this is the text which we shall vote on presently.
Mr. YINGLING (United States of America): I associate myself with the remarks which have been made by the Delegate of the United Kingdom. I see no need for repeating the arguments. This Convention is clearly not a penal statute, and the term “crimes” is clearly inappropriate to express violations of this Convention, which will not be crimes until they are so made by domestic penal legislation.

Mr. LAMARLE (France): The French Delegation would like to make some general comments on the arguments which the Delegate of the Union of Soviet Socialist Republics advanced a few minutes ago. Firstly, as regards the second amendment proposing a new text for the Article, I notice two alterations.

One alteration would be to replace the words in the French text “infractions graves” by “infractions lourdes”. I can completely reassure the Delegate of the Union of Soviet Socialist Republics on this point, for, in French, the words “lourd” and “grave” have exactly the same meaning. It is quite impossible to distinguish between the two. One of these words has apparently been derived from classical Latin and the other from vulgar Latin. The word “gravité” means precisely heaviness or weightiness. I can therefore, as I have already said, completely reassure the Delegate of the Union of Soviet Socialist Republics on this linguistic point.

A more serious point, on the other hand, is the disappearance at the end of the Article of the stipulations ensuring that the accused persons shall have the judicial safeguards provided by Article 95 and those following of the Prisoners of War Convention. This proviso had been inserted on the suggestion of the International Committee of the Red Cross and at the request of the French Delegation. I therefore propose that the words “grave breaches” be substituted in the French text, and to find a term corresponding to the French text of Article 39—this is how I refer to it—I am in favour of maintaining the word “infractions” in the French text instead of the term which we had proposed; and we might then say “infractions graves”. I hope this proposal will meet with general approval; but I wish to emphasize that we interpret the word “infractions” as a breach of the law, and not simply as an insignificant misdeed.

If this is agreed, the question arises how to coordinate the English version with the French, and to find a term corresponding to the French words “infractions graves”. I therefore propose that the words “grave offences” be substituted for the words “grave breaches”.

If the English speaking delegations agree that the English version should be brought into line with the French version as proposed by us, we should be ready to withdraw our proposal for the substitution of the word “crimes” for “infractions” (French) and “breaches” (English).

Some delegations have argued that we are trying to introduce a new penal code. In reply to this argument I should like to point out that the question under discussion is sufficiently important to require legislators in the various countries to insert a special provision on this point in their national penal codes. This, of course, is a question which cannot be dealt with at present. The only thing on which we can come to an agreement, I feel, is to retain the words “infractions graves” in the French text, and to insert the term I proposed in the English text so as to ensure that the versions in the two languages correspond. This would serve to dissipate the misunderstanding.
Mr. Yingling (United States of America): As one of the English speaking Delegates in this Assembly, I should like to say that that is unacceptable to us. The Soviet Delegate, of course, knows that the word “offence” is tantamount to the word “crime”. We are perfectly satisfied with the English text as it is now.

Mr. Morosov (Union of Soviet Socialist Republics): In order to solve our present difficulty and to avoid lengthy debates, I think that the various delegations should be given the opportunity of meeting to clear up this question. I therefore propose to propose the matter in the hands of a Working Party. This solution seems all the more acceptable to me as the Working Party in question will have to deal with other questions which arise on the same subject. I therefore formally propose that the question should be referred to the Working Party which has, in fact, already been set up to deal with this Article.

The fact that the English-speaking Delegations do not agree to the alteration I have suggested, and therefore prefer to keep to the present English wording of the text, does not help matters. If we adopt the wording which I propose for the French text (which, I must remind you, is the original text) the question of the corresponding term in English is merely a question of translation. We shall never get out of our deadlock if the minority of the English-speaking Delegations refuses to accept the English wording as coordinated with the French text adopted by the majority. If by chance such a difficulty arose for us, we should have to revert to the provision contained in the text adopted at Stockholm to the effect that the French text “shall be considered as authoritative” in cases of doubt. For the time being I am not making a formal proposal on this point, but if any difficulty of this description should arise I should be bound to request that the said provision be restored.

It seems to me that the whole difficulty could be avoided by the adoption of my proposal, that is to say, by a compromise solution for the French term such as I have just indicated, and by the correction of the English wording to bring it into line with the French.

To avoid discussing this question any longer I propose to refer the matter to the Working Party.

The President: Before I call up on other delegations to speak I should like to make a short clarification. I am informed that the text of this Article was originally drafted in English, and that the French text purports to be a translation of the English text. The point at issue therefore seems to me to be whether the word “infractions” is a correct translation of the term “breaches” in the text as originally drafted. It is this point, put from a somewhat different angle, which the Soviet Delegate now proposes should be referred to the Working Party. After that explanation I will call upon the Delegate for Canada to speak.

Mr. Wershof (Canada): I wish to object, on behalf of the Canadian Delegation, to the Soviet proposal that the phrase “grave breaches” be referred to a Working Party, and if that proposal is put to a vote I hope that it will be rejected decisively.

The Soviet Delegate has referred to some difficulty which he very kindly offers to solve for us. I am not aware of any difficulty whatsoever, except in the mind of the Soviet Delegate. Here is a text which, as our President has just pointed out, was originally drafted in the English language. This was the proposal which was put before the Conference, and the numerous delegations which have drafted this text deliberately used the phrase “grave breaches”. This is what those delegations wanted and, as far as I know, they do not want anything else; certainly the Canadian Delegation, which has on previous occasions voted for the text, is not prepared to vote for any other version.

The question of whether the French words “infractions graves” is a correct translation of the English words “grave breaches” has already been dealt with by the Drafting Committee of the Conference, and I presume that the majority of the Drafting Committee of the Conference were satisfied, therefore I do not see why we now need to refer the matter to yet another Committee.

The Soviet Delegation has tabled an amendment to substitute the word “crimes” or the French word “crimes” for the phrases we have mentioned. They have made many speeches on that subject in the course of this Conference, and now at long last they have the final opportunity to have their proposal put to a vote, and I have no doubt it will be rejected.

It seems to me that we should decline the generous suggestion of the Soviet Delegation to refer this matter to yet another Working Party, and that we should proceed to vote on the Soviet amendment, which I hope will be rejected; we can then adopt the Article.

Mr. Sinclair (United Kingdom): I do not now wish to speak.

The President: In that case, if no one else has anything to say, I would ask the Delegate for the U.S.S.R. whether he wishes his proposal to refer this matter to a Working Party to be put to the vote, having regard to the fact that it has been opposed.
Mr. Morosov (Union of Soviet Socialist Republics): I rise to speak in order to state that the Soviet Delegation maintains its proposal; as this Article will have to be discussed again by the Assembly, it will not be possible to take a final decision today.

I do not understand the restlessness of the Delegate of Canada; he is always in a hurry. What I can understand, however, is that he should wish to settle this question as soon as possible.

It seems to me that the good will of the Soviet Delegation in not pressng its proposal for the more drastic wording which it had at first submitted should be taken into consideration.

Everyone agrees that the acts specified in Article 39 and the corresponding Articles, are criminal. The only thing we now have to do is to find an adequate wording to qualify these acts.

If we follow the line indicated by the Delegate of Canada, we shall never find in the national legislations of any country the condemnation of such acts.

The Delegate of Canada changes this purely technical question of translation into a question of principle. I do not wish to go further into this subject; it would require a special discussion. It seems to me, however, that it is a question of language which would be difficult to solve in such a large meeting. For this reason, I had proposed that the question should be referred to the Working Party. The latter's recommendation would enable us to come to a decision likely to satisfy, if not everybody, at least the majority of the delegations, and that would be a very worthwhile result.

As we are joining our efforts to find a compromise solution, I think that our proposal should not be purely and simply rejected, and thus the door closed to any further possibility of agreement. That would be the result of the proposal of the Delegate of Canada. The Assembly would then be required to vote on the first wording which we had proposed, even while we were endeavouring to arrive at a compromise text on the point. I again suggest that this question should be referred to the Working Party which, after studying it, would put forward proposals which we could examine before taking a final decision.

The President: The Soviet Delegation having maintained its view that this matter should be referred to a Working Party, and that proposal having been opposed, we will now proceed to vote upon it. The proposal is that the discordance in the French and English texts between the words "infractions graves" in French and "grave breaches" in English, should be referred to a Working Party. The Soviet Delegate says that in addition to a mere matter of translation there is also a point of substance. (A vote was taken.)

The proposal submitted by the U.S.S.R. Delegation was adopted by 17 votes to 16, with 9 abstentions.

The matter will therefore be referred to the Working Party which has previously dealt with this question of breaches of the Conventions.

I may take this opportunity to make an announcement on a point which arose on the previous Article. The Working Party which, on the proposal of the Rapporteur, would examine the recommendation of Committee I regarding Article 39 will meet on Monday, 1st August, at 9.15 a.m. under the Chairmanship of Mr. Bolla. The Working Party is composed of the Delegations of France, the United Kingdom, the Union of Soviet Socialist Republics, the United States of America, Turkey and Uruguay. I assume that the same Working Party will also deal with the point raised by the Soviet Delegation.

Mr. Gardner (United Kingdom): The proposal to refer the question of legislation for the protection of the red cross and the Swiss national emblem to a Working Party seems to the United Kingdom Delegation to have nothing whatever to do with the proposal which we have just adopted to refer the question of the translation of the English word "breaches" to a Working Party. Article 39 in the Wounded and Sick Convention and the corresponding Articles in the other Conventions deal with the very serious problem of grave breaches of the Conventions during war time. The use of the red cross emblem or of the Swiss flag for commercial or other purposes outside the protection of the wounded and sick involves generally comparatively minor offences nearly all of which arise in peace time, and the United Kingdom Delegation suggests that the provision in the Conventions requiring legislation to protect the red cross emblem and the Swiss flag is a question quite different from the one dealt with in Article 39 of the Wounded and Sick Convention.

For that reason we would hope that even if the same Working Party deals with them, they will deal with them as distinct and separate questions, and not let us confuse this very serious problem of what should be done about grave breaches with what is much more an administrative problem in peace time, of how you will ensure that firms and others do not misuse the red cross emblem. Because they are distinct and separate questions, the United Kingdom Delegation would have preferred to see them dealt with by a separate Working Party. The question of legislation to protect the red cross is not, in fact, common to the four Conventions at all. It belongs primarily to the Wounded and Sick and Maritime Warfarce Conventions. It may have some reference to the Civilians Convention but that cannot be known until the results of the discussion on that Convention are known because
there is an amendment coming before the Conference which would remove the use of the red cross entirely from the Civilians Convention. It has nothing to do with the Prisoners of War Convention because the red cross emblem is not referred to in that Convention so this question of legislation to implement Article 42 of the Wounded and Sick Convention is not a question proper to the Joint Committee. It is a question which should in our view have been settled by Committee I and it ought to be referred to an appropriate Working Party selected from that Committee and not to a Working Party appropriate to the question of grave breaches.

The President: I understand that the objection of the United Kingdom Delegation is not so much to the composition of the Working Party which is proposed on the point arising out of Article 39, but rather to the suggestion that both these points, the one arising out of Article 39 only and the one arising out of Articles 39 and 40, should be considered by the same Working Party. If that is the case I take it that for the first Working Party there will be general acceptance of the following: France, Turkey, United Kingdom, Union of Soviet Socialist Republics, United States of America, and Uruguay, under the Chairmanship of Mr. Bolla. If there is no objection to that, I will proceed to the question of the Working Party to consider the point arising in Articles 39 and 40. It is clear that, as the question of English and French translations arises in a high degree in this connection, it means that the Working Party should consist of Representatives of France, the United Kingdom and the United States of America and, of course, the Union of Soviet Socialist Republics. As it is a point of drafting, I am wondering if we could not stop there and leave it to that small Committee to try to find a solution on the point arising on Articles 39 and 40.

Mr. Lamarle (France): I would thank the Chair for having included the French Delegation among those to be represented on the Working Party; I should like to state quite frankly, however, that I really doubt whether we can be of any assistance. The French text has been approved, and, as nobody has denied, it is simply a question of providing a correct and accurate English translation. In these circumstances, the participation of the French Delegation would not serve any useful purpose.

The President: In view of the statement of the French Delegate I provisionally suggest that possibly the Belgian Delegate might be prepared to help this Committee. I will now call upon the Delegate of Australia.

Mr. Glyn Jones (Australia): I wish to refer to the remarks of the President, made prior to the vote which took place as to whether or not this meeting would appoint a Working Party. You will recall that he said that this Common Article is the result of an amendment put in under the names of several delegations. It was put in in English on June 24 (see Annex No. 49) and special attention was paid to every word that was in that amendment. Our Delegation would not have been prepared to put their name to this amendment, had the words "grave breaches" been in any way altered, or if it had been made clear that the French translation of that amendment would have in any way suggested the very smallest variation of those particular words "grave breaches". That being the case—and here I support the Delegate of the United Kingdom—this is not a matter which should go back to the Working Party suggested for matters quite outside the jurisdiction of what had been before the Special Committee. I suggest that it should either be referred again to the Special Committee, or that the Working Party should consist of the same delegations as were on the Special Committee.

I would remind you that an amendment to Article 40/44/179A/130A was put in on July 15 by the Soviet Delegation which simply states:

"At the beginning of the first paragraph replace the words 'grave breaches' by 'serious crimes'".

This was following many attempts to replace the words "grave breaches" by "serious crimes" during the hearings of the Special Committee (Twenty-ninth and following Meetings) on the form in which the original amendment went in, which was split into "A" and "B". On "A" they were defeated, and on "B" they tried to get it back and again were defeated. When this amendment was presented to the Joint Committee on 19 July, this particular wording was defeated by 15 to 8 votes, with 7 abstentions.

I think it is wasting the time of the Conference for the matter to be referred to working parties, particularly when it is the intention apparently to alter what we agreed to very clearly in the wording of our amendment and in the wording of the amendment now before this Plenary Meeting. We do not want to vary that one whit; and if it is the intention that the French translation is to alter it in any way, or if it is intended to claim, as the Delegate of the U.S.S.R. suggests, that the French translation is to be accepted as the basic one, then we, the Australian Government, shall be forced to reserve our right on this particular point, inasmuch as this has been dealt with in a way that never intended when we submitted our name as one of the Delegations agreeing to this proposed amendment.
The President: The decision that this matter should be referred to a Working Party having been taken by the Conference, rightly or wrongly, there is little use in discussing how far it was a good decision. Therefore I think we should be in order in confining our remarks to the composition of the Working Party to be entrusted with this matter. If I may express an opinion from the end of our time. We come to the second Soviet delegation's proposal, I will assume that that course if our discussions are not to be delayed. If there is no objection to the Australian delegation's proposal, I will assume that that course will be adopted. We are now very close to the end of our time. We come to the second Soviet amendment. Is there any delegation which would like to speak on this amendment now?

Mr. Morosov (Union of Soviet Socialist Republics): As identical terms are used both in the first and second parts of the amendment submitted by our Delegation, we feel that it would be impossible to split up the amendment; and that both parts should be referred as they stand to the Working Party.

Mr. Sinclair (United Kingdom): The United Kingdom Delegation cannot agree with the view that has just been expressed by the Soviet Delegate. We do not see that the reference of this matter, which has already been decided, back to the Special Committee on just one particular point can in any way affect the general principle and intention of this Article. Therefore, we can see no grounds whatsoever for referring the Article as a whole back to the Special Committee.

The President: I think there is no doubt at all that the decision of this Conference was to refer back to the Working Party only the words as to which the Soviet Delegation claims that there is discordance, viz. "infractions graves" in the French and "grave breaches" in the English text. It would be quite improper in view of the decision taken here today that any other point should be taken up by the Special Committee. In view of the observation made by the Soviet Delegate, I think it would be undesirable to proceed today with the discussion of their second amendment. I would propose therefore:

(a) to make it clear that the point arising in Article 39 will be referred to a Working Party composed as I have already indicated, under the Chairmanship of Mr. Bolla; and

(b) to refer the point arising on Article 40 back to the Special Committee of the Joint Committee. In order that we may proceed as quickly as possible and not lose too much time, I would suggest that these two Committees should, if possible, meet this afternoon. Possibly they might meet at different times in case there should be one delegate representing his country on both parties.

Mr. Gardner (United Kingdom): We would like to be clear about the tasks of the two Working Parties. The first, as we understand it, will consider what provisions should be made in the Wounded and Sick and the Maritime Warfare Conventions, and if necessary in the Civilians Convention, in order to protect the Red Cross emblem and the Swiss flag. The Working Party, we take it, is not instructed to make that provision a part of Article 39.

The second Working Party, as we understand it, will consider the French words "infractions graves" and the English words "grave breaches" in connection with Article 39 of the Wounded and Sick Convention and Article 40 of that same Convention, and the corresponding Articles of the other Conventions.

We would like to be clear that our understanding of the tasks of the two Parties is that of the Conference.

The President: As regards the second point raised by the United Kingdom Delegate I can say that I agree, as far as the Chairman is concerned.

As regards the first point, I think the United Kingdom Delegate has explained the point clearly but I would call upon the Rapporteur to confirm that my view is correct.

Colonel Du Pasquier (Switzerland), Rapporteur: You have taken me somewhat by surprise in putting this question, as I have had no opportunity of examining it. I notice, however, that the International Committee of the Red Cross, in its memorandum to the President of the Conference, on which the proposal to refer this back is based, mentions the Articles in the Wounded and Sick and in the Maritime Warfare Conventions, but does not refer to the other two. I presume therefore that it would be only necessary to prepare drafts for these two Conventions. If my suppo-
sition is incorrect, I hope the Representative of
the International Committee of the Red Cross
will say so at once. The Representative of the
International Committee of the Red Cross signifies
his assent.

The President: Does the Representative
of the International Committee of the Red Cross
agree?

(Approbation of the Delegate of the International
Committee of the Red Cross.)

Mr. Bolla (Switzerland): I suggest that the
first Working Party, dealing with abuses of the
Red Cross emblem, should meet this afternoon at
3 p.m., and that the second Working Party, which
will consider the amendments of the Soviet Dele­
gation should meet at 4 o'clock.

May I point out that the terms of reference of
the second Working Party are somewhat indefinite,
and I appeal to the Conference to define them
clearly.

The President: My idea of the task of the
Special Committee is quite clear, and I hope
after I have spoken the Conference will agree.
The Soviet Delegate has suggested that there is a
discordance between the words “grave breaches”
and the words “infractions graves”: not only
that, but he has said that while he can accept
“infractions graves” he cannot accept “grave
breaches”, and he suggests instead what would
appear in English to be a change of substance,
namely the word “offences” to be substituted for
the word “breaches”.

Now that is the task before the Working Party,
which should endeavour to deal with the Soviet
Delegation’s proposals, particularly as regards the
concordance of the texts. If that is now clear
to Mr. Bolla, who has been good enough to under­
take to preside at this meeting, I will assume
—unless I hear to the contrary—that everybody
is in agreement with the times proposed for the
meetings of these two Working Parties.

If no one else desires to speak I will close the
meeting.

The meeting rose at 1.10 p.m.

TWENTY-SECOND MEETING
Monday 1 August 1949, 10.30 a.m.

President: Mr. Max Petitpierre, President of the Conference

COMMON ARTICLES

Article 39/43/119/130 (continued)

The President: During its Saturday meeting,
the Conference decided to refer to a Working
Party the recommendations made by Committee
I on Article 39, which had not been taken into
account by the Joint Committee.

This Working Party proposed that the following
new Article be inserted in the Wounded and Sick
Convention:

"The High Contracting Parties shall, if their
legislation is not already adequate, take measures
necessary for the prevention and repression, at
all times, of the abuses referred to under Article
42.”

Does anyone wish to speak on this subject?

Wishes

Mr. Cahen-Salvador (France): I ask to be
excused for interrupting the work of the Meeting
for a few moments. But on behalf of all the Dele­
gations and as one of the veterans of this Con­
ference, I think our work should not begin without
our conveying to Switzerland, our host, our con­
gratulations and good wishes for her prosperity
on this day on which she celebrates her National
Festival.

We all know Switzerland’s heroism and patriotism
and at this time, when the solemn Grütli Oath is
being commemorated, I wish to pay tribute to
that country on behalf of you all. We may claim
the right to do so, having experienced the cordiality
of Switzerland’s welcome, the spirit of brotherhood
and of solidarity in which she has received us.
The kindness of our Swiss hosts is a very valuable
help to us and I believe that my words truly interpret the feelings of us all. I am sure that we are unanimous in addressing our most heartfelt good wishes to Switzerland for her prosperity and happiness, and for that of all those peoples whose fortunes are bound up with those of that high-minded and great-hearted country.

(Applause).

The President: I beg to offer my thanks to the Delegate of France, and I desire also to thank you all for the moving tribute which you have just paid to my country. You know how happy the Federal Government as well as the people of Switzerland have been to receive this Diplomatic Conference on our national territory.

While conveying our sense of gratitude for what has just been said and the manner in which you have all endorsed it, I now wish to express not only in my own name, but also on behalf of my country the earnest hope that this Conference which is to close in a few days will achieve the results which all peoples so ardently desire.

(Applause).

**Article 39/43/119/130 (continued) and new Article**

The President: We return to the proposal made by the Working Party instructed to examine the recommendation made by Committee I. Does anyone wish to speak on this proposal?

Since nobody wishes to speak, I consider it to be adopted.

The new Article will be inserted after Article 42. During the Saturday meeting the Conference also decided to refer to a second Working Party the first amendment proposed by the Soviet Delegation to Article 39 of the Wounded and Sick Convention. After having studied the question, the Working Party proposes (see Annex No. 53) that the first paragraph of that Article (which corresponds to Article 43 of the Maritime Warfare Convention, 119 of the Prisoners of War Convention and 130 of the Civilians Convention) be drafted as follows:

"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 of the present Convention defined in the following Article."

Does anybody wish to speak with regard to this proposal submitted by the Working Party?

There being no observations, the proposal is adopted.

In view of the agreement reached by Working Party No. 2, I assume that the Soviet Delegation withdraws its amendment. I request that the Soviet Delegation be so good as to confirm that assumption.

Mr. Morosov (Union of Soviet Socialist Republics): It is quite correct that the first Soviet amendment should be considered as withdrawn, so far as the first part of Article 39 is concerned. The second amendment now remains to be considered.

The President: The position seems quite clear to me. The Delegation of the Union of Soviet Socialist Republics has withdrawn its first amendment. We will now proceed to the second amendment submitted by the same Delegation.

Does anyone wish to speak?

Mr. Morosov (Union of Soviet Socialist Republics): The second amendment of the Union of Soviet Socialist Republics stipulates that it is necessary to retain the text in its present wording. It is stated, in the second paragraph, that each Contracting Party shall be under the obligation to search for persons alleged to have committed, or to have ordered to be committed, any of the above-mentioned serious breaches and to defer them to its own tribunals, whatever their nationality may be. We propose, however, to add the following words: "or to the Conventions for the repression of such acts as may be defined as breaches". These words should therefore be added to the first sentence of the second paragraph.

I have examined the memorandum drawn up by the United Kingdom Delegation, which has not yet been distributed; I have been informed however that I can refer to this document.

This memorandum states that if the laws of a State are violated, the courts of that country can immediately prosecute the responsible parties, and that it is therefore unnecessary to specify the legal sources on the basis of which the court takes action. Further, the memorandum contains the following sentence: "... in other words, if a specified act is a penal offence under the law of any State, (either because of express legislation or because of an international treaty which has become part of the law of such a State), it is obvious that the courts of such a State will have jurisdiction to try any person committing such an offence".

As noted in the United Kingdom memorandum, it is unnecessary to refer, in the second part of Article 39/43/119/130, to sources on which the jurisdiction of the country in question is based. I therefore imagine that the last part of the passage which I have just quoted is based on a misunderstanding, since it is quite clear that these provisions cannot have force of law unless they have been embodied in municipal legislation.
It is necessary, in the second paragraph of the Article under consideration, to emphasize the obligation to search for and to prosecute persons guilty of serious breaches of the Convention, when it has been duly established that national legislation must take account of facts or acts which, under the Convention we are now engaged in drawing up, constitute serious breaches of that Convention. There is, therefore, first of all the obligation to embody in national legislation the concept of punishment for the breaches of the Convention; then we have the part showing how this decision is given effect. In other words, one of the sources of the national legislation on the subject consists of the fact that in the Convention provision had been made for the punishment of serious breaches.

May I draw your particular attention to the fact—to which I attach special importance—that one of the legal sources of municipal law is precisely the obligation to punish certain serious breaches specified in the Convention. This is why we consider that to emphasize this, the addition to the second part of Article 39/43/119/130 proposed in our amendment is necessary.

Miss Gutteridge (United Kingdom): The United Kingdom Delegation wishes to explain shortly how what has been referred to as the United Kingdom memorandum on this subject, was presented. It was handed to the Delegation of the U.S.S.R. in the form of a note giving a short explanation of the reason for which the words in the second paragraph of Article 39/43/119/130, now under discussion, were not included in the Article as approved by the Joint Committee. It was not, as you will understand, in any sense intended to be a formal memorandum but merely a note of explanation. However, since it has been laid before the Conference, I have been instructed to read the note. The note is as follows:

"The words "in obedience to its own legislation or to the Conventions repressing such acts as may be defined as breaches" which appear in the second paragraph of Article 39/43/119/130, as amended by the Delegation of the Union of Soviet Socialist Republics, were not included in the Article as approved by the Joint Committee. It was not, as you will understand, in any sense intended to be a formal memorandum but merely a note of explanation. However, since it has been laid before the Conference, I have been instructed to read the note. The note is as follows:

"The words "in obedience to its own legislation or to the Conventions repressing such acts as may be defined as breaches" which appear in the second paragraph of Article 39/43/119/130, as amended by the Delegation of the Union of Soviet Socialist Republics, were not included in the Article as approved by the Joint Committee for the following reasons: If the High Contracting Parties carry out their obligations, under the first paragraph of this Article, to enact any legislation necessary to provide effective penal sanctions for persons committing...etc., grave breaches of the Convention, it necessarily follows that they will be able to bring before their Courts any such persons. In other words, if a specified act is a penal offence under the law of any State (either because of express legislation or because of an international treaty which has become part of the law of such a State), it is obvious that the Courts of such a State will have jurisdiction to try any person committing such an offence. It is, therefore, quite unnecessary to specify the source from which the jurisdiction of the Court arises in the second paragraph of Article 39/43/119/130".

I do not think that the United Kingdom Delegation needs to add very much more by way of explanation except to say that the argument just put forward by the Delegation of the Union of Soviet Socialist Republics has been carefully considered by us and we feel that the first paragraph of the Article, in the form in which it was approved by the Joint Committee, makes it quite clear that the grave breaches for which penalties are to be provided as a result of the Convention we are now discussing. We do not therefore see any need for further clarification or for the addition of these words.

The President: We will vote on the amendment submitted by the Delegation of the U.S.S.R. I would again draw your attention to the fact that an error has occurred in the French text of the distributed Document. This amendment is worded as follows: "Conformément à ses propres lois et aux Conventions réprimant les actes..." whereas it should read "Conformément à ses propres lois ou aux Conventions réprimant les actes...", the word "et" should be replaced by "ou". The English text is in order.

The amendment was rejected by 21 votes to 9, with 12 abstentions.

We will now vote on the Article as a whole. Delegations accepting this Article together with the alterations are required to signify.

This Article was adopted by 40 votes to none with 1 abstention.

Article 40/44/119A/130A

The President: There are no amendments to this Article, as that submitted by the Soviet Delegation has been withdrawn.

Does anyone wish to speak?

Nobody wishing to speak, the Article is adopted.

Articles 40A/44A/119B/130B and 41/45/119C/130C

The above mentioned Articles were adopted.
Article 41A/45A/119D/130D

The President: An amendment has been submitted by the Soviet Delegation proposing the deletion of the Article.

Mr. Morosov (Union of Soviet Socialist Republics): The Soviet Delegation's amendment is to delete this Article which requires the Parties to the Convention to recognize the jurisdiction of the International Court of Justice. Some serious doubt may be felt as to the practical necessity for inserting such a stipulation into the Convention.

Articles 9/10/10 and 41/45/119C/130C already provide measures for the settlement of disputes which may arise in connection with application of the Conventions, and also prescribe the procedure of enquiry with regard to breaches of the Conventions.

Apart from this, it may be emphasized that the Article under examination does not concern both with the Statute of the International Court of Justice and with the United Nations Charter. As is well known, according to Article 35 of the Statute of the Court, the latter is open without further proviso to States who recognize this Statute. Moreover, the conditions of access to the Court for other countries are determined, according to the same Article 35, by the Security Council.

The Statute thus provides for two categories of States; for States in the first category, the International Court of Justice is open without further proviso; for States in the second category, however, such access is subject to certain conditions laid down by the Security Council. But Article 41A, with which we are now dealing, contains provisions of an entirely different character.

Are we entitled to say that this Article, as now drafted, is in conformity with the provision I have just mentioned, and with the Statute of the International Court and the Charter of the United Nations?

If this question is considered carefully, it will be apparent that the intention is to alter Article 41A substantially, even possibly to do away with the conditions I have referred to above, and which constitute an integral part of the Charter and the Statute. For Article 41A on the one hand merges and includes in one category the two types of countries which, as I stated above, are eligible for access to the Court. It also compels States belonging to both these categories to recognize that the jurisdiction of the Court is binding on both under the same conditions. Lastly, the Article completely ignores the fact that the States represented at this Conference have not all adhered to the Statute of the International Court. Similarly, the Article ignores the fact that members of the United Nations are, under Article 93 of the Charter, ipso facto parties to the Statute, whilst States which are not members of the United Nations may become parties to the Statute, only on certain conditions, to be determined in each case by the General Assembly of the United Nations, upon the recommendation of the Security Council. I must frankly confess to some surprise at having to explain these facts to this audience as they are elementary matters which are well known to all. I am unfortunately compelled to do so, however, since the provisions of Article 41A obviously infringe both the competence of the Security Council and of the General Assembly of the United Nations; it overthrows the procedure set up for recognition of the jurisdiction of the Court, by which States which are parties to the Statute, equally with those which are not, must recognize this jurisdiction in accordance with the conditions laid down in Article 36 of the Statute. These conditions only apply to States which are parties to the Statute, in particular those which have subscribed to the declaration of recognition provided for under Article 36 with regard to the compulsory character of such jurisdiction. But certain countries, including the Union of Soviet Socialist Republics, have not yet subscribed to this Declaration.

We therefore consider that the Conference is not competent to deal with this point, and has no right to interfere in a matter which in reality comes within the province of the General Assembly and of the Security Council of the United Nations. The Soviet Delegation therefore feels that to adopt Article 41A would constitute an unprecedented violation of established international practice and of international law.

We cannot possibly condone such a situation. We cannot agree that, simply as the result of a vote, States which are not parties to the Statute should be able to compel those which are parties to recognize that the jurisdiction of the Court is binding; similarly, we cannot accept a situation in which States which are parties to the Statute would be in a position, by a mere vote, to compel those which had not adhered to it to recognize its jurisdiction. Such questions cannot, and must not, be decided by a mere vote.

It is for the above reasons that the Soviet Delegation propose the deletion of the provision contained in Article 41A of the Wounded and Sick Convention, and the corresponding Articles of the other Conventions.

We should regard it as absolutely inadmissible that the Conference endorse a decision, which was carried by a majority vote in the Joint Committee, and adopt Article 41A in its present wording.

In practice, this provision would have no legal
validity, for the simple reason that it violates the United Nations Charter and the Statute of the International Court of Justice.

I would therefore ask the Conference why we should place ourselves in such a ridiculous position, and why we should introduce provisions into our Convention which are in conflict with the Charter of the United Nations. By taking such a decision, we would risk jeopardizing the work accomplished by this important Conference. No legal arguments can possibly be adduced to justify the text of Article 41A as it stands at present.

It is true that decisions which are entirely contrary to commonsense can always be taken; but this is scarcely our purpose. Surely we have not come here to take decisions which would prejudice the whole work of this Conference.

For all the above reasons, the Delegation of the U.S.S.R. urges the Conference to delete Article 41A.

Mr. Cahen-Salvador (France): The text at present under discussion expresses the views of the French Delegation, and this is why I venture to speak on its behalf.

The purpose of this wording is to conciliate conflicting views. It was, of course, quite natural that the referring to difficulties in interpreting and applying the Conventions we are engaged in framing, France should envisage recourse to the highest international jurisdiction.

It was the best safeguard for all concerned; at the same time it was a tribute to the impartiality and objectivity of this High Court which, as you are aware, is composed of the most outstanding authorities on international law of all countries, regardless of nationality.

After the statement by the Delegate of the U.S.S.R., however, the French Delegation clearly realizes that the terms of the Statute of the International Court (of which the Soviet Delegate gave a very clear analysis) impedes the proposed solution. It is, in fact, evident that we cannot contemplate specifying, in one of our Conventions, conditions of accession which are reserved by the Statute of the Court itself to other authorities. To avoid a lengthy debate which might lead to confusion, and at the same time in the conciliatory spirit which the French Delegation has always shown whenever it was possible, without detriment to the rights of the French State, we now ask you all, both the majority and the minority, to make a conciliatory gesture. If the French Delegation is fortunate enough to have its suggestion unanimously approved by the Conference, it will consider that once more it has followed a broad humanitarian policy by which all Delegations are enabled to agree on a vote.

The suggestion which the French Delegation wishes to place before you is the following: to make the present clause mandatory under the Convention would be to hamper an accession which cannot be compulsory, but only voluntary.

What would be feasible, would be to recommend delegations, who have not yet signed the Statute of the International Court of Justice, that they should join the international community which recognizes the competence of this High Court; this should be recommended, but not made an obligation.

That is the suggestion which the French Delegation would once more make both to the minority and the majority element in the Joint Committee; it considers that by so doing, it is contributing towards the unanimity which we are seeking by every means within our power and in all cases where our rights are not infringed. The French Delegation hopes that it has also helped to shorten the debates, once again in the interests of all concerned.

If, therefore, the Conference will adopt this draft Resolution, and convert Article 41A into a Resolution which would be appended to the other Resolutions annexed to the Convention, the French Delegation would be most gratified and it therefore makes an earnest appeal along those lines to all delegations.

Mr. Cohn (Denmark): The expediency of inserting a clause of this kind in the Conventions we have been framing during this lengthy Conference has been emphasized from the outset of our proceedings, and a substantial number of delegations have expressed themselves in favour of this procedure. There is nothing in what the Representative of the U.S.S.R. has told you which can in any way diminish the importance of this question. He confined himself to repeating the formal, legal arguments which he had developed on several occasions, both in the Special Committee and the Joint Committee; and the French Delegation, which was present at these meetings, has already had several opportunities of giving its views with regard to these objections.

I should merely like to say that these objections are baseless. There is no rule, no principle of international law, which conflicts with the insertion of a clause of this kind in our Conventions; and no one will deny that all the States represented here are entitled to recognize the jurisdiction of the Court. The objections which have been made are therefore devoid of any importance and should not prevent this Conference from including such a clause among the provisions of the Conventions. After listening to the views expressed by the French Delegation today, it would be superfluous for me to go into further detail, and I have nothing to add to these few words.
Mr. MEVORAH (Bulgaria): I had originally intended to raise a point of order with regard to the admissibility of this Article, in order to make my position quite clear. I at once realized, however, that this would cut short the discussion, and I had no wish that it should end in a hurry. Personally, I consider that this discussion has been very useful, for we are dealing with a question which affects a very important legal principle.

Two objections may be raised to this Article. The first was made by the Representative of the U.S.S.R., and repeated aptly by the Representative of France. It amounts to this: the Statute of the International Court of Justice contains a clause providing for and regulating the access of a State to the Court and its acceptance of the Court's jurisdiction. If we endeavour here to insert a provision compelling States which have not yet declared their readiness to submit to this jurisdiction to do so, and thus if we ignore the rules and procedures laid down in the Statute of the Court itself and in the Charter of the United Nations, we should be doing what is generally known as exceeding our terms of reference.

I will not dwell on this objection; it has been explained at some length by other delegates.

I now come to my second objection, which is of a personal nature and may be set forth as follows: is it admissible that the Meeting should impose obligations upon specific States without the latter having declared their readiness to accept them? Can obligations of this nature be imposed merely by means of a majority vote? In other terms, if a State which is Party to the present Convention has not until now declared that it recognizes the jurisdiction of the Court of Justice, can it be said that this State has obligations towards this Court, against its own will, in virtue of a majority vote of this Meeting? The reply to these questions must clearly be negative.

I am much surprised by the remarks made by the Delegate from Denmark; he has just said the arguments advanced by the previous speakers have not convinced him and that he still holds to his theoretical position. In the Joint Committee I was led to believe that, after the objections raised there, this Meeting would accept our opinion unanimously. I have observed, however, that this is not the case, and that the great majority of the Meeting has maintained its previous attitude. Nevertheless, I am not discouraged, and I trust that the Meeting will reconsider and readjust its opinion. It is in fact absurd (this is a technical and legal term that may be employed in such cases) for the majority to decide upon an obligation which is incumbent on a minority when the latter has, by vote, refused to accept it. This act, in itself, cannot be subject to a majority vote. The point at issue is a declaration, a free expression of a readiness to accept a certain jurisdiction. This declaration would have neither aim nor effect if it ceased to be freely accepted and were merely the result of a vote by others against those very delegates who do not wish to assume the obligation.

You will observe that the case in point is typical, and still more so for States who are not members of the United Nations Organization; the two questions are correlated. It would be advisable to leave these States to follow their own course and direction without seeking to oblige them to become members of the United Nations Organization, or to bind them irrationally to observe obligations which result from the competence of the High International Court of Justice. They should be left free as regards their accession to the United Nations Organization, and their admission by the latter.

It is premature for these countries to declare that they accept this jurisdiction forthwith, since, as the Soviet Delegate has already stated, the procedure laid down requires that the question should be brought before the Security Council and the General Assembly. Conditions may be attached to the acceptance of this jurisdiction, and the submission to the International Court of Justice. The two problems, therefore, cannot be treated separately. They go hand in hand.

In my opinion, the discussion should simply be adjourned, and the States left free to accept the jurisdiction of the Court at their discretion. It will only be possible to decide whether that acceptance is voluntary or not after a decision has been reached at Lake Success. If the acceptance of the jurisdiction of the Court is adopted by a majority vote, it would amount almost to compulsion. I do not think anyone would wish to go so far as to impose a decision which would be contrary to the wish of those principally concerned.

As regards the proposal for a compromise put forward by the Delegation of France, I wish to add that it should be submitted in writing. It will be the subject of a future debate; we shall vote upon it when deciding on the resolutions to be taken by the Assembly.

Colonel HODGSON (Australia): My Delegation always opposed this Article but the Committee were determined to go ahead and approve of it. It seems to us quite wrong in principle; it seems unlawful, and, above all, it is impracticable. In a dispute arising out of the interpretation or application of a Convention, expedition is the whole essence of the settlement of such a dispute, and the International Court is the very last tribunal in the world from which to get a decision expeditiously. What would happen? There are several delegations here representing States who have not accepted the
Statute; they cannot accept the Statute because they are not members of the United Nations, and I quite agree with that argument about non-Members, and even about Members, of the United Nations: they are not compelled to accept the competency of the International Court. There are several members of the United Nations who have not accepted and are not bound to accept the competency of the Court, and I understand that, of those who have accepted, a large majority have accepted with reservations, but you, under these Conventions, are compelling all those who sign the Conventions automatically to accept that obligation, and we are told that is not well founded in law.

Here is another legal objection, and a practical objection going hand in hand with the legal one. Suppose that in the future non-members of the United Nations get involved in some dispute regarding the interpretation or application of a Convention, and they go to the Court and the Court simply say “Despite that Convention we have no jurisdiction, because our jurisdiction flows from the charter of the United Nations, and under our Charter you have got to go to the Security Council—under Article 35 of the Statute”. They then go to the Security Council, which involves another delay, and those of you who know the operation of the Veto in the Security Council will know that you are not going to get the Security Council to lay down conditions for non-members of the United Nations.

For all those reasons we are going to vote for the rejection of this Article. As to the suggestion that it might take the form of a general resolution, we could not accept it in the terms in which it is drafted in this Article. Until we see it we could not indicate our support of it, but at the moment I am speaking on the question of deletion, and my Delegation will vote for its deletion.

Mr. Cohn (Denmark): As I have already said, I have no intention of prolonging this discussion, nor of entering into details. I wish, however, to comment on an argument which has been repeated on several occasions by the Delegate for Bulgaria, namely that the majority cannot compel the minority to submit to the jurisdiction of the Court, should that minority not wish to do so.

There is a misunderstanding here. The majority of our Assembly cannot compel the States to do anything at all; those States are bound by their signature and their ratification of the Convention. The question of the competency of the majority as regards the minority is identical for all the questions we have discussed and settled by a vote of our Conference. This is not a question which has special reference to the jurisdiction of the Court, as the Delegate for Bulgaria imagines.

Sir Robert Craigie (United Kingdom): The United Kingdom Delegation have always been in favour of some reference to the jurisdiction of the Hague Court in our Convention, and we feel that if we were to take as the last word on this subject the legal objections made by the Soviet Delegate and the Australian Delegate it would really preclude the inclusion in any future international treaties of references to the jurisdiction of the Hague Court. In actual fact, of course, that has not been the case: there have been several important international treaties where that jurisdiction has been invoked. I do not want to prolong the legal argument, but if we look at Article 35 it seems quite clear that precisely such a reference is provided for. Article 35 says, in the first paragraph, “The Court shall be open to States Parties to the present Statute”, and in the second paragraph “The conditions under which the Court shall be open to other States shall, subject to the special provisions contained in treaties in force—that is, treaties in force at the time of the dispute—be laid down by the Security Council but in no case shall such conditions place the parties in a position of inequality before the Court”. Under the words “subject to the special provisions contained in treaties in force”, any such reference in an international treaty seems to us to be perfectly in order.

On the other hand, in a matter of this kind we do feel very strongly that there should be unanimity; there should be no question, I think, of trying to enforce the wish of a majority on the will of a minority, and from that point of view the United Kingdom Delegation would fully support the proposal of the French Delegate that the present Article, which is mandatory, should be turned into a resolution. The advantage of that would be that it would at all events bring this matter to the attention of governments, and would perhaps lead to a more general acceptance of the jurisdiction of the International Court. It seems to us quite clear that there are some kinds of dispute which might not be so readily referred to the type of procedure that we have laid down—conciliation and consultation—as to the highest international juridical body in existence, so that it would be unfortunate in our view if there were no reference to it at all.

I should like to submit a point of order; I would appreciate it if at all events the proposal that the principle of a resolution dealing with references to the International Court of Justice were taken first in order, before the Soviet amendment to Article 110D, Prisoners of War. It would be better for delegations who wish to see some reference if the votes could be taken in that order.

The President: I admit the point of order. In point of fact I was intending to take the vote
of the Assembly on the draft resolution, before passing on to vote on the deletion of Article 41A as proposed by the Soviet Delegation.

I suggest that the votes should be taken as follows: I shall first put to the vote the French Delegation’s proposal to replace Article 41A by a resolution, the text of this resolution to be drafted by a Working Party to be nominated forthwith. Should the French proposal be accepted, Article 41A should be considered as rejected. Should the French proposal not be accepted, I shall put to the vote the acceptance or rejection of Article 41A, in accordance with the proposal made by the Soviet Delegation. Do you agree to this procedure?

Mr. Morosov (Union of Soviet Socialist Republics): May I make a few remarks on the voting procedure proposed, which also affects the draft resolution submitted by the French Delegation?

The text of that resolution is not yet before us; in view of the fact, I cannot see the reason for any departure from the method of voting we have followed hitherto in dealing with questions of this kind. The question at issue is whether Article 41A should be replaced by the resolution announced to us. I fear that some confusion may arise if it is decided to replace a provision which is the subject of an actual Article by a resolution, the precise tenor of which is unknown to us. As the Delegate for Australia rightly pointed out, we should have this text before us. Imagine the situation that might arise should we now vote on a resolution intended to replace Article 41A, and, when that resolution was submitted, it proved inadmissible; it is impossible to substitute a resolution for an article, since an article deals with a binding obligation, which signatory States undertake to respect by their signature; a resolution merely expresses a wish. This being the case, to substitute a resolution, a mere recommendation, for an Article of the Convention seems to me quite impossible from a legal point of view. This is the reason, as I have already said, why I propose that two votes should be taken on the matter.

The first vote would be on the question of deleting Article 41A—or, if you prefer, on the text of the Article—since there is an amendment to delete it completely.

The second vote would be on the proposal to refer to a Working Party the drafting of a text on the lines suggested by the French Delegation, which would constitute a wish or a resolution, as has been pointed out.

I think therefore that we should proceed as I have suggested, taking two distinct votes in succession. In this way the Conference would not be bound by a text which it had not yet seen. I suppose that the majority of delegations will prefer to vote first on the deletion of Article 41A, that they will then agree to instruct a Working Party to frame the text of the draft resolution submitted by the French Delegation, and that, lastly, the resolution might be adopted by a majority of the Conference. I must say that personally we have a great deal of sympathy with the French proposal, but I repeat once more that we consider it necessary for the vote to be taken in two parts.

The President: We now have to discuss a point of order and my reasons for deciding to accept it. One speaker opposed this point of order; one other may express himself in favour, after which a vote must be taken. The Delegate of France desires to speak, and I hope that it is for the purpose of defending this motion rather than in order to combat it.

Mr. Cahen-Salvador (France): I thank you for allowing me to say a few words in support of the procedure which should, I think, be recommended to the Conference. If the efforts which we have made are to reach a logical conclusion, something approaching unanimity must be achieved by this Conference. That is our aim, and is, in fact, the object of our proposal.

If, as certain delegations seem to desire, we were to begin by voting upon the Article, majority and minority would, in a sense, crystallize: and, whether the Article were approved or rejected, I do not see what could be added by a draft resolution.

The attempt at conciliation ought to be made before the vote is taken and I propose to the Chair that we should vote (as the President himself
suggested) on the principle of a draft resolution, the effect of which would be to transform into a recommendation a requirement which is considered by a certain number of delegations as being scarcely compatible with diplomatic law and custom. This would make it possible to avoid taking a vote where a majority and a minority were opposed. The draft resolution has not been actually put into words, but it is easy to imagine it. It would be roughly on the following lines:

"The Conference recommends that the High Contracting Parties to the present Convention who have not declared that they recognize the jurisdiction of the International Court of Justice as fully binding in law and irrespective of the existence of any special Convention to that effect, in their relations with any other State accepting the same obligation, should recognize, or agree to recognize, the competence of this Court in regard to any question relating to the interpretation or application of the present Convention."

A simple recommendation should, in fact, take the place of an obligation or a compulsory clause. We believe that this will elicit a united vote from those who are opposed to the Article as at present drafted and those who are prepared to maintain it. It may therefore perhaps be possible, as a special exception, to suspend the vote on Article 41A/45A/119D/130D, and set up a Working Party without delay to prepare a text for later submission to the Conference. In the last resort, delegations, in the very improbable case of the draft resolution not meeting with general agreement, would be free to vote for or against the Article.

I ask you to help to bring our work to a successful conclusion by drafting a resolution which will be approved almost unanimously when submitted to the Conference.

The President: On a point of order, the Delegation of the United Kingdom has moved that the meeting first give its decision on the proposal of the Delegation for France. Its proposal is that a Working Party be asked to draw up a draft recommendation for submission to the Plenary Meeting. This point of order was opposed by the Delegation of the Union of Soviet Socialist Republics, which proposed that the meeting should begin by deciding whether to adopt or reject Article 41A/45A/119D/130D; it could afterwards examine the French proposal.

We have therefore to consider the order in which the decisions of the Meeting should be taken.

A request to speak has been made, but the Rules of Procedure are explicit, and the debate cannot be continued on this question. I suggest, therefore, that you should now vote and I shall afterwards call upon the Delegation which has asked to speak.

Mr. Morosov (Union of Soviet Socialist Republics): I should like to ask a question concerning the matter about which we are about to vote.

The President: I now call upon the Delegate of the Union of Soviet Socialist Republics for a short statement.

Mr. Morosov (Union of Soviet Socialist Republics): We have to vote upon the proposal of the United Kingdom Delegation concerning the second part of the Article and we must also give a decision regarding the Article itself. I should like to know upon which we are going to vote first.

The President: We shall vote upon the proposal of the Delegation of France. If it is accepted, the Working Party will draw up a draft recommendation which will be submitted to the Meeting; the vote upon the acceptance or the rejection of the Article in question will be held over until the draft resolution has been submitted to the Meeting. If the proposal of the Delegation of France is rejected, we shall immediately proceed to vote upon the acceptance or the rejection of the Article.

I must remind you that we are only deciding at present upon the method of voting, and not yet upon the French proposal. The delegations who agree that the first vote should be on the proposal of the French Delegation (in accordance with the motion of the United Kingdom) are requested to signify in the usual manner.

The motion of the Delegation of the United Kingdom was adopted by 27 votes to 13 with 4 abstentions.

The President: We will now vote on the proposal submitted by the Delegation of France.

The proposal tabled by the Delegation of France was adopted by 26 votes to 1 with 16 abstentions. I propose that the Working Party responsible for drawing up the draft recommendation be composed of members of Delegations of the following countries: France, Union of the Soviet Socialist Republics, Denmark, Australia, Italy.

Are there any other proposals?

Colonel Hodgson (Australia): I shall be glad if you will excuse the Australian Delegation, Mr. President. We have practically no Delegation now available, and secondly I happen
to be the only Delegation who voted against that proposal and I am against it in principle.

The President: Would the Delegation of the United Kingdom care to be on this Working Party?

No objection being made, I take this suggestion as accepted. We have finished our provisional consideration of Articles 41A/45A/119D/130D.

The meeting rose at 1.25 p.m.

TWENTY-THIRD MEETING
Monday 1 August 1949, 3.30 p.m.

President: Mr. Max Petitpierre, President of the Conference

COMMON ARTICLES

Article 43/46/120/131

The President: We shall resume the consideration of the common Articles beginning with Article 43/46/120/131, an amendment to which has been submitted by the Delegations of Ecuador, Mexico, Nicaragua, the Union of Soviet Socialist Republics, and Venezuela. I should like to add a second paragraph stipulating: "The Federal Council shall arrange for official translations of the Convention to be made into the Russian and Spanish languages."

I do not think that much discussion will be necessary on this amendment, which proposes to give the Federal Council a mandate to have official translations of the Conventions made into the Russian and Spanish languages.

The Federal Council has already considered this question; it is prepared to accept this mandate which could therefore be adopted without discussion if there are no objections.

Colonel Falcon Briceño (Venezuela): No delegation here can be surprised by the request submitted by the Delegations of Ecuador, Mexico, Nicaragua, the Union of Soviet Socialist Republics and Venezuela.

We are not requesting the Swiss Federal Council to arrange for official translations of the Conventions to be made into Russian and Spanish out of any desire to complicate our work, but rather in order to possess a single authentic text, which may also prove very helpful to the International Committee of the Red Cross in the fulfilment of its great humanitarian mission.

We therefore hope that the amendment will be favourably received.

Colonel Hodgson (Australia): I can see the practical advantages of this proposal for the reasons just indicated, but I do not think that the principle behind it is correct. A similar question arises year after year at the United Nations when, for example, the Chinese Delegate will say: "Well, why not Chinese?" and somebody else will ask, why not something else? Further, I should like to know how many of these official translations are going to be made by the Federal Council. Ten thousand? One hundred thousand? Two hundred thousand? And who is going to pay for them?

Further, I think this: we argued this morning that this Conference could not lay certain obligations on individual countries, and here you have it not as a simple request but as something which I think is utterly outside our Conventions. Our Conventions impose an obligation not on one country, but on every State who is a Party to the Convention.

Here you are for the first time imposing an obligation on one State, Switzerland, and the language used is not even polite. It says: "The Federal Council shall arrange", and my Delegation, for one, objects to it. I think the proper and most polite way would be for certain States, if they so desire, to exchange their views informally. I think the Swiss Council are very good to give the reply that they have given, but I do not
think either they, or this Conference, should have been called upon in the first place to entertain such a proposal which was never even submitted to, or discussed in Committee.

Colonel Wang (China): Allow me to add one comment to the remarks made by the Delegate of Australia. The amendment proposed by the Delegations of Ecuador, Mexico, Nicaragua, the Union of Soviet Socialist Republics and Venezuela is no doubt based on the precedent established by the United Nations Charter at San Francisco. There is, however, one omission. The San Francisco Charter was translated into five official languages. I fully agree that the Swiss Federal Council should establish official translations of the Conventions into Russian and Spanish. I should, however, like to point out that, if the San Francisco Charter is taken as a model, the Chinese language has been overlooked.

Mr. Morosov (Union of Soviet Socialist Republics): I should first like to express the profound satisfaction with which I listened to the statement made by the President in the name of the Swiss Federal Council. I think that in thanking him, I am expressing the feelings of everyone who submitted this amendment and of all those who are supporting it. The adoption of this proposal will certainly contribute to a wider understanding of the Conventions and a correspondingly wider implementation of their provisions.

May I add that the attitude taken up by the Delegate of Australia surprises me greatly. He spoke as if someone here were asking him personally, or asking his Government, for financial assistance in carrying out this work. He asked who was going to meet the cost of it. And to substantiate an argument in itself fallacious, he asked how many copies of this translation were to be printed—100,000, 200,000, or even more? In my opinion these questions and these objections are unfounded. Was he perhaps trying to amuse us by telling us an anecdote? I do not think so and, besides, we have only a little time left in which to finish our work; we have not, therefore, leisure in which to listen to such pleasant entertainment. Any question of finance is, we think, entirely irrelevant here.

In reply to his question as to the number of copies of this translation to be printed, I would say: “Sir, just one in Russian and just one also in Spanish.” We do not intend to ask the Swiss Government to undertake the task proposed in the amendment submitted by the four Delegations in question. I do not therefore consider that there is any reason to oppose the agreement which may be reached here by adopting this amendment.

The Soviet Delegation raises no objection in principle to the translation of these Conventions into other languages. My Delegation was, nevertheless, somewhat surprised by the remarks of the Delegate for China, who expressed his opinion on this issue without, I would submit, any previous preparation, perhaps even without having carefully considered the matter and without submitting his amendment in accordance with the Rules, which were duly respected by the four other Delegations.

Notwithstanding the great respect the Soviet Union Delegation naturally feels for other languages, it seems to us that a proposal of this kind could not but distort the meaning of the text, and complicate the adoption of the amendment submitted by the four other Delegations. Perhaps it was even with this object in view that it was submitted in a manner contrary to the Rules.

This is why the Soviet Delegation supports the proposal put forward by the four other Delegations to the effect that the Conventions should be translated into two other languages; namely Russian and Spanish, which are the mother tongues of hundreds of millions of people. I may perhaps be allowed to point out that Russian is the language of over two hundred million human beings. An agreement on the point at issue might very well contribute to a better and wider understanding of the Conventions.

The President: There are still two speakers on the list. I wonder, as matters stand, whether it is really useful to prolong this debate. I will, nevertheless, call upon them to speak, but I hope that when we have heard them, we shall at last be able to vote. I would point out that, so far, the amendment has not been formally opposed.
Commander Orozco Silva (Mexico): At this stage of the debate the Mexican Delegation supports entirely the view of the Soviet Delegate. We took due note of the objections of the Australian Delegation but we think that the Australian Delegate ignores some facts. The amendment that the Union of Soviet Socialist Republics and we, the Delegations of Ecuador, Nicaragua, Venezuela and Mexico put forward in the name of the Spanish-speaking peoples, is quite clear and we think that it needs no explanation. Nevertheless we should like to point out that it is very important for us Spanish-speaking nations to obtain an official translation of the Convention, since it will avoid each government giving a different interpretation to the Conventions through their own translation. I am sure that you are aware that we defended this point at the International Red Cross Conference at Stockholm, taking into account that the Spanish language is spoken by twenty nations—a linguistic and geographic fact that cannot be ignored. At Stockholm our language was unanimously accepted not only as an official language, but as a working language to be used at the next International Red Cross Conference.

If we do not make a similar demand here it is because we hope that it will not be necessary to have another Diplomatic Conference in the future, in view of what such a Conference would imply. We are now only asking for an official Spanish translation for the benefit of all Spanish-speaking countries. As it is merely a technical matter we expect that the delegates of the States here represented will vote in favour of what we are so anxious to obtain. We are aware that the Swiss Federal Council has agreed beforehand to make this translation. We now take this opportunity to express, through the kind offices of our President, our appreciation to the Swiss Federal Council for the facilities that they have been good enough to grant, and we should like to assure them of our collaboration whenever they think it will be necessary.

Colonel Wang (China): I should merely like to reply to the Delegate of the U.S.S.R., who, I think, has not fully understood the position of the Chinese Delegation. The Chinese Delegation has no desire to add further complications to the work of the Conference. That is why it has not submitted a formal amendment, but now that we are about to vote on the proposed Russian and Spanish translations, my Delegation would simply like to draw attention to the Chinese language.

The President: We shall now take the vote on the amendment concerning the translations of the Convention to be made into the Russian and Spanish languages. The amendment was adopted by 34 votes to 1 with 6 abstentions.

Article 43/46/120/131, with the amendment which had just been adopted, was adopted as a whole by 41 votes, nem. con. with no abstentions.

Articles 44/47/123/132; 45/48/124/133; 46/49/125/134; 47/50/121/—; 48/51/126/136; 49/52/127/137

The above mentioned articles were adopted.

Article 50/53/128/138

The President: We shall now consider Article 50/53/128/138.

Mr. Feneaș (Rumania): I should like to draw the attention of the Meeting to the fact that, as a consequence of the decision made with regard to Article 2/2/2, which was divided into two parts, reference should be made, in order to avoid confusion, in the first sentence of Article 128 of the Prisoners of War Convention, not only to Article 2, but also to Article 2A/2A/2A/2A. The Drafting Committee might be instructed to insert this reference.

The President: We shall consider the question which has just been raised and we shall return in a moment to Article 50/53/128/138. I think that the question can be settled without referring it back to a Committee.

Articles 51/54/129/139 and 52/55/130/140

The President: We shall now consider Article 51/54/129/139.

This Article was adopted.

Signature Clause

The President: Lastly, we must consider the signature clause terminating each of the four Conventions. I declare the discussion open on the clause submitted by the Joint Committee. As no one wishes to speak, I conclude that you are in agreement on this clause and that you have adopted it.

With the exception of Articles 41A/45A/119D/130D and 50/53/128/138, we have thus completed the consideration of the Common Articles.
I should like to take this opportunity of thanking the Chairman of the Joint Committee, Professor Bourquin, Head of the Belgian Delegation, and Colonel Du Pasquier, Rapporteur, for their cooperation, the Report which they submitted to the Conference and the part which they took in the debates on these Common Articles. (Applause.)

Article 50/53/128/138 (continued)

I have just been told that the Rapporteur is in a position to make a statement on Article 50/53/128/138, so that we could settle this question immediately.

Colonel Du Pasquier (Switzerland), Rapporteur: After considering what the Rumanian Delegate has just said, I agree with him. I think it would be preferable to word the opening portion of this Article 50/53/128/138 as follows:

"The situations provided for in Articles 2 and 2A shall give immediate effect to ratifications deposited, and accessions notified..."

Article 2A being in reality a provision taken from Article 2, it is therefore appropriate that ratifications deposited, and accessions notified should apply not only to the obligations assumed by the Contracting Parties as regards international war but also as regards civil war. If it was decided not to quote Article 2A, this would imply that ratifications deposited and accessions notified would be effective in cases of international war, but not in cases of civil war. I entirely fail to understand why such a distinction should be made.

Under these conditions—I am simply expressing my own views and not voicing those of the Committee—I should be prepared to agree to the suggestion made by the Rumanian Delegate.

The President: Is there any opposition to the views expressed by the Rapporteur?

Mr. Wershof (Canada): In my opinion it is unfortunate that a point of this kind should have been thrown at us without any notice at the last moment of our consideration of the common clauses. It may be that the Delegate of Rumania thought it was purely a point of having overlooked Article 2A when drafting Article 50, but it does not seem to me to be so, and I must, with great regret, differ from the honourable Rapporteur.

In the first place, the fact that what is now Article 2A was part of Article 2 in the Stockholm Draft but has now become a separate Article, seems to me to be of no importance whatsoever because what we have here as Article 50 was in one or both of the 1929 Conventions. Unfortunately I have not the text with me, so I am not certain whether it was in both Conventions but it was certainly in one of them: and there was, of course, no reference to civil war in the 1929 Conventions. Therefore the new Article 50 as it stands is a perfectly reasonable Article in relation to Article 2, and—I have been looking back at the precedent of the 1929 Conventions—there is not the slightest reason to drag the question of civil war into Article 50.

I think, however, that there is a more definite reason against referring to Article 2A in Article 50. What is the purpose of Article 50? I must say that Article sometimes puzzled the Canadian Delegation, and it may be that we have misunderstood what its real purpose is. If we have really misunderstood it we shall be grateful if our misunderstanding is removed this afternoon. In another Article of the Convention, it is stated that the instrument of ratification or adherence shall come into force for the country which deposits it, six months after the date of deposit, that is the basis on which we drafted the Convention, namely that if a country ratifies it it will come into force for the country six months afterwards, or if the country adheres to the Convention it will come into force for the country in question six months later. The purpose of Article 50, as we have understood it, is that if, for example, on 29th August 1939 one of the countries which went to war a week later had only at that late date ratified the 1929 Prisoners of War Convention, in the absence of a clause like Article 50, the Convention would not have begun to apply, would not have been in force for that country, until six months later. Everybody agreed in 1929, and presumably agree's now, that that is not desirable, and Article 50 therefore says that, if war breaks out, within the meaning of Article 2 immediate effect shall be given to the ratifications and accessions notified—in other words there will be no six months delay: even if the instrument of adherence is notified after the beginning of the war, it will come into force immediately. It seems to me that that is a reasonable enough provision as regards international war, but at the moment I cannot think of any reason why we should make it apply to civil war. For example, if a country adheres to one of these Conventions and three days later a civil war breaks out within the meaning of Article 2A, I really do not know why the Convention should be deemed to come into force immediately without the six months delay as regards that country.

Finally, I would say that Article 2A has already been the source of much bitter controversy in this Conference. I would have thought that those delegations who are anxious to have civil war mentioned in the Conventions would perhaps have
been satisfied by their partial victory. They have Article 2A, and are presumably content with it, so why they should now desire to reopen the dispute—and I predict that it will be reopened if this proposal regarding Article 50 is pressed—is something that I do not understand, and which I certainly deplore.

The President: I note that there is a difference of opinion on this question, and most of the delegations are not, I believe, in a position to give an opinion. I therefore suggest that each of you should consider this question, and that we should vote on the Rumanian Delegate's proposal at a subsequent meeting.

In principle, I am opposed to referring Articles back, but in this particular case, I think that each delegation should have an opportunity of forming an opinion on a question which is new to most of them.

Do you agree that we should defer taking a decision on this Article, until we take on Article 41A?

It is understood that there will not be a further discussion, but only a vote, since both views have been heard. We have thus completed the consideration of the Common Articles, with the exception of the two Articles to which we shall return later.

Civilians Convention

The President: We can now commence the consideration of the last of our Conventions, the Convention for the Protection of Civilian Persons in time of War. I should like to draw your attention to the fact that 62 amendments have been submitted, and this seems to me to be a reason for requesting the speaker in favour of or against these amendments to be as brief and precise as possible. This rule would not seem difficult to observe, since the majority of these amendments, if not all, have already been discussed at great length by the Committee concerned.

I should therefore like to remind you once more of the Recommendations made by the Bureau, which you approved at the beginning of our Plenary Meetings. If the speeches on the same subject were too long or too numerous, the Bureau would be obliged to propose restrictions, either as regards the length of the speeches, or as regards their number.

I think it would be better not to be obliged to impose these measures, and I again appeal to the spirit of discipline which has so far prevailed at our Conference.

I also remind you that we do not have to examine the Articles of this Convention which have been considered during the discussions on the Common Articles.

We shall immediately proceed with the consideration of Article 3.

Article 3

Colonel DU PASQUIER (Switzerland), Rapporteur: Following the recommendations of the Bureau, I have no intention of inflicting on the Assembly a second edition, even an abridged one, of the Report which my colleagues of the Delegation of the United Kingdom and I have the privilege of submitting.

I shall restrict myself to drawing your attention to a green paper which has just been distributed to you and which is not an amendment. It merely deals with the corrigendum which corrects certain typing errors which appeared in the final text of the Report.

This applies only to the French text of the Articles with which I was personally concerned, that is to say, from the beginning to Article 43.

Certain sections of the text would be incomprehensible without these corrections and, for the final publication of the Acts of the Conference, it is absolutely necessary to clear up these points.

The President: We have two amendments to Article 3 which have been submitted, one by the Delegation of the United States of America, and the other by the Delegation of the Union of Soviet Socialist Republics. The first one proposes to place the present fourth paragraph ahead of the present third paragraph. The second one proposes to delete the first sentence in the second paragraph.

I declare the discussion open.

Mr. Morosov (Union of Soviet Socialist Republics): As regards the United States of America's amendment to alter the order of the paragraphs of the Article concerned, the Delegation of the Union of Soviet Socialist Republics supports this proposal and will therefore vote in favour of this amendment.

I should now like to make some comments on Article 3 itself. The Delegation of the U.S.S.R. consider that it is a mistake, in principle, to include in Article 3 provisions according to which the nationals of a State which is not bound by the Convention, do not benefit from its protection. These provisions are unacceptable. The aims of the Civilians Convention must be borne in mind. This Convention ensures that the civilian population shall receive humane treatment, forbids any action such as murder or torture, or any arbitrary measures against civilian persons in time of war.

The application of these humanitarian provisions, which are based on the elementary rules of inter-
national law, the conscience and honour of nations, and the traditional standards of conduct generally recognized throughout the civilized world, cannot be subject to criteria of race or nationality. It is clear that these rules should apply, in the same degree, to any category of protected persons, regardless of their civilian status.

The provision which it is proposed to include in Article 3, and which would have the result of denying protection to the citizens of the States which are not bound by the Convention, is contrary to elementary humanitarian principles.

Nor can the said provisions of Article 3 be defended from a legal standpoint. The nationals of any State whatever cannot and must not be held responsible for the actions of a government which, for any reason, has not adhered to the Convention. It is perfectly obvious that the nationals of a State which has refused to adhere to the Civilians Convention cannot be allowed to be victims of acts prohibited by that Convention. How can those in favour of including in Article 3 the provision now under discussion contemplate that the acts committed against the nationals of a State not signatory to the Convention, such as murder, destruction of property, and so on, shall not be punished, as they would be if the victims were nationals of States signatory to the Convention?

The third fundamental argument concerning the sentence in the second paragraph of Article 3 to which I refer, is that it is in flagrant contradiction to the provisions of Article 2 of the present Convention. That Article stipulates that:

"Although one of the Powers in a conflict may not be a party to the present Convention, the Powers who are parties thereto shall remain bound by it in their mutual relations. They shall furthermore be bound by the Convention in relation to the said Power, if the latter accepts and applies the provisions thereof."

In this way, Article 2 makes it possible for the protection of the Convention to be extended to the nationals of a State which has not explicitly adhered to the said Convention, while Article 3 excludes that category of persons from the same protection. On these grounds, the Soviet Delegation insist on the above-mentioned provision being omitted from Article 3 as being in contradiction with Article 2 and with the spirit and aims of the present Convention.

Mr. Wershof (Canada): I wish to speak on the Soviet amendment to delete the first sentence of the second paragraph of Article 3 which reads as follows:

"Nationals of a State which is not bound by the Convention are not protected by it."

This same amendment was proposed by the Soviet Delegation in Committee III and at the Forty-eighth Meeting held on July 18th. The amendment was rejected by 26 votes to 7, with 2 abstentions. In the face of such a vote one might have expected that the Soviet Delegation would regard the matter as settled. However, the Soviet Delegation apparently think that the first sentence of the second paragraph is so bad that it is necessary for this Plenary Assembly to discuss it once again.

This sentence was not included in the Stockholm Draft. It had not occurred to the Canadian Delegation, and so far as I know, it had not occurred to any other delegation which took part in the Stockholm Conference, that the nationals of a State which refused to accept the Convention could legally demand the status of protected persons under the Convention. However, at Geneva, in the Drafting Committee of Committee III, it became apparent that the Soviet Delegation thought that it was perfectly reasonable that nationals of a state not party to the Convention and refusing to be bound by the Convention should nevertheless be entitled to claim the status of protected persons under the Convention. In the Drafting Committee of Committee III the Soviet Delegate gave as one of his arguments the argument which I think he gave this afternoon, namely that it is not the fault of the individual citizen if his government, for mysterious reasons of its own, does not wish to be bound by the Convention.

In the face of this reasoning, it seemed to the six other members of the Drafting Committee of Committee III that it was essential to put the matter beyond doubt. Accordingly the sentence now objected to was added to this Article in the Drafting Committee by the vote of the Delegations of Norway, Switzerland, France, United States of America, United Kingdom and Canada, on the motion of Professor Castberg of the Norwegian Delegation. In the Meeting of Committee III held on July 18th, when the Soviet Delegate sought to delete this sentence, he did not use the arguments which his Delegation used in the Drafting Committee. He used quite different arguments. During this meeting he said that I had misunderstood his attitude completely, and I now quote from the Summary Record of the Meeting:

"The Soviet Delegation had never assumed that nationals of a State not signatory to the Convention were to enjoy the benefits of the latter except in the case provided for in the third paragraph of Article 2."

That was certainly quite a different kind of reasoning from the one used in the Drafting Committee of Committee III, and it is a somewhat
different reasoning from that which has been used today. Frankly, I do not know what are the arguments put forward today by the Soviet Delegation.

The main point apparent to the Canadian Delegation, having heard in the Drafting Committee of Committee III the views of the Soviet Delegation, is that it is essential that this sentence should be retained in Article 3. There is certainly a danger that some day it may be argued that a belligerent must accord the status of protected persons in this Convention to citizens of the enemy, even though the enemy government absolutely refuses to accept the Convention. One other argument that has been used by the Soviet Delegation is that there is some conflict between this sentence in Article 3 and the last paragraph of Article 2. That argument was considered by Committee III on July 18th and was effectively rebutted by the Rapporteur on that occasion; we agreed that there was nothing in that argument.

I would add this, although in our opinion, the status of protected persons does not properly belong to citizens of a State who refuses to accept the Convention, such persons have other protections under international law. The idea that if an individual in war time is not a protected person under this Convention therefore it will be legal to murder or torture him is complete nonsense because we had no Convention in the last war, but other international laws prohibited conduct of that kind on the part of a government towards enemy aliens in its hands. Furthermore, in Canada and many other countries, even though no Civilians Convention existed, the government voluntarily gave to enemy aliens practically every right contained in this Convention, including, incidentally, the right of full access to and protection by the Protecting Powers and the International Committee of the Red Cross. However, it is one thing to say that every alien has certain protection under international law or that a government may voluntarily give enemy aliens protection in time of war, and quite another thing to say that these aliens should legally have that protection under this Convention when their own government refuses to become a party to the Convention or be bound by it. For those reasons the Canadian Delegation is absolutely opposed to the Soviet amendment, and hopes that the Conference will decide to retain this sentence in Article 3.

The President: I shall first ask you to vote on the amendment submitted by the United States of America.

The amendment submitted by the Delegation of the United States of America was adopted by 31 votes to 4, with 1 abstention.

The President: We shall now vote on the amendment submitted by the Soviet Delegation.

The amendment submitted by the Union of Soviet Socialist Republics was rejected by 28 votes to 9, with 5 abstentions.

The President: We now have to decide on Article 3 as a whole, with the alteration made by the amendment which has just been adopted. Article 3 as thus amended was adopted by 31 votes, with no opposition and with 9 abstentions.

Article 3A

The President: An amendment has been submitted by the Soviet Delegation. It proposes:

1. Delete Article 3A in the wording adopted by Committee III.

2. Complete the Convention, as a result of this deletion, by adding a new Article 102A, reading as follows:

"Persons convicted of espionage and sabotage on the national territory of the belligerent, or in occupied territory, shall be deprived of the right to correspond by letter and by other means of communication provided in the present Convention."

Mr. Morosov (Union of Soviet Socialist Republics): The Delegation of the U.S.S.R. cannot accept the text of Article 3A as adopted by Committee III. This is a particularly important issue, because to maintain Article 3A as it now stands in the Civilians Convention would leave signatory States free to deprive protected persons of their rights and privileges. The question therefore required exhaustive consideration and I ask your permission to speak on it at some length.

The Delegations of the United States of America, the United Kingdom, Australia, Canada, France, and certain other delegations who support this text, are of the opinion that these measures should be taken in the interests of the security of the State by all signatories of the Convention, to protect themselves against spies and saboteurs. It is proposed that such persons be deprived of the right of communication with the exterior which is guaranteed to persons protected under the present Convention. As regards this argument, the Soviet Delegation agrees that spies and saboteurs should be deprived of the right of communication with the exterior, as stipulated by the Convention. My Delegation therefore proposes to include in the Convention the special Article mentioned above.
This suggestion would, we feel, settle the question of the withdrawal of the right to communicate with the exterior. If this right were not withdrawn, a harmful activity would most probably continue even after the agents had been unmasked.

In view of its substance, it matters little to the Delegation of the U.S.S.R. whether Article 3A figures in other places in the Convention, but nothing can change the Soviet Delegation’s point of view on the insertion of the Article in this part of the Civilians Convention.

Were it merely a matter of depriving spies and saboteurs of the right of corresponding with the outside world, as is asserted by those in favour of introducing Article 3A into the Convention, they would have little difficulty in agreeing to the proposal I have just made. These delegations, however, persist in combating the proposal put forward by the Soviet Delegation and press for the maintenance of Article 3A as adopted by the Joint Committee. This is positive proof that the real intentions of those delegations which insist on the inclusion of Article 3A are not consistent with the motives they allege in support of their view. Moreover, the provisions of Article 3A go much further than the motives which are given and on which the text of Article 3A is based.

A glance at Article 3A will convince us that to deprive any protected person on the territory of a belligerent of the rights and privileges provided by the Convention is to express suspicion of him. I would ask you to note that this wording arouses suspicion in respect of the person thus accused of activities hostile to the State. This would lead to all aliens who are nationals of an enemy country being suspected of activities hostile to the Power on whose territory they may be during the war. Thus, any protected person whatsoever on belligerent territory may easily be placed on the list of persons suspected of activities hostile to the State.

I must also add that Article 3A makes no provision for investigation and clarification of the accusations or the suspicions laid against protected persons. Consequently, any policeman will be in a position to state that he suspects any alien of committing acts hostile to the State; and that will be enough, not only to cause this person to be interned or committed to an assigned residence, but also to deprive him of all rights and advantages under the present Convention. Such a proposal spoils the effect of the whole work which we have been seeking to build up in this Convention which safeguards in such detail protected persons on the territory of a belligerent. These stipulations are therefore in flagrant contradiction with those concerning the internment of aliens on belligerent territory, included in the present Convention.

Internment may be ordered just because it is impossible to leave certain aliens who are nationals of an enemy country at liberty if they are likely to endanger the security of the country where they may be. In the opposite case, that is to say if the persons concerned are not suspected of wishing to commit acts contrary to the security of the State, aliens cannot be deprived of their liberty and cannot be interned.

Finally, if for reasons of security of the State, it is necessary to intern such or such a person and if internment takes place in accordance with a clearly defined procedure, judicial or administrative, which ensures its lawfulness, the interned person retains the rights and privileges accorded to him under this Convention.

This is precisely the sense of a series of Articles of the Civilians Convention concerning aliens on the territory of belligerent Powers. In these circumstances, since we have provisions relative to the internment of foreigners in the territory of belligerents for reasons of State security, it is unnecessary to include in the Convention provisions contained in Article 3A. Clearly the provisions of these Articles sometimes duplicate the provisions of Article 32 and other Articles of the Civilians Convention. Contrary to the stipulations of these Articles, it is proposed in Article 3A to deprive aliens who cannot be left at liberty for reasons of State security of all the rights and privileges of the present Convention. As I have already said, what is proposed is to a certain extent reprisals against aliens suspected of activity hostile to the State. They are to be detained in conditions which eliminate any possibility of control over the legality and justification of decisions of this kind. It is clear that this is equivalent to excluding from the Convention the provisions contained in Article 32 and the other Articles concerning the treatment of protected persons who have to be interned during the war for reasons of State security.

Have we worked here these three months, have we discussed for so long and in such detail the provisions relative to the treatment of aliens who are citizens of an enemy country and are on the territory of a belligerent Power in time of war, in order, at the end of our work, to adopt a final text of the Convention which includes an Article that may render the provisions of this same Convention null and void?

The arguments of those who are in favour of the present text of Article 3A can be summed up as follows: this Article is in no way dangerous, they say, for there is no question of depriving certain aliens—“individual” aliens, if I may use the term—who are nationals of an enemy country, of the rights and privileges granted by the Convention.

This contention cannot stand. It follows from
nevertheless represent tens of thousands of persons. True, these measures may be implemented on an individual basis, but the total sum of cases will nevertheless represent tens of thousands of persons.

In the second paragraph of Article 3A, it is proposed to withdraw the right of communication with the outside world from persons arrested as spies or saboteurs or suspected of activity hostile to the security of the Occupying Power. If the supporters of Article 3A wished to make use of this provision for the sole purpose of withdrawing the right of communication with the exterior from persons regarded as spies or saboteurs, they could have accepted the text of the new Article in the wording proposed by the Delegation of the Union of Soviet Socialist Republics. But the fact is that it is intended to deprive these persons not only of the right of communication but also of the other rights and privileges conferred by the Convention. This is clearly implied in the text of Article 3A, third paragraph. Let us consider the wording of this paragraph: it concerns persons who are on the territory of a belligerent Power, or individuals among the civilian population of occupied territory who are suspected of hostile activity. It is proposed to deprive them of the rights and privileges conferred on protected persons by the Convention, which are inconsistent with the security of the Occupying Power, as the case may be.

The second paragraph of Article 3A, however, deals with persons in occupied territory who are suspected of hostile activity. These persons can only be deprived of the right of communication with the outside world. Those responsible for Article 3A forgot this provision when they went on to the third paragraph. It would, in fact, be logical in this last paragraph to state that protected persons in occupied territory would be entitled to communicate with the outside world. In the third paragraph of Article 3A, it is stated instead that these persons shall be granted at the earliest date the full rights and privileges consistent with the security of the Occupying Power. In other words, it is assumed that these persons may be deprived of other rights and privileges stipulated in the Convention, apart from the right of communication.

To provide this preposterous edifice with a proper façade, the sponsors of Article 3A have decided to include among these provisions a stipulation laying down that the persons mentioned in the preceding paragraphs shall nevertheless be treated with humanity and in case of trial shall not be deprived of the rights of a fair and regular trial prescribed by the Convention. This stipulation simply disguises the facts. It has no bearing whatsoever on aliens who are in the territory of a belligerent, because infringements committed by these persons must be brought before the competent courts of that country and tried in accordance with a form of procedure not covered by the Convention. Nor has this stipulation any bearing whatsoever on members of the civilian population of occupied territories suspected of activity hostile to the State. Article 3A states that this category of persons may be deprived only of the right of communication with the exterior. Why, therefore, also specify that these persons cannot be deprived of the rights of a fair trial? That right is ensured by Articles 59, 60 and others of the Civilians Convention. Thus, a fair and regular trial and humane treatment are merely required in Article 3A to obscure the meaning of that Article, which is thus in contradiction with the spirit and the aim of our Convention. What has been said about alien nationals of an enemy Power who may be in the territory of a belligerent is even more applicable to the civilian population of occupied territories.

I would like to ask the originators of Article 3A, and those who light-heartedly support it, whether there is in the whole world a country whose citizens would be loyal to the Occupying Power. There may be Quislings, but never a whole nation which will welcome the occupant with open arms. Under the terms of Article 3A it is enough that a person in occupied territory should be suspected, considered as dangerous and assumed to be carrying on activities hostile to the Occupying Power, for that person to be deprived of the rights and privileges provided by the Convention. If it were our task to set up a police organization or occupation statutes, then Article 3A might be included. But we are here to draw up a Convention for the protection of the civilian population and that being so it is perfectly plain that the text of Article 3A is unacceptable. It cannot be approved, either from a political or a legal point of view.

The Delegation of the Union of Soviet Socialist Republics presses with the utmost urgency that Article 3A should be excluded from the Convention. My Delegation repeats that the proposal it made to draft a new Article would fully ensure the security of the belligerents, and that of the occupying Power, and would enable them to deprive persons convicted of espionage and sabotage in the national territory of the belligerent, or in occupied territory, of the right to communicate with the external world.

Mr. Ginnane (United States of America): Article 3A as adopted by you in Committee III by 29 votes to 8, represents a careful compromise solution of the difficult security problem. It attempts to protect the security of States and, at the same time, to protect the fundamental rights of individual
men. The text of Article 3A speaks for itself and I shall not reply to the misinterpretations of it which you have just heard. The Soviet amendment, which applies only to spies and saboteurs after they have been convicted, clearly does nothing to meet the legitimate security problems of States. For that reason the United States Delegation strongly urges the rejection of the Soviet proposal to delete Article 3A.

Mr. Sinclair (United Kingdom): This subject has already been exhaustively dealt with and I do not propose to go any further into the general merits and needs of an Article like the one we are now considering, but I should just like to give an answer to one or two of the points which have been raised by the Soviet Delegation.

One was that anybody could be just suspected of being hostile to the State by, I gathered, practically anybody in the State at all and would thus be caught by this Article. It is quite clear that that in no way represents the intention or effect of this Article. Nobody can be deprived of protection under this Article unless he is definitely suspected of a hostile act.

Following much the same line of argument, it was then said that there would be nothing to prevent a policeman from taking up somebody under this Article and depriving him of the rights of this Convention if he thought fit to do so. Well, Brother Delegates, I just ask you to look at this Article and see, in the first place, that it is stated quite definitely that the person which has to be satisfied as to whether somebody is in fact definitely suspected of hostile activity is no less a body than the State itself. Can it really be suggested that with that onerous and very serious duty thrust on the State itself. Can it really be suggested that with that onerous and very serious duty thrust upon it by this Article, any responsible State is going to allow a decision for which it holds such a responsibility to be made by a policeman?

A further point which I should just like to mention is that it was stated that the provisions with regard to restoring the rights under the Convention to people once they were no longer required to be deprived of them, and in particular the prescription of proper rights of trial, really meant nothing; it was therefore rather surprising to hear it suggested that the last provision was not necessary because of the fact that we already had Articles 59 and 60, for surely if you read Article 3A, giving it its fullest meaning, then it would be possible for Articles 59 and 60 to be abrogated under its provisions. Those who were responsible for the framing of Article 3A were quite satisfied that there could on no account be any possible occasion upon which anybody, whatever act they did, could not have a fair trial and that is why the provision in question was put in, and if it had not been put in it might have been said that there was no particular reason why that right should not have been taken away. Lastly, I should just like to comment on the remark made that if we have this very limited Article it will spoil the effect of the whole work which we have been seeking to build up in the construction of this Convention. Surely that is a somewhat large overstatement, to put it no more strongly, because it seems to me that the arguments put forward against this Article completely overlook the fact that the people with whom we are generally dealing here are people who have entered the country of the Home Power in time of peace and with their permission, and who have taken all that the country had to give them and have turned out to be conspirators and traitors in war-time against the country which has sheltered them. I personally, Brother Delegates, am genuinely no less a humanitarian than anybody else among you, but is it not being a little extravagant to feel so much tenderness for people of that kind when the issue at stake is the security and lives of our own men, women and children in belligerent territory, and the security of your own military forces in occupied territory?

There is just one further point which I should like to make, and that is that I think it must have been owing to a little excessive enthusiasm for the type of person whom I have just been mentioning that the Soviet Delegate overlooked, I think, the true position in one of his final phrases, because he certainly gave me the impression of saying that the effect of this Article as applied to occupied territory was that they could be deprived of all the rights in the Convention. That, I need hardly say, would not be a correct representation of the picture because it is quite clear that in occupied territory all that is being proposed is to deprive these suspected—and definitely suspected—persons of the rights of communication.

Mr. Mevorah (Bulgaria): It is very difficult to be the last speaker and at so late an hour. I shall endeavour not to try your patience too much. But I must speak because I feel very strongly that matters have not yet been clearly and sufficiently explained. I do not think this debate has been exhausted yet. This is a serious issue and in my opinion we must pursue it to the end and have the courage to go to the root of the matter and adopt a really just and beneficial solution in order that our consciences may be clear and we may have the satisfaction of having done our duty.

Though many arguments have already been put forward and debated in the Committees, I feel that it is also our duty to say what we think and to endeavour to throw the greatest possible light on the question.
There is one point on which we thoroughly agree; that is that while the requirements of individual security cannot be ignored, the requirements of the security of the State must also be considered. Up to that point no really serious divergencies separate us. It is when we try to strike a balance that difficulties arise. Where should we draw the limit? Where must we draw what I can only call the crucial line? We are all the victims of a sort of impotence of expression—forgive me using this term—which is typical of mankind. We think, we feel, but we must admit that we are ill-equipped to express our ideas clearly and that we are thus reduced to approximate statements.

I feel that the wording of the proposed text is not very apt. If we gather round a table to discuss how this text should be worded, I do not doubt that after three minutes we shall conclude that the task is too difficult. I will explain what I mean:

First of all the expression in the first paragraph "serious grounds" (sérieuses raisons): I suppose that doubtless this means, for example, that no one can be imprisoned, deprived of light, refused the right to correspond with a relation, a friend, a mother, a wife and so on, without due reason. This is certainly what all the delegates who supported this text stated, but they are obliged and I too am obliged to go somewhat further; the rest of the sentence must be understood: "serious grounds" (de sérieuses raisons)... but grounds of what? To what end? If this were all, then this wording might be a little more acceptable. Is it a matter of being satisfied, for example, that the prosecution of any person is justified? No—all that is said is: "is satisfied that an individual person is definitely suspected...".

It is from this point that I fail to understand the text: "serious grounds for suspicion...". It is as if one said: "serious grounds for not being serious...". I cannot find any terms which are more adequate or conclusive; the difficulty of finding adequate words to express one's thoughts is always a handicap and I am doubly handicapped by speaking a language which is not my own.

The wording is therefore: "serious grounds for suspicion...". It is true that the word "...definitely..." is added, but once more I ask, suspicion of what? Here several notions are added, such as espionage and sabotage. This is not all, however; it is further said: "suspected of or engaged in activities hostile to the security of the State...". Once before, when confronted with this term, I failed to understand—and do not understand even now—what is meant by "activities hostile to the State". I have already said and I still say: this might be interpreted to cover just anything. In its own territory, or in territory which it occupies, a State cannot prosecute citizens or protected persons except for hostile activity, because any offences against common law come within the competence of the regular Courts of the country. In the case of activity which is to the advantage of the State, it is clear that there will be no question of prosecuting persons engaged in such activity.

In fact, any act liable to be interpreted as being directed against the State would constitute hostile activity. This is a truism. But if that is so, what is left apart from this idea? Hardly anything; that could be proved by a few examples, of which I could quote any number. It is clear that a person definitely charged with espionage or sabotage will be prosecuted. There is no doubt on this point. It is possible, however, to imagine the case of a person who, in the territory of a belligerent Power or in occupied territory, has formed a small group whose members exchange unofficial news, listen to the foreign radio in the evening or at night, spread this news abroad, and print as best they can a small underground newspaper which they distribute; other people will buy it, will read it or will, perhaps, make financial contributions towards its publication and distribution. We have here a very wide and elastic conception, an almost unlimited list of activities which might be regarded as hostile to State security. I question whether complete forfeiture of rights and privileges as stipulated at the end of the first paragraph, could really be imposed for all activities of this kind, on the grounds of suspicion against persons who are alleged to have taken part in such activities. Or, again, partial forfeiture might be decreed, in accordance with the provision at the end of the second paragraph. In my opinion, such measures would be too severe, since we have conceived and drafted all these provisions as a means of limiting, in one way or another, the somewhat excessive activities and powers of the State, in order to ensure that humane principles are respected and that individuals are more adequately protected against legal proceedings which may perhaps be too lightly instituted.

But in that case, all the provisions which we have attempted to lay down with this aim in view would become null and void.

I should no doubt express myself more briefly; I have no intention of making a long speech on this point, or of putting forward futile suggestions. I am attempting to deal with concrete cases. If our real intention is to safeguard the State against the activities of spies and saboteurs, let us have the courage to say so frankly, and to delete this unfortunate phrase which refers to persons engaged "in activities hostile to the State...".

It is further alleged that the forfeiture of rights and privileges which is mentioned here is not
such a serious matter, and that, in the circumstances described at the end of the first paragraph, the consequence will not be that the persons concerned are deprived of all the rights enumerated by the Convention. This is poor consolation. Let us be frank; in the case of persons mentioned in the first paragraph the following phrase is used: “deprived of all rights and privileges...”. What is the exact position, then? I would certainly presume too far on your patience and indulgence if I attempted to enumerate all the rights and privileges which should be assured to a person who has been prosecuted, accused, convicted, or even merely suspected of activity hostile to the State and which this person should now forfeit. It would be another almost endless list. I do not understand therefore why we have drawn up this list, if we are going to render it practically meaningless by subsequent provisions which, as a previous speaker has said, are intended to meet a theoretical situation based on the flimsiest premises.

As regards the second paragraph, it is true that the forfeiture of rights and privileges is less extensive; it is a minimum forfeiture. Here it is a question of occupied territory and the forfeiture of all rights relating to correspondence and communication, which is stipulated again with regard to the same cases of espionage and sabotage. Moreover, to my distress, the following words have been added: “any activity hostile to the security of the Occupying Power”. To reassure us, it has been said that these restrictions only amounted to the forfeiture of the right of correspondence or communication. We would do well to make this point clear, in order to avoid the danger of this provision being interpreted differently by different people, or not understood by those who have to implement the Convention. If this is the way in which you understand the matter, I beg you to say so. It would be simpler, straightforward and might make it possible for us to agree.

I have gradually come to the Soviet amendment. Having listened very carefully to the criticism with which it has met, I particularly remember what the French Delegate said. His criticism did somewhat shake me. In particular, he said that we were agreed to prosecute saboteurs and spies.

It was feared that it would be going too far to state that complete forfeiture of rights could be imposed, on suspicion alone. If it is necessary to take action against a spy who has been found guilty, it is also necessary to prosecute a spy who is not under sentence, but against whom judicial proceedings are pending.

The accused person must not be allowed to conduct his defence by lies or to carry out his hostile intentions by communicating with the outside world. In this case, it is precisely the security of the State which is at stake.

I venture to make a suggestion which will be the conclusion of my speech. This suggestion is drafted, as it were, on the Soviet amendment. It is to add to the spies and saboteurs mentioned therein, persons against whom judicial proceedings are pending for sabotage or espionage.

I think that in this way the fundamental intention of the promoters of the official proposal would be realized, while at the same time the official wording, which I consider unfortunate, would be improved. We would thus have removed from this text the notion of suspicion, and of the prosecution of persons who have engaged in activity hostile to the State.

Colonel Hodgson (Australia): My Delegation was one of the sponsors of this Article as finally drafted and it is surprising to hear this afternoon that our motives have been questioned and to be told that we were deliberately trying to get round the Convention. This particular Article has been before the Plenary Assembly longer than any other Article as it was first raised on the 26th July. It was longer with the Drafting Committee than any other Article, and it was not until the 18th July that the vote was taken on this Article in Committee III. Now, at this late stage, after every angle has been most exhaustively discussed, the Delegate of Bulgaria calmly comes up and tells us: “Let us sit round the table and we will soon reach agreement, probably in an hour or so” when it has been discussed for months and months. The agreement reached in all respects is not only a reasonable compromise, if you like to call it that, but also a merging of various viewpoints. It certainly does not go so far as the original Australian proposal and what my Government wanted. Even so, you would think this afternoon that our main purpose in coming to this Conference was to draft Conventions or Articles for the protection of Quislings, saboteurs and traitors. We are not and it seems to me that it is quite wrong in principle for an Article which has been decisively defeated two or three times in the various Working Parties, Special Committees and main Committees to be brought up repeatedly, and all this time taken over it.

I can quite understand a delegation, when the voting is close in a thin Committee, that is to say, when the voting is 13 to 14, or 15 to 16, coming back with an amendment. In such a case, I think it is the duty of a delegation responsible for an amendment to submit it to the Plenary Assembly to test the feelings of the whole Conference, but to expend so much time and, through the medium of this particular Convention, to
tackle sheaves of amendments on Articles which have been overwhelmingly defeated, using exactly the same arguments over and over again is, I suggest, quite wrong. It must also be remembered that the vote taken on the 18th July was only taken after a very long discussion. The Conference this afternoon is in fact being told that it was ill-informed and unintelligent and that it should reverse its vote within a few days. My Delegation will do nothing of the kind. We think that sufficient time has been taken up on this Article and I move the closure of the debate, and I hope that other delegations will move the closure of the debate in subsequent Articles where the previous voting has been similar to the voting on this Article. I formally move the closure of the debate.

The President: I have no other speakers on my list and I think that we can now vote, even without discussing the proposal submitted by the Australian Delegation.

Mr. Mevorah (Bulgaria): I wish to add something...

The President: I call upon you to speak, but only on the amendment submitted by the Australian Delegation.

Mr. Mevorah (Bulgaria): I think that enough has been said on the matter...

The President: So do I...

Mr. Mevorah (Bulgaria): ...and I will not even speak on the closure of the debate.

The President: I think that would be useless...

Mr. Mevorah (Bulgaria): But I must raise another point. I would wish my suggestion to be considered as an amendment and put to the vote.

The President: The Delegate of Bulgaria made a proposal just now which may be considered as a sub-amendment to the amendment submitted by the Delegation of the Union of Soviet Socialist Republics. I think we are in a position to decide on this sub-amendment immediately. Will the Delegate of Bulgaria kindly repeat the text of his amendment, to enable the Meeting to get a clear idea of the issue involved?

Mr. Mevorah (Bulgaria): This is the text:

"Persons judicially prosecuted for espionage and sabotage, as also persons convicted for the same reasons, or on the same counts of indictment, in the national territory of the belligerent, or in occupied territory, may be deprived of the right to correspond by letter and by other means of communication provided in the present Convention."

The addition to the Soviet amendment appears at the beginning of the text and consists of the terms: "Persons judicially prosecuted for espionage and sabotage..."

The President: I call upon the Delegate of the United Kingdom to speak, but only on the question of the vote.

Mr. Sinclair (United Kingdom): On a point of order, Mr. President. I want to object on behalf of the United Kingdom Delegation, to an amendment being introduced in this manner at this stage, which is quite inconsistent with the Rules of Procedure, and is without notice. I do not think anybody would say that this does not involve a question of substance.

Colonel Hodgson (Australia): I wish to raise a point of order before the Soviet Delegate commences to speak. I have formally moved the closure of the debate. After that you will have no amendments or any further motions: under the Rules if anybody desires to speak one delegation may speak for the closure, and one against and then the vote must be taken, but as nobody asked to speak for or against, then the position is, I respectfully suggest, that the vote should be taken immediately.

The President: The closing of the debate is not in question. Speakers who spoke after the point of order had been raised by the Delegate of Australia did so simply and solely on the question of the vote. The Delegate of Bulgaria made a verbal proposal. I think that it would be inadvisable to defer this Article to a subsequent debate, and that the Meeting is now in a position to vote both on the verbal proposal and on the amendment submitted by the Delegation of the Union of Soviet Socialist Republics.

I call upon the Delegate of the Union of Soviet Socialist Republics for a short statement dealing exclusively with the question of the vote.

Mr. Morosov (Union of Soviet Socialist Republics): I wish to state that the Soviet Delegation agrees with the proposal just put forward by the Delegate of Bulgaria. There are not therefore two proposals before us, but one, a Soviet amendment with a sub-amendment submitted by the Bulgarian Delegation.

On the other hand, the Delegate of the United Kingdom has spoken, and not on the point of
order. Rule 25 of the Rules of Procedure leaves it to the President's discretion to call upon a delegate to speak when a proposal or an amendment justified his doing so by its brevity, its clarity and its relative unimportance.

The Bulgarian amendment is a case in point, for all it says is: "...persons who are the object of judicial prosecution...". This is simple, clear and brief.

It raises no new point, and the President has the right to authorize the discussion of this sub-amendment, especially as the movers of the amendment themselves agree.

On the other hand, in view of the obvious pressure which is being brought to bear on some delegations, I move that the Meeting should proceed to a secret ballot.

The President: I note that we have before us at the present moment a single amendment submitted by the Delegation of the Union of Soviet Socialist Republics with a sub-amendment submitted by the Delegation of Bulgaria.

The Soviet Delegation supports the text submitted by the Delegation of Bulgaria.

A proposal has been made for a secret ballot. You have now to vote on that proposal.

The proposal submitted by the Delegation of the Union of Soviet Socialist Republics was rejected by 14 votes to 13, with 15 abstentions.

The President: We will therefore proceed to vote by a show of hands.

The delegations in favour of the amendment to Article 3A submitted by the Delegation of the Union of Soviet Socialist Republics are requested to raise their hands.

The amendment was rejected by 25 votes to 9, with 6 abstentions.

Article 3A as a whole was adopted by 29 votes to 8, with 4 abstentions.

The meeting rose at 7.35 p.m.

TWENTY-FOURTH MEETING

Tuesday 2 August 1949, 10 a.m.

President: Mr. Max Petitpierre, President of the Conference

The President: The Delegate of France has the floor on a point of order.

Time-limit for speeches

Mr. Cahen-Salvador (France): I am taking the floor today on a point of order, but certainly not out of a love of procedure. We make a lot of procedure—in my opinion, a great deal too much—but there are cases where procedural points may serve the aims and the intentions of the whole Conference. It is to meet a wish which I have heard expressed by a great number of delegations that I take the liberty, as one of the veterans of the Conference, to submit that desire to the Chair.

Yesterday we began to consider the Civilians Convention. In three and a half hours work, we were able to vote on only two Articles. We are now reaching the closing stages of this Conference and it is to be feared that if we do not curb the often persuasive eloquence of our colleagues we shall prolong this Conference into its fourth month. However, despite the agreeable and friendly hospitality of the Swiss Confederation, and of Geneva in particular, a great many of us have other duties and after three months and a half of conference work we should like, in full agreement, to be able to close these debates.

The French Delegation considers that the best means to this end would be to limit both the time allowed for speakers and the number of speeches. The self-restraint for which the President has often called, does not seem to have produced the desired results. I base my remarks on our experiences during my Chairmanship of Committee III; on June 7th, with the full agreement of all present, we set a limit of five minutes for individual
speakers and ten minutes per delegation on the text of an Article or an amendment. The Bureau of Committee III proposed this regulation which was unanimously accepted and applied by that Committee.

On June 23, the Bureau of the Conference drew attention to this measure and recommended that all Committees should consider its possible application in the Plenary Assembly. So far, with his usual courtesy, our President has avoided making that ruling obligatory. I would, however, remind him of the decision of the Bureau and of Article 27 of the Rules of Procedure, which states that the Conference, either in Plenary Meeting or in Committee, may at any time on a point of order and a formal motion, limit the length of speeches. In the interest of the success of this Conference, and in the interest of all concerned, therefore, I take the liberty of recalling this rule, for repetitions do not make the smallest contribution to the result which we have in view whilst they sometimes have an unfortunate effect.

Furthermore, as we are concerned with the physical, moral and intellectual integrity of civil populations in time of war we should consequently also be concerned with the physical integrity of our colleagues in peacetime.

In this spirit and for these various reasons, I venture to suggest that the Chair might follow the precedent whereby Committee III was enabled to finish its work within the allotted time. I therefore request the President to ask the Conference to apply similar if not identical regulations, so that we may bring our work to a close within the time limit which had been originally fixed. At the same time, I appeal to the Conference for unanimity on this motion.

The President: We have before us a point of order; in accordance with the term of Rule 30 of the Rules of Procedure two speakers may address the meeting, one against and one in favour.

Personally, I accept this point of order as I believe that it has become necessary to limit the length of speeches. Our experiences up to the present justify a measure of this description.

Mr. Pashkov (Union of the Soviet Socialist Republics): When discussing the first three Conventions, no procedural motion was tabled to limit the length of speeches and the number of speakers. Yet all the problems involved were very thoroughly studied and our discussions were crowned with success.

It usually happens in families that the eldest child is more spoilt than the others. We are doing the same thing. The first Conventions were granted every privilege but now we have arrived at the last we are inclined to neglect it.

The last Convention is the most complicated and the most important. It has called for harder work and will still require much more detailed study than all the others.

I do not think it is necessary at present to adopt this point of order on the limitation of speeches and of the number of speakers.

For the time being I think that, without adopting a formal rule, the President could, in each particular case and when the necessity is quite clear, limit the length and number of speeches.

It should be sufficient for the moment to leave the matter in the President's hands as we must first of all see how our work is likely to proceed.

The Soviet Delegation therefore believes that it would be premature to take such a decision after only one day's discussion of the Convention.

The President: We will now proceed to the vote.

The point of order submitted by the French Delegation (to limit the length and number of speeches) is adopted by 22 votes to 10, with 10 abstentions.

The President: The principle we have adopted is that speeches should not last more than five minutes and that the length of speeches should be limited to ten minutes per delegation, when several speakers of the same delegation wish to take the floor.

Signature of the Conventions

The President: This question was examined by the Bureau of the Conference during its Meeting on July 28. Its decision is contained in a document which has already been distributed (see Annex No. 403). A decision now has to be taken by the Assembly. I will ask you to vote on the proposals submitted by the Bureau.

The proposals submitted by the Bureau were adopted.

Prisoners of War Convention

Article 109 (continued)

The President: This Article was referred to a Working Party, which has embodied in it an amendment adopted by the Assembly. It proposes a new text for the fifth paragraph:

"Prisoners of war against whom criminal proceedings for an indictable offence are pending may be detained until the end of such proceed-
ings, and, if necessary, until the completion of the punishment. The same shall apply to prisoners of war already convicted for an indictable offence."

Are there any remarks on the proposal of the Working Party?

Mr. WERSHOF (Canada): I do not wish to speak on it, but would be glad if it could be put to the vote because we wish to vote against it.

The President: We shall now vote. Delegations accepting this Article as drafted by the Working Party will please signify their approval.

Article 109 was adopted by 30 votes to x, with 3 abstentions.

Common Articles

Article 50/53/128/138 (continued)

The President: The vote on this Article was deferred to this morning's meeting, following a proposal by the Delegation of Rumania to insert a reference to Article 2A in the Article under discussion.

This question was already discussed yesterday. I take it that all the delegations are now in a position to come to a decision, and we will therefore proceed to a vote. Delegations in favour of the proposal of the Delegation of Rumania to insert in this Article a reference to Article 2A are requested to signify.

The proposal of the Delegation of Rumania was adopted by 28 votes to 2, with 10 abstentions.

The President: We will now proceed to take a vote on the Article as a whole. Delegations in favour of this Article are requested to signify.

The Article was adopted by 38 votes to none, with 2 abstentions.

Civilian Convention

Article 4

The President: An amendment has been submitted by the Delegation of the United Kingdom, proposing the deletion, in the second paragraph, of the words "one year after" and their replacement them by "on".

Mr. Feneșan (Rumania): Before speaking on the substance of Article 4 of the Civilians Convention, I should like, for the reasons I explained yesterday in connection with Article 50/53/128/138, to draw the attention of the Conference to the necessity of filling a gap by inserting a reference to Article 2A in the first paragraph of Article 4. To explain what I mean, I venture to make a brief reference to certain points.

During the first reading, on April 27, no reservations were made to the first paragraph of Article 4 of the Civilians Convention. The Drafting Committee of Committee III prepared, on July 6 (see Annex No. 198), the text of Article 4, without any change in the first paragraph, and this Article was also adopted by Committee III at its Meeting of July 8, 1949.

Consequently, as explained by the Rapporteur of Committee III, there was no difficulty with regard to the disposition concerning the commencing date for the application of the Civilians Convention; but at the time when Article 4 of the Civilians Convention was adopted, it had not yet been decided to subdivide Article 2, as it was only on July 20 that in the Joint Committee the text of Article 2A was adopted in a form which provided for splitting it up into two separate Articles, 2 and 2A. It was therefore impossible to refer at the time to Article 2A, but only to Article 2, the fourth paragraph of which, in the Stockholm text, covered the application of the humanitarian provisions of the Civilians Convention to the case of wars not of an international character. This is shown by the fact that on May 9, when the fourth paragraph of Article 2 was under discussion, the Special Committee of the Joint Committee decided, by 10 votes to 1, with 1 abstention, to extend the application of at least a portion of the Convention to armed conflicts not of an international character.

To sum up, when Article 4 was adopted, the subdivision of Article 2 had not yet been effected; and by referring to Article 2, the intention was to refer also to the cases covered by the fourth paragraph of Article 2 and, subsequent to the adoption of Article 4, by Article 2A.

For the above reasons, the Rumanian Delegation considers that it would be necessary, and logical, simply to re-establish the position envisaged by Committee III when it adopted Article 4.

Mr. Sokirkin (Union of Soviet Socialist Republics): The Soviet Delegation could not accept the proposal of the United Kingdom Delegation to establish, in the second paragraph of Article 4, that the application of the Convention in belligerent territory shall cease immediately on the close of hostilities instead of one year after the general close of military operations as provided in the text adopted by the majority of the Committee. His Delegation is of the opinion
that the arguments relied on by the United Kingdom Delegation in support of its amendment rest on very precarious premises.

The United Kingdom Delegation said that if the text of Article 4 was to be adopted in its present form, it might serve as a pretext for prolonging the internment of protected persons, after the need for that measure had disappeared. We consider that this argument is not sound; the internment of protected persons can and must come to an end, even before the close of hostilities, as soon as the reasons for this measure cease to exist. Further, the stipulations of the Convention on the reconsideration of decisions concerning internment, and also the terms of Articles 121 and 122, lay great stress on this point.

If the proposal of the United Kingdom Delegation were accepted, the obvious conclusion would be that the effects of the Convention are to cease with the end of hostilities; or, in other words, that the Convention, an application restricted to the home territory—and this may also apply in the case of civil war—the maintenance of the provisions of Articles 1 to 10, which clearly included 2A, is expressly stipulated at the end of the third paragraph.

It seems to me, therefore, that the Conference, if it is to be consistent, should adopt the proposal of the Rumanian Delegation, as it has already done in regard to Article 50/53/128/138.

Mr. Sinclair (United Kingdom): As is stated in the note accompanying the amendment to Article 4, which has been put forward by my Delegation, the point here is a very simple one. Under the final paragraph of his Article, protected persons whose release, repatriation or re-establishment may take place after such dates—that is, the dates on which the Convention will generally cease to apply—shall meanwhile continue to benefit by the present Convention. Accordingly, all the people who would normally be affected by this Article on the home territory of a belligerent are duly safeguarded. Therefore it seems to me that there can be no advantage—it is pretty certain that it would go the other way—in continuing to apply this Convention after the cessation of hostilities on the home territory of a belligerent. It is quite true that another Article says that internment has got to cease as soon as military conditions no longer require it, but you cannot get away from the fact that, if in fact there is a provision in this Convention which makes it absolutely clear that it will be regarded as quite the normal thing for this Convention to go on applying for a year after hostilities end, it may, at any rate, be still much easier for some country that may have some special motive for wanting to keep, say, one particular class of internees interned longer than might really be justified because they have at any rate then got what they can put before the rest of the world—the definite sanction for continuing to apply this Convention for another year. If, in fact, the Convention were to be terminated on the conclusion of the hostilities, that possibility would be entirely obviated.

Therefore, having regard to the further fact which I think once again is being overlooked, and which I mentioned in another connection from this rostrum yesterday—that is, that the people this Article is going to affect in the home territory of a belligerent are people who had come into that country of their own free will before the war and thereby assumed the rights and obligations of ordinary citizens—they will automatically on the cessation of hostilities merely be restored to the same position that they were in before, alongside the home citizens of the country in which they have been detained.

Colonel Du Pasquier (Switzerland), Rapporteur: The Rumanian Delegation has again raised an interesting and delicate question and I feel that, as Rapporteur, I should submit my views on the subject.

As we did in the case of the common Article 50/53/128/138, I think we should accept the suggestion of the Rumanian Delegation to embody in Article 4, not only the reference to Article 2, which already appears in the first paragraph, but also a reference to Article 2A. It is true that the latter only provides for a limited application of the Convention, an application restricted to the great humanitarian principles. The terms “shall apply”, or, subsequently, “application”, should refer to application within the limit fixed by Article 2A. No serious drawbacks are to be feared at the outset of the application of the Convention apart from some practical difficulties that might be encountered, for the period dating from the end of the conflict it would also be advisable to retain the time limit of one year mentioned in the second and third paragraphs of Article 4.

I would also point out that as regards occupied territory—and this may also apply in the case of civil war—the maintenance of the provisions of Articles 1 to 10, which clearly included 2A, is expressly stipulated at the end of the third paragraph.
Mr. Sinclair (United Kingdom): I am just finishing. Therefore they will merely be like everybody else, returning from measures of control which have had to be exercised over them because of war time emergencies, but as most of them will have done nothing whatsoever to have aroused any enmity against them in the country where they have been detained, their object will be, like the citizens of that country, to get back to normal conditions and exercise their ordinary rights alongside the citizens of the State which will be bearing no enmity to them whatsoever.

General Schepers (Netherlands): The Rumanian Delegate proposed that a reference to Article 2A be inserted in Article 4. The Netherlands Delegation opposes this proposal for the following reason: Article 4 states that “the present Convention shall apply...” whereas Article 2A only provides for the limited application of the Convention.

Article 2A, in fact, enumerates the special provisions which may be applied in the case of an armed conflict not of an international character. It states the conditions governing the observance of these provisions in the case of an armed conflict, namely that they shall be in force from the beginning to the end of hostilities. For this reason, the Netherlands Delegation opposes the inclusion in Article 4 of the idea expressed in Article 2A.

The President: We will first vote on the amendment of the United Kingdom Delegation. The amendment was adopted by 17 votes to 14, with 12 abstentions.

We will now pass on to the proposal submitted by the Rumanian Delegation to insert a reference to Article 2A in Article 4. The proposal was rejected by 21 votes to 20, with 2 abstentions.

We will now vote on Article 4, as thus amended. Article 4 was adopted by 35 votes to none, with 8 abstentions.

Article 11

The President: A recommendation has been made by the Drafting Committee (see Report of the Drafting Committee).

Mr. Bammate (Afghanistan): The proposal of the Drafting Committee to alter the text of Article 11 would mean, more or less, a reversion to the Stockholm wording. Committee III, however, found it advisable to change this wording; this was not done in any hasty or arbitrary fashion but after careful consideration of the subject and on the recommendation of its own Drafting Committee. What is more, it unanimously adopted the wording which it is now proposed to modify. What is the reason for this retraction? As the amendment to modify the text was submitted by my Delegation, I beg to place before you the arguments by my Delegation, I beg to place before you the arguments which were brought up before the Committee and which I trust will be also accepted by this Assembly.

Referring to the wording proposed by the Drafting Committee I read:

"without any adverse distinction founded on sex, race, religion, political opinions, or any other similar criteria".

The word "similar" in the expression "any other similar criteria", seems to me particularly unfortunate. Indeed, what can be similar between such different facts as race, which is a physical fact, and religion, which is a spiritual principle, and the conception of nationality, which combines both moral and physical elements?

This enumeration is not, in fact, a list of criteria properly speaking, but merely a collection of divergent and incongruous elements. We could go on discussing this question for a long time without giving any more specific meaning to the idea conveyed by the word "criterion".

I now come to my second argument. If there is no analogy there can be no criterion in the strict sense of the word. For what is a criterion? It is a rule which, proceeding from the known to the unknown by means of analogy—and I wish to underline the word analogy—makes it possible to apply a predetermined principle to a multiplicity of phenomena. If there is no profound analogy between these different terms, there can be no criterion; and this is precisely what the Rapporteur wished to make clear in his Report, when he pointed out that it was difficult to grasp how there could be similar criteria, based on such distinctive and different ideas as race, nationality, religion, and political opinions. If the problem is defined as it ought to be defined, it seems to me that it is not a question of criteria at all, but simply of a series of conceptions intended not as a strict definition, but to clarify the intention of the legislator by quoting certain examples to illustrate what this "unfavourable" character may be, by emphasizing their gravity and generality.

If this second argument, which was accepted by Committee III, seems to you rather too theoretical, there is a third which seems to me quite decisive. For what has been our real object? We have been
trying to extend as widely as possible the protection given; but in so trying we have succeeded in doing just the opposite. For by saying: "...without any adverse discrimination...or similar criteria", the emphasis has been laid on the distinctions which occur solely among cases similar to those enumerated in Article II. But there may be distinctions which might be extremely adverse to protected persons, but which have nothing in common with those I have just enumerated.

After these criticisms, let us see how much of the text of the Drafting Committee can be accepted: "...without any distinction" would be the most concise way of putting it, and would suffice. Some perhaps will find it somewhat laconic. "...without any distinction" is a general prohibition. What occurred in fact was that the whole question was re-examined, and that the words "any other" were reintroduced. This brought the problem back to the domain of the absolute. A fourth proposal reintroduces the words "similar criteria". These changes of mind should be avoided. This is why, in addition to deleting the words "similar criteria", I suggest the deletion of "or any other". Reverting to the formula "without any distinction of an adverse character", it is clear that if a distinction is adverse, its character is also adverse. This is why the word "character" is not necessary. Instead of saying "basée" (in French) it would be better to say "fondée", which is better French. The word "adverse" would therefore be sufficient, and the sentence should read: "without any adverse distinction based on race, nationality, religion or political opinion".

We thus revert to the text of Committee III, with the addition of the word "adverse", which had been decided upon by that Committee, as is shown by the fact that the word actually occurs in the English text. This is why I propose that we should not vote for the Drafting Committee's proposal, but should accept the text it had adopted, with the sole addition of the word "adverse". We should then have a more complete, a more vigorous, a more understandable, and, above all, a much more accurate text.

Colonel Du Pasquier (Switzerland), Rapporteur: I think we should have no hesitation in dropping the Drafting Committee's proposals, and in retaining the text as drafted by Committee III. In suggesting this, I represent the opinion of the Chairman of that Committee.

I do not propose to restate the arguments just advanced by the Delegate of Afghanistan, with which I entirely agree. I should like to draw attention, however, to the fact that the somewhat hasty character of some of the proposals put forward, has resulted in a distinct lack of coherence between the English and French texts of the Report of the Drafting Committee, which contains the proposed new draft. First, the text adopted by Committee III is somewhat inaccurately quoted in the English text. The word "nationality" has been omitted; it reads "religion beliefs" instead of "religion"; and the proposed text includes the word "sex", which does not appear in the French version; on the other hand, the word "nationality" has been omitted. This is an additional reason for rejecting the proposal.

Mr. Cohn (Denmark): As Rapporteur of the Drafting Committee, I should like to make a few remarks in defence of the text proposed by that Committee. In my opinion, it should be adopted. The question at issue was discussed at great length, and there are weighty reasons in favour of this version.

In reply to the remarks made by the Delegate of Afghanistan, I seem to notice some contradiction between the opening and closing parts of his speech. He began by saying that it was impossible to discover any analogy between the various cases cited in the Article, which constitute an enumeration, but not an analogy; whereas at the conclusion of his speech he said that the word "analogy" implied a certain limitation, since only cases which were similar ought not to be taken into account.

I do not think it is very difficult to discern an analogy between the different cases. Other cases could be imagined, for instance, social differences between the rich and the poor, or the caste system in certain countries. The analogy is simply that it is a question in each case of differences between human beings.

This is why I venture to urge you to vote in favour of the text submitted by the Drafting Committee.

Mr. de Alba (Mexico): I remember that during the proceedings in Committee III, the Mexican Delegation more or less agreed on a wording for Article II somewhat similar to the one suggested by the Drafting Committee; we pointed out that the expression "adverse discrimination" was rather tautological, and we proposed to substitute the word "distinction" for the word "discrimination".

At the end of the phrase proposed by the Drafting Committee, instead of saying "or any other similar criteria", would it not be preferable to say "or any other discriminatory criteria? As the Delegate of Afghanistan cogently pointed out, if the term "similar criteria" is used it is uncertain to what the adjective "similar" refers. Subject to this alteration, the text proposed by the Drafting Committee would be preferable to one originally adopted by Committee III.
Sir Robert Craigie (United Kingdom): I quite appreciate the point which has been raised by the Delegate for Afghanistan and I am wondering whether we cannot perhaps make a slight change in the drafting of the Drafting Committee’s text in order to meet his point. My suggestion is that this text should be changed so as to read as follows:

“Without any adverse distinction founded on such considerations as sex, race, religion or political opinions.”

That would be a far better text so far as the English is concerned than the original text proposed by the Drafting Committee which seems to us, in English, to be a thoroughly bad text. To go back to the original Article II would also be retrograde because there have been a good many discussions since that took place. I therefore venture to recommend that amended text to the Conference, and would ask whether it meets the view of the Delegate for Afghanistan.

Mr. Morosov (Union of Soviet Socialist Republics): We are in favour of the text proposed by the Drafting Committee, as it provides the most effective safeguards with regard to the provisions in the Chapter of the Convention commencing with Article II; we also agree with the views expressed by the Mexican Delegate.

On the other hand, I should like to point out that the English and French texts of the proposal made by the Drafting Committee require coordination; the word “sexe” has been omitted from the French text, and the word “nationality” from the English. The idea of nationality is of special importance in this connection; and this is why I think it ought to figure in the English text, irrespective of the proposal submitted by the United Kingdom Delegation. In short, the Soviet Delegation is in favour of the Drafting Committee’s text, subject to the insertion of “sexe” in the French text and “nationality” in the English.

Colonel Du Pasquier (Switzerland), Rapporteur: I should like to point out, contrary to what has just been said, that there are no translation errors in the official texts submitted to the Conference by the Committees. Article II, as it resulted from the discussions in the Drafting Committee and in Committee III, contains no reference, in either the French or English texts, to “sex”, and quite rightly, since Article 25 provides that persons of the feminine sex shall be treated with special consideration. On the other hand it does include a reference to nationality, in conformity with the French text. Confusion has arisen because, in the Report of the Drafting Committee, the word “sex” has been inserted into the English text, for some unknown reason, and the word “nationality” omitted. It was on this error that the United Kingdom Delegate based his remarks just now, and no doubt caused him to make his own mistake. But the official text, to which I have just referred, is the only one which should be taken into account.

Mr. Quentin-Baxter (New Zealand): It is certainly true that those of us, or some of us, who have relied upon the English text did not realize that the word “nationalité” appeared in the French text. On that point my Delegation does feel that it would be wrong to introduce the word “nationality” into this list, because inevitably if you are fighting a war and if it is nations that are fighting that war there will be some sort of discrimination founded upon nationality. The Conference will remember that we have a new Article, 40A Civilians, which specifically safeguards the position in regard to measures of control and says that they shall not be based solely on nationality. That is a reasonable suggestion, but to go further and to say that there shall be no distinction founded on nationality seems to us to be an impossible provision which runs entirely counter to what is written in the rest of the Convention.

With that one exception we do consider that the Drafting Committee’s Report and their new text are very much better than the text of Committee III. My Delegation agrees entirely with the views expressed by the Delegate for Denmark and with the suggestion of the Delegate for the United Kingdom, and we would like to say further that we think the biggest thing to be said in favour of the Drafting Committee’s text is that it avoids these words “adverse discrimination on alleged considerations”. The only inference that can be drawn from that text is that the prohibition extends only to alleged considerations, and that if the considerations are real ones discrimination is permissible.

We feel, therefore, that the Drafting Committee’s text is a very much better one. We would like very much to be able to vote for it, and we hope that we may have some way of clarifying the position to see whether the word “nationality” should be there or not, and if it is not we shall be very pleased to support the Drafting Committee’s text.

Colonel Du Pasquier (Switzerland) Rapporteur: If the intervention to which we have just been listening is to be taken as a proposal to delete the word “...nationality...” from Article II, then I must make the following observation: Article II only relates to Part II, and consequently to a series of obligations of a quite general nature,
such as protection of hospitals, protection of children, etc. It is not necessary to draw any distinction as regards nationality.

Part III, on the other hand, lays down provisions with which you are already acquainted; it starts with Article 25, which also in its third paragraph refers to discrimination:

"...without any adverse discrimination on alleged considerations, in particular, of race, religious beliefs or political opinions".

The term "nationality" very properly does not appear. The observation made by the Delegate for New Zealand would be well-founded if the question turned on a basic Article of Part III; but it would appear to be inaccurate with regard to a provision of Part II.

Mr. COH (Denmark): I have already addressed the Meeting, but I should like to be allowed to speak once more on this Article in my capacity as a member of the Drafting Committee.

The President: I call upon the Delegate of Denmark.

Mr. COH (Denmark): I would like to point out that the word "nationality" has perhaps not the meaning attributed to it by the Delegate of New Zealand. It goes without saying that the enumeration of the various categories given here could not imply the elimination of all distinctions between one man and another. Thus, in the case with which we are now dealing, the term "nationality" in this context does not imply the elimination of any differences between the nationals of the country, on the one hand, and enemy aliens, on the other; that goes without saying. The term must be taken to mean nationality in the same circumstances. In other words, what is meant is that discrimination cannot be made simply on the basis of difference of nationality; but this does not mean that no difference is to be made between the nationals of a country and enemy aliens.

I think that this statement may make clearer the meaning of the text proposed by the Drafting Committee, and may make its acceptance easier.

Mr. Quentin-Baxter (New Zealand): I am exceedingly sorry to speak again on this point but there are two things I should like to say. In the first place, I am indebted to the Rapporteur and to the Delegate of Denmark for replying to my remarks about the word "nationality", and on more mature consideration, agree that there is no possible objection to the word "nationality" appearing in this text. The second point is this: that I made some remarks based on the presence of the word "alleged". That word does appear in the text adopted by Committee III as stated in the Drafting Committee’s proposal, but in the actual text adopted by Committee III the word does not appear, so I think that is one point we should be quite clear about before we go much further. I gather that the Drafting Committee text is wrong in quoting the Committee III text as having the word "alleged" in it.

Mr. BAMMATE (Afghanistan): I should like to make a statement which I think may lead us to a solution which could be accepted unanimously. I have just had a consultation with the Delegations of the United Kingdom and of the Union of Soviet Socialist Republics. Both of them approve the present text and my Delegation is in full agreement with them. I propose to read it to you in French and then in English, and I hope that the Meeting will find no difficulty in accepting it. In French it reads as follows:

"...sans aucune distinction de caractère défavorable, fondée notamment sur des considérations de race, de nationalité, de religion ou d’opinions politiques...”.

and in English:

"...without any adverse distinction founded in particular on such considerations as race, nationality, religion, or political opinions...”.

The President: A new text which, it appears, has met with the approval of several delegations is now submitted to you. It has just been read to the Meeting. Has anyone any objection to it? If not, we could vote on it. The Secretary will now proceed to read the Article as a whole. (The Article was read).

Mr. BAMMATE (Afghanistan): I beg your pardon, but in the reading of the Article which we have just listened to, I did not hear the word “adverse” which appears in the Draft proposed by us. On the other hand, the Delegations of the United Kingdom and of the Union of Soviet Socialist Republics might be prepared to delete the word “fondé” which seems useless in the French text. The text would thus read: "...sans aucune distinction de caractère défavorable...”.

The President: This method of submitting texts which are afterwards subject to alteration seems to me undesirable. I propose that we should wait until the text is distributed after its final re-wording. We could then vote on the draft tomorrow. (Agreed).
Articles 12 and 12A

The above-mentioned Articles were adopted.

Article 13

The President: The Delegation of Italy has submitted an amendment.

Mr. Maresca (Italy): Committee III was quite justified in wishing to retain Article 13, in the Civilians Convention, among the provisions of Part II, in other words among those intended to protect war victims, regardless of their nationality or the territory in which they find themselves, or the conditions under which they are suffering hardships due to war. This is a rule sanctioned by international law, an idea which has always been accepted by the human conscience quite apart from any international laws. This Article also figures in the Wounded and Sick, and Maritime Warfare Conventions.

The authors of the text in the Civilians Convention were careful to adopt a more flexible, unpretentious and cautious wording. This is why the Italian Delegation ventures to suggest that the words "as far as military considerations allow" should be deleted from the second paragraph, since the Italian Delegation considers that these words are both inappropriate and dangerous.

The rule we are now considering in connection with Article 13 lays down a fundamental principle, recalling the good Samaritan's action in helping a wounded man despite the urgency of his journey. This is one of the fundamental principles of human solidarity. If it neglects these principles, mankind is doomed to return to depths of barbarism. This is why we consider that the words "as far as military considerations allow" are quite inappropriate, and even dangerous. All of you here who have had the honour of commanding military units in war are well aware how many and varied military necessities can be: retreat, medical supplies, the establishment of camps, etc., all of which constitute military necessities which may delay aid to the sick and wounded or to civilians. These words are dangerous for other reasons, because they tend to diminish the force of the stipulation imposing the duty to help the sick and the wounded, which should not be hesitating or timid. These words are dangerous for yet another reason; if they are retained, the opening provisions of the Convention will provide for limitations; but our Convention should not open with limitations, but with a positive affirmation.

Mr. Gardner (United Kingdom): This Article has been likened to an article of the Wounded and Sick and Maritime Conventions, but there is one important fundamental difference between those Conventions and this Convention. Those Conventions deal with the conduct of armed forces which are under the command of Commanders-in-Chief and are under full discipline and control, and the searches for wounded and sick referred to in them will be carried out by parties belonging to those armies who are under the control of the Commanders-in-Chief. This Convention deals with facilities to be given to civilians and I ask the Conference to visualize for a moment a battle going on in a town and the mayor or prefect of that town coming to the commander of the forces and saying: "You are bound to allow me to send out parties to search for wounded and sick and collect them." No party can go out in such a battle area without getting knowledge of the military posts which are occupied in that area and will any Commander-in-Chief, or any commander, be in a position to allow civilians not part of his forces to go wandering into the battle area seeing his dispositions and making all kinds of use of the information they get?

That is the practical reason why the United Kingdom Delegation suggests that these particular words are essential in a civilians convention. They do not appear in the other Conventions because in fact they are there, since the whole of the search operations are carried out by troops under the command of the commanders in the field and they will be carried out in accordance with military exigencies. Here you are dealing with parties not under the control of the commanders in the battle area concerned and therefore it is necessary to specify that all these things so far as civilian parties are concerned must be subject to military exigencies. I ask the Conference to take a realistic view and maintain the text of Committee III.

The amendment of the Italian Delegation is rejected by 26 votes to 12, with 6 abstentions.

Article 13 as a whole was adopted by 47 votes nem. con., with 1 abstention.

Article 14

The President: An amendment has been submitted by the Indian Delegation. The amendment proposes to substitute the word "religions" for the word "denominations" in this Article.

Mr. Haksar (India): I do not think it is really necessary to speak on this, but I might add that if one looks at the first paragraph of Article 50B the object of the amendment will be obvious, if it is not already clear.
The amendment submitted by the Indian Delegation was adopted by 30 votes nem. con., with 7 abstentions.

Article 14 as a whole was unanimously adopted by 43 votes.

**Article 15**

The President: Several amendments have been submitted, the first by the Canadian Delegation, the second by the Burmese Delegation, the third by the Delegations of the United States of America, the United Kingdom and Pakistan (see Annex No. 214), the fourth by the Delegations of Argentine, Belgium, Denmark, Italy, Luxemburg, Uruguay and Venezuela (see Annex No. 213).

The Canadian amendment is to change "shall be marked" to "may be marked".

The amendment of the Burmese Delegation read as follows: "delete 'the emblem provided for in Article... of the 1949 Geneva Convention for the Relief... in the field' and insert 'a red circle on a white back ground.'"

General Oung (Burma): I regret to have to bring this proposal before you at such a late stage, but I believe much discussion took place with regard to this subject at Stockholm—as much as that for a universal emblem for the armed forces—and also we have had plenty of time to study the "Remarks and Proposals" submitted by the I.C.R.C. and in which special recommendations are given on page 73 of the English version.

Once again it has been left to me to take up another subject which is open to misunderstanding. If, in the process of my discourse, I create any offence or misunderstanding I hope you will overlook it as it may not only be owing to my inexperience at this type of diplomatic conference, but also to my enthusiasm to secure everlasting understanding and goodwill between the various races and ideologies; that is to restore the real universal brotherhood and peace which underlies our endeavours in this Conference.

With reference to my amendment, I need not go into any details as I am sure you must be as tired of the subject as I am myself. I have only three points to make to support my amendment, and I invite criticism of those points.

The first is to prevent the abuses of the emblem designed to protect the wounded and sick and the medical personnel of our armed forces. In support of this point it will only be necessary to remind you that even without extension of the military emblem legislation is necessary to prevent misuses. With the extension of the military emblem to civilian personnel there will be many more cases of misuse and more difficult legislation. I will quote to you brief extracts from page 72 of the I.C.R.C. booklet, "Remarks and Proposals", English version. It speaks about the extension of the military emblem to civilians:

"This extension seems dangerous, since any widening of the applicability of the red cross emblem will inevitably entail a far greater risk of misuse and violation".

I will not read any further than that, but if you will read paragraph 2 you will find some basis for my argument.

If you will also refer to the United Kingdom amendment which is before you, you will find the objective underlying the amendment to safeguard against abuse. If you will look at the United Kingdom amendment you will find that it proposes these additional safeguards. I submit to you, Sir, that these additional safeguards are not sufficient until we adopt a single emblem as a distinctive civilian emblem.

My next point I put forward in order to avoid confusion. There is going to be, as you know, much more use made of the emblem if we extend it to the civilians. More civilians are involved in modern wars, and in our Civilians Convention transports are to be provided for the wounded and sick civilians, for the infirm and for maternity cases. You can imagine the confusion which will arise with all the number of transports which we have to provide, and you can imagine the greater responsibilities—responsibilities which I do not think you can take on in war time.

My third point is that of the desirability of a universal emblem, a universal symbol for protected civilian activities. I need not go into any detail about this, but I would like just to tell you that in Articles 15, 18 and 19, on which I am proposing this amendment, you will find reference to only one emblem. If that were so, my third point would not arise, but unfortunately—I say unfortunately—this is not so. When it refers to one emblem it means two others; that is three, and I assure you that there are going to be many more emblems than three, whether this Conference likes it or not; so I base my third argument on this desirability of a universal emblem. We have the opportunity in our hands now to adopt one such universal emblem, a distinctive emblem, so I put it to the Conference to consider the acceptance of my amendment. I hope it will receive your approval, and I would like to quote again this little edition on which I base all my work—my bible, page 73, "Remarks and Proposals", the last paragraph:

"If a protective emblem for all civilian medical personnel is desired, it would be better to examine the possibility of using a special device entirely distinct from the 'red cross emblem'."
I therefore appeal to you for a practical display of that tolerance, that spirit of goodwill and of compromise, which you have advocated at this Conference.

The President: I propose to adjourn our debate at this point. The next meeting will be held this afternoon at 3 p.m.

The meeting rose at 12.55 p.m.

TWENTY-FIFTH MEETING

Tuesday 2 August 1949, 3 p.m.

President: Mr. Max Petitpierre, President of the Conference

CIVILIANS CONVENTION

Article 15 (continued)

The President: Several amendments have been submitted. The Delegate for Burma has already had an opportunity of speaking to set forth his Delegation’s amendment; I suggest that we should now finish the discussion which we began. We can then put this amendment to the vote before passing on to the others. (Agreed).

Does anyone else wish to speak on the amendment submitted by the Delegation of Burma?

As this is not the case, I put it to the vote. The amendment submitted by the Delegation of Burma was rejected by 14 votes to 3, with 17 abstentions.

General Oung (Burma): May I give notice that I am bringing this up in the form of a resolution?

The President: We shall therefore wait for the submission of the resolution which has just been announced, and shall see whether it will be possible to consider it.

I now put the other amendments to Article 15 for discussion.

Mr. Najjar (Israel): Our Delegation wishes to make a short statement on the question of the distinctive emblem, which has just been discussed.

Twice, though by a small majority, this Meeting has rejected recognition of the Red Shield of David.

In these circumstances, in order not to retard the work of the Conference, the Israeli Delegation has considered it useless to submit amendments to Articles 15, 18 and 19A of the Civilians Convention (or to Article 6 of Annex I) which define the emblems of this Convention in omitting the Red Shield of David.

The Delegation of Israel is nevertheless desirous of reaffirming that there is a contradiction of principle between the fact of excluding the Red Shield of David and the fact of maintaining simultaneously the Red Cross, the Red Crescent and the Red Lion and Sun, above all at a time when opposition is raised against amendments submitted with the aim of achieving the unification of the distinctive emblems.

Our Delegation also points out that the Red Cross and the Red Crescent, maintained side by side, cannot but symbolize two separate aspects of human civilisation and of religious faith. The coexistence of these two emblems, which is particularly apparent in the Middle East, deprives them of the universal character which, taken separately, one or the other might have had.

The Israeli Delegation has supported all the attempts made here to achieve the unification of the distinctive emblems. These attempts all failed. Others, solemnly announced, have never been put into concrete form.

The considerations put forward by the Delegation of Israel in the course of debates on Articles 31 of the Wounded and Sick Convention and 38 of the Maritime Convention thus retain their full value.

The Delegation of Israel consider it necessary to state that as long as the unification of the distinctive emblems has not been achieved, the