TRANSLATION

COMMISSION OF GOVERNMENT EXPERTS

for the Study of Conventions for the Protection of War Victims.

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Volume I

Revision of the Geneva Convention
and related Treaty Provisions

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I.- Revision of the Geneva Convention of July 27, 1929, for the relief of the Wounded and Sick in Armies in the Field.

HISTORICAL INTRODUCTION

The Geneva Convention of 1864, which constituted an important innovation in international law, was marked however by certain lacunae and imperfections. Within four years after signature, a Conference was held to study its revision, which concluded, on October 20, 1868, with a draft of additional articles; but this was never ratified. Following the recommendation expressed at the First Hague Conference in 1899, the idea of revising the Geneva Conference was again put forward. The Diplomatic Conference of 1906 later adopted a revised text which, compared to that of 1864, presented a fundamental revision and important developments.

After the First World War, it was apparent that the Geneva Convention must be adapted to modern war conditions. During the Diplomatic Conference of 1929, held in Geneva, another revision, far less extensive than in the first instance, led to its present shape.

The International Committee of the Red Cross, in pursuance of their time-honoured mandates issued by the International Red Cross Conferences, continued as formerly to study all the aspects of the Geneva Convention which required amendment. Furthermore, efforts were made by the Committee to induce an increasing number of states to adhere to this fundamental treaty, in its most recent version.

A new revised text of the Geneva Convention was drafted in 1937, following a meeting of international experts called by the Committee. This draft was first submitted to the Sixteenth International Red Cross Conference (London 1938), and was placed on the agenda of the Diplomatic Conference that the Swiss Federal Authorities had called for the beginning of 1940, but which was adjourned owing to the outbreak of the Second World War.

At the close of hostilities, the International Committee of the Red Cross planned to resume their work on the 1937 draft, with the addition of experience gained during six years of unprecedented warfare. To this effect, a Preliminary Conference of National Red Cross Societies was held on July 26, 1946, to which the latter brought the outcome of their experiences acquired during the late war. The result of the work accomplished by this Conference is included in the present document.
1. Application of the Convention to all cases of armed conflict

The Commission held in 1937, followed by the Sixteenth International Red Cross Conference, unanimously agreed that the Convention should be applicable to all cases of armed conflict between States, even if no declaration of war has been made, and that the humanitarian principles contained therein should be respected in all circumstances, even should the Convention not be legally applicable. The 1937 Commission had recommended the introduction of this principle in the final Act of the future Diplomatic Conference.

Further, the International Committee of the Red Cross suggested at the Preliminary Conference of National Red Cross Societies of 1946, that the Convention should embody not only the above principle, but also the idea that, in case of civil war within any particular State, the parties concerned should be invited to declare their readiness to apply the principles of the Convention, subject to reciprocity being observed. To this effect, the Conference adopted the following wording: "The present Convention is applicable between the High Contracting Parties from the moment hostilities have actually broken out, even if no declaration of war has been made and whatever the form such armed intervention may take".

"In the case of armed conflict within the borders of a State, the Convention shall also be applied by each of the adverse parties unless one of them announces expressly its intention to the contrary."

By providing that in case of armed conflict within the borders of a State the Convention be applied by each of the parties, unless one of them announces expressly its intention to the contrary, it is anticipated that no State or insurgent body will venture to declare to the civilised world their intention to disregard the principles of humanity, whose value and vital importance are universally admitted.

2. Extension of the Convention to Wounded and Sick Civilians

At the present time the Convention applies only to Members of the Armed Forces and other personnel officially attached to such Forces. During the 1937 Commission, several experts present suggested that the Convention should be expressly extended to Wounded and Sick Civilians. They pointed out that, taking into special account the development of aerial warfare, the whole of a belligerent territory is exposed to hostile action, and not only
the combat zone, and that civilians are thus as much liable to sustain casualties as army personnel.

Despite a strong current of opinion in favour of this argument, the majority of the 1937 Commission, and in turn the Sixteenth International Red Cross Conference, decided not to endorse this suggestion, on the grounds that it would outstep the specific and traditional domain of the Convention. It was considered preferable to deal with Wounded and Sick Civilians by means of a special Convention.

Two new stipulations were, however, included in the Geneva Convention by the 1937 Commission, one providing that the protection due to medical units and establishments, their staff and equipment shall not cease when their activities are extended to the civilian population, the other that Voluntary Aid Societies may be allowed to use the distinctive emblem in the execution during hostilities of their welfare work in favour of wounded and sick civilians.

The experience acquired during the Second World War has convinced the International Committee of the Red Cross of the necessity of thoroughly revising the question of the possible extension of the Geneva Convention to Wounded and Sick Civilians, in order to seek at once means for their better protection. The Committee considered indispensable that this essential question be solved after weighing all arguments for and against such a course, in view of the grave responsibilities incurred.

To this effect, the International Committee recommended one of the three following solutions -

a) Special Convention.- Instead of extending the Geneva Convention to Wounded and Sick Civilians during war time, the question would be ruled by a separate Convention, i.e. by a separate chapter on the subject, to be included in the future Convention concerning civilians of enemy nationality (Tokio Draft). It might, however, be theoretically and practically inconvenient de facto to extend the Geneva Convention by reference thereto in another treaty, instead of deliberately amending the Geneva Convention itself. It is a fact that modern warfare increases the liability of civilians and military personnel sustaining casualties in the same places and thus being cared for together.

b) Full Extension.- The Geneva Convention would be extended so as to give full protection to Wounded and Sick Civilians in war time, and include the protection of civilian hospitals. The title of the Convention would then have to be modified, and could be amended thus, "Geneva Convention for the
relief of Wounded and Sick in Time of War*. In this case a certain risk would obviously occur of increased abuse or non-application of the Convention, in proportion to its enlarged field of activity, and thus of compromising the prestige which attaches to the Convention and its emblem.

(c) Partial Extension.—On the whole, the Geneva Convention would be expressly extended to Civilians wounded as the result of acts of war, to the medical personnel which gives them assistance and to the equipment employed. A military medical establishment would not be deprived of protection if its inmates included wounded, or even sick civilians.

On the other hand, the Geneva Convention would not be extended to specifically civilian hospitals, utilised for sick civilians only. The protection of such establishments would come under a special ruling in a separate Convention, and the buildings would bear other markings than the Red Cross.

The Preliminary Conference of National Red Cross Societies of 1946 recognized that it was absolutely necessary henceforth to ensure the adequate protection of civilian war victims; it therefore recommended that the principles of the Geneva Convention should be extended to Wounded and Sick Civilians as also to the staff, buildings and equipment at their service. Further, as will be seen in the chapter concerning Civilian Hospitals, it was considered that these buildings should be protected, in the same manner as military hospitals, by the Geneva Convention and that, to this effect, they should be authorised to display the red cross on a white ground. The Conference however, did not prejudice the number or form of the Convention, or Conventions, to be eventually set up to regulate the status of Military and Civilian War Victims.

Chapter I.—Wounded and Sick (1)

Article 1.

"Members of the Forces and other persons officially attached to the armed forces who are wounded or sick shall be respected and protected in all circumstances; they shall be treated with humanity and cared for medically, without distinction of nationality, by the belligerent in whose power they may be".

(1) The articles quoted are those of the Geneva Convention of 1929.
"Nevertheless, the belligerent who is compelled to abandon wounded or sick to the enemy, shall, as far as military exigencies permit, leave with them a portion of his medical personnel and material to help with their treatment."

Commentary
Re Section 1. As the result of experience gained during the Second World War, it would doubtless be advisable to define (both in the Geneva Convention and in the Convention relative to the Treatment of Prisoners of War) more precisely the expression "other persons officially attached". This has frequently been a cause of dispute between belligerents as to the military status of certain persons or classes of persons (customs officials, for instance). The question would, however, be of lesser importance if the Geneva Convention was extended to wounded and sick civilians.

On the other hand, the Preliminary Conference of National Red Cross Societies was in agreement with the International Committee as to the advisability of replacing the words "without distinction of nationality" by "without any distinction whatever, particularly of nationality, race, sex, religion or political opinion".

Article 2.

"Except as regards the treatment to be provided for them in virtue of the preceding article, the wounded and sick of an army who fall into the hands of an enemy shall be prisoners of war, and the general provisions of international law concerning prisoners of war shall be applicable to them.

Belligerents shall, however, be free to prescribe, for the benefit of wounded or sick prisoners, such arrangements as they may think fit beyond the limits of the existing obligations."

Article 3.

"After each engagement the occupant of the field of battle shall take measures to search for the wounded and dead, and to protect them against pillage and maltreatment.

Whenever circumstances permit, a local armistice or a suspension of fire shall be arranged to permit the removal of the wounded remaining between the lines."
Commentary.

Re Section 1. In order to take into consideration the conditions of modern warfare, Section 1 of Article 3 must be amended. The Preliminary Conference proposed the following amendment: "Each belligerent shall without delay take measures to search for the wounded and dead, and to protect them against pillage and maltreatment."

During the meeting of the Commission of Experts in 1937, the Bulgarian Red Cross proposed the adjunction to Article 3 of a stipulation that belligerents should grant passage through their lines to the necessary medical staff and equipment bound for a besieged or blockaded area, and allow the evacuation of the wounded and sick. This question was the subject of several resolutions passed by International Red Cross Conferences (Resolutions XII of 1921, IX of 1928 and XXIV of 1930).

The 1937 Commission preferred not to modify the Convention on this point, on the grounds that this was a possible case for an ad hoc agreement between belligerents, according to Article 2, Section 2.

However, the International Committee pointed out that during the Second World War certain besieged towns or areas held out for months and even years. In several cases (islands and "pockets" occupied by the German forces on the French Atlantic coast and in the Channel, for instance) the delegates of the International Committee were allowed to enter these besieged areas, to bring relief and to render useful assistance.

In obedience to this principle, the Preliminary Conference recommended the adoption of a new Section 3 of Article 3, reading as follows: "Whenever circumstances permit, belligerents shall grant passage through their lines to the necessary medical staff and equipment bound for a besieged or encircled zone, and shall allow the evacuation of the wounded and sick."

This provision should clearly apply also to the delegates of the International Committee, who should be allowed free passage to besieged or encircled zones.

Article 4.

"Belligerents shall communicate to each other reciprocally, as soon as possible, the names of the wounded, sick and dead, collected or discovered, together with any indications which may assist in their identification.

They shall establish and transmit to each other the certificates of death."
They shall likewise collect and transmit to each other all articles of a personal nature found on the field of battle or on the dead, especially one half of their identity discs, the other half to remain attached to the body.

They shall ensure that the burial or cremation of the dead is preceded by a careful, and if possible medical, examination of the bodies, with a view to confirming death, establishing identity and enabling a report to be made.

They shall further ensure that the dead are honourably interred, that their graves are respected and marked so that they may always be found.

To this end, at the commencement of hostilities, they shall exchange the list of graves and of dead in their cemeteries and elsewhere."

Commentary

Re Section 1. Whereas the Geneva Convention now provides for the exchange of information concerning wounded, sick and dead, it does not indicate what authorities this exchange shall take place. As regards wounded and sick in enemy hands, information is forwarded through official Prisoners of War Information Bureaux, set up in pursuance of Art. 77 of the Convention on Prisoners of War, through the intermediary of the Central Agency, such wounded and sick being Prisoners of War. The same applies to prisoners of war deceased during captivity. On the other hand, during the Second World War, information concerning casualties on the battle-field was, in fact, conveyed equally by the Official Bureaux and by the Central Agency.

The Preliminary Conference of Red Cross Societies of 1946 recommended that the principle of the centralisation of information should be laid down, and the following possible wording/proposed: "Belligerents shall communicate to each other reciprocally, as soon as possible, through the official Prisoners of War Information Bureaux, set up by Art. 77 of the Convention of 1929 relative to the Treatment of Prisoners of War, and through the Central Agency for Prisoners of War the names of the wounded, sick and deceased, collected or discovered, together with any indications which may assist in their identification."

With regard to identification proper, the International Committee of the Red Cross has pointed out certain difficulties which arose during the recent World War in connection with the identification of the dead. It stressed the fact that military medical experts should decide whether other means of identification (for instance, a kind of Bertillon system, or the
measurement or even radiography of skulls of army personnel) should be adopted. The Preliminary Conference of Red Cross Societies considered, for its part, that it was not competent to deal with the question, and that measures to this effect should be eventually taken by the Powers concerned, independently of the Convention which already contains general provisions to this effect. The Convention provides, firstly, that the belligerents shall exchange all data to assist in the identification of the dead and, secondly, that burial or cremation shall be preceded by a careful and, if possible, medical examination of the bodies.

Re Section 2. The present text of the Convention does not stipulate the form of death certificate to be established. In fact, belligerents adopted various forms for this purpose, but some utilised the unified and detailed form set out by the International Committee, which facilitated the communication to the next of kin of numerous details attending the circumstances of decease.

Without wishing to overload the Convention with a wealth of detail, the International Committee, seconded by the National Red Cross Societies, proposed to add at the close of Section 2 the words "if possible by means of a unified form."

Re Section 3. In the majority of cases, personal belongings found on dead bodies or on the battle-field were conveyed from one belligerent to another through the Central Agency. The same remark may be made here as regards Section 1, concerning death certificates. A provision could be added to the Convention relative to Prisoners of War, to the effect that personal belongings shall be collected by the official Information Bureaux and forwarded to the Power concerned through the Central Agency.

The Preliminary Conference of National Red Cross Societies considered that such a practice - which was in fact generally followed during the recent war - should be adopted. The question was, however, left to the appreciation of the Governments concerned.

Re Section 5. During the recent war, certain belligerents requested the enemy to inter or cremate their nationals according to the rites of the religion to which they belonged.

In view of the fact that the rites of certain religions or sects were sometimes difficult to observe, the International Committee and the Preliminary Conference of National Red Cross Societies recommended the insertion of such a stipulation in the Convention, preceded by the words: "if possible."
Section 5 would therefore read as follows: "They shall further ensure that the dead are honourably interred, if possible according to the rites of the religion to which they belonged, and that their graves are respected, so that they may always be found."

Re Section 7. It may be recorded, although this practice does not apparently need to be expressly stipulated in the Convention, that certain belligerents agreed to exchange, through the International Committee of the Red Cross, photographs of the graves of deceased enemy Service men.

Further, the International Committee of the Red Cross ascertained that lists of graves and of the dead buried had been communicated to the enemy before the close of hostilities. The Preliminary Conference of National Red Cross Societies found such a practice desirable, and it was proposed to replace the words "after the cessation of hostilities" by "as soon as circumstances allow and at latest after the cessation of hostilities."

Article 5.

"The military authorities may appeal to the charitable zeal of the inhabitants to collect and afford medical assistance, under their direction, to the wounded or sick of armies, and may accord to persons who have responded to this appeal special protection and certain facilities."

Commentary.

It was pointed out by the International Committee that there seemed to be a gap in the present wording of Article 5, which provides that military authorities who have appealed to inhabitants to help in nursing the wounded and sick, shall afford the said inhabitants special protection and certain facilities. It does not stipulate, however, that other military authorities, particularly the enemy, shall act likewise. There can be no doubt that the spirit of the Geneva Convention demands that this Article shall be given the widest interpretation, a fact which is proved by the wording of the Article in the Geneva Convention of August 22nd, 1864 (Art. 5): "The inhabitants of the country who afford assistance to the wounded shall be respected and remain free. The generals of the belligerent Powers shall make it their duty to advise the inhabitants of the appeal made to their humanity and of the neutrality resulting thereby. Every wounded person collected and nursed in a house shall serve as its safeguard. An inhabitant
who has given shelter to the wounded shall not be required to billet troops and shall be partially exempted from any war contributions which may be levied."

The Preliminary Conference of National Red Cross Societies of 1946 further expressed the wish that another Section be added to Article 5, stipulating that inhabitants, even in occupied regions, may not be prohibited from giving spontaneous help to the wounded and sick, on condition that the latter shall not be assisted to elude the possible control of the occupying authority.

The representative of the Belgian Red Cross pointed out that the civilian population should, under all circumstances, be allowed to carry out their humanitarian duty to the wounded of whatever nationality. He recommended the clear embodiment of this principle, since during the Second World War certain inhabitants were prohibited from giving such assistance or, after having given it, had been punished by the occupants, or even by their own authorities. In order to reconcile the demands of human kindness with military requirements, it should be stipulated that no inhabitants shall assist the said wounded and sick to elude the possible control of the occupying authority. The picking up and care of wounded military personnel, such as parachutists, should not serve as a pretext to assist either tactical manoeuvres or espionage.

Article 5 would therefore be completed as follows:

1) at the close of Section 1 by the phrase "In case of occupation, the enemy belligerent shall grant these persons the same protection and the same facilities."

2) by the addition of a fresh Section: "Inhabitants, even in occupied regions, may not be prohibited from giving spontaneous help to the wounded and sick, on condition that the latter shall not be assisted to elude the possible control of the occupying authority."

It may further be asked whether Article 5 would not be better placed at the close of Chapter III relating to Medical Personnel and their protection, rather than at the end of a chapter which mainly concerns Wounded and Sick. The Preliminary Conference of National Red Cross Societies recommended the first of the above courses.
Chapter 11.- Medical Formations and Establishments.

Article 6.

"Mobile medical formations, that is to say, those which are intended to accompany armies in the field, and the fixed establishments of the medical service, shall be respected and protected by the belligerents."

Commentary

With regard to this article, the question arises as to whether the definition of mobile medical formations as "those which are intended to accompany armies in the field" is not too narrow, or superfluous. It is certain that, in the spirit of the Convention, all units devoted to the care of the wounded and sick shall be protected. It would doubtless suffice to state that: "Fixed establishments and mobile formations of the Medical Service shall be respected and protected by the belligerents."

The Preliminary Conference of National Red Cross Societies considered this amendment of the wording to be desirable.

Article 7.

"The protection to which medical formations and establishments are entitled shall cease if they are made use of to commit acts harmful to the enemy."

Commentary.

The International Committee proposed at the 1937 Commission that acts harmful to the enemy should be defined as follows: "any act committed with the purpose, or having as possible effect to reinforce the military defence, or to impede enemy action, outside the relief to be given exclusively to the wounded and sick". The 1937 Commission decided, however, not to amend the Convention on this point, considering that the definition of an act harmful to the enemy might be dangerous, since it would be incomplete, and might tend to favour and not restrain abuses.

Moreover, the 1937 Commission, while rejecting the idea of extending the domain of the Geneva Convention to Wounded and Sick Civilians, nevertheless decided to insert a clause to the effect that: "The protection due to medical formations and establishments, their staff and equipment, and to hospital transports, shall not cease when their humanitarian activities are extended to the civilian population."
Nine years later, the Preliminary Conference of National Red Cross Societies was of opinion that the principles embodied in the Geneva Convention should be extended to Wounded and Sick Civilians. It recommended, however, to introduce into the Convention the stipulation suggested in 1937 and quoted above, in case Governments should not sanction the extension of the whole of the Convention to Wounded and Sick Civilians.

Article 8.

"The following conditions are not considered to be of such a nature as to deprive a medical formation or establishment of the protection guaranteed by Article 6:

1) that the personnel of the formation or establishment is armed, and that they use the arms in their own defence or in that of the sick and wounded in charge;
2) that in the absence of armed orderlies the formation or establishment is protected by a piquet or by sentries;
3) that small arms and ammunition taken from the wounded and sick, which have not yet been transferred to the proper service, are found in the formation or establishment;
4) that personnel and material of the veterinary service are found in the formation or establishment, without forming an integral part of the same."

Commentary.

The Preliminary Conference of National Red Cross Societies of 1946 recommended the insertion in this Article of the word "particularly" at the end of the first paragraph. Thus, it will be more easily understood that the list of conditions not considered as harmful to the enemy, is not restrictive.

The International Committee also proposed to add to the facts not considered liable to deprive a medical formation or establishment of protection, that the latter is equipped for Air Raid Protection, or that it includes A.R.P. personnel. The Preliminary Conference thought that this provision was obvious, and that there was no need to mention it in the Convention.
Article 9.

"The personnel engaged exclusively in the collection, transport and treatment of the wounded and sick, and in the administration of medical formations and establishments, and chaplains attached to armies, shall be respected and protected under all circumstances. If they fall into the hands of the enemy they shall not be treated as prisoners of war.

Soldiers specially trained to be employed, in case of necessity, as auxiliary nurses or stretcher-bearers for the collection, transport and treatment of the wounded and sick, and furnished with a proof of identity, shall enjoy the same treatment as the permanent medical personnel if they are taken prisoners while carrying out these functions."

Commentary

The Commission of 1937 considered that Section 1 had a general scope, and that it applied both to civilian and military personnel. It did not think necessary to specify this principle in the text. This opinion is however apparently erroneous, as the whole structure of the Geneva Convention goes to show that military personnel alone, i.e. personnel attached to medical formations, is covered in this case. (Proof of this will be found by referring to Article 21 concerning the emblem).

Had it been intended that civilian hospital staff, temporarily called upon to attend wounded military personnel, should benefit by the same protection as Military Medical Personnel, such ruling would constitute an important extension of the Geneva Convention and would necessitate fresh additions to the text. The stipulation would be corollary to the recommendation of the 1937 Commission (see Article 7), which proposed that the protection due to Military Medical Personnel shall not cease when their activities are extended to the civilian population.

Such extension will become naturally effective if the Geneva Convention is applied to wounded and sick civilians. Should the domain of the Convention included wounded military personnel only, the question of the protection due to civilian personnel attending military wounded or sick must nevertheless be closely examined and given a positive solution, in view of the evolution of modern warfare, which is increasingly the reason why military personnel and civilians are wounded and cared for in the same areas.

In order to complete the definition of medical personnel as given in Art. 9, Sec. 1, the Preliminary Conference of National Red Cross Societies proposed to modify the wording in such a way that the personnel engaged in
the search for wounded and sick should enjoy the same protection as those employed for the collection, transport and treatment of the said wounded and sick, and for the administration of medical units. The following wording was recommended: "The personnel engaged exclusive by in the search, the collection, the transport and the treatment of wounded and sick..... "

The same addition should obviously be made to Sec. 2 of Art. 9 - "Members of Forces specially trained to be employed, in case of necessity, as auxiliary nurses or stretcher-bearers for the search, the transport and the treatment of wounded and sick ...".

On the other hand, with regard to Sec. 1 of Art. 9, the question might arise (it was in fact raised by the Belgian Red Cross during the Preliminary Conference, whether the word "exclusively" should not be deleted, also whether Section 2 should not also be expunged. This course would avoid the distinction now made in the Convention between permanent medical personnel, exclusively attached to the Medical Corps, and temporary medical personnel, enrolled in units set up in certain countries, of men specially trained for employment, in case of need, as auxiliary nurses or stretcher-bearers. The delegate of the Belgian Red Cross observed that while it was desirable to have trained personnel available at short notice, the risk of abuses which might occur under the present wording of Art. 9, Sect. 2 should be avoided. The Preliminary Conference finally recommended the maintenance of the word "exclusively" in this paragraph, and the distinction now established by Section 2.

Differences of opinion arose during the second World War with regard to the categories of persons who should benefit by the protection of the Geneva Convention (for instance, pharmacists, dentists, convoyers, administrative officers of medical formations, and especially paymasters). It would therefore be advisable to study the definition of medical personnel laid down by Article 9, and decide whether it is sufficiently explicit, or whether it should be more precisely worded.

Further, considerable difficulty arose from the fact that large numbers of medical personnel were not in possession of the certificates of identity prescribed by the Geneva Convention. (See commentary on Article 23). The Preliminary Conference recommended that certificates of identity held by both temporary and permanent medical personnel should be of uniform type, so that the former, if captured while carrying out the same functions as permanent personnel, may enjoy the benefit of the Convention. By this recommendation, however, the Preliminary Conference had no intention of denying that identity documents issued to temporary members should be marked "Temporary Personnel".
Another question to be considered, and which was discussed during the Preliminary Conference is the amending of Article 9, so that medical personnel engaged in the prevention of disease should enjoy the same protection as the personnel engaged in the care of the sick and wounded. It was pointed out, in this respect, that in all belligerent armies the medical personnel includes staff whose task is the prevention of disease. Such personnel are called upon, especially when there is the danger of an epidemic, to vaccinate, to administer certain drugs, to ensure the proper feeding and hygiene of the troops. This question should be given consideration without contemplating the protection of all army personnel who may eventually be called upon to safeguard the health of the troops. The International Committee would be glad to know the opinion of the Commission of Experts on this point.

Article 10.

"The personnel of Voluntary Aid Societies, duly recognised and authorised by their Government, who may be employed on the same duties as those of the personnel mentioned in the first paragraph of Article 9, are placed on the same footing as the personnel contemplated in that paragraph, provided that the personnel of such societies are subject to military law and regulations.

Each High Contracting Party shall notify to the other, either in time of peace or at the commencement of or during the course of hostilities, but in any case before actually employing them, the names of the societies which it has authorised, under its responsibility, to render assistance to the regular medical service of its armed forces."

Commentary.

The International Committee suggested to the Commission of 1937 to replace, at the close of Sec. 1, the words "subject to military laws and regulations" by the phrase "subject to military laws and discipline". In 1937, however, the Commission preferred to retain the present text, on the grounds that (1) there are far more military regulations than military laws, and (2) the idea of regulation is quite different to that of military discipline, to which, in any case, Voluntary Aid Societies cannot be wholly subjected.

During the Preliminary Conference, the International Committee raised the point that the Geneva Convention makes no mention (except in Article 24) of Red Cross Societies as such, but refers only to Voluntary
Aid Societies. The Red Cross Societies are, however, Voluntary Aid Societies par excellence, and form almost the total of such societies recognised in pursuance of Article 10. The International Committee therefore recommended the abolition of the present ambiguity, and the following wording was proposed to replace Section 1 of Art. 10:

"The personnel of National Red Cross (Red Crescent, Red Lion and Sun) Societies, duly recognized by their respective Governments, are placed on the same footing as the personnel contemplated in Section 1 of Article 9, provided that they are employed in the same functions and be subject to the same military laws and regulations."

The Preliminary Conference made no decision regarding the omission or maintenance of the mention of other Voluntary Aid Societies, side by side with National Red Cross Societies; it was considered that this question should be dealt with by the Governments concerned. Such Aid Societies, although not attached to the Red Cross organization, are recognized by their respective Governments as auxiliary members of the Army Medical Services. There are about ten such societies, of which the most important are the 'Orders of Malta, of St. John of Jerusalem, of St. John and St. George', as named in the final Act of the Diplomatic Conference of 1929. It remains for the Governments concerned to decide whether the present text (which does not name the other Aid Societies) is sufficient, if the mention made in 1929 should be upheld, or if other Voluntary Aid Societies should be recognized not only by their respective Governments but also by the National Red Cross Societies.

Article 11.

"A recognized society of a neutral country can only afford the assistance of its medical personnel and formations to a belligerent with the previous consent of its own Government and the authorization of the belligerent concerned.

The belligerent who accepts such assistance is bound to notify the enemy thereof before making any use of it."

Commentary.

The Commission of 1937 adopted a new Section to be inserted as Sec. 2 of Art. 11. Following a proposal of the Netherlands Red Cross, the Commission recognized the advantage of the neutral State's obligation to notify the adverse party direct of the proposed assistance to the enemy.
belligerent, in addition to notification by the belligerent benefiting by such assistance. The purpose of this adjunction was merely to unify a procedure which had led to some confusion, and to establish the responsibility assumed by a neutral State when lending assistance.

A new Section 4 to Art. 11, stipulating that in no circumstances should the loan of medical formations and personnel by a neutral State to a belligerent be considered as interference in the conflict, was also proposed in 1937 by the Netherlands Red Cross. The latter observed that whereas this stipulation would appear on principle to be obvious, the loan of assistance had often been misunderstood on past occasions, which proved the necessity for its precise definition in the Convention.

In 1946, the International Committee, supported by the Preliminary Conference, proposed the adoption of two amendments suggested by the 1937 Commission. Article 11 would now read as follows: "A recognized society of a neutral country can only afford the assistance of its medical personnel and formations to a belligerent with the previous consent of its own Government and the authorization of the belligerent concerned.

The neutral Government shall notify this consent to the adverse party of the State which accepts the assistance mentioned in the preceding paragraph.

The belligerent who accepts such assistance is bound to notify the enemy thereof before profiting by it.

Under no circumstances shall such assistance be considered as interference in the conflict."

Lastly, with regard to Article 11, the 1937 Commission gave up the idea of adding a paragraph stipulating that "the rights and obligations involved by the proposed assistance, as far as they are not embodied in the present Convention, are subject to the general principles of neutrality". The Commission also declined to settle the question whether neutral countries might, or might not lend their Medical Services to belligerents, such proceeding being considered too difficult in practice.

**Article 12.**

The persons designated in Articles 9, 10 and 11, may not be retained after they have fallen into the hands of the enemy.

Unless otherwise agreed, they shall be sent back to the belligerent to which they belong as soon as the route for their return shall be open and military considerations permit.
Pending their return, they shall continue to carry out their duties under the direction of the enemy: they shall preferably be engaged in the care of the wounded and sick of the belligerent to which they belong.

On their departure, they shall take with them the effects, instruments, arms and means of transport belonging to them.

Article 13:

Belligerents shall secure to the personnel mentioned in Articles 9, 10 and 11, while in their hands, the same food, the same lodging, the same allowances and the same pay as are granted to the corresponding personnel of their own armed forces.

At the outbreak of hostilities, the belligerents will notify one another of the grades of their respective medical personnel.

Commentary.

In their report the International Committee stated that the principle of the repatriation of members of protected personnel, provided by Article 12, was applied to a small extent only during the Second World War. The reason for this is, firstly that the belligerents, basing their arguments on the words "in the absence of agreements to the contrary" of Sec. 2, and upon Sec. 4 of Article 14, of the 1929 Prisoners of War Convention, agreed to retain in the camps a large proportion of medical orderlies for the care of their prisoner compatriots, and this in the interest of the latter. Thus, for every thousand prisoners, certain States retained two doctors, one dentist, one chaplain and six orderlies. Nevertheless, these were cases where larger numbers were retained; sometimes such men had nothing to do, at other times they were required to perform other work.

The International Committee is therefore of opinion that, for the future, the rules to be followed as regards the detention of Medical Personnel (percentage, criteria, etc.) should be clearly stated.

In the report placed before the Preliminary Conference by the Belgian Red Cross, it was suggested to include in the Geneva Convention the principle that members of the Medical Personnel could be retained for the care of their prisoner compatriots, but that such a course could not free the Detaining Power from its obligations.

Further, with regard to Article 13, the International Committee stressed the necessity of stipulation in detail, either in the Geneva
Convention, or in the Convention relative to Prisoners of War, the status and treatment of detained Medical Personnel. During the second World War, certain belligerents claimed that detained Medical Personnel must be assimilated to Prisoners of War, which is obviously contrary to the Geneva Convention. It is clear, however, that detained Medical Personnel can only enjoy liberty to an extent which is compatible with military discipline and life in camps. During the war, the International Committee had requested belligerents, and often succeeded in obtaining, that Medical Personnel detained by them should be granted certain facilities in the execution of their welfare duties, and certain privileges. The points upon which the International Committee consider this ruling should bear are particularly the following: the confirmation that Medical Personnel can never be assimilated to Prisoners of War, but that they should enjoy at least the privileges granted to the latter. That Medical Personnel shall be exclusively employed for the care of their prisoner compatriots. That Medical Personnel shall have separate quarters from prisoners of war, either in the infirmaries or close by. Furthermore, fixed pay; supplementary rations; extra parcels; permission to go outside the camp and take walks at regular intervals, etc.

Another question which should be considered with regard to the status of Medical Personnel, is that of the "relief" of detained Medical Personnel. This system consists of replacing detained personnel by similar staff from the home country and was tried in certain occupied countries, such as France and Jugoslavia.

Mention should also be made here of the case of nationals of occupied or annexed countries who were enrolled voluntarily or by compulsion, in the Medical Services of the occupying Army. Following the liberation of their countries, they frequently became liable to sentence for high treason, under the military penal code of their home country. While it may be true that the Medical Service, though unarmed, does form part of the Army, the spirit of the Geneva Convention and the principle of the Red Cross (which require the care of war victims irrespective of nationality) are opposed to such persons being subjected to the same penalties as those who took up arms against their own country. Although it seems improbable that the Convention can provide for such cases, this point might perhaps be raised in the Final Act of the future Diplomatic Conference.

The Commission, which was appointed by the Preliminary Conference to study the revision of the Geneva Convention, laid before the Plenary Session a series of new Articles for insertion in Chapter III of the Geneva
Convention, as follows:

Article 12, amended:
The persons named in Articles 9, 10 and 11 may not be retained, subject to the provisions of the following articles, after they have fallen into the hands of the enemy. They shall be sent to the belligerent to whom they belong as soon as a route for their return is open and military considerations permit. On their departure, they shall take with them the effects, personal property and valuables, instruments, arms and means of transport belonging to them.

Article 13, (New)
When the state of health and number of prisoners of war justify it, the persons named in Articles 9, 10 and 11 may be retained in view of the purposes mentioned in Article 14, without this provision relieving the Detaining Power of its obligations. The choice of persons to be detained shall not depend on racial descent, nor political opinions. Their number shall be proportionate to the genuine medical needs of the prisoners.

Article 14, (New)
Persons thus retained shall be placed under the authority of the Medical Service of the Detaining Power and used, except in cases of urgent necessity, to care for prisoners of war of their own nationality. They shall, moreover, assist in the supervision and carrying out of hygienic measures necessitated by the places of detention.

Article 15, (New)
Partial relief or substitution of this retained staff, by personnel of the same nationality may be governed by agreements between the belligerent Powers concerned.
Article 16, (New)

In no case may members of medical personnel who are retained or awaiting repatriation be considered as prisoners of war, though enjoying all the rights of the latter. They shall be granted priority treatment, and especially the following privileges:

a) Separate quarters from the prisoners of war, if possible in the hospitals or infirmaries close by;
b) Permission to receive and to write more letters than prisoners of war;
c) Permission to leave the camp or hospitals and take walks at regular intervals, with or without escort;
d) Permission in each camp or hospital to select a spokesman among themselves.

At its plenary session, the Preliminary Conference did not however feel able to adopt the conclusions submitted by the Commission. The Conference was of opinion that such provisions might compromise the privileged position of members of medical personnel and their right to repatriation, and further, that the said proposals might involve the risk of permitting the Detaining Power to free itself from the obligation laid upon it by the present text.

Finally, a solution should be found for the problem raised by the escape of members of the medical personnel. Articles 50 and 51 of the 1929 Convention on Prisoners of War lay down what punishments are applicable to escaped prisoners of war, and Article 31 of Fourth Hague Convention of 1907 provides for escaped spies, subsequently recaptured.

There is however no stipulation governing escaped medical personnel. The question arises whether a member of the medical personnel, not being a prisoner of war, may be subjected to disciplinary punishment, should the attempted escape fail. If the answer is in the affirmative, membership of the medical personnel will then be of no advantage to him. In any case, the Detaining Power cannot, except in the case of previous agreement with the home country (Art. 12 of the Convention), retain medical personnel.

It is, however, understandable that the Detaining Power cannot allow medical personnel to return home of their own free will (danger of espionage, infringement of military discipline, etc).

The matter should therefore be decided in the following cases:

1) Escape of medical personnel retained illegally.
2) Escape of medical personnel retained according to previous agreement with the home country, or for military reasons.
3) Escape of medical personnel sent by the home country to replace compatriot medical personnel.

Chapter IV.—Buildings and Material

Article 14.

Mobile medical formations, of whatsoever kind, shall retain, if they fall into the hands of the enemy, their equipment and stores, their means of transport and the drivers employed.

Nevertheless, the competent military authority shall be free to use the equipment and stores for the care of the wounded and sick; it shall be restored under the conditions laid down for the medical personnel, and as far as possible at the same time.

Article 15.

The buildings and material of the fixed medical establishments of the army shall be subject to the laws of war, but may not be diverted from their purpose as long as they are necessary for the wounded and the sick.

Nevertheless, the commanders of troops in the field may make use of them, in case of urgent military necessity, provided that they make previous arrangements for the welfare of the wounded and sick who are being treated therein.

Article 16.

The buildings of aid societies which are admitted to the privileges of the Convention shall be regarded as private property.

The material of these societies, wherever it may be, shall similarly be considered as private property.

The right of requisition recognised for belligerents by the laws and customs of war, shall only be exercised in case of urgent necessity and only after the welfare of the wounded and sick has been secured.

Commentary.

The 1937 Commission was of opinion that the text of Art. 16 would suffice to protect material belonging to Aid Societies everywhere, consequently
even when such material was being transported by land, sea, or air. However, the Commission decided to add (following the words "wherever it may be") the words "or under whatever conditions". The Preliminary Conference also recommended this amendment of Section 2, which would thus run:

"The material of these Societies, wherever it may be or under whatever conditions, shall similarly be considered as private property."

Furthermore, the International Committee raised the question concerning this Article, whether its amendment be desirable in view of the fact that during the second World War, many National Red Cross Societies complained of their equipment being requisitioned by the occupying forces.

The Preliminary Conference, however, considered the wording of Article 16 as satisfactory. Violations of its stipulation should be assimilated to the general problem of the application of the Convention, and of the sanctions involved by violations in general.

**Chapter V. - Medical Transport.**

**Article 17.**

"Vehicles equipped for the evacuation of wounded and sick, proceeding singly or in convoy, shall be treated as mobile medical formations, subject to the following special provisions:

A belligerent intercepting vehicles of medical transport, singly or in convoy, may, if military exigencies demand, stop them and break up the convoy, provided he takes charge in every case of the wounded and sick who are in it. He can only use the vehicles in the sector where they have been intercepted, and exclusively for medical requirements. These vehicles, as soon as they are no longer required for local use, shall be given up in accordance with the conditions laid down in Article 14.

The military personnel in charge of the transport and furnished for this purpose with authority in due form, shall be sent back in accordance with the conditions prescribed in Article 12 for medical personnel, subject to the condition of the last paragraph of Article 16.

All means of transport specially organized for evacuation and the material used in equipping these means of transport belonging to the medical
service shall be restored in accordance with the provisions of Chapter IV. Military means of transport other than those of the medical service may be captured, with their teams.

The civilian personnel and all means of transport obtained by requisition shall be subject to the general rules of international law."

Commentary.

Acting on the request of the Belgian Red Cross, the Preliminary Conference recommended the introduction into this chapter, relative to medical transport, of a prefatory Article laying down general principles, as is the case for medical units, since Art. 17 only regulates matters of detail. The Conference considered, however, that the introduction of a new Article should not be undertaken without most careful scrutiny, in order to ensure perfect concordance between the said Articles and the stipulations already contained in Article 17. It therefore confined itself to laying down the following general principles, establishing the immunity of medical transports:

"Transports of wounded and sick and the medical staff and materiel employed for that purpose, including the means of conveyance, shall under all circumstances enjoy the protection ensured by the present Convention to hospital establishments. Transports of medical equipment shall enjoy the same facilities, on condition that all steps to ensure strict observance of the principles laid down in the Convention are taken by the belligerent to whom they belong".

Article 17, last Section, gave rise in 1937 to discussion concerning the detachable affixion of the distinctive emblem, and the temporary requisitioning of civilian personnel and equipment. It had been suggested that a new Section should be introduced at the close of Article 17, providing that under exceptional circumstances the military authorities might requisition civilian personnel and equipment for the purpose of collecting and transporting the wounded and sick, such personnel to be issued a document made out by the military authorities, assigning it some definite task. During the validity of such documents, the said personnel and equipment would benefit by the protection of the Convention. The 1937 Commission, however, decided not to amend this text, considering it preferable to leave the matter to be dealt with by the Military Command.
Article 18.

"Aircraft used as means of medical transport shall enjoy protection of the Convention during the period in which they are reserved exclusively for the evacuation of wounded and sick and the transport of medical personnel and material.

They shall be painted white and shall bear, clearly marked, the distinctive emblem prescribed in Article 19, side by side with their national colours, on their lower and upper surfaces.

In the absence of special and express permission, flying over the firing line, and over the zone situated in front of clearing or dressing stations, and generally over all enemy territory or territory occupied by the enemy, is prohibited.

Medical aircraft shall obey every summons to land.

In the event of a landing thus imposed, or of an involuntary landing in enemy territory or territory occupied by the enemy, the wounded and sick, as well as the medical personnel and material, including the aircraft, shall enjoy the privileges of the present Convention.

The pilot, mechanics and wireless telegraph operators captured shall be sent back, on condition that they shall be employed until the close of hostilities in the medical service only."

Commentary.

In the reports laid before the Preliminary Conference, the International Committee recalled the fact that at the Diplomatic Conference of 1929, the question of medical aircraft was summarily settled by the adoption of Article 18 of the Geneva Convention. In its Final Act, the Conference recommended that detailed regulations for the use of medical aircraft be introduced at a later date. Consequently, at the Fourteenth Red Cross Conference (Brussels, 1930), the International Committee submitted a plan for the adaptation of the principles of the Geneva Convention to Aerial Warfare, drafted by Ch. Julliot and P. Des Gouttes. This plan met with the approval of the Conference (1), which invited the International Committee to transmit it to the Swiss Government, for discussion by a Diplomatic Conference fixed

(1) See Annex Draft Stipulations concerning the use of medical aircraft in time of war, page 43
for 1940, but postponed owing to the war.

The International Committee, considering it necessary to resume study of detailed regulations concerning medical aircraft, submitted the 1930 Draft to the Preliminary Conference and stressed a certain number of points which, in its opinion, should now be amended, as follows:

a) The International Committee believed it necessary to take up the idea expressed by the 1929 Diplomatic Conference - approved, moreover, by M. Julliot in 1935 - of adopting provisions for the regulation of medical aircraft only, and of abandoning the plan of adapting the principles of the Geneva Convention to aerial warfare. Such provisions could quite simply be incorporated into the Geneva Convention as an extension of Article 18, since the system of legal protection based on the Geneva Convention is applied ratione personae, and not ratione loci. The protection accorded by the Geneva Convention to the wounded, the buildings which shelter them, the nursing personnel and material used for this purpose is as clearly valid for aerial warfare as for land warfare. Medical aircraft, provisions for which have now to be more precisely drafted, are one means only among many by which the wounded can be collected and transported. If in 1907 it was thought necessary to adapt the principles of the Geneva Convention to maritime warfare, this was due to the special conditions prevalent at sea, but which do not exist in the air. Speaking quite generally, one may hold that the air must be considered as dependent on the regulations applicable to the ground or to the expanse of ocean over which it stretches. The Preliminary Conference concurred with this point of view.

b) A new plan was drafted unofficially in 1935 by MM. Julliot and Schickelé for the regulation of medical aircraft. It differs essentially from the 1930 plan in that it introduces the use - in addition to planes definitely set aside for the Medical Services and governed by Article 18 of the Geneva Convention - of aircraft temporarily engaged in medical work and equipped with a distinctive removable emblem.

The Preliminary Conference considered that, generally speaking, provisions relative to air transport should be brought into line with those governing medical transport on land (Article 17). The Conference was of the opinion that use should not be made of aircraft temporarily engaged in medical work and equipped with a distinctive removable emblem.

c) The Julliot-Schickelé draft includes a provision that landing-strips used solely by medical aircraft should be considered immune from attack and
marked out with the Red Cross emblem. The Julliot-Des Gouttes plan of 1930 merely stipulates that the belligerents shall be free to prescribe, by the usual manner of regulation, the neutralizing of certain landing-grounds. The Preliminary Conference thought it preferable to give up the idea of marking out with the distinctive emblem, with a view to protecting them from attack, landing grounds used by medical aircraft.

d) In 1930 the Fourteenth International Red Cross Conference, which approved the draft submitted by the International Committee, recommended that complementary stipulations be added concerning the immunity of medical aircraft engaged in rescue work over the seas, and the faculty for them to cross neutral territory.

Concerning the employment of medical aircraft over the seas, it should be pointed out that the draft of the revised Naval Convention (of 1937) explicitly stated that the provisions of Article 18 of the Geneva Convention should be applicable on the seas, and that special provisions were included regarding medical seaplanes. A lacuna still remains to be filled concerning medical aircraft flying over neutral territory. MM. Julliot and Schickelé proposed the introduction of a provision that medical aircraft have free passage over the territory or territorial waters of non-belligerents, subject to the latter having a right of control similar to that exercised by belligerents over the country they occupy.

The Preliminary Conference was of the opinion that it was desirable to insert a clause authorizing free passage for medical aircraft over territory or territorial waters of non-belligerents, in accordance with Article 14 of the Fifth Hague Convention of 1907 on the rights and duties of Neutral Powers.

e) The Commission convened in 1937 to revise the Tenth Hague Convention had studied the question of whether belligerents might use medical planes with a view to finding and rescuing war victims at sea. The Commission decided to support this point of view and agreed that aircraft might be used temporarily in such work. The International Committee consider desirable that the question of similar use of medical aircraft should be examined also in connexion with land operations.

The Preliminary Conference recommended that the question of search by medical aircraft for wounded, sick and shipwrecked persons on land and at sea should be studied in all its aspects.
Finally, the same Conference thought necessary to replace (in the French text) the expression "appareils sanitaires aériens" by the words "appareils aériens sanitaires".

Chapter VI - The Distinctive Emblem.

The symbol of the Red Cross on a white ground is, primarily, the emblem of the Geneva Convention. This treaty confers upon it high significance, by making it the very symbol of protection extended to wounded and sick members of forces, to the buildings which shelter them, to the staff that cares for them, and to the equipment and stores devoted to their use.

The Geneva Convention is the only Convention which governs in Articles 19 to 24 (1929) the use of the Red Cross Emblem, if we except Article 5 of the Tenth Hague Convention of 1907 for the application to maritime warfare of the principles of the Geneva Convention, and which, moreover, refers expressly to the latter.

A clear distinction must be drawn between two different uses of the Red Cross Emblem.

In its first use - whence it derives its essential significance - the emblem is, so to speak, constitutive of protection, when it is displayed on buildings, personnel and equipment for which the Convention demands respect. This use takes on its practical value in time of war and in the zone of military operations. The dimensions of the emblem are then usually large enough to be visible, especially from the air.

In its second use the emblem is merely descriptive, in peace time and in war time outside the fighting area, and has no protective purpose; it serves to draw public attention to buildings, publications etc. In such cases the emblem is always of a small size.

Particularly when the emblem is constitutive of protection, it is obvious that the greatest care must be exercised that it shall be employed solely within the limits fixed by the Convention, or by a special agreement between the Powers concerned. These precautions are essential to ensure respect of the emblem, and to safeguard its prestige. The presence within the war zone of buildings or articles improperly marked with the Red Cross emblem
is indeed likely to imperil the safety of those who have the right to bear it.

Inconsiderate extension of the use made of the emblem, even if only in the descriptive manner, can however contribute largely to lessen the prestige attaching to the emblem and, consequently, to compromise the good name of the Institution itself - the more so, since it is sometimes difficult, in practice, for the enemy to distinguish the descriptive from the constitutive use.

During the second World War, alleged cases of the misuse of the Red Cross Emblem were brought to the notice of the International Committee. The latter did not fail thereupon to recommend the National Society of the country concerned to make representations to its Government. In some cases, especially during the last phase of hostilities in Europe, serious misuse of the Red Cross emblem was noticed by the Committee's delegates: motor-trucks displaying the Red Cross emblem were used for the transport of troops or war material. In such cases the International Committee addressed itself repeatedly to the Government concerned.

The International Committee therefore considers that the use of the emblem should conform strictly to the stipulations of the Geneva Convention, subject to such amendments as may be held necessary in the wording.

**Article 19**

"As a compliment to Switzerland, the heraldic emblem of the red cross on a white ground, formed by reversing the Federal colours, is retained as the emblem and distinctive sign of the medical service of armed forces."

"Nevertheless, in the case of countries which already use, in place of the Red Cross, the Red Crescent or the Red Lion and Sun on a white ground as a distinctive sign, these emblems are also recognized by the terms of the present Convention."

**Commentary**

In their report, the International Committee recalled to the Preliminary Conference that the 1937 Commission had expressed unanimous
regret that the unity of the Red Cross Emblem had been abolished by Section 2, and were of the opinion that it would be very desirable to restore it. The 1937 Commission stressed the fact that the red cross on a white ground is an international emblem, created by the Geneva Convention and entirely free from any national or religious significance. The fact of substituting other symbols creates the risk of causing confusion with national flags, of lessening the protection attaching to the distinctive emblem of the Convention and, generally speaking, of impairing the efficiency of the world mission of the Red Cross. The 1937 Commission recommended that, in any case, the text of the Convention should not be further amended so as to permit other exceptions to the unity of the emblem than those now provided for in Article 19.

After the second World War, the International Committee remained convinced that attempts should be made to return to the unity of both emblem and title of the Red Cross. The Committee therefore invited National Red Cross Societies - especially those employing the Red Crescent and the Red Lion and Sun - to express their views on this matter and to summarise their experiences.

This opinion was strongly supported by delegates sitting on the Commission of the Preliminary Conference for the study of the Geneva Convention. They adduced numerous practical arguments in its favour and were of the opinion that it would be highly advisable for the universality and neutrality of the Red Cross that the unity of the emblem should be restored. They also recommended that suitable propaganda should be made among the Eastern populations, to explain the exact meaning of the heraldic sign of the red cross on a white ground.

The representative of the Egyptian Red Crescent, supported by other delegates, stressed that it would be impossible at the present time to introduce the emblem in Muslim countries, as such a proceeding would deeply shock the religious feelings of the masses. He pointed out that during the fighting in Libya, the Red Cross and the Red Crescent had worked side by side without creating any confusion; he fully appreciated the advantage of restoring unity and did not exclude future developments permitting a solution which was impracticable at the present day.

The Commission then recommended that the whole question should be studied by the Seventeenth International Red Cross Conference, on the grounds of the views expresses during the discussion.
At the plenary session, however, the representative of the Egyptian Red Crescent stated that the present condition of affairs rendered further study useless, since any resolution adopted by the Seventeenth Conference with regard to the unity of the emblem would be impossible of application. The Preliminary Conference concurred with this view and finally decided not to bring the matter before the Seventeenth Conference.

Article 20

"The emblem shall figure on the flags, armlets, and on all material belonging to the medical service, with the permission of the competent military authority."

Article 21

"The personnel protected in pursuance of Articles 9 (Paragraph 1), 10 and 11, shall wear, affixed to the left arm, an armlet bearing the distinctive sign, issued and stamped by a military authority."

"The personnel mentioned in Article 9, Paragraphs 1 and 2, shall be provided with a certificate of identity, consisting either of an entry in their small book (paybook) or a special document."

"The persons mentioned in Articles 10 and 11 who have no military uniform shall be furnished by the competent military authority with a certificate of identity, with photograph, certifying their status as medical personnel."

"The certificates of identity shall be uniform and of the same pattern in each army."

"In no case may the medical personnel be deprived of their armlets or the certificates of identity belonging to them."

"In case of loss they have the right to obtain duplicates."

Commentary

The International Committee observed that during the recent War many members of the Medical Personnel falling into enemy hands were unable to enforce their right to repatriation, or experienced great difficulties
for such rights to be recognised, because they did not hold the identification papers prescribed by the Convention. Since the beginning of 1940, the International Committee instituted an enquiry among National Red Cross Societies, which showed that the majority of States had not adhered strictly to the provisions of the Convention concerning identification papers for Medical Personnel. The International Committee expresses the hope that the painful experiences of the recent War will induce States to take henceforth all possible steps to provide their Medical Personnel with regular documents, and suggests that a recommendation (to be included in the Final Act of a Diplomatic Conference) may stress this need.

Furthermore, in order to avoid the recurrence of the difficulties mentioned, from which so many members of the Medical Personnel have suffered, the International Committee proposed that the identification papers issued to Medical Personnel of all ranks for every State should be unified. (1) Such unification would simplify formalities and obviate disputes.

The Committee also stated that it would be most desirable to achieve uniformity of identification papers in use in all countries. If this cannot be done, it would at least be desirable that at the latest on the outbreak of hostilities, belligerents should inform each other of the kind of forms in use in their forces.

In conclusion, the International Committee remarked that pay books are often too large to be carried in a uniform pocket. Medical orderlies are therefore prone to put them in their packs, which they leave behind them when they go to pick up the wounded. Moreover, the book is often kept in the Army offices. It is desirable that Army Medical Personnel be furnished with an identification paper small enough to be carried in the pocket, and provided with a photograph.

The Preliminary Conference approved the proposals made by the International Committee, and recommended unification by all States of the identification papers issued to Medical Personnel of every category, and the adoption by all States of a uniform identity card. The meeting also recommended that the uniform identity card should be of the model suggested by the Commission for the study of Medical Equipment, whose conclusions were ratified by the International Red Cross Conference. (2)

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(1) See above.
The Preliminary Conference also recommended that the identification card should be provided with the photograph and fingerprint of the bearer.

Lastly, the Conference recommended that all States should at once establish all identification papers for Medical Personnel in duplicate, the duplicates to be kept in order to replace original documents in case of loss.

It should be added that the International Committee had already proposed, before the war, that identity cards for Medical Personnel should be made out in triplicate — one copy to be issued to the person concerned, the second to be kept in the records of the Home Power, and the third to be filed in a card index kept by the Army Medical Corps, or by the National Red Cross Society. In case of war, this card index would at once be sent to a neutral agency, which would then be in a position to certify to the Detaining Power that any particular member of the Medical Personnel in captivity, and not in possession of an identity card, was in fact a bona fide member; the agency would then supply a duplicate having authenticity and bearing the same date of issue as the original.

The Preliminary Conference did not however think fit to recommend this course, on the grounds that it might create considerable practical difficulties and might meet with opposition from Powers who, for military reasons, would not wish to reveal the strength of their Medical Personnel, from which the approximate strength of their armed forces might be inferred.

**Article 22**

"The distinctive flag of the Convention shall be hoisted only over such medical formations and establishments as are entitled to be respected under the Convention, and with the consent of the military authorities. In fixed establishments it shall be, and in mobile formations it may be accompanied by the national flag of the belligerent to whom the formation or establishment belongs."

"Nevertheless, medical formations which have fallen into the hands of the enemy, so long as they are in that situation, shall not fly any other flag than that of the Convention."

"Belligerents shall take the necessary steps, so far as military
exigencies permit, to make clearly visible to the enemy forces, whether land, air, or sea, the distinctive emblems indicating medical formations and establishments, in order to avoid the possibility of any offensive action.

Commentary.
Re Section 1.- The 1937 Commission recommended the division of this Section in two paragraphs, the first referring to the Convention flag, the second to the national flag. It also recommended that the use of the latter should be unified, by laying down that both mobile units and fixed establishments be simply authorised to display it. It was observed that the national flag, which is a symbol of belligerence, might sometimes favour attack.

The text of Section 1 would therefore read as follows - "The distinctive flag of the Convention shall be flown only over such medical units and establishments to which it guarantees respect under the Convention, and with the consent of the military authorities. In mobile units, as in fixed establishments, it may be accompanied by the national flag of the belligerent to whom the unit or the establishment belongs."

Re Section 3.- The 1937 Commission studied the question of the marking, or the reverse (camouflage), of Army Medical units and establishments. It is obvious that, in the front zone, it is often essential not to mark medical units, in order not to give the enemy information as to the presence of combatant forces.

This practice is, moreover, perfectly legitimate and in accordance with the text of the Convention, since Section 3 makes the military authority responsible for the decision to mark or not. A medical unit which is not marked obviously loses its safeguard in practice, even if theoretically it continues to enjoy the right thereto. (As soon as the enemy is aware of the medical character of a camouflaged unit, he must respect it.)

The 1937 Commission proposed no amendment of the Convention as regards camouflage, but invited a sub-commission, with General Schickelé in the chair, to study these questions from the technical point of view. Dr. Schickelé's report was published as an annex to the 1937 Report on the revision of the Geneva Convention. It recommends especially not to resort to camouflage of medical units, except during the time strictly necessary to the secrecy of military operations, and to mark such units immediately on engaging battle, when the military command need no longer conceal
anything from his adversary.

The International Committee is led to believe that the practice of camouflaging medical units in the front line became general during the second World War. It would be most useful to learn the opinion of the meeting on this point.

Article 23

"The medical units belonging to neutral countries which shall have been authorized to lend their services under the conditions laid down in Article 11, shall fly, along with the flag of the Convention, the national flag of the belligerent to whose army they are attached."

"They shall also have the right, so long as they shall lend their services to a belligerent, to fly their national flag."

"The provisions of the second Paragraph of the preceding article are applicable to them."

Commentary

In order to bring this Article into line with the preceding, which they had proposed amending, the 1937 Commission recommended the addition, at the close of the first Section of Article 23, of the words: "should he make use of the faculty conferred on him by Article 22" and to replace Sections 2 and 3 by the following provision:

"Subject to contrary orders by the responsible military authorities, they may, on all occasions, fly their national flag, even if they fall into the hands of the adverse party."

Thus, the use by medical units and establishments of the national flag, whether belligerent or neutral, would be made equally optional in the draft of the revised Convention.

Article 24

"The emblem of the red cross on a white ground and the words "Red Cross" or "Geneva Cross" shall not be used, either in time of peace or in time of war, except to protect or to indicate the medical formations and establishments and the personnel and material protected by the Convention."

"The same shall apply, as regards the emblems mentioned in Article 19,
Paragraph 2. In respect of the countries which use them."

"The Voluntary Aid Societies mentioned in Article 10, may, in accordance with their national legislation, use the distinctive emblem in connexion with their humanitarian activities in time of peace."

"As an exceptional measure, and with the express authority of one of the National Societies of the Red Cross (Red Crescent, Red Lion and Sun), use may be made of the emblem of the Convention in time of peace to mark the position of aid stations exclusively reserved for the purpose of giving free treatment to the wounded or the sick."

Commentary

Re Section 1.--- The Preliminary Conference recommended a purely formal amendment on this point, indicating that the general principle expressed by this Article is affected by the exceptions quoted in the three last Sections of Article 24. Section 1 would therefore read:

"The emblem of the Red Cross on a white ground and the words "Red Cross" or "Genova Cross" shall not be used except in the cases named in the last three Sections of the present Article, either in time of peace or in time of war, unless to protect or to indicate the medical formations and establishments, personnel and equipment protected by the Convention."

Re Section 3.--- The 1937 Commission, confirming well-established usage, recommended that the text of this Article should include a sentence stipulating that National Red Cross Societies shall be able to employ the Red Cross Emblem when carrying out, in war time, their welfare activities in behalf of sick or wounded civilians.

The Preliminary Conference considered that the faculty for National Societies to use the emblem, in war or in peace, should be extended to the whole of their welfare work. The Conference, however, recognized that when National Societies are engaged on any other activities than the care of wounded or sick of the armed forces, the utilisation and dimensions of the emblem should be such that it may not, in time of war, be considered by the enemy to confer protection in the sense of the present Convention. The Conference proposed the following wording:

"National Red Cross (Red Crescent, Red Lion and Sun) Societies may."
however, in obedience to national legislation, make use of the emblem of the Convention, in time of peace as well as in time of war, for all their humanitarian activities, is so far as this utilisation and the dimensions of the emblem are such that the latter cannot, in time of war, be considered by the enemy as conferring protection in the sense of the present Convention."

Re Section 4.—The International Committee pointed out an obvious gap in the Geneva Convention which should be filled. Neither the International Committee nor the League is mentioned in the Convention as an institution authorised to employ the Red Cross emblem in peace time as in time of war. However, no-one has ever questioned the right of the International Committee to use this emblem and to supply its delegates with a white armlet bearing a red cross, since the Committee used it thus even before the existence of the Geneva Convention, and may even be considered its inventor. The Preliminary Conference suggested the following additional text:

"Under similar conditions, the International Committee of the Red Cross, the League of Red Cross Societies, or any other recognised Red Cross organisation, functioning as a neutral intermediary, shall also be authorised to make use at all times of the emblem of the red cross on a white ground."

Re Section 5.—The 1937 Commission considered it opportune to provide, in Article 24, for the faculty, exceptionally and in obedience to the law of the land, for National Red Cross Societies to allow other organizations to employ the Red Cross emblem in peace time for humanitarian activities. This faculty does not exist in the present text of the Convention, except as a means of marking the site of free aid stations. It may be conceived that there are humanitarian reasons for use of the Red Cross emblem in peace time by ambulances, which have no connexion with any National Red Cross Society, and are used only for the transport of sick civilians. Nevertheless, the Preliminary Conference did not think proper to make any amendment to the 1929 Convention on this point.

The 1937 Commission proposed the following text:
"Exceptionally, and in conformity with national legislation, National Red Cross Societies may authorise other organisations to make use of the red cross emblem in peace time, when engaged in humanitarian activities."
Chapter VII.- Application and Execution of the Convention

Article 25

"The provisions of the present Convention shall be respected by the High Contracting Parties in all circumstances. If, in time of war, a belligerent is not a party to the Convention, its provisions shall, nevertheless, be binding as between all the belligerents who are parties thereto." (1)

Article 26

"The Commanders-in-Chief of belligerent armies shall arrange the details for carrying out the preceding Articles, as well as for cases not provided for, in accordance with the instructions of their respective Governments and in conformity with the general principles of the present Convention."

Commentary

The 1937 Commission had already recommended the insertion in the Geneva Convention of a principle similar to that embodied in Section 3 of Article 2 of the Convention relative to the Treatment of Prisoners of War, forbidding measures of reprisal. The Preliminary Conference, agreeing with the International Committee's suggestion, recommended the adoption of the following provision:

"In no case shall measures of reprisal be taken against the wounded, the sick, the buildings, the personnel or the equipment protected by the Convention."

Article 27

"The High Contracting Parties shall take the necessary steps to instruct their troops, and in particular the personnel protected, in the provisions of the present Convention, and to bring them to the notice of the civil population."

(1) As regards application of the Convention in all cases of hostilities, the reader is referred to page 2 above.
Article 28

"The Governments of the High Contracting Parties whose legislation is not at present adequate for the purpose, shall adopt or propose to their legislatures the measures necessary to prevent at all times:

a) the use of the emblem or designation "Red Cross" or "Geneva Cross" by private individuals or associations, firms or companies, other than those entitled thereto under the present Convention, as well as the use of any sign or designation constituting an imitation, for commercial or any other purposes;

b) by reason of the compliment paid to Switzerland by the adoption of the reversed federal colours, the use by private individuals or associations, firms or companies of the arms of the Swiss Confederation, or marks constituting an imitation, whether as trade-marks or as parts of such marks, or for a purpose contrary to commercial honesty, or in circumstances capable of wounding Swiss national sentiment."

"The prohibition indicated in (a) of the use of marks or designations constituting an imitation of the emblem or designation of "Red Cross" or "Geneva Cross", as well as the prohibition in (b) of the use of the arms of the Swiss Confederation or marks constituting an imitation, shall take effect as from the date fixed by each legislature, and not later than five years after the coming into force of the present Convention. From the date of such coming into force, it shall no longer be lawful to adopt a trade-mark in contravention of these rules."

Commentary

Re Section 1. The 1937 Commission proposed amending the first sentence of this Paragraph as follows:

"The High Contracting Parties shall ensure the enforcement of the legislative measures they may have been led to take, with a view to preventing at all times ...."
wording involves the risk of endangering the efficiency of the provi-
sion, in case the legislative Powers should decline to adopt legal
measures which, true to the spirit of this text, the Government might
propose.

The Preliminary Conference considered this amendment desirable.

Letter (a): The 1937 Commission had recommended that the words
"for commercial or any other purpose" be replaced by the words "whatever
the object of this use". The Preliminary Conference concurred with
this suggestion.

Re Section 2: The 1937 Commission had proposed an amended wording of
Section 2, which was adopted by the Preliminary Conference. It runs as
follows:

"The States which, not being party to the Convention of July 27,
1929, may later ratify the present Convention or adhere thereto, shall take
the measures required to prevent at all times such acts as those mentioned
under letters (a) and (b) quoted above, so that the said interdiction may
become operative five years at latest after the said ratification or
adhesion."

"The prohibition to adopt a trade or commercial mark contrary
to the above-mentioned interdictions, already enacted by the Convention of
July, 1929, is maintained."

"In States which, not being party to the Convention of 1929, may
later ratify the present Convention or adhere to it, it would no longer
be legal, as from the filing of the act of adhesion, to adopt a trade or
commercial mark contrary to these prohibitions. Within five years, at
most, from the coming into effect of the Convention, the trade-marks,
commercial titles and names of associations or firms contrary to these
prohibitions shall be amended, whatever the earlier date of their adoption."

The main effect of this new wording is to define, with all
due clearness - since some doubt on the matter still appeared to exist,
unnecessarily in the International Committee's opinion - that all
trade-marks contrary to the provisions of the Convention must be
abolished within five years at most, whatever the previous date of their
adoption.

Lastly, the Preliminary Conference, acting on a suggestion
by the American Red Cross, noted with regret that some States have
neglected to prohibit abuses of the emblem or name of the Red Cross. The Conference considered it necessary to request States party to the Convention, to take prompt and appropriate steps for the enforcement of the prohibitions stipulated in Article 26.

Article 29

"The Governments of the High Contracting Parties shall also propose to their legislatures, should their penal laws be inadequate, the necessary measures for the repression in time of war, of any act contrary to the provisions of the present Convention."

"They shall communicate to one another, through the Swiss Federal Council, the provisions relative to such repression not later than five years from the ratification of the present Convention."

Commentary

The 1937 Commission did not amend this Article, as it considered that it was sufficient to ensure penalties for any act contrary to the provisions of the Convention.

The Preliminary Conference recommended the insertion in Sec.1 of the amendments already recommended in Sec. 1 of Article 28, i.e. that the words "The Governments of the High Contracting Parties" be replaced by the words "The High Contracting Parties".

Article 30

"On the request of a belligerent, an enquiry shall be instituted, in a manner to be decided between the interested parties, concerning any alleged violation of the Convention; when such violation has been established the belligerents shall put an end to and repress it as promptly as possible."

Commentary

The 1937 Commission unanimously recognized that Article 30, in its present shape, is inadequate, and that it is necessary to widen its scope. However, taking into account the diplomatic character of certain aspects of the question, the Commission considered that their duty was less to draft a definite text than to clarify the main principles on
which the revision of Article 30 might be founded.

The recommendations of the Preliminary Conference, given below, are chiefly based on the work of the 1937 Commission, who had given the most careful attention to this matter. A few additions, however, were adopted, on the suggestion of the Belgian Red Cross. They run as follows:

1) That the procedure of investigation shall be instituted as rapidly as possible and in a practically automatic fashion.

2) That the enquiry may be instituted on the demand of any Parties to the Convention directly concerned.

3) That a single central and permanent agency, foreseen by the Convention, shall be instructed to nominate the Commission of Enquiry, as a whole or in part.

4) That the Commission of Enquiry shall be appointed for each particular case, immediately the request is made, after an alleged violation of the Convention.

5) That the members of the Commission of Enquiry shall be appointed by the afore-mentioned body from lists, kept up-to-date, of qualified and available persons, whose names shall have been already suggested by the Governments.

6) That special agencies shall be appointed in advance to undertake, in urgent cases, the rapid verification which may be urgently required.

7) That the report of a Commission of Enquiry may, if necessity arises, contain, besides evidence of facts, recommendations to the Parties concerned.

Furthermore, the Conference recommended the adoption of the following principle:

Each belligerent State shall facilitate the investigations of the said agency on the territory where the said State exercises authority.

The Conference was finally of opinion that the agency charged with the constitution of the Commission of Enquiry -- see (3) -- should be the International Court of Justice.

Final Provisions

Neither the 1937 Commission, nor the Preliminary Conference of 1946 recommended any amendments to the Final Provisions of the Geneva Convention.
Draft Treaty Provisions concerning the Use of Medical Aircraft in Wartime

Chapter I.—Medical Units in Aerial Navigation.

Art. 1.—The medical units in aerial navigation shall be attached to the Medical Services. They shall be respected and protected as such by the belligerents, as long as they are reserved exclusively for the evacuation of wounded and sick and the transport of medical personnel and equipment.

Art. 2.—Protection to which these units are entitled shall cease if they are employed to commit acts harmful to the enemy.

The following conditions are not considered to justify a medical unit losing the protection thus provided for:

1) the fact that the personnel is armed and that they use arms in self-defence or in that of the sick and wounded in their charge;

2) that in the absence of armed orderlies, a medical plane is protected by a guard or by sentries;

3) that small arms and ammunition taken from the wounded and sick, which have not yet been transferred to the proper authorities, are discovered in the medical unit.

Chapter II.—Medical Aircraft.

Art. 3.—Medical aircraft, i.e., those which are painted white and which bear, clearly marked, the distinctive emblem prescribed in Article 11, together with their national colours, shall be respected and may not be captured for as long as they are reserved exclusively for the evacuation of sick and wounded and for the transport of medical personnel and equipment, and on the condition that they are not equipped with photographic apparatus.

In addition, medical aircraft, if obliged to land on a neutral landing-strip, shall not be treated like war-planes.

(1) See page 25
Art. 4.— The belligerents undertake not to use medical aircraft for any military purpose.

Failing special and express permission, flying over the firing line, and over the zone situated in front of the principal clearing or dressing stations, and generally over all enemy territory or territory occupied by the enemy, is prohibited.

Art. 5.— Belligerents shall have the right to inspect and verify all medical aircraft. They may refuse their co-operation, summon them to withdraw or to land, compel them to follow a certain route or even detain them, if the gravity of the circumstances demands.

In the event of a forced or chance landing in enemy territory, or territory occupied by the enemy, the wounded and sick, as well as the medical personnel and equipment, including the aircraft, shall continue to enjoy the privileges of the present Convention.

Art. 6.— Protection shall be afforded by the present provisions to aircraft equipped totally or partially at the expense of belligerent or neutral Aid Societies, duly recognized according to Articles 10 and 11 of the 1929 Geneva Convention.

Chapter III.— Personnel.

Art. 7.— The personnel engaged exclusively in the collection, transport and treatment of the wounded, sick and shipwrecked, and in the administration of medical units and establishments, and chaplains attached to armed forces, shall be respected and protected under all circumstances.

Art. 8.— The persons designated in the foregoing Article may not be detained after falling into the hands of the enemy.

Failing any agreement to the contrary and subject to the provisions of the last Section of the present Article, the said persons shall be returned to the belligerent to whom they belong, as soon as a route for their return shall be open and military conditions permit.

Pending their return, they shall continue to carry out their
duties under the direction of the enemy; they shall preferably be engaged in the care of the wounded and sick of the belligerent to whom they belong.

On their departure, they shall take with them the effects, instruments, and arms belonging to them.

Pilots, mechanics and wireless operators, however, shall only be sent back on condition that they shall be employed until the close of hostilities in the medical service only.

Art.9.— Belligerents shall grant the personnel mentioned in the above articles, while in their hands, the same rations, the same quarters, the same allowances and the same pay as are granted to the corresponding personnel of their own armed forces.

At the outbreak of hostilities belligerents shall notify each other of the ranks of their respective medical personnel.

Chapter IV.— Equipment.

Art.10.— Medical aircraft falling into the hands of the enemy shall retain their equipment and stores.

They may be neither captured nor diverted from their original purpose.

Their restitution shall take place in accordance with the conditions prescribed for the medical personnel, and as far as possible at the same time.

The military authority concerned shall be free to requisition their medical equipment for the care of the wounded and sick. This right of requisition shall only be exercised as regards the equipment of Aid Societies admitted to the privileges of the Convention in case of urgent necessity, and only after the welfare of the wounded and sick has been ensured.

The equipment and stores shall be restored under the conditions laid down for the medical personnel, and as far as possible at the same time.

Chapter V.— Distinctive Emblem.

Art.11.— Medical aircraft shall be painted white and shall bear, clearly
marked, the distinctive emblem prescribed in Article 19 of the 1929 Convention, together with their national colours, on their lower and upper surfaces - this in addition to the general rules laid down in Articles 19 to 24 of the 1929 Convention, and to which both medical aircraft and their personnel are subjected.

Aircraft belonging to a neutral country which has been authorized to lend its services under the conditions laid down in Article 6, shall fly, alongside the Convention flag, the national flag of the belligerent to whose forces it is attached. It shall also have the right, so long as its services to a belligerent, to fly its national flag. Nevertheless, aircraft which fall into the hands of the enemy, so long as they are in that situation, shall not fly any other flag than that of the Convention.
II. REVISION OF THE TENTH HAGUE CONVENTION

dated October 18, 1907


HISTORICAL REMARKS

The first Peace Conference, held at the Hague in 1899, led to the drafting of a Convention making the principles of the Geneva Convention of 1864 applicable to Maritime Warfare. At that time the Convention comprised ten Articles only. Regarded as inadequate, it was revised and extended in 1907, at the time of the Second Peace Conference, and became the Tenth Hague Convention of 1907 for the adaptation to Maritime Warfare of the principles of the Geneva Convention of 1906. Duly ratified by 47 States, it has remained in force under that form up to the present time.

The evolution in methods of warfare, and above all the fact that the Geneva Convention was itself revised in 1929, made it necessary to consider the redrafting of the Tenth Hague Convention, many of its provisions having become obsolete. After preliminary study, the International Committee of the Red Cross drew up in 1937, with the assistance of naval experts delegated by Governments and National Red Cross Societies, a Revised Draft Convention which was approved by the Sixteenth International Red Cross Conference and placed on the agenda of the Diplomatic Conference which the Swiss Federal Council had convened for 1940, but which had to be postponed on account of the war.

After the close of the Second World War the International Committee once more took up the 1937 draft, with a view to completing it in the light of experience gained during the conflict. The Preliminary Conference of National Red Cross Societies, which met in Geneva in July 1946, had occasion to study the question and approved several amendments to the Draft Convention.

In view of the importance of the Tenth Hague Convention and its close relation with the Geneva Convention, the International Committee consider that it necessary to establish without delay a draft revised text, taking account both of the experience most recently gained, and the amendments to be made to the Geneva Convention itself.
Chapter I.- Wounded, sick, or shipwrecked persons (1)

Article 1.

"Sailors and soldiers on board, as well as other persons officially attached to land, naval, or air forces, who may be sick, wounded or shipwrecked, shall be respected and protected under all circumstances; they shall be treated humanely and nursed, without distinction of nationality, by the belligerent into whose power they have fallen".

"The benefit of the foregoing provisions shall also cover sick, wounded or shipwrecked persons of any vessel that is the victim of an incident of war."

Article 11 (of the Xth Hague Convention, 1907).-- Sailors and soldiers on board, when sick or wounded, as well as other persons officially attached to fleets or armies, whatever their nationality, shall be respected and tended by the captors.

Article 1 (of the Geneva Convention, 1929).-- Members of the Armed Forces and other persons officially attached to the armed forces who are wounded or sick shall be respected and protected in all circumstances; they shall be treated with humanity and cared for medically, without distinction of nationality, by the belligerent in whose power they may be.

Nevertheless, the belligerent who is compelled to abandon wounded or sick to the enemy, shall, as far as military exigencies permit, leave with them a portion of his medical personnel and material to help with their treatment.

Commentary

Re Section 1. It should be noted that this paragraph relates to the protection of sick, wounded and shipwrecked persons, whereas the corresponding provision of the Hague Convention only refers to the first two categories. The addition, which is suggested by the International Committee, does not express any new idea, but is merely intended to define the scope of the provision. Obviously

(1) The Articles reproduced are those of the revised Draft Maritime Convention drawn up in 1937.
the authors of the 1907 Convention never intended to make any difference between the treatment accorded to the wounded and sick on the one hand, and to shipwrecked persons on the other. It has never been disputed that shipwrecked persons, whose situation is, to say the least, as precarious as that of wounded or sick, are entitled to enjoy similar protection.

Re Section 2. This Section, which is new, extends the scope of the Convention to cover civilian victims, whereas up to the present it referred only to sick, wounded and shipwrecked members of forces.

It had been pointed out that the protection of civilian victims of maritime warfare was only a special instance of protection of civilians in time of war - a question which was to be debated later on, when revision of the Geneva Convention was being discussed. The experts of 1937 however decided unanimously to introduce without delay this new paragraph into the revised Draft Maritime Convention, even if the Geneva Convention was not to be extended to cover civilians. They remarked that the organization of relief for civilians was far better provided for on land than at sea, where it is practically non-existent.

The whole important problem of extending humanitarian provisions to cover sick and wounded civilians will be considered in connexion with the revision of the Geneva Convention. Should the latter be extended to cover civilians, the same extension ought logically to be provided for in respect of the Maritime Convention. Should it however be decided that a separate Convention would afford the best solution, such a Convention might then be drafted so as to cover civilian victims of maritime warfare also.

Article 2.

"Prisoners of war shall include the wounded, sick and/or shipwrecked persons of one belligerent who fall into the hands of the other. The latter shall decide, according to circumstances, if it is expedient to hold them, or to convey them to a port situated in its own territory, in a neutral country, or even in enemy territory. In the last case, the prisoners thus returned to their home country may no longer do active service for the duration of the war".

Article 14 (of the Xth Hague Convention, 1907).- The shipwrecked, wounded, or sick of one of the belligerents who fall into the power of the other belligerent are prisoners of war. The captor must decide, according to circumstances, whether to keep them, send them to a port of his own country, to a neutral port, or even to an
enemy port. In this last case, prisoners thus repatriated can not serve again while the war lasts.

Article 2 (of the Geneva Convention, 1929).—Except as regards the treatment to be provided for them in virtue of the preceding article, the wounded and sick of an army who fall into the hands of the enemy shall be prisoners of war, and the general provisions of international law concerning prisoners of war shall be applicable to them.

Belligerents shall, however, be free to prescribe, for the benefit of wounded or sick prisoners, such arrangements as they may think fit beyond the limits of the existing obligations.

Commentary:

It should be noted that, in its draft prior to 1937, the International Committee had reproduced, in this Article, Section 2 of Article 2 of the Geneva Convention. The 1937 Commission, while favouring the adoption of this provision, nevertheless considered it desirable to extend its scope, and to make of it a distinct and separate Article, which would take its place in Chapter VII of the Convention. (Application and execution of the Convention). (1) Thus, the latitude of belligerents to conclude ad hoc agreements, over and above the obligations imposed by the Convention, shall include not only the cases envisaged in Art. 2 of the Geneva Convention, but also any other cases which may arise, more especially those which the Commission considered should be dealt with by the belligerents themselves.

Article 3.

"Any warship of a belligerent may demand the delivery of the wounded, sick and shipwrecked who are on board military hospital-ships, hospital-ships belonging to relief Societies or to private persons, merchant ships, yachts and other craft, whatever the nationality of those vessels."

Article 12 (of the Xth Hague Convention, 1907).—Any war-ship belonging to a belligerent may demand that sick, wounded, or

(1) See below, page 77
shipwrecked men on board military hospital ships, hospital ships belonging to relief societies or to private individuals, merchant ships, yachts, or boats, whatever the nationality of these vessels, shall be handed over.

Commentary.

It was suggested in 1937 that a limitation should be placed upon the right of any warship to demand delivery of the sick and wounded persons, since the exercise of this right might affect such persons adversely as regards the care they need.

In support of this view, it was pointed out that, for example, a small destroyer holding up a large hospital-ship could not ensure on board adequate care for the wounded and sick from the hospital-ship. Furthermore, it would be inconceivable that a warship should take on board serious cases from a hospital-ship in exchange for her own less gravely wounded.

The naval experts, on their part, had stressed that the limitation of the right to demand delivery would be almost impossible of execution. They further observed that in practice the drawbacks mentioned above would not arise. Wounded and sick on board are always a serious handicap, and the captain of a warship would never decide to share with them the restricted space available on board his vessel, unless he had peremptory reasons for so doing. Moreover illegitimate exchange of sick and wounded should be impossible, in view of the precise wording of Art. 1 of the Draft, which provides that the belligerents shall ensure the same treatment to all wounded and sick, without distinction of nationality.

The 1937 Commission shared the views of the experts and accordingly decided to uphold the principle embodied in the 1907 Convention.

Article 4.

"If wounded, sick or shipwrecked persons are taken on board a neutral warship, precautions shall be taken to ensure that they can take no further part in warlike operations."

Article 13 (of the Xth Hague Convention, 1907).— If sick, wounded, or shipwrecked persons are taken on board a neutral war-ship, every possible precaution must be taken that they do not again take part in the operations of the war.
Commentary.

This Article reproduces the terms of Art. 13 of the Hague Convention, 1907, with the exception of the words "as far as possible", which have been deleted. The Commission of 1937 was generally of opinion that the principle embodied in this Article should be made more imperative.

Article 5.

"Wounded, sick and shipwrecked persons who are put ashore by belligerent warships in a neutral port, with the consent of the local authorities, shall be held by the neutral State, unless an arrangement to the contrary is made between the said State and the belligerents, so that they can take no further part in hostile operations.

The cost of accommodation in hospital and internment shall be borne by the State of which the wounded, sick and shipwrecked are nationals.

Wounded, sick and or shipwrecked persons who are landed by merchant ships, yachts, other vessels, private or neutral, and by aircraft, without such vessels or aircraft being party to any agreement with one of the belligerents, shall be free.

Warships arriving at a neutral harbour shall be authorized, with the consent of the neutral State, to put ashore the wounded, sick or shipwrecked persons who may be on board."

Article 15 (of the Xth Hague Convention, 1907).- The shipwrecked, sick, or wounded, who are landed at a neutral port with the consent of the local authorities, must, unless an arrangement is made to the contrary between the neutral State and the belligerent States, be guarded by the neutral State so as to prevent them again taking part in the operations of the war.

The expenses of tending them in hospital and interning them shall be borne by the State to which the shipwrecked, sick, or wounded persons belong.

Commentary

Re Section 1. This Section reproduces, in an amended form the principle of Sect. 1, Art. 15 of the Hague Convention. The 1937 Commission thought fit to stipulate that the persons referred to should be the wounded, sick
and shipwrecked persons put ashore by belligerent warships, the case of wounded, sick, and shipwrecked persons picked up by neutral warships or mercantile vessels being dealt with elsewhere (cf. Commentary, Art. 5, Sect. 3) The term "warship" is apparently taken to mean any vessel flying a belligerent flag, with the exception of hospital-ships, whose case is dealt with below (cf. Commentary re Art. 5, Sect. 3). It is true that the Commission gave no considered opinion on this point, but it appears evident that the term "warship" must in the present case be taken to include all ships which are subject to capture. Mercantile vessels and other belligerent craft would therefore come within this category; and wounded, sick and shipwrecked persons whom they might have picked up would be interned, on landing in a neutral port. The International Committee however think it would be preferable to embody this principle explicitly in the text of the Convention itself.

Re Sect. 3. This Section is new, but it is merely the codification of a rule which was implicitly admitted in 1907 already.

The Hague Convention however, silent as to the fate of wounded, sick, or shipwrecked persons landed in a neutral port by hospital-ships.

Two views were held by the Commission of 1937. The representatives of the American, Belgian, Italian, Japanese, Norwegian and Polish Red Cross Societies, as well as the International Committee of Military Medicine and Pharmacy, were of opinion that persons landed by hospital-ships were liable to internment; and that, in consequence, it was desirable to mention these vessels in Section 1 of Article 5, relating to belligerent warships. On the other hand, the naval and military experts of the French and German Red Cross Societies, as also the representative of the Netherlands Red Cross - the latter basing his argument on historical precedent - considered that wounded, sick, and shipwrecked persons landed by hospital-ships should enjoy the same treatment as if they had been landed by neutral mercantile vessels, and that their case should be regulated by Sect. 3, Art. 5 of the Draft.

According to the course chosen, it will be necessary to add, either to Sect. 1 of Art. 5 the words "and hospital-ships" (following the words "belligerent warships") or to Sect. 3 the words "by hospital-ships" (following the words "in a neutral port").

Re Sect. 4. This Section follows a proposal made by the International
Committee of Military Medicine and Pharmacy. Starting from the view that accommodation of wounded is better in a port than on board a warship, the said International Committee suggested that a new provision might be introduced here, making it obligatory for warships arriving in a neutral port to declare and land all wounded and sick persons on board, the neutrals being for their part obliged to receive such ships and their wounded.

The 1937 Commission, however, was in general of the opinion that such an obligation would be too onerous and that it would be preferable that it should remain optional, leaving the final decision to the captains of warships and the authorities of the neutral States. It may also be pointed out in this connexion that if warships arriving in a neutral port were compelled to land all sick, wounded or shipwrecked, they would try to avoid neutral ports when carrying wounded of their own nationality, but when conveying enemy prisoners, would hasten to land them, as a convenient means of being relieved of them, by getting them interned.

Article 6.

"After every engagement, both belligerents shall take steps, so far as military interests permit, to search for the shipwrecked, wounded and sick, and to protect them, as well as the dead, against pillage and ill-treatment.

Article 16 (of the Xth Hague Convention, 1907).—After every engagement, the two belligerents, so far as military interests permit, shall take steps to look for the shipwrecked, sick, and wounded, and to protect them, as well as the dead, against pillage and ill-treatment. They shall see that the burial, whether by land or sea, cremation of the dead shall be preceded by a careful examination of the corpse.

Article 3 (of the Geneva Convention, 1929).—After each engagement the occupant of the field of battle shall take measures to search for the wounded and dead, and to protect them against pillage and maltreatment. Whenever circumstances permit, a local armistice or a suspension of fire shall be arranged to permit the removal of the wounded remaining between the lines.
**Commentary.**

This Article, which reproduces the wording of Art. 16, Sect. 1, of the Hague Convention, was adopted without discussion. As regards Sect. 2 of the said Art. 16, the 1937 Commission, with a view to ensuring a better concordance between the provisions of the Hague Convention and those of the Geneva Convention, decided to embody it in Art. 7 of the draft, given below.

**Article 7**

"The belligerents shall inform each other, with all possible speed, of the names of the wounded, sick and dead picked up or discovered, together with all the data required for their identification.

They shall establish and forward to each other the certificates of death.

They shall likewise collect and forward to each other all the personal property found in captured vessels or on the dead, particularly or half of the identity disc, the other half remaining attached to the body.

They shall ensure that burial on land or at sea, or cremation of the dead shall be preceded by careful and if possible medical examination of the body, with a view to certifying death, establishing identity and being in a position to report the event.

Should wounded, sick or dead be collected by neutrals, the latter shall assume as regards the belligerents the obligations indicated in the preceding paragraphs."

**Article 17** (of the Hague Convention, 1907).— Each belligerent shall send as early as possible, to the authorities of their country, navy, or army the military marks or documents of identity found on the dead and the description of the sick and wounded picked up by him.

The belligerents shall keep each other informed as to interments and transfers as well as to the admissions into hospital and deaths which have occurred among the sick and wounded in their hands. They shall collect all the objects of personal use, valuables, letters, etc., which are found in the captured ships, or which have been left by the sick or wounded who died in hospital, in order to have them forwarded to the persons concerned by the authorities of their own country.
Article 4 (of the Geneva Convention, 1929).—Belligerents shall communicate to each other reciprocally, as soon as possible, the names of the wounded, sick and dead, collected or discovered, together with any indications which may assist in their identification.

They shall establish and transmit to each other the certificates of death.

They shall likewise collect and transmit to each other all articles of a personal nature found on the field of battle or on the dead, especially one half of their identity discs, the other half to remain attached to the body.

They shall ensure that the burial or cremation of the dead is preceded by a careful, and if possible medical, examination of the bodies, with a view to confirming death, establishing identity and enabling a report to be made.

They shall further ensure that the dead are honourably interred, that their graves are respected and marked so that they may always be found.

To this end, at the commencement of hostilities, they shall organise officially a graves registration service, to render eventual exhumations possible and to ensure the identification of bodies whatever may be the subsequent site of the grave. After the cessation of hostilities they shall exchange the list of graves and of dead interred in their cemeteries and elsewhere.

Commentary.

Re Section 1 à 4. Following the model of Sections 1 - 4 of Art. 4 of the Geneva Convention, these Sections amplify and make more precise the corresponding provisions of Art. 16 (Sect. 2) and Art. 17 of the Hague Convention.

At the request of the German Red Cross the question was raised in 1937 whether Sect. 5, 6, and 7 of Art. 4 of the Geneva Convention ought not also to be embodied into the Maritime Convention, so as to cover the case of the dead brought ashore. The Committee negatived this suggestion, and adhered to the view that the Geneva Convention and that of the Hague should be regarded as complementary, and that their field of application
is determined not ratione personae, but ratione loci. Thus, whenever wounded, sick, or deceased persons are on board ship they come under the provisions of the Maritime Convention; once they are ashore, they come automatically under the protection of the Geneva Convention. Moreover, Article 26 of the Draft expressly provides for this.

Re Sect. 5. This paragraph is new. The 1937 Commission unanimously agreed that the obligations arising under Sect. 1 - 4 of the present Article must also be incumbent on neutral powers.

Article 8

"The belligerents may appeal to the humanitarian feelings of the commanders of neutral merchant ships, yachts or other craft to take on board and care for the sick and wounded, and the shipwrecked.

Vessels responding to this appeal, and those having of their own accord rescued wounded men, shall enjoy special protection and certain facilities.

In no case can they be captured for having such persons on board, subject to undertakings made to them, they remain liable to capture for any violations of neutrality they may have committed."

Article 9 (of the Xth Hague Convention, 1907).- Belligerents may appeal to the charity of the commanders of neutral merchant ships, yachts, or boats to take on board and tend the sick and wounded. Vessels responding to this appeal, and also vessels which have of their own accord rescued sick, wounded, or shipwrecked men, shall enjoy special protection and certain immunities. In no case can they be captured for having such persons on board, but, apart from special undertakings that have been made to them, they remain liable to capture for any violations of neutrality they may have committed.

Article 5 (of the Geneva Convention, 1929).- The military authorities may appeal to the charitable zeal of the inhabitants to collect and afford medical assistance, under their direction, to the wounded or sick of armies, and may accord to persons who have responded to this appeal special protection and certain facilities.
Commentary.

This Article reproduces the provisions of Article 9 of the Hague Convention, with the exception of the word "immunities", which has been replaced by the word "facilities" appearing in the corresponding text of Art. 5 of the Geneva Convention. In the Draft submitted to the experts in 1937, the International Committee suggested that neutral mercantile vessels, yachts, and other craft having picked up wounded persons, either spontaneously or at the request of a belligerent party, could not on that account be diverted from their route. The Commission, while recognising that the idea was a generous one, considered that in certain circumstances it might be legitimate for a warship to divert neutral mercantile vessels carrying wounded persons, if only for the purpose of preventing them from supplying information, especially as regards the warship's presence in the vicinity.

Chapter II - Hospital-Ships

It should be noted that in its 1937 draft the International Committee called this chapter "Des navires-hôpitaux et des navires hospitaliers" (the latter being vessels fitted out by private persons or relief societies), according to the distinction laid down in the 1907 Convention. The 1937 Commission considering that "navires-hôpitaux" and "navires hospitaliers" had the same legal status, adopted the same generic term of "navires-hôpitaux" (hospital-ships) which covers as well military hospital-ships belonging to belligerents as hospital-ships belonging to private persons, or to relief societies of neutral countries or of belligerent Powers.

Article 9.

"Military hospital-ships, that is to say, ships specially fitted out by States specially and solely with a view to assisting the wounded, sick, and shipwrecked, and the names of which have been communicated to the belligerent Powers at the commencement or during the course of hostilities, and in any case before they are employed, shall be respected and can not be captured."
Article 1 (of Tenth Convention of the Hague, 1907).—Military hospital ships, that is to say, ships constructed or assigned by States specially and solely with a view to assisting the wounded, sick, and shipwrecked, the names of which have been communicated to the belligerent Powers at the commencement or during the course of hostilities, and in any case before they are employed, shall be respected, and can not be captured while hostilities last.

These ships, moreover, are not on the same footing as war-ships as regards their stay in a neutral port.

Article 6 (of Geneva Convention of 1929).—Mobile medical formations, that is to say, those which are intended to accompany armies in the field, and the fixed establishments of the medical service shall be respected and protected by the belligerents.

Commentary

In 1937 it was proposed to amalgamate Articles 1, 2 and 3 of the Hague Convention, the separation of their stipulations no longer appearing justifiable since military hospital-ships and those of relief societies and private persons were now governed by the same rules. The Commission of 1937 considered it preferable to maintain the separation of the provisions of Articles 1, 2 and 3 of the Hague Convention, which make it possible to distinguish the origin of the various hospital-ships.

Article 10.

"Hospital-ships utilised by private individuals or officially recognized relief societies, shall be likewise respected and exempt from capture, if the belligerent Power to whom they belong has given them an official commission and has notified their names to the hostile Power, at the commencement of or during hostilities, and in any case before they are employed.

These ships must be provided with a certificate from the responsible authorities, stating that the vessels have been under their control while fitting out and on final departure."

Article 2 (of the Tenth Hague Convention of 1907).—Hospital ships, equipped wholly or in part at the expense of private
individuals or officially recognized relief societies, shall be likewise respected and exempt from capture, if the belligerent Power to whom they belong has given them an official commission and has notified their names to the hostile Power at the commencement of or during hostilities, and in any case before they are employed. These ships must be provided with a certificate from the competent authorities declaring that the vessels have been under their control while fitting out and on final departure.

Commentary.

The words "utilized by", which replace "equipped wholly or in part at the expense of" were suggested in 1937 by the French Red Cross. The amendment was unanimously approved, as it is of no importance to know at whose expense hospital-ships have been equipped, nor if they are or are not the property of relief societies or of private persons mentioned in Art. 10.

The Preliminary Conference (1946) recommended the following amendment to the beginning of Sect. 1 of Art. 10: "Hospital-ships utilized by National Red Cross Societies, by officially recognized relief societies or by private individuals shall be ..... etc".

Article 11.

"Hospital-ships utilized by private individuals or officially recognized relief societies of neutral countries, shall be respected and exempt from capture, on condition that they are placed under the control of one of the belligerents, with the previous consent of their own Government and with the authorisation of the belligerent himself, and that the latter has notified their names to his adversary at the commencement of, or during hostilities, and in any case before they are employed."

Article 3 (of the Tenth Hague Convention of 1907).- Hospital ships, equipped wholly or in part at the expense of private individuals or officially recognized societies of neutral countries shall be respected and exempt from capture, on condition that they are placed under the control of one of the belligerents, with the previous consent of their own Government and with the authorization of the belligerent himself, and that the latter has notified their names to his adversary at the commencement of
or during hostilities, and in any case, before they are employed.

Commentary.

The Preliminary Conference (1946) recommended the adoption of the same amendments as those advised for Article 10. Similarly, the problem of fixing a minimum tonnage of hospital-ships was discussed by the Conference. During the second World War controversy sometimes arose between belligerents, some of whom refused to recognize hospital-ships, alleging that they were of insufficient tonnage. It therefore appears necessary to name a tonnage in the Convention, so that any recurrence of such difficulties may be avoided.

Article 12

"The ships mentioned in Articles 9, 10 and 11, shall afford relief and assistance to the wounded, sick and shipwrecked of the belligerents, without distinction of nationality.

The Governments undertake not to use these ships for any military purpose.

These vessels must in no wise hamper the movements of the combatants.

During and after an engagement they will act at their own risk and peril.

The belligerents shall have the right to control and search them. They can refuse to help them, order them off, make them take a certain course, and put a commissioner temporarily on board; they can even provisionally detain them, if important circumstances require it.

As far as possible, the belligerents shall enter in the log of the hospital ships the orders which they give them."

Article 4 (of the Hague Convention of 1907).— The ships mentioned in Articles 1, 2, and 3 shall afford relief and assistance to the wounded, sick, and shipwrecked of the belligerents without distinction of nationality.

The Governments undertake not to use these ships for any military purpose.

These vessels must in no wise hamper the movements of the combatants. During and after an engagement they will act at their own risk and peril.

The belligerents shall have the right to control and search
them; they can refuse to help them, order them off, make them take a certain course, and put a commissioner on board; they can even detain them, if important circumstances require it. As far as possible, the belligerents shall enter in the log of the hospital ships the orders which they give them.

Commentary.

This Article reproduces the text of Article 4 of the Hague Convention, excluding the words "and put a commissioner on board; they can even detain them", which are replaced by the words "and put a commissioner temporarily on board; they can even provisionally detain them", in order to avoid the risk of disguised capture of hospital-ships.

The Commission of 1937 also recommended that States should place on board hospital-ships neutral observers, as was the case in 1917 following a Franco-German agreement. These observers would be empowered to see that no misuse was made of the hospital-ships.

The observer would in no case have power to assume control or give orders to the captain, who must retain full liberty of action. The Commission however considered it possible to provide that neutral observers might be placed on board hospital-ships, whose main function would be to ascertain facts and be able to give an account of them. Their evidence would make it possible to verify the perpetration of infringements, or to exonerate the captain of the ship from unfounded charges and thus avoid reprisals. The neutral observers could, if not instruct the captains, at least draw their attention to the possible consequences of their acts.

The 1946 Conference expressed entire agreement with this principle, and even proposed to add a new paragraph, as follows:

"States may, either unilaterally or by special agreement, place neutral observers on board their hospital-ships who shall verify the strict adherence to the stipulations of the present Convention".

In 1937 it was proposed to lay down that a hospital-ship assumedly renounces the protection of the Convention when it is convoyed by warships, or if it is included in a convoy of mercantile vessels. The Commission had, however, finally adopted the principle that, whatever the position of hospital-ships in relation to warships, the former can never lose the benefit of protection under the Convention. Should they approach warships, they expose themselves de facto to loss of their security, and
are then acting at their own risk, in accordance with Sect. 4 of Art. 12.

The 1946 Conference nevertheless retained the idea of presumption, which might be expressed as follows:

"Hospital-ships convoyed by warships, or included in a convoy of mercantile vessels are assumed to renounce the protection of the Convention."

Article 13.

"Vessels mentioned in Articles 9, 10 and 11 are not on the same footing as warships as regards their stay in a neutral port."

Article 1, Section 2 (of the Tenth Convention of the Hague, 1907).

These ships, moreover, are not on the same footing as war-ships as regards their stay in a neutral port.

Commentary.

This Article reproduces the text of Art. 1, Sect. 2 of the Hague Convention of 1907. By embodying this stipulation in separate article the Commission intended to stress the fact that it is applicable not only to military hospital-ships, but equally to hospital-ships utilized by private individuals, or by officially recognized relief societies of belligerent or neutral countries.

Article 14.

"Mercantile ships which have been transformed into hospital-ships cannot be put to any other use throughout the duration of hostilities."

Commentary.

This new Article was unanimously adopted by the 1937 Commission and introduced into the revised Draft to avoid risk of misuse.

Article 15.

"The protection to which hospital-ships and sick bays are entitled shall cease if they are employed to commit acts harmful to the enemy."

In particular hospital-ships are forbidden to communicate by means
of a secret code, either by signals or by wireless.

The following conditions shall not be considered as justifying the withdrawal of protection:

1. the fact that the crew of these ships is armed for the maintenance of order and for the defence of the sick and wounded;
2. the presence on board of wireless apparatus small signal-guns and cable-guns;
3. the presence on board of small arms and ammunition taken from the wounded, sick and shipwrecked, and which have not yet been handed to the proper service.

Article 8 (of the Tenth Convention of the Hague of 1907). Hospital ships and sick wards of vessels are no longer entitled to protection if they are employed for the purpose of injuring the enemy. The fact of the staff of the said ships and sick wards being armed for maintaining order and for defending the sick and wounded, and the presence of wireless telegraphy apparatus on board, is not a sufficient reason for withdrawing protection. (1)

Article 7 (of the Geneva Convention of 1929). The protection to which medical formations and establishments are entitled shall cease if they are made use of to commit acts harmful to the enemy.

Commentary.

Re Sect. 2. This new paragraph was adopted without discussion by the 1937 Commission.

The 1946 Conference, however, was of opinion that this paragraph should be introduced in a new article which might be worded as follows:

"Hospital-ships provided with wireless shall not be in possession of a secret code. All their communications by signals or by wireless shall be in plain language."

Re Sect. 3, pars. 1 and 2. These stipulations, in a different form, simply reproduce Art. 8, Sect. 2 of the Hague Convention with the addition, after the words "wireless apparatus" of the words "small signal-guns and cable-guns". This addition was adopted without discussion.

(1) Cf. also Geneva Convention, 1929, Art. 8.
Article 16.

"The religious, medical, and hospital staff of hospital-ships shall be respected and protected in all circumstances; their members cannot under any circumstances be taken prisoner.

The same provision shall apply to the crews of hospital-ships, as also to the crews of aircraft attached to such ships, during the period when they are carrying out their functions."

Commentary.

This Article is new, although its principle may be considered to be implicitly admitted in view of the Hague Convention. The order of subject matter in the Geneva Convention made it necessary to introduce the Article into the Revised Maritime Convention. The Commission of 1937 considered it desirable to emphasize that the protection enjoyed by crews is limited to the period during which they are engaged in navigating ships or aircraft attached to them, and of which they are in some measure an integral part.

The 1946 Conference drew attention to the fact that the wording of Art. 16, Sect. 1, and of Art. 17 should be made to concur.

Article 17.

"The religious, medical, and hospital staff of any captured ship shall be respected and protected in all circumstances.

Should they fall into the hands of the enemy, they shall not be treated as prisoners of war.

Military personnel specially trained to act, in case of need, as nurses or auxiliary stretcher-bearers engaged in removing, transporting or caring for the wounded and sick, and furnished with identification papers, shall benefit by the same regime as the regular hospital staff, should they be captured while engaged in performing such duties."

Article 10, Section 1 (of the Hague Convention, 1907).—The religious, medical, and hospital staff of any captured ship is inviolable, and its members can not be made prisoners of war. On leaving the ship
they take away with them the objects and surgical instruments which are their own private property.

Article 9 (of the Geneva Convention of 1929).— The personnel engaged exclusively in the collection, transport and treatment of the wounded and sick, and in the administration of medical formations and establishments, and chaplains attached to armies, shall be respected and protected under all circumstances. If they fall into the hands of the enemy they shall not be treated as prisoners of war.

Members of Forces specially trained to be employed, in case of necessity, as auxiliary nurses or stretcher-bearers for the collection, transport and treatment of the wounded and sick, and furnished with a proof of identity, shall enjoy the same treatment as the permanent medical personnel, if they are taken prisoners while carrying out these functions.

Commentary.

Re Section 1.— The question arose in 1937 whether the religious, medical and hospital staff which might be on board a hospital ship as passengers, would also enjoy the protection of the Convention. It was unanimously agreed that the words "in all circumstances" were sufficiently explicit.

Re Section 3.— This new stipulation reproduces Section 3 of Article 9 of the Geneva Convention which is also applied in the Maritime Convention.

The International Committee, in their draft submitted to the experts in 1937, introduced here two articles reproducing the stipulations of Art. 10 and 11 of the Geneva Convention. The Commission of Experts was also in favour of this adjunction. Further consideration of the question led the International Committee to the conclusion that Art. 10 and 11 of the Geneva Convention being practically identical with existing stipulations (Art. 16, 10 and 11 of the Draft) it was superfluous to reproduce Art. 10 and 11 of the Geneva Convention in a revised Convention.

Article 18.

"The persons referred to in Article 17 may not be detained after they have fallen into the power of the adverse party. Failing any agreement to the contrary, they shall be landed as speedily as possible, so far as
military requirements permit.

While awaiting repatriation, they shall continue to discharge
their duties under the direction of the adverse party; they shall preferably
be occupied in caring for the wounded and sick of the belligerent Power
whose nationals they are.

On leaving, they shall take with them the articles, surgical
instruments and arms which are their property."

Article 10, Section 2 (of the Tenth Hague Convention of 1907).- This staff shall continue to discharge its duties while necessary,
and can afterwards leave, when the commander-in-chief considers
it possible.

Article 12 (of the Geneva Convention of 1929).- The persons
designated in articles 9, 10 and 11 may not be retained after
they have fallen into the hands of the enemy.

In the absence of an agreement to the contrary, they shall be
sent back to the belligerent to whom they belong as soon as a
route for their return shall be open and military considerations
permit.

Pending their return they shall continue to carry out their
duties under the direction of the enemy; they shall preferably
be engaged in the care of the wounded and sick of the belligerent
to whom they belong.

On their departure, they shall take with them the effects,
instruments, arms and means of transport belonging to them.

Commentary.

This Article, adopted without discussion in 1937, constitutes an
adaptation of Art. 10, Sect. 1 and 2 of the Hague Convention to Art. 12 of
the Geneva Convention, of which the more detailed and explicit wording was
considered preferable.

Article 19.

"The belligerents shall grant the personnel referred to in
Article 17, while in their power, the same maintenance and the same
accommodation, so far as the installations on board allow, as well as the
same allowances and the same pay, as to the personnel of corresponding
rank in their own navy. At the outbreak of hostilities, the belligerents shall agree as to what constitutes corresponding rank in the case of hospital personnel."

Article 10, Section 3 (of the Tenth Hague Convention of 1907).- The belligerents must guarantee to the said staff, when it has fallen into their hands, the same allowances and pay which are given to the staff of corresponding rank in their own navy.

Article 13 (of the Geneva Convention of 1929).- Belligerents shall secure to the personnel mentioned in articles 9, 10 and 11, while in their hands, the same food, the same lodging, the same allowances and the same pay as are granted to the corresponding personnel of their own armed forces.
At the outbreak of hostilities the belligerents shall notify one another of the grades of their respective medical personnel.

Commentary.

The words "so far as the installations on board allow" were introduced in 1937. It will obviously not always be possible, in view of the restricted amount of space available on a warship, to grant captured hospital staff the same accommodation as that enjoyed by the personnel of corresponding rank in the capturing vessel.

Chapter IV - Material

Article 20.

"In case of fighting on board warships, the sick bays shall be respected and spared as far as possible.

The said sick bays and their equipment shall remain subjected to the laws of warfare, but they may not be diverted from their original purpose so long as they are required for the wounded and sick. The commander into whose power they have fallen may however apply them to other purposes, in case of urgent military necessity, after ensuring the proper care of the wounded and sick who are nursed there."
Article 7 (of the Hague Convention of 1907).—In the case of a fight on board a war-ship, the sick wards shall be respected and spared as far as possible.

The said sick wards and the materiel belonging to them remain subject to the laws of war; they can not, however, be used for any purpose other than that for which they were originally intended, so long as they are required for the sick and wounded.

The commander, however, into whose power they have fallen may apply them to other purposes, if the military situation requires it, after seeing that the sick and wounded on board are properly provided for.

Article 15 (of the Geneva Convention of 1929).—The buildings and material of the fixed medical establishments of the army shall be subject to the laws of war, but may not be diverted from their purpose as long as they are necessary for the wounded and the sick. Nevertheless, the commanders of troops in the field may make use of them, in case of urgent military necessity, provided that they make previous arrangements for the welfare of the wounded and sick who are being treated therein.

Commentary.

This Article is practically identical with Article 7 of the Hague Convention, but follows more closely the Geneva Convention. The question arose in 1937 as to whether modern naval warfare might not preclude the possibility of a fight on board ship and if, consequently, the stipulation of Article 7 of the Hague Convention should not be removed, as being out of date. This stipulation being in no way objectionable the Commission decided to maintain it.

Chapter V—Medical Transport

Article 21.

"The provisions of Article 18 of the Geneva Convention of July 27, 1929, are applicable in case of hostilities at sea."
Furthermore, these provisions are completed as follows: Hospital sea-planes must at once obey any order to descend. In case of their alighting at sea, whether in response to a summons or fortuitously, all wounded and sick, as well as hospital personnel and equipment, including the aircraft, shall enjoy the protection of the present Convention.

Article 18 (of the Geneva Convention of 1929).—Aircraft used as means of medical transport shall enjoy the protection of the Convention during the period in which they are reserved exclusively for the evacuation of wounded and sick and the transport of medical personnel and material. They shall be painted white and shall bear, clearly marked, the distinctive emblem prescribed in article 19, side by side with their national colours, on their lower and upper surfaces. In the absence of special and express permission, flying over the firing line, and over the zone situated in front of clearing or dressing stations, and generally over all enemy territory or territory occupied by the enemy, is prohibited. Medical aircraft shall obey every summons to land. In the event of a landing thus imposed, or of an involuntary landing in enemy territory, or territory occupied by the enemy, the wounded and sick, as well as the medical personnel and material, including the aircraft, shall enjoy the privilege of the present Convention. The pilot, mechanics and wireless telegraph operators captured shall be sent back, on condition that they shall be employed until the close of hostilities in the medical service only.

Commentary.

This Article is new, as it was in 1929 only that general provisions concerning the use of medical aircraft were inserted into the Geneva Convention (Article 18). In any case, these provisions are applicable equally to both naval and land operations. In 1937 the experts considered sufficient to add a special clause to provide for medical seaplanes on the same basis.

The question was put to the experts in 1937, whether hospital aircraft could be employed by belligerents for searching and giving assistance to persons shipwrecked during hostilities. The Commission replied in the
affirmative and further recognised that aircraft could be used temporarily
for such relief purposes, in opposition to the recommendations regarding
life-saving craft.

It appears necessary to complete the revised Maritime Convention
in this respect, and also the Geneva Convention, in order to regulate such
use of medical aircraft by the insertion of the following provision:
"Medical aircraft may be temporarily utilised by the belligerents to whom
they belong, for searching and giving assistance to war victims without,
on this account, forfeiting the protection due to them under the present
Convention."

Another problem was raised in 1937, with regard to the transport
of medical equipment by sea in war time. The question raises considerable
difficulties, because hospital/ships carrying such equipment would run the
risk of being regarded as conveying contraband of war, and of being captured.
Precise and strict ruling would provide a solution.

Suggestions were made in 1937 for the creation of an auxiliary
neutral agency, with representatives in all ports concerned, whose duty
would be to control the reception and the issue of equipment, and to
superintend its destruction after use, to prevent utilisation for military
purposes.

Further, neutral observers placed on board hospital ships could
verify the medical equipment carried by these vessels.

The whole question could be settled by special agreements, under
Article 29.

Chapter VI - The Distinctive Emblem

Article 22.

'The emblem of the Red Cross shall be displayed on the flags,
brassards and all equipment belonging to the Medical Service, with the
consent of the responsible military authority."

Article 20 (of the Geneva Convention, 1929). The emblem shall
figure on the flags, armlets, and on all material belonging to
the medical service, with the permission of the competent
military authority.
Commentary.

This Article merely repeats the terms of Article 20 of the Geneva Convention. Its insertion into the Maritime Convention was considered necessary by the 1937 Commission, when it was adopted without discussion.

Article 23.

"The religious, medical, and hospital staff, which is protected under Section 1 of Article 16, and Section 1 of Article 17, shall bear on the left arm a brassard, bearing the distinctive sign, issued and stamped by a military authority.

The religious, medical, and hospital staff of military hospital-ships and the personnel referred to in Section 3 of Article 17 shall be furnished with a certificate, consisting either of an entry in their paybook or a special document.

The religious, medical, and hospital staff of the hospital-ships referred to in Articles 10 and 11, not wearing uniform, shall be provided by the responsible military authority, with an identity card bearing a photograph, attesting their capacity as hospital workers.

Identity cards must be uniform in size and of the same pattern in each fleet.

Hospital staff cannot under any circumstances be deprived of the emblem or identity certificates which are their property.

In case of loss, the bearers shall have right to obtain duplicates."

Article 21 (of the Geneva Convention of 1929).— The personnel protected in pursuance of articles 9 (paragraph 1), 10 and 11, shall wear, affixed to the left arm, an armlet bearing the distinctive sign, issued and stamped by a military authority.

The personnel mentioned in article 9, paragraphs 1 and 2, shall be provided with a certificate of identity, consisting either of an entry in their small book (paybook) or a special document.

The persons mentioned in articles 10 and 11 who have no military uniform shall be furnished by the competent military authority with a certificate of identity, with photograph, certifying their status as medical personnel.

The certificates of identity shall be uniform and of the same pattern in each army.

In no case may the medical personnel be deprived of their armlets.
or the certificates of identity belonging to them.
In case of loss they have the right to obtain duplicates.

Commentary.

This Article, which is new, embodies the principles laid down in Art. 21 of the Geneva Convention. The medical personnel of military hospital-ships employed by private persons or relief societies duly recognised (Art. 10 and 11) may wear the brassard, with the exclusion of temporary medical personnel. The medical personnel wearing uniform (including the medical personnel of military hospital-ships and personnel having had special training for employment, in case of need, as orderlies or auxiliary stretcherbearers) should be provided with a certificate of identity, which, as a rule, consists of an inscription in the pay book: personnel not wearing uniform (medical personnel on hospital ships employed by private persons or relief societies duly recognized) should be furnished by the responsible authority with a certificate of identity, with photograph, attesting their status as medical personnel.

Article 24.

The ships referred to in Articles 9, 10 and 11 shall be distinguished by being painted white outside with a horizontal red band, about a metre and a half in breadth. The boats of the ships above mentioned, as also small craft which may be used for hospital work, shall be distinguished by similar marking.

The decks, funnels, and superstructure of the ships mentioned in Section 1 of the present Article shall be painted white and bear large red crosses, so as to render their emblems plainly visible to the enemy land, air, or naval forces.

All hospital-ships shall make themselves known by hoisting, with their national flag, the white flag with a red cross, and further, if they belong to a neutral State, by flying at the mainmast the national flag of the belligerent whose control they have accepted.

Hospital-ships which, in accordance with Article 12, are provisionally detained by the enemy, shall haul down the national flag of the belligerent to whom they belong.

The above-mentioned ships and boats which wish to ensure by
night the freedom from interference to which they are entitled, must, subject to the assent of the belligerent they are accompanying, take the necessary measures to render their painting and distinctive emblems sufficiently plain."

Article 5 (Hague Convention of 1907). - Military hospital ships shall be distinguished by being painted white outside with a horizontal band of green about a meter and a half in breadth. The ships mentioned in Articles 2 and 3 shall be distinguished by being painted white outside with a horizontal band of red about a meter and a half in breadth. The boats of the ships above mentioned, as also small craft which may be used for hospital work, shall be distinguished by similar painting.

All hospital ships, shall make themselves known by hoisting, with their national flag, the white flag with a red cross provided by the Geneva Convention, and further, if they belong to a neutral State, by flying at the mainmast the national flag of the belligerent under whose control they are placed. Hospital ships which, in the terms of Article 4, are detained by the enemy must haul down the national flag of the belligerent to whom they belong. The ships and boats above mentioned which wish to ensure by night the freedom from interference to which they are entitled, must, subject to the assent of the belligerent they are accompanying, take the necessary measures to render their special painting sufficiently plain.

Article 22 (Geneva Convention of 1929). The distinctive flag of the Convention shall be hoisted only over such medical formations and establishments as are entitled to be respected under the Convention, and with the consent of the military authorities. In fixed establishments it shall be, and in mobile formations it may be accompanied by the national flag of the belligerent to whom the formation or establishment belongs. Nevertheless, medical formations which have fallen into the hands of the enemy, so long as they are in that situation, shall not fly any other flag than that of the Convention. Belligerents shall take the necessary steps, so far as military
exigencies permit, to make clearly visible to the enemy forces, whether land, air, or sea, the distinctive emblems indicating medical formations and establishments, in order to avoid the possibility of any offensive action.

Article 23 (Geneva Convention of 1929). The medical units belonging to neutral countries which shall have been authorised to lend their services under the conditions laid down in article 11, shall fly, along with the flag of the Convention, the national flag of the belligerent to whose army they are attached. They shall also have the right, so long as they shall lend their services to a belligerent, to fly their national flag. The provisions of the second paragraph of the preceding article are applicable to them.

Commentary.

Re Section 1.- This Section is a combination of Sect. 1 and 2 of Art. 5 of the Convention. The 1937 Commission unanimously agreed to unify the methods of marking hospital-ships mentioned in Art. 9, 10 and 11, by the adoption of the red band for all. As all distinction between military hospital-ships and other hospital-ships has been abolished and their legal status will henceforth be identical, it was not considered useful to make any exception with regard to markings.

The Preliminary Conference of 1946, while approving the principle of unification, nevertheless expressed the following recommendation.

The use of green or red colour should be studied anew by experts, who would decide as to which of the two colours is more easily recognizable, by night as well as by day.

Re Section 2.- This Section is the exact reproduction of the corresponding provision of the Hague Convention.

A subsidiary question had been put to the experts in 1937 concerning the use of speed-boats to assist victims of maritime war, when circumstances allowed. The Commission agreed to the suggestion, but stipulated that the attribution of such craft to the Medical Service should remain definite, for the duration of hostilities. Speed-boats can serve as weapons of war, and their alternative employment for medical or warlike purposes might lead to misuse.

During the second World War, the use of speed-boats bearing the
Red Cross emblem, for rescuing airmen from the sea, gave rise to disputes between belligerents. Great Britain, for instance, refused to recognise the use of such craft by Germany, on the grounds that they might serve, for reconnoitring purposes. The use of lifebuoys, with first-aid containers, was also a matter of dispute.

The 1946 Commission recommended that the use of such small speedboats for medical purposes should be studied by experts.

The Commission further requested that experts should examine the possibility of extending the Geneva Convention to include the mercantile marine.

Re Section 3.—This Section is new. In 1937, the experts thought that the development of modern methods of warfare, and especially of aircraft, made the markings provided for under the Hague Convention inadequate, since they had been selected at a time when air warfare was still unknown, and when it was sufficient that the markings should be visible from other ships.

The International Committee therefore proposed to stipulate that the deck, funnels and superstructure of hospital-ships should be provided with large red crosses on a white ground.

It should be noted that although the 1937 Draft never became a Convention, the majority of the belligerent Powers during the second World War adopted this type of markings (red crosses on the deck and superstructures).

During the war in the Far East, many protests were lodged in regard to destruction of hospital-ships, and it seems that lack of modern markings was the chief cause of these incidents.

From a report by the United States Government, communicated to the International Committee by the American Red Cross in reply to protests lodged by the Japanese Red Cross, it may be gathered that out of nine Japanese hospital-ships alleged to have been attacked, four were lying close to military objectives, and were not marked in the stipulated manner.

The others bore no distinctive signs, or such as were invisible from the air. One hospital-ship bore markings which became recognisable only when photographs taken at the time of the attack were examined through a magnifying glass. Another hospital-ship, attacked by night, illuminated its distinctive markings only after the attack.

The United States Government observed that it was at their own risk that hospital-ships took up a position near a military objective, and that they ran great danger if they were not provided with the markings and
illumination stipulated under the Convention of 1907. Moreover, the United States Government pointed out that markings provided for under the Convention were a minimum, and that hospital-ships should certainly have markings of larger dimensions, which would be visible from the air. The United States Government therefore proposed that the Japanese Government should follow their example, by brilliantly lighting up their hospital-ships continuously from sunset to sunrise, placing distinctive markings on the decks and illuminating the funnels and hull, so that the red cross emblems might be distinguishable from the air. If a hospital-ship chose to black-out under certain circumstances, it was at its own risk.

(See Addendum, p. 90)

Chapter VII - Application and Execution of the Convention

No new provisions having been proposed by the 1937 Draft, or since, the Articles of this Chapter are given below, without commentary.

Article 25.

"The provisions of the present Convention shall be respected by the High Contracting Parties in all circumstances.

In time of war, if one of the belligerents is not a party to the Convention, these provisions shall, nevertheless, remain binding as between the belligerents who are parties thereto."

Article 26.

"In case of hostilities between belligerent land and marine forces, the provisions of the present Convention shall only apply to forces aboard. For forces ashore, the provisions of the Geneva Convention of July 27, 1929 shall immediately become operative."

Article 27.

"The commanders in chief of belligerent fleets shall ensure the detailed application of the provisions contained in the preceding Articles."
also to unforeseen cases, following the instructions of their respective governments in accordance with the general principles of the present Convention."

Article 28.

"The High Contracting Parties shall take the necessary steps to acquaint their Navies, and particularly the protected personnel, with the provisions of the present Convention, and to bring these to the knowledge of the inhabitants."

Article 29.

"Belligerents are at liberty to conclude, above and beyond the obligations arising under the present Convention, any ad hoc agreements which they may deem necessary."
3. PROTECTION OF CIVILIAN HOSPITALS.

A. Historical Remarks.

The question of protecting Civilian Hospitals was raised at the Diplomatic Conference of 1929. This Conference was of opinion that the Geneva Convention, applying to Members of the Armed Forces, should not be extended to cover Civilian sick and wounded.

The congress of the International Hospitals Association in 1935 recommended that the States should complete the provisions of international law, so that, in time of war, civilian hospitals might enjoy the same protection as military hospitals.

The Commission convened by the International Committee in 1937, to study the revision of the Geneva Convention, seconded in 1938 by the International Red Cross Conference in London, decided not to extend the Geneva Convention so as to cover civilians, but recommended that the protection of civilian sick and wounded should be dealt with in a separate Convention.

B. Protection of Civilian Hospitals against Bombardment.

1. Present legislation.

Under present legislation, civilian hospitals are not protected by the Geneva Convention, and may not display the distinctive emblem of the red cross on a white ground.

As regards bombardment, they come under the very general and summary provisions of Art. 27 of the Regulations annexed to the Fourth Hague Convention of 1907, and Art. 5 of the Ninth Hague Convention of the same year, which run as follows:

Article 27, Fourth Convention: "In sieges and bombardments all necessary steps must be taken to spare, as far as possible, buildings dedicated to religion, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not being used at the time for military purposes."
It is the duty of the besieged to indicate the presence of such buildings or places by distinctive and visible signs, which shall be notified to the enemy beforehand".

Article 5 - Ninth Convention.- "In bombardments by naval forces all the necessary measures must be taken by the commander to spare as far as possible sacred edifices, buildings used for artistic, scientific, or charitable purposes, historic monuments, hospitals, and places where the sick or wounded are collected, on the understanding that they are not used at the same time for military purposes.

It is the duty of the inhabitants to indicate such monuments, edifices, or places by visible signs, which shall consist of large, stiff rectangular panels divided diagonally into two colored triangular portions, the upper portion black, the lower portion white".

Some States, with a view to bringing civilian hospitals under the protection of the Geneva Convention in time of war, have had recourse to the system which consists of militarising these hospitals by placing them under military authority, discipline and management. For this system to have any chance of being recognised as valid by the enemy, it is certain that a second condition must be fulfilled at the same time, namely, that these hospitals shall be really militarised, and that they shall be utilised at least partially for sick and wounded members of Forces. The Geneva Convention affords protection only to buildings, staff and material exclusively used for their proper purpose, i.e. caring for sick or wounded members of the armed Forces.

Where these two conditions are fulfilled, it may be admitted that the presence of civilians in military hospitals does not deprive them of protection, although this view constitutes a wider interpretation of the Convention.

However this may be, the solution referred to is hardly more than an expedient; it still remains urgently necessary to seek an explicit regulation of the matter, the more so as one only of the two aspects of the problem is solved (that of the simultaneous presence in a militarised hospital of both military and civilians), while the question of protection of hospitals for civilians only remains acute.
II. Provisions required

As previously stated in the paragraph dealing with the Geneva Convention, a solution for this fundamental problem must be found without delay. Three possibilities may be considered:

1. Extension of the Geneva Convention so as to cover all sick and wounded civilians (including the protection of civilian hospitals).

2. Adoption of an entirely distinct Convention to regulate the protection of all sick and wounded civilians (corollary to the Geneva Convention, solely applicable to wounded and sick members of the Forces).

3. Adoption of special treaty stipulations relating to the protection of all sick and wounded civilians, the Geneva Convention itself being partially extended to cover civilian victims of an incident of war, and sick persons in military hospitals.

Solution (1) would have the obvious advantage of simplicity, since it would not necessitate a new Convention. On the other hand, it would lead to a greatly extended use of the Red Cross emblem, with consequent greater risk of misuse.

The Preliminary Conference of Red Cross Societies (1946) showed a marked preference for Solution (1), on the grounds that civilian hospitals should benefit by the same protection as military hospitals, under the Geneva Convention. This is a logical solution, the Conference (1) having recommended that the Geneva Convention be extended to cover all wounded and sick civilians, as well as the staff, buildings and equipment devoted to their care.

The International Committee put two subsidiary questions to the 1946 Conference.

(1) Whether specifically civilian hospitals should be authorised to use the emblem of the red cross on a white ground as a protective measure or whether a special distinctive marking should be created. The International Committee observed that during the second World War some belligerents distinguished civilian hospitals by means of a red square placed in the centre of a white background.

The Conference considered that civilian hospitals should be

(1) Cf. above p. 4
authorised to use the emblem of the Geneva Convention, and that the
creation of a new emblem, which might lead to confusion, should be
avoided.

(2) Since the limits of protection should depend upon the character
of the buildings to be protected, what should these buildings be? Should
civilian hospitals include dispensaries, maternity homes, clinics,
orphanages, charitable institutions, etc.? The Conference considered that the term "civilian hospitals"
should designate establishments housing sick and wounded civilians, and
authorised by the Government. Such establishments only should be protected
by the Geneva Convention and be permitted to employ the distinctive emblem.

III. Protection of Civilian Hospitals in
regard to Enemy Authorities.

The Commission appointed by the 1946 Conference to study the
protection of civilian hospitals considered that such buildings should be
protected, not only against bombardments (for which the above provisions
have been adopted), but also in regard to enemy authorities when civilian
hospitals exist in an enemy country, or on a territory occupied by the
enemy. The Commission was of the opinion that Art. 56 of the Regulations
annexed to the Fourth Hague Convention of 1907 was inadequate. Provisions
more complete than those of Art. 56 should be introduced in future
conventions, to regulate the whole question of protection of civilian
hospitals. It is particularly desirable that civilian hospitals in an enemy
country, or on a territory occupied by the enemy, should be able to
pursue their work under certain conditions and be protected against pillage,
that patients undergoing treatment should be protected against expulsion,
and that staffs and equipment should be the object of special privileges.
4. HOSPITAL LOCALITIES AND ZONES.

For information on this subject, the reader is referred to the "Report concerning Hospital and Safety Localities and Zones" published by the International Committee of the Red Cross in May 1946 and annexed to the present documents.

Pages 1 - 3 comprise an Historical Summary; on page 16 will be found the Draft Convention on Hospital Localities and Zones, drafted in 1938.

The 1946 Conference did not go into the details of the 1938 Draft. It merely recommended that the International Committee should study, with the cooperation of experts, the insertion into the Geneva Convention of provisions for the protection of such zones.

The Conference stressed the fact that it would be necessary to exclude, in the vicinity of these localities and within a radius to be determined, all military units and all establishments directly related with war operations.

Draft Convention
on Hospital Localities and Zones (1938)

Article 1.- Field of Application.

1. Hospital localities and zones, as specified hereinafter, are intended to accommodate the wounded and sick as defined by Article 1 of the Geneva Convention of 27 July, 1929, for the relief of the wounded and sick of armies in the field.

2. As such, they shall be respected and protected in accordance with Article 6 of the Geneva Convention of 27 July 1929, under the conditions specified hereinafter.

3. The benefit of the present Convention shall apply not only to the territory, but to the air space extending above hospital localities and zones.
Article 2. Definition

1. Hospital localities and zones shall be used solely for the requirements of the Army Medical Corps, excluding any military utilisation whatever.

2. They shall, moreover, fulfil the following conditions:
   a) They shall be situated and maintained outside the zone of operations (including the coast-line), and shall be sufficiently far removed from military objectives to run no danger through bombardment of the latter;
   b) they shall have no anti-aircraft means of defence within the surrounding zone, to a depth at least equal to the useful range of the said means of defence;
   c) they shall be free, within a surrounding zone of 5 kilometres depth, from all military units and establishments connected with national defence, including all radio broadcasting stations;
   d) they shall not serve as a refuge to persons who were not resident there before hostilities;
   e) they shall be thinly populated in relation to the possibilities of hospitalisation.

3. The proviso mentioned under Section 1 of the present Article does not include:
   a) utilisation in transit of the lines of communication and transport by military convoys;
   b) the presence of men on leave who are natives of the locality or zone;
   c) the presence of the staff required for air-raid precaution work;
   d) the cases stipulated under Article 8 of the Geneva Convention, provided application of the said Article be not contrary to Section 1 of the present Article.

Article 3. Markings

Hospital localities and zones shall be clearly marked in the day-time around their outer precincts, by the emblem of the Geneva Convention of July 27, 1929.
Article 4.- Notification.

1. Already in peace-time, each High Contracting Party shall communicate to the International Committee of the Red Cross the list of hospital localities and zones which it proposes to establish in time of war. This list shall be available at all times to the High Contracting Parties.

2. When war has broken out or is in progress, each of the belligerent High Contracting Parties shall notify the other belligerent Contracting Parties, through the International Committee of the Red Cross, of the hospital localities and zones which it proposes to institute, specifying their exact location and area. The International Committee of the Red Cross shall simultaneously notify the non-belligerent High Contracting Parties.

Article 5.- Opposition

1. Each belligerent High Contracting Party who receives the notification provided for under Section 2 of the preceding Article shall be entitled to raise opposition to it:
   a) If the hospital localities and zones designated in accordance with Article 4, Section 1, are mentioned on the list communicated to the International Committee of the Red Cross three months at least before the outbreak of hostilities, the High Contracting Party concerned shall notify its opposition, through the International Committee of the Red Cross, within a period of three days as from receipt of the notification.

   b) If the hospital localities and zones thus designated are not mentioned on the above list, the delay for opposition shall be extended to twenty days.

2. Opposition shall be grounded; it shall form an obstacle to the creation of the said hospital locality or zone.
Article 6. - Withdrawal of approval

Each High Contracting Party shall be entitled to withdraw, at any time during hostilities, approval given for the creation of a hospital locality or zone. The withdrawal of approval shall be grounded and notified to the State concerned. It shall automatically, and within a period of five days from the date of receipt of the notification, entail loss for the hospital locality or zone of the benefit of the present Convention.

Article 7. - Conciliation

If the High Contracting Party under whose authority the hospital locality or zone is of opinion that opposition or withdrawal of approval, as defined under Articles 5 and 6, are not founded de jure or de facto, it shall be entitled to submit the contestation to an enquiry or conciliation procedure established in accordance with Article 30 of the Geneva Convention of July 27, 1929, for the relief of wounded and sick of armies in the field.

Article 8. - Occupation

1. In the event of occupation by the enemy, the hospital locality or zone shall continue to be utilised as such by the occupying Power, unless there is contrary notification on its part, or opposition on the part of the dispossessed enemy.

2. The occupying Power shall grant to persons protected by the Geneva Convention the treatment to which they are entitled under that Convention.

3. The situation of the civilian population of the hospital locality or zone shall be governed by the general rules of the law of nations.

Article 9. - Control

1. The hospital localities and zones shall be placed under the control of a commission of at least three neutral nationals appointed under emergency procedure by the International Committee of the Red Cross, and approved
by the State on whose territory it will have to carry out its duties.

2. A Commission of control shall be set up for each belligerent country possessing hospital localities and zones.

3. The Commission shall be a travelling one, according to the decision of its chairman; any one of its members may be charged with a specific mission of control.

4. The costs of the Commission shall be borne by the State under whose authority the hospital locality or zone is placed; the accounting shall be undertaken by the International Committee of the Red Cross.

Article 10. - Duties of Control Commissions

1. The Control Commissions shall have as their duties to supervise the observance of the provisions of the present Convention.

2. They shall draw the attention of the belligerent under whose authority the hospital localities and zones are placed to any fact which they consider contrary to the stipulations of the present Convention.

3. Should no account be taken of its observations, the Commission is entitled to resign its control duties for the hospital locality or zone to which their complaint applied. It shall so inform the belligerent States through the International Committee of the Red Cross.

4. Belligerents shall, in the widest measure possible, facilitate the duties of the commissioners. The latter shall, in particular, enjoy the privileges and immunities which are necessary for the performance of their office.

Article 11. - Alleged Infringement of the Convention

In the case of alleged infringement of the present Convention, each of the High Contracting Parties shall be entitled to claim that an enquiry be opened, in accordance with Article 30 of the Geneva Convention of July 27, 1929, for the relief of wounded and sick of armies in the field.
5.- AMALGAMATION OF THE ABOVE TREATY STIPULATIONS

The International Committee, in their report submitted to the Preliminary Conference of Red Cross Societies, referred to the preparatory work effected before the second World War, which resulted in the drafting of various projects (Revised Geneva Convention, Revised Maritime Convention, Medical Transport by Air, Hospital Localities). The question of the eventual amalgamation of these various provisions into one single Convention was raised, but no decision was reached. Today, the problem should be solved, as all the above-mentioned treaty provisions have clearly developed out of the system of protection instituted under the Geneva Convention and, logically, they should all be assembled under that agreement. From the practical viewpoint, the same applies to the provisions relating to Air Medical Services and Hospital Localities, in so far as the States may agree upon new provisions in this respect.

The embodiment of the Revised Maritime Convention in the Geneva Convention constitutes the most important problem. In 1937, the experts had prepared a draft in which the text of the Tenth Hague Convention was adapted as closely as possible to that of the Geneva Convention, in order to allow for amalgamation, if such a course was decided upon. A brief survey shows that, out of the 29 main Articles composing the Draft Revised Maritime Convention, 14 could be wholly incorporated into the Convention, with hardly any change to the latter, whilst two could be incorporated providing certain additions were made to the text of the Geneva Convention. On the other hand, eleven of these Articles which deal with the special circumstances of naval warfare and the use of hospital ships, would have to be introduced into the Geneva Convention as new clauses.

The Preliminary Conference of Red Cross Societies decided that the advantages of amalgamation and of a single Convention would outweigh the drawbacks, and therefore recommended the amalgamation to the Geneva Convention of related treaty stipulations, especially the revised draft of the Maritime Convention.

The provisions directly relative to maritime warfare should be grouped in a separate chapter of the Geneva Convention. Further, separate
indexes should be established for the use of land, sea and air forces. (1)

(1) It should here be mentioned that during its Final Session, the Preliminary Conference examined the whole question of amalgamation of the Conventions for armed forces and civilians.

The Conference did not, however, wish to prejudge the number and form of the convention (or conventions) fixing the status of military and civilian war victims.
The Preliminary Conference of National Red Cross Societies, held in July-August 1946, recommended that the technical suggestions put forward by the representative of the French Red Cross should be brought to the attention of the Experts engaged on the final draft of the Maritime Conference.

The suggestions were as follows:

(1) The routes and itineraries to be followed by hospital-ships shall be signified to them by the harbour authorities of the port of departure; the latter shall report to their headquarters, who inform the belligerent Powers through the appropriate channels.

All changes of route or of itinerary which the captain of a hospital-ship makes on his own responsibility shall be signalled by him to the maritime authorities on land to whom he is accountable, and these shall advise headquarters for transmission to the belligerent Powers.

(2) All hospital-ships at sea shall indicate their position in clear on 600 metres wave-length (the wave-length adopted for the security of human life) every six hours.

This position shall be relayed by the maritime authorities on land.

(3) It might be useful to supply hospital ships with Radar reflectors of a special type, allowing identification of these ships by Radar receivers on board warships.