Report on the Work
of the
Conference of Government Experts
for the Study of the Conventions
for the Protection of War Victims

(Geneva, April 14-26, 1947)
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ABBREVIATIONS

ICRC = International Committee of the Red Cross.
PW = Prisoner(s) of War.
CWI = Civilian War Internees.
CI = Civilian Internees.
DP = Detaining Power.
MMC = Mixed Medical Commission(s).
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REPORT ON THE WORK
OF THE
CONFERENCE OF GOVERNMENT EXPERTS
FOR THE STUDY OF THE CONVENTIONS
FOR THE PROTECTION OF WAR VICTIMS

Geneva, April 14-26, 1947

INTRODUCTION

In the pursuit of their preliminary work for the revision of the Geneva Conventions and the drafting of new humanitarian agreements, the International Committee (ICRC) suggested to the Allied Governments whose experience in this field was particularly extensive, the holding of a Conference of Experts for the consideration of the following points:

(1) — Revision of the Geneva Convention of July 27, 1929, for the Relief of the Wounded and Sick in Armies in the field, and related stipulations (Tenth Hague Convention of 1907 for the adaptation to Maritime Warfare of the principles of the Geneva Convention of 1906; Protection of Civilian Hospitals; Hospital Localities and Zones; Medical Aircraft).

(2) — Revision of the Geneva Convention of July 27, 1929, relative to the Treatment of Prisoners of War.

(3) — Establishment of a Convention relating to the Condition and Protection of Civilians in War-Time.

Following the proposal of the ICRC, the Conference decided at its opening session on April 14, to entrust the study of each of these Chapters to a separate Commission. The three Commissions started work immediately and sat for nine days. Further, in order to facilitate and speed up their work, the said Commissions nominated Sub-committees to deal with various
technical items on the Agenda. During the last three days of the meeting, the Conference discussed in plenary sessions the reports submitted by the three Commissions, and adopted them with adjunctions or amendments. Finally, the Conference gave its opinion concerning various questions of a general nature, touching upon the whole of the Agenda, viz. (1) the possible amalgamation of the treaty stipulations which had been discussed; (2) the form to be given to the Conventions; and (3) the date of the Diplomatic Conference for the discussion and ultimate adoption, in their definite shape, of the Draft Conventions prepared by the ICRC.

Below will be found a full précis of the minutes of the Conference of Government experts.

LIST OF DELEGATES

Australia: — Mr. Norman Rupert Mighell, C.M.G., Deputy High Commissioner in London (III); Major-General Allan J. Boase, C.B.E., Australian Army Representative in London (II); Group-Captain Patrick G. Heffernan, A.F.C. (I); Lady Hilda Margaret Owen, Liaison Officer to the Australian Red Cross in Great Britain (III).

Belgium: M. Maurice Bourquin, Professor at the University and the "Institut des Hautes Etudes internationales", Geneva (III); M. Edmond Dronsart, Director-General of the Belgian Red Cross (I); Colonel B.E.M. René Devyver (II); Major Paul Wibin, M.D. (I); M. Léopold Adam, Attaché of Legation, Berne (III); Mlle. Simone Vercamer.

Brazil: M. Joaó Pinto da Silva, Brazilian Consul-General, Geneva (III).

Canada: M. Jean Désy, Canadian Ambassador at Rio de Janeiro (III); Mr. Henry F. Davis, Ministry of External

1 The figures in brackets indicate the Commission or Commissions upon which the delegate was more particularly engaged.
Affairs, Ottawa (III); Lt. Col. J.N.B. Crawford (I); Major E.J.H. Barber (III); Dr. Fred W. Routley, National Commissioner, Canadian Red Cross (III); Mles. Maria Pouliot and E.J. Ross, Secretaries.

China: Colonel Ko-Shiang Wang, Military Attaché, Lisbon (II); Dr. Chia-Hong Wang, Counsellor of Legation, Berne (I); Dr. Li-Chow Tang (III).

Czecho-Slovakia: M. Oscar Zika, Counsellor, Ministry for Foreign Affairs (I, III); General Dr. Joseph Škvařil, National Defence (I); M. Miloslav Záloudek, Counsellor, Ministry of Health (II); Dr. Karel Macháček (III); Colonel Charles Sedláček, Military Attaché, Czecho-Slovak Legation, Berne (III).

France: M. le ministre Albert Lamarle, Director of Unions, Ministry of Foreign Affairs, Paris (II, III); Mlle. Andrée Jacob, Ministry of Ex-Service Men (III); M. Fernand Darchicourt (II); Colonel Dominique Bordat (I); M. Pierre Bellan (II); M. Claude Bourdet (III); M. Frédéric Simon, Under-Secretary, Ministry of Labour (II); Dr. Pierre Puyo (I); Colonel Raymond Moynier, M.D. (I); Dr. Daniel Boidé (I); Dr. Francis Borrey; M. Georges Beauchamp, Chef de Cabinet.

Great Britain: Sir Harold Satow, K.C.M.G., O.B.E., (II); Mr. William Parker Speake, Home Office (III); Mr. Henry J. Phillimore, War Office (II); Brigadier E. Kenneth Page, O.B.E., D.S.O., M.C., (II, III); Mr. William Henry Gardner (I); Mr. Andrew Scott Weston (I); Miss Sheila M. Beckett (II); Miss F.A. Nightingale, Secretary.


Netherlands: Major-General François Daubenton, Inspector, Royal Army Medical Service (I); Dr. Gaston E. Mathon, Director, Legal Section, Ministry of War (II); Dr. van der Berg, Chief Director, Public Health Department, Ministry of Social Welfare (III); Staff Colonel Kornelis Metting van Rijn (II);
Commander Dr. Martinus Willem Mouton (I); Dr. Andries W. Mellema, Royal Navy (I, III); Dr. Franz Jacob Besier, Counsellor, Ministry of Social Welfare (III); Dr. Walter M. Bijleveld, Secretary, Legal Section, Ministry of War; Dr. Charles Jean Bernard, Delegate, Netherlands Red Cross; Jhr. Carl Hendrik Christian Flugi van Aspermont, Assistant Delegate, Netherlands Red Cross.

**New Zealand**: Major Alan Hight (I, II, III).

**Norway**: M. Frede Castberg, Professor, Oslo University (III); M. Carl Kruse-Jensen, Judge, Norwegian Supreme Court (I); Major-General August E.D. Tobiesen (II); M. Arnold Roerholt, Secretary-General, Norwegian Red Cross (II, I, III); Mlle. Christoffersen, Secretary.

**Poland**: Colonel Alexander Wolynski (III); M. Michal Zulkos (II).

**Union of South Africa**: Colonel Lennard Strickland, Director, Civil Internment Camps (III); Colonel Handrik F. Prinsloo, Commandant, Prisoner of War Camps (II); Mr. Bernardus G. Fourie, High Commissioner's Office, London (I, II, III); Colonel Reginald Noël Johnson, Medical Officer (I).

**United States**: Chairman: Mr. Albert Edwin Clattenburg Jr., Chief, Special Projects Division, Department of State (III); Delegates: Mr. Alwyn Freeman, Assistant Legal Adviser, Department of State (I, III); Mr. Eldred D. Kuppinger, Consultant (London) (II, III); Brigadier-General Blackshear M. Bryan, Provost Marshal General, U.S.A. (II); Col. R. MacDonald Gray, Personnel and Administration Division WDGS (I); Colonel Joseph V. Dillon, USABF (II); Harold V. Starr, American National Red Cross.

**International Committee of the Red Cross**: M. Max Huber, Honorary President (I, II, III); Dr. Ernest Gloor, Vice-President (I); M. Martin Bodmer, Vice-President (II); M. J. Chenevière,
Member (II); Mlle. S. Ferrière, Member (III); Mlle. L. Odier, Member (II); Dr. A. Cramer, Member (I); M. Ed. Chapuisat, Member (III); M. D. Schindler, Member (III); M. Ed. Grasset, Member (II); M. P. Carry, Member (III); M. R. Gallopin, Director-Delegate (II); M. J. Pictet, Director-Delegate (I); M. H. Cuchet, Director-Delegate (II); M. F. Siordet, Adviser (II).

**Bureau**

*Chairman:* M. Max Huber, Honorary President, ICRC.

*Vice-Chairmen:* Mr. Norman Rupert Mighell (Australia); Professor Maurice Bourquin (Belgium); M. Joaõ Pinto da Silva (Brazil); M. Jean Désy (Canada); Colonel Ko-Shiang Wang (China); M. Oscar Zika (Czechoslovakia); M. Albert Lamarle (France); Sir Harold Satow (Great Britain); Colonel B.M. Rao (India); Major-General François Daubenton (Netherlands); Major Alan Hight (New Zealand); Professor Frede Castberg (Norway); Colonel Alexander Wolynski (Poland); Colonel Lennard Strickland (South Africa); M. Albert Edwin Clattenburg Jr. (U.S.A.)

*Secretary-General:* M. J. Duchosal, Secretary-General, International Committee.

**Bureau of the First Commission**

*Chairmen:* M. E. Dronsart (Belgium).

*Vice-Chairman:* Colonel J.N.B. Crawford (Canada); M. O. Zika (Czechoslovakia); Colonel D. Bordat (France).

*Rapporteur for the ICRC:* M. J. Pictet, Director-Delegate, ICRC.

Bureau of the Second Commission

Chairman: Sir Harold Satow (Great Britain).
Vice-Chairman: M. Lamarle (France).
Members: Colonel R. Devyver (Belgium); M. F. Darchicourt (France); Mr. H. J. Phillimore (Great Britain).

Rapporteur for the ICRC: M. C. Pilloud, Director, Legal Section.

Rapporteurs of the Commission to the Plenary Session: Sir Harold Satow, M. C. Pilloud.

Bureau of the Third Commission

Chairman: M. Jean Désy (Canada).
Vice-Chairman: Professor M. Bourquin (Belgium).

Rapporteur for the ICRC: M. M. Maier, Secretary to the ICRC.

Rapporteur of the Commission to the Plenary Session: M. Jean Désy.
REPORT OF THE FIRST COMMISSION

REVISED DRAFT OF THE GENEVA CONVENTION AND RELATIVE STIPULATIONS

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

A revised Draft of the Geneva Convention was framed in 1937, following a meeting of international experts convened by the ICRC. This was first submitted to the XVIth International Red Cross Conference (London, 1938), and then placed on the agenda of the Diplomatic Conference called by the Swiss Federal Authorities for the beginning of 1940, but adjourned owing to the outbreak of the second World War.

At the close of hostilities, the ICRC planned to take up once more the 1937 Draft, with additions based on the experience gained during six years of unprecedented warfare. To this effect, a Preliminary Conference of National Red Cross Societies was held from July 26 to August 3, 1946 ¹, to which the Societies brought the outcome of their experience acquired during the recent World War. The views of this meeting were included in the data submitted to the Government Experts convened from April 14 to 26, 1947. They are reproduced, when necessary, in the following report.

Below will be found the revised Draft Convention, drawn up by the First Commission, as approved and amended by the plenary assembly. The amendments made to the texts now in force, suitably commented, are printed in italics.

¹ Called "hereinafter " Preliminary Conference (1946) "

7
General Remarks

1. Application of the Convention to all cases of armed conflict.

The Conference, in plenary session, recommended the insertion in the Geneva Convention, without specifying in what chapter, of the following provisions:

The present Convention is applicable between the Contracting Parties, from the outbreak of any armed conflict, whether the latter is or is not recognised as a state of war by the parties concerned.

In case of civil war, in any part of the home or colonial territory of a Contracting Party, the principles of the Convention shall be equally applied by the said Party, subject to the adverse Party also conforming thereto.

The Convention is equally applicable to cases of occupation of territories in the absence of any state of war.

This provision should also be embodied in the P.W. Convention and in that relating to the protection of civilians in time of war.

The 1937 Commission, followed by the XVIth 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 had been made, and that the humanitarian principles contained therein should be respected in all circumstances, even if the Convention were not legally applicable. The 1937 Commission had recommended to introduce this principle into the Final Act of the future Diplomatic Conference.

Furthermore, the Preliminary Conference (1946) had proposed 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 Convention should be applied, unless one of the parties expressly announced its intention to the contrary.

1 See below pages 102 sqq. and 272 sqq.
The 1947 Conference did not consider opportune to insert a definition of civil war in this Article. The treaty stipulations in question are binding upon the contracting party, on the sole condition that they be applied by the adverse party, wherever the civil war may take place, and even if the parties are not recognized as belligerents.

According to one Delegation, it should be clearly understood that the humanitarian obligations stipulated by the present Article should entail no juridical consequences in respect of the legal status of any body claiming governmental authority, but not recognized by another Government as enjoying such authority.

Another Delegation reserved its opinion as to the last Section of this Article.

2. Extension of the Convention to Civilian Wounded and Sick.

The Commission recognized that civilian wounded and sick should be protected in time of war, in accordance with the same humanitarian principles as apply to wounded and sick members of the Forces. New stipulations should be inserted on this matter in the separate Convention envisaged for the general protection of civilians.

In its report to the Conference, the ICRC had pointed out that at present the Convention applies only to members of the armed Forces and other personnel officially attached to the latter.

During the meetings of the 1937 Commission, several experts 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 was exposed to hostile action, and not only the actual combat zone, and that civilians are thus as much liable to suffer 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 XVIth International Red Cross Conference, decided not to endorse this suggested extension, 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.

After the experience of the recent war, the ICRC thought necessary thoroughly to review the question of the possible extension of the Geneva Convention to wounded and sick civilians, and to seek forthwith means for their better protection.

To this effect the ICRC 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 (Tokyo Draft). It might, however, be theoretically and practically inconvenient to extend the Geneva Convention de facto by reference thereto in another treaty, instead of deliberately amending the Geneva Convention itself. It is a fact that modern warfare conditions increase the liability of civilians and military personnel to suffer casualties in the same places and thus to be 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 safeguarding 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 there would obviously be a certain risk of more frequent
abuse or non-application of the Convention, in proportion to its enlarged field of action, and thus a danger 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 nurses them, 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 (1946) recognized that it was absolutely necessary to ensure henceforth 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.

The 1946 Conference did not, however, express an opinion as to the best course to achieve this end. The First Commission confirmed that it had been found impossible, during the second World War, to draw a clear distinction between civilians and members of the armed forces. However, it agreed that it was essential that the principles governing the Geneva Convention should be extended to civilian wounded and sick. The question of means of application was discussed at length.

Finally, the First Commission expressed the view that the Geneva Convention should preserve its customary field of application and protect members of the armed forces only. It considered desirable that new Articles concerning civilian wounded and sick should be embodied in the special Convention conferring general protection on civilians.

1 These Articles will be found on pages 67 sqq.
Chapter I. — Wounded and Sick

Article 1

Members of the Armed Forces and other persons officially attached to the said forces who are wounded or sick shall be respected in all circumstances; they shall be treated with humanity and cared for medically, without any distinction of nationality, race, religion or political opinion, by the belligerent in whose power they may be. Women shall be treated with the consideration due to their sex.

Nevertheless, the belligerent who is compelled to abandon wounded or sick to the enemy, shall, as far as military considerations permit, leave with them a part of his medical personnel and supplies to assist with their care.

Article 1 (1929) 1. — Members of the Forces 2 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.

The Preliminary Conference (1946) agreed with the ICRC 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”. The distressing events of the recent war had shown that this principle should be clearly specified.

The ICRC, however, did not consider it opportune to include the words “of sex”. It thought that the spirit of the Convention itself indicates that women in particular should be granted

1 These Articles are those of the Geneva Convention as revised in 1929.
2 This expression replaces the words “Officers and soldiers” used in the official British translation.
preferential treatment. The ICRC suggested to the 1947 Conference that the idea expressed in the P.W. Convention should be taken up: "Women shall be treated with all consideration due to their sex." The Commission adopted the above text, but first decided to delete the word "particularly" appearing in the ICRC draft, as it was thought this might lead to misunderstanding. It was also thought better to amend Section 2 of Art. 1.

Finally, the Commission considered the advisability of more clearly defining the expression: "Members of the armed forces and other persons officially attached to these aid forces", and thought that it would be desirable later on to amend the present text, on the basis of recommendations made concerning Arts. 1 and 81 of the P.W. Convention.

Article 2

Except as regards the treatment to be given them in virtue of the preceding Article, the wounded and sick of a belligerent who fall into enemy hands shall be prisoners of war, and the general provisions of international law concerning prisoners shall be applicable to them.

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

Art. 2 (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 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.

One Delegation having suggested that it should be stated in this Article that the P.W. Convention was applicable, the Commission decided to examine the question as to how far reference could be made in the Geneva Convention to the

1 See below, page 102.
P.W. Convention. The same question was also raised in connexion with Art. 4, Sec. 1. Finally, the Commission left the matter open.

Article 3

At all times and particularly after an engagement, each belligerent shall without delay take the necessary measures to search for the wounded and dead, protect them against pillage and maltreatment, and ensure their adequate care and attention.

Whenever circumstances permit, a local armistice or a suspension of fire shall be arranged to permit the removal and transport of wounded.

Likewise, local arrangements may be concluded between belligerents for the removal of wounded and sick from a besieged or encircled zone, and for the passage of medical personnel and equipment bound for the said zone.

Re Section 1.

The Preliminary Conference (1946) and the ICRC had already, for similar reasons, proposed to amend the wording of this Section. The First Commission adopted a slightly different wording, which seems better adapted to the conditions of modern warfare.

Re Section 2.

The ICRC had no comments to offer on this Section. One Delegation, however, proposed to add the words "and the transport of wounded", and to delete "between the lines", to

1 See below, pages 15 sqq.
allow transport of wounded from one district to another, since there were districts rather than actual lines during the recent war.

Re Section 3.

During the meeting of the 1937 Commission, the Bulgarian Red Cross proposed the adjunction to Art. 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 removal of the wounded and sick. This question was the subject of several resolutions passed by International Red Cross Conferences (Resolutions XII (1921), IX (1928) and XXIV (1930).

The 1937 Commission preferred not to modify the Convention on this point, on the grounds that this was a possible case for ad hoc agreements between belligerents, according to Art. 2, Sec. 2.

However, the ICRC pointed out, in its reports to the Preliminary Conference (1946) and the present meeting, that during the recent 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 ICRC were allowed to enter the besieged areas, bringing relief and rendering useful assistance.

The First Commission desired to endorse this new principle by the above text, while leaving the belligerents the option of concluding such agreements.

Article 4

Belligerents shall communicate to each other, as soon as possible, according to the procedure described in Article 77 of the 1929 Prisoners of War Convention, the names of the wounded, sick and dead discovered or collected, together with any indications which may assist in their identification. They shall establish and transmit to each other by the same channel certificates of death or, in lieu thereof, duly authenticated lists of the dead.

They shall likewise collect and exchange, by the same channel, all articles of a personal nature having an intrinsic or sentimental
value which are found on the dead, especially one-half of their identity discs, which should be of a standard pattern, the other half to remain attached to the body.

Bodies shall not be cremated except for imperative reasons of hygiene, or for religious motives. In case of cremation, the circumstances and motives shall be stated in detail in the death certificate of the cremated person.

The belligerents shall ensure that 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, if possible according to the rites of the religion to which they belonged, that their graves are respected, assembled if possible, 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, in order to allow eventual exhumations and to ensure the identification of bodies, whatever may be the subsequent site of the grave. These stipulations also apply as far as possible to the ashes, which shall be kept by the graves registration service until the close of hostilities.

As soon as circumstances permit, and at latest at the end of hostilities, they shall exchange a list of graves and of dead interred in their cemeteries and elsewhere.

Art. 4 (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.

Re Section 1.

Under the terms of the present Geneva Convention provision is made for the exchange of the names of wounded, sick and dead, but it is not stated through what channels this exchange shall take place. As regards wounded and sick in enemy hands, information is forwarded through the official P.W. Information Bureaux, set up in pursuance of Art. 77 of the P.W. Convention, through the intermediary of the Central Agency, such wounded and sick being P.W. The same applies to P.W. deceased during captivity. During the recent 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 (1946) recommended that the system of notification should be unified. The insertion of the following wording in this Section was proposed: “Through official information bureaux set up by Art. 77 of the Convention of 1929 relating to the treatment of P.W., and through the Central P.W. Agency.”

The First Commission concurred with this view, but adopted a slightly different wording.

The ICRC had further pointed out, concerning this Section, that during the recent war difficulties arose in connection with the identification of the dead. The ICRC stressed that it devolved on Army medical experts to decide whether some other means of identification, for instance, a kind of Bertillon system, or the measurement or even radiography of skulls of army personnel, should be resorted to.

The Preliminary Conference (1946) considered, for its part, that it was not competent to deal with the question, and that such measures should be eventually taken by the Powers concerned, independently of the Convention, which already
contains general provisions to this effect: firstly, that belligerents shall exchange all data to assist in the identification of the dead; secondly, that burial or cremation shall be preceded by a careful and, if possible, medical examination of the bodies.

The First Commission, for their part, were opposed to the establishment of a compulsory system of identification and considered that each State should be left free to make its own decisions.

*Re Section 2.*

The ICRC had proposed two amendments of this Section. The first covered the procedure by which death certificates should be forwarded. By adopting the insertion of the words "by the same channel", the Commission agreed in principle that death certificates should be drawn up and forwarded according to the procedure laid down in Art. 77 of the P.W. Convention.

The second amendment dealt with the expression "certificates of death". The present text of the Convention does not stipulate the form of death certificate to be established. In point of fact, belligerents adopted various methods for this purpose, but some utilized the unified and detailed form set out by the ICRC, which facilitated the communication to next of kin of numerous details attending the circumstances of death.

The First Commission was anxious to take into account the various methods employed by the belligerents during the recent war and therefore made Sec. 2 more general. Not only will belligerents be able to use individual death certificates, but they will have the option of employing duly authenticated lists of the dead, which will have the same value as the death certificates themselves.

*Re Section 3.*

This Section governs transmission of what are called "personal belongings" found on the battle-field or on the dead, especially one-half of their identity discs.
The ICRC had made no suggestions as regards the stipulations concerning the identity disc, but merely pointed out that they were often disregarded by belligerents. However, the Commission considered it desirable to stipulate in the Convention that such discs should be of a standard pattern.

As regards personal belongings proper, the Commission thought that it should specified what articles of a personal nature should be returned to next of kin of deceased. It was desired to restrict these to essentials, and the above wording was adopted. Furthermore, the Commission recommended the deletion of the word "battle-field", in order to take conditions of modern warfare into account. It is obvious, however, that not only articles found on the dead, but also those which might be discovered close to them should be considered as personal belongings.

The ICRC had recommended that the same channel should be followed for transmission of personal belongings as for information concerning the dead. The Commission endorsed this recommendation by introducing the words "likewise by the same channel" into this Section.

Re Section 4.

The ICRC had adopted the proposals submitted by the Associations for religious and intellectual relief to P.W., which met in Geneva in March, 1947, to the effect that cremation of bodies, except for imperative reasons of hygiene or for religious motives, should be forbidden. If cremation is resorted to, the circumstances and motives should be stated in detail in the death certificate of the cremated person. The Commission shared these views.

Re Section 6.

The Commission examined an ICRC proposal, already approved by the Preliminary Conference (1946), and by the Associations which met in March 1947, that the dead should be buried according to the rites of the religion to which they
belonged. The Commission considered that such a stipulation might be inserted in the Convention, but recommended that it should be preceded by the words "if possible," in view of the fact that the rites prescribed by certain religions or sects are sometimes difficult to observe (e.g. sacrifice of an animal or use of rare ingredients).

The Commission also decided to provide that graves must, if possible, be assembled and marked so that they may always be found. Finally, the Commission was of opinion that when bodies are cremated, according to Sec. 4, the ashes should be regarded like interred bodies, as far as possible, and kept by the graves registration service until the close of hostilities.

Re Section 7.

The Commission adopted the above-mentioned amendment and noted that lists of graves and of dead interred in cemeteries and elsewhere had often been communicated to the adverse party before the close of hostilities, and that this practice should be encouraged.

The Commission then discussed at length a proposal made by one Delegation to insert the following clause:

"After the close of hostilities, the belligerents shall come to an agreement and grant all facilities for the possible return to the home country of bodies and ashes."

The majority of the meeting were not in favour of this insertion, and the proposal was withdrawn.

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 and sick of armies, and may accord to persons, who have responded to this appeal special protection and certain facilities. *In case of occupation, the enemy belligerent shall grant to these persons the same protection and facilities.*
Similarly, the military authorities shall allow and encourage the civilian population, even in occupied regions, to collect and care for enemy wounded or sick, on condition that the latter shall not be withheld from the eventual control of national or occupying authorities. The civilian population shall protect these combatants and abstain from offering them any kind of violence.

Art. 5 (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.

It was pointed out by the ICRC that there seemed to be a gap in the present wording of Art. 5, which provides that military authorities who have appealed to inhabitants to help in nursing the wounded and sick, shall afford them 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 1.

In compliance with these views, the Commission recommended that Art. 5 should be completed by a stipulation that, in case of occupation, the enemy belligerent should grant the same protection and facilities to these persons.

Furthermore, the ICRC and one of the Delegations proposed the addition of a second clause to Art. 5.

The ICRC took up the proposal made by the Belgian Red Cross during the Preliminary Conference (1946), 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 ICRC pointed out that the civilian population should, in all circumstances, be able to fulfil its humane service to the wounded of all national-

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1 Evidence of this is furnished by the wording of this stipulation in the Geneva Convention of August 22, 1864.
ities. The ICRC recommended the explicit approval of this principle, since during the recent war, some inhabitants were prohibited from giving such charitable assistance, or had afterwards been punished by the occupants, or even by their national authorities. Finally, in order to reconcile the demands of humanity with military considerations, it should be stipulated that no inhabitants may 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 for assisting either tactical manoeuvres or espionage.

The other proposal, worded in the same spirit as that of the ICRC, ran as follows:

"The military authorities shall urge the civilian population to grant humane treatment, comprising emergency measures and first aid to enemies captured by them. No coercion, except that which may prove necessary to prevent them from escaping, shall be exercised by civilians on wounded and sick. shall be exercised by civilians on these combatants.

"Civilians are invited to protect them and to hand them over as soon as possible to the military authorities."

The Commission adopted the first clause of this second proposal, after amendment, as it was considered that the proposed measure should be couched in positive terms. The amendments concerned the word "urge", which was considered too categorical and was replaced by "encourage", and to the phrase "even in occupied regions"; this was added as being the essential element of both proposals.

The Commission then discussed at length what limitation should be placed on the freedom the Article would leave to the population to give spontaneous care to wounded and sick. Some Delegations pointed out that one might feel repugnance to compelling the civilian population to hand over the wounded they collected to the occupying authorities. These Delegations thought that in a Convention based on humanitarian principles no such allowance should be made for military requirements. Other Delegations replied that a provision of this kind served above all to shield civilians from the occupying authorities.
Finally, the Commission agreed on the text of the new Section quoted above, but deleted the obligation for the civilian population to hand over to the occupant wounded and sick cared for by them. The only conditions imposed on the civilian population are that it shall not withhold such army personnel from the possible control of national or occupying authorities, and that it shall refrain from offering them any violence.

The ICRC asked the Commission where the stipulation contained in Art. 5 should be inserted. The ICRC was of opinion that such a provision would be better placed at the close of Chapter III relating to Medical Personnel, than in the chapter devoted to Wounded and Sick. The Commission was of opinion that this question could not be settled until a final draft of the Convention had been framed, and that it was impossible to come to any decision at this stage.

CHAPTER II. — MEDICAL FORMATIONS AND ESTABLISHMENTS

Article 6

Fixed establishments and mobile hospital units of the Medical Service may in no circumstances be the object of attacks, but shall at all times be respected and protected by the belligerents.

If they fall into the hands of the adverse party, they shall be free to pursue their duties, as long as the capturing Power has not itself ensured the necessary care of their wounded and sick.

Art. 6 (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.

Re Section 1.

The ICRC asked whether the definition of mobile medical units 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 wholly devoted to the
care of the wounded and sick must be protected. The ICRC
therefore thought that it would doubtless suffice to state that
"Fixed establishments and mobile units of the Medical Service
shall be respected and protected by the belligerents". The
Preliminary Conference (1946) considered this amendment
of the wording to be desirable. The First Commission also
endorsed it.

The Commission also desired to state explicitly that medical
units and fixed establishments may in no circumstances be
attacked, as it was not considered sufficient to say that they
should be respected and protected.

Re Section 2.

This provision is new. The Commission having, as shown
below (Arts. 10 and 17), foreseen that members of the medical
personnel who fall into enemy hands should be P.W., and that
medical equipment should be subject to the laws of war,
considered it necessary to specify here that medical units and
establishments shall continue to function, as long as the capturing
Power has not itself provided the necessary care to the wounded
and sick nursed therein.

Article 7

The protection to which medical units and establishments are
entitled shall cease only if they are used to commit acts harmful
to the enemy and after due warning which has met with no response.

Art. 7 (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.

The new wording adopted heightens the protection granted
to medical units and establishments. It is clearly specified that
this protection shall cease in one case only: if such units or
establishments are used to commit acts harmful to the enemy.
Furthermore, loss of protection cannot become effective except after due warning given, and which has met with no response. It is anticipated that this procedure will, in many cases, allow extreme measures to be avoided.

Article 8

The following conditions are not considered to be of such a nature as to deprive medical units or establishments of the protection guaranteed by Art. 6:

(1) that the personnel of the unit 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 unit or establishment is protected by a picket 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 unit or establishment;

(4) that personnel and material of the veterinary service are found in the unit or establishment, without forming an integral part of it;

(5) that the humanitarian activities of medical units and establishments or those of their personnel are extended to civilians.

Art. 8 (1929). — 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 picket 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.
The 1937 Commission having rejected the idea of deliberately extending the scope of the Convention to civilian wounded and sick, nevertheless decided to insert here a stipulation providing that “the protection due to medical units and establishments, to their personnel, equipment and medical transport shall not cease if their humanitarian activities are extended to the civilian population”.

The Preliminary Conference (1946) thought that the principles of the Geneva Convention should be extended to wounded and sick civilians; it recommended, however, should Governments refuse to adopt this proposal, the insertion in the Convention of the provision drafted in 1937 and quoted above.

Finally, the 1947 Conference did not endorse the extension of the Geneva Convention to wounded and sick civilians and expressed a preference for new articles intended for their safeguard 1. A new Section was therefore added to Art. 8 to this effect.

*Article 9 (new)*

*Belligerents may conclude particular agreements for the creation of hospital zones, to ensure better protection for the wounded and sick of armed forces therein assembled, to the exclusion of any utilisation for military purposes.*

The Commission decided to insert a provision to this effect when discussing the question of hospital localities and zones.

The report submitted by the ICRC recalled that the idea of assembling certain persons in localities for their better safeguard was not new, for it was conceived by Henry Dunant himself. It was taken up in 1929 by General Georges Saint-Paul, of the French Army Medical Service, and further by the Congress for Military Medicine and Pharmacy in Monaco.

The studies of the Monaco Congress were handed to the ICRC, who continued, with the cooperation of government experts and of national Red Cross Societies, to pursue this subject.

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1 See above pages 8 sqq.
In 1938, a commission of experts framed a "Draft Convention on Hospital Localities and Zones", in eleven Articles, which could either become a separate treaty or be embodied in the Geneva Convention itself.

During the recent war, the ICRC on several occasions recalled this draft to Governments, suggesting that it might serve as a basis for agreements, and also be extended to various classes of the civilian population. Further, attempts were made, mostly by private initiative, to set up hospital localities.

The Preliminary Conference (1946) did not go into the details of the 1938 Draft. It merely recommended that the ICRC should study, with the cooperation of experts, the insertion in the Geneva Convention of provisions for the safeguard of such zones.

The First Commission thus had two essential questions to settle:

1. Has the idea of setting up hospital localities and zones still any value?

2. If so, would it be advisable to take up again the provisions of the 1938 Draft, or at least some of its essential provisions, and try to embody them in the Geneva Convention?

The ICRC representative pointed out that under the present Geneva Convention it is possible to set up hospital zones in the open country. Since every hospital unit is shielded as such by the Convention, it must be admitted that several adjacent hospital units would also be protected. However, the Convention cannot be used to consider as protected a place where, besides members of the armed forces, members of the civilian population are also present. The First Commission restricted its studies to the creation of hospital localities, exclusive of zones, as it was considered that the latter term implied extensive areas. One Delegation pointed out that almost insurmountable obstacles would be encountered in that case, such as the defence of these zones against invasion by unauthorized persons; the removal of military objectives; the establishment of such zones away from lines of communication; and finally, the prohibition to aircraft to fly over such zones.
As regards hospital localities, the Commission thought that it could only suggest, in the Convention, that belligerents should allow such localities to be set up by particular agreements.

Article 9 (new) was drafted to this effect, and contains a summary definition of hospital zones, in order to avoid any misunderstanding.

**Chapter III. — Personnel**

In its report to the Conference, the ICRC pointed out that repatriation of members of the Medical Personnel, based on Art. 12 of the present Geneva Convention was infrequent during the recent war.

The reason for this was, first, that the belligerents, profiting by the words "in the absence of agreements to the contrary" (Sec. 2) and by Art. 14, Sec. 4 of the P.W. Convention, agreed to hold in their camps a large percentage of medical personnel, for the care of their P.W. compatriots, this course being taken in the interests of the men themselves. Thus certain States retained two doctors, one dentist, one chaplain and six orderlies for every 1,000 prisoners. In some cases, however, an excess number of Medical Personnel were retained; in others, such members had nothing to do and were required to perform non-professional work.

The ICRC therefore considered that it would be necessary in future to state what rules should be applied in this matter of retaining members of the Medical Personnel (percentage, criteria, etc.)

In its report to the Preliminary Conference (1946), the Belgian Red Cross also suggested the inclusion in the Geneva Convention of the principle that members of the Medical Personnel could be retained for the care of their P.W. compatriots, but that such a course could not free the Detaining Power from its obligations.

1 As regards Security Zones, see below, page 300.
Further, the ICRC stressed the necessity of stipulating in detail, either in the Geneva Convention, or in the P.W. Convention, the status and treatment of detained Medical Personnel, which are barely indicated in the present texts. During the recent war, certain belligerents claimed that detained Medical Personnel must be assimilated to P.W.—a course obviously contrary to the Geneva Convention. It is clear, however, that detained Medical Personnel can only enjoy liberty to an extent compatible with military discipline and life in camp. During the war, the ICRC had requested belligerents, and often succeeded in obtaining their consent, that Medical Personnel detained by them should be granted certain facilities for the pursuit of their welfare duties, and also certain privileges. The points upon which the ICRC thinks this ruling should bear are particularly the following: (1) the confirmation that Medical Personnel can never be assimilated to Prisoners of War, but that they shall enjoy at least the privileges granted to the latter; (2) that Medical Personnel shall be exclusively employed for the care of their prisoner compatriots; (3) that Medical Personnel shall have quarters separate from P.W., either in the infirmaries or close by. Furthermore (4) fixed pay; (5) supplementary rations; (6) extra parcels; (7) permission to go outside the camp and take walks, etc.

The Commision of the Preliminary Conference (1946) for the study of the revision of the Geneva Convention, framed a series of new Articles endorsing the retention of Medical Personnel, should the state of health and number of P.W. justify this step, and defining the status of the said personnel retained in camps. It had already been specified that this option could not release detaining Powers from their obligations, and that the selection of men to be retained could not be influenced by considerations of race or of political opinion.

The Preliminary Conference (1946), in plenary session, did not, however, vote these Articles, as it feared that such provisions might too seriously weaken the privileged position of members of the Medical Personnel. The matter was left for further study by experts.
Before undertaking the study of each Article, the First Commission endeavoured to solve the question of principle, raised by certain delegations: should members of the Medical Personnel continue to enjoy special safeguards, or should they be considered as P.W. when they fall into enemy hands? Supporters of the view that members of the Medical Personnel could not be P.W. advanced the following chief arguments:

(1) The entire purpose of the Geneva Convention is that wounded and sick shall be properly cared for. It is thus in the interest of these sick and wounded that Medical Personnel should be able to assist them freely, both on the battle-field and in camps.

(2) If deprived of their immunity, doctors possibly, and above all the subaltern personnel, might do their work less conscientiously and with less devotion to duty.

(3) If the Medical Personnel is not released, it will be attached to the care and nursing of P.W., thus relieving the Detaining Power of this duty. If this excess personnel remains unoccupied, it may be employed on work outside its own field.

(4) Finally, to decide on retention of Medical Personnel in enemy hands means the overthrow of the whole Geneva Convention and the abandonment of the great humanitarian principle laid down in 1864.

The adversaries of unconditional repatriation of Medical Personnel pointed out, among other things, that:

(1) The Convention should not grant more particular attention to one group of persons than to another, its first aim being the relief of wounded and sick, whether they are P.W. or combatants.

(2) The Detaining Power never has sufficient Medical Personnel available to care for P.W.; furthermore, the latter greatly prefer to be attended by doctors of their own nationality.

(3) Repatriation of Medical Personnel in war-time is a matter of great difficulty, requiring long and arduous negotiations.
Meanwhile, the members of the Medical Personnel share the P.W.'s life and are treated practically in the same way, since it is difficult, for military reasons, not to subject them to the same camp discipline.

(4) If the protection afforded to P.W. is granted to Medical Personnel, the scope of that enjoyed by P.W. will be widened. There is a tendency at present to grant better treatment to members of the forces in enemy hands.

(5) In modern nations the army forms a single unit. Comradeship requires that when men are captured together they should all have the same status. P.W. find it very difficult to understand why their medical comrades should be able to return home, when they themselves are detained.

(6) Repatriation of Medical Personnel often takes place a long time after their capture and creates a risk of espionage.

(7) Members of the medical and religious personnel have dedicated themselves to the care of the men in their charge, and are most unwilling to desert them before the close of the war.

Adversaries and supporters of the retention of Medical Personnel agreed on the two following principles:

(1) Medical Personnel must enjoy the greatest possible degree of freedom, in order to carry out their functions to the best purpose.

(2) Medical Personnel should be retained only when their presence in camp is necessary. Excess staff should be repatriated as soon as possible.

The Commission then unanimously adopted the following Articles, except one Delegation which reserved its opinion for the whole of this Chapter.

**Article 10 (former Art. 9)**

*Medical personnel exclusively engaged in the search, collection, transport and treatment of the wounded and sick, and in the*
prevention of disease, personnel exclusively engaged in the administration of medical units and establishments, and chaplains attached to armed forces, shall be respected and protected under all circumstances. If they fall into the hands of the enemy, they shall be treated as prisoners of war, subject to the provisions of Article 12.

(Section 2 is deleted.)

ART. 9 (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.

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.

Besides the question of the status of Medical Personnel, the Commission raised that of personnel engaged in prevention of disease.

The Preliminary Conference (1946) had already suggested amending Art. 9 so as to ensure that Medical Personnel engaged in prevention of disease should have the same safeguards as the personnel engaged in the care of sick and wounded.

The 1947 Commission likewise noted that in all belligerent armies the medical personnel includes staff whose task is the prevention of disease; these are called upon, especially when there is risk of an epidemic, to vaccinate troops and ensure proper administration and hygiene. The Conference, however, while recognizing the necessity of including this personnel in the Convention, set certain limits to its protection. Only the personnel engaged exclusively on this work would enjoy such protection. Combatant personnel engaged, in case of epidemics, in duties connected with the health of troops shall not have such protection. In order to supply a clearer definition of medical personnel than that given in Art. 9, Sec. 1, the Preliminary Conference (1946) had already recommended amendment of its
wording. The First Commission was also of opinion, when proposing the above text, that the personnel engaged in the search of wounded and sick should have the same protection as that ensured to staff employed for the collection, transport and treatment of the wounded, and also for the administration of medical units.

The essential amendment of Art. 9 was adopted, as mentioned above, after prolonged debate. The last clause of the Article constitutes a kind of compromise between the theory of immunity of medical personnel, and that of their capture. Medical Personnel, once they have fallen into enemy hands, shall be treated as P.W., but with certain reservations contained in Art. 13.

The Commission unanimously decided to delete Sec. 2 of the present Art. 9. This Section was inserted in 1929, on the request of the French Delegation. Its aim was to grant the safeguard of the Convention to personnel temporarily engaged in medical work.

The Preliminary Conference (1946) had already discussed the maintenance or suppression of this category of protected personnel, but finally decided in favour of maintenance.

The 1947 Conference pointed out that during the recent war it was almost always impossible to grant temporary personnel any privileges. First, it was difficult to provide all concerned with certificates of identity vouching for their status; furthermore, many combatants were also trained to give first aid to wounded and sick in case of need. Motor-truck drivers often transported wounded and sick as well as ammunition; finally, and above all, when P.W. are taken in large numbers, it is impossible to determine, when sorting them, which men were engaged on ambulance work at the moment of capture. The Commission was of opinion that, to ensure genuine protection of permanent Medical Personnel, no generalization should be made; it was thus unanimously decided to delete Sec. 2. When the military command makes temporary use of combatants for medical work, the latter shall not enjoy the protection of the Geneva Convention.
The personnel of Voluntary Aid Societies, duly recognised and authorised by their Governments, who may be employed on the same duties as the personnel mentioned in Article 10, are placed on the same footing as the personnel contemplated in that Article, provided that the personnel of such societies are subject to military laws and regulations.

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

Art. 10 (1929). — The personnel of Voluntary Aid Societies, duly recognised and authorised by their Governments, who may be employed on the same duties as the personnel mentioned in the first paragraph of Art. 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.

The Commission made no change in this Article. In its report, however, the ICRC pointed out that the Geneva Convention makes no mention (except in Art. 24) of Red Cross Societies as such, but refers only to "Voluntary Aid Societies". The Red Cross Societies are Voluntary Aid Societies par excellence, and constitute almost the entire body of such societies recognised in pursuance of Art. 10. In order to abolish present ambiguity, the ICRC therefore recommended that National Red Cross Societies should be expressly mentioned. The Preliminary Conference (1946) suggested the adoption of the following wording:

"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 are subject to the same military laws and regulations."

The Preliminary Conference however 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 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 not more than ten such societies, of which the most important are the Orders of Malta, of St. John of Jerusalem, and of St. John and St. George.

The proposal made by the ICRC gave rise to debates within the Commission. Some Delegations were of opinion that an Article which had, up to now, proved satisfactory should not be amended; others feared that the express mention of Red Cross Societies might provoke similar demands from other aid societies.

The amendment proposed by the ICRC, to mention "relief Societies... and particularly National Red Cross Societies", was finally rejected by 6 votes to 5.

The Conference in plenary assembly did not consider it useful to open a fresh debate on this point.

*Article 12 (former Art. II)*

A recognised Society of a neutral country can only afford the assistance of its medical personnel and units to a belligerent with the previous consent of its own Government and the authorization of the belligerent concerned. The neutral Government shall notify this consent to the adversary of the State which accepts this assistance.

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

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

The members of the personnel named in Section 1 shall be duly furnished, before leaving the neutral country to which they belong, with the identity cards provided for in Article 24.
Art. II (1929). — 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.

Re Section 1.

The addition proposed by the Commission dates from 1937 already. The 1937 Commission, accepting a proposal of the Netherlands Red Cross, recognized the advantage for the neutral State to have its assent notified compulsorily and direct to the enemy belligerent, in addition to notification by the belligerent receiving such assistance. The purpose of this adjunction was simply to unify a procedure which had led to some uncertainty, and to show that the neutral State took responsibility for the aid given.

The Preliminary Conference (1946) also recommended the adoption of this amendment.

The Commission thought moreover opportune to replace the words "to the enemy" by "to the adversary (partie adverse)".

Re Section 3.

This Section was also proposed in 1937 by the Netherlands Red Cross. The latter observed that whereas this stipulation appeared obvious, in practice the loan of assistance had been misunderstood on past occasions; this showed the necessity for its precise definition in the Convention. The Preliminary Conference (1946) also considered such an amendment desirable.

The Commission, in its turn, approved this proposal.

Re Section 4.

This Section was added, without discussion, on the proposal of one Delegation.

Article 13

The members of personnel named in Articles 10 and 11 shall be held captive in so far as the state of health, the spiritual needs and
the number of prisoners of war demand. Under the authority of the Detaining Power and particularly of its Medical Service, they shall continue to carry out their medical or spiritual duties, in accordance with their professional ethics, for the benefit of prisoners of war, preferably those of their own nationality.

The foregoing provision does not relieve the Detaining Power of its obligations as regards medical and spiritual care to prisoners of war.

Members of personnel mentioned in Section I of the present Article shall enjoy all the rights of prisoners of war. To allow them to carry out their humanitarian duties under the best possible conditions, the detaining authorities shall grant them, as far as is necessary, certain facilities, especially as to accommodation, food, correspondence relating to their particular duties, the election of a spokesman among themselves and such travel facilities, with or without escort, as may be necessary for their work.

In this Article, the Commission approved the principle that Medical Personnel should be retained, in so far as the state of health, the spiritual needs and the number of P.W. demand.

Furthermore, at the request of certain Delegations, it is stated that Medical Personnel shall continue to carry out their duties under the authority of the Detaining Power, and particularly of its Army Medical Service.

It is stipulated in Sec. 2 that the foregoing does not relieve the Detaining Power of its obligations as regards P.W.'s health and spiritual needs.

During the plenary session one Delegation asked that it should be stipulated that medical personnel shall continue to carry out their duties "in accordance with professional ethics". The Delegation observed that, during the last war, it happened fairly often that doctors were compelled by the Detaining Power to do work contrary to professional ethics.

Finally, the Commission recognized that it was in the interest of wounded and sick P.W. themselves that Medical Personnel in captivity should be granted priority as regards accommodation, food, correspondence relating to their particular duties, election of a spokesman among themselves, and such travel facilities, with or without escort, as may be necessary for their work.
Article 14

Members of personnel named in Articles 10 and 11, whose retention in captivity is not made indispensable by the exigencies mentioned in Article 13, shall be returned to the belligerent to whom they belong, as soon as a route is open for their return and the military situation permits.

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

The Commission here followed the terms of Article 12 of the present Convention.

It should be stressed that this Article (which is applicable only to medical personnel whose retention in captivity is not indispensable in pursuance of Art. 13) is categorical. It therefore offers the belligerents no option to conclude agreements forgoing repatriation of Medical Personnel.

One Delegation recommended that the classes of personnel eligible for repatriation should be confined to medical officers and orderlies.

Article 15

The selection of repatriates shall be made irrespective of any consideration of race, religion or political opinion, but preferably according to the chronological order of their capture.

As from the outbreak of hostilities, belligerents may determine by special arrangement the percentage of personnel to be retained in captivity, in proportion to the number of prisoners of war.

The Commission found it necessary to mention the considerations which have no bearing on the selection of repatriates. The members were of opinion that the main factor of repatriation should be the chronological order of capture.

Finally, the Commission admitted the necessity of leaving belligerents the option of concluding special arrangements as from the outbreak of hostilities, to determine the percentage of personnel to be retained in captivity, proportionately to the number of P.W.
The persons designated in Article 12 may not be retained after they have fallen into the hands of the adverse party.

Unless otherwise agreed, they shall be authorised to return to their country, or if this is not possible, to the territory of the belligerent in whose service they were, as soon as a route for their return is open and military considerations permit.

Pending their return, they shall continue their work under the direction of the adverse party; they shall preferably be engaged in the care of the wounded and sick of the belligerent in whose service they were.

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

Belligerents shall secure to this personnel, while in their power, the same food, lodging, allowances and pay as are granted to the corresponding personnel of their armed forces.

Art. 12. (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 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.

Art. 13 (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 will notify one another of the grades of their respective medical personnel.

The status of Medical Personnel belonging to recognized Aid Societies of a neutral country remains the same as under the 1929 Convention. This personnel is not subject to capture and must be repatriated unconditionally. The wording of the Article was slightly amended.
The Commission having spent some days in discussing the chapter on Medical Personnel, the ICRC drew attention to the case of nationals of occupied or annexed countries who enlisted voluntarily or under coercion, in the medical services of the occupying Forces. After the liberation of the country, these persons often 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, the ICRC thought that this point might perhaps be raised in the Final Act of the future Diplomatic Conference.

The Commission did not take up discussion of this problem. One Delegation reserved its opinion for the whole of the chapter on Medical Personnel.

Chapter IV. — Buildings and Material

Article 17 (former Art. 14 and 15)

The buildings, material and stores of fixed medical establishments and of mobile medical units of the armed forces shall remain subject to the laws of war, but may not be diverted from their purpose, as long as they are required for the care of wounded and sick.

Nevertheless, the commanders of 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.

Art. 14 (1929). — 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 (they) shall be restored under the conditions laid down for the medical personnel, and as far as possible at the same time.

Art. 15 (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.

Re Section 1.

The ICRC submitted no proposal to amend Art. 14 and 15 of the present Convention.

During the Commission’s sitting one Delegation proposed an important amendment, namely, to delete the restitution of equipment of mobile medical units, as a logical corollary of the retention of Medical Personnel. Already in 1906 it was proposed that the equipment of mobile medical units might be captured, but the opinion prevailed that it should be returned. Some members observed that during the war belligerents had usually requisitioned such equipment. The Commission endorsed this view and decided to amalgamate the two Articles covering the equipment of mobile units and fixed establishments. This equipment shall be liable to capture, but shall not be diverted from its purpose as long as it is required for the care of wounded and sick.

The Commission also decided to subject stores and equipment to the same regulation.

Article 18 (former Art. 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 to belligerents by the laws and customs of war shall be exercised only in case of urgent necessity, and only after the welfare of the wounded and sick has been ensured.

Art. 16 (1929). — 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.

The 1937 Commission was of opinion that the text of Art. 16 would suffice to protect equipment belonging to aid societies everywhere, consequently even when such material was being transported by land, sea, or air. The Commission however decided to add after the words "wherever it may be", the words "or in whatever conditions".

The 1947 Commission considered it preferable, however, not to amend this text, so as to avoid risk of abuse.

Chapter V. — Medical Transports

Article 19 (former Art. 17)

Transports of wounded and sick, or of medical equipment shall be respected and protected in the same way as mobile medical units. The same shall apply to vehicles temporarily employed for the above purposes, for the time that they are so employed.

When such transports or vehicles fall into the hands of the adverse party they shall be subject to the laws of war, on condition that the belligerent who captures them shall in all cases undertake the care of the wounded and sick whom they contain.

The civilian personnel and all means of transport obtained by requisition shall be subject to the general rules of international law.
Art. 17 (1929). — 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 charges 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 18.

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.

Acting on the request of the Belgian Red Cross, the Preliminary Conference (1946) 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 regulates matters of detail only. The Conference considered, however, that the introduction of a new Article should not be undertaken without the 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 material 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. »
The First Commission noted that the proposed wording no longer conformed with the new provisions concerning medical equipment. The above wording was then decided upon.

Re Section 1.

The Commission decided to grant protection in the Convention to vehicles temporarily employed for medical purposes, such protection to be extended only during the time they are so employed.

Re Section 2.

The Commission brought this Section into line with the wording of Art. 17, and deleted all restitution of transports or vehicles once they have fallen into enemy hands, on condition that the belligerent who captures them shall in all cases undertake the care of the wounded and sick nursed therein.

Article 20 (former Art. 18)

Aircraft defined in the present Article and used as a means of medical transport may not be the object of attack, but shall be respected by belligerents during the time they are exclusively employed for the removal of wounded and sick, or the transport of medical personnel and material.

They shall be painted white and shall bear, clearly marked, the distinctive emblem prescribed in Article 22, together with their national colours, on their lower, upper and lateral surfaces. Unless agreed otherwise, flights over land or maritime war zones, military objectives or units, whether on land or sea, and territories belonging to the enemy or occupied by him, shall be prohibited.

Medical aircraft shall obey every summons to land. In the event of landing thus imposed, or of an involuntary landing in enemy territory, or territory occupied by the enemy, the wounded and sick, the medical personnel of the aircraft, as well as the crew shall be prisoners of war.
Art. 18 (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 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.

The Commission referred the study of the articles concerning medical aircraft to a sub-committee of specialists, whose report it then discussed.

In the report to the Conference, the ICRC recalled the fact that at the Diplomatic Conference of 1929, the question of medical aircraft was summarily settled by the adoption of Art. 18 of the Geneva Convention, and that in its Final Act the Conference recommended that the whole question of the use of medical aircraft should be regulated at a later date. Consequently, at the XIVth Red Cross Conference (Brussels, 1930), the ICRC submitted a draft adaptation of the principles of the Geneva Convention to aerial warfare, framed by MM. Ch. Julliot and P. Des Gouttes; this draft was adopted. The Conference invited the ICRC to transmit the draft to the Swiss Government, for discussion by the Diplomatic Conference fixed for 1940, but postponed owing to the war.

The ICRC again submitted the 1930 draft to the experts and stressed a certain number of points which required amendment.

The majority of the experts, considered, however, that Art. 18 of the Geneva Convention had met with very limited application during the recent war. Removal of the wounded by air was
usually effected under the protection of fighting craft, without any recourse to the safeguard of the Geneva Convention. The experts thought that the technical progress made in this field, particularly with regard to increased speed and anti-aircraft guns, rendered illusory any attempt to develop the use of protected medical aircraft. They were, nevertheless, willing to admit that the substance of Art. 18 could be maintained and adapted for flights over neutral territories.

Re Section 1.

The 1929 text was adopted with slight alterations.

Re Section 2.

To enhance its visibility, the distinctive emblem should also be marked on the lateral surfaces of aircraft.

Re Section 3.

The Commission adopted this new Section in order to reduce to a minimum the danger of espionage by medical aircraft, some Delegations having pointed out that photographs could be taken by such aircraft, and that it was therefore expedient to indicate clearly the regions over which flights were prohibited.

For this reason, the Commission mentioned in the text that flights over land or maritime war zones, as well as military objectives or units, whether on land or sea, belonging to the enemy or occupied by him, should be prohibited.

Re Section 5.

In connexion with the decisions made regarding medical personnel, the Commission wished to introduce a special stipulation into the Convention that the medical personnel of aircraft, as well as the crew, shall be treated as P.W., thus eliminating Section 6 of Art. 18.
Article 21 (new)

Medical aircraft shall have free passage over the territories or territorial waters of neutral countries, on condition that such passage be previously notified to the latter.

The aircraft shall obey every summons to land.

In the event of a thus imposed, or involuntary landing, the wounded and sick shall be detained by the neutral State, so that they may not be able to take part again in military operations. The medical personnel and material, as well as the aircraft and crew, shall be subject to the general rules of international law.

The costs of accommodation and treatment shall be borne by the State to which the wounded and sick belong.

The Commission considered that medical aircraft should have the option of flying over neutral countries, on condition that their passage was previously notified, and that they obeyed every summons to land. These stipulations should be worded in the spirit of Art. 14 of the Fifth Hague Convention, 1907, relative to the rights and duties of neutral Powers and persons in case of war on land.

Two Delegations reserved the opinions of their Governments with regard to Art. 20 and 21.

Chapter VI. — The Distinctive Emblem

Article 22 (former Art. 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 recognised by the terms of the present Convention.
ART. 19 (1929). — 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.

Re Section 2.

A lively debate took place in the Commission with regard to the possible omission of this section, as proposed by the 1937 Commission, thus restoring the unity of the emblem of a red cross on a white ground. The Preliminary Conference (1946) had fully discussed the question and finally decided to leave the Section in its present form.

Some Delegations pointed out that combatants were sometimes not sufficiently instructed, and that it was difficult to make them grasp the obligation of respecting several different emblems. The Chinese delegation observed that in its country both military personnel and civilians were quite familiar with the Red Cross emblem.

On the other hand, the Indian delegation stressed that Muslims are strongly opposed to the Red Cross emblem, and that it was essential to maintain the protection of the Red Crescent.

The Commission finally decided to maintain this Section.

Article 23 (former Art. 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.

ART. 20 (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.
The personnel mentioned in Articles 10, 11 and 12 shall wear, affixed to the left arm, a water-resistant armlet bearing the distinctive sign, issued and stamped by the military authority.

Such personnel shall also carry an identity card, attesting their status, and which can be put in the pocket. It shall be water-resistant, bear the photograph and finger-prints of the owner, and shall be embossed with the stamp of the military authority.

The identity card shall be uniform throughout the same armed forces, and, so far as possible, of similar type in the armed forces of the Contracting Parties. At the outbreak of hostilities, belligerents shall inform each other of the model in use in their armed forces.

All identity cards shall be established at least in duplicate, one copy being issued to the owner and the other kept by the Power of origin.

Under no circumstances may the personnel mentioned above be deprived of their armlets or identity cards. In case of loss they are entitled to duplicates.

Art. 21 (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.

Re Section 1.

The Commission made a purely formal change in this Section by adding the provision that armlets should in future be water-
resistant. This was considered useful in view of experience gained during the war.

The ICRC had drawn attention to the fact that during the recent war many members of the Medical Personnel who fell into enemy hands were unable to substantiate their right to repatriation, or experienced great difficulties in so doing, because they did not hold the identification documents prescribed by the Convention. Since the beginning of 1940, the ICRC instituted an enquiry which showed that most countries had not adhered strictly to the provisions of the Convention relative to identification papers of medical personnel. The ICRC therefore expressed the hope that the distressing experiences of the recent war would induce States to take henceforth all possible steps to provide their Medical Personnel with regulation documents, and suggested that a recommendation (to be included in the Final Act of a Diplomatic Conference) should stress this necessity.

The Commission concurred and thought the Final Act of the future Diplomatic Conference should recommend that: "States and National Red Cross Societies shall take all necessary measures, already in peace time, to ensure that Medical Personnel shall be duly provided with the emblems and identification documents mentioned in this Article".

Re Section 2.

In this Section the Commission wished to subject identity cards to certain conditions. The ICRC had stressed the desirability of unifying all identification documents in use in the various States. Should such unification prove impossible, it would be at any rate expedient that all belligerents should inform each other, at latest on the outbreak of hostilities, of the type of document in current use in their forces.

The ICRC further observed that pay books are often too large to be carried in a uniform pocket, and that medical orderlies are therefore prone to put them in their packs, which they leave behind when they go to pick up the wounded. Moreover, the book is often kept in base offices. It thus seems desirable that
Army Medical Personnel be furnished with an identity card small enough to be slipped in the pocket, and provided with a photograph.

The Commission endorsed the proposals made by the ICRC and recommended the adoption of an identity card small enough to be put in the pocket, and water-resistant; it should bear the finger prints of the holder and the embossed stamp of the military authorities, to avoid all chance of forgery.

One Delegation, however, reserved its Government’s opinion as regards finger prints and embossed stamp.

Re Section 3.

The ICRC had pointed out, as is mentioned above, that in order to obviate the recurrence of difficulties quoted, from which so many members of the Medical Personnel suffered, provision should be made for unifying the identity cards for all ranks of medical personnel for every State, as such unification would simplify formalities and preclude differences of opinion.

The Preliminary Conference (1946) also recommended unification by all States of the identification documents issued to Medical Personnel of all categories, and the adoption by all States of a uniform identity card.

The 1947 Conference was also in favour of unification of identification documents for all armies and, as far as possible in all armies of contracting Powers with notification by the belligerents at the outset of hostilities, of the type employed in their forces.

Re Section 4.

By inserting this new Section the Commission aimed at reducing the difficulties encountered by medical personnel having lost their identity cards.

Article 25 (former Art. 22)

The distinctive flag of the Convention shall be hoisted only over such medical units and establishments as are entitled to
be respected under the Convention, and with the consent of the military authorities.

In mobile units, as in fixed establishments, it may be accompanied by the national flag of the belligerent to whom the unit or establishment belongs.

Nevertheless, medical units which have fallen into the hands of the enemy 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.

ART. 22 (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.

Re Section I.

The 1937 Commission recommended the division of this Section into 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 Commission adopted the proposed text, quoted above, without debate.
Re Section 3.

The Commission decided to delete the words "so long as they are in that situation ", for they were relevant only if practically immediate repatriation of medical units was foreseen. Since the latter were to remain in enemy hands, the use of the Red Cross flag would depend on the Detaining Power.

The ICRC recalled in its report that the 1937 Commission had discussed the question of the marking and camouflage of medical units and establishments, in connexion with this Article.

The 1937 Commission proposed no amendment 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 views were published in annex to the 1937 Report on the revision of the Geneva Convention. He recommended 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 the enemy.

In the First Commission, most of the Delegations stressed that modern tactics usually prevented the marking of front line medical units, as this would provide the enemy with information concerning the position and number of troops engaged. The Commission expressed doubt, moreover, as to the usefulness of marking medical units and establishments in the combat zone.

Article 26 (former Art. 23)

The medical units belonging to neutral countries which shall have been authorised to lend their services under the conditions laid down in Article 12, shall fly along with the flag of the Convention, the national flag of the belligerent to whose army they are attached, should the latter make use of the faculty conferred on him by Article 25.

Subject to orders to the contrary by the responsible military authorities, they may, on all occasions, fly their national flag, even if they fall into the hands of the adverse party.
ART. 23 (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.

In its report, the ICRC had reproduced these two proposals, as made by the 1937 Commission. The First Commission endorsed them, thus making the use by medical units or establishments of the national, belligerent or neutral flag uniformly optional.

Article 27 (former Art. 24)

With the exception of the cases mentioned in the last three Sections of the present Article, the emblem of the red cross on a white ground and the words "Red Cross" or "Geneva Cross" may not be employed, either in time of peace or in time of war, except to protect or to indicate the medical units and establishments, the personnel and material protected by the Convention.

The same shall apply to the emblems mentioned in Article 22, Section 2, in respect of the countries which use them.

The Voluntary Aid Societies mentioned in Article II and in particular the National Red Cross Societies, may in accordance with their national legislation, use the distinctive emblem in time of peace as in time of war, in so far as the size of the emblem and the conditions of its use are such that it cannot, in time of war, be considered as conferring the protection of the present Convention.

In the same conditions, the organs of the International Red Cross shall be similarly authorised to make use of the emblem of the Red Cross on a white ground, at all times.

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

Art. 24 (1929). — 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.

Re Section 1.

The above amendment was adopted by the Commission, following the proposal made by the Preliminary Conference (1946). The latter recommended a purely formal amendment on this point, indicating that the general principle expressed by this Article admits of the exceptions quoted in the last three Sections of Art. 24.

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.

There are, as the ICRC recalled in its report, two uses of the Red Cross emblem.

In the first case—and this is its essential meaning—the emblem may be described as constitutive of protection, when it is
displayed on buildings, personnel and material protected by the Convention. In practice, this use is important in time of war and in the zone of military operations. The emblem is then, usually, of a large size in order to be easily recognized, particularly from the air.

In the second case, the emblem is used in a descriptive manner only, both in peace time and in time of war, outside the fighting zone, without carrying any protection. Its object is to draw public attention to buildings, printed matter, etc. The emblem is then always of a small size.

Obviously, when the emblem may be considered as conferring protection, the greatest and most particular care must be taken to ensure that the Red Cross is used only within the limits fixed by the Convention, or by explicit agreement between the Powers concerned. These precautions are essential to secure the respect it demands and to safeguard its authority. The presence, in a war zone, of buildings or objects on which the Red Cross emblem is displayed in unwarranted fashion is liable to imperil the security of those who wear it legitimately.

Inconsiderate extension of the use of the emblem, even in a descriptive manner, is liable to reduce the prestige attaching to the emblem, and thus to compromise the reputation enjoyed by the Red Cross itself—the more so as it is sometimes difficult in practice for the enemy to distinguish the descriptive from the constitutive and protective use.

During the recent war cases of alleged abuse of the Red Cross emblem were brought to the knowledge of the ICRC, which did not fail to recommend the National Society of the country concerned to approach its Government on the subject. In some cases, especially during the final phase of hostilities in Europe, serious abuses of the emblem were noted by ICRC delegates. Motor-trucks displaying the Red Cross were used to transport troops or war material, and the ICRC itself repeatedly approached the Government concerned.

The ICRC therefore believes that the emblem should be employed in strict agreement with the stipulations of the Geneva Convention, subject to such amendments as may be held necessary.
The First Commission, by adopting Sec. 3 amended, wished to record a factual situation, and to allow, under certain circumstances, the descriptive use of the emblem.

According to the former text of this Section, National Red Cross Societies are not entitled to use the emblem in war-time for all the humanitarian work they do outside their function as auxiliaries of the Army Medical Service.

The Commission wished to remove this anomaly, as Sec. 3 of Art. 24 was never strictly applied during the recent war.

Re Section 4 (new).

The ICRC pointed out an obvious gap in the Geneva Convention which should be filled. Neither the ICRC nor the League is mentioned in the Convention as a body which is 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 ICRC to use this emblem and to supply its delegates with a white armlet bearing a red cross, since the Committee employed it thus even before the existence of the Geneva Convention, and may even be considered to be its inventor.

The Commission was anxious to permit the use of the emblem to the "international Red Cross organizations", i.e. the ICRC, the League of National Red Cross Societies, and the Standing Commission of the International Red Cross Conference.

Re Section 5.

The Preliminary Conference (1946) left this Section as it stands. On due consideration, the ICRC thought that the possible employment of the emblem by first aid stations should, perhaps, be extended to ambulances not connected with the Red Cross.

The Commission considered that here, too, it was a matter of confirming a practice already established in most countries, if not in all. It pointed out that the Red Cross is well-known to the public, and that if it is displayed on an ambulance (with the permission of the National Red Cross Society concerned), other drivers observe the rule of the road and give it priority.
Furthermore, to obviate certain difficulties of application, the Commission decided to insert a clause (which was certainly implied), namely, the words "in obedience to national legislation", which do not appear in the present text.

Finally, the Commission unanimously regretted the numerous abuses of the emblem. It therefore thought desirable that the Final Act of the next Diplomatic Conference should include a recommendation that States must take the greatest care that the Red Cross emblem is used solely within the limits of the Geneva Convention, in order to safeguard its authority and preserve its high significance.

**Chapter VII. — Application and Execution of the Convention**

*Article 28* (former Art. 25)

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

If a belligerent is not a party to the Convention, its provisions shall, nevertheless, be binding as between all the belligerents who are parties thereto.

Art. 25 (1929). — 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.

The Commission decided to retain the present wording, but to delete, in Sec. 2, the phrase "in time of war", as this seemed superfluous in conjunction with the word "belligerent".

*Article 29* (former Art. 26)

The belligerents, acting through their commanders-in-chief, shall arrange the details for carrying out the preceding Articles.
as well as for unforeseen cases, in accordance with the instructions of their respective Governments and in conformity with the general principles of the present Convention.

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

Art. 26 (1929). — 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.

Re Section 1.

The effect of the change of wording adopted by the Commission is to heighten the obligation incumbent on States.

Re Section 2.

The 1937 Commission had already recommended the insertion in the Geneva Convention of a principle similar to that embodied in Art. 2, Sec. 3 of the PW Convention, forbidding measures of reprisal.

The Commission also considered that the insertion of this principle was necessary.

Article 30 (former Art. 27)

The High Contracting Parties shall take, in time of peace as in time of war, the necessary steps to make known the text of the present Convention, to instruct their armed forces, and in particular the medical personnel and the chaplains, in its provisions, and to bring them to the notice of the civil population.

Art. 27 (1929). — 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.
The Commission unanimously agreed that the Geneva Convention was not sufficiently well known, and that knowledge of this document should form part of the instruction of all members of the armed forces.

The other changes of wording were adopted to bring the text into line with modern military terminology and with the amendments made to Arts. 10 and following.

Chapter VIII. — Suppression of Abuses and Infractions

Article 31 (former Art. 28)

The High Contracting Parties whose legislation is not at present adequate for the purpose, shall take the measures necessary to prevent at all times:

(a) the use of the emblem or of the 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, whatever the object of such use;

(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 States not party to the Convention of July 27, 1929, and which may subsequently ratify the said Convention or adhere thereto, shall take the measures required at all times to prevent acts such as those mentioned under (a) and (b), 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 which is contrary to the above interdictions, already enacted by the Convention of July 27, 1929, is maintained.
In States not party to the present Convention, and which may subsequently ratify it or adhere thereto, it shall 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 which are contrary to these prohibitions shall be amended, whatever the previous date of their adoption.

ART. 28 (1929).—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.

Re Section 1.

The 1937 Commission had already proposed that the words "the High Contracting Parties" should be substituted for the terms "The Governments of the High Contracting Parties". The earlier wording might endanger the practical scope of the provision, in case legislative bodies should decline to vote the
laws which Governments may propose in obedience to the spirit of this Section.

The First Commission adopted this amendment and, in the same spirit, replaced the words "or propose to their legislatures" by the words "shall take the measures necessary".

Re (a).

The amendment adopted by the Commission, bearing entirely on wording, was put forward by the 1937 Commission and endorsed by the Preliminary Conference (1946).

Re Section 2.

The new wording of Sec. 2 had been proposed by the 1937 Commission and endorsed by the Preliminary Conference (1946).

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 opinion of the ICRC—that all trademarks contrary to the provisions of the Convention must be abolished within five years at most, whatever the previous date of their adoption.

One Delegation abstained for the whole of this Article.

_article 32 (former Art. 29)_

Should their penal laws be inadequate, _the High Contracting Parties_ shall take 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.

Art. 29 (1929). — 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 Conventions.
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.

Re Section 1.

The Preliminary Conference (1946) had recommended the insertion in Sec. 1 of the amendments as to wording already recommended for Sec. 1 of Art. 28, i.e., that the words "The Governments of the High Contracting Parties" be replaced by the words "The High Contracting Parties". The Commission shared this view.

**Article 33 (new)**

*Any wilful violation of the present Convention, leading to the death of persons protected by its provisions, to grave ill-treatment of the said persons, or serious damage to hospital buildings and equipment, shall be considered as a war crime. The responsible persons shall be liable to appropriate penalties.*

The High Contracting Parties undertake to insert in their penal and military legislation provisions for the punishment of any infractions of the stipulations of the present Convention.

Discussion of the present Article 30 led the Commission to set up this new one. Independently of the procedure of investigation foreseen in this text, the Commission thought necessary that the law of the land should punish infractions of Convention provisions, and that the most serious of these infractions should be considered as war crimes and punished as such.

This new stipulation is of a general nature, and the plenary Assembly agreed that it might also be inserted, subject to adaptation, in the Conventions relating to P.W. and civilians.

In the report submitted by the ICRC, it was pointed out that public opinion was generally desirous that grave violations of the laws of war should be suitably punished. Up to now, however, the humanitarian Conventions provided no ruling on this point, and the matter was still left more or less to national
legislations, which are often inadequate. Furthermore, there is a strong tendency in favour of international repression of such breaches.

The ICRC had indicated a few of the proposed solutions, namely, extension of the procedure of investigation, transmission of fact-finding reports to the United Nations Security Council, setting up of a special international tribunal, assimilation to war crimes, appeals to public opinion, and so forth.

The text adopted by the Commission was purposely worded in a very general manner. It lays on the contracting States the obligation to pass special measures, should their legislation be inadequate. Further, the Commission's object, in describing serious and intentional infractions of the Conventions as war crimes, was to warn all persons entrusted with the application of the Conventions of the possible consequences of their acts.

As international world organization stands at present, the Commission did not feel able to aim at the setting up of an international penal jurisdiction, but the wording now adopted does not preclude recourse to such a solution in the future. Furthermore, this text does not specify which authority would be entrusted with the prosecution of offenders. In consequence every contracting State itself may, on the basis of its own legislation, punish the culprits it detains, or hand them over to another State for trial. Thus, the principle of universality of punishment, without being made obligatory, is nevertheless tacitly admitted.

One of the Delegations reserved its Government's opinion as to this Article.

Article 34 (former Art. 30)

Any High Contracting Party alleging a violation of the present Convention may demand the opening of an official enquiry. This enquiry shall be carried out as soon as possible by a Commission instituted for each particular case, comprising three neutral members selected from a list of qualified persons drawn up by the High Contracting Parties in time of peace, each Party nominating four such persons.
The plaintiff and defendant States shall each nominate one member of the Commission. The third member shall be designated by the other two and, in case they are not able to agree, by the President of the International Court of Justice.

As soon as the enquiry is closed, the Commission shall report to the Parties concerned on the reality and nature of the alleged facts, and may make appropriate recommendations.

All facilities shall be extended by the High Contracting Parties to the Commission of Inquiry, in the fulfilment of its duties.

Art. 30 (1929). — 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.

The ICRC had recalled in its report that the 1937 Commission unanimously recognized that Article 30, in its present form, was inadequate, and that it was necessary to widen its scope. Taking into account the diplomatic character of certain aspects of the question, the Commission however considered that their duty was, rather than draft a definite text, to clarify the main principles on which the revision of Article 30 might be founded.

The recommendations of the Preliminary Conference (1946), 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. The recommendations 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 Party to the Convention directly concerned, whether belligerent or neutral.

(3) That a single central and permanent agency, foreseen by the Convention, shall be instructed to appoint 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, as the result of an alleged violation of the Convention.

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

(6) That special agencies shall be appointed in advance to undertake, in urgent cases, the rapid verifications 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 two following principles:

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

The agency charged with the constitution of the Commission of Enquiry—see (3)—should be the International Court of Justice.

Though all the Delegations agreed on the principle of investigation and procedure, the constitution of the commission of enquiry gave rise to lively debates.

The majority were opposed to the idea that a single central and permanent agency, foreseen by the Convention, should be instructed to nominate the commission of enquiry. They pointed out that in the history of pacific settlement of international disputes, States have always claimed the right to appoint themselves a proportion of the members of arbitration tribunals and commissions of enquiry. This would apply even more strongly to the case of a commission instructed to investigate in belligerent territory and, more often than not, in the zone of military operations.

It was therefore decided to adopt the principle of a commission of three, the plaintiff and defendant States each to nominate one member, the third member to be designated by the other
two and, in case they should not agree, by the President of the International Court of Justice. For this office of supreme arbitrator certain Delegations had proposed the President of the ICRC. The representatives of this body stressed that the ICRC undertakes chiefly, in time of war, wide-scale welfare and practical activities in behalf of war victims; they drew attention to the risk that a belligerent might put an end to this work, by considering as an unfriendly act any participation in the constitution of a commission of enquiry directed against itself.

In the opinion of the Commission, the duty incumbent on the President of the International Court of Justice would attach to him personally, wherever he might be, and even if the Court should cease to sit.

The First Commission stressed, moreover, that the true purpose of such a commission of enquiry is to investigate into violations of the Convention, and not to pass judgment, as might a tribunal. The commission of enquiry would transmit, by methods to be decided later, the results of its investigations to the countries concerned, requesting them to take the necessary measures. Later, international tribunals called upon to pass judgment on breaches of the Convention would be in possession of facts investigated at the time when they occurred.

On the other hand, the Commission considered it desirable that, as soon as an international Court of Penal Justice is created, this Court should be charged with the repression of violations of the Convention, either directly or in the capacity of a Court of Appeal for the national tribunals.

One Delegation reserved the opinion of its Government as to the whole of this Article.

II. — PROTECTION OF WOUNDED AND SICK CIVILIANS IN WAR TIME

As already stated the Conference rejected the idea of extending to civilians the Geneva Convention as it stands, and approved the application of certain broad principles of the

1 See above page 9.
said Convention to wounded and sick civilians, by inserting new Articles in the draft Convention for the protection of civilians in general.

The First Commission, for the revision of the Geneva Convention, and the Third Commission, which dealt with the protection of civilians, drafted conjointly the following new articles.

**Article I**

*Independently of the general protection granted to civilians by the present Convention, the wounded and the sick shall be the object of particular regard and protection. They shall receive, as far as possible, the care they may require.*

*In so far as military considerations permit, each belligerent shall facilitate the steps taken to search for killed or wounded civilians, and shall protect them against pillage and ill-treatment.*

*Re Section i.*

In drafting this Article, the Commission first wished to follow the terms of Art. i of the Geneva Convention, namely: "Wounded and sick civilians shall be respected and protected in all circumstances", with the addition of: "They shall receive the necessary care without delay."

It was, however, pointed out that the first clause would impair the safeguards due to civilians in general. Consequently, the following wording was preferred: "Independently of the general protection granted to civilians by the present Convention, the wounded and the sick shall be the object of particular regard and protection."

Certain Delegations further pointed out, as regards the second clause, that no Government would accept such an obligation for its own population, and would refuse it a fortiori for the enemy population in war-time. It was observed, moreover, that it would be extremely difficult to draw a clear distinction between civilians who were sick and those who were not. The following wording was therefore adopted: "They shall receive, as far as possible, the care they may require."

1) See below page 269.

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The question arose further whether expectant mothers should be expressly mentioned, as well as the wounded and sick. It was considered that such women were assimilated to the sick in general.

Re Section 2.

This was adopted without discussion.

Article 2

Local agreements may be concluded between belligerents for the removal of the wounded and sick, and maternity cases from a besieged or encircled zone, and for the passage of medical personnel and material bound for the said zone.

The Commission did not reopen the debate on this Article. The matter was considered to have been exhaustively dealt with during examination of Art. 3 of the Geneva Convention.

Article 3

Civilian hospitals, recognised as such by the State and organised to afford permanent care to wounded and sick, or to maternity cases, shall in no circumstances be the object of attack, but shall at all times be respected and protected by the belligerents.

The ICRC had recalled, in their report, that under present legislation, civilian hospitals do not enjoy the protection of the Geneva Convention and cannot display the emblem of a red cross on a white ground. As regards bombardment, they are governed by the very general and summary provisions contained in Art. 27 of the Regulations annexed to the Fourth Hague Convention of 1907, and of Art. 5 of the Ninth Hague Convention of the same date, 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

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1 See above pages 14 sqq.
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 Hague 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 coloured triangular portions, the upper portion black, the lower portion white.

Red Cross conferences and commissions of experts have long since agreed that civilian hospitals should enjoy better protection.

The ICRC had already raised the question, during the Preliminary Conference (1946), as to the manner of limiting the protection granted to hospital buildings, according to their nature. The Preliminary Conference (1946) agreed that buildings which sheltered civilian wounded and sick, and which were authorized by the State, should alone enjoy protection under the Geneva Convention and have the right to display the Red Cross emblem.

The First Commission, for its part, raised the question whether the degree of protection granted to civilian hospitals should be determined by their size. Thus, those only would enjoy protection which were able to accommodate 20 persons at least. One Delegation pointed out that the number of establishments thus protected would be very large and might compromise the entire scheme.

Finally, the Commission considered that the question of the size of the civilian hospitals requiring protection was a secondary matter, and it subjected such hospitals demanding protection to two conditions:

(I) that they should be recognized as such by the State;
(2) that they should be able permanently to care for wounded, sick and maternity cases.

Furthermore, the expression "protection of civilian hospitals" means, in the eyes of the Commission, not only protection against bombardment, but also against any form of requisition by the occupying Power.

Finally, in order to define the protection due to these hospitals, the Commission used practically the same wording as Art. 6 of the Geneva Convention proper. It was considered preferable, however, to replace in this text the words "shall not be attacked" by "shall in no circumstances be the object of attack", as it was held that the former wording was weaker and that it did not so emphatically preclude unintentional attacks.

Article 4

Protection due to civilian hospitals shall not cease unless they are used to commit acts harmful to the enemy, and after due warning given without effect.

The fact that wounded or sick members of the forces are nursed in these hospitals, or that small arms and ammunition, taken from these persons and not yet handed over to the responsible service, are discovered there shall not be considered as an act harmful to the enemy.

Re Section 1.

The Commission followed the wording of Art. 7 of the Geneva Convention.

Re Section 2.

The Commission considered that such a clause was necessary, as a corollary to the provision inserted in Art. 8 of the Geneva Convention, and that the fact of civilians being nursed in a military hospital should not deprive the latter of the protection due to it.
Article 5

Civilian hospitals may pursue their activities in enemy or enemy-occupied territories, and shall be protected against pillage.

The buildings and equipment of these hospitals shall remain subject to the right of requisition recognised to belligerents by the laws and customs of war, but shall not be diverted from their purpose, except in case of urgent necessity, and after the care of the wounded and sick they accommodate has been ensured.

The Commission considered it desirable to bring this Article into line with the provisions of the Geneva Convention covering military medical establishments fallen into enemy hands.

Article 6

Members of the personnel of civilian hospitals shall be protected and respected by the belligerents. They shall hold identity cards certifying the capacity of the bearers and provided with the photograph and finger-prints of the holder, and the embossed stamp of the responsible authority.

The management of every civilian hospital shall at all times have a correct list of its staff and patients, giving all relevant particulars as to identity, especially the date of admission of patients.

Re Section 1.

The experts raised the question whether any scheme of protection and regulation should be set up, similar to that which the Geneva Convention provides for military medical personnel, and applicable to all persons engaged in the care of civilian wounded and sick, or if such protection should be limited to personnel of civilian hospitals alone. The latter view was adopted.

The Commission considered that members of the civilian medical personnel should also hold identity cards, certifying the qualification of the bearer and provided with his photograph and finger-prints, and the embossed stamp of the responsible authority. One Delegation, here too, reserved its Govern-
ment's opinion with regard to finger-prints and embossed stamp.

Another Delegation considered that members of the staff of civilian hospitals should be allowed to wear the Red Cross armlet.

Re Section 2.

The Commission discussed this Section at length. Certain Delegations were anxious that strict measures should be taken, to ensure the general protection of civilian hospitals, by laying on the managements the obligation of having at all times available a correct list of their staffs and patients. Other Delegations objected to this requirement, as they considered it incompatible with medical professional ethics.

The supporters of the regular listing of patients and staff of civilian hospitals finally prevailed. One Delegation considered that the provisions of Art. 6 should extend to hospitals, infirmaries and places of internment set up by a Detaining Power for civilians.

Article 7

Civilian hospitals shall be marked by means of the emblem of the Red Cross (Red Crescent, Red Lion and Sun) on a white ground, subject to the consent of the military authorities.

As far as military considerations permit, belligerents shall take the necessary measures to render clearly visible to enemy land, air or naval forces the distinctive emblems marking civilian hospitals, in order to obviate the possibility of any aggressive action.

During the Preliminary Conference (1946), the ICRC asked the meeting whether it considered that specifically civilian hospitals might display, as a protective measure, the emblem of the red cross on a white ground or if, on the contrary, a special distinctive marking should be introduced. The ICRC pointed out that during the recent war, some belligerents distinguished civilian hospitals by means of a red square placed in the centre of a white background. The Conference considered, for its part, that civilian hospitals should be authorized to use
the emblem of the Geneva Convention, and that the creation of a new emblem, which might lead to confusion, should be avoided.

Notwithstanding a certain current of opinion among members of the First Commission, during discussion of the use of the Red Cross emblem in the Geneva Convention, in favour of restricting this use, the Commission was unanimous in choosing the Red Cross emblem to distinguish civilian hospitals. One Delegation, however, reserved its Government’s opinion with regard to this extension of the distinctive emblem.

**Article 8**

*Belligerents may conclude special agreements for the creation of hospital localities, to ensure better protection for the wounded and sick assembled therein, all military utilisation of such zones being excluded.*

The Commission considered it desirable to insert in this Chapter on the protection or civilians in time of war, an Article concerning the creation of hospital localities. The wording of Article 9 of the Geneva Convention was used.

II.

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

**General Observations**

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.

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1 See above, page 26.
At that time the Hague 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 up to the present day.

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 ICRC drew up in 1937, with the assistance of naval experts delegated by Governments and National Red Cross Societies, a revised draft Convention. This was approved by the XVIth 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 war, the ICRC 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 (1946), had occasion to study the question and approved a few amendments to the draft.

The present Conference nominated a sub-committee of specialists to study the Tenth Hague Convention, on account of the peculiarly technical nature of the agreement. Their report was examined by the First Commission of the Conference and submitted, with their comments thereon, to the plenary Session.

Before examining each Article of the Maritime Convention, the Commission made the following general observations:

(1) The question was discussed whether the essential amendment made to the Geneva Convention (assimilation of Medical Personnel to Prisoners of War) should also be inserted in the Maritime Convention. The majority of the Commission considered that hospital-ships are in an exceptional situation, and that special immunities should be granted to the Medical Personnel of these vessels.
(2) Taking into account the above reservation, the Commission was of opinion that, in so far as the text of the Maritime Convention could be adapted to that of the Geneva Convention, the amendments made to the latter should be considered as approved also in respect of the Maritime Convention.

(3) The representative of one Government pointed out that he had received no instructions regarding the revision of the Maritime Convention, but he had no doubt that his Government would give serious consideration to the opinions expressed by the Commission.

(4) The Commission was of opinion that the text of the revised Maritime Convention should be embodied in the Geneva Convention. All the stipulations proper to maritime warfare should, however, be assembled in a distinct Chapter which might, if necessary, contain references to the general stipulations of the Geneva Convention.

The Conference further expressed the recommendation that the Governments of Maritime Powers should send the ICRC lists of cases noted during the recent war where the Tenth Hague Convention did not find proper application. These lists might usefully complete the data to be furnished to the future Diplomatic Conference.

The Commission took as the basis of its discussions the revised draft Convention established in 1937 by a commission of naval experts delegated by their Governments and National Red Cross Societies.

A new draft was made, of which the text is given below, followed by the 1907 Articles, and references to the corresponding articles of the 1929 Geneva Convention.

Chapter I. — Wounded, Sick and Shipwrecked

Article 1

Sailors and soldiers on board ship and other persons officially attached to the land, sea and air armed forces who are wounded, sick or shipwrecked, shall be respected and protected in all circum-
stances. They shall be treated with humanity and cared for, without any distinction of nationality, race, religious or political convictions, by the belligerent in whose power they may be. Women shall be treated with the particular consideration due to their sex.

The benefit of the foregoing provisions shall also extend to wounded, sick and shipwrecked of all vessels victims of a hazard of war.

Art. II (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.

Art. I (1929) : see page 12.

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 refers to the first two categories only. The addition, which is suggested by the ICRC, does not express any new idea, but is merely intended to define the scope of the provision. Obviously, 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 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 debated later on, when revision of the Geneva Convention was being discussed. The 1937 experts, however, unanimously decided to introduce
this new paragraph without delay into the revised draft Maritime Convention, even if the Geneva Convention should not be extended to cover civilians. They remarked that the organization of relief for civilians was far better on land than at sea, where it is practically non-existent.

The Article was adopted without discussion. However, one Delegation made a reservation regarding members of the Mercantile Marine, whose rights should not be restricted, and raised the question whether the protection granted to shipwrecked persons is also valid in cases of shipwreck due to natural causes, and not to a hazard of war.

_Article 2._

_Shall be regarded as prisoners of war the wounded, sick or shipwrecked of one belligerent who fall into the hands of the adverse party._ 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.

_Art. 14 (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.

_Art. 2 (1929)._ — See above, page 13.

The First Commission decided to make of Art. 2, Sec. 2 of the 1929 Convention a distinct and separate stipulation, to form Article 29 of the Draft.

One Delegation proposed to maintain the first Section of this Article and to replace the two last by the clause: "They shall be treated in accordance with the stipulations contained in the Prisoner of War Convention".

Another Delegation enquired whether it should not be exactly determined what kind of occupation should be allowed or
prohibited in respect of these repatriated prisoners. A third Delegation observed that the case had been provided for under Article 74 of the P.W. Convention.

Article 3

All warships of a belligerent Power shall have the right to demand the surrender of the wounded, sick or shipwrecked on board military hospital-ships, hospital-ships of relief societies or private persons, merchant vessels, yachts and other craft, whatever their nationality.

ART. 12 (1907). — Any warship belonging to a belligerent may demand that sick, wounded or 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.

With a view to restricting the right of recapture, one Delegation proposed the insertion of a new Section, reading thus:

"However, when the route of a hospital-ship has been notified to the adverse party the naval forces of the latter shall observe the special agreements concluded in view of that particular voyage."

Another Delegation pointed out that a safe-conduct system of this kind would greatly reduce the immunity and usefulness of hospital-ships, the more so as special agreements are always possible, according to the terms of Art. 29. Furthermore, this system would restrict the right of belligerents to inspect hospital-ships, whereas it must be possible to exercise this right in all circumstances.

Another Delegation proposed that this Article be amended so as to ensure that belligerents cannot claim the seriously wounded and sick eligible for repatriation who may be on board hospital-ships.

Article 4

If wounded, sick or shipwrecked persons are taken on board a neutral warship, steps shall be taken to ensure that they can no longer participate in warlike operations.
ART. 13 (1907). — If sick, wounded, or shipwrecked persons are taken on board a neutral warship, every possible precaution must be taken that they do not again take part in the operations of the war.

By deleting the words "as far as possible" in Art. 13 of the Hague Convention 1907, the Commission wished to make the principle embodied in this article more imperative.

One Delegation recommended that this stipulation should be brought into line with Article 74 of the P.W. Convention.

Article 5

Wounded, sick or shipwrecked persons who are disembarked by the warships of belligerents in a neutral port, with the consent of the local authorities, and in the absence of contrary arrangements between the neutral and belligerent Powers, shall be so guarded by the neutral Power that they cannot take part again in war operations.

The costs of hospital accommodation and internment shall be borne by the Power to which the wounded, sick and shipwrecked persons belong.

If wounded, sick or shipwrecked persons are disembarked in a neutral port by neutral and private merchant ships, vessels, yachts or airships, which have assumed no obligation whatever towards one of the belligerent Powers, the said wounded, sick or shipwrecked persons shall be free.

All warships arriving in a neutral port shall have the option, with the consent of the neutral Power, of disembarking wounded, sick or shipwrecked persons who may be on board.

ART. 15 (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 internment shall be borne by the State to which the shipwrecked, sick, or wounded persons belong.
Re Section 1.

This Section reproduces, in an improved form, the principle of Art. 15, Sect. 1 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 merchant vessels being dealt with elsewhere (See Art. 5, Sec. 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. 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 liable to capture. Merchant vessels and other belligerent craft would therefore come within this category; wounded, sick and shipwrecked persons whom they might have picked up would be interned, on landing in a neutral port. The ICRC however think it would be preferable to make this principle explicit in the text of the Convention itself.

Re Section 3.

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

The Hague Convention is 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 1937 Commission. 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 Art. 5, Sec. 1 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 arguments on
historical precedents—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 Art. 5, Sec. 3 of the Draft.

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

Re Section 4.

This Section follows a proposal made by the International Committee of Military Medicine and Pharmacy. Starting from the view that accommodation of wounded in a port is better than on board a warship, the said 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, 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 to make it 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 would hasten to land any enemy prisoners on board, as a convenient means of being relieved of them, by securing their internment.

The 1947 Commission adopted the principle of this Article as it appears in the heading.

One Delegation proposed to insert the words "neutral warships and hospital-ships" before the words "merchant ships". The Commission asked itself whether a distinction should not be drawn between neutral and belligerent hospital-
ships, as it would hardly be in the latter's interest to disembark enemy wounded and sick in neutral countries, if it were certain that they would thus become free. Two other Delegations made reservations as regards their Governments' point of view on this possible addition.

Another Delegation reserved its opinion regarding the mention of airships.

Another Delegation further pointed out that the determinant factor of internment or release of wounded, sick or shipwrecked persons put ashore in a neutral port should be their personal status, and not the status of the vessel disembarking them. Consequently, combatants on board any vessel should be interned, whereas civilians would be free. Lastly, another Delegation pointed out that this proposal would restrict the protection granted to wounded, sick or shipwrecked combatants.

Article 6

After each engagement, belligerents shall take all possible measures to search for the shipwrecked, wounded and sick, and to protect them and the dead against pillage and ill-treatment.

Art. 16 (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, or cremation of the dead shall be preceded by a careful examination of the corpses.


The words "after each engagement" were purposely maintained, on account of the conditions prevailing at sea.

One Delegation proposed the following text: "...to search for and collect the shipwrecked, wounded, sick and dead", in order to include in the search those apparently dead.
Article 7

Belligerents shall communicate to each other as soon as possible, according to the procedure prescribed in Article 77 of the 1929 Convention on the treatment of prisoners of war, the names of the wounded, sick and dead, discovered or collected, together with any indications which may assist in their identification.

They shall establish and transmit to each other by the same channel certificates of death or, in lieu thereof, duly authenticated lists of the dead.

They shall likewise collect and exchange by the same channel all articles of a personal nature and of intrinsic or sentimental value found on the dead, especially one-half of their identity discs, which should be of a standard pattern, the other half to remain attached to the body.

Bodies shall not be cremated except for imperative reasons of hygiene or for religious motives. Should cremation be carried out, the circumstances and motives which made it necessary shall be noted in detail on the death certificate of the person cremated.

The belligerents shall ensure that burial on land or at sea, 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, if possible according to the rites of the religion to which they belonged, that their graves are respected, assembled and marked so that they may always be found. To this end, at the commencement of hostilities, they shall officially organise a graves registration service, in order to allow eventual exhumations and to ensure the identification of bodies, whatever the subsequent site of the grave. These stipulations also apply as far as possible to the ashes, which shall be kept by the graves registration service until the end of hostilities.

As soon as circumstances permit, and at latest at the end of hostilities, they shall exchange a list of graves and of dead interred in their cemeteries and elsewhere.
Should wounded, sick or dead be collected by neutrals, the latter shall assume as regards the belligerents, the obligations indicated in the preceding sections.

Art. 17 (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 internments and transfers, as well as to the admissions into hospital and deaths having 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.


Re Section 8.

This Section is new. The 1937 Commission unanimously agreed that the obligations arising under Sec. 1, 2, 3 and 4 of the present Article should also apply to neutral powers.

Article 8

Belligerents may appeal to the humanitarian sentiments of commanders of merchant vessels, yachts or other neutral craft, to take on board and care for wounded, sick or shipwrecked persons.

Vessels which have responded to this appeal, and those having spontaneously collected wounded, shall benefit by special protection and facilities to carry out such assistance.

They may in no case be captured on account of such transport; subject to promises made to them, they shall, however, remain liable to capture for any violations of neutrality they may have committed.

Art. 9 (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.


One Delegation suggested that this Article should be placed in Chapter II, because it deals with vessels rather than with personnel. The chapter could then be entitled "Hospital-Ships and Neutral Craft".

Chapter II. — Hospital-Ships

Article 9

Military hospital-ships, that is to say, ships built or fitted out by States specially and solely with a view to assisting the wounded, sick or shipwrecked, and whose names and description have been communicated to the belligerent Powers at the commencement or during the course of hostilities, in any case before they are employed, shall be respected and may not be captured.

Art. 1 (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 warships as regards their stay in a neutral port.

Art. 6 (1929). — See page 23.

One Delegation proposed that not only the notification of hospital-ships should be required, but also an acknowledgment of such notification. It was pointed out that such requirements might reduce the protection granted by the Convention to hospital-ships, and that it would be a means for the adverse Party to refuse all recognition of the hospital-ships notified.
The same Delegation further proposed that the contents of the notification should be defined in the Convention; it was, however, objected that each belligerent had lists of all hospital-ships.

Article 10

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

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

Art. 2 (1907). — Hospital ships, equipped wholly or in part at the expense of private persons 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.

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.

Article II

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

Art. 3 (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.

Some delegations further suggested the insertion of additional Articles into the new Convention, namely:

(1) One Delegation proposed the insertion here of a new Article fixing the minimum tonnage allowed for hospital-ships. This figure would be 6,000 tons. Another Delegation proposed a minimum of 2,000 tons. A third Delegation suggested, to obviate difficulties arising from the various kinds of tonnage (registered tons, displacement tons, metric tons, etc.) that this question be settled not on the basis of tonnage, but of size, and more particularly of surface.

The Commission agreed (one Delegate’s opinion being reserved) upon the principle of stating the minimum tonnage, but did not consider itself competent to determine an exact figure. The points to be considered in settling the necessary definition to be inserted in the Convention are, firstly, visibility and, secondly, proper accommodation for the sick.

The question of the use of speed-boats for saving airmen from the sea was discussed. For reasons of military security—speed itself constituting sufficient protection—the Commission considered that these boats should not have the protection of the Convention.

(2) One Delegation suggested the insertion of a new Article to protect life-boats of low speed and attached to a fixed base, which cannot be assimilated to the speed-boats mentioned above, nor to hospital-ships, whose tonnage will be determined by the
Convention. In case of occupation, the Occupying Power should be able to control the use of such craft.

On the other hand, the Commission considered the position of a hospital-ship in an occupied port. In this case, the vessel would not be captured, but “seized”, and the Commission asked whether it should be left free to pursue its journey. One Delegation made a comparison between hospital-ships in an occupied country and captured medical units; another Delegation thought that this comparison could not stand, because a hospital-ship does not belong to any particular unit, but is employed on successive and independent missions, a fact which does not apply to medical units. If a country had only one or two hospital-ships, the seizure of one or both would be very detrimental to its wounded and sick.

(3) One Delegation proposed the insertion of a new Article to prohibit the notification of a hospital-ship in a besieged port.

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.

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

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

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

ART. 4, Sec. 1-4 (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.

One Delegation took up the proposal made by the Preliminary Conference (1946) to insert, at the close of this Article, a new
section as follows: “All hospital-ships escorted by warships or included in a convoy of merchant ships are presumed to waive protection under the Convention.” The Commission thought that this clause might entail abuses and that, in any case, there can be no question, even in such an event, of depriving hospital-ships of all protection.

**Article 13**

The belligerents shall have the right to control and search the ships mentioned in Articles 9, 10 and 11. They can refuse them help, order them off, make them take a certain course, and put a commissioner temporarily on board; they can even detain them for a maximum period of seven days, if the gravity of circumstances requires.

As far as possible, the belligerents shall enter into the log of the hospital-ships, in a language intelligible to the commander of the ship, the orders which they give them.

Belligerents may, either unilaterally or by particular agreements, put on board their hospital-ships neutral observers, who shall verify the strict observation of the stipulations contained in the present Convention.

Art. 4, Sec. 5 and 6 (1907). — 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.

This Article reproduces the text of Art. 4, Sec. 5 and 6 of the Hague Convention, with the exception of 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 detain them for a maximum period of seven days”. The object is to avoid the risk of disguised capture of hospital-ships. The 1937 Commission had already proposed the phrase “even provisionally detain them”.
The same Commission had further recommended that States should place neutral observers on board hospital-ships, as was done in 1917, as the result of a Franco-German agreement.

The duty of these observers would be to see that no misuse was made of hospital-ships. They would in no case have power to take control or issue orders to the captain, who must keep his full liberty of action. The Commission considered it feasible, however, to provide for neutral observers on board hospital-ships, whose main function would be to ascertain facts and be able to report thereon. Their evidence would make it possible to verify possible breaches, or to exonerate the captain from unfounded charges, thus avoiding reprisals. While not instructing the captains, the neutral observers could at least draw their attention to the possible consequences of their acts.

Two Delegations reserved the opinion of their Governments as to this Article.

Article 14

_Vessels mentioned in Articles 9, 10 and 11 are not assimilated to warships as regards their stay in a neutral port._

Art. 1, Sec. 2 (1907). — These ships, moreover, are not on the same footing as war-ships as regards their stay in a neutral port.

Article 15

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

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

Two Delegations to the Conference reserved the opinions of their Governments as to this Article.

Article 16

_The protection to which hospital-ships and sick-bays are entitled shall cease only if they are used to commit acts harmful to the enemy, and after warning which has met with no response._
In particular, hospital-ships provided with wireless or any other means of communication shall not be in possession of a secret code. All their communications shall be made in clear.

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 apparatus exclusively intended to facilitate navigation or communication;

3. the discovery on board hospital-ships or in sick-bays of portable arms and ammunition taken from the wounded, sick and shipwrecked, and which have not yet been handed to the proper services.

Art. 8 (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.

Art. 7 and 8 (1929). — See pages 24-25.

This new wording had been proposed by the Preliminary Conference (1946) and was duly approved by the First Commission.

Chapter III. — Personnel

Article 17

The religious, medical and hospital staff of hospital-ships and their crews shall be respected and protected; they may not be captured during the time they are pursuing their duties, whether or not there are wounded and sick on board.

As already mentioned, the majority of the Commission was in favour of special immunity being granted to the medical
personnel of hospital-ships, in view of the character of these vessels. The introduction into this Article of the words "whether or no there are wounded and sick on board" clearly indicates that this personnel may not be captured while officially attached to a hospital-ship, and forming part of its permanent staff.

**Article 18**

> The religious, medical and hospital staff of any captured ship shall be respected and protected; they may continue to carry out their duties as long as this is necessary for the care of wounded and sick.

> On landing, they shall be subject to the stipulations provided for captured hospital staff by the Geneva Conventions and by the Eleventh Hague Convention of 1907.

**Art. 10, Sec. 1 (1907).** — The religious, medical, and hospital staff of any captured ship is inviolable, and its members cannot 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.

**Art. 9 and 12 (1929).** — See pages 32 and 39.

The Commission thought that the adaptation to maritime medical staff of the stipulations of the Geneva Conventions should be thoroughly studied later, in view of the special conditions obtaining at sea.

One Delegation reserved their opinion as to the whole of this Chapter.

**Chapter IV. — Material**

**Article 19**

> 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 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.

Art. 7 (1907). — In the case of a fight on board a warship, the sick wards shall be respected and spared as far as possible.

The said sick wards and the material belonging to them remain subject to the laws of war; they cannot, 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.


This Article is practically identical with Art. 7 of the Hague Convention, but is more closely adapted to the Geneva Convention. The question arose in 1937 whether modern naval warfare might not preclude the possibility of fighting on board ship and if, consequently, the stipulation of Art. 7 of the Hague Convention should not be omitted, as being obsolete. Since this stipulation is in no way objectionable, the 1937 Commission decided to maintain it.

Ten years later, the Conference of Government Experts shared this view.

Chapter V. — Medical Transport

Article 20

The provisions of Articles 20 and 21 of the Geneva Convention are applicable to hostilities at sea, in particular as regards seaplanes used as medical aircraft.

Belligerents may conclude agreements to ensure the benefit of the said Convention to medical aircraft entrusted with the search and transport of wounded, sick and shipwrecked at sea.
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 (Art. 18). In any case, these provisions are applicable to both naval and land operations. The 1937 Commission considered it sufficient to add a clause providing for medical seaplanes on a similar basis, and the Conference agreed with this view.

Furthermore, the 1937 Commission was asked to discuss the question whether belligerents might make use of medical seaplanes for the purpose of discovering and individually assisting war victims on the high seas.

The First Commission solved the question by adding Sec. 2 to this new Article, making the matter subordinate to mutual agreements.

Article 21

Hospital-ships, and all ships chartered to this end shall be authorized to transport medical equipment, provided their routes and tasks have been notified to the adverse Power. The latter, duly advised, shall preserve the right to board, but not to capture them.

In agreement with the belligerents, neutral observers may be placed on board these ships to verify the medical equipment carried.

On their return journey, hospital-ships shall transport no cargo except medical supplies.

The question of transporting medical equipment by sea in war-time was raised in 1937; it was then observed that, under the 1907 Hague Convention, hospital-ships carrying such equipment might be considered as transporting contraband of war, and thus captured.

The First Commission advised settling the question by the above wording.

Two Delegations reserved the opinion of their Governments as to the whole of this Chapter.
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.


The Commission adopted the above Article without debate; it simply follows the wording of Art. 20 of the Geneva Convention.

Article 23

The personnel named in Articles 17 and 18 shall carry, affixed on the left arm, a water-resistant armlet marked with the distinctive emblem, issued and stamped by the military authority.

Such personnel shall also carry an identity card attesting their status. This card should be able to be put in the pocket and be water-resistant. It shall carry the photograph and finger-prints of the owner and be embossed with the stamp of the military authority.

The identity card should be uniform throughout the armed forces of a belligerent, and, in so far as possible, be of the same type in the armed forces of the Contracting Parties. At the outbreak of hostilities, belligerents shall inform each other of the model in use in their armed forces.

Identity cards shall be established at least in duplicate, one copy to be given to the owner and the other kept by the Power of origin.

Under no circumstances may the personnel mentioned above be deprived of their armlet or identity card. In case of loss they may obtain duplicates.

Art. 21 (1929). — See page 49.

One Delegation reserved the opinion of their Government as regards the introduction of finger-prints and embossed stamp.
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 markings.

The decks, funnels, and superstructures 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 distinctive emblems plainly visible to the enemy land, air, or naval forces.

All hospital-ships shall make themselves known by hoisting, besides 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 13, are provisionally detained by the enemy, shall haul down the national flag of the belligerent to whom they belong.

The above-mentioned ships and craft which may 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 apparent.

Art. 5 (1907). — 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.

Art. 22 and 23 (1929). — See pages 52 and 54.

Re Section I.

This Section combines Sec. 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. 10 and
11, by the adoption of the red band for all.

As all distinction between military and other hospital-ships
has been abolished and their legal status will henceforth be
identical, it was considered useless to make any exception with
regard to markings.

The Preliminary Conference (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 which of the two colours is
more easily recognizable, by night as well as by day."

In 1947, the following proposals were made regarding this
Article:

(1) The purpose of marking hospital-ships being to make
them recognizable, one Delegation suggested painting them
orange-yellow throughout, a colour which is particularly
visible from the air. Red crosses on a white ground could also
be painted on them as a supplementary indication.

(2) One Delegation, supported by a second, proposed that
the red crosses be painted in the centre of each side of a hospital-
ship, on the deck and on the funnels, so as to be visible from all
directions. The same Delegation also proposed that the ship's
name should be inscribed on the bows (port and starboard) and
on the stern.

(3) The same Delegations proposed to stipulate that hospital-
ships must be lit up from sundown to sunrise, if they wish to
benefit by immunity. This ruling would apply to funnels, hulls and decks, and to all distinctive markings.

(4) One Delegation proposed the insertion of the following new Section: "As soon as technically possible, all hospital-ships shall be provided with radar apparatus, to allow their identification by the detecting apparatus of belligerents and neutrals".

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 marking should be visible from other ships.

The ICRC therefore proposed that the deck, funnels and superstructures 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, most of the belligerent Powers during the second World War, adopted this type of marking (red crosses on the deck and superstructures) ¹.

¹ 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 ICRC by the American Red Cross in reply to protests lodged by the Japanese Red Cross, it is 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 only such as were invisible from the air. One hospital-ship bore markings which became recognizable 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 therefore proposed that the Japanese Government should follow its 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 did so at its own risk.
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.

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.

Art. 18 (1907). — The provisions of the present Convention do not apply except between Contracting Powers, and then only if all the belligerents are parties to the Convention.

Art. 25 (1929). — See page 58.

Article 26

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

Art. 22 (1907). — In case of hostilities between belligerent land and naval forces, the provisions of the present Convention apply only to forces on board.

Article 27

Belligerents shall ensure, through their respective commanders-in-chief, the proper implementing of the preceding Articles, and shall arrange for unforeseen cases, in accordance with the instructions of their Governments and in conformity with the general principles of the present Convention.

Art. 19 (1907). — The commanders-in-chief of the belligerent fleets must see that the above articles are properly carried out; they will have also to see to cases not covered thereby, in accordance with the instructions of their respective Governments and in conformity with the general principles of the present Convention.

Article 28

The High Contracting Parties shall take the necessary steps, in peace-time as in war-time, to publish the text of the present Convention, to instruct their armed forces, and in particular the medical personnel and the chaplains, in its provisions, and to bring them to the notice of the civilian population.

Art. 20 (1907). — The signatory Powers shall take the necessary measures for bringing the provisions of the present Convention to the knowledge of their naval forces, and especially of the members entitled thereunder to immunity, and for making them known to the public.

Art. 27 (1929). — See page 59.

Article 29

Belligerents shall be at liberty to conclude, beyond the obligations arising under the present Convention, the particular agreements which they may deem necessary.


Chapter VIII. — Suppression of Abuses and Infractions

The Commission considered that this chapter should contain Articles similar to those of the corresponding chapter of the Geneva Convention, taking into account the provisions of Art. 21 of the Tenth Hague Convention.