INTERNATIONAL RED CROSS
COMMITTEE
GENEVA


(Item 4 a of the Agenda)

I. INTRODUCTION

Since 1929, the International Red Cross Committee has carefully noted all the experiences made concerning the application of the Geneva Convention, and the difficulties and deficiencies revealed by actual practice. The Chaco hostilities, the conflict between Italy and Abyssinia, the civil war in Spain have furnished abundant examples and confirmed the necessity of adapting existing provisions, which are still imperfect in many respect, to the methods and effects of modern warfare. A strong current of opinion in favour of the revision of the Geneva Convention has thus quickly made itself felt among National Red Cross Societies.

Resolution No. 37 of the Tokyo Conference recommended a study of certain laws of warfare and expressed the hope that the International Red Cross Committee, as well as National Societies, may approach their Governments with a view to securing better protection of the victims of hostilities.

Furthermore, a private meeting held in November 1936, in connection with the Sixteenth Session of the Board of Governors of the League of Red Cross Societies, and
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comprising representatives of thirty-eight National Societies, requested the International Committee to "take without delay such steps as may ensure that the Geneva Conventions may attain their fullest value as an element of humanitarian protection, even during an armed conflict involving the use of all the means at the disposal of modern military technique".

In consequence, the International Red Cross Committee, in the final note to its Circular No. 325 of April 26, 1936 (page 7), informed National Societies of its intention to submit to their earliest consideration, "the points on which the Committee considers it desirable to seek betterment of conditions and secure a more efficient action of the Red Cross in time of war, and further, to stress the methods that might be adopted in order to attain this object".

Following on this communication, the International Red Cross Committee, by its Circular No. 328 of July 31, 1936, called the attention of National Societies to a certain number of questions, the solution of which it thought likely to ensure more satisfactorily and to develop the humanitarian task of the Red Cross, in particular by the revision of the Geneva Convention. The Committee therefore drew the attention of National Societies to a number of points where insufficiencies, obscurities or deficiencies had become manifest in the wording of the Convention, and suggested ways in which their amendment might be contemplated. In its anxiety to consult National Societies before finally drafting the programme of the proposed study, the International Committee requested comment on these various points and notification of further questions which Societies might consider useful to include in this investigation.

In reply to this circular, a certain number of National Societies kindly advised the International Committee of
their suggestions, thereby expressing the interest they took in this question.

For this reason, by its Circular No. 338, the International Committee requested National Societies to send representatives to attend a meeting of experts with a view to the revision and possible extension of the Geneva Convention, and asked them to furnish all the information they might be able to collect in their respective countries. The International Committee likewise invited the League of Red Cross Societies, the Permanent Committee of the International Army Medical and Pharmaceutical Congresses, the International Hospitals Association, and a certain number of Swiss experts.


The following National Societies and International Organisations were represented:


Belgian Red Cross: M. Henri van Leynseele, barrister, Administrator general of the Belgian Red Cross.

Brazilian Red Cross: Senhor Jorge Olinto de Oliveira, First Secretary of Legation.

British Red Cross: Lieutenant General Sir Harold B. Fawcus, KCB, CMG., DSO., DCL., MB., Director general of the British Red Cross; Mr. R. C. Murchison, MBE., Secretary.

Czechoslovak Red Cross: M. K. Náprstek, Attaché of Legation.

Danish Red Cross: M. Worsaae, Secretary of Legation.

Danzig Red Cross: Herr Walther G. Hartmann.

French Red Cross: His Excellency M. de Panafieu, former

Ambassador, Vice-president of the "Association des Dames Françaises"; Professor Basdevant, Member of the Council of the "Société de secours aux blessés militaires".

German Red Cross: Herr Walther G. Hartmann; Count A. von Mandelsloh, Chief of Division in the "Institut für ausländisches öffentliches Recht und Völkerrecht".

Hellenic Red Cross: His Excellency M. Polychroniadis, Permanent Delegate of the Greek Government to the League of Nations.

Hungarian Red Cross: M. Ladislas Bartók, Counsellor of Legation.

Italian Red Cross: Count G. Vinci-Gigliucci, General Delegate to the International Committee.

Japanese Red Cross: M. S. Yamanouchi, Foreign Representative of the Japanese Red Cross.

Jugoslav Red Cross: General Dr. Jarko Rouviditch, Head of the Medical Department of the War Ministry; Staff Colonel Stoïadin T. Milenkovich.

Latvian Red Cross: His Excellency M. Feldmans, Minister Plenipotentiary of Latvia.

Lithuanian Red Cross: M. A. Gerutis, Temporary Chargé d'Affaires of the Lithuanian Delegation to the League of Nations.

Luxemburg Red Cross: M. A. Rockenbrod, barrister, Director of the Luxemburg Red Cross.

Netherlands Red Cross: Major-General S. W. Praag, Vice-president of the Netherlands Red Cross; M. F. Donker Curtius, barrister, Secretary general of the Netherlands Red Cross.

Norwegian Red Cross: M. M. Hansson, Chairman of the International Refugees (Nansen) Office.

Polish Red Cross: M. C. Trebicki, First Secretary of Legation.

Rumanian Red Cross: His Excellency M. G. Crutzesco, Minister Plenipotentiary; General Dr. C. Iliesco, member of the Central Committee of the Rumanian Red Cross; Staff Major A. Dobriceano.

Swiss Red Cross: Lieutenant-colonel Dr. E. Denzler, Chief Medical Officer of the Swiss Red Cross.

League of Red Cross Societies: M. B. de Rougé, Secretary general.

Permanent Committee of International Army Medical and Pharmaceutical Congresses: Major-General J. M. A. Schickelé; Colonel Dr. J. Voncken; Mr. A. de la Pradelle, Professor of Jurisprudence, Paris University.

International Hospitals Association: M. Henri Mouttet, member of the "Conseil des Etats", Berne; Colonel Thomas, Chief Pharmaceutical Officer to the Swiss Army.

Swiss Experts: Colonel Dr. Vollenweider, Chief Medical Officer of the Swiss Army; Colonel Dr. Ch. Hauser, former Chief Medical Officer of the Swiss Army; Lieutenant-colonel P. Wacker, Chief of Section, General Staff; Lieutenant-colonel P. Glauser, Chief of Section, Air Force; M. C. Gorgé, Counsellor, Chief of Section, Federal Political Department.

International Red Cross Committee: M. Max Huber, President; M. P. Logoz; M. P. des Gouttes; M. W. Yung.

The Officers and Secretariat of the Commission were nominated as follows:

M. Max Huber, Chairman;
Professor Basdevant and M. Hansson, Vice-chairmen;

M. R. Gallopin and M. J. Pictet, Secretaries.

The documents prepared by the International Committee included a Draft Revision of the Convention, which took into account the suggestions made by National Societies, and a Report on the protection of Civil Hospitals in case of bombardment, with an Appendix concerning the protection of Civil Hospitals and of the Civilian Population in case of invasion. These texts furnished the basis of a questionnaire drawn up for the use of the Commission.

The documents also included opinions kindly furnished by services of the Swiss Military Department on marking camouflage and the temporary use of the distinctive emblem. These will be found in annexe to the present report.

Concerning the revision of Article 30 of the Convention, the International Committee submitted the written opinions of the late M. A. Hammarskjöld, member of the Permanent Court of International Justice and of Herr Schindler, professor at Zurich University. These also appear in annexe hereto.

The Commission first examined the possibilities of interpretation and revision of the Convention, and then turned to cases of possible extension. It requested the International Committee to prepare, on the basis of its discussions, a draft Report to the Sixteenth International Red Cross Conference, and a draft of a revised text of the Geneva Convention.

Proofs of this Report have been submitted to the experts of the Commission of October 19, who have expressed their approval. Some of them contributed remarks which have been taken into consideration in the present text. The British Red Cross Society has reserved its opinion pending the issue of the English translation.
II. Scope of Application of the Convention

In the course of its enquiry, the Commission found itself called upon to examine various questions of a general nature which, without touching upon any particular provision of the Convention, brought into question the scope of its application. It seems desirable, before undertaking the examination of each Article, to deal first with these questions.

The scope of the Convention is determined by the nature of the hostilities and by the group of persons it affects.

a) Next to wars declared between States and to which the Convention is beyond all question applicable, there are other cases of hostilities to which the Convention does not expressly refer. These include armed conflicts between States not preceded by a declaration of war, and cases of civil war, or of conflicts between a mother country and a colony.

As regards armed conflicts between States not preceded by a declaration of war, the Fifteenth International Red Cross Conference, in its Resolution No. 38, expressed the wish that the Geneva Convention should apply to these also. Until recently the question did not arise, as hostilities were invariably preceded by an official declaration of war which removed all possibility of doubt as to the applicability of the Convention. But since the Great War this practice tends to disappear; indeed, it seems very probable that such preliminary declaration will be more and more frequently omitted in the future.

For this reason, the Commission, acting on the suggestion of the International Committee, considered whether it would not be proper to replace the word "war", which occurs frequently in the Convention, particularly in the Preamble and in Articles 24, 25, 29 and 37, by the expres-

sions "armed conflict between States", "hostilities", or "recourse to force". Finally, the Committee came to the conclusion that the text of the Convention did not lend itself to this amendment, especially as the principal contingency which it was desirable to provide for, namely civil war, has not been legally covered by it. In such cases we are not in the presence of two States parties to the Convention, and each entitled to claim its protection, but in actual fact to two fractions of the same country.

On the other hand, the Commission unanimously recognised that the Convention must apply to all armed conflicts between States, and that its humanitarian principles must be respected under all circumstances, even when it is not juridically applicable. The Commission expressed the hope that these two ideas would be introduced into the final texts of the future diplomatic Conference.

b) It is well known that at present, and from a strictly legal point of view, the Geneva Convention only applies to officers and men, and to other persons officially attached to the armed forces, who are wounded or sick.

In the course of the session, the delegates of the Permanent Committee of International Army Medical and Pharmaceutical Congresses proposed that the Convention should be explicitly extended to apply to the civil population affected by war, thus deliberately overstepping the domain of the forces in the field. They argued that, especially by reason of the development of aerial warfare, the whole of the territory of the belligerent parties, and not only the fighting zone, is now exposed to hostilities, and that civilians are just as liable to be wounded as the military. According to this opinion, the conditions of modern warfare constitute a new development which should justify the extension of the Geneva Convention.

In spite of a strong current of opinion in favour of this proposal, the majority of the Commission decided not to modify the Convention on this point, considering that this extension would carry it beyond the bounds of its specific scope. The Commission expressed, however, the view that the humanitarian principles of the Convention should also be applicable to the civilian population affected by war, and that the medical personnel should remain fully entitled to protection when giving medical assistance to civilians, likewise the hospitals in which the latter are nursed (see below, pages 14 and 28).

Regarding the scope of application of the Geneva Convention, it may be of interest to note that the Commission of Experts who, in June 1937, discussed the revision of the Tenth Hague Convention, decided to introduce into Article 26 of the Draft Naval Convention a paragraph providing that, in case of disembarkation, naval forces shall immediately become liable to the provisions of the Geneva Convention. The Commission thus laid down the principle that the Geneva and Hague Conventions complete one another mutually, the scope of their application not being determined ratione personae, but rather ratione loci, and that whenever sick or wounded are at sea, they enjoy the benefit of the Naval Convention, whereas once they have been landed they are automatically protected by the Geneva Convention.

III. Text and Analysis of the Draft Convention Adopted by the Commission of Experts

The Articles of the 1929 Convention are given in full in small type at the beginning of each relevant discussion. The wording adopted as the result of the discussion appears at the end, in the same type as the text, the changes being printed in italics. This method is in contradiction with the practice observed in the
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Report on the Revision of the Tenth Hague Convention (Document No. 2, 1938 Conference) where another system was justified by the existence of two texts, that of 1907 and that of 1929.

The Articles to which no commentary is added gave rise to no discussion. The revised text of the Convention, as adopted by the Commission, will be found in annexe on page 45.

Title

The International Committee had raised the question whether the title of the Convention should be altered. It is well known that the title of a Convention is not part of the official text; but the present title, adopted in 1929 is that used in the Protocol of the Conference of 1929. In the opinion of the Commission a change in the title would be justified only in the event of the scope of application of the Convention being extended, since the title determines its object. As this extension was not put into effect (see above, Sect. II, page 7), the present title — "Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armies in the Field" — has therefore been kept.

Chapter I. — Wounded and Sick ¹

Article 1

Officers and soldiers, 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

¹ The English text is the official version, as printed and published by H. M. Stationery Office (1931, Treaty Series No. 36, Cmd. 3940).

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.

**Article 2**

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

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

**Article 3**

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

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

In its reply to the International Committee following Circular No. 328, the Bulgarian Red Cross suggested the introduction into Article 3 of provisions whereby, if a town were besieged or an area blockaded, the Red Cross might take steps to obtain from the belligerent permission to send the medical personnel and stores needed for the care of the wounded and sick within the blockaded or besieged area, and to evacuate all or part of the wounded and sick from that area.

The Commission, finding that the suggested provision was purely discretional, considered that its introduction was not necessary, since it is any case possible for the Red Cross to take steps for the purpose contemplated.

The idea was discussed in this connexion of an engagement to be taken by the belligerents to allow the passage

through their lines of the hospital staff and necessaries intended for a besieged or blockaded area, and to permit the evacuation of the wounded and sick. The idea met with the approval of the Commission, but the latter considered that there was no occasion to amend the Convention to this effect, since it was a case of *ad hoc* agreements which might be entered into between belligerents according to Article 2, paragraph 2, of the Convention.

**Article 4**

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

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

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

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

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

To this end, at the commencement of hostilities, they shall 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 graves.

After the cessation of hostilities they shall exchange the list of graves and of dead interred in their cemeteries and elsewhere.

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1 It should be noted that this question was the subject of Resolutions No. 12 of the 1921 Geneva Conference, No. 9 of the 1928 Hague Conference and No. 24 of the 1930 Brussels Conference. (See the International Committee's report to this last Conference, Document No. 5.)

Article 5

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

* * *

The International Committee had proposed the introduction, after Article 5, of a prohibition of reprisals between the persons and equipment protected by the Convention. The reader is referred to what is said in this connection in Chapter VII of the Convention (see below, page 32).

Chapter II. — Medical Formations and Establishments

Article 6

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

Article 7

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

The International Committee had proposed to insert into Article 7 a paragraph defining the act detrimental to the enemy as "any act the object or result of which is or might be, to strengthen the military defence or to hinder the enemy attack, apart from the assistance to be given exclusively to the sick and wounded".

The Commission decided not to alter the present wording. Any definition of the act detrimental to the enemy, the interpretation of which is liable to vary in each specific case, would be dangerous, because it would
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necessarily be incomplete and likely to favour abuse rather than to restrict it.

* * *

In the course of the debate concerning the protection to be afforded to the civilian population ¹, the Commission laid down the principle that the ambulance staff must enjoy the protection of the Convention even when it is assisting the wounded or sick civilian population affected by war, as well as the hospitals sheltering it.

Though attaching importance to the recognition of this principle, the Commission did not decide where — in the present chapter or elsewhere — this provision should be introduced ².

The latter might be expressed as follows:

"The protection due to medical units and hospitals, to their staff, equipment and transport shall extend also to their humanitarian activities on behalf of the civilian population".

Article 8

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

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

¹ See above, Chapter II, page 8.
² See below, Art. 24, p. 30.

Chapter III. — Personnel

Article 9

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

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

Paragraph 1. — The Committee unanimously recognised that this paragraph has a general bearing, and that it refers to both civilian and military personnel. It did not appear advisable to specify this fact in the wording of the paragraph.

Article 10

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

Each High Contracting Party shall notify to the other, either in time of peace or at the commencement of or during the course of hostilities, but in every 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.

Paragraph 1. — The International Committee had proposed to substitute, at the end of the paragraph, for the

words "subject to military law and regulations" the wording "subject to military law and discipline". The Commission upheld the present wording, since on the one hand there are far more military regulations than laws, and on the other hand, the notion of "regulations" is very different from that of military "discipline", to which, moreover, Voluntary Aid Societies may not be entirely subject.

**Article 11**

A recognised 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 authorisation of the belligerent concerned.

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

A new paragraph, which would become paragraph 2, was proposed by the delegation of the Netherlands Red Cross, and adopted. The delegation argued the desirability of compulsory and direct notification of its assent by the neutral Power to the enemy belligerent, concurrently with the notification made by the beneficiary belligerent. The object of this adjunction is merely to unify a procedure regarding which there is uncertainty, and to show that the neutral State assumes responsibility for the assistance given. During recent conflicts, in which neutral ambulances gave assistance to belligerents, the notification to the enemy of the assent of the neutral State was conveyed through diverse channels, in particular through the Swiss Federal Council or the International Red Cross Committee.

The Netherlands Red Cross further proposed a new paragraph 4, stipulating that the assistance given by medical formations or personnel of a neutral country to a belligerent shall under no circumstances be considered as an unwarranted interference in the conflict. The

Netherlands Red Cross maintained that if this principle seemed a matter of course, a wrong interpretation of the assistance referred to has been frequently given in practice, thus showing the necessity of a clear definition in the Convention. The International Committee had made an almost identical proposition.

Furthermore, the Netherlands délégation proposed the introduction into this Article of a paragraph stipulating that "the rights and obligations that the afore-mentioned assistance implies, in so far as they are not provided for by the present Convention, are implied in the general principles of neutrality". The délégation also requested the experts to examine the question of the legal status of the medical assistance afforded by neutrals.

The Commission considered that it was not competent to discuss a problem of international law of this kind, regarding which, moreover, no difficulty has arisen in actual practice. The Commission first decided to submit the matter to a sub-commission, but finally abandoned the idea.

In connection with Article 11 the question was also raised, whether neutral States might not give the belligerent the benefit of their Medical Service. The Commission rejected this proposition without discussion, in view of the very great difficulties which would follow such practice. It should be noted that the Committee of Experts which dealt with the revision of the Tenth Hague Convention reached the same conclusion 1.

Article 11, adopted by the Commission of Experts, runs as follows:


“A recognised Society of a neutral country can only afford the assistance of its medical personal and formations to a belligerent with the previous consent of its own Government and the authorisation of the belligerent concerned.

The neutral Government shall notify such assent to the enemy party opposing the State which accepts the assistance mentioned in the foregoing paragraph.

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

In no case shall such assistance be considered as an unwarranted interference in the conflict.

Article 12

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

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

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

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

Article 13

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

At the outbreak of hostilities, the belligerents shall notify one another of the grades of their respective medical personnel.
CHAPTER IV. — BUILDINGS AND MATERIAL

Article 14

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

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

Article 15

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

Article 16

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

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

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

The Commission agreed unanimously that the present wording of the Convention is sufficient to protect the material of relief societies, whatever its location, and in consequence also when it is being transported by land, by sea or by air. The Commission nevertheless decided to add, after the words "wherever it may be", the words

"or whatever the conditions" (as the International Committee had suggested), considering that this was calculated to make the text clearer.

Paragraph 2 therefore runs as follows:

"The material of these societies, wherever it may be and whatever the conditions, shall similarly be considered as private property."

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The question of the Protection of civil hospitals in time of war, which might have been dealt with in connection with this chapter, will be found at the end of the Report (see Sect. IV, page 42), since it constitutes a matter for the possible extension of the Convention.

Chapter V. — Medical Transport

Article 17

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

A belligerent intercepting vehicles of medical transport, singly or in convoy, may, if military exigencies demand, stop them, and break up the convoy, provided he takes charge, in every case, of the wounded or 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 organised 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.

It is in connection with this Article that the Commission discussed the removability of the distinctive emblem or, in other words, the temporary requisition of civilian personnel and equipment for the collecting and transport of the wounded. Although this problem, relating to personnel, equipment and the distinctive emblem is of a somewhat general character and seems to belong rather to another chapter, it is in the last paragraph of Article 17 that we find a provision relating to the requisition of civilian personnel and equipment.

The International Committee, acting on a proposition it had received, suggested introducing into Article 17 a new paragraph providing that the military command may, in exceptional cases, requisition civilian personnel and equipment for collecting and transporting the wounded and sick, by issuing to this personnel a written certificate, stamped and signed by the military authorities, for the purpose of carrying out a strictly defined and limited duty and that, during the validity of this mandate, the above personnel and equipment may enjoy the protection of the Convention.

The Commission decided not to alter the wording of the Convention on this point, but thought it preferable to leave this question to the appreciation of the military command. It was argued that, as the requisitioning of civilians for the collecting of the wounded is a method which is only employed in urgent cases, the suggested formalities would often make its application impossible.

Article 18

Aircraft, used as a 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 question here arose as to whether the Convention should not be amplified as regards medical aviation. It should first be noted that this subject was not introduced into the Geneva Convention until 1929 and is there only briefly dealt with. Moreover, the diplomatic Conference of 1929 expressed the wish (Final Protocol, III) that a Convention should be drawn up regulating, with all necessary detail, the use of ambulance aircraft in war time. Following on this resolution, a “Draft Additional Convention to the 1929 Geneva Convention and to the Hague Convention of 1907 for the adaptation to aerial warfare of the principles of the Geneva Convention” was submitted by the International Committee to the Fourteenth International Red Cross Conference held in Brussels.
in 1930, which approved it. The International Committee transmitted this Draft to the Swiss Federal Council in 1931, for communication to Governments whenever it might be thought expedient. Having sounded various Governments, the Swiss Federal Council has not yet found it possible to summon a diplomatic Conference for this purpose.

As a subsidiary question, and in case the Additional Convention contemplated should not materialize, the International Committee had suggested certain amendments of Article 18, viz. the suppression of white paint as a distinctive sign for ambulance aircraft; a stipulation providing that in the case of an unfounded summons to land, the wounded and sick should be handed back together with the pilots and equipment; and finally a provision stipulating that the persons referred to in Paragraph 6 should be returned in accordance with the conditions set out in Article 12.

The Commission did not discuss the matter, being of opinion that, as a Draft Convention on ambulance aviation was ready for study by a diplomatic Conference, it was better to reserve this point for the time being.

The délégation of the Permanent Committee of International Army Medical and Pharmaceutical Congresses had expressed the idea that ambulance aircraft should be considered merely as a means of transport, and that it was desirable to introduce the provisions concerning it in the Geneva Convention. This, in its opinion, could be done without difficulty and would make it possible to dispense with a special Convention on this subject.

The Commission was of opinion, however, that it was not called upon to prejudge the possible amalgamation of the treaties known as Red Cross Conventions.

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1 See Document No. 7 of the Fourteenth Conference.

Chapter VI. — The Distinctive Emblem

Article 19

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

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

Paragraph 2. — The International Committee had asked whether this paragraph should not be deleted.

The Commission was unanimous in expressing regret that the unity of the emblem should have been destroyed, and in thinking that it would be most desirable to restore it. The Red Cross is an international emblem, without any national or denominational meaning, and for which it is illogical to substitute particular symbols. Moreover, the result is to create a risk of confusion with national flags, especially in the case of States whose national emblem is a red symbol on a white ground; this risk is heightened if other countries invoke such precedents and claim similar rights.

However, the Commission did not decide to amend the wording of the Convention on this point. It was of opinion that the matter should first of all be taken up with the parties concerned, namely the countries employing the Red Crescent or the Red Lion and Sun, and who were not represented on the Commission.

It expressed the wish that, in any case, the wording of the Convention should not be amended so as to allow of other exceptions to the unity of the emblem than those now mentioned in Article 19.

ARTICLE 20

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

ARTICLE 21

The personnel protected in pursuance of Articles 9, (paragraphs 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 (pay-book), 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 of the certificates of identity belonging to them.

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

ARTICLE 22

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

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

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

Paragraph 1. — On the proposition of the International

Committee, the present paragraph 1 has been divided into two paragraphs, the first dealing with the flag of the Convention, the second with the national flag.

The representative of the Belgian Red Cross had suggested that medical formations, should no longer use the national flag in addition to the flag of the Convention. In his view, the use of both flags side by side is contradictory and liable to create confusion; one is a symbol of immunity, while the other, the national flag, the use of which was introduced in 1906, is a symbol of belligerency and has proved likely to favour attacks.

The Commission decided that it was desirable to unify the use of the national flag, both for mobile formations and stationary establishments, by offering both the option of flying it side by side with the Convention flag. This has led to the new draft of paragraph 2 (see page 28 below).

The proposal to omit the words “to whom the formation or establishment belongs” was rejected on the grounds that it did not affect the actual substance of the provision. Attention was called, moreover, to the fact that this expression was justified in cases where several allied belligerents were concerned.

Paragraph 3. — The question of the marking and camouflage of medical formations and establishments was examined in connection with this paragraph.

The Commission acknowledged its great importance, but was of opinion that the Convention should not contain provisions of a purely technical character. On the other hand, since in view of the actual Paragraph 3 of Article 22, the decision lies with the military authority, the Commissions declined any amendment of the existing text.

The Commission nominated a Sub-Committee (Chairman Major-General Schickelé) to study these questions from
the technical point of view. On the basis of the Subcommittee's debates, Major-General Schickelé drew up a report which received the approval of the Commission. The latter warmly recommends it to National Societies and to Governments, and expresses the hope that it may serve as a basis for exhaustive study on their part. This report appears in annexe (see pp. 56-69).

As regards camouflage, the Commission laid down the principle that as soon as the enemy recognises the medical nature of a camouflaged formation, the provisions of the Convention which protect it become applicable.

It may not be superfluous to note that the markings indicating medical formations are not, as stated in paragraph 3 of Article 22, an essential condition for their protection. They will not therefore cease to be protected de jure in case of camouflage, but are exposed de facto to losing this safeguard 1.

The International Committee had suggested the introduction into Article 22 of a paragraph providing that the location of medical establishments should, as far as possible, be notified to the enemy.

The Commission was of opinion that such a course, in view of its optional character, was open in any case, even though the Convention did not specify it, and rejected this addition. It held moreover that such notification was not always practically possible, particularly in regard to mobile formations, and that a certain risk would be the consequence, as the enemy might argue the fact of no notification having been made, although possible, to deny a medical establishment all protection.

Paragraph 1 of Article 22 therefore runs as follows:

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1 See the Report by Major-General Schickelé, page 67.

"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 mobile formations as well as in fixed establishments, it may be accompanied by the national flag of the belligerent to whom the formation or establishment belongs."

Article 23

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.

Paragraph 1. — The addition of the words "if the latter takes advantage of the option granted him by Article 22" was voted by the Commission, on the proposal of the Netherlands Red Cross. The Commission held that this addition was imperative owing to the amendment introduced in Article 22.

Paragraph 2. — The delegation of the Netherlands Red Cross had proposed a paragraph providing that the medical units of neutral countries should, under all circumstances, fly their national flag, even if they fell in the hands of the enemy.

The Commission held that this was a matter for the military authorities, and amended the proposal by stating that, in the case of neutral medical units, the flying of the national flag was optional and not compulsory, this
being the course applicable to the medical units of belligerents according to Article 22.

The use by medical units and establishments of the national flag, belligerent or neutral, is now uniformly optional in the Draft.

Article 23, as adopted by the Commission, therefore runs as follows:

"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, together with the flag of the Convention, the national flag of the belligerent to whose forces they are attached, if the latter takes advantage of the option granted him by Article 22.

Failing orders to the contrary issued by the competent military authorities, they may, under all circumstances, fly their national flag, even if they fall into the hands of the enemy."

Article 24

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

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

The Voluntary Aid Societies mentioned in Article 10, may, in accordance with their national legislation, use the distinctive emblem in connection 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.

Paragraph 1. — In confirmation of an acknowledged and well established right, the Commission decided to introduce into this paragraph a sentence stipulating that the Societies referred to in Article 10 are entitled to use the emblem of the Convention when carrying out, in time of war, their humanitarian activities on behalf of civilian sick or wounded.

As regards the protection of the medical personnel engaged in such activities, reference should be made to the comment on Article 7 (see pages 13-14).

Paragraph 3. — This was not amended by the Commission, which came to the conclusion that Societies authorised to cooperate in time of war with the Medical Service must be able to train for this work in peace time and at that time already enjoy the benefit of the Red Cross emblem.

The Commission rejected the proposal of the International Committee to complete this paragraph by a provision that the Societies referred to in Article 10 are entitled to exercise their relief activities in case of bombardment, territorial occupation, or civil war. It considered that this possibility was self-evident and resulted from constant practice. Moreover, it held that it was not advisable to define, in the Convention, the task or programme of relief societies, which depends on their by-laws and on national legislation.

Paragraph 4. — After exhaustive discussions, the Commission adopted the new wording proposed by M. Gorgé. The paragraph now empowers National Red Cross Societies, in exceptional cases and subject to the requirements of national legislation, to permit other organisations to make use of the emblem of the Convention in peace time, in the execution of their humanitarian activities. This faculty only exists, in the present text

of the Convention, for the purpose of indicating the location of free first aid stations.

The Commission was of opinion that, in the minds of the general public, the Red Cross is a characteristic symbol of medical assistance and that for this reason it may render services in certain cases.

In the course of the discussion it was proposed to abolish this faculty, to create a special distinctive sign for this purpose, to subordinate the granting of the sign to certain conditions, or to grant this right to Governments only. The Commission rejected these suggestions.

Article 24 will therefore run as follows:

"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 or peace or in time of war, except to protect or to indicate medical formations and establishments and the personnel and material protected by the Convention. The Societies referred to in Article 10 may also employ this emblem in time of war while carrying out their humanitarian activities on behalf of civilian sick or wounded.

The same shall apply, as regards the emblems mentioned in Article 19, paragraph 2, in respects of countries which use them.

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

Exceptionally, and subject to national legislation, national Red Cross Societies may authorize other organisations to use the emblem of the Convention in peace time, in the prosecution of humanitarian activities."

Chapter VII. — Application and Execution of the Convention

Article 25

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

Article 26

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

The International Committee had proposed to introduce in Chapter I, after Article 5, a prohibition of reprisals against the wounded, the sick, the personnel and medical stores protected by the Convention.

Attention was called to the fact that this provision was of a general nature, since it referred to the wounded, the medical personnel and stores, and that its place was not in Chapter I, which deals with the wounded and sick, but rather in Chapter VII.

The Commission observed, firstly, that the protection of the Convention applies "in all circumstances", according to Articles 1, 9 and 25, and that the law of nations already forbids measures of reprisal or reciprocity which might be contrary to the principles of humanity. A belligerent could not, for instance, kill the wounded under the pretext that the enemy had done so.

Considering that the protection of the Convention, interpreted according to its spirit, is primordial and absolute, the Commission was however of opinion that it was

necessary to introduce a provision expressly forbidding reprisals against the wounded, the sick, the medical personnel or material. It recognised that this question is connected with the verification of abuses and breaches, since measures of reciprocity can in no case be envisaged before a commission of enquiry has duly established the existence of repeated violations for which the enemy grants no satisfaction. As the delegation of the French Red Cross pointed out, measures of reciprocity are identical with those applied by the enemy and to which they constitute a reply, whereas measures of reprisal are different, though often similar.

The Commission left it to the future diplomatic Conference to examine where and in what terms this provision should be inserted. It might be worded as follows:

“In no case shall measures of reprisal be applied to the wounded, the sick, the medical personnel or material protected by the Convention”.

**Article 27**

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

**Chapter VIII. — Suppression of Abuses and Infractions**

**Article 28**

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

(a) the use of the emblem or designation “Red Cross” or “Geneva Cross” by private individuals or associations, firms or companies other than those entitled thereto under the present

Convention, as well as the use of any sign or designation constituting an imitation, for commercial or any other purposes;

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

The prohibition indicated in (a) of the use of marks or designations constituting an imitation of the emblem or designation of ,,Red Cross” or “Geneva Cross”, as well as the prohibition in (b) of the use of the arms of the Swiss Confederation or marks constituting an imitation, shall take effect as from the date fixed by each legislature, and not later than five years after the coming into 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.

Paragraph 1, clause 1. — The Commission adopted M. Gorgé’s proposal to substitute the words “the High Contracting Parties” for “the Governments of the High Contracting Parties”. Attention was called to the fact that the old terminology was liable to weaken this provision, in case of conflict between the Government and the legislative authority, the latter refusing to take the legal measures which, according to the spirit of this clause, the Government might propose.

(a) The Commission adopted the proposal of the American Red Cross to replace, at the close of this paragraph, the words “whether for commercial or other purposes” by the words “for any purpose whatsoever”, as it considered that this might was more correct.

(b) The International Committee had proposed to introduce at this point a new provision stipulating that any red cross on a light ground, or any white cross on a dark ground, whatever the shape of the cross might be,
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constituted an imitation in the sense of the foregoing paragraph. Although it was unanimously agreed that all imitation should be stopped, the Commission nevertheless considered it advisable not to define the cases of imitation for fear of opening a door to a large number of abuses. In its view, the wording proposed by the International Committee and intended to repress such abuses, would on the contrary be liable to lessen the general scope of the prohibitions referred to under (a) and (b); among other things, it would not have forbidden the use of red crosses on a dark ground, of light coloured crosses on a red ground, of red crosses with white stripes or dotted with stars.

Moreover, the Commission stressed the fact that the emblems or arms of national or official nature (States, towns, etc.), obviously, did not fall within the scope of this article; it would also be necessary to reserve cases where such emblems or arms, used by private persons in obedience to national legislation, might present some similarity with the distinctive sign of the Convention.

Paragraph 2. — The American Red Cross and the International Committee proposed very similar wordings for this paragraph, with a view to eliminating trade marks contrary to the prohibitions of article 28 (a) and (b), and which continue to exist because they were in use prior to the coming into force of the Convention. The Commission approved this amendment and gave preference to the International Committee’s proposal, because of its wording.

The Commission observed, however, that the 1929 Convention had allowed a maximum period of five years for the coming into force of the prohibitions mentioned in this Article; this temporary provision could therefore not be reproduced without taking into account the mea-

sures which may have been adopted by States along the lines of said provision. The new wording of this paragraph, embodying the opinion of the Commission, is due to Professor Basdevant.

Article 28 becomes the following:

"The High Contracting Parties shall ensure the application of the legislative measures they have been led to take in order 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 any purpose whatsoever;

(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 the Swiss national sentiment.

The Governments of States not parties to the Convention of July 27, 1929, which may ratify the present Convention or adhere to it shall adopt, or recommend their legislature to adopt, the measures necessary to prevent, at all times the acts referred to under (a) and (b) above, in such a manner that the prohibition may take effect at the latest five years after their ratification or adhesion.

The prohibition of assuming a trade-mark or commercial emblem infringing the above prohibitions—already enacted by the Convention of July 27, 1929, is maintained.

In the case of States not parties to the Convention of 1929
which may ratify the present Convention or adhere to it, it shall no longer be lawful, from the moment the ratification or adhesion has been filed, to adopt a trade-mark or a commercial emblem contrary to the above prohibitions. Within five years from the coming into force of the Convention, the marks, trade names and names of associations or establishments contrary to the above prohibitions, must be modified, whatever the priority of their date of adoption may be”.

**Article 29**

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

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

The Commission did not amend this Article, judging that it is sufficient to guarantee the penal repression of acts contrary to the Convention.

It also expressed the hope that the Swiss Federal Council, after consulting the Governments concerned, might agree to prepare, if possible in time for the Sixteenth Red Cross Conference, a comparative study of the present state of penal legislation, including military penal legislation, dealing with violations of the Geneva Convention.

The International Committee hastened to informed the Swiss Federal Council of this wish. By a letter dated November 11, 1937, the Division for Foreign Affairs of the Federal Political Department informed the International Committee that effect had been given to the wish expressed and that it would be advised in due course of the result of the enquiry.

**Article 30**

On the request of a belligerent, an inquiry 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.

As stated above (see page 6), the International Committee, abandoning the idea of drafting an amendment of Article 30, had submitted to National Societies the opinions of two experts in international law, M. Hammarskjöld and Professor Schindler, and had drawn up, on the basis of the first of these, a proposal for a revised Article. The conclusions of M. Hammarskjöld’s memorandum, the proposed Article 30 drafted on this basis by the International Committee, and the exposé by Professor Schindler which includes a draft Article, will be found in annexe (pages 80-103).

Two further proposals for a revised Article 30, one submitted by the delegation of the Netherlands Red Cross, and the other by M. Gorgé, chef de section of the Swiss Federal Political Department, were discussed by the Commission of experts. In addition, MM. Donker-Curtius and Gorgé supported these two proposals orally, and Professor Basdevant also expressed his opinion on this subject. These proposals will be found in annexe, with a summary of the remarks made by the three authors (see pages 104-126).

The Commission¹ unanimously admitted that the present Article 30 is insufficient and needs to be completed. In view of the limited time at its disposal and the diplomatic nature of certain aspects of the question the Commission considered that its duty was less to adopt a final text than to stress the guiding principles on the basis

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¹ Having no instructions regarding Article 30, the representative of the Polish Red Cross reserved his opinion.

of which a revised Article 30 might be drawn up. Consequently, it agreed on a certain number of points which, in its opinion, should govern the procedure for establishing the facts in cases of violation.

The Commission held it desirable:

1. that the investigation procedure should be initiated as rapidly as possible and almost automatically.

The Commission considered that the rapid opening of the investigation was of vital importance, since delay might lead to a repetition of the violation of the Convention and to reprisals. By "almost automatically" it should be understood that the setting up of the procedure should be immediate, and that it should not be liable to be deferred by the action of the parties, as might be the case at present.

2. that the investigation may be demanded by any Party to the Convention directly concerned.

The Commission stated that the words "party concerned" were meant to include not only the belligerents but also the neutral country lending a belligerent the assistance of its medical personnel or equipment.

3. that a single, central and permanent authority, previously provided by the Convention, be entrusted with the nomination of the whole, or part of, the enquiry commission.

This principle establishes a sole, central and pre-constituted nominating authority, ready to function at all times, so as to guarantee the greatest rapidity in the setting up of the enquiry commission.

The Commission of Experts rejected the proposal of the Netherlands Red Cross to institute a multiple nomi-
nating authority, namely the National Red Cross Societies nominated by the States concerned.  

The Commission considered that the unity of the nominating authority was likely to ensure a more rapid constitution of the commission, and that the Red Cross Societies could not conciliate this rôle with their neutrality, which should remain absolute.

(4) that the commission of enquiry be appointed for each special case at the time when it is demanded, following an alleged violation of the Convention.

The idea of an anticipated appointment of the commission of enquiry, before or after the opening of hostilities, was rejected. The commission should be constituted for each particular case, following an application by a party concerned. It follows that when two or more violations are related the same investigation commission should, by way of joinder, be called upon to deal with them.

(5) that the members of the investigation commission be selected by the aforesaid authority from lists, kept up to date, of the persons who are qualified and available and who shall have been previously nominated by Governments.

In view of the difficulty of finding, at short notice, qualified persons willing to accept to serve on an commission of enquiry, the experts adopted the principle of lists of names nominated by the Governments, such lists to be fully representative and kept up to date with the greatest care;

(6) Special organs should be nominated beforehand to ensure, if need be the immediate establishment of the facts of the case.

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1 See page 109.

The Commission of Experts considered more especially the possibility of finding persons near the place where the violation has been committed, and entrusting them with the initial investigations in cases of extreme urgency. Indeed, however rapidly an investigation commission may be set up, a certain time must necessarily elapse between the time when the infraction has been committed and the moment when the investigators can arrive on the spot. It was for this reason, we may add, among others, that in order to overcome this difficulty the Netherlands Red Cross had proposed to give the National Societies nominated by the parties concerned, power to appoint the investigators.

(7) *The report of the commission of enquiry might, if occasion arose, comprise, besides the actually established facts, recommendations referring to the parties concerned.*

The main object of such recommendations would be to prevent a repetition of the violation and recourse to reprisals.

**Final Provisions**

These gave rise to no discussion.

The representative of the Italian Red Cross, however, suggested the following amendment of paragraph 3 of Art. 32:

"A procès-verbal of the deposit of each instrument of ratification shall be drawn up, one copy of which, certified to be correct, shall be transmitted by the Swiss Federal Council to the Governments of all countries on whose behalf the Convention has been signed or whose accession has been notified, *and to the International Red Cross Committee of Geneva.*"

IV. PROTECTION OF CIVIL HOSPITALS IN THE CASE OF BOMBARDMENT OR INVASION OF A TERRITORY

The question of the protection of civil hospitals in case of bombardment or invasion of a territory was already raised at the diplomatic Conference of 1929 for the revision of the Geneva Convention, but it was set aside as not coming within the scope of the Convention.

The Fourth Congress of the International Hospitals Association, held in Rome in 1935, expressed the wish that the same protection should be afforded to civil and military hospitals, in case of war, and several National Red Cross Societies also raised this question. The International Committee therefore requested the Commission to express its views as to the proper solution of this problem.

The Commission unanimously admitted the necessity of increasing the protection of civil hospitals in case of war, and discussed the available means of securing this object.

(a) As already stated, the Commission decided not to extend the scope of the Convention to the civilian population affected by war, and for similar reasons considered that the protection of civil hospitals did not fall within the scope of the Geneva Convention, and could not therefore be sought for by a revision of the said Convention.

Some members of the Commission however, maintained their view that the protection of civilian hospitals should be included in the Geneva Convention, for the reasons quoted on page 8 and also the revision of the Fourth Hague Convention cannot be expected for some time.

(b) The Commission found that the Regulations annexed to the Fourth Hague Convention of 1907 offered a certain degree of protection to civil hospitals. Recognising that this protection was insufficient, the Commis-

The Swiss experts who attended the meetings of the Commission explained that the Swiss Confederation provided for the militarization of civil hospitals in case of war, in order to give them the protection based on Article 6 of the Geneva Convention. Such hospitals are then wholly subject to military discipline.

Some members of the Commission were of opinion that this solution, while possible under given circumstances, should nevertheless be considered as provisional, and could not possibly justify abandoning the search for means of establishing the principle of the protection of civil hospitals by a convention.

It was, moreover, pointed out that this solution disregarded the question of protecting the civilian wounded and sick nursed in hospitals thus militarized. It is useful in this connection to bear in mind the decision made by the Commission regarding Article 7 (see pages 13-14).

The Commission thought it desirable, as an indication for National Societies and their Governments, to quote in this report the method, applied in Switzerland, of militarizing civil hospitals in order to secure them the protection of the Convention during hostilities.

V. Conclusion

(a) If we consider the sessions of the Commission as a whole, we notice that it has only felt itself called upon to propose a fairly small number of amendments of the wording of the Convention. We should note that, as regards the two most important points, the marking of medical units and the procedure for establishing violations, the Commission has not drafted any revised text. Firstly, it did not think such a course desirable; secondly, it did

not consider that the matter fell within the scope of its mandate. Without touching on the question of whether it is opportune at the present time, to seek for a revision of the 1929 Convention, the Commission expressed the wish that if its most important proposals did not lead to this revision, they should nevertheless be recommended to the States as subjects for special agreements.

As regards Article 30 in particular, the Commission did not come to any decision as to whether it was better to introduce it in the Convention itself or to secure, on this point, the conclusion of an annexed Convention.

(b) The idea of amalgamating in a single convention all Red Cross matters, i.e. those which are dealt with in the Geneva Convention, the Tenth Hague Convention and the draft Convention on medical aircraft was, it is true, mooted during the meetings of the Commission, but was not the subject of any decision. The experts considered that it was not within their province to attack a problem of such general nature, which depended on diplomatic contingencies. Moreover, this question will be submitted to the Sixteenth Red Cross Conference in June 1938.

In the opinion of the International Committee, the question of amalgamating these conventions should not be considered before the Geneva and Hague Conventions, — the latter more particularly —, have been revised. Once this work of revision and adaptation has been completed, it appears that it will be easier to undertake diplomatic negotiations for amalgamation. By linking this problem with that of revision and by attempting to solve both of these simultaneously, there would apparently be a risk, in the event of diplomatic negotiations failing, of making it impossible to amend the existing texts, and to attain what in the opinion of the International Committee, must remain a primary and immediate object.

ANNEXE I

Revised Text of Convention adopted by the Commission of Experts.

CHAPTER I. — WOUNDED AND SICK.

ARTICLE 1

Officers and soldiers, 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.

ARTICLE 2

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

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

ARTICLE 3

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

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

ARTICLE 4

Belligerents shall communicate to each other reciprocally, as soon as possible, the names of the wounded, sick and dead, col-
lected 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 graves.

After the cessation of hostilities they shall exchange the list of graves and of dead interred in their cemeteries and elsewhere.

**Article 5**

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

**CHAPTER II. — MEDICAL FORMATIONS AND ESTABLISHMENTS**

**Article 6**

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

Article 7

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

Article 8

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

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

Chapter III. — Personnel

Article 9

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

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

Article 10

The personnel of Voluntary Aid Societies, duly recognised and authorised by their Government, who may be employed on the
Revised Text.

same duties as those of the personnel mentioned in the first paragraph of Article 9, are placed on the same footing as the personnel contemplated in that paragraph, provided that the personnel of such societies are subject to military law and regulations.

Each High Contracting Party shall notify to the other, either in time of peace or at the commencement of or during the course of hostilities, but in every 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.

**Article 11**

A recognised 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 authorisation of the belligerent concerned.

The neutral Government shall notify such assent to the enemy party opposing the State which accepts the assistance mentioned in the foregoing paragraph.

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

In no case shall such assistance be considered as an unwarranted interference in the conflict.

**Article 12**

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

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

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

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

**Article 13**

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

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

**Chapter IV. — Buildings and Material**

**Article 14**

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

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

**Article 15**

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

**Article 16**

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

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

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

ARTICLE 17

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

A belligerent intercepting vehicles of medical transport, singly or in convoy may, if military exigencies demand, stop them, and break up the convoy, provided he takes charge, in every case, of the wounded or 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 organised 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.

ARTICLE 18

Aircraft used as a 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.

Chapter VI. — The Distinctive Emblem

Article 19

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

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

Article 20

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

Article 21

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

The personnel mentioned in Article 9, paragraphs 1 and 2, shall be provided with a certificate of identity, consisting either of an entry in their small book (pay book), 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 certificate of identity shall be uniform and of the same pattern in each army.
Revised Text.

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

**Article 22**

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

*In mobile formations as well as in fixed establishments*, it may be accompanied by the national flag of the belligerent to whom the formation or establishment belongs.

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

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

**Article 23**

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, *if the latter takes advantage of the option granted to him by Article 22.*

*Failing orders to the contrary issued by the competent military authority, they may under all circumstances, fly their national flag, even if they fall in the hands of the enemy.*

**Article 24**

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

material protected by the Convention. The Societies referred to in Article 10 may also employ this emblem in time of war while carrying out their humanitarian activities on behalf of civilian sick and wounded.

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 connection with their humanitarian activities in time of peace.

Exceptionally, and subject to national legislation, National Red Cross Societies may authorize other organisations to use the emblem of the Convention in peace time, in prosecution of humanitarian activities.

CHAPTER VII. — APPLICATION AND EXECUTION
OF THE CONVENTION

ARTICLE 25

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

ARTICLE 26

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

ARTICLE 27

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

Article 28

The High Contracting Parties shall ensure the application of the legislative measures they have been led to take in order 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 any purpose whatsoever.

(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 Governments of States not parties to the Convention of July 27, 1929, which may ratify the present Convention or adhere to it shall adopt, or recommend their legislature to adopt, the measures necessary to prevent, at all times, the acts referred to under (a) and (b) above, in such a manner that the prohibition may take effect at the latest five years after their ratification or adhesion.

The prohibition of assuming a trade-mark or commercial emblem infringing the above prohibitions, already enacted by the Convention of July 27, 1929, is maintained.

In the case of States not parties to the Convention of 1929 which may ratify the present Convention or adhere to it, it shall no longer be lawful, from the moment the ratification or adhesion has been filed, to adopt a trade-mark or a commercial emblem contrary to the above prohibitions. Within five years from the coming into force of the Convention, the marks, trade names and names of associations or establishments contrary to the above prohibitions, must be modified, whatever the priority of their date of adoption may be.

**Article 29**

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

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

**Article 30**

On the request of a belligerent, an inquiry 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.
Annexe II

VISIBILITY, MARKING AND CAMOUFLAGE
OF MEDICAL UNITS

1. — Report by Major-General Schickelé, of the
French Army Medical Service.

Chapter I

Visibility

The visibility of medical units is subject to the general
conditions of the visibility of objects.
Seven factors must be taken into account:

- Shape;
- Colour;
- Contrast;
- Lighting;
- Location;
- Atmospheric conditions;
- Conditions of observation.

1. Shape. — Well-defined, regular, symmetrical geo-
metrical forms favour visibility.

2. Colour. — Colour is important, as, normally, some
are more easily recognisable than others.

3. Contrast. — Contrast occurs when there is an oppo-
sition in shade between an object and a colour, and the
background against which they stand out. The best
visibility is therefore a problem in each particular case,
so that there are no objects or colours which are good
under all circumstances.

4. Lighting. — Light shows up objects and colours
and increases contrast. It falls vertically or obliquely,
and in the latter case introduces effects of light and shade which are very favourable to contrast. Light is either natural and varies according to the latitude, the time of day, the seasons; or it is artificial and can be regulated at will.

5. Location. — The location of an object allows of its being placed in the best conditions to make its shape and colour visible, and to isolate if from neighbouring objects that might be confused with it.

6. Atmospheric Conditions. — The clearness of the air ensures the best conditions for observation. These are of course variable, according as the sky is overcast or heavily clouded, or as mist and fog rise from the ground.

7. Conditions of Observation. — Observation furnishes varying data, according as sight is horizontal, oblique or vertical. On the ground, only horizontal or slightly oblique observation is possible, in consequence of the height at which the observer is placed. The profile of the ground involves dead angles, and an object that is clearly visible from one place need not be so from another.

Observation from the air does away with such dead angles. Oblique sight is better able to perceive contrasts of form and colour, and the play of light and shade against the background. Objects are thus more easily identified and located. From overhead, aerial observation fixes precisely the surface occupied by a given object and recognizes its exact relative position to its surroundings. This observation is more accurate when applied to isolated objects.

From a military standpoint, visibility must be considered separately, for the location of targets and for purposes of bombardment.

Location has for its object the knowledge of the exact position of everything that may form a military objective,
J. Schickelé.

and the marking of the data obtained on a map, plan or sketch.

Observation on land or from the air contributes towards location. The first utilizes optical instruments, usually of high power; the second makes an increasing use of photography.

A clearly visible object will be more easily located and marked at its precise emplacement on the staff maps and plans; there will be no doubt whatever as to its character and position.

For fire from the ground, visibility is a matter of identification, for the same observers on the ground or in the air will take the range and mark the hits. They can therefore easily keep them off the targets to be spared. The latter can then no longer be hit unless they are located within the area of probable range error of the weapon firing at a neighbouring target.

In aerial bombardment there is no ranging by observation, but direct sighting of the target by the bomber and machine gunner, whose fire will be accurate in proportion as the target is more visible. Conversely, it will always be possible to avoid aiming at a very visible object which is a forbidden target. The only remaining risk of the object being struck is, therefore, the dispersion of shots, which also constitutes the possible range error; this dispersion is magnified by the altitude at which the aircraft is operating. Isolation of the clearly visible object alone ensures the best safety conditions.

Taking these considerations as a whole, it seems desirable to give maximum visibility to all permanent or mobile medical units and for the latter, whether they are in motion or stationary, and deployed or not.

This aim will be best attained by ensuring that all vehicles, shelters and buildings are geometrically regular and symmetrical in shape.
Although colour only acts by its contrast with the background, it may be held that the latter will, as a rule, be the earth, the natural colour of which is dark. It may, therefore, be suggested that it might, after all, be advantageous to reserve light colours exclusively for all components of medical services, and to make these colours their distinctive mark. The choice of colour would remain subject to future experiments but, at first sight, it would seem that white should be more especially tested.

The next most important factor to be considered as favouring the visibility of medical units is their isolation. This problem should be considered jointly with that of safety from risk of bombardment by projectiles; it does not come within the scope of the present report.

It should only be remembered that the better the isolation, the greater the visibility. In this respect, there is an undeniable advantage in setting apart certain towns or areas for medical establishments.

Chapter II

Marking

The object of marking is to identify clearly all visible medical units. It consists in the adoption of an international emblem, whose visibility is carried to a maximum and regarding the nature of which no misconception is possible.

This emblem exists, and is defined in Article 19 of the Geneva Convention of July 27, 1929; it is the Red Cross.

The problem of marking medical units and all vehicles employed by the medical service, whatever their nature or position, therefore consists in determining the best conditions of visibility of the Red Cross.

Any other means of marking, the usefulness of which might be duly established, must be considered only as
accessory and additional means intended to facilitate observation of the Red Cross. They cannot in themselves ensure protection, but they will constitute a warning signal, signifying the proximity of a Red Cross which should be sought for more attentively.

The visibility of the Red Cross is subject to all the conditions of visibility enumerated in the preceding chapter.

The colours red and white are prescribed by the Geneva Convention, and there can be no coming back on them. It should, moreover, be remarked that they furnish excellent contrast.

It is not impossible that the shape of the arms of the Red Cross have a certain bearing on its visibility, but experience must prove this point, for at first sight, it seems desirable to respect the shape adopted by use of a Red Cross with equal arms.

The contrast with the background retains its value; it should be sought for, and can be secured, by creating an artificial background, on which the total emblem of the Red Cross, as defined by the Geneva Convention, will stand out.

Lighting will be the object of a special paragraph.

The isolation of the Red Cross is an important condition of its perfect visibility, but is limited by the area available on which the Red Cross can be placed, for it is obvious that the cross cannot exceed the surface of the object it is intended to protect.

The size and position of the Red Crosses have further to be defined.

If observation from the ground has alone to be considered, the use of large or small flags is sufficient, as experience has shown.

Aerial observation alone makes special measures necessary.
Visibility, Marking and Camouflage.

The size of the Red Crosses to be used depends of course on the operating height of the aircraft. In this case, observation and bombardment must be considered separately.

In both cases, aircraft will fly at an altitude which best suits the task it has to carry out, i.e. normally at a height of from 2,000 to 4,000 metres, and will drop lower if it can. It can only be prevented from doing so by anti-aircraft defence, especially from the ground, which compels it to rise.

It would thus appear that wherever medical units are not in the neighbourhood of a powerfully organised aerial defence, the size of the Red Cross should be such as to provide good visibility up to 4,000 metres, in the case of observation with the naked eye.

The same visibility should be ensured up to 6,000 metres for the other case considered, but it appears difficult to go further.

It must be remarked that bombardment from great altitudes is so lacking in accuracy that it can only be employed against very large targets, such as a big town; otherwise it leads to such a waste of ammunition that it will not be resorted to.

In practice and in the majority of cases, a visibility of the Red Cross up to 4,000 metres appears to be sufficient.

The dimensions to be adopted for the Cross would therefore be a total width of 25 metres, with arms 3 metres across.

These figures should be checked by actual experiment. We may add that visibility at 4,000 metres should be sought for in clear weather.

When the ceiling drops below this height, bombers wishing to see their target and aim properly must fly below the ceiling. Presumably, conditions that are favour-
able to aiming will likewise favour the visibility of the Red Cross.

It may be objected that bombers might take advantage of a low ceiling by flying above the clouds, diving suddenly on the target and remaining below the ceiling for a minimum time. Speed in this case would be a great obstacle to the visibility of the Red Crosses.

The operation, though technically possible, is somewhat risky, and it seems unlikely that it will be frequently resorted to.

Vertical dive bombing, which is very much in favour for day attacks, employs this method, however, but with smaller risk, for it is practised when visibility is good. Here again, the speed with which the aircraft swoops towards the target may interfere with proper sighting of the Red Crosses.

Generally accepted opinion inclines to the belief that day bombing entails such risk that night bombing is preferred in the majority of cases.

Under these conditions the visibility by day of the Red Crosses will serve more particularly for the locating of medical units.

The dimensions indicated for the Red Crosses appear to correspond to usual circumstances in most conditions obtaining in war time.

The visibility of the Red Crosses will be further greatly enhanced if they are placed on an area with an open prospect, on flat or very gently sloping ground, if possible exposed to the sun, and always uniformly lighted.

A slight relief of the cross against the ground is likely to make it show up better and render it more readily visible, owing to the play of shade and light which will draw attention to its presence. This can be done by placing it on posts at a given height.
Experience will show whether this method, which has not yet been tested, at least not to my knowledge, offers any advantages and, in the affirmative, what is the suitable height. It will also determine whether it would be useful to fill up the gaps between the arms of the raised cross and the ground with red panels.

Such conditions imply a sufficiently large surface for installing the Cross. These exist only in the case of medical units of some importance. Should there be only one cross for each formation or several? These are particular cases which can only be examined individually.

As a matter of principle, it is always advantageous to mark the boundary of the unit. When the latter is well isolated and clearly visible, a single cross should suffice. In all other cases, the crosses should be multiplied and exhibited at various angles from the horizontal to the vertical position, so that it may always be possible to see at least one Red Cross distinctly.

Of course in the majority of cases, the size of these crosses will be a good deal less than those of the large crosses placed on the ground, but it will always be useful to make them of the largest size compatible with the areas intended to support them. Walls and roofs are naturally indicated for this purpose, but hoardings like those used for commercial posters can also be employed.

Ambulance vehicles should invariably be provided with a red cross on the roof, so as to make them conspicuous to low-flying aircraft likely to make bomb or machine-gun attacks on convoys running along lines of communication, whether by road, rail or water.

The secondary signs which may accompany the Red Cross may be extremely varied; they are permanent or temporary, fixed or moveable.

Firstly, a colour assigned to the Medical Service might constitute the principal of these signs, and is likely to make
medical vehicles and units more recognizable. This does not apply to medical aircraft; for these, according as they are seen from the ground or from the air, the use of light or dark colouring may be more advantageous. In their case, there is thus no advantage in adopting a special paint; it may even be said that white, although prescribed for them by Article 18 of the Geneva Convention, is perhaps the least suitable colour for them.

Cones or balls, attached to masts, pylons, balloons, or kites may now be considered. These may all be painted a special colour, namely that of the Medical Service, if it is adopted. It would then be advisable to complete these signals with large Red Cross flags, particularly for balloons or kites, whose mooring cables may not be very visible and are likely to be deflected by the wind, but which could serve as a support for the flag.

All these devices are efficient, but they offer the very serious military disadvantage of furnishing excellent identification marks.

It may be agreed that they would only be flown if the medical unit is threatened, i.e. as soon as enemy aircraft are sighted, but that would merely lessen the drawback mentioned.

Rockets and smoke signals, which might also be coloured, are identification signals which could be used in case of emergency. To be effective, they would have to be defined and reserved exclusively to the Medical Service by an international Convention.

The wireless might be used to broadcast a special international code signal, to be adopted, but this means, which has a very long range, is of use only if it is picked up and if the station is identified.

The use of sirens or hooters must be rejected. It is doubtful whether the sound when emitted from the ground, or between aircraft, would be audible to aircraft...
Visibility, Marking and Camouflage.

in flight, as it would be drowned in the noise from the engines. Moreover, sirens are often used as alarm signals to give warning of an air raid.

It seems that, in practice, medical aircraft alone should be entitled to the use of flares or smoke trails as identification marks. It should be noted under this heading, that in principle and according to the special stipulations of Article 18 of the Geneva Convention, they may not fly over the enemy lines, and that enemy chaser planes are the only possible foe they are likely to encounter in their own lines, and this should, in practice, be a rare occurrence.

In their case especially, it may be considered advisable to provide them not only with red crosses placed on all vertical and horizontal surfaces, but also with secondary markings to facilitate their identification. These might be streamers or wind stockings of approved colour, attached to the planes or stays. The value of such identification marks can be shown by experience only; here again, a colour reserved to the Medical Service would appear useful.

In any case, the use of streamers or air stockings in tow does not seem advisable, for reasons of safety.

All medical units and all medical equipment must bear the emblem of the Geneva Convention permanently affixed.

Should removable emblems be contemplated, they can only be employed by the medical staff itself. This will apply almost wholly to means of transport, and it seems easy to admit that such removable emblems can be, as an invariable rule, affixed or removed by the medical staff, who are under the obligation of being present at the loading or unloading points of any vehicle used for temporary medical duty.

These removable emblems should be of the same shape and size as the fixed emblems, and should be placed in the
same way as the latter. This clause does not, however, appear applicable to aircraft, for which we must be content with accessory emblems, of course showing the Red Cross.

Illumination at night will always be very easily carried out, either by means of luminous grids made up of lamps or incandescent tubes outlining the red crosses. Experience may show whether it would not be better to choose a colour other than red, in order to ensure a night visibility equal to day visibility from high altitudes.

As for accessory luminous signals, the choice would lie between beacons or pylons showing the colour reserved for the Medical Service. It would also be very easy to mark the boundaries of the whole area of a medical unit in operation by means of boundary lights. All these requirements are technically possible, especially with the help of electricity; they might only be somewhat costly and, under all circumstances, would take some time to instal.

Unfortunately, illumination by night of medical units conflicts with the absolute necessity of ensuring the anti-aircraft defence of a territory. It has been shown that a complete black-out is then absolutely necessary, as it is the only effective means of defence. Therefore, if medical units, whose exact site has previously been established by day observation, are illuminated at night, they would furnish a set of range marks on the ground which would be of immense assistance to war planes. Under these conditions, no military commander could allow permanent illumination by night of medical units.

Temporary lighting, when aircraft are flying overhead, cannot be contemplated either, as it would lead to the same result. There is only one other possibility, that of lighting up only when the medical unit has actually been hit by a first bomb. This would imply exceptional coolness on the part of the staff in charge of the lighting arrangements,
and as aerial bombardment is of very short duration, corresponding with the passage of the aircraft, there would be great risk of lighting up when it was useless, as the alarm would then be over. It seems therefore necessary to abandon entirely the idea of illuminating medical units by night. Here again, only their distance from military targets can provide safety.

Medical aircraft alone might, without attendant disadvantages, benefit by being lighted at night. Technically, this is not impossible, but will need an increased electric equipment and imply a much heavier load to carry. Large aircraft alone could be thus fitted up. Moreover, the utility of this system is doubtful. Normally, medical aircraft will not fly at night. Night chasing has not, so far, proved very effective. They could only run the very problematical risk of running at night into a squadron of bombers on an expedition, which might open fire without much chance of hitting the target and with some risk for their neighbours. Finally, medical aircraft are not called upon to cross the enemy lines and, consequently, to come within range of the anti-aircraft defence. Their only risk is failure to be recognised by their own artillery, and the identification signal by rocket would then be called upon.

All circumstances duly considered, our conclusion that it is impossible to illuminate medical units at night, remains sound in all cases.

Chapter III

Camouflage

If the visibility and marking of medical units afford essential advantages as regards the efficacy of the protection given by the Geneva Convention, the same remark does not apply from a military point of view.
A unit that is clearly visible on the ground, whatever its nature, forms an excellent landmark, of which the army can make valuable use. Firstly, it can be used to locate, by triangulation, the position of a target which is not readily visible. It can then be used as a point of aim, the sighting telescope being directed towards the visible object and the gun or machine-gun being laid on the distant target. This fact will no doubt lead to the prohibition, at any rate at the front, of all auxiliary signals such as masts, pylons, balloons or kites by medical units visible to the enemy observers on land.

Moreover, the G.O.C. preparing an attack takes the greatest care to conceal the location of his forces. There is no doubt that the installation of mobile medical units on the battlefield furnishes valuable indications to the enemy.

For both these reasons, the camouflage of medical units may be essential; today, it is the rule in the battalion or regimental echelon, where dressing stations are in such close contact with the fighting forces that it is impossible to isolate them from the military objectives amongst which they are positioned. More often than not, they will have to shelter in cellars, trenches or galleries.

Similar arrangements will also often be essential in the divisional echelon.

In the case of army corps or of an army, camouflage may be ensured by one of the methods adopted in the national military organisation. It may be permanent or temporary; in the latter case, the use of smoke screens will certainly be that most frequently adopted.

From the medical point of view, therefore, the camouflage of Medical Service units presents no new technical problem.

From the point of view of the application of the Geneva Convention, it is wholly permissible. Articles 19, 20 and 22,
which regulate the use of the Red Cross, nowhere make it an obligation that medical equipment or establishments shall be covered by it. In all cases, the intervention of the military authorities is provided for. This leads us to conclude that camouflage cannot deprive the medical units which resort to it of the protection assured by the Geneva Convention. This protection can only be operative, however, when the enemy himself can ascertain that he is in the presence of a unit of this kind, and this can only happen in case of capture. In this case he will find, in addition to the sick and wounded, a medical personnel which, according to the terms of Article 21, must wear a Red Cross armlet and carry identity papers.

In all circumstances, therefore, the military command may order the camouflage of its medical units. The bombing of the latter cannot then constitute a violation of the Geneva Convention, since the enemy cannot identify the medical nature of his objective. In consequence, the camouflage of medical units corresponds to a deliberate temporary renunciation of the protection afforded by the Convention, without, however, the latter ceasing to be valid in all circumstances and, in particular, in case of capture.

In order to observe the spirit of the Convention, it is therefore highly desirable that medical units should only be camouflaged during the time strictly necessary for the secrecy of military operations.

The best rule to recommend would be to camouflage medical units only during the time they are being installed, and to make them recognizable as soon as they begin to function, i.e. the moment fighting begins. At this moment the military command has nothing more to hide from the enemy; it has laid down its hand.
Swiss Federal
Military Department.

2. — Opinions furnished to the International Red Cross Committee by services of the Swiss Federal Military Department.

I
DISPLAY OF THE RED CROSS EMBLEM

A. Opinion of the General Staff

Referring to the methods of displaying the Red Cross, it is desirable to define:

(a) the means of clearly indicating mobile medical units, when stationary, and permanent medical establishments, to allow identification by day by aircraft flying at a normal height, and to exclude practically, under ordinary circumstances any possibility of involuntary aerial bombardment. By night, there is no need for marking; darkness ensures protection.

(b) the marking of medical aircraft.

It would be useful to insert, as a complement to Chapter VI of the 1929 Convention, provisions concerning the display of the Red Cross emblem and, as a complement to Chapter V, provisions concerning medical aircraft. We consider that a revision in this direction is essential.

B. Opinion of the Air Force and Aerial Defence Service

1. During the months March to May 1936, the Military Air Force carried out practical experiments regarding the visibility of the Red Cross sign viewed from aircraft.

The results are as follows:

(a) Emblems measuring 5 x 5 metres, as employed up to the present, are inadequate.

(b) The cross cannot be identified in approaching flight from aircraft 1,000 metres above the ground; it is only when the aircraft is vertically above the cross that the latter can be recognized.

At 2,000 metres, the cross appears distorted, but it is still recognizable as such.

Between 2,500 and 3,000 metres, the outline of the emblems becomes blurred; at 3,000 metres they can no longer be distinguished, except when the observer knows their location and visibility is very good.

At a height of 4,000 metres, if their position is known, they are still recognizable in the shape of white spots.

(c) The emblems should not be spread over the ridge of a roof; in this case the cross appears broken and can only be identified if the aeroplane is vertically, or almost vertically, above it.

To sum up, it must be admitted that these signs, in their present shape and, if placed on the roofs of the buildings to be protected are, as a rule, recognized too late by approaching aircraft, even when flying at low or medium altitudes. They must therefore be considered inadequate.

If the building to be marked is not isolated, it is bad policy to spread the Red Cross signs on the roof, as their visibility may be considerably impaired by the neighbourhood of sky-lights, terraced or white roofs, etc.

The most suitable course is to place the emblems on a background of uniform colour (grass). If this is not possible, very much larger emblems should be used, and these should not be spread on the ridge of a roof.

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As stated above, these tests are based on crosses measuring 5 x 5 metres (arms of the cross three metres). New tests are to be undertaken shortly with emblems measuring 10 x 10 metres (branch of the cross eight metres), under various atmospheric conditions. We shall report on these new tests.

2. As to the general problem of displaying the Red Cross emblem, it would be desirable, with a view to the proposed enquiry, to consider the following:

The efficacy of protective emblems depends in a great measure on the location of the object to be indicated and its immediate surroundings. In the case, for instance, of hospitals standing in places and towns close to objects subject to attack, such as railway lines, electric power stations, gasometers, etc., even perfectly recognizable marking will be useless; when such targets are attacked, it is most probable the hospitals will be hit likewise. In such cases evacuation alone can ensure complete safety.

In our opinion, hospitals should be removed at least 1 1/2 kilometres from objects likely to be bombed, in so far as circumstances do not permit of their being entirely removed.

The question should moreover be examined, whether it would not be desirable to display protective emblems already along the main directions of approach of aircraft. This method would give pilots prior warning, for it must be borne in mind that the technique of bombing demands that aim should be taken in advance of the target at a distance which, according to the height and speed of the plane, may amount to a few miles. Single marking of the object to be protected is not sufficient. If tests of this nature are undertaken, we recommend testing the visibility of signs in a horizontal or slightly inclined position (as
regards the direction of approach of the plane). Such a method, however, can only apply, in our opinion, to bombing in full daylight. Application of this system at night would demand the substitution of fabrics by electric lights. This would present the great drawback of infringing the principle of total blacking-out, as is practised in Switzerland, for instance. Such luminous signals, which would be the only ones left, would doubtless enable enemy pilots to detect the position of the towns. Even if arrangements of this kind were used to mark the presence of isolated hospitals, i.e. away from built-up areas or towns, such outside lighting might serve as a welcome guide to enemy pilots. For these reasons, such night marking must, in principle, be abandoned.

As to the distinctive emblems for medical aircraft mentioned sub 1 (paint, hooters, wireless and electric signals), practical tests should apply, at first, to special paints and the fitting of luminous signals.

3. The question of marking medical aircraft should be considered under the following headings:

(a) Paint. — This means can only be considered as a make-shift. To begin with, it should be noted that the background against which the aircraft stands out (blue sky, white, grey or black clouds, grass, fallow land, thickets, snow fields) may have considerable influence on the possibility of recognising paints. For instance, the identification of paint, viewed from the ground, is no longer possible at a height of over 1,000 metres. In our opinion, the colour which, as a general rule, stand out most clearly, on the various back-grounds are bright yellow and red. It must, however, be remembered that in the case of head-on attack in mid air, the best coat of paint will be useless of an attacking plane opens fire in this position. Considering the development of aircraft guns, we must
expect that direct fire will thus be opened, and at com-para-tively long ranges.

(b) Fitting of electric signals. — It would be useful to investigate more completely the value of electric signals (by means of incandescent electric bulbs) in the shape of a red cross, or of some other protecting emblem which may be selected. To ensure their being recognized, such signals will of course have to be fixed to the upper and lower wings, sides and front of the planes.

We now turn to the other means of signalling which should be considered:

(c) Smoke trails. — These necessitate a special apparatus similar to that used in sky-writing. It is obvious that medical aircraft would not require the same quantities of chemicals (fog-producing as in sky-writing. Practical tests might show whether it would not be sufficient to emit smoke signals at short intervals, instead of a continuous trail. Such signals would be very striking in clear weather. It should be noted, however, that if the plane is close to a cloud-bank, the value of the method will be considerably reduced; the use of a substance whose colour strikes the eye appears to be the only possible solution in this case.

(d) Special constructional shape. — To ensure certain identification of medical aircraft in flight, it would be necessary, in our opinion, to build them along special lines. At the present time, it is admittedly difficult to distinguish from one another the types of aircraft belonging to the various countries merely by their outline, and this similarity is likely to become greater. This is due to the fact that endeavours are being made on all hands to build according to the most advantageous aerodynamic lines; this leads to constantly increasing resemblance.
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In any case it would be desirable to examine whether international regulations should ensure that medical aircraft (cabins and body) be built to a special shape.

(e) Standard flying height. — In order to increase the chances of identifying medical aircraft provided with distinctive signs, it would be useful to examine whether they could not be obliged to fly at a fixed low altitude. Firstly, it would be far easier to recognize them from the ground and, secondly, the fact that they would remain at a uniform altitude of flight would serve as a clue to pilots of the same or of enemy forces.

C. Opinion of the Medical Service

1. The protection of mobile medical units when stationed and of permanent medical establishments against attack by air can only be ensured by the display of pieces of white fabric of sufficient size and bearing the red cross. Tests will determine the required size and the best method of placing these flags.

We are already aware that they should be very large. Therefore they cannot, as a rule, be used for mobile medical units in the regimental or divisional sector, since they would furnish the enemy with a far too convenient locating point for his own defensive or attacking organisation.

They can, however, be used for mobile or permanent medical establishments in the Army Corps or Army sector (at the rear), as well as in a divisional sector, for instance when a field hospital is quartered in a civilian hospital.

It remains to be seen whether it would not be better to replace stuff bearing the red cross by whitewash or a similar substance, spread on the ground.

2. To ensure the identification of a medical aeroplane with some certainty it must, in our opinion, be of a special
shape, designed according to standards fixed by international conventions.

3. The marking by night of the objects mentioned under (1) and (2) is superfluous; in this case blacking-out must be sufficient.

4. It will be necessary to advise the enemy of the location of the large hospitals existing in the Army sector (at the rear), as soon as possible after their installation.

II

Camouflage of Medical Units

A. Opinion of the General Staff

We consider that the camouflage of medical units is to be preferred to marking them in any position where the visibility of the Red Cross emblem is likely to reveal the presence of combatant troops or their numbers. Hence mobile or stationary medical units must usually camouflage themselves in the same way as combatant troops. Only by specific order of the G.O.C., who would be responsible, might that the Red Cross sign be shown. Judicious selection of the location, far from objects especially liable to bombardment, is also part of any system of camouflage.

Provisions regarding camouflage should be adopted and introduced into the 1929 Convention, as an addition to Chapter VI. We consider the introduction of such provisions necessary.

B. Opinion of the Air Force and Air Defence Service

Answering the question whether it would be more desirable to mark medical units located in the zone of

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operations proper, and in particular transport columns, rather than camouflage them, we give the preference to camouflage, from the point of view of the Air Force. In any case, practical tests have sufficiently shown that the marking of medical transport columns is a very difficult matter and that with the means at present available these columns can no longer be identified as such, even at low altitude.

The marking of medical units and medical transport columns in the zone of operations offers another disadvantage, that of allowing conclusions as to the strength of the opposing forces.

As regards camouflage, it will follow the same lines as in the army.

C. Opinion of the Medical Service

Camouflage is necessary wherever mobile medical units are not authorized, for the strategic reasons quoted above, to use the Red Cross emblem. This will generally be the case in the regimental and divisional sectors.

Although this method of protection is often precarious, there is no alternative.

Care should be taken, moreover, to instal these formations as far as possible from the fighting organisations, depots, lines of communication, etc. This is as important as camouflage itself.

III

Temporary use of the Red Cross Emblem

A. Opinion of the General Staff

We are doubtful as to the problem of the occasional use of the Red Cross emblem (in the form of removable

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signs). Whether it be a question of the temporary use of means of transport usually employed for other purposes, or of persons who are normally part of the combatant troops, the possibility and temptation of misusing the emblem are always very great. In any case, a belligerent might, whether rightly or wrongly makes no difference, be taxed with misuse, and this alleged breach might be taken as an excuse for no longer complying with the prescriptions of the Convention.

The suggestion of the Chief Medical Officer to give the personnel exceptionally or temporarily employed on medical duty a written order certifying that they are under the control of the Red Cross — this taking the place of a temporary emblem — seems to us quite feasible. The means of transport and equipment temporarily used for medical services by the said personnel should also have a written certificate, giving the same particulars; in this way the equipment would also come under the protection of the Convention.

Provisions of this kind would necessitate a revision of Chapters III to VI of the Convention. We consider that this question should be examined, but that it is advisable to oppose the temporary use of the Red Cross emblem.

B. Opinion of the Air Force and Air Defence Service

It would certainly be most desirable to extend the protection of the Red Cross temporarily to military or civil aircraft, as has been suggested. In our opinion, this question can only be examined more closely when the tests proposed under I) have been completed and their results are known. We, however, note that great difficulties must be expected regarding the possibility of employing movable emblems and the efficacy of this method.
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C. Opinion of the Medical Service

In our opinion, the issue of a Red Cross armlet and of a special certificate to persons temporarily and occasionally attached to the Medical Service is practically unworkable in the field, likewise the marking of the equipment for the time only when it is employed for medical purposes.

The issue on a single occasion, e.g. of the Red Cross armlet, to a large number of persons who are liable to occasional employment on medical work involves the risk of all sorts of misuse of the Red Cross emblem; consequently, this possibility cannot be seriously taken into account.

One solution, we think, would be that the competent authority should furnish the commander of a detachment of this sort, specially constituted for medical purposes, a written order specifying the work to be carried out, together with the necessary details as to its duration and a note regarding the protection afforded by the Red Cross. This order would serve as an official certificate (protective emblem) in accordance with the meaning of the Geneva Convention. Further, every member of the detachment should be exactly acquainted with the contents of the certificate.
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ANNEXE III

REVISION OF ARTICLE 30 OF THE GENEVA CONVENTION

1. — Conclusions of the Consultation of A. Hammarskjöld, member of the Institute of International Law. ¹

... I do not hesitate to take as basis, or starting point, the debates of the Disarmament Conference regarding the official investigation of alleged breaches of the proposed interdiction of chemical, incendiary and bacterial weapons. (Cf. especially: Documents of the Conference, pages 462 sqq. and 731.) To my mind, these discussions have great intrinsic value; moreover, they represent the outcome of the cooperation of experts from a surprisingly large number of countries — an important point, if we desire that the following suggestions should have some chance of success. The results of the said discussions cannot, however, be taken as they stand; they must be adapted.

The reason of this necessary adaptation is twofold. Firstly, the debates only dealt with breaches of the prohibition of recourse to certain forms of warfare, whereas the subject of the present study is the possible violation of the Geneva Conventions through the use of any means whatsoever of injuring the enemy. Further, the system evolved by the Disarmament Conference hinges on the assumed existence of a Permanent Disarmament Commission, the creation of which cannot, it seems, be expected in the near future.

¹ The complete text of the consultation by A. Hammarskjöld was published in the Zeitschrift für ausländisches öffentliches Recht und Völkerrecht, vol. III, No. 2, 1937. We only publish here the author's conclusions summarizing the whole paper. — ED.
A further consideration might be added to these reasons. As stated above, enquiries regarding violations of the Geneva Convention may be of various kinds, necessitating different methods of investigation, not only as regards urgency, but also as concerns the immediate object of the facts to be established. An enquiry into breaches of the prohibition of chemical weapons will always be one "of immediate urgency", since its object is to collect evidence of a transient nature.

1. The call for an investigation should always come from one of the parties concerned, in the shape of denunciation of alleged practices by the enemy which the complainant considers contrary to the Geneva Convention. It would not, therefore, seem desirable to provide for automatic action, in particular by the International Red Cross Committee, in view of an enquiry based on the Convention (cf. Huber, "Red Cross and Neutrality", International Red Cross Review, May 1936).

Neither would it seem desirable to institute a right of initiative by Governments of the neutral countries to which belong the medical units placed at the disposal of either of the parties concerned, in accordance with Article 11 of the Geneva Convention. In spite of expert opinion (Des Gouttes, page 171), we cannot, in view of Article 23 paragraph 2, consider the said units as "denationalised". But they may, and should be, considered, in respect of the application of the Geneva Convention, as being placed under the authority of the party to whose forces they are attached. This in no manner precludes Governments of their respective countries from claiming, as against the other party, their right to the diplomatic protection of their nationals. But this protection works along different lines, since its object is not the respect of the Geneva Convention, but the persons and property of the nationals
who are members of medical units. Both purposes may, of course, be concurrent, since, in order to become effective, protection may imply the objective establishing of a breach of the Geneva Convention. In such a case, however, the national Government is always at liberty to request one of the parties concerned (it will probably be to the interest of both to do so) to demand the investigation.

Once an information has been lodged, several different questions immediately arise:

(1) Assuming the alleged facts are duly proved, do they affect the Geneva Convention?
(2) Do these facts relate exclusively to the past, or do they constitute a continuous condition?
(3) The actual existence of the said facts.
(4) Their possible incompatibility with the provisions of the Convention.

2. As regards the first question, which is likewise the first to arise, it would seem that the information should be lodged with the International Red Cross Committee. Should the latter not deem consider that the alleged facts cannot prima facie affect the Convention, the Committee transmits the complaint, firstly, to the opposite party and secondly, to the central authority which would take the place occupied, according to the suggestions of the Disarmament Conference, by the Permanent Commission.

3. How should this authority be constituted? As we have seen, the practice of Governments suggests four solutions: (1) the Head of a State; (2) the Chairman, for the time being, of the Council of the League of Nations (or the Council itself); (3) the International Red Cross Committee; and (4) the Permanent Court of International Justice, or its President.

The first two solutions must be abandoned forthwith. As to the third, I am not much in favour of it for reasons
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which can be summed up in the words of the present Chairman of the Committee 1: "The Red Cross cannot possibly taken upon itself to act in what is after all a judicial capacity; for its role is different: it is of a humanitarian nature". These words deserve consideration, if we regard firstly, the history of the efforts recently made for the application of Article 30 of the Geneva Convention and, secondly, to the fact that the enquiry will almost invariably have the character of a judicial investigation.

This leaves the Permanent Court of International Justice. Seeing the numerous more or less similar missions entrusted to it by the treaty laws in force, and which it has accepted, I do not see, from the point of view of its constitution, any decisive objection to entrusting it also with the setting up of the commissions of enquiry. There are, moreover positive reasons in favour of this solution. I shall return to these later.

It may perhaps be objected that the States signatories to the Geneva Convention have not all adhered to the conventions instituting the Court. That of course, is correct. But it is likewise true that the Court is open to all States, and that it is, in principle, universal in character; in view of its non-political constitution moreover, the difficulty could only be of a moral order. For if a revised Geneva Convention recognized that the Court possesses certain powers in its capacity as a de facto permanent international institution, all the signatories, irrespective of whether they are or not among the States granting their positive support to the Court, would recognize that it possesses, by definition, the said powers.

In any case, it would appear possible to give, if necessary, a certain degree of flexibility to the rule stipulating the competence of the Court (see below).

1 "Red Cross and Neutrality", International Red Cross Review, May 1936.
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At all events, it seems preferable to entrust the suggested powers neither to the full Court — a body too numerous to fulfil easily an administrative task, and moreover somewhat difficult to convene between sessions — nor to the President alone, as one of the parties might always raise objections to any single person. The suitable authority would seem to be an emanation of the Court, namely the three senior members of the Chamber of Summary Procedure, in the order of precedence laid down in the Regulations, always excluding members of the same nationality as the parties. The presence of ad hoc judges would involve the application of Article 3 of the Regulations and cause unnecessary delay. Under these conditions, it seems more simple to give a regular mandate, for administrative tasks, to a delegation of three members; substitute members might, in case of need, take the place of members who are nationals of the countries concerned. Moreover, the absence of ad hoc judges in cases of urgency and in what are practically administrative matters is allowed both by the Regulations themselves (as regards measures of conservation; see Article 66) and in actual practice (e.g., to take cognisance of waivers, etc.). From a practical point of view, the utilisation of a delegation of the Chamber of Summary Procedure would offer the advantage of ensuring very rapid meeting in all circumstances.

4. In constituting commissions of enquiry, the Court should not be free to choose, but limited by previously established lists. This principle is found not only in proposals emanating from the Disarmament Conference, but also in many modern treaties. It is incorporated in the Statute of the Court, in connection both with the election of the judges and with the appointment by the Court itself of the technical assessors who may, in certain
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cases, be called upon to assist them. This is of particular interest from the present point of view. This principle is further adopted in the clause of the Labour Charter (Treaty of Versailles, Article 412) concerning the nomination of commissions entrusted with investigations into alleged breaches of the Labour Conventions.

Taking into account the reports of the Disarmament Conference, it may be held that the Court should have, for the above requirements, two different lists established specially: a list of military experts and a list of medical men. The Court already has lists of qualified jurists, namely the list of candidates for the elections of judges, — this list is drawn up in conformity with Article 5 of the Statute of the Court, — and the list of the members of the Permanent Court of Arbitration. If desired, the list of members and associate members of the Institute of International Law might be added.

The lists of members of the military and medical professions should include names presented within a stated period after the coming into force of the revised Convention, at the rate of two (or four) for each State signatory, one (or two) of whom shall be national (s) and one (or two) a foreigner, or foreigners. The schedule should include the exact address of the persons nominated, as well as the indications of their particular qualifications (army medical officer; medical jurist, etc.). The lists and addresses should be kept regularly up to date. This would be the duty of the Recorder of the Court, as in such matters the keeping of the lists up to date cannot be left to Governments.

The debates of the Disarmament Conference also foresaw the drawing-up of lists of experts in other departments (chemistry, biology, etc.). Although, at times, the investigation commissions may require the assistance of experts of this kind, the same need would not appear
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to arise in this connection, as regards both the application of the Geneva Convention and the application of a prohibition of the use of chemical weapons.

5. On receipt of a complaint, the delegation of the Chamber shall first ascertain whether the alleged breach was committed in the past, or is a definite and continuous state of affairs.

6. In cases where facts have to be established which are not in the nature of isolated incidents belonging to the past, but rather of a more or less permanent situation (marked by events similar in nature and occurring with a certain regularity), the investigation commissions might be composed of a military expert and a medical man selected from the above lists, excluding nationals of the parties concerned, as well as persons who have been employed by the said parties. On the other hand, it does not seem desirable — contrary to the usual practice — to exclude persons habitually resident in the territory of the countries concerned; for they may be more rapidly and more easily available than others. As a matter of fact, it might seem better to choose persons whose names have been entered on the lists at the request of the parties concerned, or whose nationality is that of countries approved by the parties as protecting Powers. A delegate of the International Red Cross Committee might be added *ex officio* to the Commission; if there happened to be one already on the spot, he would be the one to be appointed.

The Court should be at perfect liberty to include assessors in the Commission, who may be qualified as experts in matters which, according to the complaint, the investigation might have to deal with. This case would not be very frequent, however.

The Court should likewise be at liberty to request the doyen of the Diplomatic Corps (through the Government he represents) to make certain provisional investigations
while awaiting the arrival (or the constitution on the spot) of the Commission. As to the methods (except as regards the "appreciation as to the consequences") of such provisional establishment of facts, reference can be made to the texts of the Disarmament Conference (Documents of the Conference, page 463, Nos. 1 and 2).

The findings (or provisional findings) of the Commission would be submitted to the Court by telegram. If the Court (Chamber of Summary Procedure in its normal composition, according to the Statute and Regulations) finds _prima facie_ evidence that a breach has been committed, it would have power to order the temporary cessation thereof in the form of an indication (in conformity with Article 41 of the Statute) of temporary protective measures. The signatories should, of course, undertake in the Convention to comply with this indication, even though it has not been preceded by a hearing (cf. Article 66 of the Regulations).

7. Immediately after receipt of the final report of the Commission, the Chamber would in any case institute summary proceedings, in conformity with the provisions of the Court Regulations. It is from the findings of these proceedings that the possible breach would be finally established and, should occasion arise, the continued application of the measures which may have been indicated provisionally.

8. If the complaint relates to one or several occurrences in the past, and not to a more or less constant alleged attitude on the part of the enemy, the composition of the Commission and the proceedings should no doubt be somewhat different; indeed, it would then be a case for a regular judicial inquiry.

In this case, the Court should first appoint a judge (as regards the lists that might serve as a basis for the
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choice and the principles of selection, see above), who would be *ex officio* Chairman of the Commission. The Court should moreover select, on the aforesaid lists, two military and two medical experts; but in the hypothesis now being considered, persons who only have their habitual residence in the territory of one of the parties concerned should be excluded; likewise the nationals of those countries and the persons who are, or have been, in their employ. A delegate of the International Red Cross Committee would be added to the Commission in the capacity of expert. The Commission would then make a thorough inquiry, in conditions it would itself determine subject to the supervision of the Court, but which could not, under any circumstances, include any hearing of the parties. Should the country accused of a breach answer the complaint, this answer would of course be submitted to the Commission. If — as will almost invariably be the case — the answer contains counter-accusations, the investigation of the two series of complaints can be usefully combined.

9. The report shall be submitted to the Court, and the latter shall, on receipt, institute summary proceedings in conformity with the provisions of the Regulations. In this case also, the finding will determine whether or no breaches have actually occurred.

10. In either of the hypotheses considered above, the findings shall remain strictly within the limits of Art. 36, par. 2, litt. c) of the Statute of the Court; that is to say, they would not even express a considered opinion as to the question of responsibility (which would, however, in the hypothesis considered by this provision, be answered by implication), — still less, therefore, regarding the question of reparations or sanctions. This, of course, would only hold good in the absence of any agreement to the contrary
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between the parties — which agreement might be in the form of a (tacit) compromise arrived at during the proceedings.

It is useful to stress once more the distinction between national and international sanctions. What has just been said refers only to the latter. There is nothing to prevent the retention, in the revised Convention, of the rule comprised in the existing Article 30, whereby the parties undertake, in their national domain, to put an end to a duly established violation and "to repress it".

11. The third possible hypothesis (cf. Nos. 6 and 8 above) is that of a general enquiry into all the alleged infractions against the laws of war, even other than the supposed violations of the Geneva Convention. It was an enquiry of this sort that the Italian Government desired to entrust to the International Red Cross Committee, in the conditions described above.

This hypothesis of course exceeds the limits outlined by Article 30 of the Convention of 1929, and it does not appear useful to contemplate provisions which would replace that Article. Yet there is nothing to prevent both parties, with the consent of the Court and entirely outside the revised Convention, from extending the powers of the Commissions and the scope of the procedure outlined above, so as to include all infractions of the laws of warfare. But this should be the outcome of a special bilateral agreement, which might be concluded between the parties.

12. There are still two points which it may be desirable to touch upon: the question of the participation in the investigation of the parties themselves and of the other signatories; and the question of costs.

On the first point, I can see nothing to add to the regulations proposed by the competent Committee of the Disarmament Conference; I suggest reference to them (Docu-
ments of the Conference, page 465, litt. d and e; page 732, Nos. 3, 5, 7). However, mention might perhaps be made expressly of the grant to the Commissioners of privileges and immunities corresponding in extent to diplomatic immunities.

13. On the second point, a distinction should be drawn between the costs of the investigation proper, and the Court fees. There is, of course, no need to discuss the latter, since they are governed by the Statute. As to the former, a very simple provision could be introduced: if the complaint turns out to be groundless, the complainant shall bear the costs of the enquiry; in the contrary case, they shall be charged to the opposing party. In the event of the Court's finding that, while the complainant had serious reasons for his accusation, the violation did not occur, it might have the power to divide the costs. In any case, the Court should be in a position to advance the necessary funds, in order to avoid all delay.

14. As regards the wording, it would appear preferable to insert in the text of the revised Convention itself a provision of principle expressing the idea

(1) of an impartial inquiry to be instituted, on the complaint of one of the parties concerned (avoiding the word "belligerent"), under the auspices of a permanent international organisation;

(2) of the obligation of stopping and repressing (in the national domain) a duly established violation;

(3) of determining in an annexed regulation the methods of procedure of the inquiry.

This regulation would have the same force and value as the text of the Convention itself — of which it would form part — between signatories who have not specifically agreed to replace it by other stipulations, which would
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be applicable to them in lieu of the proposed regulation.

This adaptable method would in particular enable those States who perhaps might not, in so far as they are themselves concerned, care to assign to the Permanent Court of International Justice the role allotted to it in accordance with the above suggestions, to centralise the procedure in the hands of some other central organisation. If it be desired, however, to avoid reverting to the vague, incomplete and in reality inapplicable regime of Article 30 of the Geneva Convention of 1929, a compulsory system, sufficiently worked out in all its details, must be established as an auxiliary measure.

15. The advantages to be derived from making the Permanent Court of International Justice the pivot of this system are many.

(1) The Court is a permanent international organisation, placed at the disposal of all the States in the world without any exception, and on an absolutely equal footing; furthermore, the number of its active adherents exceeds that of the Members of the League of Nations;

(2) The utilisation of the Permanent Court of International Justice makes it possible to centralise in the same hands, firstly, the legal and strictly non-political decision as to alleged infractions and, secondly, the organisation of the judicial inquiry into the facts relating to the said allegations.

(3) This utilisation provides an immediate answer to certain questions, among others, raised by the competent Committee of the Disarmament Conference (Documents of the Conference, page 465, litt. f) and tending to ascertain:

(i) "what is, at the seat of the Permanent (Disarmament) Commission, the authority qualified in the name of the said Commission to receive the complaint," etc.;
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(ii) "what parts should the complaining State and the accused State play in the debates of the Commission";

(iii) "what will be that part in the issuing of the declaration" (as to whether there has been a violation or not)?

All these questions — as well as many others, such as that of public proceedings — are automatically answered in the Statute or the Regulations of the Court.

(4) As has been seen, this utilisation would very largely simplify the settling of the question of costs; these would moreover be greatly reduced, as the procedure before the Court and its various interventions do not involve other costs to the parties than counsel’s fees and other similar expenses, the importance of which depends ultimately on the parties themselves.

 Needless to say, the foregoing represents purely personal ideas, for which the author is solely responsible.

Proposed revised Article of the Geneva Convention
drafted by the International Red Cross Committee
according to M. A. Hammarskjöld's consultation.

Article 30

A violation of the Convention having been alleged, an impartial inquiry shall be undertaken, on the complaint of one of the parties concerned, and under the auspices of a permanent international organisation.

The violation having been duly established, the parties concerned undertake to put an end to and repress it as promptly as possible.

The methods of the inquiry shall be governed by the Regulations attached to the present Convention. The provisions of the said Regulations shall be binding on the Contracting Parties who have not specifically agreed to replace them by other stipulations applicable as between them in lieu of the said Regulations.
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**Proposed Regulations annexed to the Geneva Convention.**

1. The party alleging a violation of the Convention shall forward a formal and substantiated complaint to the International Red Cross Committee. If the latter does not consider it *prima facie* impossible that the facts alleged should affect the Convention, it shall transmit the complaint, firstly, to the opposing party, and secondly, to the competent Court.

2. The Court referred to in the preceding Article shall be constituted by the three senior judges of the Chamber of Summary Procedure of the Permanent Court of International Justice, in the order of priority laid down by its Regulations, to the exclusion of the nationals of the parties concerned.

3. Immediately on receipt of the complaint, the Court shall at once nominate a Commission of inquiry whose members shall be selected:

   (a) from the list of candidates for election as Judges of the Permanent Court of International Justice (eventually from that of the Members and Associates of the Institute of International Law);

   (b) from a list of military experts;

   (c) from a list of medical men.

   The lists referred to under (b) and (c) shall be kept up to date by the Recorder of the Permanent Court of International Justice, and shall be drawn up beforehand, each signatory presenting within a period of . . . . . . after the coming into force of the present Convention, the names of 2 (1) nationals and 2 (1) foreigners, with their addresses and special qualifications.

4. When the complaint alleges persistent violation of the Convention, the Commission shall be constituted by a military expert and a medical man, excluding persons of the nationality of the parties concerned or who have been in their service, and of a delegate of the International Red Cross Committee. The Court may add experts as assessors to the Commission.

5. Pending the arrival on the spot of the Commission, the Court may request the doyen of the Diplomatic Corps to carry out preliminary investigations, through the agency of the Government he represents.

6. The result of the inquiries of the Commission or, should occasion arise, the results of the provisional investigations, shall be transmitted to the Court, sitting in this case as a Chamber of
A. Hammarskjöld.

Summary Procedure in its normal composition according to the Statute and Regulations. If the Chamber is *prima facie* of opinion that misuse seems to have occurred, it may order provisional cessation, in the form of the indication, according to Article 41 of the Statute, of temporary measures of protection, with which the signatories undertake to comply.

7. Immediately after receipt of the final report of the Commission, the Chamber shall open summary proceedings in conformity with the Regulations of the Permanent Court of International Justice.

8. When the complaint relates to facts having occurred in the past, the Commission shall be constituted by a judge, acting as chairman, two military experts and two medical men, excluding nationals of the parties, and persons who have been in their employ or whose residence is in their territory. A delegate of the International Red Cross Committee shall be attached to the Commission in the capacity of expert.

9. The Commission shall make an exhaustive investigation, in the conditions it shall itself determine, under the supervision of the Court; but such investigation cannot in any case comprise any hearing of the parties. However, if the complaint has given rise to a reply, the latter shall also be communicated to the Commission. If the complaint has given rise to counter-accusations, the Court may jointly investigate both series of complaints.

10. After receipt of the report of the Commission, the Chamber shall open summary proceedings, in conformity with the regulations of the Permanent Court of International Justice.

11. Subject to agreements which may be concluded between the parties concerned, the award of the Court, whether following on the procedure according to par. 7, or to par. 10 of the present Regulations, shall be limited to determining whether or no an infraction has been committed, within the limits of Article 36, paragraph 2 c) of the Statute of the Permanent Court of International Justice.

12. If it is decided that the complaint is unfounded, the costs of the inquiry shall be charged to the complainant; otherwise, they shall be borne by the opposing party.

If the Court, while considering that the complainant had serious reasons for taking action, should decide that no violation has been committed, it is at liberty to divide the costs between the parties.
2. — Remarks by Herr Dietrich Schindler, professor of Law at Zurich University

The question of the procedure to be adopted in case of violation of the Convention was discussed at length by the 1929 Conference. None of the propositions in view of establishing precise regulations were approved by all the States. It was therefore decided merely to introduce an Article, stipulating the obligation of opening an inquiry at the request of a belligerent, but which leaves it to the parties concerned to determine the form of procedure of the said inquiry.

Amendment of Article 30 should bear on the investigation procedure. What is most important is to find means of ascertaining as rapidly as possible — and with impartiality — the accuracy of the facts alleged by one of the parties concerned, and held by it to be a violation of the Convention.

It would be desirable to institute a jurisdiction, whose duty it would be to settle the conflicts arising from such violation. The creation of this jurisdiction would make it possible both to establish the facts and to decide on matters of law. It does not seem very probable, however, that a relevant clause could be inserted in the Convention. In order to ensure the application of the Convention, it is perhaps more important to institute a rapid investigation procedure than a jurisdiction. The purpose of this paper deals solely with the procedure intended to establish the infractions to the Convention. The States desirous of establishing a jurisdiction will have ready access to the Permanent Court of International Justice.

It might be possible to entrust the investigation to one of the permanent Commissions, appointed by application of the investigation or conciliation treaties. In case of war, a treaty of this kind should of course be considered
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as suspended or void; it could not, therefore, be applied as it stands. Moreover, the task of an enquiry commission would not be the same as that of most of the present permanent commissions. But this does not prevent the parties having recourse, for this investigation, to the services of the persons nominated by them as members of the Permanent Commission instituted between them. However, all these persons could not conduct the investigation in a proper fashion. The nationals of belligerent countries who are members of the Commission cannot enter enemy territory; only the members nominated jointly could undertake enquiries in both belligerent States. Even these investigators may belong to belligerent nations, in cases where war embraces more than two States, so that the Commission might be unable to provide the required services. The insertion into the Geneva Convention of a clause whereby the belligerents, in the case of enquiries dealing with violations of the Convention, shall leave the matter in the hands of one of the existing Permanent Commissions, is therefore excluded. It is only in certain cases — for which rules cannot be laid down in advance — that the appeal to an existing Commission can serve a useful purpose.

A solution seems possible, however: that appointment of an Commission of Enquiry by both belligerents at the outbreak of hostilities. But the previous constitution of a commission implies that violations are anticipated, and this, from a psychological point of view, is perhaps not very happy. Moreover, it may be difficult to reach an agreement between belligerents regarding the composition of such an organ. Lastly, there is a further objection: if there are several belligerents, a great number of Commissions would have to be set up, most of which would probably serve no purpose. Consequently, the express obligation on States of appointing enquiry commissions

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from the very outbreak of hostilities does not appear to be a practical solution of the problem. But there is nothing to prevent the Geneva Convention allowing the belligerents to institute such commissions between themselves. Besides, the present wording of Article 30 in no way opposes this course.

In order to amend Article 30, it would be necessary to institute a procedure allowing the rapid formation of a commission of inquiry at the request of one of the belligerents. For this purpose, it seems indispensable, to my mind, to ensure the cooperation of a neutral instance, independent of the belligerents. But which is it to be?

In this connexion, it may be remembered that in its session of 1913, the Interparliamentary Union voted the following resolution: "Considering that numerous infractions of the Hague Convention of October 18, 1907, concerning the laws and customs of war have been reported by both parties..., considering that it must be to the interest of a belligerent that such allegations should be examined by an impartial organ and at the proper moment; considering the importance of creating effective sanctions for possible violations of the law, the Eighteenth Interparliamentary Conference expresses the hope that these matters may be placed on the agenda of the next Peace Conference".

In view of the Interparliamentary Conference which would have been held in Stockholm in 1914 if the world war had not broken out, the following resolution had been drafted by the Russian group:

"1. That, in case of war between the signatory Powers... the Administrative Council of the Hague Permanent Arbitration Court be commissioned to appoint international supervision and investigation Commissions attached to the belligerents.

2. That these Commissions shall include members selected by the Council among the nationals of neutral States, enjoying the
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highest personal reputation and of known competence in questions of international war legislation, three at least being appointed on each Commission . . . \(^1\) "

The idea of having the investigation commissions appointed by an international authority seems to be a good one. On the other hand, the appointment of an international commission attached to each belligerent State does not seem to be always possible; States might be inclined to consider this permanent supervision as a mark of distrust. This difficulty might perhaps not arise if the commission of control were composed, for instance, of the diplomatic representatives of neutral States accredited to the belligerent. This "commission" would not be nominated by an international authority, but would be self-appointed. Obviously, the diplomatic representatives as a body, that is to say the Diplomatic Corps, could not carry out investigations itself. But it might, at the outbreak of hostilities, appoint a commission, composed of nationals of neutral countries preferably chosen among the personnel of the Diplomatic Service, which would open the inquiry as soon as a complaint was made against a State. Such complaints would be laid before the Diplomatic Corps through the protecting Power. Commissions of this kind offer the advantage that they can come into operation very rapidly. It is not quite so certain that they offer all the desired guarantees of impartiality. Besides, it is not only a question of making an investigation against the incriminated State, but also one of examining if the claims of the complaining State are justified. For this purpose, the said commissions cannot function, unless it is agreed to grant the commission constituted in

\(^1\) Efremoff, Recueil des cours de l'Académie de droit international, 1927, III, pages 22-23.

It should be added that the Carnegie Endowment for International Peace had sent an investigation commission to the seat of the Balkan war. Efremoff, loc. cit.
the opposing State the right to make a preliminary examination of any complaint. A system of this kind was proposed to the Disarmament Conference, but it is doubtful whether it could function without the existence of a central organisation (this organisation would have been the Permanent Disarmament Commission). Could the International Red Cross Committee be this central organisation? This question should be left to the Committee itself to answer.

Upon the whole, a Commission constituted between two or more States seems preferable to Commissions each attached to one State. However, the nomination of such a Commission cannot be left to the belligerents. It is therefore essential to find an international authority which would be in a position, either to appoint these Commissions, or to carry out the investigations itself.

The Board of management of the Permanent Arbitration Court would not appear to be the suitable organisation for this task. The Permanent Court of International Justice might certainly make enquiries or appoint commissions; nevertheless, it is hardly likely that all the States signatory to the Geneva Convention would be willing to recognise its competence in this matter. Moreover, if the seat of war is in another continent, the enquiry instituted by the Court would be liable to be undertaken too late.

The Council of the League of Nations cannot fill this office. Owing to the task assigned to it in pursuance of the Covenant of the League of Nations (Article 16), it might not always possess the impartiality which is indispensable.

The most suitable international instance for accomplishing this task is the International Red Cross Committee. It can make investigations itself or appoint commissions of competent persons. Its entire impartiality and its acquaintance with the subject mark it out espe-
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cially for this function. If both States appeal to the Committee, it can appoint a commission without in any way endangering its neutrality.

It would be difficult, however, to incorporate in an universal Convention the obligation of having investigation commissions appointed by the International Red Cross Committee. The difficulty just mentioned again arises here: in case of war between two distant countries, it would probably be difficult for the Committee to nominate commissions able to carry out an investigation rapidly. A commission of persons resident in Europe would arrive too late. Thus, in connection with the Chinese-Japanese conflict, the appointment of an enquiry commission was decided by the League of Nations on December 10, 1931; but this commission — the Lytton Commission — reached Japan only on February 29, 1932. Another commission, constituted in Shanghai by the official representatives of the Council of the League of Nations was in a position to supply its first reports at the end of a few days. Consequently, the Geneva Convention should provide for another procedure for the appointment of commissions of inquiry. In such new procedure, an important part would be entrusted to the only instances which can still taken into account: the protecting Powers.

The Convention regarding the treatment of prisoners of war attributes an important function to the protecting Powers in the “organisation of the control” of the application of the Convention. These provisions could not be applied, as they stand, to the investigations opened in the case of alleged violations of the Geneva Convention. These investigations, contrary to those provided for the control of prisoners of war camps, should take place but rarely, but should then act very rapidly. In either case the protecting Powers are destined to fill an important function. It seems to me that the desirable procedure
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would be the following. In the case of a violation of the Geneva Convention, the injured party would apply to the protecting Power which, after a summary examination, would communicate the complaint to the opposing party. If it should be a question of clearing up questions of fact the protecting Power, in agreement with the accused Power, will appoint an investigation commission composed wholly of nationals of neutral countries. It is indeed important that the commission should be composed of persons who are at liberty to visit either of the belligerent countries indifferently, since the investigation will frequently have to be made on both sides.

It may be objected to this system that it may lead to the forming of two investigation commissions, one constituted at the request of State A alleging a violation by State B, and another constituted at the request of State B accusing State A of an infraction. In my opinion, the co-existence of these two commissions involves no drawback. As a matter of fact, it would be difficult for a single commission to carry out simultaneous investigations relating to several infractions. The existence of two commissions would considerably facilitate investigations. Besides, it is not impossible that the two commissions might include the same members; and in that case, the two protecting Powers (if there are two), or the commissions themselves, would see to the investigations being co-ordinated, if necessity arises.

It might be useful to provide expressly for the case of the violation of the Convention by a belligerent at the expense of a neutral (e.g. the bombardment of a neutral ambulance). The neutral State should be entitled to ask for the opening of an investigation on the same conditions as the protecting Power, unless in the particular case the latter has already requested it. The States concerned should undertake to grant the same facilities to an
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investigation commission appointed at the request of a neutral as they would to the commission appointed at the request of a belligerent. If a conciliation and arbitration treaty exists between the neutral and the belligerent, the choice between the procedure stipulated by the said treaty and the procedure prescribed by the new Article 30 of the Geneva Convention, should be left to the neutral. As a rule, the procedure provided for by the Geneva Convention will be the more rapid, but there may arise situations when the application of the conciliation and arbitration treaty may be more efficacious. In any case, the procedure instituted by the Geneva Convention could not subsequently exclude another procedure provided for by a treaty.

To complete the system suggested here, means would have to be provided to forestall difficulties arising from a misunderstanding between the protecting Power and the belligerent regarding the composition of the commission. The Convention might provide that if the members of the commission are not appointed within five days following the handing in of the application, the protecting Power shall apply to the International Red Cross Committee (or to the Diplomatic Corps accredited to the State accused of violating the Convention) which will decide finally. The appeal to the International Red Cross Committee should also be provided for in the case where no protecting Power exists; the State alleging injury would then apply directly to the International Red Cross Committee. As to the details of procedure, the clauses of the treaties of conciliation, particularly Chapter I of the "General Act" of 1928, furnish useful data. It seems, moreover, superfluous to settle such details before a decision has been made regarding the constitution of an organisation entrusted with investigations.
Draft of a new Article 30 of the 1929 Geneva Convention, proposed by Professor D. Schindler

**Article 30**

1. At the request of a belligerent, an enquiry shall be instituted regarding any alleged violation of the Convention. As soon as the violation has been established, the belligerents shall put an end to it as soon as possible.

2. The enquiry shall be entrusted to a Commission composed of three (or five) members chosen among the nationals of neutral countries. The Commission shall be appointed by the protecting Power of the State alleging the violation, in agreement with the State incriminated.

3. If this agreement is not arrived at within a period of five days, commencing from the date of application for an enquiry, the International Red Cross Committee shall itself appoint the Commission, at the request of the protecting Power of the State alleging a violation.

4. The International Red Cross Committee shall likewise appoint the Commission at the request of the State alleging violation, in the event of there being no protecting Power.

5. The protecting Powers may propose the appointment of Commissions to the belligerents immediately on the outbreak of hostilities.

6. In the absence of any agreement to the contrary, the procedure adopted for the investigation shall be that provided in Chapter III of the Hague Convention of October 18, 1907, for the peaceable settlement of international conflicts (Articles 18 to 36).

**Article 30 B.**

1. A neutral Power may demand that an investigation be made regarding a violation of the Convention committed against it.

2. The investigation commission shall be appointed by mutual agreement between the parties among the nationals of third Powers. Failing an agreement within five days dating from the application, it shall be appointed, at the request of the neutral State, by the International Red Cross Committee.

3. The provisions of other treaties, particularly as regards arbitration, remain in force for those States which are parties to them.
3. — Proposals of the Netherlands Red Cross

A) Draft Article 30

(1) At the request of one of the belligerent Powers, an enquiry shall be instituted regarding any alleged violation of the Convention.

(2) The same right is enjoyed by a neutral Power, the recognized Society of which gives the belligerent Powers the assistance provided for by Article 11 of the Convention, if the alleged violation concerns it.

(3) The enquiry shall be entrusted to a commission of three members.

On the outbreak of hostilities, at least one commission shall be constituted for each conflict.

For this purpose, each belligerent Power shall apply to one of the neutral recognized Societies with a view to appointing one member, eventually on each of the said commissions. The third, who occupies the chair *ex officio*, is appointed by the two Societies. In case of disagreement between the said Societies, the International Red Cross Committee, at the request of the most active belligerent, shall make this appointment.

(4) On receipt of an appeal, the Commission of enquiry shall proceed to the spot and immediately start an official investigation; it may take evidence of witnesses and experts.

(5) The Commission shall hand its report to the Powers concerned within the shortest possible time. The latter shall act upon it as they deem fit.

(6) The belligerent Powers shall divide the costs of the investigation.

(7) Once the violation has been duly established, the belligerents shall put an end to it and repress it as promptly as possible.
B) COMMENTS BY F. DONKER-CURTIIUS, 
SECRETARY-GENERAL OF THE NETHERLANDS RED CROSS

General Remarks

It appears useful to specify, in the first place, that Article 30 regulates, and must solely regulate, a question of preliminary enquiry: that of a means of proving the facts of the case. The object is to ascertain whether the facts constitute, or do not constitute a violation of the Convention, the appreciation in law being then reserved.

As a matter of fact, the Convention has a precise and well-defined scope, that of bettering the condition of the wounded and sick of forces in the field. Overstepping the boundaries of the laws of war and of neutrality, its interests are both military and humanitarian, and it forms a sort of compromise between idealism — which is uncompromising by nature — and utilitarianism — which is opportunist by definition.

Its rules are, in fact, governed by a special technique, belonging successively and even simultaneously to tactical and medical science, so that its equivalent would be vainly sought in any other province of the law of nations.

Hence the strength and the weakness of this Convention, its supranational efficiency, its wise submission to the national interests which it means to serve, but which it means also to exploit for wider purposes. Balance, therefore, is the stamp of its practical rules, and the strict regulations which are in a way its corollary, must be founded on the same regard for measure and prudence.

Hence the necessity of drawing a distinction between the two phases of formal jurisprudence: the enquiry into facts, and the legal appreciation of such facts.

These phases are no doubt closely connected and almost blended, like the relation of cause to effect in private law. Since these standards are subordinate in nature to a superior
public authority, this connection can only be advantageous. But it is advisable to act with great caution in transposing the rules of private law to the realm of public law — which is essentially different, since there “the superior public authority” is absent. Discrimination between the establishing of facts and their legal appreciation is therefore necessary, if only because, in matters of public law, it is sometimes very difficult to draw the line between the legal and the political points of view. In other words, the opinion has been held that it is of prime importance that an investigating organ should deal exclusively with enquiry into facts.

An endeavour has therefore been made to regulate appeals for an enquiry as opposed, for instance, to those alluded to in Chapter II of the Hague Convention of 1907 on compulsory arbitration, which is free from any juridical element. Such a method is called for especially as, firstly, it does not seem that all the experiments made with the juridical type of inquiry commission have been successful, and secondly, in presence of Article 32, 2 (c) of the Statute of the Permanent Court of International Justice, it is not certain that the testing of a factual investigation commission with a juridical function would, at the present time and even from the point of view of positive law, be particularly desirable.

Regarded in this way, the inquiry does not prejudge the main issue. It may be that the conflict raised by certain facts duly established by the investigation, might lend itself more readily to another solution, e.g. negotiations, rather than to a juridical decision. In this respect, the liberty of the parties after the investigation remains complete. Besides, there is nothing to prevent the parties vesting the commission with arbitral powers.

These considerations imply practical advantages whose importance can hardly be exaggerated.
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The value of the inquiry will be in direct proportion to its rapidity. Since the establishing of a fact is a matter of practical execution, it tends more to celerity than juridical appreciation which, founded on deliberation, is liable to waste time.

Three conclusions may be drawn from the foregoing: the inquiry should be a preliminary investigation; it should be conducted with the greatest celerity possible, and under conditions of entire impartiality and authority.

Re Paragraphs 1 and 2

In the case of an alleged violation, an enquiry is instituted. Appeal is not a matter of right. It must be formulated by one of the belligerent parties, or by the neutral State whose recognized Society is giving one of the belligerent parties the aid provided for in Article 11 of the Convention, if the alleged violation concerns it. This neutral Power, without being a party to the conflict, is interested in it, as laid down and specified by the Convention. It follows that the said aid must comply with the conditions set out in this clause. Appeal can only be made if, in this hypothesis, it is not a matter of technical assistance according to Article 11, but an aid in the shape of funds, equipment, or even of personnel to a recognized belligerent Society.

The right to appoint the commission belongs only to the belligerent Powers, not to the neutral Powers referred to in paragraph 1. At the time when the commissions are to be formed, it is not yet known whether recognized neutral Societies will give the help mentioned in Article 11 to one of the belligerent Powers. However, the part played by this aid is naturally a secondary consideration. Therefore the belligerent Powers should be credited with

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1 See page 104.
F. Donker-Curtius.

a sincere desire to constitute these commissions, in conformity with their treaty engagements and under the best conditions possible. Should they fail in this respect, neutral Societies would act accordingly.

Re Paragraph 3

The inquiry shall be carried out by a commission of three members. If there are fewer, there is no commission, but only commissioners; if there are more than three, the work of the commission is hampered and delayed.

The commission is appointed on the outbreak of hostilities. There shall be as many commissions as there are conflicts. Therefore, if powers A, B and C, for instance, are at war with powers D and E, six commissions must be constituted. The need for celerity requires that the negotiations shall be prior to any hostile action. Moreover, the mere appointment of a commission would certainly already have a deterrent influence.

As to the question of its composition, the proposers consider it desirable to keep it free from all political influence. With this object in view, application is made to organisations which are as “non-political” as possible. However laudable the intentions of the “protecting Powers”, which have been suggested, it is obvious that these Powers already have their role and duties in the conflict. The Permanent Court of International Justice might be requested to adjudicate on the violation as regards the main issue. Is it opportune under these conditions, to make it participate, indirectly no doubt, but practically, in the preliminary enquiry into the facts?

By a process of elimination we are thus led to turn to the Red Cross Societies: each belligerent Power shall apply to one of the recognized Societies with a view to nominating one member.
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It seems necessary to grant these Societies very great freedom; they may choose either one of their own nationals, or some other neutral. It has not been considered necessary to forbid specifically the choice of a belligerent subject, for such an appointment would be essentially contrary to the most elementary principles of international collaboration.

Lastly, the two Societies concerned would agree to appoint the third member, who will be *ex officio* chairman. In case of disagreement, this appointment shall be made, at the request of the more active party, by the International Committee. This institution will therefore receive, in a way, functions somewhat similar to those of a referee between the Societies, and opinion is in favour of such an appointment within the "Red Cross circle".

*Re Paragraph 4*

On receipt of a demand for an enquiry, the commission shall proceed to the spot and "at once" establish the necessary facts. Its role in establishing facts is thus made patent; this course can only be taken on the spot, and must be pursued within the shortest possible time. The commission may — and almost invariably will — take evidence. It may seek enlightenment from experts; it will thus obtain the full benefit of their knowledge without the disadvantages inherent in their belonging to the commission. In conformity with the fundamental principles of the plan every endeavour has been made to remove every juridical aspect from the investigation of facts: there is no debate, hence no cross-examination; there are no agents, no counsel, but only three competent and impartial men examining facts and recording the data they have collected.

If, for instance, the commission deems it useful to confront witnesses it will obviously not fail to order it.
Except as regards the points mentioned above, which are the essence of every preliminary enquiry, it is entirely free to regulate the progress of the inquiry; this will moreover be governed by the circumstances of each case.

Re Paragraph 5

Always by virtue of the same principle, that the Commission shall limit itself to establishing facts, it has been concluded that the Powers concerned shall decide by mutual agreement (see, however, Art. 38, 2 (c), of the Statute of the Court) as to the report of the Commission will be dealt with: whether the case shall be dismissed, or damages allowed, or whether a judicial ruling shall be given on the questions of law to which it may give rise.

Re Paragraph 6

As the commissions are not called upon to decide between the parties, it appears that no award of costs is possible; these must therefore be borne equally by the parties.

Re Paragraph 7

This paragraph is merely a reproduction of the last paragraph of the existing Article 30 and, for this reason, calls for no comment.
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4. — Proposal made by Monsieur C. Gorgé, Counsellor of Legation, Chief of Division, Swiss Political Department

A) Draft Article 30

1. In the event of an alleged violation of any of the stipulations of the present Convention, each of the High Contracting Parties shall have the right to request the International Red Cross Committee to open an enquiry.

2. The enquiry shall be entrusted to a Commission of five members, which shall be constituted as follows:

   (a) The adverse Parties shall each appoint a Commissioner among the nationals of neutral Powers, selected from a list kept up to date by the International Red Cross Committee and composed of three nominations—a lawyer, a military expert, and a medical man—by each of the High Contracting Parties;

   (b) The International Red Cross Committee shall select the other three members, namely a lawyer, a military expert and a medical man, from the above list; it shall, at the same time, appoint the chairman of the Commission.

3. Should the alleged violation involve several High Contracting Parties, and should these not decide to take joint action, each of them shall appoint a Commissioner, as stated in paragraph 2. In this case, the number of Commissioners to be appointed by the International Red Cross Committee shall always exceed by one that of the Commissioners appointed by the Parties.

4. If, within a period of five days—ten days in the hypothesis considered in the preceding paragraph—dating from the demand for an enquiry, one of the Parties has failed to appoint the Commissioner it has the right to
C. Gorgé.

nominate freely, the International Red Cross Committee shall itself make the said appointment.

5. In case of the decease, resignation or inability to attend of any Commissioner, he shall be replaced in the manner fixed for his appointment.

6. The Commission shall meet in the place appointed by its chairman. The International Red Cross Committee shall give it assistance for the work of its secretariat.

7. In the absence of any majority decision to the contrary, the Commission shall, for its procedure, conform mutatis mutandis to the provisions of Chapter III of the Hague Convention of October 18, 1907, for the peaceful settlement of international disputes.

8. The duty of the Commission shall be to ascertain if the alleged violation has actually been committed. Its report shall be forwarded to the International Red Cross Committee, which shall at once communicate it to the Parties. Should occasion arise, the report shall contain recommendations to the Parties with a view to ensuring the observation of the provisions of the present Convention.

9. Should the existence of any violation be duly established, the belligerents shall put an end to it without loss of time and, if need be, repress it as soon as possible.

10. The costs of the Commission shall be divided equally between the Parties. The International Red Cross Committee shall establish such costs.

B) Commentary

1. In regard to establishing violations of the Geneva Convention, it is not sufficient that Article 30 should
lay down a general principle. It is of the utmost importance that this Article should outline as complete a procedure as possible for the establishment of the facts.

2. To be efficacious, the procedure should, in particular, fulfil the two following conditions:

(a) it must be speedy;
(b) its working must be more or less automatic, excluding any possibility of delay or obstruction.

3. The procedure might be entrusted to an investigation commission nominated for each particular case.

The previous appointment of a commission (immediately the Convention comes into force, or on the outbreak of hostilities) would no doubt offer certain advantages, but these would, in our opinion, not be sufficient to balance the following disadvantages:

(a) The fact of appointing an Commission of enquiry before any breach has been committed would cast unwelcome suspicion on the good faith of the belligerents and on their wish to observe the Convention.

(b) Previous appointment might quite easily, in the atmosphere peculiar to war, lead one of the belligerents to set in movement, without serious reasons, a mechanism which is ready to function and thus inconsiderately accuse the adverse party of having violated the Convention.

(c) In the case of a more or less general war, the States accused of the same violation may be more or less numerous; the composition of the investigation organisation may therefore depend on circumstances it is impossible to foresee when the Convention comes into force or on the outbreak of hostilities.

(d) The alleged violations may be of a somewhat varied kind; it would thus be extremely useful to take into account such diversity in nominating the Commission when occasion arises.
(e) The system of nominating a Commission at the outbreak of hostilities would necessarily lead, in the case of a war between several States, to the creation of a number of commissions of enquiry. If war breaks out between States A, B, C, and D, on the one hand, and States E, F, and G, on the other, it would be necessary to set up no less than twelve enquiry commissions; and these twelve commissions would have to be active simultaneously, even though there might be but a single breach to deal with. The size of this investigation machinery would be excessive, and would no doubt lead to serious complications in actual practice.

4. The automatic functioning of the investigation procedure should be ensured by recourse to a *Permanent Central Organisation*. This organisation should not only offer unquestionable guarantees of impartiality, but should also enjoy the entire confidence of the belligerents at all times.

5. With this object in view it has been suggested that recourse should be had to the Chamber of Summary Procedure of the Permanent Court of International Justice.

This solution appears to have at least three disadvantages:

(a) The parties to the Geneva Convention have not all recognized the Statute of the Court of the Hague, and it is possible that certain States may prefer not to appeal to an international organisation whose jurisdiction they have not recognized up to the present;

(b) There is no possibility of knowing what the composition of the Chamber of Summary Procedure will be at any given moment. The persons constituting it at the time when it might be necessary to open an enquiry might be nationals of belligerent countries, or in sympathy with the
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belligerent against whom the complaint is made. The latter would be justified, in such a case, to question the impartiality of the Chamber and to refuse forthwith to accept its decisions. The opposite case may likewise occur. A belligerent who has cause to complain of a breach of the Convention might find himself precluded from setting the procedure in motion because, at a given moment, the composition of the Chamber of Summary Procedure did not inspire him with the full confidence which is necessary. Nationality in such cases may be, nolens volens, of paramount importance.

In both of the hypotheses considered it may prove imperative to recast completely the composition of the Chamber of Summary Procedure. The Plenary Court should meet for this purpose, and it may even happen that one of the States concerned not being represented by a judge of the Court, whereas its opponent is thus represented, may demand to take part in the elections. This might lead perhaps to inextricable complications and certainly to waste of time, which would amount to paralysing the investigation.

6. To provide against these serious drawbacks, we have thought it would be best to entrust the duty of organising the enquiry to the International Red Cross Committee. The latter enjoys, and would no doubt still enjoy, general confidence in time of war. The nationality of its members would no longer play a decisive part, since it is that of a traditionally neutral country, which is firmly resolved to remain so.

The fear has been expressed that a mandate of this sort conferred on the International Red Cross Committee might be likely to jeopardise the neutrality it is resolved, and properly so, to maintain at all times. This apprehension strikes us as exaggerated. There would never be a question
of the Committee's being called upon to express an opinion on the main issue of the dispute, but only of lending its good offices for the nomination of a commission. Even so, it would only lend them, as we shall see further on, under conditions calculated to reduce its responsibilities as regards the choice it would have to make.

A mandate of this kind seems to us quite compatible with the Committee's own statutes, which define the following aims, among others:

(a) To uphold the fundamental and uniform principles of the Red Cross institution;

(b) To act as a neutral intermediary whose intervention is recognized as being necessary, especially in case of war, civil war or interior difficulties;

(c) To assume the functions entrusted to it by international conventions.

7. It has also been proposed to have recourse, for the constitution of the enquiry commission, to the protecting Powers, or to the national Red Cross Societies. We think proper, in this respect, to express certain objections:

(a) As regards the protecting Powers, it may be queried — and the same query arises in connection with recourse to the Permanent Court of International Justice — whether it would be opportune to appeal expressly, with a view to the application of Article 30, to organisations which are nowhere referred to in the Convention. The Geneva Convention is sufficiently abundant in matter not to need the addition of this further innovation. The same objection was raised, moreover, at the Diplomatic Conference in 1929. On the other hand, the intervention of the protecting Powers would also imply, in the case of a war between several States, the necessity of calling in, with all the disadvantages attendant on such a system, several
commissions for the purpose of establishing a single breach of the Convention.

(b) As to the national Red Cross Societies, it is open to doubt whether the nomination of commissioners in an enquiry is quite in keeping with their traditional duties. This is an activity they may well not be in a position to exercise satisfactorily. The organisation of an international enquiry is not a humanitarian question, but an essentially juridical and political matter.

8. According to our draft Article 30, the enquiry commission would be composed of five members in the case of a war between two States; there might be more in the case of a war between several countries. The advantages of this solution appear to be more especially the following:

(a) A commission of five members at least would be consistent with the international practice most generally adopted in matters of investigation or conciliation. The very great majority of the Conventions in force for the peaceful settlement of international disputes provide for the institution of arbitration tribunals and conciliation commissions composed of five members. The two great collective Conventions in this connection, the Hague Convention for the peaceful settlement of international conflict of October 18, 1907, and the General Act for the peaceful settlement of international disputes concluded at Geneva on September 26, 1928, likewise prescribe this particular composition for investigation and conciliation commissions.

(b) With a five member commission, we avoid the drawbacks inherent to a smaller commission (three members, for instance) in which, failing agreement between two commissioners, the whole weight of responsibility falls on a single person, the chairman.
(c) The system of the five member commission makes it possible to grant the States concerned, in accordance with the practice generally adopted in cases of enquiry and conciliation, the option of appointing a commissioner having their full confidence from among the nationals of neutral countries. This gives them an additional guarantee that their point of view will be examined with all due care. An advantage of this kind is not negligible. In the system we have considered, there would be nothing to endanger the authority of the commission. For even assuming that the commissioner appointed by a belligerent might be inclined to favour somewhat the State which had given him his mandate, there would always remain a group of three commissioners (or more possibly, in the case we refer to later, of a war between more than two States) whose mandate does not derive from the belligerents and whose independence would consequently be entire.

(d) If it has appeared necessary to have recourse to five member commissions to make decisions in peace time, in connection with disputes that may after all be of secondary importance, it seems that there is all the more reason why this solution should be adopted when it is a question of establishing, in time of war, facts liable to imperil a Convention of such prime importance as the Geneva Convention.

(e) In cases where an armed conflict might involve several States and where an investigation might be called for regarding a breach of the Convention, it would seem obvious to follow a procedure similar to that provided by Article 34 of the General Act for the peaceful settlement of international disputes of September 26, 1928. Should several States be accused of a breach of the Convention, they would be entitled to act jointly and to appoint only one commissioner chosen by them. If, on the contrary, they preferred to act singly, each of them would be
entitled to appoint a commissioner. In the latter case, the commissioners not appointed by the parties concerned would be more numerous by one than the commissioners freely appointed by each opponent. The operation of this system would present no difficulty.

9. According to our system, it would fall to the International Red Cross Committee to appoint the commissioners who are to be nominated outside the parties; it would also be its duty to make further appointments if a State concerned should not avail itself of its right of nomination. For the procedure, as we have said, should be automatic in a sense; hence its operating should in no wise depend on the good will of the belligerent States.

10. The fact that the International Red Cross Committee should appoint commissioners cannot possibly be considered, as we have already said, as an abandonment of its invariable attitude of neutrality. But it might happen that, under certain circumstances, entire freedom in the appointment of the commissioners might awaken certain scruples on the part of the International Committee. In order to obviate this difficulty it would seem desirable to take pattern on the provisions of the Statute of the Permanent Court of International Justice for matters concerning labour, transit and communications (Articles 26 and 27). The choice would be made from lists of commissioners drawn up on the Convention coming into force, and composed of three nominations for each State which is a party to the Convention. In order to make it possible to constitute the Commission as rationally as possible, it would be useful if, among the three commissioners to be presented, each State should appoint a lawyer, a military expert and a medical man.

11. The advantage of such lists would be appreciable. They would give the commissioners so proposed an
authority they would probably not possess to the same degree, if they did not enjoy, by common knowledge and repute, the complete confidence of their Governments. The commissioners would obviously feel in honour bound to prove themselves worthy of the trust placed in them by their own country, which would further reinforce the spirit of absolute impartiality expected of them.

This method would, in addition, present a dual advantage which cannot be over-emphasised:

(1) A previously established list of candidates would allow of a more rapid choice than if it was still necessary, at the last moment, to start looking for commissioners satisfying the required conditions and prepared to accept the mandate offered them.

(2) Owing to the fact that a lawyer, a military expert or a medical man had consented to his name appearing on the list of possible commissioners — and that might perhaps be the most important advantage — he would tacitly accept the obligation of answering at any time the call that might be made on his services.

12. We believe that the rapidity of setting the procedure in motion would be sufficiently guaranteed by the periods suggested for the appointment of commissioners (five, possibly ten days). These could hardly be shortened.

13. The task of the commission would consist, first and foremost, in ascertaining whether the alleged violation has actually been committed.

We think, however, that it would be useful not to limit the role of the commission necessarily to merely ascertaining the facts. Similarly to what has been provided in certain treaties for the peaceful settlement of disputes (e.g. Franco-Swiss Treaty of April 6, 1925), the commission should have the right, in certain cases, to issue recommen-
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dations to the parties, in order to put an end to the violation which has been ascertained, or to prevent its repetition; in other words, to ensure in the best way possible the application of the Geneva Convention.

14. In order that nothing may hinder the progress of the enquiry and to protect it, in case of need, against all dilatory measures, we have provided in addition:

(a) that the Chairman of the commission be elected only by the International Red Cross Committee;

(b) that the commission meet at the place named by its chairman;

(c) that in the case of decease, resignation or inability to attend of one of the commissioners, he be automatically substituted;

(d) that the procedure be, mutatis mutandis, that of Chapter III of the Hague Convention for the peaceful settlement of international conflicts of October 18, 1907, subject to amendment at all times by a majority vote.

15. It has been remarked that, in certain cases, it would benefit the enquiry if it were entrusted to a smaller group, possibly to a single investigator. Our system is less adaptable, for, owing to the reasons mentioned above, we think necessary, even at the cost of some formalism, to avoid all possible causes of discussion and of consequent delays, whereas it is important to act with all celerity the moment a breach of the Convention has been reported by a State.

16. We may add that, according to our draft Article 30, the enquiry may be demanded by any State which is a party to the Convention. This may, therefore, be a belligerent or even a neutral State which may have cause to complain of a breach of the Convention committed
against it (e.g. treatment contrary to the Convention inflicted on a neutral ambulance). We have not thought fit to specify — but there is nothing to prevent this being done — that a State demanding the opening of an enquiry should have suffered damage to its own interests. We do not think that, in practice, a neutral State, moved solely by a desire to ensure the respect of the Geneva Convention with regard to third parties, would desire to make up for the inaction of the injured party by demanding the cessation or the establishment of a breach by which it has not itself been affected. This seems in fact a somewhat theoretical hypothesis.
5. — Opinion expressed by Professor Basdevant

The opinions expressed up to the present, either in writing or verbally, show an agreement that in the future a better application of Article 30 should be secured. It should no longer be left to the belligerents to arrange, when need arises, the organisation of the proposed enquiry, but it should be settled beforehand what suitable mechanism may be applied to ensure, when application is made by a contracting Party concerned, the opening and operation of the enquiry. The term “automatic” has even been used in this connection.

In order to bring out the principles according to which this mechanism must be instituted and adjusted, several points need to be considered.

Firstly, the method of nominating the Commission of enquiry.

It has been suggested that it should be appointed by the protecting Power of the State alleging the breach. It is to be feared, either that this may place the said Power in a delicate position, or that the appointments made by it may give rise to a suspicion of partiality.

It has been proposed that the said appointment be made by the Red Cross Society of a neutral State. But, in order to play their part of humanitarian assistance, neutral Societies need to possess a spirit and a reputation of impartiality which would run the risk of being compromised by this new task. Also, it might be difficult for these Societies to obtain the data which would enable them to make a judicious choice.

It is preferable to have the appointment made by a body enjoying a high international position and offering the greatest guarantees of impartiality. In this connection, one’s mind turns either to the International Red Cross
Committee or to the Permanent Court of International Justice. It would be an acceptable solution to entrust the choice to either of them. We may note, however, that the International Committee has to play a continuous part during the war; it follows all that concerns the application of the Geneva Convention. It can only fulfil its task efficiently if its reputation for impartiality is not exposed to the slightest breath of a suspicion of partiality. It is to be feared that the activities of some particular commission appointed by it may give rise to such suspicion. Even if this be unjustified, the pursuance of the Committee’s principal activities may be hampered thereby. This must be avoided, and it would therefore seem prudent not to entrust it with such a task, but to turn, in preference, to the Permanent Court of International Justice and to request its acceptance of this mandate.

This is the object attained by Monsieur Hammarskjöld’s proposal, which entrusts the appointment of the members of the commission to a special Court, composed of three members of the Chamber of Summary Procedure of the Permanent Court of International Justice. It seems impossible to find a body offering greater guarantees of impartiality. It would be the duty of this Court to appoint the Commission of inquiry, to start its working, and eventually to supervise its operation.

Should the Commission be established beforehand and permanent, or constituted in respect of each appeal?

The question must be considered from a practical angle. On the outbreak of hostilities, there is a tendency among belligerents to bombard one another with accusations, and the events to which they refer may have occurred at very different points of the field of operations. An established Commission, i.e. a single body, could not do its work under such conditions. It would seem preferable to leave it to the Court to appoint a commission for each
case, with the latitude, however, of referring several cases to the same commission every time this is practicable.

The question of the constitution of the Commission should be solved in the same spirit. As it is appointed by an impartial organisation, and not by the belligerents, it may include none but neutrals; the number of its members is left to the discretion of the Court which, according to circumstances, may appoint one, three, or five commissioners. The choice of these can either be free or made from a list prepared in advance with the help of Governments. The latter system offers advantages, particularly from the point of view of the rapidity of choice; care should however be taken to have sufficiently long lists, carefully kept up to date, so that the choice may not be narrowed in practice.

Throughout, the outstanding consideration should be the desirability of ensuring the very rapid constitution of the commission, the moment a demand arises. Nevertheless, events will outstrip the setting up of the Commission. Acting on a suggestion made by the Conference for the limitation and reduction of armaments, Monsieur Hammarskjöld very rightly proposes that the doyen of the Diplomatic Corps should cause the facts of the case to be verified with extreme urgency. A military attaché could be dispatched by him, who should be considered, not exactly as an investigator, but rather as a particularly well qualified witness.

If the belligerents do not take part in the appointment of the Commission (and this makes it possible to avoid delay or obstruction), they must lend their assistance through representatives accredited to it. These should furnish even closer assistance than that afforded by the agents attached to an international legal body. It may be admitted that they would take part in the actual debates of the Commission in an advisory capacity.
It will be the duty of the Commission to make an inquiry with a view to establishing facts and leading to a proper application of the Geneva Convention. It may be asked whether the Commission will itself furnish to the belligerent Governments the result of its activity, or whether it will submit a record of the facts established before the Court. In the second case the Court, after the enquiry has been started, would also have a part to play in its issue. That is what Monsieur Hammarskjöld proposes, and he even contemplates injunctions of the Court, and a verdict; thus, the Court would not only have to start the investigation, but also to follow it up and control it. If this system be adopted it should not, however, be pushed too far, for according to Article 30, an investigation rather than a judgment should be contemplated. Besides, it can be admitted, in accordance with the happy suggestion made by Monsieur Gorgé, that the establishment of the facts may be accompanied, if need be, by recommendations considered likely to facilitate the proper application of the Convention.

It has been said that Monsieur Hammarskjöld's proposal is complicated, and, to a certain extent, this criticism is justified. But if both its principle and its spirit are approved, it is capable of simplification. It is with this concern in mind that the foregoing considerations have been put forward; they are essentially prompted by an earnest desire to lay down simple rules which may make it possible to take into account the variety of possible circumstances, to call upon a pre-existing organisation, the competence and impartiality of which may be beyond suspicion, and to secure with all due speed the constitution of a Commission charged with the duty of making enquiries and thereby contributing to the exact application of the Geneva Convention.
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