

FINAL RECORD  
OF THE  
DIPLOMATIC CONFERENCE OF GENEVA  
OF 1949

VOL. II  
SECTION B

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# JOINT COMMITTEE

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## EXAMINATION OF THE ARTICLES COMMON TO ALL FOUR CONVENTIONS



## JOINT COMMITTEE

### FIRST MEETING

*Tuesday 26 April 1949, 10 a.m.*

*Chairman:* Mr. Maurice BOURQUIN (Belgium), Chairman of Committee II

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#### **First reading of Articles common to all four Conventions**

The CHAIRMAN said that the Plenary Assembly had drawn up the list of Articles common to all four Conventions for the consideration of the Joint Committee of Committees I, II and III, and had also indicated the method to be followed. They were instructed to begin by a preliminary examination in order to prepare the ground for a second reading. It would not be till after the second reading that the Committee would be called upon to decide on the tenor of the Articles. On the first reading it was advisable to avoid discussion on points of form, to have a quite simple and direct exchange of views, not to raise questions of form or wording, and to concentrate on the meaning and substance of the Articles.

#### **Appointment of a Rapporteur**

The CHAIRMAN proposed the appointment of a Rapporteur in the person of Colonel Du Pasquier, Rapporteur of Committee III.

This proposition was approved unanimously.

#### **Collaboration of the International Committee of the Red Cross**

The CHAIRMAN drew attention to the important rôle which the I.C.R.C. would be called upon to play as an expert in the work of the Committee. He asked Mr. Pilloud to be at the disposal of the Committee for any clarification which might be required.

#### **Agenda**

The CHAIRMAN announced that an addition to the list of common Articles adopted by the Conference had been proposed by the Netherlands Delegation, namely, the inclusion of Article 118 of the Prisoners of War Convention, corresponding to Article 129 of the Civilians Convention. The Plenary Assembly would have to take a decision on that extension of the instructions by the Committee.

#### **Postponement of consideration of Article 1**

The CHAIRMAN felt that, although it was logical to start with a discussion on Article 1, it was preferable to defer examination of that Article, since it was probable that the Committee would have to discuss it in connection with the Preamble. Up to the present only in one Convention is proposed a Preamble, namely in the Convention for the Protection of Civilians. But it had been suggested—and the suggestion had met with considerable approval—that all the Conventions should have a Preamble. But Preambles, like the prefaces of books, although placed at the beginning of the Conventions, were written after them. It would, therefore, be best to begin with the consideration of Article 2.

The Chairman's proposal was adopted.

#### **Consideration of Article 2**

The CHAIRMAN pointed out the importance of Article 2 as determining the scope of the Convention. Article 2 had a history. It had been prepared

in various stages. He felt that the discussion might begin with a statement by the Delegate of the International Committee of the Red Cross on the origin of the Article and the problems it raised.

Mr. GARDNER (United Kingdom) having suggested a general discussion on the whole of the common Articles before taking them individually, Mr. SLAVIN (Union of Soviet Socialist Republics) supported the Chairman's suggestion for a study of the Articles *seriatim*.

The CHAIRMAN pointed out that the common Articles concerned widely different questions, and it was preferable to take them Article by Article in the interest of a clear discussion.

Mr. GARDNER (United Kingdom) agreed with the Chairman's ruling.

Mr. PILLOUD (International Committee of the Red Cross) said that Article 2 contains important changes with reference to the text of the 1929 Conventions. This Article, particularly the first paragraph was considered necessary to define the conception of war. It was paragraph 4 of the proposed text which had given rise to most discussion at Stockholm. The idea of reciprocity figuring in the Convention for the Protection of Civilians was deleted in the Draft of the Convention for the Sick and Wounded. The two texts should be brought into conformity. Further, the I.C.R.C. in its "Remarks and Proposals", had suggested the addition in paragraph 3 of a provision with regard to the case of two States at war, one of which was not a Party to the Convention.

Mr. LAMARLE (France), speaking primarily with reference to paragraph 4, did not contest the necessity of providing for the situations envisaged in the Article, but felt that the positive form of the phraseology of the text might be dangerous in certain connections. The Conference at Stockholm had been mainly concerned with the protection of the rights of the individual; but it was also necessary not to lose sight of the rights of the States. It was impossible to carry the protection of individuals to the point of sacrificing the rights of States. In order to protect the rights of the State the French Delegation would propose an amendment making it impossible, for forms of disorder, anarchy or brigandage to claim the protection of the Convention under a mask of politics or on any other pretext. The amendment would indicate that the forces concerned must be organized military forces belonging to a responsible authority capable of respecting, or enforcing respect for the Convention, in a given territory.

Sir Robert CRAIGIE (United Kingdom) was against the adoption of paragraph 4 of Article 2 in its present form. He thought that the provisions of Article 2 required very careful consideration. He did not believe it possible to oblige a State to apply the Conventions to situations which were not war, declared or not, as this idea is defined by international law. The application of the Conventions in cases where there is no war, would lead to the application of new laws specifically adapted to the situation and this would create a great confusion. Moreover, the Parties to a conflict could not be sole judges as to whether a state of war existed. In the United Kingdom Delegation's view, paragraph 4 of Article 2 was a source of serious difficulties, not only because the Conventions would be applicable to situations which were not war, but because the application of the Conventions would appear to give the status of belligerents to insurgents, whose right to wage war could not be recognized. Even if paragraph 4 were confined in its application to situations in which one of the combatants was the lawful government (e.g. in the case of civil war), the difficulties would still exist. Careful consideration of the provisions of the Convention concerning Civilians, in particular, left little room for doubt that their application to civil war would strike at the root of national sovereignty and endanger national security, quite apart from the practical difficulty to which the I.C.R.C. had drawn attention in its "Remarks and Proposals" in connection with the stops which signatories were expected to take to implement the provisions of the Convention in the event of civil war.

Mr. PESMAZOGLOU (Greece) recalled that at Stockholm he had drawn attention to paragraph 4 of Article 2. The meeting of Governmental Experts two years ago in Geneva had proposed that, when an international war was not in question, humanitarian principles alone should be applicable and then only on condition of reciprocity. He considered that the Stockholm Conference, by suppressing the explicit references to "civil war" and "colonial war" had given too wide a scope to the text. As the Delegate of France had pointed out, if that rule were applied in all armed conflicts, the rights of the State would be ignored, especially in the case of rebellion incited by a few factious parties. In particular, the adoption of the text as at present drafted would entail the application to the latter of the provisions of Articles 74 and 100 of the Prisoners of War Convention. The rebels could not, therefore, be charged with crimes against common law committed before their arrest, and they would be automatically granted a pardon at the end of the disturbances. Furthermore, they could claim the protection of a Proteo-

ting Power. The possibility of such protection might incite political opponents to take up arms against a legitimate government. In the Conventions it was necessary to distinguish between the humanitarian and the legal principles. The recognition of belligerency entailed certain rights; but who would be competent to recognize belligerency in the case of civil war? The Greek Delegation had proposed one form of wording, and others might be forthcoming. It might for example be decided that a majority of members of the Security Council of the United Nations should be competent for the purpose. But as a general rule it was preferable to adhere to the conception of prior consideration for humanitarian principles as compared with strictly legal principles.

Mr. DE ALBA (Mexico) agreed with the spirit of Article 2. Confused situations might no doubt arise. In civil wars there might also be movements for emancipation of a morally creditable character. But in any case, the rights of the State should not be placed above all humanitarian considerations. The Conference at Stockholm had been courageous in placing this principle at the beginning of the Conventions. It might be advisable, in order to protect the rights of the State, to forego the eventual recourse to a Protecting Power; but in this case the rôle of the Protecting Power should devolve on some international body such as the International Red Cross in order to place the question on a humanitarian plane. Often civil war was more cruel than international war; and the Conference should not be deaf to the voice of those who are suffering.

Mr. CASTBERG (Norway) hoped that the proposals adopted by the Stockholm Conference, as a sequel to the meetings of the Governmental Experts and the work of the I.C.R.C., would be upheld.

It was a step forward in international law to say explicitly that, even if war was not recognized, the rules concerning the conduct of war should be applied. As to civil war, the term "armed conflict" should not be interpreted as meaning "individual conflict", or "uprising". Civil war was a form of conflict resembling international war, but taking place inside the territory of a State. It was not a conflict between a number of individuals. No doubt there were special cases, and it would be a good thing if some system of settlement could be found. The Greek Memorandum had very properly suggested that the point should be considered.

As for belligerency, when belligerency was recognized in an internal conflict, serious legal consequences were entailed; but it was to be

hoped that the Conference would agree that purely humanitarian rules should be applied in armed conflicts independently of any recognition of belligerency.

The last sentence of Article 2 was a sound innovation. If the application of the Convention entailed no consequence as regards the legal status of opposing parties, that meant that the Convention must be applied even where the opposing parties were not recognized as belligerents.

The Marquis OF VILLALOBAR (Spain) supported the amendment proposed by the Delegate of France. The Conventions should only be applied in cases where the legal government was obliged to have recourse to the regular military forces against insurgents militarily organized and in possession of a part of the national territory.

Mr. FALUS (Hungary) was of the opinion that the essential aim of the Conference was to extend the field of action of the Convention as much as possible for the protection of the victims of conflicts. He regretted that the Stockholm Conference had restricted the scope of the text submitted by the I.C.R.C. by including the idea of reciprocity. He did not think there was any justification for the fear expressed by certain previous speakers that the Convention might operate as an indirect incitement to take up arms.

Mr. COHN (Denmark) fully supported the views expressed by the Delegate of Mexico. The principles of international law and the humanitarian principles contained in the Conventions should be recognized in all cases of what could be called genuine armed conflicts; and not an action of a State against wrongdoers. He proposed the retention of paragraph 4 in its present form.

Dr. DIMITRIU (Rumania) thought the text of the Article should be adopted as it stood, in spite of certain imperfections. Humanitarian considerations should prevent the Conference from introducing restrictions in the text, the whole object of which was to extend the protection of the Convention to the greatest possible number of persons. The amendment of the French Delegation seemed redundant, since paragraph 4 provided for the application of the Convention, subject to its observance by the opposing party. The application of international Conventions, concerned about humanitarian causes, could not be the work of anarchy, disorder or banditry.

*The meeting rose at 12.45 p.m.*

## SECOND MEETING

Wednesday 27 April 1949, 10 a.m.

Chairman: Mr. Maurice BOURQUIN (Belgium)

**Article 2** (*continued*)

Mr. Leland HARRISON (United States of America) said that the United States Delegation considered Article 2, as adopted by the Stockholm Conference, was an improvement over previous drafts, but was still inadequate. The United States of America did not consider that it could bind itself to observe the provisions of the Convention except in the case of war as understood in international law. The Convention would therefore be applicable in all cases of declared or undeclared war between States, parties to the Convention, and to certain armed conflicts within the territory of a State party to the Convention.

Every government had a right to put down rebellion within its borders and to punish the insurgents in accordance with its penal laws. Conversely, premature recognition of the belligerency of insurgents was a tortious act against the lawful government and a breach of international law. The United States of America therefore considered that the Convention should be applicable only where the parent government had extended recognition to the rebels or where those conditions obtained which would warrant other States in recognizing the belligerency of the rebels whether or not such recognition was accorded by the Power on which they depend in this latter eventuality. The application of this Convention could not be regarded as recognition of belligerency by any party thereto. The conditions which should obtain before the Convention would be applicable to an armed conflict within a State, party to the Convention, might be briefly stated as follows:

- (1) The insurgents must have an organization purporting to have the characteristics of a State.
- (2) The insurgent civil authority must exercise *de facto* authority over persons within a determinate territory.
- (3) The armed forces must act under the direction of an organized civil authority and be

prepared to observe the ordinary laws of war.

- (4) The insurgent civil authorities must agree to be bound by the provisions of the Convention.

Dr. WU (China) observed that there was apparently a conflict of views, one humanitarian, the other juridical, the former tending to extend the scope of application of the Conventions as much as possible, while the latter considered the practical aspect of the system of international law. The same divergencies might be found in other Articles of the Conventions and it was the task of the Conference not to exaggerate this division, but to endeavour to keep the various trends in harmony. With regard to the first paragraph of Article 2, providing for the application of the Convention in places where the state of war was not even recognized by one of the belligerents, the interpretation of this paragraph was important in view of the situation obtaining during the recent world war. China had been subjected for 8 years to aggressive war which was often described as an "incident". The Chinese Delegation therefore felt that paragraph 4 of Article 2 was too sweeping when it declared that in all cases of armed conflict not of an international character occurring in the territory of one or more of the Parties to the conflict, each of the adversaries should be bound to implement the provisions of the Convention.

The Chinese Delegation therefore supported the views of the French and Greek Delegates expressed in the previous meeting, and was in favour of a restriction in the scope of the fourth paragraph, such as had been suggested by the United States Delegation.

Mr. LAMARLE (France) wished firstly to dispel a misunderstanding which appeared to have occurred as a result of his remarks on the previous day with regard to the rights of the State, and of the need for establishing a balance between them and the rights of the individual. By rights of the State,

he did not wish to imply rights, as interpreted by fascist régimes who sought to impose their laws on their own nation before imposing them on the world. It was obvious that the rights and duties of the State were identical. Taking as an illustration a group of persons who, animated by some pretext or other, aimed at exterminating another group, the Delegate for France considered it was the duty of the State to protect by violence the group of persons threatened. The sense of his remarks on the preceding day was to prevent lawlessness, in whatever form it might occur. He had not thought for one moment of placing the State above humanitarian laws, but on the contrary, of conceiving the State as the servant of these laws and of the common rights.

To take into account the remarks made by the Norwegian, Danish and Rumanian Delegations, the French Delegate would agree his proposal being modified to specify that respect of the wounded and sick covered by the provisions of the Convention concluded for this purpose, would not be excluded.

Mr. WERSHOF (Canada) suggested firstly, that there should be an addition to Article 2 providing for a reciprocal basis in the case of international war, for the application of the Convention between a party signatory and a party which was not signatory to the Convention. Secondly, the Delegate for Canada touched the question of civil war. According to the suggestion just made by the Delegate for the United States of America, in instances of large scale civil war, it should be possible to apply most of the terms of this Convention between the lawful Government and the rebels, in the case of effective control of a substantial portion of the national territory by the rebels, who had set up something resembling a civil administration. The Delegate for Canada considered it might even be in the interest of the lawful Government to have many provisions of the Convention applied. However, before saying that a civil war was of the kind in which the Convention should be applied, the test should be: recognition of belligerency of the rebels by the lawful Government. Except in the instance of a civil war of that kind, the Canadian Delegation were not in favour of the provisions contained in paragraph 4, Article 2.

In its present form, the fourth paragraph would justify a demand on the part of a small group of rebels for the recognition of a protecting power, and except in the case of a large scale civil war in which an extensive section of the national territory was in rebel hands, this would be absurd. Moreover, the same difficulty would occur in matters relating to treatment of prisoners of war. Although rebel prisoners should be treated in a

humane manner, a distinction should be made between humane treatment, and the application of the provisions of the Prisoners of War Convention, such as the supplying of pay and allowances.

Lastly, the introduction of the fourth paragraph into Article 2 seemed even more impossible in the case of the Civilian Convention. Here the persons protected were essentially enemy nationals residing in the country. It would be inconceivable to suggest that even in a large-scale civil war supporters of the rebels could justifiably demand from the lawful Government that they be treated as protected persons under the Civilian Convention, although they were not living in the part of the country controlled by the rebels. No lawful Government would be able to quell a rebellion under these circumstances.

Therefore the Canadian Delegation was in favour of complete suppression of the proposed application of the Civilian Convention to civil war, although they would be ready to support a formula covering only a limited type of civil war, as suggested by the United States Delegation.

Mr. MARESCA (Italy) pointed out that the fourth paragraph must be examined in connection with the text of paragraph 3 of Article 2 as it might be interpreted in different ways. According to the first interpretation, the provisions of the Convention would be applicable to the nationals of a belligerent not a party to the Convention. The second interpretation which reproduced the clause of *si omnes* appearing in all preceding Conventions seemed more accurate; it was only if all belligerent Powers were parties to the Convention that its provisions would be applied. Another interpretation would be to consider the Convention only applicable to victims of war even if one of the Powers in conflict is not party to the Convention. With a view to obviating this dual interpretation the Italian Delegation proposed that paragraph 3, Article 2 be amended as follows: "The Powers Parties to the present Convention shall be bound by it in their mutual relations, even if one of the Powers in conflict is not party to the present Convention." This wording would appear to be a compromise formula between the two theories with regard to the problem raised by paragraph 4. The Italian Delegation would be disposed to support the formula as suggested by the French Delegation, which might be accompanied by a recommendation stipulating that the humanitarian principles which are the essence of the Conventions should guide the conduct of States.

General SLAVIN (Union of Soviet Socialist Republics) recalled that Article 2, drafted by the experts in Geneva in 1947 and then approved at Stockholm contained two provisions; the first

referred to the application of the Convention in cases of international conflicts; the second related to the application of the Convention in all cases of armed conflict which were not international in character. In this connection, the United Kingdom Delegation had alluded to the fact that colonial and civil wars were not regulated by international law, and therefore that decisions in this respect would be out of place in the text of the Conventions. This theory was not convincing, since although the jurists themselves were divided in opinion on this point, some were of the view that civil war was regulated by international law. Since the creation of the Organization of the United Nations, this question seemed settled. Article 2 of the Charter provided that Member States must ensure peace and world security. They could therefore not be indifferent to the cessation of hostilities, no matter the character or localization of the conflict. Colonial and civil wars therefore came within the purview of international law.

With regard to the proposals submitted by the French and Greek Delegations, the Soviet Delegate noted that they were similar in character to the United Kingdom proposal.

If the French proposal were followed, there would be a danger of one party declaring, without proof, that the other party was not in a position to ensure order, and thus of justifying any violation of the basic humanitarian principles of the Conventions.

The Greek amendment was unacceptable, for it subordinated the application of the Convention in cases of conflict which were not of an international character, to formal recognition of the status of belligerents to the present Parties. This amendment restricted the scope of the text of the Draft which was approved at Stockholm and sapped its humanitarian bases.

Nor was its proposal to recognize the parties to the conflict as belligerents through a special decision of the Security Council any more acceptable. The latter's task was to seek a peaceful solution to conflicts which threatened world security and not to note these conflicts and to recognize the status of belligerents to the parties to the conflict.

Contrary to the fears expressed by the French and Greek Delegates, the text drafted at Stockholm allowed the States the means of repressing crimes jeopardizing the security of the State in accordance with their national law.

The proposal of the United States Delegation by subordinating the application of the Convention to the decision of one Party, was no longer in harmony with the humanitarian principles governing these Conventions.

In conclusion, the Soviet Delegate pointed out that civil and colonial wars were often accompanied by violations of international law and were charac-

terized by cruelty of all kinds. The suffering of the population in the instance of civil and colonial wars was as distressing as that which led Henry Dunant to realize the need for regulating the laws of warfare.

The Soviet Delegation shared in this connection the views of the Mexican, Danish, Norwegian, Rumanian and several other Delegations, and considered it necessary to maintain the text of Article 2 of the Convention, as it was drafted at the 16th and 17th Red Cross Conferences and which extends the application of the Convention to all cases of conflict.

MR. DE GEOUFFRE DE LA PRADELLE (Monaco) was of the opinion that from the humanitarian viewpoint, it would be regrettable to confine the application of Article 2 to international war alone. The objections submitted by the advocates of such a limitation did not seem justifiable. It should not be forgotten that this Article formed part of a whole which was the International Conventions for the protection of war victims. The activities of a group of criminals was obviously not war, this form of violence coming within the competency of domestic penal legislation.

The Conventions, the Conference was preparing were international Conventions regulating situations which were international in character, and which even if there were a civil war, might come within the competency of international law.

The Delegate for Monaco recalled the Havana Convention of 20 February 1928, regulating the application of international law to civil war. On the other hand, anarchy and rebellion came within the sphere of national law.

He could not accept the mutilation of paragraph 4, as proposed by certain delegations, that in situations coming within the competency of international law, application of the Conventions should be subject to a sort of previous authorization of the Powers directly or indirectly interested in the conflict. He considered that it was not even necessary that the application of the Conventions should be made subject to recognition of belligerency by a third party, which might be deemed impartial, or by a high international body, i.e. the Security Council.

The aim in view was to guarantee minimum protection to those who deserve it on account of their attitude, as evidenced by circumstances and facts, and who are ready to apply to their adversaries the provisions of these Conventions.

Paragraph 4 should be retained, but amended according to the French proposal, so that even if it were detached from its context, it would not frighten the supporters of sovereignty of the State.

Mr. BOLLA (Switzerland) noted that Article 2 raised interesting problems, and that only that relating to the application of the principles of the Convention to civil war was controversial.

The text prepared at Stockholm appears not to give sufficient guarantees to those who did not wish to disarm the State against crime, even of a political nature.

Without going into the detail of the various amendments submitted, the Delegate for Switzerland was of the opinion that the Conference should refrain from any restrictive condition or reference to the United Nations Organization. He suggested the nomination of a small Sub-Committee to deal with the definition of what was meant by armed conflict, and which would draft a text reconciling the different view points expressed.

Sir Robert CRAIGIE (United Kingdom) did not feel that a distinction should be drawn between the humanitarian viewpoint and the legalistic view. Humanity suffered when discord and chaos arose and judicial methods were the technical means of establishing order; they therefore made humanitarianism effective. Far from being in opposition, these two conceptions can be considered as complementary. He wished to correct what must have been a misapprehension; namely that he had stated colonial and civil wars were not subject to rules. He was well aware that under certain conditions, international law took notice of wars which were not international in character. But all delegations seemed to be of the view that the State must be protected against irresponsible outbursts.

He asked for a postponement of a few days to enable delegations to consider this problem in informal talks, before the Committee suggested by the Swiss Delegate was set up.

General OUNG (Burma) considered the issue involved in paragraph 4 of Article 2 perfectly clear. He recalled the experience of his own country and the distress entailed by the overrunning of the national territory by the armies of two foreign Powers. The proposed Convention should not give legal status to insurgents who sought by undemocratic methods, to overthrow a legally constituted government by force of arms.

Mr. W. R. HODGSON (Australia) pointed out that at present the Australian Government was of the opinion that the Convention should apply when an armed conflict became a full-scale war and when there was an organized form of Government which effectively controlled definite portions of the national territory and the inhabitants therein.

To distinguish between the aforementioned state of affairs and local uprisings, the principles of the present Convention should be applied to the Parties to the conflict, provided:

- (1) the *de jure* government had recognized the insurgents as belligerents, or;
- (2) the *de jure* government had claimed for itself the right of belligerent, and;
- (3) the *de jure* government had accorded the insurgents recognition as belligerents for the purposes only of the present Conventions;
- (4) that the dispute had been admitted to the Agenda of the Security Council or the General Assembly of the United Nations as being a threat to international peace, a breach of the peace, or an act of aggression.

This latter proviso indicates the fact that the matter was not one coming within the domestic jurisdiction of a State according to the terms of Article 2, point 7 of the Charter. Moreover no difficulty would arise with regard to the veto, because the placing of a conflict on the Agenda was purely a matter of procedure.

The CHAIRMAN considered that the first reading of Article 2 was closed. A second reading of Article 2 would take place later, and that in accordance with the terms of reference of the Joint Committee, decisions would then be taken. Meanwhile the Committee could examine the other Articles submitted. He suggested that a decision be taken at the next meeting with regard to the nomination of a small Committee as suggested by the Swiss Delegate.

*The meeting rose at 1.05 p.m.*

## THIRD MEETING

*Friday 29 April 1949, 10 a.m.*

*Chairman:* Mr. Maurice BOURQUIN (Belgium)

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**Article 2** (*continued*)

The CHAIRMAN drew the attention of the meeting to the fact that the Swiss Delegation had proposed that a sub-Committee should be formed in order to establish a compromise formula for Article 2, paragraph 4 relative to armed Conflicts which were not of an international character.

He suggested that this Sub-Committee should be composed as follows:

Australia, United States of America, France, Greece, Italy, Monaco, Norway, United Kingdom, Switzerland, Union of Soviet Socialist Republics.

This proposition was adopted unanimously.

Mr. PESMAZOGLOU (Greece) wished to clarify the meaning of the motion he had formulated at the last meeting.

He did not wish it to be understood that recognition as belligerents should be given to rebels by the Security Council but given individually by the majority of the countries represented in the Council.

The CHAIRMAN considered the first reading of Article 2 to be closed and requested the Committee to proceed to the examination of the next Article, No. 4 in the Wounded and Sick Convention, and No. 5 in the other three Conventions.

**Article 4/5/5/5**

Mr. PILLOUD (International Committee of the Red Cross) pointed out that this Article is an almost exact reproduction of the terms of Article 83 of the 1929 Prisoners of War Convention. The only important amendment consists of the introduction in paragraph 1 of a stipulation which lays down that belligerents may in no case conclude agreements which may adversely prejudice the position of persons protected by the Conventions.

Mr. GARDNER (United Kingdom) stated that experience gained during the last war had shown that Article 83 of the 1929 Prisoners of War Convention had been one of the most valuable in that Convention. It was a fact that this Article had rendered possible the adaptation of the terms of the Convention to circumstances which its authors could not have foreseen. The corresponding Article of the new Convention should however make it possible for belligerents to conclude special agreements which might at first sight appear disadvantageous or unfavourable to prisoners of war. In certain cases it may be difficult to determine in advance whether a special agreement will, on the whole, be favourable or unfavourable to prisoners of war. For example, the Power on which the prisoners of war depend might request that its own medical personnel held as prisoners should not receive a higher rate of pay from the Detaining Power than that which they received in their own army, or that there should be a reduction of the number of letters or post cards which prisoners of war were permitted to send with a view to lightening the task of the censorship services and thereby to speed up despatch.

The position is different as regards the Wounded and Sick Convention, in which for the first time an Article is foreseen which would authorize special agreements between belligerents. This Convention already contains three Articles by which it would be possible for such agreements to be made in predetermined cases. It appeared to the United Kingdom Delegation that in other fields the provisions of the Convention should not be modified by special agreements and that Article 4 of the Wounded and Sick Convention as well as Article 5 of the Maritime Convention would be not only useless but even dangerous and for this reason should be deleted.

Mr. LAMARLE (France) considered that the examples quoted by the United Kingdom Delegation in order to justify the deletion of the safeguarding clause were of a much too special character. He

wished to maintain this necessary clause, but would like, however, that it should not be possible to detract from the rules set by the Conventions except in cases where it is necessary to clarify the procedure for their implementation or to elaborate more favourable measures.

Mr. MARESCA (Italy) was of the opinion that special agreements are particularly important as they are an everlasting record of international law during and notwithstanding the war. As regards the safeguarding clause, it could be elaborated in such a manner as to satisfy both the United Kingdom and the French Delegations. There also existed the problem of special agreements which might be concluded at the end of a war, that is to say, when the two contracting parties are in the position of victor and vanquished. The former might impose on the latter a renunciation of the rights to which it would be entitled by the Conventions, that is to say, to claims to which it might be entitled owing to the non-observation of the Conventions in time of war, such as for instance the payment of an indemnity to prisoners who had been wounded while carrying out dangerous tasks such as were prohibited by the Convention. He thought that in its present form the safeguarding clause is not a sufficient guarantee against such contingencies. Hoping to avoid that the Convention will not become a dead letter at the moment when its entire application must be used, the Italian Delegation had proposed in the Memorandum to introduce to this Article a third paragraph, reading as follows:

“No agreement even should it take the form of a clause to a Treaty intended to regulate matters which have remained in suspense at the conclusion of an armed conflict shall relieve any Party from the responsibilities it has incurred by its failure to observe this Convention”.

It might, however, be possible that the proper place for this clause would be at the end of the Convention in the Chapter which deals with violations.

Mr. DE GEOUFFRE DE LA PRADELLE (Monaco) estimated that the safeguarding clause ensures the superiority of the Conventions to special agreements reached by belligerents during the war. However, its importance should yet be stated. The problem raised by the possibility of the Conventions conflicting with armistice or peace treaties reached on the termination of war, is on the other hand also very important.

The Speaker reminded his colleagues that other Articles in the Conventions already dealt with the implementation of the protection instituted by them beyond the duration of hostilities and pointed to the importance of the Italian amendment.

Count of ALMINA (Spain) supported the Italian motion.

Nobody wishing to speak, the CHAIRMAN considered the first reading of this Article to be closed. He requested the Committee to start examining Article 5 of the Wounded and Sick Convention, which bears the number 6 in the three other Conventions.

#### Article 5/6/6/6

Mr. PILLOUD (International Committee of the Red Cross) pointed out that this Article was new, having been established after the Government Experts Conference, because it seemed necessary to protect prisoners of war, civilian internees and prisoners of war who were members of medical personnel against the temptation of giving up their status for another, for instance that of a civilian worker, or to join the forces of the Detaining Power. The I.C.R.C. had proposed at Stockholm that protected persons should not be persuaded, by coercion or any other forced means, to renounce the rights conferred upon them by the Conventions. Deleting the allusion of coercing, the Stockholm Conference went even further in stipulating, that the interested Parties could not renounce partially or totally ~~to~~ the rights granted to them by the Conventions. It adopted a text which inserted into a Convention which is intended to prescribe the obligations of the Detaining Powers, obligations incumbent upon the persons under detention. Mr. Pilloud therefore considered that this Article should be modified on the lines of the suggestion contained in its “Remarks and Proposals” (see *Annex No. 17*). This text, established in the spirit of the Stockholm Conference, prescribes obligations on behalf of the Detaining Power.

Mr. CASTRÉN (Finland) proposed a modification in reverting to the text submitted to the Stockholm Conference and inserting the word “inalienable” before the word “rights”. The Article would thus apply both to the belligerent Powers and to the protected persons.

Mr. GARDNER (United Kingdom) recalled that the Prisoners of War Convention is particularly intended to give the prisoner the greatest possible freedom. It may seem strange for a humanitarian Conference to have inserted an Article stipulating that in no circumstances a prisoner of war may be allowed to make a free choice; it would therefore be preferable to revert to the Draft submitted to the Stockholm Conference.

Mr. CASTBERG (Norway) supported the I.C.R.C. proposition and at the same time pointed out

how dangerous it would be to grant to protected persons the faculty to renounce to the rights granted to them by the Conventions. In the States of Social legislation persons who benefit through them cannot renounce to the rights deriving from it. This principle may lead to harsh consequences, but it is effective in ensuring the protection of persons protected by the Convention. Supposing an agreement was reached between the Detaining Power and prisoners of war or detained civilians, according to which the latter would renounce to the rights given to them by the Convention, Mr. Castberg thinks that it would be very difficult to prove that coercion or pressure have been used. Powers who have obtained a renunciation will have no difficulty in asserting that it was obtained with the free consent of those concerned, and for their part, the latter might confirm this allegation. The only way to ensure the sought for protection would be to set up in a general ruling the invalidity of a renunciation of the rights given by the Convention.

Mr. MOROSOV (Union of Soviet Socialist Republics) was of the opinion that the wording of the

text adopted at Stockholm is clear. It signifies that no legal issue may be raised by the fact that a protected person renounces the rights which the Conventions accord him. It is not correct to say that it places obligations on the protected persons and not upon States, for the States alone are bound by the Conventions.

The amendment suggested by the I.C.R.C. is no improvement on the text adopted at Stockholm, as it merely repeats what has already been said in Article 1, which provides that the Contracting Parties undertake to respect and ensure respect for the Convention in all circumstances.

The Finnish Delegate proposed to reinsert the mention of coercion and other means of pressure, but this in no way increases the scope of the text adopted at Stockholm. As regards the examples quoted by the United Kingdom Delegate, they tend to express ideas bordering on absurdity and deform the meaning of Article 6.

In consequence, the Soviet Delegation is of the opinion that the text adopted at Stockholm should be maintained.

*The meeting rose at 1 p.m.*

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#### FOURTH MEETING

*Monday 2 May 1949, 10 a.m.*

*Chairman:* Mr. Maurice BOURQUIN (Belgium)

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#### **Article 5/6/6** (*continued*)

Mr. LAMARLE (France) indicated that the French Delegation could not support the theory voiced at the preceding meeting by the Expert of the International of the Committee Red Cross according to which the proposed or any similar text, stating, that it is forbidden to enlist prisoners of war in the armed forces of the Detaining Power. Amongst other cases, he wanted to recall, the case of the inhabitants of Alsace-Lorraine, annexed by force by the Reich in 1871, who in 1914 were taken prisoners by the French or Allied Armies and wanted to join one of them. He considered that it would be contrary to the honour of the prisoners of war, to hinder them to serve in the armies of the

Power who captured them. Therefore he made the most explicit reservations.

The CHAIRMAN invited the Committee to start with the examination of the following Article: 6 of the Wounded and Sick Convention and 7 of the other Conventions.

#### **Article 6/7/7**

Mr. PILLOUD (International Committee of the Red Cross) recalled that this Article defined on general lines the rôle and functions of the Protecting Powers and reproduced practically in full the stipulations of Article 86 of the Prisoners of War Convention of 1929. However, it was an innova-

tion to introduce it into the Wounded and Sick and the Maritime Conventions. This stipulation was customary as during the last war the Protecting Powers were concerned with the application of these Conventions.

Mr. WERSHOF (Canada) pointed out that as drafted at present, the wording of Article 7 differed in two respects from Article 86 of the Prisoners of War Convention of 1929.

It embodied a new idea: the supervision by Protecting Powers, which, according to the interpretation of the Canadian Delegation, would imply some form of directives or instructions which the Protecting Powers would be authorized to give to the Detaining Powers. There was, however, no precedent for this in international law, nor had any justification of such instructions ever been given by the International Committee of the Red Cross, which would mean the obligation to supervise the application of the Conventions. The Canadian Delegation was therefore in favour of deleting the words "the supervision".

On the other hand the last sentence of the first paragraph of Article 7, added at Stockholm, stated that "the said Power may only refuse its approval if serious grounds are adduced". In wartime, security problems dictated the conduct of governments, and there were times when a government would not be in a position to disclose the reasons why a delegate selected from outside the diplomatic service of the Protecting Power was not *persona grata*. Therefore it would not be advisable to formulate rules for the delegates other than those in force for the diplomatic service and which provide that indications of reasons for a refusal of approval need not be disclosed.

Sir Robert CRAIGIE (United Kingdom) paid a tribute to the splendid work carried out by Protecting Powers during the two wars and stressed the great moral support which internees derived from the knowledge that somebody was looking after their interests. However, in defining the functions of the Protecting Powers care should be taken to avoid placing too heavy a burden upon them in time of war. For example, the Civilians Convention placed on the Protecting Power the onus of watching over the whole economic system of the country to which they were accredited and assuring that the food supplies and distribution and allocation of relief consignments were being properly carried out.

Moreover, the Protecting Power, to supervise the operation of the Wounded and Sick and the Maritime Conventions, would necessitate a large number of observers both on the battlefields and at sea.

The United Kingdom Delegation was also opposed to the word "supervision", used in the drafts. Such supervision would further increase the responsibilities of the Protecting Power and might even lead to friction with the Detaining Power.

Mr. BOLLA (Switzerland) was of the view that action by the Protecting Power would be all the more effective if it could rest on well-defined texts. He therefore considered that mention should be made of the Protecting Power in all Conventions. In acting as *negotiorum gestor* the Protecting Power might be exposed to risks, but the international solidarity imposes duties and they cannot be bound to the simple rôle of a messenger.

With regard to the first observation made by the Delegate for Canada, the Delegate for Switzerland considered that in French the word "supervision" did not imply the right to give directives to the Detaining Power. With regard to the second remark, he considered that a reason based on military security of the Detaining Power should be considered as serious grounds to be dispensed from entering into excessive specifications.

Mr. MARESCA (Italy) considered that the Protecting Powers could not undertake effective work, as specified by the Conventions unless, they were allowed to exercise a certain right of control. It was, however, essential that the person entrusted with this control should be approved by the Detaining Power and should enjoy their confidence. To restrict to the utmost degree feasible the possibility of refusal of approval, on the other hand he felt it was necessary to have recourse to qualified persons. The diplomatic and consular representations which approval could be refused only within the limits of international courtesy seem to be designated for this task. The Delegate for Italy suggested that the second and third sentences of the first paragraph should read as follows: "...To that effect, the Protecting Powers may, in addition to their diplomatic staff, appoint delegates from amongst their own nationals or the nationals of other neutral Powers. Such delegates shall perform their duties under the control and responsibility of the head of the diplomatic mission."

This addition would, in his view, make it possible to delete the last sentence of the paragraph.

Mr. SÖDERBLOM (Sweden) indicated that the experience acquired by the country as Protecting Power coincided with that of Switzerland. The Swedish Delegate stressed the need for the Protecting Power of being able to base its action on well-defined and precise provisions of a Convention. Moreover, the text approved at Stockholm did not imply that a Protecting Power was previously

compelled to ask for approval of each delegate as, in diplomatic practice, this was only done in the case of the head of the mission.

Mr. LAMARLE (France) recalled that the Prisoners of War Convention of 1929 already alluded to the control by the Protecting Power in the title of the section in which Article 86 can be found. He was supporting the thesis exposed by Mr. Bolla and suggested that this word must not be deleted.

All amounts to, as the Italian Delegate had mentioned, that it was a matter of confidence in the Power and the persons who were entrusted with carrying out the tasks belonging to the Protecting Power. On the other hand, they differed from the views expressed by the Swedish Delegation and considered that the Detaining Power should be given the widest possible powers of refusal with regard to the Delegates of the Protecting Power.

Colonel HODGSON (Australia) observed that in order to carry out its functions, the Protecting Power had to have the right of a certain degree of supervision and of reporting on the implementation of the provisions of the Convention. This system was a useful one, because it enabled certain minor details in the camps and elsewhere to be settled immediately with the camp commanders, and the local authorities.

In the English text of the Convention, the word "control" was now replaced by the much weaker term "supervision". The Australian Delegation therefore would have no objection to the first sentence of Article 7 standing in its present form.

The Australian Delegation agreed, on the other hand, with the Canadian Delegation that the Detaining Power should be authorized to refuse their approval without giving reasons for such action to the Protecting Power.

Mr. GARDNER (United Kingdom) pointed out that if the word "control" appeared in the heading of the Section, where Article 86 in the Prisoners of War Convention of 1929 is placed, it did not appear in the actual text of the Article. According to the rules relating to the interpretation of international treaties, it was only the text of the Articles which was taken into account in interpreting the obligations of the treaty. Although admitting that the 1929 Convention should be strengthened, the United Kingdom Delegation were desirous of an assurance that the system advocated by the new Draft would prove practicable.

The United Kingdom Delegation were deeply interested in the remarks made by the Swiss and Swedish Delegations. At a later stage in the discussion, they would be glad to have fuller explanations from these two Delegations as to how the new

obligations placed upon the Protecting Powers under the Draft Convention for Wounded and Sick, and in the Conventions for Maritime Warfare and for Civilians, would be implemented.

#### Article 7/8/8/8

Mr. PILLOUD (International Committee of the Red Cross) indicated that this Article reproduced almost completely the provisions contained in Article 88 of the Convention of 1929 relating to the Treatment of Prisoners of War. It involved no commitment for the governments and merely restated the freedom of action of the International Committee of the Red Cross. It has been very useful in the practice and the I.C.R.C. would like to see it adopted under its present form.

Mr. GARDNER (United Kingdom) paid a tribute to the courage, patience and unselfishness with which the International Committee of the Red Cross had pursued their humanitarian effort. He desired that the unique position which this private body held in the world should in no way be weakened.

He wondered whether any useful purpose would be served by including the Article in question in the Wounded and Sick and in the Maritime Conventions. He recalled that the Diplomatic Conference of 1929 had not considered this necessary, although it had undoubtedly been conscious of the work accomplished by the International Committee of the Red Cross.

The problem presented itself differently in the Prisoners of War and Civilians Conventions submitted today to the Conference. There were over thirty references to the International Committee of the Red Cross, many of which corresponded to specific functions to be exercised by the Committee. Mr. Gardner feared that it would have the opposite effect as, the more precisely the duties of the Committee were defined, the more risk there was of governments opposing all activities which had not been expressly foreseen.

A further point to be examined critically was the duplication of functions between the Protecting Powers and the International Committee of the Red Cross. This might also lead in any future conflict to confusion and probably would result in restriction of the activities of the International Committee of the Red Cross. The Diplomatic Conference of 1929 had deleted the mention of certain detailed functions of the Committee with regard to visiting prisoner of war camps, and in the opinion of the United Kingdom Delegation, this had been a wise decision which had reacted to the interest of the humanitarian work of the International Committee of the Red Cross.

Mr. MARESCA (Italy) considered it necessary to introduce the provision under discussion into all the Conventions. However, he thought that it should be brought into line with the following Article, which provided for international humanitarian bodies offering all guarantees of impartiality which could act as substitutes for the Protecting Power. He proposed that this Article should be amended as follows:

“The provisions of the present Convention constitute no obstacle to the humanitarian activities which the International Committee of the Red Cross or any other impartial humanitarian body may undertake...”

MSGT. BERNARDINI (Holy See) approved the proposal submitted by the Italian Delegation and expressed the view that Red Cross work was coordinated with that of all other impartial agencies carrying out humanitarian activities.

Mr. CASTBERG (Norway) desired that the International Committee of the Red Cross which had been twice awarded the Nobel Prize, should be expressly mentioned in all the Conventions.

Mr. LAMARLE (France) considered that it would be regrettable to be deprived of the assistance which certain humanitarian agencies could extend, although perhaps in a more limited field than the International Committee of the Red Cross. He gave many instances which proved the valuable help given and he therefore supported the formula put forward by the Delegate for Italy, who, while making special mention of the International Committee of the Red Cross, reserved the possible collaboration of other welfare agencies. Such mention should appear in all the Conventions.

*The meeting rose at 1.00 p.m.*

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## FIFTH MEETING

*Tuesday 3 May 1949, 10 a.m.*

*Chairman: Mr. Maurice BOURQUIN (Belgium)*

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### **Article 7/8/8** (*continued*)

Mr. CARRY (International Committee of the Red Cross) emphasized the importance attached by the I.C.R.C. to this Article. Although it may not be as essential in the Wounded and Sick Convention and the Maritime Warfare Convention as in the other two, it may however prove extremely useful. The I.C.R.C. was, during the second world war, in particular, compelled to exercise considerable activity in the matter of military medical personnel retained in camps. As for the great number of proposals made by the I.C.R.C., they were introduced at previous Conferences and at the request of different countries.

### **Article 8/9/9**

Mr. PILLOUD (International Committee of the Red Cross) pointed out that this Article was introduced by government experts at their meeting

held in 1947, when they recognized the fact that the implementation of the Conventions depended on the existence and functioning of an organization capable of ensuring the protection of persons to whom these Conventions applied. It was in fact necessary to make up for the too frequent absence of a Protecting Power which had resulted, particularly during the last war, in 70 % of prisoners of war not receiving any benefit from the assistance of a Power of this description. The first paragraph made it possible, in time of peace already, to set up an organization which might replace all Protecting Powers; the second paragraph made the Detaining Power responsible for nominating either a neutral State or an impartial organization capable of assuming the functions of the Protecting Powers.

Mr. HARRISON (United States of America) pointed out that Article 7 deals with one of the principles which the United States Delegation considered essential for the application of Conventions.

The action of the Protecting Power and in particular, visits to prisoner of war camps and internment camps, contributes to the relief of war victims.

As far as humanitarian organizations such as the I.C.R.C. are concerned, they have an important complementary rôle to play.

Mr. LAMARLE (France) drew attention to the fact, that the French Delegation had emphasized at the 1947 Conference of Experts the necessity of providing for the possibility that, in any general conflict, the case that there might no longer be any neutral Power capable of efficiently fulfilling the part of a Protecting Power. Otherwise one can very well imagine that a non-belligerent Power might be in the impossibility of fulfilling this task or might not be accepted by a Detaining Power. For this reason an organization offering all the guarantees of impartiality must be considered in order to substitute the absence of a Protecting Power. The rôle of the I.C.R.C. is totally different from that of a Protecting Power; it does not act by virtue of a mandate but according to moral laws which go far beyond all mandates. For this reason it was sometimes compelled to refuse to undertake tasks which could only be accomplished by a Protecting Power. That is why the French Delegation considered the Stockholm text as the best one.

Mr. GARDNER (United Kingdom) was desirous that practical means should be found to provide for a substitute in the absence of a Protecting Power. The text adopted at Stockholm does not solve the problem as it merely stipulates that the Detaining Power should apply to a neutral State or to an impartial humanitarian organization. There is no obligation for a neutral State or an impartial humanitarian organization to assume the duties for which it is solicited. The United Kingdom Government sought by its Memorandum (*see Annex No. 20*) to strengthen the practical value of the Stockholm text. In particular great importance is attached to the fact that the substitute of a Protecting Power should act according to diplomatic usage, as its impartiality must be above all suspicion.

Mr. LAMARLE (France) said he had been convinced by the well founded statement just made by the Delegate of the United Kingdom. It was indeed important to obviate that the Detaining Power should nominate some puppet body to act as a Protecting Power.

Mr. DE ALBA (Mexico) was of the opinion that the functions of humanitarian organizations and particularly the I.C.R.C. should be extended in order to enable them to take the place of Protecting Powers as far as possible.

Mr. MOROSOV (Union of Soviet Socialist Republics) was unable to endorse the British proposal which appeared to him to reduce considerably the possibility of compensating for the absence of a Protecting Power, as it does not allow to appeal to a neutral or independent body except in the event of there being no government, representing the prisoners of war concerned, able to nominate a Protecting Power. The text adopted by the Stockholm Conference is more specific and has the advantage of obliging the Detaining Power to compensate for the absence of a Protecting Power by nominating, in its place, a humanitarian body. Further, Mr. Morosov pointed out, that the nomination of a substitute of the Protecting Power should be made with the consent of the belligerents concerned and that this is possible on the basis of the Stockholm text. It is likewise necessary that neutral States requested to assume the task of a Protecting Power may be able to consent of their own free will to their nomination.

Mr. Morosov refrained from drawing any definite conclusion at the moment but considered that the matter should be examined on the basis of the text drawn up at Stockholm.

Mr. LAMARLE (France) specified the reasons by the French Delegation preferred the United Kingdom's text to that of Stockholm. The aim in view is mainly to prevent the Detaining Power from evading the obligations imposed upon it by the Convention by nominating a puppet body. The United Kingdom text seemed to him to offer every guarantee from this point of view.

Colonel HODGSON (Australia) reminded the Meeting that the Protecting Power is by definition a neutral State, having a sufficient number of diplomatic and consular agents available to enable it to carry out its task properly. The tendency has become apparent, among defenders of the Stockholm text, to take into consideration the humanitarian aspects only of a Protecting Power's functions. This Power is, however, entrusted with important official or governmental functions, such as transfer and issue of relief, transfer of funds, custody of property and papers, conclusion of agreements relative to exchange of diplomats and civilians, and these functions cannot be assumed by a humanitarian body. Neutral States are indispensable for fulfilment of these tasks. It might however happen that no neutral State would be available for this purpose. The I.C.R.C. are the only case of a body able to a certain degree to replace the Protecting Power, but they can act in the humane sphere only and have no mandate allowing them to fulfil other functions. In these circumstances the Australian Government considers that the I.C.R.C. cannot serve as a substitute

for the Protecting Power and that it is probably impossible to find an international body able to play this part. It would therefore be advisable to replace the words which appeared in the Draft adopted at Stockholm, i.e. "an impartial humanitarian body, such as the International Committee of the Red Cross", by "a recognized international body".

Mr. WERSHOF (Canada) reminded the Meeting that after the German capitulation there was no longer any German Government on whose behalf

a Protecting Power could have acted. Switzerland was thus obliged to relinquish the mandate with which Germany had entrusted it to safeguard German interests in Canada. The I.C.R.C. then consented to fulfil some of the functions incumbent on the Protecting Power.

Mr. Wershof, in consideration of the complex nature of Article 8, proposed that it should be examined by a Sub-Committee.

*The meeting rose at 12.50 p.m.*

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## SIXTH MEETING

*Wednesday 4 May 1949, 10 a.m.*

*Chairman:* Mr. Maurice BOURQUIN (Belgium)

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### Article 9/10/10/10

Mr. PILLOUD (International Committee of the Red Cross) indicated that this Article was the reproduction, with certain alterations in the wording, of Articles 83 and 87 of the Convention of 1929 relative to the Treatment of Prisoners of War.

Mr. DE GEOUFFRE DE LA PRADELLE (Monaco) considered that this Article did not represent an improvement but on the contrary a regression in relation to previous texts.

After having defined the procedure of conciliation and recalled that, according to existant laws, the latter should conclude by a formula for the solution of the conflict proposed to the Parties, the Delegate for Monaco noted that the Article under consideration merely established a procedure for consultation, which doubtless could not be disregarded by the Parties to the dispute, but which contained no obligation as to the settlement of the dispute and which can, indeed, merely lead to note being taken that such difference of opinion exists between them. On the other hand, Article 41 of the Convention for Wounded and Sick stipulated for an investigation procedure which, by its provisions and the obligations it involved, was more akin to conciliation in the precise sense of the term.

Article 41, an improvement on Article 10, is however not as good as Article 30 of the 1929

Convention (Wounded and Sick) by which the decisions of the Enquiry Commission became compulsory in character.

The Delegate for Monaco considered that the humanitarian character of the Conventions ought to provide for a procedure which would conclude not merely by advice, which is the essence of conciliation, but by a settlement which would have force of obligation for the Parties. He asked the Committee to study carefully this aspect of the problem and to draw up a text taking into account the complete system of peaceful methods of solution of disputes, bearing on interpretation and application of the Conventions, from consultation and investigation procedure to arbitration.

The CHAIRMAN thought, that the insertion of stipulations of Article 41 of the Wounded and Sick Convention into the Prisoners of War and Civilians Conventions, where they do not appear, exceeded the limits of the terms of reference intrusted to the Committee.

The examination of this text by the Committee could only take place, if in a Plenary Session, the Conference would consider it as a joint stipulation.

Mr. COHN (Denmark) announced the submission of an amendment providing for a procedure for a final solution of disputes which might arise in connection with implementation of these Conventions.

The CHAIRMAN considered that this amendment also went beyond the scope of the terms of reference of the Committee and suggested that consideration of it should be postponed until the Conference had decided to extend the terms of reference of the Committee.

The two foregoing proposals made by the Chairman were adopted by the Committee.

#### Article 38/42/117/128

Mr. PILLOUD (International Committee of the Red Cross) pointed out that this was a new Article introduced to meet the desire expressed in various quarters that the Convention should be more widely disseminated amongst the public and amongst those who had occasion to apply it or to refer to its provisions. The text of this Article varies lightly according to the Conventions. He proposed to adopt the text as worded in Article 38 of the Wounded and Sick Convention in the manner that the words "if possible" figure in all the Conventions.

No comment was made on this Article.

#### Article 118 Prisoners of War, 129 Civilians

Mr. PILLOUD (International Committee of the Red Cross) recalled that this Article already existed in a similar form in the Convention of 1929 relative to the Treatment of Prisoners of War. He suggested, that it could be introduced into all the Conventions. Furthermore he recommended countries which were neither English nor French speaking, but which spoke a common language, should agree to adopt a common translation of the Convention.

No comment was made.

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

The CHAIRMAN pointed out that the Stockholm Conference in adopting this Article, which was considered insufficient, had made a recommendation that the I.C.R.C. pursue its studies on the question of possible violation of the Conventions and submit new proposals. He suggested that the text drawn up by the I.C.R.C. in collaboration with a Committee of Experts and printed in the booklet "Remarks and Proposals" should be taken as a basis of discussion.

Mr. YINGLING (United States of America) recalled that the official text of Article 119 had been adopted by a large majority at the Stockholm Conference and that the United States Delegation

had no directions with regard to the proposals made by the I.C.R.C., and were therefore not in a position to debate them.

The CHAIRMAN explained that he had not wished to ask the Committee to drop the Article adopted at Stockholm but he had suggested that the Committee take jointly as a basis of discussion the four new Articles drawn up by the International Committee of the Red Cross as a result of the recommendation expressed by the Stockholm Conference.

Mr. WERSHOF (Canada) pointed out that the Stockholm Conference had not said the text of Article 119 was unsatisfactory; the International Committee of the Red Cross had suggested that with the approval of the Conference they would continue their studies on this point.

The Canadian Delegation was ready to begin the discussion of Article 119 taking into consideration the four I.C.R.C. Draft Articles.

Mr. SÖDERBLOM (Sweden) pointed out that the Swedish Delegation was in a similar position to the Delegation of the United States of America. He recalled that the Diplomatic Conference had been convened by the Swiss Government to draft new Conventions on the basis of the texts adopted at Stockholm. These texts could not be disregarded and must serve as a basis of discussion.

Captain MOUTON (Netherlands) intimated that the Netherlands Delegation would propose an amendment to adopt the principles contained in the I.C.R.C. proposals.

Mr. QUENTIN-BAXTER (New Zealand) and Mr. LAMARLE (France) appreciated the comments made by the United States Delegate.

Mr. YINGLING (United States of America) drew attention to the fact that the text of Article 119 as it appeared in the Draft Conventions sent out by the Swiss Federal Government was not exactly the text adopted by the Conference at Stockholm. He proposed to defer discussion until the correct text had been distributed.

Mr. PILLOUD (International Committee of the Red Cross) announced that a note re-establishing the text adopted at Stockholm would be distributed (*see Annex No. 50*).

The CHAIRMAN considered that no useful purpose would be served by beginning discussion before the exact text of the Resolution adopted at Stockholm had been distributed. Moreover, he asked the Committee if it considered whether its terms of

reference would enable it to examine the new Articles proposed by the I.C.R.C., and embodied in the amendments submitted by the Netherlands Delegation, or whether the matter should be submitted to the Plenary Assembly.

Mr. YINGLING (United States of America) considered that it was impossible for the Joint Committee to transform Article 119 into a code on war crimes by means of a so-called amendment. He questioned whether it were appropriate to include this item on the Agenda of the present Conference.

Captain MOUTON (Netherlands) considered that the amendment submitted by the Netherlands Delegation should be handled like any other amendment submitted to the Conference.

The CHAIRMAN stated that the Conference will regularly receive proposals from the I.C.R.C. while the Delegation for the Netherlands submitted them in the form of an amendment to Article 119.

He asked the Committee if it considered that this amendment could be included in the scope of its term of reference.

This suggestion was adopted by fourteen votes to eleven.

On the proposal of Colonel HODGSON (Australia), the Committee decided to adjourn the debate on Article 119.

#### **Article 43/46/120/131**

Mr. HARRISON (United States of America) considered that it was contradictory to state, on the one hand, that the French and English texts were equally authentic, and on the other, in case of doubt, that the French text should be considered as authoritative. He therefore moved the following amendment:

“The present Convention is formulated in the English and French languages, each of which is equally authentic.”

If need be, this provision might be included at the end of the Convention.

#### **Articles 47/50/121, 122/135**

Mr. CASTRÉN (Finland) considered that Article 122 of the Convention relative to the Treatment of Prisoners of War was superfluous and should be deleted, since the new Convention not only completed but also partially amended Chapter 2 of the Regulations of the Hague Conventions relative to Land Warfare.

#### **Article 44/47/123/132**

#### **Article 45/48/124/133**

No comments were made.

#### **Article 46/49/125/134**

Mr. WERSHOF (Canada) pointed out that two blanks had been left. He suggested that the period for coming into force of the present Conventions should be six months, similar to the Conventions of 1929.

This proposal raised no objections.

#### **Article 48/51/126/136**

#### **Article 49/52/127/137**

#### **Article 50/53/128/138**

No comments were made.

#### **Article 51/54/129/139**

Mr. CASTRÉN (Finland) felt that the last sentence of the last paragraph was redundant, for it was obvious that denunciation of an international treaty had no effect on the other international obligations of the denouncing party.

#### **Article 52/55/130/140**

Mr. HARRISON (United States of America) pointed out a possible misinterpretation of the adopted Stockholm text, and assumed that the Swiss Federal Council would forward to the United Nations Organization, for the purpose of registration, a copy and not the original document of the present Convention.

#### **Agenda**

The CHAIRMAN noted that if the Committee had concluded the last Article of the text, there would not be many different questions to resume. Certain questions remaining in abeyance or referred to a sub-Committee would still have to be considered; in particular, it would have to consider Article 1 of the Conventions possibly in connection with the question of the Preamble. Since this question was not included in the terms of reference given by the Plenary Assembly to the Committee, the Plenary Assembly would have to be consulted on this point.

This proposition was adopted unanimously.

The CHAIRMAN proposed to suspend the work of the Committee until the Conference in Plenary Session had reached a decision.

This proposition was adopted unanimously.

*The meeting rose at 12.40 p.m.*

## SEVENTH MEETING

*Tuesday 17 May 1949, 9.30 a.m.*

*Chairman:* Mr. Maurice BOURQUIN (Belgium)

**Terms of Reference and Membership of the Special Committee appointed to study Article 2, paragraph 4**

The CHAIRMAN proposed to extend the scope of the Special Committee by asking it to study other intricate questions which might be submitted for its consideration by the Joint Committee, so that the second reading of the Articles common to the four Conventions might be as easy as possible.

He likewise proposed to add to the Special Committee the Delegations for Burma and Uruguay, to represent Asia and Latin America.

Furthermore, any delegation submitting an amendment could take part in its discussion by the Special Committee.

These proposals were approved.

**Settlement of Disputes**

The CHAIRMAN pointed out that the Plenary Assembly had adopted a Draft Resolution submitted by the Delegations for Austria, Denmark, Finland, France, Monaco and the Netherlands aiming at charging the Joint Committee with the study as to whether a procedure for the settlement of disputes should be stipulated. It seemed preferable to refer such study to a limited Committee which might be the Special Committee whose terms of reference had just been extended.

Mr. COHN (Denmark) reminded the Committee that the Delegation for Denmark had submitted an amendment and requested that this amendment be referred to the Special Committee.

The CHAIRMAN agreed to refer this amendment to the Special Committee. The latter would also take into account the comments submitted by various delegations at the first discussion of the subject by the Joint Committee.

These proposals were approved.

**Article 1 of the four Draft Conventions**

The CHAIRMAN reminded the Committee that this Article had been reserved because it might be correlated to the Preambles of the four Conventions. The Plenary Assembly had decided that the Preamble should be examined by Committees I, II and III, and that the text should be referred to the Coordination Committee. The Joint Committee might therefore begin forthwith its consideration of Article 1.

Mr. PILLOUD (International Committee of the Red Cross) pointed out that Article 1 was along the lines of Article 83 of the Convention of Prisoners of War of 1929, and Article 25, first paragraph, of the Wounded and Sick Convention of 1929. The Stockholm Conference had deleted from the Drafts the words "in the name of their peoples".

**Agenda**

No delegate having asked to speak on this Article, the CHAIRMAN noted that two questions remained on the Agenda to complete the first reading of the common Articles:

- (1) the question of the settlement of disputes concerning the interpretation and application of the Conventions which had just been referred to the Special Committee for consideration, and
- (2) the question of violating the Conventions and the consequent penal sanctions which was the subject of a proposal made by the Netherlands Delegation resuming the draft Articles drawn up by the International Committee of the Red Cross.

The study of this problem should be deferred until such a time as the delegations had been able to study it and to receive the necessary instructions from their governments. The Chairman therefore proposed to include this item on the Agenda of a subsequent meeting of the Joint Committee, which would precede the second reading of the common Articles.

This proposal was approved.

*The meeting rose at 10.20 a.m.*

## EIGHTH MEETING

*Wednesday 29 June 1949, 10 a.m.*

*Chairman: Mr. Maurice BOURQUIN (Belgium)*

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**High International Committee (Article 7 A)**

The CHAIRMAN announced that since the last meeting the Delegation of France had tabled a proposal which represented supplement to Articles 6/7/7/7 and 8/9/9/9. It was evident that this proposal should, on account of its importance, be discussed at a first reading by the Joint Committee before being considered by the Special Committee.

Mr. CAHEN-SALVADOR (France) indicated the reasons that had prompted the Delegation of France to propose the appointment of a High International Committee which, in the absence of Protecting Powers, would take over the duties of such Powers. An essential condition for the effective working of the Conventions lies in the supervision of their application, such supervision being incumbent upon the Protecting Powers. The possibility must be borne in mind that in a future conflict there might be no neutral Powers left capable of effectively carrying out the duties of a Protecting Power. It was true that the Draft Conventions provided for the possibility of an appeal to the International Committee of the Red Cross. The duties of the International Committee of the Red Cross were, however, completely different from those of a Protecting Power, and even if it could replace a Protecting Power in certain respects, the possibility must be considered that the Committee itself might no longer be in a position to carry on its activities.

That was why the Delegation of France thought it important to seek means of filling the gap created by the absence of a Protecting Power. It therefore proposed the setting up, in time of peace, of an organization providing every guarantee of impartiality and efficacy in the sense of the provision which was already embodied in the first paragraph of Article 8/9/9/9. It was important to the Conference that the setting up of such an organization should be provided for, as otherwise there would be a serious gap in the Conventions which it was drawing up, and the hopes of the

peoples of the world would be disappointed. The Conference might perhaps charge a sub-Committee to examine the problem with a view to a further Conference, but it was essential to take up a definite position with regard to the matter.

The Committee decided to refer the question to the Special Committee for examination.

**First Report drawn up by the Special Committee**

The CHAIRMAN invited the Joint Committee to begin the second reading of Articles which had been referred to it for consideration. He suggested that the proposals made by the Special Committee should be considered as being amendments to the Stockholm text. He also asked the delegations, who had tabled amendments and were not withdrawing them, to be good enough to mention them while discussion of the Article takes place.

Mr. BOLLA (Switzerland), Chairman of the Special Committee, reads this Committee's Report.

**Article 1**

No observation having been made, the new Article 1, reproducing the text of Stockholm, was adopted unanimously.

**Article 2**

Mr. SOKIRKIN (Union of Soviet Socialist Republics) reserved the final opinion of his Delegation in view of the fact that the fourth paragraph of the Article had not yet been accepted by the Special Committee.

The new Article 2 (*see Annex No. 14*) was adopted unanimously; the Soviet reservation being noted.

**Article 4/5/5/5**

Mr. GARDNER (United Kingdom) thought that circumstances might arise in which the Contracting Powers would have to have the option of concluding special Agreements which might affect, to some degree, the rights conferred by the Convention. Such circumstances had been provided for in various Articles of the Conventions, so that the second sentence of the Article in question (*see Annex No. 16*) was now in contradiction with them. In order to bring it into line, it should be clearly stated that it was only the other special agreements mentioned in the first sentence which could not be allowed to prejudice the rights of protected per-

sons. He therefore proposed to insert after "No special agreement" the words "under this Article...".

Mr. YINGLING (United States of America) opposed the suggested amendment for the reasons given in the special Committee's Report.

The amendment proposed by the United Kingdom was rejected by 16 votes to 8, with 3 abstentions.

The new text of Article 4/5/5/5 was adopted by 27 votes to 1, with 3 abstentions.

*The meeting rose at 12 noon.*

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**NINTH MEETING**

*Monday 11 July 1949, 10 a.m.*

*Chairman:* Mr. Maurice BOURQUIN (Belgium)

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**Second Report drawn up by the Special Committee**

On the invitation of the Chairman, Mr. BOLLA (Switzerland), Chairman of the Special Committee, presented his Report.

**Article 5/6/6/6**

After the United Kingdom Delegation had withdrawn its amendment the Article was adopted unanimously. It reproduces the text of Stockholm.

**Article 6/7/7/7**

After a statement made by the Rapporteur, the CHAIRMAN announced that the Committee had before it two amendments, one submitted by the United Kingdom Delegation, the other by the Delegation of the Union of Soviet Socialist Republics (*see Annex No. 19*).

Mr. GARDNER (United Kingdom) proposed that the words "auprès de laquelle" at the end of the first paragraph should be translated into English by "with which". The words in the third paragraph

of the English text "the limits of their mission as defined in the present Convention" should be replaced by the words "their mission under the present Convention", because the Conventions did not, strictly speaking, define the mission of the Protecting Powers. A similar change should be made in the French text.

Mr. MOROSOV (Union of Soviet Socialist Republics) declared that the Soviet Delegation continued to support the proposal which it had made to the Special Committee concerning the Article in question. It considered that it was necessary to show in the text of the Conventions that the activity of the Protecting Powers and of their delegates should neither impair the sovereignty of the State nor run counter to its security and military requirements. But the third paragraph adopted by the Special Committee was not sufficiently precise and should be more emphatic. It ought to be replaced by the following text:

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

Mr. BOLLA (Switzerland), Chairman of the Special Committee, considered that the drafting changes proposed by the United Kingdom Delegation were interesting. He suggested they should be sent to the Drafting Committee of the Conference.

Mr. GARDNER (United Kingdom) accepted the suggestion of the Chairman of the Special Committee.

Agreed.

The first two paragraphs of Article 6/7/7/7 were adopted unanimously.

The Soviet amendment concerning the third paragraph was rejected by 17 votes to 7, with 8 abstentions.

The third paragraph was adopted by 29 votes, with 3 abstentions, in accordance with the proposal made by the Special Committee.

Mr. MOROSOV (Union of Soviet Socialist Republics) declared that he had voted for the proposal of the Special Committee, because it contained a certain number of provisions which appeared in the amendment proposed by his own Delegation; but the latter reserved the right to refer again to the third paragraph during the debate in the Plenary Meeting.

The CHAIRMAN took note of the Soviet statement, and put the Article as a whole to the vote, subject to the above reservation.

Article 6/7/7/7 was adopted unanimously.

#### Article 7/8/8/8

In the absence of observations, Article 7/8/8/8 was adopted unanimously.

#### Article 8/9/9/9

Mr. MOROSOV (Union of Soviet Socialist Republics) thought that, as a result of the changes made by the Special Committee, the Article (*see Annex No. 25*) was now vague and incomprehensible in certain parts. There was even a contradiction between it and the clear and precise text of the Stockholm Draft. The Soviet Delegation could consequently not accept the Draft text proposed by the Special Committee. The Special Committee's text made it possible to compel the Detaining Power to accept a substitute for the purpose of protection, whatever might be the reason, and irrespective of whether a government existed or not to which the protected persons were attached. Thus, if the Protecting Power chosen

by a belligerent gave up its functions, that belligerent could not choose another Protecting Power, and it would be left to the Detaining Power to solve the problem. That was quite absurd. He considered that the right to choose the Protecting Power could only be transferred to the Detaining Power when there did not exist a government to which the protected persons could claim attachment. The Soviet Delegation therefore proposed to omit the words "no matter for what reason" which the Special Committee had inserted in the second paragraph.

Again, the Soviet Delegation could not give its agreement to the third and fourth paragraphs added to the Stockholm text by the Special Committee. The Soviet Delegation could not admit that a sovereign State should be forced to accept against its will the services of a humanitarian organization, and considered that every State had the right to decide itself what organization it would ask to assume the humanitarian duties normally confided to the Protecting Power.

The Soviet Delegation had proposed on July 11, the substitution of the Stockholm text by the text of the Article adopted by the Special Committee. They now wished to modify that proposal slightly, in the sense that they suggested that the fifth paragraph of the text adopted by the Special Committee should be added to the Stockholm text.

The CHAIRMAN said that the Stockholm text served as a basis for the work of the Conference and, consequently, if the amendments to it were rejected, the Conference automatically reverted to the Stockholm text. In the proposal of the Special Committee, which comprised six paragraphs, the first and sixth paragraphs reproduced the Stockholm text, whereas the second, third and fourth were new and replaced the second paragraph of the Stockholm text. The fifth paragraph, which was also new, was approved by the Soviet Delegation.

The first and sixth paragraphs of Article 8/9/9/9 were adopted unanimously.

The fifth paragraph was adopted unanimously.

The proposal made by the Special Committee for the second, third and fourth paragraphs was adopted by 24 votes to 10, with 1 abstention.

Article 8/9/9/9 as a whole was adopted by 27 votes to 7, with 3 abstentions.

Mr. MOROSOV (Union of Soviet Socialist Republics) declared that the reason why the Soviet Delegation had voted against the Article in its entirety, although it contained some provisions with which he was in agreement, was that in his opinion a provision, which might impose a Protecting Power without taking into consideration the

wish of the government to which the protected persons belonged, was not legitimate. For that reason, the Soviet Delegation proposed to submit its text to the Plenary Meeting as a minority proposition.

The CHAIRMAN took note of Mr. Morosov's declaration.

### Third Report drawn up by the Special Committee

#### Article 38/42/117/128

The Article was adopted unanimously.

It concerns the Stockholm text of which the first paragraph of the Prisoners of War and Civilians Conventions was modified in order to adapt it to the text of the first two Conventions (*see Annex No. 48 — version Prisoners of War and Civilians*). The text of the Article for the Conventions Wounded and Sick and Maritime is the Stockholm text.

#### Article 38A/42A/118/129

The Article was adopted unanimously.

It concerns the text of Articles 118 Prisoners of War and 129 Civilians which was introduced into the first two Conventions.

#### Article 43/46/120/131

The Article was adopted unanimously.

It concerns the Stockholm text of which the last sentence ("In case of doubt...") was deleted.

#### Article 44/47/123/132

The Article was adopted unanimously. It is the Stockholm text completed by the introduction of the words "Geneva" and "21 April 1949".

#### Article 45/48/124/133

The Article was adopted unanimously. It reproduces the Stockholm text.

#### Article 46/49/125/134

The Article was adopted unanimously. To the Stockholm text were added the words "six months".

#### Article 47/50/121/ —

The Article was adopted unanimously. It is the Stockholm text.

#### Article 48/51/126/136

The Article was adopted unanimously. It is the Stockholm text.

#### Article 49/52/127/137

The Article was adopted unanimously. To the Stockholm text were added the words "six months".

#### Article 50/53/128/138

The Article was adopted unanimously. The Stockholm text was reproduced.

#### Article 51/54/129/139

The Article as proposed by the Special Committee (*see Annex No. 57*) was adopted unanimously.

#### Article 52/55/130/140

The Article as proposed by the Special Committee (*see Annex No. 58*) was adopted unanimously.

### Signature clauses

The signature clauses, as proposed by the Special Committee (*see Summary Record of the Twenty first Meeting*), were adopted unanimously.

*The meeting rose at 12.20 p.m.*

## TENTH MEETING

*Saturday 16 July 1949, 10 a.m.*

*Chairman:* Mr. Maurice BOURQUIN (Belgium)

#### Fourth Report drawn up by the Special Committee

Captain MOUTON (Netherlands), Rapporteur, introduced the Report dealing with Penal Sanctions.

As Delegate of the Netherlands, he recalled that the improvements which were now being sought in penal legislation with regard to the Conventions were not novel concepts, having already been advocated in 1874 in Brussels by the Frenchman, General Arnaudeau, who proposed that the Convention should serve as a common penal code for violations of the laws of war. He thought that the Contracting Parties would thereby be obliged to write into their penal codes similar provisions. The Oxford Manual of 1880 had also inserted in its Draft of Laws of War certain articles concerning violations.

It should be noted that through the absence of such articles, the Prisoners of War Convention was violated many times during the last war. The Reports published by the United Nations War Crimes Commission mentioned several trials concerning the Prisoners of War Convention.

The Netherlands Delegation was strongly convinced that a law and also an international convention had no strength without the possibility to enforce it, had no strength without sanctions. It hoped that the Conventions would never again be put to a test in practice. But if, what God forbid, these Conventions should ever have to be applied, they must be obeyed.

The task of this Conference was to diminish as much as possible the sufferings and horrors of that cancer of the human species for which a complete safe prophylactic had not yet been found. To make the protection of persons and goods as large as possible, it was necessary to find the means to prevent that irresponsible individuals or irresponsible Governments should turn the work of this Conference into a farce.

Thanks to the co-operation of a certain number of delegations and in particular to the help of the British Delegation a draft could be produced such as the text adopted by the Special Committee. (*See Annex No. 55*)

Mr. CASTRÉN (Finland) considered that the word "maltreatment" figuring in Article 40/44/119A/130A should be replaced by "inhuman treatment", in order to distinguish between serious crimes and offences of a milder character. The latter, under certain penal codes, such as that of Finland, were punishable only by a fine.

Mr. MOROSOV (Union of Soviet Socialist Republics) considered that Article 39/43/119/130 (*see Annex No. 51*) should be reinforced to increase their efficacy. A time limit of two years should be accorded for the introduction of provisions into the domestic legislation granting the punishment of violations of the Convention. This period should be sufficient to enact penal legislation and would go further than the present wording which would be only a recommendation.

The words "grave breaches" should be replaced by "serious crimes". The enumeration of "grave breaches" as given in Article 40/44/119A/130A proved that the offences the Conference had in mind were in reality crimes. The word "penal" should also be retained before the word "legislation".

The Soviet Delegation likewise asked for the addition of the words "in conformity with its own laws or with the Conventions prohibiting acts that may be defined as breaches" in the second paragraph.

The Soviet Delegation would support the Finnish amendment, as reproduced above.

Mr. MARESCA (Italy) asked for the deletion of the words "There remained, for instance, the liability to pay compensation" on page 11 of the Report.

Captain Mouton, Rapporteur, agreed.

Mr. LAMARLE (France) proposed to replace the word "repression" in Article 39/43/119/130, last paragraph, by the words "to inflict penalties for" (in French "sanction"), to cover also cases which would call only for disciplinary sanctions.

Referring to the amendment by the Italian Delegation, Mr. Lamarle pointed out that he was in agreement with this proposal, since recent peace

treaties had provided for agreements between former adversaries in full settlement of debts between them.

The French Delegation shared the view of the International Committee of the Red Cross that judicial guarantees should be accorded to all accused in virtue of this Article, including presumable war criminals who were handed over by a vanquished Power to its victor.

Mr. YINGLING (United States of America) stated that the reason why the United States Delegation could not accept the insertion of a two-year time limit was because the United States Legislature was independent of the Government who had no power over it to obligate it to enact legislation within a specific period.

Mr. HARASZTI (Hungary) was in favour of inserting the time limit of two years, which appeared adequate to modify the national legislation of the Contracting Parties, and to preclude arbitrary behaviour on the part of the Governments. The new Hungarian Military Penal Code which came into force on 1 February 1949 already stipulated severe penalties for acts contrary to the provisions of the Conventions. Mr. Haraszti was also in favour of defining the offences referred to in the Conventions by the term "serious crimes".

Mr. QUENTIN-BAXTER (New Zealand) was of the opinion that it was not the function of the present Conference to discuss the general subject of international criminal law, and he would therefore vote against the Soviet amendment.

The New Zealand Government would require more time to examine freely the responsibilities involved by these provisions, and therefore he was bound to reserve completely their attitude towards these Articles. Nevertheless he would support the text submitted by the Special Committee, because the principles which underly it were of great importance.

Colonel HODGSON (Australia) pointed out the difficulty in some federal States of enacting uniform legislation for the Federal Government and the States making up that country. This sometimes entailed long delay and he therefore could not vote in favour of the Soviet amendment.

He asked the Delegate of Italy what was the meaning of Article 40A/44A/119B/130B (*see Annex No. 56*).

Mr. MARESCA (Italy) said that the new Article purported to be a necessary supplement to the two precedent Articles. The new concept contained in this Article was that prior to their own responsibility, the perpetrators of violations had involved the responsibility of their State, and that the latter stood liable, even after individual penalties had been inflicted on the offenders who had acted as agents of that State. The provision would apply only to serious violations and would not involve special agreements, or over-all financial settlements of debts between the Parties.

Mr. SINCLAIR (United Kingdom) proposed to use the word "suppression" instead of "repression" in the third paragraph of Article 39/43/119/130, to meet the objection made by the Delegate of France. He could not agree to bind the legislature of his country by inserting a time limit of two years. He made a reservation for the position of the United Kingdom Delegation with regard to Article 40A/44A/119B/130B.

Colonel FALCON BRICENO (Venezuela) was opposed to the two-year time limit as proposed by the Delegation of the Union of the Soviet Socialist Republics and would vote in favour of the text submitted by the Special Committee.

The CHAIRMAN noted that the General Debate was closed.

*The meeting rose at 1.15 p.m.*

## ELEVENTH MEETING

Tuesday 19 July 1949, 10 a.m.

Chairman: Mr. Maurice BOURQUIN (Belgium)

**Fourth Report drawn up by the Special Committee** (*continued*)

The CHAIRMAN stated that the vote had to be taken on three Articles as presented by the Special Committee, i.e. Articles 39/43/119/130, 40/44/119A/130A and 40A/44A/119B/130B concerning Penal Sanctions for violations of the Conventions.

**Article 39/43/119/130**

*First paragraph.*

An amendment had been tabled by the Soviet Delegation regarding this paragraph, purporting to add the words "within a maximum period of two years" to the text of the Special Committee which comprised no time limit.

This amendment proposed by the Soviet Delegation was defeated by 9 votes for, 16 against, with 5 abstentions.

*Second paragraph.*

The Soviet amendment proposing to replace the words "grave breaches" by "serious crimes" in the second paragraph was rejected by 8 votes for, 20 against, with 7 abstentions.

The Soviet amendment proposing to add in the second paragraph the words "in conformity with its own laws or with the conventions prohibiting acts that may be defined as breaches" was rejected by 8 votes for, 19 against, with 7 abstentions.

*Third paragraph*

The United Kingdom proposal to replace the word "repression" by "suppression" was adopted by 20 votes for, 9 against, with 6 abstentions.

At the request of Mr. LAMARLE (France) the word "suppression" would be translated in the French text by "redressement".

*Fourth paragraph*

This paragraph was subject of an amendment (*see Annex No. 52*) tabled by the French Delegation, which differed according to the Conventions.

Mr. MOROSOV (Union of Soviet Socialist Republics) considered that the French amendment was not acceptable, since the accused persons referred to already benefited of the protection of the Convention. It would be inappropriate to introduce an Article of this kind into the Conventions, since it would appear to offer safeguards to perpetrators of violations.

Mr. LAMARLE (France) replied that the subject of the French amendment had already been contained in "Remarks and Proposals" published by the International Committee of the Red Cross, and had been discussed in the Special Committee. Probably nine-tenths of the cases were already covered by the Conventions, but the proposed amendment purported to cover those persons who in virtue of armistice agreements or peace treaties might be handed over by a vanquished Power to its victors as presumed war criminals.

The French amendment was adopted by 24 votes to 10, with 1 abstention.

Vote on Article 39/43/119/130.

The Article including the mentioned amendments was adopted by 28 votes to NIL, with 9 abstentions.

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

The amendment tabled by the Delegation of Finland proposing to replace the word "maltreatment" by "inhuman treatment" was adopted by 22 votes to 5, with 10 abstentions.

The Soviet amendment proposing to replace the words "grave breaches" by "serious crimes", was rejected by 8 votes for, 21 against, with 7 abstentions.

The Article as a whole was adopted by 33 votes to NIL, with 1 abstention.

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

Since the Australian amendment of this Article had been distributed only that morning, the vote was postponed.

**Fifth Report drawn up by the Special Committee**

Draft Resolution concerning a High International Committee.

Mr. ALEXANDER (United Kingdom), Rapporteur, read the Report drawn up by the Special Committee and the Draft Resolution concerning Article 8/9/9/9 (*see Summary Record of the Thirty-sixth Meeting*), which dealt with substitutes for Protecting Powers.

Mr. LAMARLE (France) said that the experience of the last war had proved that many countries were deprived of Protecting Powers, either because the adverse Party did not recognize their status as a legal government, or that the available neutral Powers were either too far away or had not met with the approval to act as Protecting Powers. He gave several examples taken from the experience of the French Provisional Government in the last war, which had not been recognized by the Government of the Reich. The International Committee of the Red Cross had not felt they could act, in these circumstances, as Protecting Power, since the functions of the latter were based on a mandate, whereas the International Committee operated by virtue of humanitarian, written and unwritten laws.

The French Delegation felt that the serious gap which at present existed in the Conventions should be filled.

Mr. MOROSOV (Union of Soviet Socialist Republics), considered that each question which came up for consideration should have a logical consequence after the Conference. As to the French proposal he felt that this was not the case, since the basis on which it rested seemed to him erroneous. He felt that the Delegate of France was unduly pessimistic when considering that in any future conflict there would be no neutral Powers left, and none who could serve as Protecting Powers. It would be doubtful whether the proposed International High Committee would be able to carry out its functions impartially in a conflict of a universal character.

Sir Robert CRAIGIE (United Kingdom) pointed out that the Committee believed that such a body might be required to operate a future conflict, if the draft Article 8/9/9/9 was adopted. The Committee was not necessarily assuming that a

future war would not absolutely be a world-wide one; but if a Protecting Power were operating it would have to be able to fulfil the heavy duties imposed upon it by the present Conventions. It would prove to be a nonsense if a Power, knowing in advance that it was not capable to carry out such duties, were to accept to carry out the provisions of the Conventions, which would then obviously be inappropriately applied. It would seem advisable for the delegations to be able to point out to their governments that the problem was a serious one, and that they should envisage the setting up of such a body already in peace-time.

General OUNG (Burma), while deprecating pessimism, felt that in the world as it was today, preparation should be made for such provisions as embodied in the Draft Resolution. He advocated that the proposed Committee should, as far as possible, be planned along the lines of the International Court of Justice, with special reference to national groups and regional agreements.

Dr. DIMITRIU (Rumania) shared the view that the present Draft Resolution was unduly pessimistic, and that there would remain neutral Powers which would be able to act as Protecting Powers. The proposed International Committee appeared to be a somewhat elaborate and expensive body, and if it were composed of outstanding personalities of various countries, their home States might find difficulty in dispensing with their services in any future conflict, to allow them to act as international officials. The Rumanian Delegation was, therefore, opposed to the Draft Resolution.

The Draft Resolution was adopted by 25 votes to 8, with 6 abstentions.

**Seventh Report drawn up by the Special Committee****Application of the Conventions to armed conflict not of an international character**

The CHAIRMAN recalled that the following Documents were put before the Joint Committee:

- (a) the Stockholm Draft, which was the basic text (Article 2, fourth paragraph);
- (b) a joint amendment resuming the draft proposed by the Second Working Party and amended by the Special Committee (*Annex E, Seventh Report of the Special Committee to the Joint Committee*) and tabled by the Delegations of France, Greece, Italy, the United Kingdom, Switzerland and Uruguay, to replace Article 2, fourth paragraph, by a new Article 2A.

The Special Committee had been unable to come to an agreement on a single text, but had submitted for the consideration of the Joint Committee the following documents:

- (1) Second Draft of the first Working Party (Annexes B and C of the Seventh Report).
- (2) Proposal made by the Delegation of the Union of Soviet Socialist Republics (Annex F).
- (3) Draft of the second Working Party as amended by the Special Committee (Annex E), which is the identical text appearing in the joint amendment mentioned above.

Mr. MOROSOV (Union of Soviet Socialist Republics) proposed that a vote should be taken first on the Soviet proposal, then on the amended Draft of the second Working Party, and lastly on the second Draft of the first Working Party.

The Soviet proposal seemed to deviate the most from the Stockholm Draft, as it embodied the broadest humanitarian measures contained in the Conventions. The joint proposal would presuppose a Convention in miniature, therefore it would facilitate the vote of certain delegations if the

Soviet proposal were voted on first, and, if it were rejected, those delegations would be able to vote for the joint proposal.

The CHAIRMAN suggested that at the present meeting a vote be taken which would be an informative one, and that the vote would be repeated on the following day. The draft which rallied the largest number of votes would then be put to a final vote.

#### Informative votes

The vote on the proposal made by the Delegation of the Union of Soviet Socialist Republics (in Annex F of the Report) showed 9 for, 25 against, with 3 abstentions.

The vote on the second Draft of the first Working Party (Annexes B and C of the Report) showed 5 for, 22 against, with 8 abstentions.

The vote on the amended Draft of the second Working Party (Annex E of the Report) showed 22 for, 4 against, with 12 abstentions.

*The meeting rose at 12.45 p.m.*

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## TWELFTH MEETING

*Wednesday 20 July 1949, 10 a.m.*

*Chairman:* Mr. Maurice BOURQUIN (Belgium)

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#### Fourth Report drawn up by the Special Committee (continued)

An amendment had been tabled by the Australian Delegation, proposing to delete the text of Article 40A/44A/119B/130B and to replace it by the following text:

"No Contracting Party shall be allowed to divest itself or any other Contracting Party of any responsibility incurred by itself or by another Contracting Party to punish persons who have committed or ordered to have been committed any of the grave breaches defined in Article 130A."

Colonel HODGSON (Australia), in presenting his amendment, recalled the explanations given by the

Delegate of Italy (*see Summary Record of the Tenth Meeting*). In view of the variety of ways in which this new Article might be interpreted, it seemed necessary to define how Governments could discharge themselves from their responsibility if they have not to pay indemnities for violations committed. The Australian amendment endeavoured to state clearly the intention of the Special Committee, which would represent the extreme limit beyond which the Australian Delegation could not go. They would, however, prefer to have the Article deleted.

Mr. MARESCA (Italy) considered that the Australian amendment was an improvement on the Stockholm Draft, but was more restricted in scope as compared with the text of the Special Committee.

The fact that an individual might act as an agent of a State in committing breaches, should be punishable, and the State should be responsible for its nationals in this respect.

Captain MOUTON (Netherlands), Rapporteur, pointed out that, in Article 39/43/119/130, the High Contracting Parties were required to bring offenders to trial before their own Courts, but not to punish them, since the Judiciary was independent of the Executive. The Australian amendment should therefore be modified to read: "Responsibility to bring to trial". In this case, however, there would be a repetition of an obligation already laid down in Article 39/43/119/130.

Sir Robert CRAIGIE (United Kingdom) considered that Article 40A/44A/119B/130B went too far in attempting to bind States in their future relations with one another, and, in particular, in their liberty to conclude a treaty of peace at the end of a war. Special agreements between States for financial settlements would be interfered with, and if the proposed provision were inserted, it would imply a much wider interpretation than the other Articles concerning violations of the Conventions.

The Delegate of the United Kingdom approved the suggestion made by the Delegate of the Netherlands to change the wording of the Australian amendment from "punish", to "bring to trial". With a view to preventing States from withdrawing themselves from their obligations to bring accused to trial, the United Kingdom Delegation would be prepared to support the Australian amendment.

Mr. YINGLING (United States of America) proposed that the amendment be voted in two parts: firstly deletion of Article 40A/44A/119B/130B, and secondly, substitution of the Australian amendment. The United States Delegation would vote against both these proposals, because they were beyond the competence of the High Contracting Parties.

Colonel HODGSON (Australia), recognizing that the Australian amendment was not acceptable, withdrew it, and declared that he would vote against the adoption of Article 40A/44A/119B/130B.

Mr. SOKIRKIN (Union of Soviet Socialist Republics) said that he would support the Article, the Soviet Delegation considering that the signatory Parties to the Convention could not absolve themselves from any liability for breaches committed against the Conventions.

The text of the new Article 40A/44A/119B/130B was adopted by 18 votes to 16, with 3 abstentions.

## Seventh Report drawn up by the Special Committee (continued)

### Article 2A

The CHAIRMAN recalled the preliminary vote which had been passed on the previous day, which showed 22 votes in favour of the Draft tabled by the Second Working Party as amended by the Special Committee. The other proposals rallied, respectively 9 and 5 votes. The final vote would therefore be taken on the first of these Drafts.

Mr. COHN (Denmark) sought to interpret the meaning of this amendment. There was a tendency to replace in all the Conventions the word "belligerents" by "Parties to the conflict". In Annex E a distinction was drawn between High Contracting Parties and Parties to the conflict, the latter referring solely to those engaged in a civil war and not in an international war.

If the word "belligerent" was replaced throughout the Convention by "Parties to the conflict", Article 2 would be affected. It would be unnecessary to provide for special agreements for the application of the other provisions of the Conventions, such application already resulting from the substitution of the words "Parties to the conflict" for "belligerents" throughout the Convention.

In addition, if the Article, as drafted, were applied, the legal status of the Parties to the conflict would be affected, because it would obligate the State to apply in a civil war all the provisions of the Conventions and those provisions were rules of international law.

The Delegation of Denmark was moreover of the opinion that in the case of civil war, the obligations under Article 2A of States remaining outside the conflict did not differ from those of Parties to the conflict and should be confined to those of a humanitarian nature.

General OUNG (Burma) asked the Chairman how delegations who were opposed to the inclusion of such an Article in the Convention could mark their objection.

The CHAIRMAN replied that they should vote against the Article as a whole.

Mr. BOLLA (Switzerland), Rapporteur of the Special Committee, reassured the Delegate for Denmark that the words in the first paragraph "each Party to the conflict", would not have as a consequence that all the provisions of the Conventions would be applicable by all Parties. The Special Committee voiced a definite opinion that the provisions of the Conventions were, on principle, not applicable to civil war, and that only

certain stipulations expressly mentioned would be applicable to such conflicts. Therefore, if the text were adopted, neutral States would have no obligations.

Mr. SÖDERBLOM (Sweden) stated that he had at no time shared the apprehensions of his Danish colleague, and that he was of the same view as the Rapporteur.

Article 2A (*see Annex E of the Seventh Report*) was adopted by 21 votes to 6, with 14 abstentions.

### Sixth Report drawn up by the Special Committee

#### Settlement of disputes

##### Article 9/10/10/10

The CHAIRMAN recalled that the Rapporteur for this question was Mr. Georg Cohn (Denmark) and he thanked him for his work.

Mr. SOKIRKIN (Union of Soviet Socialist Republics) recalled that the Soviet Delegation opposed during the Thirty-ninth Meeting to the addition of the word "interpretation" in the first paragraph of Article 9/10/10/10 (*see Summary Record of this Meeting*), since they considered that the function of Protecting Powers was to contribute to the application of the Conventions, but not to interpret them. He would therefore vote against the addition of this word.

Mr. YINGLING (United States of America) pointed out that, in virtue of the present Conventions and this Article, in particular, the Protecting Power had no right to interpret the Convention, but only to use its good offices to bring the Parties together to enable them to come to an agreement as to the interpretation of the Convention.

Mr. SOKIRKIN (Union of Soviet Socialist Republics), referring to the suggestion made by the Special Committee to insert a new Article referring to recognition by the Contracting Parties of the jurisdiction of the International Court of Justice, remarked that such a provision would be in contradiction with Article 36 of the Statute of the Court. Articles 9 and 41 of the Wounded and Sick Convention already provided for the settlement of disputes, by the International Court. The new Article, therefore, seemed redundant. Moreover, some countries were not members of the United Nations, yet might be signatories to the present Convention, and should, therefore, not be required to recognize the jurisdiction of the International Court, and in fact, according to

Article 36, the Court would not consider itself competent to recognize applications submitted by them. The conditions according to which the Court would be open to non-member States of the United Nations were laid down by the Security Council in Article 35 of the Statute of the Court.

Mr. MEVORAH (Bulgaria) considered that the Article under consideration raised a question of method, because it applied not to all Contracting States, but only to some, and the obligations which the Article laid on the latter might have been carried by a majority vote, whereas the States to which the Article would apply might have been defeated in the vote.

The CHAIRMAN recalled that Article 9/10/10/10 contained two paragraphs. For the first paragraph there was a Soviet amendment comprising two elements:

- (1) Deletion of the word "interpretation" in the first paragraph.
- (2) Deletion of the words "with a view to settling the disagreement", at the end of the first paragraph, and substituting them by the words "with a view to facilitating such application".

The first part of this amendment was rejected by 9 for, 21 against, with 2 abstentions.

The second part of the Soviet amendment was defeated by 10 for, 19 against, with 3 abstentions.

The Article as a whole was adopted by 24 votes to 6, with 4 abstentions (*see Annex No. 27*).

##### Article 41/45/119C/130C

The above Article (*see Summary Record of the Thirty-ninth Meeting*) was adopted by 35 votes to NIL, with one abstention.

#### New Article on judicial settlement

The new Article (*see Summary Record of the Thirty-ninth Meeting*) was adopted by 17 votes to 10, with 10 abstentions.

The CHAIRMAN recalled that the Special Committee had asked the Drafting Committee of the Conference to decide on the most appropriate place in the Conventions for the insertion of this new Article.

*The meeting rose at 12.30 p.m.*

## THIRTEENTH MEETING

Monday 25 July 1949, 10.30 a.m.

Chairman : Mr. Maurice BOURQUIN (Belgium)

**Approval of the Report submitted by Joint Committee to Plenary Assembly**

Colonel DU PASQUIER (Switzerland), Rapporteur, Mr. YINGLING (United States of America) and Mr. LAMARLE (France), pointed out that several corrections have to be made in this Report.

Mr. SOKIRKIN (Union of Soviet Socialist Republics) asked to replace the beginning of Article 6/7/7/7 by a text reading as follows:

"The third paragraph was drawn up by the Special Committee with special reference to a proposal submitted by the Delegation of the U.S.S.R. which had submitted the following amendment:

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

The Soviet Delegation, however, was not satisfied and maintained its amendment which was rejected by 17 votes to 7, with 8 abstentions."

In the passage concerning Article 9/10/10/10, Mr. Sokirkin proposed the following wording:

"It was not the duty of the Protecting Powers to intervene in juridical questions which were not within their competence and concerned the interpretation of the Conventions".

With regard to the new Article, Mr. Sokirkin proposed to add at the end of the penultimate paragraph the following words:

"as it was of opinion that the present Conference was not competent to settle questions which fell within the competence of the Security Council".

Regarding Article 2A, the Soviet Delegation proposed to change the last paragraph as follows:

"...that in the case of an armed conflict not of an international character, each of the Parties to the conflict shall apply all the provisions of the Convention which involve the humane treatment of persons who should benefit by the protection of the Convention."

Colonel DU PASQUIER (Switzerland), Rapporteur, readily agreed to the suggestions made by the Soviet Delegation.

Mr. COHN (Denmark), referring to Article 2A, pointed out that in all the Conventions there was a tendency to replace the word "belligerents" by the words "Parties to the conflict", which could not fail to influence the legal status of the Parties to the conflict. The new Article 2A, as proposed, dealt with relations between Governments and insurgents, but no account had been taken of relations between insurgents and parties outside the conflict, which however could raise most intricate problems in international law, and went beyond the scope of the present Convention. He proposed that a declaration should be made to the Plenary Assembly making the following reservation:

"The question whether a Party to a conflict, who was not a government, should be recognized by a party outside the conflict, was to be decided in accordance with the general rules of international law in this connection, and was not governed by the Conventions drawn up at this Conference."

Captain MOUTON (Netherlands) asked that the Danish proposal be submitted to the Committee in writing.

In the third paragraph of the comment concerning the "Sanctions repressing the violation of the Conventions", the words "or the principle of the universality of repression" (figuring in the first

sentence after "international jurisdiction") should be deleted, following the decision not to replace the words "High Contracting Parties" by "Parties to the conflict", as proposed by a delegation.

Colonel HODGSON (Australia) deprecated the introduction into the present Report of any individual reservations by delegations. Such reservations should, in his opinion, be made at the time of signing the Convention.

At the end of paragraph two, concerning the "Question of the High International committee", he felt the wording should be revised, since the Special Committee had been careful not to invite the Governments to set up a specific international body, but, as would be seen in the relevant resolution on the High International Committee, only "An International Body".

Colonel DU PASQUIER (Switzerland), Rapporteur, agreed to the changes suggested by the Delegates of the Netherlands and Australia.

Mr. MARESCA (Italy) asked for the deletion in the passage concerning Article 40A/44A/119B/130B of the last sentence of the last paragraph.

Colonel HODGSON (Australia) was opposed to the deletion of that sentence.

Mr. MARESCA (Italy) withdrew his proposal.

Mr. SOKIRKIN (Union of Soviet Socialist Republics) shared the views of the Delegations of the Netherlands and Australia, and considered that the Danish proposal to formulate a statement to the Plenary Assembly, with regard to the implications of the term "Parties to the conflict" instead of "belligerents" throughout the Conventions,

should be examined at a subsequent Meeting of the Joint Committee, since it went beyond the scope of the present Report.

Mr. COHN (Denmark) withdrew his request that a vote be taken on this subject at the present Meeting.

Mr. SOKIRKIN (Union of Soviet Socialist Republics) agreed to the Report, while making the reservation that the U.S.S.R. Delegation considered that the comments in the Report on the subject of particular Articles of the Conventions could not be considered as obligatory in regard to the interpretation or implementation of the Conventions.

The CHAIRMAN noted the above statement by the Soviet Delegation.

The first and second Reports submitted the Joint Committee to the Plenary Assembly were unanimously adopted. They will be found in one Document.

The CHAIRMAN congratulated the Rapporteur on the clarity of the above Reports and thanked the Special Committee, its Chairman, Rapporteurs and collaborators, for their efforts. He also thanked the various Representatives of the International Committee of the Red Cross, who had rendered the greatest service in supplying information and advice.

Mr. AURITI (Italy), supported by Mr. LAMARLE (France), expressed the gratitude of the Joint Committee to their Chairman, Mr. BOURQUIN, for the authority, ability, impartiality and courtesy with which he had conducted the debates of the Committee.

*The meeting rose at 12.30 p.m.*