SIXTEENTH MEETING

Wednesday 27 July 1949, 3.30 p.m.

President: Mr. Max PETITPIERRE, President of the Conference

PRISONERS OF WAR CONVENTION

Article 42A

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

Article 43 *(continued)*

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

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

> "No prisoner of war may be employed on labour which is either unhealthy or of a dangerous nature". (First point of the Amendment.)

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

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

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

The first paragraph would therefore read as follows:

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

The PRESIDENT: Does anyone else wish to speak? This not being so, we will vote successively on the two proposed amendments.

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

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

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

We will now proceed to vote on amendment No. 1 with the addition proposed by the French Delegation, which you have just accepted.

Amendment No. 1 was adopted by 25 votes to none, with 10 abstentions.

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

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

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

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

Article 44

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

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

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

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

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

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

Mr. GARDNER (United Kingdom): I want to say briefly why my Delegation—as, I think, Committee II—rejected this proposal. The spirit behind it is one with which we all would sympathize but it disregards, I believe, the practical circumstance, surrounding the employment of prisoners of war in what is, perhaps, the best occupation in which they can be employed namely in agriculture. If you go into the northern part of the country which I have the honour to represent you will find that agricultural labourers—indeed all the farm workers—during the winter work no more than four or five hours in the days which are shortest. Against that their hours in the long days of June and July are certainly longer than ten. I would go further, and I would say that in my country generally, and I suspect in most countries—certainly in countries which are liable to have heavy thunderstorms or rain coming on suddenly—it would be impossible to get the harvest in if the workers were restricted to ten hours a day. In harvest time people work almost from sunrise until sunset, and if prisoners of war employed on those farms were to get more favourable treatment it would only result in antagonism on the part of the civil population against the prisoners.

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

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

The PRESIDENT: We shall now take the vote.

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

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

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

The above mentioned Articles were adopted.

Article 51

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

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

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

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

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

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

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

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

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

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

Mr. ZUTTER (Switzerland): The United Kingdom amendment which we have just accepted provides for the deletion of the word "gold" wherever it appears. I should like to know whether the

paragraph appearing under the Categories I, II, III, etc., namely:

"the Swiss gold franc aforesaid is the franc containing 203 milligrams of fine gold",

remains or is omitted.

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

We will now proceed to Article 51A.

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

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

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

Article 51A

Article 51A was adopted.

Article 52

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

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

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

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

Articles 53, 54, 55, 56 and 57

The above mentioned Articles were adopted.

Article 57A

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

The PRESIDENT: Are there any comments on the remark just made by the Rapporteur?

As there are none, the remark is noted. Does anybody wish to speak?

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

Article 58

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

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

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

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

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

Moreover, the Conference has already agreed, in a similar case in the same Convention, namely

the third paragraph of Article 19, which deals with notifications in connection with the internment of prisoners of war, that such notification shall be made at the outbreak of hostilities. This was already provided by the 1929 Convention.

The expediency of coordinating provisions which are so similar is a reason in favour of our amendment.

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

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

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

We will now take a vote on Article 58 as a whole.

Article 58 was adopted by 33 votes, with 1 abstention.

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

The above mentioned Articles were adopted without discussion.

Article 75

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

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

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

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

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

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

The United States Delegate was however obliged to recognize immediately that these States afterwards adhered to the principles of the Nuremberg Statutes and that, further, the General Assembly of the United Nations, in a resolution taken in the name of all members of this Organization had agreed with these principles. Thus a heavy majority of the States participating in the present Conference had accepted and recognized

the principles contained in the Statute of the Nuremberg Tribunal. Some States, which are not members of the United Nations and are represented at this Conference, had not up to the present raised any objection to the inclusion in Article 75 of the allusion to the principles of the Nuremberg Trial. It must be emphasized, which is rather strange, that the objections made to this inclusion emanate entirely from delegations whose Governments have, in one form or another, expressed their agreement with the Nuremberg principles.

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

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

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

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

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

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

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

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

The French Delegation had pointed out that Article 75, in the form adopted by Committee II, is absolute, peremptory and unlimited. The French Delegation have cited several examples to show that this absence of any limitation, if I may so express myself, is distincly unfortunate, and that it would be really grotesque to allow certain war criminals to receive their pay. And we pointed out, the Nuremberg Tribunal did not agree to pay Marshal Goering the quintuple salary to which he was entitled, as Prime Minister of Prussia, Marshal of the Reich, and the holder of several

other important offices. We were all agreed on this point; but Article 75, as it is now drafted, would compel the Allies, as Occupying Powers in Germany, to issue to war criminals still serving their sentences in prison their handsome pay as Generals or Field Marshals; and I can scarcely imagine that anybody really whishes to do this.

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

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

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

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

We consider this matter as a question of principle, as a matter on which the Convention we are discussing must be absolutely clear, so that it will leave no doubt about the intention of its authors. The Soviet amendment concerns those prisoners of war who have been convicted for war crimes or for crimes against humanity in accordance with the principles of the Nuremberg Trial. In other words, it concerns those war criminals who not only give by their deeds clear evidence that they do not respect the provisions of this Convention and other Conventions concerning the war, but also manifest that the very basic principles of humanity mean nothing to them and that they are always ready to violate the elements of human law, written or unwritten, of human society. The main purpose of our Convention is to guarantee the humanitarian principles even in war; and the Conventions resulting from this Conference must form, if I may say so, a charter of those humanitarian principles. It would be a very bad service to humanity to include in such a charter of humanitarian principles provisions giving special protection and granting special benefits to the war criminals and criminals against humanity, that is, to the most dangerous enemies to the very life of humanity. This is the main reason, this reason of principle, for which my Delegation cannot accept the text of Article 75 as it stands without adding to it an exception concerning war criminals and criminals against humanity as stipulated in the Soviet amendment.

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

Other arguments put forward against the amendment in question contend that this principle itself would be acceptable, if the amendment did not refer to the principles of the Nuremberg Trial and if it did not use the words "war criminals" and "criminals against humanity". These arguments we cannot understand either. We see here again the question of principle. The Nuremberg Trial was a result of cooperation and agreement between the Great Powers who were allies in the last war. So was the Moscow Declaration concerning prosecutions and punishment of war criminals. In abanding and denying this agreement and this coopera-

tion we feel that there is a grave danger to one of the very fundamental principles of international law, of the principle *Pacta sunt servanda*; and this is being endangered at a Conference engaged in creating new international Conventions. Having in mind that we are working on Conventions which are humanitarian par excellence, we could never accept provisions protecting the greatest enemies of human society, the war criminals. I appeal to all delegations not only in the name of Lidice and Terezin but in the name of Majdanky and Osviecim and in the name of all the pillaged and burnt-out villages of many countries and in the name of the millions of people massacred by the war criminals of the last war, to join with us with voting for the amendment in question.

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

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

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

Now just exactly what does Article 75 do? What is it intended to accomplish? It gives to a prisoner convicted of a crime, a pre-capture crime, the right to the minimum standards of a prison regime as laid down in Article 98. If his conviction entails a sentence of death, it gives him the benefit of Article 91, which requires that his Government should be notified of his conviction and that his execution should be delayed for six months. If the principle of granting a man convicted and sentenced to death a six months' respite is to be denied by this Conference, then the United States Delegation cannot agree with such a conclusion.

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

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

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

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

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

I wonder what is the exact difference between these two hypotheses. The case I have just mentioned concerns hostile activity, which has not yet been proved by trial, since the proceedings have only reached the stage of enquiry and nothing exists but more or less indefinite suspicions. Yet we would be ready to decree the complete forfeiture of the rights and privileges granted by the Convention. Why should we now change our opinion? We are dealing with war crimes and crime against humanity. What does this mean? The principles are well established and adequately defined, since there was a preliminary agreement in London when they were outlined, though, I admit, somewhat briefly; but later came the Records, we have witnessed convictions, and have thus been able to reach a clear definition of what we now call war crimes or crimes against humanity.

In these circumstances, why should we now refer to definitions which are not admitted in the field of international public law? On the other hand, as soon as the words "crimes against humanity" are pronounced, they immediately call up the vision of a person who has lost all sense of humanity, whose remaining instincts are those of a brute, who would not hesitate to smash a child's body against a wall, who would shoot anybody and who would order summary executions without trial or sentence, who would torture his victims or, in violation of the prohibition which we have adopted, would take hostages and perhaps, worse still, would execute them. If this is clear for a layman, it must be still more apparent for a jurist, especially if he has studied the Nuremberg trials. This has already become history and we should have no hesitation in referring to a matter which is quite clear to everybody.

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

I have given my full attention to previous interventions. It is obvious that we all agree on the principles, but in spite of that there is a difference of opinion as regards their application.

It has just been said that we cannot refer to Nuremberg because it has nothing to do with our Convention. I venture to say that the remark is somewhat egoistical. Nuremberg has, in fact, much in common with our Convention. We cannot, of course, apply the London agreements or the Nuremberg judgments (which were pronounced for war crimes) to persons who have been guilty of activities directed against the State, but that standard might be admitted in the estimation of crimes.

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

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

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

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

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

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

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

I have to draw the Meeting's attention to the fact that the principles of Nuremberg were accepted during the last World War by the Great Powers and afterwards by most of the countries represented here. They represent remarkable progress in the field of international law. I consider that it is not for this Conference to disavow those principles. If we pass them over in silence, or even if we are not prepared to confirm them, we

must not be astonished if a revision of the Nuremberg proceedings as well as the principles of Nuremberg is asked for. Under those conditions the Hungarian Delegation considers that we ought of clearly indicate that we approve of those principles. If we fail to give this point of view due emphasis, we put ourselves on the side of those who do not recognize those principles. In that case it is better to say so clearly, at once.

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

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

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

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

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

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

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

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

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

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

When the experts gathered here in 1947 after the experience of this last war and after the experience of several trials of war criminals, they realized that they could not, on the simple fact that somebody is alleged to have committed a war crime, put that person outside the protection of the Convention and for that reason we thought that we should at least make a provision that nobody would lose the protection of the Convention until condemned by a Court. But when you take this

step why not take one step more? What is there against leaving even a war criminal (and do not forget that there are gradations in the criminality; we always hear of frightful types of war criminals in these discussions here but there might be some of a minor character and the difficulty is to know where to draw the line) protected by the few provisions of this Convention which still apply? I am sure that in the case of any of your soldiers who are accused of war crimes and are convicted by Courts you would still want to have them treated in a humane way and would want them to be repatriated after their sentence is finished.

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

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

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

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

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

The Delegate for the United States of America thinks that the Soviet amendment would cause

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

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

. . . . . .

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

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

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

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

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

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

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

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

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

What are they? First, if he is sentenced to death under Article 91, that sentence must be suspended long enough for his Government to consider the facts of the case and to make any representations they think fit. Nobody, even a convicted war criminal in the hands of his captors, because he is a prisoner should be deprived of that. Secondly, he should have the same right of appeal as prisoners of the Detaining Power. Does anyone dispute that a convicted war criminal ought to have every right to appeal? Thirdly, the notification of his conviction and his rights of appeal should be communicated to the Protecting Power. Is there any reason why the war criminal should be deprived of that? Finally, if

he is sent to prison, he shall enjoy the minimum standards laid down under Article 98 for any criminal put in prison who is in the hands of the enemy as a prisoner of war. We submit that those things are the minimum which should be given to anybody anywhere; even in peace-time, if a citizen of the United Kingdom is convicted in a foreign Court, these are the things we should seek to secure for him through diplomatic channels. We repudiate, therefore, any suggestion that we are trying to be soft towards war criminals. We have provided for their punishment; but we have insisted, and we shall continue to insist, in the vote that is to take place, that if you punish a war criminal in the name of the law of humanity your punishment must conform to the law of humanity. Unless the Soviet amendment really means treating him worse than Article 98 when he is imprisoned, I do not believe there is any difference in practice between the parties; there is only a difference in the way it is expressed. I ask the Conference to endorse the view which Committee II took on the same amendment and to uphold the Stockholm text (former Article 74).

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

The PRESIDENT: Are there any objections to this proposal?

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

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

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

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

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

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

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

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

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

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

The results of the roll-call were:

In favour:

Albania, Byelorussia S.S.R., Bulgaria, Hungary, Roumania, Czechoslovakia, Ukraine S.S.R., Union of Soviet Socialist Republics.

Against:

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

Abstentions:

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

Absent:

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

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

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

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

The PRESIDENT: This declaration is duly noted.

Article 30A

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

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

The meeting rose at 7.50 p.m.

SEVENTEENTH MEETING

Thursday 28 July 1949, 10 a.m.

President: Mr. Max PETITPIERRE, President of the Conference

PRISONERS OF WAR CONVENTION

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

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

The above mentioned Articles were adopted.

Article 95

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

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

Committee II unanimously adopted this text.

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

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

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

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

Articles 96, 97 and 98

The above mentioned Articles were adopted.

Article 100

The PRESIDENT: To this Article no amendment has been submitted.

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

The justification has been that there are some captured as prisoners of war who, if returned to their own country, have to fear persecution. I suggest that a country should be allowed to decide for itself whether it will give refuge and asylum to a foreigner who has come to that country not by a voluntary act of his own; for instance, when a Detaining Power is satisfied that he has good grounds for staying, but there should not be an obligation on the Detaining Power to keep a prisoner of war who, as the Convention itself says, ought no longer to be a prisoner of war. I invite the Conference to vote against the last paragraph of Article 100.

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

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

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

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

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

had any right to be received in the territory of the Detaining Power.

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

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

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

Is there any opposition to the first paragraph?

As this is not the case, it is adopted.

Is there any opposition to the second paragraph?

As this is not the case, it is adopted.

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

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

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

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

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

Does anyone else wish to speak on Article 100?

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

Articles 101, 101A, 102, 103, 104

Articles 101 to 104 were adopted.

Article 105

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

General SKLYAROV (Union of Soviet Socialist Republics): The Soviet Delegation considers that the wording of Article 105 adopted by Committee II should be altered.

The Stockholm text was completed by the addition of the following words:

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

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

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

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

Mr. GARDNER (United Kingdom): I hope the Conference will maintain the text as submitted by Committee II, for this reason. This Article is in the Section dealing with the direct repatriation during war time of sick and wounded pris-

oners or with their accommodation in neutral countries. The position of the fit being repatriated at the end of hostilities is dealt with in Article 109 on this particular point, in the sixth paragraph of that Article which Committee II decided should not include a provision on these lines.

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

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

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

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

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

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

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

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

I recall these facts to show you that the two classes of penalties, or in other words offences, are not the same if you look at them from the point of view of the penalty provided under the law, and the penalty inflicted after conviction. In the latter case, we are considering a much more serious class of offences, whereas the offences in the former category are not very serious. To show you clearly what I mean, here is an example.

Take the case of rape committed under normal conditions—i.e. abnormal conditions. Let us suppose first that the punishment provided by the criminal code is ten years' imprisonment; in such a case, it would not be possible to release the detained prisoner by virtue of the provisions of Article 105. If the Court had already passed sentence and inflicted not the maximum penalty of ten years, but only eight years, for example, it would be impossible to retain this sentence. You see, therefore, that the same offence may produce directly opposite results, according to the position envisaged, in other words, whether we take the period before or after conviction.

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

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

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

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

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

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

Articles 106 and 107

These Articles were adopted.

Article 108

The PRESIDENT: We will now consider Article 108. An amendment has been presented by the Delegation of the Union of Soviet Socialist Republics. It proposes to delete the two last sentences of the stipulation in sub-paragraph *b)* last paragraph of the Article.

Mr. SÖDERBLOM (Sweden), Rapporteur: This refers to the apportionment of repatriation costs for prisoners of war between the Detaining Power and the Power on which the prisoners depend. The Stockholm Conference had advocated a Model Agreement to be annexed to the Convention. Committee II did not favour that idea, and instead inserted a fourth paragraph in Article 108. This fourth paragraph lays down the general principles governing the apportionment of costs.

The amendment now submitted to us relates to the remaining costs, that is to say, the expenses of transport on the territory of the Powers concerned.

Mr. FILIPPOV (Union of Soviet Socialist Republics): The Soviet Delegation considers that certain provisions of Article 108 are not well-founded. Point *(b)* lays down the principle that the Detaining Power, if it has no common frontier with the Power on which the prisoners depend, must bear a proportion of the repatriation expenses involved, including transport costs not only up to that Power's own frontier or up to the nearest point on the territory of the Power on which the prisoners of war depend, but even beyond its own frontier.

The Soviet Delegation considers that repatriation costs of prisoners of war in respect of their transport beyond the frontier of the Detaining Power cannot, in any case, be the responsibility of that Power. Such costs should be met by the Power on which the prisoners depend.

The result of such a provision, if adopted, would be that Powers who had been victims of agression would afterwards be required not only to pay for the transport of prisoners of war up to their own frontier but would further have to meet a proportion of the transport costs beyond their own territory. This would involve difficulties especially if the prisoners had to be conveyed considerable distances from the frontier of the country which had been invaded. It would not be equitable that the Detaining Power should be called upon to bear these costs or any part of them.

For this reason, the Soviet Delegation proposes that the two last sentences, beginning with the words: "The Parties concerned shall agree . . ." be deleted from paragraph four, sub-paragraph *(b)*.

Mr. BAISTROCCHI (Italy): The apportionment of repatriation costs was discussed at considerable lenght in Committee II.

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

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

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

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

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

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

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

Mr. SÖDERBLOM (Sweden), Rapporteur: The suggestion as to the drafting seems judicious to me and should be adopted without further proceedings.

I hesitate to give an opinion on the remaining question which raises a great many difficulties. I think a vote should be taken on these two divergent views.

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

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

Mr. BAISTROCCHI (Italy): We oppose this proposal.

The PRESIDENT: If I have rightly understood, the Italian Delegation is opposed to this proposal.

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

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

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

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

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

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

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

Will you now vote on the whole of Article 108.

Article 108 was adopted by 35 votes to none, with 11 abstentions.

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

The meeting rose at 11.50 a.m.

EIGHTEENTH MEETING

Thursday 28 July 1949, 3 p.m.

President: Mr. Max PETITPIERRE, President of the Conference

"PRISONERS OF WAR" CONVENTION

Article 109

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

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

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

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

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

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

The PRESIDENT: Is any objection raised to the proposal submitted by the Delegation of the Union of Soviet Socialist Republics ?

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

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

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

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

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

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

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

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

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

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

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

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

The PRESIDENT: Voting on Article 109 as a whole is therefore postponed till a later meeting.

Does anyone wish to speak on Article 109?

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

The PRESIDENT: I think the United Kingdom Delegation may now submit its objections.

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

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

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

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

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

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

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

I suggest that these questions should be considered separately.

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

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

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

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

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

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

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

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

General DILLON (United States of America): The alleged contradiction is illusory rather than real. Article 105 deals with repatriation during hostilities, and of those who are eligible for repatriation, approved by the Mixed Medical Commission under Article 105, there are going to be very few, at best, who are undergoing any sentence. Article 109 deals with repatriation at the close of hostilities. These two decisions were taken by Committee II after long and serious consideration of the matter: the decisions were deliberately made because the Committee felt it was willing, in the case of repatriation under Article 105 during hostilities, to take the proposal of a maximum of 10 years to apply but they were unwilling to apply it in a general repatriation at

the close of hostilities. There is no contradiction ; we just took different decisions in the two Articles, and I think the decisions taken are correct and we should not regard them as inconsistent.

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

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

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

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

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

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

Article 110

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

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

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

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

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

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

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

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

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

Article 111

The PRESIDENT: We shall now consider Article 111.

Article 111 was adopted.

Article 112

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

Mr. SÖDERBLOM (Sweden), Rapporteur: The Drafting Committee suggested to the Assembly that the word "nationality" appearing in the fourth paragraph should be replaced by "indication of the Power on which they depend". This change is in my opinion not only justified, but necessary. Allow me to remind you that Article 15, in which identity cards are mentioned, does not use the term nationality, but refers to persons who are under the jurisdiction of the Belligerent Parties... etc.

In Annex IV (capture card), the word "nationality" has been avoided. The wording is the following: "the Power on which the persons concerned depend".

We must adopt a term which has been approved for the rest of the Convention.

Article 112 was adopted.

Articles 113 and 114

Articles 113 and 114 were adopted.

Article 115

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

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

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

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

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

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

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

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

We do not see the necessity of giving a complete list here of all the organizations engaged in different forms of relief and assistance to prisoners of war. We see no reason to make special reference to religious organizations for they seem to us to be included in the idea of relief societies, as defined in Article 115.

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

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

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

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

All of us here know how much has been done by the International Committee of the Red Cross, mentioned in Article 113, and everyone here has made a point of paying the most solemn and whole-hearted tribute to the magnificent work which it has accomplished, but we all know equally well, how vast its task was in the last conflict, and what substantial aid it received from relief societies and religious organizations.

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

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

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

The amendment was rejected by 25 votes to 8, with 3 abstentions.

Article 115 was adopted by 32 votes to none, with 9 abstentions.

Article 116

Article 116 was adopted.

Article 122

Article 122 was adopted.

Annexes I, II, III, IV

Annexes I, II, III, IV were adopted.

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

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

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

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

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

Annex V

Annex V was adopted.

Titles of chapters and sections

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

Does anyone wish to speak on the titles?

Since no delegation wishes to speak, I take it that you agree with the details figuring in this Document.

Article 110 *(continued)*

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

Mr. SÖDERBLOM (Sweden), Rapporteur: I am glad to have had a few minutes to consider this Article. I rather agree, as one delegation pointed out in the course of the debate, that the Meeting should refer to the Drafting Committee's Report. The Drafting Committee explains certain editorial

modifications of Article 110 and also mentions the fact that the United Kingdom Delegation had preferred another text for the first paragraph of the Article. This text is to be found in the Report I have just quoted.

In my opinion this is a text that would do very well as the first paragraph of Article 110. If you think it advisable I see no objection to the United Kingdom Delegation's text being put to the vote.

The adoption of this text would solve the difficulty and there would be no reason to return to the Article. If it is adopted, I would remind you that the Drafting Committee also mentioned in the Report that some doubt had arisen as to the coordination of the English and French texts, and that improvements, not affecting the substance, might be made.

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

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

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

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

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

The PRESIDENT: That is true.

Articles 3, 30A, 109 *(continued)*

Mr. SÖDERBLOM (Sweden), Rapporteur: We have now reached the end of the Agenda, but three Articles remain, namely Article 3, which has to be considered after Article 2 had been discussed in the light of the Joint Committee's Report, Article 30A, which has to be coordinated with Article 29B, and finally the Report of the sub-Committee on Article 109.

Articles 13, 20 *(continued)*

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

This term has been replaced by "who have been taken prisoner" or "who have fallen into the hands of the enemy", for instance in Articles 3, 4, 17, 50, 59, etc. The word "capture", however, has survived in the third paragraph of Article 13, and has been introduced into the third paragraph of Article 20 as the result of the adoption of an amendment proposed by the Soviet Delegation. I think we might ask the Secretariat to delete this word in the two Articles mentioned, which would then read as follows: Article 13, first sentence third paragraph:

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

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

This is a mere correction.

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

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

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

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

Article 105 *(continued)*

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

The PRESIDENT: The motion has been noted. The question will probably figure in the Agenda of tomorrow afternoon's Plenary Meeting. I must remind the Meeting, however, that there will be no discussion, but merely a vote.

Article 100 *(continued)*

Mr. GARDNER (United Kingdom): The United Kingdom Delegation further wishes Article 100, upon which we tied yesterday, to be put on the Agenda for new votes.

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

COMMON ARTICLES

The PRESIDENT: We will now consider the Articles common to the four Conventions. We will base our work on the Wounded and Sick Convention.

To save time I suggest we should consider each Article for the four Conventions simultaneously. There will thus be one vote on any given Article or amendment, except where an amendment does not concern all the Conventions or where a delegation specially asks us to proceed otherwise.

I take it that you agree with this proposal.

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

Mr. BOLLA (Switzerland): As you are aware, the Stockholm Draft contained a number of provisions which were repeated in identical or almost identical terms in the four Conventions or at least in two or three of the Conventions.

This Conference has decided in Plenary Meeting that these common provisions should be considered separately and referred to a Joint Committee having, in reality, the same membership as the Plenary Meeting.

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

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

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

That, briefly, was the work assigned to us.

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

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

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

The PRESIDENT: We will now consider the common Articles.

Articles 1, 2

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

Article 2A

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

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

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

zation the maintenance of peace and international security, the adoption of collective measures in order to repress all acts of aggression or other infringements of peace) to understand clearly that the members of the United Nations cannot neglect such events as civil or colonial wars, wherever they may occur.

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

This is the fundamental difference of principle between the draft of the fourth paragraph of Article 2 of all four Conventions proposed by the Soviet Delegation and the draft Article 2A as submitted by the majority of the Drafting Committee and based on the French proposal. We must choose between these two proposals. We have already said that Article 2A, as worded by the Joint Committee, is intended to restrict the application of the Convention as far as possible in conflicts of a non-international character; this will at once become clear if we examine the Article attentively. It is proposed that, in the case of a conflict of a non-international character, none of the provisions of the four Conventions for the protection of war victims, except those of Article 2A, shall be applied if the Parties do not decide by a special agreement to apply all or part of the other provisions of the Convention. Article 2A is thus, as it were, a miniature Convention which is intended to replace the four Conventions in conflicts of a non-international character. The obvious outcome of such a measure is that a large number of important provisions concerning the protection of war victims will not be put into operation. This is tantamount to denying the necessity of applying, in case of conflicts of a non-international character, a large number of important provisions in the Draft Conventions drawn up by our Conference. The great majority of the provisions concerning the protection in international conflicts of wounded, sick, prisoners of war and the civilian population cannot be applied in the case of conflicts of a non-international character which occur in the territory of a State signatory of this Convention: This decision is based, from a purely formal point of view, on the fact that certain provisions of the Conventions can obviously not be applied to the same degree in wars between States and in wars of a non-international character; for instance it is impossible to stipulate that the provisions relative to penal legislation and the continued functioning of Courts in occupied territory should be applied in exactly the same fashion. This undoubted fact has been used as a pretext to deny the possibility of applying several provisions of the four Conventions which, on the contrary, can very well be applied to all cases of conflict, international or not. I should be very glad if the supporters of Article 2 would explain why, in the case of conflicts of a non-international character, it would be impossible to apply the provisions of the Wounded and Sick Convention or those of the Civilians Convention, which stipulate, for instance, that civilian hospitals may in no circumstances be attacked, and that women and children shall at all times enjoy particular respect and protection, that, in order to bring relief to the civilian population, the unrestricted transport and distribution of various shipments, such as medicines and medical equipment, shall be guaranteed —that all these provisions should be extended to apply to conflicts of a non-international character, as well as a number of other humanitarian provisions established by the present Conference.

There can be no question but that all these humanitarian provisions must be implemented in all cases of armed conflict, whatever their character may be.

Measures must be taken to ensure that in all cases—especially cases of civil war and colonial conflicts, which are particularly cruel—the protection of the victims must not run the risk of being ineffectual, when it is precisely in these cases that it is the most urgently needed. It is with this aim in view that the Delegation of the Soviet Union proposes to stipulate that in cases of armed conflict of a non-international character, each of the Parties to the conflict shall be bound to implement all the provisions of the Convention, which ensure that protected persons shall be treated in accordance with humane principles.

Especially as regards the Wounded and Sick and the Maritime Warfare Conventions, we consider that all the provisions should be implemented

which ensure that the persons covered by these Conventions are treated in accordance with humane principles, particularly those provisions which prohibit all discrimination of race, colour, religion, sex, birth, occupation or social status.

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

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

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

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

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

General OUNG (Burma): It is because of the conflicts arising in certain parts of the world, including mine—conflicts caused by foreign ideologies—that I am submitting my amendment that Article 2A and the consequential reference in Article 3 be deleted. In doing so I refer not only to Article 2A adopted by the Joint Committee but also to the U.S.S.R. amendment and the original Stockholm text, known to us as Article 2, paragraph 4. I regret having to take up your time, but you will perhaps remember that at the very first meeting, when Article 2 was discussed, I affirmed clearly that humanitarian principles are to us more important than national and racial issues and that as such they are very strictly observed, and also that we were strongly of the opinion that the inclusion of this Article in the Convention is a very serious danger to sovereignty and civilian rights. To give international recognition to insurgency would certainly be as grave an error as recognition of aggression.

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

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

In the Report drawn up by the Joint Committee and submitted to the Plenary Assembly, a reference is made to Article 2A. The Joint Committee accepted the second Working Party's text by 21 votes to 6 with 14 abstentions. You will also find in the third paragraph of this Report that only 2 solutions are possible, but it says that in view of the very thorny problems presented by the application to civil war, of Conventions drawn up for international war, an attempt was made to find another principle which might provide a solution. That was after finding that there were only two possible solutions. Then an attempt was made, and if you will excuse my language, it must be said that a futile attempt was made, which was no solution. The observation in the Report of the Joint Committee is really an apology for the adoption of the Article—the Article which would never have been accepted if such an observation had been known before the meeting of the Joint Committee. So the fact remains that we have an adopted text before us, the U.S.S.R. and the Stockholm text, not only

without any distinction or clarification but with increased vagueness.

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

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

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

The Stockholm text according to the above mentioned Report presupposed:

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

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

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

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

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

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

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

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

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

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

Well, the discussions are not superfluous. On the other hand, they have been very thorough. Very careful considerations have clearly revealed the fact that no satisfactory solution can be arrived at, no compromise would meet the case,

and that the only reasonable course is to ignore it completely in our Conventions.

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

May I now refer to the adopted text, as it stands, for your consideration? It starts with the reference to "armed conflicts not of an international character". You see that no attempt has been made to define this phrase. To go further, the phrase may include banditry, uprisings, disorders, rebellion and civil war. By not defining it, all the above degrees of armed conflict fall within the Article that you are now asked to adopt. Even the lesser forms are discarded, rebellion and civil war are by themselves most undesirable inclusions in the Conventions. They may easily be the work of paid mercenaries and "Quislings" acting for their own gain and at the expense of the civilians on behalf of foreign ideologies. Some of you, especially the delegations of Colonial Powers, have really been remarkably broadminded to support the Article, though it is going to encourage Colonial wars. We, the smaller nations, naturally feel much enthusiasm for Colonial wars, we like to help, we like to help them, but if you will refer to the number of conquered countries which have been given their independance, there is every hope—I go further and say it is certain—that in this highly enlightened age the remaining conquered countries of the world will also receive their independence without the loss of a single drop of blood. So the only help that the Article will give, if you adopt it, will be to those who desire loot, pillage, political power by undemocratic means, or those foreign ideologies seeking their own advancement by inciting the population of another country. If you agree that this will be the result, we are sure you will not adopt this Article, especially if you will realize that no Government of an independent country can, or will ever, be inhuman or cruel in its actions towards its own nationals. If you adopt it you will not only be embarrassing the *de jure* government, but you will also seriously endanger its sovereignty, as you will be taking away from it its own legal machinery to maintain the security of its population and the prosperity of its State.

The next point in the text that I would submit for your consideration is the phrase "Parties to the conflict". By the substitution of this phrase in place of "belligerents" in other Articles the insurgent party in the country of a High Contracting Party is being included in this term. It is thus being, rightly or wrongly, given a place in international law.

Then the Article says that "each Party to the conflict shall be bound to apply" etc. May I ask how it is proposed to bind the rebels? If there was a foreign agency behind the movement, would you let the former enter the scene and help in binding the rebels to the Conventions, which means securing the benefits of the Conventions to the insurgents? It is a dangerous aspect. In Article 2, the application of the Conventions in conflicts of an international character, the High Contracting Party has to apply the provisions only when a non-signatory party accepts and complies with its provisions. In this Article in a conflict not of an international character—in the dealings with insurgents—the High Contracting Party is bound to apply the provisions whether the insurgents accept and observe them or not.

In adopting the principle "to restrict the obligations of a legitimate government and the rebel authority to the most obvious and imperious rules of the Convention, that is, the humanitarian duties as a whole", the Article states in point one of paragraph one:

> "persons taking no part in the hostilities shall in all circumstances be treated humanely... To this end the following acts are and shall remain prohibited".

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

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

Paragraph 3 says:

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

Surely this interference with the position of the High Contracting Parties is unjustified, as it is

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

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

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

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

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

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

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

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

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

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

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

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

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

The meeting rose at 6.25 p.m.