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GENEVA CONVENTIONS FOR THE PROTECTION OF WAR VICTIMS

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COMMITTEE ON FOREIGN RELATIONS

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JUNE 27, 1955.—Ordered to be printed

Mr. MANSFIELD, for Mr. GEORGE, from the Committee on Foreign Relations, submitted the following

REPORT

[To accompany Executives D, E, F, and G, Eighty-second Congress, first session]

The Committee on Foreign Relations, to whom were referred the 4 Geneva Conventions for the Protection of War Victims (Ex. D, E, F, and G, 82d Cong., 1st sess.) opened for signature on August 12, 1949, reports the conventions to the Senate with 2 reservations and a statement rejecting certain reservations by other parties to the conventions, and recommends that the Senate give its advice and consent to ratification.

1. MAIN PURPOSE OF THE CONVENTIONS

The purpose of these conventions is to improve the treatment to be given persons who become the victims of armed conflict and to relieve and reduce the suffering caused thereby. To that end the four conventions are designed to modify, clarify, and develop existing international rules and practices dealing with the condition of wounded and sick in the armed forces in land and maritime warfare, prisoners of war, alien enemies within the territory of a belligerent and the inhabitants of areas subjected to military occupation.

At the present time the United States is a party to four basic conventions covering all these subjects except that relating to alien enemies in the national territory; but as early as the Italo-Ethiopian conflict and the Spanish Civil War it had become apparent that their provisions were in need of reexamination. The conventions referred to are: The Geneva convention of 1929 for the amelioration of the condition of the wounded and sick in armies in the field; the Geneva convention of 1929 relative to the treatment of prisoners of war; Hague Convention No. IV, respecting the laws and customs of war on land; and Hague Convention No. X for the adaptation to maritime warfare of the principles of the Geneva convention of 1906.

Experience acquired during 1939–45 amply demonstrated the necessity of bringing these instruments up to date, making them susceptible of more uniform application and more definite in interpretation, and further improving them so as to provide greater and more effective protection for the persons whom they were intended to benefit.

Until the present time there has not been in existence a separate, comprehensive treaty establishing standards of humane treatment for civilians in time of war, although the matter is partially dealt with, so far as concerns territory under belligerent occupation, in the regulations annexed to Hague Convention No. IV of 1907. For this reason, a new convention was drawn up at the Geneva Conference in 1949, which spells out to a degree never before attempted the obligations of the parties to furnish humanitarian treatment to two broad categories of civilians: enemy aliens present within the home territory of a belligerent, and civilian persons found in territory which it occupies in the course of military operations.

The essential point is that all of the conventions now before the Senate, with the exception of the convention on civilians, are based, fundamentally, on treaty obligations which the United States had previously accepted. The function of the new texts is to provide better protection and to adapt the earlier treaties to modern conditions. So far as the policies of the United States are concerned, the convention on civilians, while new in form, reflects generally the practices which we ourselves have followed. It combines both the precepts of the Hague regulations on inhabitants in occupied territory and the concepts we apply in our domestic law relative to civilian internees in the United States. There is, therefore, nothing in that convention in the nature of a departure from those basic principles which the Senate—or the Congress—had previously sanctioned. Certain specific points in the conventions which are unacceptable to the United States, are taken care of by appropriate reservations. (See below, secs. 9, 11, and 13.)

2. Background of the Conventions

The conventions now before the Senate are the product of years of study and preparation commencing even before the Second World War had terminated. Probably no treaty or group of treaties previously submitted to the Senate have been subjected to such thoroughgoing and painstaking development and analysis, not only among the several interested branches of our Government, but as between the United States and other nations. Two major preparatory conferences were held in contemplation of the definitive Diplomatic Conference of Geneva in 1949. Not long after the close of hostilities in World War II, an interdepartmental committee was established on the initiative of the Secretary of State to work out improvements in existing treaties dealing with the protection of war victims. All agencies of our Government which had been involved in problems arising from applying provisions of these treaties contributed their experience in reaching decisions as to what changes or additions were in the best interests of the American people. Representatives of the Departments of State, Army, Navy, Air Force, Justice, Treasury, Post Office, and Labor, the Federal Security Agency, and the American Red

Cross met at regular intervals to formulate a national position for this country. In 1947, a meeting of Government experts was held in Geneva, which prepared basic drafts of the four conventions. As reviewed and revised at the 17th International Red Cross Conference at Stockholm in 1948, these draft texts became the working papers of the 1949 Conference. The United States was represented at all 3 conferences, the American delegation in 1949 being composed of officials of the Department of State, the 3 military services, the Department of Justice, and the American Red Cross. Fifty-nine governments participated in the work of the Diplomatic Conference, which devoted over 3 months (April 21–August 12, 1949) to the preparation of the final instruments.

The conventions were open for signature on August 12, 1949, and were transmitted to the Senate for its advice and consent on April 25, 1951. At the present time they have been ratified or acceded to by 48 governments, including all of the Iron Curtain countries.

3. Committee Action

Not long after the treaties were received by the Senate, the Department of State indicated its desire that further action be postponed in view of developments in the Korean conflict. This suggestion seemed a wise course to pursue, since all parties to the Korean conflict had signified in one way or another an acceptance of the principles of the conventions, and there was every reason to believe that more careful and mature consideration could be given to their detailed provisions after, rather than in the midst of, armed conflict. In consequence, no steps were taken in the Senate to consummate ratification of the conventions. With the Korean conflict abated, it became possible to reconsider the matter of ratification.

Accordingly, on March 29 of this year, the Secretary of State transmitted a second statement to the Committee on Foreign Relations, supplementing the report and commentaries which had accompanied the original message from the President requesting Senate approval. In this statement, Secretary Dulles summarized the present status of the conventions, and recommended that, in the national interest, action on ratification should no longer be delayed.

On June 3, 1955, a public hearing was held, beginning with testimony in support of the conventions by administration witnesses. Deputy Under Secretary of State Robert Murphy dealt with the background and general policy aspects of the conventions. Mr. Murphy was followed by the General Counsel of the Department of Defense, Wilber M. Brucker, who addressed himself to the principal features of the conventions on prisoners of war and wounded and sick and the occupied territory portions of the civilians convention. The views of the Department of Justice, which emphasized the position of alien enemies under the civilians convention, were presented by J. Lee Rankin, Assistant Attorney General of the United States. Ellsworth Bunker, President of the American National Red Cross, gave testimony on behalf of that organization in support of ratification.

Spokesmen for a number of private companies appeared to urge adoption of a reservation which would except pre-1905 users of the Red Cross emblem from the effects of the obligation contained in

articles 53 and 54 of the convention on wounded and sick to prohibit all uses of the convention not authorized therein. The legal and historical setting upon which they based this request was developed before the committee by Senator Everett Dirksen, former Senator Millard Tydings, Mr. Clark Clifford, Mr. Kenneth Perry, Mr. John Cassidy, and Mr. Robert P. Smith.

The committee considered the 4 conventions in executive session on June 9, 1955, and voted unanimously to report them to the Senate with 2 reservations—one to the convention on sick and wounded in armed forces in the field, another to the civilians convention—and a statement to accompany the resolution of ratification regarding the United States position on reservations made to various provisions of the conventions by other parties.

4. Changes Supported by United States at the Conference

The United States can well be proud of its efforts at the Diplomatic Conference to elevate the standards of treatment applicable to war victims. It found support for a substantial portion of the position it took to Geneva. One significant example is furnished by the revision of the 1929 article in the Prisoners of War Convention on food furnished to prisoners of war. The United States successfully supported a proposal to require that food of prisoners of war must be sufficient in quantity, quality, and variety to keep prisoners in good health, and to prevent loss of weight or the development of nutritional deficiencies (art. 26). This was a considerable improvement over article 11 of the 1929 convention, which specified that food rations of prisoners should be equivalent to those of troops at base camps—an inadequate standard recalling the familiar "fishhead and rice" diet of American prisoners of war in the Pacific. We likewise obtained a new and simplified formula regarding employment of prisoners of war. In contrast with article 31 of the 1929 convention, which provided somewhat obscurely that prisoners' labor shall have no "direct relation" to war operations, and prohibited "unhealthful or dangerous work," articles 50 and 52 of the new convention limit compulsory work of prisoners of war to specific categories and prohibit compelling prisoners to clear and dispose of mines. Other revisions for which we contended were acceptance of the obligation to carry out release and repatriation of prisoners of war immediately following the cessation of active hostilities, rather than awaiting the conclusion of peace (art. 118, prisoners of war); a provision which would permit transfer of prisoners of war among cobelligerents upon condition (a) that the receiving government is also a party to the convention and (b) that the transferring government retains a contingent responsibility either to take effective measures to correct the situation or request the return of the prisoners where the transferee fails to treat them in accordance with the convention (art. 12, prisoners of war); application of all four conventions to conflicts which are not international in character by providing certain minimum humane safeguards for persons taking no active part in the hostilities (art. 3, prisoners of war); making illegal the taking of hostages (art. 34, civilians); prohibition of deportations from occupied territory (art. 49, civilians); and improved identification markings for hospital ships (art. 43, wounded and sick at sea).

5. Provisions Common to the Four Conventions

Each of the four conventions contains certain general provisions which deal with its application and the mechanics of its enforcement. Thus, for example, articles 1, 2, 3, 6, 7, 8, 9, 10, and 11 of the first three conventions (Wounded and Sick, Wounded and Sick at Sea—or "Maritime"—and Prisoners of War Conventions) are identical with the corresponding provisions of the Civilian Convention (arts. 1, 2, 3, 7, 8, 9, 10, 11, and 12), except for adapting differences in phraseology.

Article 1 establishes as the basic theme of all the conventions the undertaking of the parties to respect and insure respect for the conventions in all circumstances. Article 2 incorporates the principle found in article 82 of the 1929 Prisoners of War Convention to the effect that although one of the parties to the conflict may not be a party to the convention, those powers which are parties shall nevertheless remain bound by it as between themselves. This avoids the unfortunate concept of the Hague Conventions which renders them inapplicable if they have not been accepted by all the belligerents (the si omnes provision). Article 2 further provides that the conventions shall apply to all cases of declared war or "of any other armed conflict which may arise" between two or more contracting parties even if the state of war is not recognized by one of them. Partial or total occupation of the territory of one of the parties brings the conventions into operation even if there is no armed resistance to the occupation.

Article 3 deals with a feature already referred to, namely, application of the conventions to armed conflicts not of an international character. In such circumstances, the parties are bound to apply humane treatment to noncombatants and those hors de combat because of sickness, wounds, or any other cause, without regard for race, color, religion, sex, birth, or wealth. As to these persons, physical violence, cruel treatment, torture, the taking of hostages, outrages upon personal dignity, and executions without the judgment of a duly constituted court rendered under recognized guaranties of a fair trial, are prohibited.

Three of the conventions (all except the one on civilians) contain a provision defining the conditions under which resistance fighters or "partisans" are entitled to protection. In the 1929 convention on prisoners of war (art. 1, par. 1), eligibility to protection was determined by compliance with the first three articles of the regulations annexed to Hague Convention No. IV of 1907. Inclusion of organized resistance movements (in art. 13 of the 1949 Wounded and Sick and Maritime Conventions and in art. 4 of the Prisoner of War Convention) does not change the basic principle. Such movements are placed on the same footing as militia and volunteer corps not forming part of the regular armed forces. Both these groups and partisans must conform to article I of the Hague regulations, which requires such persons to act under orders of a responsible commander, to wear a fixed emblem recognizable at a distance, to carry arms openly, and to obey the laws and customs of war. In sum, extension of protection to "partisans" does not embrace that type of partisan who performs the role of farmer by day, guerilla by night. Such individuals remain subject to trial and punishment as unlawful belligerents.

To tighten up the obligations of the parties in still another respect, three of the conventions (all but the Maritime Convention) are expressly made applicable to all protected persons without discrimination until they are finally released, repatriated, or reestablished (art. 5, wounded and sick, and prisoners of war; art. 6, civilians). These provisions, among other things, should serve to prevent a practice followed by some belligerents in World War II of arbitrarily depriving prisoners of protection on the ground that the convention did not apply after occupation or capitulation.

Article 6 contemplates that the parties may enter into special agreements in addition to those provided for in the conventions with respect to protective functions of a neutral power or a humanitarian organization (as, for example, arts. 10, 15, 23, 28, 31, 36, 37, and 52 of the Wounded and Sick in the Field Convention); but no such agreements can diminish or prejudice the rights established in the conventions. This restriction is complemented by the provision in article 7 that persons protected by the conventions "may in no circumstance renounce in part or in entirety the rights secured to them" thereby. Comparable provisions were not contained in the 1929 conventions (e. g., art. 83 of the Prisoners of War Convention of 1929).

Under article 8, the conventions are to be applied with the cooperation and under the scrutiny of the protecting powers whose duty it is to safeguard the interests of the parties to the conflict. To that end, the protecting powers (neutral nations which endeavor to ensure that the conventions are being properly applied) may appoint delegates from their diplomatic or consular staffs, or otherwise, subject to the approval of the detaining power. These representatives or delegates are enjoined to take account of the imperative necessities of the security of the state in which they are acting. The limitation was accepted in preference to a proposal advanced by the Soviet delegation that the protecting power or its delegates "may not infringe the Sovereignty of the State," which was roundly rejected by the Conference.

Article 9 supplements the protecting features of these instruments by expressly providing that the conventions constitute no obstacle to the humanitarian activities which the International Committee of the Red Cross or any other impartial humanitarian organization may undertake, subject to the consent of the parties, on behalf of persons protected by the conventions. The possibility of a substitute for the protecting power—should its activities fail to benefit the war victims—is envisaged by article 10. In such case the detaining (usually the capturing) power is required to request a neutral state or an impartial humanitarian organization to assume the functions performed under the conventions by a protecting power agreed upon by the parties to the conflict.

In the event of disagreement between the parties to the conflict concerning the application or interpretation of the conventions, the protecting powers, under article 11 are authorized to lend their good offices with a view to settling the disagreement, a concept which was embodied in article 87 of the 1929 Convention on Prisoners of War.

6. Provisions Relating to Execution of the Conventions

In addition to the articles set forth above, all of the conventions contain general, virtually identical, provisions concerning their execu-

tion and the prevention and punishment of abuses and violations. These provisions (arts. 47–52, wounded and sick; arts. 48–53, maritime; arts. 127–132, prisoners of war; and arts. 143–149, civilians) obligate the parties both in peace and in war to disseminate the texts of the conventions as widely as possible within their respective countries and to include the study thereof in programs of military and, if possible, civil instruction so that the entire population will become familiar with their principles. The parties agree, moreover, to enact legislation necessary to provide effective penal sanctions for persons committing violations of the conventions enumerated as grave breaches (art. 130, prisoners of war; art. 50, wounded and sick; art. 51, maritime; art. 147, civilians). Each contracting party, moreover, is under an obligation to search for persons alleged to be responsible for the commission of such breaches of the convention, and to try them before its own courts regardless of their nationality. It may, on the other hand, in accordance with its own legislation, hand such persons over for trial to another contracting party concerned, provided the latter has made out a prima facie case against the suspects. These sanctions for compelling observance of the conventions are an advance over the 1929 instruments which contained no corresponding provisions. In view of a number of special problems which it raises, the matter of "grave breaches" is discussed in more detail later in this report. (See sec. 12 below.)

A final group of articles (arts. 55–64, wounded and sick; arts. 54–63, maritime; arts. 133–143, prisoners of war; arts. 150–159, civilians) regulates routine items pertaining to the official text of the conventions, the status of the conventions in relation to prior conventions dealing with the same subjects, ratification and accession, registration with the United Nations, and denunciation. As was true of the 1929 conventions, denunciation takes effect 1 year after being notified to the Swiss Federal Council; but no denunciation made during the course of a conflict in which the denouncing party is involved can take effect until peace has been concluded and the obligation of release and repatriation of persons protected by the conventions has been met. Such denunciation is effective only for the denouncing party, and does not release it from other obligations incumbent upon all nations under international law and civilized usages.

7. Summaries of the Conventions

a. WOUNDED AND SICK IN ARMED FORCES IN THE FIELD (CONVENTION NO. I)

This convention has a distinguished history, with antecedents going back to the Geneva Convention of 1864, a monument attributable to the inspiration of a Swiss, Henri Dunant, after witnessing the suffering of wounded soldiers at Solferino. That convention instituted the principle that wounded and sick combatants should be protected and taken care of irrespective of their nationality, and that special protection should be enjoyed by ambulances, military hospitals, medical personnel and equipment. In 1906 and 1929 the convention was revised. The 1949 document retains its basic features, but introduces a number of important modifications consonant with present-day requirements. It consists of 10 separate headings, of which the most

important is the chapter on wounded and sick. Other divisions deal with medical units, personnel, buildings and material, medical transports, the distinctive Red Cross emblem, execution of the convention, and repression of abuses and infractions.

(1) Wounded and sick

Article 12 (art. 1 of the 1929 convention) attempts to define with greater accuracy and detail the manner in which wounded and sick are to be treated by the parties to a conflict, in the light of some of the experiences of World War II. Although the 1929 convention prohibited differential treatment of victims on the basis of nationality, it is now prohibited also on the basis of sex, race, religion, political opinions, or similar criteria. Priority in order of treatment is justified only by urgent medical reasons. The article strictly prohibits such acts as murder, extermination, or violence to the person. It provides that sick and wounded members of the opposing forces shall not be subjected to torture or to biological experiments, or left without medical care and assistance. In a wholly new provision reflecting changes in the composition of modern armies, women are required to be treated with all consideration due their sex.

Article 13 substantially changes the various categories of persons entitled to the benefit of the convention. The 1929 document was applicable only to members of the armed forces and other persons officially attached thereto. The present convention amplifies the scope of its beneficiaries to include members of militias and corps of volunteers, together with resistance-movement groups which meet the conditions already described in this report. Other new categories comprise members of regular forces claiming allegiance to a government not recognized by the detaining power (such as a government in exile), and members of crews of merchant marine vessels and civil aircraft.

Article 15 authorizes the conclusion of local arrangements between the parties for removal or exchange of wounded and sick from a besieged or encircled area, and for the passage of medical and religious personnel and equipment on their way thereto. It consequently extends article 3 of the 1929 instrument, which merely made possible the conclusion of arrangements for temporary suspension of hostilities to collect and remove the wounded.

Article 16 clarifies the provisions of old article 4 relative to the identification of wounded, sick, and dead, and new provisions have been adopted in article 17 with respect to handling of the dead. Burial or cremation is to be carried out individually as far as circumstances permit, but cremation is permitted only for imperative reasons of hygiene or for motives based on the deceased's religion.

Article 5 of the 1929 convention permitted the military authorities to call upon the charitable zeal of the civilian population to collect and nurse, under appropriate direction, all wounded and sick combatants. During the Second World War the provision was found inadequate with respect to wounded parachutists or members of a resistance movement, assistance to whom was frequently prohibited upon severe penalties. For this reason, article 18 of the new convention stipulates that the military authorities shall permit the inhabitants and relief societies spontaneously to collect and care for wounded and sick of whatever nationality, and that no person may be molested or convicted solely for having nursed such individuals.

(2) Medical units and personnel

Articles 21–22 set forth the circumstances under which misuse of fixed medical establishments and medical units forfeits their protection, and lists specific acts (such as possession of small arms, treatment of civilian wounded and sick) which do not have this effect. Article 23 introduces an entirely new concept, that of "hospital zones and localities." Under this provision the parties may establish, during time of peace or after war has begun, hospital zones or localities organized to protect the wounded and sick from the effects of war and staff them with personnel required for their administration. A model agreement is annexed to the convention to facilitate mutual respect for the zones created.

One of the most fundamental changes wrought in 1949 relates to the status of regular medical personnel and chaplains attached to the Armed Forces. Traditionally, such personnel have enjoyed immunity from capture as prisoners of war, and the right of early repatriation. Their detention was expressly prohibited in article 12 of the 1929 convention, except for agreements between the belligerents authorizing their temporary retention. Experience in the last war showed, however, that there was a need to permit retention of at least a part of the medical or religious personnel who fell into enemy hands to nurse and minister to wounded and sick prisoners who might otherwise fail to receive adequate care. Article 28 adopts a compromise formula under which medical personnel and chaplains, while not to be deemed prisoners of war, may be retained as far as the medical and spiritual needs of the prisoners may require. While in detention, they are to enjoy the advantageous provisions of the 1949 convention on prisoners of war. Personnel attached only temporarily to the medical service are, on the other hand, treated as prisoners of war, but must be employed on their medical duties if needed (art. 29). This modifies the 1929 principle under which they were treated on the same basis as permanent medical personnel.

Another drastic departure from past practice has been introduced with respect to the material of mobile medical units. Article 14 of the 1929 convention provided that such material, if it fell into the power of the adversary was subject to restitution as far as possible when sanitary personnel were returned. Article 33 of the 1949 convention stipulates that this medical material may be retained, but shall be reserved for the care of the wounded and sick. Materials, buildings and stores of fixed medical establishments of the Armed Forces remain subject to the laws of war, but the materials of mobile and fixed installations may not be intentionally destroyed. Similar treatment is accorded to transports of wounded and sick or of medical equipment (art. 35) in contrast with article 17 of the 1929 instrument which required them to be returned. The new convention makes these transports and vehicles subject to the law of war on condition that the capturing party will in all cases ensure care of the wounded and sick they are carrying.

(3) Medical aircraft

Medical aircraft are dealt with in article 36. The inadequate identification markings specified in article 18 of the 1929 convention ("painted in white and * * * the distinctive sign * * * alongside the national colors on their upper and lower surfaces") are improved, lateral surfaces now being included. Likewise intended to reduce the

margin of confusion is the provision prohibiting any attack on such aircraft when flying at heights, times, and on routes agreed upon between the belligerents. Medical aircraft are prohibited from flying over enemy territory. They must obey a summons to land, but are permitted to continue in flight after an examination. In the event of an involuntary landing in enemy territory, both the crew of the aircraft and its wounded and sick become prisoners of war. By contrast, the 1929 rule extended the benefits of the prisoners of war convention to the wounded and sick, the sanitary personnel and material, and the aircraft; but pilots, mechanics, and radio operators were to be returned on condition that they would only be utilized in the medical services. Flight over neutral territory, which the 1929 convention failed to consider, is permitted after appropriate notification (art. 37). The neutral nation may, however, attach restrictions or conditions upon the use of its airspace. Wounded and sick who are landed in neutral territory with the latter's consent must be interned if required by international law, to prevent further participation in the conflict.

(*4*) *The distinctive emblem*

Articles 38–43, relating to the military use of the distinctive emblem of the Red Cross, make very few changes in the corresponding text of 1929 (arts. 19–23). Article 40 clarifies provisions for identifying medical and religious personnel. A new, pocket-size identification card supplements the red-cross armlet. Temporary personnel are identified by the wearing of a white armlet with a red cross smaller than those borne by permanent personnel (art. 41).

As in article 24 of the 1929 convention, article 44 prohibits the use of the distinctive emblem in peace or in war except to protect the medical units and establishments, the personnel and material protected by the convention. Article 53 supplements this general proscription by specifically prohibiting at all times the use by individuals, societies, firms or companies, whether public or private, unless entitled thereto under the convention, of the emblem or any imitation thereof, regardless of purpose and irrespective of the date of its adoption. The article encountered considerable opposition from companies who considered it a threat to their long-recognized property interests. The circumstances which gave rise to approval of a reservation by the committee, and the reservation itself, are discussed in a separate section of this report. (See sec. 11 below.)

National Red Cross Societies are permitted in time of peace to make use of the name and emblem as prescribed by the International Red Cross Conferences; but this use confers no protection in wartime, when the emblem must be small and not placed on armlets or on the roofs of buildings.

For the first time International Red Cross organizations are authorized to make use of the emblem which they themselves had introduced.

b. WOUNDED, SICK AND SHIPWRECKED MEMBERS OF ARMED FORCES AT SEA

(CONVENTION NO. II)

This convention is essentially a revision and a refinement of Hague Convention X of October 18, 1907, for the adaptation to maritime warfare of the principles of the Geneva convention of 1906—itself a predecessor of the 1929 convention on wounded and sick. The United

States, as a maritime nation and a party of the 1907 document, welcomed the opportunity to rephrase its articles in the interest of clarity, amplification, and enlarged protection. The result is a much more detailed and comprehensive instrument than the earlier convention, and one which ensures better protection to wounded, sick, and shipwrecked at sea. Henceforth, these war victims enjoy the same conditions of treatment as those provided for forces in the field under the wounded and sick convention (No. I).

Insofar as it deals with the treatment of wounded and sick, persons entitled to the benefits of the convention, identification and handling of wounded and dead, the status of medical and religious personnel, medical transports, and the use of the distinctive emblem, its provisions are largely identical to corresponding provisions of the wounded and sick convention. Details concerning such matters will not be repeated in this portion of the report, which is devoted to provisions characteristically maritime in nature. The common articles have also been previously discussed.

(1) Wounded, sick, and shipwrecked

Article 12, which is new, defines "shipwreck" as a shipwreck from any cause, including forced landings at sea by or from aircraft. Article 16 of the Hague convention obligated the parties to search for shipwrecked, wounded, and sick. Article 18 of the 1949 convention adds to this the duty of taking them aboard and providing necessary care for them as well as protection against pillage and ill-treatment. Moreover, whenever permitted by circumstances, the parties are to conclude local arrangements for the removal of the wounded and sick by sea from a besieged or encircled area, and for the passage of medical and religious personnel and equipment on their way thereto—phrasing which recalls article 15 of the wounded and sick convention. Article 14 reproduces the principle of article 12 of the Hague convention giving belligerent warships the right to demand the surrender of wounded, sick, and shipwrecked from hospital ships and other craft, but upon the new condition that the wounded and sick—

> are in a fit state to be moved and that the warship can provide adequate facilities for necessary medical treatment.

The conditions under which hospital ships are entitled to immunity from attack or capture are now conditioned upon a notification of their names and descriptions to the parties in conflict 10 days before employment of vessels as hospital ships (art. 22). Article 23 incorporates the provisions of the wounded and sick convention by reference, in providing that shore establishments entitled to its protection shall also be protected from bombardment or attack from the sea. No comparable provision was in effect previously.

Hospital ships of any tonnage and their lifeboats, wherever operating, are protected by the convention and are exempt from capture (art. 25). But to insure the maximum of comfort to wounded and sick, the parties to the conflict—

> shall endeavor to utilize, for the transport of wounded, sick, and shipwrecked over long distances and on the high seas, only hospital ships of over 2,000 tons gross (art. 26).

Hospital ships which happen to be in a port falling into the hands of the enemy must be allowed to depart (art. 29), a new provision applying the principle of exemption from capture.

Article 31 continues the rights which parties were granted under article 4 of the Hague convention to control and search hospital ships, adding a provision that belligerents may control the use of their wireless and other means of communication, and detain them for not more than 7 days if circumstances so require. Another new clause permits the parties to place neutral observers on board to verify strict observance of the provisions of the convention.

To prevent abuses from occurring, article 33 prevents merchant vessels, which have been converted into hospital ships, from being put to any other use for the duration of the hostilities. No corresponding provision was contained in the Hague convention. Without it, it might be open to a government to transform merchant vessels into protected vessels as the dangers of particular areas required, then reconvert them to merchantmen.

(2) *Medical personnel and transports*

Articles 36 and 37 deal with the protection of medical and religious personnel, and contain many new features. The immunity from capture of religious, medical, and hospital personnel of hospital ships is extended to the crews of such ships, without whom the ships would be rendered useless. No such reason exists in the case of crews of vessels other than hospital ships who are therefore denied immunity (art. 37). A new provision permits retention of their medical and religious personnel when required to care for the medical and spiritual needs of prisoners. Upon being put ashore, this personnel becomes subject to the corresponding provision of the Wounded and Sick Convention. Whereas the 1907 convention, in protecting medical and religious personnel, did not distinguish between warships, merchant ships, and other vessels, article 37 restricts that protection exclusively to personnel engaged in the medical or spiritual care of persons described in articles 12 and 13 as protected by the convention. In short, religious, medical, and hospital personnel of vessels other than hospital ships enjoy the same protection as the personnel of the latter, except for the provision permitting their retention in the manner already noted.

The chapter on medical transports (arts. 38–40) is entirely new. Under article 38, ships may be chartered to transport medical equipment for the exclusive use of the wounded and sick if duly notified to the adverse party and approved by it. The latter has the right to board the vessels, but may not capture them or seize their equipment. Articles 39–40 reproduce the principles concerning medical aircraft (arts. 36–37) of the Wounded and Sick Convention, adapted to maritime warfare.

Articles 41–43 pertain to the distinctive emblem of the red cross. Articles 41–42, while new so far as the Maritime Convention is concerned, are basically the same as the corresponding provisions of the Wounded and Sick Convention.

One of the principal inadequacies of the 1907 convention was that of article 5 concerning the markings of hospital ships. Most of the attacks on such ships in World War II could be attributed to the fact that they were not recognizable as hospital ships. It is therefore provided under article 43 that all exterior surfaces must be painted white with red crosses as large as possible placed so as to afford maximum visibility from the sea and from the air. The national flag must be flown along with a red-cross flag at the mainmast as high as possible. Smaller craft (such as lifeboats) must be similarly identified.

C. PRISONERS OF WAR (CONVENTION NO. III)

Some of the more significant features of this convention have already been discussed in the sections summarizing American contributions to the Conference and the common provisions. The convention contains 143 articles, divided into 6 major parts accompanied by 4 annexes, including a model agreement for repatriation of wounded and sick prisoners, and regulations for the work of the mixed medical commissions contemplated under article 12. It is an enlightened code which, if applied with a reasonable degree of good faith, should give assurance that captured members of a nation's military forces will be treated with the decency to which all self-respecting, civilized governments should aspire.

(1) *Captivity and internment*

Articles 17–24 deal with the beginning of captivity and the internment of prisoners of war. Several other new classes are brought within the scope of the convention in addition to those categories of persons who qualify for protection under the Wounded and Sick Convention. Thus, persons arrested by an occupying power because of membership in the armed forces of the occupied country, military personnel interned in neutral countries, as well as the regular armed forces of governments or authorities not recognized by the detaining power (exiled or ousted governments) enjoy protection. Whenever the status of a person as one protected is in doubt, he enjoys protection pending a determination of that status by a competent tribunal (art. 5). Each party to the conflict must issue an identity card to every person under its jurisdiction who is liable to become a prisoner of war, showing his name, rank, serial number, and date of birth. As in article 5 of the 1929 convention, article 17 forbids physical or mental torture or any form of coercion to secure information of any kind whatsoever.

Article 21 contains provisions authorizing the release of prisoners on parole or promise if allowed by the laws of their own nations; but parole release may not be imposed involuntarily. Article 22 directs the detaining power to assemble prisoners of war in camps or compounds according to their nationality, language, and customs, provided that such persons are not separated without their consent from prisoners appertaining to the armed forces with which they served. Article 23 strengthens the safety provisions of article 9 of the 1929 convention by requiring that prisoners of war shall have shelters against air bombardment and other hazards to the same extent as the local civilian population. Another innovation requires prisoner compounds to be indicated by the letters PW or PG so as to be clearly visible from the air, whenever military considerations permit. Prisoners in permanent transit camps must be given the same treatment as other prisoners (art. 24).

Articles 25–28 completely restate the obligation of the detaining power under articles 11–12 of the 1929 convention with respect to the quarters, food, and clothing furnished to prisoners. As already noted in this report, the 1929 food standard is abandoned in favor of a ration which maintains the prisoners in good health and takes account of their habitual diet.

Articles 29–31 amplify and clarify the provisions of articles 13–15 of the 1929 convention relating to medical care and sanitation. Under a new article (33) medical personnel and chaplains who fall into the hands of the enemy are not considered to be prisoners of war. They may, however, be retained to minister to prisoners of war "preferably those belonging to the armed forces upon which they depend." Articles 34–38 guarantee to prisoners the enjoyment of religious, intellectual, and physical activities, and require facilities to be furnished for out-of-doors exercise. The provisions are a marked improvement over article 17 of the 1929 convention, which contained a weak exhortation that—

> so far as possible, belligerents shall encourage intellectual diversions and sports organized by prisoners of war.

Recognition of promotions in rank received by prisoners is required by the detaining power, in a new provision (art. 43). The impracticable rule of article 22 in the 1929 document under which officer prisoners were to provide their own food and clothing has been abandoned in article 44 which treats officers and other prisoners alike in this regard.

Articles 47–48 are improvements on the conditions accorded prisoners in transfer, who are permitted to take with them their personal effects not in excess of 25 kilograms (55 pounds) per person.

(2) Labor of prisoners of war

The conditions under which the detaining power may utilize the labor of prisoners of war are set forth in articles 49–57. The 1929 convention contained a rather vague stipulation that labor exacted from prisoners should have "no direct relation with war operations." No clause proved more troublesome to apply in World War II. Article 50 now lists the specific classes of work which may be exacted, and article 52 retains the prohibition of former article 32 against involuntary use of prisoners on unhealthful or dangerous labor, included in which is the removal of mines or similar devices. The 1929 principles on working conditions, duration of the hours of labor, accidents, pay, and rest periods (arts. 27–30) are spelled out in greater detail in articles 53–57. However, in place of the detaining power's former obligation to pay compensation equivalent to that of comparable laborers in cases of accident, it is provided only that injured prisoners shall be given all the care their condition requires, it being left to their own country to meet claims for compensation.

(3) Financial resources of prisoners of war

A completely new section (arts. 58–68) introduces a number of far-reaching changes in the 1929 rules dealing with financial resources of prisoners of war. The detaining power may fix the maximum amount of money which a prisoner may have in his possession, and any excess is credited to his account (art. 58). Whereas under the former convention, pay was only given to officers, under article 60 of the 1949 convention, pay is given to all prisoners, fixed on the basis of five categories for the separate ranks. This is called "advance of pay," indicating it is only a part of the amount paid them in their own army, and is fixed by the detaining power in amounts which may not go below a specified number of Swiss francs, as converted into the national currency. The detaining power is responsible for paying

prisoners for work they perform, whether for private or public employers (art. 62). It must also pay them for work performed when they are permanently detailed to duties connected with the administration or management of camps.

Article 24 of the 1929 convention required each prisoner to be given pay to the credit of his account at the end of captivity. The 1949 convention (art. 66) instead requires that he be furnished a statement signed by an authorized officer of the detaining power and showing the credit balance due him, and a copy thereof certified to the prisoner's own government. It is further provided that—

> the Power on which the Prisoner depends shall be responsible for settling with him any credit balance due to him from the Detaining Power on the termination of his captivity.

Inasmuch as the United States paid out millions of dollars in the settlement of accounts of prisoners of war which it held during World War II without corresponding benefits to American prisoners held by the enemy, the new provision would seem to be to our distinct advantage.

(4) Relations of prisoners of war with the outside world

Articles 69–77 deal with the relations of prisoners with the outside world. Among other matters, it is provided in article 69 that the prisoner shall be permitted to send out a "capture card" addressed to the "Central Prisoners of War Agency" for its card index system. Prisoners' correspondence is treated in article 71, which entitles them to mail a minimum of 2 letters and 4 cards each month; but this minimum may be reduced if the protecting power finds that to be required by necessary censorship. A new provision likewise allows prisoners to send telegrams under certain circumstances.

The right of prisoners' representatives to take possession of collective relief shipments and to distribute them as desired by donors, is recognized in a new article (73) which is accompanied by another new provision to the effect that such relief shipments shall be exempt from import, customs, and other dues (art. 74). Where military operations prevent the powers from complying with the convention's requirements on transport of these shipments, such transport may be undertaken by the International Red Cross (art. 75).

Articles 78–81 concern the important matter of requests and complaints as to the conditions of detention, in the relations between prisoners and the authorities, and the appointment of prisoners' representatives who must be allowed ready access to the representatives of the protecting power.

(5) Penal and disciplinary sanctions

One of the most important chapters in the convention is that relating to penal and disciplinary sanctions (arts. 82–108). This chapter sets forth the circumstances under which prisoners may be tried for various infractions of the laws and regulations of the detaining power; establishes maximum punishments for disciplinary offenses including attempted escapes; provides specific safeguards and guaranties of a fair judicial proceeding; and prohibits procedures and punishments contrary to those set out in the convention.

Article 82 provides that acts punishable by the laws of the detaining power, but which are not punishable if committed by a member of that power's forces, shall entail only disciplinary punishment. This

provision should be read together with article 87, which excludes the application to prisoners of any penalties other than those provided for such acts in respect of members of the armed force of the detaining power. Women prisoners may not be more severely treated or punished than women members of the detaining power's own forces for like offenses (art. 88). No prisoner may be tried or sentenced for an act which is not forbidden by the law of the detaining power or by international law in force at the time the said act was committed (art. 99)—a provision of particular significance in view of criticism voiced against the alleged ex post facto nature of certain aspects of the Nuremberg war crimes proceeding. Under article 84, the prisoner has the right to be tried by a military court unless the existing laws of the detaining power expressly permit the civil courts to try members of that power's own forces in respect of the offense alleged. In no event may he be tried by any court not offering the essential guaranties of independence and impartiality generally recognized, nor under procedure which fails to accord the rights of defense set forth in article 105. The latter article gives him the right to freely chosen counsel, to call witnesses, and to the services of a competent interpreter. Should he or the protecting power fail to select counsel, the detaining power must find one for him. Other provisions ensure that his counsel will have opportunity to prepare an adequate defense along with the right of appeal (arts. 106–107).

One of the most extensively debated subjects at the Conference was whether a prisoner who is prosecuted for a precapture crime, in particular, offenses against the laws of war, should enjoy the benefits of the convention. On this, article 85 provides:

> Prisoners of war prosecuted under the laws of the Detaining Power for acts committed prior to capture shall retain, even if convicted, the benefits of the present Convention.

The article was adopted over the opposition of the Soviet bloc, which attached a reservation thereto at the time of signature. That reservation, and the committee's recommendations with respect to it, are discussed in a separate section. (See sec. 13 below.)

Article 86 repeats the injunction of article 52 in the 1929 convention against punishing prisoners more than once for the same offense (non bis in idem). Article 102 requires that trials be by the same court as in the case of members of the armed forces of the detaining power. Collective punishment for individual acts, corporal punishment, imprisonment in premises without daylight, and any form of torture or cruelty are prohibited.

In contrast with the rather general language of the 1929 convention on disciplinary punishment, the 1949 convention contains a limitative enumeration of those types of disciplinary penalties which may be applied to prisoners. In no case may such punishments be inhuman, brutal, or dangerous to the prisoners' health. Whereas article 55 of the former document permitted food restrictions as an increase in punishment, the present instrument omits any authorization of this kind.

(6) Escape, release, and repatriation

Articles 91–95 detail with greater thoroughness than heretofore the consequences of attempted escapes and define the conditions which must be met before an escape can be regarded as successful (art. 91),

an important addition because of the effects produced by a successful escape. Another new provision prohibits camp commanders from delegating their disciplinary powers to prisoners of war, and requires a record to be kept of disciplinary punishments open to inspection by representatives of the protecting power (art. 96).

Articles 109–116 deal with direct repatriation and accommodation of prisoners in neutral countries. Articles 109–110 set forth principles under which parties to the conflict are obligated to repatriate seriously wounded and sick prisoners of war. Specified categories may also be accommodated in neutral countries after agreement with the latter. No wounded and sick prisoner eligible for repatriation may be repatriated against his will during hostilities.

Articles 118–121 contain provisions on the release and repatriation of prisoners of war at the close of hostilities, deceased prisoners, death certificates, burial and cremation, and the transmittal of wills to the protecting power. Article 118 requires that "prisoners of war shall be released and repatriated without delay after the cessation of active hostilities," a principle which occasioned the dispute during the Korean armistice negotiations as to whether a belligerent was obligated to repatriate prisoners against their will (see sec. 10 below). Finally, under article 121, whenever death or serious injury of a prisoner of war is caused by a sentry or any other person or is due to unknown causes, an official inquiry must be held by the detaining power, and measures taken to prosecute the guilty.

d. CIVILIAN PERSONS (CONVENTION NO. IV)

The convention on civilians, as already noted in this report, adheres closely to principles to which the United States has subscribed previously, either in earlier international undertakings (the regulations annexed to Hague Convention No. IV of 1907), or in its own treatment of internees within its territory during the last great war. Because, however, the convention is completely new in form and creates a number of new international obligations for the parties, particularly with respect to alien enemies within the home territory of a belligerent, its provisions merit examination in somewhat greater detail than those of the three conventions thus far discussed.

(1) *Scope and coverage of the convention*

Article 4 identifies as a person protected by the convention anyone who, during a conflict or military occupation, falls into the hands of a power of which he is not a national. The convention does not, however, protect nationals of a state not bound by it, nor nationals of a neutral state found within belligerent territory as long as that state maintains diplomatic representation with the latter. Nor does it cover individuals who are protected by the other three conventions under consideration.

Protected persons suspected of hostile activities within the metropolitan territory lose only such rights and privileges under the convention as would prejudice the state's security. Similarly, protected persons in occupied territory who are detained for spying or sabotage, or as persons under definite suspicion of activity hostile to the security of the occupying power, may be deprived of all rights of communication

under the convention (permitting contacts with relatives and the protecting power) where absolute military security so requires. However, such persons must be humanely treated and shall also be granted the full rights and privileges of a protected person at the earliest date consistent with the security of the state or occupying power (art. 5).

Articles 1–3 and 8–12 are those common articles already discussed above which concern the applicability of the convention to undeclared and civil war, to protecting powers and related matters.

Part II of the convention (arts. 13–26) deals with the general protection of populations against certain consequences of war.

(2) Hospitals and safety zones

Article 14 encourages the parties to establish within their territories hospitals and safety zones organized to protect and shelter young children, the aged, wounded and sick and expectant mothers from the effects of war. Neutralized zones may be established, upon agreement between the parties, in regions where fighting is going on, for wounded and sick combatants and noncombatants, or civilian persons not participating in the hostilities (art. 15). The parties agree to facilitate measures taken to search for killed and wounded, to protect them against pillage and ill-treatment (art. 16) and to try to arrange for the removal from besieged or encircled areas of the wounded, sick, infirm and aged persons, children, and maternity cases (art. 17).

Articles 18–23 provide for the immunity of civilian hospitals from attack, the manner of their identification by the Red Cross emblem, the circumstances under which such protection is lost by acts harmful to the enemy, and the protection to be accorded personnel engaged in the operation of civilian hospitals. Similar provision is made for the protection of hospital convoys on land and sea, and of aircraft used for removing wounded and sick when properly marked with the emblem and flying on courses agreed between the parties. Under specified conditions protecting a party from improper use, the free passage of medical supplies, food, and clothing for children and maternity cases is stipulated.

Articles 24–26 relate to the welfare of children under the age of 15 and measures for facilitating the establishment of contact between members of a family who have been separated because of the war.

Part III is the largest and most important portion of the convention (arts. 27–141). It sets forth the principal obligations of the parties with respect to the two broad categories of persons which it protects: (*a*) alien enemies and other protected persons within the territory of a party to the conflict (sec. II) and (*b*) persons residing in territory which is occupied by the enemy (sec. III).

(3) Provisions applicable to both national and occupied territory

Certain common provisions applicable to both categories are set forth in articles 27–34 (sec. I). These common articles provide for humane treatment of the individuals protected, and bind the parties to respect their person, honor, family rights, and religious customs. Women are to be especially protected against any attacks on their honor and against enforced prostitution. Any distinction in treatment based upon race, religion, or political opinion is specifically forbidden. It is, however, recognized that a party may be justified in taking such measures of control and security in regard to protected persons as may be necessary because of the war.

Article 30 seeks to put teeth into the protection given, by requiring the parties to give protected persons—

> every facility for making application to the Protecting Powers, the International Committee of the Red Cross, the National Red Cross (Red Crescent, Red Lion and Sun) Society of the country where they may be, as well as to any organization that might assist them.

Detaining powers must facilitate visits by other humanitarian or relief organizations to persons in their custody.

Coercion of any kind to elicit information from protected persons is prohibited (art. 31), as are any measures causing the physical suffering or extermination of such persons, including mutilation or so-called scientific experiments not necessitated by medical treatment (art. 32). A familiar precept of the Hague Regulations of 1907 (art. 50) is found in the prohibition of collective penalties, and of the punishment of a protected person for offenses which he has not committed (art. 33). Pillage (also prohibited in art. 47 of the Hague rules), reprisals against a person or his property and the taking of hostages are prohibited (arts. 33–34).

(4) *Aliens in territory of a party to the conflict*

The convention grants to any protected person during a conflict the right of voluntary departure unless contrary to the national interests of the state. In the event that permission to leave is denied, the convention provides that the applicant's request shall be reconsidered by an appropriate court or administrative board designated by the detaining power (art. 35). This is analogous to the United States practice during World War II in giving interned enemy aliens hearings before advisory boards which recommended release, parole, or continued internment to the Attorney General. Persons permitted to leave are entitled to take with them necessary funds for expenses and reasonable amounts of personal effects.

Articles 27 and 38 require protected persons in the territory of a belligerent to be treated humanely, even while confined pursuant to a sentence involving loss of liberty (art. 37). Apart from the special measures of security and control contemplated by articles 27 and 41, their situation continues to be regulated in principle by the provisions concerning aliens in time of peace; but in any case they are entitled to receive individual or collective relief sent to them, medical attention if needed, and to practice their religion. Children under 15 and pregnant women and mothers of children under 7 years of age enjoy any preferential treatment provided for the nationals of the state concerned (art. 38).

Protected persons who have lost their employment as a result of the war must be permitted to find paid work on the same basis as nationals, except for security requirements. If they cannot support themselves as a result of security measures the detaining power must insure their support and that of their dependents (art. 39). On the other hand, they may be compelled to work only to the same extent and under the same conditions as nationals of the territory. Alien enemies, however, may only be compelled to do work normally necessary to insure the feeding, sheltering, clothing, transport and health of human beings, and not related directly to the conduct of military operations (art. 40). This, too, is a general reflection of past American practice.

Under article 42, the internment or placing in assigned residence of protected persons may be ordered only if the security of the detaining power makes it absolutely necessary; and, if such internment is maintained, the internee is entitled to periodic review of his case by an appropriate court or administrative board at least twice yearly.

Article 43 introduces, with respect to internees, the concept of the protecting power borrowed from the 1929 Prisoner of War Convention. Unless the individual himself objects, the detaining power must give to the protecting power the names of any protected persons who have been interned or thereafter released. Similar opportunities to communicate with the protecting power are provided for internees as are enjoyed by prisoners of war. Protected persons may not be transferred to a power not party to the convention (art. 45) nor may the detaining power automatically treat as enemy aliens exclusively by virtue of their nationality of an enemy state refugees who in fact enjoy the protection of no government (art. 44).

(5) *Occupied territories*

Articles 47–78 of the convention deal with the highly important subject of the treatment of inhabitants of occupied territory by the occupying power. In that connection, it should be noted that articles 27–34, which have already been discussed, are common both to this portion of the convention and that dealing with enemy aliens in belligerent territory.

This portion of the convention constitutes the first successful attempt in almost 50 years to revise treaty law dealing with belligerent occupation. It presents primarily a refinement, expansion, and clarification of the regulations annexed to Hague Convention IV of 1907 respecting the laws and customs of war on land, by which the United States is presently bound. The provisions do not replace the Hague rules but are supplementary to them as between powers which are bound by the 1899 or 1907 conventions, and are also parties to the 1949 document (art. 154).

Article 47 prohibits the occupying power from depriving protected persons who are in occupied territory of the benefits of the convention by any change it may attempt to make in the government of that territory or its institutions, or by agreements between the occupying power and the authorities of the occupied territory, or by annexation thereof in whole or in part. Protected persons found therein who are not nationals of the dispossessed power must be given an opportunity to depart in accordance with procedure established pursuant to article 35 (art. 48). Article 49 prohibits individual or mass forcible transfers and deportations of protected persons from occupied territory to another country; but evacuation of specific areas is permissible for imperative military reasons or the security of the population (art. 49). Specific measures to insure the care, health, and education of children and prohibiting changes in their personal status are set forth in article 50. Compulsory military service by protected persons in the armed forces of the occupant is prohibited, along with pressure or propaganda aimed at inducing voluntary enlistment. Forced labor of protected persons is forbidden unless they are over 18 years of age, and then must be limited to work necessary either for the needs of the army of occupation, public-utility services, or for the feeding, sheltering, clothing, transportation and health of the inhabitants.

Compulsory work in connection with military operations is excluded (art. 51).

(6) Welfare of the inhabitants

Article 55 considerably enlarges the responsibility of an occupying power with respect to the welfare of the occupied territory. Under article 43 of the Hague regulations, that obligation was stated merely as one to "ensure, as far as possible, public order and safety." Moreover, the occupant, under article 52, could only requisition goods and services "for the needs of the army of occupation." Article 55 of the Civilian Convention goes beyond this by imposing upon the occupying power the duty of ensuring the food and medical supplies of the population to the best of its capabilities, even if it has to bring these in from outside the territory. Services may be requisitioned, as previously noted, for the benefit of the population. Foodstuffs, articles, or medical supplies may still be requisitioned for the use of occupation forces and administrative personnel, but only if the requirements of the civilian population have been taken into account.

Articles 56–63 set forth the obligations of the occupant relative to the maintenance of hospital and medical establishments, the prevention of disease, relief consignments and their distribution, and the activities of Red Cross Societies.

(7) Punishment of criminal offenses

Article 64 substantially rephrases article 43 of the Hague rules which required the occupant to respect "unless absolutely prevented," the laws in force in the country. Instead it is now provided that the penal laws of the occupied territory shall remain in force, with the exception that they may be repealed or suspended by the occupying power when they constitute a threat to its security or an obstacle to applying the convention. Local tribunals will continue their functions with respect to offenses covered by such laws. Penal laws enacted by the occupant may not be retroactive (art. 65). The occupying power is authorized to try offenses against such laws by its properly constituted, nonpolitical military courts, provided they sit within the territory (art. 66). Only provisions of law applicable prior to the offense and in accordance with general principles of law may be applied by the courts (art. 67). Internment or simple imprisonment is the maximum penalty which may be applied to offenses intended solely to harm the occupying power but which do not constitute an attempt on the lives or persons of members of the occupying forces or administration, nor a grave collective danger nor damage property of the occupying forces or installations used by them (art. 68).

It is further provided in article 68 that the penal provisions promulgated by the occupying power may impose the death penalty upon protected persons only for cases of espionage, sabotage, or intentional offenses which have caused the death of one or more persons—

> provided that such offenses were punishable by death under the law of the occupied territory in force before the occupation began.

The United States attached a reservation to this provision at the time of signature, which is discussed in a later section of this report. (See sec. 9 below.)

Articles 70–76 contain enlightened provisions safeguarding the rights of protected persons arrested for criminal offenses. Among other things accused persons are assured the right to be informed promptly of the charges against them, to call witnesses and present evidence, to defense counsel and an interpreter, the right of appeal and to have the protecting power notified of particulars of the proceedings. No person condemned to death may be deprived of the right of petition for pardon or reprieve and, except in grave emergencies, execution of the death sentence may not be carried out before the expiration of 6 months from the date of receipt by the protecting power of notification of final judgment confirming such sentence (art. 75). Article 76 provides that protected persons who are accused of offenses shall be detained in the occupied country and serve their sentences there if convicted. Under article 77, protected persons, who have been accused of offenses or convicted by the courts in occupied territory, shall be handed over at the close of occupation to the authorities of the liberated country, with all relevant records.

(8) Treatment of internees

Regulations for the treatment of internees are contained in articles 79–135, which are similar in a great many respects to the provisions governing the treatment of prisoners of war and need not, therefore, be recataloged here. They embrace such matters as places of internment, food and clothing, hygiene and medical attention, religious, intellectual, and physical activities, personal property and financial resources, administration and discipline, relations with the exterior, penal and disciplinary sanctions, transfers of internees, deaths and release and repatriation. A final section (arts. 136–141) concerning information bureaus and a Central Information Agency also follows closely provisions on the same subject in the Prisoners of War Convention.

8. Administrative Review of Detention and Internment Decisions

The committee's attention was particularly drawn to articles 35, 43, and 78 of the Convention on Civilians. Under article 35, a protected person who has been denied permission to leave the home territory of a belligerent in time of war is entitled to have such denial reconsidered by an appropriate court or administrative board designated for that purpose by the detaining power. A similar right is provided by article 43 for persons who have been interned or placed in assigned residence in a belligerent's home territory. In article 78 it is likewise provided that persons who have been placed in internment or assigned residence in occupied territory, shall be entitled to review or reconsideration by a "competent body." From information furnished to the committee by the executive branch it appears that the administrative boards and the competent bodies contemplated by the three articles to reconsider decisions in these cases may be created with advisory functions only, leaving the final decision to a high official or officer of the government. This understanding of the provisions appears to be a reasonable one to the committee.

A spokesman for the Department of Justice emphasized that the internment provisions of the civilians convention do not require a

belligerent government to hold a hearing before it interns an alien enemy in time of crisis, and that policies which the United States have heretofore followed would not be handicapped thereby. However—

they do require that the internment weapon be used with discrimination and common sense, and that opportunities for reconsideration be provided as a safeguard against mistakes. The internment policies and procedures followed by the United States in World War II would comply with Articles 42 and 43.

9. Application of the Death Penalty in Occupied Territory

Of the four conventions, the only instrument to which the United States made a reservation at Geneva was the one on civilians. Article 68, paragraph 2, of that convention in its present form permits the imposition of the death penalty by an occupying power only in cases involving espionage, serious acts of sabotage, or intentional offenses causing the death of one or more persons; *provided, however, that such offenses were punishable by death under local law in force before the occupation began.* Adoption of this limitation upon the death penalty was due to the efforts of a number of countries, some of which had experienced wholesale imposition of this extreme measure under military occupation, and others of which have abolished the death penalty in their legal systems. Our own Government, while willing to agree not to impose it except in the three categories of cases listed in article 68, was unable to accept the proviso further limiting its use. Along with the United Kingdom, we took the position that an occupying power would be unable to protect its own forces adequately against the activities of illegal combatants unless it retained the power to take drastic legal action to meet the situation. From a practical standpoint, moreover, the limitation in article 68 would permit an enemy on the point of being dislodged from the national territory to repeal a death penalty law previously applicable, thus opening the way to all kinds of subversive activities against the occupant which would not be punishable by death. Reasons of this kind impelled the United States to sign the convention with a reservation in the following form:

The United States reserves the right to impose the death penalty in accordance with the provisions of Article 68, paragraph 2, without regard to whether the offences referred to therein are punishable by death under the law of the occupied territory at the time the occupation begins.

Similar reservations to article 68 were made by the United Kingdom, Canada, New Zealand, and the Netherlands.

The committee considers that this reservation is essential to the protection of the national interest and, accordingly, in reporting the convention to the Senate, recommends that it be included in the resolution giving its advice and consent to ratification.

10. Release and Repatriation of Prisoners of War

During the Korean armistice negotiations the most contested legal issue was whether the parties were obligated to compel prisoners to be repatriated against their will, or whether the detaining power could in its discretion grant asylum to any prisoner who desired it. The United Nations Command maintained the position that all prisoners who wished to be repatriated were entitled to repatriation, but that

international law did not require force to be used if they were unwilling to return. The Communists asserted that forced repatriation was prescribed under the principle of article 118 of the 1949 convention on prisoners of war. That article provides in part:

> Prisoners of war shall be released and repatriated without delay after the cessation of active hostilities.

In the United Nations General Assembly in the fall of 1952, during debates on the Korean armistice negotiations, the Soviet bloc sought to maintain the thesis that the principles of articles 118 and 7 (which prohibits renunciation of rights by a prisoner) did not encompass a grant of asylum to prisoners of war. The exchanges, in which our own Government took a leading part, developed that the practice of many nations, including the practice of the Soviet Government, was authority for granting asylum to prisoners of war; that at Geneva, in 1949, the negotiators proceeded upon the premise that the doctrine of asylum was applicable; and that they did not intend to overturn customary law in this respect. Both General Assembly Resolution 610 (VII) and the eventual armistice agreement in Korea permitted the individual prisoner of war a free choice between return and asylum, under safeguards of impartial supervision. The fact that it is an "unrestricted opportunity of repatriation," and not an absolute obligation or predetermined fate of repatriation which the prisoner is given under article 118, was similarly recognized by the General Assembly in Resolution 427 (V) of December 14, 1950, and reaffirmed in Resolution 741 (VIII) of December 7, 1953.

Members of the committee, exploring the problem of involuntary repatriation with the executive branch, were informed at the hearing that the United States official position continues to be that maintained in Korea and overwhelmingly supported in the resolution of the General Assembly, and that article 118 does nothing to change accepted principles of international law under which asylum is applicable to prisoners of war.

The committee unqualifiedly concurs. It finds nothing in the Geneva conventions of 1949 which will compel the United States forcibly to repatriate prisoners of war who fear political persecution, personal injury, or death should they return to their homeland. That article, being intended for the benefit and the well-being of prisoners, will permit the United States to continue the policy of nonforceable repatriation, while at the same time leaving it free, where necessary, to refuse requests for asylum. The interpretation which has thus prevailed gives due weight to the word "release" in article 118, is faithful to precedent and legislative history, and is fully consistent with the great humanitarian purposes which underlie all four of the conventions.

11. Prohibition on the Use of the Red Cross Emblem

Article 53 of the convention for the amelioration of the condition of the wounded and sick in armed forces in the field (Convention I) prohibits at all times the use by any individuals, societies, firms or companies, whether public or private, unless entitled thereto under the convention—

> of the emblem or the designation "Red Cross" or "Geneva Cross", or any sign or designation contituting an imitation thereof, whatever the object of such use, and irrespective of the date of its adoption.

Article 54 further provides that the parties to the convention—

shall, if their legislation is not already adequate, take measures necessary for the prevention and repression, at all times, of the abuses referred to under Article 53.

Testimony was presented to the committee on behalf of several well-known private business organizations (including Johnson & Johnson, the A. P. W. Paper Co., and others) that the prohibitions in these articles would impair their enjoyment of a long-standing right to the use of the Red Cross emblem in the advertisement and sale of their products. It was therefore urged that a reservation be adopted which would protect the property rights here alleged to be affected.

The committee has weighed carefully the evidence submitted to it on the use of the emblems by these companies and, after examining pertinent Federal legislation, has concluded that justice and equity as well as the provisions of our own law require that the interests here involved should receive appropriate safeguards in the ratification of the convention. This conclusion is based upon the following considerations:

There was no Federal statute dealing with the use of the Red Cross trademark until the act of June 5, 1905 (33 Stat. 600; 36 U. S. C. § 4) made it unlawful for any person or group other than the Red Cross of America "not now lawfully entitled to use" the symbol to make use of it thereafter. The act of June 23, 1910 (36 Stat. 604; cf. 18 U. S. C. 706) limits the use of the emblem to those who had enjoyed the right before 1905, and for only the same purpose and class of goods. This legislation, as well as the decisions of high Federal courts (e. g., the opinion of Judge Learned Hand in *Loonen* v. *Deitsch*, 189 F. 487; and of Mr. Justice Douglas in *Federal Trade Commission* v. *A. P. W. Paper Co.*, 328 U. S. 193) appear to give support to the proposition that the trademark and its use by private companies constitute a valuable property right.

All of the companies represented before the committee enjoyed the right to use the symbol before the 1905 statute was passed, and several have used it regularly for 75 years. According to testimony presented by these witnesses, this long continued use has created valuable interests in associating certain products with the emblem, the loss of which would have an appreciable effect upon sales. That testimony further indicated that millions of dollars had been spent on the symbol in advertising and marketing.

The problem is not a new one. After ratification of the 1929 convention on wounded and sick, which contained a similar prohibition, an unsuccessful attempt was made to enact implementing legislation (cf. H. R. 6911, 77th Cong., 1st sess.). Hearings on the bill then introduced likewise appear to sustain the thesis that to the extent that pre-1905 users established a property right they would be entitled to just compensation.

The committee cannot ignore the contention that if no protective reservation is attached to the treaty, the foundation will have been laid for a claim of deprivation of private property rights in violation of the just compensation clause of the fifth amendment. It is the position of the executive branch that the prohibition of articles 53 and 54 is not intended to be self-executing. Nevertheless, once the treaty is ratified, the United States will have assumed an international obligation under article 54 to give effect to its injunctions.

In testimony submitted at the hearing, the Department of Defense expressed opposition to any reservation to this convention which would have the effect of diminishing the protection it guarantees to members of our Armed Forces and the civilian population. As stated by Mr. Brucker:

> * * * we are not opposed to the observance of proper equities as far as the business, industrial firms of this country are concerned, but * * * balanced against that, we have a very serious international problem which, if we unilaterally make reservations that dilute the Red Cross emblem, are going to bring perhaps not only repercussions but failure to recognize even our own marked spots for the Red Cross emblem, both abroad and here, whenever it may occur.

Subsequently, the Department of Defense advised the committee in a letter to the chairman dated June 6, 1955, that its principal concern over any proposed reservation related to the possible use of the Red Cross emblem on buildings and other outdoor structures; and suggested appropriate phrasing to that effect for inclusion both in a reservation and in such legislation as might hereafter be enacted for the protection of the emblem.

Because of the facts which have been set forth above, the committee, after extended consultation with the executive departments concerned, the American National Red Cross, and representatives of the pre-1905 users, considers that a reservation should be adopted which would relieve the United States of any obligation to disturb continued enjoyment of any use of the emblem which was lawful under domestic law in the United States at the time of ratifying the convention. Such a use would be one lawfully begun prior to January 5, 1905, and permitted to continue under the act of January 5, 1905, the act of June 23, 1910, and subsequent Federal legislation, subject, of course, to extinction by abandonment at any time.

Moreover, the protection of the national interest—and especially the interest of wounded and sick—requires that such a reservation be qualified so as to express the acceptance by the United States of an obligation to enact legislation prohibiting any use of the emblem on aircraft, vessels, vehicles, buildings, or other structures, or upon the ground, except as authorized under the terms of the conventions.

Accordingly, the committee, in reporting the convention to the Senate, recommends that the resolution giving its advice and consent to ratification, include the following reservation:

> The United States, in ratifying the Geneva convention for the amelioration of the condition of the wounded and sick in armed forces in the field, does so with the reservation that irrespective of any provision or provisions in said convention to the contrary, nothing contained therein shall make unlawful, or obligate the United States of America to make unlawful, any use or right of use within the United States of America and its territories and possessions of the Red Cross emblem, sign, insignia, or words as was lawful by reason of domestic law and a use begun prior to January 5, 1905, provided such use by pre-1905 users does not extend to the placing of the Red Cross emblem, sign, or insignia upon aircraft, vessels, vehicles, buildings or other structures, or upon the ground.

12. The "Grave Breaches" Provisions

In an earlier section of this report, reference was made to a number of common articles of the conventions relating to sanctions for what is described as "grave breaches." (See sec. 6 above.) Thus, for example the first paragraph of article 49 of the convention on wounded and sick in armed forces in the field provides—

The High Contracting Parties undertake to enact any legislation necessary to provide effective penal sanctions for persons committing, or ordering to be committed, any of the grave breaches of the present Convention defined in the following Article.

Article 50 defines such "grave breaches" as—

any of the following acts, if committed against persons or property protected by the Convention: wilful killing, torture or inhuman treatment, including biological experiments, wilfully causing great suffering or serious injury to body or health, and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly.

These provisions gave rise to a searching discussion in the committee concerning the possible extent to which they might be construed as enlarging the power of the Federal Government of the United States to enact penal legislation, beyond that now vested in it under the Constitution.

Administration witnesses stated that the undertaking in article 49 was not designed to enact an international penal code, and that it was not intended that there be any enlargement of existing Federal power, which it was felt was already adequate for that purpose. On the other hand, they pointed out that the acts enumerated in article 50 were all acts already condemned by Federal and State criminal law.

At the request of the committee, which felt that no doubt should be allowed to subsist on a question of such importance, this testimony was later supplemented by an authoritative communication from the Department of Justice to the chairman, under date of June 7, 1955, discussing the matter in some detail. The letter pointed out that broad authority exists under those clauses of the Constitution which empower Congress to—

define and punish * * * offenses against the law of nations (art. I, sec. 8, clause 10)—

which, it is well established, includes the power to provide for the trial and punishment of offenses against the laws of war; and under the war powers as set forth in the Constitution which provide a basis for Congress to regulate the treatment accorded by the United States to enemy wounded and sick, inhabitants of territory under our military occupation, and civilian internees. Moreover, article I, section 8, clause 14, which gives the Congress the right—

to make rules for the government and regulation of the land and naval forces—

would warrant enactment of penal sanctions for mistreatment of such "protected persons" by members of our Armed Forces.

The committee is satisfied that the obligations imposed upon the United States by the "grave breaches" provisions are such as can be met by existing legislation enacted by the Federal Government within its constitutional powers. A review of that legislation reveals that no further measures are needed to provide effective penal sanctions or procedures for those violations of the conventions which have been considered in this portion of the report. It should be emphasized, in any event, that the grave breaches provisions cannot be regarded as self-executing, and do not create international criminal law.

The committee was also concerned as to whether these provisions as to "grave breaches" would impose criminal liability upon persons without official status. However, it is clear that these provisions of the conventions do not convert into a "grave breach" every corresponding crime in which a protected person is the victim, but are

concerned primarily with the action of civilian or military agents of a government. It should further be noted that as a practical matter only individuals exercising governmental power would normally be in a position to maltreat such protected groups as prisoners of war, civilian internees or the inhabitants of occupied territory.

13. Reservations to the Convention by the Soviet Bloc

Members of the Soviet bloc (Albania, Byelorussian Soviet Socialist Republic, the Bulgarian People's Republic, the Hungarian People's Republic, Poland, the Rumanian People's Republic, Czechoslovakia, the Ukrainian Soviet Socialist Republic, and the Soviet Union) entered a group of reservations which are of such potential significance that the committee considered at some length the desirability of specifically stating in the resolution of ratification that the reservations are unacceptable to the United States and that we could not agree to them as proposed changes in the convention.

These reservations pertain to common article 10 (art. 11, Civilians Convention), article 12 (art. 45, Civilians Convention), and article 85 of the Prisoners of War Convention, the reservation respecting the latter article being the most important. The possibility that the reservations might be used by the Soviet bloc to evade normal international obligations under the conventions in a broad sphere has been the subject of most extensive examination by the executive branch and the committee.

Article 85 deals with the treatment of prisoners of war who are prosecuted and sentenced for precapture offenses. It provides:

> Prisoners of War prosecuted under the laws of the Detaining Power for acts committed prior to capture shall retain, even if convicted, the benefits of the present Convention.

A typical reservation of the Soviet bloc (that of the Soviet Union) to this article is worded as follows:

> The Union of Soviet Socialist Republics does not consider itself bound by the obligation, which follows from Article 85, to extend the application of the Convention to prisoners of war who have been convicted under the law of the Detaining Power, in accordance with the principles of the Nuremberg trial, for war crimes and crimes against humanity, it being understood that persons convicted of such crimes must be subject to the conditions obtaining in the country in question for those who undergo their punishment.

A reservation of this kind raises the question as to whether the Soviet-bloc countries will consider themselves bound by the convention to accord to prisoners of war accused of war crimes, as described in the reservation, the benefits of fair trial which the convention ensures. By reasonable construction and its literal wording, the reservation quoted above declares that it is only when a prisoner of war has been convicted of a war crime that he ceases to benefit from the provisions of the convention. Accordingly, it would appear that the protection of the convention would continue through trial and, indeed, until exhaustion of the appellate proceedings provided by the convention.

There is, however, no definite assurance, beyond the reasonable construction of the language used in the reservation, that the Soviet bloc intends thereby to recognize the applicability to prisoners of war of the provisions of the convention respecting trial and appeal. On the other hand, in the light of the practice adopted by Communist forces in Korea of calling prisoners of war "war criminals," there is the

possibility that the Soviet bloc might adopt the general attitude of regarding a significant number of the forces opposing them as ipso facto war criminals, not entitled to the usual guaranties provided for prisoners of war. As indicated above, however, the Soviet reservation expressly deprives prisoners of war of the protection of the convention only after conviction in accordance with the convention.

In view of the foregoing, the committee concurs with the conclusion of the executive branch that the most satisfactory means of dealing with these reservations is to make it clear that the United States does not accept them, but proposes to enter into treaty relations with the Soviet-bloc countries with respect to the remaining, unreserved parts of the conventions. If in the event of armed conflict any of those countries were to exploit reservations in an unwarranted manner so as to nullify the broad purposes of the conventions, such action would, of course, alter the legal situation for the United States; and this Government would be free to reconsider its position. It is hoped that the members of the Soviet bloc may one day find it possible to withdraw their reservations, or will at least construe and apply them in a manner compatible with their legal and humanitarian obligations. In the meantime, by having treaty relations the United States has obtained agreement to the best standards of treatment and is in the soundest position to protect our nationals.

To avoid any possibility of misunderstanding on this aspect of the conventions, the committee, in reporting the conventions to the Senate, recommends that there be included in the resolutions giving its advice and consent to ratification a statement adapted to each convention in the following form:

> The United States, rejecting the reservations—other than to article 68, paragraph 2, of the Civilian Persons Convention—which states have made with respect to the Geneva conventions, accepts treaty relations with all parties to those conventions, except as to the changes proposed by such reservations.

It is the committee's view that this statement adequately expresses the intention of our Government to enter into treaty relations with the reserving states so that they will be bound toward the United States to carry out reciprocally all the provisions of the conventions on which no reservations were specifically made.

14. Experience With the Conventions in Korea

Although the provisions of the Prisoners of War Convention were not recognized as being legally in force with respect to the Korean conflict, the United States, the Republic of Korea, and the North Korean regime had early stated that they would apply its principles. Moreover, while the Chinese Communist regime never explicitly undertook to apply the convention, its Foreign Minister did inform the Swiss Government on July 16, 1952, that his Government had decided to "recognize" the 1949 conventions, subject to certain reservations.

The lamentable contrast in the treatment which was accorded to prisoners by the two sides impelled members of the committee to inquire whether the 1949 instrument afforded adequate protection against the kind of cruelties which our men had undergone at the hands of the Communists, such as "brainwashing" and other types of torture. On this point administration spokesmen emphasized at the

hearing that the draftsmen had anticipated thoroughly the principal problems which might arise. In the words of Mr. Brucker:

> The conventions give us the means of dealing with the problems we encountered in Korea and forbid those very acts which so outraged our conscience. The conventions, for example, impose no impediment to restoring and keeping order in prisoner of war camps; indeed, they require it * * *. They do not authorize "brainwashing." They forbid those very killings, acts of torture and forms of harsh treatment for which our enemies were justly condemned.

The entire problem of brainwashing has received intense study by the intelligence services of the three military departments, for the purpose of detecting the techniques by which it has been accomplished, and the most appropriate method of combating this new kind of warfare. The 1949 convention, in the views of those appearing before the committee, contains more definite and positive language against such abuses than the 1929 document.

With respect to the organized uprisings and attendant violence in the Korean camps, which produced such adverse propaganda effects for the United States, questioning by the committee elicited testimony from the executive branch that the problem was not one of lack of authority under the convention, but rather the means of exercising that authority. Attention was directed to article 83 which provides:

> A prisoner of war shall be subject to the laws, regulations, and orders in force in the Armed Forces of the Detaining Power; the Detaining Power shall be justified in taking judicial or disciplinary measures in respect of any offence committed by a prisoner of war against such laws, regulations or orders.

The committee was assured that measures had been introduced to give complete effect in the future to the authority contained in article 83:

> there has been considerable indoctrination in the armed forces by way of prevention, to see that that doesn't get under way again, and * * * the matter has been the subject of numerous conferences by the Secretary and others since that time.

It was emphasized that should any future occasion arise prompt and vigorous steps would be taken to meet the situation.

15. Extent of Implementing Legislation Required

From information furnished to the committee it appears that very little in the way of new legislative enactments will be required to give effect to the provisions contained in the four conventions. The problem of continued use of the Red Cross emblem by commercial organizations has already been discussed. However, under article 38 of the convention on wounded and sick in armed forces in the field, certain countries are permitted to use, in place of the red cross, the red crescent or the red lion and sun on a white ground. While article 53 also forbids commercial use of these distinctive signs, without effect on rights acquired through prior use, no legislation restricts the use of such emblems in the United States. For this reason it will be necessary to make appropriate changes in title 18, section 706, of the United States Code.

Similarly, as already noted, the 1949 conventions for the first time authorize the use of the Red Cross emblem by the International Red Cross and its personnel (art. 44, Wounded and Sick Convention), civilian hospitals and personnel engaged in their administration, and convoys of vehicles, hospital trains and aircraft carrying wounded and

sick civilians (arts. 18–22, Civilians Convention). Further amendment of title 18, section 706, of the United States Code would seem necessary to anticipate these uses. Legislation providing workmen's compensation for civilian internees, where not otherwise provided under Federal or State law, may be needed to give effect to article 95 of the Civilians Convention. The necessity of such legislation is dependent upon whether civilian internees in a future conflict work for public or private employers and upon the type of work which they perform. In any event, the matter is not one requiring immediate statutory action.

In World War II, specific legislation was enacted (act of June 27, 1942, 56 Stat. 461, 462) to implement the provisions of the 1929 convention (art. 38) which provided that—

> relief in kind for prisoners shall be * * * exempt from all import and other duties, as well as of payments for carriage by the state railways.

It may be necessary to consider reviving this statute to effectuate the intention of article 74 of the Prisoners of War Convention and article 110 of the Civilians Convention which provide that—

> all relief shipments * * * shall be exempt from all import, customs and other dues.

In that connection, attention is directed to section 1318 of title 19 of the United States Code, granting the President power to authorize the Secretary of the Treasury to permit the free importation of emergency relief food, clothing, and other supplies. Despite this general power, specific legislation was enacted for the purposes we have been considering.

Finally, enforcement of the provisions of article 23 of the Prisoners of War Convention, and article 83 of the Civilians Convention may require adoption of appropriate penal measures. These articles provide that the location of prisoners of war and internment camps shall be identified by the letters PW, PG (prisonniers de guerre), or IC, so placed as to be clearly visible from the air. It is only such camps which may be so marked.

16. Importance of the Conventions to the United States

The history of war years since the 1929 conventions were formulated is a tragic testimonial to their value and to the importance of improving their provisions in ways dictated by the cold and cruel logic of belligerent experience. In the same way, the mistreatment of American civilians abroad in World War II has demonstrated that such civilians, particularly if they are interned, need the general benefits of the protection secured to prisoners of war. During that terrible conflict the United States, without the compulsion of an international agreement, applied the principles of the 1929 convention to civilians interned in this country; and in occupied territories our relief and reconstruction activities not only went far beyond the requirements of the Hague regulations, but stand as a model for all enlightened nations to emulate, should civilization unhappily be visited, once again, by the scourge of war.

If it be objected that the treatment of our soldiers captured in Korea by the Communists was in many respects ruthless and below civilized norms, it is also true that without the convention, that treatment could have been still worse.

Our Nation has everything to gain and nothing to lose by being a party to the conventions now before the Senate, and by encouraging their most widespread adoption. As emphasized in this report, the requirements of the four conventions to a very great degree reflect the actual policies of the United States in World War II. The practices which they bind nations to follow impose no burden upon us that we would not voluntarily assume in a future conflict without the injunctions of formal treaty obligations.

We should not be dissuaded by the possibility that at some later date a contracting party may invoke specious reasons to evade compliance with the obligations of decent treatment which it has freely assumed in these instruments. Its conduct can now be measured against their approved standards, and the weight of world opinion cannot but exercise a salutary restraint on otherwise unbridled actions. If the end result is only to obtain for Americans caught in the maelstrom of war a treatment which is 10 percent less vicious than what they would receive without these conventions, if only a few score of lives are preserved because of the efforts at Geneva, then the patience and laborious work of all who contributed to that goal will not have been in vain.

17. Conclusions

The committee is of the opinion that these four conventions may rightly be regarded as a landmark in the struggle to obtain for military and civilian victims of war, a humane treatment in accordance with the most approved international usage. The United States has a proud tradition of support for individual rights, human freedom, and the welfare and dignity of man. Approval of these conventions by the Senate would be fully in conformity with this great tradition.

Through its own conduct in previous wars the United States has been instrumental in encouraging the acceptance of standards of treatment which would preserve the peoples of all races and all nations from the savageries and barbarisms of the past. By adding our name to the long list of nations which have already ratified, we shall contribute still further to the world-wide endorsement of those high standards which the draftsmen at Geneva sought to achieve.

For these reasons, the Committee on Foreign Relations urges the Senate to give its advice and consent to the ratification of the four conventions, subject to the reservations and the statement which have been noted above.

O