Twenty-ninth session
Item 93 of the provisional agenda*

RESPECT FOR HUMAN RIGHTS IN ARMED CONFLICTS

First session of the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts

Report of the Secretary-General
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ANNEX

Text of the provisions in draft Protocols I and II considered at the first session of the Diplomatic Conference and list of proposals and amendments relating to those provisions
I. INTRODUCTION

1. In paragraph 7 of resolution 3102 (XXVIII) of 12 December 1973, the General Assembly requested the Secretary-General to report to it at its twenty-ninth session on relevant developments concerning human rights in armed conflicts, in particular on the proceedings and results of the 1974 session of the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts.

2. Since 1864, diplomatic conferences at which the Geneva Humanitarian Conventions were adopted were convened and organized by the Swiss Federal Council, which became the depositary of these Conventions. Continuing this traditional role of Switzerland in the international humanitarian law field, the Swiss Federal Council decided to convene the present Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts. The Diplomatic Conference, which met in Geneva, held a first session from 20 February to 29 March 1974. The Swiss Federal Council addressed to the Secretary-General a note verbale, dated 24 July 1973, inviting the United Nations to be represented at the Diplomatic Conference.

3. As indicated in the convening letter from the Swiss Government, the Diplomatic Conference was entrusted with the task of examining two draft Additional Protocols to the Geneva Conventions for the Protection of War Victims of 12 August 1949 - namely the draft Additional Protocol relating to the protection of victims of international armed conflicts (Protocol I) and the draft Additional Protocol relating to the protection of victims of non-international armed conflicts (Protocol II) - prepared by the International Committee of the Red Cross (ICRC) after thorough consultations with Government Experts as well as bearing in mind other relevant developments, particularly in the United Nations General Assembly.

4. The Diplomatic Conference considered likewise the question of the prohibition or restriction of use of specific conventional weapons which may cause unnecessary suffering or have indiscriminate effects, as invited by General Assembly resolution 3076 (XXVIII) of 6 December 1973, and by resolution XIV adopted by the twenty-second International Conference of the Red Cross held at Teheran in November 1973. The General Assembly, in resolution 3058 (XXVIII) of 2 November 1973, has also invited the Diplomatic Conference to submit its comments and advice regarding the draft articles on the protection of journalists engaged in dangerous missions in areas of armed conflict.

\[1/\] For the text of the draft Additional Protocols and related commentaries, see documents CDDH/1 and CDDH/3.

\[2/\] Conference of Government Experts on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts, convened in 1971 and 1972 by the ICRC. The proceedings of this Conference, where the Secretary-General was represented, have been summarized in earlier reports of the Secretary-General (A/8370 and A/8761 and Corr.1).
5. During the preparatory stage of the Diplomatic Conference, including the
drawing up of the draft Additional Protocols, the Swiss Government and the ICRC
remained in close liaison with the United Nations and followed attentively the work
of United Nations bodies in the field. The need for additional humanitarian
international instruments has been stressed, notably, in resolution XXIII of the
International Conference on Human Rights held at Teheran in 1968 3/ as well as in
several General Assembly resolutions. 4/ Moreover, some General Assembly
resolutions reaffirm, develop or enunciate certain relevant general principles like,
for instance, resolution 2675 (XXV) entitled "Basic principles for the protection
of civilian population in armed conflicts" and resolution 3103 (XXVIII) entitled
"Basic principles of the legal status of the combatants struggling against colonial
and alien domination and racist régimes".

6. Since 1969, the Secretary-General in response to requests by the General
Assembly has submitted to it a series of reports and studies dealing with
substantive aspects of the subject and related matters as well as recording
information on relevant developments. 5/ Thus, at the last session of the General
Assembly the Secretary-General submitted a survey on existing rules of international
law concerning the prohibition or restriction of use of specific weapons (A/9215,
vols. I and II) 6/ and a report on relevant developments concerning human rights in
armed conflicts (A/9123 and Add.1 and 2), as requested by General Assembly
resolution 3C32 (XXVII).

7. The present report gives an account of the proceedings and results of the
1974 session of the Diplomatic Conference on the Reaffirmation and Development of
International Humanitarian Law Applicable in Armed Conflicts. In preparing
the report special attention has been given to matters having or presenting a
particular interest for the United Nations. The text of the articles of the draft
Additional Protocols considered at the 1974 session has been included in an annex
in order to facilitate the understanding of the deliberations of the Diplomatic
Conference. Amendments submitted to such articles are also listed in the annex
as a supplementary information. The Diplomatic Conference requested its secretariat
to prepare a comparative table of proposals and amendments to be distributed by
November 1974 (see paragraph 131 below).

3/ Final Act of the International Conference on Human Rights (United Nations
publication, Sales No.: E.68.XIV.2), p. 18.

4/ Resolutions 2444 (XXIII), 2597 (XXIV), 2673 (XXV), 2674 (XXV), 2676 (XXV),
2677 (XXV), 2852 (XXVI), 2853 (XXVI), 3032 (XXVII) and 3102 (XXVIII).


6/ A report by a group of consultant experts, entitled Napalm and Other
Incendiary Weapons and All Aspects of Their Possible Use (United Nations
publication, Sales No.: E.73.I.3), was submitted in 1972 under paragraph 5 of
General Assembly resolution 2852 (XXVI). For the comments of Governments on that
II. ORGANIZATION OF THE DIPLOMATIC CONFERENCE ON THE
REAFFIRMATION AND DEVELOPMENT OF INTERNATIONAL
HUMANITARIAN LAW APPLICABLE IN ARMED CONFLICTS

(FIRST SESSION: GENEVA, 20 FEBRUARY-29 MARCH 1974)

A. Opening of the Conference and election of its President

8. The Diplomatic Conference was opened on 20 February 1974 with a statement
by Mr. Pierre Graber, Vice-President of the Swiss Federal Council and Head of the
Swiss Federal Political Department, in his capacity of Acting President.
Mr. André Chavanne, Vice-President of the State Council of the Republic and Canton
of Geneva, Mr. Vittorio Winspeare Guicciardi, Director-General of the United
Nations Office at Geneva and representative of the Secretary-General of the
United Nations at the Conference, and Mr. Eric Martin, President of the
International Committee of the Red Cross, also made statements at the opening
meeting.

9. The Director-General of the United Nations Office at Geneva conveyed to the
Diplomatic Conference a personal message of the Secretary-General of the United
Nations of his most warm good wishes for the success of the Conference in its
humanitarian endeavours. Recalling that the International Conference on Human
Rights, held in Teheran in 1968 under the auspices of the United Nations, declared
itself convinced that humanitarian principles must prevail even in times of armed
conflict and that the General Assembly adopted, from 1968 to 1973, a series of
resolutions reaffirming or developing important general principles of international
humanitarian law, the Director-General stressed the increasingly intimate connexion
between the work of the Diplomatic Conference, on the one hand, and some of the
most basic purposes and endeavours of the United Nations, on the other.

10. Following the statements referred to above, the Diplomatic Conference elected
by acclamation, Mr. Pierre Graber, Vice-President of the Swiss Federal Council,
as President of the Conference.

11. The opening meeting was closed by a statement from His Excellency
Mr. Mokhtar Ould Daddah, President of the Islamic Republic of Mauritania.

B. The question of invitations

12. As convening Government, the Swiss Government, depository of the 1949 Geneva
Conventions for the Protection of War Victims, issued the invitations to participate
in the Diplomatic Conference. The Swiss Government addressed the invitations
to all States parties to the Geneva Conventions for the Protection of Victims of
War of 12 August 1949 and to all States Members of the United Nations. The United
Nations and several other international organizations were also invited by the
Swiss Government to be represented at the Diplomatic Conference as observers.
13. Immediately after the opening of the Diplomatic Conference, some delegations raised the question of the participation of (1) Guinea-Bissau, (2) the Provisional Revolutionary Government of South Viet-Nam and (3) National Liberation Movements. Draft resolutions were submitted proposing to invite to the Diplomatic Conference Guinea-Bissau, the Provisional Revolutionary Government of South Viet-Nam and National Liberation Movements recognized by the regional intergovernmental organizations concerned. Different views having been expressed on the matter, including on the capacity in which some of those entities could eventually be invited to participate, the "question of invitations" became the first issue requiring a decision by the Diplomatic Conference.

14. In order to allow delegations to hold consultations on the issue, no public meetings of the Diplomatic Conference were held during a certain number of days. The outcome of the extensive consultations held having not materialized in a consensus on all relevant draft resolutions submitted, the Diplomatic Conference voted on the majority rule to be applied to its decisions on invitations. By

7/ General Assembly resolution 3102 (XXVIII) of 12 December 1973 had urged that the national liberation movements recognized by the various regional intergovernmental organizations concerned be invited to participate in the Diplomatic Conference as observers, in accordance with the practice of the United Nations. Resolution XIII adopted by the XXIInd International Conference of the Red Cross, held at Teheran in November 1973, had urged the Diplomatic Conference to consider inviting national liberation movements recognized by regional intergovernmental organizations to participate in its work as observers in accordance with the United Nations practice (see A/9123/Add.2, p. 5).

8/ Draft resolution in document CDDH/12 and Add.1 to 4, sponsored by Algeria, Burundi, Chad, Congo, Cuba, Democratic People's Republic of Korea, Egypt, Gambia, Ghana, Ivory Coast, Kenya, Libyan Arab Republic, Madagascar, Mali, Mauritania, Morocco, Nigeria, Romania, Senegal, Sudan, Tunisia, Uganda, United Republic of Cameroon, United Republic of Tanzania, Upper Volta, Yugoslavia and Zaire.


10/ Draft resolution originally submitted by Mali in document CDDH/11. For the amended text of the draft resolution established by the Representatives of Regional Groups in the course of consultations and adopted by the Diplomatic Conference see document CDDH/22.

11/ For the summary records concerning the question of invitations, see CDDH/SR.2-7.
64 votes to 28, with 14 abstentions, it decided to apply to such decisions the simple majority rule 12/ instead of a two-thirds majority. 13/

15. On 26 February 1974, the Diplomatic Conference adopted by acclamation the draft resolution inviting Guinea-Bissau to participate as a State, 14/ and, on 1 March 1974, by consensus the amended text of the draft resolution inviting National Liberation Movements recognized by the regional intergovernmental organizations concerned to participate without voting rights. 15/ A list of National Liberation Movements covered by the adopted draft resolution was read out by the President of the Conference before the vote and circulated in a document. 16/

16. The draft resolution inviting to participate the Provisional Revolutionary Government of South Viet-Nam failed to obtain the required majority. On 26 February 1974, the draft resolution received 37 votes in favour and 38 against, with 33 abstentions. 17/ The result of the roll-call vote taken was as follows:

In favour: Albania, Algeria, Bangladesh, Byelorussian Soviet Socialist Republic, Bulgaria, Burundi, China, Congo, Cuba, Czechoslovakia, Democratic People's Republic of Korea, Egypt, German Democratic Republic, Guinea-Bissau, Hungary, India, Indonesia, Iraq, Libyan Arab Republic, Madagascar, Mali, Mauritania, Mongolia, Peru, Poland, Romania, Senegal, Sri Lanka, Sudan, Syrian Arab Republic, Uganda, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Republic of Cameroon, United Republic of Tanzania, Yemen, Yugoslavia.

Against: Australia, Belgium, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Cyprus, Dominican Republic, Ecuador, Germany, Federal Republic of, Greece, Guatemala, Haiti, Honduras, Israel, Japan, Khmer Republic, Liberia, Luxembourg, Malaysia, Mexico, Monaco, New Zealand, Nicaragua, Paraguay, Philippines, Portugal, Republic of Korea, Republic of Viet-Nam, San Marino, Spain, Thailand, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Venezuela.

12/ Draft resolution in document CDDH/13/Rev.2 adopted at the third plenary meeting (CDDH/SR.3).

13/ Amendment in document CDDH/21. By 58 votes to 31, with 14 abstentions, the Diplomatic Conference decided that document CDDH/21 was a separate draft resolution.

14/ See summary record CDDH/SR.4.

15/ See summary record CDDH/SR.7.

16/ See summary record CDDH/SR.6 and document CDDH/INF.11. For delegations of National Liberation Movements which attended the first session of the Conference, see paragraph 17 (b) below.

17/ See summary record CDDH/SR.5. During his intervention in the general debate, the representative of Algeria read out a message addressed to the Diplomatic Conference by Mrs. Binh, Foreign Minister of the Provisional Revolutionary Government of South Viet-Nam (CDDH/SR.14).
Abstentions: Argentina, Austria, Burma, Central African Republic, Chad, Denmark, El Salvador, Finland, France, Ghana, Holy See, Iran, Ireland, Italy, Ivory Coast, Jordan, Kenya, Lebanon, Liechtenstein, Netherlands, Nigeria, Norway, Pakistan, Panama, Saudi Arabia, South Africa, Sweden, Switzerland, Togo, Trinidad and Tobago, Turkey, Upper Volta, Zaire.

C. Participation

17. The following delegations attended the First Session of the Diplomatic Conference as representatives of States or of National Liberation Movements recognized by the regional intergovernmental organizations concerned: 18/

(a) 126 delegations attended as representatives of States:

Afghanistan, Albania, Algeria, Argentina, Australia, Austria, Bangladesh, Belgium, Bolivia, Botswana, Brazil, Bulgaria, Burma, Burundi, Byelorussian Soviet Socialist Republic, Canada, Central African Republic, Chad, Chile, China, Colombia, Congo, Costa Rica, Cuba, Cyprus, Czechoslovakia, Dahomey, Democratic People's Republic of Korea, Democratic Republic of Viet-Nam, 19/ Democratic Yemen, Denmark, Dominican Republic, Ecuador, Egypt, El Salvador, Finland, France, Gabon, Gambia, German Democratic Republic, Germany, Federal Republic of, Ghana, Greece, Guatemala, Guinea-Bissau, Haiti, Holy See, Honduras, Hungary, Iceland, India, Indonesia, Iran, Iraq, Ireland, Israel, Italy, Ivory Coast, Japan, Jordan, Kenya, Khmer Republic, Kuwait, Lebanon, Liberia, Liechtenstein, Libyan Arab Republic, Luxembourg, Madagascar, Malaysia, Mali, Malta, Mauritania, Mauritius, Mexico, Monaco, Mongolia, Morocco, Netherlands, New Zealand, Nicaragua, Niger, Nigeria, Norway, Oman, Pakistan, Panama, Paraguay, Peru, Philippines, Poland, Portugal, Qatar, Republic of Korea, Republic of Viet-Nam, Romania, San Marino, Saudi Arabia, Senegal, South Africa, Spain, Sri Lanka, Sudan, Sweden, Switzerland, Syrian Arab Republic, Thailand, Togo, Trinidad and Tobago, Tunisia, Turkey, Uganda, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Emirates, United Kingdom of Great Britain and Northern Ireland, United Republic of Cameroon, United Republic of Tanzania, United States of America, Upper Volta, Uruguay, Venezuela, Yemen, Yugoslavia, Zaire and Zambia.

18/ For reservations expressed on credentials of certain delegations, see Report of the Credentials Committee (CDDH/51) and summary record of the twentieth plenary meeting (CDDH/BR.20).

19/ At the second plenary meeting, on 27 February 1974, the delegation of the Democratic Republic of Viet-Nam stated that in view of the state of affairs on the invitation to the Provisional Revolutionary Government of South Viet-Nam, it could not continue to take part in the Diplomatic Conference (CDDH/BR.2). Subsequently, the President of the Conference received from the head of the delegation of the Democratic Republic of Viet-Nam "Draft Amendments to the draft Additional Protocols" which were published in a document of the Conference (CDDH/41). /...
(b) 10 delegations attended as representatives of National Liberation Movements recognized by the regional intergovernmental organizations concerned: 20/

Mozambique Liberation Front (FRELIMO), People's Movement for the Liberation of Angola (MPLA), Angola National Liberation Front (FNLA), African National Congress (ANC), Pan Africanist Congress (PAC), Zimbabwe African People's Union (ZAPU), Zimbabwe African National Union (ZANU), South West Africa People's Organization (SWAPO), Seychelles People's United Party (SPUP) and Palestine Liberation Organization (PLO).

18. The International Committee of the Red Cross which prepared the draft Additional Protocols to the 1949 Geneva Conventions was represented at the Diplomatic Conference. Its experts joined in the work of the Conference and its Committees, as provided for in rule 33 of the rules of procedure of the Conference. The League of Red Cross Societies — the international federation of National Red Cross, Red Crescent and Red Lion and Sun Societies — was represented by observers. According to rule 62 of the rules of procedure of the Conference the experts of the League may submit to the Conference oral or written statements on any question concerning its members' humanitarian activities.


20. Representatives of the Sovereign Order of Malta participated in the work of the Conference, without the right to vote.

20/ Rule 58 of the rules of procedure of the Conference provides that: "National Liberation Movements recognized by the regional intergovernmental organizations concerned and invited by the Conference to participate in its work shall participate fully in the deliberations of the Conference and its main Committees. Notwithstanding anything contained in these rules of procedure, the statements made or the proposals or amendments submitted by delegations of such National Liberation Movements shall be circulated by the Conference Secretariat as Conference documents to all the participants in the Conference, it being understood that only delegations representing States will be entitled to vote".
21. Representatives of the organizations listed below participated in the Conference as observers:

(a) **Specialized agencies of the United Nations 21/**

- International Labour Organisation
- United Nations Educational, Scientific and Cultural Organization
- International Telecommunication Union
- International Civil Aviation Organization
- World Health Organization
- Inter-Governmental Maritime Consultative Organization

(b) **Other intergovernmental organizations 21/**

- Council of Europe
- League of Arab States
- Organization of American States
- Organization of African Unity
- International Civil Defence Organization

(c) **Non-governmental organizations 22/**

- Arab Lawyers Union
- Amnesty International
- Association for the Study of the World Refugee Problems
- Carnegie Endowment for International Peace
- Christian Peace Conference
- Commission of Churches on International Affairs of the World Council of Churches
- Friends World Committee for Consultation
- International Association of Lighthouse Authorities
- International Association of Democratic Lawyers
- International Commission of Jurists
- International Commission on Illumination
- International Conference of Catholic Charities
- International Confederation of Former Prisoners of War
- International Electrotechnical Commission
- International Union for Child Welfare
- International Union of Socialist Youth
- Pax Romana (International Secretariat of Catholic Jurists)
- World Council of Peace
- World Federation of Democratic Youth
- World Federation of Scientific Workers
- World Federation of United Nations Associations
- World Jewish Congress
- World Muslim Congress
- World Veterans Federation
- World Young Women's Association

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21/ See rule 60 of the Rules of Procedure of the Conference.
D. Agenda

22. On the basis of a provisional agenda prepared by the convening Government, the Diplomatic Conference adopted on 4 and 5 March 1974, the Agenda of the Conference and the annex thereto listing the programme of work of the established Committees. 23/ In addition to the consideration of the draft Additional Protocols to the 1949 Geneva Conventions, prepared by the ICRC, the adopted agenda entrusted the Diplomatic Conference with the task of examining the question of the prohibition or restriction of use of specific categories of conventional weapons which may cause unnecessary suffering or have indiscriminate effects.

23. The General Assembly in its resolution 3076 (XXVIII), of 6 December 1973, had invited the Diplomatic Conference to consider - without prejudice to its examination of the draft Protocols submitted to it by the ICRC - the question of the use of napalm and other incendiary weapons, as well as other specific conventional weapons which may be deemed to cause unnecessary suffering or to have indiscriminate effects, and to seek agreement on rules prohibiting or restricting the use of such weapons. The twenty-second International Conference of the Red Cross held at Teheran, from 8 to 15 November 1973, invited the ICRC to call, in 1974, a conference of government experts to study in depth the question of prohibition or restriction of the use of conventional weapons which may cause unnecessary suffering or have indiscriminate effects and to transmit a report on the work of the conference to all Governments participating in the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts. 24/

24. With regard to General Assembly resolution 3058 (XXVII), of 2 November 1973, requesting the Secretary-General to transmit to the Diplomatic Conference the draft articles on the protection of journalists engaged in dangerous missions in areas of armed conflict together with related amendments, observations and suggestions and to invite the Diplomatic Conference to submit its comments and advice on those texts, see paragraphs 41 and 129 below.

E. Mandate of the Main Committees and the Ad Hoc Committee established by the Conference

25. As set forth in rule 28 of the Rules of Procedure of the Conference the two draft Additional Protocols, prepared by the ICRC, to the 1949 Geneva Conventions for the Protection of War Victims constituted the basic proposals for discussion by the Conference. The Diplomatic Conference examined the question of the establishment of main committees and of the allocation to them of the articles contained in the draft Additional Protocols on the basis of proposal made by the Swiss Government contained in the note of invitation and in a document on organization and procedures (CDDH/4) submitted to the Diplomatic Conference.

23/ See CDDH/5/Rev.1.

24/ Resolution XIV (A/9123/Add.2, annex, p. 3-4).
26. Corresponding provisions in draft Protocol I (International Armed Conflicts) and draft Protocol II (Non-international Armed Conflicts) were allocated to three Main Committees as follows:

Committee I (General Provisions)
Draft Protocol I = articles 1-7, 70-79, 80-90 and preamble
Draft Protocol II = articles 1-5, 36-39, 40-47, 6-10 and preamble

Committee II (Wounded, Sick and Shipwrecked Persons, Civil Defence, Relief)
Draft Protocol I = articles 8-20, 21-32, 54-59, 60-62 and Annex
Draft Protocol II = articles 11-19, 30, 31, 33-35

Committee III (Civilian Population, Methods and Means of Combat, New Category of Prisoners of War)
Draft Protocol I = articles 43-53, 33-41, 42, 63-69
Draft Protocol II = articles 24-29, 20-23, 32

It was also decided that according to the progress made by the Committees, articles 63-65 and 67-69 of draft Protocol I and article 32 of draft Protocol II might be transferred from Committee III to Committee I for consideration in connexion with articles 6-10 of draft Protocol II.

27. In addition to the three Main Committees referred to above, the Diplomatic Conference decided by 68 votes to none, with 10 abstentions, to establish an Ad Hoc Committee of the Whole on Weapons. 25/ The mandate of the Ad Hoc Committee was defined in the adopted proposal 26/ as follows: "... during the 1974 session of the Conference the Ad Hoc Committee shall examine the question of prohibition or restriction of use of specific categories of conventional weapons which may cause unnecessary suffering or have indiscriminate effects, and consider all proposals which are submitted to the Conference relating to such weapons. It shall report to the Conference on the results of its work. This report - describing the discussions and including the proposals tabled as well as the records of the Committee - shall be transmitted to the ICRC with a view to assisting it in identifying questions and possibilities which need to be explored in depth by the Conference of Government Experts which it will convene in 1974 and in assisting it in finding the most suitable work plan and mode of organization of that Conference. The rules in the Rules of Procedure pertaining to Main Committees were made applicable to the Ad Hoc Committee, with the exception that its Rapporteur shall not be a member of the Drafting Committee during the 1974 session of the Diplomatic Conference. 27/"

25/ At the ninth plenary meeting, on 4 March 1974 (see CDDH/SR.9).
26/ Document CDDH/23, sponsored by Egypt, Kuwait, Libyan Arab Republic, Mexico, Norway, Sudan, Sweden, Switzerland and Yugoslavia.
27/ For the composition of the Drafting Committee, see paragraph 28 (c) below.
F. Vice-Presidents of the Conference, officers of Main Committees and the Ad Hoc Committee, and officers and composition of the Drafting Committee and the Credentials Committee

28. At its seventh plenary meeting, on 1 March 1974, the Diplomatic Conference approved en bloc by consensus the list of Vice-Presidents of the Conference, officers of the Main Committees and officers and composition of the Drafting Committee and the Credentials Committee agreed upon by the different geographical groups in the course of prior consultations. 28/ The following countries and representatives were elected:

(a) Vice-Presidents of the Conference: Mr. Erich Kussbach (Austria), Mr. Jean de Breucker (Belgium), Mr. D. M. Miller (Canada), Mr. Pi Chi-Lung (China), Mr. Richard Balken (Germany, Federal Republic of), Mr. Joseph Turpin (Guinea-Bissau), Mr. Nicolò de Bernardo (Italy), Mrs. Sall (Mauritania), Mr. Mohamed Al-Arbi Khattabi (Morocco), Mr. J. M. Espino Gonzalez (Panama), Mr. Hortencio J. Brillantes (Philippines), Mr. Aureliu Cristescu (Romania), Mr. Appiah Pathmarajah (Sri Lanka), Mr. Mowaffak Allaf (Syrian Arab Republic), Mr. Barry B. L. Auguste (Trinidad and Tobago), Mr. Akisoferi Hikairi Ogola (Uganda), Mr. Michail Gribanov (Union of Soviet Socialist Republics), Mr. Augusto Legnani (Uruguay), Mr. Ginyanta Mutati Kasasa (Zaire).

(b) Officers of Main Committees:

Committee I
Chairman: Mr. Édvard Hambro (Norway)
Vice-Chairmen: Mr. B. Akporode Clark (Nigeria)
Reprorteur: Mr. Konstantin Obradović (Yugoslavia)

Committee II
Chairman: Mr. T. Mallik (Poland)
Vice-Chairmen: Mr. Osvaldo Salas (Chile)
Reprorteur: Mr. Nasim Hasan Shah (Pakistan)

Committee III
Chairman: Mr. Hamed Sultan (Egypt)
Vice-Chairmen: Mr. Géza Herczegh (Hungary)
Reprorteur: Mr. Djibrilla Maiga (Mali)

Ad Hoc Committee
Chairman: Mr. Diego Garces (Colombia)
Vice-Chairmen: Mr. Houchang Amir-Mokri (Iran)
Reprorteur: Mr. Mustapha Chelbi (Tunisia)

28/ See CDDH/17 and 33.
(c) **Drafting Committee:**

Chairman: Mr. Abu Sayed Chowdhury (Bangladesh)

Vice-Chairmen: Mr. Mario Carías (Honduras)
Mr. H. N. Rattansey (United Republic of Tanzania)

Rapporteur of Committees: Mr. Miguel Marín-Bosch (Mexico)
Mr. Djibrilla Maiga (Mali)
Mr. Richard R. Baxter (United States of America)

Other Members: Mr. Abdelouahab Abada (Algeria)
Mr. Carlos Alberto Dunshee de Abranches (Brazil)
Mr. Christian Girard (France)
Mr. Bernhard Graefrath (German Democratic Republic)
Mr. E. Soepraptó (Indonesia)
Mr. Hassane Rifat (Lebanon)
Mr. Hans Blix (Sweden)
Sir Colin Crowe (United Kingdom of Great Britain and Northern Ireland)

Mr. Igor Blishchenko (Union of Soviet Socialist Republics)

(d) **Credentials Committee:**

Chairman: Mr. Danilo Sanson-Roman (Nicaragua)

Members: Mr. P. J. Mahoni (Australia)
Mr. Gejza Mencer (Czechoslovakia)
Mr. Riyadh Al-Adhami (Iraq)
Mr. Maxime Zafera (Madagascar)
Mr. Carlos Alzamora (Peru)
Mr. Amadou Cissé (Senegal)
Mr. Wichian Watanakun (Thailand)
Mr. Rémy Jean Mbaya (United Republic of Cameroon)
Mr. George H. Aldrich (United States of America)

G. **Secretariat of the Conference**

29. The Swiss Government appointed a Commissioner-General for the Diplomatic Conference, Mr. Jean Humbert, who also served as Secretary-General of the Conference. The cost of organizing and running the Conference was borne by the Swiss Government.

H. **Rules of procedure of the Conference**

30. The Conference had before it draft rules of procedure and a paper on methods of work prepared by the convening Government. The draft rules of procedure were based, except for some matters of detail, on the rules of procedure of the United Nations Conference on the Law of Treaties. Several amendments having been moved to the draft rules of procedure, it was decided to entrust to the Drafting Committee established by the Conference, the task of studying these amendments and making a
report thereon to the Plenary. In the meanwhile, the Conference adopted provisionally chapter V of the draft rules of procedure relating to the conduct of business. On the basis of the corresponding report of the Drafting Committee, the Conference adopted on 8 March the draft rules of procedure, as amended, as the Rules of Procedure of the Conference. 29/
III. GENERAL DEBATE IN PLENARY

31. The Diplomatic Conference decided to hold a general debate to which it devoted eight meetings. During the debate heads of delegations expressed the point of view of their respective countries on general aspects of the subjects to be considered by the Conference. 30/

32. All delegations welcomed the convening of the Diplomatic Conference by the Swiss Federal Council and emphasized the urgent need to reaffirm and develop international humanitarian law applicable in armed conflicts by supplementing, as appropriate, the rules set forth in the 1949 Geneva Conventions for the Protection of War Victims in the light of past experience and taking into account present conditions. They expressed likewise their willingness to contribute to such an endeavour. Generally speaking, delegations felt that the draft Additional Protocols to the 1949 Geneva Conventions, drawn up by the ICRC, constituted an effective working basis.

33. The large number of participating countries from all continents was underlined as a manifestation of the universality of international humanitarian law and of the importance attached by States to its reaffirmation and development. The participation of delegations of national liberation movements in the Diplomatic Conference was welcomed by several delegations.

34. Some delegations expressed the view that international humanitarian law must distinguish between the aggressor and the victim of aggression. Only by preventing aggression and fighting against its causes could human suffering be alleviated and loss of life and destruction be reduced. Consequently, in the opinion of those delegations, international humanitarian law should condemn aggression and avoid impeding the struggle against imperialism, colonialism and racism. Perpetrators of war crimes should not be allowed to invoke international humanitarian law to escape punishment. It was also stated by certain delegations that a distinction between just and unjust wars should be made in the Protocols.

35. Other delegations rejected the idea of introducing into international humanitarian law discriminatory levels of protection based on the causes or justness of an armed conflict as perceived by the parties to it. They considered totally alien to the principles of international humanitarian law and extremely dangerous for its effective application the introduction of subjective notions of that kind in the body of international humanitarian law. Such subjective criteria would inevitably result, in the opinion of those delegations, in lowering the equal standard of protection accorded by international humanitarian law to all victims of armed conflicts.

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30/ See CDDH/SR.10-14 and 17-19. Views expressed in the general debate were developed later in the course of the work done by the committees (see paras. 40-126 below).
36. Certain delegations pointed out that international humanitarian law should reflect the progress made in the promotion of human rights, while others considered that international humanitarian law applicable in armed conflicts was not synonymous with the law of human rights.

37. With regard to draft Protocol I, applicable in international armed conflicts, representatives agreed on the need to strengthen the protection of the civilian population and, as a corollary, to distinguish between combatants and non-combatants and between civilian objects and military objectives. In this connexion reference was made to the prohibition of terror attacks, particularly area bombardment. The obligations of the parties to the conflict with regard to the prisoners of war were also recalled as well as the need of widening the protection afforded to combatants not belonging to the regular army. Moreover, several delegations expressed the view that the Geneva Conventions must apply to armed struggles for self-determination and liberation and that such struggles should be classified as international armed conflicts. Delegations favoured the strengthening of measures to ensure the application of international humanitarian law and, more particularly, the improvement of the machinery for appointing the Protecting Powers and of their substitute. Reference was made in that connexion to the role to be played by the ICRC and other humanitarian bodies.

38. Delegations which made statements on the question of the application of international humanitarian law in the event of a non-international armed conflict, and on the advisability of preparing a draft Additional Protocol to the Geneva Conventions for that purpose, recalled the need of bearing in mind the principles of State sovereignty and of non-interference in domestic affairs, and stressed that the field of application of such an instrument would have to be settled as a matter of priority. However, they generally recognized the urgent necessity of giving greater protection to the victims of non-international armed conflicts, and most of them supported draft Protocol II in principle. Nevertheless, some delegations expressed a preference for a single Protocol containing rules relating to non-international armed conflicts. It will be recalled further that a few delegations expressed the desire that draft Protocol II should not be taken up for examination until the second session of the Diplomatic Conference.

39. Lastly, on the subject of weapons that may cause unnecessary suffering or have indiscriminate effects, delegations were on the whole in favour of the idea of studying such weapons and their effects. Some delegations felt, however, that disarmament bodies were more appropriate forums than the Diplomatic Conference to study the matter. Different views were expressed on the question of the categories of weapons which should be studied by the Conference, some delegations favouring to include in the study not only conventional weapons but also nuclear weapons and other mass-destruction weapons. The view prevailed that the Conference should limit its study to conventional weapons only. Certain delegations underlined that rules on prohibition or restriction of specific categories of conventional weapons eventually adopted should be the object of a separate instrument or instruments.
IV. WORK OF COMMITTEE I: PROVISIONS OF GENERAL CHARACTER
(PREAMBLE AND ARTICLES 1 TO 7 AND 70 TO 90 OF PROTOCOL I; PREAMBLE AND ARTICLES 1 TO 10 AND 36 TO 47 OF PROTOCOL II) 31/

40. At the first meeting of the Committee, the Chairman proposed to examine simultaneously corresponding sections of each of the two draft Protocols allocated to the Committee in the following order: (a) General provisions (1. Articles 1 to 7 of Protocol I; 2. Articles 1 to 5 of Protocol II); (b) Execution (3. Articles 70 to 80 of Protocol I; 4. Articles 36 to 39 of Protocol II); (c) Final provisions (5. Articles 80 to 90 of Protocol I; 6. Articles 40 to 47 of Protocol II); (d) Humane treatment of persons in the power of the Parties to the conflict (7. Articles 6 to 10 of Protocol II); (e) Preamble (8. Preamble of Protocol I; 9. Preamble of Protocol II). The Chairman's proposal, after a brief discussion in which it was supported by numerous delegations, whilst others felt that the draft Protocols should be examined separately, was adopted by 46 votes to 9, with 6 abstentions.

41. Committee I considered only the first five articles of Protocol I and related amendments. Most of the meetings held by the Committee were devoted to the study of article 1 (scope) of Protocol I and amendments thereto. This matter, together with the question of invitations referred to above, constituted the most outstanding issue discussed at the first session of the Conference. The Committee referred the amendments to article 1 to a Working Group entrusted with the task of submitting a single amendment to article 1. The Working Group, with the Rapporteur as Chairman, consisted of the delegations which had sponsored the amendments and other delegations wishing to take part. It was not possible however to reach general agreement. Thereafter, the Committee gave priority to one of the amendments submitted and approved it, as orally amended, by a vote as the text for article 1 of Protocol I (see paragraphs 53 to 55 below). The Committee referred paragraphs (a) and (b) of article 2 (Definitions), together with corresponding amendments, to the Drafting Committee established by the Conference, and postponed decisions on other provisions and amendments relating to article 2, article 3 (Beginning and end of application) and article 4 (Legal status of the Parties to the conflict), including amendments proposing new articles. Finally, the Committee began consideration of article 5 (Appointment of Protecting Powers and of their substitute) and amendments thereto in conjunction with the definitions of the terms "Protecting Power" and "substitute" provided for in paragraphs (d) and (e) of article 2. A draft resolution submitted to Committee I on the question of the protection of journalists engaged in dangerous missions in areas of armed conflict was referred by the Committee to the Plenary of the Conference (see paragraph 129 below). The report of Committee I to the Plenary was approved by 59 votes to none, with 22 abstentions. 32/

31/ For the documents and summary records of Committee I, see CDDH/1/I/1-82 and CDDH/1/SR.1-16.

A. Matters considered by the Committee

1. Scope of Protocol I

42. Article 1 of Protocol I was by far the most debated article at the first session of the Conference, both in public and in private meetings. All delegations attached particular importance to the wording of article 1, which determines the scope of the entire Protocol I.

43. The original basic text proposed by the ICRC, which had been approved by the experts by a large majority, provided that Protocol I, which supplements the Geneva Conventions of 12 August 1949, for the Protection of War Victims, shall apply in the situations referred to in article 2 common to these Conventions. Such situations are the following: (1) all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them; (2) all cases of partial or total occupation of the territory of a High Contracting Party, even if that occupation meets with no armed resistance. In the commentary to the article it is also said that: (1) the Protocol in no respect opens the way to a revision of the 1949 Conventions, but seeks to supplement them where the lessons drawn from contemporary armed conflicts show that the Conventions have proved to be inadequate before the requirements of humanity; (2) the article should be read in conjunction with article 84 (Treaty relations upon the entry into force of the present Protocol) of the draft Protocol.

44. The majority of delegations considered that wars of national liberation were international armed conflicts within the meaning of article 2 common to the four 1949 Geneva Conventions and should consequently be included in the field of application of Protocol I. They proposed to add a provision to article 1 of Protocol I stipulating that the situations referred to in the said common article 2 of the 1949 Geneva Conventions include those armed conflicts in which peoples, in the exercise of their right to self-determination, fight against colonial domination and alien occupation and against racist regimes. In up-dating international humanitarian law every effort should be made to protect duly the victims of those struggles, a social and political phenomena of the times. International humanitarian law could not but make explicit a rule of contemporary international law which had developed gradually over the past quarter of a century and had been now generally accepted. The right of peoples to self-determination had been recognized in the Charter of the United Nations and reaffirmed and developed in a number of declarations, such as the Declaration on the Granting of Independence to Colonial Countries and Peoples and the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, and other numerous resolutions adopted by the General Assembly of the United Nations. As specifically stated in

33/ Delegations of national liberation movements attending the Conference also made statements in connexion with article 1 of Protocol I and amendments thereto.
General Assembly resolution 3103 (XXVIII), armed conflicts resulting from struggles to achieve that right are to be regarded "as international armed conflicts in the sense of the 1949 Geneva Conventions". As features testifying to the international nature of conflicts arising out of such struggles reference was made to national liberation movements as subjects of international law, to the ability and will of these movements to apply international humanitarian law rules, to the separate and distinct legal status of the territory of a colony or other non-self-governing territory, and to colonialism as an international crime or permanent aggression.

45. Other delegations did not share that view. They considered unacceptable to introduce into Protocol I criteria based on political motivation and subjective judgement alien to the system adopted in the 1949 Geneva Conventions and provided for in draft Protocol I. It was a basic principle of humanitarian international law that the protection afforded by it should never vary according to the motives and aims of those engaged in a particular armed struggle or the legitimacy of that struggle. To do otherwise would imply the revision of the entire international humanitarian law and jeopardize the universal acceptability of the international instruments concerned and would not ensure better protection for all war victims. Recalling that the Geneva Conventions and draft Protocol I had been devised for entities such as States, some of these delegations were of the opinion that national liberation movements would not be in a position to assume numerous obligations provided for in those instruments. Other delegations made it clear that they accepted that the four Geneva Conventions and Protocol I could apply to armed conflicts other than between States, but only in so far as the Parties to the conflict accepted the provisions thereof and were willing and able to apply them. Lastly, reference was also made to the need of avoiding formulations which could be construed as authorizing actions which would impair the integrity of States as well as the use of terms and expressions such as "peoples", "alien domination", "racist régimes", etc., all too vague for law-making instruments.

46. Some delegations were ready to support a provision including within the scope of Protocol I struggles to achieve self-determination in the strict sense given to that concept in the Charter of the United Nations, but opposed wider or less precise formulations.

47. Many of the delegations referred to in the two preceding paragraphs agreed to include a restatement of the Martens Clause in article 1 of Protocol I, whereby in cases not included in the Protocol or in other instruments of conventional law, civilians and combatants remain under the protection and the authority of the principles of international law, as they result from established custom, from the principles of humanity and the dictates of public conscience. This clause was considered by other delegations useful in certain conflicts of a nature difficult to define but insufficient for national liberation struggles which were specifically international in character.

48. Three formulations were initially proposed for defining the armed struggles for self-determination to be considered as "international armed conflicts". The first read "armed conflicts where peoples fight against colonial and alien
domination and against racist régimes" (amendment CDDH/I/5). 34/ The second used the words "armed struggles waged by peoples in the exercise of their right of self-determination, as enshrined in the Charter of the United Nations and defined by the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations" (amendment CDDH/I/11 and Add.1-3). 35/ The third spoke of "armed conflicts in which the people of a colony, a non-self-governing territory or a territory under foreign occupation are engaged, in the exercise of the right to self-determination and the right to self-defence against aggression, with a view to ensuring more effective protection for the victims of aggression and oppression" (amendment CDDH/I/13). 36/

49. Other delegations proposed to amend (CDDH/I/12 and Add.1 and Corr.1) 37/ the original ICRC text of article 1 by adding to it two new paragraphs providing that: (1) the High Contracting Parties undertake to respect and to ensure respect for the present Protocol in all circumstances; (2) in cases not included in this present Protocol or in other instruments of conventional law, civilians and combatants remain under the protection and the authority of the principles of international law, as they result from established custom, from the principles of humanity and the dictates of public conscience. Point 1 of the amendment followed the wording of article 1 of the 1949 Geneva Conventions and point 2 was based on the Martens Clause which in the original ICRC text was incorporated in the preamble of Protocol I. Moreover, the amendment deleted from the text proposed by the ICRC the words "which supplements the Geneva Conventions of 12 August 1949, for the Protection of War Victims."

50. Most sponsors of amendment CDDH/I/11, together with other delegations, proposed subsequently in another amendment (CDDH/I/41) the following formulation for defining the armed struggles for self-determination to be considered "international armed conflicts": "... armed conflicts where peoples fight against colonial and alien domination and against racist régimes in the exercise of their right of self-determination, as enshrined in the Charter of the United Nations and defined by the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations." This new formulation received the support of the sponsors of

34/ Sponsored by Czechoslovakia, the German Democratic Republic, Hungary, Morocco, Poland, the United Republic of Tanzania and the USSR.

35/ Sponsored by Algeria, Australia, Burundi, Cuba, Democratic Yemen, Egypt, Guinea-Bissau, the Ivory Coast, Kuwait, the Libyan Arab Republic, Madagascar, Nigeria, Norway, Pakistan, Senegal, the Sudan, the Syrian Arab Republic, Tunisia, the United Arab Emirates, the United Republic of Cameroon, Yugoslavia and Zaire.

36/ Sponsored by Romania.

37/ Sponsored by Argentina, Austria, Belgium, the Federal Republic of Germany, Italy, Netherlands, Pakistan and the United Kingdom.
amendments CDDH/I/5 and CDDH/I/13 who withdrew their own amendments in favour of amendment CDDH/I/41. 38/

51. Another formulation, somewhat more limited in scope, was proposed in amendment CDDH/I/42. 39/ It read: "... armed conflicts waged by the national liberation movements recognized by regional intergovernmental organizations concerned against colonial and foreign domination and racist régimes in the exercise of the principle of the self-determination of peoples as set out in the Charter of the United Nations".

52. To explore the possibility of submitting a single amendment to article 1, the Committee decided, at its sixth meeting on 15 March, to establish the Working Group mentioned in paragraph 41 above and referred to it the amendments in document CDDH/I/11, 12, 41 and 42. The Working Group met on 19 and 20 March. It was not possible, however, to reach agreement within the Working Group. At that stage, five Latin-American delegations 40/ moved a new amendment (CDDH/I/71) to article 1. The amendment consisted of four paragraphs. Paragraph 1 reproduced the text originally proposed by the ICRC (see paragraph 43 above). Paragraph 2, based on amendment CDDH/I/41 (see paragraph 50 above), read as follows: "The situations referred to in the preceding paragraph include armed conflicts in which peoples are fighting against colonial and alien occupation and racist régimes in the exercise of their right of self-determination, as enshrined in the Charter of the United Nations and the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations". Paragraphs 3 and 4 incorporated 41/ provisions concerning the undertaking to respect and to ensure respect for the Protocol and on the Martens Clause proposed in amendment CDDH/I/12 (see paragraph 49 above). A draft resolution (CDDH/I/78) 42/ intended to refer to an intersessional working group the consideration of the problem of the right of peoples to self-determination in relation both to Protocol I and Protocol II, commencing with the relevant proposals advanced during the Diplomatic Conference, was also submitted.

38/ Amendment CDDH/I/41 and Add.1-7 was finally sponsored by Algeria, Bangladesh, Bulgaria, Burundi, Byelorussian SSR, Chad, Congo, Cuba, Czechoslovakia, Democratic People's Republic of Korea, Egypt, German Democratic Republic, Ghana, Guinea-Bissau, Hungary, India, Indonesia, Iraq, Ivory Coast, Jordan, Kuwait, Lebanon, Liberia, Libyan Arab Republic, Madagascar, Mali, Mauritania, Mongolia, Morocco, Nigeria, Oman, Pakistan, Poland, Qatar, Romania, Saudi Arabia, Senegal, Sri Lanka, Sudan, Syrian Arab Republic, Togo, Tunisia, Uganda, Ukrainian SSR, USSR, United Republic of Cameroon, United Republic of Tanzania, Yemen, Yugoslavia, Zaire and Zambia.

39/ Sponsored by Turkey.

40/ Argentina, Honduras, Mexico, Panama and Peru

41/ In the case of paragraph 4 with minor drafting changes.

42/ Sponsored by Canada and New Zealand.
53. At its 13th meeting on 22 March, the Committee put to the vote the submitted proposals and amendments. It decided to give priority to the amendment submitted by five Latin-American delegations in document CDDH/I/71, as orally amended in paragraph 2 by replacing the words "colonial and alien occupation" by the words "colonial domination and alien occupation" and inserting the word "against" before the words "racist régimes". In its orally amended version, the amendment was approved by a roll-call vote by 70 votes to 21, with 13 abstentions. The result of the vote was as follows:

**In favour:** Albania, Algeria, Argentina, Bangladesh, Bulgaria, Burundi, Byelorussian Soviet Socialist Republic, Cuba, Chad, Czechoslovakia, China, Cyprus, Democratic People's Republic of Korea, Democratic Yemen, Egypt, El Salvador, Finland, Gabon, German Democratic Republic, Ghana, Guinea-Bissau, Honduras, Hungary, India, Indonesia, Iran, Iraq, Ivory Coast, Jordan, Khmer Republic, Kuwait, Lebanon, Liberia, Libyan Arab Republic, Madagascar, Mali, Morocco, Mauritania, Mexico, Mongolia, Nigeria, Norway, Oman, Pakistan, Panama, Peru, Poland, Qatar, Republic of Viet-Nam, Romania, Saudi Arabia, Senegal, Syrian Arab Republic, Sri Lanka, Sudan, Thailand, Togo, Trinidad and Tobago, Tunisia, Uganda, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Emirates, United Republic of Cameroon, United Republic of Tanzania, Venezuela, Yemen, Yugoslavia, Zaire, Zambia.

**Against:** Belgium, Canada, Denmark, Germany (Federal Republic of), France, Israel, Italy, Japan, Liechtenstein, Luxembourg, Monaco, New Zealand, Netherlands, Portugal, Republic of Korea, Spain, South Africa, Switzerland, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay.

**Abstaining:** Australia, Austria, Burma, Brazil, Colombia, Chile, Greece, Guatemala, Holy See, Ireland, Philippines, Sweden, Turkey.

54. The text of the approved amendment reads:

"Article 1

"Amend the title and text of the article to read as follows:

'General principles

'1. The present Protocol, which supplements the Geneva Conventions of 12 August 1949 for the Protection of War Victims, shall apply in the situations referred to in article 2 common to these Conventions.

'2. The situations referred to in the preceding paragraph include armed conflicts in which peoples are fighting against colonial domination and alien occupation and against racist régimes in the exercise of their right of self-determination, as enshrined in the Charter of the United Nations and the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations.
3. The High Contracting Parties undertake to respect and to ensure respect for the present Protocol in all circumstances.

4. In cases not included in the present Protocol or in other instruments of treaty law, civilians and combatants remain under the protection and authority of the principles of international law derived from established custom, from the principles of humanity and from the dictates of public conscience.

55. As a result of the Committee's decision on document CDDH/I/71, the sponsors of draft resolution (CDDH/I/78) did not press for a vote on their proposal. 43/ At its 16th meeting on 26 March, the Committee decided by 51 votes to 23, with 9 abstentions, to recommend in its report to the plenary the text of article 1 of draft Protocol I, reproduced in paragraph 54 above, for adoption by the Conference (for further consideration of the matter in plenary, see paragraph 127 below).

2. Definitions of general terms used in Protocol I

56. The Committee considered also article 2 of Protocol I. Paragraphs (a) and (b) defining the term "the Conventions" and the terms "First Convention", "Second Convention", "Third Convention" and "Fourth Convention", were referred to the Drafting Committee established by the Conference. The original ICRC text defines the term "the Conventions" as meaning "the four Geneva Conventions of August 12, 1949, for the Protection of War Victims", namely by the title under which they had been published in the United Nations Treaty Series and by which they were designated by the depositary. 44/ The terms "First Convention", "Second Convention", "Third Convention" and "Fourth Convention" are defined in that text, respectively, as follows: the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, of 12 August 1949; the Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of the Armed Forces at Sea, of 12 August 1949; the Geneva Convention on the Treatment of Prisoners of War, of 12 August 1949; the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949. The Committee decided to leave it to the Drafting Committee to take the methodological amendment submitted to those paragraphs into account as it saw fit. After a short debate, the Committee deferred consideration of paragraph (c) of the article providing for a general definition of the terms

43/ For further developments concerning the establishment of an intersessional working group to consider the problem of the right of peoples to self-determination in relation both to Protocol I and Protocol II, see foot-note 78 below.

44/ During the consideration of article 1, it was pointed out that the expression "the Geneva Conventions" was purely descriptive and that the work of the Conference in no way affected the separate and distinct legal validity of each of the 1949 Geneva Conventions.
"protected persons" and "protected objects", together with related amendments, until
other relevant articles, in particular article 74 (Repression of breaches of the
present Protocol), had been dealt with. Paragraphs (d) and (e) devoted to the
definition of the terms "Protecting Power" and "substitute" were considered
together with article 5 (Appointment of Protecting Powers and of their substitute)
of Protocol I (see paras. 52 to 69 below). Consideration of an amendment for
the addition to article 2 of two new paragraphs defining the expressions "Party
to the Conventions" and "Party to the conflict" was postponed pending a decision on
the text of article 1 of Protocol I. 45/  

3. Obligations incumbent upon the High Contracting Parties to respect and to
ensure respect for the Conventions and Protocol I  

57. The Committee deferred the study of another amendment proposing the insertion
of a new article 2 bis 46/ on the question of the obligation for the Parties to
the instruments to respect and to ensure respect for the Conventions and the
Protocol and the means of ensuring that obligation. The amendment will be studied
together with article 7 (Meetings) and related amendments as well as with
amendments proposing the addition of new articles 7 bis and 7 ter. It should be
noted, however, that paragraph 1 of the proposed new article 2 bis is identical to
paragraph 3 of the text subsequently adopted by Committee I for article 1 (see
paragraph 54 above).  

4. Beginning and end of application of Protocol I  

58. Reference was made during the discussion of article 3 to questions such as:
(1) whether the words "the Conventions and "should be inserted before the words
"the present Protocol" in the three paragraphs of the article; (2) whether in
paragraph 1 the word "situation" should be replaced by the word "case" and the
words "in peacetime" by the words "at all times"; (3) whether "the general close of
military operations" referred to in paragraph 2 was appropriate as the time-limit to
end the application or should that expression be duly supplemented or replaced by
another; (4) whether a new provision or provisions should be added to the article to
secure protection in certain cases after the end of application in accordance with
paragraphs 2 and 3. With respect to the latter point, some delegations stated that
paragraph 5 of article 65 (Fundamental guarantees) was limited in scope and did not
cover categories of persons who ought to be protected after the lapsing of the time-
limit established by article 3 for terminating the application. Different views were

45/ See CCDH/I/38.
46/ See CCDH/I/20. It was also proposed to place before article 70 (Measures
for execution) of Protocol I a new article drafted as follows: "1. Any grave
violation of the basic provisions of the Convention and of the present Protocol
shall be regarded as a crime against humanity; 2. For the purpose of remedying the
situations referred to in paragraph 1 of this article, the High Contracting
Parties undertake to act jointly or individually, in co-operation with the United
Nations and within the framework of the United Nations Charter." (See CCDH/I/74.)
This amendment has not yet been examined by the Committee.

/...
however expressed and proposals were made on the categories of persons who needed to be covered by the suggested new provision or provisions. The amendments submitted to article 3 reflected the preoccupations of certain delegations on the questions mentioned above. The Committee approved the Chairman's suggestion that the delegations which had sponsored the amendments, and the ICRC legal expert, should meet informally with a view to producing a revised version of article 3. Delegations which attended those informal meetings submitted a revised text for paragraph 1 of the article which was reproduced in a document of the Committee. 47/ With regard to paragraphs 2 and 3 of article 3, and a proposed new paragraph 4, the sponsors were unable to reach an agreement. The Committee decided to postpone the vote on the choice between the two texts proposed for paragraph 1 of article 3, i.e., the original ICRC text and the text submitted by delegations which attended the informal meetings referred to.

5. Application of the Conventions and Protocol I and legal status of the Parties to the conflict

59. As indicated in the ICRC commentary to article 4 of Protocol I, the object of that provision is to ensure a better fulfilment of the humanitarian aims of the Conventions and the Protocol. The Parties to the conflict might fear that the application of those instruments might bring in its wake political or legal consequences affecting their reciprocal status. It was advisable therefore to remove all doubts in this regard by providing that the application of the instruments concerned shall not affect the legal status of the parties to the conflict. The Committee considered article 4 and related amendments, but many delegations however were not prepared to pursue further the discussion until the field of application of Protocol I had been definitely established in article 1.

60. During the debate certain delegations questioned the need of mentioning in article 4 that the application of the instruments shall not affect the legal status of the territories over which the Parties to the conflict exercise authority. Some proposed the deletion of that reference from the original ICRC text. It was also proposed to replace the words "or that of the territories over which they exercise authority" by other formulations. Other delegations supported the original ICRC text. Different views were also advanced on the appropriateness of adding to the article, as proposed in an amendment, 48/ two new paragraphs on the status of the territory of a colony or other non-self-governing territory, and on the territorial integrity and political unity of sovereign and independent States, based on some passages of the principle of equal rights and self-determination of peoples contained in the Friendly Relations Declaration.

47/ It reads as follows: "In addition to the provisions to be applied at all times, the Conventions and the present Protocol shall apply from the outset of any case mentioned in Article 2 common to the Conventions" (see CDDH/I/63 and Corr.1).

48/ See CDDH/I/43.
6. Principles governing the interpretation and application of the Conventions and Protocol I

61. The Committee discussed briefly a proposed new article 4 bis relating to interpretation and application. 49/ According to the proposed article no provision of Protocol I shall be construed as to affect State sovereignty or to authorize foreign States to intervene in an armed conflict, and, in interpreting and applying the Conventions and the Protocol, the parties shall observe the basic principles of contemporary international law governing international treaties, contained in the Friendly Relations Declaration and in the Vienna Convention on the Law of Treaties. Certain delegations considered that the suggested provisions were implicit in all international agreements. The amendment was withdrawn by the sponsor who reserved the right to revert to the matter at a later stage.

7. Appointment of "Protecting Powers" and of their "substitute" and definition of these terms

62. The deliberations of the Preparatory Conference of Government Experts and the replies of Governments to a questionnaire sent to them by the ICRC, published in 1972 and 1973, indicated that there was support in favour of keeping and improving the existing system of "Protecting Powers". No proposal was submitted for its abolition. The impartial supervision of the application of humanitarian instruments by an independent third party was viewed as an important means of facilitating that application. The United Nations General Assembly itself, in paragraph 3 (a) of its resolution 2852 (XXVI), invited the ICRC to devote special attention to the need for "strengthening the system of Protecting Powers" contained in the 1949 Geneva Humanitarian Conventions. Moreover, the General Assembly, in its resolution 3032 (XXVII), considered that substantial progress on fundamental issues such as the methods to ensure a better application of existing rules relating to armed conflicts was indispensable. These developments reflected the widely shared feeling that the system of "Protecting Powers" of the 1949 Geneva Humanitarian Conventions had not always worked well in practice.

63. The ICRC included in draft Protocol I a series of provisions intended to strengthen the system of "Protecting Powers" set up by the 1949 Geneva Humanitarian Conventions. Paragraphs (d) and (e) of article 2 define the terms "Protecting Powers" and "substitute". According to these definitions a "Protecting Power" cannot be but a State not engaged in the conflict. "Substitute" is an organization acting "in place of" a "Protecting Power".

64. The appointment of "Protecting Powers" and of their "substitute" is regulated in article 5 of Protocol I. The "Protecting Powers" are designated and accepted by the parties to the conflict (paragraph 1). In the event of disagreement, the ICRC shall offer its good offices with a view to the designation of "Protecting Powers" acceptable to both parties to the conflict (paragraph 2). If no

49/ See CDDH/I:15.
"Protecting Power" is however appointed, paragraph 3 of the article provides for the appointment of the ICRC as a "substitute". Under Alternative I the assumption by the ICRC of such functions is subject to the agreement of the Parties to the conflict. Alternative II makes the assumption mandatory by providing that the Parties to the conflict "shall accept" the offer made by the ICRC to act as a "substitute". Paragraphs 4 to 6 contain a series of precisions and safeguards concerning the system and its operation.

55. The Committee considered article 5 in conjunction with the definitions in paragraphs (d) and (e) of article 2. Several amendments were moved to those provisions. Some modify the whole system proposed by the ICRC. Others refer only to certain specific aspects of that system, particularly to paragraph 3 of article 5 for which, as indicated, the ICRC has proposed two alternatives. Following the introduction of the amendments, the Committee proceeded to examine article 5 paragraph by paragraph. By the end of the session, the Committee had considered only paragraphs 1 and 2 of the article. No decisions were taken.

66. The advisability of introducing some kind of automatic procedures in the appointment system was at the core of the preoccupations reflected in the amendments submitted as well as in the statements made during the debate. Although it was generally agreed that the principle of consent should be the overriding principle governing the appointment of "Protecting Powers", some delegations favoured a certain degree of automatism in the assumption of functions by the "substitute". Other delegations emphasized that the appointment system as a whole should be respectful of State sovereignty and of the principle of non-interference in the internal affairs of States. No delegation took however exception with the obligation of each Party to the conflict to designate a "Protecting Power" as provided for in paragraph 1 of the text proposed by the ICRC for article 5. A delegation, however, preferred to use the expression "Protecting Entity" instead of the expression "Protecting Power". In his opinion there was no reason to limit the choice to States not engaged in the conflict.

67. It should be noted that while article 2, paragraph (e), states that "substitute" means "an organization", namely any organization, article 5, paragraph 3 (both alternatives), refers only to the ICRC. The commentary indicates that in 1972 certain experts, who had deduced that the ICRC did not intend to play the role of "substitute", had proposed to establish a permanent supervisory body to be set up or designated to that end by the United Nations. A majority of experts were however against an article dealing with the establishment of such an organ. At the Diplomatic Conference, some delegations considered that article 5 should allow any international organization or body, or any impartial humanitarian organization or body, to assume the functions of a "substitute". In addition to the ICRC, the United Nations, the United Nations Commissioner for Refugees and the Order of Malta were specifically mentioned in this regard. It was also said that several "substitutes" could eventually operate at the same time.
68. One amendment 50/ submitted to the Diplomatic Conference proposes to enable the United Nations to take the initiative, if necessary, in designating a "substitute". The proposed text reads as follows:

"2. If a Protecting Power is not designated in accordance with the preceding paragraph, the Parties to the conflict shall in their territories and for the sole purpose of applying the Conventions and the present Protocol, permit a humanitarian organization, such as the International Committee of the Red Cross, designated and accepted by those Parties or, where appropriate, designated by the United Nations Organization and recognized by the Parties, to act as substitute within the meaning of Article 2(e)."

Other amendments propose that in the event of failure to appoint a "Protecting Power" an impartial humanitarian organization such as the ICRC be appointed by a party to the conflict and accepted by the other or, in the last instance, appointed by the Conference of the High Contracting Parties. 51/

69. Several delegations supported the deletion in paragraph 1 of article 5 of the words "which has not already entrusted the protection of its interests and of those of its nationals to a third State". In their opinion, there was no reason to limit by those words the obligation of each party to the conflict of designating a "Protecting Power". It should not be assumed that a Power appointed under article 45 of the Vienna Convention on Diplomatic Relations should consent to act as "Protecting Power" under Protocol I. Support was expressed for the deletion of the words "unjustified delay" in paragraph 2 of the article. Reference to the convenience of introducing time-limits in the procedure of appointment of "Protecting Powers" was also made.

B. Matters not yet considered by the Committee having a particular interest for the United Nations

1. Participation in the Protocols

70. According to the final provisions proposed by the ICRC both Protocols will be open only to Parties to the 1949 Geneva Humanitarian Conventions which in turn are only open to States. 52/

50/ See CDDH/I/18.
51/ See CDDH/I/75 and CDDH/I/62.
52/ Regulations annexed to agreements concluded between the United Nations and States participating in a United Nations peace-keeping force contain a standard clause providing that "The Force shall observe the principles and spirit of the General International Conventions applicable to the conduct of military personnel" (emphasis supplied). In the body of the agreements it is spelled out that the Conventions referred to in the Regulations include inter alia, the 1949 Geneva Humanitarian Conventions.
2. Depositary, registration and publication of the Protocols

71. As in the case of the 1949 Geneva Humanitarian Conventions, the Swiss Government is supposed to be the depositary of the Protocols. The draft Protocols expressly indicate that the Swiss Government, as depositary, will transmit the Protocols to the Secretariat of the United Nations for registration and publication. It is also provided that the depositary shall inform the United Nations Secretariat of all ratifications, accessions and denunciations with respect to the Protocols (draft articles 89 of Protocol I and 46 of Protocol II).
V. WORK OF COMMITTEE II: WOUNDED, SICK AND SHIPWRECKED PERSONS, CIVIL DEFENCE, RELIEF (ARTICLES 8 TO 32, 54 TO 62 AND ANNEX OF PROTOCOL I AND ARTICLES 11 TO 19, 30, 31 AND 33 TO 35 OF PROTOCOL II) 53/

72. Committee II decided to begin its work by examining the provisions of Protocol I concerning general protection of wounded, sick and shipwrecked persons in international armed conflicts, namely articles 8 to 20. Once those articles had been examined, it would decide whether the corresponding provisions of Protocol II (articles 11 to 19) should be studied immediately thereafter. The Committee agreed to wait until articles 8 to 20 of Protocol I had been examined before setting up, as suggested by some delegations, a working group to study provisions of the same Protocol relating to civil defence (articles 54 to 59). Regulations concerning the identification and marking of medical personnel, units and means of transport, and civil defence personnel, equipment and means of transport contained in Annex to Protocol I, and amendments thereto, were referred to a Technical Sub-Committee on signs and signals without previous discussion in the Committee. It was decided that all delegations interested could take part in the work of the Technical Sub-Committee.

73. The Committee was able to consider only four articles of Protocol I (articles 8 to 11) and their respective amendments. It did not conclude the discussion of article 11 (Protection of persons), but articles 8 (Definitions), 9 (Field of application) and 10 (Protection and care), together with related amendments, were referred to a Drafting Committee established by the Committee and composed of 15 members. 54/ The Drafting Committee submitted a report to the Committee containing the text provisionally adopted for article 8 and paragraph 1 of article 9. The report reproduced also a tentative version for other paragraphs of article 9 prepared by the Bureau of the Drafting Committee but that the Drafting Committee had no opportunity of discussing. After a brief exchange of views, the Committee at its last meeting 55/ took note of the report of the Drafting Committee, and comments thereon made by delegations, as the basis for discussion at the next session of the Conference. The report of the Drafting Committee was annexed to the report of Committee II to the Plenary. 56/

53/ For the documents and summary records of Committee II, see CDDH/II/1-82 and CDDH/II/SR.1-12, respectively.

54/ The Drafting Committee was composed of three members of each geographical group as follows: African States (Egypt, Nigeria, Uganda), Asian States (Indonesia, Iraq, Japan), Eastern European States (Poland, Romania, Yugoslavia), Latin American States (Argentina, Brazil, Mexico) and Western European and other States (France, Spain, United States of America).

55/ See CDDH/II/SR.12.

56/ See CDDH/49, annex I.
A. Matters considered by the Committee

1. Definition of terms for the purposes of part II of Protocol I

74. Committee II devoted its attention from the very outset of its work to study the meaning which should be given to terms such as "the wounded and sick", "shipwrecked persons", "medical unit", "medical personnel", "distinctive emblem" and "distinctive signal". Different views were expressed with regard to the formulations proposed by the ICRC for defining each of those terms, including on a new version of the definition of "shipwrecked persons" suggested by the ICRC during the discussion. Some of the amendments submitted and suggestions made added qualifications to the conditions set forth in the basic proposal with the result of restricting the scope of the definition concerned. Others, on the contrary, intended to widen the scope of certain definitions. Finally, other amendments and suggestions were of a mere drafting character.

75. Some delegations were of the opinion that the persons referred to in the definition of "the wounded and sick" should be persons in need of medical assistance and care "due to physical or mental incapacity" or "because of trauma, disease or other physical or mental disorder". It was also said that the need of assistance should be "serious", a qualification opposed by other delegations. The definition of "medical unit" should, in the view of certain delegations, cover first-aid teams as well as establishments for the prevention of diseases. Although several delegations drew the Committee's attention to the need to limit the number of categories of persons entitled to special protection, others tried to enlarge somewhat the definition of "medical personnel" by including under the notions of "military medical personnel", "civilian medical personnel" and "medical personnel of civil defence" certain additional categories of persons in medical services or engaged exclusively in the operation or administration of medical units. For instance, it was proposed to include among the protected "medical personnel of civil defence" not only personnel belonging to the national Red Cross (Red Crescent, Red Lion and Sun) Societies, but also medical personnel of volunteer relief agencies.

76. One delegation asked that the term "chaplain" be defined in article 6. It was pointed out, however, that the problem of chaplains and other persons performing similar functions could be more usefully dealt with in a special article to be placed after article 15 (Civilian medical and religious personnel), a view shared by the Drafting Committee. Another delegation requested that the emblem used by the medical services of the armed forces and by the national societies existing in its country, namely the Red Shield of David, should be recognized as a "distinctive sign" in the same way as the Red Cross, the Red Crescent and the Red Lion and Sun, but no written amendment to that effect has been tabled.

77. The text provisionally adopted by the Drafting Committee for article 8 (Definitions) reads as follows:
"For the purposes of the present Protocol:

(a) 'the wounded and sick' means persons, whether military or civilian, who, because of trauma, disease or other physical or mental disorder or disability, are in need of medical assistance and care and who refrain from any act of hostility. The term shall also be construed to cover other persons in need of medical assistance and care who refrain from any act of hostility, including the infirm, pregnant women and maternity cases, as well as new-born babies;

(b) 'the shipwrecked' means persons, whether military or civilian, who are in peril at sea or on other waters as a result of the destruction, loss or disablement of the vessel or aircraft in which they were and who refrain from any act of hostility;

(c) 'medical units' means establishments and other units, whether military or civilian, organized for medical purposes, such as the search for removal, transportation, diagnosis or treatment of the wounded and sick and shipwrecked, as well as the prevention of disease. The term includes, for example, hospitals, blood transfusion centres, preventive medicine centres and institutes, medical depots and the medical and pharmaceutical stores of such medical units. Medical units may be fixed or mobile, permanent or temporary. Permanent medical units are those assigned exclusively and for an indeterminate period to medical purposes, temporary medical units are those devoted exclusively to medical purposes for limited periods;

(d) 'medical personnel' means:

(i) military medical personnel, as described in the First and Second Conventions, whether permanent or temporary, including medical transport crews, as well as personnel engaged exclusively in the operation or administration of medical units;

(ii) civilian medical personnel, whether permanent or temporary, duly recognized and authorized by the competent authority, including medical transport crews, as well as personnel engaged exclusively in the operation or administration of medical units or transports;

(iii) medical personnel (as defined in the preceding two subparagraphs) of civil defence, assigned to the discharge of the relevant tasks mentioned in article 54 of the present Protocol, and medical personnel likewise, as defined in the preceding two subparagraphs of the national Red Cross (Red Crescent, Red Lion and Sun) Societies and other national voluntary aid Societies duly recognized and authorized by the competent authority;

(e) 'distinctive emblem' means the distinctive emblem of the Red Cross (Red Crescent, Red Lion and Sun) on a white ground;

(f) 'distinctive signal' means any signalling or identification system specified for the exclusive use of medical units and transports in Chapter III of the Annex of the present Protocol."
2. Field of application of part II of Protocol I

78. With regard to article 9 a number of delegations approved the text of paragraph 1 proposed by the ICRC. Other delegations considered that that provision was too restrictive and suggested, for instance, to replace the expression "territory of the Parties to the conflict" by the expression "area under the control of the Parties to the conflict" and the expression "without distinction on grounds of nationality" by the expression "without discrimination". The text of paragraphs 2 and 3 of the article proposed by the ICRC extended the right of recognized "societies of neutral countries" to lend the assistance of their medical personnel and units, as laid down in article 27 of the First 1949 Convention, to (1) States not parties to the conflict and recognized societies of those States and (2) organizations of an international character. In this regard, it was pointed out, inter alia, that the expression "organization of an international character" did not make it sufficiently clear that the term intended to refer to both non-governmental and intergovernmental organizations, and that the proviso that the "organization fulfils the requirements imposed on the Government of a State which is not a party to the conflict under the terms of the aforesaid article 27" of the First 1949 Convention should not impede the activities of the United Nations under the United Nations Charter. 57/

79. The Drafting Committee adopted provisionally the following text for paragraph 1 of article 9:

"1. The present Part shall apply, without any discrimination, to all combatant and non-combatant military personnel of the Parties to a conflict and to the whole of the civilian population of the Parties to a conflict, particularly to the wounded, sick and shipwrecked, as well as to medical units and medical transport under control of any of such Parties."

The text was presented in square brackets because some members considered that the field of application of the Protocol would be less controversial if the paragraph was omitted. The Bureau of the Drafting Committee proposed to combine present paragraphs 2 and 3 of the article in a single paragraph drafted as follows:

"2. Articles 27 and 32 of the First Convention shall apply, mutatis mutandis by analogy by extension, to permanent medical units and transport (other than hospital ships to which article 25 of the Second Convention applies) and their personnel lent for humanitarian purposes to a Party to a conflict:

"(a) by a State which is not a Party to that conflict;

"(b) by a recognized and authorized relief society of such a State; or

57/ It should be recalled that in addition to the authorization of the Party to the conflict receiving the assistance and the notification of that consent to the adversary, article 27 of the First Convention states that the provided medical personnel and units "shall be placed under the control of the Party to the conflict" receiving the assistance.

/...
"(c) by an organization of an international character, whether
governmental or non-governmental, including international organizations of
the Red Cross /the International Committee of the Red Cross and the League
of Red Cross Societies/".

3. Protection and care

80. Among the points made in connexion with article 10 the following could be
mentioned: to add in paragraph 1 a sentence concerning respect and protection for
shipwrecked persons; to replace in paragraph 2 the expression "without any adverse
distinction" by the expression "without any discrimination"; to insert the words
"circumstances permitting" in paragraph 2, in order to avoid practical difficulties
that might be caused to underdeveloped countries in fulfilling the obligations laid
down in that paragraph; to add a new paragraph whereby doctors who consider that
surgical intervention is necessary would be obliged to obtain the written consent of
the patient. The CICR suggested the addition of three subparagraphs, firstly to
specify the nature of the protection to be afforded to the wounded and the sick and
secondly to extend that protection to persons in a dangerous situation on land. The
proposed changes received the support of some delegations but were opposed by
others. The article, together with related amendments, was referred to the Drafting
Committee. No text has yet been submitted by the Drafting Committee to the
Committee.

4. Protection of persons

81. Some delegations raised the question whether the provisions of article 11 might
not be more appropriately placed in chapter I of section III (Treatment of persons
in the power of a party to the conflict) of part IV (Civilian population). It was
also proposed to prohibit persons protected under the article from being subjected
to medical treatment which would not be applied to the nationals of the Party into
whose hands they had fallen. It was also considered preferable by certain
degulations to omit the word "unjustified" from paragraph 1. As indicated in
paragraph 73 above, the Committee did not conclude the discussion of article 11.
Consequently, the article has not yet been referred to it by the Drafting Committee.

5. Regulations concerning identification and marking

82. The "Technical Sub-Committee on signs and signals" completed the study of the
provisions contained in the Annex to Protocol I and submitted to the Committee a
revised draft of the "Regulations concerning the identification and marking of
medical personnel, units and means of transport, and civil defence personnel,
equipment and means of transport". The Regulations contain provisions on identity
cards for civilian medical personnel, the distinctive emblem, distinctive signal
methods (light signals, radio identification signals, radar identification),
communications (radio and other communication means, use of international codes,
flight plan), and on an international distinctive emblem for civil defence services.
The Committee, at its last meeting, 58/ decided to defer its discussion of the

58/ CDDH/II/SR.12. /...
revised draft Regulations to the second session of the Conference in order to allow
governments to study them. The report of the Technical Sub-Committee was annexed
to the report of Committee II to the Plenary. 59/ Some provisions in the
Regulations like, for instance, provisions on radio signals and other means of
communication, use of international codes, etc., could be of interest for the
United Nations, particularly in connexion with certain United Nations operations.

B. Matters not yet considered by the Committee having a particular
interest for the United Nations: Relief

83. Articles on relief and related amendments were not considered at the first
session of the Conference. One of the amendments submitted to article 66 of
Protocol I and article 33 of Protocol II presents however a particular interest for
the United Nations. 60/ It reads as follows:

"The Parties to the conflict and any High Contracting Party should accept as
International Relief Co-ordinator the United Nations Disaster Relief
Co-ordinator (UNDRO) and the International Red Cross in co-operation with other
impartial international relief organizations".

59/ See CDDH/I/49, annex II.
60/ Submitted by Norway in documents CDDH/II/77 and 78.
VI. WORK OF COMMITTEE III: CIVILIAN POPULATION, METHODS AND MEANS OF COMBAT, NEW CATEGORY OF PRISONERS OF WAR (ARTICLES 33 TO 53 AND 63 TO 69 OF PROTOCOL I AND ARTICLES 20 TO 29 AND 32 OF PROTOCOL II) 61/

84. Committee III decided to take up section by section the provisions of Protocol I allocated to it. Although some delegations expressed reservations on the parallel consideration of Protocol I and Protocol II, it was also decided that provisions of Protocol II would be discussed ad referendum immediately after considering the corresponding provisions of Protocol I. Having started its work by studying the provisions relating to protection of civilian population against the effects of hostilities, the Committee discussed articles 43 (Basic rule), 44 (Field of application), 45 (Definition of civilians and civilian population) and 46 (Protection of the civilian population) of Protocol I as well as the corresponding provisions of Protocol II, namely articles 24, paragraph 1, 25 and 26 of that Protocol.

85. Following discussion in the Committee, each of those articles and related amendments were referred to a Working Group under the chairmanship of the Rapporteur of the Committee and made up of the delegations sponsoring amendments and such other delegations as might wish to participate. This procedure proved to be extremely useful. The Working Group submitted texts or alternative texts for articles 43, 44 and 45 of Protocol I and for article 24, paragraph 1, and article 25 of Protocol II. The Committee then proceeded to vote on the articles reported upon by the Working Group and approved revised texts for articles 43, 44 (paras. 2 and 3), and 45 of Protocol I and articles 24, paragraph 1, and 25 of Protocol II. It was understood that the voting on articles of Protocol II would be subject to the decisions to be taken later by Committee I on article 1 of Protocol II and on the scope of that Protocol. It was also understood that the articles adopted might be called for at the second session of the Conference in order to adjust them to or harmonize them with other articles of the two Protocols subsequently adopted. The adopted texts were reproduced in the report of Committee III to the plenary. 62/ The Working Group was unable to complete its consideration of article 46 of Protocol I and article 26 of Protocol II in such time as to permit their further consideration by the Committee.

86. The progress made by Committee III during the first session of the Conference reflects the feelings shared by delegations that existing rules of international humanitarian law concerning the protection of civilian population required development. The underlying principles of the articles proposed by the ICRC were generally approved. The amendments submitted by delegations were intended mainly to improved formulations, although some of them revealed a somewhat restrictive approach to some aspects of the subject-matter.

61/ For the documents and summary records of Committee III, see CDDH/III/1-79 and CDDH/III/SR.1-12.

62/ See CDDH/50.
A. Matters considered by the Committee

1. Basic rules in Protocols I and II concerning the protection of civilian population and civilian objects against effects of hostilities

87. General support was expressed in the Committee for the basic rule set forth in article 43 of Protocol I and in paragraph 1 of article 24 of Protocol II, which was regarded as being the governing principle with respect to the protection of the civilian population. The principal suggestions for its improvement were that express reference should be made to the purpose of ensuring respect for "civilian objects" as well as the "civilian population" and that the words "destruction or weakening of the military resources of the adversary" should be deleted. Several delegations considered that such words were out of place in instruments relating to the protection of the civilian population rather than the law of war in the strict sense and that the expression "military resources" might provide too wide a basis for attacks in wartime. The Committee adopted by consensus the identical texts proposed by the Working Group for article 43 of Protocol I and paragraph 1 of article 24 of Protocol II as orally amended. The adopted texts read as follows:

"In order to ensure respect and protection for the civilian population and civilian objects, the Parties to the conflict shall at all times distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly shall direct their operations only against military objectives."

2. Field of application of section I of part IV of Protocol I concerning general protection against effects of hostilities

88. So far as paragraph 1 of article 44 is concerned, the discussion centred mainly on the following three questions: (1) whether the term "warfare" in the original text should be replaced by the terms "military operations" or "attacks"; (2) whether the words "against the adversary" should be inserted in the paragraph; (3) whether to delete the words "on land". Delegations favouring the deletion of the words "on land" considered that the protection of Section I of Part IV of Protocol I should be as broad as possible embracing the protection of the civilian population, individual civilians, and civilian objects at sea and in the air as well. Other delegations supported the retention of the words "on land" in order to exclude the application of the Protocol to attacks on merchant ships and on civil aircraft, which they asserted to be covered by other bodies of law, such as the law of blockade and of visit and search. The Working Group being unable to reach agreement on a generally acceptable text for the paragraph, the Committee decided the three questions referred to above by a vote as follows: (1) to use the term "military operations" (by 53 votes to 10, with 5 abstentions); (2) to insert the words "against the adversary" (by 31 votes to 22, with 11 abstentions); (3) to maintain the words "on land" (by 35 votes to 33, with 4 abstentions). Unable to agree on the place in which the words "on land" - words which were intended to include rivers, canals and lakes - should be inserted, the Committee decided by 41 votes to 21, with 17 abstentions, to return the entire paragraph to the Working Group, with a request that it give renewed study to the provision. The text of the
paragraph resulting from the votes on the first two questions reads (with the places where "on land" might be inserted or omitted indicated by blanks):

"1. The provisions contained in the present Section apply to any land, air or sea military operations against the adversary [ ] which may affect the civilian population, individual civilians or civilian objects [ ]."

89. With regard to paragraph 2 of article 44, the Working Group submitted to the Committee the question of the deletion of the words "against the adversary", in view of the variety of views expressed about the extent, if any, of the application of Protocol I to a Party's own population. The Committee decided to maintain such words (by 38 votes to 18, with 10 abstentions) and thereafter adopted the text submitted by the Working Group for the paragraph (by 51 votes to 1, with 18 abstentions). A number of delegations expressed themselves in favour of formulating paragraph 3 of the article so as to save the protection granted by any relevant international convention as well as by any relevant rule of customary international law. It was also stated that the wording used should make clear that the Protocol is intended to supplement the 1949 Convention so that the latter would be applied in the future as supplemented by the Protocol. The Committee approved (by 73 votes to none, with 2 abstentions) the revised text recommended for paragraph 3 by the Working Group. The adopted text of paragraphs 2 and 3 of article 44 reads:

"2. Attacks means acts of violence against the adversary, whether in defence or offence.

"3. The provisions of the present Section are in addition to the rules with respect to humanitarian protection contained in the Fourth Convention, particularly Part II thereof, and in such other international conventions as may be binding upon the High Contracting Parties, as well as other rules of international law relating to the protection of civilians and civilian objects on land, on sea, or in the air, against the effects of hostilities."

3. Definition of civilians and civilian population in Protocols I and II

90. The text proposed by the ICRC for paragraphs 2 and 3 of article 45 of Protocol I did not call for specific observations from delegations participating in the debate. Some difficulties were encountered in the Committee in choosing an appropriate expression to describe the persons covered by the two articles referred to in paragraph 1 of article 45, namely, articles 4 (A) (1), (2), (3) and (6) of the 1949 Third Convention and 42 of Protocol I. In this connexion, the Committee finally agreed to refer to "persons" instead of "armed forces" as recommended by the Working Group. Two divergent tendencies emerged in the discussion of paragraph 4 of article 45 with regard to its drafting. On the one hand, it was thought desirable by some delegations that the presumption should be retained as drafted by the ICRC. On the other hand, several delegations were of the view that
the provision should be redrafted in such a way as to make it more readily understandable to the soldier. It was also pointed out that there was a possibility of conflict between the presumption set forth in the paragraph and that contained in the second paragraph of article 5 of the Third Convention. To avoid such difficulties, the Working Group proposed that the word "presumed" should be replaced by the word "considered". This allowed the Committee to arrive at a convergence of views. The Committee adopted the text proposed for article 45 by the Working Group with a minor oral amendment. Except for the changes referred to, the adopted text is identical with that proposed by the ICRC. It reads as follows:

"1. A civilian is anyone who does not belong to one of the categories of persons referred to in article 4 (A) (1), (2), (3) and (6) of the Third Convention and in article 42 of the present Protocol.

"2. The civilian population comprises all persons who are civilians.

"3. The presence, within the civilian population, of individuals who do not fall within the definition of civilians does not deprive the population of its civilian character.

"4. In case of doubt as to whether a person is a civilian, such person shall be considered to be a civilian."

91. The discussion of article 25 of Protocol II in the Committee and in the Working Group followed much the same course as the discussion of the corresponding article 45 of Protocol I. The Working Group thought it desirable to conform the language of paragraph 1 of article 25 to that of draft article 1 of Protocol II so that anyone not a member of the armed forces or "of an organized armed group" would be considered a civilian. Paragraphs 2 and 3 of article 25 were cast in the same form as the corresponding paragraphs 2 and 3 of article 45 of Protocol I. It was also considered appropriate to add a new paragraph 4 to article 25 corresponding to paragraph 4 of article 45 of Protocol I. In the light of those conclusions the text of article 25 of Protocol II adopted by the Committee reads as the one adopted for article 45 of Protocol I excepts its paragraph 1 which is worded as follows:

"1. A civilian is anyone who is not a member of the armed forces or of an organized armed group."

92. The Working Group gave also some consideration to the problem of those who, in an internal armed conflict, do not bear arms but who lend support to the armed forces or members of armed groups by supplying labour, transporting supplies, serving as messengers, disseminating propaganda, and the like. It was decided that this matter might more appropriately be dealt with in connexion with paragraph 2 of article 26 (Protection of civilian population) of Protocol II. The Working Group agreed likewise that a proposal made by one delegation relating to a definition of "civilian objects" would be taken up in connexion with later provisions concerning the protection of civilian objects.
93. It was called to the attention of the Committee, and its Working Group, that in at least one national legal system, the definitions contained in paragraph 1 of both Article 45 of Protocol I and Article 25 of Protocol II, if given effect in internal law, alter existing national administrative law with respect to the definition of civilians and members of the armed forces. The Working Group considered that this problem might be dealt with through a reservation or declaration of the State concerned in which it would make clear that the definitions given in both articles were only for the purposes of international humanitarian law. It was thought desirable to call this matter to the attention of Committee I, so that it might deal with the question in connexion with its consideration of what reservations might be permitted to the Protocols.

94. Finally, the Working Group was of the opinion that some or all of the paragraphs of Article 45 of Protocol I and Article 25 of Protocol II might ultimately be moved to an article on definitions to be included at the beginning of Protocol I and of Protocol II respectively, or to some other place in the Protocols.

4. Provisions in Protocols I and II concerning protection of civilian population against attack

95. The important provisions contained in Article 46 of Protocol I and Article 26 of Protocol II concerning the protection of civilian population against attacks, and amendments thereto, were likewise considered by the Committee. Different views were expressed concerning the text proposed by the ICRC as well as its wording, particularly with regard to matters such as: methods intended to spread terror among the civilian population; persons protected by the provisions; methods affecting indiscriminately the civilian objects to an extent disproportionate to the direct and substantial military advantage anticipated; prohibition of reprisals against civilian population; prohibition of presence or movements of civilian population to shield military objectives; etc.

96. Thus, some delegations called for an interpretation of "methods intended to spread terror", mentioned in the second sentence of paragraph 1 of Article 46 of Protocol I, going beyond the "attacks" referred to in the first sentence of that paragraph. Specific reference was made in this connexion to propaganda. The language "intended to" also gave rise to some controversy. Considering that the element of intent would be too difficult to determine, some delegations were of the opinion that methods that in fact spread terror should be prohibited. Other delegations emphasized the problem of imposing responsibility for acts that might cause terror without terror having been intended. Discussion of paragraph 2 of Article 46 centred on the problem of the person who intermittently or occasionally takes part in hostilities and how that participation should be defined. While the introductory sentence of paragraph 3 of Article 46 seemed to have achieved a certain measure of acceptance, a number of delegations thought that subparagraph 3 (a) was too imprecise to afford a guide of conduct for aviators, while other delegations supported the prohibition of "target area" or "carpet" bombardment as an important safeguard for the civilian population. With regard to the principle of proportionality in subparagraph 3 (b), some delegations considered it a necessary means of regulating the conduct of warfare and of protecting the civilian
population. Other delegations rejected however this principle as a criterion and asserted that in humanitarian law there should be no condonation of casualties among civilians. Some who took the latter view considered that it would be desirable either to delete the words "to an extent disproportionate to the direct and substantial military advantage anticipated" or to delete subparagraph 3 (b) as a whole. In the course of the debate on reprisals (paragraph 4 of article 46), some delegations supported the text proposed by the ICRC. Several delegations considered that the prohibition of reprisals against the civilian population should be extended to "civilian objects" as well. Certain other delegations expressed doubt whether it would be realistic to expect that there would be compliance with the prohibition in paragraph 4 of the ICRC text. The discussion of paragraph 5 of article 46 was largely directed at the drafting of the first sentence and the desirability of retaining the second sentence.

97. The discussion of article 26 of Protocol II ran along lines similar to those of the discussion of the corresponding article 46 of Protocol I. Several delegations stated that parts of article 26 were unsuitable in the situation of non-international conflict and that there was a need for simplicity in order to provide a practical Protocol II.

98. Article 46 of Protocol I and article 26 of Protocol II, and related amendments, were referred to the Working Group, which still had the articles under consideration at the time of the last meeting held by the Committee during the first session of the Conference.

B. Matters not yet considered by the Committee having a particular interest for the United Nations

1. Prohibition of making use of recognized signs

99. The text of paragraph 3 of article 36 of Protocol I proposed by the ICRC states:

"3. It is forbidden to make use of the distinctive sign of the United Nations except as authorized by that Organization."

One amendment submitted at the first session of the Conference proposes the insertion of the words "emblem and" before the words "distinctive sign of the United Nations". 63/ The wording of the amendment follows closer the language of General Assembly resolution 92 (1) on the official seal and emblem of the United Nations. The amendment proposes also to add a new paragraph 3 to article 23 of Protocol II aiming to include a similar provision in rules governing the use of recognized signs in non-international armed conflicts.

63/ Document CDDH/III/75 submitted by Venezuela.
2. New category of prisoners of war

100. An amendment 64 to article 42 of Protocol I (New category of prisoners of war) proposes to consider expressly as prisoners of war, if fulfilling certain specified conditions, the members of organized national liberation movements in armed struggle where peoples exercise their right of self-determination as guaranteed by the United Nations Charter and the Friendly Relations Declaration.

3. Protection of environment

101. The insertion of a new article 49 bis in Protocol I intended to protect the "natural environment" by forbidding to despoil it as a technique of warfare was also proposed in an amendment. 65

4. Localities under special protection

102. Among the provisions concerning "protection of the civilian population" to be considered by Committee III, at a subsequent session, the ones on "localities under special protection" (Non-defended localities; neutralized localities) (articles 52 and 53 of Protocol I) could be, under certain circumstances, of particular importance for the protection of United Nations staff.

5. Privileged treatment in favour of women and children

103. With regard to provisions of Protocols I (articles 67-69) and II (article 32) concerning measures and privileged treatment in favour of women and children it should be recalled that in 1974 the Commission on the Status of Women adopted a draft declaration on the matter and submitted it to the Economic and Social Council. At its 1897th plenary meeting, on 16 May 1974, the Council adopted resolution 1861 (LVI) entitled "Protection of women and children in emergency and armed conflict in the struggle for peace, self-determination, national liberation and independence". The resolution recommends to the General Assembly the adoption of a draft resolution containing a declaration on the protection of women and children in emergency and armed conflict in the struggle for peace, self-determination, national liberation and independence.

64 Document CDDH/III/73 submitted by Madagascar. See in this connexion the note to the original ICRC text for article 42 of Protocol I.

65 Document CDDH/III/60 submitted by Australia.
VII. WORK OF THE AD HOC COMMITTEE ON CONVENTIONAL WEAPONS

104. As indicated in paragraph 27 above, the Ad Hoc Committee on Conventional Weapons was requested to examine the question of conventional weapons which may cause unnecessary suffering or have indiscriminate effects, and to make a report thereon to the Plenary. 67/ On the basis of a draft proposed by its Chairman, the Ad Hoc Committee adopted the following agenda: 1. General debate; 2. Consideration of the plan proposed by the ICRC for the Conference of Government Experts on Arms to be held in 1974; 68/ 3. Examination of the questions of prohibition or restriction of use of specific categories of conventional weapons which may be deemed to cause unnecessary suffering or have indiscriminate effects, and consideration of proposals relating, inter alia, to: (a) incendiary weapons, (b) small calibre projectiles, (c) blast and fragmentation weapons, (d) delayed action and pernicious weapons, (e) potential weapons development; 69/ 4. Other questions; 5. Adoption of the report.

105. The Ad Hoc Committee had before it an opening statement of its Chairman 70/ as well as the working paper submitted by Egypt, Mexico, Norway, the Sudan, Sweden, Switzerland and Yugoslavia. 71/ The working paper contained a certain number of proposals, including draft rules regarding the prohibition or restriction of use of incendiary weapons, anti-personnel fragmentation weapons, flechettes, high velocity effects and dumb effect projectiles, and anti-personnel land-mines. Mention was made of certain recent publications as constituting an important background documentation for the work of the Committee, particularly United Nations documents such as the "Survey on existing rules of international law concerning the prohibition or restriction of use of specific weapons" (A/9215, vols. I and II), the Report on Napalm and Other Incendiary Weapons and All Aspects of Their Possible Use (A/8603/Rev.1) and the replies from Member States concerning that report (A/9207 and Corr.1 and Add.1), as well as the report on "Weapons that may cause unnecessary suffering or have indiscriminate effects", prepared in 1973 by the ICRC with the assistance of a Group of Experts.

66/ For the documentation and summary records of the Ad Hoc Committee, see CDDH/IV/1 to 5 and CDDH/IV/SR.1 to 7.

67/ No provisions of the draft Additional Protocols prepared by the ICRC were allocated to the Ad Hoc Committee. Articles of the Protocols on methods and means of combat were allocated to Committee III.

68/ Resolution XIV of the XXIIInd International Conference of the Red Cross held at Teheran in November 1973 invited the International Committee of the Red Cross (ICRC) to convene in 1974 a conference of government experts to study weapons which may cause unnecessary suffering or have indiscriminate effects. General Assembly resolution 3076 (XXVIII) took note of such invitation.

69/ Some delegations expressed their understanding that the listing of certain specific categories of weapons under agenda item 3 did not preclude the question whether such weapons cause unnecessary suffering or have indiscriminate effects.

70/ See CDDH/IV/2.

71/ See CDDH/IV/2.
106. The Ad Hoc Committee held a general debate (agenda item 1). Statements made by some delegations analyzed in detail certain aspects of the issues involved. Other statements were more general and tentative in nature. Certain delegations contributed likewise to the discussion on specific weapons or categories of weapons (agenda item 3), but no decisions were taken on the draft rules proposed in the working paper mentioned in the preceding paragraph. It was pointed out by several delegations that during the first session of the Diplomatic Conference the Ad Hoc Committee could accomplish no more than a tour d'horizon, thus aiding the ICRC in identifying the main questions which the Conference of Government Experts to be held in 1974 would be asked to study in depth. The Committee devoted also some time to the consideration of matters relating to the organization of that Conference (agenda item 2). The views expressed in the Ad Hoc Committee in connexion with its agenda items are summarized below on the basis of the information recorded in the report of the Ad Hoc Committee to the Plenary. 72/

A. General debate

107. During the general debate reference was made by several delegations to matters such as: the necessity of supplementing existing general principles with new agreed specific rules prohibiting or restricting the use of certain named weapons or categories of weapons; the competence of the Diplomatic Conference and its Ad Hoc Committee to examine that question; the scope of such an examination, particularly with regard to the types of weapons to be examined; the approach which should be followed including the question of whether or not the results eventually achieved should be incorporated in the Protocols or in one or more separate instruments; the premises on which the discussions concerning conventional weapons should be based; the standards or criteria to be applied in assessing specific conventional weapons; the enforcement of possible new prohibitions or restrictions; the periodical review of weapons development; etc.

1. Consideration of the subject-matter by the Diplomatic Conference

108. Several delegations expressed doubts as to the competence of the Diplomatic Conference to deal with the matter of arms limitations, which would more properly be dealt with in United Nations bodies like the Conference of the Committee on Disarmament. Some other delegations, while no longer making any reservations as to the competence of the Diplomatic Conference and its Ad Hoc Committee, yet felt that problems of arms control are involved in the question of prohibition or restriction of use of specific weapons. Others, while accepting that prohibitions or restrictions of use of specific conventional weapons may affect the military capacity of States, pointed out that such bans on use would not entail the necessity to have corresponding bans on production, stockpiling, etc., or peacetime verification machinery. Some others felt however that the destruction of existing stockpiles might be an indispensable complement to prohibitions on use.

72/ See document CDDH/47. See also the report (A/9726) submitted by the Secretary-General pursuant to resolution 3076 (XXVIII).
2. Types of weapons to be examined by the Diplomatic Conference

109. Some delegations criticized the limitation of the work of the Diplomatic Conference and its Ad Hoc Committee to conventional weapons. They rejected the view that the debate on nuclear weapons and other weapons of mass destruction should be left to the disarmament discussions and urged the Diplomatic Conference to include them in its programme of work. Another delegation expressed its regret at the decision not to consider these weapons. Many other delegations, however, accepted the limitation of the work of the Diplomatic Conference to conventional weapons. It was pointed out by some that under present conditions such arms, particularly nuclear weapons, have a special function in that they act as deterrents preventing the outbreak of a major armed conflict between certain nuclear Powers.

110. Conventional weapons, on the other hand, are in fact used in all armed conflicts. Some of the more repugnant of these weapons are used in armed conflicts where there existed great inequalities between the technological and industrial capacities of the parties to the conflict. Reference was made in this connexion to the case of wars of national liberation. Bearing this in mind, some delegations suggested that the Committee should also look into the matter from a regional standpoint and that particular attention should be paid to the conditions of armed conflicts in the African region. It was also stated that weapons used mainly to break the morale of the civilian population should be prohibited as well as the use of military air power by a party to the conflict who possesses complete air superiority.

3. Necessity of supplementing existing general principles with new agreed specific rules

111. There was general agreement that a consideration of certain modern conventional weapons in the light of such factors as the degree of suffering caused or their indiscriminateness has by now become an urgent necessity. Technological developments had led to even more sophisticated weapons, in many cases with greater destructive power. As was emphasized by several delegations, although the draft Additional Protocols prepared by the ICRC already contain articles reaffirming certain general principles placing limits on the power of belligerents to employ weapons of their choice (article 33 of Protocol I and article 20 of Protocol II), such principles, indispensable as they may be, are not in themselves enough to provide the desired result. It was therefore important that Governments give the most careful consideration and reflection to the elaboration of new agreed specific rules, prohibiting or restricting the use of certain named weapons or categories of weapons. Certain delegations stressed that any system of protection of the civilian population would be incomplete without a set of agreed prohibitions or restrictions of use of certain weapons.

4. Approach which should be followed

112. Some delegations suggested that the Diplomatic Conference should and could elaborate new rules on prohibitions or restrictions of use of specific weapons
or categories of weapons. At least as concern some weapons such as napalm and other incendiaries there was sufficient information already available and there was no need to wait for the results of any further expert investigations and discussions. In any event, the Diplomatic Conference could adopt at its second session the necessary provisions. favouring a more cautious approach, other delegations warned against attempts to rush ahead too quickly with the weapons issue. Although much useful work had already been done, additional investigation was still needed, both as concerns the characteristics of certain conventional weapons and their effects and as regards the standards by which these weapons should be assessed. Moreover, Governments had not so far expressed their views on many of the questions involved. It was also pointed out in this regard that at the present stage it should not be taken for granted that as the outcome of the examination which had just started, certain existing conventional weapons would be prohibited or their use restricted.

113. Some delegations considered preferable to see the rules eventually elaborated included as an integral part of the draft Protocols under consideration. Others were of the opinion that progress with respect to the draft Protocols should not be held up by the examination of the question of weapons because the matters dealt with in the draft Protocols had acquired a state of maturity which the weapons issue still lacked. Finally, several delegations declared themselves opposed to introducing specific weapons prohibitions or restrictions into the body of the draft Protocols. They favoured a solution whereby such prohibitions or restrictions would be embodied in one or more separate instruments.

114. As it might prove difficult to arrive at agreed solutions for all categories of weapons at the same time, a few delegations favoured a procedure whereby separate categories would be dealt with one after another. This idea of a step by step procedure was not, however, taken up by other delegations. Reference was also made by certain delegations to the convenience of aiming at restrictions on use rather than absolute prohibitions as a means of facilitating agreement on the matter. Other delegations considered, however, that such restrictions would be exposed to a constant strain in practice. A total prohibition would therefore be, in their view, preferable.

5. Premises on which the discussion should be based

115. Many delegations referred to what they considered to be the premises upon which the discussions concerning weapons should be based. Much reliance was placed on the principles enshrined in the St. Petersburg Declaration and The Hague Regulations of 1899 and of 1907 which were frequently invoked. Recent endeavours to promote the respect of human rights in situations of armed conflict were also mentioned.

116. Approaching the matter from a somewhat different angle, one delegation underlined the interrelationship between the principle of the prohibition of the use or threat of force as embodied in the United Nations Charter, general and complete disarmament and the question of the prohibition or restriction of use
of specific conventional weapons. Another delegation stressed that the type of weapons used is closely related to the type of war. The aggressor, who conducts an unjust war, is likely to use cruel and genocidal weapons, whereas just wars are precisely directed against the use of such weapons.

6. **Criteria to be applied in assessing specific conventional weapons or categories of conventional weapons**

117. There was some divergence of views as to whether the criteria to be applied in assessing specific conventional weapons can be considered settled and sufficiently clear. According to some, the criteria of "unnecessary suffering" and "indiscriminate effects" were indeed well established in international humanitarian law and needed only to be applied. Others argued that agreement was lacking on the standards by which concepts such as "unnecessary suffering" or "indiscriminateness" can be measured. It was pointed out in this respect that all weapons can be used indiscriminately or in such a manner that they cause unnecessary suffering.

118. The question of what constitutes "unnecessary suffering" was entered into by several delegations. According to one, the underlying philosophy was that if two means of weakening the military forces of the enemy were roughly equivalent for the purposes of placing an adversary hors de combat, the less injurious should be chosen; if the choice was between killing the adversary or injuring him, then he should be injured; and a light injury should be preferred to a grave one. In this connexion, other delegations estimated that perhaps in recent times there had been too much emphasis from certain quarters on the nature of the wounds inflicted by certain modern conventional weapons. This might lead to situations where the clean kill would be preferred to the severe wound. The question was asked against what standard of degree of suffering inflicted was to be measured: against the military utility of the weapon or also against such factors as the cost of the weapon or the cost of its replacement by another? In this respect, it was also asserted that the question ought to be assessed from the point of view of the victim of the weapon and not of the user.

119. As for the criterion of "indiscriminateness", it was said that although all weapons can be used without discrimination, some are more indiscriminate than others. Reference was made in this respect to certain types of incendiary weapons. According to some, to determine that a certain weapon has indiscriminate effects would be easier than to apply the criterion of "unnecessary suffering". The latter criterion contained in their view an element of subjective appreciation, whereas the criterion of "indiscriminateness" was said to have a more objective character.

120. There was some reference during the debate to the criterion of "treacherousness" or "perfidy". Delayed action weapons and booby traps were mentioned in this respect. However, the discussion provided little clarification of this criterion.

73/ As well as to bacteriological and certain chemical weapons which admittedly were outside the scope of the debate in the Ad Hoc Committee.
121. A number of delegations emphasized that the final decision to ban or restrict the use of a specific weapon would always be a political one. Such decisions would be taken in the light of available alternatives. One delegation pointed out that Governments were completely free to prohibit or restrict the use of a given conventional weapon, irrespective of whether they considered such use to be in violation of one or other of the criteria referred to above.

7. Enforcement and periodic review of rules eventually elaborated

122. The enforcement of possible new prohibitions or restrictions of use of specific weapons was discussed by some delegations. Reference was made in this connexion to problems relating to retaliation and reprisals. Some delegations stressed the need to devise a machinery for periodic review of the rules eventually elaborated in the light of weapons and weapon systems which might be developed in the future.

B. Specific categories of conventional weapons which may be deemed to cause unnecessary suffering or have indiscriminate effects

123. Few delegations made comments on specific categories of conventional weapons. Some explained that, as far as they were concerned, this was due primarily to the difficulty and complexity of the problems posed as well as to the fact that the necessary preparatory work at the expert level had not yet been done. Their Governments were willing to send qualified experts to the Conference of Government Experts which the ICRC was expected to convene.

1. Napalm and other incendiary weapons

124. Certain delegations reiterated what they had already stated in the general debate, namely that priority should be given to the question of napalm and other incendiary weapons, a view shared by the delegation who introduced the working paper submitted to the Diplomatic Conference (see paragraph 105 above). This delegation stressed the strong public reaction evoked by the use of such weapons, often used indiscriminately, the terrifying effects they have and the extreme suffering they cause, and stated, inter alia, that it would be necessary to examine whether from a military point of view certain incendiary weapons were so completely indispensable that they could not be included in a general prohibition on use of incendiary weapons. Recalling that in the working paper submitted to the Conference an exception was made for anti-aircraft and anti-armour incendiary projectiles but that one of the co-sponsors had proposed that this exception be deleted so as to make the prohibition of incendiary weapons complete, the delegation introducing the working paper indicated that it would also be prepared to go along with the deletion of the exception in question. Another co-sponsor of the working paper expressed itself in favour of the deletion of that exception. The Diplomatic Conference was also urged by one delegation to pass a resolution renouncing the use of napalm until such time as the Conference would have brought about a formal prohibition.
2. **Other categories of conventional weapons**

125. The co-sponsor who introduced the working paper referred likewise to the characteristics, military value, suffering caused and indiscriminate effects of other categories of weapons, such as small-calibre projectiles, which resemble closely by its effects dum-dum bullets, anti-personnel fragmentation weapons affecting civilians and combatants alike, particularly cluster warheads, flechettes and anti-personnel mines. Another delegation made special mention of types of weapons which, like delayed action weapons and booby traps, act indiscriminately and treacherously.

C. **Organization and planning of the Conference of Government Experts on Weapons to be convened by the International Committee of the Red Cross in 1974**

126. In accordance with item 2 of its agenda, the Ad Hoc Committee discussed a plan on the organization of the Conference of Government Experts on Weapons that may cause unnecessary suffering or have indiscriminate effects submitted to the Diplomatic Conference by the ICRC. 74/ All delegations supported the convening of the Experts Conference and, generally speaking, considered that the plan outlined by the ICRC was an acceptable basis for its organization. Different views were however expressed on certain specific points relating to the place, date, financing, participation and terms of reference. At the last meeting of the Committee, the ICRC introduced a draft programme 75/ for the Conference, together with a covering letter confirming its preparedness to call the Conference under certain conditions. The Conference will be convened in Lucerne from 24 September to 18 October 1974.

74/ See CDDH/42.

75/ For the views expressed, see paragraphs 52 to 63 of the report of the Ad Hoc Committee to the plenary (CDDH/47).
VIII. DECISIONS TAKEN BY THE DIPLOMATIC CONFERENCE AT THE CLOSING OF ITS FIRST SESSION

A. Reports of Main Committees and of the Ad Hoc Committee

1. Report of Committee I

127. The Conference considered the Report of Committee I (CDDH/48) at its twenty-second plenary meeting, on 29 March 1974. As indicated, 76/ the report contained, in paragraph 37, a recommendation of the Committee whereby the text of article 1 (Scope) of draft Protocol I, as approved by the Committee, 77/ was recommended for adoption by the Conference. The Conference did not proceed to discuss the text of article 1 of draft Protocol I. It adopted by consensus the following draft resolution submitted orally by India:

"The Conference,

"Adopting the report of Committee I, containing its recommendation in paragraph 37,

"Welcomes the adoption of article 1 of draft Protocol I by Committee I." 78/

2. Reports of Committee II, of Committee III and of the Ad Hoc Committee

128. The Conference took note of the report of Committee II (CDDH/49), of Committee III (CDDH/50) and of the Ad Hoc Committee (CDDH/47) at its twenty-second and twenty-first plenary meetings held on 29 and 28 March 1974, 79/ respectively.

B. Draft resolutions

1. Protection of journalists engaged in dangerous missions

129. The secretariat of the Conference referred to Committee I a communication of the Secretary-General of the United Nations concerning the question of the protection of journalists engaged in dangerous missions made pursuant to General Assembly resolution 3058 (XXVIII). 80/ A draft resolution (CDDH/I/60) relating to that question was submitted to Committee I by Australia, Lebanon and Morocco. Switzerland

76/ See paragraph 55 above.
77/ See paragraph 54 above.
78/ See CDDH/SR.22. A document (CDDH/46) on the establishment of an intersessional working group to consider the problem of the right of peoples to self-determination in relation both to Protocol I and Protocol II was submitted to the Plenary by Canada but later withdrawn by its sponsor.
79/ See CDDH/SR.22 and 21.
80/ See paragraphs 24 and 41 above.
moved an amendment (CDDH/I/69) to the draft resolution. As indicated in paragraph 3b of its report, 81/ Committee I decided, at its ninth meeting, to refer to the Plenary of the Conference the draft resolution. The Conference considered the draft resolution at its twenty-first plenary meeting, on 28 March 1974. 82/ The sponsors having explained that they had no intention of requesting absolute priority for examining the question of the protection of journalists to the detriment of draft Protocols I and II, the Swiss delegation withdrew its amendment. Thereafter, the Conference adopted by consensus the draft resolution, which reads as follows:

Resolution on Protection of Journalists Engaged in Dangerous Missions

"The Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts, meeting at Geneva from 20 February to 29 March 1974,

"Considering resolution 3058 (XXVIII), of 2 November 1973, by which the General Assembly of the United Nations requested the Secretary-General of the Organization to invite the Diplomatic Conference to submit its comments and advice on the draft articles on the protection of journalists engaged in dangerous missions and related amendments,

"Being desirous of complying with that request by giving the Secretary-General of the United Nations detailed comments on the documents in question,

"Noting that the progress so far made in its work will unfortunately not permit it to examine this question under appropriate conditions during its present session,

"Asks the Secretary-General of the Conference to transmit to the Secretary-General of the United Nations its request that additional time may be allowed for that purpose,

"Decides to include the examination of this question as a matter of priority in the agenda for its next session."

2. Dissemination of the underlying principles of the Geneva Conventions and principles relating to disarmament, development and peace

130. A draft resolution (CDDH/40) submitted by Uruguay on the dissemination of the underlying principles of the Geneva Conventions and principles relating to disarmament, development and peace was not discussed by the Conference. The sponsor stated that his delegation would prefer the draft resolution to be discussed at the next session of the Conference in 1975. 83/

81/ CDDH/48.
82/ See CDDH/SR.21.
83/ See CDDH/SR.21.
3. Submission and publication of proposals and amendments before the second session of the Diplomatic Conference

131. At its twenty-second plenary meeting, on 29 March 1974, the Conference adopted by consensus the following draft resolution (CDDH/52 and Add.1) submitted by Bangladesh, Canada, Mexico, Nigeria, Sri Lanka, the Sudan, Sweden and Yugoslavia:

"The Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts,

"Having decided to resume its deliberations at a later date,

"Aiming at a rapid progress in the deliberations of the Conference,

"1. Calls upon all participants in the Conference to submit to the Secretariat of the Conference proposals and amendments to the two draft Protocols by a date not later than 15 September 1974; this being understood to be without prejudice to the right of participants to submit proposals and amendments at a later date or during the following session;

"2. Requests the Secretariat of the Conference to prepare a comparative table of proposals and amendments submitted by 15 September 1974 and to distribute that table to all participants by 15 November 1974."

IX. PLACE AND DATE OF THE SECOND SESSION OF THE DIPLOMATIC CONFERENCE

132. At the closing of the first session of the Conference, on 29 March 1974, the President announced that the Government of Switzerland intended to invite the participants to meet again the following year for a session that could not be but a mere continuation of the work done at the first session. At that session, the Committee would resume their work as speedily as possible. The second session will be held at Geneva from 3 February to the end of April 1975.
ANNEX

Text of the provisions in draft Protocols I and II considered at the first session of the Diplomatic Conference and list of proposals and amendments relating to those provisions a/

I. DRAFT PROTOCOL ADDITIONAL TO THE GENEVA CONVENTIONS OF 12 AUGUST 1949, AND RELATING TO THE PROTECTION OF VICTIMS OF INTERNATIONAL ARMED CONFLICTS

Part I

General provisions

Article 1. Scope of the present Protocol

The present Protocol, which supplements the Geneva Conventions of 12 August 1949, for the Protection of War Victims, shall apply in the situations referred to in article 2 common to these Conventions.

Amendments to article 1

- Czechoslovakia, German Democratic Republic, Hungary, Morocco, Poland, Union of Soviet Socialist Republics, United Republic of Tanzania: CDDH/I/5 and Add.1 and 2;

- Algeria, Australia, Burundi, Cuba, Democratic Yemen, Egypt, Guinea-Bissau, Ivory Coast, Kuwait, Libyan Arab Republic, Madagascar, Nigeria, Norway, Pakistan, Senegal, Sudan, Syrian Arab Republic, Tunisia, United Arab Emirates, United Republic of Cameroon, Yugoslavia, Zaire: CDDH/I/11 and Add.1 to 3;

- Argentina, Austria, Belgium, Germany (Federal Republic of), Italy, Netherlands, Pakistan, United Kingdom of Great Britain and Northern Ireland: CDDH/I/12 and Add.1 and Corr.1;

- Romania: CDDH/I/13;

- Algeria, Bangladesh, Bulgaria, Burundi, Byelorussian Soviet Socialist Republic, Chad, Congo, Cuba, Czechoslovakia, Democratic People’s Republic of Korea, Egypt, German Democratic Republic, Ghana, Guinea-Bissau, Hungary, India, Indonesia, Iraq, Ivory Coast, Jordan, Kuwait, Lebanon, Liberia, Libyan Arab Republic, Indonesia,

a/ Except regulations in annex to Protocol I and related amendments.
Madagascar, Mali, Mauritania, Mongolia, Morocco, Nigeria, Oman, Pakistan, Poland, Qatar, Romania, Saudi Arabia, Senegal, Sri Lanka, Sudan, Syrian Arab Republic, Togo, Tunisia, Uganda, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Republic of Cameroon, United Republic of Tanzania, Yemen, Yugoslavia, Zaire, Zambia: CDDH/I/41 and Add.1 to 7;

- Turkey: CDDH/I/42;

- Argentina, Honduras, Mexico, Panama, Peru: CDDH/I/71.

Draft resolution

- Canada, New Zealand: CDDH/I/78.

Article 2. Definitions

For the purposes of the present Protocol:

(a) "the Conventions" means the four Geneva Conventions of 12 August 1949 for the Protection of War Victims;

(b) "First Convention", "Second Convention", "Third Convention" and "Fourth Convention" mean, respectively, the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, of 12 August 1949; the Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea of 12 August 1949; the Geneva Convention relative to the Treatment of Prisoners of War, of 12 August 1949; the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949;

(c) "protected persons" and "protected objects" mean persons and objects on whom or on which protection is conferred by the articles, chapters or sections which concern them in parts II, III and IV;

(d) "Protecting Power" means a State not engaged in the conflict, which, designated by a Party to the conflict and accepted by the adverse Party, is prepared to carry out the functions assigned to a Protecting Power under the Conventions and the present Protocol;

(e) "substitute" means an organization acting in place of a Protecting Power for the discharge of all or part of its functions.
Amendments to article 2

- Poland: CDDH/I/29;
- Australia, Belgium, United Kingdom of Great Britain and Northern Ireland, United States of America: CDDH/I/36 and Corr.1;
- Brazil: CDDH/I/38;
- Algeria, Democratic Yemen, Egypt, Jordan, Kuwait, Lebanon, Libyan Arab Republic, Morocco, Nigeria, Oman, Pakistan, Qatar, Saudi Arabia, Sudan, Syrian Arab Republic, Tunisia, Uganda, United Arab Emirates: CDDH/I/44 and Corr.1;
- Austria, Finland, Sweden, Switzerland, United Kingdom of Great Britain and Northern Ireland: CDDH/45;
- Syrian Arab Republic: CDDH/I/62;
- Senegal: CDDH/I/72.

New article 2 bis

- Pakistan: CDDH/I/20.

Article 3. Beginning and end of application

1. In addition to the provisions applicable in peacetime, the present Protocol shall apply from the beginning of any situation referred to in article 2 common to the Conventions.

2. In the territory of Parties to the conflict, the application of the present Protocol shall cease on the general close of military operations.

3. In the case of occupied territory, the application of the present Protocol shall cease on the termination of the occupation.

Amendments to article 3

- Uruguay: CDDH/I/14;
- Israel: CDDH/I/45;
- India: CDDH/I/46;
- Syrian Arab Republic: CDDH/I/47;
Article 4. Legal status of the Parties to the conflict

The application of the Conventions and of the present Protocol, as well as the conclusion of the agreements therein provided, shall not affect the legal status of the Parties to the conflict or that of the territories over which they exercise authority.

Amendments to article 4

- Australia: CDDH/I/34;
- Norway: CDDH/I/43;
- Byelorussian Soviet Socialist Republic, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics: CDDH/I/52;
- Algeria, Democratic Yemen, Egypt, Iraq, Jordan, Kuwait, Lebanon, Libyan Arab Republic, Morocco, Oman, Qatar, Romania, Sudan, United Arab Emirates: CDDH/I/59 and Add.1 and 2;
- Senegal: CDDH/I/73.

New article 4 bis

- Romania: CDDH/I/15.

Article 5. Appointment of Protecting Powers and of their substitute

1. From the beginning of a situation referred to in article 2 common to the Conventions, each Party to the conflict, which has not already entrusted the protection of its interests and those of its nationals to a third State, shall without delay designate a Protecting Power for the sole purpose of applying the Conventions and the present Protocol and shall without delay and for the same purpose permit the activities of a Protecting Power designated by the adverse Party and accepted as such.
2. In the event of disagreement or unjustified delay in the designation and acceptance of Protecting Powers, the International Committee of the Red Cross shall offer its good offices with a view to the designation of Protecting Powers acceptable to both Parties to the conflict. For that purpose, it may, inter alia, ask each of the Parties to provide it with a list of at least five States which they consider acceptable in that respect; these lists shall be communicated to it within 10 days; it shall compare them and seek the agreement of any proposed State named on both lists.

3. **Proposal I**

If, despite the foregoing, no Protecting Power is appointed, the International Committee of the Red Cross may assume the functions of a substitute within the meaning of article 2 (e), provided the Parties to the conflict agree and in so far as those functions are compatible with its own activities.

4. The designation and acceptance of Protecting Powers for the sole purpose of applying the Conventions and the present Protocol shall not affect the legal status of the Parties to the conflict or that of the territories over which they exercise authority.

5. The maintenance of diplomatic relations between the Parties to the conflict does not constitute an obstacle to the appointment of Protecting Powers for the sole purpose of applying the Conventions and the present Protocol.

6. Whenever in the present Protocol mention is made of a Protecting Power, such mention also implies the substitute within the meaning of article 2 (e).

**Amendments to article 5**

- Republic of Viet-Nam: CDDH/I/9;
- Romania: CDDH/I/18;
- Pakistan: CDDH/I/24;
- Greece: CDDH/I/31;
- Italy: CDDH/I/50;
- Australia: CDDH/I/51;

/...
- Byelorussian Soviet Socialist Republic, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics: CDDH/52;

- Brazil: CDDH/I/54;

- Bangladesh: CDDH/I/61;

- Syrian Arab Republic: CDDH/I/62;

- United States of America: CDDH/I/64;

- Belgium, Netherlands, United Kingdom of Great Britain and Northern Ireland: CDDH/I/67 and Add.1;

- India: CDDH/I/68;


- Algeria, Democratic Yemen, Egypt, Iraq, Jordan, Kuwait, Lebanon, Libyan Arab Republic, Morocco, Oman, Qatar, Sudan, United Arab Emirates: CDDH/I/75;

- Republic of Korea: CDDH/I/76;

- Spain: CDDH/I/77;

- Argentina, Austria, Brazil, Holy See, Ireland, Liberia, Philippines, United Kingdom of Great Britain and Northern Ireland, United Republic of Cameroon: CDDH/I/80 and Add.1.
Part II

Wounded, sick and shipwrecked persons

Section I

General protection

Article 8. Definitions

For the purposes of the present Part:

(a) "the wounded and the sick" means persons, whether military or civilian, who are in need of medical assistance and care and who refrain from any act of hostility. The term includes inter alia: the wounded, the sick, the shipwrecked, the infirm, as well as expectant mothers, maternity cases and new-born babies;

(b) "shipwrecked persons" means persons, whether military or civilian, who are in peril at sea as a result of the destruction, loss or disablement of the vessel or aircraft in which they were travelling and who refrain from any act of hostility;

(c) "medical unit" means medical establishments and units, whether military or civilian, especially all installations of a medical nature, such as hospitals, blood transfusion centres and their medical and pharmaceutical stores. Medical units may be fixed or mobile, permanent or temporary. Permanent units are those assigned exclusively and for an indeterminate period to medical purposes. Temporary medical units are those assigned exclusively but for one or more limited periods to medical purposes;

(d) "medical personnel" means:

(i) military medical personnel as defined in the First and Second Conventions, including medical transport crews;

(ii) civilian medical personnel, including members of the crews of means of medical transports, whether permanent or temporary, duly recognized or authorized by the State and engaged exclusively in the operation or administration of medical units and means of medical transport, that is to say personnel assigned to the search for, removal, treatment or transport of the wounded and the sick;

(iii) the medical personnel of civil defence organizations referred to in article 54, and the medical personnel of the National Red Cross (Red Crescent, Red Lion and Sun) Societies;
(e) "distinctive emblem" means the distinctive emblem of the Red Cross (Red Crescent, Red Lion and Sun) on a white background.

(f) "distinctive signal" means any signalling and identification system for medical units and means of transport as envisaged in Chapter III of the Annex.

Amendments to article 8

- Yugoslavia: CDDH/II/3;

- Australia, Belgium, France, Italy, Japan, Netherlands, Norway, Spain, Switzerland, United Kingdom of Great Britain and Northern Ireland: CDDH/II/13;

- Poland: CDDH/II/17;

- Holy See: CDDH/II/18;


- France, Sweden, Denmark: CDDH/II/30;

- Australia: CDDH/II/42;

- United Kingdom of Great Britain and Northern Ireland: CDDH/II/46;

- Austria, Denmark, Greece, Iran, Mexico, Switzerland: CDDH/II/57/Rev.1;

- Holy See: CDDH/II/58;

- Syrian Arab Republic: CDDH/II/73;

- Mexico: CDDH/II/76.

Article 9. Field of application

1. The present Part shall apply, without distinction on grounds of nationality, to all the wounded, the sick and the shipwrecked of the armed forces and of the civilian population on the territory of the Parties to the conflict and to all military and civilian medical personnel, units and means of transport on such territory.

2. The provisions of article 27 of the First Convention apply to permanent medical units and means of transport and their medical personnel lent for humanitarian purposes to a Party to a conflict by a State which is not a Party to the conflict or by a society recognized by such a State.

...
3. The provisions of article 27 of the First Convention also apply to medical units and means of transport and their medical personnel lent for humanitarian purposes by an organization of an international character, provided the said organization fulfills the requirements imposed on the government of a State which is not a party to the conflict under the terms of the aforesaid article 27.

Amendments to article 9

- Austria: CDDH/II/4;

- Bulgaria, Byelorussian Soviet Socialist Republic, German Democratic Republic, Hungary, Poland, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics: CDDH/II/19;

- Austria, Belgium, France, Germany, Federal Republic of, Norway: CDDH/II/20;

- United Kingdom of Great Britain and Northern Ireland: CDDH/II/28;

- Australia: CDDH/II/41;

- Canada, Netherlands, Switzerland, United Kingdom of Great Britain and Northern Ireland, United States of America: CDDH/II/49;

- Austria, Finland, Sweden, Switzerland, United Kingdom of Great Britain and Northern Ireland: CDDH/45.

Article 10. Protection and care

1. The wounded and the sick shall be respected and protected.

2. In all circumstances they shall be treated humanely and shall receive with the least possible delay and without any adverse distinction the medical care necessitated by their condition.

Amendments to article 10 b/

- Bulgaria, Byelorussian Soviet Socialist Republic, German Democratic Republic, Hungary, Poland, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics: CDDH/II/19;

b/ The ICRC submitted a suggestion which appears in document CDDH/II/75.
- United Kingdom of Great Britain and Northern Ireland: CDDH/II/26;

- Australia: CDDH/II/40;

- Canada, Netherlands, United Kingdom of Great Britain and Northern Ireland, Union of Soviet Socialist Republics, United States of America: CDDH/II/50;


Article 11. Protection of persons

1. All unjustified acts or omissions, harmful to the health or to the physical or mental well-being of the persons protected by the Conventions or by the present Protocol pursuant to article 2 (c), and especially of persons who have fallen into the hands of the adverse Party, or who are interned, detained or deprived of liberty as a result of hostilities, shall be prohibited. This prohibition applies even if the individual in question gives his consent to such acts.

2. It accordingly is prohibited to carry out on such persons physical mutilations or medical or scientific experiments, including grafts and organ transplants, which are not justified by the medical, dental or hospital treatment of the persons concerned and are not in their interest.

Amendments to article 11

- Uruguay: CDDH/II/29;

- Australia, Austria, Hungary, Netherlands, Poland, Sweden, Switzerland, United Kingdom of Great Britain and Northern Ireland, United States of America, Union of Soviet Socialist Republics: CDDH/II/43;

Part IV

Civilian population

Section I

General protection against effects of hostilities

Chapter I

Basic rule and field of application

Article 43. Basic rule

In order to ensure respect for the civilian population, the Parties to the conflict shall confine their operations to the destruction or weakening of the military resources of the adversary and shall make a distinction between the civilian population and combatants, and between civilian objects and military objectives.

Amendments to article 43

- Czechoslovakia, Poland, German Democratic Republic: CDDH/III/9;
- Romania: CDDH/III/10;
- Libyan Arab Republic, Romania, Kuwait, Syrian Arab Republic, Sudan, Madagascar, Mauritania, Morocco, United Arab Emirates: CDDH/III/14;
- Ghana: CDDH/III/20;

Article 44. Field of application

1. The provisions contained in the present Section apply to any land, air or sea warfare which may affect the civilian population, individual civilians and civilian objects on land.

2. These provisions apply to acts of violence committed against the adversary, whether in defence or offence. Such acts are referred to hereafter as "attacks".

3. These provisions are complementary to such other international rules relating to the protection of civilians and civilian objects against effects
resulting from hostilities as may be binding upon the High Contracting Parties, in particular to Part II of the Fourth Convention.

**Amendments to article 44**

- Romania: CDDH/III/10;
- Belgium, United Kingdom of Great Britain and Northern Ireland: CDDH/III/16;
- Egypt: CDDH/III/19;

**Chapter II**

**Civilians and civilian population**

**Article 45. Definition of civilians and civilian population**

1. Any person who does not belong to one of the categories of armed forces referred to in article 4 (A) (1), (2), (3) and (6) of the Third Convention and in article 42 is considered to be a civilian.

2. The civilian population comprises all persons who are civilians.

3. The presence, within the civilian population, of individuals who do not fall within the definition of civilians does not deprive the population of its civilian character.

4. In case of doubt as to whether any person is a civilian, he or she shall be presumed to be so.

**Amendments to article 45**

- Finland, Sweden: CDDH/III/13;
- Belgium, United Kingdom of Great Britain and Northern Ireland: CDDH/III/22 and Corr.1 (French);
  - Brazil: CDDH/III/25;
  - Romania: CDDH/III/30;
  - Australia: CDDH/III/35.
Article 46. Protection of the civilian population

1. The civilian population as such, as well as individual civilians, shall not be made the object of attack. In particular, methods intended to spread terror among the civilian population are prohibited.

2. Civilians shall enjoy the protection afforded by this article unless and for such time they take a direct part in hostilities.

3. The employment of means of combat, and any methods which strike or affect indiscriminately the civilian population and combatants, or civilian objects and military objectives, are prohibited. In particular it is forbidden:

   (a) to attack without distinction, as one single objective, by bombardment or any other method, a zone containing several military objectives, which are situated in populated areas, and are at some distance from each other;

   (b) to launch attacks which may be expected to entail incidental losses among the civilian population and cause the destruction of civilian objects to an extent disproportionate to the direct and substantial military advantage anticipated.

4. Attacks against the civilian population or civilians by way of reprisals are prohibited.

5. The presence or movements of the civilian population or individual civilians shall not be used for military purposes, in particular in attempts to shield military objectives from attacks or to shield, favour or impede military operations. If a Party to the conflict, in violation of the foregoing provision, uses civilians with the aim of shielding military objectives from attack, the other Party to the conflict shall take the precautionary measures provided for in article 50.

Amendments to article 46

- Czechoslovakia, German Democratic Republic, Hungary, Poland: CDDH/III/8;
- Romania: CDDH/III/10;
- Finland, Sweden: CDDH/III/13;
- Brazil, Canada, Germany, Federal Republic of, Nicaragua: CDDH/III/27;
- Ghana: CDDH/III/28; c/

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(c/ Ghana subsequently withdrew the amendment to paragraph 1 of article 46 contained in CDDH/III/23 in favour of the amendment contained in CDDH/III/38.

/...
- Ghana, Nigeria, Uganda, United Republic of Tanzania: CDDH/III/38;

- Australia: CDDH/III/43 and Rev.1;

- Sweden: CDDH/III/44;

- Algeria, Democratic Yemen, Egypt, Iraq, Kuwait, Libyan Arab Republic, Mauritania, Morocco, Sudan, Syrian Arab Republic, United Arab Emirates: CDDH/III/48/Rev.1;

- Philippines: CDDH/III/51.

...
II. DRAFT PROTOCOL ADDITIONAL TO THE GENEVA CONVENTIONS OF 12 AUGUST 1949, AND RELATING TO THE PROTECTION OF VICTIMS OF NON-INTERNATIONAL ARMED CONFLICTS

...

Part V

Civilian population

Chapter I

General protection against effects of hostilities

Article 24. Basic rules

1. In order to ensure respect for the civilian population, the Parties to the conflict shall confine their operations to the destruction or weakening of the military resources of the adversary and shall make a distinction between the civilian population and combatants, and between civilian objects and military objectives.

2. ...

Amendments to article 24, paragraph 1

- Romania: CDDH/III/12;
- Czechoslovakia, German Democratic Republic, Poland: CDDH/III/15;
- United States of America: CDDH/III/23.

Article 25. Definition

1. Any person who is not a member of armed forces is considered to be a civilian.

2. The civilian population comprises all persons who are civilians.

3. The presence, within the civilian population, of individuals who do not fall within the definition of civilians does not deprive the population of its civilian character.

Amendments to article 25

- Republic of Viet-Nam: CDDH/III/2;
- Romania: CDDH/III/12;

/...
- Finland, Sweden: CDDH/III/13;
- Brazil: CDDH/III/31;
- Egypt: CDDH/III/33;
- Australia: CDDH/III/34;
- Canada: CDDH/III/36.

Article 26. Protection of the civilian population

1. The civilian population as such, as well as individual civilians, shall not be made the object of attack. In particular, methods intended to spread terror among the civilian population are prohibited.

2. Civilians shall enjoy the protection afforded by this article unless and for such time they take a direct part in hostilities.

3. The employment of means of combat, and any methods which strike or affect indiscriminately the civilian population and combatants, or civilian objects and military objectives, are prohibited. In particular it is forbidden:

   (a) to attack without distinction, as one single objective, by bombardment or any other method, a zone containing several military objectives, which are situated in populated areas and are at some distance from each other;

   (b) to launch attacks which may be expected to entail incidental losses among the civilian population and cause the destruction of civilian objects to an extent disproportionate to the direct and substantial military advantage anticipated.

4. Attacks against the civilian population or civilians by way of reprisals are prohibited.

5. The Parties to the conflict shall not use the civilian population or civilians in attempts to shield military objectives from attacks.

Amendments to article 26

- Romania: CDDH/III/12;
- Ghana: CDDH/III/28;
- Canada: CDDH/III/36;
- Australia: CDDH/III/42;
- Sweden: CDDH/III/45;
- Algeria, Democratic Yemen, Egypt, Iraq, Kuwait, Libyan Arab Republic, Morocco, Sudan, Syrian Arab Republic, United Arab Emirates: CDDH/III/48;
- Philippines: CDDH/III/51;
- Brazil: CDDH/III/68.