Twenty-ninth session
Agenda item 27

NAPALM AND OTHER INCENDIARY WEAPONS AND ALL ASPECTS
OF THEIR POSSIBLE USE

Report of the Secretary-General

1. By resolution 3076 (XXVIII), the General Assembly invited the Diplomatic
Conference on the Reaffirmation and Development of International Humanitarian Law in
Armed Conflicts to consider - without prejudice to its examination of the draft
protocols submitted to it by the International Committee of the Red Cross - the
question of the use of napalm and other incendiary weapons, as well as other specific
conventional weapons which might 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; and requested the Secretary-General, who had been invited
to attend the Diplomatic Conference as an observer, to report to the General Assembly
at its twenty-ninth session on aspects of the work of the Conference relevant to the
resolution.

2. The last paragraph of the preamble of the resolution also referred, in the same
general connexion, to the intention of the International Committee of the Red Cross
to call a conference of government experts to study in depth the question of the
prohibition or restriction of the use of conventional weapons which might cause
unnecessary suffering or have indiscriminate effects and to transmit a report on the
work of that conference to all Governments participating in the Diplomatic Conference
with a view to assisting them in their further deliberations.

3. The Diplomatic Conference, convened at the invitation of the Swiss Federal
Council, held its first session at Geneva from 20 February to 29 March 1974. The
aspects of the Conference concerned with the two draft Additional Protocols to the
Geneva Conventions of 1949 1/ are reported by the Secretary-General in a separate
report (A/9669) requested by the General Assembly in its resolution 3102 (XXVIII),
entitled "Respect for human rights in armed conflicts". The present report,
submitted in accordance with General Assembly resolution 3076 (XXVIII), is concerned
only with the aspects of the Conference relating to the question of the use of


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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 the seeking of agreement on rules prohibiting or restricting the use of such weapons.

4. On the proposal of Egypt, Kuwait, the Libyan Arab Republic, Mexico, Norway, the Sudan, Sweden, Switzerland and Yugoslavia (CDDH/23), the Diplomatic Conference decided to establish, in addition to three main committees, an Ad Hoc Committee of the Whole on Conventional Weapons (also referred to as Committee IV) for the question of prohibition and restriction of the use of conventional weapons which might cause unnecessary suffering or have indiscriminate effects. It was stipulated that this Ad Hoc Committee should have the specific mandate, during the 1974 session of the Diplomatic Conference, to examine the question of prohibition or restriction of the use of specific categories of such conventional weapons, to consider all proposals submitted to the Conference relating to such weapons and to report to it the results of the Committee's work. It was also specified that the report of the Ad Hoc Committee, describing the discussions and including any proposals tabled, as well as its records, should be transmitted to the International Committee of the Red Cross with a view to assisting it in identifying questions and possibilities which needed to be explored in depth by the Conference of Government Experts, which it was to convene in 1974, and to assisting it in finding the most suitable mandate and mode of organization of that Conference.

5. The following were chosen as officers of the Ad Hoc Committee:

- **Chairman**
  - Mr. Diego Garces (Colombia)

- **Vice-Chairmen**
  - Mr. Houchang Amir-Mokri (Iran)
  - Mr. Mustapha Chelbi (Tunisia)

- **Rapporteur**
  - Mr. F. Kalshoven (Netherlands)

6. In the course of the general debate in the plenary meetings of the Diplomatic Conference, a number of delegations referred in general terms to the question of the weapons under consideration, but the question was discussed in significant detail only at the meetings of the Ad Hoc Committee, whose report on the matter (see para. 18 below) was subsequently approved by the plenary without further debate. Summaries of the debate in the plenary and in the Ad Hoc Committee follow.

7. In the limited debate on the matter in the plenary of the Diplomatic Conference, delegations speaking on the subject generally favoured further study and consideration of the question of weapons that might cause unnecessary suffering or have indiscriminate effects. Some delegations, however, held that such consideration might more appropriately be carried out in disarmament forums than at the Conference. Also, while most speakers believed that the Conference should limit its study to conventional weapons, some favoured concurrent consideration of nuclear weapons and other weapons of mass destruction. Some delegations stressed the view that any rules that might be adopted by the Conference on the prohibition or restriction of specific categories of conventional weapons should be the subject of an instrument or instruments separate from the two draft Protocols under consideration by the Conference.

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8. At the first organizational meeting of the Ad Hoc Committee, the Chairman noted (CDDH/IV/2) that the Committee would initiate a discussion of a type which had not taken place at the intergovernmental level since the early 1930s. He also stated that the Committee's mandate made clear that no decisions of substance should be taken by the Committee at this session. He further noted that, while the Ad Hoc Committee did not have any draft protocols as a basis of discussion, there were three major reports on the general subject on which the Committee could comment: (1) the report of the Secretary-General of the United Nations on napalm and other incendiary weapons; 2/ (2) the report of the International Committee of the Red Cross on weapons which may cause unnecessary suffering or have indiscriminate effects; 3/ and (3) the survey by the Secretariat of the United Nations on existing rules of international law concerning the prohibition or restriction of use of specific weapons (A/9215, vols. I and II). The Chairman also called attention to the detailed comments on the subject submitted to the Conference by seven delegations (see para. 11 (a) below).

9. The Ad Hoc Committee adopted the following agenda (CDDH/IV/1/Rev.1):

1. General debate.

2. Consideration of the plan proposed by the International Committee of the Red Cross for the Conference of Government Experts on Arms to be held in 1974.

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 perfidious weapons;
   
   (e) Potential weapons developments.

4. Other questions.

5. Adoption of report.

2/ A/8030/Rev.1 (United Nations publication, Sales No.: E.73.I.3).

10. In connexion with the agenda, several delegations stated that, during the current session of the Diplomatic Conference, the Ad Hoc Committee could accomplish no more than a tour d'horizon, thus aiding the International Committee of the Red Cross in identifying the main questions which the Conference of Government Experts would be asked to study in depth. Some delegations expressed their understanding that the listing of certain specific categories of weapons under agenda item 3 did not prejudge the question of whether such weapons caused unnecessary suffering or had indiscriminate effects.

11. The Ad Hoc Committee had before it the following documents:

(a) A working paper submitted to the Diplomatic Conference by Egypt, Mexico, Norway, the Sudan, Sweden, Switzerland and Yugoslavia (CDDH/32/2 and Add.1), (i) pointing out that the two draft Protocols before the Conference contained no new rules concerning specific weapons; (ii) holding that, in addition to reaffirming general prohibitions against the use of weapons causing unnecessary suffering or having indiscriminate effects, the Conference should study the question of prohibiting the use of certain weapons where use seemed incompatible with the general bans, such as incendiary weapons, antipersonnel fragmentation weapons, flechettes, projectiles with high velocity or "dumdum" effects and antipersonnel land-mines; and (iii) proposing specific draft rules to accomplish the prohibition of such weapons.

(b) A document submitted to the Diplomatic Conference by the International Committee of the Red Cross (CDDIR/42), calling attention to the fact that the International Conference of the Red Cross had, in 1973, invited the International Committee to convene, in 1974, a conference of government experts to study in depth the question of prohibition or restriction of the use of conventional weapons which might cause unnecessary suffering or have indiscriminate effects, outlining the International Committee's views on the organization of such a conference of experts, and soliciting the comments and proposals of Governments interested in such a conference. In this document, the International Committee suggested that the conference be held at Lucerne, Switzerland, from 4 to 28 June 1974. In introducing the document to the Ad Hoc Committee, the representative of the International Committee of the Red Cross noted that his organization was not able to finance the conference from its budget and suggested various possible methods by which participants might cover the costs. Finally, the International Committee proposed to define the experts' mandate and submit a more definite plan of work for the conference after hearing the views of the Ad Hoc Committee (see para. 17 below).

General debate

12. In spite of some divergencies of opinion on details, the general debate revealed widespread agreement that, particularly in the light of rapid technological developments in the weapons field, there was a need for consideration of certain modern conventional weapons in the light of their compatibility with already existing international law prohibiting the use of weapons which might cause unnecessary suffering or have indiscriminate effects. Most delegations speaking in the debate supported further consideration of the matter at the conference of
experts proposed by the International Committee of the Red Cross. Several
delegations held that nuclear weapons and other weapons of mass destruction should
also be considered, but most appeared to agree that the work of the Diplomatic
Conference and the proposed expert conference should be limited to consideration of
conventional weapons. There also appeared to be general acceptance of the view
that the conventional weapons in question should be considered primarily in the
light of the factors of the degree of suffering they caused or of their
indiscriminateness. A number of delegations, however, also favoured consideration
of a ban on the use of modern conventional weapons, including aircraft, by
militarily advanced countries against countries not possessing such weapons. In
this context, some made express reference to the case of national wars of
liberation. Some delegations pointed out that such weapons were often used mainly
to break the morale of the civilian population and that, accordingly, their use
was closely related to the question of protection of the civilian population.
Several delegations favoured a regional approach to this problem. The difference
between just and unjust wars was also stressed and it was maintained that aggressors
used cruel and genocidal weapons, while just wars fought for independence were
directed against the use of such weapons.

13. With regard to possible specific action concerning the weapons in question,
the seven delegations supporting the working paper on the subject (see
para. 11 (a) above), as well as a number of other delegations, held that use
of most or all of the weapons listed in the working paper and in the agenda should
be specifically banned at an early date and in the course of supplementing the
Geneva Conventions of 1949 by the Diplomatic Conference. They would prefer to see
the necessary provisions included as an integral part of the draft Protocols.

14. A number of other delegations stressed the view that the achievement of any
rules prohibiting or restricting the use of specific weapons would be a difficult
matter, deserving the careful consideration of Governments. Although much useful
work had been done in the general field, Governments had so far not given mature
consideration to many of the questions involved or taken decisions on them.
Several other delegations favoured a gradual approach to the problem, beginning with
consideration of napalm and other incendiary weapons. A number of delegations
stressed, in particular, that before final decisions could be taken, the terms of
reference, such as "unnecessary suffering", "indiscriminate effects", "cruel" and
"perfidious", must be clearly defined. One delegation maintained that the banning
of some weapons might lead to the development of other weapons even more cruel
in their effects; others noted that traditional weapons could be as inhumane and
indiscriminate as modern sophisticated ones, and warned against action which might
lead to adoption of weapons which killed rather than wounded; while two delegations
noted the need for verification of any prohibitions adopted. Several delegations
also warned against tying the work on specific weapons too closely to the more
advanced work on the two draft Additional Protocols to the 1949 Geneva Conventions,
thereby holding up progress on those Protocols. They opposed the idea of
introducing specific weapons prohibitions into the body of the draft Protocols and
believed such bans should be embodied in one or more separate instruments. A number
of delegations noted that, to be effective, any prohibition or restriction should
be accepted by the major military Powers and have universal application. One

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delegation stated that it should not be taken for granted that certain existing conventional weapons would be prohibited or restricted as a result of the present deliberations on the matter.

15. Several countries expressed doubts as to the competence of the Diplomatic Conference to deal with matters of arms limitation, expressing the view that this matter should more properly be dealt with in appropriate disarmament bodies, such as the Conference of the Committee on Disarmament. While there appeared to be widespread acceptance of the idea that a ban or restriction on the use of certain weapons, as opposed to bans on their production and stockpiling, could appropriately be considered by the Diplomatic Conference, some delegations maintained that it would be difficult to separate the two issues.

Prohibition of specific weapons

16. The seven delegations submitting the working paper on the subject set forth their views with regard to all the categories of weapons listed in the agenda, stressing the widespread view that napalm and other incendiary weapons should be given first priority, with most uses to be banned within the shortest possible time, as warranted by the extensive studies already made on the subject, including the report of the United Nations Secretary-General. One of these delegations also stressed in some detail the inhumane and indiscriminate effects of the other categories of weapons under discussion and urged early curbs, or preferably a complete ban, on their use. The sponsors of the document maintained that, if any use of such weapons were permitted, belligerents would be inclined to go to the very limit of such permissible use, thus putting a serious strain on the restrictions. One sponsor stressed the view that the texts of article 33 of draft Protocol I and article 20 of draft Protocol II, both before the Diplomatic Conference, merely served to reaffirm existing law and should be followed without further delay by other texts relating to the prohibition of certain conventional weapons. The same delegation also specifically proposed that the Diplomatic Conference adopt a resolution renouncing the use of napalm and other incendiaries pending the adoption of limitations on the use of all the weapons under consideration. In general, the delegations sponsoring the working paper held that, at the latest, the second session of the Diplomatic Conference in 1975 could adopt provisions for the curbs required on any conventional weapons, and that these curbs should constitute an integral part of the draft Additional Protocols under consideration by the Diplomatic Conference.

17. The few other delegations contributing to this discussion stressed the view that there had been insufficient exploratory work on these questions and that they were too difficult and complex to be considered by other than qualified experts. Most delegations appeared to agree that such consideration should take place at the proposed expert conference, to be held later in 1974, which would then report to Governments participating in the Diplomatic Conference. One delegation, however, stated that it was unable to accept the view that the studies to be carried out by the experts should be related to the work of the Diplomatic Conference.
Plan of the International Committee of the Red Cross for a conference of government experts

18. The Ad Hoc Committee considered the original suggestions of the International Committee (see para. 11 (b) above), as well as a work programme it subsequently submitted (CDDH/IV/4). The view was widely expressed that the proposed expert conference should hold a series of in-depth discussions of the various categories of weapons already considered by the Ad Hoc Committee, beginning with incendiary weapons. It was also specifically suggested that the costs of the Conference be covered by voluntary contributions. However, the Ad Hoc Committee took no formal decisions with regard to the proposed conference. The International Committee of the Red Cross later decided to hold the conference at Lucerne from 24 September to 18 October 1974.

Committee report

19. The Committee's draft report (CDDH/IV/3), consisting of a summary of discussions on all agenda items, but with no specific recommendations, was adopted with little discussion (CDDH/47) and approved by the plenary of the Diplomatic Conference without discussion.