



Chairman: Mrs. Helvi SIPILÄ (Finland).

In the absence of the Chairman, Mr. Mahmassani (Lebanon), Vice-Chairman, took the Chair.

AGENDA ITEM 49

Respect for human rights in armed conflicts (continued):

- (a) Report of the Secretary-General (A/8313 and Add.1 to 3, A/8370 and Add.1, A/C.3/L.1895, A/C.3/L.1896);
(b) Protection of journalists engaged in dangerous missions in areas of armed conflict: report of the Secretary-General (A/8371 and Add.1, A/8403, chap. XVII, sect. A; A/8438 and Add.1)

1. Mr. TARASOV (Union of Soviet Socialist Republics) underlined the importance of ensuring respect for human rights in armed conflicts now that the imperialist Powers were unleashing wars of aggression in various parts of the world, as in Viet-Nam, the Arab countries and the territories under Portuguese domination. His delegation believed that it was the duty of the Committee vigorously to defend human rights and, especially, to see that the provisions of the Geneva Conventions of 1949 were complied with.

2. The reports of the Secretary-General on respect for human rights in armed conflicts were the result of long work and constituted a good basis for dealing with the problem. There were some points, however, which caused difficulty for his delegation. The Soviet Union believed that the best defence of human rights was peace, and in keeping with that position it had voted in favour of resolution XXIII adopted at the International Conference on Human Rights. To protect human rights in armed conflicts it laid special emphasis on the strict application of the provisions of the 1949 Geneva Conventions, while recognizing the possible need for additional agreements to strengthen the protection, *inter alia*, of non-combatants, in view of the modern methods of warfare. In its resolution 2444 (XXIII), the General Assembly expressly prohibited the launching of attacks against the civilian population and affirmed that distinction must be made between persons taking part in the hostilities and members of the civilian population.

3. As to the treatment of prisoners of war, his delegation believed that responsibility for crimes against peace and humanity, clearly enunciated in the Statute of the International Military Tribunal at Nuremberg and reaffirmed in numerous United Nations resolutions, must not be overlooked. There was no reason to apply the treatment prescribed for prisoners of war to persons who had committed war crimes or crimes against humanity, or had

ordered the commission of such crimes. That was a principle that had to be borne very much in mind in drafting the documentation on the item under consideration.

4. A question of great importance to his delegation, which jointly with other delegations had proposed a convention on the subject,¹ was that of the prohibition of the development, production and stockpiling of bacteriological (biological) and toxin weapons and on their destruction.

5. In protecting human rights in armed conflicts his delegation considered that the principle of non-interference in the internal affairs of States and respect for the sovereignty of every State was important. At no time should any attempt be made to internationalize domestic conflicts and thereby justify outside interference, for that would lead to the violation of the norms of international law.

6. As to guerrilla warfare and the protection of freedom fighters, it was necessary to stress the legitimacy of the struggle of peoples for self-determination and the need to recognize those who were fighting to liberate themselves from the colonial yoke as international combatants.

7. With regard to international assistance for the application of humanitarian rules in armed conflicts, his delegation considered it necessary to make use of existing machinery and above all to apply strictly the principles laid down in the 1949 Geneva Conventions on the victims of war.

8. The Soviet delegation fully supported the efforts reflected in (A/8370 and Add.1) to ensure the implementation of existing conventions relating to armed conflicts and the steps taken to draw up new legal instruments designed to strengthen international humanitarian law. It also duly appreciated the co-operation towards that end given by the International Committee of the Red Cross.

9. In the opinion of his delegation the main problem was the failure to apply existing rules, especially on the part of imperialist States which were daily violating the norms laid down in the 1949 Geneva Conventions.

10. Some delegations had pointed to the necessity of developing rules for the application of the Geneva Conventions to domestic conflicts. In the opinion of his delegation, that was not an urgent problem and for that reason the Conference of Government Experts meeting at Geneva in 1971 had not considered it advisable to deal with the

¹ Official Records of the Disarmament Commission, Supplement for 1971, document DC/234, annex A.

question. Nor did his delegation deem it advisable to draft new international instruments: to establish different forms of protection for various categories of the civilian population would weaken their protection as a whole. Unquestionably, the best protection for human rights would be to do away finally and completely with war and the possibility of war. However, pending the attainment of that goal, efforts should be concentrated on respect for the principles laid down in the Geneva Conventions and other existing agreements on the subject.

11. Regarding the draft resolutions to be adopted, the Committee should vigorously defend respect for human rights in armed conflicts so as to put an end to the inhuman crimes committed by aggressors in their struggle against those who fought for the freedom and independence of their country. The resolution to be adopted should emphasize observance of the rules laid down in the Geneva Conventions and stress the responsibility of those who committed war crimes and crimes against humanity.

12. At the previous meeting, the representative of the United States had referred to the situation of prisoners of war in Viet-Nam. The answer of the Soviet delegation was that it had been repeatedly shown that the imperialist aggressors were daily violating human rights in Viet-Nam. Tragedies such as that at Song-My were an every-day occurrence in that merciless war. At the meetings held the previous year by the International Commission for the Investigation of War Crimes in Indo-China, scientists, lawyers, intellectuals and outstanding personalities of 15 countries had studied a multitude of documents on the crimes committed in Indo-China and had heard the statements of numerous participants in that war who had said that it was really a war of genocide. That had been confirmed by a former United States lieutenant who had been in charge of a patrol in Viet-Nam and who had stated that United States soldiers had orders to kill people, including civilians.

13. A report presented by a commission of the Republic of South Viet-Nam had indicated that in 1969 that country had suffered the complete destruction of 1,600 villages with their inhabitants, constituting 14 per cent of all the villages in South Viet-Nam. The destruction of villages was a regular practice in the Viet-Nam war, in which devastation and torture constituted a threat to the entire population of the country.

14. Recently, *Le Monde* had published a document on the subject distributed by United Press International concerning the murders and tortures frequently committed in the so-called "Phoenix" pacification programme carried out during the last three years by the Pentagon and the Central Intelligence Agency of the United States. While it was denied that the objective of the programme was the physical destruction of the population of Viet-Nam, it had been privately admitted that that was what was happening in practice. At the beginning of 1968 approximately one third of the "neutralized" Viet-Cong in the Mekong Delta had been murdered. In 1969, it had been decided that the ideal proportion of executions was 80 per cent, and the practice of killing nearly all suspects had begun to be applied. It was obvious that the use of such a method resulted in numerous mistakes and many innocent people

were dying. It was impossible to read the United Press International document without shuddering when it spoke of the gangs of criminals formed by the Central Intelligence Agency to engage in executions and torture. Previously, the members of that special service had been paid by the number of victims, but now they were paid by the month, and the pay was handsome.

15. Conscientious citizens of the United States knew what their Government was doing in Viet-Nam. Various personalities of the academic world had condemned those crimes. Senator Mansfield himself had termed the war a barbarous conflict and had said he would not rest until the extermination had ceased and the last American had left Viet-Nam.

16. The United States of America was organizing a broad political campaign on the question of the treatment of prisoners of war, arguing that aggressors and their victims should be treated in the same way. It was enough to have heard, for example, the statement of the representative of the United States at the previous meeting. The United States was conducting the most cruel and aggressive war in history, bombarding North Viet-Nam and using biochemical weapons in South Viet-Nam. As the representative of North Viet-Nam had said, the very number of United States pilots captured in North Viet-Nam was the best proof that the United States was committing war crimes in their country.

17. The various international forums which had dealt with the subject had found that United States pilots were committing war crimes, bombarding civilians and using other methods of mass annihilation. Nevertheless, the United States was cynically accusing North Viet-Nam of not complying with the Geneva Convention relative to the Treatment of Prisoners of War.

18. When North Viet-Nam signed the Geneva Convention in 1957, it had made an expressed reservation under article 85 to the effect that it would not consider as prisoners of war covered by the Convention persons who were tried and convicted of having committed crimes against humanity. In 1965, in a letter to the Red Cross, North Viet-Nam had reaffirmed that United States pilots captured while killing civilians or destroying their property would be tried in the country's courts.

19. On 23 December 1970, a representative of North Viet-Nam had accused the United States of using the question of prisoners of war to conceal its own criminal activities and justify the military occupation of South Viet-Nam. The United States was using asphyxiating gases and tear gas, as well as bacteriological weapons, all of which were prohibited by the Geneva Protocol of 1925. It was true that the United States had not ratified the Protocol, although it had signed it, but that did not free it at all from the moral obligation of complying with its provisions.

20. The United States had launched a war of aggression against the people of Viet-Nam and had still not ended it. There could only be peace in the area if the United States stopped imposing on other peoples a régime which they repudiated.

21. In connexion with the Geneva Protocol of 1925, it was interesting to note the strange position taken by the

United Kingdom concerning toxin gases. While it accepted the prohibition against the use of tear gas and other dangerous gases, it did not include in that category smoke bombs, including CS gas, which British troops had used in their repressive operations in Northern Ireland. There was obviously a desire to legalize its use in the future, so as to employ it not only within, but also outside the country.

22. At the previous meeting the representative of Israel had repeated his usual insinuations concerning the Arab countries. The latter naturally had to judge the statement for themselves, but the Committee already knew of the massive violations of human rights being committed by Israel in the occupied territories, a problem which had also been dealt with by the Commission on Human Rights. Israel was trying by every possible means to prevent a peaceful settlement in the area. The bombing of the Abu-Zabad steel works, the use of napalm and delayed-action bombs, which had caused the death of many civilians, and other such acts had been committed by Israel with premeditation in order to neutralize the people of Egypt and other Arab States. It was pursuing a systematic policy of terror designed to force them to acquiesce in its criminal acts. Israelis in American Phantom aircraft had bombed peaceful settlements in cold blood and had killed children at the Bahr-el-Bakr school. The Secretary-General had recently confirmed once more that he had been unable to establish contact with Israel concerning compliance with the resolutions of the General Assembly and the Security Council. It must be obvious to everyone by now that Israel was not fighting for survival but was carrying on a war of conquest. For years, the Arab countries had not known the meaning of peace, owing to the policy of imperialism, which, using the Israelis as its instrument, was trying to crush the liberation movements of the Arab peoples in order to maintain its control over the oil of the region.

23. Miss SOLESBY (United Kingdom) said that the draft resolution submitted by her delegation (A/C.3/L.1895) was a procedural resolution based on four main premises. Firstly, that there was a need for new protocols to expand existing humanitarian laws. Secondly, that the task of drafting those protocols had already been successfully begun by the Conference of Government Experts in 1971 and should be continued at the second conference, to be held in 1972, with a view to producing texts for consideration by a diplomatic conference. Thirdly, that international interest in the question must be maintained. The United Kingdom believed that the United Nations had a role complementary to that of the Red Cross, which should prepare the texts while the United Nations provided the proper platform for educating world opinion. Fourthly, that the existing international instruments, in particular the Geneva Conventions of 1949, continued to be important and valid. Operative paragraph 1 of the draft resolution, therefore, called upon all States to observe those rules and invited those States which had not yet done so to adhere to those instruments. For the same reason, operative paragraph 2 called upon States to consider the possibility of withdrawing any reservations which they might have made to those instruments. The Red Cross had already made a similar appeal, and the United Kingdom was considering the possibility of withdrawing in the near future its reservation to the second paragraph of article 68 of the fourth Geneva Convention.

24. The draft resolution submitted by the United Kingdom was close in spirit to resolution 2677 (XXV), which had been adopted almost unanimously by the General Assembly, and she therefore hoped that the members of the Committee would support it. Moreover, it was similar in many respects to the other draft resolution on the subject (A/C.3/L.1896). Her delegation was therefore prepared to discuss with the sponsors of the second draft resolution the possibility of preparing a single text that would be acceptable to all.

25. With regard to the preliminary draft international convention on the protection of journalists engaged in dangerous missions submitted by the Economic and Social Council in its resolution 1597 (L), the United Kingdom had doubts about the desirability of protecting a special category of civilians, no matter how highly their services were esteemed. Since not everyone shared those doubts, however, it was prepared to participate in the debate, in order to arrive at an acceptable international instrument either at the current or at the next session. Both the preliminary draft convention of the Council, which had been introduced by the representative of France at the 1885th meeting, and the Australian draft (see A/8371/Add.1) were interesting, and the comments submitted by Governments were also worthy of consideration. The question needed to be studied carefully and without haste. In the opinion of the United Kingdom both texts seemed over-ambitious in attempting to draft a single convention applicable to all parties in all conflicts. The United Kingdom believed that a convention could be effective only if it was signed and ratified by States parties which were bound by its provisions. A convention of that type obviously could not protect journalists engaged in missions in areas of internal conflict. Their situation might be covered by an international declaration which established international standards. If a solution of that type was of interest, the United Kingdom would be prepared to submit a draft text of such a declaration.

26. There seemed to be some justification, at least, for viewing with optimism the progress made during the past year towards the development of international law designed to limit the suffering inflicted by armed conflicts. It was not easy to reconcile military necessity with humanitarian concern. To do so, it was necessary to take into account the advice not only of international lawyers but also of those who had first-hand battlefield experience. The United Nations and the Red Cross were doing admirable work, and she hoped that it would be pursued to a satisfactory conclusion.

27. Mr. ERMACORA (Austria) referred to several points which had not been stressed sufficiently. For example, means of transport used in bringing supplies to the civil population should not be utilized for military purposes. One of the main problems concerning human rights in armed conflicts was the problem of non-international armed conflicts; in that connexion he did not agree with the statement of the Soviet representative, believing that an armed conflict of international character should be ruled by international law, and it should not be too difficult, in principle, to apply the existing standards of international law to those conflicts. It was much more difficult to ensure

the observance of humanitarian principles in non-international conflicts, as could be seen from the fact that the Secretary-General's report (A/8370 and Add.1) devoted only 20 paragraphs to the subject. First of all, it was difficult to determine the existence of such a conflict, and it was also necessary to comply with the provisions of Article 2, paragraph 7, of the Charter of the United Nations. The best course for the present was not to prepare a convention on the subject but only to make recommendations. Such recommendations should contain certain principles: firstly, it should be made clear that in non-international armed conflicts all parties, including freedom fighters, should respect the Universal Declaration of Human Rights and the Geneva Conventions; secondly, persons involved in non-international armed conflicts should not always be treated according to the penal law; lastly, everything possible should be done to prevent the conflict from affecting the most essential means of life of the civilian population.

28. Apart from those points, he had failed to find in the Red Cross report² any comment on the clause concerning grave breaches of the Geneva Conventions, it was not even clear whether or not those "breaches" could be justified. Moreover, as had been pointed out in the Secretary-General's report, the clause relating to protecting Powers also reduced the effectiveness of the Conventions, since those Powers could intervene only if the parties to the conflict agreed. He believed that an element relating to protecting Powers could be included at least in the fourth Geneva Convention, establishing bodies that would act as protecting Powers authorized either by the United Nations or by the International Committee of the Red Cross. The role of the Red Cross should also be fully discussed, since its humanitarian function was closely linked to political problems; the representatives of the Red Cross must avoid any political development.

29. He believed that the draft resolutions submitted (A/C.3/L.1895 and A/C.3/L.1896) were quite similar and should be combined. For example, operative paragraphs 2 and 3 of draft resolution A/C.3/L.1895 could be incorporated into draft resolution A/C.3/L.1896, and the same was true of operative paragraph 5(a). In draft resolution A/C.3/L.1896 the words "and the question of guerrilla warfare" in operative paragraph 2(c) which also appeared in the report of the Secretary-General, were far from specific. Operative paragraph 3 of the same draft resolution referred to the Conference of Government Experts to be convened by the International Committee of the Red Cross; in that connexion it would be desirable to mention the activities of the United Nations as well. Lastly, in operative paragraph 4 the Secretary-General was requested to prepare a report "as soon as possible"; in his judgement, it would be better to say "so early that the Conference of Government Experts to be convened by the International Committee of the Red Cross can deal with this point".

30. Mr. GONZALEZ GALVEZ (Mexico) said that in 1970 more than one fourth of all Member States had been involved in armed conflicts, and therefore it seemed even

more urgent to review and bring up to date the so-called customs and laws applicable to armed conflicts, bearing in mind that the objective of such conflicts was to defeat but not destroy the adversary. It was evident that existing conventions should remain in force and that the possible legal consequences should be analysed before any new standards were accepted. For the moment, in view of the results of the Conference of Government Experts convened at Geneva by the International Committee of the Red Cross, he believed that the Committee should continue to study the matter under the supervision of the General Assembly, with a view to the holding of one or more conferences at which the results of the consultations already begun could be considered.

31. The basic problem that needed study was how to achieve full application of those existing conventions which, because of the lack of an adequate supervisory structure, had unfortunately not been applied in many cases in which there was no doubt about the international character of the conflict. An order of priority should therefore be established for the items to be considered at the second Conference convened by the International Committee of the Red Cross, as had been done in the draft resolution co-sponsored by his delegation (A/C.3/L.1896). That would bring about better co-ordination between the activities of the Committee and of the General Assembly. The first point considered was the problem of better application of existing legal instruments, a problem related to the establishment of an organ within the United Nations structure which could perform the functions of the protecting Powers. In that connexion, he agreed with the representative of the Soviet Union that the idea of the responsibility of aggressors should be developed. The second point for consideration would be protection of the civilian population; as the representative of Sweden had observed at the 1885th meeting, the number of civilian victims was steadily increasing at an alarming rate. That had induced the sponsors to submit a very rough preliminary draft to the Conference of Government Experts, which might serve as a point of departure. Operative paragraph 2(b) of draft resolution A/C.3/L.1896 referred to legal restraints and restrictions on certain methods of warfare and weapons that had proved particularly perilous to civilians. For that reason, operative paragraph 4 requested the Secretary-General to prepare a report on napalm and other incendiary weapons and the effects of their possible use. When the report was completed measures could be adopted on the basis of its conclusions. The General Assembly would perhaps decide to transmit the report to the Conference of Government Experts convened by the International Committee of the Red Cross; in any event, that would depend on how much time was needed to prepare the report.

32. Since the Conference of the Committee on Disarmament was studying the question of the control or limitation of the use of certain types of weapons, it would perhaps be appropriate for the Third Committee to limit itself to studying the question of conventional weapons. Mexico had proposed to the Conference of the Committee on Disarmament that a cut-off date—not later than 1973—should be established for the suspension of all types of nuclear tests; although many might think that that was going too far, Mexico thought it essential and hoped that it

² Report on the work of the Conference of Government Experts on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts (Geneva, August 1971).

would gain the approval of the General Assembly. Moreover, together with the Swedish delegation, Mexico had proposed a moratorium during which the States parties to the revised draft convention on the prohibition of the development, production and stockpiling of bacteriological (biological) and toxin weapons and on their destruction would commit themselves to refraining from the use of those types of weapons for purposes of warfare. It had also submitted a proposal³ concerning Additional Protocol II of the Treaty for the Prohibition of Nuclear Weapons in Latin America (Treaty of Tlatelolco). He noted with regret the attitude of the Soviet Union and France on the last question and he expressed the hope that the People's Republic of China would ratify the Treaty.

33. Like the representative of the United Kingdom, he trusted that the sponsors of the two draft resolutions (A/C.3/L.1895 and A/C.3/L.1896) would reach agreement on certain points, so that the Committee would have to vote only on a single draft. One of those points—a fundamental one, in his view—was that the General Assembly should establish an order of priority for the items to be considered at the forthcoming Conference of Government Experts convened by the International Committee of the Red Cross. Another high-priority item was the study of napalm and other incendiary weapons. The initiative had come from the Secretary-General himself so that there were no grounds for questioning the feasibility of such a study.

34. Many of the ideas in the United Kingdom draft resolution (A/C.3/L.1895), particularly operative paragraph 2, could easily be accommodated in the draft resolution co-sponsored by his delegation (A/C.3/L.1896).

35. Mr. PEACHEY (Australia), speaking on the protection of journalists engaged in dangerous missions in areas of armed conflict, said that his country supported the preparation of an agreement to ensure better protection for journalists on such missions. Because of the complexity of the question and the comments received so far on the preliminary draft convention submitted by the Economic and Social Council in its resolution 1597 (L), and because of the short time still available to the Committee, there was little possibility of general agreement being reached at the current session, but his delegation did not object to efforts being made to reach a final text or to any progress that might be made in that direction. As noted in the report of the Secretary-General (A/8371 and Add.1) the Commission on Human Rights, considering that it had not had sufficient time to examine the preliminary draft convention in detail, had therefore referred it to the Economic and Social Council, which, in turn, had sent it on unamended to the General Assembly, still as a preliminary draft. The observations submitted by Governments, in response to the Secretary-General's request, stressed the preliminary nature of the draft and contained various other comments, among which he wished to draw particular attention to those of Brazil, Denmark and the United States.

36. The Australian Government had forwarded to the Secretary-General its views on what the proposed convention should contain, and had submitted a new draft

convention, which was contained in document A/8371/Add.1. The latter was quite different from the original preliminary draft convention, and his delegation considered the new version necessary partly because the original text did not lend itself easily to amendments. Among the differences between the two, he wished to draw attention to the contents of article 6 of the Australian draft, which provided that each State would be responsible for the issue, withdrawal, renewal and authentication of safe-conduct cards. That approach avoided many of the disadvantages associated with the provision in article 3 of the preliminary draft. It would be unreasonable to expect an international committee to be able to issue thousands of safe-conduct cards, and the procedure would be costly. Furthermore, some provision would have to be made for the issue of cards during the intervals between meetings of the Committee, and if the Secretariat were empowered to issue them, the International Professional Committee would be deprived of any necessary function. Issue by national authorities would also emphasize the intended protective role of the safe-conduct card.

37. A further aspect of the question where difficulties might arise concerned article 4 of the preliminary draft, which provided that the validity of the card should be limited to a specific geographical area and to the expected duration of the journalist's mission. Those provisions might not prove workable, as they would require a journalist to apply for a new card each time he went into a new area of operation, which would often not be possible. The result was likely to be, therefore, that the journalist would proceed to an area of armed conflict without the protection that the convention was intended to provide. Those problems might be overcome by issuing the safe-conduct card for a specified duration, such as 12 months, and universal validity as provided for in article 5 of the Australian draft. His delegation would like the Committee to consider the Australian draft as a formal proposal and it wished its text to be circulated as a Committee document⁴ rather than simply included in document A/8371/Add.1.

38. Mrs. SELLAMI (Algeria) said that only strict application of the existing conventions could alleviate the suffering caused by war. Algeria believed that peace was the best guarantee of respect for human rights and, consequently, that certain Powers which were responsible for causing conflicts should respect the rights of the peoples who found themselves obliged to resort to force. As long as they refused to respect those rights attempts would have to be made to improve existing international instruments. In that connexion, he wished to congratulate the Secretary-General and the International Committee of the Red Cross on the work that they had done. Some concrete proposals might emerge from the meeting to be convened by the Committee in 1972 which could be submitted to the General Assembly at its twenty-seventh session. Any study designed to improve the existing Conventions should take several points into account: first, that the participants in liberation movements were soldiers and deserved to be treated as prisoners of war if they were captured; secondly, that civilian populations should not be treated as rebels subject to reprisals; and thirdly, that special provisions would have to be adopted with regard to the use of modern

³ See *Official Records of the Disarmament Commission, Supplement for 1971*, document DC/234, annex C, document CCD/342.

⁴ Subsequently distributed as document A/C.3/L.1902.

weapons such as chemical and bacteriological methods of warfare. Algeria would assist in the preparation of any additional instruments designed to guarantee respect for human rights during periods of armed conflict, but it wished to reserve its position on the subitem entitled "Protection of journalists engaged in dangerous missions in areas of armed conflict" until the organs of the Algerian Government had studied the question.

39. Mr. RIOS (Panama) asked for the summary records of meetings to be circulated earlier..

40. The CHAIRMAN said that attention would be paid to that request.

The meeting rose at 12.50 p.m.