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RESPECT FOR HUMAN RIGHTS IN ARMED CONFLICTS

Report of the Secretary-General

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INTRODUCTION

1. It may be recalled that the International Conference on Human Rights, held in 1968, during the International Year for Human Rights, had adopted resolution XXIII on "Human rights in armed conflicts", in which it had requested the General Assembly to invite the Secretary-General to study:

"(a) Steps which could be taken to secure the better application of existing humanitarian international conventions and rules in all armed conflicts;

"(b) The need for additional humanitarian international conventions or for possible revision of existing conventions to ensure the better protection of civilians, prisoners and combatants in all armed conflicts and the prohibition and limitation of the use of certain methods and means of warfare." 1/

At its twenty-third session, the General Assembly examined the resolutions adopted at the Conference and, in resolution 2444 (XXIII) of 19 December 1968 entitled "Respect for human rights in armed conflicts", the Assembly invited, inter alia, the Secretary-General, in consultation with the International Committee of the Red Cross (ICRC) and other appropriate international organizations, to undertake the study requested by the International Conference on Human Rights. In the resolution, subparagraph (b) concerning the subject matter of the study entrusted to the Secretary-General was reworded as follows:

"The need for additional humanitarian international conventions or for other appropriate legal instruments to ensure the better protection of civilians, prisoners and combatants in all armed conflicts and the prohibition and limitation of the use of certain methods and means of warfare."

2. At its twenty-fourth session, the General Assembly included in its agenda an item entitled "Respect for human rights in armed conflicts: report of the Secretary-General", which was referred to the Third Committee, on whose recommendations the Assembly adopted resolution 2597 (XXIV) on 16 December 1969 entitled "Respect for human rights in armed conflicts", in which the General Assembly requested, inter alia, the Secretary-General to continue the study initiated under General Assembly resolution 2444 (XXIII), giving special attention

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

to the need for protection of the rights of civilians and combatants in conflicts which arose from the struggles of peoples under colonial and foreign rule for liberation and self-determination and to the better application of existing humanitarian international conventions and rules to such conflicts.

3. At its twenty-fifth session, the General Assembly included in its agenda item 47 entitled "Respect for human rights in armed conflicts: report of the Secretary-General", which was also allocated to the Third Committee.

4. The Committee had before it the following documents:

(a) A report of the Secretary-General (A/7720) of 20 November 1969 on respect for human rights in armed conflicts, prepared in compliance with General Assembly resolution 2444 (XXIII) of 19 December 1958.^{2/}

(b) A further report of the Secretary-General (A/8052) of 18 September 1970 on respect for human rights in armed conflicts, prepared in compliance with General Assembly resolution 2597 (XXIV) of 16 December 1969.^{2/}

5. Having considered item 47 at its 1780th to 1788th and 1792nd to 1804th meetings, the Third Committee submitted five draft resolutions, which the General Assembly adopted at its 1922nd plenary meeting, on 9 December 1970.

6. In resolution 2673 (XXV) entitled "Protection of journalists engaged in dangerous missions in areas of armed conflict", the General Assembly invited the Economic and Social Council to request the Commission on Human Rights to consider the possibility of preparing a draft international agreement ensuring the protection of journalists engaged in dangerous missions; the Secretary-General was requested to submit a report on the question to the General Assembly at its twenty-sixth session.^{3/}

7. In resolution 2674 (XXV), entitled "Respect for human rights in armed conflicts", the General Assembly solemnly reaffirmed in paragraph 1, that, in order effectively to guarantee human rights, all States should devote their efforts to averting the unleashing of aggressive wars and armed conflicts that violated the Charter of the United Nations and the provisions of the Declaration on Principles of International Law concerning Friendly Relations and Co-operation

^{2/} Documents A/7720 and A/8052 are referred to hereinafter as the first report of the Secretary-General and the second report of the Secretary-General.

^{3/} See A/8370.

among States in accordance with the Charter of the United Nations.^{4/} In paragraph 2, actions of countries which, in flagrant violation of the Charter, continued to conduct aggressive wars and defy the generally accepted principles of the Geneva Protocol of 1925^{5/} and the four Geneva Conventions of 1949,^{6/} were condemned. In paragraph 3, the Assembly considered that those principles should be strictly observed by all States and that States violating those international instruments, should be condemned and held responsible to the world community. In paragraph 4, it was affirmed that the participants in resistance movements and freedom-fighters in southern Africa and territories under colonial and alien domination and foreign occupation, struggling for their liberation and self-determination, should be treated, in case of their arrest, as prisoners of war in accordance with the principles of the Hague Convention of 1907^{7/} and the Geneva Conventions of 1949. In paragraph 5, air bombardments of civilian populations and the use of asphyxiating, poisonous or other gases and of all analogous liquids, materials and devices, as well as bacteriological (biological) weapons, were considered to constitute a flagrant violation of the Hague Convention of 1907, the Geneva Protocol of 1925 and the Geneva Conventions of 1949. In paragraph 6, the Assembly recognized the necessity of developing additional international instruments providing for the protection of civilian populations and freedom-fighters against colonial and foreign domination as well as against racist régimes.

^{4/} General Assembly resolution 2625 (XXV).

^{5/} League of Nations, Treaty Series, vol. XCIV (1929), No. 2138.

^{6/} First: Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, of 12 August 1949 (United Nations, Treaty Series, vol. 75 (1950), No. 970);

Second: Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, of 12 August 1949 (ibid., No. 971);

Third: Geneva Convention relative to the Treatment of Prisoners of War, of 12 August 1949 (ibid., No. 972);

Fourth: Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949 (ibid., No. 973).

^{7/} Carnegie Endowment for International Peace, The Hague Conventions and Declarations of 1899 and 1907 (New York, Oxford University Press, 1915)

8. In resolution 2675 (XXV) entitled "Basic principles for the protection of civilian populations in armed conflicts", the General Assembly noted with appreciation the report of the Secretary-General on respect for human rights in armed conflicts. It affirmed the following eight basic principles for the protection of civilian populations in armed conflicts, without prejudice to their future elaboration within the framework of progressive development of the international law of armed conflict:

"1. Fundamental human rights, as accepted in international law and laid down in international instruments, continue to apply fully in situations of armed conflict.

"2. In the conduct of military operations during armed conflicts, a distinction must be made at all times between persons actively taking part in the hostilities and civilian populations.

"3. In the conduct of military operations, every effort should be made to spare civilian populations from the ravages of war, and all necessary precautions should be taken to avoid injury, loss or damage to the civilian populations.

"4. Civilian populations as such should not be the object of military operations.

"5. Dwellings and other installations that are used only by civilian populations should not be the object of military operations.

"6. Places or areas designated for the sole protection of civilians, such as hospital zones or similar refuges, should not be the object of military operations.

"7. Civilian populations, or individual members thereof, should not be the object of reprisals, forcible transfers or other assaults on their integrity.

"8. The provision of international relief to civilian populations is in conformity with the humanitarian principles of the Charter of the United Nations, the Universal Declaration of Human Rights and other international instruments in the field of human rights. The Declaration of Principles for International Humanitarian Relief to the Civilian Population in Disaster Situations, as laid down in resolution XXVI adopted by the twenty-first

International Conference of the Red Cross,^{8/} shall apply in situations of armed conflict, and all parties to a conflict should make every effort to facilitate this application."

8/ Resolution XXVI reads as follows:

"The XXist International Conference of the Red Cross,

"noting that in the present century the international community has accepted increased responsibility for relief of human suffering in any form,

"whereas human suffering in all its manifestations is of deep concern to the conscience of mankind and world opinion requires effective action for the relief of such suffering,

"affirming that one of the major purposes of the community of nations as laid down in the Charter of the United Nations is to achieve international co-operation in solving international problems of an economic, social, cultural or humanitarian nature,

"noting with satisfaction the improvements in the ability of the international community to provide various forms of humanitarian relief as a result of international agreements and through the International Red Cross and other impartial international humanitarian organizations,

"recognizing that further steps have to be taken by the international community to ensure prompt and effective relief action to civilian populations in natural or other disaster situations,

"adopts the following Declaration of Principles:

- "1. The fundamental concern of mankind and of the international community in disaster situations is the protection and welfare of the individual and the safeguarding of basic human rights.
- "2. Relief by impartial international humanitarian organizations for civilian populations in natural or other disaster situations should as far as possible be treated as a humanitarian and non-political matter and should be so organized as to avoid prejudicing sovereign and other legal rights in order that the confidence of the parties to a conflict in the impartiality of such organizations may be preserved.
- "3. The activities of impartial international humanitarian organizations for the benefit of civilian populations should be co-ordinated in order to secure prompt action and effective allocation of resources and to avoid duplication of effort.
- "4. Disaster relief for the benefit of civilian populations is to be provided without discrimination and the offer of such relief by an impartial international humanitarian organization ought not to be regarded as an unfriendly act.

9. In resolution 2676 (XXV), entitled "Respect for human rights in armed conflicts", the General Assembly, in paragraph 1, called upon all parties to any armed conflict to comply with the terms and provisions of the Geneva Convention relative to the Treatment of Prisoners of War, of 12 August 1949, so as to ensure the humane treatment of all persons entitled to the protection of the Convention and, inter alia, to permit regular inspection, in accordance with the Convention, of all places of detention of prisoners of war by a protecting Power or humanitarian organization such as the International Committee of the Red Cross. In paragraph 2, it endorsed the continuing efforts of the International Committee of the Red Cross to secure the effective application of the Convention. In paragraph 3, it requested the Secretary-General to exert all efforts to obtain humane treatment for prisoners of war, especially for the victims of armed aggression and colonial suppression. In paragraph 4, the General Assembly urged compliance with article 109 of the Convention, which required repatriation of seriously wounded and seriously sick prisoners of war and which provided for agreements with a view to direct repatriation or internment in a neutral country of able-bodied prisoners of war, who had undergone a long period of captivity. In paragraph 5, the Assembly urged that combatants in all armed conflicts not covered by article 4 of the third Geneva Convention of 1949 be accorded the same humane treatment defined by the principles of international law applied to prisoners of war. In paragraph 6, the Assembly urged strict compliance with the provisions of the existing international instruments concerning human rights in

8/ (continued)

- "5. All States are requested to exercise their sovereign and other legal rights so as to facilitate the transit, admission and distribution of relief supplies provided by impartial international humanitarian organizations for the benefit of civilian populations in disaster areas when disaster situations imperil the life and welfare of such populations.
- "6. All authorities in disaster areas should facilitate disaster relief activities by impartial international humanitarian organizations for the benefit of civilian populations."

armed conflicts and urged those States which had not yet done so to ratify or to accede to the relevant instruments.

10. Resolution 2677 (XXV), entitled "Respect for human rights in armed conflicts", expressed in its third preambular paragraph, the General Assembly's conviction of the continuing value of existing humanitarian rules relating to armed conflicts and in particular the Hague Conventions of 1899 and 1907, the Geneva Protocol of 1925 and the Geneva Conventions of 1949. In the fourth preambular paragraph it was stated that, because existing humanitarian rules did not adequately meet all contemporary situations of armed conflict, it was necessary to develop the substance of those rules and procedures for their implementation. In the fifth preambular paragraph, the principles contained in resolution XXIII of the International Conference on Human Rights held at Teheran in 1968, and in General Assembly resolutions 2444 (XXIII) and 2597 (XXIV) were reaffirmed. In the sixth preambular paragraph, the General Assembly expressed its awareness of the importance and complexity of the tasks undertaken in pursuance of those resolutions, which in its view required the continuing attention and concern of the United Nations, the International Committee of the Red Cross and the international community as a whole. In the ninth preambular paragraph, the Assembly welcomed the decision of the International Committee of the Red Cross to convene at Geneva, from 24 May to 12 June 1971, a conference on the reaffirmation and development of international humanitarian law applicable to armed conflicts, to be attended by government experts. In the tenth preambular paragraph the belief was expressed that one or more plenipotentiary diplomatic conferences of States parties to the Geneva Conventions and other interested States might be convened at an appropriate time, after due preparation, in order to adopt international legal instruments for the reaffirmation and development of humanitarian law applicable to armed conflicts.

11. In paragraph 1 of resolution 2677 (XXV), the General Assembly called upon the parties to any armed conflict to observe the rules laid down in the Hague Conventions of 1899 and 1907, the Geneva Protocol of 1925, the Geneva Conventions of 1949 and other humanitarian rules applicable in armed conflicts and invited those States, which had not yet done so to adhere to those instruments. In paragraph 2, the hope was expressed that the conference of government experts to be convened in 1971 by the International Committee of the Red Cross would consider further what

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development was required in existing humanitarian laws applicable to armed conflicts, and that it would make specific recommendations in that respect, for consideration by Governments. In paragraph 3, the General Assembly requested the Secretary-General: (a) to invite early comments by Governments on his reports; (b) to transmit his reports and the comments of Governments thereon, together with the records of relevant discussions and resolutions of the General Assembly, the Economic and Social Council and the Commission on Human Rights, to the International Committee of the Red Cross for consideration, as appropriate, by the conference of government experts; (c) to present the comments received to the General Assembly, at its twenty-sixth session, and to report at that session on the results of the conference of government experts to be convened by the International Committee of the Red Cross and on any other relevant developments. In paragraph 4, the General Assembly decided to consider the question again, in all its aspects, at the twenty-sixth session.

12. In pursuance of paragraph 3 (a) of resolution 2677 (XXV), the Secretary-General invited Governments to submit their comments on his reports.^{9/} As provided in paragraph 3 (b) of the resolution, the reports of the Secretary-General and the comments of Governments thereon, together with the records of relevant discussions and resolutions of the General Assembly, the Economic and Social Council and the Commission on Human Rights, were transmitted to the Conference of Government Experts on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts convened by the International Committee of the Red Cross.

13. The purpose of the present report is to provide the General Assembly with a survey of the results of that Conference and of other relevant developments relating to the protection of human rights in armed conflicts, as requested in paragraph 3 (c) of General Assembly resolution 2677 (XXV). Section I contains a general description of the organization, purposes and character of the Conference, as well as the outcome of its work. Section II reviews the proposals made on the questions discussed at the Conference. Section III contains information received by the Secretary-General on certain developments arising out of activities of various non-governmental bodies interested in the problem.

^{9/} The comments by Governments on the reports of the Secretary-General (A/7720 and A/8052) are contained in documents A/8313 and addenda.

I. ORGANIZATION, PURPOSES AND WORK OF THE CONFERENCE OF
GOVERNMENT EXPERTS CONVENED BY THE INTERNATIONAL
COMMITTEE OF THE RED CROSS

14. The Conference of Government Experts on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts was held at Geneva from 24 May to 11 June 1971. On the invitation of the International Committee of the Red Cross government experts were sent by: Australia, Austria, Belgium, Brazil, Burundi, Canada, Congo (Democratic Republic of), Denmark, Ethiopia, the Federal Republic of Germany, Finland, France, the German Democratic Republic, Hungary, India, Indonesia, Israel, Italy, Japan, Jordan, Kenya, Lebanon, Mexico, the Netherlands, Nigeria, Norway, Pakistan, the Philippines, Poland, Romania, Saudi Arabia, Spain, Sweden, Switzerland, the Union of Soviet Socialist Republics, the United Arab Republic, the United Kingdom of Great Britain and Northern Ireland, the United States of America and Yugoslavia. The experts included senior diplomats, legal advisers and other high ranking officials of the Ministries of Foreign Affairs, Justice, Health and National Defence, as well as university professors.

15. The President of the International Committee of the Red Cross invited the Secretary-General to be represented at the Conference. The Secretary-General designated for the purpose Mr. Marc Schreiber, Director of the Division of Human Rights, who was assisted by two other members of the Division of Human Rights.

16. As stated in the invitation issued by the ICRC, and confirmed by the rules of procedure, proposed by the ICRC and adopted by the Conference, its purpose was, in the light of resolution XIII of the twenty-first International Conference of the Red Cross,^{10/} to obtain expert opinion which would enable the Committee to draw up concrete draft rules, for submission to all Governments, on the reaffirmation and development of international humanitarian law applicable in armed conflicts.

17. At the first plenary meeting, the Conference elected Mr. Jean Pictet, Vice-President of the ICRC, as its Chairman. Mr. W. Riphagen (Netherlands), Mr. A. Cristescu (Romania) and Mr. S. Gonzalez Gálvez (Mexico) were elected Vice-Chairmen. The Conference established four commissions, chaired respectively by Mr. N. Singh (India), Mr. E.G. Lee (Canada), Mr. S. Dabrowa (Poland) and Mr. S. Gonzalez Gálvez (Mexico).

^{10/} See for the text of this resolution A/7720, annex I, section D.

18. Except for the opening meeting, all meetings of the Conference were held in private. The rules of procedure of the Conference also provided that the government experts would speak in their personal capacity and that their statements would not bind in any way the Governments that had nominated them. It was further provided that the Conference would not adopt any resolutions or make any recommendations. Although observations and proposals could be submitted in writing, no votes were to be taken.

19. The documentation of the Conference consisted principally of: (a) documents I to VIII, prepared by the International Committee of the Red Cross,^{11/} (b) the Report on the work of the Conference of Red Cross Experts on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts, held at The Hague from 1 to 6 March 1971,^{12/} (c) the reports of the Secretary-General, the records and other documents of the United Nations transmitted to the ICRC, in accordance with resolution 2677 (XXV) of the General Assembly; (d) the documents supplied by the Secretary-General concerning the protection of journalists engaged in dangerous missions.

^{11/} International Committee of the Red Cross, Conference of Government Experts on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts, Geneva, 24 May - 12 June 1971.

- Document I: Introduction (CE/1b);
- Document II: Measures intended to reinforce the implementation of the existing law (CE/2b);
- Document III: Protection of the civilian population against dangers of hostilities (CE/3b);
- Document IV: Rules relative to behaviour of combatants (CE/4b);
- Document V: Protection of victims of non-international armed conflicts (CE/5b);
- Document VI: Rules applicable in guerrilla warfare (CE/6b);
- Document VII: Protection of the wounded and sick (CE/7b);
- Document VIII: Annexes (CE/8b).

^{12/} This Conference, also convened by the ICRC, was attended by experts, delegated by thirty-four National Red Cross, Red Crescent and Red Lion and Sun Societies, who proceeded to a broad exchange of views.

20. The agenda of the Conference was as follows:

1. Protection of the wounded and sick.
2. Protection of victims of non-international armed conflicts.
3. Rules applicable in guerrilla warfare.
4. Protection of the civilian population against dangers of hostilities.
5. Rules relative to behaviour of combatants.
6. Measures intended to reinforce the implementation of the existing law.

The items were allocated to the four commissions, as follows: item 1 to Commission I; items 2 and 3 to Commission II; items 4 and 5, as well as the question of the protection of journalists engaged in dangerous missions, to Commission III; item 6 to Commission IV.

21. Commission I prepared a draft Protocol on the Protection of the Wounded and Sick, which would be additional to the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949 (see annex I below). It also adopted a draft Protocol on the Protection of the Wounded and Sick, which would be additional to article 3 common to the four Geneva Conventions of 12 August 1949, which related to armed conflicts not international in character (see annex II below). The ICRC proposed that the question of the safety of medical transports be discussed, but the Commission decided to postpone its consideration to a second conference of government experts, in which specially qualified persons would participate. Before such a second conference, Governments would have the opportunity of examining the technical problems and the ICRC would, for its part, continue its studies and complete its documentation by including the points of view of Governments, of the International Civil Aviation Organization, of the Inter-Governmental Maritime Consultative Organization and of the International Telecommunication Union.

22. Commission II devoted most of the time allotted to it to a discussion of various aspects of the problem of protection of victims of non-international conflicts. It did not arrive at any concrete conclusions. On the question of guerrilla warfare, only preliminary remarks were made and the Commission did not consider the question of internal disturbances and tensions to which the ICRC documentation had referred.

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23. Commission III examined questions relating to the protection of the civilian population. Questions concerning the standards of behaviour of combatants were only briefly touched upon.

24. Commission IV considered the questions related to measures intended to reinforce the implementation of existing law; it did not reach any specific conclusions. The ICRC was invited to continue the study of these matters and possibly send appropriate questionnaires to Governments. It may be noted that in the course of the discussions on questions relating to the supervision of the observance of the law in force, the representative of the ICRC stated that after a careful examination of the tasks falling upon protecting Powers under the Geneva Conventions of 1949, the Committee had arrived at the conclusion that all those tasks could be considered as having a humanitarian character, and that the ICRC, therefore, would be ready to assume such tasks, under the conditions provided for in the Conventions.

25. The Conference was essentially an occasion for qualified experts, many of them occupying governmental positions, to express their views on the issues raised in the agenda. Those issues, as studied in the documentation prepared by the ICRC, corresponded, in many instances, to those dealt with in the Secretary-General's reports presented to the General Assembly at its twenty-fourth and twenty-fifth sessions. While many interesting points of view were expressed and commented upon, there was only little negotiation of specific proposals submitted to the Conference and, except for the draft protocols on the protection of the wounded and the sick, no agreed texts were adopted. The Conference did not therefore submit any specific recommendations to Governments. The report on the Conference prepared by the ICRC,^{13/} as well as section II of this report, which reviews the proposals made in the Conference and relates them, as appropriate, to the suggestions contained in the reports of the Secretary-General, should help in assessing the opinions of the government experts assembled by the ICRC as to the developments required at the present time regarding humanitarian rules applicable in armed conflicts.

^{13/} Copies of this report will be sent by the ICRC to the Governments parties to the Geneva Conventions of 1949, and will be made available to the members of the Committee concerned.

26. At the closing meeting of the Conference, the President of the ICRC, Mr. Marcel Naville, stated: "The debates of the Conference have shown that solutions are possible, that they are desirable and desired and that, consequently, it is necessary to continue the work of the reaffirmation and development of the humanitarian law".

27. At the same meeting, the President of the ICRC also announced that having concluded that a further consultation of the government experts was necessary, the ICRC would convene, in April or May 1972, in Geneva, another conference of government experts, perhaps for a period somewhat longer and with a broader representation. The International Committee of the Red Cross would try to prepare several draft protocols, taking into account, as far as possible, the various opinions expressed at the first Conference, but without necessarily proposing compromise solutions or systematically searching for common denominators.

28. In the course of the debates of the Conference, many government experts referred to, or expressed their support for, various considerations and suggestions contained in the two reports of the Secretary-General on respect for human rights in armed conflicts. In his interventions, the representative of the Secretary-General explained and substantiated those suggestions and stressed the importance attached in the United Nations to the issues relating to respect for human rights in armed conflicts. He pointed out in particular that the interests and activities of the Organization in that field were based not only on the provisions of the Charter concerning human rights, in accordance with which all Members pledged themselves to take joint and separate action in co-operation with the Organization for the achievement of universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion (Articles 55 and 56), but also on one of the general purposes of the United Nations that of achieving "international co-operation, in solving international problems of... a humanitarian character" (Article 1, paragraph 3). The representative of the Secretary-General, as well as a number of government experts, also drew the attention of the Conference to the fact that the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, and

other relevant international instruments adopted within the framework of the United Nations, were applicable, in accordance with their provisions, in time of war as in time of peace, and that they should therefore be taken fully into account when additional instruments developing existing international humanitarian law were prepared.

II. QUESTIONS DISCUSSED AT THE CONFERENCE

29. In order to facilitate the evaluation by Member States of the contribution made by the Conference to the study of the question of respect for human rights in armed conflicts in the light of the previous resolutions of the General Assembly on the subject, section II of the present report summarizes the specific draft proposals contained in documents II to VII submitted by the ICRC to the Conference, and the written proposals submitted directly to the Conference by various government experts. To ensure a continuity between the present and previous reports of the Secretary-General on respect for human rights in armed conflicts, the issues considered by the Conference are reviewed in the sub-sections below in the order in which they were presented in the second report of the Secretary-General (A/8052). For the convenience of the reader, the suggestions and observations of the Secretary-General are also briefly summarized. Within each sub-section, the order in which the different issues were debated in the four Commissions of the Conference is followed.

A. PROTECTION OF CIVILIANS

1. The question of the form and scope of a draft international instrument relating to the protection of civilians

30. In paragraph 37 of the second report of the Secretary-General (A/8052), it was suggested that the formulation of detailed standard minimum rules, for further elaborating and amplifying the three principles affirmed by the General Assembly in resolution 2444 (XXIII),^{14/} might prove useful for the protection of civilians

^{14/} These principles were the following: "(a) that the right of the parties to a conflict to adopt means of injuring the enemy is not unlimited; (b) that it is prohibited to launch attacks against the civilian population as such; (c) that distinction must be made at all times between persons taking part in the hostilities and members of the civilian population to the effect that the latter be spared as much as possible".

against military operation in time of armed conflicts. In paragraph 38, suggestions were made as to matters concerning which norms could be established. Resolution 2675 (XXV) of the General Assembly affirmed eight basic principles for the protection of civilian populations in armed conflicts.

31. In document III prepared for the Conference, the International Committee of the Red Cross suggested that a protocol relating to the protection of the civilian population in armed conflicts should be drafted. Fifteen basic rules were suggested, which would be preceded by a preamble and accompanied by rules of implementation.^{15/} In the same document, the ICRC included an outline for draft regulations on the strengthening of the guarantees afforded by international humanitarian law to non-military civil defence organizations.^{16/}

32. In paragraph 41 of the second report of the Secretary-General it was stated that the suggested minimum standard rules would apply to an armed conflict without any further qualification; in particular they would apply irrespective of whether the conflict would be international or national. They would also apply to all acts of violence committed against the adverse party, whether in defence or in offence.

33. As regards the field of application of the basic rules to be included in a protocol, the ICRC had indicated that such rules were intended to apply in all types of armed conflicts.^{17/}

34. The government experts from Spain^{18/} and Norway (see para. 112 below), in their respective written proposals submitted at the Conference, expressed also the view that the protocol which was envisaged should apply to all armed conflicts. In their proposal, the government experts from Spain stated that "in view of its limited relationship to the Hague Convention of 1907 and to the fact that the

^{15/} CE/3b, pp. 7-8. See for the draft of these rules, *Ibid.*, pp. 129-138.

^{16/} *Ibid.*, pp. 151-156.

^{17/} CE/3b, p. 8.

^{18/} CE/COM III/41 and CE/COM III/45.

Fourth Geneva Convention is applicable only in international armed conflicts, it would seem that this Protocol should be a separate one". They further pointed out that the general provisions of the protocol tended to exclude the possibility of making reserves. The government experts from Mexico, the Netherlands, Sweden, Switzerland and the United Arab Republic in their working paper on an "Outline of an instrument on the protection of civilians against the dangers of hostilities",^{19/} proposed however that the instrument as a whole should apply to international conflicts. The question of whether and to what extent it should be applicable in armed conflicts not of an international character was left open, for further consideration. In accordance with another provision of the working paper, the rules to be included in the instrument would apply to all acts of violence committed against the adverse Party, whether in defence or in offence.

2. Distinction between civilian populations and persons taking part in military operations

35. Resolution 2444 (XXIII) of the General Assembly provided, inter alia, that distinction must be made, at all times, between persons taking part in the hostilities and members of the civilian population to the effect that the latter be spared as much as possible. In accordance with principle 2 of resolution 2675 (XXV) of the General Assembly, in the conduct of military operations during armed conflicts, a distinction must be made at all times between persons actively taking part in the hostilities and civilian populations. In principle 3, it was stated, inter alia, that every effort should be made to spare civilian populations from the ravages of war. Principle 4 provided that civilian populations as such should not be the object of military operations.

36. In document III, the ICRC proposed a further reaffirmation of that principle. The relevant draft proposal contained the following elements: (a) the obligation to make, at all times, a distinction between persons directly participating in military operations and persons belonging to the civilian population; (b) the

^{19/} CE/COM III/44, arts. 2 and 4.

obligation to spare the civilian population as much as possible; (c) the obligation to restrict attacks in all circumstances to military objectives alone.^{20/}

37. Several amendments submitted at the Conference proposed changes or deletions in the ICRC draft. Thus, a proposal submitted by the government experts from Denmark suggested to replace the formulations "to spare the civilian population as much as possible" and "to restrict attacks in all circumstances to military objectives alone" with formulations, which would use a wording closer to that of the relevant principles in General Assembly resolution 2675 (XXV), and read as follows: "in the conduct of military operations every effort should be made to spare the civilian population"; "civilian population as such should not be the object of military operations";^{21/} The government experts from Sweden proposed to maintain in the draft only the obligation to make, at all times, a distinction between persons directly participating in military operations and persons belonging to the civilian population.^{22/} An amendment by the experts from the United Arab Republic, supported by those from Norway and Spain, proposed the deletion of the word "as much as possible" from the wording "to spare the civilian population as much as possible."^{23/} The deletion of the word "directly" in the ICRC text concerning the distinction between persons participating in military operations and civilians (see para. 36 above) was proposed by the government experts from France.^{24/}

38. A differently formulated draft for the principle of distinction was proposed by the government experts from Romania. Their proposal suggested that a clear distinction between persons taking a direct and immediate part in military operations and the civilian population should be made. A wording was also proposed to the effect that the civilian population, its dwellings, property or any other utilities used by or useful to it would never be the object of military operations, and should be spared, in all circumstances, from the ravages of war.^{25/}

^{20/} CE/36, p. 130.

^{21/} CE/COM III/4.

^{22/} CE/COM III/17.

^{23/} CE/COM III/5, 7 and 14.

^{24/} CE/COM III/11.

^{25/} CE/COM III/6.

3. Definition of civilian population

39. In paragraph 38 of the second report of the Secretary-General (A/8052) it was proposed that a general understanding of the terms "civilians" or "civilian population" would have to be arrived at in order to make clear the position as to who were to be the beneficiaries of the protection afforded by the suggested standard minimum rules protecting civilians from the dangers of military operations. In paragraph 39 of the report, it was suggested that, for the purpose of the applicability of such rules, those not taking part in hostilities would be considered as civilians. Thus the following would not be classified as civilians: members of the armed forces or of their auxiliary or complementary organizations; persons not belonging to forces referred to above but nevertheless taking part in the fighting or contributing directly to military operations. Principle 2 of resolution 2675 (XXV) referred to "persons actively taking part in the hostilities" as having to be distinguished at all times, from "civilian populations".

40. In document III, the ICRC submitted two alternative draft proposals. The first defined the civilians as persons who did not form part of the armed forces, nor of organizations attached to them or who did not directly participate in military operations (or: in operations of a military character). It further provided that the above-mentioned persons, whose activities contributed directly to the military effort, did not, for that reason, lose their status of civilians. The second proposal was to the effect that persons who did not form part of the armed forces, nor of organizations attached to them or who did not directly participate in military operations, (or: in operations of a military character) were civilians and as such, they constituted the civilian population.^{26/}

41. Several amendments submitted at the Conference by government experts proposed changes in the wording of the alternative draft proposals of the ICRC, as well as the inclusion in, or the exclusion from, the category of civilian population of certain bodies or persons. Thus, the experts from France suggested the deletion of the word "directly" in the second proposal of the ICRC.^{27/} Under

^{26/} CE/3b, p. 130

^{27/} CE/COM III/11.

a proposal of the government experts from Belgium, the members of army medical services should be included in the category of the civilian population, "despite their military status".^{28/} The government experts from Austria proposed that the members of civil police forces should be considered as part of the civilian population and that "police action against a legitimate combatant who endangers the life of members of the civilian population in a way contrary to international law does not affect the civilian status of a policeman".^{29/} Amendments were submitted by the government experts from Saudi Arabia to both proposals of the ICRC, with a view to excluding from the category of civilian population not only persons who directly participated in military operations but also "persons who indirectly contribute to military operations".^{30/}

42. Other government experts proposed definitions of the civilian population closer to the second proposal of the ICRC (see para. 40 above) and to the suggestions made in the second report of the Secretary-General (see para. 39 above). Thus, in the working paper submitted by the government experts from Mexico, the Netherlands, Sweden, Switzerland and the United Arab Republic, the civilian population was defined as consisting of all persons not belonging to one or the other of the following categories: (a) members of armed forces; (b) persons who did not belong to the forces referred to above, but who were directly participating in military operations.^{31/} Similar proposals, in their substance, were presented by the government experts from Mexico^{32/} and from Canada.^{33/} The government

^{28/} CE/COM III/2.

^{29/} CE/COM III/22.

^{30/} CE/COM III/3.

^{31/} CE/COM III/44, art. 5.

^{32/} CE/COM III/8.

^{33/} CE/COM III/9.

experts from the United Kingdom^{34/} and from Belgium^{35/}, proposed the formulation: "not actively participating in military operations" instead of that of "not directly participating" in such operations, the word "actively" having been used in resolution 2675 (XXV) of the General Assembly. In proposals submitted by the government experts from Romania^{36/} and by those from Brazil^{37/}, non-participation in military operations should be qualified not only by the word "directly" but also by the word "immediately". The drafts submitted by the government experts from the United Kingdom and Romania maintained the provision contained in the first draft proposal of the International Committee of the Red Cross, in accordance with which persons belonging to the civilian population did not lose their status for the reason that their activities contributed directly to the military efforts.

4. Protection of civilian population

(a) "General protection"

43. In paragraph 42 (a) of the second report of the Secretary-General (A/8052), the prohibition of attacks directed against the civilian population as such, whether with the objective of terrorizing it or for any other reason, was suggested for inclusion in the standard minimum rules for the protection of civilian population in armed conflicts. In paragraphs 42 (c) and (d) of the report, the prohibition, in all circumstances, of the use of the civilian population as an object of reprisals, as well as the prohibition of its use as a shield to shelter military personnel from attacks was also specifically mentioned. In resolution 2675 (XXV), principle 4 stated that civilian populations as such should not be the object of military operations and principle 7 provided that civilian populations, or individual members thereof, should not be the object of reprisals, forcible transfers or other assaults on their integrity.

^{34/} CE/COM III/20.

^{35/} CE/COM III/2.

^{36/} CE/COM III/ 6.

^{37/} CE/COM III/15b.

44. The text proposed by the ICRC provided that the civilian population should enjoy general protection against dangers arising from military operations. In particular, the civilian population should not be the object of attacks launched directly against it, should not be used, by its presence, to render certain points or areas immune from military operations, and neither as a whole nor the individual members thereof, must never be made the object of reprisals. As an exception to the general rule, it was provided that "civilians whose activities directly contribute to the military effort assume, within the strict limits of these activities and when they are within a military objective, the risks resulting from an attack directed against that objective".^{38/}

45. Several amendments submitted at the Conference by the government experts were directed at the wording used in the ICRC draft. Thus, the Government experts from Saudi Arabia suggested to replace the expression "general protection" by the expression "every protection" and to extend the protection not only against direct attacks but also against indirect attacks.^{39/} The Government experts from Switzerland proposed to utilize the term "protection" instead of "general protection".^{40/} An amendment was submitted by the Government experts from Hungary to replace the wording of the proposal of the ICRC, concerning the prohibition of the use of the civilian population to render certain points or areas immune from military operations by the wording "to render certain military objectives immune from attack".^{41/}

46. Proposals similar in their substance were made by the government experts from Romania^{42/} and Brazil^{43/}. They specified that the civilian population would be always entitled to effective and general protection against all dangers arising

^{38/} CE/3b, p. 131.

^{39/} CE/COM III/30.

^{40/} CE/COM III/18.

^{41/} CE/COM III/16.

^{42/} CE/COM III/13.

^{43/} CE/COM III/15.

from military operations and that it should never be the target of attack. The government experts from Romania further proposed to add to the text submitted by the ICRC on the prohibition of reprisals against the civilian population (see para. 44 above) after the word "never", the words "in any circumstances". An amendment submitted by the government experts from France^{44/} and an amendment of the government experts from Sweden^{45/} drafted in similar terms provided that "In the conduct of military operations, the parties to the conflict shall make every effort to spare the civilian population from the ravages of war. The civilian population as such shall not be the target of military operations". The amendment made by the government experts from France further proposed to delete from the draft of the ICRC (see para. 44 above), the words "whose activities directly contribute to the military effort" and "within the strict limits of these activities".^{44/}

47. A proposal submitted by the government experts from Norway aimed at replacing the ICRC draft by more detailed provisions. The amendment which was entitled "Basic principles and rules for the protection of civil populations in all armed conflicts" contained five provisions on the subject, the wording of which was, in general, similar to that of principles 1, 3, 4, 5 and 7 of General Assembly resolution 2675 (XXV), with the addition of the prohibition to use the civilian population as a shield for military operations.^{46/}

48. In the working paper, submitted by the government experts from Mexico, the Netherlands, Sweden, Switzerland and the United Arab Republic, there were provisions for the prohibition of attacks against the civilian population as such, against individuals and groups of civilians, as well as of the use of reprisals, forcible transfers or other assaults on the integrity of the civilian population as a whole, or groups of it or individual members of it.^{47/}

^{44/} CE/COM II/12.

^{45/} CE/COM III/17.

^{46/} CE/COM III/19.

^{47/} CE/COM III/44, arts. 6 and 7.

(b) "Special protection"

49. Paragraph 43 of the second report of the Secretary-General (A/8052), pointed out that, as suggested by the Commission on the Status of Women, special consideration might be given to the question of specific measures of protection relating to children and women in periods of armed conflict. In paragraph 55 of the report, in connexion with the possibility of establishing refuges or sanctuaries, a suggestion was made to give priority, among others, to children under 15, expectant mothers, mothers of children under 7 and aged persons.

50. The draft proposals submitted to the Conference in document III of the ICRC stated that children of less than 15 years of age should be the object of special protection, the parties to the conflict having the duty to make every effort to keep them away and safe from military operations. The ICRC further proposed a text to the effect that the parties to a conflict should facilitate the task of medical personnel and authorize the civil defence service personnel to accomplish their mission "especially when their functions are mainly exercised in favour of the civilian population and individuals".

51. An amendment submitted by the government experts from Switzerland^{48/} suggested to replace "special protection" by "special protected categories".^{49/} An amendment proposed by the government experts from Brazil read as follows: "Children under the age of 15 years shall be entitled to special protection. Parties to a conflict shall undertake to keep them at a safe distance from military operations."^{50/}

52. More detailed provisions were suggested in connexion with the protection of certain categories of persons belonging to the civilian population. Thus, an amendment of the government experts from Nigeria, provided that: "(i) Children must not be molested or killed. They must be protected and cared for; (ii) Youths and school children must not be attacked unless they are engaged in open hostility against the military forces; (iii) Women must be protected against any attack on

^{48/} CE/3b, pp. 131-132.

^{49/} CE/COM III/18.

^{50/} CE/COM III/21.

their person and honour and in particular against rape or any form of indecent assault; (iv) Male civilians who are hostile to the military forces are to be dealt with firmly but fairly. They must be humanely treated; (v) All military and civilian wounded must be given necessary medical attention and care. They must be respected and protected in all circumstances; (vi) Foreign civilian nationals on legitimate business in areas of military operations must not be molested.^{51/} The working paper, submitted by the government experts from Mexico, the Netherlands, Sweden, Switzerland and the United Arab Republic contained provisions relating to children, medical personnel and civil defence personnel, close to the ICRC draft, as well as a provision regarding the protection of women, in particular against rape or any form of indecent assault.^{52/}

53. Proposals to include in the special protected categories the civil police forces or police officers were submitted by the government experts from Austria^{53/} and Switzerland.^{54/}

54. Referring to the communication received from the Office of the United Nations High Commissioner for Refugees (see A/7720, annex I, B) the representative of the Secretary-General pointed out that not all refugees were adequately protected by the fourth Geneva Convention. The representative of the ICRC agreed that the question deserved attention and a further study.

5. Military and non-military objectives

(a) Distinction

55. The question of a differentiation to be made between "military" and "non-military" objectives was discussed in paragraphs 140 to 145 of the first report of the Secretary-General (A/7720).

^{51/} CE/COM III/23.

^{52/} CE/COM III/44 arts. 8, 9 and 11.

^{53/} CE/COM III/22. See also paragraph 40 above.

^{54/} CE/COM III/34. This proposal consists in a draft declaration (containing four points) aimed at applying to police officers the fourth Geneva Convention.

56. The draft proposal contained in document III of the ICRC provided that in the conduct of military operations, the distinction must be made, in all times, between military and non-military objectives, so that the latter should be spared as much as possible and attacks restricted, in all circumstances, to military objectives alone.^{55/}

57. Some of the amendments to the proposal of the ICRC submitted by government experts expressed that distinction in less categorical terms. Thus, according to a proposal of the government experts from the United States of America, all possible efforts should be made "to distinguish between military and non-military objectives so that the latter be spared as much as possible".^{56/} An amendment of the government experts from the United Kingdom provided that in the conduct of military operations, "endeavours shall be made at all times to distinguish between military objectives and non-military objectives, so that the latter be spared as much as possible", and that "attacks shall, in all circumstances, be restricted, as far as possible, to military objectives alone".^{57/}

58. A different formulation was proposed by the government experts from Romania, to the effect that, in the conduct of military operations, "a clear distinction must be made at all times between military and non-military objects, so that the latter be spared the devastation of war" and that "military operations must, in all circumstances, be restricted to military objectives only".^{58/}

(b) Definition of non-military objects

59. In paragraphs 42 (e) and 45 of the second report of the Secretary-General (A/8052) dwellings, installations or means of transport, that were used by the civilian population, as well as places and areas designated for the sole protection of civilians, such as hospital zones or similar refuges were indicated as objects which should not constitute targets for attacks or military operations. According to principles 5 and 6 of resolution 2675 (XXV), dwellings and other installations used by civilian populations, as well as places or areas designated for the sole protection of civilians, such as hospital zones or similar refuges, should not be the object of military operations.

^{55/} CE/3b, p. 132.

^{56/} CE/COM III/24.

^{57/} CE/COM III/38.

^{58/} CE/COM III/27.

60. In document III prepared by the ICRC for the Conference, non-military objects were defined as the objects necessarily or essentially designed for the civilian population, even if they should subsequently assume a preponderantly military character, following a transformation of their use. Houses and constructions which sheltered the civilian population or were used by it, food-stuffs and food producing areas as well as water resources were indicated as entering in the category of non-military objects.^{59/}

61. Two amendments to the draft proposal of the ICRC were submitted by government experts. The proposal put forward by the government experts from the United Arab Republic read as follows: "Objects reputed to be non-military are those necessarily or essentially utilized by the civilian population, which shall include, among other objects, houses and constructions which shelter the civilian population or which are used by it, food-stuffs and food producing areas, water resources and constructions designed to regulate such resources."^{60/} In accordance with an amendment of the government experts from the United States, which defined non-military objects in the same manner as the ICRC draft, once those objects were occupied by military personnel or used for military purposes, they became military objectives.^{61/}

62. Several government experts proposed a different approach to the problem of definition, by submitting proposals which defined military objectives and enumerated categories of non-military objects, as was done in paragraphs 2 and 3 of the resolution adopted by the Institute of International Law at its session held at Edinburgh in 1969 (see A/7720, para. 142). The government experts from Brazil suggested to replace the definition proposed by the ICRC by those paragraphs.^{62/} In the working paper submitted by the government experts from Mexico, the Netherlands, Sweden, Switzerland, and the United Arab Republic,^{63/} military objectives were defined, in terms similar to those contained in the resolution of the Institute of International Law, as those which were, in view of their essential characteristics, generally recognized to be of military importance and whose total or partial destruction, in the circumstances ruling

^{59/} CE/3b, p. 133.

^{60/} CE/COM III/28.

^{61/} CE/COM III/24.

^{62/} CE/COM III/25.

^{63/} CE/COM III/44, arts. 11-14.

at the time, offered a military advantage. In accordance with that proposal, the following should be considered as non-military objectives: (a) houses, dwellings, installations or means of transport used by the civilian population, unless used mainly in support of the military effort;^{64/} (b) objects which were indispensable to the survival of the civilian populations,^{65/} such as food-stuffs and producing areas, crops, cattle, water resources and construction designed for the regulation of such resources; (c) objects which, by their nature or use, served primarily humanitarian and peaceful purposes such as medical, religious, educational or cultural institutions.^{66/} A proposal of the government experts from Romania contained a definition of non-military objects, in accordance with which such objects were those not directly producing arms, military equipment and means of combat or which were not employed directly and immediately by the armed forces even if as a result of a change in their utilization they might subsequently assume a preponderantly military character.^{67/}

(c) Protection of non-military objects

63. The ICRC draft in document III provided for a general protection, against the dangers arising from military operations, of non-military objects, necessarily or essentially designed for the use of civilian population. In particular, they should not be made the object of direct attacks, unless they were used mainly in support of the military effort. The objects indispensable to the survival of civilians, inasmuch as the survival of the civilian population would be threatened, must be neither destroyed nor damaged, nor be made the object of reprisals. The ICRC proposal further provided that non-military objects which were accorded special protection by the law in force should not be used, by their presence, to render certain points or areas immune from military operations and might not be made the objects of reprisals.^{68/}

^{64/} A similar enumeration is given in the second report of the Secretary-General (see para. 57 above).

^{65/} This category is mentioned in the resolution of the 1969 session of the Institute of International Law.

^{66/} Similar provisions are contained in the resolution of the Institute of International Law.

^{67/} CE/COM III/27.

^{68/} CE/3b, p. 133.

64. A different formulation for the protection of non-military objects was suggested at the Conference in a proposal submitted by the government experts from Romania, which stated that non-military objects would be entitled to general protection from the devastation of war and must not be made the object of attack, nor be damaged or destroyed or made the object of reprisals, on condition that they were not used directly and immediately in the conduct of military operations.^{69/}

65. An amendment of the government experts from the United States referred to the objects indispensable to the survival of civilians, proposing to replace the formulation "inasmuch as the survival of civilian population would be threatened" used in the ICRC draft, by the words "unless there are other adequate provisions to ensure the well-being of the civilian population".^{70/}

66. In the working paper submitted by the government experts from Mexico, the Netherlands, Sweden, Switzerland and the United Arab Republic, it was provided that non-military objects might not be the subject of direct attack. Houses, dwellings, installations or means of transport, used by the civilian population must not be the object of attacks directly launched against them, unless they were used mainly in support of the military effort. Objects which were indispensable to the survival of the civilian population must never be subjected to attacks directly launched against them nor be attacked by way of reprisals. Objects which, by their nature or use, served primarily humanitarian and peaceful purposes enjoyed the protection expressly accorded to them under applicable rules of international law and must not be made the object of reprisals.^{71/}

(d) Installations, the destruction of which might result in specially great damage to the civilian population

67. The ICRC draft contained in document III provided that in order to spare the civilian population from the dangers which might result from the destruction of constructions and installations, such as hydro-electric dams, nuclear power

^{69/} CE/COM III/27.

^{70/} CE/COM III/24.

^{71/} CE/COM III/44, arts. 11-14.

stations and dikes, following the release of natural or artificial elements, the interested States or Parties were invited: (a) to agree on a special procedure, in time of peace, whereby a general protection might be assured to the installations designed for essentially peaceful purposes; (b) to agree, during periods of conflicts, to grant special protection - possibly taking existing legal provisions as a basis - to such of those installations the activity of which did not have any or no longer had any relationship with the conduct of military operations.^{72/}

68. The draft proposed by the ICRC was reproduced in the working paper submitted by the government experts from Mexico, the Netherlands, Sweden, Switzerland and the United Arab Republic.^{73/}

69. Some government experts felt, however, that the regulation of the matter should not be left or not entirely left to procedures on which interested States or Parties might or might not agree. Thus the government experts from Romania suggested a draft provision, to the effect that civil engineering constructions, dams, dikes, power plants and networks and objectives of national economic interest for peaceful purposes should be constantly protected and spared by combatants, so as to protect the civilian population from the hazards resulting from the destruction, damage or disruption of the operation of such non-military objects.^{74/} In accordance with an amendment of the government experts from Austria, the installations referred to in the ICRC draft (see para. 67 above) should not be the aim of any military attack. The interested States or Parties should be invited to complete that protection by further agreements.^{75/}

^{72/} CE/3b, p. 134.

^{73/} CE/COM III/44, art. 15.

^{74/} CE/COM III/27.

^{75/} CE/COM III/26.

6. Precautions to be taken to spare the civilian population and non-military objects

70. Paragraph 42 (e) of the second report of the Secretary-General (A/8052) referred to the obligation of the person or persons responsible for ordering or launching an attack to ensure that the objective to be attacked was not the civilian population or the dwellings, installations or means of transport which were occupied by or for the exclusive use of civilians. The obligations of the parties to an armed conflict to take all necessary steps to protect the civilian population, in particular by removing it from the vicinity of objectives of military importance likely to be attacked and to endeavour to refrain, so far as possible, from causing the permanent presence of sizable armed forces and military installations, equipment and material in towns or other places where a large civilian population was located were also mentioned in paragraph 42 (g) and (h) of the report.

71. In document III of the ICRC, there were draft proposals on "active precautions" and "passive precautions" as well as on the obligations of the parties to an armed conflict to identify military objectives, to warn the civilian population, prior to the launching of an attack and to take into consideration the criterion of proportionality, when launching an attack.^{76/}

72. The ICRC proposal on "active" precautions provided that, when a party to a conflict ordered or launched an attack, it should take all necessary steps to spare the civilian population, individuals and non-military objects designed for its use or, as an alternative, "non-military objects which are indispensable to its survival". It further provided that the persons mentioned in the suggested draft protocol as members of the civilian population should benefit from the presumption that they belonged to the civilian population; non-military objects, as enumerated in the protocol, should benefit from the presumption that they had no military character whatsoever.

73. With respect to "passive" precautions, in accordance with the ICRC draft proposal, the Parties to the conflict: (a) should take, so far as possible, all necessary steps to protect the civilian population and individuals and the non-military objects designed for its use (or: indispensable to its survival)

^{76/} CE/3b, pp. 135-137. The draft proposal of the ICRC on the "choice of weapons" is referred to in paragraph 103 below.

under their authority, from the dangers arising from military operations;
(b) should make every effort, either to remove military objectives from threatened areas or to avoid the permanent presence of military objectives in towns or other densely populated areas.

74. The ICRC draft proposals on rules relating to "active" precautions provided under "identification", that those who ordered or launched an attack must ensure that the objective or objectives concerned were not civilian elements, but were identified as military objectives. As to "warnings", it stated that those who ordered or launched an attack must warn the civilian population threatened, whenever the circumstances permitted, so that it might find shelter. The ICRC draft proposal on "proportionality" provided that those who ordered or launched an attack must take into consideration the losses or damage which the attack might inflict on the civilian population and non-military objects designed for its use (or: indispensable to its survival). When there was a choice between several objectives which would obtain the same military advantage, the choice should fall upon that which entailed the least danger to the civilian population and non-military objects designed for its use (or: indispensable to its survival) and the attack should be abandoned, if it would be found that the probable damage would be disproportionate to the military advantage anticipated.

75. Some amendments were submitted to the ICRC proposal on "active precautions" with the view to make it more flexible. Two proposals of the government experts from Italy suggested that non-military objects, intended for the use of the civilian population and individuals, should be qualified by adding the words "which are within the area of the military objective under attack or which are not in a general way secure from the dangers resulting from direct attack on the said objective."^{77/} In their amendment, the government experts of the United Kingdom proposed to replace the words "all necessary steps" by the words "all practicable steps".^{78/}

76. In an amendment submitted by the government experts from Romania, the obligation of warning was formulated in stricter terms than in the ICRC draft,

^{77/} CE/COM III/29 and 29b.

^{78/} CE/COM III/37.

by providing that those "who order or launch an attack must warn the threatened civilian population, so that it may take shelter".^{79/}

77. With respect to "proportionality", a proposal was made by the government experts from Hungary to add a provision stating that "no military advantage may justify an operation in which it is impossible to make a clear distinction between non-military and military objectives".^{80/}

78. A comprehensive proposal which combined the different rules on precautions in attacks against military objectives was made in the working paper submitted by the government experts from Mexico, the Netherlands, Sweden, Switzerland and the United Arab Republic. That draft referred to the duties of the person responsible for ordering or launching an attack concerning the identification of military objectives, the respect of the proportionality rule and the warning of the civilian population, "whenever the circumstances allow". With respect to "warnings", a provision was added to those of the ICRC, in accordance with which such warnings should never discharge the persons responsible for the attack from the duty of observing all the other rules relating to the precautions which should be taken when launching an attack. The working paper further provided that "the person responsible for ordering or launching an attack must take all possible precautions both in the choice of weapons and methods to be used, and in the carrying out of the attack, so as not to cause losses or damage to the civilian population or individuals, or to non-military objects for their use, in the vicinity of a military objective. In particular, in towns and other places with a large civilian population, which are not in the vicinity of military or naval operations, the attack shall be conducted with the greatest degree of precision. It must not cause losses or destruction beyond the immediate surroundings of the objectives attacked. The person responsible for the attack must refrain from or, if possible, suspend the attack if he perceives that the conditions set forth above cannot be respected." With regard to "passive precautions", the working paper, after reproducing the ICRC draft on this matter referred to in paragraph 73 above, proposed the addition of a text, which read as follows: "The Parties to the conflict are prohibited from placing or keeping members of the civilian population subject to their authority in or

^{79/} CE/COM III/27.

^{80/} CE/COM III/30.

near military objectives with the idea of inducing the enemy to refrain from attacking those objectives. The Parties to the conflict are prohibited from placing or using non-military objects which are accorded special protection under the present rules or other rules binding the Parties in or near military objectives with the idea of inducing the enemy to refrain from attacking those objectives."^{81/}

7. The establishment of refuges and sanctuaries for the protection of civilians

79. The question of the establishment of refuges or sanctuaries for the protection of civilians was dealt with in some detail in paragraphs 145 to 148 of the first report of the Secretary-General (A/7720) and in paragraphs 45 to 87 of the second report (A/8052). The following questions were considered: the main objectives of establishing such refuges; the persons eligible to be sheltered; the conditions and obligations to be observed in their establishment; the registration and recognition of sanctuaries; the markings and insignia; control and verification. In those reports, it was suggested to envisage, after a comprehensive analysis and study in depth, the drawing up of an additional protocol to the Geneva Conventions of 1949 or of a separate international instrument dealing with all those matters.

80. In document III, the ICRC had not proposed any draft provisions on "populated areas under particular protection", but had limited itself to the presentation of certain ideas and suggestions on the matter.^{82/}

81. The government experts from Spain submitted a proposal, suggesting that the idea of the existence of zones or areas not containing military objectives might be studied. In the same document, it was stated that declarations of the existence of such zones could be unilateral entailing a subsequent inspection by an impartial international organization. Such declarations and inspections could be made not only in time of peace but also during armed conflicts.^{83/} In the

^{81/} CE/COM III/44, arts. 18, 19 and 21.

^{82/} CE/3b, pp. 89-102; the suggestions are put forward in p. 102.

^{83/} CE/COM III/35.

working paper, submitted by the government experts from Mexico, the Netherlands, Sweden, Switzerland and the United Arab Republic, the question of undefended populated areas, open cities and populated areas under particular protection was mentioned as a possible object of regulation in an instrument on the protection of the civilian population against the dangers of hostilities, without drafting any specific provision in this respect.^{84/}

82. Questions were raised in the course of the discussion as to the practicability and the merits of the suggestions made in the Secretary-General's reports. There appeared to be general agreement that the question might usefully be the subject of further inquiry and study.

8. Protection of the civilian population against certain effects of economic warfare

83. In paragraph 42 (i) of the second report of the Secretary-General (A/8052), it was suggested that consideration should be given to the adoption of a standard minimum rule providing that all interested parties should assume the obligation not to conduct a military blockade in such a way as to cause unnecessary sufferings to civilians, by depriving them of essential food-stuffs, medical supplies and other items necessary for survival.

84. In document III, title III, chapter 4 on "protection of the civilian population against certain methods of economic warfare", the ICRC referred to one of its draft proposals on the protection of non-military objects in accordance with which the objects "indispensable to the survival of civilian population must be neither destroyed, nor damaged, nor be made the object of reprisals in as much as the survival of the civilian population would be threatened".^{85/}

85. The proposals submitted by government experts at the conference to the draft proposals of the ICRC on the protection of non-military objects also referred to certain effects of economic warfare, against which the civilian population should be protected (see paras. 65 and 66 above).

^{84/} CE/COM III/44, p. 6, where articles 16-17 are reserved for the inclusion of rules on this matter.

^{85/} CE/3b, pp. 119-120.

9. International relief action for the civilian population

86. In paragraph 42 (j) of the second report of the Secretary-General (A/8052), the adoption of a standard minimum rule was suggested which would provide that civilians would be entitled to receive, under conditions acceptable to the authorities in control where the civilians found themselves, international assistance and relief, including medical supplies, essential food-stuffs and other items necessary for survival. Principle 8 of resolution 2675 (XXV) of the General Assembly stated that "the provision of international relief to civilian populations is in conformity with the humanitarian principles of the Charter of the United Nations, the Universal Declaration of Human Rights and other international instruments in the field of human rights. The Declaration of Principles for International Humanitarian Relief to the Civilian Population in Disaster Situations, as laid down in resolution XXVI adopted by the twenty-first International Conference of the Red Cross,^{86/} should apply in situations of armed conflicts, and the parties to a conflict should make every effort to facilitate this application".

87. The ICRC made no concrete proposal on the subject in document III, as it considered that international law in force was sufficient. Nevertheless, the document stated that it might prove useful to include some additional specific provisions in that respect in the regulations of execution of the draft protocol on the protection of the civilian population.^{87/}

88. Two proposals were submitted by government experts with respect to the formulation of relevant rules on that subject. In the proposal put forward by the government experts from Norway on a draft protocol on "rules for international humanitarian relief to the civilian population in disaster situations created by armed conflicts", it was stated that relief by impartial humanitarian organizations in such situations should be treated as a humanitarian and non-political matter and should be organized so as to avoid prejudicing sovereign and other legal rights of the State concerned. The relief should be provided without discrimination. The offer of such relief by an impartial

^{86/} See foot-note ^{8/} above.

^{87/} CE/3b, p. 123.

humanitarian organization should not be regarded as an unfriendly act. The proposed rules provided further that the parties to this protocol should exercise their sovereign and other legal rights so as to facilitate the transit, admission and distribution of relief supplies. All authorities in disaster areas should facilitate disaster relief activities by impartial humanitarian organizations for the benefit of civilian populations.^{88/} The working paper submitted by the government experts from Mexico, the Netherlands, Sweden, Switzerland and the United Arab Republic, contained a provision to the effect that "the Parties to a conflict shall exercise their authority in such a way as to facilitate actions aiming at assistance and aid including medical supplies, essential food-stuffs and other material vital to the survival of the civilian population. The offer of such assistance shall not be regarded as an unfriendly act, especially when coming from impartial international organizations".^{89/}

89. A proposal submitted by the government experts from the USSR pointed out that a draft article to be worked out by the ICRC on the matter under discussion must be in full correspondence with the provisions of article 10 of the fourth Geneva Convention in accordance with which such activities were subject to the consent of the Parties to the conflict concerned.^{90/}

10. Strengthening the guarantees afforded by international humanitarian law for non-military civil defence organizations

90. In document III, the ICRC included an "outline for draft regulations", containing proposals for strengthening the guarantees afforded by international humanitarian law for non-military civil defence organizations. Those organizations were defined in the draft regulations as organizations without military character, carrying out, in armed conflicts, humanitarian tasks on behalf of the civilian population and as being set out by their Government or officially authorized to perform those tasks. Their military character was not affected if they were under the authority of the Ministry of War or of National Defence, if their recruitment was made under obligation, if they were organized on a military pattern and if a limited number of their personnel were given light

^{88/} CE/COM II/14.

^{89/} CE/COM III/44, art. 30.

^{90/} CE/COM III/43.

weapons to be used for the maintenance of order or for self-defence. Such organizations might also take orders from the military command, co-operate with military personnel and take care of wounded and sick soldiers. The draft contained detailed provisions on the tasks of the organizations covered by the regulations, on their protection, the protection of their personnel and equipment, as well as on markings.^{91/}

91. The opinions of the government experts on the advisability of preparing detailed regulations on the matters were divided. Though most of the experts favoured such an action, some of them pointed out that the creation of two categories of civilians - those entitled to general protection and those who, belonging to the civil defence, would be entitled to a special protection - might give rise to great difficulties.

92. Several of the government experts who were in favour of drafting detailed regulations on the matter made suggestions relative to their content, some of which took the form of written amendments to the ICRC proposals. Thus, the government experts from Belgium submitted proposals on the definition and the tasks of non-military civil defence organizations, and on the situation which did not affect their non-military character.^{92/} The government experts from Sweden submitted a proposal indicating certain temporary activities of a non-military civil defence organization which, provided that they did not involve fighting activities or otherwise affected the civilian status of the organization, would not deprive it of the protection it was entitled to.^{93/} An amendment of the government experts from Brazil suggested the inclusion of a provision to the effect that when one of the Parties to a conflict was not bound by the proposed regulations, the two Parties might form an ad hoc committee to implement the rules for the protection of the civilian population.^{94/}

^{91/} CE/3b, pp. 151-156.

^{92/} CE/COM III/42.

^{93/} CE/COM III/39.

^{94/} CE/COM III/40.

B. PROTECTION OF COMBATANTS IN INTERNATIONAL ARMED CONFLICTS

93. In paragraph 180 of the first report of the Secretary-General and especially in the second report where the question was dealt with in more detail (A/8052, chap. V), observations were made regarding the rules contained in the Geneva Conventions of 1949 and the Hague Regulations of 1907 with respect to persons entitled to protection as combatants and their rights and obligations. Suggestions were made with a view to their up-dating and adaptation to modern conditions and developments in the field of armed conflicts. It was stated that the task of revising, adapting and completing the Hague Regulations might be undertaken, after adequate preparation, by a conference convened by an interested member State or by the General Assembly itself, if the usefulness and advisability of such an initiative would commend themselves to the General Assembly. The outcome might possibly be an additional protocol to the Geneva Conventions or an independent international instrument.

94. In document IV, the ICRC reviewed the provisions concerning combatants contained in the Regulations appended to the fourth Convention of The Hague of 1907, and indicated the extent to which it was desirable to reaffirm them and to make them more explicit. In the opinion of the ICRC, it was timely to envisage, in the near future, the recasting of the fundamental rules contained in the Hague Regulations, in a new instrument of international law to which all States could adhere explicitly.^{95/}

95. The short debate in the Conference indicated that the government experts appeared to agree to the necessity to supplement the Hague Regulations, by a new international instrument adapted to the conditions of modern warfare, and applicable, in principle, to all categories of armed conflicts.

96. Two proposals were submitted on specific questions concerning the protection of combatants. A proposal introduced by the government experts from the Federal Republic of Germany concerned "ruse" and "perfidy" in armed conflict. It consisted of several draft articles relating to the law of war on land and in the air and in special proposals relating to the law of war at sea and the law of neutrality. It

^{95/} CE/4b, pp. 2-3.

was stated in the draft, that "the use of stratagems is permissible; all permissible acts of war to mislead, delude or otherwise cause an enemy to act to his own detriment are included in this context". It was however further provided that "it is forbidden to employ illicit stratagems in order to gain the enemy's trust with a view to betraying that trust". The following would be specifically forbidden: murder or wounding of persons who were hors de combat; use of persons protected by international law for the purpose of impeding the activities of the enemy; improper use of emblems, enemy flags, insignia or uniforms; simulation of surrender; feigning of emergency of protected persons; abuse of ceasefire agreements. For the maritime war, the same rules would apply, with the exception that use of national flags and insignia of the enemy would be forbidden only during military action or with the intention of gaining a respite, while, for the law of war on land and air, the prohibition was meant to cover any use of such stratagems. It was further suggested that the use by a merchant ship of one of the parties to the conflict of a neutral flag for its protection, thereby endangering neutral ships, would be considered as a breach of the laws of neutrality.^{96/}

97. A proposal of the government experts from Israel was entitled "Rules relative to the protection of airmen in distress". According to the suggested rules, "airmen and other occupants of an aircraft in distress, including aircraft making involuntary or forced landing (hereinafter - 'airmen in distress') shall be considered hors de combat". Furthermore "airmen in distress shall not be attacked in the course of their descent" and "shall be given, upon reaching the ground, a reasonable opportunity to lay down their arms and surrender" and those who "have refused to lay down their arms and surrender, or have attempted to escape, may be subjected to the use of only such force as is strictly necessary in the circumstances to capture them; no fire shall be opened on such airmen without first enabling them to surrender and only after due warning has been given". It was further proposed that "the protection granted to prisoners of war shall apply to airmen in distress, irrespective of whether or not they wear their uniform at the time of their capture". Lastly, the provisional rules provided that "Contracting

^{96/} CE/COM III/C.2.

Parties undertake to bring the provisions contained in the present rules to the knowledge of their military personnel as well as of their civilian population. They also undertake to enact any necessary legislation to provide effective penal sanctions for persons committing or ordering to be committed any violations of these Rules". 27/

C. PROHIBITION AND LIMITATION OF CERTAIN METHODS
AND MEANS OF WARFARE

98. In paragraph 124 of the second report of the Secretary-General (A/8052), it was pointed out that any results of the work obtained by the United Nations in the field of disarmament would obviously affect the efforts to improve the situation with regard to the protection of human rights of all categories of persons involved in armed conflicts. Paragraphs 63 to 69 of the first report (A/7720) and chapter VII of the second report of the Secretary-General briefly reviewed recent activities and resolutions of United Nations organs in the field of disarmament.

99. In paragraph 42 (f) of the second report, it was suggested that the standard minimum rule on protection of civilians in armed conflicts might include a provision regarding the obligation of all the parties to a conflict to take all necessary precautions, both in the choice of the weapons and methods to be used, and in the carrying out of an attack, in order to avoid or to reduce to a minimum, loss or damage that might be caused to the civilian population in the vicinity of the objective under attack. Paragraph 42 (a) suggested that attacks directed against the civilian population as such, whether with the object of terrorizing it or for any other reason should be prohibited. In that connexion, it was stated that consideration might be given to a specific prohibition of the use of "saturation" bombing as a means of intimidatory, demoralizing and terrorizing civilians by inflicting indiscriminate destruction upon densely populated areas. In paragraph 123, the suggestions made in paragraphs 199 and 200 of the first report of the Secretary-General in connexion with a study on napalm weapons and the effects of its possible use were amplified.

100. At the twenty-fifth session of the General Assembly, several resolutions were adopted which contained provisions relating to questions connected with the prohibition and the elimination of weapons of mass destruction. Thus in paragraph 20 of resolution 2734 (XXV), entitled "Declaration on the Strengthening of International Security", the General Assembly inter alia urged all States, particularly the nuclear-weapon States, to make urgent and concerted efforts within the framework of the Disarmament Decade and through other means for the cessation and reversal of the nuclear arms race and the elimination of nuclear weapons and

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other weapons of mass destruction. In resolution 2661 A (XXV) on general and complete disarmament, adopted by the General Assembly on 7 December 1970, the Assembly urged the Governments of the nuclear-weapon Powers to bring about an immediate halt in the nuclear arms race and to cease all testing as well as deployment of offensive and defensive weapons. In articles I and II of the Treaty on the Prohibition of the Emplacement of Nuclear Weapons and Other Weapons of Mass Destruction on the Sea-Bed and the Ocean Floor and in the Subsoil Thereof, the text of which was annexed to resolution 2660 (XXV) adopted by the General Assembly on 7 December 1970, it was provided, inter alia, that the States Parties to the Treaty undertake not to emplant or emplace on the sea-bed and the ocean floor and in the subsoil thereof beyond the outer limit of a sea-bed zone, coterminous to the 12-mile outer limit of the zone referred to in part II of the Convention on the Territorial Sea and the Contiguous Zone, signed at Geneva on 29 April 1958, any nuclear weapons or any other types of weapons of mass destruction as well as structures, launching installations or any other facilities specifically designed for storing, testing or using such weapons. Article I further provided that the above-mentioned undertakings "shall also apply to the sea-bed zone referred to in the same paragraph, except that within such a sea-bed zone, they shall not apply either to the coastal State or to the sea-bed beneath its territorial waters".

101. In operative paragraph 1 of resolution 2662 (XXV) entitled "Question of chemical and bacteriological (biological) weapons", adopted on 7 December 1970, the General Assembly reaffirmed its resolution 2162 B (XXI) of 5 December 1966 and called anew for the strict observance by all States of the principles and objectives of the Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare, signed at Geneva on 17 June 1925. In paragraph 2 of the resolution, the Assembly invited all States that had not already done so to accede to or to ratify that Protocol. In paragraph 5 of its resolution 2674 (XXV) entitled "Respect for human rights in armed conflicts", the General Assembly considered that air bombardments of civilian populations and the use of chemical and biological weapons constituted a flagrant violation of international conventions in force. In paragraph 9 of resolution 2707 (XXV) adopted on 14 December 1970, the General Assembly called

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upon the Government of Portugal not to use chemical and biological methods of warfare against the peoples of Angola, Mozambique and Guinea (Bissau), contrary to the generally recognized rules of international law and to General Assembly resolution 2603 (XXIV) of 16 December 1969.

102. In the documentation prepared by the ICRC for the governmental Conference, some aspects of the question of the prohibition and limitation of certain methods and means of warfare were examined in connexion with the question of the protection of the civilian population^{98/} and that of guerilla warfare.^{99/} Taking into account the activities of the United Nations in the field of disarmament, the ICRC did not propose that this subject should constitute a special item on the agenda of the Conference.^{100/}

103. In the document of the ICRC on protection of the civilian population, a draft rule was proposed, regarding the choice of means of inflicting injuries on the enemy. Under that rule, those responsible for an attack must take the necessary precautions in the choice of weapons and methods of attack, as well as in its execution, so as not to cause losses and damage to the civilian population or individuals or non-military objects in the vicinity of a military objective.^{101/}

104. As regards the question of the protection of the civilian population against certain types of bombardments, the ICRC expressed views concerning the prohibitions of all indiscriminate bombardments or of those deliberately directed against the civilian population, pointing out at the same time, that all these types of bombardments would fall, in any case, under the general existing rules of international law applicable in that field.^{102/}

105. After reviewing different aspects of the protection of the civilian population against the effects of certain weapons, the ICRC concurred with the suggestion made by the Secretary-General as regards a study on napalm weapons and the effects of their possible use, expressing however, the opinion that all incendiary weapons should be included in such a study.^{103/} The ICRC indicated that it would undertake a study on the weapons of that category, if it should appear that they were not to be studied within the framework of the United Nations and if the experts so recommended.^{104/}

^{98/} CE/3b, title II, chaps. 2 and 7 and title III, chaps. 2 and 3.

^{99/} CE/6b, pp. 44-49.

^{100/} CE/1b, p. 19.

^{101/} CE/3b, p. 137.

^{102/} *Ibid.*, pp. 108-109.

^{103/} *Ibid.*, p. 117.

^{104/} CE/1b, p. 21.

106. At the Conference, where the matter was discussed in connexion with the protection of the civilian population, some government experts submitted several proposals with the view to explicitly determine what methods and means of warfare were or should be prohibited. Thus, the government experts from Brazil,^{105/} supported by those from Spain,^{106/} suggested to add, to the provisions of the ICRC draft Protocol on the protection of civilian population the paragraphs 6, 7 and 8 of the resolution adopted by the Institute of International Law at Edinburgh, in September 1969, as a reaffirmation of the rules in force of international law. It may be recalled that the resolution stated that existing international law prohibited: (a) any action whatsoever, irrespective of the type of weapons used, designed to terrorize the civilian population; (b) the use of all weapons which, by their nature, affected indiscriminately both military objectives and non-military objects, or both armed forces and civilian populations, and in particular, the use of weapons, the destructive effect of which was so great that it could be limited to specific military objectives or was otherwise uncontrollable (self-generating weapons), as well as of "blind" weapons; (c) all attacks for whatever motive or by whatsoever means for the annihilation of any group, region or urban centre, with no possible distinction between armed forces and civilian populations or between military objectives and non-military objects.

107. In the working paper submitted by the government experts from Mexico, the Netherlands, Sweden, Switzerland and the United Arab Republic, several draft provisions were included concerning prohibited methods and means of warfare. The proposal specified that the draft provisions did not deal with weapons the very elimination of which was the subject of active discussion in other forums, such as nuclear, and biological and chemical weapons, the latter category being moreover, explicitly prohibited for use through the 1925 Geneva Protocol. One of the draft provisions reaffirmed the principle that methods and means of warfare which were calculated to cause unnecessary suffering and whose harmful effect could spread to an unforeseen degree or escape, either in space or in time, from the control of those who employed them, remained prohibited, that general rule being

^{105/} CE/COM III/33.

^{106/} CE/COM III/36.

without prejudice to present or future prohibitions of specific methods and means of warfare. Under other draft provisions, the following methods were considered to be prohibited: (a) any action whatsoever, irrespective of the type of weapon or method used, designed to terrorize the civilian population; (b) the attack, without distinction, as a single objective, of an area where between several military objectives at a distance from one another, elements of the civilian population, or dwellings were situated; (c) delayed action weapons, the dangerous and perfidious effects of which were likely to be indiscriminate and to cause sufferings to the civilian population. It was further provided that if the Parties to a conflict made use of mines, they were bound, without prejudice to the stipulation of the VIIIth Hague Convention of 1907, to chart the minefields. The chart should be handed over at the close of active hostilities, to the adverse Party, and also to all other authorities responsible for the safety of civilian populations. As to the weapons the use of which should be prohibited, the draft provisions mentioned: (a) napalm bombs and other incendiary weapons, in circumstances where they might affect the civilian population, when calculated to cause unnecessary suffering;^{107/} (b) bombs which for their effects depended upon fragmentation into great numbers of small calibre pellets. It was further provided that, without prejudice to the precautions specified above, weapons capable of causing serious damage to the civilian population should so far as possible be equipped with a safety device which would render them harmless, when they escaped from the control of those who employed them.^{108/} In a proposal relating to that working paper, the government experts from Spain suggested the inclusion of a provision to prohibit, in general terms, the use of weapons and methods of warfare which, by their nature, affected indiscriminately military objectives and the civilian population and non-military objects.^{109/}

108. With regard to further action in respect to the prohibition of certain weapons, the government experts from Romania suggested that it would be useful if the ICRC

^{107/} The provision on napalm bombs and other incendiary weapons was submitted on a tentative basis, pending a study on their effects, to be undertaken under the authority of the Secretary-General.

^{108/} CE/COM III/44, arts. 22-29.

^{109/} CE/COM III/45.

drew up documentation and proposals, based on the United Nations studies and resolutions, for the introduction into international humanitarian law applicable in armed conflicts, of rules for the prohibition of all weapons of mass destruction.^{110/} In the working paper submitted by the experts from Mexico, the Netherlands, Sweden, Switzerland and the United Arab Republic,^{111/} it was suggested that napalm bombs and other incendiary weapons, referred to in one of the draft provisions, be made the subject of a special study under the authority of the Secretary-General.

110/ CE/COM III/27.

111/ CE/COM III/44.

D. NON-INTERNATIONAL ARMED CONFLICTS

1. The question of the form and scope of a draft international instrument concerning non-international armed conflicts

109. Paragraph 177 of the first report of the Secretary-General (A/7720) stated that the elaboration of a new international instrument, providing in particular for a comprehensive system of protection of civilian populations as well as combatants in non-international armed conflicts might be one of the fields of inquiry to which attention should be directed in any future study of human rights in armed conflicts. Paragraph 164 of the second report of the Secretary-General (A/8052) also dealt with the question and suggested the preparation of legally binding additional instruments in the form of a protocol or a separate additional convention, to be submitted to a conference of the States Parties to the Geneva Conventions and the Hague Regulations. The report contained also observations and suggestions concerning substantive rules relative to the type of conflicts to be covered, persons protected in conflicts not of an international character, the rights and obligations of persons involved in such conflicts and the implementation of the substantive rules. The report further recalled, in paragraph 139, that situations arising from non-international armed conflicts as well as from internal disturbances or tensions were covered by several United Nations pronouncements such as the Universal Declaration of Human Rights, the Standard Minimum Rules for the Treatment of Prisoners, approved by the Economic and Social Council by resolution 663 (XXIV) of 6 August 1957, and the International Covenant on Civil and Political Rights, in particular the provisions thereof which should not be suspended.

110. In document V, prepared for the Conference, the ICRC stated its view that the most valid legal means to ensure that the victims of non-international armed conflicts obtained a more effective protection, would be to reaffirm and develop article 3 common to the four Geneva Conventions of 1949, by a series of appropriate rules, to be concretized in the form of an additional protocol to that article. The additional protocol would consist of the following: (a) provisions relating to non-international armed conflicts entailing the application of international humanitarian law as a whole; (b) provisions relating to the field of application of the protocol; (c) provisions relating to the treatment of combatants and civilian persons and to penal prosecutions and punishments; (d) provisions relating to the

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implementation of the protocol. It should also include rules relative to the behaviour of combatants and to the protection of the civilian population against the dangers of hostilities.^{112/}

111. The government experts from Canada submitted a draft protocol to the Geneva Conventions of 1949 concerning conflicts not international in character, with a view to reaffirming and supplementing the provisions of these Conventions. The rules contained in the protocol would apply, as a minimum, to all persons, whether military or civilian, combatant or non-combatant, present in the territory where such a conflict was occurring.^{113/} Its provisions could be made applicable even in internal disorders as, in the opinion of the government experts from Canada, the provisions were consistent with generally accepted rules of criminal law.

112. Several proposals were submitted by the government experts from Norway. They considered that the additional protocol to article 3 relative to non-international armed conflicts prepared by the ICRC, the proposed protocol relative to the protection of civilian population as well as the proposed instruments relating to guerilla warfare could be replaced by a single international instrument applicable in all armed conflicts, which might take the form of an additional protocol to the third and fourth Geneva Conventions.^{114/} The protocol would contain basic rules applicable in all armed conflicts, special rules for the protection of civilians in all armed conflicts and special rules for guerilla warfare (rules for the protection of civilian populations and rules concerning status as prisoners of war).^{115/} Furthermore, the third and fourth Geneva Conventions of 1949 would apply as a whole, in accordance with article 2 common to all the Geneva Conventions, to wars of national liberation, to any armed conflict where the armed forces of one of the High Contracting Parties participated in military operations on the territory of another Party and in any other armed conflict where hostilities had reached a level making it a humanitarian necessity to apply the Geneva Conventions.^{116/}

^{112/} CE/5b, p. 10-12.

^{113/} CE Plen 2/bis, art. 1, para. 2, and CE/COM II/7, p. 1.

^{114/} CE/COM II/1.

^{115/} CE/COM II/2.

^{116/} CE/COM II/3. Article 2 of the Geneva Conventions provides their application in declared wars or any other armed conflict between two or more Parties to it.

113. A proposal submitted by the government experts from France was directed at developing the system of bilateral agreements, as envisaged in paragraph 3 of article 3 common to the four Geneva Conventions.^{117/} The proposal stated that the parties to a non-international conflict, in liaison with the ICRC and, if need be, on the basis of model agreements drawn up by the ICRC, should negotiate special agreements with a view to applying to the conflict other provisions of the Geneva Conventions or any other special provisions deemed relevant.^{118/}

114. The government experts from Denmark suggested the insertion in the draft protocol, as a first article, of a provision which stated that the States Parties to the envisaged protocol "recognizing their obligations under existing international law to protect fundamental freedoms and human rights, agree to refrain from derogations from these rights and freedoms, except in the case of a public emergency which threatens the life of a nation. Any derogation shall be notified to the other States Parties to the Protocol and shall not exceed the scope strictly necessary to deal with the situation. In no case may the human rights provisions referred to in article 4 (2)^{119/} in the International Covenant on Civil and Political Rights be derogated from". They thought that the same article might also refer to the Standard Minimum Rules for the Treatment of Prisoners approved by the Economic and Social Council on 6 August 1957. In the same proposal, the government experts from Denmark also stated that "by suggesting this article we would at the same time underline that the basic human rights provisions also apply in time of internal disturbances". They further proposed the insertion, in the envisaged protocol concerning non-international armed conflicts, of a second article which could read as follows: "In case the

^{117/} In accordance with paragraph 3 of article 3 of the Geneva Conventions, the Parties to a conflict should further endeavour to bring into force, by means of special agreements, all or part of the other provisions of the respective convention. Article 1, paragraph 3 of the draft protocol proposed by the government experts from Canada repeated this provision.

^{118/} CE/COM II/5.

^{119/} In accordance with article 4, paragraph 2, of the International Covenant on Civil and Political Rights, no derogation from articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18 of the Covenant is permissible. The Party availing itself of the right of derogation shall immediately inform the other Parties to the Covenant.

public emergency referred to in article 1 involves government military forces on one side and military forces - whether regular or irregular - on the other side, the following (additional) rules shall apply: (this second article would be followed by the proposals put forward by ICRC and the Canadian experts.)". A third article was also contemplated in the proposal, stipulating: "that the parties to the conflict could not deny to the ICRC or to other humanitarian bodies the right to carry on their activity, except in case of situations involving strict military necessity; that the application of the preceding provisions should not affect the legal status of the parties to the conflict; that article 3 common to all four Geneva Conventions of 1949 remain in force as between the Contracting Parties, irrespective of the present Protocol."^{120/}

2. Determination of the existence of a non-international armed conflict

(a) Definition of non-international armed conflict

115. In paragraphs 130 to 136 of the second report of the Secretary-General (A/8052), different criteria were reviewed to determine the nature of a non-international armed conflict, as envisaged by article 3 of the Geneva Conventions.

116. In document V of the ICRC, the opinion was expressed that it could be possible to formulate a definition or at least single out certain objective criteria, to determine the existence of a non-international armed conflict, to which article 3 of the Geneva Conventions would apply. The ICRC further pointed out that the practical need for such a development of article 3 had been demonstrated by the fact that cases had arisen where Governments were not willing to apply that article because they questioned the existence of a non-international armed conflict. The ICRC submitted, therefore, a draft definition in accordance with which situations occurring in the territory of a State and involving military and civilian victims, would be considered as non-international conflicts, if they consisted, inter alia, of: (a) a hostile organized action, either directed against the authorities in power by armed forces or which constrained the authorities to have recourse to their regular armed forces, to respond to such a hostile action; (b) hostile organized actions, which took place between the armed forces of two or more factions, whether or not they entailed the intervention

of the authorities in power. This enumeration was not considered to be exhaustive by the ICRC, which pointed to four other situations as constituting cases of non-international armed conflicts.^{121/}

117. The government experts submitted a number of proposals, some of them suggesting a definition of a general type, others indicating various criteria, for the determination of the existence of a non-international armed conflict. In accordance with the Canadian draft protocol, its provisions would apply to all cases of armed conflict which: (a) would occur in the territory of a High Contracting Party; (b) would involve government military forces on one side and military forces, whether regular or irregular, on the other side; and (c) to which article 2 common to the four Geneva Conventions would not be applicable.^{122/}

The proposal submitted by the government experts from France, referred to in paragraph 113 above, defined a non-international armed conflict as a conflict involving military operations on a scale and of a duration comparable to those of a conflict between States.^{123/} The government experts from the United Kingdom indicated in their proposal, as criteria for the definition of non-international armed conflict, the following: "(i) organized military forces are engaged in armed conflicts with each other; (ii) each such military force is subjected to an internal disciplinary régime appropriate to military forces; (iii) such disciplinary régime requires, as a minimum, the observance by the military force concerned of the rules contained in this Protocol."^{124/}

In accordance with a proposal submitted by the government experts from Indonesia, for the purpose of the proposed protocol, a non-international armed conflict should be defined as "a conflict which occurs in a country where a number of people raise their weapons against the lawful government of that country and which becomes a civil war."^{125/} The government experts from Austria suggested that an armed conflict non-international in character should be defined in relation to the existence of hostilities "in which government military forces are engaged against military forces of any sort and in which military methods and weapons are employed" ^{126/}

^{121/} CE/5b, p. 43-48

^{122/} CE Plen/2 bis, art. 1, para. 1.

^{123/} CE/COM II/5.

^{124/} CE/COM II/8.

^{125/} CE/COM II/9

^{126/} CE/COM II/10.

Under a joint proposal, submitted by the experts from Belgium and France, who were joined by those of Ethiopia, an armed conflict of non-international character could be defined as a conflict "of evident intensity, which is carried on in the territory of a High Contract Party for a substantial period of time and in which organized armed forces carry on hostile activities in arms against the authorities in power, and the authorities in power employ their armed forces against such persons, these said forces being subject to the rules of discipline appropriate to armed forces". Riots, banditry, isolated acts of terrorism and common law crimes would not be covered by that definition.^{127/}

118. A proposal made by the government experts from Italy, referred to the conditions to be fulfilled by the parties in conflict, other than the Government of the State concerned, namely: (a) the organized character of the armed forces of those parties and their submission to an internal discipline of a kind which ensured the observance of the rules contained in the envisaged protocol; (b) the exercise by those parties of an effective authority over a part of the territory.^{128/} The government experts from Australia suggested that the definition of non-international armed conflicts, which would be adopted, be preceded by the following text: "This Protocol shall apply to any armed conflicts not of an international character occurring in the territory of the High Contracting Parties, and for the purpose of this Protocol the words 'armed conflict not of an international character' include..." In the opinion of the government experts from Australia, as stated in their proposal, the inclusion of such a text would be a way of leaving intact the opening words of article 3 common to the four Geneva Conventions and at the same time achieving the objective of the ICRC of elaborating criteria for the determination of the existence of a non-international armed conflict.^{129/}

119. A Drafting Committee was established for the purpose of preparing a single proposal on the definition of a non-international armed conflict. In its report to Commission II, the Drafting Committee attempted to define such conflicts as

^{127/} CE/COM II/17 and 17b.

^{128/} CE/COM II/11.

^{129/} CE/COM II/12.

those carried on in the territory of a State for a substantial period of time and in which "(1) organized armed forces carry on hostile activities in arms against the authorities in power and the authorities in power employ their armed forces against such persons; or (2) organized armed forces carry on hostile activities in arms against other armed organized forces, whether or not the authorities in power employ their armed forces, for the purpose of restoring order." Several members of the Drafting Committee were however of the view that other elements should be added to those mentioned under (1), such as (a) the occupation of a part of the territory of the State by the armed forces carrying on hostilities against the authorities in power; (b) the subjection of such armed forces to a system of military discipline. The view was also expressed within the Drafting Committee that there should be a third category of non-international conflicts to be described as follows: "(3) hostilities have reached such a level as to make the application of the Protocol a humanitarian necessity". ^{130/} The government experts from Romania submitted an amendment to the proposal of the Drafting Committee to the effect that the State concerned should first recognize the existence and the character of the conflict and its constituent parts as defined in that proposal. ^{131/} No vote was taken by Commission II on the proposals of the Drafting Committee.

(b) Procedures for objective finding of the existence of a non-international armed conflict

120. Paragraphs 157-162 of the second report of the Secretary-General reviewed questions relating to procedures and machinery for determining objectively whether a specific situation was to be considered as a "non-international armed conflict". Suggestions were made as to the establishment of an international body for this purpose, outside the United Nations or within their framework, presenting full guarantees of independence and impartiality, for which provisions would be made in an international instrument.

121. In document V, the ICRC pointed out that the formulation of a procedure which would permit the objective determination of the existence of non-international

^{130/} CE/COM II/13 Rev. 1

^{131/} CE/COM II/18.

armed conflicts would be complementary to a better definition or a better specification of the very concept of "non-international armed conflict". However, after reviewing different opinions expressed in that respect, the ICRC pointed to the difficulties of creating a new body responsible for a determination of the existence of non-international armed conflicts. The ICRC further indicated that it did not wish to assume itself the role of a fact-finding body.^{132/} The government experts did not submit any specific written proposals on the matter.

3. Substantive rules for the protection of victims of non-international armed conflicts

122. In paragraphs 148 to 150 of the second report of the Secretary-General (A/8052), suggestions were made for adding new categories to the persons protected at present in non-international armed conflicts, and for improving the protection of medical and relief personnel who carry out their duties during that type of conflict. In paragraphs 151 to 156 of the report, comments were made on different aspects of the question of the rights and obligations of persons involved in non-international armed conflicts and it was suggested that certain minimum rules of conduct between combatants and special minimum rules for "political" and "non-delinquent" prisoners might be formulated. It was also suggested that various provisions adopted within the United Nations, such as those of the Universal Declaration of Human Rights, the International Covenants on Human Rights and the Standard Minimum Rules for the Treatment of Prisoners, should be applicable to captured combatants and civilian detainees in non-international armed conflicts. It was further suggested in the report that efforts should be pursued towards the application to those persons of the third and the fourth Geneva Conventions respectively.

123. In the ICRC document V,^{133/} principles for regulation of the protection of victims of non-international armed conflicts were formulated for inclusion in the proposed protocol to article 3 common to the four Geneva Conventions, as regards penal prosecution, penalties and the protection of prisoners of war. The ICRC did not make any proposals regarding the protection of the civilian

^{132/} CE/56, p. 36-42.

^{133/} See CE/5b, title IV.

population in non-international armed conflicts. The opinion of the government experts in that respect was requested. In the opinion of the ICRC, the protection of the wounded and sick in such conflicts would be covered by the draft protocol relative to the wounded and sick in non-international armed conflicts, as proposed in its document VII.^{134/}

124. The Canadian draft protocol^{135/} submitted to the Conference contained detailed provisions regarding the protection of persons involved in non-international armed conflicts. It incorporated with some changes and additions some of the provisions of the draft protocol on the protection of the wounded and sick prepared by the ICRC (see annex I below). The provisions of the Canadian draft protocol were largely based on the relevant articles of the fourth Geneva Convention, with certain modifications necessary to adapt them to the special circumstances of non-international armed conflicts and to ensure a minimum humane treatment to persons involved in them.^{136/} Among the principles formulated in the Canadian draft protocol, the following may be mentioned:

- (a) special protection for children and women, who, together with the wounded, sick and infirm should be removed, if possible, from areas where hostilities were taking place and eventually evacuated on a voluntary basis to a third State;
- (b) free passage of all consignments of medical supplies, food and clothing;
- (c) postponing the execution of death penalties until hostilities had ceased and, in any event, until the convicted persons had exhausted all means of appeal;
- (d) guarantee that the relief organizations, especially those operating under the Red Cross, might pursue their activities in accordance with their humanitarian purposes.

125. In the course of the discussion of the questions relating to substantive rules on the protection of victims of non-international armed conflicts, the government experts from Denmark referred to their proposal (see para. 114 above). The government experts from Norway explained that the rules which they proposed

^{134/} CE/7b.

^{135/} CE Plen/2 bis, arts. 2-23.

^{136/} See the explanatory notes on the draft protocol presented by the Canadian experts (CE/COM II/7).

for international relief to the civilian population in disaster situations^{137/}
and for the protection of civilians^{138/} were meant to apply in all armed conflicts.

4. Non-international armed conflicts entailing the application of international humanitarian law as a whole

(a) Non-international armed conflicts in which the party opposing the authorities in power has an organization displaying many constituent features of a State

126. The ICRC document V contained a draft proposal according to which, when, in the case of a non-international armed conflict, the Party opposing to the authorities in power presented "the component elements of a State", in particular if it exercised public power over a part of the territory, disposed of a provisional government and an organized civil administration, as well as of regular armed forces, the whole of the international humanitarian law applicable in international armed conflicts would be applied by the Parties.^{139/}

127. The government experts from Spain submitted a proposal which enumerated the following conditions to be fulfilled by the Party opposing the constitutional Power in order that "all the rules of the Geneva Conventions of 12 August 1949 and the legal instruments applicable in international and non-international armed conflicts" should be made applicable: (a) effective control of a considerable area of the territory of the State; (b) an organized and functioning administration; (c) organized armed forces under regular command.^{140/}

(b) Foreign State aid in non-international armed conflicts

128. In document V, the ICRC formulated a draft proposal providing that, when in case of a non-international armed conflict, one or the other Party or both benefited from the assistance of operational armed forces furnished by a third State, all the rules of international law applicable in armed conflicts should be applied by the Parties to the conflict.^{141/}

^{137/} CE/COM II/14.

^{138/} CE/COM II/19.

^{139/} CE/5b, p. 15.

^{140/} CE/COM II/4.

^{141/} CE/5b, p. 21.

129. A proposal submitted at the Conference by the government experts from Indonesia contained a provision to the effect that foreign assistance accepted by those fighting against the lawful government or the presence of foreign elements on their side should not change the nature of the said conflict as a non-international armed conflict.^{142/} In accordance with a proposal submitted by the government experts from the United States, when, in the course of a non-international armed conflict, the armed forces of a party to the Geneva Conventions engaged in hostilities with the armed forces of another party to the Conventions, the Conventions as a whole would apply to those armed forces in their relations with each other and with persons protected by the Conventions.^{143/}

130. As the ICRC had mentioned in document V the matter of the application of the Geneva Conventions in actions which the forces of the United Nations could undertake according to the provisions of Chapter VII of the Charter,^{144/} the representative of the Secretary-General referred to passages of the first report of the Secretary-General (A/7720, paras. 9 and 114), which pointed out that the regulations promulgated by the Secretary-General as regards the United Nations forces in the Middle East, in the Congo and in Cyprus provided that the forces were to observe the principles and spirit of the general international conventions applicable to the conduct of military personnel, and that in United Nations peace-keeping forces the responsibility for the training of troops had thus far rested with each national contingent rather than with the Organization. The problem of the United Nations peace-keeping forces had, for some time, been under study by the Special Committee on Peace-keeping Operations. That Committee submitted reports to the General Assembly.

E. GUERRILLA WARFARE

131. It may be recalled that following a preliminary study of the question of guerilla warfare in the first report of the Secretary-General (A/7720, paras. 158-167), a more detailed review of the question was included in the second report (A/8052, chap. IX), which examined inter alia issues involved in

^{142/} CE/COM II/9.

^{143/} CE/COM II/16.

^{144/} CE/5b, p. 22.

the protection of guerillas both in international and non-international armed conflicts, and the implementation of the relevant substantive rules in international conflicts. In paragraph 191 of the second report, a number of suggestions were made in relation to the main areas in which humanitarian rules applicable to guerillas might be further studied with a view to their possible amendment or elucidation. Some of the suggestions dealt with the clarification of the meaning of the relevant existing rules in that regard, and others were related to the development of such rules beyond their actual wording or the generally applied interpretation. Possible alternative procedures of various kinds for giving effect to those suggestions were also indicated in paragraphs 192 and 193 of the report.

132. In document VI on rules applicable in guerilla warfare submitted to the Conference of government experts, the International Committee of the Red Cross drew up a protocol which would modify the conditions required under article 4A (2) of the third Geneva Convention of 1949, in order to enable combatants to obtain, in the event of capture or surrender, the status of prisoners of war.^{145/} In the same document, the ICRC also proposed certain standard minimum rules which would be applicable in all armed conflicts without in any way affecting the designation of the conflict or the legal status of the parties involved. The standard minimum rules proposed by the ICRC dealt with such matters as: the definition of combatants and their treatment in the event of capture or surrender, the definition of civilian population and its protection in the event of military occupation or against the dangers arising from hostilities; the principles and rules governing the behaviour of combatants; and the procedures for the implementation of the rules.^{146/}

133. At the Conference, due to the limited time available, the debates on the question of guerillas in Commission II were merely of a preliminary nature. Several government experts considered that there was no need for drawing up a separate instrument specifically on guerilla warfare as proposed by the ICRC. They thought that such an undertaking could be combined with those proposals which had already been made in such related fields as internal armed conflicts and the protection of civilians. Some other government experts were in favour of the proposal to elaborate standard minimum rules as suggested by the ICRC.

^{145/} CE/6b, pp. 16-18.

^{146/} Ibid., pp. 52-55.

F. PROTECTION OF CIVILIANS AND COMBATANTS IN CONFLICTS
WHICH ARISE FROM THE STRUGGLES OF PEOPLES UNDER
COLONIAL AND FOREIGN RULE FOR LIBERATION AND SELF-
DETERMINATION

134. The question of the protection of civilians and combatants in conflicts arising from the struggles of peoples for liberation and self-determination was examined in chapter X of the second report of the Secretary-General (A/8052). Paragraphs 195 to 203 reviewed the resolutions of United Nations organs referring to the treatment of freedom-fighters.

135. At its twenty-fifth session, the General Assembly adopted several resolutions containing provisions which referred to the treatment of freedom-fighters and the protection of civilian populations in conflicts arising from struggles for liberation and self-determination. In resolution 2621 (XXV) entitled "Programme of action for the full implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples", it was stated that "all freedom fighters under detention shall be treated in accordance with the relevant provisions of the Geneva Convention relative to the Treatment of Prisoners of War, of 12 August 1949". In resolution 2674 (XXV) entitled "Respect for human rights in armed conflicts", the Assembly affirmed that the participants in resistance movements and freedom-fighters in southern Africa and territories under colonial and alien domination and foreign occupation, struggling for their liberation and self-determination, should be treated, in case of their arrest, as prisoners of war in accordance with the principles of the Hague Convention of 1907 and the Geneva Conventions of 1949. In resolution 2652 (XXV) entitled "Question of Southern Rhodesia", the Assembly called upon the Government of the United Kingdom, in view of the armed conflict in the Territory and the inhuman treatment of prisoners "to ensure the application to that situation of the Geneva Convention relative to the Treatment of Prisoners of War and the Geneva Convention relative to the Protection of Civilian Persons in Time of War, both dated 12 August 1949". In resolution 2678 (XXV) entitled "Question of Namibia", the Assembly called again upon the Government of South Africa "to treat the Namibian people captured during their struggle for freedom as prisoners of war in accordance with the Geneva Convention relative to the Treatment of Prisoners of War of 12 August 1949, and

/...

to comply with the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949". In resolution 2707 (XXV) entitled "Question of Territories under Portuguese administration", the Assembly called upon the Government of Portugal "to treat the freedom fighters of Angola, Mozambique and Guinea (Bissau) captured during the struggle for freedom as prisoners of war in accordance with the Geneva Convention relative to the Treatment of Prisoners of War, of 12 August 1949, and to comply with the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949".

136. Various questions concerning the application of humanitarian rules to "wars of liberation" were reviewed by the ICRC mainly in document V on protection of victims of non-international conflicts.^{147/} The ICRC suggested, as a method for strengthening the protection of the persons involved in such wars, the broadening of the maximum number of humanitarian rules, to meet a greater number of situations which did not automatically and incontrovertibly entail the implementation of the law of armed conflicts as a whole. In the opinion of the ICRC, the proposed draft rules relating to non-international armed conflicts and guerilla warfare were meant to benefit those engaged in struggles of peoples under colonial and foreign rule for liberation and self-determination.^{148/}

137. In the proposal of the government experts from Norway on a draft to be incorporated in an additional protocol to the third and fourth Geneva Conventions, it was provided that those conventions should apply, as a whole, also to wars of national liberation conducted by peoples, under colonial or alien domination or foreign occupation, for their liberation and self-determination.^{149/} The opinions expressed by government experts during the debate which took place in Commission II revealed the existence of divergent opinions on the legal qualifications of conflicts arising from struggles for liberation and self-determination, as well as on the methods to be employed for strengthening the protection of the victims of such conflicts.

^{147/} CE/5b, pp. 23-35.

^{148/} CE/5b, p. 34.

^{149/} CE/COM II/3.

G. PROTECTION OF THE WOUNDED AND SICK

138. In document VII, the ICRC submitted to the Conference: (i) a draft protocol on the protection of the wounded and sick which would be additional to the fourth Geneva Convention of 1949;^{150/} (ii) a draft protocol concerning the protection of the wounded and sick which would be additional to article 3 of each of the four Geneva Conventions which related to conflicts not international in character;^{151/} and (iii) a study on the safety of medical transports, with particular emphasis on medical air and sea transports.^{152/}

139. On the basis of the ICRC proposals, the Conference adopted two draft protocols on the protection of the wounded and sick (see annexes I and II below). The Conference did not enter into the discussion of the problems in connexion with the safety of medical air transports. It decided to submit to the National Societies of Red Cross a draft proposal of the government experts from Switzerland and Yugoslavia on the protection of those societies in international armed conflicts.^{153/}

H. PROTECTION OF JOURNALISTS ENGAGED IN DANGEROUS MISSIONS

140. The suggestions and observations made by the government experts during the discussion of this item in Commission III are reviewed in document A/8371, prepared in pursuance of paragraph 6 of General Assembly resolution 2673 (XXV) entitled "Protection of journalists engaged in dangerous missions in areas of armed conflict".

I. INTERNATIONAL ASSISTANCE IN, AND SUPERVISION OF, HUMANITARIAN INTERNATIONAL CONVENTIONS AND RULES

141. In paragraphs 216 to 220 of the first report of the Secretary-General (A/7720), suggestions were made with a view to improving the functioning of the institution of Protecting Powers or their substitutes.

142. Paragraphs 220 to 227 of the first report of the Secretary-General and paragraphs 241 to 250 of the second report (A/8052) examined the question of ensuring the supervision and control of humanitarian rules through existing

^{150/} CE/7b, pp. 4-8.

^{151/} *Ibid.*, pp. 33-34.

^{152/} *Ibid.*, pp. 39-68.

^{153/} CE/COM I/3.

international organizations or through a special international agency created for that purpose.

143. In document II on measures intended to reinforce the implementation of the existing law, the ICRC made suggestions for the improvement of the existing system of Protecting Powers provided for in the Geneva Conventions of 1949 as the means to supervise their application. Those suggestions were the following: (a) to stipulate that the designation of Protecting Powers or of their substitutes had no effect upon the particular status of the parties to a conflict; (b) to provide that in cases when the diplomatic relations between the parties to the conflict were not broken, the diplomatic representatives of the belligerents would exercise ipso facto the prerogatives of the Protecting Powers.^{154/} As regards the question of supervision and control of the application of humanitarian rules by an international organ or agency in existence or to be established, document II referred to the comments of the ICRC on that matter which had been made in connexion with the protection of civilians,^{155/} non-international armed conflicts and guerilla warfare.^{156/}

144. The government experts from the United States proposed a draft procedure for the appointment of Protecting Powers.^{157/} In that proposal, it was suggested that if the Parties did not appoint, by mutual agreement, a Protecting Power or an organization as a substitute for it, the ICRC should request them, within 30 days after either Party had proposed such an appointment, to submit a list of possible Protecting Powers or substitute organizations acceptable to it. The list should be submitted to the ICRC after 10 days. If, in spite of the assistance of the ICRC, no agreement had been reached within a further period of 20 days, the ICRC would be accepted as a substitute for a Protecting Power. A proposal was submitted by the government experts from the United Arab Republic on existing possibilities for a better application of the Geneva Conventions of 1949, suggesting, in essence, that, in cases where the institution of the Protecting Powers failed to operate, the ICRC should be urged to assume the humanitarian functions performed by Protecting Powers under the Conventions.^{158/}

^{154/} CE/2b pp.30-31. See articles 8 to 10 of the first, second and third Geneva Conventions and articles 9 to 11 of the fourth Geneva Convention.

^{155/} CE/3b, pp. 95, 102.

^{156/} CE/6b, pp. 54-55.

^{157/} CE/COM IV/2.

^{158/} CE/COM IV/3.

/...

145. The government experts from Norway submitted a proposal for the establishment of ad hoc teams, whose members would be trained on a national basis in different States, to act as supervisory and/or fact-finding bodies, with regard to the observance of the Geneva Conventions. The teams could be registered both with the ICRC and with the United Nations and be made available upon request, in accordance with agreements between the Parties.^{159/}

146. In their statements in the debate, government experts expressed, inter alia, the following opinions and suggestions:

(a) The existing system of Protecting Powers set out in the Geneva Conventions should remain unchanged, implemented in good faith and no new organizations of any kind should be created to reinforce the rules relating to the supervision of the existing humanitarian law;

(b) Some permanent international agency within the United Nations system could be established, enjoying an autonomous status, as in the case of the United Nations High Commissioner for Refugees;

(c) The system of supervision established by the Convention for the Protection of Cultural Property in the Event of Armed Conflict, signed at The Hague in 1954, could be adopted with necessary modifications;

(d) Regional organizations could be considered as providing some mechanism to act as supervisory organs;

(e) A private individual or body of individuals linked to an international organization could perform the supervisory functions.

147. As some government experts expressed the apprehension that it might not be advisable to entrust a United Nations organ with supervisory functions concerning the implementation of humanitarian conventions applicable in armed conflicts because such an organ might be open to political influence, the representative of the Secretary-General, referring to such instances as the Office of the United Nations High Commissioner for Refugees, the United Nations Children's Fund and the United Nations Relief and Works Agency for Palestine Refugees in the Near East, stated that it was quite possible to set up humanitarian bodies of incontrovertible objectivity and effectiveness in the framework of the United Nations.

^{159/} CE/COM IV/4.

J. BETTER APPLICATION AND REAFFIRMATION OF HUMANITARIAN
INTERNATIONAL CONVENTIONS AND RULES

1. Reinforcement of the rules relative to penal sanctions for violations
of the law in force

148. In paragraph 127 of the first report of the Secretary-General (A/7720), it was suggested that information on penal legislation, enacted by States in respect of violations of existing humanitarian rules be included in reports on measures taken to give effect to humanitarian instruments which might be submitted to appropriate international organs. It was also indicated that the effectiveness of international humanitarian instruments which might be elaborated in the future would be enhanced if they were to stipulate the adoption of penal sanctions against individuals infringing their provisions.

149. In document II, on measures intended to reinforce the implementation of the existing law, the ICRC pointed out that as the national penal legislation and national jurisdictions were at present the only means available for the repression of infringements of international humanitarian law applicable in armed conflicts, measures should be taken to improve those penal provisions as, in the majority of States, existing provisions were still insufficient to ensure the prevention and repression of grave breaches of humanitarian rules, as provided in the Geneva Conventions of 1949.^{160/} The ICRC had therefore recommended that the States should develop their legislation in that field and, if necessary, enact special legislation following, as far as possible, a uniform pattern.^{161/}

150. Several government experts expressed various views on the methods to be used for a better application of existing humanitarian rules, such as: (a) the setting up of an international criminal tribunal on a permanent basis; (b) the elaboration by the ICRC of model laws, to serve as a guide for the drafting of national legislations. Suggestions were also made to remedy some shortcomings of the provisions of the Geneva Conventions in connexion with the sanctioning of breaches.

^{160/} Article 50 of the first Convention, article 51 of the second Convention, article 130 of the third Convention and article 147 of the fourth Convention.

^{161/} CE/2b, pp. 47-48.

2. The question of reprisals

151. Paragraph 42 (c) of the second report of the Secretary-General (A/8052) suggested the adoption of a rule which would prohibit reprisals against civilians in all circumstances. Principle 7 of resolution 2675 (XXV) of the General Assembly stated that: "civilian populations, or individual members thereof, should not be the object of reprisals".

152. In document II, the ICRC considered that reprisals by belligerents in conducting hostilities should comply within certain limitations imposed by the requirements of humanity. It mentioned three principles in that connexion: (a) the principle that reprisals must correspond to an imperative necessity; (b) the principle of proportionality; (c) the principle according to which reprisals resorted to by belligerents should in any case not be contrary to the laws of humanity. The ICRC had also referred to its suggestions concerning the prohibition of reprisals against the civilian populations (document III), to the close link between the question of reprisals and that of hostages, torture and terrorism in guerilla warfare (document VI) and to the necessity of studying the problem of reprisals in non-international armed conflicts.

153. At the Conference, some government experts expressed the view that in the light of the Charter of the United Nations and resolutions of the General Assembly and of the Security Council, reprisals exercised by belligerents should not be considered any more as a means of law enforcement and should be abolished. Other government experts held the opposite view. The government experts generally agreed as to the prohibition of reprisals against civilians. Divergent views were expressed, however, on the question of the resort to reprisals in non-international armed conflicts.

3. Publicity, dissemination and teaching

154. The questions relating to publicity, dissemination and teaching as means for a better application of existing rules of humanitarian law were discussed in paragraph 118 of the first report of the Secretary-General (A/7720), and in paragraphs 252 to 256 of the second report of the Secretary-General (A/8052).

162/ CE/2b, paras. 62-63.

155. In document II, the ICRC dealt in particular with the necessity for States to enact national legislation for an appropriate application of the Geneva Conventions of 1949, as well as with the dissemination through instructions given to armed forces and through other various means of the rules of those Conventions and other humanitarian rules.

156. The government experts made several suggestions on educational measures for the dissemination of humanitarian rules directed to armed forces as well as to civilians (for instance, simple manuals for troops, examination on the law of armed conflict as a prerequisite for commission in the armed forces, films, libraries, seminars and courses, etc.). The government experts further suggested that States should transmit to the United Nations and/or to the ICRC their military manuals.

4. Reservations

157. In paragraph 116 of the first report of the Secretary-General (A/7720) as well as in paragraph 257 of the second report (A/8052), attention was drawn to the question of a re-examination by States of the reservations which they had made to the ratification of or accession to the humanitarian conventions.^{163/}

158. At the Conference, some government experts expressed the opinion that it would be important that reservations made to the provisions of the Geneva Conventions concerning the supervisory system be reconsidered or withdrawn, unless they were designed to strengthen the humanitarian purpose of the Conventions. The question of reservations to article 85^{164/} of the third Geneva Convention was also referred to. Some experts considered that States should be able to make reservations to that article, while others stated that such reservations were contrary to the object and purpose of the Conventions.

^{163/} CE/2b, pp. 2-9.

^{164/} Article 85 provides that prisoners of war prosecuted under the laws of the detaining Power for acts committed prior to capture shall retain, even if convicted, the benefits of the Convention.

III. INFORMATION ON RELEVANT DEVELOPMENTS ARISING OUT OF
ACTIVITIES OF CERTAIN NON-GOVERNMENTAL BODIES

159. The Secretary-General received information concerning the activities of certain non-governmental bodies which had manifested their specific interest in various problems relating to the respect for human rights in armed conflicts. Those activities included the adoption of a number of formal proposals and resolutions which seemed particularly relevant to certain issues discussed in the present report. It was therefore considered appropriate to reproduce them in the following paragraphs. The texts appear in the chronological order of their adoption.

160. The 54th Conference of the International Law Association held at The Hague, Netherlands, from 23 to 29 August 1970, adopted a resolution on international medical law which read as follows:

/Original: French/

INTERNATIONAL MEDICAL LAW

The Fifty-fourth Conference of the International Law Association held at The Hague in August 1970,

Having heard the reports of the Commission on International Medical Law and the statements to which they gave rise,

Desirous of strengthening international protection of the human person and in particular of promoting the effective implementation of the Geneva Conventions,

Mindful of the paramount importance of the Geneva Conventions for international medical and humanitarian law,

Notes that the following problems have been raised and call for an urgent solution:

1. Extension of the Geneva Conventions with a view to ensuring their application in all circumstances to all civilian health services;
2. Adoption of an international statute concerning relief measures and the activities of health teams and international humanitarian missions in cases of armed conflict of any kind or of disasters;
3. Establishment of an international institution to organize, co-ordinate and carry out relief measures in cases of armed conflict of any kind or of disasters, without prejudice to the jurisdiction and functions of existing organizations, notably the International Red Cross;
4. Search for means of making the role of the Protecting Power effective, in the light of the experience gained in 1949;
5. Binding character, based on the norms of international law (jus cogens), of the principles relating to the protection of the human person set forth in the Geneva Conventions;

Expresses the hope that the Commission on International Medical Law will continue its studies and efforts with a view to the attainment of the above-mentioned objectives and will prepare detailed papers on these questions for the Fifty-fifth Conference;

/...

Pays a tribute to the United Nations and the International Red Cross for their efforts in the field of international medical law;

Recommends the extension of the activities of the Commission to other aspects of international medical law, the enumeration of the priorities to be assigned to these problems being left to the next Conference.

161. The thirteenth session of the General Assembly of the World Veterans Federation held at Vienna, Austria, from 31 August to 4 September 1970, adopted a resolution concerning prisoners of war which read as follows:

/Original: English/French/

"PRISONERS OF WAR

"The Thirteenth General Assembly,

"1. Bearing in mind that more than twenty years have passed since the adoption of the 1949 Geneva Conventions establishing humanitarian standards for the treatment and protection of prisoners of war;

"2. Recalling that the Conventions apply to armed conflict of any nature between two or more parties without regard to how that conflict may be characterized;

"3. Bearing in mind that the Conventions have been signed by the Government representatives of 125 nations including all those now presently engaged in armed conflict;

"4. Bearing in mind that the responsibility of all signatories to the Geneva Convention to abide by all the obligations of the Geneva Convention was unanimously reaffirmed by 114 countries at the International Conference of the Red Cross nearly a year ago at their meeting in Istanbul in September, 1969;

"5. Calls once more on all signatories to abide by their obligations under the Conventions and to provide, as reiterated by the Istanbul Conference, assurances that 'all uniformed members of the regular armed forces of another party to the conflict and all other persons entitled to prisoner of war status are treated humanely and given the fullest measure of protection prescribed by the Convention; and further calls upon all parties to allow the Protecting Power or the International Committee of the Red Cross free access to prisoners of war and to all places of their detention';

"6. At the same time, empowers the WVF Executive Board to consider in conjunction with the IRC and the other appropriate agencies ways and means leading to the establishment of a suitable international base area or areas and facilities for the repatriation, exchange and quartering of POWs with the end in view of ameliorating current difficulties in the application of the Geneva Conventions."

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162. At the same session, the General Assembly of the World Veterans Federation also adopted a resolution on the banning of chemical and biological weapons which read as follows:

/Original: English/French/

"THE BANNING OF CHEMICAL AND BIOLOGICAL WEAPONS

"The Thirteenth General Assembly,

- "1. Recalling the resolution "Disarmament" adopted by the Twelfth General Assembly;
- "2. Welcoming the ratification and entry into force of the Treaty on Non-Proliferation of Nuclear Weapons;
- "3. Reaffirms its conviction that comprehensive measures of general and complete disarmament under effective international control prohibiting the manufacture of and trade in weapons of war are essential both for the safety and for the future well-being of humanity;
- "4. Alarmed at the spread of weapons of mass destruction which constitute an ever-increasing menace to the future of mankind;
- "5. Concerned at the continued extravagant use of valuable material and intellectual resources for the development and stock-piling of such weapons;
- "6. Noting with regret that the slow progress of disarmament negotiations has hitherto contrasted dramatically with the rapid technological development of armaments, including the development of chemical and biological (bacteriological) weapons;
- "7. Convinced that a negotiated ban on the use, development, production and stockpiling of these weapons is an urgent necessity and would be a welcome opening for the Disarmament Decade;
- "8. Urges all governments which have not yet done so to ratify or adhere to the Protocol of Geneva of 1925 for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare;
- "9. Urges all governments to accept the application of the Protocol to all armed conflicts;
- "10. Requests all member associations to take the adequate steps in their respective countries to initiate and support action towards that end;
- "11. Requests the Executive Board to supply the member associations with all appropriate information for that purpose."

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163. The International Congress on Humanitarian Law held at San Remo, Italy, from 24 to 27 September 1970, adopted the "Declaration of San Remo" which read as follows:

/Original: English/French/

"THE INTERNATIONAL CONGRESS ON HUMANITARIAN LAW,

I.

"Calling to mind the obligation incumbent upon all States to refrain from resorting to threatening or violent action in their international relations and to settle their differences peaceably;

Whereas respect of the individual human being is the very foundation of international humanitarian law and of the international rules guaranteeing the integrity of human rights;

Whereas the faithful application of these rules is essential to safeguard the peaceful co-existence of human beings;

Whereas, consequently, their violation is a matter which is outside the domestic jurisdiction of the State;

"REAFFIRMS

"That the belligerents in international or internal armed conflicts do not enjoy an unlimited choice of means to inflict harm on the enemy;

That it is unlawful to launch attacks on the civilian population as such;

That a distinction must at all times be made between combatants and civilians, so that the latter may be spared as far as possible;

That the general principles of the law of war apply to nuclear weapons and the like;

"URGES

"That violations of the rules contained in conventions of a humanitarian nature be penalized by impartial international tribunals;

That, at the very least, observance of the rules governing the exercise of the rights of a protecting power be improved so as to allow injured parties direct access to an international authority, such as that represented by a United Nations High Commissioner for Human Rights, which should be set up without further delay.

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II.

"Believing that the Geneva Conventions of 1949 constitute a vital step forward in the evolution of international law;

"RECOMMENDS

"All those who are interested in the progress of international humanitarian law, including international organizations and scientific institutions active in that sphere, and especially the Sanremo International Institute of Humanitarian Law, to strive first and foremost to set themselves specific aims on which to concentrate their efforts, in particular:

1. the adjustment of the Hague Conventions of 1907 on the law of war to the rules embodied in the Geneva Conventions of 1949,
2. the harmonization of the United Nations Covenant on Civil and Political Rights and the European Convention on Human Rights with the rules of the Geneva Conventions of 1949,
3. the preparation of draft protocols relating to Article 3 of the said conventions and bearing on:
 - (a) the competence of impartial authorities, such as the International Court of Justice, to establish, in application of this article, the existence of an armed conflict,
 - (b) the distinction between acts governed by the law of war and crimes committed against innocent parties, such as the unlawful seizure of aircraft in flight, the taking of hostages and the violation of diplomatic immunity, which render their perpetrators unworthy of the treatment accorded to combatants or political refugees;
4. the improvement of efforts to foster in the public better knowledge of, and greater respect for, the existing rules of humanitarian law, with the help of the most advanced technological methods, including in particular the computerizing:
 - (a) of national and international provisions relating to the law of war and to the rules penalizing infringements of them;
 - (b) of national and international judgments passed on those who contravene such provisions;
5. the revival of proposals aimed, following the lines laid down by the European Convention on Consular Functions, at promoting respect for the rules of international humanitarian law;
6. the consideration of means of securing free legal aid to persons deprived of the protection of their national consulate."

164. At its meeting in Geneva on 18 February 1971, the Geneva Special NGO Committee on Human Rights adopted for circulation and adoption by non-governmental organizations a "Proposal for the Appointment of a United Nations Commission of Inquiry into Breaches of the Humanitarian Conventions"^{165/} which read as follows:

/Original: English/French/

"Gravely concerned by the disregard of the provisions of Humanitarian Conventions and Laws in the course of armed conflicts, the undersigned international organizations urge

- "1. The setting-up within the framework of the United Nations of a permanent Commission of Inquiry charged with the responsibility of investigating all complaints of violations during armed conflicts of:
 - (a) The Hague Conventions of 1899 and 1907,
 - (b) The Geneva Protocol of 1925 as defined by Resolution 2603 (XXIV) of the General Assembly,
 - (c) The Geneva Conventions of 1949.
- "2. That such a Commission of Inquiry should have full powers of investigation to inquire into complaints made to it by any government, any party to an armed conflict, or any responsible non-governmental organization, and should report its finding to the Security Council and to the General Assembly of the United Nations.
- "3. Such a Commission of Inquiry should be composed of persons, independent of any government, and chosen because of their high moral character and their capacity to conduct inquiries in accordance with generally recognized judicial principles.
- "4. That in so far as possible the investigations undertaken by the proposed Commission of Inquiry should be conducted in public and its findings and reports should be public."

^{165/} At its ninth Congress held at Helsinki, Finland, from 15 to 19 July 1970, the International Association of Democratic Lawyers requested its General Secretary to ask the Secretary-General to bring to the attention of the General Assembly "the need for the establishment within the United Nations framework of an impartial investigating body or commission empowered to receive, investigate and report on all allegations of violation or non-observance of the humanitarian conventions."

Similar recommendations were made by the Annual Conference of the International Peace Bureau held at Driebergen, Netherlands, from 6 to 8 August 1970, and by the World Conference on Religion and Peace held at Kyoto, Japan, from 16 to 21 October 1970.

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165. The Commission médico-juridique de Monaco adopted on 17 April 1971 "draft regulations for the execution of the Geneva Conventions of 12 August 1949 for the protection of war victims" which read as follows:

/Original: English/French/

"PREAMBLE

"The Draft Regulations below were adopted as a working document by the Commission médico-juridique de Monaco at the close of its VIth Session, on Saturday 17 April 1971, to be submitted, at the suit of the International Committee of the Red Cross, to the meeting of government experts convened at Geneva on 24 May next.

"The purpose of the Regulations is to remind States of the existence of mechanism for scrutiny, as laid down in the Geneva Conventions of 12 August, 1949, that can be applied in times of armed conflict, whether of international or non-international character (common Articles 2 and 3 of the four Conventions).

"Depending on the situation, the machinery for scrutiny may have recourse either to a neutral State, designated as the Protecting Power, or to an organization replacing it, designated as the substitute, but, in all cases, the International Committee of the Red Cross shall retain the possibility to intervene in the field of humanitarian relief which is its special calling.

"In view of these considerations, it is of importance, without waiting for a conflict possibly to break out, to recruit and train a staff of supervisors, called delegates, who will be capable of carrying out, with the approval of the Parties to the conflict, an effective scrutiny of the application of the Convention.

"It is on this essential point that, while distinguishing between the two above-mentioned situations (inter-State conflict and internal conflict), efforts are brought to bear for wording the regulations more clearly and more precisely. The appointment of the delegates, in case of conflict, can be usefully prepared and facilitated by preparing lists as soon as the Regulations come into force. The project takes up again, for this purpose, the studies and achievements already undertaken by governments on the suggestions of the International Committee for the Neutrality of Medicine.

"By providing, in case of default of the elected instrument of the Protecting Power, for a mechanism of scrutiny to be designated the ad hoc body, the Regulations suggest to States the application, which, under the circumstances, is privileged, of common Article 1 of the four Conventions which states that "The High Contracting Parties undertake to respect and to ensure respect for the present Convention in all circumstances".

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"The Parties to the present regulations:

"Considering that, in order further to achieve the humanitarian purposes of the four Geneva Conventions of 12 August, 1949, for the protection of war victims, - the Convention for the Amelioration of the Condition of the Wounded and Sick in the Field; the Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea; the Convention relative to the Treatment of Prisoners of War; and the Convention relative to the protection of Civilian Persons in Time of War, (hereafter called "the Conventions") - it would be appropriate to set up regulations specifying the provisions of the Conventions as to the scrutiny of their application by Protecting Powers, the International Committee of the Red Cross (hereafter call the ICRC), or any other impartial humanitarian organization,

"Have agreed as follows:

"CHAPTER I

"Protecting Powers

"Article 1

Organization of the scrutiny by and co-operation of the
Protecting Powers and of the International
Committee of the Red Cross

"As soon as an armed conflict to which common Article 2 of the four Conventions is applicable breaks out:

(a) The Contracting Parties engaged in the conflict shall request a neutral country and the ICRC to provide their co-operation for the application of the Conventions and shall undertake to accept their scrutiny,

(b) Neutral Powers and the ICRC may on their own initiative offer their services,

(c) The Protecting Power of each Party to the conflict and the ICRC shall appoint their delegates in conformity with the provisions of the present Regulations.

/...

"Article 2

"Drawing up of lists of delegates by the Contracting Parties

"As soon as the present Regulations come into force, the Contracting Parties, with a view to assuming the functions of a Protecting Power in time of conflict, shall compile lists of persons selected among their own nationals who would be able to act as delegates.

"Article 3

"Appointment of delegates by the Protecting Powers
of Parties to the conflict

"When nominating delegates, the Protecting Power shall select names from the list it has drawn up, adding to it, if necessary, names of other persons from among its own nationals or of citizens of countries not engaged in the conflict.

"Names of these delegates must be submitted for approval to the Party to the conflict to which they shall be accredited.

"Approval must be granted or refused within fifteen days.

"CHAPTER II

"Ad hoc bodies

"Article 4

"Substitutes for Protecting Powers - Ad hoc bodies

"In those cases where Protecting Powers would not have been appointed or where their appointment would be inoperative, a number of Contracting Parties, taking no part in the conflict may agree together, under common Article 1 of the four Conventions, to create an ad hoc general or regional body, that would assume the tasks of Protecting Powers.

"Those countries which will have proposed the creation of an ad hoc body and will have thus become members of such a body, must draw up a list of persons who would be able to act as delegates of that body.

"The ad hoc body shall have its headquarters in a neutral country.

"Article 5

"Appointment of delegates by the ad hoc body

"The ad hoc body may appoint its delegates from among the names of those on the list.

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"These delegates must receive the approval of the Party to the conflict to which they shall be accredited.

"Approval must be granted or refused within a period not exceeding fifteen days, silence being understood to mean consent.

"CHAPTER III

"Discharge of the delegates' mission

"Article 6

"Selection of delegates

"Delegates must be selected among distinguished persons, of high moral conduct and unquestionable impartiality.

"It is desirable to include among delegates not only members of diplomatic and consular personnel, but also qualified persons, such as doctors and members of the staffs of National Red Cross Societies and of relief organizations.

"Article 7

"Functions of delegates

"The duties of the delegates of the Protecting Powers or of the ad hoc body shall, in particular, consist:

- in co-operating with the competent authorities of the Parties to the conflict in the implementation and application of the Conventions;
- in establishing violations of the Conventions;
- in investigating, with the approval of the Party where the delegates are carrying out their mission, into the circumstances in which the violations occurred;
- in taking the necessary steps on the spot in order to bring to an end violations of the Conventions;
- if necessary, in approaching the Parties to the conflict in any way they may judge to be useful for the application of the Conventions.

"The delegates shall draw up the necessary reports on the application of the Conventions and shall submit them to all Parties concerned, as well as to the Protecting Power or ad hoc body which appointed them.

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"Article 8

"Expenses

"Delegates' remunerations and expenses shall be borne by the Protecting Power or ad hoc body which appointed them.

"CHAPTER IV

"International Committee of the Red Cross

"Article 9

"Drawing up of a list of delegates

"On the entry into force of the present Regulations, the ICRC may compile a list of persons who may be appointed, in case of conflict, as its delegates.

"Article 10

"Selection of delegates

"Delegates must be selected from among distinguished persons of highly moral conduct having had some experience in the sphere of humanitarian action, according to the criteria mentioned in article 6.

"Article 11

"Appointment of delegates by the ICRC in case of conflict

"The ICRC may freely appoint its delegates

"Names of delegates must be submitted for approval to the Party to the conflict, where they will be discharging their mission.

"Approval must be granted or refused within a period not exceeding fifteen days.

"Article 12

"Functions of delegates

"The duties of the ICRC delegates shall consist in particular:

- in co-operating with the Parties to the conflict in the implementation and application of the Conventions;
- in providing humanitarian assistance to all persons protected by the Conventions and other victims of armed conflicts;

- in taking all steps which they would judge to be useful for the application of the humanitarian rules of the Conventions;
- if necessary, in approaching the Parties to the conflict in any way which they may judge to be useful for the application of the Conventions.

"CHAPTER V

"Non-international armed conflict

"Article 13

"Co-operation of the Protecting Powers

"In case of an armed conflict not of an international character breaking out on the territory of one of the Contracting Parties to the Conventions, the Parties to the conflict shall endeavour to bring into force, through special agreements, the provisions of the present Regulations regarding the Protecting Powers and the ad hoc body.

"Article 14

"Humanitarian activities of the ICRC

"The Parties to the conflict shall accept the services of the ICRC.

"The ICRC must act in conformity with the provisions laid down in Chapter IV of the present Regulations.

"CHAPTER VI

"General provisions

"Article 15

"Status of delegates

"The delegate's person is inviolable. He may not be arrested or detained in the exercise of his mission.

"The Parties to the conflict shall take all appropriate measures to prevent and repress all attacks on the persons and dignity of delegates.

"The Parties to the conflict shall facilitate, in the largest possible measure, delegates' tasks.

"A Party to the conflict may at any moment withdraw the approval it granted to a delegate. He may be expelled without any motive being given. At all events, it must be ensured that every delegate may leave freely and at any moment the country where he is carrying out his duties.

/...

"Article 16

"Identification of delegates

"The Protecting Powers, the ad hoc body and the ICRC must issue to their delegates identity cards bearing the photograph and the signature of the holder.

"Identity cards must bear mention of the approval granted by the competent authorities of the Parties to the conflict to which delegates will have been accredited.

"Article 17

"Review of lists of delegates

"Lists of persons who may act as delegates of the Protecting Powers and of the ICRC shall be periodically reviewed."

ANNEXES

ANNEX I

DRAFT PROTOCOL ON THE PROTECTION OF THE WOUNDED AND
SICK, ADDITIONAL TO THE GENEVA CONVENTION RELATIVE
TO THE PROTECTION OF CIVILIAN PERSONS IN TIME OF WAR,
OF 12 AUGUST 1949

(adopted by the Conference of Government Experts)

Preamble

The Parties, while solemnly reaffirming the provisions of the Fourth Geneva Convention of 12 August 1949, relative to the protection of civilian persons in time of war, have agreed to the following additional provisions.

Art. 1: Application of the Protocol

The provisions of this Protocol shall apply to all cases specified in article 2 of the aforesaid Fourth Convention and, with the exception of articles 8 and 10, paragraphs 3 and 4 of this Protocol, to the whole of the populations of the countries in conflict.

Art. 2: Terms

In this Protocol the expression:

(a) "Protected Person" means all those persons specified as protected persons in the four Geneva Conventions;

(b) "Medical Establishments and Units" means hospitals and other fixed medical establishments, medical and pharmaceutical stores of fixed medical establishments, mobile medical units, blood transfusion centres and other installations designed for medical purpose;

(c) "Medical Transportation" means transportation of wounded, sick, infirm, maternity cases, medical personnel, medical equipment and supplies by ambulances or by any other means of transportation excluding aircraft transportation.

/...

(d) "Medical Personnel" means persons regularly and solely engaged in the operation and administration of medical establishments and units, including the personnel engaged in the search for, removal and transporting of and caring for wounded and sick, the infirm and maternity cases.

(e) "Distinctive Emblem" means the distinctive emblem of the red cross (red crescent, red lion and sun) on a white background.

Art. 3: Protection and care

All wounded and sick, whether non-combatants or combatants rendered hors de combat, as well as the infirm, expectant mothers and maternity cases, shall be the object of special protection and respect.

In all circumstances these persons shall be treated humanely and shall receive medical care and attention necessitated by their condition with the least possible delay, and without any adverse distinction or discrimination founded on race, colour, caste, nationality, religion, political opinion, sex, birth, wealth or any other similar criteria.

Art. 4: Respect for persons

Any unjustified act or omission which endangers the health or physical or mental well-being of any protected person is prohibited.

Consequently, all experiments on and treatment of protected persons including removal or transplant of organs, not intended to provide them with medical relief are prohibited. This prohibition applies even if the protected persons concerned have given consent to such experiments.

Art. 5: Civilian medical establishments and units

Civilian medical establishments and units may in no circumstances be attacked, but shall at all times be respected and protected by the parties to the conflict.

The parties to a conflict shall provide these medical establishments and units with certificates identifying them for the purposes of this Protocol.

With authorization from the State, medical establishments and units shall be marked by means of the distinctive emblem.

In order to obviate the possibility of any hostile action, parties to the conflict shall as far as military considerations permit take the necessary steps to make known the location of medical establishments and units and mark them with the aforesaid distinctive emblem in such manner as to be clearly visible to the adverse forces.

The responsible authorities shall ensure that the said medical establishments and units are, as far as possible, situated in such a manner that attacks against military objectives cannot imperil their safety.

Art. 6: Discontinuance of protection of civilian medical establishments and units

The protection to which civilian medical establishments and units are entitled shall not cease unless they are used to commit, outside their humanitarian duties, acts harmful to the enemy. Protection may, however, cease only after due warning has been given, naming, in all appropriate cases, a reasonable time-limit and after such warning has remained unheeded.

The fact that sick or wounded members of the armed forces are nursed in these medical establishments and units, or the presence of small arms and ammunition taken from such combatants which have not yet been handed to the proper service, shall not be considered to be acts harmful to the enemy.

Art. 7: Civilian medical transportation

Ambulances and other vehicles used for medical transportation and serving to civilian medical establishments and units shall be respected and protected at all times. They shall bear a certificate from the competent authority testifying to their medical nature.

Other means of transport used in isolation or in convoy, whether on land or on waterways, temporarily assigned for medical transportation shall be respected and protected while being used for the aforesaid purpose.

With the consent of the competent authority, all vehicles and means of transportation mentioned above shall be provided with the distinctive emblem. However, the means of transportation mentioned in paragraph 2 above may display the distinctive emblem only while performing their humanitarian mission.

The provisions of article 6 shall also be applicable to medical transportation.

Art. 8: Requisition

The right of the Occupying Power to requisition civilian medical establishments and units, their movable and immovable assets as well as the services of their medical personnel shall not be exercised except temporarily and only when there is urgent necessity for the care of protected persons and then on condition that suitable arrangements are made in due time for the care and treatment of the patients and for the needs of the civilian population for hospital accommodation.

The material and stores of medical establishments and units cannot be requisitioned so long as they are necessary for the needs of the civilian population.

Art. 9: Civilian medical personnel

Civilian medical personnel duly recognized or authorized by the State and regularly and solely engaged in the operation and administration of medical establishments and units and the duly authorized personnel of the national Red Cross Societies employed in the medical treatment of the protected persons, as well as the personnel engaged in the search for, removal and transporting of and caring for wounded and sick, the infirm, maternity cases, shall be respected and protected.

The aforesaid medical personnel shall be recognizable by means of an identity card bearing the photograph of the holder and embossed with the stamp of the responsible authority, and also by means of a stamped armlet which they shall wear on the left arm while carrying out their duties. This armlet shall be issued by the State and shall bear the distinctive emblem.

As far as possible, every assistance shall be given to the aforesaid personnel in order that they may carry out their humanitarian mission to the best of their ability. In particular they shall be permitted access to all such places where their services may be required, subject to such supervisory and safety measures which may be considered necessary by the parties to the conflict.

If the aforesaid personnel fall into the hands of the adverse party they shall be given all facilities necessary for the performance of their mission. In no circumstances shall they be compelled or required to perform any work outside their medical duties.

The management of each medical establishment and unit shall at all times hold at the disposal of the competent national or occupying authorities an up-to-date list of such personnel.

Art. 10: Protection in the discharge of medical duties

In no circumstances shall the exercise of medical activities, consistent with professional rules, be considered an offense, no matter who the beneficiary may be.

In no circumstances will medical personnel be compelled by any authority to violate any provision of the Geneva Conventions for the protection of war victims, 12 August 1949, or of this Protocol.

No medical personnel shall be required to perform acts or do work which violates professional rules.

No medical personnel shall be compelled to inform an occupation authority of the wounded and sick under his care, unless failure to do so would be contrary to the regulations concerning the notification of communicable diseases.

Art. 11: The role of the population

The civilian and military authorities shall permit the inhabitants and relief societies, even in invaded or occupied areas, spontaneously to collect and care for wounded or sick, of whatever nationality.

The civilian population shall respect these wounded and sick, and in particular abstain from offering them violence.

No one may ever be molested or convicted for having nursed or cared for military or civilian wounded or sick.

Art. 12: Use of the distinctive emblem

The Parties shall take all necessary measures to ensure the proper use of the distinctive emblem and to prevent and repress any misuse thereof.

ANNEX II

DRAFT PROTOCOL ON THE PROTECTION OF THE WOUNDED AND SICK,
ADDITIONAL TO ARTICLE 3 OF THE FOUR GENEVA CONVENTIONS
OF 1949, RELATIVE TO ARMED CONFLICTS NOT INTERNATIONAL
IN CHARACTER

(adopted by the Conference of Government Experts)

Art 1: Protection and care

All wounded and sick, whether non-combatants or combatants rendered hors de combat, as well as the infirm, expectant mothers and maternity cases, shall be the object of special protection and respect.

In all circumstances these persons shall be treated humanely and shall receive medical care and attention necessitated by their condition with the least possible delay, and without any adverse distinction or discrimination founded on race, colour, caste, nationality, religion, political opinion, sex, birth, wealth or any other similar criteria.

Any unjustified act or omission which endangers the health or physical or mental well-being of any person referred to in the first paragraph is prohibited.

Art. 2: Search and recording

At all times and particularly after an engagement, parties to the conflict shall without delay take all possible measures to search for and collect the wounded and the sick, to protect them against pillage and ill-treatment and to ensure their adequate care.

Parties to the conflict shall communicate to each other, or when this is not possible, publish all details of wounded sick and dead of the adverse party in their hands.

Art. 3: Role of the population

The civilian population shall in particular respect the wounded and the sick and abstain from offering them violence.

No one may ever be molested or convicted for having nursed or cared for the wounded or sick.

/...

Art. 4: Medical and religious personnel

Military and civilian medical personnel as well as chaplains and others performing similar functions shall be, in all circumstances, respected and protected during the period they are so engaged. If they should fall into the hands of the adverse party they shall be respected and protected. They shall receive all facilities to discharge their functions and shall not be compelled to perform any work outside their medical duties.

Art 5: Medical establishments and transportation

Fixed establishments and mobile medical units, both military and civilian, which are solely intended to care for the wounded and the sick shall under the circumstances be attacked; they and their equipment shall at all times be respected and protected by the parties to the conflict.

Transportation of wounded and sick, or of medical personnel or equipment shall be respected and protected in the same way as mobile medical units.

Art 6: Evacuation

The parties to the conflict shall endeavour to conclude local arrangements for the removal from areas where hostilities are taking place of wounded or sick, infirm, expectant mothers and maternity cases.

Art. 7: Medical assistance by other States or by impartial humanitarian organizations

An offer of medical assistance by another State or by an impartial humanitarian organization to aid in the relief of persons suffering as a consequence of the conflict shall not be considered as an unfriendly act or have any effect on the legal status of the parties to the conflict.

An offer by another State to receive wounded, sick or infirm persons, expectant mothers and maternity cases on its territory shall not be considered as an unfriendly act or have any effect on the legal status of the parties to the conflict.

Art. 8: The distinctive emblem

The emblem of the red cross (red crescent, red lion and sun) on a white background is retained as distinctive emblem of the medical services of the parties to a conflict. It shall not be used for any other purposes and shall be respected in all circumstances.

Art 9: Legal status of the parties to the conflict

The application of the preceding provisions shall not affect the legal status of the parties to the conflict.
