

United Nations
**GENERAL
ASSEMBLY**

THIRTY-SECOND SESSION
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SIXTH COMMITTEE
14th meeting
held on
Tuesday, 11 October 1977
at 10.30 a.m.
New York

SUMMARY RECORD OF THE 14th MEETING

Chairman: Mr. GAVIRIA (Colombia)

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AGENDA ITEM 115: RESPECT FOR HUMAN RIGHTS IN ARMED CONFLICTS: REPORT OF THE
SECRETARY-GENERAL

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Distr. GENERAL
A/C.6/32/SR.14
14 October 1977
ENGLISH
ORIGINAL: SPANISH

The meeting was called to order at 10.50 a.m.

AGENDA ITEM 115: RESPECT FOR HUMAN RIGHTS IN ARMED CONFLICTS: REPORT OF THE SECRETARY-GENERAL (A/32/144 and Add.1)

1. Mr. SZELEI (Hungary) said his Government attached the utmost importance to the Diplomatic Conference on Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts and to the two Protocols it had adopted at its fourth session. In addition to constituting an essential gain for humanitarian law, those instruments represented a contribution to the progressive development and codification of international law in both the short and the long term.
2. Referring to the provisions of Protocols I and II, he expressed satisfaction with the reference to acts of aggression in the preamble to Protocol I and the wording of article 1, paragraph 4, of that instrument. Similarly, the provisions of article 44, dealing with the question of combatants and prisoners of war, and the inclusion in the Protocol of the concept of protection of the natural environment, were consonant with the positions advocated by his delegation at the Diplomatic Conference and in the Sixth Committee. He congratulated the United Nations Secretariat on its contribution to the success of the Diplomatic Conference and expressed the hope that all States, whether or not they had participated in the work of the Conference, would adopt appropriate measures to give force of law to the Additional Protocols to the Geneva Conventions.
3. With regard to the various resolutions adopted by the Diplomatic Conference, he expressed his delegation's support for resolution 21 (IV) on dissemination of knowledge of international humanitarian law applicable in armed conflicts and said that his Government would act in accordance with that resolution. On the other hand, his delegation had reservations concerning the usefulness of resolution 22 (IV) on follow-up regarding prohibition or restriction of use of certain conventional weapons.
4. Mr. CHAVEZ (Peru), after outlining the history of the four sessions of the Diplomatic Conference on Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts, said that in 1977 the Conference had succeeded in adopting two very important international instruments, Additional Protocols I and II to the 1949 Geneva Conventions. Although those Protocols were milestones in the application and development of international humanitarian law in armed conflicts, certain aspects of the question were still outstanding and could be the subject of international agreements. Consequently, the Diplomatic Conference had quite rightly adopted resolution 22 (IV), in which it recommended that a Conference of Governments should be convened not later than 1979 with a view to reaching the goals set out in the fifth, sixth and seventh preambular paragraphs and operative paragraph 3 of that resolution. His delegation firmly supported the convening of that Conference of Governments with a view to concluding agreements on the use of certain weapons and as a means of seeking new areas of compromise and understanding regarding international humanitarian law. At the same time it considered that, at a later stage, the Conference of Governments could also undertake the task of improving Protocol II, which in its current form was somewhat brief.

(Mr. Chavez, Peru)

5. He stressed the need to combat the scourge of war in all its aspects by measures such as the permanent observance of the purposes and principles of the United Nations Charter, general and complete disarmament, denuclearization and arms control. That was not enough, however, for it was also necessary to take into account, among other things, the rights of non-combatants, methods and means of warfare, the civilian population, the protection of the environment and the protection of cultural property, which was why his delegation urged that the 1949 Geneva Conventions and the 1977 Additional Protocols should be ratified.

6. Lastly, he paid a tribute to the praiseworthy work of the International Red Cross, which had made and was making a fundamental contribution to the development and application of international humanitarian law.

7. Mr. GONZALEZ GALVEZ (Mexico) observed that the international community had always been somewhat reluctant to prepare rules applicable in armed conflicts, for fear that that might provoke a reaction on the part of public opinion and affect the vital interests of countries in times of crisis. Thus, the British Yearbook of International Law for 1920-1921 had contained an article expressing strong opposition to any amendment of the rules applicable in time of war because that would be tantamount to acknowledging the ineffectiveness of the existing international machinery in that regard. That theory had been supported by many writers and only after the massive loss of human lives in the Second World War had Governments begun to consider the need to bring up to date the rules applicable in armed conflicts. Nevertheless, the International Law Commission had decided in 1949 that the codification of the law applicable in time of war was not urgent.

8. Fortunately, that view had lost support in the United Nations and with the passing of the years a series of resolutions had been adopted guiding the work of the Diplomatic Conference, whose fourth session had culminated in the adoption of the two Additional Protocols to the 1949 Geneva Conventions. However, many countries, including his own, had reservations with regard to Protocol II, for it was essential to devise machinery to ensure that the rules applicable in armed conflicts were not transformed into a means of intervention in time of civil war. The definition in Protocol II in that regard was not sufficiently clear, a fact which might influence the number of ratifications of that instrument.

9. He noted that although the two Protocols adopted represented substantial progress, the development of international humanitarian law would not be completed until the international community adopted rules relating to the prohibition or restriction of use of certain conventional weapons having indiscriminate effects. Resolution 22 (IV) of the Conference, which related to that question, was therefore especially important, and he urged all States to make every effort to ensure the success of the Conference of Governments envisaged in paragraph 3 of that resolution.

10. His delegation considered that resolution 22 (IV) of the Conference should not be included in the disarmament negotiations, for the programme of work of the Conference of the Committee on Disarmament was already quite full and such a course would merely result in a lengthy postponement of the solution of that problem.

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(Mr. Gonzalez Galvez, Mexico)

Furthermore, two Powers whose contribution was essential were not represented in that body. He noted that the two Protocols adopted in Geneva referred to elements of traditional humanitarian law as a result of the impetus provided by the Viet Nam war, which had focused attention on the problem of prisoners of war who did not have the necessary international protection. However, the time had come to deal with the protection of the civilian population and in that regard he observed that a SIPRI report stated that since 1941 more than 100 armed conflicts had been recorded in developing countries and that whereas civilians had constituted 50 per cent of the casualties in the Second World War, that percentage had increased to 80 in Korea and Indo-China. Those statistics highlighted the need for the international community to ponder that question.

11. Mr. KRECZKO (United States of America) said that his country supported the Protocols adopted by the Diplomatic Conference on Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts and trusted that they would be signed and ratified by all States. The success of the Conference could be attributed in good measure to the excellent preparatory work by the International Committee of the Red Cross and to the willingness of delegations to make accommodations in their positions in order to advance the protection of human rights.

12. The most significant accomplishment of Protocol I was perhaps to be found in articles 24 to 30, which provided for the protection of medical aircraft. Articles 32 to 34, designed to ensure accounting of the missing in action and the protection of remains of the dead, were also important.

13. Several principles established in Protocol I prevented its scope from being limited, to the detriment of certain individuals. First, the preamble acknowledged that no person could be denied the protection of the Conventions or the Protocol because of charges of aggression, and article 44 stated that a soldier could not be deprived of his status as a prisoner of war by allegations of war crimes. Second, the preamble recognized that the provisions of the Protocol must be applied "in all circumstances to all persons who are protected by those instruments, without any adverse distinction based on the nature or origin of the armed conflict or on the causes espoused by or attributed to the Parties to the conflict". Third, article 75 established minimum standards of treatment for persons which confirmed basic human rights applicable at all times, guaranteed certain rights during detention and trial, and included special protection for women.

14. Other important advances made in Protocol I included the prohibition of indiscriminate attacks, the definition of "military objectives", the prohibition of starvation of civilians and the destruction of crops and food supplies, the special protection of dams, dikes and nuclear power stations, the codification of the rule of proportionality and the definition of "mercenary".

15. Although the provisions relating to dissemination of the rules of war, the attachment of legal advisers to the armed forces and the responsibility of commanders to take steps to prevent violations represented an improvement on the

(Mr. Kreczko, United States)

1949 Conventions, sufficient progress had not been made. His country would have liked provision to be made for the appointment of Protecting Powers in all cases and for the creation of a mandatory International Fact-Finding Commission to inquire into cases of grave breaches or serious violations.

16. His country also supported Protocol II, whose basic thesis was that international concern for humanitarian rights must extend to those affected by internal conflicts. However, more progress could have been made in the development of the very slim body of international law currently applicable. Article I subjected the field of application to so many qualifications that many Governments could argue that the Protocol did not apply to their own internal armed conflicts. The Conference had deferred too much to the concept of national sovereignty, to the detriment of the protection of human rights. Nevertheless, if nations had the courage to accept and apply the Protocol in good faith, its provisions on fundamental guarantees, or persons whose liberty had been restricted and on guarantees during penal prosecution would provide an important minimum level of protection for all victims of civil wars.

17. Satisfaction with the achievements of the Conference should not be obscured by the introduction of other issues, and his delegation's decision not to comment on certain extraneous remarks did not mean that it agreed with them.

18. The CHAIRMAN said that, if there were no objections, he would take it that the Committee, in accordance with its usual practice, decided to invite the observer for Switzerland to participate in the debate on the item without the right to vote.

19. It was so decided.

20. Mr. MARCUARD (Observer for Switzerland) said that the item under consideration was of particular interest to his country, which had taken the initiative of convening and organizing the Diplomatic Conference on Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts, which had met in Geneva between 1974 and 1977 with a view to completing the 1949 Geneva Conventions, bearing in mind the changes in the character and methods of armed conflicts and the growth of the international community. Both Protocol I - article 1 of which extended the concept of international armed conflict to cover the struggles of peoples against colonial domination, alien occupation and racist régimes - and Protocol II - concerning internal conflicts - reflected a new political reality. However, the basic principles of the 1949 Conventions were still valid: universal application, whatever the origin of conflict and its political or ideological motive; broad legal and material protection for combatants and the civilian population; limitation of military actions to combatants, who should be organized militarily and observe the laws and customs of war; protection of the civilian population and combatants by humanitarian principles and the dictates of the public conscience in cases not regulated by international law.

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(Mr. Marcuard, Observer, Switzerland)

21. Great improvements had been made in Protocol I in connexion with the material welfare of victims of conflicts, especially with regard to medical transport, relief and civil defence services. Article 75 - a veritable catalogue of human rights - marked notable progress with regard to the Geneva Conventions.

22. The distinction between civilian population and combatants - which should also be respected by those using weapons of mass destruction - was the best way of preserving the civilian population from the horrors of war. However, the long debate on article 44 had given rise to confusion. His Government was not opposed to granting prisoner-of-war status to guerrillas, but considered that the distinction between civilian population and combatants should be established clearly in practice and in every case. Otherwise, the civilian population would bear the brunt of military operations and a state of total war would result.

23. Another innovation was the introduction of Protocol I of provisions on methods and means of warfare, which were regulated by the Hague rules. Unfortunately, the use of weapons which caused superfluous injury or had indiscriminate effects had not been prohibited or limited, and article 35 embodied a very general rule which needed clarification. His country had therefore supported the efforts made to that end by Sweden, the Philippines and Mexico, and regretted that the Mexican proposal for the establishment of permanent machinery to consider the prohibition of weapons causing superfluous injury had been rejected by a few votes.

24. It would have been desirable to establish more effective machinery to guarantee respect for the Conventions and the Protocol, and in particular to have given the International Fact-Finding Commission established by article 90 compulsory jurisdiction, which would have had a deterrent effect, especially in occupied territories, and would have avoided difficulties of interpretation as such as might derive from article 85.

25. Protocol II represented a marked improvement over the scanty provisions of the Conventions applicable to the ever-increasing number of internal conflicts. However, its field of application was limited to the traditional type of civil war, which was currently very infrequent. Many essential principles of humanitarian law contained in the original draft had been omitted from the simplified text. His country had accepted those omissions only for the sake of achieving a text which, although imperfect, could command wide support, instead of a more perfect document that would remain a dead letter, and it was convinced that article 3, which was common to all the 1949 Conventions, imposed on all the Contracting Parties respect for the humanitarian rules which were not restated in Protocol II.

26. Switzerland welcomed the extension of the application of humanitarian law achieved by the Conference and particularly article 96, paragraph 3, in Protocol I, which allowed the authority representing a people engaged in an armed conflict against a High Contracting Party to undertake to apply the Conventions and Protocol I by means of a unilateral declaration.

(Mr. Marcuard, Observer, Switzerland)

27. The Government of Switzerland thanked all the participants in the Conference and particularly the Secretary-General and the General Assembly for their interest in the work of the Conference, and expressed the firm hope that both Protocols would enter into force as soon as possible. The ceremony of signature would be held on 12 December in Berne, and the Protocols would remain open for signature for a period of 12 months. Since only States which were parties to the Geneva Conventions could become parties to the Protocols, it was to be hoped that States which were not parties to the Conventions would accede to them without delay.

The meeting rose at 11.50 a.m.