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HUMAN RIGHTS IN ARMED CONFLICTS
RESPECT FOR HUMAN RIGHTS IN ARMED CONFLICTS

Report of the Secretary-General

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INTRODUCTION

1. At its twenty-third session, having considered resolution XXIII 1/ of the International Conference on Human Rights, held at Teheran in 1968, the General Assembly, in resolution 2444 (XXIII) of 19 December 1968, invited, inter alia, the Secretary-General, in consultation with the International Committee of the Red Cross (ICRC) and other appropriate international organizations, 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 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. Accordingly, the Secretary-General submitted a report on those matters (A/7720) to the General Assembly at its twenty-fourth session. 2/ At that session, the General Assembly adopted resolution 2597 (XXIV) of 16 December 1969, in which the Secretary-General was requested "to continue the study initiated under General Assembly resolution 2444 (XXIII), giving special attention to the need for protection of the rights of civilians and combatants in conflicts which arise 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 had before it, inter alia, the second report of the Secretary-General (A/8052) on respect for human rights in armed conflicts, prepared in accordance with General Assembly resolution 2597 (XXIV). 2/ The General Assembly adopted five resolutions concerning respect for human rights in armed conflicts (resolutions 2673 (XXV) 3/ - 2677 (XXV)), the texts of which were reproduced or summarized in some detail in document A/8370.

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

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/ General Assembly resolution 2673 (XXV) concerned the protection of journalists engaged in dangerous missions in areas of armed conflict, a matter which is dealt with in a separate report submitted by the Secretary-General to the present session of the General Assembly (A/8777).

4. In the fifth and sixth preambular paragraphs of resolution 2677 (XXV), the General Assembly, reaffirming the principles contained in resolution XXIII of the International Conference on Human Rights and in General Assembly resolutions 2444 (XXIII) and 2597 (XXIV), 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 (ICRC) 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 four Geneva Conventions of 1949 ^{4/} 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. In operative paragraph 2 of resolution 2677 (XXV), 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 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 operative paragraph 3, the General Assembly requested the Secretary-General, *inter alia*, 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; and to report at the twenty-sixth session of the General Assembly 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.

5. In accordance with General Assembly resolution 2677 (XXV), the Secretary-General submitted to the General Assembly at its twenty-sixth session a report on the Conference of Government Experts on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts, convened in 1971 by the International Committee of the Red Cross, and on some other relevant developments (A/8370 and Add.1). As suggested by the ICRC, the report drawn up by

^{4/} 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).

the ICRC on the work of the Conference 5/ was also distributed to the members of the Third Committee. In the preamble of resolution 2852 (XXVI), adopted on 20 December 1971, the General Assembly, inter alia, welcomed the decision of the ICRC to convene in 1972 a second session of the Conference of Government Experts with broader participation to include all the States parties to the Geneva Conventions of 1949, and to circulate in advance of that session a series of draft protocols. In the operative part of the resolution, the General Assembly, inter alia, invited the ICRC to continue its work, taking into account all relevant United Nations resolutions on human rights in armed conflicts, and to devote special attention to:

"(a) The need to ensure better application of existing rules relating to armed conflicts, particularly the Hague Conventions of 1899 and 1907, 6/ the Geneva Protocol of 1925 7/ and the Geneva Conventions of 1949, including the need for strengthening the system of protecting Powers contained in such instruments;

"(b) The need for a reaffirmation and development of relevant rules, as well as other measures to improve the protection of the civilian population during armed conflicts, including legal restraints and restrictions on certain methods of warfare and weapons that have proved particularly perilous to civilians as well as arrangements for humanitarian relief;

"(c) The need to evolve norms designed to increase the protection of persons struggling against colonial and alien domination, foreign occupation and racist régimes;

"(d) The need for development of the rules concerning the status, protection and humane treatment of combatants in international and non-international armed conflicts and the question of guerilla warfare;

"(e) The need for additional rules regarding the protection of the wounded and the sick."

The General Assembly also expressed the hope that the second session of the Conference of Government Experts would result in specific conclusions and recommendations for action at the government level. The Secretary-General was requested to report to the General Assembly at its twenty-seventh session on the results of the Conference of Government Experts and any other relevant developments.

5/ Report on the Work of the Conference of Government Experts on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts, Geneva, August 1971.

6/ Carnegie Endowment for International Peace, The Hague Conventions and Declarations of 1899 and 1907 (New York, Oxford University Press, 1915).

7/ League of Nations, Treaty Series, vol. XCIV, 1929, No. 2138.

A report on napalm and other incendiary weapons and all aspects of their possible use, which the Secretary-General was asked to prepare with the help of qualified governmental consultant experts, is being submitted to the General Assembly in a separate document (A/8803), in accordance with operative paragraph 5 of General Assembly resolution 2852 (XXVI).

6. In resolution 2853 (XXVI), also of 20 December 1971, the General Assembly, inter alia, welcomed the progress made by the Conference of Government Experts at its first session and expressed the hope that the second session of the Conference would make recommendations for the further development of international humanitarian law applicable in armed conflicts, including, as appropriate, draft protocols to the Geneva Conventions of 1949, for subsequent consideration at one or more plenipotentiary diplomatic conferences. The Secretary-General was requested to transmit his latest report (A/8370 and Add.1) together with any further observations received from Governments as well as the records of relevant discussions and resolutions of the General Assembly, to the ICRC for consideration, as appropriate, by the Conference of Government Experts at its second session. The General Assembly further asked the Secretary-General to report to the General Assembly at its twenty-seventh session on the progress made in the implementation of resolution 2853 (XXVI).

7. The purpose of the present report is to provide the General Assembly with a survey of the results of the second session of the Conference of Government Experts and of some other relevant developments in accordance with the above-mentioned resolutions. Part one of the present report contains a general description of the organization and purposes of the Conference, as well as the outcome of its work; part two contains a summary of proposals made on the questions discussed at the Conference; part three contains information received by the Secretary-General on certain developments arising out of the activities of various non-governmental bodies interested in questions concerning respect for human rights in armed conflicts. Throughout the present report symbols in the series CE/- refer to documents of the International Committee of the Red Cross.

Part One

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

8. In accordance with the intention it had expressed at the conclusion of the first session in 1971, in 1972 the ICRC organized a second session of the Conference of Experts on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts. The Conference was held at Geneva from 3 May to 3 June 1972. The ICRC had addressed invitations to all States Parties to the Geneva Conventions and, of these, 77 sent experts: Algeria, Argentina, Australia, Austria, Bangladesh, Belgium, Brazil, Bulgaria, Byelorussian Soviet Socialist Republic, Cameroon, Canada, Chile, Cuba, Cyprus, Czechoslovakia, Democratic People's Republic of Korea, Denmark, Egypt, Federal Republic of Germany, Finland, France, Gabon, German Democratic Republic, Greece, Guatemala, Holy See, Hungary, India, Indonesia, Iran, Iraq, Ireland, Israel, Italy, Ivory Coast, Japan, Jordan, Khmer Republic, Kuwait, Lebanon, Liberia, Libyan Arab Republic, Mali, Mexico, Monaco, Netherlands, Nicaragua, Nigeria, Norway, Pakistan, Philippines, Poland, Portugal, Republic of Korea, Republic of Viet-Nam, Romania, San Marino, Saudi Arabia, Senegal, South Africa, Spain, Sudan, Sweden, Switzerland, Syrian Arab Republic, Tunisia, Turkey, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, United States of America, Uruguay, Venezuela, Yemen, Yugoslavia and Zaïre. As in 1971, 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.
9. The President of the ICRC 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 Mr. M. Tardu and Mr. A. Bolintineanu, members of the Division of Human Rights.
10. In accordance with resolution XIII of the twenty-first International Conference of the Red Cross, and as stated in the invitation issued by the ICRC, the purpose of the Conference was to obtain the opinion of government experts which would enable the Committee to draw up additional concrete rules in the field of international humanitarian law applicable to armed conflicts, in particular in the form of additional protocols to the 1949 Geneva Conventions. Any draft rules which the ICRC might draw up would subsequently be submitted to the Governments of all the States Parties to those Conventions.
11. As provided in the rules of procedure of the Conference, except for the opening meeting, all meetings were held in private. The rules of procedure provided that the government experts would in no way bind the Governments that had nominated them. It was also specified that the Conference would not adopt any resolutions or recommendations. Votes could be taken, but would be purely indicative.
12. The Conference elected Mr. Jean Pictet, Vice-President of the ICRC, as its Chairman. Mr. A. Cristescu (Romania), Mr. K. M'baye (Senegal) and Mr. W. Riphagen (Netherlands) were elected Vice-Chairmen. Since Mr. Kéba M'baye (Senegal) was unable to attend the Conference, Mr. P. Mataga (Cameroon) was subsequently elected

Vice-Chairman. The Conference established four commissions, chaired respectively by Mr. N. Singh (India), Mr. D. Miller (Canada), Mr. S. Dabrowa (Poland), and Mr. Kussbach (Austria).

13. The documentation submitted to the Conference included the texts submitted in 1971, in particular the first two reports of the Secretary-General to the General Assembly (A/7720 and A/8052) and basic documents I to VIII prepared by the ICRC for the first session, 8/ and also the following new documents: (a) the report prepared by the ICRC on the work of the first session; 9/ (b) the texts, with commentaries of the two draft additional protocols to the Geneva Conventions, prepared by the ICRC, one (draft I) concerning international armed conflicts, and the other (draft II), a draft additional protocol to article 3 common to the Geneva Conventions, concerning armed conflicts of a non-international character; 10/ (c) a preliminary draft declaration on the application of international humanitarian law in armed struggles for self-determination (see para. 312 below), and a draft resolution concerning disarmament and peace (see para. 153 below), prepared by the ICRC; (d) a questionnaire from the ICRC on measures designed to strengthen the application of the Geneva Conventions and the replies of Governments thereto;

8/ 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 guerilla warfare (CE/6b);
- Document VII: Protection of the wounded and sick (CE/7b);
- Document VIII: Annexes (CE/8b).

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

10/ International Committee of the Red Cross, Conference of Government Experts on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts, Geneva, 3 May-3 June 1972 (second session).

- Document I: Basic texts;
- Document II: (parts one and two): Commentary.

(e) the report on the work of a conference of Red Cross experts on the reaffirmation and development of international humanitarian law applicable in armed conflicts, held at Vienna from 20 to 24 March 1972; (f) the report of the Secretary-General submitted to the General Assembly at its twenty-sixth session (A/8370 and Add.1), and the other United Nations documents transmitted to the Conference in accordance with General Assembly resolution 2853 (XXVI); and (g) the United Nations documents concerning the protection of journalists engaged in dangerous missions supplied to the Conference by the Secretary-General in accordance with General Assembly resolution 2854 (XXVI).

14. Consideration of the questions dealt with in the draft additional protocols and the other texts prepared by the ICRC was allocated to the four commissions as follows:

(a) On the basis mainly of articles 11 to 29 of draft protocol I prepared by the ICRC, Commission I considered questions relating to the protection of wounded, sick and shipwrecked persons in international armed conflicts, including questions relating to the marking and identification of medical transport and the role of the National Red Cross Societies and other humanitarian organizations in that field;

(b) Questions relating to non-international armed conflicts were dealt with by Commission II, on the basis of draft protocol II prepared by the ICRC;

(c) Commission III dealt with questions relating to combatants (part III of draft protocol I) and the civilian population (part IV of draft protocol I) in international armed conflicts and in that Commission, too, the experts expressed their views on the preliminary draft international convention on the protection of journalists engaged in dangerous missions transmitted by the Secretary-General in accordance with General Assembly resolution 2854 (XXVI);

(d) Commission IV had the task of considering the preamble, part I (General provisions), part V (Execution of the Conventions and of the present Protocol) and part VI (Final provisions) of draft protocol I, as well as the preliminary draft declaration on the application of international humanitarian law in armed struggles for self-determination and the draft resolution concerning disarmament and peace.

15. In view of the fact that identical or similar questions had been dealt with from different angles in the two draft protocols prepared by the ICRC, there was frequently a close fundamental connexion between the work of Commission II relating to non-international conflicts and that of the other commissions concerning international conflicts. Both in the commissions and in plenary meetings, the question was debated whether consideration should be given to the preparation of a single protocol applicable to all armed conflicts or to the standardization as far as possible of the basic rules contained in the two draft protocols. Moreover, the problems relating to armed struggles for self-determination and against colonial or foreign domination or occupation were the subject of debate and proposals in several commissions.

16. It appears from the work of the Conference that a single text which forms a complete draft may be considered as having received the agreement of a great number of experts as a recommendation to the ICRC: a revised draft of part II of

draft protocol I, concerning the protection of wounded, sick and shipwrecked persons in international armed conflicts, prepared by Commission I. The text appears as an annex to this report. It should be noted that the debates on the various questions considered, in particular the use of certain weapons, the status of guerrillas, the protection of the civilian population, the problems relating to non-international conflicts, and the strengthening of the procedures for the application and supervision of the Geneva Conventions and the protocols, in general went into greater depth than the debates during the first session. A very large number of written proposals were submitted and discussed. Several alternative texts were proposed by the commissions or their working groups on various aspects. With regard to some questions, indicative votes were taken which might perhaps facilitate the revision of the draft protocols. Their results are not, however, given in the report prepared by the ICRC on the work of the Conference.

17. At the closing meeting, the President of the ICRC, Mr. Marcel Naville, stated, inter alia, that "the results obtained during the second session were sufficiently important to enable the ICRC to hope now that a diplomatic conference could shortly be convened". The President of the ICRC stated that the Committee intended first of all to draft new texts of additional protocols, taking into account all the views which had been gathered during the Conference. Mr. Naville stated that, in the process, the ICRC "will also be in contact with the United Nations on the subjects on which the latter has been asked to undertake special studies". The ICRC then proposed "to transmit, during spring 1973, the new draft protocols to the Swiss Government, which is the depositary of the Geneva Conventions so that they might be communicated to the Governments of States Parties to the Conventions. Those Governments would thus have an opportunity to study them before the convening of a conference of plenipotentiaries."

18. In the course of the debates of the Conference, many government experts referred to the first two reports of the Secretary-General on respect for human rights in armed conflicts (A/7720 and A/8052) and several experts expressed support for various observations and suggestions contained in those reports. The representative of the Secretary-General had an opportunity to refer to, and elaborate on, a number of those suggestions, which had been submitted in accordance with the wishes of the Teheran Conference and the General Assembly. He said, in particular, that in the work required to adapt the basic rules of international humanitarian law to current conditions in armed conflicts, full account should be taken of the Universal Declaration of Human Rights and other international instruments adopted by the United Nations, general rules relating to human rights which, in accordance with their provisions, were applicable in time of war as in time of peace. With regard to the strengthening of the procedures for the implementation and supervision of international humanitarian law, the representative of the Secretary-General emphasized that it was important to make the system of protecting Powers effective as far as possible, particularly by preparing in peace-time for its smooth operation. In general, it appeared that the role of protecting Powers or of an adequate substitute would have more

chance of being accepted if freedom of choice was left to the parties concerned and an extensive range of possibilities, including the possibility of ad hoc arrangements, was offered to them. In reply to some observations made during the debate, the representative of the Secretary-General pointed out that the proposed protocols would not limit the possibilities for action of United Nations organs under the Charter, which, by its very terms, must prevail over any other international agreement. The representative of the Secretary-General reiterated the intention of the Secretary-General to pursue with the ICRC the fruitful collaboration between the two organizations which characterized their work in the reaffirmation and development of international humanitarian law applicable in armed conflicts.

Part Two

QUESTIONS DISCUSSED AT THE CONFERENCE

19. Following the method which was adopted for the preparation of the Secretary-General's report on the first session of the Conference (A/8370 and Add.1) the second part of the present report summarizes the draft protocols and other texts prepared by the ICRC and a number of written proposals submitted to the Conference by various government experts. Appropriate references are also made to resolutions of the General Assembly concerning respect for human rights in armed conflicts as well as to the observations and suggestions contained in the previous reports of the Secretary-General. To ensure continuity between those previous reports and the present document, the main questions considered by the Conference are reviewed as far as possible in the order in which they were presented in the second report of the Secretary-General (A/8052).

I. GENERAL CONSIDERATIONS REGARDING THE DESIRABILITY AND FEASIBILITY
OF PREPARING IDENTICAL OR DIFFERENT RULES CONCERNING INTERNATIONAL
AND NON-INTERNATIONAL ARMED CONFLICTS

20. It should be recalled that in several resolutions, particularly resolutions 2444 (XXIII) and 2675 (XXV), the General Assembly had stressed the need to ensure respect for human rights in "all armed conflicts", without qualification.

21. In his first report (A/7720, chap. III) as well as in his second report (A/8052, paras. 20-29, and annex I), the Secretary-General had pointed out that the general international instruments on human rights adopted under the auspices of the United Nations had the effect of affording a substantial measure of protection to all persons in all armed conflicts, and should therefore be fully taken into account in the process of reaffirmation and development of international humanitarian law applicable in armed conflicts. In paragraph 41 of his second report the Secretary-General had expressed the view that his suggested standard minimum rules on the protection of civilians should apply irrespective of whether the conflicts were international or non-international.

22. At the first session of the Conference the question whether there should be one or two protocols was debated. In particular it may be recalled that, according to one proposal, matters concerning the status of guerillas and the protection of civilians should be dealt with in a single instrument which would be applicable in all armed conflicts (see A/8370, para. 112). ^{11/} The ICRC, in

^{11/} See also, ICRC, Report on the work of the Conference of Government Experts on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts, Geneva, August 1971, paras. 21-22.

its basic documents for the first session, had proposed that separate rules concerning non-international conflicts be prepared; but it had also suggested that fundamental norms concerning the protection of civilians be made applicable in all armed conflicts (ibid., para. 33). 12/

23. The basic documents submitted by the ICRC to the second session of the Conference contained no draft instrument applicable in all armed conflicts. All substantive matters were dealt with in different terms within the context of international conflicts (draft Protocol I) and as regards non-international conflicts (draft Protocol II). However, as was pointed out by the ICRC at the Conference, several provisions were similar in both instruments.

24. The question whether there should be one or two draft protocols was debated in Commissions II and III as well as in plenary meetings, particularly as regards the protection of civilians and the status of guerillas. During the debates in the Commissions, some experts, pointing out that the need of the victims for protection and relief were the same in all conflicts, felt that there should be a single substantive instrument for certain matters or identical substantive clauses applicable to both types of armed conflicts, even though implementation procedures might differ. 13/ Other experts were of the opinion that two separate instruments should be drawn up, since, in their view, the political aspects of the two types of conflicts as well as the legal conditions governing the implementation of the two protocols differed; it was stated in that connexion that the application of Protocol II should be based on the principle of non-interference in the domestic affairs of States. 14/ Many experts recognized the need for taking into account the work of other commissions in the debates concerning draft Protocol II. 15/

25. At the last plenary meeting of the Conference, the experts of Algeria, Austria, Ireland, Jordan, the Libyan Arab Republic, Mali, Nigeria, Norway, the Sudan, Sweden, Switzerland, the United Republic of Tanzania, Yemen and Yugoslavia submitted a proposal 16/ urging "that a Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts, to this end should endeavor to elaborate new substantive rules for the protection of war victims in international conflicts and in conflicts not of international character to the largest extent possible by uniform provisions".

12/ See also, CE/3b, p. 8.

13/ ICRC, Report on Commission II, paras. 13 and 14.

14/ Ibid., para. 15.

15/ Ibid.

16/ CE/SPF/3.

II. CONSIDERATION OF THE DRAFT ADDITIONAL PROTOCOL
RELATING TO INTERNATIONAL ARMED CONFLICTS

A. Consideration of the Preamble

26. the International Committee of the Red Cross proposed the following preamble to the draft additional protocol relating to international armed conflicts:

"The High Contracting Parties,

"Recalling that the recourse to force is prohibited in international relations,

"Deploring that despite this prohibition and notwithstanding all endeavours to proscribe armed conflicts they continue to occur and to cause a great deal of suffering which must be alleviated,

"Noting that humanitarian rules retain all their validity despite the infringements which they suffered and believing that the observances of these rules in their entirety by all the Parties to the conflict will improve the likelihood of finding peaceful solutions,

"Reaffirming the conventional and customary rules whereby the Parties to the conflict must make a distinction between protected persons and objects, on the one hand, and military objectives, on the other,

"Emphasizing that the methods and measures which are today available to the armed forces do not always allow such a distinction to be made,

"Believing, consequently, that it is essential to reaffirm and develop the rules ensuring the protection of the victims of armed conflicts and enshrining the principles of humanity and to supplement those measures intended to reinforce their implementation;

"Have agreed on the following:"

27. Some experts felt that no preamble would be needed, as none had been included in the Geneva Conventions of 1949 and the preparation of a preamble might raise unnecessary complications. 17/ Among the experts who agreed with the idea of including a preamble, some submitted written proposals. 18/

17/ ICRC Report on Commission IV, para. 161.

18/ CE/COM IV/32, 51, 62, 77 and 78.

28. Proposals by the experts of Bulgaria, Czechoslovakia, the German Democratic Republic, Hungary and Poland and by the experts from Romania were comprehensive alternative texts, as follows:

(a) Proposal by the experts from Bulgaria, Czechoslovakia, the German Democratic Republic, Hungary and Poland

"The High Contracting Parties,

"Recalling that in international relations the recourse to force is prohibited, in conformity with the Charter of the United Nations,

"Deploring that despite this prohibition armed conflicts continue to occur and to cause untold sorrow to mankind which must be prevented,

"Reaffirming that the armed struggles of oppressed nations and peoples in territories under colonial and alien domination for their national liberation and self-determination have an international character, and that the combatants of such movements should enjoy the full protection of international law,

"Noting that humanitarian rules retain all their validity despite the infringements which they suffered and believing that the observance of these rules in their entirety by all the parties to the conflict will improve the likelihood of finding peaceful solutions,

"Reaffirming the conventional and customary rules whereby the parties to the conflict must make a distinction between protected persons and objects on the one hand, and military objectives on the other,

"Emphasizing that the use of weapons and means of mass destruction is contrary to humanitarian principles and international law,

"Believing, consequently, that it is essential to reaffirm and develop the rules ensuring the protection of the victims of armed conflicts and enshrining the principles of humanity and to supplement those measures intended to reinforce their implementation,

"Have agreed on the following: 19/

(b) Proposal by the experts from Romania

"The High Contracting Parties,

"Convinced that peace is the underlying condition for the full observance of human rights and war is their negation,

"Recalling that under the terms of the Charter of the United Nations, it is forbidden in international relations to threaten or to use force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations,

"Reaffirming solemnly 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 violate the Charter of the United Nations and the provisions of the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations,

"Emphasizing the need to undertake specific and immediate action at an international level to outlaw war and to prohibit the use or threat of force and the interference in any manner whatsoever in the domestic affairs of other States, as well as to ensure respect for the sovereignty of States and the right of peoples to decide their own fate,

"Deploring the immense suffering caused to humanity by armed conflicts,

"Stressing vigorously that the basic human rights, as accepted in international law and set forth in the Universal Declaration of Human Rights and in other international instruments of the United Nations, shall remain applicable in full in cases of international armed conflicts, conflicts between States and wars of national liberation waged in defence of the right of peoples to decide their own fate,

"Reaffirming solemnly that, by virtue of the rules established by conventions and by customs:

The progress of civilization must not result in an aggravation of the calamities of war;

The only legitimate object of States waging war shall be to weaken the military forces of the enemy, to which end, it shall suffice to put as large a number as possible hors de combat; such object would be exceeded by the use of arms capable of uselessly aggravating the suffering of persons already hors de combat or of making their death inevitable, and the use of such arms shall, consequently, run counter to all humanitarian rules;

The right of the Parties to an armed conflict to adopt and use means of injuring the enemy shall not be unlimited;

/...

The use of weapons of mass destruction, causing incalculable human suffering, shall be forbidden and contrary to humanitarian laws and the principles of international law;

Attacks on civilians, as such, shall be forbidden;

A distinction shall be made, at all times, between the civilian population and protected property, on the one hand, and combatants and military objectives, on the other;

In the conduct of military operations, every effort shall be made to spare the civilian population from the devastation of war, and all necessary precautions shall be taken to avoid inflicting wounds upon the civilian population, or causing them loss or injury;

Dwellings and other installations used by the civilian population shall not be made the object of military operations;

The civilian population, or individuals forming part of it, shall not be made the object of reprisals, forcible removal, or of any other attack on their person;

The civilian population and combatants shall remain, in cases not covered by conventional law, under the protection of the principles of humanity and the dictates of the public conscience;

"Emphasizing that the methods and measures which are today available to the armed forces are of such a nature as to strike indiscriminately at, and annihilate the civilian population as well as the immediate environment and, consequently, violate the above-mentioned principles of humanity applicable in armed conflicts;

"Believing, consequently, that it is essential to reaffirm and develop the rules ensuring the protection of the victims of armed conflicts and of the civilian population and enshrining the principles of humanity and to supplement those measures intended to reinforce their implementation;

"Have agreed on the following:" 20/

29. Other proposals were to amend certain paragraphs of the International Committee of the Red Cross draft. Regarding the first paragraph, a proposal by the expert from Monaco was to declare that the States Parties were:

"Conscious of the principles of international law incorporated in the United Nations Charter, particularly that of the prohibition on the threat or the use of force in international relations." 21/

20/ CE/COM IV/62.

21/ CE/COM IV/77.

A mention of the Charter was also contained in the proposals mentioned in paragraph 28 above. A proposal made by the expert from Denmark 22/ was to include the "De Martens Clause" 23/ in the preamble. It was orally proposed to add a reference to the Universal Declaration on Human Rights. The experts from the Philippines 24/ made comments to strengthen paragraphs 3 and 4 and to delete paragraph 5.

22/ CE/COM IV/51.

23/ The "De Martens Clause" (eighth preambular paragraph of the Fourth Hague Convention of 1907) reads as follows:

"Until a more complete code of the laws of war has been issued, the High Contracting Parties deem it expedient to declare that, in cases not included in the Regulations adopted by them, the inhabitants and the belligerents remain under the protection and the rule of the principles of the law of nations, as they result from the usages established among civilized peoples from the laws of humanity, and the dictates of the public conscience."

24/ CE/COM IV/78.

B. Protection of civilians in international armed conflicts

1. Unity or duality of the rules concerning
the protection of civilians

30. As was noted in chapter I above, the question whether there should be one or two protocols to deal with international and internal armed conflicts was raised in general terms at the Conference. Nevertheless, during the discussions, it may be noted that the protection of civilians was one of the matters on which particular stress was placed.

31. In conformity with the comprehensive terms of General Assembly resolution 2444 (XXIII), the Secretary-General, in his second report (A/8052, paras. 41 and 42), had specified that his suggested set of minimum standard rules for the protection of civilians would apply to any situation amounting to an armed conflict without any further qualification; in particular, they would apply irrespective of whether the conflict would be international or non-international. The basic principles set forth in General Assembly resolution 2675 (XXV) were also couched in general terms.

32. In its basic document submitted to the first session of the Conference of Government Experts, 25/ the ICRC had, likewise, indicated that the basic rules for the protection of civilians suggested by it were intended to apply in all types of armed conflicts. This position of the ICRC had previously been expressed in the Draft Rules formulated in 1956.

33. At the first session of the Conference (see A/8370, paras. 34 and 112), 26/ the view had been embodied in certain written proposals, and supported by some experts, that a contemplated protocol on the protection of civilians should apply to all armed conflicts. On the other hand, a comprehensive working paper submitted by five government experts had proposed that such an instrument should apply to international conflicts, the question whether and to what extent it should be applicable also in internal conflicts being left open for further consideration.

34. The ICRC, taking into consideration what it felt was the opinion of the majority of government experts, submitted to the second session of the Conference two separate sets of draft rules concerning the protection of civilians in international and in non-international armed conflicts, respectively (draft Protocol I, part IV; and draft Protocol II, chapter IV). 27/

35. At the second session of the Conference, the debates on the protection of civilians were held according to the method proposed by the ICRC, namely on the

25/ CE/3b, p. 8.

26/ See also, ICRC, Report on the Work of the Conference of Government Experts on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts, Geneva, August 1971, paras. 484-485.

27/ See ICRC, Commentary of draft Protocols, p. 81.

basis of two distinct drafts concerning international and non-international conflicts respectively. Some speakers maintained, however, that the civilian population should be protected in identical fashion in all armed conflicts, whether international or internal. The government expert from Norway submitted some basic principles on the protection of civilians, to be embodied in article 40 of the draft Protocol, which should, according to him, "apply in all armed conflicts". 28/

2. Definitions

(a) Definition of civilian population

36. Resolution 2444 (XXIII) of the General Assembly provided, inter alia, that a 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 the second report of the Secretary-General (A/8052, para. 39), it was suggested that, for the purpose of the applicability of his proposed minimum rules, those not taking part in the hostilities would be considered as civilians. As explained by the Secretary-General, the following would therefore not be classified as civilians: members of the armed forces or of their auxiliary or complementary organizations, and persons not belonging to such forces but nevertheless taking part in the fighting or contributing directly to the conduct of military operations. Principle 2 of General Assembly resolution 2675 (XXV) referred to "persons actively taking part in the hostilities" as having to be distinguished at all times from "civilian populations".

37. The proposals made by the ICRC and by several government experts at the first session of the Conference have been summarized in the preceding report of the Secretary-General (A/8370, paras. 40-42).

38. In article 41, paragraph 1, of draft Protocol I the ICRC proposed that "any person who is not a member of the armed forces and who, moreover, does not take a direct part in hostilities is considered to be a civilian". It was also proposed in paragraph 3 of the draft article that "the presence, within the civilian population, of individuals who do not conform to this definition /or, according to a variant, of 'individual combatants'7, does not prevent the civilian population from being considered as such", reservation being made, however, for article 45, paragraph 5, and articles 49, 50 and 51 of the draft Protocol. Furthermore, the ICRC draft specified in its paragraph 4 that "in case of doubt as to their civilian character, the persons mentioned in paragraph 1 /of this article7 shall be presumed as belonging to the civilian population". In its commentary, the ICRC stressed, inter alia, that this draft definition, in contrast with the fourth Geneva Convention, did not lay down any requirement concerning the nationality of protected civilians.

39. A large number of proposals were made concerning this draft definition. 29/ While the government expert from France 30/ suggested the deletion of draft article 41, inter alia, on the grounds that any attempted definition would raise doubts, the sponsors of the other proposals accepted the idea that a definition was necessary and feasible. It was generally felt that the best methodology for that purpose was to use an appropriate negative formula, the civilian population being defined as those persons who did not perform certain specified activities.

40. Some proposals aimed at making the ICRC draft definition more comprehensive. One method suggested, as in a proposal by the expert from Romania, 31/ was to set alternative, not cumulative, conditions, i.e.: "persons who are not members of the armed forces or who do not take part directly and immediately in military operations". It was added in the same proposal that: "persons whose activities could contribute directly to the military effort do not thereby lose their status as civilians". A similar approach was to add a clause, as proposed by the expert from Yugoslavia, 32/ according to which "the fact that civilians have taken part temporarily in the hostilities does not deprive them of their civilian status when hors de combat". Some other proposals to the same general end were to remove from paragraph 3 of draft article 41 the reservations concerning article 45, paragraph 5, and articles 49, 50 and 51 of the draft Protocol. 33/

41. On the other hand, certain experts, in particular the expert from the Republic of Viet-Nam, 34/ proposed that a person should not be considered a civilian if he were "not covered by article 4 of the third /Geneva/ Convention and, moreover, not participating in the war effort of one of the Parties to the conflict".

42. Proposals by some experts, including the expert from Switzerland, 35/ were to replace paragraph 1 of draft article 41 by a formula under which "any person who does not fall within one of the categories enumerated in article 4A, subparagraphs (1) to (6) of the third /Geneva/ Convention or in article 38 of the present Protocol is considered to be a civilian".

29/ CE/COM III/PC 3, 21, 22, 24, 29, 35, 36, 43, 49, 51, 62, 67, 68, 78 and 103.

30/ CE/COM III/PC 51.

31/ CE/COM III/PC 43.

32/ CE/COM III/PC 63.

33/ CE/COM III/PC 35 (expert from the German Democratic Republic) and 62 (experts from Brazil and Spain).

34/ CE/COM III/PC 68.

35/ CE/COM III/PC 36; see also CE/COM III/PC 29, proposed by the expert from the United Kingdom, which was later replaced by a joint proposal (CE/COM III/PC 78).

43. The expert from the Philippines proposed alternative definitions of civilians in relation to a number of circumstances as follows:

"(a) he is not an active member of the armed forces;

"(b) he does not take a direct part in the hostilities;

"(c) when by reason of his occupation or physical location, he is not so assimilated to combatants as to lose his civilian characteristics; or

"(d) he is neither a government official nor an employee forming part of the Ministry of War or Department of Defense comprising the Departments of the Army, Navy or Air Force." 36/

44. The experts from Australia, Canada, Belgium, the Federal Republic of Germany, the United Kingdom and the United States of America combined their proposals into a single joint text as follows:

"1. Civilians are all persons who do not fall within one of the categories enumerated in article 4A, subparagraphs (1), (2), (3) and (6) of the third Convention or in article 38 of the present Protocol.

"2. Civilians as defined in paragraph 1 shall enjoy the protections set out in part IV of the present Protocol unless and for such time as they take a direct and immediate part in hostilities.

"3. The civilian population comprises all civilians fulfilling the conditions stipulated in paragraph 1.

"4. The presence, within the civilian population, of individuals who do not conform to the definition given in paragraph 1, does not prevent the civilian population from being considered as such.

"5. In case of doubt as to their civilian character, the persons mentioned in paragraph 1 shall be presumed as belonging to the civilian population." 37/

45. After the attention of the Conference had again been drawn by the representative of the Secretary-General to certain problems concerning the status of refugees and stateless persons in relation to the fourth Geneva Convention (see also A/8370, para. 54), the experts from Denmark, Finland, Ireland, Netherlands, Norway, Sweden and Switzerland made the following proposal:

"The definition of civilian population given in article 41 supplements that given in article 4 of the fourth Convention.

36/ CE/COM III/PC 21.

37/ CE/COM III/PC 78.

/...

"In particular, refugees and stateless persons within the meaning of international instruments defining their status as such shall enjoy the full protection accorded to protected persons by the fourth Convention." 38/

(b) Definition of objects of a civilian character

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

47. The ICRC proposed the following text for article 42 on the definition of objects of a civilian character:

"1. Objects which, by their nature or use, answer the needs of the civilian population, are considered as objects of a civilian character.

"2. Objects of a civilian character comprise, in particular, objects which are indispensable to the survival of the civilian population, as well as those serving mainly pacific or helpful purposes.

"3. In case of doubt as to the nature and destination of objects mentioned in paragraph 1, crops, provisions and other food-stuffs, drinking water reserve supplies and dwellings and buildings designed for the shelter of the civilian population, or which the latter habitually uses, shall be presumed to be objects of a civilian character."

48. The debates on this article were closely related to those concerning the definition of military objectives in draft article 43 (see section (c) below). The numerous written proposals 39/ concerning this draft definition of objects of a civilian character might be divided into three main categories.

49. Several proposals aimed at a negative definition of objects of a civilian character by reference to the definition of military objectives. Thus, the experts from Canada 40/ and the United Kingdom 41/ proposed the deletion of article 41, explaining that in their view the concept of "civilian objects" flowed

38/ CE/COM III/PC 103.

39/ CE/COM III/PC 4, 22, 23, 29, 34, 40, 44, 51, 62, 64, 66, 69 and 93.

40/ CE/COM III/PC 22.

41/ CE/COM III/PC.29.

directly from that of military objectives. According to the expert from France, 42/ "all objects which are not military objectives according to article 43 shall be considered to be of a civilian character. In case of doubt, food resources, drinking water, reservoirs and dwellings and structures normally used by civilians shall be considered objects of a civilian character".

50. A negative definition of objects of a civilian character was also offered by the expert from Romania 43/ who proposed in particular that "All objects which do not directly produce weapons, military equipment or means of combat, or are not directly and immediately employed by the armed forces are considered to be non-military objects, even if, at a later date, as a result of a change in their utilization, they might subsequently assume a predominantly military character ...".

51. The opposite approach was followed by some experts who proposed to expand and strengthen the ICRC draft definition of objects of a civilian character and at the same time to delete draft article 43 on military objectives. The expert from the United States of America 44/ submitted a text stating that "Objects reputed to be non-military are those necessarily or essentially designed for and used predominantly for civilians. Once they are occupied by military personnel or used for military purposes, they then become military objects."

52. The experts of Czechoslovakia, the German Democratic Republic and Hungary submitted the following text to replace paragraph 2 of draft article 42:

"Objects which by their nature and use are indispensable for the survival of the civilian population comprise for example crops, provisions, foodstuffs as well as facilities and installations for their production and storage, drinking water reserve supplies, dwellings, buildings and objects designed for the shelter of the civilian population, for cultural purposes, for education or social and health services." 45/

One may also mention in this category a proposal by the expert from Denmark, 46/ the text of which was closer to the ICRC draft.

53. A third approach was to replace draft articles 42 and 43 (as well as draft articles 47 and 48 (1)) by a single comprehensive text, proposed by the experts from Egypt, Mexico, the Netherlands, Sweden and Switzerland, 39/ as follows:

42/ CE/COM III/PC 51.

43/ CE/COM III/PC 44.

44/ CE/COM III/PC 4.

45/ CE/COM III/PC 34.

46/ CE/COM III/PC 40.

"Article 42

"Objectives which are, in view of their essential characteristics, generally recognized to be of military importance and whose total or partial destruction, in the circumstances ruling at the time, offers a military advantage, constitute military objectives.

"Objects not falling within this category are non-military and may not be the subject of direct attack."

"Article 43

"Houses, dwellings, installations or means of transport which are used by the civilian population must not be the object of attacks directly launched against them, unless they are used mainly in support of the military effort."

"Article 43A

"Objects which are indispensable to the survival of the civilian population, such as foodstuffs and food-producing areas, crops, cattle, water resources and constructions designed for the regulation of such resources must never be subjected to attacks directly launched against them, nor be attacked by way of reprisals."

"Article 43B

"Objects which, by their nature and use, serve primarily humanitarian or peaceful purposes, such as medical, religious, educational or cultural institutions, enjoy the protection expressly accorded to them under applicable rules of international law. They must not be made the object of reprisals." 47/

(c) Definition of military objectives

54. The International Committee of the Red Cross submitted the following draft of article 43:

"Only those objectives which, by their nature or use, contribute effectively and directly to the military effort of the adversary, or which are of a generally recognized military interest, are considered as military objectives."

The debates and proposals 48/ on this draft article were closely linked to those concerning the definition of objects of a civilian character (see section (b) above).

47/ CE/COM III/PC 64.

48/ CE/COM III/PC 4, 29, 34, 40, 45, 48, 51, 62, 64, 66 and 93.

55. As was mentioned in the preceding section, there were several proposals 49/ to delete the definition of military objectives.

56. Other proposals were to adopt definitions of military objectives somewhat broader than that contained in the International Committee of the Red Cross draft. Thus the expert from the United Kingdom, 50/ proposed that an objective should be considered military "only if its complete or partial destruction, capture or neutralization would in the opinion of the operational commander in the light of the information available to him at the time, confer a distinct military advantage". The definition submitted by the expert from France 51/ was: "any objective, the total or partial destruction, capture or neutralization of which would offer a distinct military advantage".

57. As regards the proposal of the experts from Egypt, Mexico, the Netherlands, Sweden and Switzerland, see paragraph 53 above.

58. Some proposals included narrower definitions of military objectives. The experts of Brazil and Spain 52/ asked that, in the ICRC draft, either the terms "military effort" or the words "of a generally recognized military interest" be deleted. The expert from Romania proposed the following formula:

"Any objective directly and immediately producing weapons, military equipment and combat material, or directly and immediately used by the armed forces is considered as a military objective." 53/

59. Under a proposal by the expert from Switzerland, 54/ the International Committee of the Red Cross definition should be supplemented by a list of military objectives partly based on that annexed to the 1956 ICRC Draft Rules on the protection of civilians. The expert of Switzerland further proposed to add as a proviso:

"The military objectives defined in article 43 may not be attacked if their total or partial destruction, in a given situation, does not further in any way the military operations."

49/ CE/COM III/PC 4 (experts from the United States of America);
CE/COM III/PC 34 (experts from Czechoslovakia, German Democratic Republic and Hungary);
CE/COM III/PC 40 (experts from Denmark);
CE/COM III/PC 66 (experts from Iraq, Jordan, Kuwait, Libyan Arab Republic and Saudi Arabia).

50/ CE/COM III/PC 29.

51/ CE/COM III/PC 51.

52/ CE/COM III/PC 62.

53/ CE/COM III/PC 45.

54/ CE/COM III/PC 48.

/...

(d) Definition of attacks

60. The International Committee of the Red Cross definition, in draft article 44, read as follows:

"Acts of violence, whether offensive or defensive, committed against the adversary by means of weapons, in the course of hostilities, are considered as attacks."

61. The expert from Australia 55/ proposed deletion of this draft article. The other proposals made 56/ were to amend it. The concept of attack was somewhat extended in the proposal by an expert from Canada 57/ to replace "means of weapons" by "any means". Also, more comprehensive than the ICRC text was a proposal by the expert from France, 58/ as follows: "any acts of violence committed against the adversary in the course of hostilities shall be considered attacks". On the other hand, the expert from the United States of America 59/ proposed to restrict the scope of the article by adding the words "for the purpose of this Protocol".

3. Respect for, and safeguard of, the civilian population, including precautionary measures

62. As pointed out by the Secretary-General in his second report (A/8052, para. 34), the protection of civilians in time of armed conflicts is dealt with partly by the fourth Geneva Convention, partly also by the 1907 Hague Regulations and customary international law. The ICRC draft attempted to consolidate and to some extent to develop most of these rules.

(a) General provision

63. The International Committee of the Red Cross proposed draft article 40 which read as follows:

"The civilian population and objects of a civilian character shall be protected against dangers resulting from hostilities."

To this article, several amendments were proposed. 60/ Some proposals, such as that by the expert from Canada 61/ were to delete the article.

55/ CE/COM III/PC 93.

56/ CE/COM III/PC 5, 22, 29, 51 and 105.

57/ CE/COM III/PC 22.

58/ CE/COM III/PC 51.

59/ CE/COM III/PC 5.

60/ CE/COM III/PC 2, 21, 22, 24, 29, 37, 42, 63 and 93.

61/ CE/COM III/PC 22.

64. The expert from the United States of America proposed, instead of the ICRC text, a more flexible formula as follows:

"The parties to a conflict shall, to the maximum extent feasible, endeavor to protect civilians and non-military objects against the dangers resulting from hostilities." 62/

65. Two proposals were made to strengthen and amplify the rule. The expert from Norway proposed to replace article 40 by a comprehensive text which would combine the substance of various articles and be applicable in all armed conflicts. This proposal read as follows:

"The following basic principles and rules for the protection of civilian populations shall apply in all armed conflicts:

- (1) Fundamental human rights continue to apply in all situations of armed conflicts.
- (2) In the conduct of military operations, every effort shall be made to spare civilian populations from the ravages of war and all necessary precautions shall be taken to avoid injury, loss or damage to the civilian population.
- (3) Civilian populations shall not be the object of military operations. Neither shall they be used as a shield for military operations.
- (4) Civilian populations, or individual members thereof, shall not be the object of reprisals, forcible transfers or other assaults on their integrity.
- (5) Dwellings and other installations that are used only by civilian populations shall not be the object of military operations.
- (6) All Parties to an armed conflict shall facilitate the provision of international humanitarian relief to civilian populations." 63/

The other formula, proposed by the expert from Romania, read as follows:

"The civilian population shall always be afforded effective and complete protection against the dangers resulting from military operations and must never be the object of such operations.

"Persons who are members of the civilian population, their dwellings and property, and all non-military installations shall never in any circumstances be the object of military operations, and shall be spared the ravages of war." 64/

62/ CE/COM III/PC 2.

63/ CE/COM III/PC 37.

64/ CE/COM III/PC 42.

(b) Protection of the civilian population and objects of a civilian character against military attacks, and precautionary measures in that connexion

66. It may be recalled that these questions had been dealt with comprehensively in the second report of the Secretary-General (A/8052, paras. 30-44). In paragraph 42 of the report, the Secretary-General had made specific suggestions regarding the possible contents of standard minimum rules for the protection of civilians, and in paragraph 41, he expressed the opinion that such rules should apply irrespective of whether armed conflicts were international or non-international in character.

67. In resolution 2675 (XXV), the General Assembly had adopted eight basic principles for the protection of civilians in armed conflicts, without prejudice to their future elaboration within the framework of progressive development of the international law applicable in armed conflicts.

68. Taking into account the proposals made at the first session of the Conference (see A/8370, paras. 44-98) the International Committee of the Red Cross submitted draft articles 45 to 52 concerning these matters. Articles 45 and 46, relating to the protection of civilian persons, read as follows:

Article 45

"1. The civilian population as such, as well as individual civilians, shall never be made the object of attack.

"2. In particular, terrorization attacks shall be prohibited.

"3. Attacks which, by their nature, are launched against civilians and military objectives indiscriminately, shall be prohibited.

"4. Attacks directed against the civilian population or individual civilians by way of reprisals shall be prohibited.

"5. Nevertheless, civilians who are within a military objective run the risks consequent upon any attack launched against this objective."

Article 46

"The civilian population or individual civilians shall never be used in an attempt to shield, by their presence, military objectives from attack."

Several amendments to these articles were submitted. 65/

65/ Amendments to article 45: CE/COM III/PC 6, 20, 22, 25, 29, 33, 39, 46, 50, 51, 61, 67, 70, 75, 93, and 106;

Amendments to article 46: CE/COM III/PC 7, 22, 29, 51, 67, 71 and 79.

/...

69. In the course of the debates on these articles, some experts drew attention to the detailed suggestions contained in subparagraphs 42 (a) to (d) of the second report of the Secretary-General.

70. Regarding draft article 45 as a whole, some experts, in particular those from the United States of America 66/ and from the United Kingdom 67/ proposed to restrict the International Committee of the Red Cross text essentially to a general prohibition of attacks against civilians, deleting most of the explicit prohibitions in paragraphs 2, 3 and 4 or expressing them in more general terms. Other experts were in favour of including in the article additional prohibition concerning, inter alia, attacks likely to disturb the cleanliness and balance of the environment, and the compulsory evacuation of the civilian population from occupied territories, as proposed by the experts from Czechoslovakia, the German Democratic Republic and Hungary. 68/

71. A debate took place on whether the specific prohibitions contained in paragraphs 2 and 3 of draft article 45 - concerning respectively terrorization attacks and indiscriminate attacks - should apply to all such attacks or only to those which were launched intentionally to harm civilians. Proposals by the experts of Australia 69/ and France, 70/ in respect of paragraph 2 and, by the expert of Denmark, 71/ concerning paragraph 3, used formulae based on an intentional criterion, while other proposals, such as those submitted by the experts from Czechoslovakia, the German Democratic Republic and Hungary, 68/ and from Spain, 72/ maintained the objective criterion underlying the ICRC text.

72. The prohibition of attacks against civilians by way of reprisals, dealt with in article 45, paragraph 4, gave rise to discussion. Expressing approval for the principle embodied in that paragraph, some experts noted that it was in harmony with the rule suggested in subparagraph 42 (c) of the second report by the Secretary-General (A/8052) which would prohibit reprisals against civilians in all circumstances. Furthermore, it was recalled, 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". Several experts maintained the view, already expressed at the first session of the Conference, that, in the light of the Charter of the United Nations and resolutions of the General Assembly and the Security Council, reprisals exercised by belligerents should not be considered any more as a means of law enforcement and should be abolished, at least whenever civilians could be affected. Some other experts, however, felt that reprisals might be taken against civilians in response to deliberate attacks on the civilian population or individual civilians by the adversary. This was the formula used in a proposal by the experts of the United Kingdom. 67/ On the question of reprisals as a whole, reference is made to paragraphs 206 to 208 below.

66/ CE/COM III/PC 6.

67/ CE/COM III/PC 29.

68/ CE/COM III/PC 33.

69/ CE/COM III/PC 93.

70/ CE/COM III/PC 51.

71/ CE/COM III/PC 39.

72/ CE/COM III/PC 75.

73. Several amendments 73/ called for the deletion of paragraph 5 of article 45 concerning the risks incurred by civilians who find themselves within military objectives, as it was felt that such a statement was explanatory in character and should therefore rather be placed in a commentary to the protocol. The expert of the United States of America 74/ proposed to replace "within a military objective" by "in the vicinity of a military objective". A proposal by the expert of Romania 75/ was to state that civilians stayed at their own risk within military objectives if they ignored a warning which the attacking party should give before launching its attack.

74. The experts from Australia, Belgium, Canada, the Federal Republic of Germany, the Republic of Viet-Nam, Spain, the United Kingdom, the United States of America and Uruguay proposed to expand the scope of draft article 46, on safeguarding of the civilian population, as follows:

"The physical presence or physical movements of the civilian population shall never be used for tactical or strategic purposes. In particular, the civilian population or individual civilians shall never be used in an attempt to shield, by their presence, military objectives from attack, nor to shield, protect, or impede military operations." 76/

A separate proposal by the expert from the Republic of Viet-Nam 77/ was to add a specific prohibition concerning the use of the civilian population for work of a military nature. Some other experts felt that such proposals might impose too many obligations on the belligerents, especially the party which would be resisting attacks.

75. The International Committee of the Red Cross proposed the following articles:

Article 47

"Objects of a civilian character shall never be attacked, provided they are not used either directly or mainly for a military purpose."

Article 48

"1. Attacks launched against objects indispensable to the survival of the civilian population by way of reprisals are prohibited.

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- 73/ CE/COM III/PC 33 (experts from Czechoslovakia, German Democratic Republic and Hungary);
CE/COM III/PC 50 (experts from Italy);
CE/COM III/PC 61 (experts from Egypt, Mexico, Netherlands, Sweden and Switzerland);
CE/COM III/PC 75 (experts from Spain).
74/ CE/COM III/PC 6.
75/ CE/COM III/PC 46.
76/ CE/COM III/PC 79.
77/ CE/COM III/PC 71.

"2. The Parties to the conflict under whose control objects indispensable to the survival of the civilian population are placed, shall refrain from:

"(a) using them in an attempt to shield military objectives from attack;

"(b) destroying them, except in cases of unavoidable military necessity and only for such time as that necessity remains."

76. The debates on these articles reflected the same broad trends as appeared during the discussion relating to the protection of civilian persons. Among the amendments to draft article 47, 78/ some (such as German Democratic Republic, 79/ Denmark, 80/ and Spain) 81/ aimed at strengthening the provision by deleting the condition that civilian objects should not be used for military purposes. On the other hand, according to some proposals, in particular those of the experts of the United States of America 82/ and the Republic of Viet-Nam, 83/ attacks against objects of a civilian character would not be prohibited if such objects were "used mainly in support of the military effort" 82/ or if they were "used to support the war effort of a Party to the conflict". 83/ Still other proposals were to maintain the condition laid down at the end of article 47, but to make it more precise by stating that civilian objects should not be "used directly and immediately in the conduct of military operations" (proposed by the expert of Romania), 84/ or that such objects should not be "used in the fighting" (proposed by the expert of Switzerland). 85/

77. Among the amendments to draft article 48, 86/ many were to delete the reference to reprisals in paragraph 1, for a variety of reasons, inter alia, on the grounds that such a reference weakened the rule and would raise unnecessary complications (proposed by the experts from the United Kingdom, 87/ the German Democratic Republic, 88/ Romania 89/ and Spain). 90/ Also for the purpose of strengthening the rule, experts from the United Kingdom, the German Democratic Republic and Spain proposed to delete the proviso "except in cases of

78/ CE/COM III/PC 8, 29, 32, 38, 41, 47, 64, 72, 76 and 93.

79/ CE/COM III/PC 32.

80/ CE/COM III/PC 38.

81/ CE/COM III/PC 76.

82/ CE/COM III/PC 8.

83/ CE/COM III/PC 72.

84/ CE/COM III/PC 47.

85/ CE/COM III/PC 41.

86/ CE/COM III/PC 29, 31, 53, 64, 77, 93 and 104.

87/ CE/COM III/PC 29.

88/ CE/COM III/PC 31.

89/ CE/COM III/PC 53.

90/ CE/COM III/PC 77.

unavoidable necessity and only for such time as that necessity remains" at the end of subparagraph 2 (b). Another formula, suggested by the experts from Romania, 91/ was to prohibit attacks on objects indispensable to the survival of the civilian population unless they are used directly and immediately for military purposes.

78. The next group of articles (49 to 52) submitted by the International Committee of the Red Cross, concerned the question of precautionary measures to be taken by both parties to the conflict in relation to military attacks with a view to ensure maximum protection to civilian persons and objects. On these questions, reference is made to subparagraphs 42 (e), (g) and (h) of the second report by the Secretary-General (A/8052) and to principle 3 in General Assembly resolution 2675 (XXV). The substantive proposals made on this matter by the ICRC for the second session of the Conference were as follows:

Article 49. Precautions when attacking

"So that the civilian population, as well as objects of a civilian character, who might be in proximity to a military objective be spared, those who order or launch an attack shall, when planning and carrying out the attack, take the following precautions:

"(a) they shall ensure that the objectives to be attacked are not civilians, nor objects of a civilian character, but are identified as military objectives; if this precaution cannot be taken, they shall refrain from launching the attack;

"(b) they shall warn, whenever circumstances permit, and sufficiently in advance, the civilians threatened, so that the latter may take shelter."

Article 50. Principle of proportionality

"1. Those who order or launch an attack, shall refrain from doing so when the probable losses and destruction are disproportionate to the concrete military advantage sought by them.

"2. In application of this principle, the Parties to the conflict shall refrain from attacking as one sole objective, by means of bombardments or any other methods, an area comprising several military objectives which are some distance from each other and situated in populated regions.

"3. When there is a choice among several objectives for obtaining the same military advantage, those who order or launch an attack shall choose the objective which presents the least danger to the civilian population and objects of a civilian character."

Article 51. Precautions against the effects of attacks

"1. The Parties to the conflict under whose control the civilian population and objects of a civilian character are placed, shall take the necessary precautions against dangers resulting from attacks.

"2. They shall endeavour, either to remove them from the vicinity of the threatened military objectives, subject to the provisions of article 49 of the fourth Convention, or to avoid that these military objectives are permanently situated within densely populated regions."

79. The amendments relating to draft article 49 92/ mainly expressed the following trends. Those who felt that the obligations imposed on the military would be too absolute and impracticable proposed more flexible formulae. Thus, according to the expert of the United Kingdom, 93/ the parties to the conflict should take "all reasonable steps so to confine their attacks that it does not extend to the civilian population". A proposal by the expert of Australia 94/ was to impose upon the parties the obligation to "use every endeavour" not to harm civilians when launching an attack (submitted by the experts from the United States of America, 95/ the United Kingdom, 93/, 96/ and Australia) 94/ were to remove the obligation to refrain from launching the attack, at the end of subparagraph (a).

80. Other proposals reflected the feeling of some experts that draft article 49 did not go far enough in ensuring the protection of civilians, and would weaken the guarantees at present afforded by article 26 of The Hague Regulations. In particular, the experts of Romania 97/ and Spain 98/ proposed deleting the qualifying words "whenever circumstances permit" from subparagraph (b). A detailed proposal by the experts from Egypt, Mexico, the Netherlands, Sweden and Switzerland 99/ was to impose additional precautionary measures relating to "blind" and uncontrollable weapons such as mines.

81. Draft article 50 entitled "Principle of proportionality", which was presented by the ICRC as a check against any tendency towards total warfare, 100/ gave rise to much discussion and several amendments. 101/ Deletion of paragraph 1 was proposed in various amendments for different reasons: some experts (for instance, those of Czechoslovakia, the German Democratic Republic and Hungary), 102/ felt that the paragraph tended to contradict or weaken the prohibition of attacks against civilians contained in article 45; while in the view of some other experts,

92/ CE/COM III/PC 9, 29, 30, 54, 59, 60, 73, 89, 93 and 107.

93/ CE/COM III/PC 29.

94/ CE/COM III/PC 93.

95/ CE/COM III/PC 9.

96/ CE/COM III/PC 73.

97/ CE/COM III/PC 54.

98/ CE/COM III/PC 89.

99/ CE/COM III/PC 59.

100/ ICRC, Commentary of draft Protocols, p. 103.

101/ CE/COM III/PC 11, 29, 33, 68, 74, 80, 90 and 93.

102/ CE/COM III/PC 33.

paragraph 1 should be deleted on the grounds that it was not clear whether it would apply to civilians or combatants or both, or that it was redundant (experts from the United Kingdom). 103/ In the opinion of certain experts, as expressed inter alia in a proposal by the expert of the United States of America, 104/ the obligations laid down in draft article 50 should be imposed on the Parties to the conflict only "to the extent consistent with the necessities of the military situation".

82. Regarding draft article 51, 105/ some experts felt that, if this provision referred not only to occupied territories but also to relations between a State and its own nationals, a qualifying clause such as "so far as possible" would be required (see, inter alia, the amendments submitted by the experts from Australia, 106/ and by the experts from Canada, the Federal Republic of Germany, the United Kingdom and the United States of America). 107/

4. Questions concerning refuges, sanctuaries and localities under special protection

83. 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 of the Secretary-General (A/8052). The Secretary-General suggested that the relevant provisions of existing International Law (article 25 of the 1907 Hague Regulations; article 23 of the first Geneva Convention; articles 14 and 15 of the fourth Geneva Convention) be developed and strengthened, inter alia, by enlarging their scope ratione personae and by studying the possibility of setting up on a permanent basis a system of international registration and recognition of civilian refuges and sanctuaries similar, mutatis mutandis, to the machinery established under The Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict of 14 May 1954. 108/

84. The International Committee of the Red Cross submitted to the second session of the Conference three draft articles on this subject, articles 53, 54 and 55.

85. Article 53 dealt with non-defended localities ("open cities"), defined in paragraph 3 as "any locality situated in a zone of military operations from which armed forces and all other combatants, as well as mobile weapons and mobile military equipment, have been evacuated and in which no use will be made of fixed military installations". Paragraph 1 contained a prohibition to attack "populated sites upon which the Parties to the conflict have conferred, by agreement, the status of non-defended localities". Under the terms of paragraph 2, such an agreement "may be either express or tacit, or may consist

103/ CE/COM III/PC 29.

104/ CE/COM III/PC 11.

105/ Amendments to article 51: CE/COM III/PC 55, 96 and 109.

106/ CE/COM III/PC 96.

107/ CE/COM III/PC 109.

108/ United Nations, Treaty Series, vol. 249 (1956), No. 3511.

of reciprocal and concordant declaration". Paragraph 4 specified that the presence in the non-defended localities of certain categories of persons including military medical personnel, civil defence organizations and police force would not be contrary to the requirements of "non-defended localities" laid down in paragraph 3. Paragraphs 5 and 6 concerned, respectively, the marking of such localities and the right of occupying authorities to destroy the military objectives which these localities may contain. In paragraph 7, it was provided, inter alia, that either one of the parties would have the right to denounce agreements concerning non-defended localities.

86. Much of the debate and the proposals 109/ on article 53 concerned the conclusion of the agreements contemplated in paragraph 3 as a prerequisite for the establishment of non-defended localities. A proposal by the expert of Uruguay 110/ would not accept the validity of "tacit" agreements in the matter. The expert of the Federal Republic of Germany 111/ proposed that, if one of the Parties in conflict, desirous to conclude an agreement, availed itself of the services of an intermediary such as a protecting Power, its substitute or any other neutral and impartial intermediary, the adverse Party would be obliged to give a reply to the proposal transmitted by the intermediary. In the course of the discussion, another proposal, by the expert from Uruguay, was to remove the possibility of a denunciation of the agreements. The views were expressed, inter alia, that the article might be too restrictive in its insistence on the conclusion of agreements in the matter. Some references were made, in that connexion, to the suggestions contained in the second report of the Secretary-General (A/8052, paras. (2-67) regarding the setting-up of an appropriate machinery in time of peace. 112/

87. Draft article 54 concerned "neutralized localities" which were defined in paragraph 3 as "any locality situated outside a zone of military operations from which armed forces and all other combatants, as well as mobile weapons and mobile military equipment, have been evacuated, in which no use will be made of fixed military installations and where any activity linked to the military effort has ceased". The other provisions of article 54 were similar, mutatis mutandis, to those of article 53. However, it was required in paragraph 2 of article 54 that the agreements establishing neutralized localities should "fix the methods of supervision". In the debates, some experts felt, inter alia, that the article should not be restricted to "localities" but extend to larger areas. 113/ As regards the question of supervision, it was noted that under the terms of a draft model agreement submitted by the International Committee of the Red Cross, a commission (the membership of which was not specified) would supervise whether the locality fulfilled the conditions laid down in paragraph 3. One opinion was that a more precise definition of the functions of the supervisory body should be elaborated. 114/

109/ CE/COM III/FC 1 and 87.

110/ CE/COM III/FC 87.

111/ CE/COM III/FC 1.

112/ ICRC, Report of Commission III, paras. 198 and 199.

113/ Ibid., para. 206.

114/ Ibid., para. 210.

88. Draft article 55 was to spare the civilian population "from dangers which may result from the destruction of, or damage to, works and installations - such as dikes, hydroelectric dams and sources of power - through the release of natural or artificial forces". Under the terms of paragraph 1 the States Parties to the Protocol would be invited "(a) to agree in peace time on a procedure which would allow, in all circumstances, special protection to be given to those works which are designed for essentially peaceful purposes" and "(b) to agree, in time of armed conflicts, to special protection being given to certain works or installations provided they are not directly or mainly used for a military purpose". As proposed in paragraph 2, when such works were used directly or mainly for a military purpose "and their destruction or damage would entail the annihilation of the civilian population", the precautionary measures required in articles 49 to 51 of the Protocol (see section 3 above) should be taken, "exercising particular care".

89. The amendments submitted 115/ aimed at strengthening the protection afforded to civilian populations under article 54 and sometimes, also at transferring it within the framework of other provisions such as articles 47 or 48 on prohibition of attacks against objects of a civilian character.

5. Specific measures for the protection of women and children

90. The Secretary-General had stressed in paragraph 43 of his second report (A/8052), that the United Nations, at the initiative of its Commission on the Status of Women, had for some time recommended consideration of specific measures of protection relating to women and children in armed conflicts. In connexion with the possibility of establishing refuges and sanctuaries, the Secretary-General had suggested that priority be given, among some other categories, to children under 15, expectant mothers, mothers of children under seven and aged persons.

91. At the second session of the Conference, the representative of the Secretary-General apprised the government experts of the recent activities of the Commission on the Status of Women with regard to the protection of women and children in emergency and armed conflict in the struggle for peace, self-determination, national liberation and independence. The Conference was informed of draft resolution XII approved at the twenty-fourth session of the Commission, in March 1972, which was later amended and adopted by the Economic and Social Council as resolution 1687 (LII); and the report of the Commission on the work of its twenty-fourth session 116/ was distributed to the Conference.

92. During the debate on assistance to the civilian population (part IV, section III of draft Protocol I), several experts, referring to the recommendations of the Economic and Social Council, the Commission on the Status of Women, as well as to the United Nations Declaration on the Rights of the Child and the work of the United Nations Children's Fund, said that the experience of recent armed conflicts confirmed the need for better protection of

115/ Amendments to article 55: CE/COM III/PC 32, 56, 66, 86 and 104.

116/ Official Records of the Economic and Social Council, Fifty-second Session, Supplement No. 6 (E/5109).

women and children. One amendment, by the expert of Romania, 117/ was to broaden the scope of article 57 submitted by the International Committee of the Red Cross so as to encompass "women, children, the aged, the wounded, sick and inform". Another proposal, by the experts from Egypt, Mexico, the Netherlands, Sweden and Switzerland, 118/ called for the inclusion of an additional article as follows: "Women must be protected, in particular against rape and any form of indecent assault." In the ICRC draft Protocol, articles 57, 58, 60 and 61 concerned children, whereas article 59 and part of article 60 related to women in certain situations.

93. Draft article 57 contained a general rule on the granting to children of "the care and aid which they age and situation require". Among the amendments submitted, 119/ some suggested the mention of "15" as a maximum age to qualify the word "children" (experts from Finland, 120/ and from Egypt and Lebanon). 121/ One proposal, by the Philippines expert 122/ was to the effect that special protection be given to schools and school vehicles, which should bear a special protective emblem.

94. In draft article 58, to which several amendments were submitted, 123/ the International Committee of the Red Cross proposed three alternative formulations to ensure that children under 15 should not take part in hostilities. The alternative provision which appeared to have been received most favourably by the speakers was a detailed text forbidding the recruitment of such children "for service in the armed forces" including the acceptance of "voluntary enrolment". 124/ The provision also specified that children under 15 "shall not be used as auxiliaries of armed forces, in particular for transporting or camouflaging weapons or military equipment or for laying mines". Alternative II contained the same text, except the latter clause regarding auxiliaries. Alternative I was to prohibit in general terms that children under 15 should "take a direct part in hostilities". Additional ideas, offered in various amendments, were, inter alia, the prohibition of any coercive measures upon children under 15 in occupied territories (experts from Bulgaria); 125/ and a proposed rule under which children under 15 who take part in hostilities and are captured may not be considered responsible nor sentenced to any penalty on account of such participation (experts from Egypt and Lebanon). 121/

117/ CE/COM III/PC 57.

118/ CE/COM III/PC 65.

119/ CE/COM III/PC 12, 20, 26, 57 and 99.

120/ CE/COM III/PC 20.

121/ CE/COM III/PC 99.

122/ CE/COM III/PC 84.

123/ CE/COM III/PC 13, 27, 84, 92, 99, 100 and 101.

124/ ICRC, Report of Commission III, para. 230.

125/ CE/COM III/PC 92.

95. Article 60 of the ICRC draft stated that in no case should the death penalty be pronounced on civilians who are under 18 at the time of the offence. 126/ As stressed by the ICRC, this text was inspired directly by article 6, paragraph 5, of the International Covenant on Civil and Political Rights.

96. In draft article 61 the ICRC proposed that, in order to facilitate the return to their families and country of children cared for or received abroad, the authorities of the receiving country should establish for each child a card with photograph to be communicated to the Central Tracing Agency. 127/

97. Under draft article 59, the death penalty should not be pronounced on "mothers of infants and on women responsible for their care". 128/ The principle embodied in this text met with no dissent. The International Committee of the Red Cross stated that, in response to some request for clarification, that the women concerned would be mothers, foster mothers, or even relatives or neighbours who might have taken a child into their homes but with no legal commitment. 129/ Draft article 59 was completed by the second sentence of article 60 under which pregnant women should not be executed.

6. Relief to the civilian population

98. The frequently disastrous effects of war on the life and well-being of the civilian population, especially as regards certain modern methods of total warfare, had been repeatedly stressed by the Secretary-General and the International Committee of the Red Cross. 130/ The need for enlarging and strengthening the relevant existing provisions of the fourth Geneva Convention had been increasingly recognized in recent years. Thus, the Secretary-General in his second report (A/8052, subparagraphs 42(i) and (j)) suggested standard minimum rules to that effect. In principle 8 of resolution 2675 (XXV) the General Assembly stated that the provision of international relief to civilian populations was in conformity with the principles of the Charter and other international instruments in the field of human rights, and that the parties to an armed conflict should make every effort to facilitate the application of 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. 131/

126/ Amendments to article 60: CE/COM III/PC 14, 28, 94 and 95.

127/ Amendment to article 61: CE/COM III/PC 102.

128/ Amendments to article 59: CE/COM III/PC 14, 28, 94 and 95.

129/ ICRC, Report of Commission III, para. 244.

130/ CE/3b, p. 119-120 (submitted to the first session of the Conference).

131/ International Review of the Red Cross, No. 104 (November 1969), p. 632; see also A/8370, para. 8, foot-note 8.

99. Draft article 63 submitted by the International Committee of the Red Cross placed upon the Parties to the conflict the obligation to ensure "to the fullest extent of their capacity and without making any distinction of an unfavourable character, the supply of goods indispensable to the civilian population placed under their control, in law or in fact. If domestic resources are inadequate, they shall endeavour to import the necessary goods". Some experts felt that the provision should be strengthened, in particular by making it an absolute requirement to import goods if domestic resources were inadequate (experts from Romania). 132/

100. Under the terms of draft article 64, paragraph 1, the Parties to the conflict would be bound to "accept and facilitate relief action destined exclusively to the civilian population". Paragraph 2 stated that the offer of relief should not be regarded "as an unfriendly act", and it was specified that such offers might emanate from "a State, a National Red Cross Society, or any other recognized relief society, or from the ICRC, or from any other impartial humanitarian body". In paragraph 3, it was provided that the Parties to the conflict would have the right to prescribe technical arrangements for the conveyance of relief, and "to be reasonably satisfied through the protecting Power, its substitute or an impartial humanitarian organization, that these consignments are exclusively used for the relief of the needy civilian population". The Parties to the conflict would be prohibited from diverting relief consignments from their proper destination and from delaying their conveyance. Several amendments were submitted. 133/

101. Some experts, for instance the experts of Jordan, Norway, the United States of America and Yugoslavia 134/ and the expert of Canada 135/ proposed to remove the word "exclusively" which qualified the terms "civilian population" in paragraphs 1 and 3.

102. Referring to the illustrative list of humanitarian bodies contained in paragraph 2, many experts stressed the growing importance of the relief activities which were carried out by the United Nations and agencies belonging to the United Nations system. The experts of Jordan, Norway, the United States of America and Yugoslavia, 134/ Sweden 136/ and Senegal 137/ proposed that relief action by "any organ or agency of the United Nations or specialized agency of the United Nations" be expressly mentioned in paragraph 2.

103. Another proposal by the experts from Jordan, Norway, the United States of America and Yugoslavia, 134/ and the expert from Sweden, 136/ relating to paragraph 2 was, inter alia, to require expressly that relief be provided "without discrimination".

132/ CE/COM III/PC 58.

133/ Amendments to article 64; CE/COM III/PC 16, 81, 82, 85, 88 and 97.

134/ CE/COM III/PC 81.

135/ CE/COM III/PC 97.

136/ CE/COM III/PC 82.

137/ CE/COM III/PC 85.

104. Among the amendments to paragraph 3, the expert from Sweden suggested the deletion of the last sentence relating to verification by the Parties to the conflict of the exclusively humanitarian character of the consignments. Another proposal, by the expert of the Philippines, 138/ was to replace this last sentence by a formula under which "the Protecting Power or its substitute, as the case may be, shall notify the Parties to the conflict that the consignments shall be exclusively for the use of the needy population".

105. Under the terms of draft article 65, the States Parties to the Protocol would be found to grant "free passage" to relief consignments destined exclusively to the civilian population, with a proviso concerning control identical to that contained in paragraph 3 of article 64. The amendments submitted 139/ expressed the same ideas as were submitted regarding article 64.

106. Regarding the general question of international relief in armed conflicts, the experts from Norway, 140/ proposed that the International Committee of the Red Cross, the League of Red Cross Societies and the Secretary-General of the United Nations should jointly convene a conference of experts on relief, to be held before the contemplated diplomatic conference. The purposes of the conference on relief would be to draw up basic principles and review methods concerning relief action and to make recommendations concerning co-ordination in that field. The conclusions of the experts would be made available to the diplomatic conference and to all organizations concerned as proposed guidelines.

7. Status and protection of civil defence organizations

107. Following up on the preliminary work which had been carried out at the first session of the Conference (see A/8370, paras. 90-92), the International Committee for the Red Cross submitted a series of draft articles concerning the status and protection of civil defence organizations (articles 67 to 72 of draft Protocol I).

108. Detailed consideration of these drafts and of the amendments thereto 141/ was entrusted to a subcommission of Commission III. The subcommission adopted modified texts which it submitted to the Conference.

138/ CE/COM III/PC 88.

139/ Amendments to article 65: CE/COM III/PC 17, 83 and 98.

140/ CE/COM III/PC 112.

141/ CE/COM III/OPC 1-20.

C. Protection of combatants in international armed conflicts

109. It may be recalled that the question of protection of combatants in international conflicts was also examined in the Secretary-General's reports (A/7720, paras. 178-182, and A/8052, paras. 88-113). Among the issues raised in the reports, it was pointed out, for example, that the provisions in force concerning the definition of protected combatants contained discrepancies, were not precise enough and might lend themselves to difficulties of interpretation. The relevant rules in the 1907 Hague Regulations were examined in the light of the present conditions. The Secretary-General came to the conclusion that some of the provisions of the Hague Regulations relating to combatants would need to be reviewed and suggested that if the advisability of such an initiative commended itself to the General Assembly, the task of up-dating the Hague Regulations might be undertaken after adequate preparations by a conference convened by interested Member States or by the General Assembly itself.

110. For the consideration of the Conference, the International Committee of the Red Cross prepared several articles (articles 31-37 and 39) for the protection of combatants which were contained in part III of the ICRC draft Additional Protocol to the four Geneva Conventions of 12 August 1949.

111. At the ICRC Conference of Government Experts, the question of combatants, among other questions, was assigned to Commission III for examination. During the course of its work, a large number of amendments to the ICRC draft articles were submitted by government experts. ^{142/} The Commission established a co-ordinating committee with a view to reconciling, where possible, the different views and proposals.

112. In introducing the draft, the ICRC representative stated that some of the draft articles were intended for the reaffirmation of the relevant rules in the 1907 Hague Regulations, and others were for the development of the law, either by modernizing the wording of certain basic regulations, or by introducing stipulations such as articles 34 to 36. ^{143/} Many experts expressed the view that the ICRC draft could serve as a basis for future work on the development of the humanitarian law.

1. Prohibition of "perfidy"

113. The International Committee of the Red Cross submitted draft article 31 on prohibition of perfidy which read as follows:

"1. It is forbidden to kill or injure by resort to perfidy. Unlawful acts betraying an enemy's confidence, such as the abuse of an convention, truce or humanitarian negotiation, the misuse of internationally recognized protective signs, the feigning of surrender, the use in combat of the enemy's distinctive emblems, are deemed to constitute perfidy.

^{142/} CE/COM III/C 1-74.

^{143/} ICRC, Report of Commission III, para. 7.

"2. Ruses of war are not considered as perfidy. Ruses of war are those acts, such as camouflage, traps, mock operations, and misinformation, which, whilst infringing no recognized rule, are intended to mislead the enemy or to induce him to act recklessly."

114. During the examination, a number of amendments were submitted. 144/ The deletion of the word "Unlawful" in the second sentence of paragraph 1 of the draft article was suggested and was supported by several experts. The proposed definition of "perfidy" was considered by some experts to be unsatisfactory. Several amendments were submitted 145/ to define "perfidy" as acts designed to mislead the adversary into the belief that protection under international law were to be granted; and to limit the scope of those acts which were carried with the intention of committing or resuming hostilities. 146/ The acts listed in the ICRC draft also gave rise to discussion. Some experts considered that the phrase "the use in combat of the enemy's distinctive emblems" should be deleted, 147/ other proposed additions such as disguising combatants as civilians or non-combatants. 148/

115. The view was also expressed that it was extremely difficult to distinguish between "perfidy" and "ruse", and that, for that reason, a statement of the forbidden acts would be sufficient.

116. The difficulty to apply the principle of the prohibition of perfidy to maritime warfare was stressed by many experts. Some of them recommended, though disputed by others, that a detailed list of possible cases of perfidy be drawn up, or that this question be given further study.

2. Recognized signs

117. The International Committee of the Red Cross submitted draft article 32 on recognized signs which read as follows:

"It is forbidden to make improper use of the flag of truce, the protective sign of the red cross (red crescent, red lion and sun), the protective sign for cultural property and other protective signs specified in international conventions."

144/ Amendments to article 31: CE/COM III/C 4, 16, 55 and 70.

145/ CE/COM III/C 4 (experts from Finland), 55 (experts from Norway) and 70 (experts from Australia, Belgium, Brazil, Canada, Federal Republic of Germany, Israel, Philippines, Republic of Viet-Nam and United States of America).

146/ CE/COM III/C 70.

147/ CE/COM III/C 16 (experts from Egypt, Saudi Arabia and Sudan).

148/ CE/COM III/C 55 and 70.

During the discussion, several amendments were submitted. 149/ Many experts felt that the word "improper" in the ICRC draft article was unnecessary and should be deleted. 150/

118. Many experts commented on the phrase "other protective signs specified in international conventions", and suggested that it should be further elaborated.

119. The representative of the Secretary-General pointed out that, in resolution 92 (I) of 1946, the Assembly had created the flag and emblem of the United Nations and requested Member States to adopt appropriate measures to prevent the use of these signs without the authorization of the Secretary-General. A number of experts, referring to Assembly resolution 92 (I), felt that it would be appropriate to mention the United Nations flag and emblem expressly in article 32. The following was also proposed: "it is forbidden to make use of the sign of the United Nations except to the extent authorized by the Secretary-General". 151/

120. The International Committee of the Red Cross submitted draft article 33 on emblems of nationality which stated that "it is forbidden to make improper use of enemy or neutral flags, military insignia and uniforms", and that "in combat their use is forbidden at all times".

121. Several amendments 152/ were submitted to this draft article. The title of the draft article was considered by several experts as unclear. Some of them preferred the title "Emblems of nationality and of international forces" 153/ or "Enemy and neutral emblems". 154/

122. Some of the experts recalled the relevant provision of the 1907 Hague Regulations (article 23 (f)) which had given rise to much abuse, and proposed that the prohibition of the use of enemy emblems be an absolute obligation. 155/ Others suggested that such absolute prohibition would apply to any misuse of enemy emblems which might facilitate acts of combat.

149/ Amendments to article 32: CE/COM III/C 7, 38, 60 and 73.

150/ CE/COM III/C 60 (experts from Australia, Belgium, Canada, Federal Republic of Germany, United Kingdom and United States of America).

151/ CE/COM III/C 73 (experts from Australia, Belgium, Canada, Federal Republic of Germany, Norway, Romania, Sudan, United Kingdom and United States of America).

152/ Amendments to article 33: CE/COM III/C 1 and Corr.1, 23, 25, 38 and 71.

153/ CE/COM III/C 38 (experts from Norway, Romania and Sudan).

154/ CE/COM III/C 71 (experts from Australia, Belgium, Brazil, Canada, Federal Republic of Germany, Israel, Philippines, Republic of Viet-Nam and United States of America).

155/ CE/COM III/C 23 (experts from Egypt, Libyan Arab Republic, Saudi Arabia and Sudan).

3. Safeguard of an enemy hors de combat

123. The International Committee of the Red Cross submitted draft article 34 entitled "Safeguard of an enemy hors de combat" which read as follows:

"1. It is forbidden to kill or wound an enemy who, having laid down his arms, or no longer having any means of defence, has surrendered at discretion.

"2. It is forbidden to decide to leave no survivors and take no prisoners, to so threaten an enemy and to conduct the fight in accordance with such a decision.

"3. A captor shall provide for persons falling into his power even if he decides to release them.

"4. Nevertheless, sentences may subsequently be passed for infringements of the law of armed conflict, consistent with the procedure recognized in international law."

124. Written amendments to draft article 34 included those submitted by the experts from the United States of America, 156/ the Philippines, 157/, Australia, 158/ Canada, the Federal Republic of Germany, the United Kingdom and the United States of America, 159/ France, 160/ and Sweden. 161/ Several experts held the view that questions relating to safeguards of an enemy hors de combat and to conditions of capture and surrender, as treated in the ICRC draft articles 34 and 35 were closely related and should be dealt with together (see paras. 128-129 below). The amendment submitted by experts from Australia, Canada, the Federal Republic of Germany, the United Kingdom and the United States thus sought to replace the ICRC draft articles 34 and 35 by one single article which would read:

"1. It is forbidden to kill or to wound an adversary who is unconscious or who, having laid down his arms or no longer having means of defense,

"a. has surrendered or has clearly expressed an intention to surrender and to obtain from any hostile action, and

"b. is not attempting to escape.

"2. It is forbidden to order that there shall be no survivors, or to threaten an adversary therewith, or to conduct the hostilities on such basis." 159/

The experts from France 160/ proposed to reverse the order of the ICRC draft articles 34 and 35, by defining the term "hors de combat" before laying down the

156/ CE/COM III/C 11.

157/ CE/COM III/C 31.

158/ CE/COM III/C 46.

159/ CE/COM III/C 61.

160/ CE/COM III/C 65.

161/ CE/COM III/C 67.

safeguards; they also proposed to add certain prohibitions which would apply even before the enemy had become hors de combat. The proposed formula concerning safeguards for the enemy hors de combat was also wider in scope and in greater detail.

125. The first paragraph of the ICRC draft article did not cause much discussion, though suggestions were offered to replace the words "kill or wound" by "attack", and the words "at discretion" by "unconditionally" or by "without offering resistance".

126. Regarding paragraph 2, some experts, drawing attention to the language of the Hague Regulations, felt that the words "to order" should be used rather than the term "to decide".

127. Some experts considered that the wording of paragraph 3 of the ICRC draft was too strong since in their view there was no legal obligation involved. Paragraph 4 of the ICRC draft was widely accepted, though some experts suggested that it be inserted elsewhere, and the expert from the Philippines 162/ would have had it removed. Two amendments proposed the prohibition of the taking and execution of hostages (experts from Brazil) 163/ and of the torture of enemies hors de combat. (experts from Sweden) 164/

4. Conditions of capture and surrender

128. Draft article 35 on conditions of capture and surrender, submitted by the ICRC, read as follows:

"1. A combatant is captured when he falls into the power of an enemy.

"2. The following inter alia shall be considered to have fallen into the power of an enemy:

"(a) any disarmed combatant unable to defend himself or express himself in territory taken, even temporarily, by an enemy;

"(b) any combatant expressing by the usual means or by his attitude his intention to surrender, and abstaining from any violence."

129. As mentioned in connexion with draft article 34, several experts had proposed the merging of draft articles 34 and 35 (see above, para. 124). As to the substance, the expert from Israel 165/ suggested to replace the words "territory... taken by an enemy", which appeared in paragraph 2 (a), by "territory under the control of the enemy", on the ground that the ICRC wording might

162/ CE/COM III/C 28.

163/ CE/COM III/C 14.

164/ CE/COM III/C 67.

165/ CE/COM III/C 28.

establish an unjustified discrimination between combatants fulfilling the conditions laid down in the paragraph and captured in a territory taken by an enemy, and those combatants also fulfilling the conditions of the paragraph, but captured in the enemy's own territory. In his view, these two categories of combatants were equally hors de combat and should thus be treated on the same footing.

130. The ICRC draft article 36 on aircraft occupants read as follows:

"The occupants of aircraft in distress who parachute to save their lives, or who are compelled to make a forced landing, shall not be attacked during their descent or landing unless their attitude is hostile."

While the opinion was expressed that the safeguarding of flyers in distress was in conformity with international law, several experts held the view that since it was not easy to determine, at the moment of landing, whether the attitude of an aircraft occupant was to be hostile or not, it would be difficult to apply the proposed rule. The need for a balance between humanitarian and military considerations was stressed. The experts from Belgium 166/ also supported by several others, considered that the application of the rule should be limited to those cases where a state of being hors de combat was obvious. The experts from the Netherlands 167/ suggested the use of special coloured parachutes to indicate the intention to surrender.

131. As to the wording of the draft article, there were comments by the experts from the Philippines 168/ and from Indonesia 169/ on the need for a clear definition of certain key terms such as "in distress", "parachute", "hostile" and "landing". The question was raised whether the term "parachute" was broad enough to cover future means of evacuation from an aircraft in distress. 170/ The experts from the German Democratic Republic 171/ suggested that the reference to forced landing be deleted.

132. Several experts considered necessary to add at the end of the proposed text a provision that the occupants of aircraft in distress be afforded a reasonable opportunity to surrender, if they landed in a territory controlled by their enemy and did not show a hostile attitude. 172/

5. Independent missions

133. In order to provide protection for those persons who sometimes might be treated by the belligerents as spies, the International Committee of the Red Cross proposed the following draft article 37:

166/ CE/COM III/C 30.

167/ CE/COM III/C 8.

168/ CE/COM III/C 31.

169/ CE/COM III/C 24.

170/ ICRC, Report of Commission III, para. 47.

171/ CE/COM III/C 25.

172/ CE/COM III/C 10.

/...

"1. Members of armed forces and other combatants complying with the conditions laid down in article 4 of the third Convention who enter a territory controlled by an enemy in order to gather and transmit information of a military order shall not be considered as spies. Similarly, military and non-military personnel openly carrying out their mission of liaison or communication between units of their own armed forces or with the enemy armed forces shall not be considered as spies.

"2. Members of armed forces and other combatants fulfilling the conditions of article 4 of the third Convention and who enter areas or territories controlled by an enemy with the intent of carrying out destruction shall not be considered as saboteurs within the meaning of article 5 of the fourth Convention.

"3. In the event of their capture, persons referred to in the two preceding paragraphs shall be prisoners of war."

134. Among the amendments submitted, 173/ the proposal of the experts from Australia, Canada, the Federal Republic of Germany, the United Kingdom and the United States of America, 174/ aimed at modifying the scope of the article. It called for the replacement of the phrases "Members of armed forces and other combatants complying with the conditions laid down in article 4 of the third Convention" and "military and non-military personnel openly carrying out" their liaison or communication missions, by the general terms "Members of armed forces in uniform and others complying with the conditions laid down" for guerrilla fighters, i.e. article 38 of the ICRC draft Protocol (see section E below). The experts from Egypt 175/ and the Syrian Arab Republic 176/ recommended the insertion of the words "wearing their uniform" after the words "Members of the armed forces". One expert thought that the draft article might be divided into three sections dealing separately with regular forces, combatants of guerrilla fighters, and irregular forces.

135. The experts from Hungary 177/ and France 178/ considered that the phrase "with the intent of carrying out destruction" in paragraph 2 was too broad and suggested that it be qualified by "military targets" or "of military nature".

136. A number of experts considered that paragraph 3 of the International Committee of the Red Cross draft article was superfluous and should be deleted.

137. An amendment submitted by the experts from the Philippines, 179/ which was supported by some others, called for the addition of a new paragraph, under which a spy could not be sentenced unless he was first tried.

173/ CE/COM III/C 20, 32, 34, 36, 37, 47, 49 and 62.

174/ CE/COM III/C 62.

175/ CE/COM III/C 36.

176/ CE/COM III/C 49.

177/ CE/COM III/C 32.

178/ CE/COM III/C 37

179/ CE/COM III/C 54.

6. Organization and discipline

138. Draft article 39 submitted by the International Committee of the Red Cross read as follows:

"Armed forces shall be organized and subject to an appropriate internal disciplinary system. Such disciplinary system shall enforce respect of the present rules and of the other rules applicable in armed conflicts."

139. As to the substance of the draft article, experts from Australia, Belgium, Canada, the Federal Republic of Germany, the United Kingdom and the United States of America 180/ felt that "irregular forces" and "militia and volunteer corps" qualified as guerrilla fighter should be under the same obligations of organization and discipline as that which was required of "armed forces".

140. Amendments were also made to the second sentence of the draft article. The expert from Romania proposed to replace the sentence by: "The High Contracting Parties undertake to enforce, by their internal disciplinary systems, respect of the present rules and of other rules applicable in armed conflicts." 181/ The expert from Hungary 182/ proposed the insertion of the words "of international law" after the words "and of the other rules" in order to make the wording clearer.

D. Prohibition and limitation of certain methods and means of warfare

141. The question of prohibition and limitation of certain methods and means of warfare was examined in the reports prepared by the Secretary-General (A/7720, paras. 63-69 and A/8052, chap. VII). The activities of the United Nations in the field of disarmament were briefly reviewed and it was pointed out that any progress obtained by the United Nations in this field would obviously improve the protection of human rights of all categories of persons involved in armed conflicts (A/8052, para. 124).

142. In connexion with the protection of civilians, it was suggested in the second report of the Secretary-General that the Parties to an armed conflict should be obliged 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 (A/8052, sub-para. 42 (f)). In connexion with the suggestion (A/8052, subpara. 42 (a)) that attacks directed against the civilian population, as such, should be prohibited, it was suggested that consideration might be given to a specific prohibition of the use of "saturation" bombing as a means of intimidating, demoralizing and terrorizing civilians by inflicting indiscriminate destruction upon densely populated areas.

180/ CE/COM III/C 64; see also CE/COM III/C 21 (experts from the United Kingdom).

181/ CE/COM III/C 17.

182/ CE/COM III/C 19.

143. It may be recalled that in paragraph 200 of the first report it was suggested that the legality or otherwise of the use of napalm would seem to be a question which would call for a study and might be eventually resolved in an international instrument which would clarify the situation. In paragraph 126 of the second report, it was further suggested that the Assembly might consider requesting the Secretary-General to prepare a report on napalm weapons and the effects of their possible use, on the pattern of his previous report relating to chemical and bacteriological weapons. It was pointed out that such a report could facilitate subsequent action by the United Nations with a view to curtailing or abolishing such uses of the weapons in question as might be established as inhumane.

144. At its twenty-sixth session, the General Assembly adopted resolution 2852 (XXVI) in which the Secretary-General was requested to prepare, with the help of qualified governmental consultant experts, a report on napalm and other incendiary weapons and all aspects of their possible use in line with the suggestion made in his report (A/8052, para. 126).

145. The question of the prohibition and limitation of certain methods and means of warfare was dealt with in connexion with combatants in article 30 (Means of combat) of the draft Additional Protocol to the four Geneva Conventions of 12 August 1949. In addition, the ICRC had prepared a draft resolution concerning disarmament and peace (see para. 153 below).

146. The ICRC submitted draft article 30 on means of combat which read as follows:

"1. Combatants' choice of means of combat is not unlimited.

"2. It is forbidden to use weapons, projectiles or substances calculated to cause unnecessary suffering, or particularly cruel methods and means.

"3. In cases for which no provision is made in the present Protocol, the principle of humanity and the dictates of the public conscience shall continue to safeguard populations and combatants pending the adoption of fuller regulations."

147. In introducing article 30, the representative of the International Committee of the Red Cross 183/ stated that it was fully conscious of the importance of the question, but that it had preferred not to deal with particular weapons. Among the considerations which he adduced, he said that as far as atomic, bacteriological and chemical weapons were concerned, they were questions dealt with by such organizations as the United Nations and the Conference of the Committee on Disarmament; and that the prohibition of specific weapons had always been the subject of separate legal instruments and had not been included in the Geneva Conventions. If necessary, the ICRC would prefer to list specific prohibitions in a separate document, for instance, a declaration of a binding character which would supplement the Geneva Conventions and their Additional Protocol.

183/ ICRC, Report of Commission III, para. 15.

148. A large number of amendments to draft article 30 were submitted. 184/ Some amendments were intended to broaden the scope of draft article 30 by suggesting the inclusion of a clause prohibiting: (a) weapons which were likely to affect combatants and civilians indiscriminately; (b) nuclear, bacteriological and chemical weapons; (c) weapons and methods which destroy the environment; (d) specific types of conventional weapons likely to cause unnecessary suffering to the civilian population and to combatants.

149. The experts from Romania 185/ proposed the prohibition of the use of nuclear and thermonuclear weapons and referred to General Assembly resolution 1653 (XVI). Similarly, the experts from Jordan 186/ submitted an amendment which called for the prohibition of the use of nuclear weapons as well as that of biological, bacteriological and chemical weapons. Both proposals stressed that prohibition should extend not only to the use, but also to the manufacture and possession of such weapons. In this connexion two experts also recalled the proposals to convene a conference of the five Powers possessing nuclear weapons and a world conference on disarmament.

150. A group of experts (from Algeria, Austria, Egypt, Finland, Kuwait, Libyan Arab Republic, Mali, Mexico, Norway, Saudi Arabia, Sweden, Switzerland, Syrian Arab Republic and Yugoslavia) submitted an amendment. 187/ Proposing the substitution of paragraph 3 of the International Committee of the Red Cross draft article 30 by a clause forbidding indiscriminate, delayed-action weapons, incendiary weapons containing napalm or phosphorus and fragmentation weapons, without excluding any new inventions and other prohibitions already formulated in the ICRC draft Protocol. The authors of the proposals to prohibit the use of particular weapons stated, inter alia, that their proposal had humanitarian purposes and should therefore be considered at the ICRC Conference rather than in disarmament bodies whose membership was not universal and where negotiations were based to a large extent on strategic considerations. It was pointed out that the above-mentioned amendment did not cover all incendiary weapons, only those using napalm and phosphorus, and that the legality of other incendiary weapons was to be assessed in the light of the general principles forbidding needlessly cruel weapons. Those experts who were opposed to proposals containing lists of particular weapons argued that their scope extended beyond the terms of reference of the Conference and might prejudice the development of its work. It was said in this connexion that a list of prohibited weapons was bound to be incomplete and transitory, in view of the fact that there were many other indiscriminate weapons which were not readily apparent to the combatants. It was also argued that effective and widely acceptable arms limitations could only be accomplished on the basis of agreement of all the countries concerned, including those countries which were using these weapons and might not yet be prepared to give them up.

184/ CE/COM III/C 14, 17, 26, 33 and Add.1, 44, 56, 57, 58, 59 and 68.

185/ CE/COM III/C 17.

186/ CE/COM III/C 44.

187/ CE/COM III/C 33 and Add.1.

151. Another group of experts (from Bulgaria, Czechoslovakia, German Democratic Republic, Hungary and Poland) proposed the replacement of the ICRC draft article by a new article 188/ which set forth, in addition to the rules proposed in the ICRC draft, the prohibition of means and methods which affect military objectives and protected persons or civilian objects indiscriminately, or destroy the natural human environmental conditions.

152. Another group of experts (from Australia, Belgium, Canada, the Federal Republic of Germany, the United Kingdom and the United States of America) submitted an amendment 189/ which (a) called for the use in paragraph 1 of the original wording of article 22 of the Hague Regulations, 190/ (b) called for the deletion in paragraph 2 of any reference to cruel weapons in paragraph 2 and (c) called for the addition, in paragraph 3 of an obligation of States to determine whether any new weapon invented were of such a nature as to cause unnecessary suffering, without prejudice to the "De Martens Clause". 191/ These experts thought that the mention of cruel methods or means in the ICRC draft article duplicated the reference to "unnecessary suffering" and did not increase the clarity of the provision. Several experts (from Australia, Canada, the Federal Republic of Germany, the United Kingdom and the United States of America, 192/ and from Bulgaria, Czechoslovakia, the German Democratic Republic, Hungary and Poland) 192/ proposed the replacement of paragraph 3 of the International Committee of the Red Cross draft article 30 by the original wording of the "De Martens Clause".

153. The question of the prohibition and limitation of certain methods of warfare were also discussed in Commission IV in connexion with the ICRC draft resolution concerning disarmament and peace, the text of which read as follows:

"The Conference,

"noting that the Geneva Conventions and their Additional Protocols do not contain any express provision concerning weapons of mass destruction, blind, poisonous and particularly cruel weapons, and weapons with indiscriminate effects,

"believing nevertheless that these weapons are contrary to the dictates of humanity and that, in armed conflicts, the members of the international community must absolutely renounce their use,

"expresses the hope that the prohibition of the production, stockpiling and use of such weapons will be confirmed or proclaimed and that these measures will lead to general and complete disarmament,

188/ CE/COM III/C 68.

189/ CE/COM III/C 59.

190/ Article 22 of the Hague Regulations reads as follows: "The right of the belligerents to adopt means of engaging the enemy is not unlimited."

191/ See foot-note 23/ above.

192/ CE/COM III/C 58.

193/ CE/COM III/C 68.

"urges, moreover, the Parties to the Conventions to spare no effort for the preservation of peace."

154. A number of experts expressed the view that the matter was outside the scope of the Conference which was to develop humanitarian law applicable in armed conflicts. Other experts felt that such a resolution might be useful in mobilizing world public opinion. Amendments were introduced by experts from Romania, 194/ Italy 195/ and the Philippines. 196/ Some experts pointed out that it seemed wrong to them to treat the use, production and stockpiling of weapons of mass destruction, of blind, poisonous, particularly cruel weapons, and of weapons with indiscriminate effects all on the same level. In their view, the text as it stood might be interpreted as weakening the law in force with respect to the use of weapons of mass destruction.

155. At the plenary meeting of the Conference, the question of prohibition and limitation of certain means of warfare was raised again. A group of experts (Argentina, Austria, Brazil, Egypt, Denmark, Finland, the Federal Republic of Germany, Iraq, Kuwait, Lebanon, Libyan Arab Republic, Mexico, Netherlands, Norway, Spain, Sweden, Switzerland, Syrian Arab Republic and Yugoslavia) submitted a proposal 197/ in which it stated that many experts had supported proposals for the prohibition or limitation of use of some specific types of conventional weapons deemed to cause unnecessary suffering or to have indiscriminate effects, and other experts had queried whether the Conference had the competence to discuss the question in an adequate manner. They proposed that, in view of the great importance of the matter and the desirability of seeking agreement on how it could best be approached, the International Committee of the Red Cross should convene a special meeting of legal, military and medical experts on the question of express prohibition or limitations of use of such conventional weapons as might cause unnecessary suffering or be indiscriminate in their effect.

E. Guerrilla warfare

156. In his reports, the Secretary-General examined whether or to what extent and under what conditions the relevant provisions of international law could be supplemented in order to confer upon guerrillas, or certain guerrillas, the privileges of being cared for under the first Convention and of being treated as prisoners of war under the second Convention (A/7720, paras. 156-161; A/8052, paras. 168-190). A number of suggestions had been made in relation to the main areas in which humanitarian rules applicable to guerrillas might be further studied with a view to their possible amendment (A/8052, para. 191).

157. Taking into account, inter alia, the views expressed and the proposals made by the experts at the first session of the Conference on the rules applicable in guerrilla warfare prepared by the International Committee of the Red Cross,

194/ CE/COM IV/71.

195/ CE/COM IV/75.

196/ CE/COM IV/76.

197/ CE/SPC/2.

the ICRC submitted a draft article to the second session of the Conference. The draft article (article 38) read as follows:

"1. In the event of their capture, members of militias or volunteer corps, including those of organized resistance or independence movements not belonging to the regular armed forces but belonging to a Party to the conflict, even in the case of a government or of an authority not recognized by the Detaining Power, shall be treated as prisoners of war within the meaning of the Third Convention, provided that such militias, volunteer corps or organized resistance or independence movements fulfil the following conditions:

"(a) that in their operations they comply with the requirements of the principles of the law of armed conflicts and of the rules laid down in the present Protocol;

"(b) that in their operations they show their combatant status by openly displaying their weapons or that they distinguish themselves from the civilian population either by wearing a distinctive sign or by any other means;

"(c) that they are organized and under the orders of a commander responsible for his subordinates.

"2. Individual infringements of the foregoing conditions shall not entail forfeiture of prisoner-of-war treatment for the other members of the organization who have observed those conditions.

"3. Combatants not fulfilling the foregoing conditions shall, in the event of their capture, be afforded guarantees not less favourable than those laid down in Article 3 common to the Conventions."

158. There was general agreement that appropriate attention should be paid to the preparation of adequate rules on guerrilla warfare, a method of combat which was resorted to with increasing frequency in contemporary armed conflicts.

159. A number of experts felt that the conditions laid down in article 4 A(2) of the third Geneva Convention on conditions for granting prisoner-of-war status were too rigid and did not correspond to the real situation in modern warfare. Other experts cautioned against the hasty adoption of measures which might be based on insufficient knowledge of the facts. Many amendments were submitted. 198/

160. It was specifically noted by several experts that since the draft Protocol to which draft article 38 belonged was designed to be applied in international armed conflicts, the persons referred to in the article would have to belong to one of the Parties to the conflict who was also a party to the Protocol. Some experts proposed that the article should make clear that the persons referred to were those who were struggling for self-determination by waging anti-colonial wars and who were assisting such movements.

161. The term "independence movements" was proposed to be deleted on the ground that it introduced a subjective element which was alien to the spirit of the Geneva Conventions. One expert suggested to delete the words "even in the case of a Government or of an authority not recognized by the Detaining Power", which in his view, might lead to abuse. On the other hand, some experts thought that guerrilla fighters as defined in the draft should be granted not only the "treatment" of prisoners of war, as proposed by the ICRC draft, but also the "status" of prisoner of war within the meaning of the third Geneva Convention.

162. Many comments were made concerning the proposed conditions laid down in paragraph 1. Several experts, commenting on paragraph 1 (a), suggested the use of the wording of the Hague Regulation and the 1949 Geneva Conventions. While one expert thought that the word "principles" should be deleted, another expert stressed the practical limitations of guerrilla groups, which may not enable them to apply the law of armed conflicts to the fullest extent. A number of experts related this provision to the question of perfidy and felt that there was a need to redefine the notion of perfidy in the context of guerrilla warfare.

163. Some experts were completely opposed to the requirements of displaying arms openly or of wearing distinctive signs as suggested by the International Committee of the Red Cross in paragraph 1 (b) or called for a more flexible formula, better suited to the special circumstances of guerrilla warfare. Some other experts felt that there was a need for both requirements. Still others agreed with the ICRC wording in requiring only one element, i.e. either carrying arms openly or wearing a distinctive sign, but they preferred to delete the phrase "or by any other means" as it appeared too vague.

164. The requirements relating to organization as proposed in paragraph 1 (c) were also questioned by some experts who either preferred the removal of paragraph 1 (c) in toto or the deletion of the part which required that guerrilla movements be "organized". Other experts questioned the requirement of "a commander responsible for his subordinates" and suggested alternatives.

165. Two written amendments were submitted to paragraph 2 which concerned the legal consequence of individual infringements of the required conditions. One amendment, submitted by the experts from Sweden 199/ proposed that individual infringements should not entail forfeiture of prisoner-of-war treatment either for the author or for the other members of the organization, though the perpetrator might be prosecuted for what he committed. Another amendment, submitted by the experts from Australia, Canada, the Federal Republic of Germany, the United Kingdom and the United States of America, 200/ proposed different consequences for different infringements: the infringement of conditions laid down in paragraphs (a) and (b) would not deprive either the individual or the group of the status of prisoner-of-war, whereas the infringement of paragraph 1 (c) would deprive both the individual and the group of such a status.

199/ CE/COM III/C 40.

200/ CE/COM III/C 63.

166. Paragraph 3, on the treatment of combatants not fulfilling the proposed requirements was also the subject of amendments. A group of experts (from Australia, Canada, the Federal Republic of Germany, the United Kingdom and the United States of America) 200/ called for the inclusion, as a separate article, of the provision that any prisoner not entitled to more favourable treatment, should at least be accorded the guarantees offered by common article 3 of the four Geneva Conventions.

167. The expert from the Syrian Arab Republic 201/ proposed a new article which stated that in any case not covered by the preceding articles, persons participating in resistance movements and freedom-fighters in territories under colonial and alien domination and foreign occupation who were struggling for their liberation and self-determination should, in case of arrest, be treated as prisoners of war in accordance with the principles of the Hague Convention of 1907, the Geneva Conventions of 1949 and the present Protocol.

168. During the Conference the experts of Algeria, Jordan, Libyan Arab Republic, Mali, Nigeria, Norway, Sudan, United Republic of Tanzania, Yemen and Yugoslavia submitted a draft resolution 202/ in which, inter alia, the experts expressed the view that the lack of balance between Powers with substantial technological means at their disposal on the one hand, and newly independent States and national liberation movements on the other, had led to an escalation of both guerrilla warfare and of its corollaries: counter-guerrilla, technological and electronic warfare. They were mindful that these conflict situations had eroded reciprocity as a de facto element of compliance with international humanitarian law applicable in armed conflicts, and deeply concerned about the fact that the rules contained in the draft Protocols submitted by the International Committee of the Red Cross did not adequately cope with these important problems. The experts urged that the ICRC and the United Nations should continue their study of problems relating to guerrilla, counter-guerrilla, technological and electronic warfare with a view to bringing these methods of warfare under the regulation of the international humanitarian law applicable in armed conflicts.

F. Protection of the wounded, sick and shipwrecked persons

169. The question of the protection of the wounded and sick was examined in the Secretary-General's second report (A/8052) in relation to the protection of civilians (the establishment of refuges or sanctuaries, in particular, paragraphs 54 and 55) and combatants (rights and obligations, in particular, paragraphs 104 to 107).

170. At the Conference of Government Experts, the question of the protection of the wounded, sick and shipwrecked persons in international conflicts was assigned to Commission I for consideration. Commission I also examined the question of

201/ CE/COM III/C 49.

202/ CE/SPF/4.

medical air transport and the position of National Red Cross Societies. For the second session of the Conference, the International Committee of the Red Cross submitted certain draft articles which were intended to supplement all four Geneva Conventions. In order to facilitate its work, Commission I established a drafting committee and a sub-commission of technical experts on marking and identification of medical transport.

171. Government experts submitted a number of written amendments and proposals. 203/ On the basis of the drafts submitted by the drafting committee, certain texts, which had been agreed upon by a large number of experts, were recommended to the plenary session of the Conference for consideration. Those texts are reproduced in the annex to the present report. In certain cases alternative texts were indicated.

172. After considering these drafts, the Commission recommended 12 articles (articles 11-22) of draft Protocol I, for the protection of the wounded, sick and shipwrecked persons. The articles covered not only all wounded, sick and shipwrecked non-combatants, but also combatants rendered hors de combat and all other persons who were or might be in serious need of medical attention such as maternity cases and new-born infants, the infirm and expectant mothers (article 12, paragraph 1). While the Commission considered that certain acts or omissions that endangered the health or the physical or mental well-being of a protected person should be prohibited (article 13, paragraph 1), it did not agree on the qualifications to be attached to such acts or omissions. Several alternatives were offered, among others: "unlawful", "unjustified", and "wrongful".

173. Under the draft articles prepared by the Commission certain medical establishments and units (article 14, paragraph 1), civilian medical transport on land or water (article 16, paragraph 1), and civilian medical personnel (article 18) were to be respected and protected at all times. During the discussion, the Commission found that certain other issues, such as the definition of protected persons under article 13, paragraph 2 204/, and the protection of religious personnel in connexion with article 18, 205/, required further study and requested the ICRC to undertake such studies.

174. In order to strengthen the protection of the wounded, sick and shipwrecked and other persons who were or might be in serious need of medical attention such as maternity cases and new-born infants (article 12), the Commission thought it necessary to state expressly that the civilian population should respect these persons, even if they belong to the adverse Party, and refrain from committing acts of violence against them; the competent authorities of the Parties to the conflict should permit inhabitants and relief societies, even in invaded or occupied areas, spontaneously to give them shelter and to tend them (article 20, paragraph 1). The Commission also agreed to recommend rules that no one should be molested or convicted for having sheltered or tended wounded, sick or shipwrecked persons, even if they belong to the adverse Party (article 20, paragraph 2).

203/ CE/COM I/1-15

204/ ICRC, Report of Commission I, para. 18.

205/ Ibid., para. 44.

175. The final article (article 22) was intended to require States not part conflict to apply, by analogy, the Protocol to persons listed in article 12 and to medical personnel (article 18).

176. As mentioned in paragraph 170 above, the Commission established a sub-commission to examine the question of marking and identification of medical transport. The sub-commission dealt with medical air, land and sea transport, but arrived at certain recommended standards, only in respect of medical air transport. The sub-commission recommended them to be included as an annex to the draft Protocol. These recommendations dealt with the means to improve visibility of the Red Cross emblem, the application of a blue light signal, radio special frequency, and the use of a secondary surveillance radar code. The Commission examined that part of the report of the sub-commission dealing with medical air transport, and suggested that the International Committee of the Red Cross should convene periodically an expert group for reviewing these technical provisions in the light of new developments. 206/

177. On the proposal of a group of experts, Commission I also dealt with the role of the National Red Cross Societies and other humanitarian organizations in offering their assistance to the wounded and sick. 207/ The Commission formulated an article 208/ which would require the Parties to the conflict to extend facilities and assistance necessary for the performance of humanitarian activities, to the National Red Cross (Red Crescent, Red Lion and Sun) Societies, the International Red Cross bodies established in accordance with the Red Cross principles as defined by International Red Cross Conferences, and other civilian humanitarian organizations duly recognized or authorized by their Governments. It was considered necessary to achieve better co-ordination of activities between the various organizations, such as the World Health Organization, the United Nations Educational, Scientific and Cultural Organization, the United Nations Children's Fund and various non-governmental organizations. The view was expressed that the idea of elaborating an international relief charter should be further studied. 207/

206/ Ibid., para. 66.

207/ Ibid., p. 32.

208/ The plan of this additional article was not determined.

G. International assistance in, and supervision of,
the application of humanitarian rules concerning
international armed conflicts

178. The fundamental importance of strengthening and developing the institutions of the protecting Powers and their substitutes provided for in the Geneva Conventions had been stressed by the Secretary-General in his first and second reports (A/7720, paras. 216-227; A/8052, paras. 241-250). In his second report (A/8052, para. 245) - and again, at the second session of the ICRC Conference - through his representative, the Secretary-General had expressed the wish that the widest possible range of effective machinery and procedures be offered to the Parties so that supervisory assistance should never fail to assert itself for lack of acceptable alternatives. Specifically, the Secretary-General had suggested in his second report that further consideration be given, inter alia, to the following questions: the extent of the possible supervisory functions of the ICRC (ibid., para. 243); the possible establishment or designation of a permanent supervisory organ within the framework, or under the auspices, of the United Nations (ibid., paras. 246-248); the use of existing or new ad hoc machinery (ibid., para. 249); and the creation of supervisory machinery by the States Parties to the Geneva Conventions of 1949 (ibid., para. 250).

179. At the first session of the Conference, various observations and proposals had been made concerning these matters (see A/8370, para. 24). The representative of the ICRC had stated that, as the Committee felt that all the tasks falling upon the Protective Powers under the Geneva Conventions could be considered as having a humanitarian character, the ICRC would be ready to assume such tasks.

180. In operative paragraph 3 (a) of its resolution 2852 (XXVI), the General Assembly had invited the ICRC to devote special attention, among the questions to be taken up at the second session of the Conference, to "the need to ensure the better application of existing rules relating to armed conflicts, particularly the Hague Conventions of 1899 and 1907, the Geneva Protocol of 1925 and the Geneva Conventions of 1949, including the need for strengthening the system of protecting Powers contained in such instruments".

181. Questions concerning international assistance in, and supervision of, the application of the Geneva Conventions and the draft Protocol thereto were dealt with mainly in articles 6 to 10 of the ICRC draft, submitted to the second session of the Conference. These draft articles had been prepared taking into consideration, inter alia, the observations mentioned in the two preceding paragraphs and the Government replies to a questionnaire sent out by the ICRC. Articles 6, paragraph 1, and 10 were discussed together.

182. Draft article 6, paragraph 1, submitted by the ICRC read as follows:

"1. For the sole purposes of applying the Conventions and the present Protocol, each of the Parties to the conflict has the obligation to appoint a Protecting Power from the beginning of the hostilities, and must accept the activities on its territory of a Protecting Power appointed by the adverse

Party. If, despite the foregoing, the appointment of a Protecting Power is not made, the Parties to the conflict shall accept, as substitute, the International Committee of the Red Cross or any other impartial humanitarian organization."

183. In its commentary on draft article 6, paragraph 1, the ICRC stated, *inter alia*, that in its opinion, the functions of the protecting Power or its substitute under the Geneva Conventions - functions which it would agree in principle to assume - excluded that of a fact-finding body empowered to make public reports on violations of the provisions of the Conventions. As was further stated in the ICRC commentary, the Conference might wish to consider, under a separate article 10, the question of the creation of a permanent impartial body, possibly of a judiciary nature, empowered to investigate into allegations brought before it of non-observance of the provisions of the humanitarian conventions and to report its findings, possibly to the General Assembly or the Security Council of the United Nations. The ICRC, however, did not submit any draft for such an article. A large number of amendments to article 6, paragraph 1, and proposals for article 10 were submitted. 209/

184. There was general agreement on the need to maintain the existing system of protecting Powers, and at the same time to prepare appropriate additional provisions designed to strengthen it and to improve the existing rules concerning substitutes. 210/

185. Several experts expressed their basic agreement with the idea expressed in the first sentence of article 6, paragraph 1, according to which Parties to a conflict are bound to seek the co-operation of a protecting Power. 211/

186. Differing opinions were expressed on the nature and scope of the functions of the protecting Powers and their substitutes. A number of experts shared the view, expressed notably in a proposal by the expert of the Federal Republic of Germany, 212/ that the protecting Powers and their substitutes should be considered not only as the representatives of the Parties to the conflict but also as the agents of the international community. Some experts felt that the duties of the protecting Powers included the investigation of, and reporting on, alleged violations of the Geneva Conventions and Protocols thereto, as well as the publication of such reports. This idea was expressed, *inter alia*, in a proposal by the expert of Saudi Arabia. 213/ On the other hand, the representative of the ICRC restated the view, already expressed by the ICRC commentary, that fact-finding and public reporting on alleged violations were not among the tasks of the

209/ CE/COM IV/1-5, 9, 11, 15, 20-22, 24-26, 28 and 48.

210/ ICRC, Report of Commission IV, paras. 49-51 and 64.

211/ *Ibid.*, para. 52; see also proposals in CE/COM IV/1-4, 9, 11, 20, 21 and 26.

212/ CE/COM IV/1.

213/ CE/COM IV/26.

protecting Powers or their substitutes under the Geneva Conventions. 214/ It was pointed out, in that connexion, that each of the Conventions contained articles concerning inquiries, 215/ which were distinct from the provisions relating to the protecting Powers, and which had never been applied. ✕

187. The above-mentioned debate concerning the nature of the functions of the protecting Powers and their substitutes was closely connected with the discussions relating to the kind of organizations which may, or should, act as substitutes. The experts of Egypt and Norway proposed a draft article 10 216/ under which the States Parties to the Protocols "may appoint any organ established or designated by the United Nations for that purpose, to assume the duties incumbent on the Protecting Power by virtue of the Conventions and the present Protocol". Paragraph 2 of the proposal read as follows:

"In case no Protecting Power is appointed within the period of --- days from the beginning of a situation provided for in article 2 common to the Conventions, and the ICRC has not assumed all the functions of the Protecting Power under the Conventions and the present Protocol, including the investigation and reporting on violations, the said organ will then undertake, by virtue of this Protocol, the functions of the Protecting Power or those of them not carried out by the ICRC."

Paragraph 3 of the proposal contained an appeal to the ICRC and the contemplated organ to act in concert and co-ordinate their activities whenever they were both assuming the functions of the protecting Power. Some other proposals, including one by the expert of Spain, 217/ also mentioned the possibility of creating a permanent supervisory body. Various experts, however, were opposed to the idea of setting up any new machinery.

188. Among existing institutions, the ICRC was regarded by a number of experts as the organ most suited to act as a substitute, both in the event of failure to designate protecting Powers and as a temporary substitute at the first stage of the conflict. The following text received the widest support, from among the proposals which mentioned the ICRC as a possible substitute:

"If, despite the foregoing /efforts to appoint Protecting Powers/, persons protected by the Conventions and by the present Protocol continue not to benefit, no matter for what reason, by the activities of a Protecting Power, the International Committee of the Red Cross shall be accepted as a substitute for the Protecting Power." 218/

214/ ICRC, Report of Commission IV, para. 62.

215/ First Convention, article 52; second Convention, article 53; third Convention, article 132; fourth Convention, article 149.

216/ CE/COM IV/48.

217/ CE/COM IV/3.

218/ See ICRC, Commission IV, Report of the Drafting Committee, p. 3.

In response to questions by experts, the representative of the ICRC to Commission IV stated 219/ that it was willing to assume the functions of protecting Powers whenever it considered it necessary and feasible, but it could not accept any obligation to act automatically as substitute. The ICRC did not object to a rule under which the Parties to the conflict would be bound to accept an ICRC offer to act as substitute, but it would make such an offer only under the conditions that its services be acceptable to both parties and that it be given the financial means and manpower required. That position was restated by the President of the ICRC at the last plenary meeting of the Conference.

189. A number of texts were submitted with a view to improving the procedures concerning the designation and acceptance of protecting Powers. The following ideas, in particular, emerged from these proposals:

(a) that lists of possible protecting Powers be drawn up already in time of peace by all States Parties (experts from Austria); 220/

(b) that negotiations concerning the designation of protecting Powers be conducted under the auspices of, or through, the ICRC (experts from the United States of America), 221/ or that the ICRC or the Secretary-General of the United Nations should lend their good offices in case of disagreement among the Parties on the appointment of a protecting Power (experts from Switzerland); 222/

(c) that, in case of disagreement between the Parties to the conflict, the United Nations should designate protecting Powers or a substitute which would have to be accepted by the Parties (experts from Romania); 223/

(d) that precise time-limits should be adopted concerning the designation of protecting Powers, the acceptance or refusal of such Powers, and the designation or coming into play of a substitute; 224/

(e) that, when declining the proposals made by its adversary concerning the designation of a protecting Power, a party to the conflict should accompany its refusal with such suggestions as might enable its adversary to make a fresh proposal (experts from Belgium). 225/

219/ ICRC, Report of Commission IV, para. 59.

220/ CE/COM IV/11.

221/ CE/COM IV/5.

222/ CE/COM IV/21.

223/ CE/COM IV/9.

224/ CE/COM IV/1-5 and 20.

225/ CE/COM IV/2.

190. Paragraph 2 of draft article 6 provided that the appointment and acceptance of a protecting Power or its substitute would have no effect on the reciprocal legal status of the parties to the conflict. There was little debate on this provision. It was considered jointly with draft article 3 which stated that the application of the Geneva Conventions and the Protocol would have no effect on the legal status of the parties to the conflict.

191. Article 6, paragraph 3, stated that the maintenance of diplomatic relations between the belligerent States did not constitute an obstacle to the appointment of protecting Powers or their substitutes.

192. Draft articles 7, 8 and 9, as explained by the ICRC, were submitted with a view to developing the basic rule, set forth in article 1 common to all Geneva Conventions, according to which the High Contracting Parties had the duty not only to respect, but further, "to ensure respect" for the Conventions in all circumstances.

193. Draft article 7 provided that the States Parties should endeavour to train qualified personnel on a national basis to facilitate the operations of the protecting Powers or their substitutes, and that lists of such persons be transmitted to the ICRC. 226/ The idea met with general approval. 227/ Some experts felt that the recruitment and training of such personnel should lie solely within the competence of each State (as was stated, *inter alia*, in the amendment submitted by the experts from France), 228/ while others expressed the view that the ICRC might contribute in some ways to such training. 229/

194. Draft article 8, paragraph 1 230/ contained an invitation to the States Parties to co-operate in the application of the Geneva Conventions and the Protocol, "in particular by making an approach of a humanitarian nature to the parties to the conflict and by relief action. Such an approach shall not be deemed to be interference in the conflict." Paragraph 2 of the article was intended to deal with the idea of giving certain functions of supervision to regional intergovernmental organizations, but the ICRC presented no text to that effect.

195. Some of the proposals submitted aimed at institutionalizing further the idea of collective responsibility contained in draft article 8, paragraph 1. Thus, it was proposed by the expert of Jordan 231/ that meetings of the States Parties be given the authority to consider appropriate joint action in case of serious violations of the Conventions or the Protocol. Another proposal, by the expert

226/ Amendments to article 7: CE/COM IV/13, 14, 30, 31, 33 and 35.

227/ ICRC, Report of Commission IV, para. 74.

228/ CE/COM IV/33.

229/ ICRC, Report of Commission IV, para. 76.

230/ Amendments to article 8: CE/COM IV/12, 16, 17, 29, 34 and 36-38.

231/ CE/COM IV/34.

of Iraq, 232/ was to invite the States Parties to co-operate in the application of the Conventions and the Protocol, in particular by availing themselves of the procedures open to them under the Charter of the United Nations.

196. Other experts felt that certain limitations should be placed on collective action under article 1 common to all Geneva Conventions lest such action should amount to inadmissible interference. 233/ Thus, the proposal of the expert of Romania 234/ was to invite the States Parties to co-operate in the application of the Conventions and Protocol, when these States were acting as protecting Powers. The proposal also specified that the States Parties should be guided by certain fundamental principles, including respect for the national sovereignty of States and non-interference in domestic affairs.

197. Some experts favoured formulae, such as those proposed by the expert of the United States of America 235/ and the Philippines 236/ which affirmed the right of the States Parties to co-operate in the application of the Conventions and Protocol without making any reference to article 1 common to all Geneva Conventions.

198. A large number of experts expressed themselves against the inclusion of any provision concerning the role of regional organizations in the implementation of the Geneva Conventions. 237/ However, one proposal, submitted by the expert of Egypt, 238/ specifically mentioned the role, which according to the author, might be played by the regional intergovernmental organizations mentioned in Chapter VIII of the Charter of the United Nations.

199. In draft article 9, 239/ the International Committee of the Red Cross proposed that meetings of the representatives of the States Parties should be held at the initiative of the Depository State or at the request of at least one fifth of the States Parties or of the International Committee of the Red Cross, to study problems concerning the application of the Conventions and the Protocol and to examine any amendments which might be proposed by any State Party. Many of the amendments submitted - such as those submitted by the experts from Denmark, 240/ Romania 241/ and Brazil 242/ - were to make the convening of such meetings dependent solely upon the wish of a specific proportion of States Parties, which was often set at a level higher than one fifth as proposed by the ICRC.

232/ CE/COM IV/37.

233/ ICRC, Report of Commission IV, para. 82.

234/ CE/COM IV/16.

235/ CE/COM IV/12.

236/ CE/COM IV/29.

237/ ICRC, Report of Commission IV, para. 88.

238/ CE/COM IV/36.

239/ Amendments to article 9: CE/COM IV/10, 18, 40 and 42.

240/ CE/COM IV/10.

241/ CE/COM IV/18.

242/ CE/COM IV/40.

H. Better application and reaffirmation of humanitarian rules concerning international armed conflicts

1. Obligation of the States Parties to ensure the execution of the Geneva Conventions and Protocol, in particular through penal sanctions

200. The questions had been dealt with in paragraphs 109 to 129 of the first report of the Secretary-General (A/7720). In particular, paragraphs 122 to 127 of that report contained observations regarding penal sanctions.

201. Draft article 73 submitted by the International Committee of the Red Cross, stated that the States Parties, acting through their civilian and military authorities, should ensure the detailed execution of the Geneva Conventions and Protocol, and provide for unforeseen cases in conformity with the general principles of the Conventions and Protocol.

202. In the course of the debates, it was pointed out that the proposed article was wider in scope than the existing provisions of the Geneva Conventions, as the former text referred not only to commanders-in-chief, but, in more general terms, to civilian and military authorities. Some experts felt that draft article 73 should be deleted, as was proposed by the expert of Turkey, 243/ inter alia, because the idea underlying it was already included in article 1 common to all Geneva Conventions and the draft text was too vague, while some other experts considered that the draft provision would be a useful supplement to article 1 common to all Geneva Conventions. 244/

203. The ICRC did not formally submit any draft article concerning the subject of penal sanctions in general. In its commentary, however, the ICRC had summarized the views expressed on this matter by the States Parties to the Geneva Conventions and by its non-governmental experts, and it had expressed the hope, inter alia, that the different penal legislations should be, as far as possible, standardized and made applicable to all alike, whether nationals or enemies, without discrimination. During the debates references were made to questions concerning the desirability and feasibility of preparing an international penal code and of establishing an international criminal court, 245/ and such questions were touched upon in certain proposals by the expert of the Philippines; 246/ by the expert of Belgium. 247/ Some other experts felt that such projects were still premature and that it would be better to concentrate, for the time being, on the completion and harmonization of national penal legislations. The view was

243/ CE/COM IV/49.

244/ ICRC, Report of Commission IV; para. 104.

245/ Ibid., para. 95.

246/ CE/COM IV/27 and 43.

247/ CE/COM IV/46.

expressed inter alia that it would be useful to consider preparing a model law for the punishment of violations of the Conventions and Protocol. 248/

204. Draft article 75, 249/ submitted by the International Committee of the Red Cross, provided, in paragraph 1, that the civilian and military authorities should issue orders and instructions intended to ensure respect for the Conventions and the Protocol and that they should supervise the execution of such orders and instructions. In accordance with paragraph 2 of the draft article, the States Parties should determine the procedure to be followed for the application of the principle under which a subordinate is exempted from any duty to obey an order which would lead him to commit a grave breach of the Conventions or the Protocol.

205. A number of experts were in favour of including a provision on superior orders which would give concrete expression on the national level to the relevant principles of international law, notably those embodied in the charter and judgement of the Nuremberg Tribunal. A number of amendments were submitted (by the experts from Norway, 250/ the Netherlands, 251/ Belgium, 252/ Canada, 253/ Jordan, 254/ and Poland 255/) in order to express those principles in ways which, according to the sponsors, were clearer and more adequate than the formula proposed by the ICRC. On the other hand, some experts felt that paragraph 2 of the draft article should be deleted, as was proposed in an amendment by the experts of Indonesia, Iraq, Pakistan, Tunisia, Turkey and the United Republic of Tanzania. 256/

2. Prohibition of reprisals

206. 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.

248/ ICRC, Report of Commission IV, para. 96.

249/ Amendments to article 75: CE/COM IV/41, 45, 46, 54, 56, 58 and 59.

250/ CE/COM IV/41.

251/ CE/COM IV/45.

252/ CE/COM IV/46.

253/ CE/COM IV/54.

254/ CE/COM IV/56.

255/ CE/COM IV/58.

256/ CE/COM IV/59.

207. Draft article 74 257/ submitted by the International Committee of the Red Cross provided, in its paragraph 1, that reprisals against persons and property protected by the Conventions and the Protocol are prohibited. Paragraph 2 read as follows:

"2. In cases where reprisals are not yet prohibited by the law in force, if a belligerent considers that it must resort thereto, it shall observe the following minimal conditions:

- (a) the resort to reprisals must be officially announced as such;
- (b) only the qualified authority can decide on resort to reprisals;
- (c) the reprisals must respond to an imperative necessity;
- (d) the nature and scope of the reprisals shall never exceed the measure of the infraction which they seek to bring to an end;
- (e) the belligerent resorting to reprisals must, in all cases, respect the laws of humanity and the dictates of the public conscience;
- (f) reprisals shall be interrupted as soon as the infraction which gave rise to them has come to an end."

208. Most of the experts were in favour of deleting paragraph 2, and a number of them suggested deletion of the whole draft article as was proposed in an amendment by the expert of Turkey 258/ on the ground that recourse to reprisals was already completely prohibited under the Charter of the United Nations and the Declaration of Principles of International Law concerning Friendly Relations and Co-operation Among States in Accordance with the Charter of the United Nations. 259/ A few experts maintained that paragraph 2 of draft article 74 was necessary, and one proposal in that connexion was that a formula expressing the idea which underlay this paragraph but clearly restricted to the use of reprisals between combatants should be inserted after draft article 30 (by the experts from Yugoslavia). 260/

3. Publicity, dissemination and teaching

209. Reference is made on these questions to paragraph 118 of the first report of the Secretary-General (A/7720) and paragraphs 252 to 256 of the second report of the Secretary-General (A/8052). In resolution 2852 (XXVI), the General Assembly had called upon all States, inter alia, to disseminate widely information and to

257/ Amendments to article 74: CE/COM IV/19, 44, 50, 53 and 55.

258/ CE/COM IV/50.

259/ ICRC, Report of Commission IV, para. 108.

260/ CE/COM IV/53.

provide instruction concerning human rights in armed conflicts, and it had requested the Secretary-General to encourage the study and teaching of principles of respect for human rights applicable in armed conflicts by the means at his disposal. As was recalled by the representative of the Secretary-General at the Conference, the States Members could avail themselves to this end, in particular, of the programme of advisory services in the field of human rights under General Assembly resolution 926 (X).

210. It was provided, in paragraph 1 of draft article 76 261/ prepared by the International Committee of the Red Cross, that the States Parties should undertake, in time of peace as in time of armed conflict, to disseminate the text of the Protocol as widely as possible in their respective countries and, in particular, to include the study thereof in their programmes of military and civil instruction. Paragraph 2 stated that the authorities which in time of armed conflict assume responsibilities in respect of protected persons and property must be fully acquainted with the Protocol.

211. A number of experts expressed support for the draft article. 262/ Two of the amendments submitted by the experts from the Federal Republic of Germany, 263/ and from the United Kingdom 264/ proposed that the States Parties should report periodically to the ICRC on the measures taken by them to give effect to the provisions of article 76.

212. In accordance with draft article 77, 265/ the States Parties would undertake to communicate to one another, through the Depository State, the laws and regulations which they would adopt to ensure the application of the Protocol.

4. Reservations

213. In paragraph 116 of the first report of the Secretary-General (A/7720) as well as in paragraph 257 of the second report of the Secretary-General (A/8052), attention had been drawn to the question of a review by States Parties of the reservations they had made to the ratification of or accession to the humanitarian conventions. In operative paragraph 4 of resolution 2853 (XXVI), the General Assembly had called upon States parties to the existing international instruments to review, as a matter of priority, any reservations they may have made to those instruments.

261/ Amendments to article 76: CE/COM IV/24, 57, 60 and 66.

262/ ICRC, Report of Commission IV, para. 119.

263/ CE/COM IV/24.

264/ CE/COM IV/60.

265/ Amendments to article 77: CE/COM IV/10 and 46.

214. Draft article 82 266/ prepared by the International Committee of the Red Cross provided, in its paragraph 1, that no reservation whatsoever would be permitted to certain articles, the list of which, however, was left open. Paragraph 2 of the draft article stated further that reservations incompatible with the object and purpose of the Protocol would not be permitted. A paragraph, the wording of it was left open, was intended to set forth a procedure to determine, in each case, whether a reservation was incompatible with the object and purpose of the Protocol. Paragraph 3 provided that a reservation might be withdrawn at any time by notification to this effect addressed to the Depositary State.

215. As was proposed by the expert of Jordan, 267/ some experts felt that the right to make reservations to the Protocol should be entirely excluded. Some other experts stressing that it was, in their view, the sovereign right of States to make reservations, supported a proposal by the experts of eight countries (Indonesia, Ivory Coast, Pakistan, Romania, Saudi Arabia, Turkey, Ukrainian Soviet Socialist Republic and United Republic of Tanzania) 268/ to delete the whole draft article. Yet another proposal, made by the expert of the Philippines, 269/ was to retain only the prohibition, contained in paragraph 2, of reservations incompatible with the object and purpose of the Protocol. In order to determine which reservations were incompatible with the said object and purpose, it was suggested to use, mutatis mutandis, the formula contained in article 20, paragraph 2, of the International Convention on the Elimination of All Forms of Racial Discrimination. 270/

5. Question of the possible accession of intergovernmental organizations to the Geneva Conventions and Protocol

216. Without proposing any text, the International Committee of the Red Cross had suggested that article 78 of draft Protocol I should provide that the Geneva Conventions of 1949 be open for accession by intergovernmental organizations. In its commentary on the draft Protocol, the ICRC expressed its view that the accession of the United Nations, in particular, would have beneficial effects especially "each time the forces of the United Nations are engaged in operations". 271/

266/ Amendments to article 82: CE/COM IV/63, 69 and 72.

267/ CE/COM IV/63.

268/ CE/COM IV/72.

269/ CE/COM IV/69.

270/ ICRC, Report of Commission IV, para. 143.

271/ See ICRC, Commentary of draft protocols, p. 159.

217. One proposal, by the expert of Egypt, 272/ contained a draft for article 78 stating that the United Nations, the specialized international organizations and regional intergovernmental organizations may accede to the Geneva Conventions and the Protocol. In the course of the discussion in Commission IV, 273/ one expert orally suggested that the United Nations be invited to adopt a declaration stating that all armed forces under its authority would be required, within the limits of the modalities available to the Organization, to observe and respect the spirit and principles of the Conventions and Protocol, while another expert suggested that the forthcoming diplomatic conference might invite the intergovernmental organizations having responsibilities for the use of armed forces to make every effort with a view to ensuring the application of the Conventions and the Protocol.

218. The representative of the Secretary-General, after recalling all the efforts made by the Organization for the promotion and protection of human rights at all times, restated the position previously explained as to accession to the Geneva Conventions and Protocol by the United Nations. Such accession would raise questions as to the legal capacity of the Organization to become a party to multilateral treaties as well as with respect to the accession procedure. Chiefly, the lack of certain competences, including the lack of territorial jurisdiction and of disciplinary and penal authority, would make it impossible for the Organization to discharge many of the obligations laid down in the Geneva Conventions. In particular, as regards the United Nations peace-keeping forces, the representative of the Secretary-General restated the clarification contained in the Secretary-General's reports (notably in A/7720, paras. 9 and 114) stressing that responsibility for the training and discipline of the military forming part of those forces had thus far rested with each national contingent, not with the Organization. Nevertheless, the Regulations issued by the Secretary-General for the United Nations forces in the Congo, Cyprus and the Middle East all provided that the forces should observe the principles and spirit of the general international conventions applicable to the conduct of military personnel. Furthermore, the agreements between the United Nations and the Governments which furnish military contingents for the United Nations peace-keeping forces provide that such Governments must give proper instruction to their troops in humanitarian law and undertake to ensure respect for the Geneva Conventions (to which these Governments were parties).

219. The great majority of government experts declared themselves against the proposal by the expert from Egypt providing for the accession of intergovernmental organizations to the Geneva Conventions, and they approved a formal proposal by the experts of Poland and the USSR 274/ not to include in the Protocol any article to that effect.

272/ CE/COM IV/47.

273/ See ICRC, Report of Commission IV, paras. 129-135.

274/ CE/COM IV 39.

III. CONSIDERATION OF THE DRAFT ADDITIONAL PROTOCOL
RELATING TO NON-INTERNATIONAL ARMED CONFLICTS

A. Consideration of the preamble

220. The ICRC proposed the following preamble to the draft additional protocol relating to non-international armed conflicts:

"The High Contracting Parties,

"Recalling that the human person remains at all times under the protection of the principles of humanity and the dictates of the public conscience,

"Emphasizing that the humanitarian principles enshrined in article 3 common to the four Geneva Conventions of August 12, 1949, constitute the foundation of respect for the human person in cases of armed conflict not of an international character,

"Conscious of the need to develop the rules implicit in article 3 common to the four Geneva Conventions of August 12, 1949, and applicable in armed conflicts not of an international character with a view to ensuring the basic humanitarian protection of all persons, whether combatants or non-combatants,

"Agree on the following:"

221. Some experts felt that no preamble would be needed, as none had been included in the Geneva Conventions of 1949. Moreover the preparation of a preamble might raise unnecessary controversial questions. 275/ Among the experts who agreed with the idea of including a preamble, some submitted written proposals. 276/

222. The proposals were to amend certain paragraphs of the International Committee of the Red Cross or to add new provisions.

223. One proposal (by the experts from Romania) 277/ was to specify that the existence, nature and characteristics of non-international armed conflict would depend upon the recognition of these elements by the State where the event occurs.

224. Another proposal (by the experts from Indonesia and Pakistan) 278/ aimed at the inclusion in the preamble of formulations referring to the respect of the sovereignty of the High Contracting Parties and of the principle of non-interference.

275/ ICRC, Report of Commission II, para. 401.

276/ CE/COM II/13, 19, 69, 83 and 87.

277/ CE/COM II/69.

278/ CE/COM II/87.

225. It was further proposed by the experts from Denmark 279/ to include in the preamble the following provision:

"Recalling furthermore the derogations provisions contained in the International Covenant on Civil and Political Rights and other International Human Right instruments, according to which the fundamental human rights such as the right to life, right to human treatment, freedom from slavery, freedom of thought, conscience and religion, freedom from ex post facto criminal legislation, can never be derogated from even in time of a public emergency which threatens the life of the nation."

226. The representative of the Secretary-General stated that it would be useful to recall, in the preamble, the general instruments relating to human rights already concluded under the auspices of the United Nations.

B. Scope of the Protocol

1. Definition of non-international armed conflicts

227. The main issue raised with respect to the scope of the protocol was the delimitation of its scope ratione materiae, by defining the elements of non-international armed conflicts, referred to in article 3 common to the four Geneva Conventions of 1949.

228. It may be recalled that 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 the above-mentioned article of the Conventions.

229. The proposals made by the ICRC, by a number of experts and by a Drafting Committee at the first session of the conference were summarized in the preceding report of the Secretary-General (A/8370), paras. 117 and 118).

230. Article 1 of draft Protocol II, proposed by the ICRC for the second session of the Conference, read as follows:

"The present Protocol, which elaborates and supplements article 3 common to the four Geneva Conventions of August 12, 1949 (hereinafter referred to as common article 3), shall apply to all armed conflicts not of an international character referred to in common article 3 and, in particular, in all situations where, in the territory of one of the High Contracting Parties, hostilities of a collective nature are in action between organized armed forces under the command of a responsible authority."

A large number of written amendments to this text were submitted. 280/

279/ CE/COM II/83

280/ Amendments to article 1: CE/COM II/1-7, 13, 14, 16-19 and
CE/COM II/CR 1.

231. Some of the amendments limited themselves to proposing the inclusion in the ICRC draft of additional criteria or conditions for the existence of a non-international armed conflict, such as the intensity and the prolonged duration of the conflict (experts from France 281/ and Liberia 282/); the condition that the Parties to the conflict should have the material means of observing and ensuring the observance of the obligations of common article 3 and of the additional Protocol (experts from the United Kingdom 283/); the condition that the armed forces should be identifiable by an immediately recognizable emblem (experts from Argentina 284/); occupation of a part of the territory of the State (experts from Indonesia 285/).

232. Other amendments by experts from the United States of America, 286/ Canada 287/ and Indonesia, 285/ while using partially a wording close to that of the ICRC text as far as the elements of a non-international armed conflict were concerned, proposed that its definition be separated from article 3 common to the four Geneva Conventions. They suggested to this effect that the Protocol should apply to all armed conflicts to which article 2 of the Conventions was not applicable. In the first of the above-mentioned amendments, it was further specified that the Protocol should have no application to isolated incidents or to situations of internal disturbance or tension. Somewhat similar formulations relating to the non-applicability of the Protocol to isolated acts of violence and other acts of similar nature were proposed by the experts from France 281/ and from Liberia. 282/ A different view was expressed in another proposal by the experts from Egypt and Norway, 288/ reading as follows: "The present Protocol which lays down minimum standards applicable in all armed conflicts, shall apply to all conflicts referred to in articles 2 and 3 common to the four Geneva Conventions of August 12, 1949...". In accordance with the same proposal, Protocol II should specify which rules would apply only in situations provided for in article 2 common to these Conventions. Explaining this proposal, one of its co-authors referred to three levels of protection of basic human rights in the following ascending order: level I, internal troubles; rules relating to basic human rights; level II, rules appropriate to all armed conflicts; level III (upper), rules appropriate to international armed conflicts (application of draft Protocol I, related to article 2 of the Geneva Conventions) and to wars of national liberation.

233. One proposal, by the experts from Romania, 289/ substantially departed from the ICRC draft and the various amendments submitted to it; it suggested that the

281/ CE/COM II/3.

282/ CE/COM II/CR 1.

283/ CE/COM II/14.

284/ CE/COM II/16.

285/ CE/COM II/6.

286/ CE/COM II/1.

287/ CE/COM II/5.

288/ CE/COM II/17.

289/ CE/COM II/4.

application of the Protocol should depend upon the recognition by the State on whose territory the events are occurring of "the existence of an internal armed conflict, its character and its constituent elements". The same idea was expressed in a different form by the experts from Argentina. 284/

234. Another proposal by the experts from Indonesia, 285/ suggested, inter alia, the inclusion in the draft Protocol of a provision in accordance with which external help given to the parties in the conflict or the presence of foreign elements within the armed forces of the parties should not change the character of the conflict.

235. The representative of the Secretary-General stressed that principles and rules contained in United Nations instruments relating to human rights were applicable not only in time of peace but also in periods of armed conflict including non-international armed conflicts (see the second report of the Secretary-General, A/8052, paras. 151-156 and annex I). Though it was evident that the application of a Protocol relating to non-international armed conflicts would not affect such principles and rules, it might be useful to include in the draft Protocol an explicit provision to that effect.

2. Protected persons: beginning and end of application
of the Protocol

236. It may be recalled that the question of persons protected in non-international armed conflicts, to which an additional international instrument relating to this subject-matter would apply, had been dealt with in the second report of the Secretary-General (A/8052, paras. 148-150).

237. The proposals of the ICRC and those made by government experts at the first session of the Conference were summarized in the preceding report of the Secretary-General (A/8370, paras. 110-114).

238. Article 2 of draft Protocol II, presented by the ICRC at the second session of the Conference, provided that:

"The present Protocol shall apply to all persons, whether military or civilians, combatant or non-combatant, who are in the territory of the High Contracting Parties where an armed conflict within the meaning of article 1 of the present Protocol is occurring."

239. Only one written proposal concerning this article was submitted by the experts of the United Kingdom. 290/ In accordance with their proposal, the Protocol should apply to: (a) all persons taking no active part in the hostilities including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention or any other cause; (b) members of the armed forces of another State who are in the territory of the State where a non-international armed conflict occurs, as well as members of militias and volunteers; (c) persons who accompany these armed forces without actually being

members thereof, as defined in article 4A (4) of the third Geneva Convention, provided that they are not nationals of the State where the conflict occurs.

240. Article 3 of draft Protocol II read as follows:

"The present Protocol shall apply from the time when the armed conflict begins until the end of hostilities. However, after the end of hostilities, persons who are interned or detained after sentence has been passed in respect of an act committed in relation to the armed conflict, and who have not been released, as well as persons arrested on charges relating to the armed conflict, shall enjoy the protection of article 26 of the present Protocol for as long as their liberty shall be restricted."

241. A proposal was submitted by the experts from Romania 291/ to amend the first sentence of the ICRC text especially by adding after the words "until the end of hostilities" the words "or until such time that the conflict ceases to possess those characteristics referred to in article 1". The experts from Indonesia 292/ suggested that the second sentence of the ICRC text be deleted.

C. General protection of the population

242. In the second report of the Secretary-General (A/8052, para. 156), it was recalled that the United Nations provisions, e.g. those of the Universal Declaration on Human Rights, the International Covenants and the Standard Minimum Rules for the Treatment of Prisoners, 293/ would be applicable to captured combatants and civil detainees in non-international armed conflicts. The protection of these categories of persons was discussed at the Conference as a part of the general protection of the population.

243. The proposals made by government experts at the first session of the Conference in connexion with matters concerning "the general protection of the population" in non-international armed conflicts were summarized in the preceding report (A/8370, paras. 124-125). 294/

244. As stated at the second session of the Conference by an expert of the ICRC, in introducing chapter II "General protection of the population" of draft Protocol II,

291/ CE/COM II/20.

292/ CE/COM II/88.

293/ Approved by the Economic and Social Council, in resolution 663 (XXIV) of 6 August 1957.

294/ See also articles 2, 7, 12 and 13 of the Canadian draft Protocol to the Geneva Conventions of 1949 relative to conflicts not international in character, submitted to the first session of the Conference (Report on the Work of the Conference of Government Experts on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts, Geneva, August 1971, pp. 57-60).

the purpose of its provisions was not the protection of the civilian population as such, but the prohibition, during a non-international armed conflict, in relation to the population in general, of certain forms of ill-treatment already forbidden by the four Geneva Conventions. The articles contained in chapter II did not, therefore, concern only the civilian population stricto sensu, but also captured combatants and internees.

245. Articles 4, 5 and 6 listed under chapter II of draft Protocol II, read as follows:

"Article 4. - Torture and ill-treatment

"In order that the prohibition stipulated in common article 3 (1) (a) should obtain its fullest effect, the Parties to the conflict shall take all necessary measures to ensure that their military or civilian agents should not commit, nor issue orders to commit, nor condone acts of torture or brutality.

"Article 5. - Terrorism, reprisals, pillage

"1. Acts of terrorism, as well as reprisals against persons and objects indispensable to their survival, are prohibited.

"2. Pillage is prohibited.

"3. Women and children shall be protected, in particular against rape and any form of indecent assault.

"Article 6. - Measures in favour of children

"1. Children shall be the object of special protection. The Parties to the conflict shall provide them with the care and aid which their age and situation require.

"2. To this end, the Parties to the conflict undertake, at least:

"(a) to ensure the identification of children, particularly by making them wear identity discs;

"(b) to take care that children who are orphaned or separated from their families as a result of armed conflict are not left abandoned;

"(c) to endeavour to conclude local agreements for the removal of children from combat zones: such children shall be accompanied by persons responsible for ensuring their safety; all necessary steps shall be taken to permit the reunion of members of families temporarily separated;

"(d) to take care that children under fifteen years of age do not take any direct part in hostilities.

"3. The death penalty shall not be pronounced on civilians below eighteen years of age at the time when the offence was committed, nor on mothers of infants or on women responsible for their care. Pregnant women shall not be executed."

A number of written proposals were submitted by the experts. 295/

246. One proposal to article 4 was made by the experts from the United States of America, 296/ mainly, with the purpose of limiting the prohibition of torture to non-combatants and combatants hors de combat. Two proposals contained a detailed enumeration of acts of torture and ill-treatment, such as violence to life and person, murder of all kinds, mutilation (experts from Austria), 297/ threats of murder, insults and exposure to public curiosity (experts from the United States States). 296/ In another proposal, the experts from Romania 298/ suggested to add at the end of the ICRC text "... or any other acts which, under the law of the State on whose territory the armed conflict is taking place, constitute offences against the person".

247. Some of the proposals submitted by the experts to article 5 aimed at adding other prohibited acts. The experts from the United States 296/ suggested to include the prohibition of taking of hostages. The experts from Romania 298/ further proposed to add a paragraph to the effect that "all other offences against the person are prohibited", in order to avoid giving an exhaustive list of prohibited acts. Another proposal by the experts from the United States 296/ had the purpose of limiting the prohibition of reprisals only as far as non-combatants and combatants rendered hors de combat were concerned.

248. Regarding article 6, the experts from Austria 297/ and from France 299/ proposed to replace its paragraph 2 (d) by a text establishing the obligations of the parties not to recruit children under 15 years of age nor accept their voluntary enrolment.

249. As to the death penalty (article 6 paragraph 3), one proposal by the experts from Switzerland 300/ aimed at ensuring a wider protection against its imposition by specifying that this penalty should also not be pronounced on women responsible for the care of infants nor on pregnant women. A more restrictive view than in the ICR text was expressed in another proposal by the experts from the United States, 301/ which suggested to lower the age limit from 18 to 15 for the persons on whom

295/ Amendments to article 4: CE/COM II/8, 15, 21 and 26;
Amendments to article 5: CE/COM II/8, 15, 21, 22, 26 and 30;
Amendments to article 6: CE/COM II/8, 9, 15, 26 and 41;
Proposal to add a new article: CE/COM II/85.

296/ CE/COM II/15.

297/ CE/COM II/8.

298/ CE/COM II/21.

299/ CE/COM II/41.

300/ CE/COM II/9.

301/ CE/COM II/26.

the death penalty should not be pronounced, and to protect mothers of infants only against the carrying out of the penalty. The experts from the United States further made a proposal 302/ to add a new article prohibiting forced movements of civilians.

D. Protection of the wounded, sick and shipwrecked

250. As mentioned in the preceding report (A/8370, paras. 138-139), the ICRC submitted, at the first session of the Conference, a draft protocol concerning the protection of the wounded and sick which would be additional to article 3 common to the four Geneva Conventions. On the basis of the ICRC proposals, the Conference adopted a draft protocol on the protection of the wounded and sick in non-international armed conflicts (for the text of this draft protocol, see A/8370, annex II).

251. For the second session of the Conference, the ICRC included in draft Protocol II a chapter III on the protection of the wounded, sick and shipwrecked by regrouping, with various drafting changes, some of the provisions contained in the draft protocol mentioned above. These provisions read as follows:

"Article 7. - Protection and care

"1. All wounded, sick and shipwrecked persons, military and civilian, as well as infirm persons, expectant mothers and maternity cases, shall be the object of special protection and respect.

"2. Such persons shall, in all circumstances, be treated humanely and shall receive, with the least possible delay, the medical care that their condition requires, without any discrimination.

"3. All unjustified acts, whether of commission or omission, that endanger their person or their physical and mental health are prohibited.

"Article 8. - Search

"At all times, particularly after an engagement, Parties to the conflict shall, without delay, take all possible measures to search for and collect the wounded, sick and shipwrecked and to ensure their adequate care.

"Article 9. - Role of the population

"1. The civilian population shall respect the wounded, sick and shipwrecked and refrain from committing acts of violence against them.

"2. No one shall be molested or convicted for having tended the wounded, sick and shipwrecked.

"Article 10. - Medical and religious personnel

"Military and civilian medical personnel as well as chaplains and other persons carrying out similar functions shall, in all circumstances, be respected and protected throughout their mission. Should they fall into the hands of the adverse Party, they shall be likewise respected and protected; they shall be granted all facilities necessary for the discharge of their functions and shall not be compelled to carry out tasks unrelated to their mission.

"Article 11. - Medical establishments and transports

"1. Fixed establishments and mobile medical units, both military and civilian, which are solely intended for the care of the wounded, sick and shipwrecked, shall in no circumstances be attacked, but shall together with their equipment, at all times be respected and protected by the Parties to the conflict.

"2. Transports of wounded, sick and shipwrecked persons, or of medical personnel or equipment, shall be respected and protected in the same way as mobile medical units.

"Article 12. - Evacuation

"The Parties to the conflict shall endeavour to conclude local agreements for the removal from areas where hostilities occur of the wounded, sick and shipwrecked, the infirm, expectant mothers and maternity cases.

"Article 13. - The distinctive emblem

"1. The emblem of the red cross (red crescent, red lion and sun) on a white background is the distinctive emblem of the medical services of the Parties to the conflict and of Red Cross organizations. It shall not be used for any other purpose and shall be respected in all circumstances.

"2. From the outbreak of hostilities the Parties to the conflict shall adopt special measures for supervising the use of the distinctive emblem and for the prevention and repression of any misuse of the emblem."

A number of written statements were submitted by the experts. 303/

252. The majority of those amendments reflected the view that as many as possible of the provisions of draft Protocol II relating to the protection of the wounded, sick and shipwrecked should be identical to those included in draft Protocol I on

303/ Amendments to article 7: CE/COM II/27 and 75;
Amendments to article 9: CE/COM II/10, 42, 75 and 80;
Amendments to article 10: CE/COM II/64, 75 and 82;
Amendments to article 11: CE/COM II/75 and 80.

this subject matter. On those lines, the experts from Sweden 304/ proposed to replace article 7 by articles 12 and 13 of draft Protocol I and the experts from the German Democratic Republic 305/ proposed to add only to the article a new paragraph 4, using the text of article 13, paragraph 2, of draft Protocol I. It was suggested by the experts from Sweden, to add a new article 10 A which, subject to some minor modification, should be identical with article 19 of draft Protocol I and by the experts from the United States of America 306/ to conform article 11, by adding two new paragraphs, to article 15 and article 16, paragraph 4, of draft Protocol I. Other amendments to articles 9, 10 and 11 (experts from Switzerland 307/ and from the United Kingdom 308/) were mainly inspired by the corresponding provisions of draft Protocol I.

E. Protection of the civilian population

253. As noted in paragraphs 30 to 31 above, General Assembly resolutions 2444 (XXIII) and 2675 (XXV), as well as the Secretary-General in his second report (A/8052, paras. 38, 41 and 42) had specified that any set of rules for the protection of civilians should apply in all types of armed conflicts. 309/

254. It was also mentioned in paragraph 32 above, that the ICRC, in the basic document relating to the protection of civilian population submitted to the first session of the Conference, held the same view, which was previously embodied in the ICRC Draft Rules formulated in 1956.

255. The relevant opinions of the experts at that session of the Conference are summarized in paragraph 33 above.

256. As mentioned in paragraph 34 above, the ICRC proposed to the second session of the Conference - in draft Protocol I and draft Protocol II - two separate sets of draft rules concerning the protection of civilians in international and in non-international armed conflicts. In its commentary to the draft Protocol II the ICRC explained that it had chosen this method, taking into account the views of the majority of the experts at the first session of the Conference. Consequently, the ICRC preferred to submit separate rules for the protection of the civilian population in non-international armed conflicts (draft Protocol II, chapter IV). The subjects dealt with are those of draft Protocol I (part IV), but the proposals were confined to the most fundamental concepts and were related to only four articles (14 to 17). These articles were virtually identical to corresponding articles of draft Protocol I.

304/ CE/COM II/75.

305/ CE/COM II/27.

306/ CE/COM II/80.

307/ CE/COM II/10.

308/ CE/COM II/64.

309/ See for the suggestions of the Secretary-General as to matters concerning which standard minimum rules for the protection of civilians, A/8052; paragraph 38.

257. Article 14 (Definition of the civilian population) reproduced article 41 of draft Protocol I; and article 17 (Precautions when attacking), article 49 of draft Protocol I. Article 15 (Respect for and safeguarding of the civilian population) combined the provisions of articles 45 and 46 of draft Protocol I, with the exception of paragraph 4 of article 45 regarding the prohibition of attacks directed against the civilian population by way of reprisals. Article 16 (Respect for and safeguarding of objects indispensable to the survival of the civilian population) presented two alternative proposals combining some of the provisions of articles 42, 47 and 48 of draft Protocol I, as follows:

"Proposal I:

"1. Objects indispensable to the survival of the civilian population shall not be the object of attack.

"2. The Parties to the conflict under whose control objects indispensable to the survival of the civilian population are placed, shall refrain from:

"(a) using them in an attempt to shield military objectives from attack;

"(b) destroying them, except in cases of unavoidable military necessity and only for such time as that necessity remains."

"Proposal II:

"1. Objects indispensable to the survival of the civilian population shall not be the object of attack.

"2. The Parties to the conflict under whose control objects indispensable to the survival of the civilian population are placed shall refrain from destroying them or using them in an attempt to shield military objectives from attack."

258. As noted in paragraph 35 above, during the debates of Commission III, some speakers maintained that the civilian population should be protected in identical fashion in all types of armed conflicts, international and non-international. A proposal submitted by the experts of Norway, 310/ relating to some basic principles for the protection of civilians, specified that they should apply in all armed conflicts.

259. In Commission II, many experts felt that it would be preferable to follow the ICRC approach and to have two different sets of rules relating to the protection of civilians, in draft Protocol I and in draft Protocol II. The experts took account of the work of Commission III on the provisions contained in both draft protocols, and, while reiterating some of their proposals to draft Protocol I, submitted a number of amendments to articles 14 to 17 of draft Protocol II.

260. Some experts expressed doubts regarding the usefulness of article 14. One proposal suggested its deletion. 311/ Another proposal 312/ aimed at simplifying the definition, replacing the definition of civilian population by that of the "civilian" as "any person who is not a member of military forces....".

261. Many proposals 313/ made with respect to article 15 aimed at strengthening the protection afforded by it. For this purpose, it was suggested 314/ to delete paragraph 2, which would weaken the general principle laid in paragraph 1. An amendment 312/ submitted to paragraph 1 intended to avoid the permanent loss of protection for civilians who took part sporadically in hostilities. Another proposal 315/ was to delete the last sentence of paragraph 3, which could be interpreted as a restriction of the protection.

262. The same trend to strengthen the protection of civilians in non-international armed conflicts appeared in the consideration of article 16. Preference was generally given to Proposal II of the ICRC draft because it did not contain the restriction included in Proposal I (b) "except in cases of unavoidable military necessity and only for such time as such necessity remains". A proposal 315/ to delete this sentence from Proposal I was made in order to remove the substantive difference between Proposal I and Proposal II of the ICRC text.

263. Article 17 appeared to some experts to lay on the combatants an excessive responsibility concerning precautions when attacking. More flexible versions of the text were proposed. 316/

F. Protection of combatants

264. In the second report of the Secretary-General (A/8052, para. 153), it was suggested that certain minimum rules of conduct between combatants in non-international armed conflicts could be formulated. Issues involved in the protection of guerrillas in non-international armed conflicts were also examined in the second report (A/8052, paras. 187-190).

265. At the first session of the Conference the ICRC submitted standard minimum rules relating to guerrilla warfare in all types of armed conflicts, which included principles and rules to govern behaviour between combatants

311/ CE/COM II/43.

312/ CE/COM II/65.

313/ CE/COM II/11, 32, 65 and 84.

314/ CE/COM II/11.

315/ CE/COM II/32.

316/ CE/COM II/43 and 81 b.

(see A/8370, para. 132). Only very few comments were made by the experts during the discussion of the rules applicable in guerrilla warfare. 317/

266. In draft Protocol (II (chapter V), the ICRC included several provisions relating to combatants. These provisions contained in article 18 to 24 were virtually identical to those of articles 30 to 36 of part III of draft Protocol I, with a view to having the same kind of rules relating to combatants in all types of armed conflicts. 318/ As mentioned by an expert of the ICRC, the fact that article 39 of draft Protocol I had not been reproduced in draft Protocol II was due only to a technical error. He further stated that the rules proposed in chapter V were meant to cover the conduct both of regular army forces and of guerrilla fighters. 319/

267. Many of the government experts expressed the view that it would be desirable that the provisions of chapter V of draft Protocol II and those of part III of draft Protocol I be as similar as possible to each other. 320/ A number of proposals were submitted. 321/

268. Some of the proposals concerning article 18 (Means of combat) aimed at strengthening the prohibitions provided in it. One expert drew attention to the amendment 322/ which had been submitted jointly in Commission III by experts from a number of countries proposing specific prohibitions of certain weapons and methods of warfare, and asked that the amendment be re-examined. The proposals submitted by experts from five countries (Bulgaria, Czechoslovakia, German Democratic Republic, Hungary and Poland), 323/ without going so far as to name the weapons to be forbidden, had the purpose of strengthening paragraph 2 of article 18 by including the prohibition of the use of means and methods "which affect military objectives and protected persons or civilian objects indiscriminately" and of means and methods "which destroy the natural human environmental conditions".

269. Other experts agreed in principle with the approach of the ICRC draft, but proposed some modifications, concerning especially paragraph 3. The experts from France 324/ and the United States of America 325/ proposed that the paragraph should be deleted. It was, however, considered by the experts from the United

317/ See Report on the Work of the Conference of Government Experts on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts, Geneva, August 1971, paras. 393 and 395.

318/ ICRC, Report of Commission II, para. 286.

319/ Ibid.; one expert felt however that provisions relating to guerrilla fighters might have been included in chapter V, since the problem arose mainly in non-international armed conflicts (ibid., para. 329).

320/ Ibid., para. 301.

321/ CE/COM II/28, 34, 63, 71-74 and 77.

322/ CE/COM III/C 33 and Add.1.

323/ CE/COM II/72.

324/ CE/COM II/77

325/ CE/COM II/63.

States 325/ that a separate article should be included in the Protocol providing that "in cases not included in the Protocol or other applicable conventions, civilians and combatants remain under the protection and rule of the principles of international law, as they result from the principles of humanity and the dictates of the public conscience".

270. There were only a few proposals regarding the rest of the draft articles of chapter V. With respect to the prohibition of perfidy (article 19) definitions of acts of "perfidy" and "ruses of war" were proposed by the experts from the United States 325/ which, following the pattern of article 31 of draft Protocol I, would be illustrated by examples. Proposals to article 22 (Safeguard of an enemy hors de combat) and 23 (conditions of capture and surrender) suggested, mainly, to merge these articles by the experts from the United States, 325/ or to reverse their order (by experts from France). 324/ The experts from Egypt 326/ proposed the deletion of article 24 (Aircraft occupants), because they thought that its provisions concerned only international armed conflicts. For the case where this suggestion was not acceptable, the experts from Egypt proposed a different wording of the text, by eliminating from the ICRC draft the words "who are compelled to make a forced landing" and by replacing the words "unless their attitude is hostile" by "provided that their having been placed hors de combat is evident". Another proposal (by the experts from the United States) 325/ suggested adding a second sentence in article 24 to the effect that the adversary should afford a reasonable opportunity to surrender to occupants of an aircraft, who have landed in an area which is controlled by him and are not showing a hostile attitude.

271. The representative of the Secretary-General stated that it would be desirable to include in article 20 (Recognized signs) a formula that would cover the use of the United Nations flag, since the Organization could offer technical assistance or relief not only in international, but also in non-international armed conflicts. He mentioned in this respect the amendment proposed by experts from three countries 327/ to article 32 of draft Protocol I, the wording of which was reproduced in article 20 of draft Protocol II.

G. Persons whose liberty has been restricted

272. In the second report of the Secretary-General (A/8052, para. 156), it was recalled that various provisions relating to human rights, adopted within the United Nations should be applicable to captured combatants and civilian detainees in non-international armed conflicts. It was further suggested that efforts should be pursued towards the application to those persons of the third and fourth Geneva Conventions respectively.

273. The basic document prepared by the ICRC for the first session of the Conference regarding principles for the protection of victims of non-international

326/ CE/COM II/71.

327/ CE/COM III/C 38.

armed conflicts to be included in a protocol to article 3 common to the four Geneva Conventions contained a number of proposals relating to the protection of persons whose liberty has been restricted. 328/

274. The proposals made by the government experts on this subject-matter were summarized in the preceding report (A/8370, paras. 124-125). 329/

275. In draft Protocol II (Chapter VI: Persons whose liberty has been restricted), the ICRC submitted to the second session of the Conference the following proposals:

"Article 25. Treatment of combatants who have fallen into the power of the adversary

"Members of regular armed forces and members of those armed forces which have fulfilled the conditions stipulated in Article 4 A (2) of the Geneva Convention relative to the Treatment of Prisoners of War of 12 August 1949, shall receive, after having fallen into the power of the adversary, a treatment similar to that provided for prisoners of war in the said Convention.

"Article 26. Treatment of persons whose liberty has been restricted

"1. Subject to Article 25 of the present Protocol, all other persons whose liberty has been restricted, whether interned or detained after sentence has been passed, in respect of an act committed in relation to the armed conflict, shall in all circumstances be respected and treated humanely, without any adverse distinction.

"2. All unjustified acts, whether of commission or omission, that endanger their person or their physical and mental health are prohibited.

"3. The Parties to the conflict shall respect, as a minimum, the following provisions:

"(a) they shall provide for the maintenance of the persons referred to in paragraph 1 above and for the medical attention which their state of health requires;

"(b) places of internment and detention shall not be set up in areas close to combat zones. The persons referred to in paragraph 1 above shall be evacuated when the places where they are interned or detained become particularly exposed to dangers arising out of the conflict, if their evacuation can be carried out in adequate conditions of safety;

"(c) the persons referred to in paragraph 1 above shall be allowed to practise their religion and receive spiritual assistance from chaplains and other persons performing similar functions;

328/ See CE/5b, pp. 61-66 and 71-72.

329/ See also Report on the Work of the Conference of Government Experts on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts, Geneva, August 1971, paras. 266-274 and p. 59 (Canadian draft Protocol, chap. 6 "Persons in restricted liberty", articles 19-21). /...

"(d) the persons referred to in paragraph 1 above shall be allowed to send and receive letters and cards. The Parties to the conflict may limit the number of letters and cards sent by each person if they deem it necessary;

"(e) the persons referred to in paragraph 1 above shall be allowed to receive individual or collective relief.

"4. Subject to temporary and exceptional measures, the Parties to the conflict shall agree to and facilitate visits to the persons referred to in paragraph 1 above, carried out by an impartial humanitarian body such as the International Committee of the Red Cross."

A number of written amendments were formulated to both articles by government experts. 330/

276. Some of the proposals concerning article 25 relating to the treatment of combatants who have fallen into the power of the enemy aimed at expanding its applications so as to cover all captured combatants, including the guerrilla fighters whose protection was provided for in article 38 of the draft Protocol I. For that purpose, the experts from Sweden 331/ suggested the inclusion in article 25 of a reference to article 38 of draft Protocol I, after the reference to the third Geneva Convention; the experts from the Netherlands 332/ suggested the adoption in article 25 of a wording similar to that of article 38 of draft Protocol I, without, however, any explicit reference to the latter article, and furthermore to guarantee a "full" prisoner of war treatment (and not a treatment "similar" to that afforded by the third Geneva Convention, as specified in the ICRC draft) to captured combatants falling under the provisions of article 4 A (2) of the third Geneva Convention and of article 38 of draft Protocol I.

277. In contrast to this trend of opinion, the view was expressed that the status of prisoners of war should not be granted to captured combatants in non-international armed conflicts. Such a view was reflected in the following proposals: (a) to delete article 25 and to extend the application of article 26 to "all persons who fall into the hands of an adversary" (experts from Canada); 333/ (b) to apply the general treatment provided in article 26 for persons whose liberty has been restricted to members of the armed forces participating in all armed conflicts, including the guerrilla fighters (as defined in article 38 of draft Protocol I), and the treatment required in article 3 common to the four Geneva Conventions to other persons who participated in the conflict (experts from Denmark and the United Kingdom); 334/ (c) to apply to all captured combatants a treatment consistent with

330/ CE/COM II/23, 25, 29, 35-38 and 55.

331/ CE/COM II/36.

332/ CE/COM II/25.

333/ CE/COM II/38.

334/ CE/COM II/37.

the requirements of article 3 of the Conventions (experts from the Philippines). 335/

278. A quite different approach was adopted in a proposal by the experts from Romania 336/ which suggested to delete the reference, in article 25, to armed forces who have fulfilled the conditions stipulated in article 4 A (2) of the third Geneva Convention and to add a provision to the effect that persons who had taken up arms against the regular armed forces should be treated humanely "in accordance with the law".

279. With respect to article 26 (treatment of persons whose liberty has been restricted) with the exception of the proposals concerning also article 25 by the experts from Canada, 333/ and from Denmark and the United Kingdom, 334/ suggesting certain drafting changes, only two substantive amendments were submitted. One proposal, by the experts from the United States of America, 337/ recommended to give in paragraph 3 (a) a more detailed description of the standards of living of detained persons by providing for their accommodation in buildings or quarters which afford reasonable protection for their lives and health, and for adequate supplies of drinking water, food rations and clothing. The other proposal, by the experts from Romania, 336/ was to add at the end of paragraph 1 the words "... in accordance with the law" and to delete paragraph 4.

H. Penal prosecutions

280. In paragraph 15⁴ of the second report of the Secretary-General references were made to expert suggestions concerning penal prosecutions against captured fighters.

281. As mentioned in the preceding report (A/8370, paras. 123-124), the ICRC basic document relating to non-international armed conflicts, prepared for the first session of the Conference, contained proposals regarding penal prosecutions and penalties. 338/ Provisions concerning these issues were also included in the Canadian draft Protocol submitted to the Conference. 339/

335/ CE/COM II/55.

336/ CE/COM II/35.

337/ CE/COM II/29.

338/ See CE/5b, pp. 56-59 and 67-73.

339/ Article 14 of the Canadian draft Protocol (Report on the Work of the Conference of Government Experts on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts, Geneva, August 1971, p. 58); for the views of the experts at the first session (ibid., paras. 253-256).

282. The following provisions were proposed by the ICRC in draft Protocol II (Chapter VII: Penal prosecutions):

"Article 27. - Individual responsibility

"No person may be punished for an offence he or she has not personally committed. Collective penalties are prohibited.

"Article 28. - Penal prosecutions against combatants

"After having fallen into the power of the adversary, combatants who will have fulfilled the conditions stipulated in Article 25 of the present Protocol, as well as those combatants who, without having fulfilled the conditions stipulated in Article 4 A (2) of the Geneva Convention relative to the Treatment of Prisoners of War of August 12, 1949, will have at least, in the course of their operations, distinguished themselves from the civilian population by some distinctive sign or by any other means and who had complied with the provisions of the present Protocol, shall not be punishable by death if they become the object of penal prosecutions only by reason of having taken part in hostilities or having been members of armed forces."

A number of written amendments were submitted by the experts concerning these articles. 340/

283. Several proposals regarding article 27 had in view the extension of the protection afforded by it. It was thus suggested: (a) to grant immunity from punishment to persons who have not ordered the commission of an offence (experts from Switzerland); 341/ to add to the first sentence the words "or for an act or omission which was not an offence at the time it was committed (the principle Nulla poena sine lege)" (experts from Canada); 342/ to provide for judicial guarantees and the non-retroactivity of penal provisions (CE/COM II/52) (experts from the United Kingdom). 343/

284. A different approach was reflected in the proposal by the experts from Yugoslavia 344/ suggesting the addition, after the first sentence, of a provision to the effect of establishing the personal responsibility of a person in charge who did not prevent the execution of an order which he knows carries an offence.

340/ Amendments to article 27: CE/COM II/31, 48, 50, 52, 53 and 56;
Amendments to article 28: CE/COM II/24, 39, 45, 49, 54 and 78.

341/ CE/COM II/31.

342/ CE/COM II/50.

343/ CE/COM II/52.

344/ CE/COM II/53.

285. The proposals relating to article 28 reflected divergent views not only regarding the principle of the abolition of the death penalty, but also on its application and on the conditions to be fulfilled in order not to incur this penalty.

286. The experts from France 78/ and Romania 45/ suggested deleting the article. Another proposal, by the experts from Egypt, 347/ was made to the effect that no one should incur the death penalty solely for having taken part in the hostilities or having been a member of armed forces, unless imperative security requirements made this necessary.

287. With respect to the conditions that should be met by combatants who would benefit under article 28, the suggestion was made by the experts from Egypt 347/ and from the German Democratic Republic 348/ to replace the reference to Article 4 A (2) of the third Geneva Convention by a reference to article 25 of draft Protocol II.

288. Another view was embodied in the proposal by the experts from the United States of America, 349/ which omitted any references to the conditions to be fulfilled by persons subjected to penal prosecutions for offences related to the conflict, and suggested that any such persons should be granted strong guarantees and protection against the passing of a sentence or carrying out of a penalty.

I. Relief to the population

289. As mentioned above (para. 99), principle 8 of General Assembly resolution 2675 (XXV) stated, inter alia, that 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 350/ should apply in situations of armed conflict, and all parties to a conflict should make every effort to facilitate this application.

290. At the first session of the Conference, the question of relief to the population in non-international armed conflicts was raised in the proposals made by government experts, which have been summarized in the preceding report (A/8370, paras. 124-125). 351/

345/ CE/COM II/78.

346/ CE/COM II/45.

347/ CE/COM II/39.

348/ CE/COM II/24.

349/ CE/COM II/49.

350/ International Review of the Red Cross, No. 104 (November 1969), p. 632; see also A/8370, para. 8, foot-note 8.

351/ See articles 10 and 11 of the Canadian draft Protocol (ICRC, Report on the Work of the Conference of Government Experts on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts, Geneva, August 1971, p. 58); see also CE/COM III/19 (ibid., p. 65).

291. Consequently, the ICRC included in draft Protocol II several provisions (chapter III, articles 29 to 34) relating to relief for the population, humanitarian assistance, consignment of essential supplies for the civilian population, recording and information, national Red Cross and other relief societies, and civil defence organizations. During the debates, some experts expressed the view that it would be necessary to further reinforce the obligations contained in the draft Protocol. Others pointed out, however, that it would be difficult to ensure a satisfactory balance between humanitarian needs and military necessities. They stated that some Governments might be apprehensive that relief might help the insurgents and that steps should be taken against the use of relief activities for interference by third States. A number of written proposals were submitted reflecting these views. 352/

292. Draft article 29 placed upon the Parties to the conflict the obligation to ensure, to the fullest extent of the means available to them and without any adverse distinction, the provision of food-stuffs, clothing, medical and hospital stores and shelter facilities, necessary for the population in the territory under their control. The experts from the United Kingdom 353/ proposed that article 29 should be deleted because the obligations imposed on the Parties to the conflict were too wide-ranging. The experts from the United States of America 354/ favoured maintaining the article, however limiting its scope by replacing the word "population" by the phrase "civilians who take no part in the hostility". The experts from Romania 355/ further suggested adding to article 29 a provision to the effect that "the State on whose territory the conflict is taking place has the right to assist the population in the zone occupied by the adverse party, which must allow this assistance to be given".

293. Under the terms of draft article 30, paragraph 1, in case that humanitarian assistance for the population and medical assistance to wounded, sick and shipwrecked, military and civilian, were needed, the parties to the conflict should to the fullest possible extent, agree and facilitate impartial relief activities undertaken by humanitarian bodies, such as the ICRC and National Red Cross Societies. Paragraph 2 recognized the right of the Parties to the conflict to prescribe the technical arrangements under which the passage of relief supplies would be allowed, but without diverting relief consignments from their purpose or delaying their forwarding. Paragraph 3 stated that in no circumstances should this assistance be considered as interference in the conflict. Article 31, paragraph 1, of the ICRC draft placed on the Parties to the conflict the obligation to allow the free passage of consignments, in cases of blockade or siege. Paragraph 2 was identical with paragraph 2 of article 30. In paragraph 3 it was provided that the Parties to the conflict or any High Contracting Party concerned may make such permission conditional on the distribution only to the persons benefited thereby being made under the supervision of an impartial humanitarian body.

352/ CE/COM II/12, 45, 51, 57, 58 and 89.

353/ CE/COM II/57.

354/ CE/COM II/51.

355/ CE/COM II/45.

294. Two proposals, submitted by experts from the United Kingdom 353/ and from the United States, 354/ suggested to combine these two articles in a single one and to amend some of their provisions. It was thus proposed, in both amendments, not to mention the ideas of "blockade" and "siege". According to the experts from the United Kingdom, the ICRC should determine the necessity of relief to the population, by assessing when the civilian population would be inadequately supplied, account being taken of their normal standard of living. However, an ICRC representative stated that that organization did not want to act as a fact-finding body. 356/ As regards the organizations which could supervise the distribution of supplies in accordance with article 31, paragraph 3, the experts from the United States proposed to entrust this task to "an organ or an agency of the United Nations, a regional international organization, or a humanitarian organization such as the International Committee of the Red Cross". Finally, one proposal by the experts from Romania, 355/ considering that only Governments were competent to appreciate whether humanitarian assistance constituted interference, suggested the deletion of paragraph 3 of article 30, which was maintained in the other amendments.

295. Chapter VIII included among others an article on civil defence organizations (article 34), according to which the Parties to the conflict, subject to temporary and exceptional measures to guarantee their security, should allow these organizations to carry out their humanitarian tasks and should be protected at all times (paragraph 1). It further provided that in no circumstances should the fact of taking part in the humanitarian activities of such organizations be considered to be punishable (paragraph 2). While one proposal (by the experts from Switzerland) 357/ aimed at strengthening the special protection of the civil defence organizations, by deleting from paragraph 1 the reservation relating to temporary and exceptional measures, other proposals (by experts from Indonesia 358/ and from the United States 354/) suggested not to include in the draft Protocol provisions concerning such a protection.

J. Implementation of draft Protocol II

296. The question of procedures for an objective finding of the existence of a non-international armed conflict was considered in the second report of the Secretary-General (A/8052, paras. 157-162 and A/8370, para. 120), as well as in the documentation prepared by the ICRC for the first session of the Conference (see A/8370, para. 121). The position of the ICRC, as expressed at the first session of the Conference, where some experts suggested that the ICRC should be entrusted with the function of determining the existence of a non-international armed conflict, was that it did not seek in any way to fulfil such a function. 359/

356/ ICRC report of Commission III, para. 175.

357/ CE/COM II/12.

358/ CE/COM II/89.

359/ See ICRC, Report on the Work of the Conference of Government Experts on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts, Geneva, August 1971, paras. 212-218.

297. In chapter IX (Executory provisions) of draft Protocol II, the ICRC included several articles (35-40), 360/ which, with some exceptions, were almost identical in substance with corresponding provisions of draft Protocol I. Article 38, relating to the legal status of the Parties to the conflict, was identical in substance with article 3 of draft Protocol I; and article 39, relating to dissemination of the Protocol, with article 76 of draft Protocol I. Article 39 (Rules of application) repeated article 77 of draft Protocol I, while article 36 (Special agreements) reproduced paragraph 3 of common article 3 of the four Geneva Conventions. 361/ Article 37 (Co-operation in the observance of the present Protocol) read as follows:

"Each Party to the conflict, to the fullest possible extent, shall call upon a body which offers all guarantees of impartiality and efficacy to co-operate in the observance of the provisions of the present Protocol and its Regulations and of the other provisions of the four Geneva Conventions of 12 August 1949, and of the Additional Protocol to the said Conventions brought into force in accordance with Article 36 of the present Protocol."

A number of written amendments were submitted by the experts to these articles. 362/

298. The majority of the written amendments were directed to article 37, which also gave rise to a lengthy debate. The main trend of opinion was to invest the ICRC or any other impartial body with specific attributions in ensuring the application of the draft Protocol and to give a mandatory character to the provisions of the article. One proposal, by the experts from Italy, 363/ reverted to the question of the determination by the ICRC of the existence of a non-international armed conflict. It suggested to add a new provision to the effect that the ICRC may confirm the existence of the conflict by means of a notification of a non-compulsory nature. According to the comment to that proposal 364/ the possibility that the ICRC might express an opinion on this subject would constitute an obstacle to the arbitrary denial by States of the existence of a conflict of this kind in their territory.

299. The experts from Italy 363/ and the experts from Austria and Switzerland 365/ suggested to place an obligation upon the Parties to the conflict to appoint an impartial body, such as the ICRC, in order to co-operate in the application of the

360/ For article 35, see paras. 300-302 below.

361/ Para. 3 of article 3 common to the four Geneva Conventions reads as follows:

"The Parties to the conflict shall endeavour to bring into force, either by means of special agreements, or by declarations addressed to the International Committee of the Red Cross, all or part of the other provisions of the four Geneva Conventions of 12 August 1949, and of the Additional Protocol to the said Conventions."

362/ CE/COM II/47, 59, 60, 61 and 61 b, 62, 66, 67, 70 and 79.

363/ CE/COM II/61.

364/ CE/COM II/61 b.

365/ CE/COM II/62.

international instruments mentioned in article 37. They further recommended that, if after a reasonable period of time, the Parties to the conflict have not called upon such a body, the ICRC may carry out the tasks of such a body 363/ or that, until such a body has been appointed, the Parties should accept the ICRC in such a capacity. 365/ According to a proposal by the experts from the United Kingdom, 366/ the Parties to the conflict should, to the fullest possible extent, call exclusively upon the ICRC to supervise the implementation and observance of the international instruments specified in article 37. The experts from Denmark proposed the following text for article 37:

"An impartial humanitarian body, such as the International Committee of the Red Cross, shall be granted the right to render humanitarian assistance, unless the Parties to a conflict expressly declare that they do not want such assistance". 367/

Finally, the experts from Indonesia 368/ suggested that in order for article 37 to work, the agreement of the legitimate Government would have to be sought.

K. Special cases of armed conflicts not of an international character

300. At the first session of the Conference, the ICRC submitted proposals concerning non-international armed conflicts entailing the application of international humanitarian law as a whole. Two such cases were envisaged: (a) non-international armed conflicts in which the Party opposing the authorities in power has an organization displaying many constituent features of a State; (b) foreign State aid in such conflict. The relevant ICRC proposals and the written amendments submitted by the experts at the first session of the Conference were summarized in the preceding report (A/8370, paras. 126-129).

301. In draft Protocol II, prepared for the Conference, the ICRC included in chapter IX a provision according to which the "Regulations concerning special cases of armed conflicts not of an international character... shall constitute an integral part of the present Protocol; the procedure by which the present Protocol is to be applied is also valid for the Regulations" (article 35). The Regulations referred to in article 35, were appended as an annex to the draft Protocol II and read as follows:

"Article 1. Effective organization of the Party opposing
the authorities in power

"When, in case of armed conflict not of an international character in the territory of one of the High Contracting Parties, the Party opposing the authorities in power has a Government which exercises effective power, by means of its administration and adequately organized armed forces, over a part of the territory, the Parties to the conflict shall apply all the

366/ CE/COM II/67.

367/ CE/COM II/60.

368/ CE/COM II/59.

provisions of the four Geneva Conventions of 12 August 1949, and the Additional Protocol to the said Conventions.

"Article 2. Outside aid in armed conflict not of
an international character

When, in case of armed conflicts not of an international character in the territory of one of the High Contracting Parties, the armed forces of other States take a direct part in the hostilities, the relations between the Parties to the conflict shall be governed as follows:

"(a) the relations as between the authorities in power and the States that aid the Party opposing the authorities in power shall be governed by the four Geneva Conventions of 12 August 1949, and the Additional Protocol to the said Conventions; the same shall apply to the relations between States aiding the authorities in power and States aiding the Party opposing the authorities in power;

"(b) the relations between the authorities in power and the Party opposing those authorities shall be governed by at least the provisions in common Article 3 and in the present Protocol. Moreover, the Parties to the conflict shall grant to all captured combatants prisoner-of-war treatment as laid down in the Geneva Convention relative to the Treatment of Prisoners of War of 12 August 1949, and shall apply to civilians the provisions of Part IV relative to the civilian population of the Additional Protocol to the Geneva Conventions:

(1) when only the authorities in power benefit from other States' assistance;

(2) when both authorities in power and the Party opposing them benefit from other States' assistance.

"(c) all the relations between the Parties to the conflict shall be governed by the four Geneva Conventions of 12 August 1949, and the Additional Protocol to the said Conventions, when the Party opposing the authorities in power fulfils the conditions stipulated in Article 1 of these Regulations, whether or not it is aided by other States."

302. On the whole, during the debate, most of the experts expressed the view that article 35 and the Regulations concerning special cases should not be retained. 369/ The written amendment submitted to article 35 contained similar suggestions. 370/ However, one of the proposals (by the experts from Egypt) 371/ recommended to add a new chapter to the draft Protocol, entitled "Special cases", which would include the following articles:

369/ ICRC, Report of Commission II, paras. 243-255.

370/ CE/COM II/59, 70 and 79.

371/ CE/COM II/70.

"(1) The Parties to the conflict shall, in special cases when hostilities have reached a level as to make it necessary, accord the combatants after having fallen into the power of the adversary, a treatment similar to that provided for prisoners of war in the Geneva Convention relative to the Treatment of Prisoners of War of 12 August 1949.

They shall also apply to the civilian population the Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949.

"(2) Liberation and self-determination movements, as well as internal conflicts which, in the view of the United Nations, threaten international peace and security shall always be considered special cases within the meaning of Article of the present Protocol.

"(3) The application of Articles and of the present Protocol does not dispense the Parties to the conflict from recognizing the application of all the Geneva Conventions of 12 August 1949 to such conflicts when circumstances warrant it."

L. Fundamental rights of the individual in time of internal disturbances or public emergency

303. Questions relating to the possible extension of the scope of article 3 common to the four Geneva Conventions to cases such as internal disturbances or tensions not necessarily coming under the present terms of the article were dealt with in the second report of the Secretary-General (A/8052, paras. 137-145). The report recalled the applicability of the United Nations instruments on human rights and especially of the International Covenants to such cases. Some very tentative suggestions were mentioned as regards criteria for extension of the guarantees of article 3 to these cases.

304. The document relating to the protection of victims of non-international armed conflicts prepared by the International Committee of the Red Cross for the first session of the Conference included a preliminary draft Declaration of Fundamental Rights of the Individual in Time of Internal Disturbances or Public Emergency, 372/ the text of which was based on various provisions of article 3 of the fourth Geneva Convention and of the International Covenant on Civil and Political Rights. Due to lack of time, the first session of the Conference did not consider the draft Declaration. The ICRC placed it therefore on the agenda of the second session.

305. The majority of the experts who took part in a very short debate on this item 373/ expressed their opposition to the preparation of an international instrument relating to internal disturbances. To substantiate this view it was

372/ CE/5 b, pp. 86-87.

373/ ICRC, Report of Commission II, paras. 431-437.

said that: (a) internal disturbances did not fall under the terms of reference of the Conference, as they could not be placed in the same category as non-international armed conflicts; (b) the preparation of an international instrument relating to this matter would encounter insuperable difficulties, since it lay clearly within the sovereignty of States; (c) as the question of internal disturbances was very closely linked to the protection of human rights, when the International Covenants entered into force there would be no need for any other legal instrument.

306. Some experts, however, felt that the ICRC should not conclude from the relative lack of discussion on this matter that it was devoid of interest or of any relevance for its work.

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

307. In accordance with operative paragraph 1 of General Assembly resolution 2597 (XXIV), the question of protection of civilians and combatants in armed conflicts arising from the struggles of peoples under colonial and foreign rule for liberation and self-determination was given special attention in the second Secretary-General's report, where suggestions were made on the methods for improving the conditions of persons involved in these struggles (A/8052, paras. 25-237). In the Secretary-General's report on the first session of the Conference, reference was also made to the relevant General Assembly resolutions adopted at the twenty-fifth session (see A/8370, para. 135).

308. At its twenty-sixth session, the General Assembly adopted several resolutions which contained provisions relating to the legitimacy of the struggle for liberation from colonial and foreign rule and to the treatment of freedom-fighters and the protection of the civilian populations in conflicts arising from struggles for liberation and self-determination.

309. In resolution 2787 (XXVI), the General Assembly, inter alia, affirmed man's basic human right to fight for the self-determination of his people under colonial and foreign domination. In particular, in resolution 2784 (XXVI), section II, on the elimination of all forms of racial discrimination and in resolutions 2787 (XXVI), 2795 (XXVI), 2796 (XXVI), 2871 (XXVI) and 2874 (XXVI), the General Assembly reaffirmed its recognition of, and vigorous support for, the legitimacy of the peoples' struggle for self-determination and liberation from colonial and foreign domination and alien subjugation, by all available means consistent with the Charter of the United Nations. In resolutions 2796 (XXVI), 2871 (XXVI) and 2795 (XXVI), the Assembly further reaffirmed the inalienable right of the peoples of Zimbabwe, Namibia and Angola, Mozambique, Guinea (Bissau) and other Territories under Portuguese domination to self-determination and independence.

310. In resolution 2795 (XXVI), the General 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 principles of 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 2796 (XXVI) on the question of Southern Rhodesia, the Government of the United Kingdom was called upon, in view of the armed conflict in the Territory and the inhuman treatment of prisoners, to ensure the application to that situation of those Conventions. The General Assembly, in resolution 2871 (XXVI), called upon South Africa once again to treat Namibians captured during their struggle for freedom as prisoners of war in accordance with the Geneva Convention relative to the Treatment of Prisoners of War, and to comply with the Geneva Convention relative to the Protection of Civilian Persons in Time of War. In this regard, the Assembly invited the International Committee of the Red Cross to exercise its good offices to secure South Africa's compliance with those Conventions.

311. The International Committee of the Red Cross prepared for the consideration of the second session of the Conference a preliminary draft declaration on the application of international humanitarian law in armed struggles for self-determination. According to the ICRC, this draft declaration might be adopted at a diplomatic conference or at some other intergovernmental gathering such as the United Nations General Assembly.

312. The text of the draft declaration read as follows:

"The undersigned plenipotentiaries, in the name of their respective Governments:

"Considering that the principle of the right of peoples to self-determination is given official sanction in, inter alia, the Charter of the United Nations, the International Covenants on Human Rights, and resolutions of the United Nations General Assembly,

"Considering that the implementation of this principle still encounters difficulties and sometimes entails armed struggles which cause great suffering and a large number of victims,

"Considering that it is incumbent upon the international community to endeavour to mitigate that suffering,

"1. Declare that the Geneva Conventions of 12 August 1949, the Additional Protocol to the said Conventions, and other humanitarian rules of international law limiting the use of weapons and means of injuring the enemy should be applied in armed struggles waged by peoples for their right to self-determination within the meaning of the definition of that right in Article 1 common to the International Covenants on Human Rights, adopted by the United Nations General Assembly on 16 December 1966;

/Proposal I/: "2. Declare that, failing full application of those provisions, the Parties to such struggles, shall in all circumstances observe, by analogy, at least the rules in Article 3 common to the four Geneva Conventions of 12 August 1949, as well as those of the Additional Protocol to that article."

/Proposal II/: "2. Declare that, failing full application of those provisions, the Parties to the struggles shall in all circumstances observe at least the rules appended to this Declaration." 374/

313. The text of the draft declaration was considered by Commission IV. 375/ It appeared that, for sometimes different reasons, a number of experts had reservations concerning the draft declaration.

374/ No such rules were actually appended to the draft declaration.

375/ ICRC, Report of Commission IV, paras. 164-170.

314. A number of experts considered that, by virtue of the Charter of the United Nations and other instruments of the United Nations organs, questions relating to the struggle for self-determination should be examined in the context of international armed conflicts within the meaning of common article 2 of the Geneva Conventions, and that this question fell within the scope of draft Protocol I additional to the four Geneva Conventions of 12 August 1949. Two amendments were submitted to that effect. A text submitted by the experts from Bulgaria, Czechoslovakia, the German Democratic Republic, Hungary and Poland (see para. 28 above) contained a clause reaffirming that the armed struggles of suppressed nations and peoples in territories under colonial and alien domination for their national liberation and self-determination had an international character, and that the combatants of such movements should enjoy the full protection of international law. 376/ For the same purpose, the experts from Algeria, Cameroon, Egypt, the Ivory Coast, the Libyan Arab Republic, Nigeria, Pakistan and Yugoslavia submitted an amendment 377/ to article 1 of the proposed draft additional Protocol I, which would have the Protocol also applicable to armed struggles waged by peoples for the exercise of their right to self-determination within the meaning of the definition of that right in article 1 common of the International Covenants on Human Rights.

315. Some other experts felt that the attempt of drafting special provisions on the armed struggles of peoples for liberation and self-determination was unnecessary, as these were internal struggles which came under common article 3 of the Geneva Conventions and draft additional Protocol II. One reservation was also made on the ground that such an attempt would tend to revive the concept of the "just war" which was considered alien to the Geneva Conventions.

316. In the debate in Commission II, 378/ the question of the status of wars of liberation and struggles for self-determination was also discussed. The views expressed on this question were similar to those expressed in Commission IV mentioned earlier. Some experts added that a distinction should be made between wars of national liberation and wars of secession and those conducted for the purpose of dismembering a territory. In their view, only the former could be considered equivalent to international armed conflicts. They also felt that a distinction should be made between liberation movements supported by the population against a foreign Power or an oppressive régime, and movements instigated from outside claiming to be supported by the population.

317. Two amendments were submitted in Commission II by the experts from Egypt. 379/ They sought to have the Regulations (see para. 301 above) concerning special cases of armed conflicts not of an international character made applicable to armed conflicts arising from the struggle of peoples under alien domination for liberation and self-determination. (See chapter III section K, above).

376/ An amendment submitted by the experts from Romania (see para. 28 above) was also to the same effect.

377/ CE/COM IV/74.

378/ ICRC, Report of Commission II, paras. 36-39

379/ CE/COM II/7 and 70.

Part Three

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

318. 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. Information concerning these activities is summarized in this part of the report. The full text of proposals and resolutions contained in the information received from these non-governmental bodies may be made available to delegations upon request.

319. The Institute of International Law at its Zagreb session which was held from 26 August to 4 September 1971, adopted, in a resolution, a set of eight articles relating to the conditions of application of humanitarian rules of armed conflict to hostilities in which the United Nations forces may be engaged. The Institute of International Law had before it a preliminary and final report on this subject prepared by a member of the Institute.

320. The International Humanitarian Law Association, Geneva, prepared a "plan for Neutral Internment of Prisoners of Armed Conflicts" which had been submitted to the ICRC Conference of Non-Governmental Organizations held in Geneva from 18 to 19 November 1971 as a proposed protocol to the third Geneva Convention for the protection of prisoners of war. The plan consists of the participation of neutral States in the internment of prisoners. The United Nations is requested to take the initiative called for in the plan. The International Humanitarian Law Association also adopted on 18 November 1971 a "declaration of Geneva" which, inter alia, contained a set of legal principles relating to the commission of serious crimes during armed conflicts.

321. The International Institute of Humanitarian Law (San Remo) organized an International Conference on Humanitarian Rules and Military Instructions, which was held from 2 to 4 September 1971, at San Remo, Italy, and has scheduled a seminar on the teaching of humanitarian law in military institutions for 6 to 18 November 1972 to deal with the presentation and teaching techniques concerning the various aspects of international humanitarian law.

322. The International Institute of Human Rights (Fondation René Cassin), Strasbourg, has organized several courses on respect for human rights in armed conflicts.

323. The International League for the Rights of Man was currently assisting in the preparation of training materials for military personnel regarding the human rights provisions of the 1949 Geneva Conventions, in particular, in relation to civilians. The League was also engaged in the developing of techniques for the collection of allegations of violations of human rights in armed conflicts.

324. The International Society for Military Law and Law of War has scheduled its 6th International Congress to be held on 25 May 1973 at The Hague. The Congress will be devoted to two principal questions: ruses of war and perfidy, and zones and places under special protection.

325. The Special NGO Committee on Human Rights, at its meeting on 18 November 1971, approved two resolutions. In resolution 1 on respect for international humanitarian law, the Special NGO Committee on Human Rights recommended to the General Assembly to establish, within the framework of the United Nations, a permanent commission charged with the responsibility of investigating all complaints of violations of humanitarian law during any armed conflicts and particularly alleged violations of: (a) the Hague Conventions of 1899 and 1907; (b) the Geneva Protocol of 1925, taking into account resolution 2603 A (XXIV) of the General Assembly and (c) the Geneva Conventions of 1949. This Commission should have full powers of investigation conducted in public to inquire into complaints made to it by any Government, any Party to an armed conflict, or any responsible non-governmental organization. It would report its findings to the Security Council and to the General Assembly. The Commission 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.

326. In resolution 2 on a convention on torture and the treatment of prisoners, the Special NGO Committee on Human Rights recommended that the General Assembly:

(a) Affirm that the United Nations Standard Minimum Rules for the Treatment of Prisoners constitute authoritative guidelines pertaining to the treatment and rehabilitation of all prisoners under human conditions, and invite Member States to give urgent and positive consideration to the embodiment of the Rules in domestic legislation and their enforcement at the national level;

(b) Request the Secretary-General to establish a committee of experts to prepare a draft convention, for adoption by the States Members of the United Nations, which would provide that torture and inhuman or degrading treatment of persons imprisoned or detained constitute crimes under international law, render compulsory under international law at the very least the observance of the United Nations Standard Minimum Rules for the Treatment of Prisoners, and establish an international machinery for implementation;

(c) Urge that, pending the incorporation of the United Nations Standard Minimum Rules for the Treatment of Prisoners in an international convention, there should be introduced a machinery for periodic reporting to the Secretary-General by Member States on the application of the United Nations Standard Minimum Rules within their country.

327. The World Veterans Federation prepared a booklet entitled Le statut du résistant dans les conflits internationaux. Included in the booklet were the conclusions and recommendations of a group of consultant experts of the World Veterans Federation.

328. Publications in the field of respect for human rights in armed conflicts and of international humanitarian and medical law have also been received from several non-governmental bodies, including the Commission médico-juridique de Monaco and the International Committee of Military Medicine and Pharmacy.

ANNEX

DRAFT ADDITIONAL PROTOCOL TO THE FOUR GENEVA CONVENTIONS
OF 12 AUGUST 1949

PART II

WOUNDED, SICK AND SHIPWRECKED PERSONS

(submitted by Commission I to the plenary session
of the Conference)

Section I

GENERAL PROVISIONS

Article 11. Definitions

For the purposes of the present Part:

(a) the term "medical establishments and units" means hospitals and other fixed medical establishments, medical and pharmaceutical stores of such establishments, mobile medical units, blood transfusion centres and other installations used for medical purposes;*

(b) the term "medical transport" means the transport of wounded, sick, shipwrecked and infirm persons, expectant mothers, maternity cases and new-born infants, medical personnel, medical equipment and supplies;

(c) the term "medical personnel" means personnel regularly and exclusively engaged in the operation or administration of medical establishments or units, including personnel assigned to the search for, removal, transport or treatment of wounded, sick, shipwrecked, infirm persons, expectant mothers or maternity cases and new-born infants;*

(d) the term "distinctive emblem" means the distinctive emblem of the red cross (red crescent, red lion and sun) on a white background;

(e) the term "shipwrecked persons" means any person who is in peril at sea as a result of the destruction, loss, or disablement of the vessel or aircraft in which he was travelling, and who is in need of humanitarian assistance and care, and who refrains from any hostile act.

Article 12. Protection and care

1. All wounded and sick persons, whether non-combatants or combatants rendered hors de combat, and other persons who are or may be in serious need of medical attention such as maternity cases and new-born infants together with shipwrecked persons at sea, the infirm and expectant mothers shall be the object of particular protection and respect.

2. In all circumstances these persons shall be treated humanely and shall receive the 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.

* Add a mention of permanent or temporary character.

Article 13. Protection of persons

1. All unlawful* acts or omissions that endanger the health or the physical or mental well-being of a protected person are prohibited.

2. Accordingly it is prohibited to subject protected persons to physical mutilation or to medical or scientific experiments of any kind, including the removal or transplant of organs, which are not justified by the medical, dental or hospital treatment of the person concerned and carried out in his interest. This prohibition applies even in cases where the protected person gives his assent.

Article 14. Civilian medical establishments and units

1. Civilian medical establishments and units, whether permanent or temporary, shall in no circumstances be the object of attack.* They shall at all times be respected and protected by the Parties to the conflict.

2. The appropriate Party to a conflict shall provide these medical establishments and units with a certificate identifying them for the purposes of the present Protocol.

3. With the authorization of the competent authority, medical establishments and units shall be clearly and visibly marked with the distinctive emblem.

4. The Parties to the conflict shall, as far as possible, make known to each other the location of fixed medical establishments and units.

5. The 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.

Article 15. Discontinuance of protection of civilian medical establishments and units

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

* Alternatives:

- delete "unlawful"
- replace "unlawful" by "unjustified"
- replace "unlawful" by "wrongful"
- replace "the object of attack" by "attacked".

2. The fact that members of the armed forces are in such medical establishments and units for medical treatment shall not be deemed to be an act harmful to the enemy; nor shall the presence of small arms and ammunition taken from such members of the armed forces and not yet handed over to the proper service.

Article 16. Civilian medical transports on land or water

1. Ambulances and other vehicles used exclusively as medical transport by civilian medical establishments and units shall be respected and protected at all times. They shall be furnished with a certificate issued by a competent authority and attesting to their medical nature.

2. Other means of transport, assigned temporarily for medical transportation, whether used in isolation or in convoy with other medical transport shall be respected and protected while being used for such purpose.

3. With the assent of the competent authority, all the foregoing means of transport shall be marked with the distinctive emblem. Those covered by paragraph 2 above may display the distinctive emblem only while they are carrying out their humanitarian mission.

4. The provisions of article 15 of the present Protocol shall likewise be applicable to medical transports.

Article 17. Requisition

1. The Occupying Power may requisition civilian medical establishments and units, their movable and immovable assets, and the services of their medical personnel only temporarily and only in case of urgent necessity for the care of military wounded and sick, including prisoners of war, and then on condition that suitable arrangements are immediately made for the care and treatment of the patients normally served by these establishments and units, and for the needs of the civilian population for medical treatment.

2. Medical equipment, material and stores other than those mentioned in paragraph 1, shall not be requisitioned so long as they are needed for the civilian population.

Article 18. Protected and civilian medical personnel

1. Civilian medical personnel, whether permanent or temporary, duly recognized or authorized by the competent authority of the Party to the conflict,

as well as the medical personnel of National Red Cross (Red Crescent and Red Lion and Sun) Societies, shall be respected and protected.*

2. In zones of military operations and in occupied territory, the above personnel shall be recognizable by means of an identity card, as per annex I of this Protocol, certifying their status, bearing the photograph of the holder, and embossed with the stamp of the competent authority of the Party to the conflict, and also by means of a stamped, water-resistant armband bearing the distinctive emblem which they shall wear on the left arm. The armband shall be issued by the competent authority of the Party to the conflict who embosses the identity card.

3. Temporary medical personnel shall be entitled to respect and protection and to wear the armband as provided in and under the conditions prescribed in the previous paragraphs, while they are employed on medical duties. The identity card shall state the duties on which they are employed.

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

5. During occupation every assistance shall be given by the Occupying Power to civilian medical personnel to enable them to carry out their humanitarian mission to the best of their ability. During invasion all assistance that is possible shall be given by the adverse forces to civilian medical personnel. In both cases, they shall have access to any place where their services are required, subject to such measures of supervision and security as the appropriate Party to the conflict may judge necessary, and in no circumstance shall they be required or compelled to carry out tasks unrelated to their mission.

Article 19. Protection of medical duties in general

1. In no circumstances shall any person be punished for carrying out medical activities compatible with professional ethics regardless of the person benefiting therefrom.

2. In no circumstances shall any person engaged on medical activities be compelled by any authority to violate any provision of the Conventions or of any Protocol thereto.

* Alternative:

1. Civilian medical personnel, whether permanent or temporary, as well as the medical personnel of National Red Cross (Red Crescent, Red Lion and Sun) Societies, all duly recognized or authorized by the competent authority, shall be respected and protected.

3. Persons engaged in medical activities shall not be compelled to perform acts or to carry out work contrary to professional rules designed for the benefit of persons listed in article 12 of this Protocol or to abstain from acts demanded by such rules.

4. Any person engaged in medical activities shall not be compelled to inform an adverse Party of the wounded, sick and shipwrecked under his care. An exception shall be made in the case of compulsory medical regulations for the notification of communicable diseases.

Article 20. Role of the population

1. The civilian population shall respect the persons listed in article 12 of this Protocol even if they belong to the adverse Party, and shall refrain from committing acts of violence against them. The competent civilian and military authorities of the Parties to the conflict shall permit inhabitants and relief societies, even in invaded or occupied areas, spontaneously to give them shelter and to tend them.

2. No one shall be molested or convicted for having sheltered or tended wounded, sick and shipwrecked persons, even if they belong to the adverse Party.

3. The Parties to the conflict may appeal to the charity of commanders for merchant vessels, yachts or other craft, to take on board and care for wounded, sick or shipwrecked persons, and to collect the dead. Vessels of any kind responding to this appeal, and those having of their own accord collected wounded, sick or shipwrecked persons, shall enjoy special protection and facilities to carry out such assistance.

Article 21.* Use of the distinctive emblem and distinctive signal

The High Contracting Parties shall adopt special measures for supervising the use of the distinctive emblem and distinctive signal and for the prevention and repression of their misuse.

Article 22. States not party to the conflict

States not party to the conflict shall apply, by analogy, the provisions of the present Protocol to persons listed in article 12 of this Protocol and to medical personnel.

* This article is proposed to become article 7⁴ A (in part V, "Execution of the Conventions and of the present Protocol").

Section II

MEDICAL AIR TRANSPORT

Article 23. Definitions

1. For the purposes of the present Section:

(a) the term "medical aircraft" means any medical air transport under the direction of a competent authority of a Party to the conflict whenever used exclusively in the performance of a medical air mission. Medical aircraft may be either permanent or temporary;

(b) the term "permanent medical aircraft" means an aircraft assigned exclusively and indefinitely for use as a medical aircraft;

(c) the term "temporary medical aircraft" means an aircraft, other than a permanent medical aircraft, while exclusively employed on a medical mission;

(d) the term "medical air mission" means the evacuation or transport by medical aircraft of any person described in article 12 of this Protocol, medical personnel or medical equipment protected by the Conventions or any Protocol thereto, or any other activities exclusively intended for the performance of the mission. At sea, a medical air mission includes the search for and rescue of the shipwrecked. /On land and on water under national jurisdiction of the adverse Party or on (internal waters), with the agreement of the competent authority of the Parties to the conflict, a medical air mission may include the search for and rescue of the persons listed in article 12 of this Protocol and persons exposed to grave danger.*/

* Submitted by: Japan, Iraq, Monaco, USA.

Annex I

Model of the Identity Card referred to in
article 18 of the present Protocol

Annex II

RECOMMENDED INTERNATIONAL STANDARDS, PRACTICES AND PROCEDURES FOR THE IDENTIFICATION AND SIGNALLING OF MEDICAL AIRCRAFT

CHAPTER 1. GENERAL

1.1. The following are standards, recommended practices and procedures for the signalling and identification of medical aircraft.

1.2. Adoption of some or all of these measures is likely to lead to a more positive identification of medical aircraft, thereby lessening the chance of them becoming the object of attack.

1.3. A joint international group of technical experts should review this annex periodically and revise and recommend improvement, where appropriate, in medical aircraft identification standards, practices and procedures.

1.4. The International Committee of the Red Cross is invited to convene the Group whenever it deems it to be necessary, after having requested the Contracting Parties, if they wish, to nominate experts. International specialized organizations may also delegate representatives to those meetings.

CHAPTER 2. STANDARDS, RECOMMENDED PRACTICES AND PROCEDURES

2.1. VISUAL IDENTIFICATION

2.1.1. Emblem. The distinctive emblem provided for in the Protocol will be conspicuously displayed.

COLOUR: Red on a white field.

LOCATION: Affixed so that its display is visible in all directions.

2.1.2. Light Signal. A distinctive light, affixed and operating as specified, should be provided.

COLOUR: Blue.

TYPE: Flashing or flashing strobe.

FLASHING

CHARACTERISTICS: Flash frequency should lie between 40 and 100 flashes per minute.

LOCATION: The lamp(s) should be so located that light is visible in as many directions as possible.

/...

2.2. NON-VISUAL IDENTIFICATION

2.2.1. Radio. A radio message, prefixed by the word "MEDICAL" can be used to transmit a position on an agreed or specified frequency at frequent intervals during a medical mission. Pending adoption of a suitable form of speech for aeronautical radio-communication between Parties to the conflict, the English language shall be used.

2.2.1.1. Message content

- (a) MEDICAL (followed by aircraft identification)
- (b) Number(s) and aircraft type(s)
- (c) Route
- (d) Altitude
- (e) Timings
- (f) Other information (for example, radio frequency(s), language, secondary surveillance radar-mode and code).

2.2.1.2. Frequency assignment. States are urged to propose specific frequency(s) for the transmission of medical messages. These proposals should be submitted to the International Telecommunication Union (ITU) for consideration and inclusion in the Radio Regulations annexed to the International Telecommunication Convention (Montreux, 1965).

Note 1. The above is consistent with Recommendation No. 34 of the ITU Administrative Radio Conference (Geneva, 1959)

2.2.2. Secondary Surveillance Radar (SSR). The SSR system, as specified in the International Civil Aviation Organization (ICAO), annex 10 - Aeronautical Telecommunications, should be used in identification through a medical mission.

2.2.2.1. Mode/Code

- (a) Mode 3/A
- (b) Code (to be agreed upon or specified by the parties)

2.2.2.2. Code assignment. A unique SSR code for ultimate universal use is recommended. Its designation should be co-ordinated through the International Civil Aviation Organization (ICAO) and subsequently included in the appropriate ICAO document(s).

Note 2. Until such time as a universal world-wide code is established, States should allocate a unique national SSR code to designate medical missions.

(e) the term "distinctive signal" means one or more of the devices recommended for signalling and identifying medical aircraft and designated for the exclusive use of medical aircraft in annex II of this Protocol. This annex may be amended from time to time pursuant to the procedures prescribed therein.

2. All medical aircraft shall carry a certificate issued by the competent authority of the Parties to the conflict and attesting to the medical nature of their functions.

Article 24. Protection

1. Permanent medical aircraft, when complying with the provisions of this Protocol, shall not be the object of attack but shall be respected and protected at all times.

2. Temporary medical aircraft, when complying with the provisions of this Protocol, shall not be the object of attack but shall be respected and protected throughout their mission.

3. The Parties to the conflict are prohibited from using their medical aircraft in order to acquire any military advantage over any other Party to the conflict. The presence of medical aircraft may not be used to render military objectives immune from military operations.

4. Medical aircraft shall not carry cameras or other intelligence gathering equipment or intelligence personnel other than those who are wounded or sick. They are prohibited from transporting persons or equipment not included in the definition of medical air mission.

5. Medical aircraft shall contain no armament other than small arms and ammunition belonging to the wounded and sick and not yet handed over to the proper authorities, and such small arms as may be necessary to permit the medical personnel and crew members to defend themselves and the persons listed in article 12 of this Protocol.

Article 25. Removal of wounded from battle area

1. In the forward part of the battle area under the control of friendly forces, and in areas where such control is not clear, the protection against attack provided in article 24 of this Protocol can be effective only by agreement between the local military authorities of the Parties to the conflict. The agreement may be concluded in every possible way and may cover the routes, times, heights of flight, number of aircraft as well as other means of identification.

2. Even if prior agreement has not been obtained, a medical aircraft shall not be the object of attack by any person who has positively recognized it as a medical aircraft.

3. In the rear part of the battle area medical aircraft belonging to friendly forces may perform their medical air mission without prior agreement.

4. The medical air mission should be carried out with the utmost possible speed.

5. At the discretion of the appropriate commander the Party using medical aircraft may give an adverse Party notification of the fact that medical aircraft will operate in that part of the combat zone which is under the control of the Party using the medical aircraft and may provide such information as will aid an adverse Party in the identification of such aircraft.

6. For the purposes of this article, the term "battle area" means an area where opposing ground forces are in hostile contact with each other.

Article 25 A. Search and rescue at sea

Alternative 1:

/At sea, but not over internal waters, /

Alternative 2:

/At sea, but not over waters under the national jurisdiction of the adverse Party, / ...

... the Parties to the conflict shall not, save in cases of imperative military necessity, interfere with the search for, or removal and evacuation of the persons listed in article 12 of this Protocol by medical aircraft. This provision shall apply especially in areas where opposing naval forces are in hostile contact with each other.

/...

Article 26. Overflight of territories controlled by the
adverse Party

Medical aircraft shall continue to enjoy the respect and protection provided under article 24 of this Protocol while they are flying over territory physically under the control of the adverse Party provided prior agreement from the competent authority of the adverse Party has been obtained. The agreement shall cover in particular the routes, times, heights of flight, number of aircraft as well as the means of identification of medical aircraft. The Party employing the medical aircraft shall ensure that they comply with the requirements laid down in article 26 A and article 27 of this Protocol while flying over such territory.

Article 26 A. Procedure for agreements

1. In order to facilitate agreements under articles 25 and 26 of this Protocol, the Parties employing medical aircraft shall provide to the adverse Party timely notification of the particulars covered by those articles and any other information which will aid in the identification of the aircraft together with an undertaking to comply with the provisions of paragraphs 4 and 5 of article 24 of this Protocol, and the means of identification proposed.

2. The adverse Party will acknowledge receipt of the information in paragraph 1 above and may condition clearance on reasonable alternative routes, times and heights of flights and other conditions, and the Party employing medical aircraft shall comply with such requirements.

Article 27. Identification

1. With the assent of the competent authority of the Party to the conflict, medical aircraft may be marked with the distinctive emblem (Red Cross, Red Crescent, Red Lion and Sun). When flights are undertaken under an agreement such as is provided for in article 26 of this Protocol, the aircraft shall always bear the distinctive emblem.

2. Apart from the distinctive emblem, medical aircraft may be fitted with one or more distinctive signals.

3. Each Party to a conflict shall do its utmost to adopt and implement reasonable methods and procedures designed to provide for the identification and protection of medical aircraft which are transmitting the distinctive signal and displaying the distinctive emblem.

Article 28. Landing

1. Medical aircraft flying over territory physically under the control of an adverse Party as provided in article 26 of the present Protocol may be ordered to land or, as appropriate, alight on water in order to permit inspection and verification of the character of the aircraft. Medical aircraft shall obey every such order.

2. In the event of a landing whether ordered, forced, or the result of fortuitous circumstances, an aircraft is subject to inspection to determine whether it is a medical aircraft within the meaning of article 23 of this Protocol. If inspection discloses that it is not a medical aircraft within the meaning of article 23 of this Protocol, or if it is in violation of the conditions prescribed in article 24 of this Protocol, or if it has flown without prior agreement, it may be seized and the crew and passengers shall be treated in accordance with the applicable provisions of the Conventions and of this Protocol. Such seized aircraft as are designed to serve as permanent medical aircraft may be used only as medical aircraft thereafter.

3. If inspection discloses that the aircraft is a medical aircraft within the meaning of article 23 of this Protocol, the aircraft, its crew, its medical personnel, and its passengers shall not be subject to capture, detention or internment but shall be permitted to continue their mission.

4. Inspection shall be conducted expeditiously in order not unduly to delay any medical treatment.

Article 28 A. Flight crews

1. Persons permanently and exclusively assigned to duties as flight crew of medical aircraft shall have the status and protection of permanent medical personnel within the meaning, as appropriate, of article 24 of the First Convention (military medical personnel), article 26 of the First Convention (personnel of National Red Cross Societies and that of other Voluntary Aid Societies) and article 18 of this Protocol (civilian medical personnel) and shall benefit from the safeguards accorded to such persons under the Conventions and this Protocol. They may wear the distinctive emblem and shall carry the identity document prescribed by the Conventions and this Protocol.

2. While in the performance of their medical air mission, persons temporarily assigned to duties as flight crew of medical aircraft shall have the status and protection of temporary medical personnel under articles 25 and 29 of the First Convention or article 18 of this Protocol. They may wear the distinctive emblem and shall carry the appropriate identity card which shall state the duties on which they are employed as prescribed by the Conventions and this Protocol. If temporary military medical personnel fall into the hands of the adverse party (unless allowed to continue their mission under paragraph 3 of article 28 of this Protocol), they shall be prisoners of war, but shall be employed in their medical duties in so far as the need arises.

Article 29. States not parties to the conflict

1. Except by prior agreement, medical aircraft shall not fly over or land on the territory of a State not party to the conflict. They shall be respected throughout their flights and also for the duration of any calls in the territory. Nevertheless they shall obey any summons to land or to alight on water.
2. The agreement shall cover in particular the routes, times and heights of flights, as well as the means of identification of the aircraft.
3. Should a medical aircraft, in the absence of an agreement, because of urgent necessity, be forced to fly over or land on the territory of a State not party to the conflict, the medical aircraft shall make every effort to give notice of the flight and to identify itself. The State not party to the conflict shall, to the extent possible, respect such aircraft.
4. In the event of a landing, on land or on water, in the territory of a State not party to the conflict, whether forced or in compliance with a summons, the aircraft, with its occupants, may resume its flight after examination, if any.
5. Any persons listed in article 12 of this Protocol disembarked from a medical aircraft with the consent of the local authorities on the territory of a State not party to the conflict shall, unless agreed otherwise between the State not party to the conflict and the Parties to the conflict, be detained by the State not party to the conflict where so required by international law, in such a manner that they cannot again take part in the hostilities. The cost of hospital treatment and internment shall be borne by the Power to which the wounded, sick and shipwrecked persons belong.
6. The States not parties to the conflict shall apply any conditions and restrictions on the passages or landing of medical aircraft on their territory equally to all Parties to the conflict.

Article 29 A. Aircraft of relief societies of States
not parties to the conflict and of
organizations of an international
character

1. The provisions of article 27 of the First Convention shall apply to permanent medical aircraft and their flight crews and medical personnel furnished to a Party to the conflict by a recognized relief society of a State not party to the conflict.
2. The provisions of article 27 of the First Convention shall also apply to permanent medical aircraft, flight crews and medical personnel furnished for humanitarian purposes by an organization of an international character, on the condition that such an international organization carries out the same requirements as are to be performed by the Government of a State not party to the conflict under the aforesaid article 27.

Article* National Red Cross Societies and other humanitarian bodies

1. The Parties to the conflict shall extend to the National Red Cross (Red Crescent, Red Lion and Sun) Societies and to International Red Cross bodies facilities and assistance necessary for the performance of their humanitarian activities to be carried out in accordance with the Red Cross principles as defined by International Red Cross conferences.

2. For the purposes of this article, the term "humanitarian activities" means medical relief and other purely humanitarian activities to be carried out impartially in favour of victims of armed conflicts.

3. Similar facilities and assistance to that mentioned in paragraph 1 of this article are also to be rendered to other civilian humanitarian organizations, which are duly recognized or authorized by their Governments and are performing exclusively humanitarian activities.

* This article is proposed to become article 65 A (in part IV "Civilian population") or article 73 A (part V "Execution of the Conventions and of the present Protocol").