

effective, any protocol imposing specific bans on weapons must also provide for a continuous revision of the bans. It might therefore be advisable to have a separate instrument regulating the use of certain conventional weapons.

44. Draft resolution A/C.6/L.964 referred to the draft resolution adopted by the First Committee at the current session of the General Assembly concerning napalm and other incendiary weapons, as well as to the resolution on the prohibition or restriction of use of certain weapons adopted by the twenty-second International Conference of the Red Cross in Teheran in 1973, inviting the Diplomatic Conference to consider the question of the prohibition or restriction of use of conventional weapons which might cause unnecessary suffering or have indiscriminate effects. The Secretary-General's impressive survey of existing rules of international law relating to the prohibition or restriction of use of specific weapons could be most helpful in the deliberations of the Diplomatic Conference and especially of the Conference of Government Experts which ICRC had been asked to convene in 1974 to study in depth the question of prohibiting or restricting the use of conventional weapons which might cause unnecessary suffering or have indiscriminate effects.
45. His delegation hoped that the Diplomatic Conference would succeed in reaching general agreement on the further development of the international humanitarian law applicable in armed conflicts and that the Conference, in performing that task, would be

guided by realism and a sincere wish to adopt universally acceptable rules.

46. Mr. ESSONGUE (Gabon) expressed appreciation to the Secretariat for the excellent and comprehensive survey contained in document A/9215. The prohibition of the use of certain specific weapons in armed conflicts could, however, be no more than a palliative and could not solve the problem alone. The solution of the problem required the prevention of the outbreak of armed conflicts. Once armed conflict had broken out, the parties, blinded by the instinct of self-preservation and the thirst for victory, were tempted to use any means to achieve those ends. However, before one could prevent the outbreak of armed conflict, it was necessary to eradicate the causes which engendered it. It would be desirable to that end to create an international morality of which the point of departure would be the United Nations and which would involve the commitment of all the peoples of the world. The purpose of such an international morality would be to inspire all peoples and all States with an abhorrence of armed conflicts, whatever their motives. Only with such an awareness would it be possible realistically to contemplate an ideal world that was more united at heart and had a brighter future.
47. Mr. VALERO (Chile) reserved his delegation's right of reply concerning the statements made in the Committee with regard to his country.

The meeting rose at 5 p.m.

1450th meeting

Thursday, 29 November 1973, at 10.55 a.m.

Chairman: Mr. Sergio GONZÁLEZ GÁLVEZ (Mexico).

A/C.6/SR.1450.

AGENDA ITEM 96

Respect for human rights in armed conflicts: report of the Secretary-General (*continued*) (A/9123 and Corr.1 and Add.1 and 2, A/9215, A/C.6/L.964)

1. Mr. OLSZÓWKA (Poland) said that his delegation attached the greatest importance to the question under discussion. Since it was difficult or even impossible to eliminate armed conflicts in the existing circumstances, every effort must be made to humanize them and to diminish the suffering they caused. In its resolution 3032 (XXVII), the General Assembly had rightly pointed out that the development of many weapons and methods of warfare had made modern armed conflicts increasingly cruel and destructive of civilian lives and property. In his delegation's opinion, humanitarian principles should be applied in all armed conflicts. To that end, States must observe scrupulously the humanitarian law and the rules and customs of war laid down in existing international instruments, as well as other universally recognized norms and principles of modern international law for the protection of human rights in armed conflicts. Yet it was not enough to reaffirm existing legal rules and to secure

their application; it was also important to ensure the progressive development of international humanitarian law in the light of new military technology and the changing conditions of modern warfare. The Polish Government had taken a great interest in the efforts made in that direction by the International Committee of the Red Cross (ICRC), particularly with regard to the preparation of the draft Additional Protocols to the Geneva Conventions of 1949.¹ It had participated actively in the conferences and meetings of government experts organized by ICRC and welcomed the progress made at those meetings and at the International Conference of the Red Cross recently held at Teheran. In ensuring the further development of international humanitarian law, special emphasis should be placed on the following issues: protection of the civilian population; application of the rules of international humanitarian law to participants in national liberation movements engaged in armed struggles against colonial domination and racist régimes; preparation of appropriate rules on guerrilla warfare, and particularly making the conditions required for the recognition of

¹Geneva, June 1973.

guerrillas as combatants more flexible; and the prohibition of the use of weapons of mass destruction and of other weapons and methods of warfare which indiscriminately affected civilians and combatants.

2. The careful preparation of the Diplomatic Conference of 1974 by the ICRC and the existing atmosphere of détente should increase the chances of success of the conference, which would be faced with difficult problems.

3. He congratulated the Secretariat on its excellent survey entitled "Existing rules of international law concerning the prohibition or restriction of use of specific weapons" (A/9215). The draft resolution in document A/C.6/L.964 seemed to serve as a useful basis for further work and would be studied carefully by his delegation.

4. Mrs. SLÁMOVÁ (Czechoslovakia) drew attention to the fact that the General Assembly, in its resolution 3032 (XXVII), had expressed its consciousness that only complete respect for the Charter of the United Nations and general and complete disarmament under effective international control could bring about full guarantees against armed conflicts and the suffering caused by such conflicts and its determination to continue all efforts to those ends. A world disarmament conference could further those efforts, since the best way of protecting human rights and fundamental freedoms lay in eliminating armed conflicts and ensuring the peaceful settlement of disputes. The concepts of human rights and of armed conflicts were contradictory. Despite the trend towards détente that had emerged on the international scene in recent years, human rights and fundamental freedoms were still not being respected in certain parts of the world, where wars of aggression and armed conflicts were still being waged. It would be unrealistic, especially in view of recent events in the Middle East, to hope to eliminate armed conflicts from international life. Accordingly, efforts should be made to secure the widest possible respect for human rights in armed conflicts.

5. The Czechoslovak Government unreservedly approved of the efforts made by ICRC to develop and codify international humanitarian law. It had participated actively in the Conferences of government experts convened at Geneva in 1971 and 1972 and in the International Conference of the Red Cross recently held at Teheran. Above all, it was important to ensure respect for the existing international instruments. There was no question of revising them, since they had already proved viable, but they should be brought up to date to take new methods of warfare into account. The second addendum to the Secretary-General's report on respect for human rights in armed conflicts (A/9123/Add.2) showed that most States were in favour of the adoption of protocols to supplement the Geneva Conventions of 1949. Her delegation shared that view, but wished to point out that those protocols should neither reiterate the existing provisions of the Geneva Conventions nor go less far than those instruments.

6. The question of national liberation movements was a vitally important one in the unification of international humanitarian law. Since the Charter of the

United Nations recognized the principle of equal rights and self-determination not only for States but also for peoples, it was essential to ensure that that principle could be applied to peoples. Colonialism was the negation of that principle, and the national liberation movements which were struggling against colonial régimes were therefore engaged in a combat worthy of support. Czechoslovakia had always endeavoured to adapt humanitarian law to international law: international law now extended its protection to those who were engaged in struggles for national liberation and who were often subjected to extremely cruel treatment. It was their fate above all that should be taken into consideration in reaffirming and developing international humanitarian law.

7. It was also essential to ensure the protection of the civilian population, since civilians were increasingly becoming the victims of armed conflicts. In that connexion, civilian property and the human environment should also be protected. Weapons and methods of warfare must be taken into account, as well as their effects, particularly those of weapons of mass destruction.

8. After congratulating the Secretary-General on his excellent report on the subject (A/9123 and Corr.1 and Add.1 and 2) and the Secretariat on its detailed survey (A/9215), she declared that her country was determined to collaborate actively in the codification of international humanitarian law. Her delegation would study the draft resolution in document A/C.6/L.964 with all the attention it deserved.

9. Mr. GUSTAFSSON (Finland) expressed appreciation of the Secretariat's detailed survey and of the work of ICRC in preparing for the Diplomatic Conference to be held at Geneva in February 1974. The two draft Additional Protocols to the Geneva Conventions of 1949, prepared by ICRC, would certainly provide a good basis for discussion at the Conference.

10. Those draft Protocols were not limited to the reaffirmation and development of the Geneva Conventions of 1949, since they also contained provisions directed towards developing the rules of warfare which had been left in abeyance since the Conventions of The Hague of 1907. Advances in armaments technology made it imperative urgently to supplement the existing provisions and to fill the lacunae.

11. In preparing for the Conference, the question of the prohibition or restriction of use of conventional weapons which might cause unnecessary suffering or have indiscriminate effects had been the subject of some controversy. The report of the Secretary-General entitled *Napalm and other incendiary weapons and all aspects of their possible use*,² as well as the report prepared under the auspices of ICRC entitled *Weapons That May Cause Unnecessary Suffering or Have Indiscriminate Effects*,³ had brought into the foreground the urgent need for new rules to prohibit or limit the use of certain weapons. His delegation had therefore been pleased to note that the International Red Cross Conference at Teheran, as well as the First Committee,

²A/8803/Rev.1 (United Nations publication, Sales No. E.73.1.3).

³Geneva, 1973.

had urged the Diplomatic Conference to begin the consideration of that subject at its 1974 session and that the Teheran Conference had invited ICRC to convene a conference of government experts in 1974 to study that question in depth.

12. His delegation hoped that the Conference of 1974 would be successful and that it would lead to the alleviation of human suffering in armed conflicts. Likewise it would support draft resolution A/C.6/L.964.

13. Mr. BLIX (Sweden) recalled that, in less than three months, the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts was to meet in Geneva at the invitation of the Swiss Federal Council. Since the Conference which had produced the four Geneva Conventions of 1949, United Nations efforts had regrettably not resulted in the adoption of rules applicable in armed conflicts. Nevertheless, it was essential to adopt legal norms in order to alleviate the suffering brought about by armed conflicts, and the forthcoming Conference in 1974 could be a historic turning point if Governments based their positions on their long-term interests.

14. The draft Additional Protocols prepared by the ICRC were, as was pointed out in the sixth preambular paragraph of the draft resolution before the Committee, an excellent basis for discussion. They took into account the familiar facts which had led to the need to update the law applicable in armed conflicts. The most pressing need was for rules affording better protection for civilian populations, who suffered severely from air warfare and the tendency to broaden the category of military targets.

15. Article 46 of the first draft Protocol, which prohibited methods intended to spread terror among the civilian population or to strike it indiscriminately and, in particular, the bombardment of an entire zone containing several military objectives, was a crucial article. The bombing of an entire zone situated in a populated area, and especially one which contained cities, was certain to result in catastrophic losses of human life while achieving questionable military advantages.

16. In the case of guerrilla warfare and, perhaps even more, anti-guerrilla warfare, the trend seemed to be towards obliterating the distinction between civilians and combatants. The articles he had mentioned were important in that context, as was also article 42, dealing with prisoner-of-war status, which might have been more generous, but had the merit of distinguishing between combatants and the civilian population.

17. Some modern weapons were dangerous for civilians, such as mini-mines, which had been universally condemned when used as letter bombs, but which could also be indiscriminately seeded over large areas by aircraft.

18. His delegation was gratified that broader agreement had been reached on the need for attention to be given at the Conference of 1974 to the problem of prohibiting or restricting the use of specific conventional weapons—reflecting a desire to move on from theoretical condemnation to the adoption of legal

norms. He hoped that Governments which were still hesitant would align their views with those of the vast majority of States.

19. Article 46 of the draft would also bar the use of electronic methods, which were apt to have indiscriminate effects on civilians.

20. Article 43 and section II contained vital provisions for the protection of civilians from starvation, which they sometimes suffered as a result of modern crop destruction programmes or denial of relief.

21. Article 46 barred the use of herbicides and other mechanical methods capable of causing irremediable damage to the environment.

22. It was also highly gratifying that an ever-growing number of countries was intending to deal with the problem of modern conventional weapons, such as incendiary weapons and fragmentation weapons, with assistance from a conference of government experts under ICRC auspices. In the absence of any draft rules prepared by ICRC, his Government and others were endeavouring to draft a working paper which, it was hoped, could be distributed in advance of the Conference and which could provide a basis for discussion.

23. There was no effective mechanism for supervising the implementation of existing rules, of which armed forces were often made aware only perfunctorily. Moreover, that issue was left largely unanswered by the draft Protocols.

24. No one could deny that an agenda containing all the problems he had referred to would be a very full one, and it had been argued that ICRC and the Conference should limit themselves to humanitarian law in the narrow sense and avoid areas—such as rules governing methods of combat and the use of various weapons—which were politically more sensitive. Nevertheless, his delegation believed that existing conventions and legal norms already made it possible to solve the problem of the sick and the wounded and also that of prisoners of war and the protection of civilians. At present the most serious problems were raised by methods and means of combat and mechanisms for implementation. The fact that those issues were more difficult from the political or military point of view was no reason for shying away from them, and it was reassuring to note that the Additional Protocols—the provisions of which supplemented those of the Conventions of The Hague of 1899 and 1907 in particular—eliminated the artificial distinction between those two fields.

25. As the representative of Canada had pointed out (1449th meeting), few international instruments had been preceded by so much preparatory work by ICRC as the two present draft protocols. In addition, the United Nations had devoted a great deal of work to that topic, such as the Secretary-General's report on napalm, the observations by Governments on that report and the Secretary-General's survey of existing rules of international law concerning the prohibition or restriction of use of specific weapons. Likewise, there was the report prepared under ICRC auspices on weapons which might cause unnecessary suffering

or have indiscriminate effects, a document which could perhaps be distributed to the members of the Sixth Committee, just as it had been distributed to the members of the First Committee.

26. On the other hand, while there were a large number of studies on the matters which would be dealt with by the Diplomatic Conference, not much had been done in the way of actual negotiations and, as was pointed out in the eleventh preambular paragraph of General Assembly resolution 3032 (XXVII), agreement had not emerged on a number of fundamental issues. The period of negotiations lay ahead.

27. In that respect, the Swiss Federal Council had made highly satisfactory arrangements: provision had been made for a second session of the Conference, if that was needed, and the establishment of three plenary committees. A fourth plenary committee was likely to be established to take up the issue of the prohibition or restriction of use of specific conventional weapons. Thus the stage now seemed to be set for the process of reconciling views and adopting new rules.

28. Turning to the Secretariat study (A/9215), he agreed that it was a useful document, but pointed out that it was organized in a complicated manner. It would perhaps have been more helpful if the study had been limited to rules on the prohibition and restriction of specific weapons without dealing with restriction of the use of weapons generally against a variety of objects. While the sections relating to bombardment were interesting, the reader lost sight of the issue of prohibition of the use of specific weapons. Moreover, dealing with a single category of questions relating to bombardment under a number of headings—State practice, doctrine and judicial decisions—only made the issue more confusing. It would have been better to place together all the material relating to categories of weapons or methods of warfare. Despite shortcomings and imperfections—of which he cited a number of examples—the document remained useful, but it needed to be used with some caution.

29. Turning to draft resolution A/C.6/L.964, he drew the attention of members of the Committee to operative paragraph 2, which was the key part of the draft. Several other parts of the draft resolution, and particularly the first preambular paragraph and paragraphs 3 to 7, merely reproduced the content of other General Assembly resolutions. In addition, the preamble mentioned certain new elements, such as the Secretary-General's report on the subject (ninth preambular paragraph), General Assembly resolution 3058 (XXVIII) (tenth preambular paragraph), the resolution on napalm which the General Assembly was about to adopt and the resolution on the prohibition or restriction of use of certain weapons adopted recently by the International Conference of the Red Cross in Teheran (eleventh preambular paragraph).

30. Mrs. HO Li-liang (China) said that there was a distinction between justice and injustice in international armed conflicts. Imperialist and colonialist aggression resulted in numerous acts of encroachment on human rights in international armed conflicts. In carrying out armed aggression and seeking to suppress peoples, imperialism and colonialism resorted to the most

brutal means in order wilfully to slaughter civilians and prisoners of war. Consequently, the victims of oppression and aggression could not ensure the protection of human rights in armed conflicts without opposing the wars of aggression launched by imperialism.

31. Her delegation strongly condemned imperialism, colonialism and neo-colonialism, racism and zionism for the criminal disregard for human rights they showed by slaughtering civilians and prisoners of war in armed conflicts. Those crimes constituted gross violations of the Geneva Protocol of 1925 and the Geneva Conventions of 1949 and should be condemned by international public opinion. Since wars of aggression still existed, it was necessary to reaffirm the provisions of the above-mentioned Protocol and Conventions and also to consider the possibility of formulating some new rules which had been made necessary by new circumstances.

32. Her delegation supported the many small and medium-sized countries which had requested that, in the first place, the protection of guerrillas, prisoners of war and civilians should be extended. Thus, the humanitarian treatment of prisoners of war should be given to the African freedom fighters who were struggling against colonialist rule and to Palestinian guerrillas who were fighting against Zionist aggression. They must not be brutally murdered or tortured. Prisoners of war should be speedily repatriated without being mistreated or tried. It should not be possible to arrest civilians or subject them to retaliation or, still less, to persecute or slaughter them. Moreover, her delegation supported the demand of the small and medium-sized countries for the limitation of means of warfare and weapons and for the prohibition of the use of weapons of mass destruction, particularly nuclear weapons.

33. Her Government had always defended the need for the strict protection of civilians and prisoners of war in armed conflicts. In the 1950s, her Government had acceded to the aforementioned Geneva Protocol and Conventions and had ratified them. Her delegation hoped that positive results would be achieved at the international Conference to be held in 1974 for the formulation of new international rules.

34. Mr. PICTET (Observer for Switzerland), speaking at the invitation of the Chairman, said that his country, which had a long tradition of devotion to humanitarian values, welcomed the interest in the Diplomatic Conference on the reaffirmation and development of international humanitarian law applicable in armed conflicts. It hoped that the Governments and international organizations that were invited would respond positively to that initiative of Switzerland and ensure the success of the Conference through broad participation.

35. The preparatory work for the Conference, which had been long and painstaking, had provided an opportunity for constant and fruitful co-operation between the ICRC and the United Nations. They had demonstrated a broad understanding on the subjects covered by the two draft Additional Protocols which the Diplomatic Conference would be called upon to consider. On the basis of those drafts and of a realistic assessment

of the situation, it would be the task of the plenipotentiaries to arrive at a definitive formulation of new rules, some of which obviously raised complex problems which were impossible to solve at the expert level.

36. Humanitarian law came into play in circumstances where the vital interests of States were involved. Therefore, if its rules were difficult to apply or did not have the full support of the parties, they might do harm not only to the persons they were intended to protect, but also to the structure of all international humanitarian law, a fragile one.

37. Referring to the problem raised by the use of certain weapons in modern conflicts, he quoted several provisions of the two draft Protocols which would prohibit the use of methods and means designed uselessly to aggravate the sufferings of the enemy or whose purpose would be better to protect the civilian population. Moreover, some of those articles repeated the wording of rules already embodied in the Regulations respecting the laws and customs of war on land, annexed to the fourth Convention of The Hague of 1907. It was a good idea to reaffirm those general principles, which were still very much of current interest. It would, of course, be desirable to go further and adopt more specific and elaborate rules including the prohibition of specific weapons, referred to by name because of their indiscriminate nature or uselessly cruel effects. Swiss and other experts had made proposals in that connexion at the second session of the International Conference of Government Experts convened by ICRC in 1972. Switzerland reserved, moreover, the right to refer again to those proposals at the Diplomatic Conference.

38. For some time, those complex problems had been the subject of important studies, including the one by the United Nations Secretariat on existing rules of international law concerning the prohibition or restriction of use of specific weapons and, at the technical level, the report of the Secretary-General on napalm and other incendiary weapons. For its part, ICRC had prepared a report on weapons of a nature to cause unnecessary injury or to strike indiscriminately.

39. Although he did not deny the importance of specific proposals which might be made at the Diplomatic Conference, he thought that they would certainly have not achieved a degree of ripeness comparable to that of the articles contained in the draft Additional Protocols. It would therefore be necessary to ensure that their consideration would not hamper the adoption of the provisions of the draft Protocols, on which agreement might be reached in the near future. In order to speed up their consideration without delaying the adoption of the draft Additional Protocols, the convening by the ICRC of a conference of intergovernmental experts to study that question in depth and submit a report on its work to all the Governments participating in the Diplomatic Conference, as had been suggested by the International Conference of the Red Cross at Teheran, would be an adequate solution.

40. He expressed the hope that the Diplomatic Conference would be successful and that the plenipotentiaries would agree to grant victims of war the increased

protection which modern armed conflicts had shown to be urgently needed. Switzerland would spare no effort to achieve that goal.

41. Mrs. ULYANOVA (Ukrainian Soviet Socialist Republic) said that the question of the protection of human rights in armed conflicts was still very much of current interest, although the international situation was more relaxed than it had been 10 years previously. Only a durable international peace could effectively protect mankind against the sufferings caused by armed conflicts. In studying that question, the Committee should pursue the two main goals of improving the effectiveness of protection of human rights in armed conflicts and of developing humanitarian law.

42. In striving to protect human rights in armed conflicts more effectively, the United Nations should not disregard international current events. Civilians had been among the victims of the recent hostilities in the Middle East, particularly as a result of the bombing of towns and villages in the Syrian Arab Republic and Egypt. The crimes committed by Israel in the occupied territories and those perpetrated by the colonialists in Angola and Mozambique should also be borne in mind. All those events constituted violations of the laws and customs of war and, in particular, of the Geneva Conventions of 1949.

43. It was the duty of the General Assembly to condemn all violations of accepted international rules and to invite all States fully to respect the laws and customs of war. The formulation of the Additional Protocols had no meaning if the existing rules on that subject were frequently disregarded, as was noted with concern in the fourth preambular paragraph of General Assembly resolution 3032 (XXVII). The Convention of The Hague of 1907, the Geneva Protocol of 1925 and the Geneva Conventions of 1949, which laid down the rules to be respected in time of hostilities, were still in force and constituted an excellent basis for the protection of human rights in armed conflicts. Their existence did not, however, obviate the need for the formulation of new rules in the light of developments in international relations and military technology.

44. She then referred to the second aspect which the Committee should keep in mind, namely the development of humanitarian law. In his interesting study of existing rules concerning the prohibition or restriction of use of specific weapons, the Secretary-General gave thorough consideration to the technical aspect of the question, which was, however, only one of the many issues in connexion with which the General Assembly, in resolution 3032 (XXVII), expressed concern because agreement had not been reached by government experts. It was therefore desirable that the Committee should endeavour to cover some of those issues during its discussions and in the draft resolution it would submit to the General Assembly on that item, because the twenty-eighth session of the General Assembly was the last which would be held before the Geneva Conference of 1974, where the opinion of the Sixth Committee, the body responsible for the development and codification of international law, would carry particular weight.

45. Two fundamental issues already considered by the General Assembly deserved the Committee's attention. The first issue was the protection of combatants struggling against colonial domination and the racist régimes. If it was agreed that the Additional Protocols to the Geneva Conventions of 1949 should reflect the contemporary international situation, they should relate mainly to the struggle against colonialism. The Geneva Conventions dated from a time when national liberation movements had hardly emerged and had had only a small international audience. For that reason, the laws and customs of war dating from that time did not contain enough clear rules on the protection of the members of national liberation movements when they took up arms or on the treatment granted to combatants who were struggling against colonial domination. The General Assembly had stressed the need to strengthen the protection of those categories of combatants.

46. It should be noted in that connexion that the necessary bases for that protection were to be found in contemporary international law, for example the right of peoples to self-determination or the right to combat colonial domination. The consequences of those rules should therefore be drawn and fully applied to armed conflicts. Many texts adopted by the General Assembly affirmed the rights of the national liberation movements. Several resolutions recognized that it was legitimate for oppressed peoples to struggle for their right to self-determination by all possible means, provided that the principles of the Charter of the United Nations were respected. Moreover, the United Nations had often appealed to States to give moral and material support to peoples struggling for their independence. The General Assembly had even affirmed that such peoples had the right to receive support in conformity with the principles of the Charter. Lastly, it had called on Portugal and South Africa to apply the régime provided for in the Geneva Conventions of 1949 to combatants of the liberation movements when they resorted to armed struggle.

47. The second fundamental issue deserving consideration by the Sixth Committee was that of increasing the protection afforded to the civilian population. The first step towards that goal was to define precisely the concept of a civilian population. That concept was recognized in contemporary international law, and was included in General Assembly resolutions 2444 (XXIII) and 2675 (XXV), the latter being entitled "Basic principles for the protection of civilian populations in armed conflicts". The proposal advanced by some to use the notion of "civilians" or "some civilians" as opposed to the "civilian population" was unacceptable. Such imprecise concepts would introduce a distinction that would be difficult to respect and might indirectly justify the use of weapons of mass destruction.

48. The Secretariat's study (A/9215) showed clearly that the use of weapons of mass destruction was prohibited by contemporary international law. That prohibition also applied to some types of particularly destructive weapons, such as napalm and incendiary, chemical and biological weapons.

49. Her delegation doubted whether the Geneva Conference of 1974 would be sufficiently qualified to consider those questions in depth. It was also questionable whether such points should be the subject of specific amendments to the Geneva Protocol of 1925. In any event, the Additional Protocols should expressly confirm that combatants did not have total freedom of choice with regard to the means of waging war, and that the use of weapons of mass destruction was contrary to internationally recognized rules. Those were only some of the many questions still to be settled.

50. Even before the Geneva Conference was convened, the General Assembly should stress that it was necessary to apply the Geneva Conventions to combatants waging an armed struggle against colonialism. That was the best way of ensuring that the consideration of that question produced practical results.

51. Mr. ALDRICH (United States of America) welcomed the efforts of the Committee and ICRC to promote the implementation and development of international humanitarian law. It was apparent that the laws of war were largely obsolete. Even the Geneva Conventions of 1949, the most recent instruments in that field, were not always easily applicable to more recent types of warfare. The initiative of the Swiss Federal Council to call a Diplomatic Conference in Geneva for the purpose of bringing those Conventions up to date was therefore welcome.

52. The inadequacies of the existing law related to both the application and the substance of the existing rules. The deficiencies regarding the application of those rules were the more important and probably the more difficult to correct. It was questionable, in that connexion, what value new conventions would have if they were not complied with. The existing conventions did not provide an adequate and independent mechanism responsible for verifying their application. The Geneva Conventions assumed the existence of protecting Powers, but without appointing them, and ICRC was given no right to operate in the territory of a party to the Conventions unless that party expressly authorized it to do so. At the Conferences of government experts held recently in Geneva, the United States had presented several proposals aimed at establishing procedures for the appointment of protecting Powers and the acceptance of ICRC as a substitute in the absence of such a Power. The United States would pursue that question at the Diplomatic Conference of 1974, for while there could be no guarantee that a State would not violate its international obligations, it was necessary at least to increase the cost of such violations and thereby make them less likely.

53. With regard to the inadequacies of the substantive rules, he pointed out first of all that with regard to non-international armed conflicts, the protection accorded by article 3 of the Geneva Conventions of 1949⁴ raised serious difficulties. Governments were concerned that the application of international rules to a civil war might connote international recognition of the insurgents. However, progress should be made in that

⁴United Nations, *Treaty Series*, vol. 75, Nos. 970-973.

connexion; for example, it should be possible to add to the requirements set out in article 3 by referring to types of outrages that had become all too common, particularly the taking of hostages, terrorism and cruel treatment of all sorts. Moreover, special protection should be accorded to women and children, medical units and personnel, and persons captured or detained. It should be possible to prohibit attacks on non-combatants and on the civilian population as such and also certain types of forced movement of civilians. He hoped that it would prove feasible to include the obligation to permit the passage of food and relief supplied for non-combatants. Perhaps the most important improvement that could be made in that connexion would be to extend the application of the Second draft Protocol, on non-international armed conflicts, so that it would come into force at a very low level of conflict.

54. With regard to guerrillas, the experience of the Second World War had resulted in a provision of article 4 of the Geneva Convention relative to the Treatment of Prisoners of War according to which guerrillas involved in international conflicts had the right to be treated as prisoners of war. However, the granting of prisoner-of-war status to guerrillas was based on criteria which currently seemed outdated. Moreover, it should be remembered that guerrillas might be induced to conduct their operations in such a way as to come within the scope of international rules, so as to be treated as prisoners of war.

55. The question of the protection of the civilian population likewise involved considerable problems. Contemporary history showed clearly that modern war was aimed not merely at the enemy's military forces, but also at his willingness and ability to continue the struggle. One could imagine prohibiting attacks on urban areas, except with selective weapons which would damage only military installations. It was true that such a rule would fundamentally change the nature of conventional war and would preclude nuclear war almost completely. He considered, however, that the Conference of 1974 could achieve significant improvements in civilian protection if it concentrated on more limited proposals. For example, rules could be devised to ensure that armed forces avoided unnecessary injury to civilians and damage to civilian property, and to make safety zones a workable concept.

56. With regard to the question of national liberation movements, he said that his comments should not be misconstrued as a condemnation of those movements. Whether his Government approved or disapproved of a particular liberation movement was beside the point; the fact was that a liberation movement as such could not negotiate or conclude international agreements. As to the suggestion that liberation movements should be allowed to attend the forthcoming Conference, it should be noted that participation in multi-lateral conferences concerned with the conclusion of treaties relating to the development of international law had always been limited to Governments and international organizations that might become parties to those treaties.

57. He was glad to see that the ICRC expert meetings planned for 1974 would begin to study in depth the possibility of prohibiting or limiting the use of certain conventional weapons. It would be advisable to mention those expert meetings in draft resolution A/C.6/L.964. With that reservation, he found the draft resolution acceptable.

58. He wished to stress his deep concern that the forthcoming Conference would not be successful unless all Governments devoted serious attention to the substantive rules, on the basis of fundamental human rights, and refrained from using the Conference as a means of obtaining short-term advantages.

59. The CHAIRMAN announced that Austria, Costa Rica and Pakistan should be added to the list of sponsors of draft resolution A/C.6/L.964.

AGENDA ITEM 90

Draft convention on the prevention and punishment of crimes against diplomatic agents and other internationally protected persons (*continued*) (A/8710/Rev.1, chap.III; A/9127 and Add.1, A/C.6/421, A/C.6/L.898, A/C.6/L.944 and Add.1-3, A/C.6/L.945-951 and Corr.1 and Rev.1, A/C.6/L.953-956, A/C.6/L.962, and Corr.2 and 3, A/C.6/L.965)

60. The CHAIRMAN announced that the consultations he had held concerning amendment A/C.6/L.951/Rev.1 had resulted in a compromise proposal (A/C.6/L.965).

The meeting rose at 12.55 p.m.

1451st meeting

Saturday, 1 December 1973, at 11.05 a.m.

Chairman: Mr. Sergio GONZÁLEZ GÁLVEZ (Mexico).

AGENDA ITEM 96

Respect for human rights in armed conflicts: report of the Secretary-General (*continued*) (A/9123 and Corr.1 and Add. 1 and 2, A/9215, A/C.6/L.964, A/C.6/L.966)

1. Mr. PALACIOS TREVIÑO (Mexico) observed that despite the prohibition of the threat or use of

force embodied in the Charter of the United Nations, armed conflicts continued to rage while the race to acquire new weapons of ever more refined cruelty continued. It was therefore not difficult to appreciate the considerable significance of the Diplomatic Conference which was to convene at Geneva in 1974 to reaffirm and develop international humanitarian law

A/C.6/SR.1451