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RESPECT FOR HUMAN RIGHTS IN ARMED CONFLICTS

Existing rules of international law concerning the prohibition
or restriction of use of specific weapons

Survey prepared by the Secretariat

Volume. II*

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CHAPTER III. JUDICIAL DECISIONS

SECTION 1. DECISIONS OF INTERNATIONAL TRIBUNALS

A. The International Court of Justice

1. The Corfu Channel Case concerned the explosion in 1946 of anchored automatic mines within Albanian territorial waters causing damage to two British ships and death and injuries to British personnel. The British Government requested the Court to adjudge and declare, inter alia,

"That the Albanian Government did not notify the existence of these mines as required by the Hague Convention VIII of 1907 in accordance with the general principles of international law and humanity;" 1/

2. In its Judgement of 9 April 1949, the International Court of Justice stated, inter alia,

"The obligations incumbent upon the Albanian authorities consisted in notifying, for the benefit of shipping in general, the existence of a minefield in Albanian territorial waters and in warning the approaching British warships of the imminent danger to which the minefield exposed them. Such obligations are based, not on the Hague Convention of 1907, No. VIII, 2/ which is applicable in time of war, but on certain general and well-recognized principles, namely: elementary considerations of humanity, even more exacting in peace than in war; the principle of the freedom of maritime communication; and every State's obligation not to allow knowingly its territory to be used for acts contrary to the rights of other States." 3/

B. Spanish Zone of Morocco Claims Arbitration

3. In one of the individual claims (the Beni-Madan, Rzini Claim) involved in the Spanish Zone of Morocco Claims Arbitration (United Kingdom vs. Spain), the Rapporteur, M. Huber, in his report of 23 October 1924, discussed article 3 of the 1907 Hague Convention (IV) respecting the laws and customs of war on land. That article reads as follows:

"A belligerent party which violates the provisions of the said Regulations shall, if the case demands, be liable to pay compensation. It shall be responsible for all acts committed by persons forming part of its armed forces." 4/

1/ Corfu Channel Case, Judgement of 9 April 1949; I.C.J. Reports, 1949, p. 10.

2/ See chapter I, supra.

3/ Corfu Channel Case, Judgement of 9 April 1949; I.C.J. Reports, 1949, p. 22.

4/ See appendix to chapter I, part I, supra.

The relevant section of the Rapporteur's report reads as follows:

"The Rapporteur is unable to agree that acts committed by a force or by isolated soldiers can never engage the international responsibility of the State. Article 3 of Hague Convention (IV) establishes the principle of such responsibility precisely in the most important contingency. Doubtless, this Convention is not directly applicable to any of the situations with which this Report is concerned, but the principle which it establishes merits retention in the event of military action which is outside war, strictly speaking. This being admitted, it must be remembered, however, that the rule to which this clause is attached gives a large place to military necessity. The evaluation of these necessities must, to a great extent, be left to those persons who are called upon to act in difficult situations, as well as to their military chiefs. A non-military jurisdiction, and especially an international jurisdiction, cannot intervene in this domain save in the event of a manifest abuse of this liberty of judgment. This having been said, it must equally be recognised that the State ought to be considered as bound to exercise vigilance of a higher order to prevent offences being committed, contrary to discipline and military law, by members of the army. The demand for this qualified vigilance is only complementary to the powers of command and of the discipline of the military hierarchy." 5/

C. The Greco-German Mixed Arbitral Tribunal

4. In the claim Coenco Brothers v. Germany, the Greco-German Mixed Arbitral Tribunal, in its decision of 1 December 1927, examined whether the 1916 German aerial bombardment of the Greek city of Salonika was an act contrary to international law. At that time, French troops occupied the city, although Greece was officially neutral. The Tribunal stated:

"The Tribunal ... must examine the bombardment of Salonika to ascertain whether it is an act contrary to international law.

The occupation of Salonika by Allied forces in the autumn of 1915, when Greece was still neutral, constitutes a violation of her neutrality.

It is unnecessary to inquire whether the Hellenic Government consented to this occupation or consented to it, either expressly or tacitly.

In either case, the occupation of Salonika was, as regards Germany, an illegal act, which entitled Germany to take, even on Greek territory, all military measures necessary for her own defence.

5/ L. C. Green, International Law through the Cases, first edition, (London, Stevens, 1951), pp. 663-664. Official French text: Reports of International Arbitral Awards, vol. II (United Nations publication, Sales No.: 1949.V.1), p. 615.

Germany's right to defend herself against the Allied occupation of Salonika did not exonerate her from the obligation to observe the rules established by international law.

The evidence shows that the bombardment of Salonika in January, 1916, took place without prior warning by the German authorities, that the attack took place at night, and that the Zeppelin which dropped the bombs was at an altitude of about 3,000 metres.

It is one of the principles generally recognised by international law that belligerents must, so far as possible, respect the civil population and civilian property.

The Hague Convention of 1907, drawing its inspiration from this principle, has, in Article 26 of the Regulations concerning the laws and customs of warfare on land, clearly laid down that 'the officer in command of an attacking force must, before commencing a bombardment, except in cases of assault, do all in his power to warn the authorities'.

It is evident that the authors of the Convention intended in this way to accord to the authorities of the threatened town an opportunity either to evade bombardment by offering its capitulation, or to evacuate the civil population.

Article 26 only envisaged warfare on land; (but) this Article ought to be regarded as expressing the communis opinio on this matter, and there is no reason why the rules adopted for bombardment in land warfare should not apply equally to aerial attacks.

The defendant has contended that aerial attack ought to be effected with surprise, and so cannot be announced in advance.

Even if this allegation by the defendant were true from the military point of view, it would not follow that aerial bombardments without warning are lawful, but, on the contrary, it would lead to the conclusion that such bombardments are, in general, inadmissible.

The defence pleads that the crew of the Zeppelin which bombed Salonika knew the position of the fortifications, the munition dumps and the other military installations.

The darkness of the night, however, the altitude of 3,000 metres, and the fact that, during the occupation, Salonika was not illuminated, made it impossible to aim the bombs with the accuracy required to spare private dwelling-houses and commercial establishments.

In view of all that has been said, the bombardment in issue must be considered as contrary to international law". 6/

6/ L. C. Green, op. cit., pp. 668-669. Authentic French text: Recueil des Décisions des Tribunaux Arbitraux Mixtes, vol. 7, p. 683.

5. The Kiriadolou v. Germany claim, decided by the Tribunal on 10 May 1930, concerned, inter alia, the 1916 attack by German aeroplanes on the Romanian city of Bucharest, a fortified enemy town. The Tribunal addressed itself to the question of the applicability of article 26 of the regulations respecting the laws and customs of war on land annexed to the 1907 Hague Convention (IV) 7/ and of article 6 of the 1907 Hague Convention (IX) concerning bombardment by naval forces in time of war. 8/ The relevant portions of the decision include the following:

"According to a generally recognised principle the life and property of non-combatants must, so far as possible, be respected. The provisions of Articles 26 and 6 of the Hague Regulations, far from being rules of an exceptional character, must be regarded as applying that general principle ... It is true that these Articles refer only to land and naval bombardments, but the deliberations of the Second Hague Conference do not preclude the extension of the provisions of these Articles to aerial navigation. In 1907, at the time of the Conference, aerial navigation was at the beginning of its development and no one could foresee the use which, in a future war, the belligerents would make of dirigibles and air-planes. The distinction between bombardment for occupation and bombardment for destruction has no juridical basis and cannot absolve air forces from the duty to give preliminary notification. This is the more so since an air-plane, which very frequently flies by night over the town threatened by bombardment at an altitude of several thousand metres, is not in a position to direct with precision the fall of bombs so as to ensure that they hit only the fortifications and war munitions, without harm being done to the persons and the property of non-combatants. The decision which the Tribunal is called upon to render is of capital importance in regard to so-called 'chemical warfare'. The dispensation from preliminary notification would enable aeroplanes and dirigibles to poison the non-combatant population of an enemy town by permitting them to drop, by night and without warning, bombs filled with asphyxiating gas spreading death or causing incurable diseases." 9/

SECTION 2. DECISIONS OF NATIONAL COURTS

A. France

(a) Court of Cassation (Criminal Division)

6. The case entitled "In re Gross-Brauckmann" dealt, inter alia, with the question whether the 1907 Hague Convention (IX) concerning bombardment by naval

7/ See chapter I, supra.

8/ See chapter I, supra.

9/ Annual Digest of Public International Law Cases, 1929-1930 (H. Lauterpacht, ed.), pp. 516-517. Authentic French text: Recueil des Décisions des Tribunaux Arbitraux Mixtes, vol. 10, p. 100.

forces in time of war 10/ had been violated by the destruction of a French lighthouse by a German war vessel in 1945. The Court of Cassation (Criminal Division) stated, in its judgement of 29 December 1948, inter alia:

"According to Articles 1 and 2 of the Hague Convention of October 18, 1907, the bombardment by naval forces of undefended ports, towns, villages, dwellings or buildings is forbidden, but military works, military or naval establishments, depôts of arms or war material, workshops or plant which could be utilized for the needs of the hostile fleet or army, are not included in the prohibition. International Conventions are acts of high administration which can only be interpreted by the contracting States. But the Courts must apply them when their meaning is free from all ambiguity. In the present case the building destroyed by the appellant was a 'plant which could be utilized for the needs of the hostile fleet or army'. Its destruction was therefore not prohibited by Article 1 of the Hague Convention." 11/

(b) Court of Cassation (Civil Division)

7. In its judgement of 15 February 1951 in the case Anciens Etablissements Graf Frères v. Société la Mure, the French Court of Cassation (Civil Division) stated the following with regard to the "general participation clause" (article 2) of the 1907 Hague Convention (IV) 12/:

"Article 2 of the Hague Convention subjects its enforcement to the condition that all belligerents are parties to the Agreement. The entry into the war on June 10, 1940, of Italy, a State which has not ratified the 1907 Convention, made that Convention inapplicable even between France and Germany." 13/

B. Germany

Supreme Court (British Zone)

8. In the "Dutch Machines Case" judgement of 13 October 1949, the German Supreme Court (British Zone) included the following concerning the "general participation clause" of the 1907 Hague Convention (IV):

"Article II of this Convention contains the so-called general participation clause, viz. the Convention is applicable only if all the Powers taking part in a war have ratified it, which could not be said of all the belligerent Powers in the last World War. On the other hand, it is generally acknowledged that the provisions of the Hague Convention merely reproduce

10/ See chapter I, supra.

11/ Annual Digest and Reports of Public International Law Cases, 1948, (H. Lauterpacht, ed.) p. 688.

12/ See appendix to chapter I, part I, supra.

13/ International Law Reports, 1951 (H. Lauterpacht, ed.) p. 678.

what in any event is generally acknowledged to be international law. They do not create new international law. They merely codify existing international law. They are therefore equally applicable where the conditions of the general participation clause are not satisfied ...", 14/

C. Japan

Tokyo District Court

9. The Decision of the Tokyo District Court, December 7, 1963, Case No. 2, 914 of 1955 and Case No. 4, 177 of 1957 (the "Shimoda Case") included the following discussion of the "international law aspects" of the bombing of Hiroshima and Nagasaki by atomic weapons:

"(1) There is no doubt that, whether or not an atomic bomb having such a character and effect is a weapon which is permitted in international law as a so-called nuclear weapon, is an important and very difficult question in international law. In this case, however, the point at issue is whether the acts of atomic bombing of Hiroshima and Nagasaki by the United States are regarded as illegal by positive international law at that time. Therefore, it is enough to consider this point only.

(2) As a premise for judging how the above acts of atomic bombing are treated by positive international law, we will begin by considering what international law has existed with regard to war, especially to hostile acts among modern countries since the latter half of 19th Century.

The following are the chronological enumeration of international laws concerning this case:

1868. St. Petersburg Declaration respecting the prohibition of the explosives and incendiaries under 400 grammes.

1899. Convention respecting the Laws and Customs of War on Land (CONVENTION CONCERNANT LES LOIS ET COUTUMES DE LA GUERRE SUR TERRE), concluded at the First Hague Peace Conference; and its annex, Regulations respecting the Laws and Customs of War on Land (RÈGLEMENT CONCERNANT LES LOIS ET COUTUMES DE LA GUERRE SUR TERRE) (the so-called Regulations respecting War on Land).

1899. Declaration concerning expanding bullets (the so-called Declaration prohibiting dum-dum bullets).

14/ Annual Digest and Reports of Public International Law Cases, 1949,
(H. Lauterpacht, ed.) pp. 390-391.

1899. Declaration concerning projectiles launched from balloons in the air (the so-called Declaration prohibiting aerial bombardment).

1899. Declaration concerning projectiles diffusing asphyxiating or deleterious gases (the so-called Declaration prohibiting poison gases).

1907. Convention respecting the Laws and Customs of War on Land (CONVENTION CONCERNANT LES LOIS ET COUTUMES DE LA GUERRE SUR TERRE), which was concluded in the Second Hague Peace Conference (the revision of the Convention of the same name in the First Hague Peace Conference).

1907. Declaration prohibiting aerial bombardment.

1922. Treaty of Five Countries concerning submarines and poisonous gases.

1923. Draft Rules concerning Air Warfare (Draft Rules of Air Warfare).

1925. Protocol prohibiting the use in war of asphyxiating, deleterious or other gases and bacteriological methods of warfare (Protocol respecting the prohibition of poison gases, etc.).

(3) In the above-mentioned laws and regulations, there is no direct provision with regard to the atomic bomb, a new weapon which appeared during World War II.

On the ground of this fact, the defendant State alleges that the question of violation of positive international law does not arise, since there was neither international customary law nor treaty law prohibiting the use of atomic bombs at that time, and the use is not prohibited clearly by positive international law.

Of course, it is right that the use of a new weapon is legal, as long as international law does not prohibit it. However, the prohibition in this case is understood to include not only the case where there is an express provision of direct prohibition but also the case where it is necessarily regarded that the use of a new weapon is prohibited, from the interpretation and analogical application of existing international laws and regulations (international customary laws and treaties). Further, we must understand that the prohibition includes also the case where, in the light of principles of international law which are the basis of the above-mentioned positive international laws and regulations, the use of a new weapon is admitted to be contrary to the principles. For there is no reason why the interpretation of international law must be limited to grammatical interpretation, any more than in the interpretation of municipal law.

...

(4) There is also an argument that a new weapon is not an object of regulation of international law at all, but such argument has not a sufficient ground as mentioned above. It is right and proper that any weapon contrary

/...

to the custom of civilized countries and to the principles of international law, should be prohibited even if there is no express provision in the laws and regulations. Only where there is no provision in the statutory international law, and as long as a new weapon is not contrary to the principles of international law, can the new weapon be used as a legal means of hostility.

Against this argument, some argue as follows. Although there are always many objections in every field against the invention and use of new weapons. They are soon regarded as advanced weapons, and the prohibition of the use of such weapons becomes altogether nonsensical. With the progress of civilization, a new weapon comes to be rather an efficient means of injuring the enemy. This is as shown in history, and the atomic bomb is not an exception.

We cannot deny that in the past, although objections were made by various interests against the appearance of a new weapon because international law was not yet developed, or a hostile feeling was strong against the people of the enemy or pagans, or the advance of general weapons was gradual, new weapons nevertheless came to be regarded as legal with the later advancement of civilization and the development of scientific techniques. This, however, is not always true. This will be clear from the recollection of the existence of the above-mentioned treaties prohibiting the use of dum-dum bullets and poisonous gases. Therefore, we cannot regard a weapon as legal only because it is a new weapon, and it is still right that a new weapon must be exposed to the examination of positive international law.

(5) Next, we will examine the international laws and regulations concerned at that time, with regard to the act of atomic bombing.

First of all, there arises the question whether the act of atomic bombing is admitted by the laws and regulations respecting air raids, since the act is an aerial bombardment as a hostile act by military plane.

No general treaty respecting air raids has been concluded. However, according to customary law recognized generally in international law with regard to a hostile act, a defended city and an undefended city are distinguished with regard to bombardment by land forces, and a defended place and an undefended place are distinguished with regard to bombardment by naval forces. Against the defended city and place, indiscriminate bombardment is permitted, while in the case of an undefended city and place, bombardment is permitted only against combatant and military installations (military objectives) and bombardment is not permitted against non-combatant and non-military installations (non-military objectives). Any contrary bombardment is necessarily regarded as an illegal act of hostility. ... This principle is clear from the following provisions: Article 25 of the Hague Regulations respecting War on Land provides that 'the attack or bombardment, by any means whatever, of towns, villages, habitations, or buildings, which are not defended, is prohibited.' 'The Convention concerning

bombardment by naval forces in time of war' (CONVENTION CONCERNANT LE BOMBARDEMENT PAR DES FORCES NAVALES EN TEMPS DE GUERRE), adopted at the Hague Peace Conference of 1907, provides in article 1 that 'the bombardment of undefended ports, towns, villages, dwellings, or other buildings by naval forces is prohibited ...,' and in article 2 that 'among the above-mentioned objects against which bombardment is prohibited are not included military works, military or naval establishments, depots of arms or war material, workshops or plants which could be utilized for the needs of a hostile fleet or army, and men-of-war in the harbor'

(6) With regard to air warfare, there are 'Draft Rules of Air Warfare.' Article 24 of the Draft Rules provides that: '(1) Aerial bombardment is legitimate only when directed at a military objective, that is to say, an object of which the destruction or injury would constitute a distinct military advantage to the belligerent. (2) Such bombardment is legitimate only when directed exclusively at the following objectives: military forces; military works; military establishments or depots; factories constituting important and well-known centers engaged in the manufacture of arms, ammunition, or distinctively military supplies; lines of communication or transportation used for military purposes. (3) The bombardment of cities, towns, villages, dwellings, or buildings not in the immediate neighborhood of the operations of land forces is prohibited. In cases where the objectives specified in paragraph (2) are so situated that they cannot be bombarded without the indiscriminate bombardment of the civilian population, the aircraft must abstain from bombardment. (4) In the immediate neighbourhood of the operations of land forces, the bombardment of cities, towns, villages, dwellings, or buildings is legitimate, provided there exists a reasonable presumption that the military concentration is sufficiently important to justify such bombardment, having regard to the danger thus caused to the civilian population' Further, article 22 provides for that 'aerial bombardment for the purpose of terrorizing the civilian population, of destroying or damaging private property not of military character, or of injuring non-combatants, is prohibited.' In other words, this Draft Rules of Air Warfare prohibit useless aerial bombardment and provide for the principle of military objective first of all. Then, together with that, the Draft Rules distinguish between places in the immediate neighborhood of the operations of land forces and other places, and provide that indiscriminate aerial bombardment against the former is permitted but that against the latter the aerial bombardment of military objectives only is permitted. In these provisions, stricter expressions are used than in the case of bombardment by land and naval forces, but what they mean is understood to be the same as the distinction between the defended city (place) and undefended city (place). The Draft Rules of Air Warfare cannot directly be called positive law, since they have not yet become effective as a treaty. However, international jurists regard the Draft Rules as authoritative with regard to air warfare. Some countries regard the substance of the Rules as a standard of action by armed forces, and the fundamental provisions of the Draft Rules are consistently in conformity with international laws and regulations, and customs at that time. Therefore,

we can safely say that the prohibition of indiscriminate aerial bombardment on an undefended city and the principle of military objective, which are provided for by the Draft Rules, are international customary law, also from the point that they are in common with the principle in land and sea warfare. Further, since the distinction of land, sea, and air warfare is made by the place and purpose of warfare, we think that there is also sufficient reason for existence of the argument that, regarding the aerial bombardment of a city on land, the laws and regulations respecting land warfare analogically apply since the aerial bombardment is made on land.

(7) Then, what is the distinction between a defended city and an undefended city? Generally speaking, a defended city is a city resisting any possible occupation attempt by land forces. A city which is far distant from the battlefield, and is not in pressing danger of the enemy's occupation, even if there exist defensive installations or armed forces, cannot be said to be a defended city, since there is no military necessity of indiscriminate bombardment; and in this case the bombardment and aerial bombardment only against military objectives is admitted. On the contrary, against a city resisting a possible occupation attempt by the enemy, indiscriminate bombardment is permitted out of military necessity, since an attack made upon the distinction between military objective and non-military objective has little military effect and cannot accomplish the expected purposes. Thus, we can say that it is a long-standing, generally recognized principle in international law respecting air raids, that indiscriminate aerial bombardment is not permitted on an undefended city and that only aerial bombardment on military objective is permitted. ...

Of course, it is naturally anticipated that the aerial bombardment of a military objective is attended with the destruction of non-military objectives or casualty of non-combatants; and this is not illegal if it is an inevitable result accompanying the aerial bombardment of a military objective. However, it necessarily follows that in an undefended city, an aerial bombardment directed at a non-military objective, and an aerial bombardment without distinction between military objectives and non-military objectives (the so-called blind aerial bombardment) is not permitted in the light of the above-mentioned principle. ...

The power of injury and destruction of the atomic bomb is tremendous as already stated, and even such small-scale atomic bombs as those dropped on Hiroshima and Nagasaki discharge energy equivalent to a 20,000-ton TNT bomb in the past. If an atomic bomb of such power of destruction once explodes, it is clear that it brings almost the same result as complete destruction of a middle-size city, to say nothing of indiscriminate of military objective and non-military objective. Therefore, the act of atomic bombing on an undefended city, setting aside that on a defended city, should be regarded in the same light as a blind aerial bombardment; and it must be said to be a hostile act contrary to international law of the day.

(8) It is a well-known fact that Hiroshima and Nagasaki were not cities resisting a possible occupation attempt by land forces at that time.

/...

Further, it is clear as stated above that both cities did not come within the purview of the defended city, since they were not in the pressing danger of enemy's occupation, even if both cities were defended with anti-aircraft guns, etc. against air raids and had military installations. Also, it is clear that some 330,000 civilians in Hiroshima and some 270,000 civilians in Nagasaki maintained homes there, even though there were so-called military objectives such as armed forces, military installations, and munitions factories in both cities. Therefore, since an aerial bombardment with an atomic bomb brings the same result as a blind aerial bombardment from the tremendous power of destruction, even if the aerial bombardment has only a military objective as the target of its attack, it is proper to understand that an aerial bombardment with an atomic bomb on both cities of Hiroshima and Nagasaki was an illegal act of hostility as the indiscriminate aerial bombardment on undefended cities.

(9) Against the above conclusion, there is a counter-argument that the war of the day was the so-called total war, in which it was difficult to distinguish between combatant and non-combatant, and between military objective and non-military objective, and that the principle of military objective was not necessarily carried through during World War II.

The concept of military objective is prescribed in various expressions by the above-mentioned treaties, but the content is not always fixed and changes with time. It is difficult to deny that the scope is gradually spreading under the form of total war. For all the above reasons, however, we cannot say that the distinction between military objective and non-military objective has gone out of existence. For example, schools, churches, temples, shrines, hospitals and private houses cannot be military objectives, however total the war may be. If we understand the concept of total war to mean that all people who belong to a belligerent are more or less combatant, and all production means production injuring the enemy, there arises the necessity to destroy the whole people and all the property of the enemy; and it becomes nonsensical to distinguish between military objective and non-military objective. However, the advocacy of the concept of total war in recent times has the intent of pointing out the fact that the issue of a war is not decided only by armed forces and weapons, but that the other factors, that is to say, chiefly economic factors like source of energy, materials, productive capacity of industry, food, trade, etc., or human factors like population, man-power, etc., have a far-reaching control on the war method and war potential. The concept of total war is not advocated in such a vague meaning as stated above, and there was no actual example of such situation. Accordingly, it is wrong to say that the distinction between military objective and non-military objective has gone out of existence because of total war. ...

(10) During World War II, aerial bombardment was once made on the whole place where military objectives were concentrated, because it was impossible to confirm an individual military objective and attack it where munitions factories and military installations were concentrated in

comparatively narrow places, and where defensive installations against air raids were very strong and solid; and there is an opinion regarding this as legal. Such aerial bombardment is called the aerial bombardment on an objective zone, and we cannot say that there is no room for regarding it as legal, even if it passes the bounds of the principle of military objective, since the proportion of the destruction of non-military objective is small in comparison with the large military interests and necessity. However, the legal principle of the aerial bombardment on an objective zone cannot apply to the city of Hiroshima and the city of Nagasaki, since it is clear that both cities could not be said to be places where such military objectives concentrate.

(11) Besides, the atomic bombing on both cities of Hiroshima and Nagasaki is regarded as contrary to the principle of international law that the means which give unnecessary pain in war and inhumane means are prohibited as means of injuring the enemy. (See Expert Opinion of Shigejiro Tabata.)

In the argument of this point, it goes without saying that such an easy analogy that the atomic bomb is necessarily prohibited since it has characteristics different from former weapons in the inhumanity of its efficiency, is not admitted. For international law respecting war is not formed only by humane feelings, but it has as its basis both military necessity and efficiency and humane feelings, and is formed by weighing these two factors. With regard to this point, the doctrine mentions as its type the provision in the St. Petersburg Declaration of 1886, which prohibits the use of projectiles under 400 grammes which are either explosive or charged with combustible or inflammable substances, and explains the reason as follows: These projectiles are so small that they have only such a power as to kill and wound one officer or man, but for that effect an ordinary bullet will do, and there is no need to use inhumane weapons which have no more profit. On the other hand, however great the inhumane result of the use of a weapon may be, the use of the weapon is not prohibited by international law, if it has a great military efficiency.

The issues in this sense are whether atomic bombing comes within the purview of 'the employment of poison or poisonous weapons' prohibited by article 23 (a) of the Hague Regulations respecting war on land, and of each forbidden provision of the 'Declaration prohibiting each the use of projectiles the sole object of which is the diffusion of asphyxiating or deleterious gases' (DECLARATION CONCERNANT L'INTERDICTION DE L'EMPLOI DE PROJECTILES QUI ONT POUR BUT UNIQUE DE RÉPANDRE DES GAZ ASPHYXIANTS OU DÉLÉTÈRES) of 1899, and the 'Protocol prohibiting the use in war of asphyxiating, poisonous and other gases, and bacteriological methods of warfare' of 1925. With regard to this point, there is not an established theory among international jurists in connection with the difference of poison, poison-gas, bacterium, etc. from atomic bombs. However, judging from the fact that the St. Petersburg Declaration declares that "... considering that the use of a weapon which increases uselessly the pain of people who are already placed out of battle and causes their death necessarily is

beyond the scope of this purpose, and considering that the use of such a weapon is thus contrary to humanity ...' and that article 23 (e) of the Hague Regulations respecting War on Land prohibits 'the employment of such arms, projectiles, and material as cause unnecessary injury,' we can safely see that besides poison, poison-gas and bacterium the use of the means of injuring the enemy which causes at least the same or more injury is prohibited by international law. The destructive power of the atomic bomb is tremendous, but it is doubtful whether atomic bombing really had an appropriate military effect at that time and whether it was necessary. It is a deeply sorrowful reality that the atomic bombing on both cities of Hiroshima and Nagasaki took the lives of many civilians, and that among the survivors there are people whose lives are still imperilled owing to the radial rays, even today 18 years later. In this sense, it is not too much to say that the pain brought by the atomic bombs is severer than that from poison and poison-gas, and we can say that the act of dropping such a cruel bomb is contrary to the fundamental principle of the laws of war that unnecessary pain must not be given.' 15/

D. The Netherlands

Special Criminal Court - The Hague (Rotterdam Chamber)

10. In the In re Fichig case, the Netherlands Special Criminal Court, in its judgement of 28 June 1949, included the following with regard to section II ("Hostilities") of the regulations annexed to the 1907 Hague Convention (IV): 16/

"... Article 23 (g) figured not in Section III but in Section II of the Hague Regulations. In the order of ideas underlying those Rules it was evident that the provisions of Section II remained in operation so long as there was still active war between the invading forces and the forces of the invaded country, a period which ends with a capitulation or an armistice (regulated in Chapters IV and V of that Section). After such a capitulation or armistice, while the war may continue elsewhere, it is Section III and no longer Section II which regulates the rights and obligations of the invader as Occupant." 17/

15/ Japanese Annual of International Law, No. 8 (1964), pp. 234-242.

16/ See appendix to chapter I, part I, supra.

17/ Annual Digest and Reports of Public International Law Cases, 1949 (H. Lauterpacht, ed.), p. 489. The judgement of the Special Criminal Court was reversed and remanded, on other grounds, by the Netherlands Special Court of Cassation. Ibid., p. 490.

SECTION 3. DECISIONS OF MILITARY COURTS

A. The International Military Tribunal at Nuremberg

11. By the London Agreement of 8 August 1945, the Governments of France, the Union of Soviet Socialist Republics, the United Kingdom and the United States agreed to establish "an International Military Tribunal for the trial of war criminals" 18/. The Charter of that Tribunal was annexed to that Agreement and reads, inter alia:

"The following acts or any of them, are crimes coming within the jurisdiction of the Tribunal for which there shall be individual responsibility:

(a) Crimes against Peace: namely, planning, preparation, initiation or waging of a war of aggression, or a war in violation of international treaties, agreements or assurances, or participation in a Common Plan or Conspiracy for the accomplishment of any of the foregoing;

(b) War Crimes: namely, violations of the laws or customs of war. Such violations shall include, but not be limited to, murder, ill-treatment or deportation to slave labor or for any other purpose of civilian population of or in occupied territory, murder or ill-treatment of prisoners of war or persons on the seas, killing of hostages, plunder of public or private property, wanton destruction of cities, towns, or villages, or devastation not justified by military necessity;

(c) Crimes against Humanity: namely, murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war, or persecutions on political, racial, or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of domestic law of the country where perpetrated.

Leaders, organizers, instigators, and accomplices participating in the formulation or execution of a Common Plan or Conspiracy to commit any of the foregoing crimes are responsible for all acts performed by any persons in execution of such plan." 19/

12. The Judgement of 1 October 1946 of the Tribunal includes the following remarks concerning the 1907 Hague Convention (IV) respecting the laws and customs of war on land: 20/

18/ International Military Tribunal, Trial of the Major War Criminals before the International Military Tribunal (Nuremberg, 1947), p. 8.

19/ Ibid., p. 11.

20/ See appendix to chapter I, part I, supra.

"But it is argued that the Pact does not expressly enact that such wars are crimes, or set up courts to try those who make such wars. To that extent the same is true with regard to the laws of war contained in the Hague Convention. The Hague Convention of 1907 prohibited resort to certain methods of waging war. These included the inhumane treatment of prisoners, the employment of poisoned weapons, the improper use of flags of truce, and similar matters. Many of these prohibitions had been enforced long before the date of the Convention; but since 1907 they have certainly been crimes, punishable as offenses against the laws of war; yet the Hague Convention nowhere designates such practices as criminal, nor is any sentence prescribed, nor any mention made of a court to try and punish offenders. For many years past, however, military tribunals have tried and punished individuals guilty of violating the rules of land warfare laid down by this Convention. In the opinion of the Tribunal, those who wage aggressive war are doing that which is equally illegal, and of much greater moment than a breach of one of the rules of the Hague Convention.

...

The evidence relating to War Crimes has been overwhelming, in its volume and its detail. It is impossible for this Judgement adequately to review it, or to record the mass of documentary and oral evidence that has been presented. The truth remains that War Crimes were committed on a vast scale, never before seen in the history of war. They were perpetrated in all the countries occupied by Germany, and on the High Seas, and were attended by every conceivable circumstance of cruelty and horror. There can be no doubt that the majority of them arose from the Nazi conception of 'total war', with which the aggressive wars were waged. For in this conception of 'total war', the moral ideas underlying the conventions which seek to make war more humane are no longer regarded as having force or validity. Everything is made subordinate to the overmastering dictates of war. Rules, regulations, assurances, and treaties all alike are of no moment; and so, freed from the restraining influence of international law, the aggressive war is conducted by the Nazi leaders in the most barbaric way. Accordingly, War Crimes were committed when and wherever the Führer and his close associates thought them to be advantageous. They were for the most part the result of cold and criminal calculation.

...

But it is argued that the Hague Convention does not apply in this case, because of the 'general participation' clause in Article 2 of the Hague Convention of 1907. That clause provided:

'The provisions contained in the regulations (Rules of Land Warfare) referred to in Article I as well as in the present Convention do not apply except between contracting powers, and then only if all the belligerents are parties to the Convention.'

Several of the belligerents in the recent war were not parties to this Convention.

/...

In the opinion of the Tribunal it is not necessary to decide this question. The rules of land warfare expressed in the Convention undoubtedly represented an advance over existing international law at the time of their adoption. But the convention expressly stated that it was an attempt 'to revise the general laws and customs of war', which it thus recognized to be then existing, but by 1939 these rules laid down in the Convention were recognized by all civilized nations, and were regarded as being declaratory of the laws and customs of war which are referred to in Article 6 (b) of the Charter of the International Military Tribunal." 21/

13. The Judgement of the Tribunal also includes the following concerning the allegation that Karl Dönitz of the German Navy committed, inter alia, war crimes by waging unrestricted submarine warfare contrary to the 1936 Naval Protocol which reaffirmed the rules of submarine warfare contained in the 1930 London Naval Agreement: 22/

"War Crimes

Dönitz is charged with waging unrestricted submarine warfare contrary to the Naval Protocol of 1936, to which Germany acceded, and which reaffirmed the rules of submarine warfare laid down in the London Naval Agreement of 1930.

The Prosecution has submitted that on 3 September 1939 the German U-boat arm began to wage unrestricted submarine warfare upon all merchant ships, whether enemy or neutral, cynically disregarding the Protocol; and that a calculated effort was made throughout the war to disguise this practice by making hypocritical references to international law and supposed violations by the Allies.

Dönitz insists that at all times the Navy remained within the confines of international law and of the Protocol. He testified that when the war began, the guide to submarine warfare was the German Prize Ordinance taken almost literally from the Protocol, that pursuant to the German view, he ordered submarines to attack all merchant ships in convoy, and all that refused to stop or used their radio upon sighting a submarine. When his reports indicated that British merchant ships were being used to give information by wireless, were being armed, and were attacking submarines on sight, he ordered his submarines on 17 October 1939 to attack all enemy merchant ships without warning on the ground that resistance was to be expected. Orders already had been issued on 21 September 1939 to attack all ships, including neutrals, sailing at night without lights in the English Channel.

On 24 November 1939 the German Government issued a warning to neutral shipping that, owing to the frequent engagements taking place in the waters around the British Isles and the French Coast between U-boats and Allied

21/ International Military Tribunal, op. cit., pp. 220-221, 226-227, 253-254.

22/ See chapter I, supra.

merchant ships which were armed and had instructions to use those arms as well as to ram U-boats, the safety of neutral ships in those waters could no longer be taken for granted. On 1 January 1940 the German U-boat Command, acting on the instructions of Hitler, ordered U-boats to attack all Greek merchant ships in the zone surrounding the British Isles which was banned by the United States to its own ships and also merchant ships of every nationality in the limited area of the Bristol Channel. Five days later a further order was given to U-boats to 'make immediately unrestricted use of weapons against all ships' in an area of the North Sea, the limits of which were defined. Finally on 18 January 1940, U-boats were authorized to sink, without warning, all ships 'in those waters near the enemy coasts in which the use of mines can be pretended'. Exceptions were to be made in the cases of United States, Italian, Japanese, and Soviet ships.

Shortly after the outbreak of war the British Admiralty, in accordance with its Handbook of Instructions of 1938 to the Merchant Navy, armed its merchant vessels, in many cases convoyed them with armed escort, gave orders to send position reports upon sighting submarines, thus integrating merchant vessels into the warning network of naval intelligence. On 1 October 1939 the British Admiralty announced that British merchant ships had been ordered to ram U-boats if possible.

In the actual circumstances of this case, the Tribunal is not prepared to hold Dönitz guilty for his conduct of submarine warfare against British armed merchant ships.

However, the proclamation of operational zones and the sinking of neutral merchant vessels which enter those zones presents a different question. This practice was employed in the war of 1914-18 by Germany and adopted in retaliation by Great Britain. The Washington Conference of 1922, the London Naval Agreement of 1930, and the Protocol of 1936 were entered into with full knowledge that such zones had been employed in the first World War. Yet the Protocol made no exception for operational zones. The order of Dönitz to sink neutral ships without warning when found within these zones was therefore, in the opinion of the Tribunal, a violation of the Protocol.

It is also asserted that the German U-boat arm not only did not carry out the warning and rescue provisions of the Protocol but that Dönitz deliberately ordered the killing of survivors of shipwrecked vessels, whether enemy or neutral. The Prosecution has introduced much evidence surrounding two orders of Dönitz - War Order Number 154, issued in 1939, and the so-called 'Laconia' Order of 1942. The Defense argues that these orders and the evidence supporting them do not show such a policy and introduced much evidence to the contrary. The Tribunal is of the opinion that the evidence does not establish with the certainty required that Dönitz deliberately ordered the killing of shipwrecked survivors. The orders were undoubtedly ambiguous, and deserve the strongest censure.

The evidence further shows that the rescue provisions were not carried out and that the Defendant ordered that they should not be carried out. The

argument of the Defense is that the security of the submarine is, as the first rule of the sea, paramount to rescue, and that the development of aircraft made rescue impossible. This may be so, but the Protocol is explicit. If the commander cannot rescue, then under its terms he cannot sink a merchant vessel and should allow it to pass harmless before his periscope. These orders, then, prove Dönitz is guilty of a violation of the Protocol.

In view of all of the facts proved and in particular of an order of the British Admiralty announced on 8 May 1940, according to which all vessels should be sunk at night in the Skagerrak, and the answers to interrogatories by Admiral Nimitz stating that unrestricted submarine warfare was carried on in the Pacific Ocean by the United States from the first day that Nation entered the war, the sentence of Dönitz is not assessed on the ground of his breaches of the international law of submarine warfare." 23/

B. The International Military Tribunal for the Far East

14. Acting upon the authority conferred upon him by the Governments of the Union of Soviet Socialist Republics, the United Kingdom and the United States 24/, the Supreme Commander for the Allied Powers established on 19 January 1946 the International Military Tribunal for the Far East for "the trial of those persons charged individually, or as members of organizations, or in both capacities, with offences which include crimes against peace". 25/ On the same day the Supreme Commander approved the Charter of that Tribunal which states the following in article 5:

"The Tribunal shall have the power to try and punish Far Eastern war criminals who as individuals or as members of organizations are charged with offenses which include Crimes against Peace. The following acts, or any of them, are crimes coming within the jurisdiction of the Tribunal for which there shall be individual responsibility:

(a) Crimes against Peace: Namely, the planning, preparation, initiation or waging of a declared or undeclared war of aggression, or a war in violation of international law, treaties, agreements or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing;

(b) Conventional War Crimes: Namely, violations of the laws or customs of war;

(c) Crimes against Humanity: Namely, murder, extermination, enslavement, deportation, and other inhumane acts committed before or during the war, or

23/ International Military Tribunal, op. cit., pp. 311-313.

24/ At the Moscow Conference of December 1946, the foreign ministers of the three above-mentioned Governments agreed, inter alia, that "The Supreme Commander shall issue all orders for the implementation of the Terms of Surrender, the occupation and control of Japan and directives supplementary thereto." Judgment of the International Military Tribunal for the Far East, Annexes, p. 15.

25/ Ibid., p. 17.

persecutions on political or racial grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated. Leaders, organizers, instigators and accomplices participating in the formulation or execution of a common plan or conspiracy to commit any of the foregoing crimes are responsible for all acts performed by any person in execution of such plan." 26/

15. In its Judgment of November 1948, the Tribunal made the following statement with regard to the "general participation clause" included in some of the 1907 Hague Conventions: 27/

"The effectiveness of some of the Conventions signed at The Hague on 18 October 1907 as direct treaty obligations was considerably impaired by the incorporation of a so-called 'general participation clause' in them, providing that the Convention would be binding only if all the Belligerents were parties to it. The effect of this clause is, in strict law, to deprive some of the Conventions of their binding force as direct treaty obligations, either from the very beginning of a war or in the course of it as soon as a non-signatory Power, however insignificant, joins the ranks of the Belligerents. Although the obligation to observe the provisions of the Convention as a binding treaty may be swept away by operation of the 'general participation clause', or otherwise, the Convention remains as good evidence of the customary law of nations, to be considered by the Tribunal along with all other available evidence in determining the customary law to be applied in any given situation." 28/

16. Specifically with regard to the 1907 Hague Convention (IV) respecting the laws and custom of war on land, 29/ the Judgment includes the following:

"This is another of the Hague Conventions which contains a 'general participation clause'. What we have said respecting this clause applies equally well here." 30/

C. British Military Court for the Trial of War Criminals at Hamburg

17. The question of military necessity and the application of the Regulations

26/ Ibid., pp. 21-22.

27/ See chapter I, supra.

28/ Judgment of the International Military Tribunal for the Far East (November 1948), p. 65.

29/ See appendix to chapter I, part I, supra.

30/ Judgment of the International Military Tribunal for the Far East (November 1948), p. 70.

annexed to the 1907 Hague Convention (IV) 31/ was discussed as follows by the British Military Court at Hamburg in its judgement of 19 December 1949 in the case entitled "In re von Lewinski (called von Manstein)":

"The second matter of general application to which I propose to refer at this stage is the question of military necessity. It was submitted by Counsel for the Defence that the Hague Conventions did not apply. In the first place it was submitted that Bulgaria, Yugoslavia and Italy were not parties to the Convention and that by Article 2, referred to as the non-participation clause, the Convention was applicable only where all belligerents are parties. But apart from this, it was submitted that the principles underlying the Convention must be adjusted to the necessities of war. The proposition may be summarized thus: The purpose of war is the overpowering of the enemy. The achievement of this purpose justifies any means, including, in case of necessity, the violation of the laws of war, if such violation will afford either the means to escape from imminent danger or the overpowering of the opponent. This theory, as Professor Oppenheim points out, is based on the old German principle dating far back in the history of war when war was regulated not by law at all but by usages. The principle was that necessity in war overrides the manner of warfare. Such a principle can have no application to the laws of war. If it had, they would, ipso facto, cease to be laws. Once the usages of war have assumed the status of laws they cannot be overridden by necessity, except in those special cases where the law itself makes provision for that eventuality. Reference to the preamble to the 4th Hague Convention makes this abundantly clear. It states that according to the views of the high contracting parties, these provisions, the drafting of which has been inspired by the desire to diminish the evils of war so far as military requirements permit, are intended to serve as a general rule of conduct for the belligerents in their mutual relations and in their relations with the inhabitants. In other words, the rules themselves have already made allowance for military necessity. Military necessity has already been taken into consideration in the framing of these laws.

If further proof of this proposition were required, it is provided by Article 23 (g) of the Regulations. Article 23 (g) states: 'In addition to the prohibitions provided by Special Conventions, it is particularly forbidden' - and then follow a number of sub-paragraphs, paragraph (g) reads: 'To destroy or seize enemy property, unless such destruction or seizure be imperatively demanded by the necessities of war'. If the necessities of war were an overriding consideration to be taken into account in regard to all the Articles of the Convention, obviously it would be quite unnecessary to make a special provision to that effect in Article 23 (g).

The combined effect of the preamble and the special exception in 23 (g) is to make it clear that, as Oppenheim expresses it, military necessity has already been discounted in the drawing up of these rules. ..."32/

31/ See appendix to chapter I, part I, supra.

32/ Annual Digest and Reports of Public International Law Cases, 1949 (H. Lauterpacht, ed.) pp. 511-512.

D. United States Military Tribunal at Nuremberg

18. Law No. 10 of 20 December 1945 of the Control Council for Germany stated in its preamble that its purpose was to give effect to the terms of the Moscow Declaration of 30 October 1943 and the London Agreement of 8 August 1945, and the Charter issued pursuant thereto, and to establish a uniform basis in Germany for the prosecution of war criminals and other similar offences, other than those dealt with by the International Military Tribunal. Control Council Law No. 10 further provided that "Each occupying authority, within its Zone of occupation" should have the right to arrest and bring to trial persons suspected of having committed a crime, and that "The tribunal by which persons charged with offences hereunder shall be tried and the rules of procedure thereof shall be determined or designated by each Zone Commander for his respective Zone." 33/ In the United States Zone of Occupation, the Military Governor made provisions for the further trials of war criminals by ordinances of the Military Government for Germany, United States Zone. 34/

19. Article II of Control Council Law No. 10 states, inter alia:

"Each of the following acts is recognized as a crime:

(a) Crimes against Peace. Initiation of invasions of other countries and wars of aggression in violation of international laws and treaties, including but not limited to planning, preparation, initiation or waging a war of aggression, or a war of violation of international treaties, agreements or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing.

(b) War Crimes. Atrocities or offences against persons or property, constituting violations of the laws or customs of war, including but not limited to, murder, ill treatment or deportation to slave labour or for any other purpose, of civilian population from occupied territory, murder or ill treatment of prisoners of war or persons on the seas, killing of hostages, plunder of public or private property, wanton destruction of cities, towns or villages, or devastation not justified by military necessity.

(c) Crimes against Humanity. Atrocities and offences, including but not limited to murder, extermination, enslavement, deportation, imprisonment, torture, rape, or other inhumane acts committed against any civilian population, or persecutions on political, racial or religious grounds whether or not in violation of the domestic laws of the country where perpetrated.

(d) Membership in categories of a criminal group or organization declared criminal by the International Military Tribunal." 35/

33/ Trials of War Criminals before the Nuernberg Military Tribunals under Control Council Law No. 10, vol. XV (Washington, D.C., U.S. Government Printing Office), pp. 23-28.

34/ Ibid., pp. 28-36.

35/ Ibid., p. 24.

20. "The Medical Case". (Trial of Karl Brandt and others) tried by the United States Military Tribunal at Nuremberg from 9 December 1946 to 20 August 1947, concerned individuals charged with, inter alia, committing war crimes and crimes against humanity including "murders, brutalities, cruelties, tortures, atrocities, and other inhumane acts" 36/ which took place during the course of medical experiments conducted without the subjects' consent upon civilians and members of the armed forces of nations then at war with Germany. In its Judgment, the Tribunal stated as follows:

"Obviously all of these experiments involving brutalities, tortures, disabling injury, and death were performed in complete disregard of international conventions, the laws and customs of war, the general principles of criminal law as derived from the criminal laws of all civilized nations, and Control Council Law No. 10. Manifestly human experiments under such conditions are contrary to 'the principles of the law of nations as they result from the usages established among civilized peoples from the laws of humanity and from the dictates of public conscience.'

...

... Moreover, assuming for the moment that they [Polish women used in sulfanilamide experiments] had been condemned to death for acts considered hostile to the German forces in the occupied territory of Poland, these persons still were entitled to the protection of the laws of civilized nations. While under certain specific conditions the rules of land warfare may recognize the validity of an execution of spies, war rebels, or other resistance workers, it does not under any circumstances countenance the infliction of death or other punishment by maiming or torture." 37/

21. In the judgement of "the Hostages Trial" (Trial of Wilhelm List and others) held at Nuremberg from 8 July 1947 to 19 February 1948, the following was included:

"... The crimes defined in Control Council Law No. 10 which we have quoted herein, were crimes under pre-existing rules of International Law - some by conventional law and some by customary law. It seems clear to us that the conventional law such as that exemplified by the Hague Regulations of 1907 clearly make the War Crimes herein quoted, crimes under the proceedings of that convention. In any event, the practices and usages of war which gradually ripened into recognised customs with which belligerents were bound to comply, recognised the crimes specified herein as crimes subject to punishment. It is not essential that a crime be specifically defined and charged in accordance with a particular ordinance, statute or treaty if it is made a crime by international convention, recognised customs and usages of war, or the general principles of criminal justice common to

36/ Trials of War Criminals before the Nuernberg Military Tribunals under Control Council No. 10, op. cit., vol. I, p. 8.

37/ Ibid., vol. II, pp. 183, 224.

civilised nations generally. If the acts charged were in fact crimes under International Law when committed, they cannot be said to be ex post facto acts or retroactive pronouncements.

...

The Hague Regulations prohibited 'The destruction or seizure of enemy property except in cases where this destruction or seizure is urgently required by the necessities of war.' Article 23 (g). The Hague Regulations are mandatory provisions of International Law. The prohibitions therein contained control and are superior to military necessities of the most urgent nature except where the Regulations themselves specifically provide the contrary. ..."38/

22. In the Trial of Alfred Felix Alwyn Krupp von Bohlen and Halbach and eleven others ("the Krupp Trial") held at Nuremberg between 17 November 1947 and 30 June 1948, the United States Military Tribunal stated the following in its judgement:

"It has been urged by the Defence that the provisions of the Hague Convention No. IV, and of the Regulations annexed to it, do not apply in 'total war'.

This doctrine must be emphatically rejected. This Tribunal fully concurs with the Judgment of the I.M.T. that the Hague Convention No. IV of 1907, to which Germany was a party, had by 1939 become customary law and was, therefore, binding on Germany not only as Treaty Law but also as Customary Law.

With further reference to the contention that total war would authorise a belligerent to disregard the laws and customs of warfare, the I.M.T. stated - and this Tribunal again fully concurs:

'... There can be no doubt that the majority of them (War Crimes) arose from the Nazi conception of "total war" with which the aggressive wars were waged. For in this conception of "total war" the moral ideas underlying the Conventions which seek to make war more humane are no longer regarded as having force or validity. Everything is made subordinate to the overmastering dictates of war. Rules, regulations, assurances and treaties, all alike, of no moment; and so, freed from the restraining influences of International Law, the aggressive war is conducted by the Nazi leaders in the most barbaric way. ...'

With particular reference to Articles 46-50-52 and 56 of the Hague Regulations, the I.M.T. states:

'... that violations of those provisions constituted crimes for which the guilty individuals were punishable is too well settled to admit of argument. ...'

38/ United Nations War Crimes Commission, Law Reports of Trials of War Criminals, vol. VIII (London, H.M. Stationery Office, 1949), pp. 53, 69.

It must also be pointed out that in the preamble to the Hague Convention No. IV it is made abundantly clear that in cases not included in the Regulations, the inhabitants and the belligerents remain under the protection and the rule of the principles of the Laws of Nations, as they result from the usages established among civilised peoples, from the laws of humanity, and dictates of the public conscience.

As the records of the Hague Peace Conference of 1899 which enacted the Hague Regulations show, great emphasis was placed by the participants on the protection of invaded territories, and the preamble just cited, also known as 'Mertens Clause', was inserted at the request of the Belgian delegate, Mertens, who was, as were others, not satisfied with the protection specifically guaranteed to belligerently occupied territory. Hence, not only the wording (which specifically mentions the 'inhabitants' before it mentions the 'belligerents'), but also the discussions which took place at the time make it clear that it refers specifically to belligerently occupied country. The Preamble is much more than a pious declaration. It is a general clause, making the usages established among civilised nations, the laws of humanity and the dictates of public conscience into the legal yardstick to be applied if and when the specific provisions of the Convention and the Regulations annexed to it do not cover specific cases occurring in warfare, or concomitant to warfare.

However, it will hardly be necessary to refer to these more general rules. The Articles of the Hague Regulations, quoted above, are clear and unequivocal.

...

Finally, the Defence has argued that the acts complained of were justified by the great emergency in which the German War Economy found itself. With reference to this argument it must be said at the outset that a defendant has, of course, the right to avail himself of contradictory defence arguments. This Tribunal has the duty carefully to consider all of them; but the Tribunal cannot help observing that the Defence, by putting forth such contradictory arguments, weakens its entire argument. The 'emergency argument' implies clearly the admission that, in and of themselves, the acts of spoliation charged to the defendants were illegal, and were only made legal by the 'emergency.' This argument is bound to weaken the other argument of the Defence, according to which the acts charged to them were legal, anyway.

However, quite apart from this consideration, the contention that the rules and customs of warfare can be violated if either party is hard pressed in any way must be rejected on other grounds. War is by definition a risky and hazardous business. That is one of the reasons that the outcome of a war, once started, is unforeseeable and that, therefore, war is a basically unrational means of 'settling' conflicts - why right-thinking people all over the world repudiate and abhor aggressive war. It is an essence of war that one or the other side must lose and the experienced generals and statesmen knew this when they drafted the rules and customs of land warfare. In short these rules and customs of warfare are designed specifically for all phases of

/...

war. They comprise the law for such emergency. To claim that they can be wantonly - and at the sole discretion of any one belligerent - disregarded when he considers his own situation to be critical, means nothing more or less than to abrogate the laws and customs of war entirely." 39/

23. The judgement of the United States Military Tribunal at Nuremberg in "the Justice Trial" (Trial of Joseph Altstötter and others), held from 17 February to 4 December 1947, included the following:

"It will be recalled that the law of 4th December, 1941, against Poles and Jews applied to the 'incorporated Eastern territories'. These territories were seized in the course of criminal aggressive war, but aside from that fact it is clear, as we have indicated, supra, that the purported annexation was premature and invalid under the laws and customs of war. The so-called annexed territories in Poland were in reality nothing more than territory under belligerent occupation of the military forces of Germany. The extension to and application in those territories of the discriminatory law against Poles and Jews was in furtherance of the avowed purpose of racial persecution and extermination. In the passing and enforcement of that law the occupying power in our opinion violated the provisions of the Hague Convention, ... [articles 23 (h), 43 and 46/ and the preamble:

'Until a more complete code of the laws of war can be drawn up, the High Contracting Parties deem it expedient to declare that, in cases not covered by the rules adopted by them, the inhabitants and the belligerents remain under the protection and governance of the principles of the law of nations, derived from the usages established among civilised peoples, from the laws of humanity, and from the dictates of the public conscience.'" 40/

24. In its judgement in the Trial of Fredrich Flick and five others ("the Flick Trial"), held from 20 April to 22 December 1947, the United States Military Tribunal at Nuremberg stated the following with regard to the language used in the 1907 Hague Convention (IV): 41/

"The purpose of the Hague Convention, as disclosed in the Preamble of Chapter II, was 'to revise the general laws and customs of war, either with a view to defining them with greater precision or to confine them within such limits as would mitigate their severity so far as possible'. It is also stated that 'these provisions, the wording of which has been inspired by a desire to diminish the evils of war, as far as military requirements will permit, are intended to serve as a general rule of conduct for the belligerents in their mutual relations and in their relations with the

39/ United Nations War Crimes Commission, op. cit., vol. X, pp. 133-134, 138-139.

40/ United Nations War Crimes Commission, op. cit., vol. VI, pp. 62, 92.

41/ See appendix to chapter I, part I, supra.

inhabitants'. This explains the generality of the provisions. They were written in a day when armies travelled on foot, in horse-drawn vehicles and on railroad trains; the automobile was in its Ford Model T stage. Use of the airplane as an instrument of war was merely a dream. The atomic bomb was beyond the realms of imagination. Concentration of industry into huge organisations transcending national boundaries had barely begun. Blockades were the principal means of 'economic warfare'. 'Total warfare' only became a reality in the recent conflict. These developments make plain the necessity of appraising the conduct of defendants with relation to the circumstances and conditions of their environment. Guilt, or the extent thereof, may not be determined theoretically or abstractly. Reasonable and practical standards must be considered." 42/

25. In "The German High Command Trial" (Trial of Wilhelm von Leeb and thirteen others) which took place at Nuremberg between 30 December 1947 and 28 October 1948, the United States Military Tribunal stated, inter alia:

"Another question of general interest in this case concerns the applicability of the /1907/ Hague Convention /((IV))/ and the Geneva Convention as between Germany and Russia. ...

In determining the applicability of the Hague Convention, it must be borne in mind, first, that Russia ratified this Convention, but Bulgaria and Italy did not. The binding effect of the Hague Convention upon Germany was considered by the IMT /International Military Tribunal/ in the trial against Goering, et al. On page 253 of that judgment, it is stated:

'But it is argued that the Hague Convention does not apply in this case, because of the "general participation" clause in Article 2 of the Hague Convention of 1907. That clause provided:

'The provisions contained in the regulations (Rules of Land Warfare) referred to in Article I as well as in the present Convention, do not apply except between contracting Powers, and then only if all the belligerents are parties to the Convention.'

'Several of the belligerents in the recent war were not parties to this Convention.

'In the opinion of the Tribunal it is not necessary to decide this question. The rules of land warfare expressed in the Convention undoubtedly represented an advance over existing International Law at the time of their adoption. But the Convention expressly stated that it was an attempt "to revise the general laws and customs of war," which it thus recognized to be then existing, but by 1939 these rules laid down in the Convention were recognized by all civilized nations, and were regarded as being declaratory of the laws and customs of war which are referred to in Article 6 (b) of the Charter.'

It is apparent from the above quotation that the view adopted by the IMT in that case as to the Hague Conventions was that they were declaratory of existing International Law, and therefore binding upon Germany. In this connection it is further pointed out that the defence in this case, particularly as regards partisan warfare, primarily is based upon the fact that partisans could be shot or hanged since under the Hague Convention they were not lawful belligerents. The defence can hardly contend that Germany was in a position to sort out as binding on her only those provisions of these Conventions which suited her own purposes. Like the IMT, we do not feel called upon in this case to determine whether or not the Hague Conventions were binding upon Germany as an international agreement. We adopt the principle outlined in that case to the effect that in substance these provisions were binding as declaratory of International Law." 43/

26. Included in "the I. G. Farben Trial" (Trial of Carl Krauch and twenty-two others) judgement of the United States Military Tribunal of 29 July 1948 is the following:

"One of the general defences advanced is the contention that private industrialists cannot be held criminally responsible for economic measures which they carry out in occupied territories at the direction of, or with the approval of, their government. As a corollary to this line of argument it is asserted that the principles of international law in existence at the time of the commission of the acts here charged do not clearly define the limits of permissible action. It is further said that the Hague Regulations are outmoded by the concept of total warfare; that literal application of the laws and customs of war as codified in the Hague Regulations is no longer possible; that the necessities of economic warfare qualify and extinguish the old rules and must be held to justify the acts charged in keeping with the new concept of total warfare. These contentions are unsound. It is obvious that acceptance of these arguments would set at naught any rule of international law and would place it within the power of each nation to be the exclusive judge of the applicability of international law. It is beyond the authority of any nation to authorise its citizens to commit acts in contravention of international penal law. As custom is a source of international law, customs and practices may change and find such general acceptance in the community of civilised nations as to alter the substantive content of certain of its principles. But we are unable to find that there has been a change in the basic concept of respect for property rights during belligerent occupation of a character to give any legal protection to the widespread acts of plunder and spoliation committed by Nazi Germany during the course of World War II. It must be admitted that there exist many areas of grave uncertainty concerning the laws and customs of war, but these uncertainties have little application to the basic principles relating to the law of belligerent occupation set forth in the Hague Regulations. Technical advancement in the weapons and tactics used in the actual waging

43/ United Nations War Crimes Commission, op. cit., vol. XII, pp. 86-87.

of war may have made obsolete, in some respects, or may have rendered inapplicable, some of the provisions of the Hague Regulations having to do with the actual conduct of hostilities and what is considered legitimate warfare. But these uncertainties relate principally to military and naval operations proper and the manner in which they shall be conducted. We cannot read obliterating uncertainty into these provisions and phases of international law having to do with the conduct of the military occupant toward inhabitants of occupied territory in time of war, regardless of how difficult may be the legal questions of interpretation and application to particular facts. That grave uncertainties may exist as to the status of the law dealing with such problems as bombings and reprisals and the like, does not lead to the conclusion that provisions of the Hague Regulations, protecting rights of public and private property, may be ignored." 44/

27. The United States Military Tribunal, in "The Einsatzgruppen Trial" (Trial of Otto Ohlendorf and others) judgement of 10 April 1948, stated the following concerning the legality of aerial bombardment - by conventional or atomic means - of towns and cities:

"It was submitted that the defendants must be exonerated from the charge of killing civilian populations since every Allied nation brought about the death of non-combatants through the instrumentality of bombing. Any person who, without cause, strikes another may not later complain if the other in repelling the attack uses sufficient force to overcome the original adversary. That is fundamental law between nations as well.

It has already been adjudicated by a competent tribunal that Germany under its Nazi rulers started an aggressive war. The bombing of Berlin, Dresden, Hamburg, Cologne and other German cities followed the bombing of London, Coventry, Rotterdam, Warsaw and other Allied cities; the bombing of German cities succeeded, in point of time, the acts discussed here. But even if German cities had been bombed without Germans having bombed Allied cities, there still is no parallelism between an act of legitimate warfare, namely the bombing of a city, with a concomitant loss of civilian life, and the premeditated killing of all members of certain categories of the civilian population in occupied territory.

A city is bombed for tactical purposes; communications are to be destroyed, railroads wrecked, ammunition plants demolished, factories razed, all for the purpose of impeding the military. In these operations it inevitably happens that non-military persons are killed. This is an incident, a grave incident to be sure, but an unavoidable corollary of battle action. The civilians are not individualized. The bomb falls, it is aimed at the railroad yards, houses along the tracks are hit and many of their occupants killed. But that is entirely different, both in fact and in law, from an armed force marching up to these same railroad tracks, entering those houses abutting thereon, dragging out the men, women and children and shooting them.

44/ United Nations War Crimes Commission, op. cit., vol. X, pp. 48-49.

It was argued on behalf of the defendants that there was no moral distinction between shooting civilians with rifles and killing them by means of atomic bombs. There is no doubt that the invention of the atomic bomb, when used, was not aimed at non-combatants. Like any other aerial bomb employed during the war, it was dropped to overcome military resistance.

Thus, as grave a military action as is an air bombardment, whether with the usual bombs or by atomic bomb, the one and only purpose of the bombing is to effect the surrender of the bombed nation. The people of that nation, through their representatives, may surrender and, with the surrender, the bombing ceases, the killing is ended. Furthermore, a city is assured of not being bombed by the law-abiding belligerent if it is declared an open city." 45/

E. USSR Military Tribunal of the Primorye Military Area

28. During December 1949 12 former members of the Japanese armed forces were tried in Khabarovsk, USSR, by the USSR Military Tribunal of the Primorye Military Area. They were charged with having committed crimes, including the preparing and employing of bacteriological weapons, punishable under article 1 of the Decree of the Presidium of the Supreme Soviet of the USSR of 19 April 1943. In its verdict, the Tribunal stated, inter alia:

"In their criminal plans for aggressive wars against peace-loving nations the Japanese imperialists planned to employ bacteriological weapons for the mass extermination of troops and the civilian population, including old people, women and children, by spreading lethal epidemics of plague, cholera, anthrax and other grave diseases.

With these aims in view, special formations for the production of bacteriological weapons were set up in the Japanese Army, and special army squads and sabotage bands were trained to contaminate with germs towns and villages, water sources and wells, livestock and crops on the territory of the states subjected to Japanese aggression.

...

The research which was conducted in detachments 731 and 100 on ways and means of waging bacteriological warfare was accompanied by criminal, inhuman experiments to test the effect of bacteriological weapons on living people. In the course of these experiments the Japanese fiends brutally killed thousands of victims who had fallen into their hands.

...

The testing of bacteriological weapons was not limited to the experiments carried out inside detachments 731 and 100. The Japanese imperialists employed bacteriological weapons in the war against China and in sabotage raids against the U.S.S.R.

45/ Trials of War Criminals before the Nuernberg Military Tribunals under Control Council Law, No. 10, op. cit., vol. X. pp. 466-467.

In 1940 a special expedition of Detachment 731 commanded by General Ishii was despatched to the theatre of hostilities in Central China, where, by dropping plague-infected fleas from aircraft with special apparatus, it caused a plague epidemic in the Nimpo area.

This criminal operation which brought in its wake thousands of victims among the peaceful Chinese population was filmed, and this film was later demonstrated in Detachment 731 to representatives of the High Command of the Japanese Army, among them accused Yamada.

In 1941 Detachment 731 sent an analogous expedition to the Changteh area, which was also infected with plague germs.

In 1942 bacteriological weapons were again employed on the territory of China. This time an expedition of Detachment 731, in the preparation of which accused Karasawa and Kawashima took part, operated jointly with the Ei Detachment, which at one time was under the command of accused Sato. It disseminated the germs of severe infectious diseases on territory which the Japanese troops were forced to abandon under pressure from the Chinese Army.

Over a period of a number of years Detachment 100 systematically sent bacteriological groups, of which accused Hirazakura and Mitomo were members, to the borders of the U.S.S.R. These groups carried out bacteriological sabotage against the Soviet Union by contaminating water sources on the border, in particular in the Tryokhrechye area.

Thus, the preliminary and Court investigations have established that the Japanese imperialists prepared to employ bacteriological weapons extensively in an aggressive war unleashed against the U.S.S.R. and other States, and thereby plunge mankind into the abyss of new calamities.

In carrying out preparations for bacteriological warfare they stopped at no crimes, putting to death thousands of Chinese and Soviet citizens in the course of their criminal experiments in the employment of bacteriological weapons and spreading epidemics of grave diseases among the civilian population of China." 46/

46/ Materials on the trial of former servicemen of the Japanese Army charged with manufacturing and employing bacteriological weapons (Moscow, Foreign Languages Publishing House, 1950), pp. 525, 528-530.

ANNEX I

Resolutions of the General Assembly Regarding the
Prohibition of Weapons and Their Use

RESOLUTION 715 (VIII) ADOPTED BY THE GENERAL ASSEMBLY AT ITS
460TH PLENARY MEETING ON 28 NOVEMBER 1953

715 (VIII). Regulation, limitation, and balanced reduction
of all armed forces and all armaments: report
of the Disarmament Commission

The General Assembly,

Reaffirming the responsibility of the United Nations for considering the
problem of disarmament and affirming the need of providing for:

(a) The regulation, limitation and balanced reduction of all armed forces
and all armaments,

(b) The elimination and prohibition of atomic, hydrogen and other types of
weapons of mass destruction,

(c) The effective international control of atomic energy to ensure the
prohibition of atomic weapons and the use of atomic energy for peaceful purposes
only,

the whole programme to be carried out under effective international control and in
such a way that no State would have cause to fear that its security was endangered,

Believing that the continued development of weapons of mass destruction such
as atomic and hydrogen bombs had given additional urgency to efforts to bring
about effectively controlled disarmament throughout the world, as the existence
of civilization itself may be at stake,

Mindful that progress in the settlement of existing international disputes
and the resulting re-establishment of confidence are vital to the attainment of
peace and disarmament and that efforts to reach agreement on a comprehensive and
co-ordinated disarmament programme with adequate safeguards should be made
concurrently with progress in the settlement of international disputes,

Believing that progress in either field would contribute to progress in the
other,

Realizing that competition in the development of armaments and armed forces
beyond what is necessary for the individual or collective security of Member
States in accordance with the Charter of the United Nations is not only economically
unsound but is in itself a grave danger to peace,

/...

Conscious of the continuing desire of all nations, by lightening the burden of armaments, to release more of the world's human and economic resources for peace,

Having received the third report 1/ of the Disarmament Commission of 20 August 1953, submitted in accordance with General Assembly resolution 704 (VII) of 8 April 1953,

Endorsing the Commission's hope that recent international events will create a more propitious atmosphere for reconsideration of the disarmament question, the capital importance of which, in conjunction with other questions affecting the maintenance of peace, is recognized by all,

1. Recognizes the general wish and affirms its earnest desire to reach agreement as early as possible on a comprehensive and co-ordinated plan, under international control, for the regulation, limitation and reduction of all armed forces and all armaments, for the elimination and prohibition of atomic, hydrogen, bacterial, chemical and all such other weapons of war and mass destruction, and for the attainment of these ends through effective measures;

...

460th plenary meeting
28 November 1953

1/ See Official Records of the Disarmament Commission, 1953, Supplement for July, August and September 1953, document DC/32.

/...

RESOLUTION 808 A (IX) ADOPTED BY THE GENERAL ASSEMBLY AT ITS
497TH PLENARY MEETING ON 4 NOVEMBER 1954

808 A (IX) Regulation, limitation, and balanced reduction of all armed forces and all armaments: report of the Disarmament Commission; Conclusion of an international convention (treaty) on the reduction of armaments and the prohibition of atomic, hydrogen and other weapons of mass destruction

A

The General Assembly,

Reaffirming the responsibility of the United Nations for seeking a solution of the disarmament problem,

Conscious that the continuing development of armaments increases the urgency of the need for such a solution,

Having considered the fourth report 2/ of the Disarmament Commission of 29 July 1954 and the documents annexed thereto, and the draft resolution 3/ of the Union of Soviet Socialist Republics concerning the conclusion of an international convention (treaty) on the reduction of armaments and the prohibition of atomic, hydrogen and other weapons of mass destruction,

1. Concludes that a further effort should be made to reach agreement on comprehensive and co-ordinated proposals to be embodied in a draft international disarmament convention providing for:

(a) The regulation, limitation and major reduction of all armed forces and all conventional armaments;

(b) The total prohibition of the use and manufacture of nuclear weapons and weapons of mass destruction of every type, together with the conversion of existing stocks of nuclear weapons for peaceful purposes;

(c) The establishment of effective international control, through a control organ with rights, powers and functions adequate to guarantee the effective observance of the agreed reductions of all armaments and armed forces and the

2/ Ibid., Supplement for July, August and September 1954, document DC/55, and Ibid., Supplement for April, May and June 1954, documents DC/53 and DC/44 and Corr.1.

3/ See Official Records of the General Assembly, Ninth Session, Annexes, agenda items 20 and 68, document A/C.1/750.

prohibition of nuclear and other weapons of mass destruction, and to ensure the use of atomic energy for peaceful purposes only;

The whole programme to be such that no State would have cause to fear that its security was endangered;

...

497th plenary meeting
4 November 1954

RESOLUTION 1653 (XVI) ADOPTED BY THE GENERAL ASSEMBLY AT ITS
1063RD PLENARY MEETING ON 24 NOVEMBER 1961

1653 (XVI). Declaration on the prohibition of the use of
nuclear and thermo-nuclear weapons

The General Assembly,

Mindful of its responsibility under the Charter of the United Nations in the maintenance of international peace and security, as well as in the consideration of principles governing disarmament,

Gravely concerned that, while negotiations on disarmament have not so far achieved satisfactory results, the armaments race, particularly in the nuclear and thermo-nuclear fields, has reached a dangerous stage requiring all possible precautionary measures to protect humanity and civilization from the hazard of nuclear and thermo-nuclear catastrophe,

Recalling that the use of weapons of mass destruction, causing unnecessary human suffering, was in the past prohibited, as being contrary to the laws of humanity and to the principles of international law, by international declarations and binding agreements, such as the Declaration of St. Petersburg of 1868, the Declaration of the Brussels Conference of 1874, the Conventions of The Hague Peace Conferences of 1899 and 1907, and the Geneva Protocol of 1925, to which the majority of nations are still parties,

Considering that the use of nuclear and thermo-nuclear weapons would bring about indiscriminate suffering and destruction to mankind and civilization to an even greater extent than the use of those weapons declared by the aforementioned international declarations and agreements to be contrary to the laws of humanity and a crime under international law,

Believing that the use of weapons of mass destruction, such as nuclear and thermo-nuclear weapons, is a direct negation of the high ideals and objectives which the United Nations has been established to achieve through the protection of succeeding generations from the scourge of war and through the preservation and promotion of their cultures,

/...

1. Declares that:

(a) The use of nuclear and thermo-nuclear weapons is contrary to the spirit, letter and aims of the United Nations and, as such, a direct violation of the Charter of the United Nations;

(b) The use of nuclear and thermo-nuclear weapons would exceed even the scope of war and cause indiscriminate suffering and destruction to mankind and civilization and, as such, is contrary to the rules of international law and to the laws of humanity;

(c) The use of nuclear and thermo-nuclear weapons is a war directed not against an enemy or enemies alone but also against mankind in general, since the peoples of the world not involved in such a war will be subjected to all the evils generated by the use of such weapons;

(d) Any State using nuclear and thermo-nuclear weapons is to be considered as violating the Charter of the United Nations, as acting contrary to the laws of humanity and as committing a crime against mankind and civilization;

2. Requests the Secretary-General to consult the Governments of Member States to ascertain their views on the possibility of convening a special conference for signing a convention on the prohibition of the use of nuclear and thermo-nuclear weapons for war purposes and to report on the results of such consultation to the General Assembly at its seventeenth session.

1063rd plenary meeting
24 November 1961

RESOLUTION 1801 (XVII) ADOPTED BY THE GENERAL ASSEMBLY AT ITS
1192ND PLENARY MEETING ON 14 DECEMBER 1962

1801 (XVII). Question of convening a conference for the purpose of signing a convention on the prohibition of the use of nuclear and thermo-nuclear weapons

The General Assembly,

Having considered the report of the Secretary-General on the question of convening a conference for the purpose of signing a convention on the prohibition of the use of nuclear and thermo-nuclear weapons, 4/

4/ Ibid., Seventeenth Session, Annexes, agenda item 26, document A/5174 and Add.1 and 2.

Having regard to the usefulness of further consultation with Governments of Member States on this question,

Requests the Secretary-General to consult further the Governments of Member States to ascertain their views on the possibility of convening a special conference for signing a convention on the prohibition of the use of nuclear and thermo-nuclear weapons for war purposes, and to report on the results of such consultation to the General Assembly at its eighteenth session.

1192nd plenary meeting
14 December 1962

RESOLUTION 1909 (XVIII) ADOPTED BY THE GENERAL ASSEMBLY AT ITS
1265TH PLENARY MEETING ON 27 NOVEMBER 1963

1909 (XVIII). Question of convening a conference for the purpose of signing a convention on the prohibition of the use of nuclear and thermo-nuclear weapons

The General Assembly,

Recalling the declaration on the prohibition of the use of nuclear and thermo-nuclear weapons, contained in its resolution 1653 (XVI) of 24 November 1961,

Cognizant that the subject can be speedily and effectively studied by the Conference of the Eighteen-Nation Committee on Disarmament in Geneva,

1. Requests the Conference of the Eighteen-Nation Committee on Disarmament to study urgently the question of convening a conference for the purpose of signing a convention on the prohibition of the use of nuclear and thermo-nuclear weapons, and to report to the General Assembly at its nineteenth session;

2. Requests the Secretary-General to transmit the text of the present resolution and all other relevant documents to the Eighteen-Nation Committee.

1265th plenary meeting
27 November 1963

RESOLUTION 2033 (XX) ADOPTED BY THE GENERAL ASSEMBLY AT ITS
1388TH PLENARY MEETING ON 3 DECEMBER 1965

2033 (XX). Declaration on the denuclearization of Africa

The General Assembly,

Believing in the vital necessity of saving contemporary and future generations from the scourge of a nuclear war,

Recalling its resolution 1652 (XVI) of 24 November 1961, which called upon all Member States to refrain from testing, storing or transporting nuclear weapons in Africa and to consider and respect the continent as a denuclearized zone,

Recalling its resolution 2028 (XX) of 19 November 1965 on the non-proliferation of nuclear weapons,

Observing that proposals for the establishment of denuclearized zones in various other areas of the world have also met with general approval,

Convinced that the denuclearization of various areas of the world would help to achieve the desired goal of prohibiting the use of nuclear weapons,

Considering that the Assembly of Heads of State and Government of the Organization of African Unity, at its first regular session, held at Cairo from 17 to 21 July 1964, issued a solemn declaration on the denuclearization of Africa 5/ in which the Heads of State and Government announced their readiness to undertake, in an international treaty to be concluded under the auspices of the United Nations, not to manufacture or acquire control of nuclear weapons,

Noting that this declaration on the denuclearization of Africa was endorsed by the Heads of State or Government of Non-Aligned Countries in the Declaration issued on 10 October 1964, 6/ at the close of their Second Conference, held at Cairo,

Recognizing that the denuclearization of Africa would be a practical step towards the prevention of the further spread of nuclear weapons in the world and towards the achievement of general and complete disarmament and of the objectives of the United Nations,

1. Reaffirms its call upon all States to respect the continent of Africa as a nuclear-free zone;

5/ See Ibid., Twentieth Session, Annexes, agenda item 105, document A/5975.

6/ See A/5763.

2. Endorses the declaration on the denuclearization of Africa issued by the Heads of State and Government of African countries;

3. Calls upon all States to respect and abide by the afore-mentioned declaration;

4. Calls upon all States to refrain from the use, or the threat of use, of nuclear weapons on the African continent;

5. Calls upon all States to refrain from testing, manufacturing, using or deploying nuclear weapons on the continent of Africa, and from acquiring such weapons or taking any action which would compel African States to take similar action;

6. Urges those States possessing nuclear weapons and capability not to transfer nuclear weapons, scientific data or technological assistance to the national control of any State, either directly or indirectly, in any form which may be used to assist such States in the manufacture or use of nuclear weapons in Africa;

...

1388th plenary meeting
3 December 1965

RESOLUTION 2162 B (XXI) ADOPTED BY THE GENERAL ASSEMBLY AT ITS
1484TH PLENARY MEETING ON 5 DECEMBER 1966

2162 B (XXI). Question of general and complete disarmament

The General Assembly,

Guided by the principles of the Charter of the United Nations and of international law,

Considering that weapons of mass destruction constitute a danger to all mankind and are incompatible with the accepted norms of civilization,

Affirming that the strict observance of the rules of international law on the conduct of warfare is in the interest of maintaining these standards of civilization,

Recalling that the Geneva Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare, of 17 June 1925, 7/ has been signed and adopted and is recognized by many States,

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

/...

Noting that the Conference of the Eighteen-Nation Committee on Disarmament has the task of seeking an agreement on the cessation of the development and production of chemical and bacteriological weapons and other weapons of mass destruction, and on the elimination of all such weapons from national arsenals, as called for in the draft proposals on general and complete disarmament now before the Conference,

1. Calls for strict observance by all States of the principles and objectives of the Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare, signed at Geneva on 17 June 1925, and condemns all actions contrary to those objectives;

2. Invites all States to accede to the Geneva Protocol of 17 June 1925.

1484th plenary meeting
5 December 1966

RESOLUTION 2164 (XXI) ADOPTED BY THE GENERAL ASSEMBLY AT ITS
1484TH PLENARY MEETING ON 5 DECEMBER 1966

2164 (XXI). Question of convening a conference for the purpose of signing a convention on the prohibition of the use of nuclear and thermonuclear weapons

The General Assembly,

Recalling the declaration on the prohibition of the use of nuclear and thermonuclear weapons contained in its resolution 1653 (XVI) of 24 November 1961,

Cognizant of the fact that the consultations carried out by the Secretary-General, pursuant to General Assembly resolutions 1653 (XVI) of 24 November 1961 and 1801 (XVII) of 14 December 1962, with the Governments of Member States to ascertain their views on the possibility of convening a conference for the purpose of signing a convention on the prohibition of the use of nuclear and thermonuclear weapons have not been conclusive,

Recalling that, by General Assembly resolution 1909 (XVIII) of 27 November 1963, the Conference of the Eighteen-Nation Committee on Disarmament was requested to give urgent consideration to this question,

Believing that the signing of a convention on the prohibition of the use of nuclear and thermonuclear weapons would greatly facilitate negotiations on general and complete disarmament under effective international control and give further impetus to the search for a solution of the urgent problem of nuclear disarmament,

Believing further that the widest possible attendance at a conference for the purpose of signing such a convention is of vital importance for the effective and universal observance of its provisions,

Requests that the forthcoming world disarmament conference give serious consideration to the question of signing a convention on the prohibition of the use of nuclear and thermonuclear weapons.

1484th plenary meeting
5 December 1966

RESOLUTION 2286 (XXII) ADOPTED BY THE GENERAL ASSEMBLY AT ITS
1620TH PLENARY MEETING ON 5 DECEMBER 1967

2286 (XXII). Treaty for the Prohibition of Nuclear Weapons in Latin America

The General Assembly,

Recalling that in its resolution 1911 (XVIII) of 27 November 1963 it expressed the hope that the States of Latin America would carry out studies and take appropriate measures to conclude a treaty that would prohibit nuclear weapons in Latin America.

Recalling also that in the same resolution it voiced its confidence that, once such a treaty was concluded, all States, and particularly the nuclear Powers, would lend it their full co-operation for the effective realization of its peaceful aims,

Considering that in its resolution 2028 (XX) of 19 November 1965 it established the principle of an acceptable balance of mutual responsibilities and obligations of the nuclear and non-nuclear Powers,

Bearing in mind that in its resolution 2153 A (XXI) of 17 November 1966 it expressly called upon all nuclear-weapon Powers to refrain from the use, or the threat of use, of nuclear weapons against States which might conclude regional treaties in order to ensure the total absence of nuclear weapons in their respective territories,

Noting that that is precisely the object of the Treaty for the Prohibition of Nuclear Weapons in Latin America, ^{8/} signed at Tlatelolco, Mexico, by 21 Latin American States, which are convinced that the Treaty will constitute a measure that will spare their peoples the squandering of their limited resources on nuclear armaments and will protect them against possible nuclear attacks on their territories, that it will be a stimulus to the peaceful use of nuclear energy in the promotion of economic and social development and that it will act as a significant contribution towards preventing the proliferation of nuclear weapons and as a powerful factor for general and complete disarmament,

^{8/} See A/6663.

Noting that it is the intent of the signatory States that all existing States within the zone defined in the Treaty may become parties to the Treaty without any restriction,

Taking note of the fact that the Treaty contains two additional protocols open, respectively, to the signature of States which, de jure or de facto, are internationally responsible for territories which lie within the limits of the geographical zone established in the Treaty and to the signature of States possessing nuclear weapons, and convinced that the co-operation of such States is necessary for the greater effectiveness of the Treaty,

1. Welcomes with special satisfaction the Treaty for the Prohibition of Nuclear Weapons in Latin America, which constitutes an event of historic significance in the efforts to prevent the proliferation of nuclear weapons and to promote international peace and security and which at the same time establishes the right of Latin American countries to use nuclear energy for demonstrated peaceful purposes in order to accelerate the economic and social development of their peoples;

2. Calls upon all States to give their full co-operation to ensure that the régime laid down in the Treaty enjoys the universal observance to which its lofty principles and noble aims entitle it;

3. Recommends States which are or may become signatories of the Treaty and those contemplated in Additional Protocol I of the Treaty to strive to take all the measures within their power to ensure that the Treaty speedily obtains the widest possible application among them;

4. Invites Powers possessing nuclear weapons to sign and ratify Additional Protocol II of the Treaty as soon as possible.

1620th plenary meeting
5 December 1967

RESOLUTION 2289 (XXII) ADOPTED BY THE GENERAL ASSEMBLY AT ITS
1623RD PLENARY MEETING ON 8 DECEMBER 1967

2289 (XXII). Conclusion of a convention on the prohibition of
the use of nuclear weapons

The General Assembly,

Recalling the Declaration on the prohibition of the use of nuclear and thermonuclear weapons, contained in its resolution 1653 (XVI) of 24 November 1961,

Reaffirming its conviction, expressed in resolution 2164 (XXI) of 5 December 1966, that the signing of a convention on the prohibition of the use of nuclear and thermonuclear weapons would greatly facilitate negotiations on general

/...

and complete disarmament under effective international control and give further impetus to the search for a solution of the urgent problem of nuclear disarmament,

Considering that it is necessary, in view of the present international situation, to make new efforts aimed at expediting the solution of the question of the prohibition of the use of nuclear weapons,

1. Expresses its conviction that it is essential to continue urgently the examination of the question of the prohibition of the use of nuclear weapons and of the conclusion of an appropriate international convention;

2. Urges all States, in this connexion, to examine in the light of the Declaration adopted by the General Assembly in resolution 1653 (XVI) the question of the prohibition of the use of nuclear weapons and the draft convention on the prohibition of the use of nuclear weapons proposed by the Union of Soviet Socialist Republics 9/ and such other proposals as may be made on this question, and to undertake negotiations concerning the conclusion of an appropriate convention through the convening of an international conference, by the Conference of the Eighteen-Nation Committee on Disarmament, or directly between States;

3. Requests the Secretary-General to transmit to all States Members of the United Nations and to the Conference of the Eighteen-Nation Committee on Disarmament the draft convention on the prohibition of the use of nuclear weapons proposed by the Union of Soviet Socialist Republics and the records of the meetings of the First Committee relating to the discussion of the item entitled "Conclusion of a convention on the prohibition of the use of nuclear weapons".

1623rd plenary meeting
8 December 1967

RESOLUTION 2444 (XXIII) ADOPTED BY THE GENERAL ASSEMBLY AT ITS
1748TH PLENARY MEETING ON 19 DECEMBER 1968

2444 (XXIII). Respect for human rights in armed conflicts

The General Assembly,

Recognizing the necessity of applying basic humanitarian principles in all armed conflicts,

Taking note of resolution XXIII on human rights in armed conflicts, adopted on 12 May 1968 by the International Conference on Human Rights, 10/

9/ See Official Records of the General Assembly, Twenty-second Session, Annexes, agenda item 96, document A/6834.

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

Affirming that the provisions of that resolution need to be implemented effectively as soon as possible,

1. Affirms resolution XXVIII of the XXth International Conference of the Red Cross held at Vienna in 1965, which laid down, inter alia, the following principles for observance by all governmental and other authorities responsible for action in armed conflicts:

(a) That the right of the parties to a conflict to adopt means of injuring the enemy is not unlimited;

(b) That it is prohibited to launch attacks against the civilian populations as such;

(c) That distinction must be made at all times between persons taking part in the hostilities and members of the civilian population to the effect that the latter be spared as much as possible;

2. Invites the Secretary-General, in consultation with the International Committee of the Red Cross 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;

3. Requests the Secretary-General to take all other necessary steps to give effect to the provisions of the present resolution and to report to the General Assembly at its twenty-fourth session on the steps he has taken;

4. Further requests Member States to extend all possible assistance to the Secretary-General in the preparation of the study requested in paragraph 2 above;

5. Calls upon all States which have not yet done so to become parties to the Hague Conventions of 1899 and 1907, 11/ the Geneva Protocol of 1925 12/ and the Geneva Conventions of 1949. 13/

1748th plenary meeting
19 December 1968

11/ Carnegie Endowment for International Peace, The Hague Conventions and Declarations 1899-1907 (New York, Oxford University Press, 1918).

12/ See foot-note 7, supra.

13/ United Nations, Treaty Series, vol. 75 (1950), Nos. 970-973.

RESOLUTION 2454 (XXIII) ADOPTED BY THE GENERAL ASSEMBLY AT ITS
1750TH PLENARY MEETING ON 20 DECEMBER 1968

2454 (XXIII). Question of general and complete disarmament

A

The General Assembly,

Reaffirming the recommendations contained in its resolution 2162 B (XXI) of 5 December 1966 calling for strict observance by all States of the principles and objectives of the Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare, signed at Geneva on 17 June 1925, 14/ condemning all actions contrary to those objectives and inviting all States to accede to that Protocol,

Considering that the possibility of the use of chemical and bacteriological weapons constitutes a serious threat to mankind,

Believing that the people of the world should be made aware of the consequences of the use of chemical and bacteriological weapons,

...

6. Reiterates its call for strict observance by all States of the principles and objectives of the Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare signed at Geneva on 17 June 1925, and invites all States to accede to that Protocol.

1750th plenary meeting
20 December 1968

B

The General Assembly,

Considering that one of the main purposes of the United Nations is to save mankind from the scourge of war,

Convinced that the armaments race, in particular the nuclear arms race, constitutes a threat to peace,

Believing that it is imperative to exert further efforts towards reaching agreement on general and complete disarmament under effective international control,

14/ See foot-note 7, supra.

Noting with satisfaction the agreement of the Governments of the Union of Soviet Socialist Republics and of the United States of America to enter into bilateral discussions on the limitation and reduction of both offensive strategic nuclear-weapon delivery systems and systems of defence against ballistic missiles,

Having received the report of the Conference of the Eighteen-Nation Committee on Disarmament, 15/ to which are annexed documents presented by the delegations of the eight non-aligned members of the Committee 16/ and by Italy, 17/ Sweden, 18/ the Union of Soviet Socialist Republics, 19/ the United Kingdom of Great Britain and Northern Ireland 20/ and the United States of America, 21/

Noting the memorandum of the Government of the Union of Soviet Socialist Republics dated 1 July 1968 concerning urgent measures to stop the arms race and achieve disarmament 22/ and other proposals for collateral measures which have been submitted at the Conference of the Eighteen-Nation Committee on Disarmament,

Recalling its resolutions 1767 (XVII) of 21 November 1962, 1908 (XVIII) of 27 November 1963, 2031 (XX) of 3 December 1965, 2162 C (XXI) of 5 December 1966 and 2344 (XXII) and 2342 B (XXII) of 19 December 1967,

1. Requests the Conference of the Eighteen-Nation Committee on Disarmament to make renewed efforts towards achieving substantial progress in reaching agreement on the question of general and complete disarmament under effective international control, and urgently to analyse the plans already under consideration and others that might be put forward to see how in particular rapid progress could be made in the field of nuclear disarmament;

...

1750th plenary meeting
20 December 1968

15/ Official Records of the Disarmament Commission, Supplement for 1967 and 1968, document DC/231.

16/ Ibid., annex I, section 10.

17/ Ibid., section 9.

18/ Ibid., section 6.

19/ Ibid., section 3.

20/ Ibid., sections 5, 7 and 8.

21/ Ibid., section 4.

22/ Official Records of the General Assembly, Twenty-third Session, Annexes, agenda items 27, 28, 29, 94 and 96, document A/7134.

/...

RESOLUTION 2597 (XXIV) ADOPTED BY THE GENERAL ASSEMBLY AT ITS
1835TH PLENARY MEETING ON 16 DECEMBER 1969

2597 (XXIV). Respect for human rights in armed conflicts

The General Assembly,

Reaffirming its resolution 2444 (XXIII) of 19 December 1968 by which it recognized, inter alia, the necessity of applying the basic humanitarian principles in all armed conflicts,

Noting with appreciation the report of the Secretary-General, 23/

Noting also the relevant resolutions concerning human rights in armed conflicts adopted at the XXIst International Conference of the Red Cross,

Considering that there has not been time at its twenty-fourth session for consideration of the item entitled "Respect for human rights in armed conflicts",

Recognizing that the study requested in resolution 2444 (XXIII) should be continued with a view to including further data and developments, thus facilitating the presentation of concrete recommendations for the full protection of civilians, prisoners and combatants in all armed conflicts and for the prohibition and limitation of the use of certain methods and means of warfare,

1. Requests the Secretary-General 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;

2. Requests the Secretary-General to consult and co-operate closely with the International Committee of the Red Cross in regard to the studies being undertaken by the Committee on this question;

...

1835th plenary meeting
16 December 1969

RESOLUTION 2602 C (XXIV) ADOPTED BY THE GENERAL ASSEMBLY AT ITS
1836TH PLENARY MEETING ON 16 DECEMBER 1969

2602 C (XXIV). Question of general and complete disarmament

The General Assembly,

Noting with grave concern that among the possible effects of radiological warfare could be the destruction of mankind,

Aware that radiological warfare may be conducted both by maximizing the radioactive effects of nuclear explosions and through the use of radioactive agents independently of nuclear explosions,

1. Invites the Conference of the Committee on Disarmament to consider, without prejudice to existing priorities, effective methods of control against the use of radiological methods of warfare conducted independently of nuclear explosions;

2. Recommends that the Conference of the Committee on Disarmament consider, in the context of nuclear arms control negotiations, the need for effective methods of control of nuclear weapons that maximize radioactive effects;

3. Requests the Conference of the Committee on Disarmament to inform the General Assembly at its twenty-fifth session of the results of its consideration of this subject.

1836th plenary meeting
16 December 1969

RESOLUTION 2603 (XXIV) ADOPTED BY THE GENERAL ASSEMBLY AT ITS
1836TH PLENARY MEETING ON 16 DECEMBER 1969

2603 (XXIV). Question of chemical and bacteriological
(biological) weapons

A

The General Assembly,

Considering that chemical and biological methods of warfare have always been viewed with horror and been justly condemned by the international community,

Considering that these methods of warfare are inherently reprehensible because their effects are often uncontrollable and unpredictable and may be injurious without distinction to combatants and non-combatants, and because any use of such methods would entail a serious risk of escalation,

/...

Recalling that successive international instruments have prohibited or sought to prevent the use of such methods of warfare,

Noting specifically in this regard that:

(a) The majority of States then in existence adhered to the Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare, signed at Geneva on 17 June 1925, 24/

(b) Since then, further States have become parties to that Protocol,

(c) Still other States have declared that they will abide by its principles and objectives,

(d) These principles and objectives have commanded broad respect in the practice of States,

(e) The General Assembly, without any dissenting vote, has called for the strict observance by all States of the principles and objectives of the Geneva Protocol, 25/

Recognizing therefore, in the light of all the above circumstances, that the Geneva Protocol embodies the generally recognized rules of international law prohibiting the use in international armed conflicts of all biological and chemical methods of warfare, regardless of any technical developments,

Mindful of the report of the Secretary-General, prepared with the assistance of the Group of Consultant Experts appointed by him under General Assembly resolution 2454 A (XXIII) of 20 December 1968, and entitled Chemical and Bacteriological (Biological) Weapons and the Effects of Their Possible Use, 26/

Considering that this report and the foreword to it by the Secretary-General add further urgency for an affirmation of these rules and for dispelling, for the future, any uncertainty as to their scope and, by such affirmation, to assure the effectiveness of the rules and to enable all States to demonstrate their determination to comply with them,

Declares as contrary to the generally recognized rules of international law, as embodied in the Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare, signed at Geneva on 17 June 1925, the use in international armed conflicts of:

24/ See foot-note 7, supra.

25/ See resolution 2162 B (XXI) of 5 December 1966, para. 1.

26/ United Nations publication, Sales No.: E.69.I.24.

(a) Any chemical agents of warfare - chemical substances, whether gaseous, liquid or solid - which might be employed because of their direct toxic effects on man, animals or plants;

(b) Any biological agents of warfare - living organisms, whatever their nature, or infective material derived from them - which are intended to cause disease or death in man, animals or plants, and which depend for their effects on their ability to multiply in the person, animal or plant attacked.

1836th plenary meeting
16 December 1969

B

The General Assembly,

Recalling its resolution 2454 A (XXIII) of 20 December 1968,

Having considered the report of the Secretary-General entitled Chemical and Bacteriological (Biological) Weapons and the Effects of Their Possible Use, 26/

Noting the conclusions of the report of the Secretary-General and the recommendations contained in the foreword to the report,

Noting also the discussion of the report of the Secretary-General at the Conference of the Committee on Disarmament and during the twenty-fourth session of the General Assembly,

Mindful of the conclusion of the report that the prospects for general and complete disarmament under effective international control and hence for peace throughout the world would brighten significantly if the development, production and stockpiling of chemical and bacteriological (biological) agents intended for purposes of war were to end and if they were eliminated from all military arsenals,

Recognizing the importance of the Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare, signed at Geneva on 17 June 1925, 27/

Conscious of the need to maintain inviolate the Geneva Protocol and to ensure its universal applicability,

Emphasizing the urgency of the need for achieving the earliest elimination of chemical and bacteriological (biological) weapons,

27/ See foot-note 7, supra.

I

1. Reaffirms its resolution 2162 B (XXI) of 5 December 1966 and calls anew for strict observance by all States of the principles and objectives of the Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare, signed at Geneva on 17 June 1925;

2. Invites all States which have not yet done so to accede to or ratify the Geneva Protocol in the course of 1970 in commemoration of the forty-fifth anniversary of its signing and the twenty-fifth anniversary of the United Nations;

II

1. Welcomes the report of the Secretary-General as an authoritative statement on chemical and bacteriological (biological) weapons and the effects of their possible use, and expresses its appreciation to the Secretary-General and to the consultant experts who assisted him;

2. Requests the Secretary-General to publicize the report in as many languages as is considered desirable and practicable, making use of the facilities of the United Nations Office of Public Information;

3. Recommends to all Governments the wide distribution of the report so as to acquaint public opinion with its contents, and invites the specialized agencies, intergovernmental organizations and national and international non-governmental organizations to use their facilities to make the report widely known;

4. Recommends the report of the Secretary-General to the Conference of the Committee on Disarmament as a basis for its further consideration of the elimination of chemical and bacteriological (biological) weapons;

...

1836th plenary meeting
16 December 1969

RESOLUTION 2660 (XXV) ADOPTED BY THE GENERAL ASSEMBLY AT ITS
1919TH PLENARY MEETING ON 7 DECEMBER 1970

2660 (XXV). Treaty on the Prohibition of the Emplacement
of Nuclear Weapons and Other Weapons of Mass
Destruction on the Sea-Bed and the Ocean
Floor and in the Subsoil Thereof

The General Assembly,

Recalling its resolution 2602 F (XXIV) of 16 December 1969,

/...

Convinced that the prevention of a nuclear arms race on the sea-bed and the ocean floor serves the interests of maintaining world peace, reducing international tensions and strengthening friendly relations among States,

Recognizing the common interest of mankind in the reservation of the sea-bed and the ocean floor exclusively for peaceful purposes,

Having considered the report of the Conference of the Committee on Disarmament, 28/ dated 11 September 1970, and being appreciative of the work of the Conference on the draft Treaty on the Prohibition of the Emplacement of Nuclear Weapons and Other Weapons of Mass Destruction on the Sea-Bed and the Ocean Floor and in the Subsoil Thereof, annexed to the report,

Convinced that this Treaty will further the purposes and principles of the Charter of the United Nations,

1. Commends the Treaty on the Prohibition of the Emplacement of Nuclear Weapons and Other Weapons of Mass Destruction on the Sea-Bed and the Ocean Floor and in the Subsoil Thereof, the text of which is annexed to the present resolution;

2. Requests the depositary Governments to open the Treaty for signature and ratification at the earliest possible date;

3. Expresses the hope for the widest possible adherence to the Treaty.

1919th plenary meeting
7 December 1970

RESOLUTION 2662 (XXV) ADOPTED BY THE GENERAL ASSEMBLY AT ITS
1919TH PLENARY MEETING ON 7 DECEMBER 1970

2662 (XXV). Question of chemical and bacteriological
(biological) weapons

The General Assembly,

Mindful of the increasing concern of the international community over developments in the field of chemical and bacteriological (biological) weapons,

Recalling its resolutions 2454 A (XXIII) of 20 December 1968 and 2603 B (XXIV) of 16 December 1969,

28/ Official Records of the Disarmament Commission, Supplement for 1970,
document DC/233.

Having considered the report of the Conference of the Committee on Disarmament, 29/

Noting the report entitled Chemical and Bacteriological (Biological) Weapons and the Effects of Their Possible Use 30/ prepared by the Secretary-General in accordance with General Assembly resolution 2454 A (XXIII), with the assistance of consultant experts, and the report of the World Health Organization's group of consultants entitled Health Aspects of Chemical and Biological Weapons, 31/

Deeply convinced that the prospects for international peace and security, as well as the achievement of the goal of general and complete disarmament under effective international control, would be enhanced if the development, production and stockpiling of chemical and bacteriological (biological) agents for purposes of war were to end and if those agents were eliminated from all military arsenals,

Conscious of the need to maintain inviolate the Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare, signed at Geneva on 17 June 1925, 32/ and to ensure its universal applicability,

Conscious of the urgent need for all States that have not already done so to accede to the Geneva Protocol,

1. Reaffirms its resolution 2162 B (XXI) of 5 December 1966 and calls anew for the strict observance by all States of the principles and objectives of the Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare, signed at Geneva on 17 June 1925;

2. Invites all States that have not already done so to accede to or ratify the Geneva Protocol;

...

5. Commends the following basic approach, contained in the joint memorandum, for reaching an effective solution to the problem of chemical and bacteriological (biological) methods of warfare:

(a) It is urgent and important to reach agreement on the problem of chemical and bacteriological (biological) methods of warfare;

(b) Both chemical and bacteriological (biological) weapons should continue to be dealt with together in taking steps towards the prohibition of their development, production and stockpiling and their effective elimination from the arsenals of all States;

29/ Ibid.

30/ See foot-note 26, supra.

31/ World Health Organization (Geneva, 1970).

32/ See foot-note 7, supra.

(c) The issue of verification is important in the field of chemical and bacteriological (biological) weapons, and verification should be based on a combination of appropriate national and international measures, which would complement and supplement each other, thereby providing an acceptable system that would ensure the effective implementation of the prohibition;

...

1919th plenary meeting
7 December 1970

RESOLUTION 2826 (XXVI) ADOPTED BY THE GENERAL ASSEMBLY AT ITS
2022ND PLENARY MEETING ON 16 DECEMBER 1971

2826 (XXVI). Convention on the Prohibition of the Development,
Production and Stockpiling of Bacteriological
(Biological) and Toxin Weapons and on Their
Destruction

The General Assembly,

Recalling its resolution 2662 (XXV) of 7 December 1970,

Convinced of the importance and urgency of eliminating from the arsenals of States, through effective measures, such dangerous weapons of mass destruction as those using chemical or bacteriological (biological) agents,

Having considered the report of the Conference of the Committee on Disarmament dated 6 October 1971, 33/ and being appreciative of its work on the draft Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction, annexed to the report,

Recognizing the important significance of the Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare, signed at Geneva on 17 June 1925, 34/ and conscious also of the contribution which the said Protocol has already made, and continues to make, to mitigating the horrors of war,

Noting that the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction provides for the parties to reaffirm their adherence to the principles and objectives of that Protocol and to call upon all States to comply strictly with them,

33/ Official Records of the Disarmament Commission, Supplement for 1971, document DC/234.

34/ See foot-note 7, supra.

/...

Further noting that nothing in the Convention shall be interpreted as in any way limiting or detracting from the obligations assumed by any State under the Geneva Protocol,

Determined, for the sake of all mankind, to exclude completely the possibility of bacteriological (biological) agents and toxins being used as weapons,

Recognizing that an agreement on the prohibition of bacteriological (biological) and toxin weapons represents a first possible step towards the achievement of agreement on effective measures also for the prohibition of the development, production and stockpiling of chemical weapons,

Noting that the Convention contains an affirmation of the recognized objective of effective prohibition of chemical weapons and, to this end, an undertaking to continue negotiations in good faith with a view to reaching early agreement on effective measures for the prohibition of their development, production and stockpiling and for their destruction, and on appropriate measures concerning equipment and means of delivery specifically designed for the production or use of chemical agents for weapons purposes,

Convinced that the implementation of measures in the field of disarmament should release substantial additional resources, which should promote economic and social development, particularly in the developing countries,

Convinced that the Convention will contribute to the realization of the purposes and principles of the Charter of the United Nations,

1. Commends the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction, the text of which is annexed to the present resolution;

2. Requests the depositary Governments to open the Convention for signature and ratification at the earliest possible date;

3. Expresses the hope for the widest possible adherence to the Convention.

2022nd plenary meeting
16 December 1971

RESOLUTION 2827 A (XXVI) ADOPTED BY THE GENERAL ASSEMBLY AT ITS
2022ND PLENARY MEETING ON 16 DECEMBER 1971

2827 (XXVI). Question of chemical and bacteriological
(biological) weapons

A

The General Assembly,

Recalling its resolution 2454 A (XXIII) of 20 December 1968, its resolution 2603 B (XXIV) of 16 December 1969, and in particular its resolution 2662 (XXV) of 7 December 1970 in which it stressed that the prospects for international peace and security, as well as the achievement of the goal of general and complete disarmament under effective international control, would be enhanced if the development, production and stockpiling of chemical and bacteriological (biological) agents for purposes of war were to end and if those agents were eliminated from all military arsenals, and commended the following basic approach for reaching an effective solution to the problem of chemical and bacteriological (biological) methods of warfare:

(a) It is urgent and important to reach agreement on the problem of chemical and bacteriological (biological) methods of warfare,

(b) Both chemical and bacteriological (biological) weapons should continue to be dealt with together in taking steps towards the prohibition of their development, production and stockpiling and their effective elimination from the arsenals of all States,

(c) The issue of verification is important in the field of chemical and bacteriological (biological) weapons, and verification should be based on a combination of appropriate national and international measures, which would complement and supplement each other, thereby providing an acceptable system that would ensure the effective implementation of the prohibition,

Convinced of the importance and urgency of eliminating from the arsenals of States, through effective measures, such dangerous weapons of mass destruction as those using chemical or bacteriological (biological) agents,

Having considered the report of the Conference of the Committee on Disarmament, 35/ in particular its work on the draft Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction and its efforts towards reaching early agreement also on the elimination of chemical weapons,

35/ See foot-note 33, supra.

Convinced that the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction is a first possible step towards the achievement of early agreement on the effective prohibition of the development, production and stockpiling of chemical weapons and on the elimination of such weapons from military arsenals of all States, and determined to continue negotiations to this end,

Recalling that the General Assembly has repeatedly condemned all actions contrary to the principles and objectives of the Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare, signed at Geneva on 17 June 1925, 36/

Noting that the Convention provides for the parties to reaffirm their adherence to the principles and objectives of that Protocol and to call upon all States to comply strictly with them,

1. Notes with satisfaction that the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction contains an affirmation of the recognized objective of effective prohibition of chemical weapons and, to this end, an undertaking to continue negotiations in good faith with a view to reaching early agreement on effective measures for the prohibition of their development, production and stockpiling and for their destruction, and on appropriate measures concerning equipment and means of delivery specifically designed for the production or use of chemical agents for weapons purposes;

...

5. Reaffirms its resolution 2162 B (XXI) of 5 December 1966 and calls anew for the strict observance by all States of the principles and objectives of the Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare;

6. Invites all States that have not already done so to accede to or ratify the Protocol;

...

2022nd plenary meeting
16 December 1971

36/ See foot-note 7, supra.

RESOLUTION 2852 (XXVI) ADOPTED BY THE GENERAL ASSEMBLY AT ITS
2027TH PLENARY MEETING ON 20 DECEMBER 1971

2852 (XXVI). Respect for human rights in armed conflicts

The General Assembly,

Reaffirming its determination to continue all efforts to eliminate the threat or use of force in international relations, in conformity with the Charter of the United Nations, and to bring about general and complete disarmament under effective international control, and reaffirming its desire to secure full observance of human rights applicable in all armed conflicts pending the earliest possible termination of such conflicts,

Reaffirming 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 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,

Recalling the successive resolutions that have been adopted by the United Nations relating to human rights in armed conflicts, in particular General Assembly resolutions 2652 (XXV) of 3 December 1970, 2674 (XXV) and 2678 (XXV) of 9 December 1970 and 2707 (XXV) of 14 December 1970, and taking into account relevant resolutions of international conferences of the Red Cross,

Deeply concerned over the terrible suffering that armed conflicts continue to inflict upon combatants and civilians, particularly through the use of cruel means and methods of warfare and through inadequate restraints in defining military objectives,

Desiring to ensure the effective application of all existing rules relating to human rights in armed conflicts, as well as the development of these rules, and aware that progress in this regard will depend upon the political readiness and willingness of Member States,

Conscious that, although negotiations are going on in the field of disarmament concerning general and complete disarmament and the limitation and elimination of nuclear, biological and chemical weapons, those deliberations do not deal with the question of prohibiting or restricting the use of other methods of warfare that are cruel, such as napalm, or that indiscriminately affect civilians and combatants,

Noting the comments by Governments 37/ on the reports of the Secretary-General on respect for human rights in armed conflicts, 38/

37/ A/8313 and Add.1-3.

38/ A/7720 and A/8052.

Noting with appreciation the report of the Secretary-General 39/ on the comprehensive discussions undertaken at the first session of the Conference of Government Experts on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts, which was held at Geneva from 24 May to 12 June 1971 at the invitation of the International Committee of the Red Cross,

Having taken cognizance of the report prepared by the International Committee of the Red Cross on the work of the Conference of Government Experts, 40/

Welcoming the decision of the International Committee of the Red Cross 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 41/ and to circulate in advance of that session a series of draft protocols,

Stressing the importance of further close co-operation between the United Nations and the International Committee of the Red Cross,

Determined to continue its efforts to achieve better application of existing rules relating to armed conflicts, as well as the reaffirmation and development of these rules,

1. Calls again upon all parties to any armed conflict to observe the rules laid down in the Hague Conventions of 1899 and 1907, 42/ the Geneva Protocol of 1925, 43/ the Geneva Conventions of 1949 and other humanitarian rules applicable in armed conflicts, and invites those States which have not yet done so to adhere to those instruments;

2. Reaffirms that persons participating in resistance movements and freedom fighters in southern Africa and in territories under colonial and alien domination and foreign occupation who are 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 and the Geneva Conventions of 1949;

3. Invites the International Committee of the Red Cross to continue the work that was begun with the assistance of government experts in 1971 and, taking into account all relevant United Nations resolutions on human rights in armed conflicts, to devote special attention, among the questions to be taken up, to the following:

(a) The need to ensure better application of existing rules relating to armed conflicts, particularly the Hague Conventions of 1899 and 1907, the Geneva

39/ A/8370, and Add.1.

40/ 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).

41/ See foot-note 13, supra.

42/ See foot-note 11, supra.

Protocol of 1925 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, and also 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 guerrilla warfare;

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

...

2027th plenary meeting
20 December 1971

RESOLUTION 2853 (XXVI) ADOPTED BY THE GENERAL ASSEMBLY AT ITS
2027TH PLENARY MEETING ON 20 DECEMBER 1971

2853 (XXVI). Respect for human rights in armed conflicts

The General Assembly,

Recalling its resolutions 2674 (XXV), 2675 (XXV), 2676 (XXV) and 2677 (XXV) of 9 December 1970,

Noting also that the twenty-first International Conference of the Red Cross, held at Istanbul in 1969, adopted resolution XIII concerning the reaffirmation and development of the laws and customs applicable in armed conflicts, 44/

Noting with appreciation the report of the Secretary-General on respect for human rights in armed conflicts, 45/ concerning in particular the results of the first session of the Conference of Government Experts on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts, which was held at Geneva from 24 May to 12 June 1971 at the invitation of the International Committee of the Red Cross, as well as the report of the International Committee on the work of the Conference, 46/

44/ See A/7720, annex I, sect. D.

45/ A/8370 and Add.1.

46/ Op. cit., foot-note 40, supra.

/...

Emphasizing that effective protection for human rights in situations of armed conflict depends primarily on universal respect for humanitarian rules,

Recognizing that existing humanitarian rules relating to armed conflicts do not in all respects meet the need of contemporary situations and that it is therefore necessary to strengthen the procedure for implementing these rules and to develop their substance,

Welcoming the decision of the International Committee of the Red Cross to convene a second session of the Conference of Government Experts with the task of reaching agreement on the wording of various texts to facilitate discussion at a future diplomatic conference, and noting that all States parties to the Geneva Conventions of 1949 47/ have been invited to participate,

Affirming that the successful development of humanitarian rules applicable in armed conflicts requires the negotiation of instruments which can be effectively implemented and which command the widest possible support,

Emphasizing the importance of continued close collaboration between the United Nations and the International Committee of the Red Cross,

1. Reiterates its call upon all parties to any armed conflict to observe the rules laid down in the Hague Conventions of 1899 and 1907, 48/ the Geneva Protocol of 1925, 49/ the Geneva Conventions of 1949 and other humanitarian rules applicable in armed conflicts, and invites those States which have not yet done so to adhere to those instruments;

2. Welcomes the progress made by the Conference of Government Experts on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts, as shown in its report, with regard to the following questions:

- (a) Protection of the wounded and the sick;
- (b) Protection of victims of non-international armed conflicts;
- (c) Rules applicable in guerrilla warfare;
- (d) Protection of civilian population against dangers of hostilities;
- (e) Strengthening of the guarantees afforded by international humanitarian law for non-military civil defence organizations;
- (f) Rules relative to the behaviour of combatants;

47/ See foot-note 13, supra.

48/ See foot-note 11, supra.

49/ See foot-note 7, supra.

(g) Measures intended to reinforce the implementation, in armed conflicts, of existing international humanitarian law;

3. Expresses the hope that the second session of the Conference of Government Experts will make recommendations for the further development of international humanitarian law in this field, including, as appropriate, draft protocols to the Geneva Conventions of 1949, for subsequent consideration at one or more plenipotentiary diplomatic conferences;

4. Calls upon States parties to the existing international instruments to review, as a matter of priority, any reservations they may have made to those instruments;

...

2027th plenary meeting
20 December 1971

RESOLUTION 2932 A (XXVII) ADOPTED BY THE GENERAL ASSEMBLY AT ITS
2093RD PLENARY MEETING ON 29 NOVEMBER 1972

2932 (XXVII). General and complete disarmament

A

The General Assembly,

Conscious that all armed conflicts and the use of any weapons bring suffering and that the only effective means of eliminating this suffering is through the elimination of armed conflicts and through general and complete disarmament,

Recalling the general rules of international law that the use of weapons that cause unnecessary suffering is especially forbidden and that only military targets are legitimate objects of attack,

Convinced that the widespread use of many weapons and the emergence of new methods of warfare that cause unnecessary suffering or are indiscriminate call urgently for renewed efforts by Governments to seek, through legal means, the prohibition of the use of such weapons and of indiscriminate and cruel methods of warfare and, if possible, through measures of disarmament, the elimination of specific, especially cruel or indiscriminate weapons,

Conscious that incendiary weapons have always constituted a category of arms viewed with horror and that the International Conference on Human Rights, held at Teheran in 1968, in its resolution XXIII on human rights in armed conflicts 50/ considered napalm bombing to be among the methods and means that erode human rights,

50/ See foot-note 10, supra.

/...

Noting that complete proposals for both elimination and non-use of incendiary weapons were advanced at the disarmament negotiations in 1933 and that proposals have recently been made to prohibit or restrict their use,

Recalling that the Secretary-General, in his reports on human rights in armed conflicts of 20 November 1969 and 18 September 1970, stated the view that the legality or otherwise of the use of napalm would seem to be a question calling for study that might eventually be resolved in an international document that would clarify the situation, 51/

Recalling further that, in response to an express suggestion made by the Secretary-General 52/ in his report of 18 September 1970, the General Assembly, by paragraph 5 of resolution 2852 (XXVI) of 20 December 1971, requested him to prepare as soon as possible, with the help of qualified governmental consultant experts, a report on napalm and other incendiary weapons and all aspects of their possible use,

Noting that the report of the Secretary-General entitled Mapalm and Other Incendiary Weapons and All Aspects of Their Possible Use 53/ concludes that the massive spread of fire through incendiary weapons is largely indiscriminate in its effects on military and civilian targets, 54/

Noting further the conclusion that burn injuries, whether sustained directly from the action of incendiaries or as a result of fires initiated by them, are intensely painful and require exceptional resources for their medical treatment that are far beyond the reach of most countries, 55/

Noting finally the conclusion that the rapid increase in the military use of these weapons is but one aspect of the more general phenomenon of the increasing mobilization of science and technology for purposes of total war, alongside which the long-upheld principle of the immunity of the non-combatant appears to be receding from the military consciousness, and that these trends have grave implications for the world community, 56/

51/ A/7720, para. 200; A/8052, para. 125.

52/ A/8052, para. 126.

53/ A/8803/Rev.1 (United Nations publication, Sales No.: E.73.I.3).

54/ Ibid., para. 186.

55/ Ibid., para. 187.

56/ Ibid., para. 190.

1. Welcomes the report of the Secretary-General entitled Napalm and Other Incendiary Weapons and All Aspects of Their Possible Use and expresses appreciation to him for having submitted it without delay;
2. Takes note of the views expressed in the report regarding the use, production, development and stockpiling of napalm and other incendiary weapons;
3. Deplores the use of napalm and other incendiary weapons in all armed conflicts;
4. Commends the report to the attention of all Governments and peoples;
5. Requests the Secretary-General to publish the report for wide circulation;
6. Requests the Secretary-General to circulate the report to the Governments of Member States for their comments and to report on these comments to the General Assembly at its twenty-eighth session.

2093rd plenary meeting
29 November 1972

RESOLUTION 2933 (XXVII) ADOPTED BY THE GENERAL ASSEMBLY AT ITS
2093RD PLENARY MEETING ON 29 NOVEMBER 1972

2933 (XXVII). Chemical and bacteriological (biological) weapons

The General Assembly,

Reaffirming its resolutions 2454 A (XXIII) of 20 December 1968, 2603 B (XXIV) of 16 December 1969, 2662 (XXV) of 7 December 1970 and 2827 A (XXVI) of 16 December 1971,

Expressing its determination to act with a view to achieving effective progress towards general and complete disarmament, including the prohibition and elimination of all types of weapons of mass destruction such as those using chemical or bacteriological (biological) agents,

Noting that the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction 57/ has been opened for signature and has already been signed by a large number of States,

Convinced that the Convention is a first possible step towards the achievement of early agreement on the effective prohibition of the development, production and stockpiling of chemical weapons and on the elimination of such weapons from military arsenals of all States, and determined to continue negotiations to this end,

57/ See resolution 2826 (XXVI), annex.

Recalling the provisions of article IX of that Convention,

Recalling that the General Assembly has repeatedly condemned all actions contrary to the principles and objectives of the Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare, signed at Geneva on 17 June 1925, 58/

Reaffirming the need for the strict observance by all States of the principles and objectives of that Protocol,

Having considered the report of the Conference of the Committee on Disarmament, 59/

Noting that a work programme, a draft convention on the prohibition of the development, production and stockpiling of chemical weapons and on their destruction, and other working papers, proposals and suggestions were submitted to the Conference of the Committee on Disarmament,

Conscious of the benefits to mankind that would result from the prohibition of the development, production and stockpiling of chemical weapons,

Desiring to create a favourable atmosphere for a successful outcome of these negotiations,

1. Reaffirms the recognized objective of effective prohibition of chemical weapons;

2. Reiterates, to this end, the request made by the General Assembly to the Conference of the Committee on Disarmament, in resolution 2827 A (XXVI), to continue negotiations, as a matter of high priority, with a view to reaching early agreement on effective measures for the prohibition of the development, production and stockpiling of chemical weapons and for their destruction;

3. Stresses the importance of working towards the complete realization of the objective of effective prohibition of chemical weapons as set forth in the present resolution and urges Governments to work towards that end;

4. Reaffirms its hope for the widest possible adherence to the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction;

5. Invites all States that have not yet done so to accede to the Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare of 17 June 1925 and/or ratify this

58/ See foot-note 7, supra.

59/ Official Records of the Disarmament Commission, Supplement for 1972, document DC/235.

Protocol, and calls anew for the strict observance by all States of the principles and objectives contained therein;

...

2093rd plenary meeting
29 November 1972

RESOLUTION 2935 (XXVII) ADOPTED BY THE GENERAL ASSEMBLY AT ITS
2093RD PLENARY MEETING ON 29 NOVEMBER 1972

2935 (XXVII). Implementation of General Assembly resolution 2830 (XXVI) concerning the signature and ratification of Additional Protocol II of the Treaty for the Prohibition of Nuclear Weapons in Latin America (Treaty of Tlatelolco)

The General Assembly,

Recalling its resolutions 1911 (XVIII) of 27 November 1963, 2286 (XXII) of 5 December 1967, 2456 B (XXIII) of 20 December 1968, 2666 (XXV) of 7 December 1970 and 2830 (XXVI) of 16 December 1971,

Recalling in particular that in four of those resolutions it addressed appeals to the nuclear-weapon States to sign and ratify Additional Protocol II of the Treaty for the Prohibition of Nuclear Weapons in Latin America (Treaty of Tlatelolco) as soon as possible,

Having taken note of the fact that the Government of the People's Republic of China, on 14 November 1972, made the following solemn declaration:

"The Chinese Government has repeatedly declared that at no time and in no circumstances will China be the first to use nuclear weapons. As a specific undertaking regarding the nuclear-weapon-free zone in Latin America, I now declare solemnly on behalf of the Chinese Government: China will never use or threaten to use nuclear weapons against non-nuclear Latin American countries and the Latin American nuclear-weapon-free zone, nor will China test, manufacture, produce, stockpile, install or deploy nuclear weapons in these countries or in this zone, or send her means of transportation and delivery carrying nuclear weapons to traverse the territory, territorial sea and territorial air space of Latin American countries.", 60/

60/ Statement by the Minister for Foreign Affairs of the People's Republic of China. See A/C.1/1028.

/...

1. Reaffirms its conviction that, for the maximum effectiveness of any treaty establishing a nuclear-weapon-free zone, the co-operation of the nuclear-weapon States is necessary and that such co-operation should take the form of commitments likewise undertaken in a formal international instrument which is legally binding, such as a treaty, convention or protocol;
2. Recalls with particular satisfaction that the United Kingdom of Great Britain and Northern Ireland and the United States of America became parties to Additional Protocol II of the Treaty for the Prohibition of Nuclear Weapons in Latin America (Treaty of Tlatelolco) in 1969 and 1971, respectively;
3. Welcomes also with satisfaction, as a preliminary measure, the solemn declaration made by the Government of the People's Republic of China on 14 November 1972, by which it entered into obligations similar to those implicit in Additional Protocol II of the Treaty for States parties thereto, and invites the Government of China to try to find procedures that will enable it to accede to the Protocol as soon as possible;
4. Deplores that the other two nuclear-weapon States have not yet heeded the urgent appeals which the General Assembly has made in four different resolutions and urges them once again to sign and ratify without further delay Additional Protocol II of the Treaty;
5. Decides to include in the provisional agenda of its twenty-eighth session an item entitled "Implementation of General Assembly resolution 2935 (XXVII) concerning the signature and ratification of Additional Protocol II of the Treaty for the Prohibition of Nuclear Weapons in Latin America (Treaty of Tlatelolco)";
6. Requests the Secretary-General to transmit the present resolution to the nuclear-weapon States and to inform the General Assembly at its twenty-eighth session of any measure adopted by them in order to implement it.

2093rd plenary meeting
29 November 1972

RESOLUTION 2936 (XXVII) ADOPTED BY THE GENERAL ASSEMBLY AT ITS
2093RD PLENARY MEETING ON 29 NOVEMBER 1972

2936 (XXVII). Non-use of force in international relations and permanent prohibition of the use of nuclear weapons

The General Assembly,

Noting that renunciation of the use or threat of force as proclaimed in the Charter of the United Nations and reaffirmed in the Declaration on the Strengthening of International Security, contained in General Assembly resolution 2734 (XXV) of 16 December 1970, and the Declaration on Principles

of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, contained in Assembly resolution 2625 (XXV) of 24 October 1970, is an obligation that all States should respect,

Noting with concern that the use of force in various forms is still occurring in violation of the Charter,

Bearing in mind that the threat of the use of nuclear weapons continues to exist,

Guided by the desire of all peoples to eliminate war and above all to prevent a nuclear disaster,

Reaffirming, in accordance with Article 51 of the Charter, the inalienable right of States to self-defence against armed attack,

Mindful of the principle of the inadmissibility of acquisition of territory by force and the inherent right of States to recover such territories by all the means at their disposal,

Reaffirming its recognition of the legitimacy of the struggle of colonial peoples for their freedom by all appropriate means at their disposal,

Recalling the Declaration on the Prohibition of the Use of Nuclear and Thermonuclear Weapons, contained in General Assembly resolution 1653 (XVI) of 24 November 1961,

Recalling further its resolution 2160 (XXI) of 30 November 1966 on the strict observance of the prohibition of the threat or use of force in international relations, and of the right of peoples to self-determination,

Believing that renunciation of the use or threat of force and prohibition of the use of nuclear weapons should be fully observed as a law of international life,

1. Solemnly declares, on behalf of the States Members of the Organization, their renunciation of the use or threat of force in all its forms and manifestations in international relations, in accordance with the Charter of the United Nations, and the permanent prohibition of the use of nuclear weapons;

2. Recommends that the Security Council should take, as soon as possible, appropriate measures for the full implementation of the present declaration of the General Assembly.

2093rd plenary meeting
29 November 1972

/...

RESOLUTION 3032 (XXVII) ADOPTED BY THE GENERAL ASSEMBLY AT ITS
2114TH PLENARY MEETING ON 18 DECEMBER 1972

3032 (XXVII). Respect for human rights in armed conflicts

The General Assembly,

Conscious that only complete respect for the Charter of the United Nations and general and complete disarmament under effective international control can bring about full guarantees against armed conflicts and the suffering caused by such conflicts, and determined to continue all efforts to these ends,

Conscious that the development of many weapons and methods of warfare has made modern armed conflicts increasingly cruel and destructive of civilian lives and property,

Reaffirming the urgent need to ensure full and effective application of existing legal rules relating to armed conflicts and to supplement these rules by new ones in order to take into account the modern developments in methods and means of warfare,

Noting with concern that the existing legal rules and obligations relating to human rights in armed conflicts are frequently being disregarded,

Recalling the successive resolutions adopted by the United Nations relating to human rights in armed conflicts, in particular General Assembly resolutions 2852 (XXVI) and 2853 (XXVI) of 20 December 1971, and resolution XIII adopted by the twenty-first International Conference of the Red Cross, held at Istanbul in 1969, 61/ concerning the reaffirmation and development of the laws and customs applicable in armed conflicts,

Noting with appreciation the report of the Secretary-General 62/ on the results of the second session of the Conference of Government Experts on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts, which was held at Geneva from 3 May to 3 June 1972 at the invitation of the International Committee of the Red Cross,

Having taken cognizance of the report prepared by the International Committee of the Red Cross on the work of the Conference of Government Experts, 63/

Expressing appreciation to the International Committee of the Red Cross for its dedicated efforts to promote the reaffirmation and development of international humanitarian law applicable in armed conflicts,

61/ See A/7720, annex I, sect. D.

62/ A/8781 and Corr.1.

63/ Report on the Work of the Conference (Geneva, July 1972).

Emphasizing the importance of continued close collaboration between the United Nations and the International Committee of the Red Cross,

Welcoming the progress achieved at the second session of the Conference of Government Experts,

Noting with concern, nevertheless, that agreement has not emerged among government experts on drafts concerning a number of fundamental issues, such as:

- (a) Methods to ensure a better application of existing rules relating to armed conflicts,
- (b) Definitions of military objectives and protected objects, in order to counter the tendency in armed conflicts to regard ever growing categories of objects as permissible targets for attack,
- (c) Definitions of protected persons and combatants, responsive to the need for improved protection of civilians and of combatants in modern armed conflicts,
- (d) The question of guerrilla warfare,
- (e) Prohibition of the use of weapons and methods of warfare which indiscriminately affect civilians and combatants,
- (f) Prohibition or restriction of the use of specific weapons which are deemed to cause unnecessary suffering,
- (g) Rules facilitating humanitarian relief in armed conflicts,
- (h) Definition of those armed conflicts of a non-international character which should be subject to rules additional to those contained in the Geneva Conventions of 1949, 64/

Considering that substantial progress on fundamental issues such as those enumerated above is indispensable if the efforts to supplement international humanitarian law by new rules are to become significant for the alleviation of the suffering brought about by modern armed conflicts,

Welcoming the readiness of the Swiss Federal Council, as communicated to the Secretary-General, to convoke a diplomatic conference on the reaffirmation and development of international humanitarian law applicable in armed conflicts,

Believing that the further preparations for that conference as well as its organization must be such that substantial progress is achieved on fundamental issues which are as yet unresolved,

64/ See foot-note 13, supra.

Expressing its appreciation to the International Committee of the Red Cross for undertaking a series of consultations to ensure the complete preparation for the conference,

1. Urges all Governments and invites the International Committee of the Red Cross to continue to seek through consultations to achieve a rapprochement in the positions of Governments to ensure that the diplomatic conference envisaged will adopt rules which will mark substantial progress on fundamental legal issues connected with modern armed conflicts and which will contribute significantly to the alleviation of the suffering brought about by such conflicts;

2. Calls upon all parties to armed conflicts to observe the international humanitarian rules which are applicable, in particular the Hague Conventions of 1899 and 1907, 65/ the Geneva Protocol of 1925 66/ and the Geneva Conventions of 1949, and, to this end, to provide instruction concerning these rules to their armed forces, and information concerning the same rules to the civilian population;

...

2114th plenary meeting
18 December 1972

65/ See foot-note 11, supra.

66/ See foot-note 7, supra.

ANNEX II

DRAFT ADDITIONAL PROTOCOLS TO THE GENEVA CONVENTIONS OF 12 AUGUST 1949,
PREPARED BY THE INTERNATIONAL COMMITTEE OF THE RED CROSS 1/

1. Draft Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of international armed conflicts

PART III

METHODS AND MEANS OF COMBAT

PRISONER-OF-WAR STATUS

SECTION I

METHODS AND MEANS OF COMBAT

Article 33. - Prohibition of unnecessary injury

1. The right of Parties to the conflict and of members of their armed forces to adopt methods and means of combat is not unlimited.

2. It is forbidden to employ weapons, projectiles, substances, methods and means which uselessly aggravate the sufferings of disabled adversaries or render their death inevitable in all circumstances.

Article 34. - New weapons

In the study and development of new weapons or methods of warfare, the High Contracting Parties shall determine whether their use will cause unnecessary injury.

Article 35. - Prohibition of perfidy

1. It is forbidden to kill, injure or capture an adversary by resort to perfidy. Acts inviting the confidence of the adversary with intent to betray that confidence are deemed to constitute perfidy. Such acts, when carried out in order to commit or resume hostilities, include the following:

(a) the feigning of a situation of distress, notably through the misuse of an internationally recognized protective sign;

(b) the feigning of a cease-fire, of a humanitarian negotiation or of a surrender;

1/ International Committee of the Red Cross publication, Geneva, June 1973. The draft Additional Protocols were prepared with the aim of providing an adequate basis for discussion at the forthcoming Diplomatic Conference; they will also be submitted to the XXIInd International Conference of the Red Cross to be held at Teheran in November 1973.

(c) the disguising of combatants in civilian clothing.

2. On the other hand, those acts which, without inviting the confidence of the adversary, are intended to mislead him or to induce him to act recklessly, such as camouflage, traps, mock operations and misinformation, are ruses of war and are lawful.

...

PART IV

CIVILIAN POPULATION

SECTION I

GENERAL PROTECTION AGAINST EFFECTS OF HOSTILITIES

Chapter I

Basic rule and field of application

Article 43. - Basic rule

In order to ensure respect for the civilian population, the Parties to the conflict shall confine their operations to the destruction or weakening of the military resources of the adversary and shall make a distinction between the civilian population and combatants, and between civilian objects and military objectives.

Article 44. - Field of application

1. The provisions contained in the present Section apply to any land, air or sea warfare which may affect the civilian population, individual civilians and civilian objects on land.

2. These provisions apply to acts of violence committed against the adversary, whether in defence or offence. Such acts are referred to hereafter as "attacks".

3. These provisions are complementary to such other international rules relating to the protection of civilians and civilian objects against effects resulting from hostilities as may be binding upon the High Contracting Parties, in particular to Part II of the Fourth Convention.

/...

Chapter II

Civilians and civilian population

Article 45. - Definition of civilians and civilian population

1. Any person who does not belong to one of the categories of armed forces referred to in Article 4 (A) (1), (2), (3) and (6) of the Third Convention and in Article 42 2/ is considered to be a civilian.

2. The civilian population comprises all persons who are civilians.

3. The presence, within the civilian population, of individuals who do not fall within the definition of civilians does not deprive the population of its civilian character.

4. In case of doubt as to whether any person is a civilian, he or she shall be presumed to be so.

Article 46. - Protection of the civilian population

1. The civilian population as such, as well as individual civilians, shall not be made the object of attack. In particular, methods intended to spread terror among the civilian population are prohibited.

2. Civilians shall enjoy the protection afforded by this Article unless and for such time they take a direct part in hostilities.

3. The employment of means of combat, and any methods which strike or affect indiscriminately the civilian population and combatants, or civilian objects and military objectives, are prohibited. In particular it is forbidden:

(a) to attack without distinction, as one single objective, by bombardment or any other method, a zone containing several military objectives, which are situated in populated areas, and are at some distance from each other;

(b) to launch attacks which may be expected to entail incidental losses among the civilian population and cause the destruction of civilian objects to an extent disproportionate to the direct and substantial military advantage anticipated.

4. Attacks against the civilian population or civilians by way of reprisals are prohibited.

5. The presence or movements of the civilian population or individual civilians shall not be used for military purposes, in particular in attempts to

2/ Article 42 concerns a "new category of prisoners of war".

shield military objectives from attacks or to shield, favour or impede military operations. If a Party to the conflict, in violation of the foregoing provision, uses civilians with the aim of shielding military objectives from attack, the other Party to the conflict shall take the precautionary measures provided for in Article 50.

Chapter III

Civilian objects

Article 47. - General protection of civilian objects

1. Attacks shall be strictly limited to military objectives, namely, to those objectives which are, by their nature, purpose or use, recognized to be of military interest and whose total or partial destruction, in the circumstances ruling at the time, offers a distinct and substantial military advantage.

2. Consequently, objects designed for civilian use, such as houses, dwellings, installations and means of transport, and all objects which are not military objectives, shall not be made the object of attack, except if they are used mainly in support of the military effort.

Article 48. - Objects indispensable to the survival of the civilian population

It is forbidden to attack or destroy objects indispensable to the survival of the civilian population, namely, food-stuffs and food-producing areas, crops, livestock, drinking water supplies and irrigation works, whether it is to starve out civilians, to cause them to move away or for any other reason. These objects shall not be made the object of reprisals.

Article 49. - Works and installations containing dangerous forces

1. It is forbidden to attack or destroy works or installations containing dangerous forces, namely, dams, dykes and nuclear generating stations. These objects shall not be made the object of reprisals.

2. The Parties to the conflict shall endeavour to avoid locating any military objectives in the immediate vicinity of the objects mentioned in paragraph 1.

3. In order to facilitate their identification, the Parties to the conflict may mark works and installations containing dangerous forces with a special sign consisting of two oblique red bands on a white ground. Absence of such **marking** in no way relieves a Party from its obligations under paragraphs 1 and 2 of this Article.

Chapter IV

Precautionary measures

Article 50. - Precautions in attack

1. Constant care shall be taken, when conducting military operations, to spare the civilian population, civilians and civilian objects. In the planning, deciding or launching of an attack the following precautions shall be taken:

(a) Proposal I

those who plan or decide upon an attack shall ensure that the objectives to be attacked are duly identified as military objectives within the meaning of paragraph 1 of Article 47 and may be attacked without incidental losses in civilian lives and damage to civilian objects in their vicinity being caused or that at all events those losses or damage are not disproportionate to the direct and substantial military advantage anticipated;

Proposal II

those who plan or decide upon an attack shall take all reasonable steps to ensure ...

(b) those who launch an attack shall, if possible, cancel or suspend it if it becomes apparent that the objective is not a military one or that incidental losses in civilian lives and damage to civilian objects would be disproportionate to the direct and substantial advantage anticipated;

(c) whenever circumstances so permit, advance warning shall be given of attacks which may affect the civilian population. Such warnings do not, however, in any way limit the scope of the obligations laid down in the preceding paragraphs.

2. All necessary precautions shall be taken in the choice of weapons and methods of attack so as not to cause losses in civilian lives and damage to civilian objects in the immediate vicinity of military objectives to be attacked.

3. When a choice is possible between several objectives, for obtaining a similar military advantage, the objective to be selected shall be that which will occasion the least danger to civilian lives and to civilian objects.

Article 51. - Precautions against the effects of attacks

1. The Parties to the conflict shall, to the maximum extent feasible, take the necessary precautions to protect the civilian population, individual civilians and civilian objects under their authority against the dangers resulting from military operations.

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2. They shall endeavour to remove them from the proximity of military objectives, subject to Article 49 of the Fourth Convention or to avoid that any military objectives be kept within or near densely populated areas.

Chapter V

Localities under special protection

Article 52. - Non-defended localities

1. It is forbidden for the Parties to the conflict to attack, by any means whatsoever, non-defended localities.

2. To facilitate the observance of this rule, the Parties to the conflict may declare as a non-defended locality any inhabited place near or in a zone where armed forces are in contact. Armed forces and all other combatants, as well as mobile weapons and mobile military equipment, must have been evacuated from that locality; no hostile use shall be made of fixed military installations or establishments; no acts of warfare shall be committed by the authorities or the population.

3. Except where a Party to the conflict replies to such a declaration addressed to it by an express refusal, it is presumed as having accepted to abide by it.

4. The Parties to the conflict may also agree on the creation of non-defended localities. Such an agreement may be concluded either directly, or through a Protecting Power or any impartial humanitarian body. The agreement shall demarcate the non-defended locality and, should the need arise, lay down the methods of supervision.

5. The presence, in these localities, of military medical personnel, civil defence personnel, civilian police forces, wounded and sick military personnel, as well as military chaplains, is not contrary to the conditions stipulated in paragraph 2.

6. The Party in whose power these localities lie shall mark them, so far as possible, by means of signs consisting of two oblique red bands on a white ground displayed where they are clearly visible, especially on their perimeter and on highways.

7. A locality will lose its status of non-defended locality if it no longer fulfils the conditions stipulated in paragraph 2 or when it is occupied militarily.

Article 53. - Neutralized localities

1. It is forbidden for the Parties to the conflict to extend their military operations to localities on which they have conferred by agreement the status of neutralized localities.

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2. This shall be an express agreement, which may be concluded verbally or in writing, either directly or through a Protecting Power or any impartial humanitarian body, and may consist of reciprocal and concordant declarations. It shall demarcate the neutralized locality and lay down the methods of supervision.

3. The subject of such an agreement may be any inhabited place situated outside a zone where armed forces are in contact. Armed forces and all other combatants, as well as mobile weapons and mobile military equipment, must have been evacuated from that locality; no hostile use shall be made of fixed military installations or establishments; no acts of warfare shall be committed by the authorities or the population; any activity linked to the military effort must have ceased.

4. The presence, in these localities, of military medical personnel, civil defence personnel, civilian police forces, wounded and sick military personnel, as well as military chaplains, is not contrary to the conditions stipulated in paragraph 3.

5. The Party in whose power these localities lie shall mark them by means of signs consisting of two oblique red bands on a white ground displayed where they are clearly visible, especially on their perimeter and on highways.

6. If the fighting draws nearer to a neutralized locality, none of the Parties to the conflict may effect a military occupation of such a locality or unilaterally repeal its status.

7. If one of the Parties to the conflict commits a violation of the provisions of paragraphs 3 or 6, the other Party shall be released from the obligations incumbent upon it under the agreement conferring upon a place the status of a neutralized locality.

2. Draft Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of non-international armed conflicts

PART IV

METHODS AND MEANS OF COMBAT

Article 20. - Prohibition of unnecessary injury

1. The right of parties to the conflict and of members of their armed forces to adopt methods and means of combat is not unlimited.

2. It is forbidden to employ weapons, projectiles, substances, methods and means which uselessly aggravate the sufferings of disabled adversaries or render their death inevitable in all circumstances.

Article 21. - Prohibition of perfidy

1. It is forbidden to kill, injure or capture an adversary by resort to perfidy. Acts inviting the confidence of the adversary with the intent to betray that confidence are deemed to constitute perfidy. Such acts, when carried out in order to commit or resume hostilities, include the following:

(a) the feigning of a situation of distress, notably through the misuse of an internationally recognized protective sign;

(b) the feigning of a cease-fire, of a humanitarian negotiation or of a surrender;

(c) the feigning, before an attack, of non-combatant status;

(d) the use in combat of the enemy's distinctive military emblems.

2. On the other hand, ruses of war, that is to say, those acts which, without inviting the confidence of the adversary, are intended to mislead him or to induce him to act recklessly, such as camouflage, traps, mock operations and misinformation are not perfidious acts.

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PART V

CIVILIAN POPULATION

Chapter I

General protection against effects of hostilities

Article 24. - Basic rules

1. In order to ensure respect for the civilian population, the parties to the conflict shall confine their operations to the destruction or weakening of the military resources of the adversary and shall make a distinction between the civilian population and combatants, and between civilian objects and military objectives.

2. Constant care shall be taken, when conducting military operations, to spare the civilian population, civilians and civilian objects. This rule shall, in particular, apply to the planning, deciding or launching of an attack.

Article 25. - Definition

1. Any person who is not a member of armed forces is considered to be a civilian.

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2. The civilian population comprises all persons who are civilians.

3. The presence, within the civilian population, of individuals who do not fall within the definition of civilians does not deprive the population of its civilian character.

Article 26. - Protection of the civilian population

1. The civilian population as such, as well as individual civilians, shall not be made the object of attack. In particular, methods intended to spread terror among the civilian population are prohibited.

2. Civilians shall enjoy the protection afforded by this article unless and for such time they take a direct part in hostilities.

3. The employment of means of combat, and any methods which strike or affect indiscriminately the civilian population and combatants, or civilian objects and military objectives, are prohibited. In particular it is forbidden:

(a) to attack without distinction, as one single objective, by bombardment or any other method, a zone containing several military objectives, which are situated in populated areas and are at some distance from each other;

(b) to launch attacks which may be expected to entail incidental losses among the civilian population and cause the destruction of civilian objects to an extent disproportionate to the direct and substantial military advantage anticipated.

4. Attacks against the civilian population or civilians by way of reprisals are prohibited.

5. The parties to the conflict shall not use the civilian population or civilians in attempts to shield military objectives from attacks.

Article 27. - Protection of objects indispensable to the survival of the civilian population

It is forbidden to attack, destroy or render useless objects indispensable to the survival of the civilian population, namely, food-stuffs and food-producing areas, crops, livestock, drinking water supplies and irrigation works, whether it is to starve out civilians, to cause them to move away or for any other reason.

Article 28. - Protection of works and installations containing dangerous forces

1. It is forbidden to attack or destroy works or installations containing dangerous forces, namely dams, dykes and nuclear generating stations, whenever their destruction or damage would cause grave losses among the civilian population.

2. The parties to the conflict shall endeavour to avoid locating any military objectives in the immediate vicinity of the objects mentioned in paragraph 1.