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HUMAN RIGHTS IN ARMED CONFLICTS

PROTECTION OF JOURNALISTS ENGAGED IN DANGEROUS MISSIONS
 IN AREAS OF ARMED CONFLICT

Report of the Secretary-General

Addendum

CONTENTS

	<u>Paragraphs</u>	<u>Page</u>
I. INTRODUCTION	1	2
II. GENERAL OBSERVATIONS	2 - 6	2
III. OBSERVATIONS ON THE DRAFT ARTICLES	7 - 27	3

ANNEX

REPLIES RECEIVED FROM GOVERNMENTS

- Austria
- Federal Republic of Germany
- France
- Italy
- Netherlands
- Ukrainian Soviet Socialist Republic

I. INTRODUCTION

1. In accordance with operative paragraph 5 of General Assembly resolution 2854 (XXVI), the Secretary-General wishes to submit hereunder an analytic report on the replies of the Governments of Austria, the Federal Republic of Germany, France, Italy, the Netherlands and the Ukrainian Soviet Socialist Republic, which were received after the issuance of documents A/8777 and Add.1. The full texts of those replies are reproduced in the annex to the present document. References are made, as appropriate, to the analytic report on previous replies, which is contained in document A/8777/Add.1.

II. GENERAL OBSERVATIONS^{1/}

2. The Government of the Federal Republic of Germany (see annex) stated that it welcomes the initiative taken by the General Assembly, the Economic and Social Council and the Commission on Human Rights to ensure better protection for journalists engaged in dangerous professional missions in areas of armed conflict. In its view, attention should be paid, in particular, to the question of whether and, if so, to what extent, the task of drawing up a convention for the protection of journalists engaged in dangerous professional missions in areas of armed conflict should be one of developing or of reaffirming the existing rules of international law.

3. The Government of France (see annex) considered that the draft currently before the General Assembly took its inspiration from the broad outlines of the initial draft articles transmitted to the twenty-sixth session of the General Assembly by Economic and Social Council resolution 1597 (L), and represented a compromise text which took into account the ideas contained in the drafts submitted by Australia ^{2/} and the United States. ^{3/}

4. The Government of Italy (see annex) felt that, on the whole, the present draft constituted an improvement as compared with earlier texts.

5. The Government of the Netherlands (see annex) considered that the draft articles were more carefully worded and more precise than the previous draft, though they suffered from certain shortcomings.

^{1/} See also A/8777/Add.1, paragraphs 2 to 8, for the summary of the general observations by the Governments of Australia, Barbados, Byelorussian Soviet Socialist Republic, New Zealand, Pakistan, Spain and Union of Soviet Socialist Republics.

^{2/} Official Records of the General Assembly, Twenty-sixth Session, Annexes, agenda item 49, document A/8589, para. 26.

^{3/} Ibid., para. 27.

6. The Government of the Ukrainian Soviet Socialist Republic (see annex) expressed the view that the draft articles could provide a basis for further work in the preparation of the balanced text of a convention on the subject. It considered, however, that the preparation of a convention on this specific question would not settle the wider issues of the protection of the civilian population in armed conflicts and of fighters struggling against colonial and foreign domination and racist régimes.

III. OBSERVATIONS ON THE DRAFT ARTICLES

A. Article 2^{4/}

7. The Government of France expressed the view that article 2 was the outcome of detailed and technically serious discussions of definitions which had taken place in the Commission on Human Rights and in which the sponsors of the major amendments had participated.

8. It was the view of the Government of the Federal Republic of Germany that, while it appeared desirable to incorporate as much as possible principles concerning the protection of human rights in international law, practical considerations relating to implementation suggested that different regulations should be adopted for international and non-international armed conflicts.

9. In the opinion of the Government of the Netherlands, the words "by virtue of laws or regulations", in paragraph 1, should be replaced by the broader phrase: "by virtue of the country's law or practice" which had been used in an earlier draft.

10. Furthermore, the Government of the Netherlands, as well as the Government of Italy, considered it desirable that paragraph 3, which dealt with the meaning of the term "armed conflict", should refer to all four Geneva Conventions of 12 August 1949 and to any protocols to those Conventions.

B. Articles 3 and 4^{5/}

11. The Government of Austria (see annex) expressed the view that it would be hardly appropriate to grant to the International Professional Committee, which would not be composed of State representatives, the authority to make regulations prescribing the form, contents and conditions for the issuance and withdrawal of the card. It suggested that such matters might rather be regulated by the convention itself.

^{4/} See also A/8777/Add.1, paragraphs 13 and 14, for the summary of the observations by the Government of Spain.

^{5/} See also A/8777/Add.1, paragraphs 15 to 18, for the summary of the observations by the Governments of Barbados, New Zealand and Spain.

12. The Government of the Federal Republic of Germany considered that the functions of the proposed committee might be to register the issuance of cards and to make recommendations relating to the conditions for the issuance of such cards. It emphasized that, in its view, the activities of the Committee should not result in restricting freedom of information.

13. The Government of France considered that the wording now submitted concerning the role of the International Professional Committee represented the most important compromise: after taking fully into account the ideas expressed in the Australian and United States documents, the sponsors had agreed that the Committee should not itself issue the card, but that that function should be performed by "the competent authorities of the States parties".

14. The Government of the Netherlands (see annex and para. 18 below) suggested that proper attention be given to the report 6/ of the Working Group established under resolution 15 (XXVI) of the Commission on Human Rights and that the functions of the proposed International Professional Committee should be examined in the light of the proposals submitted by the Working Group.

C. Article 5^{7/}

15. The Government of Austria questioned the reasons for restricting the issuance of the card to a "specified geographical area", as provided for in paragraph 2, a clause which, in its view might be too restrictive of the freedom of movement of journalists. The Governments of Italy and of the Netherlands were also of the view that the restriction to specified geographical areas was not desirable, in particular because the issuing process would suffer from considerable delays, and the issuing authorities would be confronted with the difficult legal problem of determining in every case whether an armed conflict was taking place.

D. Article 6^{8/}

16. The Government of Austria felt that the qualifying phrase in paragraph 2: "who is under its jurisdiction", which apparently meant to provide for cases of multiple nationality or statelessness, might lead to abusive interpretation.

17. The Government of the Federal Republic of Germany stated that, under its national laws, press cards were issued not by government agencies but by the professional organizations of journalists. The application of paragraph 1 of

6/ A/8438.

7/ See also A/8777/Add.1, paragraphs 19 to 21, for the summary of the observations by the Governments of Morocco and Spain.

8/ See also A/8777/Add.1, paragraph 22, for the summary of the observation by the Government of Spain.

article 6, requiring the competent authorities of the States Parties to be responsible for the issuance of the card, might thus give rise to some problems in that country.

18. In the view of the Government of the Netherlands (see also para. 14 above) paragraph 1 did not necessarily imply that those "competent authorities" should be under the supervision of the State. It suggested that the Assembly may wish to reconsider the possibility of entrusting the task of issuing the card to the International Professional Committee as provided for in the preliminary draft. 9/

E. Article 7^{10/}

19. The Government of Austria questioned the usefulness of the qualifying term "as far as possible", in paragraph 1 of articles 7 and 10, in relation to parties to an armed conflict which were not Parties to the convention.

F. Article 10^{11/}

20. The Government of France felt that article 10, on the protection to be given to journalists, was broader than the text which the sponsors had originally proposed. They had agreed to take into account the humanitarian views expressed by a number of delegations on that subject.

21. The Government of the Federal Republic of Germany considered that the obligations of States as laid down in paragraph 1 (a) could not be fully guaranteed, and that the provision could be used as a pretext to keep journalists entirely away from the areas of armed conflict. It suggested the addition of the following at the end of the subparagraph: "to the extent that this is possible under the circumstances within the scope of the journalistic activity, and that the journalists are not thereby prevented against their will from performing their professional task".

22. The Government of Austria considered that the reference, in paragraph 1 (c), to the Geneva Convention relative to the Protection of Civilian Persons in Time of War was not clear.

9/ See A/8371, annex.

10/ See also A/8777/Add.1, paragraph 23, for the summary of the observation by the Government of Spain.

11/ See also A/8777/Add.1, paragraphs 25 to 27, for the summary of the observation by the Government of Spain.

23. With respect to paragraph 3, the Government of Austria expressed the view that it was difficult to draw a distinction between the professional need of journalists to expose themselves to danger and the obligation of the States parties to protect journalists. It suggested that the limitation of the scope of protection should be avoided in order to achieve effective protection.

G. Article 11^{12/}

24. The Government of Austria felt that this article should be deleted as, in its view, this provision stated merely the obvious.

H. Article 13^{13/}

25. The Government of Austria was of the view that the words "not to interfere in domestic affairs," in paragraph 2 were ambiguous and might lead to abuses. It expressed doubts as to whether the provision should be included.

26. The Government of France considered that article 13 had been amended in the light of the opinion of those delegations which had felt that the text in its original form had not sufficiently affirmed the principle of the sovereignty of States.

I. Article 14

27. The Government of the Federal Republic of Germany felt that the connexion between the proposed convention and the Geneva Conventions as well as the contemplated protocols thereto should be defined more precisely.

^{12/} See also A/8777/Add.1, paragraph 28, for the summary of the observation by Spain.

^{13/} See also A/8777/Add.1, paragraph 29, for the summary of the observation by Spain.

ANNEX

REPLIES RECEIVED FROM GOVERNMENTS

AUSTRIA

/Original: English/
15 September 1972

1. The establishment of an international professional committee as foreseen in article 3 of the convention gives rise to some critical remarks. Article 4 entitles the international professional committee to make regulations prescribing the form, contents and conditions for the issuance and the withdrawal of the card. This provision grants legislative power to an international organ which does not consist of State representatives. This transfer of legislative power from national to international instances should be avoided in this form. It might be conceivable to regulate the requirements prescribing the form, contents and conditions for the issuance and the withdrawal of the card in the convention itself.
2. As to article 5, paragraph 2: it is difficult to understand why the card should be issued for a specified geographical area only. Nothing seems to justify this limitation. In addition it is certainly not in the interest of the journalists involved to be restricted in their liberty to move.
3. Article 6, paragraph 2, by using the term "who is under its jurisdiction" apparently provides for cases of multiple nationality and of statelessness. Considering the different administrative processes it remains to be seen whether this regulation will not lead to abuse.
4. The clause "as far as possible" as foreseen in article 7, paragraph 1, and in article 10, paragraph 1, has an optical rather than a normative function since it refers also to States that are not contracting parties to the convention. It appears to be of little use only and could be even interpreted as a treaty-provision binding upon third States.
5. Relating to article 10, paragraph 1 (c), it may be noted that the relation between this provision and the Geneva Convention relative to the Protection of Civilian Persons in Time of War is somewhat blurred. The question might arise which of these regulations should apply to war correspondents. An unequivocal solution would therefore be preferable.
6. It is almost impossible to define clearly the concrete obligations of the contracting State according to article 10, paragraph 3. It is hard to draw a clear line between the professional need of journalists to expose themselves to danger and the restricted obligation of States to protect journalists if they exceed the extent of exposure to immediate danger resulting from hostilities. In order to achieve effective protection the limitation of the scope of protection should be avoided.

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7. Article 11 merely states a commonplace and should be cancelled.

8. Referring to article 13, paragraph 2, a rather difficult problem arises. It is obvious that the obligation "not to interfere in the domestic affairs of States" is an ambiguous one. Since article 13 does not provide for any sanction it is questionable whether the above-mentioned provision should be included in the convention. If sanctions were provided for, the question would be even more complex - such a regulation could to the last extent lead to a paralysis of journalistic activities since it is always the State that decides whether or not interference in domestic affairs took place.

FEDERAL REPUBLIC OF GERMANY

/Original: English/
27 September 1972

1. The Government of the Federal Republic of Germany supports all endeavours to ensure freedom of the press, freedom of opinion and objective information even in armed conflicts. It is also convinced that journalists, through their activity in the areas of armed conflict, are able to contribute to a more effective enforcement of international humanitarian law. There can be no doubt that journalists must be afforded better protection in armed conflicts. The Federal Government, therefore, welcomes the initiative taken by the General Assembly, the Economic and Social Council and the Commission on Human Rights concerning the question of better protection of journalists.

2. Work on the draft International Convention on the Protection of Journalists Engaged in Dangerous Professional Missions in Areas of Armed Conflict has reached an advanced stage. In this connexion it might be useful to examine to what extent the problem is one of developing or rather of reaffirming existing protective rules of international law. One group of journalists covered by the draft Convention is afforded protection de lege lata in application of the rules that the First, Second and Third Geneva Conventions provide for war correspondents. Other journalists are granted international protection as civilian persons under the Fourth Geneva Convention. A precise answer to the question to what extent the purport of those rules is to be supplemented by the projected special convention or to what extent that purport is to be reaffirmed is required for two reasons:

On the one hand, the connexion between the proposed regulation and the Geneva Conventions and their projected supplementary protocols should be defined more precisely than is the case in draft article 14. This appears to be necessary especially in the case of draft article 10, paragraph 1 (c) which in its present version refers to provisions of the Fourth Geneva Convention that are neither applicable to journalists who are members of the armed forces nor to journalists in non-international armed conflicts, and which, for example, afford no full protection for the professional equipment of the journalists from seizure - notably of photographers and film cameramen.

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On the other hand, the actual compliance with new protective provisions should be reappraised in the light of past experience and, if possible, increased through suitable means. This would be in line with the purpose of a regulation which reaffirms the present protection of journalists under international law and which, at the same time, creates the necessary legal guarantees for new protective rules.

3. In addition, an effective system of protection should make allowance for the fact that, on the one hand, the obligation of States defined in draft article 10, paragraph 1 (a) to do all that is necessary to protect journalists from the danger of death or injury or from any other danger inherent in the armed conflict cannot be fully guaranteed. On the other hand, a far-reaching obligation like this can be used as a pretext to keep journalists entirely away from the areas of armed conflict. It is therefore suggested that the following clause be added to draft article 10, paragraph 1 (a):

"... to the extent that this is possible under the circumstances within the scope of the journalistic activity, and that the journalists are not thereby prevented against their will from performing their professional task."

4. Furthermore, it might be useful to examine in what manner special protection may be provided for journalists who cannot be associated with any of the parties to the conflict and who have not been authorized by any of those parties to perform their task. The exchange of opinions which took place at the Conference of Government Experts on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts, convened by the International Committee of the Red Cross, has shown that here again the solution of the problem will, in the final analysis, hinge on how far States are prepared in times of armed conflict to assume obligations far beyond those required by the former legal provisions. Article 13 of the draft Convention provides a valuable basis for dealing with this problem. However, it can not be overlooked that, e.g., special protection could so far be ensured neither for doctors nor for persons concerned with the distribution of aid consignments or the granting of other humanitarian assistance in cases in which such activities are not based on an express authorization by a party to the conflict. It will therefore have to be clarified inter alia to what extent at least prior information of the parties to the conflict may be prescribed as a basis for protection.

5. An important problem involves the applicability of the projected Convention in non-international armed conflicts. While it appears desirable to incorporate human rights as much as possible into international law, aspects of practical enforceability suggest that different regulations be adopted for international and non-international armed conflicts. Since the protection in non-international conflicts can presumably be laid down only in minimum rules, an additional formula is required that ensures more comprehensive protection of journalists in international armed conflicts.

6. Great importance will have to be attached to the matter of an International Professional Committee, as provided for in draft articles 3 and 4. Such a Committee could help to render protection under international law more effective by registering the issuance of cards and making recommendations relative to the conditions for the

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issuance of such cards. However, the activities of this Committee must not result in restricting the freedom of the press. The proposed issuance of cards by national authorities may give rise to problems. According to the applicable press law of the Federal Republic of Germany issuance of such cards by governmental agencies is not possible. The journalistic activity in this country is not subject to any legal conditions. Press cards are issued directly in each case by the professional organizations of journalists. Nor does the existing law provide for governmental control.

FRANCE

/Original: French/

2 October 1972

In the view of the French Government, the "draft articles of the International Convention on the Protection of Journalists Engaged in Dangerous Professional Missions in Areas of Armed Conflict" transmitted to the General Assembly by the Economic and Social Council resolution 1690 (LII) are in line with the recommendations made in resolution 2854 (XXVI).

The latter invited consideration of the preliminary draft convention contained in Economic and Social Council resolution 1597 (L) "taking into consideration the draft conventions submitted by Australia and by the United States of America", as well as a number of other documents.

The text now being submitted to the General Assembly meets these requirements. It takes its inspiration from the broad outlines of the initial draft submitted to the twenty-sixth session of the General Assembly in Economic and Social Council resolution 1597 (L). At the same time, it constitutes a compromise incorporating the ideas contained in the draft submitted by Australia and in the "working paper" prepared by the United States. In order to achieve this compromise, the sponsors of the draft demonstrated a high degree of conciliation and co-operation.

I. Like the draft transmitted in resolution 1597 (L), the present draft reflects three underlying concerns:

A. To ensure real protection for journalists. This means that it takes into account specific suggestions made by the profession, to the effect that genuine journalists should be identified and that means should be arranged of keeping track of what happens to them in the event of difficulties arising at the place of their mission. The suggestions are realistic ones.

B. To ensure a sufficiently broad wording to cover all conflict situations and, while there can obviously be no question of imposing legal obligations on parties to a conflict which are not States, at least to ensure that they conduct themselves in the manner laid down by the Convention.

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This explains the reference to armed conflict - which in the view of the French Government covers both international and non-international conflicts - and the mention of "all parties" to an armed conflict; this approach is compatible with a text establishing practical and specific rules. In any case, it states that the application of the Convention will have no legal effect on the situation of the parties to a conflict.

C. To ensure that this protection cannot be extended to activities other than that of information-gathering for the press, and shall not interfere with that activity.

It is for this purpose that the journalistic profession is itself given the responsibility for drawing up the regulations for the issuance of the card. This will avoid any suspicion on the part of journalists and will ensure that the Convention meets their practical requirements.

II. The draft now being submitted is a compromise, in that it reproduces certain concepts contained in the other documents transmitted to the Commission on Human Rights and a number of the amendments submitted have been incorporated in it.

For example, article 2 is the result of detailed and technically serious discussions of definitions which took place in the Commission on Human Rights. The sponsors of the major amendments participated in these discussions.

The most important compromise concerns the wording now used with regard to the role of the Professional Committee. After taking fully into account the ideas expressed in the Australian and United States documents, the sponsors agreed that the Committee should not itself issue the card, but that this function should be performed by "the competent authorities of the States Parties".

Article 10, dealing with the protection afforded, is broader than the text initially proposed by the sponsors, who agreed to take account of the humanitarian views expressed by a number of delegations on this subject.

Article 13 has also been amended in the light of the opinion of those delegations which felt that in its original form it did not sufficiently affirm the principle of sovereignty of States.

ITALY

/Original: English/

6 October 1972

The Italian Government has already expressed, in various organs of the United Nations and in reply a/ to Note SO 262/4 of 29 April 1971, its support for the

a/ See A/8371, annex II.

adoption of a Convention on the protection of journalists engaged in dangerous professional missions in areas of armed conflict.

The amendments made by the Commission on Human Rights to the original text considered by the twenty-sixth session of the General Assembly, such as the proposal to combine that text with the one put forward by Australia, represent, in the opinion of the Italian Government, an improvement of the fundamental and procedural regulations contained in the draft Convention.

There are, however, several aspects on which the Commission did not reach unanimity and, therefore, it would be desirable for the next session of the General Assembly to concentrate its attention on these. Among these aspects, the Italian Government wishes to stress the following:

1. Article 5, paragraph 2, states, among other things, that documents would be issued for the undertaking of a dangerous mission "in a specific geographical area". This restrictive regulation could, on the one hand, hinder the prompt issuance of documents for individual missions and, on the other, create difficulties for the competent authorities in the issuance of documents in that they would have to judge whether or not there existed a state of armed conflict in a specific geographical area.

2. Article 2, paragraph 3, states that the term "armed conflict", whether or not it is international, refers to the definition it was given in the 1949 Geneva Convention relating to the Protection of Civilian Persons in Time of War and to the related protocols ratified by the participating States. Considering that in the four Geneva Conventions of 1949 the same general definition of international and internal armed conflict is used, the Italian Government believes that the above-mentioned article of the draft Convention should refer to the four Conventions and not only to that one relating to the protection of the civilian population.

The above observations have been submitted by the Italian delegation also to the second session of the Conference of Government Experts recently convened by the International Committee of the Red Cross.

NETHERLANDS

/Original: English/

19 September 1972

1. The Netherlands Government made some general comments on the protection of journalists engaged in dangerous missions in areas of armed conflict at an earlier stage. b/ As the draft international convention has since been discussed in the

b/ Ibid.

General Assembly and more drafting work been done by the Commission on Human Rights, the Netherlands Government would like to make observations with respect to a few elements of the draft articles. As far as the basic attitude of the Netherlands is concerned, this is reflected in last years' comments.

2. The draft articles approved by the Commission on Human Rights at its twenty-eighth session as the basis for further work constitute in certain respects a considerable improvement in comparison to the earlier draft, the new draft being more carefully worded and more precise. We would like to state, however, that the draft articles now transmitted to the forthcoming twenty-seventh session of the General Assembly present certain drawbacks. This applies in particular to the position of the proposed International Professional Committee. According to the preliminary draft the composition and functions of the International Professional Committee were to be defined in a protocol annexed to the convention. In fact, such a protocol was drafted by a working group of experts, who were for the greater part persons nominated by national professional organizations of journalists from different geographical regions and who represented as such the voices of persons directly interested. It would seem that the report of the Working Group (A/8438), setting out in detail proposals concerning the composition and the functions of the International Professional Committee, had little bearing upon the draft now circulated for comments. It is desirable that the report of the Working Group receive proper attention and that the functions of the International Professional Committee be considered again in the light of that report.

3. Article 2, paragraph 1, describes for the purposes of the application of the Convention the word "journalist". In view of the different regulations and practices in the various countries with regard to the status of journalists, this provision had to refer to criteria prevailing at the national level. In this context the provision uses the term "by virtue of laws or regulations". This term might, however, not cover the situation in those countries where the status of journalists is not made dependent upon laws or regulations. In our view it is therefore preferable to use instead the term "by virtue of the country's law or practice", which better reflects the various practices in different countries. In fact, the latter term was used in the preliminary draft.

4. With respect to the term "armed conflict" (article 2, paragraph 3), it would seem desirable that not only reference be made to the Geneva Convention relative to the Protection of Civilian Persons in Time of War and to all protocols to that Convention, but more general to all Geneva Conventions of 12 August 1949 and any protocol to those Conventions. The reason is that all four Geneva Conventions have the pertinent articles 2 and 3 in common and that any future additional protocol which may be relevant to the definition of the term "armed conflict" may very well go beyond the scope of the Convention relative to the Protection of Civilians in Time of War.

5. As for the conditions of issuance of the card we do not favour the system of granting the card only for "a specified geographical area where there is an armed conflict" (article 5, paragraph 2). Such a restriction to a specified geographical

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area would have adverse effects, in particular because it could cause considerable delay before the card is issued. Furthermore, the issuing authorities would face the difficult legal problem to determine in every special case whether or not there is an armed conflict.

6. In our view the words "the competent authorities of the States parties who shall be responsible for the issuance... of the card" (article 6) do not imply that those authorities form part of a State supervised system. More consideration should be given to the question whether it is not preferable to entrust the task of issuing the card to the International Professional Committee, as was provided for in the preliminary draft convention, instead of to authorities on the national level.

UKRAINIAN SOVIET SOCIALIST REPUBLIC

Original: Russian

11 October 1972

The competent authorities of the Ukrainian SSR have carefully considered the draft articles for an international convention on the protection of journalists engaged in dangerous professional missions in areas of armed conflict annexed to resolution 6 (XXVIII) of the Commission on Human Rights. In their opinion, the draft articles can serve as a basis for the further elaboration of a more balanced text for the draft international convention.

In stating its general observations on this draft convention, the Ukrainian SSR would point out that its representatives in the Commission on Human Rights and the United Nations General Assembly have already on a number of occasions expressed their view that the elaboration of an international legal instrument on this particular question would not solve the problems facing the United Nations in the matter of protecting human rights during armed conflicts.

The proposal for the conclusion of a convention on the protection of journalists seems to us to form only part of a broader question which would entail the preparation of further instruments designed for the protection of the civilian population in armed conflicts. Nor does the proposal deal with the question of protecting persons fighting for their freedom against colonial and foreign rule and racist régimes, or with other aspects of the problem of the protection of human rights in armed conflicts, a problem which is of vital importance and calls for a speedy decision by the United Nations.
